PERSPECTIVES
Teaching Legal Research and Writing

Teaching Students How to Learn in Your Course: The "Learning-Centered" Course Manual

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Legal research and writing (LRW) professors should tell their beginning students, in writing, how they may learn optimally in the LRW course. An excellent tool for this purpose is a "learning-centered" course manual.[1] This is a set of documents that students receive before class sessions begin and refer to throughout the semester. Like a traditional syllabus, it includes a schedule of assignments and class sessions. But it also offers more. It supplements the course's syllabus with an informative handbook that seeks to answer, concisely yet comprehensively, a question every student should repeatedly ask: What must I know about the course to get maximum benefit from it?[2] Accordingly, a learning-centered course manual articulates the course's relevance and the professor's expectations and plans by concisely explaining at least:

- the course content's importance;
- the course's goals;
- how the professor will work with students to attain those goals, and why;

[1] "Learning-centered" has been used by many authors, *e.g.*, Judith Grunert, *The Course Syllabus: A Learning-Centered Approach* (Anker 1997); Robert M. Diamond, *Designing and Assessing Courses and Curricula: A Practical Guide 193* (2d ed., Jossey-Bass 1998). Professor Diamond taught for years at Syracuse University and in 1998 helped found the National Academy for Academic Leadership. See <www.thenationalacademy.org/About/history.html> (visited April 22, 2003).

[2] *See* Diamond, *supra*, at 192 (posing a similar, more general question).

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- how students can best work with one another and the professor; and
- how and with what criteria the professor will assess student performance.[3]

Moreover, such a course manual also may describe the course's crucial points[4] and enduring, fruitful questions.[5]

The result is a "do-it-yourself building kit for learning."[6] A learning-centered course manual articulates for the professor and student a shared mission and a plan. These will guide them through an arduous, often emotionally draining semester chockablock with carefully orchestrated, time-sensitive assignments and readings. The manual will seek to empower and inspire students, helping them to avoid frustration[7] and to become active, motivated, savvy learners.[8] Such goals are vital in a required, not immediately popular course. That is especially true if the course notoriously requires great effort yet earns disproportionately few credits. The course manual may, for example, describe students as apprentice lawyers and link their course work explicitly to typical student goals and to lawyers' activities.[9] This can help students appreciate the knowledge and skills they are to learn. The course manual also can convey the professor's enthusiasm, preparedness, and commitment to supporting (as well as challenging) the students.[10] Moreover, the manual may help students manage their time well and focus their efforts efficiently. It can do so by providing an overview of not just the order and timing of assignments but also the reason for this sequence.[11] Such an overview also communicates the professor's understanding and respect for the students. They typically "abhor surprises" and "appreciate a tightly organized, explicit course structure around which they can plan the rest of their lives."[12]

The Inadequacy of Traditional, Simple Syllabi

A common means of imparting course-related information to students in writing is a syllabus. Traditionally in law school courses, however, a course syllabus—if used at all—is what course-design experts describe as "teacher- or content-centered."[13] This is little more than an address card for the professor ("my office is __, my phone

[3] Gregory S. Munro, *Outcomes Assessment for Law Schools* 142–44 (Inst. for Law School Teaching 2000) ("criteria by which [the professor] will assess student performance … should be written and provided to the students because students prepare better for performance when they know the criteria," and "learning makes more sense for students if specific course goals … are set out in the syllabus so they understand what they are supposed to learn"). *See also* John Bransford, Nancy Vye & Helen Bateman, *Creating High-Quality Learning Environments: Guidelines from Research on How People Learn,* in National Research Council, The Knowledge Economy and Postsecondary Education 159, 189 (Patricia Albjerg Graham et al., eds. 2002) (emphasizing the special importance of stating "the goals for learning and the methods for assessing it"). *See also* Diamond, *supra* note 1, at 191 ("The clearer the picture your students have of what you expect … and the greater their understanding of what their role will be and of the criteria" by which you will evaluate their work, "the more effective the course will be.").

[4] This makes the syllabus or manual rather like the syllabi familiar from scholarly articles and Supreme Court reports: abstracts or concentrations of a larger work's (in this case the course's) important points and essential qualities.

[5] *E.g.,* Gerald F. Hess & Steven Friedland, *Techniques for Teaching Law 28* (Carolina Academic Press 1999) (describing a syllabus composed largely of questions that "synthesize in sequence every topic covered in the course" and focus students' attention on important views concerning the topic).

[6] *Id.* at 24.

[7] Debbie Mostaghel, *Around What Goals Should We Construct a Legal Research and Writing Curriculum?* 11 Second Draft, No. 2, p. 4 (1997) ("Student resistance to some of the things we do may impede our ability to teach effectively," and "reducing frustration is a legitimate goal because it can lead to a better learning situation.").

[8] James B. Levy, *Motivating Students to Learn,* 9 The Law Teacher 14 (Spring 2002) (labeling motivation "the fulcrum of student learning" and discussing applications of motivation theories to law school course design).

[9] *Cf.* Linda B. Nilson, *Teaching at Its Best: A Research-Based Resource for College Instructors* 19 (Anker 1998) (recommending a brief "travelogue to pique the students' interest in the expedition" on which the course will lead students).

[10] *See* Levy, *supra* note 8 (discussing the importance of helping students expect that they can succeed, grow excited about the process, and catch the "emotional contagion" spread by the professor's enthusiasm). Popular television educator "Crocodile Hunter" Steve Irwin agrees: "[E]ducation is all about being excited about something. ... [I]f we can get people excited about animals, then by crikey, it makes it a heck of a lot easier to save them." *Method to His Madness*, Scientific American.com, March 26, 2001, <www.sciam.com/article.cfm?articleID=00000077-EE59-1CEE-93F6809EC5880000> (visited July 15, 2003).

[11] Diamond, *supra* note 1, at 194.

[12] Nilson, *supra* note 9, at 22.

[13] Diamond, *supra* note 1, at 192.

number is __, my office hours are __," etc.), a calendar listing dates and assignments ("read __ on Monday, submit __ on Tuesday," etc.), and perhaps a brief statement of basic course rules.[14] Teacher manuals and syllabus banks suggest that this style of syllabus may persist even among LRW faculty.[15] Such a perfunctory listing of basic information will do little to help "students understand their expanding role in the learning enterprise" and to become active, responsible learners.[16]

This shortcoming costs both students and professors. Novice LRW students tend to rely on understandings and methods of learning that have brought them academic success before law school. Some of these understandings and methods may serve them poorly. A student might believe that success in the course depends primarily on listening attentively to lectures and articulating the professor's views. This student might accordingly pursue learning mainly through

- meticulous note-taking in the classroom,
- self-effacing refusal to articulate personal opinions, and
- formulaic mimicry of writing samples favored by the professor.

This would be a weak learning strategy in a course designed to help a student learn through

- Socratic dialogue,
- independent, forthright expression of the student's own ideas, and
- recursive evaluation of whether the student's writing is suited its subject's logic and emotion and serves its audience's needs and preferences.

When familiar, trusted ways of learning fail them, students experience confusion and dismay. Unaddressed, these can quickly calcify into antipathy, apathy, and other psychological and social burdens that seriously hinder learning.

Those results can in turn bring writing professors bitter complaints, weak evaluations, and personal and professional anguish. Moreover, lack of written, "detailed precision" regarding our expectations for students will increase the hours we spend with individuals "reviewing content, attempting to clarify assignments, and generally helping them (and perhaps ourselves) to understand requirements, assignments, and standards."[17]

Hence both simple fairness and common sense dictate that we should thoroughly describe, in writing, how students may best succeed in the course. We will present students with a complex set of readings, activities, and assessments that will challenge them in unexpected ways. In particular, the course will repeatedly demand a scrutiny of the student's writing that is surprisingly intense, critical, thorough, and focused. Moreover, it will demand that students learn, think, and write outside the classroom with an often novel degree of intellectual independence. As they strive, within prevailing rhetorical conventions, to communicate using an authentic voice, they tread a difficult path. A learning-centered course manual provides a welcome guide to the terrain.

An Example

My fall semester course manual, for example, is required reading before the initial class session.

"Hence both simple fairness and common sense dictate that we should thoroughly describe, in writing, how students may best succeed in the course."

[14] *Cf.* Munro, *supra* note 3, at 33 (defining "assessment" as a set of practices that fosters more active teaching and learning by articulation of goals and measurement of effectiveness in attaining those goals, and concluding that this typically "is woefully inadequate in law schools"); Diamond, *supra* note 1 at 193 (describing a 1985 study that compiled a substantial list of important questions typically left unanswered by college syllabi).

[15] *See, e.g.*, Linda H. Edwards, *Teacher's Manual, Legal Writing: Process, Analysis, and Organization* (3d ed., Aspen 2002); Amy E. Sloan, *Basic Legal Research: Tools and Strategies* (2d ed., Aspen 2003); the Legal Writing Institute's syllabus bank at <www.lwionline.org/publications/syllabusbank.asp> (visited April 22, 2003). Of course LRW professors may often include some of the information described in this article in materials not formally part of the course syllabus, such as a course manual or handout collection.

[16] *See, e.g.*, Hess & Friedland, *supra* note 5, at 15–16 (endorse active learning and quoting the "Seven Principles for Good Practice in Undergraduate Education" articulated in 1987 by Arthur W. Chickering and Zelda F. Gamson: Students "must talk about what they are learning, write about it, relate it to past experiences, and … make what they learn part of themselves").

[17] Diamond, *supra* note 1, at 192.

"My description recommends two attitudes that will help students to achieve the course goals: willingness to learn actively and openness to constructive criticism."

The manual begins with a table of contents and a welcome letter.[18] The letter greets students, places the course in a professional context, and invites them to engage in a learning-oriented partnership with me and their peers. Specifically, it explains that:

- within months most of the first-year students will be working as apprentice lawyers outside of the law school, alongside professionals;
- legal writing is more difficult than many novices realize and may require "willing[ness] to abandon writing techniques that have worked well in the past, and to learn new writing skills";[19]
- a team of instructors is dedicated to supporting students along their journey;
- this team will challenge the students to learn responsibly and actively, primarily by doing; and
- the course will complement their other courses explicitly and purposefully.

Next, my course manual describes goals and how students may best attain them. Such a description must take into account that individuals have varying learning styles and strategies. Hence it should focus on general advice that will help students customize their own approach.[20] My description recommends two attitudes that will help students to achieve the course goals: willingness to learn actively and openness to constructive criticism. It then links these attitudes to the teaching methods their team of instructors[21] and texts will employ. It also briefly explains why these attitudes, methods, and texts can combine to produce a superb learning experience. This assures students that we have carefully considered our teaching plan.

My course manual then helps teach students to plan effectively by explaining, in a concise essay, the semester's instructional progression. This describes what topics we will address when, how, and in what context. But it also introduces the major points we will challenge students to grasp and to incorporate into their work. Students learn from this, for example, that we will:

- read about, examine critically, and use an organizational paradigm for legal writing, which the manual briefly introduces;
- address tort and contract issues to complement the students' other first-semester courses;
- progress gradually, with a building-block approach, from drafting a paragraph through completing memoranda, in first a litigation and then a transactional context (including drafting a contract clause);
- cycle or spiral frequently through a recursive process of reading, writing, receiving commentary from the professor and fellow students, and revising;[22]
- integrate research exercises with writing assignments; and
- provide teaching assistants and online tools to help students learn citation.

Accompanying this is a course syllabus. The syllabus contains a detailed schedule of assignments, contact information for the teaching team, a list of texts, and various charts. Two charts show submission deadlines for papers and the weight of each of the course's performance measures in calculating a student's course grade. Another chart, arranged as follows and explained in accompanying notes, shows students the dates and content of assignments:

Week	Documents to Submit	Documents to Receive	Reading	Class Topics
[Week numbers and dates appear here.]	*[Writing, research and citation assignments appear in a consistent order in the charts' boxes.]*			

[18] Grunert, *supra* note 1, at 28 (a letter can "set a dialogic tone" for the course). I also maintain the conversational tone by continuing to address the student reader as "you" throughout the syllabus, as Professor Diamond recommends. Diamond, *supra* note 1, at 197.

[19] Robin Wellford, *Legal Reasoning, Writing and Persuasive Argument* vii (2002).

[20] The aim is to "help them to become effective learners by actively shaping their own learning." Grunert, *supra* note 1, at xi.

[21] At Vanderbilt, students learn from a team composed of a writing professor, a research professor (a reference librarian), and a student teaching assistant, who primarily teaches citation and serves as a general mentor.

[22] Laurel Currie Oates, Anne Enquist & Kelly Kunsch, *Teacher's Manual, The Legal Writing Handbook: Analysis, Research, and Writing* 25 (Aspen 2002) (A "spiral curriculum" helps students learn effectively because it "sequences what [they] need to learn" and requires them "to use what they have learned again and again in increasingly sophisticated contexts."); Mary S. Lawrence, *Writing As a Thinking Process* 4–5 (1972) (describing presentation of information in "recurring cycles" to teach writing as a process).

Finally, my course manual ends with references to additional books, articles, Web sites, or other "material that supports learning outside the classroom."[23] These may include, for example, supplemental handbooks, textbooks, reference guides, and audiovisual materials, as well as online or electronic resources such the Interactive Citation Workbook and Workstation, CALI exercises, and useful Web sites.

Creating a Learning-Centered Course Manual

One should carefully consider the costs and logistics of producing a learning-centered course manual. Pedagogically it is a sound investment of time and energy because it helps the professor thoughtfully design, implement, and later evaluate the course. Each time I evaluate one semester's LRW course and prepare to teach the course again, I thoroughly review, revise, and learn from my course manual. Moreover, your law school or university may provide resources such as peer review of a draft manual; help obtaining copyright permission where necessary; copying, printing, and binding services; and the ability to sell the manual through a bookstore, thereby passing the cost on to students.[24] At Vanderbilt, for example, colleagues from our superb Center for Teaching[25] have helped me develop a learning-centered manual; a printing office obtains copyright clearances and binds the manual together with the semester's supplemental readings; and the campus bookstore sells the resulting packet. A law school also might permit the professor to reap institutional or even monetary benefits from creating especially informative, effective, and original syllabi—for example as course-enhancement grants, royalties from manual sales,[26] or fulfillment of renewal or promotion standards.[27]

Design and layout also are important considerations for a learning-centered manual. The final document, though it accomplishes many things, must remain reader-friendly. Students will appreciate strong organization, visible at a glance in a table of contents composed of informative headings. A sensible format and design also are important because the manual's look affects its usefulness. Consequently, good advice regarding effective design and layout of print or Web-based materials is invaluable. Helpful advice is available from sources such as Robin Williams's *The Non-Designer's Design Book*. It targets professors who lack "background or formal training in design" but understand "that students respond more positively to information that is well laid out."[28]

Conclusion

Creating and distributing a learning-centered course manual promotes thoughtful course design and effective, efficient, and enjoyable learning among LRW students. Such a manual prompts professors to articulate their goals and expectations and to communicate these to students in an even-handed, enduring, and reviewable manner.

That should be reason enough to justify the time, energy, and expense of creating a manual. If one needs further incentive, however, it could come from this: A learning-centered manual also helps communicate the professor's pedagogical vision and methods to other important audiences, such as adjunct professors or teaching assistants in the LRW program, your dean and fellow faculty members, and alumni.

"Creating and distributing a learning-centered course manual promotes thoughtful course design and effective, efficient, and enjoyable learning ..."

[23] Grunert, *supra* note 1, at 18–19.

[24] Professor Diamond recommends this and discusses details of doing so. Diamond, *supra* note 1, at 198–201. He also recommends copyrighting your syllabus's new material and considering "the possibility of collecting royalties" on its sales. *Id.* at 201.

[25] *See* <www.vanderbilt.edu/cft/>.

[26] *See* Diamond, *supra* note 1, at 201.

[27] The Washburn University School of Law's dean recently wrote: "We must reward faculty members for being very effective teachers," even if enhancing their effectiveness "necessarily will [leave them] less time for scholarship and service." Dennis R. Honabach, *Precision Teaching in Law School: An Essay in Support of Student-Centered Teaching and Assessment,* 34 U. Tol. L. Rev. 95, 103 (2002).

