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In contrast to recent German debates stating that jurisprudence should transform itself from a hermeneutic science of texts into a practical science of decision making, this essay proposes a return to the text. Text, however, will then have to be understood no longer as merely a written form of language. Rather, we should attempt to conceive of the legal system itself as a specific form of textuality. I try to develop and elaborate this idea by regarding law from the various perspectives of Paul de Man's literary criticism, John Austin's discussion of performative utterances, Roland Barthes' deconstruction of hermeneutics, media theory, and an ex negativo approach based on Carl Schmitt's scorn for normativism. Finally, I ask for possible practical consequences that the newly designed textual understanding of the legal procedure might have. Abstract.

Linda L Berger, Studying and Teaching "Law as Rhetoric": A Place to Stand, 16 Legal Writing 3 (2010).

This article proposes that law students may find a better fit within the legal culture of argument if they are introduced to rhetorical alternatives to counter narrowly formalist and realist perspectives on how the law works and how judges decide cases. . . . From the rhetorical point of view, law students, law teachers, and lawyers are human actors whose work makes a difference because they are the readers, writers, and members of interpretive and compositional communities who constitute the law. Abstract.


This article argues that legal writing professors can structure a world of legal conflict that announces its social construction rather than suppressing it, while also teaching necessary skills. In part this may be accomplished by socially self-conscious problem construction. That is, in creating legal hypotheticals and characters, and in choosing case law for students to work with, legal writing professors can invite students to engage with the social context of a problem as well as teaching them how to reason and write about those problems. Abstract.


As more and more primary and secondary legal materials are published in electronic format, law libraries need to constantly reexamine the need to maintain and collect print collections. In this article, the author examines how much of print collections are available online by focusing on the collection of the University of Oregon Law Library. Abstract.

In this article, I draw on hip hop music and culture as an access point to teach first-year law students about the academic and professional pitfalls of plagiarism. . . . This article marks the beginning of my attempt to theorize hip hop ethics and develop the theory's application to the teaching, the academic study, and perhaps eventually, the reform of the law. *Abstract.*


This document contains 8 concrete tips for legal writing teachers (new and experienced) to use not only when crafting writing assignments but also for integrating diversity issues in the classroom. *Abstract.*


This article addresses the importance of attention to detail in legal writing through anecdotal accounts. *Abstract.*


This research considers the citations to Supreme Court opinions issued over a ten year period of the Rehnquist Court. It traces the citations to those opinions received over the ten years following their issuance, broken down into total citations, significant positive citations, and negative citations. . . . The vote margin in the case was not a significant predictor of citations, but conservative opinions consistently received more citations than liberal opinions, during this era. Opinion author proved significant, and the most dramatic findings were the much higher citation rates associated with Justice Scalia's opinions for the Court, including negative citations. *Abstract.*


The Durham Statement on Open Access to Legal Scholarship, drafted by a group of academic law library directors, was promulgated in February 2009. It calls for two things: (1) open access publication of law school–published journals; and (2) an end to print publication of law journals, coupled with a commitment to keeping the electronic versions available in “stable, open, digital formats.” The two years since the Statement was issued have seen increased publication of law journals in openly available electronic formats, but little movement toward all-electronic publication. This article discusses the issues raised by the Durham Statement, the current state of law journal publishing, and directions forward. *Abstract.*


Drawing on the special committee’s report and input from various interested parties, the Student Learning Outcomes sub-committee of the ABA’s Standards Review Committee currently proposes revising the Standards and Interpretations to shift from a teaching-centered regime to a regime focusing on student learning as well as shifting from a curriculum focus to an outcomes focus. The Student Learning Outcomes sub-committee has developed five drafts to date and continues to make revisions, making it difficult to analyze the actual language of any revised standard; however, some guiding principles seem to be surfacing around the outcome measures issue. This Article analyzes these principles and their possible ramifications, both good and bad, on legal writing programs, the legal academy, law students, and the public. The Article then predicts a positive impact on legal education if outcome measures become more prominent in the standards. Exploring the rich literature on learning objectives and assessment, the Article offers law school faculties generally, and legal writing professors specifically, concrete and practical suggestions on how to prepare for the changes outcome measures will require. *Abstract.*

All of us have, at one time or another, had occasion to consider, or reconsider, our program model. . . . Those reconsiderations have led to a great diversity of Legal Research and Writing (LRW) program models: two-, three-, four-, and all-semester programs; adjunct-, contract-, and tenure-track staffing; and directors, co-directors, and no directors. Reconsiderations have also led to discussions about how to use writing specialists, teaching assistants, teaching librarians, and post-graduate fellows in LRW programs.

