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As the current President of the Legal Writing Institute, I want to welcome you to this conference. This conference is a very special event every two years. I came to my first conference, the second of these biennial conferences, in 1986 and I remember sitting out in the audience during the beginning welcomes and thinking, well, what would I want to say if I ever got the chance to address 350 of my colleagues? It was a beguiling fantasy only because I never thought I'd have the chance of doing so. But here I am. And, during the past two years as I've been President-Elect, I've found that I do have something important to me that I want to say.

This is a very special conference run by a very special Institute because it's where we all get together, all legal writing teachers, from a variety of different kinds of programs from all different areas of the country—and sometimes even other countries—as well as representatives from practice and law librarians and those from related disciplines, and we share our ideas during presentation sessions, in the hallways and over meals. The exchange of ideas during this conference has been for many what helped them in the classroom as teachers, as developers of curriculum, and as writers of legal scholarship. We get support from our colleagues in our successes and support in overcoming the obstacles that all of us face as educators in the legal writing discipline. We are friends, colleagues, mentors to each other; and many of those relationships have begun right here at this conference.

But this conference is also special because it illustrates, in my opinion, one of our great gifts to the legal academy: we value our successes in the classroom as much as we value our successes in
developing curriculum as much as we value our successes in legal scholarship. We know that all types of intense, creative engagement with ideas that result in teaching our students well and enriching the profession and academy is the whole point of what we do as legal educators. We have no need to place a hierarchical value on the form as opposed to the substance of the contribution we make to legal education. We know that excellence in teaching and excellence in curriculum development and excellence in legal scholarship are goals that each of us should aspire to during a long career; but we value each because of its unique contribution to our enterprise, not because we recognize more inherent value in one than another.

Now, what I’ve just said should be so obvious to everyone in legal education that I would feel ashamed to get up here and make such a mundane point. But we also all know that legal education takes teaching and curriculum development for granted, and too often adheres to a narrow vision of what qualifies as “good” legal scholarship instead of looking to the quality of the thinking and the contribution of the endeavor. It is this narrow point of view that has long prevented the sufficient development of legal education—and is thus something that hinders the education of our students and ultimately the quality of the legal profession itself.

But, don’t kid yourself—this point of view is not a popular one and it is not one that endears us to the legal academy. And we all know that we are in the midst of a very real struggle—a worthy one—that of being accepted as valuable and equal members of the legal academy. But the question is, is acceptance on the academy’s terms worth the loss of our own voice? And my own answer is, no. We have great gifts individually, and as a discipline, to give to this academy. We must therefore gain admission on our own terms—not only to remain true to ourselves but because we have so much of value to contribute to the next stage of legal education. We are innovators, and our acceptance must not come at the cost of our own unique contribution.

I remember the point in my own development when I realized that I felt strongly enough about something to do with legal writing that I was no longer afraid to speak what I perceived to be the truth. In the mid-1980’s, we developed goals for our first-year legal writing curriculum at Boston College Law School. I and my colleagues drafted a goals statement, one that developed a series of goals for teaching legal analysis, teaching legal research, and teaching legal writing. When I brought them to the chair of the committee, he asked me if I thought it was politically wise to be so
forthright about the fact that we were teaching legal analysis. I remember vividly that, though I was afraid, I knew that this was not negotiable. I could not teach legal writing well if I were not teaching legal analysis; and to omit the foundational goals of our course was to deny the truth of our course and the very real value of what it was contributing to the rest of the first-year curriculum. I felt we had no choice but to go forward with the goals as written, whatever the risk to ourselves and our course. Now, luckily, this story has a happy ending. Despite some questions, the faculty adopted our goals as written and we went on to develop a course that we believe contributes something unique to the first-year curriculum, not the least of which is teaching students analytical skills in a manner that is different from, but complementary to what occurs in the doctrinal courses.

I believe that the discipline of legal writing is right now at the same sort of crossroads as my colleagues and I were in my story. All of us in legal writing want, and should, be accepted by the legal academy; but we should never do so at the cost of losing the uniqueness of our contribution—or our victory will be hollow indeed. We bring to legal education our belief in the inherent, equal value in all forms of high level engagement of ideas—and we must hold onto this ideal.

This conference is one of the major legal writing events that shapes our attitudes about ourselves and our discipline and our ultimate place in legal education. So enjoy yourselves; learn a lot of new ideas; get to know a lot of great people. But know that you are doing so as those who will help shape the future of legal education.
MARY S. LAWRENCE

Director of Legal Research and Writing
University of Oregon 1978 - 2000

Linda H. Edwards

Mary Lawrence served as the Director of Legal Research and Writing at the University of Oregon for 22 years. In 1949, Mary began her post-secondary education in her native Scotland, at the University of St. Andrews, where she was honored as an English Medallist. In 1960 and 1962, respectively, she received her B.A. and M.A. in English from Michigan State University.

During the next twelve years, Mary established a national reputation as a scholar and teacher in the fields of English and English as a Second Language. She taught at Ohio University, the University of Pittsburgh, St. Mary's College, and the University of Michigan. Her book, Writing As A Thinking Process,1 now in its second edition, was a groundbreaking text for students studying English as a second language.

Then in 1977, Mary earned her J.D. from the University of Oregon School of Law. Not willing to let her go, the Dean asked her to teach Legal Writing that next Fall, and thus began Mary's second teaching career. In 1978, she was appointed Assistant Professor and Director of the Legal Research and Writing Program at Oregon. Under Mary's leadership, Oregon became one of the first law schools in the nation to hire full-time law graduates to teach Legal Writing. During her years as Director, Mary earned the Orlando John Hollis Award for Outstanding Teaching, and she published three books, numerous articles, and several instructional videotapes. She served on nearly every Law School committee and on many University-wide committees. In 1996, the AALS Section on Legal Writing, Reasoning and Research presented Mary with its Award for Distinguished Service to the Profession.

Mary was a founding member of the Legal Writing Institute and the Association of Legal Writing Directors. She has held every standing office in the AALS section, and she has chaired numerous planning committees for Section programs and workshops. The list of Mary's national presentations on Legal Writing covers three

pages. She has served on the Legal Writing Advisory Committee of the Law School Admission Council and the Committee on Appellate Practice of the American Bar Association Appellate Judges Conference. She is a member of Scribes, and she serves on the Editorial Board of Perspectives.