[28] Robin Williams, *The Non-Designer's Design Book: Design and Typographic Principles for the Visual Novice* 11 (Peachpit Press 1994).

TEACHABLE MOMENTS FOR TEACHERS . . .

DEMONSTRATIONS AND BILINGUAL TEACHING TECHNIQUES AT THE UNIVERSITY OF PARIS: INTRODUCING CIVIL LAW STUDENTS TO COMMON LAW LEGAL METHOD

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Teachable Moments for Teachers *... is a regular feature of* Perspectives *designed to give teachers an opportunity to describe a special moment of epiphany that changed their approach to presenting a particular topic to their students. It is a companion to the* **Teachable Moments for Students** *column that provides quick and accessible answers to questions frequently asked by students and other researchers. Readers are invited to submit their own "teachable moments for teachers" to the editor of the column:* Louis J. Sirico Jr., Villanova University School of Law, 299 N. Spring Mill Road, Villanova, PA 19085-1682, phone: (610) 519-7071, fax: (610) 519-6282, e-mail: **sirico@law.vill.edu.**

In April and October 2002, I had the pleasure of visiting the school of law at the University of Paris V, each time to teach a two-week course in common law legal method and selected issues of United States contract law. In each semester, I taught a group of upper-division law students who spoke English in varying degrees of fluency and were interested in exploring the common law legal system as part of a broader course of study in international law. Despite those helpful qualities in the students, my teaching assignment presented some interesting pedagogic challenges, both because the students spoke English only as a second or third language and because they were primarily acquainted with the French civil law system.

I. Contrasting Systems

The French civil law system is based largely on the Napoleonic codes of 1804. As with legislation in the United States, much of the language of the French codes is necessarily general, raising difficult issues about the application of the code to disputes not specifically addressed by the text or even contemplated by the drafters. To resolve such disputes, the French judiciary must interpret imprecise text and fill gaps in the code. The French legal culture, however, restricts the creative law-making role of courts in interpreting imprecise code provisions, or at least it partially conceals the extent to which such law-making in fact takes place.

The restrictions stem from a popular reaction against perceived abuses of judicial power in the decades prior to the French Revolution. Enacted in 1804, article 5 of the French Civil Code prohibits the French high court in civil matters, the *Cour de Cassation*, from announcing law of general applicability. Through a published opinion whose explicit reasoning is limited to a terse syllogism, a chamber of the *Cour de Cassation* either will affirm the decision of the lower court or will vacate that decision on the ground that the lower court failed to follow applicable code provisions. The authoring chamber, however, will not purport to generalize from its interpretation by announcing a rule that would apply to a broad class of cases.

Indeed, French judicial decisions are not even formally a source of law, because they do not create binding precedent on questions of interpretation of code provisions. At least in theory, each case presents a new opportunity to discover the true meaning of a code provision,

without formal deference to previous and possibly mistaken judicial interpretations.

Admittedly, behind the scenes and largely outside of the published pronouncements, French courts regularly consider precedent for its persuasive value,[1] lending weight to the view that the courts have created at least a weak and informal species of case law that supplements the codes. It remains true, however, that previous decisions of even the highest French courts are not *binding* on them or even on lower courts and thus are not formally treated as sources of law applicable to subsequent disputes. Moreover, a reflexive utterance by one of my French student research assistants suggests that French law students have thoroughly assimilated this legal culture of restricting—or at least understating—the law-making role of the judiciary. When I asked the student whether a legal proposition that she was discussing could be found in the text of the civil code, she looked a bit surprised and responded, "Yes, *all* the law is in the code."

In our common law system, on the other hand, principles of stare decisis ensure that published judicial decisions form a body of case law, a primary source of law, regardless whether the decisions develop common law rules or interpret constitutions, statutes, or regulations. Our courts are most transparently engaged in an act of creative law-making when they act outside the boundaries of legislation to develop or refine common law principles in the context of particular disputes. Moreover, even when our courts interpret and apply legislation, their published interpretations add a judicial gloss to the legislation, a gloss that may control the outcome of subsequent disputes over application of the legislation.

Our system of deferring to precedent, in turn, helps to define the elements of legal method that we explore with our students. Students soon learn, for example, that a court must carefully justify a decision to overrule its own case law, and that the potential applicability of arguably binding authority from a higher court typically raises interesting questions of analogizing or distinguishing the precedent.

II. Pedagogic Challenges

My students at the University of Paris V had several years of legal study under their belts, and some of them had taken other common law courses. Still, one can imagine that principles of common law legal method might appear at least as peculiar and challenging to many of them, in light of their contrasting civil law tradition, as they would to a typical American first-semester student.

Moreover, as a substantive vehicle for exploring principles of common law legal method, I chose to cover elements of the doctrine of consideration, which is a notoriously slippery concept at the margins. Consideration doctrine recommended itself for coverage both because it is a foundational principle of Anglo-American common law of contracts, and because it compares and contrasts nicely with the broader French contract requirement of cause, which permits enforcement of even promises to make a gift.

Finally, because our common law system has absorbed some code system qualities with the explosion of state and federal legislation in the past century, I undertook as well to introduce the students to selected provisions of Article 2 of the Uniform Commercial Code (UCC) and of the United Nations Convention on International Sales of Goods (CISG), the latter of which has been adopted by the United States and is codified as federal law. This legislative component of our course provided opportunities for exploring additional elements of legal method, such as the primacy of legislation over common law in our system, empowering the legislature to nullify, replace, modify, or codify common law rules, and the partly contrasting notion that—even when we organize legislation into a *code* system such as the UCC—statutory schemes in the United States are not necessarily comprehensive, and the common

[1] *See* Mitchel Lasser, *Judicial (Self-)Portraits: Judicial Discourse in the French Legal System*, 104 Yale L.J. 1325 (1995).

law remains as a backdrop, ready to apply to issues not addressed by the legislation.[2]

III. Pedagogic Strategies

In preparing to cover this material in a handful of class meetings over two weeks, I recognized that two factors worked in my favor. First, although the University of Paris V required me to administer a graded final exam, it did not expect me to assign a written brief or memo and to provide individual written feedback to each of 30 students, a task that would have been daunting for both students and for me within the short time we had together. Although I addressed outlining and essay exam-taking, I limited that instruction to in-class writing exercises and group feedback. Second, I was only one in a series of short-term visiting professors from common law countries, most whom were emphasizing doctrine, so I could afford to use sources of law primarily as vehicles for exploring legal method, without pretending to achieve comprehensive coverage of any doctrinal topic.

Indeed, such was my emphasis on legal method that I devoted significant classroom time to an exercise and to a longer workshop set in nonlegal contexts, which allowed students to focus exclusively on analytic method without the distraction of simultaneously learning new and complicated doctrinal matters. This technique of isolating questions of method had worked well with first-semester students in the United States, and I guessed that it would be similarly effective with students approaching common law method from a different legal tradition. At the University of Paris V, however, I added a bilingual twist to the exercise and the workshop set in nonlegal contexts, and I created a new exercise that invited exploration of both method and legal doctrine, again with a bilingual element.

[2] *See* UCC § 1-103(b) (rev. 2001) (calling for application of common law principles to issues not addressed by provisions of the UCC); CISG art. 7 (effective 1988) (calling for application of the domestic law, which might consist of common law, selected by the forum's conflicts rules, to issues not addressed by the articles of the CISG or by the principles of international law on which they are based).

A. The Grocer's Rule—Thinking About Precedent in Two Languages

After assigning some general background reading on our system of precedent, I performed the classroom demonstration that I sometimes call "The Grocer's Rule," which I adapted from a simpler problem created by other legal writing faculty and which has been further expanded by still others.[3] It uses a problem set in a universally familiar nonlegal context to explore (i) the role of precedent, (ii) arguments based on analogy and distinction, and (iii) the inherent uncertainty or indeterminacy in legal questions that lie in the "gray areas" of the law. For students of any legal culture, the demonstration is effective and memorable because it builds on foundations of common knowledge, and its questions are raised in the vivid and accessible form of a brief skit, using real or artificial fruit as props.

In performing the demonstration for French students, I added a bilingual element. True, one goal of the course was to improve the students' abilities to analyze the law in the English language in their reading, their writing, and our oral classroom discussions. And the course provided many such opportunities because nearly all of the reading assignments and all of the class discussions were communicated exclusively in the English language. On a few occasions, however, I added a French-language component to my class presentations, both to ensure that students understood critical facts in hypothetical cases and to help them evaluate their own translations of the written English.

In presenting The Grocer's Rule to the French students, my French research assistant acted the part of the grocer, while I played the role of the grocer's employee. In the skit, the grocer announces as a general standard that produce will be placed in the store's window display case only if it will tend to attract passing pedestrians who had not otherwise intended to enter the store. The employee observes the grocer applying the general standard in two "cases." In the first case, the grocer

[3] *See* Charles R. Calleros, *Using Classroom Demonstrations in Familiar Nonlegal Contexts to Introduce New Students to Unfamiliar Concepts of Legal Method and Analysis* (hereafter, *"Classroom Demonstrations"*), 7 J. Leg. Writing Inst. 37, 41 nn. 6–12 (2001).

places large, ripe, red, shiny apples in the window display case. In the second case, the grocer places rough, unwashed, unpeeled carrots in the appropriate section in the interior of the store. I then ask the class how the employee should treat a new case—literally a case of large red tomatoes—that arrives while the grocer is away for the afternoon. Because the employee desires to please the boss, the employee seeks to predict how the grocer would apply the general standard to the case of tomatoes.

It soon becomes clear to students that they could better predict how the grocer would react if they understood the rationale for each of the two previous applications of the grocer's standard. If they understood why the grocer thought that the apples would attract impulse shoppers but the carrots would not, they could employ the same reasoning in their application of the grocer's standard to the tomatoes. Unfortunately, the grocer offered no explicit rationale for either of the two previous cases, so students must speculate. If students can develop a rationale that explains the application of the general standard to both of the previous cases, and if they apply that rationale to reach a decision in the new case, they can at least develop an argument with which the employee can justify his or her actions to the grocer.

Interestingly, class discussion of the problem reveals that the two previous decisions can be explained on the basis of a number of different, equally plausible rationales that point to different results in the new case. For example, if the previous two decisions were based on the visual appeal of the apples and the relatively unattractive appearance of the carrots, a student might reason that shiny, red, round tomatoes in the window display case, like apples, would catch the eye of passing pedestrians. On the other hand, if the previous two decisions were based on the appeal of an apple as an immediately edible and portable snack and the undesirability of snacking on a soiled carrot, another student might equally plausibly reason that the tomato—which typically is not as sweet as an apple and is messier when eaten on the run—belongs with the carrots in the interior of the store, convenient to shoppers who had planned to visit the store to purchase ingredients for a salad. I hope that students leave this demonstration with a new understanding of indeterminacy in the law and with a sense of security that they are making progress if they can develop and express sound arguments, even if neither they nor I can identify a certain answer to many legal questions (until an "answer" is supplied, for example, by a 5–4 decision of the Supreme Court).

In the renditions of this skit with French research assistants, I spoke my lines in English, and the assistant spoke his or her lines in French. Although the students needed every opportunity to practice their skills in reading and using English, I reasoned that an analytically rich discussion in English would depend on the students' comprehending every detail of the hypothetical case. They had previously read an English-language version of the problem included in their materials, but I wanted to provide them with a French-language supplement to help them confirm or refine their understanding. Because the facts and issue of this case were not difficult, and because I am not fluent in French, I decided to provide only partial French-language clues, so that the students would continue to think of the problem simultaneously in both English and French. Each pair of alternating English and French lines in the dialogue between the grocer and the employee addressed the same topic and overlapped in content to some extent. I hoped that these relationships between the English and French lines might enable a student whose understanding of an English line was hazy or incomplete to gain a clearer picture with content supplied by the preceding or succeeding line expressed in French.

B. The Promise—Hypothetical Cases in a Legal Context Presented in Written English and Oral French

In the limited time available to me to teach consideration, I decided to focus on the concept of reciprocal inducement, partly because it helps students to distinguish enforceable bargained-for exchanges from promises to make gifts. At the margin, some gratuitous promises appear at first glance to be exchanges, because the recipient agrees to perform some act to collect the gift; however, the promise remains gratuitous and thus generally unenforceable if that act is not an inducement to the promisor for his or her promise but instead is simply a convenient means to transfer the promised gift. One early case presenting such a puzzle is *Kirksey v. Kirksey*, 8 Ala. 131 (1845). A majority of the court finds no consideration on stipulated facts, announcing its split decision in a cryptic bench ruling devoid of reasoning.

With some faculty assistance, *Kirksey* can help students become accustomed to uncertainty in the application of law to facts in close cases and develop their skills in developing factual arguments when certain answers are not to be found. The distinction between a bargained-for exchange and a gratuitous promise that lacks reciprocal inducement, however, is a subtle one that warrants exploration in follow-up hypothetical cases that students can synthesize with *Kirksey*. To that end, and to help students briefly explore the doctrine of promissory estoppel, which I summarize for them in writing, I drafted three hypothetical cases with the following characteristics:

> Case 1: Although a number of facts appear at first glance to support an argument for consideration, a promise by a couple to transfer $10,000 to a friend to help her realize her dream of opening a bakery is almost certainly gratuitous.
>
> Case 2: To the facts of Case 1, I added elements of reliance by the recipient of the promise, inviting arguments on the question whether the promise is enforceable on a claim of promissory estoppel in the absence of consideration.
>
> Case 3: Although the facts are analogous to those of Case 1 on the surface, the requirement of reciprocal inducement is more likely satisfied in this case by the promisor's keen desire to meet the promisee for lunch, arguably not merely as a convenient means to transfer promised money for a café, but also as a genuine inducement to the promisor, who wants the opportunity to meet with the promisee to attempt to heal a rift between them.

I assumed that the significance of the additional facts in Case 2 would be fairly obvious to the students, but the distinction between Case 1 and Case 3 was subtler and required a more sophisticated synthesis. How could I bring these hypotheticals to life, so that the English text did not sit on the page in a haze, failing to create vivid images in the minds of the French readers? I decided to present these hypothetical cases again in the form of skits, with real people making promises and explaining circumstances. Additionally, because the students' abilities to recognize and discuss relatively subtle distinctions would depend on their understanding the nuances of the facts of the hypothetical cases, particularly those of Cases 1 and 3, I decided to present the skits entirely in the French language. Finally, because I could not guarantee that I could stage these skits with several characters in the French language in class, I obtained a small grant from the Institute for Law School Teaching to create a videotaped version of the skits. My neighbors next door hail from France, and they graciously agreed to translate my script and to act out the skits in French.

My presenting the skits in the French language did not spare my students the necessity of analyzing the problem in English. I assigned the written problem in English before class without informing students that I would supply a French-language version in class. As a surprise, I then screened the video in class so that students could confirm their understanding of the English text, fill any gaps in their translations, and see the cases come to life. We then returned to the English language for an oral class discussion of our analyses and syntheses of the cases.

C. Rules for Monica—Bilingual Parental Pronouncements

I ended the common law component of my short course with a workshop that I had developed long before the hypothetical cases on reciprocal inducement: a series of four cases set—like The Grocer's Rule—in a nonlegal context so that students could focus their attention exclusively on techniques of legal method. In each of the four cases, a mother, Carmen, reacts to an evening social outing of her daughter, Monica, expressing approval or disapproval with statements that provide some insight into her reasoning. As the cases proceed, they form an analogy to incremental law-making by courts developing common law.

After each case, the workshop facilitator leads class discussion, inviting both an interpretation of the latest holding and a synthesis of each succeeding case with the case or cases that preceded it. The outcome of the first case is not in doubt: Carmen expresses disapproval when Monica returns after 11 p.m. on a Friday night after first attending a football game and then going to a pizza parlor with three friends. But which facts or combination of facts caused Carmen to disapprove? Carmen's comments to Monica are ambiguous and may support a number of interpretations: Carmen may be forbidding Monica from going to the pizza parlor after the football game; she may be requiring Monica to come home as soon as she has eaten her pizza rather than "hanging out" to socialize; she may be applying a bright-line curfew rule of 11 p.m.; or she may simply be demanding that Monica call home on future occasions to notify Carmen where she is going after the football game. Indeed, the general policy consideration that motivates Carmen to craft rules for evening social outings is not entirely clear; Carmen says that she wants Monica to reserve adequate time for sleep and homework, but many students read between the lines to infer that Carmen is most concerned about Monica's safety.