Our curricula reflect fresh thinking as well, with the introduction of more and varied practice skills: interviewing, counseling and negotiation; drafting and client communications; and especially professional responsibility. Some of us have ventured even further away from the traditional model to integrate our programs with first-year or upper-level courses, to champion or at least support writing-across-the-curriculum, and to acknowledge the phenomenon of globalization by exporting our teaching or importing our students. *Excerpt.*


In a prior article, we described several key factors that contributed to student overconfidence and illustrated how this overconfidence impeded students’ progress in both early legal analysis and early legal writing. In this follow-up article, we suggest strategies for better orienting students to law school learning and better managing their goals for legal writing at the beginning of the first-year course. *Abstract.*


This article discusses the perceived civility crisis in the legal profession and examines a prominent suggestion for addressing it: that courts should take an active role in promoting civility. To raise awareness of the problem and the courts’ role in dealing with it, the article discusses judicial handling of incivility in lawyers’ writing. Among the cases discussed are one where a lawyer called bar attorneys “vultures” who “should rot in hell;” another where a lawyer wrote that a board’s statements were like “the grunts and groans of apes”; and another where a lawyer wrote that a child was “akin to broccoli.” These cases engage readers’ attention while raising awareness about incivility and the role of the courts in handling it. *Abstract.*


A litigator’s objective is to persuade judges. With oral arguments occurring at a steadily decreasing frequency and with full trials becoming a rarer occurrence, judges increasingly make their decisions based on the litigator’s written work-product. . . . [I]f your opponent has the superior legal position but she fails to highlight it effectively, you may win both because the judge understands your argument and your opponent did such a poor job of communicating that she failed to convey the merits on her side. *Excerpt from the Introduction.*


This is a chapter from a book I have written, which is intended to help law students, lawyers, and other professionals improve their writing through exercises in advanced editing. This chapter teaches emphasis, clarity, and specificity. *Abstract.*

This is a chapter of a book I have written, which is intended to help law students, lawyers, and other professionals improve their writing through exercises in advanced editing. This chapter concerns organizing paragraphs, creating coherence, and writing thesis paragraphs. Abstract.

M.H. Sam Jacobson, Paying Attention or Fatally Distracted? Concentration, Memory, and Multi-tasking in a Multi-media World, 16 Legal Writing 419 (2010).

This article discusses the role of attention in learning, what limits attention, and how to improve the ability to pay attention and concentrate. Attention requires ignoring stimuli that are not relevant to the task at hand. This is especially important because of the severely limited capacity of working memory, the cognitive function essential to inputting information into long term memory and to extracting information from long term memory. Effective learning will not occur if the limited capacity of working memory is diverted from the task at hand to irrelevant stimuli. What determines successful performance on reasoning and other higher-order cognitive tasks, such as legal analysis, is the ability to control attention. Our attention is undermined by multi-tasking, stress and anxiety, and fatigue. People can improve attention by managing distractions, dividing tasks into manageable chunks, managing stress, and getting sleep. Abstract.


Ms. Justiss conducted a survey of law firm librarians in 2010 that identified electronic research database alternatives to LexisNexis and Westlaw and ranked them by subscription frequency. The survey also generated information regarding suggested or mandated legal research policies in law firms for the use of alternatives to LexisNexis and Westlaw and examined their applicability to billable and nonbillable research. Lastly, it examined the prevalence in firms of flat-rate pricing agreements with LexisNexis and Westlaw. Abstract.