When Mary retired last year as Oregon’s Director, the school endowed a scholarship in her name and announced plans to hold a Legal Writing Symposium in her honor. Despite the minor detail of her retirement, Mary continues her contributions to the field of Legal Writing. She remains active at the University of Oregon Law School, working with upper-level law students on their writing portfolios and preparing material for pre-law students who are non-native speakers. She is presently working on two books, *How to Read and Analyze the Law*, forthcoming from LEXIS Publishing in 2001, and *Legal Research Guide: Strategies and Practice* (both with Paul Beneke). She has undertaken a study to identify the skills judges and law firms expect from their law clerks and associates. She continues her service on the Editorial Board of Perspectives and her active involvement with all of the national Legal Writing organizations. Most important of all, she continues to be a mentor to many Legal Writing teachers across the nation.

On July 20, 2000, the Association of Legal Writing Directors made Mary the first recipient of the Rombauer Award. The award salutes a person who has contributed significantly to the field of Legal Writing (1) by education about the importance of Legal Writing; (2) by published scholarship that advances the teaching of Legal Writing and the understanding of its underlying principles; (3) by contributions to national Legal Writing organizations; (4) by contributions to individual Legal Writing programs; and (5) by efforts to improve the status of Legal Writing faculty. These criteria certainly describe Mary’s illustrious career, and the Association is proud to recognize her lifetime of achievement.

**TO MARY LAWRENCE**

**On the Occasion of her Receipt of the Rombauer Award**

[Speech by Linda H. Edwards on July 20, 2000, at the Legal Writing Institute Conference at Seattle University]

Mary, I want to talk to you tonight instead of about you. And I
talk to you on behalf of every person in this room and the many in
our discipline across the nation who could not be here tonight -- for
in one way or another, you have been a friend, teacher, and mentor
to every one of us. You have embodied for us the best and most
beautiful aspects of your Celtic tradition, and tonight we want to
thank you especially for two of these.

First, we want to thank you for being for so many of us our
Anam Cara, our Soul Friend. Scotland's Celtic tradition teaches us
that each of us needs an Anam Cara, someone who will stand be­
side us over the long years, and who can call forth from each of us,
through all the joys and sorrows along the way, our very best
selves.

You have been an Anam Cara for so many Legal Writing
teachers through the years -- for your fellow early pioneers, who,
along with you, banded together to do the foundational work that
has had such a profound effect on the study of Legal Writing and on
the lives of those who teach it.

-- and for those of us who came later, whom you have welcomed
so generously into the community. One who has been blessed by
your Anam Cara friendship is more truly and fully herself for hav­
ing known you. Tonight we thank you for giving us the priceless
gift of ourselves.

Second, we thank you for embodying for us the wisdom of the
Celtic Knot. The Celtic Knot has no beginning and no end. It shows
us that everyone is connected to everyone else, and that tears in
the fabric of the community wound and weaken us all.

You have taught us this truth. You have inspired us to keep
our connections to each other strong, and to value our diverse tal­
ents and projects, for more than anything else, it is our connections
to and our support of each other that will define our future.

And it is in our connections to each other that our discipline
finds its best and truest self. So by teaching us to keep our connec­
tions strong, you have been an Anam Cara for our whole discipline.
You have drawn forth the best of who we are collectively, our disci­
pline's best and truest self.

Today, as our discipline is growing in so many directions, we
need to remember your teaching more than ever. Mary, we want
you to know that we have heard you. We promise you that we will
not forget your example and good counsel. We will continue to re­
spect each other, support each other, and value each other's efforts
on behalf of our students and our discipline --

-- but only if you promise that you'll continue to be our Anam
Cara, our Soul Friend, for many years to come.
I KNOW THAT I TAUGHT THEM HOW TO DO THAT

Laurel Currie Oates

It has happened to all of us. Although we know that we have taught our students how to do something, they do not seem to be able to use what it is that we have taught them. For example, even though we have taught our students how to research a problem that required them to locate and apply a state statute, they seem lost when we ask them to research a problem that requires them to locate and apply a federal statute. Similarly, even though we have taught our students how to organize the discussion section of a memo that required them to set out and analyze the elements of a criminal statute, they do not see that they should use the same organizational scheme for a memo that requires them to set out and analyze the elements of a tort.

The frustrations that we have experienced are common ones. For years, teachers have complained that students are not able to recognize that information acquired in one class is also applicable in another class, and employers have complained that their employees cannot apply the skills that they learned in school to real world tasks. Although students can compute the acceleration of an object when the problem is presented to them in their physics class, they cannot solve the same problem when it is presented to them in “real life.”

In response to these complaints, in the 1980s researchers began studying the problem of transfer, that is, the use of knowledge or a skill acquired in one situation to perform a different task. In one of the first experiments on transfer, Gick and Holyoak read

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1 Laurel Currie Oates is the Director of Legal Writing at Seattle University School of Law.
4 Id. at 154.
6 Gick & Holyoak, supra n. 2, at 351.
the following story to their subjects:

A small country fell under the iron rule of a dictator. The dictator ruled the country from a strong fortress. The fortress was situated in the middle of the country surrounded by farms and villages. Many roads radiated outward from the fortress like spokes on a wheel. A great general arose who raised a large army at the border and vowed to capture the fortress and free the country of the dictator. The general knew that if his entire army could attack the fortress at once it could be captured. His troops were poised at the head of one of the roads leading to the fortress, ready to attack. However, a spy brought the general a disturbing report. The ruthless dictator had planted mines on each of the roads. The mines were set so that small bodies of men could pass over them safely, since the dictator need to be able to move troops and workers to and from the fortress. However, any large force would detonate the mines. Not only would this blow up the road and render it impassable, but the dictator would then destroy many villages in retaliation. Therefore, a full-scale direct attack on the fortress appeared impossible.