Because all of the interpretations of Carmen's holding are reasonable when the first case is analyzed in isolation, students should be anxious to see a second case, on slightly different facts, to help clarify Carmen's first ruling. The second case, taking place the following week, presents facts identical to the first one, except that Monica returns home before 11 p.m. Carmen expresses no disapproval. By synthesizing the two cases, comparing their facts and outcomes, students can gain a clearer idea of their holdings and can generalize a curfew rule for application to future cases. Of course, the third and fourth cases add new twists that provide further opportunities for synthesis. By the time students have completed analyzing and synthesizing all four cases, they see that Monica's social outings are also limited to two evenings each week, except that this frequency limitation is subject to an exception for important family outings.

After analyzing and synthesizing all four cases, the facilitator

- invites the students to spend a few minutes beginning an outline of the material covered;
- distributes and discusses a sample completed outline; and
- invites students to take an essay exam in which they must apply the parental rules to new facts on two issues with uncertain resolutions.[4]

I hope that my students—whether in France or the United States—will have a clearer idea of the processes of synthesis, outlining, and essay exam-taking after this hour-long workshop. The

[4] Sample outlines and the exam question and sample answer are provided in Calleros, *Classroom Demonstrations, supra* n. 3, at 49–62. Those materials also appear, and the workshop is described in even greater detail, in Charles R. Calleros, *Teacher's Manual for Legal Method and Writing* 23–30, 34 (4th ed., Aspen L. & Bus. 2002).

workshop can cover that substantial ground precisely because it isolates concepts of legal method without distracting students with the burden of simultaneously learning new and difficult legal doctrine.

For the French students, however, I experimented with a minor bilingual element. Even before I produced the French-language videotape of the reciprocal inducement cases, I had created an English-language videotape of the parental rule-making cases, also supported by a grant from the Institute for Law School Teaching. I dubbed this videotape "Rules for Monica" and used it to bring the cases to life for pre-law and first-semester law students in the United States. In France, I assigned English-language written versions of the cases before class, and I presented the cases in the vivid form of the English-language videotape in class. These written and oral presentations provided students with ample opportunity to test their English skills in interpreting the parent's statements in each case.

When I paused the videotape to discuss each case, however, I additionally used an overhead projector to display my research assistant's French-language version of critical excerpts of Carmen's statements, so that all students could confirm their understanding of the mother's words and could better appreciate the different ways in which those words might reasonably be interpreted. As always, we conducted our class discussion in English, so that the French-language element of the instruction merely supplemented, and did not supplant, students' experiential learning of English expression.

IV. Reflections and Assessment

Judging from anonymous student responses to questionnaires that I distributed in October 2002, my presenting hypothetical cases in live skit or video form helped to make the cases more interesting, fun, and memorable for nearly all of the students. The extent to which these teaching techniques actually helped students achieve a deeper understanding of the material than would otherwise be the case is more difficult to measure. Nonetheless, if the presentations fully engaged the students' attention, put them in a receptive mood for learning, and made the facts of the hypothetical cases less abstract, one can speculate that they enhanced learning for most students, undoubtedly to varying degrees.

The questionnaires revealed greater controversy regarding the bilingual components. A few students admitted that they needed help clarifying the English versions, and they appreciated the bilingual elements. Most students, however, were confident of their English skills and believed that they would have understood the factual nuances of the exercises equally well, or nearly so, without the limited French translations. Two of these students recommended complete immersion in English as the best way to teach students to work in English.

I might agree with the total immersion approach if my sole or primary educational goal was to improve the students' facility with English. At least as important to me, however, was the goal of improving the students' facility with common law legal method and with the doctrine of reciprocal inducement, both of which required them to understand the facts of hypothetical cases with some precision. Confirming that level of understanding with some bilingual elements represented a modest compromise in a course that otherwise employed total immersion in the English language, because students had the opportunity to fully analyze the problems in English before hearing or reading French versions in class. Indeed, providing the French version in class must have furthered the goal of language instruction for some students, because it offered them a chance to compare and refine their own translations of the English text.

In the final analysis, I have decided to repeat these teaching strategies in my next visit to Paris V, while continuing to gather reactions from students. I also welcome your advice, which you can e-mail to me at **charles.calleros@asu.edu.**

RESEARCHING ENGLISH CASE LAW

BY STEPHEN YOUNG

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Teachable Moments for Students ... *is designed to provide information that can be used for quick and accessible answers to the basic questions that are frequently asked of librarians and those involved in teaching legal research and writing. These questions present a "teachable moment," a brief window of opportunity when—because he or she has a specific need to know right now—the student or lawyer asking the question may actually remember the answer you provide. The material presented in this column is not meant to be an in-depth review of the topic, but rather a summary of the main points that everyone should know. It is a companion to the* **Teachable Moments for Teachers** *column that gives teachers an opportunity to describe a special moment of epiphany that changed their approach to presenting a particular topic to their students. Readers are invited to submit their own "teachable moments for students" to the editor of the column:* Barbara Bintliff, University of Colorado Law Library, Campus Box 402, Boulder, CO 80309, phone: (303) 492-1233, fax: (303) 492-2707.

Inevitably, at some point in a law student's three years in law school he or she will encounter citations to English case law. Most often the initial encounter occurs when reading the introductory chapters to the hornbook for the first-year property class; however assignments for law review, research for a faculty member, and countless other projects will continue to bring the law student in contact with English case law throughout the rest of his or her law school career. How is English case law arranged? How does one decipher the citations? What sources should one expect to use in locating a case?

Court Structure

Any understanding of a jurisdiction's case law requires an understanding of the court structure within that jurisdiction. The modern organization of the courts in England began with the Judicature Act of 1873 and has continued through the Courts Act of 1971. Currently, the structure for the courts of record is made up of the House of Lords, the Privy Council, and the Supreme Court of Judicature.[1] The House of Lords is the supreme court of appeal for civil cases in the United Kingdom and criminal cases outside Scotland. The Privy Council is an appellate court that derives jurisdiction from the right of all the monarch's subjects to appeal to the Crown for redress. The Supreme Court of Judicature is an umbrella title for the following courts; the Court of Appeal, which has two divisions, Civil and Criminal; the High Court, and the Crown Court. The High Court has three divisions, Queen's (or King's) Bench, Chancery, and Family. Finally there is the Crown Court; this is a criminal court with general jurisdiction and responsibility for handling most of the serious criminal cases. Cases from the courts listed above are widely reported in the various reporters.

Deciphering Citations

Although citations to English case law are not unlike their American counterparts, enough differences exist that it is worth spending a moment reviewing the basics of the citation. The following constitute some general rules that have traditionally applied to English case law research. Citations include the year in brackets when the year is essential to finding the case, e.g., [1969] 1 All E.R.210, and the year in parentheses when the volume number is sequential from year to year. In the citation the year is followed by the volume

> "Any understanding of a jurisdiction's case law requires an understanding of the court structure within that jurisdiction."

[1] The courts of record are those courts that are widely reported, and therefore cases decided by these courts are far more available than cases decided by the "inferior" courts (e.g., Magistrates or County courts).

"The Council, responding to what it termed the 'evils of law reporting,' had produced the first official set of reports for case law in the country."

number (if applicable), the abbreviation for the reporter, and the page the case begins on.[2] Parties in civil cases are referred to as Smith *and* Jones rather than Smith *versus* Jones, although they are cited as Smith v. Jones. In criminal cases the parties are referred to as the Crown *against* Williams, not *versus*, and are cited as R. v. Williams. Cases involving the Crown are cited as R. v. defendant, the R. indicating Regina or Rex depending on the monarch reigning at the time that the action was brought.

Modern Law Reporting: 1865–Date

Modern law reporting began in England and Wales on November 2, 1865, with the publication of the *Law Reports* by the newly formed Incorporated Council of Law Reporting for England and Wales. The Council, responding to what it termed the "evils of law reporting," had produced the first official set of reports for case law in the country.

The *Law Reports* consisted of 11 titles from 1865 to1875, six titles from 1876 to 1890, and four titles from 1891 to the present. These changes in the size of the set reflected the changes in the court structure. Currently, the *Law Reports* comprises the following four series; *Appeal Cases* (covering the House of Lords and Privy Council), *Chancery Division* (covering the High Court–Chancery and Court of Appeal), *Queen's (King's) Bench Division* (covering the High Court–Queen's Bench and both divisions of the Court of Appeal), and *Family Division*.[3] Cases from the Court of Appeal are reported in the series corresponding to the court in which the case originated, unless it was further appealed to the House of Lords when it would be reported in *Appeal Cases*. Citations to the *Law Reports* employ the bracketed year format, e.g., Caparo Industries Plc v. Dickman [1990] 2 A.C. 605, however citations to the earliest series of the *Law Reports* (pre-1891) are by volume number, not date.

Occupying a unique role in law reporting in England and Wales is the *Weekly Law Reports*. Although this set serves as an advance sheet for the *Law Reports* it is also considered a reporter in its own right. The *Weekly Law Reports* began publication in 1953 and is currently published as weekly paperback issues cumulating into three annual volumes. While the material contained in volumes two and three are later reported in the *Law Reports*, it should be noted that material from volume one does not appear in the *Law Reports*. Each paperback issue of the *Weekly Law Reports* contains within it cases for volume one and either cases for volume two or volume three. This multivolume arrangement within a single issue can cause confusion. The citation format for the *Weekly Law Reports* is identical to the *Law Reports*, e.g., Holgate v. Duke [1984] 2 W.L.R. 660.

It would be incorrect to assume that the Incorporated Council of Law Reporting for England and Wales is the only game in town. Other publishers also provide services reporting cases from all levels of the court system. The most popular, and heavily cited, is the *All England Law Reports* published by Butterworths. This set began publication in 1936 and continues to provide coverage for all the courts of record in weekly paper reports and three or more annual bound volumes. Citation format is Mills v. Cooper [1967] 2 All ER 100.

Older Law Reporting: Pre-1865

Among the 60-plus other modern law reporters, the more popular include *Criminal Appeal Reports, Lloyd's Law Reports, Justice of the Peace Reports, Simon's Tax Cases, Road Traffic Reports, Industrial Cases Reports, Local Government Reports,* and *Knight's Industrial Reports*. On occasion the only available report of a case is in a newspaper (e.g., *Times* or *Financial Times*) or in a law journal (e.g., *Solicitor's Journal, New Law Journal, Law Society Gazette*).

[2] Beginning in 2001 the High Court and the Court of Appeal adopted a format neutral citation system.

[3] Usually the *Law Reports* are shelved in this order thereby reflecting the Court hierarchy.

While the vast majority of the cases researched today were decided since 1865, it is impossible to ignore the huge body of case law created in the country prior to modern law reporting. Although no exact date can be placed on when law reporting in England began, the first period of law reporting is generally considered to be between the 1100s and 1563. During this period cases were reported in the *Year Books* and *Plea Rolls*. The Selden Society has reprinted the *Year Books*, while both the Selden Society and the Pipe Roll Society have selectively reprinted the *Plea Rolls*. Most academic law libraries carry the Selden Society's reprints. Originally the *Year Books* were published in Law French, therefore making usage very difficult; however the reprints have been translated. There is currently an ongoing debate as to the purpose of the *Year Books*, however it is most likely they were used for educational reasons rather than for court records.

Between 1571 and 1865 we see the publication of the nominate reports. This generic term (there were more than 260 individual reporters) refers to the naming of the report after the individual publisher (e.g., *Giffard*). Many of these reports were collections and therefore did not report current cases; additionally there is much overlap between the reports and a wide range in the quality of the reporting.[4] Four of the more heavily cited nominate reports are *Plowden, Coke, Burrow*, and *Durnford & East* (the first to cover terms of court). Although very few academic law libraries carry many of the nominate reports, a compilation set, the *English Reports (Full Reprint)*, is widely available. This "best of" set comprises 178 volumes covering the period 1220 to 1865, and it incorporates cases selected from the *Year Books* as well as the nominate reports. A separate pamphlet provides a chart to indicate which nominate report is in which volume of the *English Reports*. Additional compilation sets of older reports include the *Revised Reports* (1786–1866) and the *All England Law Reports Reprint* (1558–1935).

[4] It is this inconsistency in coverage and quality that culminated in the Incorporated Council of Law Reporting for England and Wales reference to the "evils of law reporting."

Finding Cases

Case name access to the reporters can be achieved through the tables of cases that accompany the major modern law reporters. For example, indexing of the *Law Reports* is achieved through a combination of volumes: the decennial digests for 1865 to 1950, red bound indexes, known simply as the "Red Book," for the years since 1951, and "Pink indexes" issued three times per year for the most recent material.[5] Very recent cases may also be located by checking the "Table of Cases" in the most recent issues of the *Weekly Law Reports* and the *All England Law Reports*. The recently published *All England Law Reports Consolidated Index 1936–2002* indexes the annual volumes of the *All England Law Reports*, while more recent cases published in this service are accessed by tables and indexes contained in the weekly paper reports. For access to pre-1865 cases consult the index volumes to *English Reports (Full Reprint)* or the "Table of Cases" volume to *The Digest*. If neither of these do the job, a check of the tables in the *All England Law Reports Reprint* or the *Revised Reports* may yield an obscure reference.

Subject access to English case law can be achieved either through using the above-mentioned indexing tools or any one of the following three print sources: *The Digest, Halsbury's Laws of England and Wales*, and *Current Law*. *The Digest*, comparable to American digests, can be used for locating pre- and post-1865 material on a particular subject. *The Digest*, formerly known as *The English and Empire Digest*, includes cases from many commonwealth countries as well as English, Scottish, and Irish decisions. This set is arranged alphabetically by subject (title). A listing of the titles is provided inside the front cover of each volume. *Halsbury's Laws of England*, an encyclopedic work in its fourth series, is also a good starting point to locate topical case material. Like its American counterparts, *American Jurisprudence 2d* and *Corpus Juris Secondum*®, this set provides an

[5] Indexes include table of cases, subject index, cases, statutes, and statutory instruments judicially considered. The pink and red indexes also index cases reported in a number of other law reporters.

"Originally the *Year Books* were published in Law French, therefore making usage very difficult; however the reprints have been translated."

"The most authoritative of the Web sites is the Court Service Web site, which provides free access to selected judgments from the Court of Appeal and the High Court."

overview of the entire body of law, citing extensively to case law, statutes, and delegated legislation. *Current Law* is a comprehensive legal information service covering all case and statutory developments from 1947 to the present. No American equivalent exists although this service does provide a citator service similar to *Shepard's*®. Subject arrangement in *Current Law* is broader than in *The Digest*, therefore it is not as useful for tracing cases on a particular subject.

Online Resources

Both of the primary legal research services in the United States, LexisNexis® and Westlaw®, have a strong presence in the United Kingdom. LexisNexis has provided access to English case law for a number of years. Its library of extensive U.K. legal resources currently contains reported and unreported cases dating back to the beginning of modern law reporting, 1865. Westlaw, a fairly new addition to online U.K. case law, also employs 1865 as its starting date for coverage of reported and unreported cases. Both LexisNexis and Westlaw provide users with separate files for the *Law Reports* and for certain subject areas (e.g., taxation).

Case law resources on the Internet are still somewhat spotty. Although decisions from the House of Lords are usually available within two hours,[6] cases from lower courts quite often take a little longer or are not available at all on the Internet. The most authoritative of the Web sites is the Court Service Web site, which provides free access to selected judgments from the Court of Appeal and the High Court.[7] One other free Web site worth mentioning is the British and Irish Legal Information Institute (BAILII), which also provides access to decisions from the Court of Appeal and the High Court.[8] In addition to these sites there are a number of other fee-based services offering access to judgments from courts at various levels.