This Article examines what can be gained and what can be lost by using storytelling in legal writing. After reviewing some basic principles of legal storytelling, the Article reviews some lessons that can be learned from the experience of the New Journalists who adopted literary techniques in their non-fiction work. In the end, the Author concludes that while there is much value in using the tools of fiction in legal writing, it is only with a blend of narrative and analysis that we most successfully do our jobs as lawyers. Abstract.


During my past five years as a legal writing professor, I have endeavored to categorize the burgeoning scholarship on legal writing, compiling a “master list” with hundreds of legal writing sources organized by topic. Students and other faculty members have often consulted me for assistance with legal writing, and the master list has proven to be an indispensable guide for them. In this article, I present an edited version of the master list for readers – including academics, practitioners, and students – seeking to improve their legal writing. Abstract.

Before hiring a new lawyer from among the short list of finalists, organizations should assess their most important lawyering skill—writing. The article describes various performance tests, as well as other indicators of writing ability. It also offers some tests for the tester (whoever does the assessing).

*Abstract.*


This research overview aims to aid the legal educator seeking to learn about learning and access tools for self-improvement. It also provides some preliminary assistance to those researchers beginning to traverse the field on the subject of “learning” and legal education, and it equally serves as a warning of the daunting task that awaits the researcher on that multifaceted subject.

*Abstract.*


[T]he article questions the dominant pedagogical model for teaching storytelling, which focuses primarily on teaching storytelling and narrative theory. We propose a new method, based on cognitive science findings about experiential learning, that emphasizes giving students repeated opportunities to tell stories in a supportive and motivating environment.

*Abstract.*


In this article, we share the results of the first comprehensive study of the credentials of today’s legal writing professors. . . . The article situates our findings within the context of the previous research on the credentials of law professors, and calls upon the academy to explain why it has not conferred the privileges of membership (e.g., equal salary and status) upon a group of professors who have traditional professorship credentials. It also suggests that gender bias and purposeful mommy-tracking of women faculty candidates may explain some of the discrepancies.

*Abstract.*


The study described in this article suggests that the length of sentences and words, which is “readability” for our purposes, probably does not make much difference in appellate brief writing. . . . Although readability did not appear to be related to outcome, there was a statistically significant relationship between the readability of the courts’ majority and dissenting opinions. Dissenting opinions are decidedly less readable than majority opinions.

*Abstract.*

The authors tested the proposition that the ubiquity of HeinOnline in law libraries would alter law review citation patterns. Has HeinOnline's provision of the full runs of law reviews in full text led to more citations to older materials? This article reports the results of the study they undertook to test this theory.


Contracts is a computer program designed for first year undergraduates studying Obligations in Glasgow University's School of Law, written by Paul Maharg and Professor Joe Thomson. It aims to improve students' written work. by – introducing the skills of legal problem-solving, illustrating the major stages of the writing process, asking students to analyse their own writing processes, presenting good models of legal writing and alternative strategies to achieve good practice, enabling students to improve through practice.

*Abstract.*


This article describes Albany Law School's first year interdisciplinary "Introduction to Lawyering" course and offers a prototype for other law schools to introduce students to essential skills and values of the profession from the first day of law school.

*Abstract.*


This article reports the results of an exhaustive study examining the citation of blogs in judicial opinions. The article begins with an exploration of opinions citing blogs for their discussion of substantive legal issues. The unique status enjoyed by several boutique blogs is examined including the importance of Douglas Berman's Sentencing Law and Policy blog in the wake of the Supreme Court's Blakely and Booker decisions. The citation of blogs for factual information is discussed and the impact of these citations on litigants' constitutional and procedural rights, the law of evidence, judicial ethics, and the judicial role in the common law adversarial system are explored. *Abstract.*


This article . . . distills the best advice from practitioners, judges, and professors, respectively, about writing briefs. It draws on the author's teaching and brief writing, and on the academic writing and practical experience of others, to offer instructional tips designed to improve all aspects of appellate briefs. Therefore, both the bewildered novice and the grizzled veteran practitioner can benefit from it. So can the legal writing teacher seeking a comprehensive, yet concise guide to brief writing to share with students. *Abstract.*