The general, however, was undaunted. He divided his army up into small groups and dispatched each group to the head of a different road. When all was ready he gave the signal, and each group charged down a different road. All of the small groups passed safely over the mines, and the army then attacked the fortress in full strength. In this way, the general was able to capture the fortress and overthrow the dictator.7

They then presented their subjects with Duncker's8 tumor problem.

Suppose you are a doctor faced with a patient who has a malignant tumor in his stomach. It is impossible to operate on the patient, but unless the tumor is destroyed the patient will die. There is a kind of ray that can be used to destroy the tumor. If the rays reach the tumor all at once at a sufficiently high intensity, the tumor will be destroyed. Unfortunately, at this intensity the healthy tissue that the rays pass through on the way to the tumor will also be destroyed. At lower intensities the rays are harmless to healthy tissue, but they do not affect the tumor either. What type of procedure might be used to de-

7 Id. at 351.
8 Karl Duncker, On Problem Solving, 58 Psychol. Monographs 1, 2-17 (1945).
strog the tumor with the rays, and at the same time avoid destroying the healthy tissue?

For those familiar with the two problems, the parallels are clear. In both problems there is an object that must be destroyed. In addition, in both problems a direct attack will not work. Finally, in both problems the solution requires division and then convergence. The “force” must be divided and the object attacked simultaneously from several different directions. Despite these parallels, few of Hick and Holyoak’s subjects saw the connections between the two problems. After reading the fortress story, only 20% of the subjects used the division and convergence solution to solve the tumor problem.9

In the years since Gick and Holyoak’s experiments, most of the research on transfer has been done in well-structured domains10 using isomorphic problems, for example, word problems that require students to use similar solutions. Within this context, researchers have identified four steps involved in transfer: problem representation, search and retrieval, mapping, and application.11

PROBLEM REPRESENTATION

Most problems can be represented in a number of different ways: they can be represented in terms of their surface features, that is, the specific facts of the problem;12 they can be represented in terms of their underlying structures, that is, those abstract features or principles that are relevant to the solution;13 and they can be represented in terms of the procedures required to solve problem.14 Research has shown that the way in which an individual represents a problem depends on his or her level of expertise.15 As a

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9 Gick & Novack, supra n. 2, at 325.
10 Although some researchers have distinguished problems in well-structured domains from problems in ill-structured domains, most researchers indicate that the extent to which a problem is well-structured or ill structured is relative and that the same principles apply. James F. Voss & Timothy A. Post, On the Solving of Ill-Structured Problems, in The Nature of Expertise 261, 262 (M.T.H. Chi, Robert Glaser & M.J. Farr eds., Univ. of Pittsburgh Press 1988).
12 Novick, supra n. 11, at 511.
13 Id.
15 Novick, supra n. 11, at 518; see Brian H. Ross, Distinguishing Types of Superficial Similarities: Different Effects on the Access and Use of Earlier Problems, 15 J. Educ. Psychol.
general rule, novices will represent the problem in terms of its surface features.\textsuperscript{16} In contrast, experts will represent a problem in terms of its surface features, its underlying structure, and the procedures required to solve the problem.\textsuperscript{17} For example, a novice would represent the fortress problem in terms of its specific facts: a fortress, a general who wanted to attack the fortress, and mines on the roads leading to the fortress. In contrast, the expert would represent the problem not only in terms of its specific facts but also in terms of the more general structure of the problem, that is, as a problem involving an object that must be destroyed but that cannot be directly attacked, and as the type of problem that can be solved using a division and convergence problem solution.

\textbf{SEARCH AND RETRIEVAL}

Once individuals have represented the problem, they begin searching their memories for an analogous problem that they can use to solve the current problem. Three factors seem to affect this process.

The first factor is the individual's level of expertise.\textsuperscript{18} Because novices represent problems in terms of their surface features, in searching their memories they look only for problems that involve similar surface features.\textsuperscript{19} For example, when given the tumor problem, novices search their memories for prior problems involving tumors. In contrast, experts will search their memories not only for prior problems with similar surface features but also for problems that have the same underlying structure.\textsuperscript{20} Thus, experts would search their memories both for problems involving tumors and for problems involving objects that must be destroyed but that cannot be directly attacked. The result is that while the novices would not find an analogous problem, the experts might.\textsuperscript{21}

The second factor that affects the search and retrieval process is illustrated in Legal Writing by the observation that, in researching a problem, most first-year students look for cases that have the same facts as the facts in their problem. For example, when asked to research a problem involving the search of a locked glove compartment, some students look only for cases involving the search of a locked glove compartment. Unless they are prompted, they do not look for cases involving other types of locked containers.

\textsuperscript{16} Novick, \textit{supra} n. 12, at 518.
\textsuperscript{17} Id.
\textsuperscript{18} Id.
\textsuperscript{19} Id.
\textsuperscript{20} Id.
\textsuperscript{21} The finding that novices typically search for problems with similar surface features is illustrated in Legal Writing by the observation that, in researching a problem, most first-year students look for cases that have the same facts as the facts in their problem. For example, when asked to research a problem involving the search of a locked glove compartment, some students look only for cases involving the search of a locked glove compartment. Unless they are prompted, they do not look for cases involving other types of locked containers.
is the level of abstraction at which the individual represents the problem's surface and underlying structural features. Sander and Richard\textsuperscript{22} have hypothesized that individuals look first for an analogy that shares, at a concrete level, the same surface and structural features as the problem that they have been asked to solve. For example, in learning how to use a text editor (word processor), individuals will look first to the domain of typing. If the first analogy that they look to is not sufficient to help them solve the problem, they will then look to a more abstract "domain."\textsuperscript{23} If they cannot learn to use a text editor by referring back to their knowledge about typing, individuals will look to the general domain of writing. If they are still not able to solve the problem, then individuals will look to the even more general domain of object manipulation.\textsuperscript{24}

The third factor that appears to affect the search and retrieval process is the way in which individuals store what they learn.\textsuperscript{25} A number of researchers have suggested that knowledge is typically embedded in the context in which the knowledge was originally acquired.\textsuperscript{26} Thus, when individuals learn a particular concept in a math class, that concept is stored with other information that they have learned in math. This storage system works well when the new problem is encountered in the same context as the old problem. When individuals encounter the new problem in math class, they will search their memories for similar problems encountered in math class. The system does not work, however, when the new problem is encountered in a different context. If the individual encounters the new problem at work, he or she will search for similar problems encountered at work and not for prior problems encountered in math class. As a result, it is unlikely that the individual will be able to retrieve the prior problem. Similarly, unless told to do otherwise,\textsuperscript{27} our students will store new information about contracts with the other information that they have learned in contracts, new information about torts with the other information that they have learned in torts, and new information about legal writing with the other information that they have learned about legal writing.