[6] House of Lords decisions since 1996 are available at <www.publications.parliament.uk/pa/ld199697/ldjudgmt/ldjudgmt.htm>.

[7] The Court Service Web site is available at <www.courtservice.gov.uk/judgments/judg_home.htm>. Judgments since 1996 are available on this site.

[8] BAILII is available at <www.bailii.org/databases.html#ew>. Judgments since 1996 have been loaded from the fee-based Smith Bernal Casetrack database.

Conclusion

Locating English case law is no more complicated than locating case law from the United States. Indeed, an argument could be made that since England is a unitary and not a federal system of government, the task of locating case law is much easier since there are fewer jurisdictions with which to contend. Recent developments in electronic resources have also helped to minimize the differences between domestic and foreign legal research. However, if the student needs additional assistance in locating English case law I recommend the following texts for being both succinct yet comprehensive in their coverage of the topic—*How to Use a Law Library,*[9] and *Using a Law Library.*[10]

[9] Philip A. Thomas & John Knowles, *Dane & Thomas: How to Use a Law Library: An Introduction to Legal Skills* (4th ed. 2001).

[10] Peter Clinch, *Using a Law Library: A Student's Guide to Legal Research Skills* (2nd ed. 2001).

Teaching Statutory Research with the USA Patriot Act

BY KAY M. TODD

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There is an old aphorism that defines a camel as a horse designed by a committee.[1] That concept could be as aptly ascribed to the USA Patriot Act of 2001,[2] enacted in the chaotic weeks after September 11, 2001. It was the product of hasty negotiations between Republicans and Democrats and the House and Senate, conducted in the harsh light of media attention. From that process has come a statute that is a nightmare for statutory interpretation—unclear internally as to effective date and application. As such it offers an effective teaching tool in a legal research curriculum.[3]

The USA Patriot Act is divided into 10 titles and covers a range of terrorism-related issues including surveillance, border protection, and intelligence gathering; however, Title III—the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001—can be used on its own as a teaching tool. Title III has the additional virtue of having its own name, and including within it a subtitle that addresses the Bank Secrecy Act. This Pirandello-esque "act-within-an-act" situation is not uncommon in federal enactments and it provides a good learning opportunity.

My own experience with the USA Patriot Act came from a research assignment to prepare an interpretive memorandum on the changes that the Act made to the prior Bank Secrecy Act provisions, including the effective date of Title III's provisions and the rulemaking activity that could be anticipated. In tracking the changes and evaluating their applicability and effective date, I soon realized that this is a statute that tests statutory interpretation skills. The Act's strengths for this purpose are: (1) there are multiple effective dates; (2) its provisions affect multiple titles of the U.S. Code; (3) the U.S. Code changes are scrambled within the Act rather than following the title arrangement of the Code; (4) definitions appear in several sections and some are so similar as to be confusing; (5) the Act is not carefully drafted, leading to confusion as to its provisions.

Effective Dates

The USA Patriot Act was enacted on October 26, 2001, and there is no effective date clause for either the whole act or for all of Title III. There is a provision that provides that Title III will terminate on or after January 1, 2005, if Congress passes a joint resolution to that effect (§ 303(a)). Within Title III itself, there are sections that take effect "within 270 days" (§ 312); "60 days after enactment" (§ 313); and "180 days after enactment" (§ 352). One section suggests retroactive application: § 358 applies with respect to records and reports filed or maintained on, before, or after the date of enactment of the Act. To further complicate matters, there are specific rulemaking deadlines as well: 180 days (§ 312); 120 days (§ 314); by July 1, 2002 (§ 356); and within six months (§ 365). As if this were not complex enough, several sections require other actions as of a particular date, such as various reports to Congress (see, e.g., §§ 356, 359, and 366).

Multiple U.S. Code Titles Affected

Title III of the USA Patriot Act has three subparts, related to international money laundering, bank secrecy, and currency crimes. The majority of its provisions affect Title 31 of the U.S. Code—Money and Finance. However, Title III also amends sections of Title 12, Banks and Banking; Title 15, Commerce and Trade; Title 18, Crimes and Criminal Procedure; Title 21, Food and Drugs; and Title 28, Judiciary and Judicial Procedure. In

> "In tracking the changes and evaluating their applicability and effective date, I soon realized that this is a statute that tests statutory interpretation skills."

[1] Credited to Sir Alec Issigonis (1906–88), British automobile designer who created the Mini and the Morris Minor, by the London *Guardian* in 1991.

[2] Pub. L. No. 107-56, 115 Stat. 272 (October 26, 2001).

[3] The best sources to assign students are the slip law or *U.S. Code Congressional and Administrative News*® and the *United States Code* (2000). *United States Code Annotated*® promptly issued a replacement volume for Title 31 that blurs the intricacy of the Act's provisions.

addition, some sections of Title III include amendments to more than one title. Thus, § 358 of the Act includes amendments to U.S. Code Titles 12, 15, and 31.

Internal Organization of Amending Sections

Title III is not organized to facilitate a review of its changes to existing law. The statute would be easier to interpret if the amendments to the Code were in the numeric order of the U.S. Code titles. However, this is not the case, and furthermore, not all the USA Patriot Act changes to a single section of the U.S. Code appear in the same or adjacent sections. For instance, 31 U.S.C. § 5318 is amended by USA Patriot Act §§ 312, 313, 325, 326, 356, 358, and 359. Analyzing the impact of the changes on § 5318 therefore requires more than the usual cutting and pasting.

Language Amendatory of Existing Sections

The easiest statutory interpretation occurs for new statutes that establish entirely new sections of the U.S. Code. This is not true of the USA Patriot Act, where the amendments are principally to existing sections of the Bank Secrecy Act and the Criminal Code. These amending sections often change some of the wording, but do not replace the text, and the new amendments include additional subsections.

Definitions—Who Is Covered by the Act?

The amendments to the Bank Secrecy Act must be carefully reviewed to determine their application to various institutions. Prior to the USA Patriot Act, the term "financial institution" included a broad range of entities from banks to pawnbrokers to travel agencies (31 U.S.C. § 5312 (2000)). The 2001 Act clarified the applicability of the Bank Secrecy Act provisions to commodities traders and credit unions (§ 321), but generally left the lengthy list of institutions unchanged. The confusion arises over the Act's new provisions that apply only to a subset of financial institutions, as is the case with § 313 that defines and applies to covered financial institutions as defined in § 5312 subparagraphs (A) through (G), thereby excluding the travel agencies and other peripheral entities.

Drafting Issues

There are several problems in interpreting the USA Patriot Act that relate to the details of its draftsmanship, and are perhaps due in part to the short legislative process. In one clear drafting error, Title III enacted two subsections (l) for 31 U.S.C. § 5318. Section 326 adds subsection (l) on "Identification and Verification of Accountholders," and § 359(c) adds subsection (l) on "Applicability of Rules."

Another question that arises from the wording of the statute relates to effective dates. Does a section that requires the promulgation of regulations take effect when those regulations are issued? Or does it take effect regardless of whether regulations are promulgated? Section 326 does not explicitly require financial institutions to do anything, but it does require the secretary of the Treasury to promulgate regulations related to verification and identification of new accountholders. That section carries no effective date but the regulations are required to be in place within one year. The Office of Thrift Supervision has equated this to an effective date for the provision of October 24, 2002, but this is not clear in the text, which says only that final regulations "shall take effect before the end of the 1-year period."

A substantial number of Title III sections will not be codified in the U.S. Code. In many cases these sections relate to policy statements or reporting requirements, but at least one section establishes a crime, but does not amend Title 18 to add a new crime there. Section 329 makes it a crime for federal officials and employees to accept anything of value in return for being influenced in their enforcement of the Act. It cites chapter 227, Title 18, but that is merely the chapter that includes sentencing provisions for all crimes.

Conclusion

This article highlights the difficulties in interpreting Title III of the USA Patriot Act. These interpretative challenges—multiple effective dates, provisions affecting multiple titles, definitional confusion, and the absence of careful drafting—make Title III a particularly rich and useful teaching tool. One can safely assume that other, equally perplexing examples can be found in the other nine titles of the USA Patriot Act.

"Does a section that requires the promulgation of regulations take effect when those regulations are issued? Or does it take effect regardless of whether regulations are promulgated?"

The Benefits of Hands-On Exercises for Initial Lexis and Westlaw Training

BY DON ARNDT

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Anyone who has taught Lexis® and Westlaw® to law students knows how challenging this training can be. Last fall I developed several hands-on exercises for use in the basic Lexis and Westlaw classes for 1-Ls that my assistant and I taught at the University of Toledo. Over an eight-week period, from September to November, we offered about 100 small-group, one-hour sessions in the library's computer lab. We taught two weeks on Westlaw, two weeks on Lexis, two more weeks on Westlaw, and then two more weeks on Lexis. Each two-week evolution had about 25 sessions. Each student got "four bites at the apple": two on Lexis and two on Westlaw. Each librarian taught about 50 sessions, overall. The goal was to help students better learn research skills. An active learning approach got the students' hands busy and brains engaged right off the bat, and kept them busy and engaged the whole way through.

This was a bit of a departure from anything I've done or seen in computer-assisted legal research (CALR) instruction. Whether taught by librarians or vendor representatives, the usual method is a lecture and demonstration with some hands-on component, e.g., "type this in" or "everyone click on this now." The problem with that method is that it creates a passive, disengaged state of mind in the students. One way this lack of engagement can be measured is by standing in the back of the lab and counting the number of students checking e-mail, instant-messaging their friends, or reading something else online while the class is taking place. Not only that, most of the students who *are* trying to keep up with what's going on *don't get it*. It doesn't matter how many pearls of wisdom are dropping from the instructor's mouth if a large percentage of the class isn't getting it, either because their minds are somewhere else, or because they're being left behind in the wake of the instructor's brilliance. Either way, lack of engagement means lack of learning. Furthermore, I saw from the glazed donuts in the students' eyes that we were killing the natural enthusiasm that they brought with them to the training. Every new crop of 1-Ls *can't wait* to get their hands on Lexis and Westlaw, and there we were snuffing out that enthusiasm by boring them to death with a lot of talk and rote repetition.

So it occurred to me to try it a new way. Actually, it occurred to me during the Shepard's®-in-print classes that I put on in late August and early September. The first session went abysmally as I showed the students how to Shepardize® and was overwhelmed with the vibes from them that this was about as exciting as watching paint dry. In the next class I changed my tack. I put the whole batch of *Shepard's Northeastern Reporter Citations* on a book truck and wheeled it into the stacks to the *North Eastern Reporter*®, with the students in tow. When we got there, I said to them, "Pick a case, any case. Good. Now Shepardize it." What a difference: instant attention; instant engagement. I helped them through it, but this time with their complete attention. A few weeks later, as students showed up in the computer lab for the CALR classes, my plan was in place: I handed them their passwords, the exercise handouts, and some vendor guides and goodies, and said, "Pick a computer and get started on the exercise. Work at your own pace and I'll be around to help you." Nine times out of 10 the response was "Cool!" Virtually all of them enjoyed the challenge. Very few students, the 10 percent who were used to being spoon-fed and liked it, found this approach uncomfortable. In short, it was a huge success. Even 2-Ls and 3-Ls, working at spare computers

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"The difference between this approach and a tutorial or self-paced workbook approach is that instructor involvement is not just a good idea, it's required."

in the lab during various sessions, told me they wished they'd been taught this way. Here's the secret though: the instructor is still absolutely engaged in teaching, just in a different way—a much harder way, actually, from the instructor's perspective. For this to work, you have to rove around the lab being a coach, a guide, a snoop even. You can tell them to ask questions when they're confused, but few of them will do so for fear of looking stupid in front of their peers. The difference between this approach and a tutorial or self-paced workbook approach is that instructor involvement is not just a good idea, it's required. Without instructor intervention, most of the students will plow right along through the exercise, not really understanding what they're doing and not getting much out of it. So you have to circulate among them and ask them questions individually while looking at their screens and their worksheets. "How did you get this result?" "Is there a better database you could have chosen?" "Is there a more effective way to construct that search?" "Why do you suppose you got more hits this time?" That's what causes the teachable moments to appear. That's also why it's more challenging for the instructor: instead of letting one pearl of wisdom drop from your mouth on everyone at once, you have to help students, one by one, see the pearl for themselves. Try to keep it light and fun so it's not too Socratic and intimidating. It's exhausting, but well worth the effort in terms of results because the students are much more likely to eventually understand and search strategically.

I designed the exercise questions to accomplish several things:

- To start off relatively easy to get the students warmed up and then progress to more challenging scenarios. Another technique is to include a killer question or two to act as a "stone wall" to slow down the students who are racing through the exercise like it's the autobahn. The idea is to create teachable moments between the student and the instructor, not to instill a "check in the box" mentality in the student. Avoid questions that are simply tutorial in nature.

- To cover a wide range of sources, so that students are exposed to the multitude of possibilities in each vendor's product and gain confidence in their ability to select the best database for a given problem: include state and federal law issues, judicial opinions, statutes, regulations, legislative history documents, newspapers, public records, law reviews, etc.

- To expose the students to a variety of the different tools each vendor provides, and to emphasize their commonalities as well as differences: pulling up documents by citation or party name, full-text keyword searching when you start with an idea rather than a specific citation, printing/downloading/e-mailing functions, directories and wizards, KeySearch® and Search Advisor, Focus and Locate, Shepard's and KeyCite®, natural language and terms and connectors, etc. Keep in mind that our goal was to establish basic concepts. At the University of Toledo, vendor representatives follow up with sessions on all their "bells and whistles" in the spring semester.

- To get the students accustomed to the various connectors and expanders available to them in these two very powerful products. Teaching students how to put together competent searches is more difficult with each passing year as students arrive with experience using Google and other Internet search engines, but little exposure to Boolean or proximity searching concepts. Getting students to kick the habit of using quotation marks to create a bound-phrase search for every problem was one of the biggest challenges I encountered.

In sum, I would recommend this approach to instructors who teach CALR with a caution that it

requires tremendous work. The students get a lot out of self-paced, instructor-involved training, but it is a challenge for instructors to keep up the energy and freshness necessary to do it right in every encounter with every student in every session. Because of the highly active nature of the class, a group size of 10 is about the most one instructor can handle. The more instructors, the better; each student gets more individualized attention. Six students per instructor is pretty much ideal. Our school's legal writing instructors were astonished at how effective this teaching method was and what a positive reaction the students had to it. The Student Bar Association president, a 3-L, shared with me that she overheard a group of 1-Ls talking about how great this experience was and how they were looking forward to the next session. (I swear I am not making this up.) One of our vendor representatives is considering modifying her approach to teaching her product after spending some time in our sessions, and one of our tenured faculty members even approached me to discuss ways of including more active learning techniques in his substantive law class after hearing about the success of this experiment. I'm convinced that this is the way to do it. Good luck and good teaching!

Westlaw 101
September 16–27, 2002

Preliminaries:

Log on to the computer.

Open a Web browser; go to http://www.lawschool.westlaw.com.

Follow the instructions on your Westlaw password handout to register your new Westlaw password.

Find this document using only its citation: 190 F.Supp.2d 1040 (*Find* is a hint.)
When you find it, write the name of the case.

Using either the database **Directory** or the **Find a Database Wizard**, which Westlaw database would you search to obtain the above case if you didn't already know its citation? (Hint: the opinion is from a federal district court sitting in Ohio.) Write the name of the database.

In the database you've identified, there is a search box. ***Using Terms and Connectors***, construct a search statement that will find that case. (Hint: the case has to do with this issue: Do you have a First Amendment right to walk barefoot into a public library?) (Another hint: look at the "Connectors/Expanders Reference List.") It may take several tries—use the "Edit Query" link to amend your search strategy. When you find one that works, write it down.

KeyCite is the Westlaw answer to Shepard's. Does KeyCite show any potentially negative citing references for this case? If so, write them down.

Let's say you wanted to **print** this case (by the way, DO NOT actually print this case). How would you go about it? (Hint: there's a right way and a wrong way.) Write down the right way.

Could you **download** it to disk instead? Or **e-mail** it to yourself? How?

Remember to **Sign Off** of Westlaw when you're done.