Writing is an act of self-expression and, in turn, self-revelation. Writing involves the self. At the mention of this idea, people almost always nod their heads in agreement. So why is legal writing hard to do? Most people would acknowledge that legal writing can indeed be challenging, especially doing it well, again for a number of different reasons. Many of those reasons would be what we call text-based: legal writing is difficult because, among other things, it requires the mastery of a number of discourse conventions - some of them complex, many of them constraining, and many of them unfamiliar to beginning legal writers. *Excerpt.*

J. Christopher Rideout, *Discipline-building and Disciplinary Values: Thoughts on Legal Writing at Year Twenty-five of the Legal Writing Institute*, 16 Legal Writing 477 (2010).

What does it mean to speak of legal writing as an academic or professional discipline? . . . The question is admittedly broad, and those attending the Symposium answered it themselves, in part and throughout the day, by looking at the role that the Legal Writing Institute has played in the teaching, scholarship, and program design of legal writing professionals. . . . The richness of the occasion reminded me that our discipline of legal writing has grown into a remarkable and unique professional community, one that is as strong and capable as the individuals who belong to it. Those individuals are, in my experience, dedicated, talented, and generous. As a result of this, our legal writing community has thrived. *Excerpt.*


This paper explores the language of the law from the point of view of the factors that contribute to the building of its specialized lexicon and the options language offers to create, institutionalize and incorporate new words into the technical legal inventory. *Abstract.*


This Article begins with a brief history of the separation of theory and practice in the law classroom and the impact that it has had on the quality and reputation of writing as its own subject. The Article argues that despite a wave of pedagogical advances, legal writing as its own subject has ample room to grow. For legal writing courses to achieve intellectual maturity, they must incorporate rhetorical theory. *Abstract.*


This short essay discusses several ways that legal writing professors can create opportunities for students to interact with lawyers and judges as part of a first year writing course in order to encourage students to think of themselves as lawyers in training and clarify to the students that the writing, research, citation, advocacy and professionalism skills that they learn in class will be applied in practice. *Abstract.*

The Checklist Manifesto explores various types of checklists and their benefits for professionals working in various fields such as medicine, aviation, and construction. This book review focuses on checklists’ potential benefits for lawyers - and more specifically, for lawyers engaged in the task of legal writing. *Abstract.*


This article offers recommendations for framing issue statements in appellate briefs and other kinds of legal documents. We have formed these recommendations based on published empirical research into issue statements in appellate briefs, a broad survey of the published literature on issue statements, and our combined 40 years of experience practicing law and teaching legal writing. *Abstract.*


In this Article we offer the first comprehensive evaluation of oral dissenting on the Supreme Court. We examine the practice in both historical and contemporary perspective, take stock of the emerging academic literature on the subject, and suggest a new framework for analysis of oral dissenting. *Abstract.*


This short article discusses five research tips to transform a mediocre work product into a persuasive one. The tips are (1) do not cite cases unless you have read them entirely; (2) know the holding of a case (did the court reverse a jury verdict?); (3) research opinions drafted by your judge; (4) use the West Digest System (such as for discovery motions); and (5) use the ABA website for research materials. These research techniques are relevant to motions to dismiss, motions for summary judgment, appellate briefs, and other persuasive works. *Abstract.*


The focus of this article is the aberrant student comment, the comment that generates scalding heat, but no light. We focus on those comments because we believe it is time to expose a deeply disturbing aspect of the student ratings process at its worst: it allows students to use the ratings process to abuse and bully a professor with no responsibility for the consequences of their actions. . . . Research into metacognition offers the legal academy a way to rethink the use of the standard student evaluation form and find ways to solicit more reliable and meaningful feedback from our students. *Abstract.*

The culture of legal scholarship has become preoccupied with article placement, citations, and download numbers, thus obscuring a deeper appreciation for the contributions of scholarly work. This article proposes that therapeutic jurisprudence ("TJ"), a theoretical framework that examines the therapeutic and anti-therapeutic properties of the law and legal practice, provides us with tools for understanding and changing that culture.

Abstract.

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**Accessing Perspectives**

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