\textsuperscript{23} Id. at 1462.
\textsuperscript{24} Id.
\textsuperscript{25} Bassok & Holyoak, \textit{supra} n. 3, at 153.
\textsuperscript{26} Id.
\textsuperscript{27} See infra. at 14-15.
MAPPING

If the individual is successful in finding a prior problem, he or she then compares the prior problem with the new problem. This part of the process can fail for either of two reasons. First, the individual may compare only the surface features of the two problems and not the underlying structures, a process that can lead an individual to incorrectly conclude that two problems are similar when in fact they are not. For example, in working on a memo, students may decide that a case that they have located is analogous to their case because the facts of the two cases are similar: both cases involve one individual striking another individual with a baseball bat. In fact, one case may be a criminal case and the other a civil case or, even if the causes of action are the same, the issues might be different. In one case, the court may be deciding whether the trial court erred in denying a motion to suppress evidence and in the other it may be deciding whether the trial court’s instructions were proper.

Second, the individual may compare only the underlying structures. For instance, in comparing math problems, students may recognize that both problems require the use of the same equation but not be able to determine which variable goes in which slot. Even though the first problem is by far the more common of the two problems, for transfer to occur, the individual must be able to map correctly both the surface features and the underlying structures.

APPLICATION

The final step in the process is the application of the solution from the first problem to the second problem. Although this part of the process is usually relatively easy, it sometimes fails because the individual does not know the procedure for solving the first problem and cannot, therefore, transfer that solution to solve the second problem. In addition, it sometimes fails because the individual does not make the necessary adoptions. In a study in which sub-

28 See Sander & Richard, supra n. 22, at 1461.
31 Bassok & Holyoak, supra n. 3, at 153.
32 Chen, supra n. 14, at 256.
33 Id.
34 Id.
jects were first read a problem in which mechanics chose the cars that they repaired and then a problem in which salespeople chose which mechanic repaired which car, a number of subjects did not make the adaptions that were required to correctly solve the problem.35

Having identified the four steps involved in transfer, researchers have now begun to identify techniques that can be used to enhance the likelihood that transfer will occur. Although the research is limited, there appear to be four things that we can do as Legal Writing professors to enhance the likelihood that our students will be able to use what we teach them in the context of one memo on their next memo assignment and in their practice as lawyers.

1. **We need to provide our students with a number of examples that have similar structures but different surface features.**

Over and over again, researchers have found that transfer is more likely to occur when students have been presented with a number of different examples that have similar underlying structures and problem solutions but different surface features.36 In such situations, students are likely to develop general schemata that are not tied to specific facts, which increases the chances that the student will be able to retrieve an analogous example during the search process.37

Thus, in teaching legal research, instead of providing our students with one example of how to research a problem that requires them to locate a statute and the cases interpreting and applying that statute, we should provide them with a number of different examples. Similarly, in teaching our students how to organize a discussion section that involves the analysis of elements,38 we should provide multiple examples.

There are at least two ways in which we can do this. If there were enough time, we could assign a number of different research projects that required students to locate statutes on a variety of


37 Chen, supra n. 11, at 704.

different topics in a variety of different jurisdictions. In addition, we could assign a number of different memo problems in different areas of law that required students to do an elements analysis. Most legal writing programs do not, however, have the ability to assign multiple research projects and memo problems. As a result, if we are to provide our students with multiple examples, we will need to provide them with these examples in their reading assignments and during class. For example, before our students go to the library to do their first research project, we should provide them with multiple examples of how to locate a statute and the cases interpreting it. Similarly, before we have them write their own memos, we should provide them with several sample memos in which the author had to set out and analyze a series of elements.

2. In providing our students with multiple examples, we need to emphasize the underlying structures of those examples and not their surface features.

We need, however, to do more than provide our students with multiple examples. Because novices tend to represent problems in terms of their surface features, we must help our students look beyond the facts of the individual examples to their underlying structures.

Researchers have found that there is a much higher rate transfer in those fields in which the underlying structures are taught through context-free examples than there is in the fields in which the underlying structures are taught in the context of specific fact patterns.\(^{39}\) For example, there is a higher rate of transfer in algebra classes in which students are taught the abstract equations first than there is in physics classes in which the equations are taught in the context of specific physical events. While algebra students are able to transfer the equations that they learn in algebra to physics, physics students are not able to transfer the equations that they learned in physics to other content areas.\(^{40}\)

Researchers have also found that transfer can be substantially increased by specifically teaching students underlying structures and then providing them with examples of those structures in specific fact situations.\(^{41}\) For instance, Bassok and Holyoak found that students who had been taught the algebraic equation for solving arithmetic-progressions problems and who were then provided with

\(^{39}\) Bassok, supra n. 36, at 522.
\(^{40}\) Bassok, supra n. 3, at 153.
\(^{41}\) Id.
examples of how to apply the equation in a variety of different situations could easily transfer the equations to constant-acceleration problems in physics.\footnote{Id. at 164.}

Finally, researchers have found that in some situations transfer can be enhanced through knowledge mapping.\footnote{Chmielewski & Dansereau, supra n. 35, at 407.} Instead of presenting underlying structures in text form, they are presented through diagrams that emphasize how the various pieces of information are related.\footnote{Id. Chmielewski and Dansereau's research also suggests that training students to use knowledge mapping is itself transferable. Students who have been trained in knowledge mapping appear to apply the strategy in new situations.} In Legal Writing, such diagrams can take a number of different forms: They can be used to teach a process, for example, the process of researching a particular type of issue (see the Class Plan 1 set out below); to teach a structure, for example, the typical structure of a memo that requires an analysis of elements or the balancing of competing interests (see the Class Plan 2 set out below), or the decision-making process that a court would go through in deciding a particular issue.\footnote{For an example of this type of diagram, see Oates et al., supra n. 38, at 185.}

What this research suggests is that we can enhance transfer through a two-step process. The first step would be to present the underlying structure in its abstract form, preferably in the form of a diagram. The second step would be to provide our students with several examples that illustrate how this structure appears in specific fact situations. Our lesson plans for these types of classes might look like this:
Class Plan 1
Teaching Students to Locate a Statute and the Cases Interpreting and Applying That Statute

Before coming to class, students should have read material in their textbook on codes.