Lexis 101
October 1–11, 2002

Preliminaries:

Log on to the computer.

Open a Web browser; go to http://www.lawschool.Lexis.com.

Follow the instructions on your Lexis password handout to register your new Lexis password.

Get this document when you only know the names of the parties and the fact that it was a federal court of appeals opinion: **Lohr v.**

"Our school's legal writing instructors were astonished at how effective this teaching method was and what a positive reaction the students had to it."

Medtronic, Inc. When you find it, write the case's citation.

Now, **Shepardize** it on Lexis. Does Shepard's online show any potentially negative citing references for this case? If so, write one of them down.

Find a **law review article** on *libel and slander*. Write the article's citation.

What was the **public law** number of the act passed by Congress in 1975 to amend the National Environmental Policy Act of 1969 in order to clarify the procedures therein with respect to the preparation of ***environmental impact statements?*** (Hint: check the federal session laws, not the current U.S. Code. The database is United States Statutes at Large.

I'll bet the EPA has plenty to say on the topic of environmental impact statements. In what *title* of the **CFR** are environmental protection regulations likely to be found?

Find a **case** from any jurisdiction having to do with **annoying** and **harassing electronic mail** messages. Using the e-mail option on Lexis, send it to Don Arndt (darndt@utnet.utoledo.edu).

Westlaw 102
October 14–25, 2002

Preliminaries:

Log on to the computer. Use a Web browser to go to http://www.lawschool.westlaw.com.

Using the Westlaw database **Directory**, choose the database for the ***Washington Post.*** Search for a news story from Friday, October 11, 2002, that shows the full text of the joint resolution approved that day by Congress, giving President Bush authorization to use military force against Iraq. What is the "short title" of that resolution?

Again using the **Directory**, choose the database for **annotated Ohio statutes.** Using terms and connectors, construct a search for a statute that addresses "financial responsibility" in the same sentence as "motor vehicles". How many hits did you get? _____ Now run that same search in the database for **unannotated Ohio statutes**. How many hits did you get this time? _____ What accounts for the difference?

Run a search in the **SCT** (Supreme Court cases after 1944) database for [race, racial, races, racist, or racially] within 2 words of [discriminate, discriminated, discriminates, discriminating, discriminatory, or discrimination]. Oh, and by the way, do it using only two terms and one connector. (Hint: think **root expander!**) Write down your search.

Use **Locate** to limit your search results to just those cases mentioning *private schools*. Write down the number of cases you found.

I can never remember how Justice O'Conn?r spells her last name. What is the **universal character** that you could plug into the spot between the n and the r to retrieve any letter?

Do you have a free speech right to play your music loudly? Use **KeySearch** to find a case that addresses the issue. How many hits did you get? _____ Write down one **Topic and Key Number** from a case you found that specifically mentions the issue: _____k_____. (Hint: use the term buttons at the bottom of the right-hand frame to quickly skim your search results looking for a relevant headnote in order to find the right topic and key number.) Now click on the **Edit Query** button that appears in the upper left-hand window. When you see the screen with the **Add search terms (optional)**: box, click on the button that says **View/Edit Full Query**. Is the default topic and key number that appears in the search box the same one you chose from your

search results? If not, plug yours in and run the search again. How many hits do you get now?

Lexis 102
October 28–November 8, 2002

Preliminaries:

Log on to the computer and go to http://www.lawschool.Lexis.com.

Search for a **news article** in the *Washington Post* from Wednesday, October 16, 2002, that raises the question of whether using a military plane to go sniper-hunting in the Washington, D.C., area violates the Posse Comitatus Act (the 1878 law that bars the military from performing civilian law enforcement). What is the title of that article?

Find the **case** referred to at the end of the above article (there's not much to go on, but it's enough). When you've tracked it down, give its citation.

Shepardize the case you just found on Lexis. Does Shepard's online show any potentially negative citing references for this case? If so, write one of them down.

Find the Posse Comitatus Act in the **U.S.C.S.** Write down its citation. When was it most recently amended? What change to the statute was effected by that amendment?

Use **Focus** to see if there are any *judicial decisions* construing this statute to mean that an otherwise lawful search or seizure made by military personnel for domestic law enforcement purposes is unreasonable if made in violation of Posse Comitatus. (Hint: you may have to click on the *check-box* in the upper left-hand corner of the document before you click on *Focus*.) If you find such a case, write down its citation. Then click on its hypertext link to go to the full text of the case. Now scan through the **Core Concepts** to see if this court has further ruled that the use of military personnel, planes, and cameras to fly surveillance does not violate the statute. Click on the *down-arrow* next to that core concept to go directly to the part of the opinion where that point is made. Lastly, **Shepardize** this case. Is it still good law?

Use **Search Advisor** to see if there are any articles in *military* law reviews on Posse Comitatus. How many hits did you get? Use **Focus** to narrow your results to just those articles that discuss whether Posse Comitatus applies to the Navy. (Hint: truncate the root of the word—nav!—in order to retrieve either Navy or naval and combine it in the same sentence as Posse Comitatus. Use the Term arrows to quickly browse.) Write down the pinpoint citation of an article where it indicates that Posse Comitatus does not apply to the Navy. ("Pinpoint" means including the specific page number where that point is indicated.)

Treating Students as Clients: Practical Tips for Acting as a Role Model in Client Relations

BY LIBBY A. WHITE

Libby A. White is Assistant Professor of Legal Writing at Villanova University School of Law in Villanova, Penn.

"To me, communication is the paramount client relations skill to have as a practitioner."

Although I am now a full-time teacher of legal writing, in many ways, I am still acting like a practicing attorney dealing with clients. The major difference, of course, is that I teach the written and oral expression of legal analysis, rather than advise my clients on the *results* of my own analysis. But pretty much everything else I do is the same: my students are my clients, and I approach each one with that "client service" mind-set (of course, no billable hours, thank goodness). I suspect I'm not alone in this regard because most legal writing teachers come to the profession following many years of practice. After initially being a bit concerned that I was not being "teacherly" enough, I decided this past year to use my client approach as a way to role-model the standards a good lawyer should try to maintain when dealing with clients. I could teach the practical skill of client relations while doing my "real" job, and this pedagogy would be comparatively effortless because I was doing it anyway.

Two questions immediately came to mind. First, when do I tell my students what I'm doing—or do I? Second, can I keep to the standards enough to be a good role model, or is this additional pressure I do not really need while I'm teaching an already pretty tough subject? The former question is really determined by the answer to the latter because my lack of success as a role model would, in effect, prevent me from admitting my subliminal goal. The problem, however, with not telling the students about my client-care standards up front is that they would be less likely to pay attention, and the lessons I'd like to teach would probably be less effective. On the other hand, I felt that I would be setting myself too high a standard and perhaps ask for too much scrutiny from the students if I told them to watch me throughout the year so they could emulate the things I do with them as my student/clients. Because I decided to explain these standards to my students mid-way through my teaching, I concluded that *if* I felt I'd been pretty successful with keeping to my "client service" standards, then I would tell my students during the last class about what I'd been trying to do. That is what I did, and the following are the standards I set out for them that I try to follow as their teacher and as their role model.

Communication: To me, communication is the paramount client relations skill to have as a practitioner. Client communication is essential to a good relationship, and it alleviates misunderstandings and anxiety. But, for a successful attorney, it is very difficult to always answer phone calls, letters, and e-mail messages in a timely manner. There are things even a busy attorney can do to keep the client happy and informed.

I role-model good communication skills by skimming my e-mail when I turn on my computer. All e-mail from students gets answered immediately. If I don't know the answer or don't have time to answer, I still reply by letting them know that I will give them an answer by an estimated time. I file the e-mails in appropriate folders, and I print my replies to the unanswered ones as reminders. I check my e-mail throughout the day and follow the same procedure. This takes little time and is very effective.

During my "active" teaching time, that is, the time during which I am either holding class or

waiting for assignments, I also check my e-mail at night (I can do so from home) and at least once a day on weekends. If I am going to be away and will not have access to e-mail, I do a general e-mail announcement to the class and ask them to contact the teaching assistant with questions, or send them to me anyway, but know that I cannot answer until I return.

The same procedure can be followed with phone calls. When I return phone calls, if I have to leave a message I also leave my e-mail address in case the student doesn't remember it or can't access it on our system. Again, I let them know when I'll be in and that they can always e-mail me if necessary.

I also make use of our virtual classroom by using it to post frequently asked questions and questions and answers that I think would be of general interest. I require that they check the virtual classroom on a weekly basis, in general, and on a daily basis during the time an assignment is out, until its due date. This saves me and the students time and prevents them from the oft-used excuse: "But you didn't tell us that in class."

Accessibility: This skill goes hand-in-hand with communication. A practitioner evidences accessibility by responding quickly to client questions, but he or she should also answer the telephone when in the office, provide clients with a cell phone number when not, and let the secretary know if meeting or telephone interruptions are permitted for certain clients. Meetings should also be scheduled within a week if at all possible.

I role-model accessibility by being in my office during the same hours five days a week. These hours coincide with the hours my students are most likely to be at the law school. I also schedule meetings at my students' convenience, but always during the time I'm already in the office, since their schedules are more rigid than mine. I encourage them to drop in even if they haven't scheduled a meeting, and I never turn them away, even if I'm on the phone. If I'm in a meeting already, I take a brief moment and suggest a time for them to return, or I ask them to e-mail me with a possible appointment time that we can meet. There are boundaries to accessibility with students—for instance, unlike clients, I do not provide a cell phone number.

Preparation: Of course, preparation is one of those skills important to all aspects of practice, but a client who knows a lawyer is "always prepared" is a client who feels in good and competent hands. In the foreign country that is law school, where students are thrown new vocabulary, new rules, and a different way of thinking, a teacher who is always prepared and seems in control of the material is an anchor. I've only taught for two years, and so I overprepare for my classes. I believe that I will continue to do so ad infinitum because there are always new ways of teaching and new things to learn about a familiar course. The students are bright—unlike some clients, they can sense (sort of like sharks) when a teacher is unprepared—and will not appreciate their time being wasted.

Organization: Complementary to preparation, being organized makes life more smooth. As a business attorney, I had to know where all documents were, what draft was in progress, who the players were, and what steps had to be climbed to close a deal. Skipping a step or losing a document could have been a disaster.

Being organized for my students helps them learn the value and comfort of organization, and illustrates how much it enhances their experience in my class and in law school. My office is (usually) neat, and I've never lost one of their papers (yes, I know, it's early days yet). To prevent panic and appearing unorganized, I have my students e-mail me their graded assignments, making clear that an e-mail is considered acceptable delivery of the assignment. I organize my students as I would my clients: each has a folder, and I put all papers concerning that student in that folder. If it's a particularly *interesting* student, I may have a file with several folders. I

"There are boundaries to accessibility with students—for instance, unlike clients, I do not provide a cell phone number."

"Once I asked a successful attorney about his secret for keeping clients satisfied. He said he tried to present bad news in a positive light."

also maintain my virtual classroom on at least a weekly basis. I post class materials, e-mail links, assignments, and anything else pertinent to what is being taught or legal writing in general. Finally, I get to class a few minutes early if there isn't a class there before me so I can set up and make sure my "technology of the day" will actually work.

Respect: I confess, I had some clients that I had somewhat less than *any* respect for, and a number I just didn't like. Nonetheless, as a professional, I had to address their problems, no matter what my feelings, and I had to mask those feelings as well. The same goes for my students. On the whole, they're a likable, pretty malleable group, but there have been one or two who make me sort of cringe when I talk with them. I do my best to be respectful no matter what the topic, no matter what the question, and most important, no matter who the student. I do remember almost laughing once when a student asked me if she needed to cite to a statute in a problem analyzing a statute, but thankfully I didn't. I also respect each student in class and do not believe that an atmosphere of humiliation and fear is the best in which to learn.

Honesty: Once I asked a successful attorney about his secret for keeping clients satisfied. He said he tried to present bad news in a positive light. He was honest, but he was excellent at finding the silver lining. That skill, combined with tact, is just as effective when dealing with a student's less-than-stellar writing abilities. Once, the only positive thing I could really find to say about a student's work was "I see you're really trying to use good grammar here." But that was enough to give hope (to both of us). I also don't mince words if the student needs a straightforward "I really need to know if this is good" answer. I do couch it in the truisms of "you're a first year," "this is all new," "keep trying; it will come."

I also think that a successful attorney must be honest in admitting to and correcting mistakes. That doesn't mean confession is necessary with minor errors, but big mistakes should never be hidden. Of course the best way to confess big mistakes to a client is to find a solution first and then tell the client. With students, I do admit to my errors, and I fix them quickly. I think this is also a good thing to role model: lawyers make mistakes, and that's OK as long as they repair any resulting damage.

Confidentiality: We have an ethical duty to maintain client confidentiality in practice, and the same need to engender trust and open discussion is present in law school. I have had many conversations, and some tears, in my office about subjects that have nothing to do with law school. Unless it's a law school "need to know" topic, that is, one in which a student's mental or physical health may be significantly affected, I keep these conversations to myself. I think many students just need to vent to a sympathetic ear, and usually no more is necessary. If more is needed, I ask the student's permission to discuss it with others.

When I disclosed my treatment of my students as my clients in the last class, we had little time for discussion. Not one student has mentioned it to me since then. I'm not sure if that means I was not as successful in role modeling as I thought, and they were just being polite, or if they didn't get it and merely thought I was being a bit unusual, or if maybe they understood but won't appreciate it until they have clients of their own. I like to think it's the last. Next year, I may take the brave step of discussing my role modeling up front and see if the learning process will be more successful.

Reusing Writing Assignments

BY JAMES D. DIMITRI

James Dimitri holds the position of Clinical Associate Professor of Law at the Indiana University School of Law–Indianapolis, where he teaches Legal Analysis, Research, and Communication, and Advanced Persuasive Writing and Oral Advocacy. Before his appointment to the IU–Indianapolis faculty, Professor Dimitri practiced law with the Indiana Attorney General's Office as a deputy attorney general. The focus of his practice was federal and state appeals, federal habeas corpus litigation, and tort litigation.

Brutal Choices in Curricular Design ... *is a regular feature of* Perspectives*, designed to explore the difficult curricular decisions that teachers of legal research and writing courses are often forced to make in light of the realities of limited budgets, time, personnel, and other resources. Readers are invited to comment on the opinions expressed in this column and to suggest other "brutal choices" that should be considered in future issues. Please submit material to* Helene Shapo, Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611, phone: (312) 503-8454, fax: (312) 503-2035.

At the Indiana University School of Law–Indianapolis, the faculty who teach our first-year legal research and writing course, Legal Analysis, Research, and Communication (LARC), are responsible for creating their own problems for the majority of the writing assignments. As my teaching career has progressed, I have built a growing bank of writing assignments, ranging from objective memoranda to appellate brief assignments. Now that I have this bank of assignments, I have become very tempted to reuse problems rather than create new ones. This temptation has grown recently since I seem to get busier with each year of teaching, and therefore find myself with less time to research and write problems for LARC assignments.

But while reusing problems saves some time, it unfailingly presents me with several issues that I must consider and resolve. In an effort to provide guidance to other legal research and writing faculty who are faced with the decision to reuse writing assignments, I will discuss what I consider before I decide to reuse an assignment and how I resolve those issues.

Closed Versus Open Assignments

Our LARC course, like legal research and writing courses at many other schools, begins with several closed assignments. The entire LARC department at my school, led by our program director, assembles these assignments because all first-year students receive the same closed assignments. The assignments are "closed" because the students are not permitted to do independent research to gather authorities to support the analysis in their papers. Rather, at the time each closed assignment is handed out, I and my LARC colleagues provide the legal authorities students will use to support their written analysis.

Later assignments in the course are "open," which means that the students are required to do independent research. Unlike the closed assignments, open assignments are not departmentwide assignments at my school; rather, each individual LARC professor creates his or her own open assignments.