5 minutes: Introduce the topics that will be covered during class and set up the problem: As a lawyer, you will often need to locate a statute and the cases interpreting and applying that statute.

5 minutes: Show students the following research plan, briefly discussing each of the steps in the plan.

Research Plan

Legal Question: Whether a particular statute applies or how a particular statute should be interpreted or applied

Jurisdiction: (Can be either federal or state)

Type of law: Statutory

Search terms

Step 1: Use the subject or topic index to locate the applicable statutory section(s). (Use the search terms listed above; as a general rule, move gradually from the narrowest to the broadest search term.) Look up the potentially relevant section(s) in the bound volumes of the annotated code.

Step 2: Determine whether the statutory section(s) that you have located have been amended or repealed by checking the pocket parts and, if there is the possibility of recent legislation, LEXIS or Westlaw.

Step 3: Read and analyze the relevant statutory section(s), identifying the elements and applying each of the elements to the facts of the client’s case. Also locate and read (a) the official comments, if any; (b) any introductory sec-
tions (for example, sections setting out the purpose or effective date); and (c) any cross-references.

Step 4: If it is clear that the elements are (or are not) met, stop. If it is not clear whether the elements are met, continue.

Step 5: Locate potentially applicable cases using the Notes of Decision following the statute in both the bound volume and in the pocket part.

Step 6: Read, analyze, synthesize, and cite check those cases that appear useful.

Step 7: If necessary and appropriate, use LEXIS or Westlaw to locate cases from other jurisdictions that have interpreted or applied an identical or similar statute. Read, analyze, synthesize, and cite check the cases that you find.

Step 8: If necessary and appropriate, check the legislative history. (See research plans No. 3 and No. 4). 46

15 minutes: Using the research plan as a guide, walk the students through the process of locating a particular statute and the cases interpreting the statute. Show students the books that they would use and what they would find at each stage.

10 minutes: Walk students through a second example that involves the same underlying structure but different facts.

10 minutes: Present students with a third example that involves the same underlying structure but different facts and have them tell you how they would locate the statute and cases.

5 minutes: Summarize the material covered in class and

46 Oates, supra n. 38, at 85, 497-498.
assign a research project that requires students to locate a statute and the cases interpreting it.

Class Plan for Teaching Students How to Organize the Discussion Section of a Memo That Requires Students to Set Out and Analyze a Series of Elements

Reading Assignment:
Before class, students should read several sample memos that required the authors to set out and analyze a series of elements.

5 minutes: Introduce topics to be covered and the problem: How should you organize a discussion section for a problem that requires you to set out and analyze a series of elements?

10 minutes: Walk students through the basic plan for organizing a series of elements, explaining why each piece of information is included and why the information is presented in the order that is set out in the plan.

Plan A:
Organizational Plan for An Elements Analysis Discussion Section

I. Set out the general rules
   • Set out the more general rules before the more specific rules and exceptions
   • Identify the elements

II. Raise and dismiss the undisputed elements
   • Identify the undisputed elements and explain why they are not in dispute

III. Analyze the first disputed element
   • Set out the specific rules
   • Provide the attorney with an il-
• Illustration of how the specific rules have been applied in analogous cases.
  • Set out the moving party's assertion and arguments
  • Set out the responding party's assertion and arguments
  • Predict how you think the court will decide this element

IV. Analyze the second disputed element
  • Set out the specific rules
  • Provide the attorney with an illustration of how the specific rules have been applied in analogous cases
  • Set out the moving party's assertion and arguments
  • Set out the responding party's assertion and arguments
  • Predict how you think the court will decide this element

10 minutes: Walk students through the first example using the basic plan as a guide. Show students the general rule section, the section in which the author raised and dismissed the elements that are not in dispute, the discussion of the first disputed element including the paragraph(s) in which the author set out the specific rules, the paragraph(s) in which the author used analogous cases to illustrate the application of one or more of those specific rules, the paragraph(s) in which the author set out the plaintiff's arguments, the paragraph(s) in which the author set out the defendant's arguments, and the mini conclusion.

10 minutes: Walk students through a second example. This time, have the students label each part of the discussion section.

10 minutes: Help students begin drafting an outline for
the discussion section of their memo. What material should go in the general rule section? What should go in the specific rule section for the first disputed element?

5 minutes: Summarize the material covered during class and instruct students to complete the outline of the discussion section for the next class.\textsuperscript{47}

(Additional plans that were developed by individuals who participated in this workshop at the Legal Writing Institute’s 2000 Conference are set out at the end of this article.)

3. \textit{We need to have students determine how the various problems that they have worked on are similar and different.}

In several experiments, researchers have been able to increase transfer by encouraging their subjects to look for similarities in problems with similar problem structures but different surface features.\textsuperscript{48} In an experiment involving students at the University of Michigan, Catrambone and Holyoak\textsuperscript{49} divided their subjects into four groups. Group 1 read the fortress story and fireman story, a story that has the same underlying structure as the fortress story, and then wrote down the ways in which the two stories were similar; Group 2 read the fortress story and an unrelated story and then wrote down the ways in which the two stories were similar; Group 3 read the fortress and fireman stories but did not do the comparison; and Group 4 read the fortress story and an unrelated story but did not do the comparison.\textsuperscript{50} Each group was then asked to solve the tumor problem. The results were striking. While 47% of the students in Group 1 solved the problem, only 16% if the students in Groups 2 and 3 and 25% of the students in Group 4 solved it.\textsuperscript{51} Similarly, Brown, Kane, and Echols\textsuperscript{52} were able to increase transfer in young children by telling them that one of the “rules of

\textsuperscript{47} Id. at 125.
\textsuperscript{48} See Bassok, \textit{supra} n. 36, at 522.
\textsuperscript{50} Id. at 1148-1149.
\textsuperscript{51} Id. at 1149-1150.
the game” was to look for the common elements in several stories.

In our classes, we can do the same things. For example, after we have shown our students several examples, we can ask them to articulate the ways in which those examples are similar. In addition, after our students have completed their second memo, we can ask them to compare their second memo to their first memo. How were the audiences for the two memos the same? How were the purposes for which the two memos were written similar? In what ways were the decision-making processes involved in analyzing the issues the same? In what ways were the discussion sections similar? Were they able to use similar writing strategies in composing both memos? Similarly, after our students have completed their first brief, we can ask them to compare the brief to the memos that they have written. By making our students do these types of comparisons, we help them build the surface, structural, and procedural representations that facilitate transfer.

4. We need to tell our students that they should look to prior problems for help in solving the current problem.

In a variety of experiments, researchers have established that transfer is substantially increased when subjects are told that they should look to prior problems that they have solved for help in solving the current problem. For instance, in Gick and Holyoak’s study,\(^53\) while only 20% of the subjects who read the fortress problem spontaneously applied the division and convergence solution to the tumor problem, 92% used the solution after being given a hint that they should use the fortress problem in solving the radiation problem.\(^54\) Sanders and Richard\(^55\) have suggested that the hint caused the subjects to view both the fortress and radiation problems in a more abstract way. In particular, it allowed the subjects to view rays, like an army, as being divisible. This process facilitated both the search and retrieval processes and the mapping process.

Thus, it seems likely that we can increase transfer by specifically instructing our students to look to prior projects for guidance in working on their current project. For instance, in assigning a new research project, we should specifically tell our students that they should think about the other research projects that they have done to determine which ones involved similar types of research.

\(^{53}\) Gick & Holyoak, supra n. 2.
\(^{54}\) Id. at 345-46.
\(^{55}\) Sander & Richard, supra n. 22, at 1480.
questions. In addition, we should specifically tell our students that they do not need to reinvent the wheel each time that they sit down to write a discussion section. The more efficient approach is to search their memories for problems that involved similar analytical structures and then use the organizational schemes that they used for those problems as models for organizing the discussion section for the current problem.

CONCLUSION

What the research establishes is that it is not enough to simply teach our students how to research a particular issue or to write a particular memo. If we want our students to be able to transfer what we have taught them to a new situation, we must change the ways in which we teach. We must provide our students with multiple examples, we must teach the underlying structures of those examples, and we must teach our students to look for the similarities between the problem that they are working on and other problems that they have encountered. If we teach in this way, instead of simply teaching our students how to research a particular issue or how to write a specific memo, we will be teaching them how to research a variety of issues and to write a wide array of memos and briefs.
Appendix

The following lesson plans were created by individuals who attended the 2000 Legal Writing Institute Conference.

Example 1:

Class Plan for Teaching Students How to Write a Persuasive Statement of Facts

Version 1

This class plan was prepared by the following individuals:

- Mark Broida, California Western School of Law
- Steve Johansen, Northwestern School of Law of Lewis and Clark College
- Lou Sirico, Villanova University School of Law
- Barbara Wilson, University of Missouri - Kansas City School of Law

Before Class:

Before class, students should read the sections in their textbook on writing a persuasive statement of facts.

5 - 10 minutes: Begin the class by introducing the topic: writing a persuasive statement of facts. When students drafted the statement of facts for their objective memoranda, they tried to present the facts objectively. Do they want to do the same thing when they draft the statement of facts for their brief? Why or why not? What was their goal in drafting the statement of facts for an objective memorandum? What is the advocate's goal in writing the statement of facts for a brief?

10 minutes: Describe four or five techniques that students can use in drafting a persuasive statement of facts, for example, (1) creating a favorable context, (2) placing favorable facts in the positions of emphasis at the beginning and end of the statement of facts, the beginning and end of paragraphs, and the beginning and end of sentences, (3) giving favorable facts more "airtime," (4) placing favorable facts in
the main clause and unfavorable facts in dependent clauses, and (5) selecting words with favorable connotations. For each technique, show the students several examples from different cases.

10 minutes: Show students a section of the statement of facts from their last objective memorandum and ask them how they might use the techniques that you have just described to rewrite the objective statement of facts so that the facts are presented in the light most favorable to the appellant. Rewrite several sentences.

15 minutes: Divide students into pairs or small groups and have them rewrite the same section of the objective statement of facts so that the facts are presented in the light most favorable to the respondent.

5 minutes: End the class by reviewing with students the advocate's goal in drafting a persuasive statement of facts and some of the techniques that they can use to write a persuasive statement of facts.

Homework: Assign the first draft of the statement of facts for the appellate brief.

How this class plan promotes transfer: This class has been designed so that it promotes two types of transfer. By explicitly talking about the differences between an objective statement of facts and a persuasive statement of facts, the professor reminds students about their prior learning and helps them determine which parts of that prior learning they can transfer to this new situation. In addition, in explicitly describing the techniques that students can use to turn an objective statement of facts into a persuasive statement of facts and providing the students with several examples of each technique, the professor is increasing the chances that the students will be able to use these techniques in a variety of different circumstances.
Example 2:

Class Plan for Teaching Students to Write a Persuasive Statement of Facts

Version 2

This class plan was developed by the following individuals:

- Tom Blackwell, Appalachian School of Law
- Denise Meyer, University of Southern California Law School of Law
- Kathryn Sampson, University of Arkansas School of Law, Fayetteville
- Thomas Trahan, Texas Wesleyan University School of Law

Before Class:

Students should read the sections in their assigned textbook on writing a persuasive statement of facts.

In addition, the professor should make arrangements with four students to tell the stories that are going to be used as examples in class. One student is asked to prepare to tell the traditional story of the three pigs, another student to read Schizca’s *The True Story of the Three Pigs* (if you do not have a copy of this book, you can get a complimentary copy from West), another student to tell the conspiracy theory account of Kennedy’s murder, and another student to tell the Warren Report account of Kennedy’s assassination.