I have found closed assignments easier to reuse than open assignments for a couple of reasons. First, with closed assignments, I do not have to update the legal authorities upon which the assignment is based. In other words, even if the law that governs a closed assignment changes due to a judicial decision or legislative amendment, I am still free to use the same legal authorities containing the "old" or superseded law because I

"As my teaching career has progressed, I have built a growing bank of writing assignments, ranging from objective memoranda to appellate brief assignments."

"I find that the best sources for law-centered issues are jurisdictions in which there is a split of authority on a legal issue."

control the sources of the law that the students will use in their papers.

In contrast, I cannot completely control the authorities that the students will use in an open assignment because the students, not me, are responsible for gathering the legal authorities that will govern their analysis. Moreover, the law governing the assignment may have changed since I first assigned the problem, requiring me to consider adding new sources of law if I reuse the assignment or abandoning the assignment altogether if the change in the law is drastic. For instance, I recently discarded an open office memorandum assignment involving the issue of whether, under Indiana law, a plaintiff could recover emotional distress damages that allegedly resulted from a defendant's negligence. One issue that the students had to discuss was whether the plaintiff suffered a direct physical impact as a result of the defendant's negligence, which was a prerequisite to the recovery of emotional distress damages. I can no longer use this assignment because the Indiana Supreme Court abrogated the direct physical impact requirement after I first gave out the assignment. In sum, because reusing open assignments requires me to update the law governing the assignment, I am less likely to reuse open assignments than I am closed assignments.

The second reason that I find closed assignments easier to reuse is that closed assignments in my LARC course are usually simpler in subject matter and scope than the open assignments. This simplicity exists because the closed assignments are designed to teach the students basic writing, analytical, and organizational skills, whereas the open assignments are designed to refine these basic skills and to teach new skills. Because the closed assignments are simpler than the open assignments, the closed assignments also tend to be shorter. The simplicity and brevity of the closed assignments require me to spend less time reviewing those assignments when deciding whether to reuse them, thus making it easier for me to reuse the assignment.

Although I find closed assignments to be easier to reuse, reusing a closed assignment based upon superseded legal authority does present a danger: the students may mistakenly believe that the superseded authority represents the current state of the law. To this point in my teaching career, I have not reused a closed assignment following a change in the law governing that assignment.[1] If, however, I ever decide to reuse a closed assignment based upon a superseded legal doctrine, I will inform the students after they have completed the assignment that the law governing the assignment has changed. That way, the students will not mistakenly believe that the superseded authority represents the current state of the law.

Objective Versus Persuasive Assignments

I also consider whether the assignment is an objective memorandum or a persuasive brief. In my school's writing program, first-year students taking LARC are assigned two major objective papers and one persuasive paper. The objective assignments are office memoranda and the persuasive assignment is an appellate brief.

Over the past several years, I have more frequently reused office memoranda than I have appellate brief assignments because appellate brief assignments are often later "mooted" by a subsequent appellate court decision. More specifically, my appellate brief assignments almost always involve law-centered issues, where the students must analyze the interpretation of a statute or constitutional provision, or where they must debate the adoption of a new common law doctrine. I find that the best sources for law-centered issues are jurisdictions in which there is a split of authority on a legal issue. Federal splits of authority occur when two or more federal circuits disagree on the resolution of a legal issue; state splits of authority occur when different districts or panels of a state's intermediate appellate court disagree on the resolution of a legal issue. Most splits of authority are eventually resolved by the

[1] The main reason I have never reused a closed assignment following a change in the law is that our program's closed assignments are typically set in a fictional jurisdiction and are based upon fictional statutes or case law, which, of course, are not subject to change through a later legislative amendment or judicial decision.

jurisdiction's highest court—the U.S. Supreme Court for federal circuit splits and the state supreme courts for splits among the districts or panels of the states' intermediate appellate courts.[2] If I choose an appellate brief assignment based upon a split of authority that is later resolved by the jurisdiction's highest court, the assignment is mooted and thus impossible to reuse.

In contrast to my appellate brief assignments, my office memorandum assignments usually involve fact-centered issues, where the students must apply an established rule of law to the facts that I have provided in the assignment. For example, my latest office memorandum assignment, which was a fact-centered assignment, was about the application of Indiana's testimonial privilege for physicians, a well-established legal rule that has existed in Indiana since the 1800s. Because my office memorandum assignments are normally based upon an established rule of law and not a split of authority, they are less likely to be mooted by subsequent judicial decisions or legislative actions. As a result, I can reuse these assignments more frequently than appellate brief assignments.

If I wish to reuse an assignment involving a law-centered issue, particularly an assignment based upon a split of authority, I have to thoroughly update the law upon which the problem is based to make sure that the problem has not been mooted. For instance, for a problem based upon a split of authority among the federal circuits, I check to see if the U.S. Supreme Court has resolved the split. If the Court has not resolved the circuit split, then I check the Court's docket to see if the Court has granted certiorari to resolve the circuit split.[3] If the Court has granted certiorari but will not hear oral argument in the case until after the students turn in the assignment, then I may reuse the problem without the risk that it will be mooted while the students are working on it. In this instance, however, the parties in the case will have already briefed the appeal. These briefs are usually available from a number of sources, such as Westlaw®. Therefore, if I reuse this type of assignment, I forbid my students from consulting the parties' briefs when writing their own briefs.

The Subject Matter of Open Assignments

When I begin evaluating an open writing assignment for reuse, I consider the subject matter of the assignment. In particular, I think about whether the assignment is based upon an area of the law that changes frequently. If the assignment covers such an area of law, I usually must spend more time updating the assignment than I would an assignment based upon an area of law that remains static. Therefore, it is typically easier for me to reuse problems based upon legal doctrines that stay relatively static.

By way of example, I find that property law tends to remain fairly static. For instance, I previously reused a problem involving the doctrine of adverse possession, which required me to do little updating of the sources used in the problem. In contrast, tort law tends to change more frequently. My open office memorandum assignment involving the issue of emotional distress damages is a good example of a tort law problem that I can no longer use because of a change in the law.

The Risk of Academic Misconduct

Fortunately, I have had to deal with only one instance of academic misconduct during my teaching career. Yet the risk of academic misconduct is still an issue that I must consider when deciding to reuse a writing assignment. First-year students often consult with second- and third-year students about dealing with law school.

> "In contrast to my appellate brief assignments, my office memorandum assignments usually involve fact-centered issues."

[2] If I choose an appellate brief problem based upon a split of authority, I normally set the problem in the jurisdiction's highest court, in a fictional jurisdiction, or in an intermediate appellate court that has never considered the issue, rather than in one of the intermediate appellate courts involved in the split. That way, the students representing the appealing party are not forced in the assignment to try to overcome binding authority in the circuit when writing their briefs. For instance, I set appellate brief problems involving a federal circuit split in the U.S. Supreme Court or in the fictional Thirteenth Circuit rather than in one of the circuits involved in the split.

[3] To check the Court's docket, you may consult the Court's official Web site at <www.supremecourtus.gov>.

"Preventing academic misconduct stemming from paper banks and online sources can be difficult."

While many of these conversations cover topics such as effective study habits or which professors to take for classes, these conversations sometimes involve the assignments from the LARC course.

To prevent second- and third-year students from sharing information about old LARC assignments with first-year students, the LARC faculty at my school impose a moratorium on assignment reuse. Under that moratorium, all of us wait four years before we reuse a writing assignment.[4] The four-year moratorium period ensures that all students who were assigned a writing assignment graduate before the assignment is reused.

Unfortunately, our moratorium does not eliminate all potential sources of plagiarism. Specifically, student organizations, such as law fraternities, compile banks of past writing problems and old papers, which students who belong to those organizations can review. Similarly, a number of Web sites on the Internet contain databases of essays and papers.[5] Students who access these Web sites can purchase papers for a fee and then submit them as their own work, thereby committing digital plagiarism.[6]

Preventing academic misconduct stemming from paper banks and online sources can be difficult. I, however, use two techniques to thwart plagiarism from these sources when I reuse a problem. First, I change the names of the parties involved in the problem to make it more difficult for students to locate old papers in paper banks and on Internet databases. Second, I change the facts in the problem to ensure that the students' written analysis will differ from the written analysis in the papers that were submitted the first time I used the problem. For example, several years ago, I used an office memorandum problem in which the students had to discuss whether a defendant was liable under one theory of liability. When I reused the problem, I altered the facts of the problem so the students had to discuss whether the defendant was liable under two theories of liability.

In addition, I am aware of at least one Web site that offers tools to detect digital plagiarism.[7] These tools are offered for a subscription fee and allow users to compare the content of submitted papers with content located on the Internet. I have never used this Web site, but research and writing teachers may want to investigate it to see if it is useful and economical.

The Feasibility of the Assignment

Perhaps the most important consideration in reusing a problem is the feasibility of the assignment. Before I reuse a writing assignment, I always look at how well the assignment worked the first time I assigned it. More specifically, I examine whether the assignment was a good tool for teaching the skills[8] that were the goal of the assignment. If an assignment was a good teaching tool the first time around, I am more likely to reuse it than an assignment that was not an effective teaching tool.

For instance, when I consider whether a closed assignment was a good teaching tool, I examine whether the assignment successfully tested the students' basic analytical and organizational skills the first time that I assigned it. In general, I find that closed assignments based upon criminal law or intentional torts are good for developing basic analytical skills, such as identifying the elements of a cause of action. For example, both the crime of burglary and the intentional tort of battery provide a good basis for closed assignments because both have easily identifiable elements. Therefore, I am more likely to reuse a closed

[4] The period is four years instead of three because my school has a four-year, part-time program in addition to the traditional three-year, full-time program, and most of the LARC faculty teach a group of part-time students each academic year.

[5] *See, e.g.,* <www.cheathouse.com>; <www.fastpapers.com>.

[6] Of course, if the law governing a writing problem has substantially changed since the first time the problem was used, plagiarism will be thwarted as a practical matter because students must write papers that will be analytically different from the papers the students submitted when the problem was first assigned. My discussion of plagiarism here assumes that the law governing the problem has not changed since the problem was first assigned.

[7] *See* <www.turnitin.com>.

[8] "Skills" in this context means analytical and organizational skills, not grammatical skills or writing mechanics.

assignment based upon these topics than assignments based upon other areas of law.

Similarly, when I consider whether an appellate brief assignment was a good teaching tool, I examine whether the assignment successfully tested the students' persuasive writing skills the first time around. In my experience, brief assignments involving a law-centered issue, such as constitutional interpretation, are good for developing persuasive writing skills. A few years ago, I assigned an appellate brief problem that involved the issue of whether an attorney who sleeps during short portions of his client's criminal trial violates per se his client's right to the effective assistance of counsel under the Sixth Amendment. This problem worked quite well because students had to craft several public policy arguments to support their positions, which is a skill that they were not required to use in their previous writing assignments. Therefore, barring a change in the law that moots the problem, the problem is a good candidate for reuse.

In addition, when I consider the feasibility of reusing an assignment, I always think about whether the students enjoyed the assignment the first time that I gave it. While it is not always possible to assign a problem that the students will enjoy, I try not to give boring assignments. In my experience, boring assignments are poor tools to teach students writing skills because the students are not enthusiastic about tackling the challenges that the assignment presents. I find that assignments on dry subjects, such as workers' compensation, do not pique the students' interest. Furthermore, if an assignment was boring for the students to write, it will probably be just as boring to me when I grade the assignment. As a consequence, I try to reuse problems that engaged my students intellectually and continue to engage me intellectually.

"... I try to reuse problems that engaged my students intellectually and continue to engage me intellectually."

WRITING TIPS ...

PUNCTUATION MATTERS

BY MARTHA FAULK

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"Standardization emerged only after the introduction of the printing press, but even then punctuation was never bound by rules to the same extent as spelling."

"Punctuation plays a critical role in the modern writing system, yet its significance is regularly underestimated," says David Crystal in his comprehensive study of the history, structure, and use of the English language.[1] Crystal explains that punctuation marks appeared first in classical texts as a guide to phrasing in oratory. Standardization emerged only after the introduction of the printing press, but even then punctuation was never bound by rules to the same extent as spelling. Although "scribes and publishing houses have always varied in their practices … today punctuation remains to some extent a matter of personal preference."[2] For legal writers, however, that observation may prove disconcerting.

Punctuation as Personal Preference

Most of us have argued with our colleagues, teachers, editors, and friends about the placement of the comma. Because certainty is valued in the legal profession, we look to authoritative publications for guidance. But, as Crystal suggests, "scribes and publishing houses"[3] often vary in their preferences just as individuals do. In my experience as a teacher of both legal and business writing, one of the most argued-about comma rules deals with a series of three or more words, phrases, or clauses connected by a coordinating conjunction—the "serial comma" rule.

The Serial Comma

Although the standard guide to legal citations does not address the serial comma rule specifically, it shows the placement of the comma before the coordinating conjunction by illustration, as in this example: "Once a full citation is given, you may use a short form for cases, statutes, regulations, legislative materials, books, articles, periodical materials, and so forth. …"[4]

Other reference books address the serial comma issue directly. *The Publication Manual of the American Psychological Association*, which is used by many academic editors, states that a comma must be used "between elements (including before *and* and *or*) in a series of three or more items."[5] Thus, a sentence describing the "height, width, or depth" of an object properly sets off each element with a comma. The *Manual* offers no explanation for its rule, nor do most other authorities.[6] It might seem that the only rationale for the particular punctuation is simply one of consistency.

Conflicting Advice

The *Associated Press Stylebook*, in contrast to the *APA Manual*, follows a different rule of punctuation for a series: "Use commas to separate elements in a series, but do not put a comma before the conjunction in a simple series."[7] This treatise begins its discussion of punctuation with a stern warning: "There is no alternative to correct punctuation. Incorrect punctuation can change the meaning of a sentence, the results of which could be far-reaching." The book continues that aside from unclear meaning, "bad punctuation, however inconsequential, can cause the reader to lose track of what is being said and give up reading a sentence."[8]

[1] *The Cambridge Encyclopedia of the English Language* 278 (1995).

[2] *Id.*

[3] *Id.*

[4] *The Bluebook: A Uniform System of Citation* 15 (17th ed. 2000).

[5] *Publication Manual of the American Psychological Association* 78 (2001).

[6] Other authorities following the APA rule include Joseph Gibaldi, *MLA Handbook for Writers of Research Papers* 81 (6th ed. 2003); *The Chicago Manual of Style* 173 (14th ed. 1993).

[7] *The Associated Press Stylebook and Briefing on Media Law* 329 (2002).

[8] *Id.* at 326.

One explanation for the varying advice may be the level of formality involved in the writing. Some style guides note a difference between formal and informal writing, sometimes described as "open" or "closed" or "light" or "heavy." Although the differences are not always clear, the "closed" style tends to follow traditional punctuation usages. In that case, then, the writer would set off all the elements of a series—including the element preceding the coordinating conjunction—with commas.

For an example of the importance of punctuation in a legal document, we can consider a typical case. Although the case illustrates a rather complex series of modifiers, we can see that punctuation is integrally connected with the grammar, and thus the meaning, of the clause.

A Case Example

Assume that an insurer issues an insurance policy to a public housing authority. As the project proceeds, the housing authority has a dispute with the construction firm and seeks a judicial resolution of the insurer's duty to provide legal services.

The defendant insurer takes the position that the policy is clear and unambiguous on its face and the housing authority's claim does not fall within its scope. The language in the insurance policy excludes all "claims arising from procurement, construction, or architect or engineer contracts." The housing authority argues that the vagueness of meaning requires a decision in its favor because of the generally recognized principle that holds the drafter of a contract liable for ambiguity of its terms.

The Ambiguity of Interpretation

Where is the ambiguity? There are two possible interpretations of the clause.

The first interpretation would be that the drafter meant for all of the nouns in the prepositional phrase limiting the meaning of "claims" to adjectivally modify the end word "contract." Thus, a construction problem relating to the *contractual* obligation would be excluded from coverage, because "construction" would serve as a noun functioning as an adjective and thus modifying "contract" just as "architect" and "engineer" do.

However, another possibility would be for the nouns "procurement" and "construction" to function as nouns indicating procurement in general and construction in general, and for the nouns "architect" and "engineer" to function as adjectives modifying the end-word "contract." In that situation, the insurer could claim that the exclusion is very broad and it has no obligation to defend any claim arising out of an issue related to construction, whatever its nature.

Since coordinating conjunctions usually link equal grammatical elements, we might expect all of the nouns in the clause to function as adjectives and modify the noun "contract." But the presence of two coordinating conjunctions, *or* and *or*, is confusing, and so is the comma placement. Since the drafter placed "procurement" and "construction" before the conjunction *or* and placed a separating comma there, we might reasonably determine that "procurement" and "construction" serve as general nouns because of the comma before the first *or*. The nouns "architect" and "engineer," which follow the comma, are placed closer to the word "contract" and thus seem more likely to be used in the adjectival sense.

The Cost of Unclear Writing

The court, faced with two possible interpretations, applied the general rule of construing the contract against the drafter who had the opportunity to make clear the intent of the agreement. Since the insurer did not, the court, by summary judgment, held the insurer liable for approximately $750,000 as a performance bond.[9]

[9] The author served as an expert witness in this Colorado case in 1995.

"One explanation for the varying advice may be the level of formality involved in the writing."

"Legal writers would be best served by following the precepts of the more formal 'closed' style of punctuation recommended by books on legal writing."

How could mere punctuation have made this clause more clear? Let's apply the closed punctuation rule—a conservative approach, favored by most legal writing experts. The clause would then recite the series of excluded items in this manner: exclusions for "claims arising from procurement, construction, architect, or engineer contracts." Now we've followed the closed punctuation rule exactly and avoided the confusion of the second *or*. The exclusions all pertain to a set of claims involving contractual obligations.

An additional change in wording would also be helpful for clarity. If the drafter used the more obvious adjectival forms of the nouns "architect" and "engineer," then the case for plain meaning of the excluded items would have been strengthened. Our amended clause would thus exclude "claims arising from procurement, construction, architectural, or engineering contracts." In either example, the four excluded items would be seen to function as adjectives modifying "contracts." If, however, the drafter wished to exclude claims arising from procurement in general and construction in general, then the entire clause would have to be rewritten to indicate such meaning.

Punctuation Advice

What advice can be drawn from this technical discussion of grammar and punctuation? Legal writers would be best served by following the precepts of the more formal "closed" style of punctuation recommended by books on legal writing, especially in legal documents where consistency and clarity of meaning are paramount.[10] The insurance company drafter should have noted the use of serial elements and considered whether those elements were properly placed and punctuated; instead, the drafter used conjunctions that may or may not have been intended to substitute for commas. The lack of attention to punctuation and word choice resulted in an adverse judgment. Not all bad punctuation practices lead to confused meaning, of course, but incorrect punctuation can suggest sloppy proofreading or general unfamiliarity with rules of writing.

Punctuation as a Custom

Some punctuation usages simply conform to a particular custom. In the United States, for example, punctuation used with quotation marks takes a form different from that in other countries. A very common example is the placement of a period or a comma within the end quotation mark. In Great Britain, the conventional use is exactly opposite: periods and commas are placed on the outside of the end quotation mark.

The Moral: Pay Attention to Punctuation

Punctuation may vary depending on the particular document and writer and on national custom, but it does matter. The rules of punctuation are sometimes those that clarify meaning and sometimes those that follow an established convention. But in either instance, poor punctuation habits work to the detriment of lawyers. Such habits may lead to litigation to resolve unclear rights and responsibilities, or they may indicate ignorance of the idiom. Whatever the consequences, lack of attention to punctuation carries a price.

[10] Martha Faulk & Irving Mehler, *The Elements of Legal Writing* 69 (1994).

SHOULD I TEACH MY STUDENTS NOT TO WRITE IN PASSIVE VOICE?

BY ANNE ENQUIST

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Writers' Toolbox … *is a regular feature of* Perspectives. *In each issue, Anne Enquist will offer suggestions on how to teach specific writing skills, either in writing conferences or in class. Her articles will share tools and techniques used by writing specialists working with diverse audiences, such as J.D. students, ESL students, and practitioners. Readers are invited to contact Professor Enquist at* **ame@seattleu.edu**.

Years ago I heard an English professor from one of the Washington state universities refer to the "much maligned passive voice." I tend to agree with his sentiments. Passive voice has gotten an undeserved bad rap.

When I work with law students on their writing, I frequently see evidence of this. Law students, sometimes even quoting their legal writing or undergraduate professors, tell me that they want me to "check their writing for passive voice," much like a dentist would check a patient for cavities, I suppose. The premise underlying this request seems to be that passive voice, like a dental cavity, is a "bad thing" that must be detected and eradicated.

I'm not sure where the "passive voice=bad" and "active voice=good" impression developed, but in my view it misrepresents a much more nuanced and interesting aspect of language. So, when students ask me to check for passive voice, I start by doing several things. First, I ask them if they'd like me to review with them what passive voice is exactly, just to be sure we are on the same page.

Inevitably they say "sure" and we can move to a quick refresher with no one being embarrassed about not knowing something basic. I start by explaining that many people confuse passive voice with past tense, but that the two are entirely different. Past tense refers to the time in which an action happened (the past, obviously), whereas passive voice refers to the relationship between the subject and verb of the sentence. (At this point I sometimes detect a slight, barely perceptible shifting of weight as the student moves in his or her seat. This nervous gesture confirms my suspicion that the quick "refresher" is not really a refresher for this student, and he or she may be hearing this information for the first time.)[1]

I then move to some examples, which I label as "basic" just to get us started. I often begin with the student's own name and add a verb and object.

Example: Joe wrote the brief.

The student readily sees that the sentence is in past tense ("wrote" as opposed to the present tense "writes"), and then I explain that although the verb is in the past tense, this is an active voice sentence because of the relationship between the subject ("Joe") and the verb ("wrote"). The subject is *actively* doing the verb; hence the term, "active voice." This relationship is easily symbolized by drawing an arrow between "Joe" and "wrote."

Active voice: *Joe* → *wrote* *the* *brief.*
subject *verb*

Then I add the passive voice version of the same sentence, noting that now the subject of the sentence is "brief" and the verb is "was written":

Passive voice: *The brief* ← *was written* *by* *Joe.*
subject *verb*

The key here is for the student to see that the arrow now goes the other way. The brief is not doing the writing; the writing is *being done to* the brief. The subject of the sentence ("brief") is now "passive," that is, it is not the doer of the action. The doer of the action is still "Joe," who has moved

[1] Sometimes, of course, students are up to speed on what passive voice is so we can move quickly to how to use it effectively.

> "I start by explaining that many people confuse passive voice with past tense, but that the two are entirely different."

"To convey the same information, the passive voice sentence takes two more words than the active voice version."

down into a prepositional phrase. I add that another passive voice version of this sentence omits the doer of the action.

Also passive voice: *The brief* ← *was written.*
subject *verb*

This second sentence gives me the opening I need to introduce the second point I want the student to get: why we have the passive voice. Using the passive voice versions of the sentence, I start asking the student why someone might want to write these sentences instead of the active voice version. Depending upon how quick and confident the student is, we can quickly come up with some reasons:

1. the doer of the action is unknown
2. the doer of the action is unimportant[2]
3. the context in which the sentence appears is focused on the brief, not the author of the brief (or "what gets the emphasis")

At this point the student can usually see that sometimes, especially in advocacy writing, he or she might want to downplay who was the doer of the action (for example when representing the defendant, "The plaintiff's retirement benefits were discontinued" rather than "Ms. Hall discontinued the plaintiff's retirement benefits"). The student should also be able to see that in a paragraph focused on the brief itself, not the author of the brief, it is more likely that the better sentence *for that context* will be the passive voice version.

Now that I have the student convinced (I hope) that the passive voice exists in the language for a reason and not just to bedevil unwitting writers, I move to the third and final point of the mini-lesson, which is why active voice is generally preferred over passive voice (unless there is a good reason for using passive voice).

Going back to the first two example sentences, I ask the student to compare their length.

Joe wrote the brief.	4 words
The brief was written by Joe.	6 words

To convey the same information, the passive voice sentence takes two more words than the active voice version. With conciseness being such a premium virtue in legal writing, it is no wonder that a loss of two or so words per sentence makes active voice the preferred choice, as long as there is no overriding reason for using passive voice.

Furthermore, active voice sentences have the benefit of a crisp verb. The energy of the single word "wrote" is diluted, albeit slightly, when changed to "was written."

Some even argue that our brains process information in active voice nanoseconds faster than information conveyed in passive voice. In the passive voice version, "the brief was written by Joe," there is a moment in the reader's mind when the action is being done by unseen hands; the brain has to wait for "by Joe" to complete the mental picture.

To summarize then, I tell students that active voice should be their default mode—use it unless there is a good reason to write in passive voice. Active voice is generally preferred over passive voice because (1) it is more concise; (2) it has more energetic verbs; and (3) arguably, it is easier for readers to process. Passive voice may be the better choice, however, when (1) the doer of the action is unknown; (2) the doer of the action is unimportant; (3) the context in which the sentence appears is focused on the receiver of the action, not the doer of the action (or "what gets the emphasis")[3]; or (4) it is undesirable to emphasize the doer of the action. Yes, reasons 1–4 for passive voice are all variations of the same theme.

With this foundation, we then move to the student's writing and look at his or her sentences, first deciding if verbs are active or passive and

[2] Students who were science majors as undergraduates often point out that they were required to write up lab experiments in passive voice. They are right; much scientific writing is done in passive voice. In scientific writing one is unlikely to see "The study investigator dispensed placebos to 100 people in the control group." Because the study investigator should not be emphasized, the more likely sentence is "One hundred people in the control group were given placebos."

[3] If the student is already familiar with the concept of dovetailing *(see* Laurel Currie Oates, Anne Enquist, & Kelly Kunsch, *The Legal Writing Handbook* 621–631*(*3d ed., Aspen L. & Bus. 2002); Anne Enquist & Laurel Currie Oates, *Just Writing* 60–69 (Aspen L. & Bus. 2001)), I will also demonstrate for the student how the need to create a good dovetail often leads to a passive voice sentence.

then deciding if the active/passive choice was the right one.[4]

My hope is that students will find their brief journey into the world of active and passive voice[5] a bit more pleasant and interesting than a visit to the dentist's office. In any case, I want them to come away realizing that unlike dental cavities, passive voice can sometimes be a good thing. As law students who aspire to be effective users of language, they need passive voice, as well as active voice, as a tool in their writing belt. The trick, as always, is to know which tool to use when.

"As law students who aspire to be effective users of language, they need passive voice, as well as active voice, as a tool in their writing belt."

[4] For example, two of the three sentences in the opening paragraph of this column are written in active voice and one is in passive voice. Sentence 1: "I heard …" active voice; sentence 2: "I agree …" active voice; and sentence 3: "Passive voice has gotten …" passive voice (no irony there). The doer of the action in the third sentence—whoever it was that gave passive voice a bad rap—is both unknown and relatively unimportant. At this point in the discussion, the emphasis has shifted to passive voice itself, so it is appropriately moved to the subject position in the sentence.

[5] Essentially the same approach can be used with a class followed by a class discussion of active and passive voice sentences in a sample piece of writing.

LEGAL RESEARCH AND WRITING RESOURCES: RECENT PUBLICATIONS

COMPILED BY DONALD J. DUNN

Donald J. Dunn is Dean and Professor of Law at the University of La Verne College of Law in Ontario, Cal. He is a member of the Perspectives *Editorial Board.* *This bibliography includes references to books, articles, bibliographies, and research guides that could potentially prove useful to both instructors and students and includes sources noted since the previous issue of* Perspectives.

Association of Legal Writing Directors & Darby Dickerson, *ALWD Citation Manual: A Professional System of Citation,* 2d ed., 2003 [New York: Aspen Publishers, 491 p.]

This major competitor to *The Bluebook* continues to be improved. This edition refines and clarifies existing rules and responds to user inquiries. Includes new rules concerning short citation and the use of numbers in citations. Also includes an expanded index and updated examples.

Association of the Bar of the City of New York, Committee on Foreign and Comparative Law, *Legal Dictionaries in England and One or More Other Languages: A Selective Bibliography,* 57 Rec. B. Ass'n City N.Y. 489 (2002).

Approximately 50 different languages are represented in this bibliography consisting of 225 entries.

Michael Bacchus, Comment, *Strung Out: Legal Citation, The Bluebook, and the Anxiety of Authority,* 151 U. Pa. L. Rev. 245 (2002).

Following a brief history of *The Bluebook* and a discussion of its competitors, the author focuses on the rules associated with "string citations" and how these rules have perpetuated the growth of string cites.

Lynn Bahrych & Marjorie Dick Rombauer, *Legal Writing in a Nutshell,* 3d ed., 2003 [St. Paul, MN: West, 263 p.]

While much of the technical content of earlier editions remains the same, this edition addresses the contemporary lawyer's need to compose and edit on the screen.

Thomas E. Baker, *A Compendium of Clever and Amusing Law Review Writings: An Idiosyncratic Bibliography of Miscellany with In Kind Annotations Intended as a Humorous Diversion for the Gentle Reader,* 51 Drake L. Rev. 105 (2002).

An annotated listing of humorous law review articles. The annotations provided by the author are often as funny as the articles described.

Coleen M. Barger, *On the Internet, Nobody Knows You're a Judge: Appellate Courts' Use of Internet Materials,* 4 J. App. Prac. & Process 417 (2002).

"[E]xplores federal appellate judges' use of and reliance on materials found on the Internet, as evidenced by their citation and use in appellate opinions." *Id.*

Peter Butt & Richard Castle, *Modern Legal Drafting: A Guide to Using Clearer Language,* 2001 [London, Eng.: Cambridge University Press, 181 p.]

Discusses how outdated and confusing legal language can be rewritten, reworked, or removed to make clearer legal documents. Also examines the plain language reforms underway in the United Kingdom, Australia, and North America.

Jean M. Callihan, *Victim Impact Statements in Capital Trials: A Selected Bibliography,* 88 Cornell L. Rev. 569 (2003).

"[C]ollects and organizes citations to dissertations, chapters in books, journal articles, legislative materials, books, and book reviews from 1980 forward that analyze the effect of victim impact statements in capital cases." *Id.* Focuses on referencing empirical studies and quantitative evaluations of victim impact statements.

Paul Douglas Callister, *Beyond Training: Law Librarianship's Quest for the Pedagogy of Legal Research Education,* 95 Law Libr. J. 7 (2003).

"After examining an earlier debate about 'process' versus 'bibliographic' approaches for teaching legal research skills, [this article] explores the creation of a flexible pedagogy that emphasizes frameworks to facilitate the learning process." *Id.*

Simon Canick, *Availability of Works Cited in Recent Law Review Articles on LEXIS, Westlaw, the Internet, and Other Databases,* Legal Reference Services Q., Nos. 2/3, 2002, at 55.

Using seven articles, the cited sources in these articles were checked in databases such as LexisNexis®, Westlaw®, and the Internet. The results showed that 77 percent of the cited sources were available online and concludes that the percentage will get larger in the future.

The Catholic Dimensions of Legal Study: The Catholic University Law School Annotated Bibliography, 2002 [Washington, DC: Catholic University of America, Columbus School of Law, Judge Kathryn J. DuFour Law Library, 115 p.]

"This bibliography … seeks to identify and describe Catholic resources useful for law teachers, law students and practicing attorneys who are seeking to integrate their faith commitment into a life in the law." *Id.* at 4.

Michael Chiorazzi, *Books, Bytes, Bricks and Bodies: Thinking About Collection Use in Academic Law Libraries,* Legal Reference Services Q., Nos. 2/3, 2002, at 1.

Shows that "over 80% of the use of all legal materials is accounted for by the 20% of all legal materials that are available online." Hence, arguments about the need to add space for print materials are harder to justify.

Bradley G. Clary & Pamela Lysaght, *Successful Legal Analysis and Writing: The Fundamentals,* 2003 [St. Paul, MN: West, 260 p.]

A basic guide designed to demonstrate how legal analysis and legal writing can work together to produce more cogent documents.

Morris L. Cohen & Kent C. Olson, *Legal Research in a Nutshell,* 8th ed., 2003 [St. Paul, MN: West, 478 p.]