In Class:

15 minutes: Begin class by having the selected student tell the traditional story of the three little pigs. Then have the next selected student read Schizca’s version. After the students have heard both stories, have them identify the ways in which the stories are the same and different. In both stories, was the “theory of the case” the same?

In both stories, was the story told from the same point of view? Were the same facts included in both stories? Which facts were emphasized in the first story, and which were emphasized in the second? How were the favorable facts emphasized
and the less favorable facts de-emphasized? How were the word choices the same or different?

15 minutes: Repeat the same exercise using the two versions of Kennedy's assassination.

15 minutes: Help students develop a list of the attributes of a good advocate (for example, the ability to view the same facts from different points of view, the ability to create a theory of the case, the ability to weave facts together into a "story" that supports a particular theory of the case) and a list of the techniques that good advocates use in drafting a persuasive statement of facts (for example, telling the story from the client's point of view, placing favorable facts in the position of emphasis, giving more airtime to favorable facts, placing favorable facts in shorter sentences, selecting words with favorable connotations.)

5 minutes: Assign the first draft of the statement of facts. In doing so, explicitly tell students that they should think about the examples that they have just heard and the attributes and techniques that they have just identified.

Homework:
Students should prepare the first draft of the statement of facts for their brief.

How this class plan promotes transfer:
Unlike the prior class plan, which used a deductive approach, this one uses an inductive approach. Instead of explicitly laying out for the students the attributes of a good advocate and the techniques that good advocates use in writing a persuasive statement of facts, the professor helps the students "discover" those attributes and techniques. Nonetheless, this class plan employs several techniques that have been shown to promote transfer: (1) instead of providing students with a single example, the professor uses two examples with very different surface features but the same underlying structures; (2) the professor helps the students identify the underlying structures by having them compare and contrast the examples, and (3) the professor explicitly tells the students to
transfer what they have learned in class to their own writing assignment.

Example 3:

Class Plan for Teaching Students How to Write a Persuasive Statement of the Issue for a Trial or Appellate Brief

This class plan was prepared by the following individuals:

- Kay Holloway, Texas Tech University School of Law
- Jennifer Jolly-Ryan, Northern Kentucky University Salmon P. Chase College of Law
- Sharon Pocock, Quinnipiac University School of Law
- Susan Reinhart, University of Michigan English Language Institute
- Ruth Vance, Valparaiso University School of Law

Before Class:
Before coming to class, students should read four examples of an objectively written fact statement and issue statement.

In Class:

5 minutes: Introduce the topic by talking about the role that the issue statement plays in a trial or objective brief. Would an advocate want to draft issues statements like the ones that the students read before coming to class? Why or why not? What is the advocate's goal in drafting an issue statement?

10 minutes: Show students several examples of well-written persuasive issue statements. What characteristics do the well-written persuasive issue statements have in common? Then show students some poorly written persuasive issue statements. How are these issue statements different from the well-written ones?

10 minutes: Help the students articulate the characteristics of an effective persuasive issue statement by helping them develop a checklist for cri-
tiquing persuasive issue statements.

15 minutes: Divide students into small groups and have each group rewrite one of the objective issue statements from the examples that they read before coming to class. Instruct the groups to draft one issue statement from the plaintiff's point of view and another from the defendant's point of view.

10 minutes: Have one or two groups share their issue statements. Have the group or class critique the drafts using the checklist that the class developed.

Homework:
Assign the first draft of the issue statement for their own briefs. In doing so, explicitly remind your students to use the checklist that they have developed in class to critique their own drafts.

How this lesson plan promotes transfer:
The authors of this lesson plan have used an inductive rather than a deductive approach in teaching their students how to write a persuasive issue statement. Instead of identifying for their students the characteristics of a well-written persuasive issue statement, they have helped their students identify these characteristics by having them look at a number of examples.

What distinguishes this class from other inductive classes is that the authors have incorporated activities that have been shown to promote transfer. For example, by having students prepare a checklist that sets out the characteristics of a well-written persuasive issue statement, the authors have highlighted for their students the underlying structures that they want their students to learn. In addition, by showing their students multiple examples with different surface features, they have enhanced the chance that their students will be able to apply those underlying structures to new situations. Finally, they have explicitly told their students to use what they have learned in class in writing their own issue statements.
Example 4:

Lesson Plan for Teaching Students Teaching How to Organize the Argument Section of a Trial or Appellate Brief

This lesson plan was prepared by the following individuals:

- Karin Mika, Cleveland State University, Cleveland-Marshall College of Law
- Samantha Moppett, Arizona State University College of Law
- Terrill Pollman, University of Nevada, Las Vegas, William S. Boyd School of Law
- Barbara Tyler, Cleveland State University, Cleveland-Marshall College of Law

Before Class:
Before coming to class, students should read a sample memo and a brief based on the same topic. In addition, they should read one or two other well-written sample briefs.

In Class:
5 minutes: Introduce the topic to be covered during this class. How should you organize the argument section of a trial or appellate brief?

10 minutes: Begin by having students compare the types of information contained in the discussion section of the objective memo with the argument section of the brief based on the objective memo. Do both contain the same types of information? Is that information presented in the same order? Why or why not?
10 minutes: Describe the basic principles that students should use in organizing the argument section. For example, tell your students that most attorneys try to take advantage of the positions of emphasis by placing their strongest arguments at the beginning and end of the argument section. In addition, describe for your students the most common organizational patterns used in briefs.

15 minutes: Walk your students through the sample briefs having them determine (1) whether each author took advantage of the positions of emphasis and (2) the organizational schemes that each author used.

10 minutes: End class by leading a brainstorming session in which your students talk about which of their arguments are their strongest arguments and about which of organizational schemes might work best for their strongest argument.

Homework:
Have students determine the order in which they are going to present the arguments in their brief and the organizational scheme that they are going to use in presenting each argument.