This standard text continues to change with the times with increasing emphasis on electronic sources. Secondary sources are discussed first, followed by a discussion of primary sources. Includes numerous illustrations.

Tad Crawford & Kay Murray, *The Writer's Legal Guide: An Author's Guild Desk Reference,* 3d ed., 2002 [New York, NY: Allworth Press, 309 p.]

Covers the business of writing; limitations of free expression; copyright; the Freedom of Information Act; negotiating a book contract; literary agents and agency agreements; collaboration agreements; the self-publishing option; estate planning for professional authors; and how to avoid or resolve disputes.

Richard A. Danner, *Electronic Publication of Legal Scholarship: New Issues and New Models,* 52 J. Legal Educ. 347 (2002).

Discusses the effects and implications that new technologies will have on communications in law, focusing on LSN (Legal Scholarship Network) and LEDA (Legal Education Document Archive).

Richard A. Danner, *Strategic Planning for Distance Learning in Legal Education: Initial Thoughts on a Role for Libraries,* Legal Reference Services Q., Nos. 2/3, 2002, at 69.

"This article discusses current distance learning alternatives for law schools, and the impacts of distance learning and other technological innovations on the future role of the academic law library in legal education." Abstract.

John C. Dernbach, *A Practical Guide to Writing Law School Essay Exams,* 2001 [Buffalo, NY: William S. Hein & Co., Inc., 74 p.]

A primer for law students on how to write an essay exam answer. Includes two exam questions and a model answer.

John Dethman, *Trust v. Antitrust: Consolidation in the Legal Publishing Industry,* Legal Reference Services Q., Nos. 2/3, 2002, at 123.

Examines the rapid consolidation of the legal publishing industry and "wonders at the effects all this concentrated change may have on law libraries and the patrons they serve." Abstract.

Paul Duguid, *The Social Life of Legal Information: First Impressions,* First Monday, <www.firstmonday.org/issues/issues7_9/duguid/index.html> (2002).

Discusses the paradox of where two information providers—law schools and law libraries – have developed different responses to digital technologies, the former often resisting them and the latter embracing them.

Daphne A. Dukelow & Betsy Nuse, *Pocket Dictionary of Canadian Law,* 3d ed., 2002 [Toronto: Carswell, 550 p.]

Contains approximately 7,000 current Canadian legal definitions.

Edmund P. Edmonds & Margaret Maes Axtmann, *A Law Library in the New Century: The Creation of the University of St. Thomas Law Library,* Legal Reference Services Q., Nos. 2/3, 2002, at 177.

When charged with developing a new academic law library, the authors were able to develop a collection development policy that took into account print and digital publishing and why a totally digital environment may not be desirable.

John D. Edwards ed., *Iowa Legal Research Guide,* 2003 [Buffalo, NY: William S. Hein & Co., Inc., 546 p.]

Provides information about the sources of primary law, such as the Iowa Constitution, statutes, local legislation, case law, and administrative law.

Entertainment Law Directory, 23 Loy. L.A. Ent. L. Rev. 163 (2002).

A listing of entertainment-oriented law firms throughout the United States compiled from oral and written information provided to the *Review* during October 2002.

Erasing Lines: Integrating the Law School Curriculum [Proceedings from the 2001 ALWD Conference], 1 J. Ass'n Legal Writing Directors 1–315 (2002).

Includes, among others, the following articles: *Introduction: Erasing Lines: Integrating the Law School Curriculum,* by Amy E. Sloan; *Opening Plenary: What Would "Best Practices" in Legal Education Look Like?–The Caste System and Best Practices in Legal Education*, by Kent D. Syverud, and *What Lawyers Need to Know, What Lawyers Need to Be Able to Do: An Australian Experience*, by David Weisbrot; Papers Delivered: *The Integration of Theory, Doctrine, and Practice in Legal Education*, by Byron D. Cooper; *Is "Thinking Like a Lawyer" Really What We Want to Teach?* by Nancy B. Rapoport; *A Liberal Education in Law: Engaging the Legal Imagination through Research and Writing Beyond the Curriculum*; Plenaries: *Models from Other Disciplines—What Can We Learn?*; *Is the Tail Wagging the Dog? Institutional Forces Affecting Curricular Innovation—A Panel Discussion*; and *Law School Curriculum, Training Law Students, and the Vitality of the Profession: The Judicial Perspective—A Panel Discussion*.

Thomas R. French, *Internet Resources for Researching International and Foreign Law,* 52 Syracuse L. Rev. 1167 (2002).

Discusses the Library Resource Exchange; conducting international law research using the Internet; FindLaw; information resources on international law; the Social Science Information Gateway; the Legal Information Institute; Australian, British and Irish, and Canadian legal information institutes; university and library sites; government- and organization-sponsored sites; trade and alternative dispute resolution; and law reviews and journals.

Betsy Frick, *Contracts and Letters of Agreement for Independent Consultants,* Clarity, No. 48, Dec. 2002, at 19.

Contracts and letters of agreement are two documents that independent consultants need to get started on a new project. This article discusses the content of these two documents and why they are important.

Bryan A. Garner, *Judges on Briefing: A National Survey,* 8 Scribes J. Legal Writing 1 (2001–02).

The author prepared two views of what a brief should be and then surveyed 100 judges as to which view they preferred. Of the 57 responders, 49 preferred view #1 (Garner's, "a tight essay") over view #2 ("a repository of all the information that a curious judge might want to know about the case"). Eight judges felt neither view was quite right. The responders' comments make up the bulk of the article.

Claire M. Germain, *Web Mirror Sites: Creating the Research Library of the Future, and More … ,* Legal Reference Services Q., Nos. 2/3, 2002, at 87.

Points out that Web mirror sites can provide an efficient and effective way to offer accessibility to information far into the future. Discusses how Cornell Law Library has recently made mirror sites available for the International Labour Organization and the International Court of Justice.

Alani Golanski, *Linguistics in Law,* 66 Albany L. Rev. 61 (2002).

"This article's goal is modest—it is to explain that law and linguistics pursue different ends, and for this reason, linguists construing statutes will miss legally decisive issues." *Id.* at 63.

Roy S. Gutterman, *The L. Rev.: The Law Review Experience in American Legal Education: A Personal Memoir,* 2003 [Bethesda, MD: Academica Press, LLC, 345 p.]

The author relates his personal experiences as editor of the *Syracuse Law Review*. Includes a glossary, law review bylaws, and a bibliography of writings about law reviews.

Thaddeus J. Holynski, *Legal Research on the World Wide Web,* 52 Syracuse L. Rev. 1141 (2002).

Describes Web law search engine sites, Web law resource sites, federal government information, and Internet tutorials and guides. An appendix lists essential print reference tools.

Terry C. M. Hutchinson, *Researching and Writing in Law,* 2002 [Roxelle, NSW: LBC Information Services, 383 p.]

Deals with the various aspects of legal research and writing in Australia.

Steven D. Jamar, *Aristotle Teaches Persuasion: The Psychic Connection,* 8 Scribes J. Legal Writing 61 (2001–02).

Using Aristotle's *Rhetoric* as a guide, the author shows—for briefs and judicial opinions— "that people are persuaded by reason because people value reason" and that "[w]hat matters most is the connection between the values of the audience and the speaker's rhetoric." *Id.* at 102.

Diana C. Jaque & Lee Neugebauer comps. *Legal Reference Books Review,* 95 Law Libr. J. 101 (2003).

Succinct reviews of eight legal reference books published in 2002. Continues the reviews from earlier issues of *Law Library Journal*.

Daniel N. Kassabian, *Researching Remedies in Intellectual Property Actions Involving Computer Technology: A Research Guide,* 9 Mich. Telecommun. & Tech. L. Rev. 65 (2002).

Provides "a methodology by which a legal practitioner can find the answer to [the] question" of "'What remedies are available to an owner of computer related technology whose rights have been infringed?'" *Id.*

Igor I. Kavass, *Law in Russia and the Other Post-Soviet Republics: A Bibliographic Survey of English Language Literature 1996–2001*, 2002 [Buffalo, NY: William S. Hein & Co., Inc., 276 p.]

An update of the 1997 edition. Covers articles and books about the Russian Federation and other post-Soviet republics.

Joseph Kimble, *First Things First: The Lost Art of Summarizing,* 8 Scribes J. Legal Writing 103 (2001–02).

A well-developed summary, at the start and end of each legal issue, helps "test the opinion" and "both shapes and reflects the analysis." *Id.* at 117. The author uses volume 462 of the *Michigan Reports* to illustrate good and bad summaries.

Joseph Kimble, *How to Mangle Court Rules and Jury Instructions,* 8 Scribes J. Legal Writing 39 (2001–02).

The author notes that jury instructions are "notoriously incomprehensible to the public" and that court rules are likewise "murky." *Id.* at 40. Thereafter, he identifies 10 surefire ways to go wrong when redrafting of instructions or rules are underway. He lauds the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States for its decision to rewrite federal rules.

Maria Kiriakova, *The Death Penalty in Russia 1917–2000: A Bibliographic Survey of English Language Writings,* 30 Int'l J. Leg. Info. 482 (2002).

An annotated bibliography that covers primary sources and secondary sources of criminal law of the Russian Federation. Includes a chronology of the death penalty in Russia over 10 centuries.

Palitha T. B. Kohona, *The United Nations Treaty Collection on the Internet—Developments and Challenges,* 30 Int'l J. Leg. Info. 397 (2002).

Discusses the multitude of challenges faced by the United Nations General Assembly in ensuring that the historical backlog of materials are available on the Internet. Also describes future plans.

Susan Hanley Kosse & David T. ButleRitchie, *How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study,* 53 J. Leg. Educ. 80 (2003).

Responses by 276 members of the legal profession showed that there was general agreement on what constitutes strong legal writing as well as agreement that lawyers do not write well. The author argues that legal research and writing programs need to be strengthened, that lawyers and judges need more exposure to writing instruction, and that new generations "must be trained and conditioned to accept the responsibility that professionalism requires." *Id.* at 102.

Scott Matheson, *Access versus Ownership: A Changing Model of Intellectual Property*, Legal Reference Services Q., Nos. 2/3, 2002, at 153.

"The article discusses the impact on libraries of a move toward viewing information as a service that must be licensed, not bought. The potential effects of protecting intellectual property with contract law instead of copyright and property law are detailed." Abstract.

Gary L. McDowell, *The Politics of Meaning: Law Dictionaries and the Liberal Tradition of Interpretation,* 44 Am. J. Leg. Hist. 257 (2000).

Discusses the rise of law dictionaries commencing in 1527 (Rastell), how philosophers have used language and lexicons, the theoretical context of Jacob's legal lexicography (1729), and the use of dictionaries in statutory interpretation by Justices Scalia and Thomas.

E. Dana Neacsu, *Legal Scholarship and Digital Publishing: Has Anything Changed in the Way We Do Legal Research?* Legal Reference Services Q., Nos. 2/3, 2002, at 105.

"[T]he author's examination of 20 law review articles, all containing at least four citations to the Internet, found that 12 of the 20 contained an online source which could no longer be accessed within a year of the online source's publication. The author suggests that librarians and scholars be aware of the risk digital publishing presents to future research." Abstract.

Richard A. Posner, *Legal Writing Today,* 8 Scribes J. Legal Writing 35 (2001–02).

In an address at the Scribes annual meeting (August 4, 2001), Judge Posner identifies seven problems in legal writing by judges and lawyers and then suggests ways that these problems might be overcome.

Laura Krugman Ray, *Judicial Personality: Rhetoric and Emotion in Supreme Court Opinions,* 59 Wash. & Lee L. Rev. 193 (2002).

Compares the proclivity of the Roosevelt Court and the Rehnquist Court for producing splintered opinions, arguing that the Justices of the Roosevelt Court used rich language and brought forth their personalities, whereas the Rehnquist Court uses a much more controlled judicial prose. Provides excellent examples to illustrate the points made.

Jane N. Richmond, *Legal Writing: Form and Function,* 2002 [Notre Dame, IN: National Institute for Trial Advocacy, 277 p.]

Intended to "identify gaps in [the law student's and lawyer's] writing background, and develop the skills needed to fill them and write effectively with confidence." Introduction.

Gordon Russell, *Re-Engineering the Law Library Resources Today for Tomorrow's Users: A Response to "How Much of Your Print Collection Is Really on WESTLAW or LEXIS-NEXIS?"* Legal Reference Services Q., Nos. 2/3, 2002, at 29.

Argues that having a larger physical space for housing a print collection needs to be reexamined in light of today's technology.

Kenneth H. Ryesky, *From Pens to Pixels: Text-Media Issues in Promulgating, Archiving, and Using Judicial Opinions,* 4 J. App. Prac. & Process 353 (2002).

Identifies text-media technology issues associated with judicial opinions and discusses preservation of textual and non-textual data, accessibility, timeliness and availability, and reliability. Also discusses materials found in reporters that are not part of opinions.

Wayne Schiess, *Writing for the Legal Audience,* 2003 [Durham, NC: Carolina Academic Press, 160 p.]

Teaches lawyers how to adjust their writing to accommodate 12 different legal audiences. Provides examples of poor legal writing and how common errors can be fixed. Also provides advice on sentence structure, organization, tone, format, and document design.

Deborah A. Schmedemann & Christina L. Kunz, *Synthesis: Legal Reading, Reasoning, and Writing,* 2d ed. 2003 [New York, NY: Aspen Law & Business, 600 p.]

Helps students prepare for practice by teaching them to think like a lawyer using a step-by-step approach and one case file. Includes exercises on a tort law issue.

Steven L. Schooner, *Communicating Governance: Will Plain English Drafting Improve Regulation* [Reviewing Thomas A. Murawski, *Writing Readable Regulations*], 70 Geo. Wash. L. Rev. 163 (2002).

A favorable review of a pro-plain language book that suggests Congress should require "all regulatory drafters to use" Murawski's book." *Id.* at 166.

April L. Schwartz, *Legal and Business Perspectives on Small Business Start-Ups: A Selective, Annotated Bibliography*, 6 J. Small & Emerging Bus. L. 479 (2002).

A compilation of monographs, serials, and Web sites on "resources for the specialized area of business law that involves helping clients to launch new businesses." *Id.*

Wendy Scott, *Evaluating and Authenticating Legal Web Resources: A Practical Guide for Attorneys,* 52 Syracuse L. Rev. 1185 (2002).

Describes evaluation criteria to apply when assessing Web resources and identifies sources that evaluate and review legal Web sites. Provides illustrations. An appendix lists selected resources.

Eugene Volokh, *Academic Legal Writing: Law Review Articles, Student Notes, and Seminar Papers,* 2003 [New York, NY: Foundation Press, 200 p.]

This booklet provides solid advice by a prolific legal scholar about writing law review articles, student notes, and seminar papers. This is something each aspiring writer should read (and reread).

Bobbi Ann Weaver, *Research in the Peaceable Kingdom: A Selected, Annotated Bibliography on Animal Law from an International Perspective,* 30 Int'l J. Leg. Info. 426 (2002).

Arranged by books and journals, articles, and Internet resources and then subdivided by animal rights in general, companion animals, farm animals, performing animals, animal experimentation, and wildlife and endangered species.

Robert J. Weiner Jr., *Evaluating Electronic Resources: Criteria Used by Librarians,* 52 Syracuse L. Rev. 1207 (2002).

Provides sample evaluative criteria for electronic resource selection, the use of product reviews, and a selected list of Web and print publications for product reviews. Additional resources are listed in an appendix.

Michael Whiteman, *Retrieving Statutes, Cases and Law Review Commentary—A Primer for Non-Lawyers,* 32 J. L. & Educ. 79 (2003).

A very basic guide, with illustrations, to locating statutory and case law on the Internet.

Christopher G. Wren, *E-Prime, Briefly: A Lawyer's Experiment with Writing in E-Prime,* Clarity, No. 48, Dec. 2002, at 13.

Writing in "E-Prime" is described as "a subset of English that eschews any form of the verb 'to be.'" *Id.* The author describes how using this technique has improved his legal writing skills.

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PREPARED BY MARY A. HOTCHKISS

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