How this class plan facilitates transfer:
The authors of this class plan have facilitated two types of transfer. First, they have helped their students transfer what they learned in writing objective memos to writing a brief by helping students identify which parts of their prior learning are relevant. Second, they are helping their students transfer their new learning to new situations by identifying for their students the underlying structures that they want their students to learn and by providing their students with several examples in which the surface features are different but the underlying structures are the same.
Example 5:

Class Plan for Teaching Students to Construct Arguments Based on Analogous Cases

This class plan was prepared by the following individuals:

- Cynthia Adams, Indiana University School of Law, Indianapolis
- James Dimitri, Indiana University School of Law, Indianapolis
- Tom Wilson

Note:

This class is the first class in a two-part series. In this class, the focus is on grouping cases, identifying the common threads, and stating principles based on those principles. In the next class, students will learn how to use those principles and the cases that they are drawn from to state a principle, to provide their reader with examples of how that principle has been applied in analogous cases, and to apply that principle to their case by comparing and contrasting the facts in their case to the facts in the analogous cases.

In Class:

5 minutes: Begin class by asking students to name the different types of legal arguments: factual arguments, arguments based on analogous cases, and policy arguments. Tell them that in this class the focus will be on how to construct arguments based on analogous cases. Then talk briefly about why courts are persuaded by arguments based on analogous cases: In our legal system, judges look to precedent in determining how to decide the cases before them. They try to decide like cases in like ways.

5 minutes: Outline for students the first part of the process that attorneys go through in constructing arguments based on analogous cases.
- They identify the analogous cases.
- They group the cases by their holdings, for example, placing the cases in which the court
found that a particular right had been infringed upon in one group and the cases in which the court found that the right had not been infringed upon in another group.

- They look at the cases in each group, identifying the common thread or threads.
- Once they have identified the common threads, they state that “thread” as a principle.

15 minutes: Present four or five short case descriptions that set out the facts of the cases and the courts’ holdings. Then walk students through the process set out above, having them (a) group the cases by their holdings, (b) identify the common threads, and (c) state principles based on those common threads.

20 minutes: Present a second set of four or five short case descriptions. This time, divide the students into pairs or small groups and have the pairs or small groups walk through the process of grouping the cases, identifying the common threads, and developing principles based on those common threads. Have several of the pairs or groups, share their groupings, common threads, and principles.

5 minutes: End class by instructing students that they should go through the same process with the cases that they have located in researching their memo or brief problem. Tell them that they will use the principles that they developed in the next class to construct the arguments that they will set out in their memos.

How this class plan facilitates transfer:
This class plan incorporates three of the techniques that have been shown to facilitate transfer. The class begins with the professor explicitly setting out the underlying structures that he or she wants the students to learn, in this case, the first part of the process that attorneys use in constructing arguments based on analogous cases. The professor then provides the students with two examples that have different surface features. Finally, the professor tells the students that they should transfer what they have learned
and practiced in class to their own memo assignment.

**Example 6:**

**Class Plan for Teaching Students How to Present an Effective Oral Argument**

This lesson plan was prepared by the following individuals:
- Susan S. McKenzie, Case Western Reserve University Law School
- Kay Kavanagh, University of Arizona, James E. Rogers College of Law
- John Matson
- Bill Galloway, Seattle University School of Law
- Tracy Bach, Vermont Law School

**Reading assignment:**
Before coming to class, students should read the materials on oral advocacy from their assigned legal writing textbook.

5 minutes: Introduce the topic of oral argument by explaining the context in which oral arguments are presented (for example, motion practice and appeals), the audience for an oral argument (for example, the judge or judges, opposing counsel, the client), and the purposes the argument serves (for example, to identify key areas of dispute and respond to the court's questions).

10 minutes: Describe for students the characteristics of an effective oral argument.

10 minutes: Show students a videotape of an effective oral argument.

10 minutes: Show students a videotape of a second effective oral argument from a different case or have students observe a live oral argument presented either by the professor, a member of the moot court board, or a guest attorney.

10 minutes: Have students identify the things that both advo-
cates did that were effective. For example, did each advocate open the argument with a statement that caught the attention of the judge and focused the judge’s attention on the issue that was being discussed? Did each advocate set out the key facts in the light most favorable to his or her client? Did each advocate present the rules and cases in the light most favorable to his or her client? Did each advocate respond to question with a one or two word answer and then a more detailed explanation? Did each advocate “talk” to the court rather than read a prepared speech? Note: This list should track the characteristics of good oral argument set out at the beginning of class.

How this class promotes transfer:
In this class, the authors have incorporated three of the four techniques that have been shown to promote transfer. They have set out the underlying principles (in this case, the characteristics of an effective oral argument), they have provided their students with two examples that illustrate those underlying principles but that have different surface features, and they have asked their students to compare the two examples identifying the ways in which they are similar.

Example 7:

Class Plan for Teaching Students How to Develop a Theme or Theory of the Case for Their Briefs and Oral Arguments

This class plan was prepared by the following individuals:
• Robin Meyer, University of Texas School of Law
• Deborah McGregor, Indiana University School of Law, Indianapolis

Before Class:
Students should read the sections in their assigned textbook on establishing a theme or theory of the case. In addition, if they have not already heard the story, students should read The True Story of the Three Little Pigs, and, if they are not familiar with the case, Fallwell v. Hustler Magazine.
In Class:

5 minutes: Identify the topic for this class: Good briefs and oral arguments have a coherent theme or theory of the case.

5 minutes: Describe for your students the characteristics of a coherent theme or theory of the case.

10 minutes: Ask students to write down in twenty-five words or less, the wolf's theme or theory in the story *The True Story of the Three Little Pigs*. Then ask students whether the wolf's theme or theory has the characteristics of a coherent theme or theory. Why or why not?

10 minutes: Have the students identify both the plaintiff’s and the defendant’s themes or theories in *Fallwell v. Hustler Magazine*. Do those themes or theories have the characteristics of a good theme or theory? Why or why not?

15 minutes: Divide students into small groups (either plaintiffs together, defendants together, or half and half) and have each group identify several possible themes or theories that they might be able to use in writing their briefs and presenting their oral arguments. Then have students evaluate each possible theme and theory. Which has the most characteristics of a good theme or theory of the case?

5 minutes: Bring the class back together and summarize the material that has been covered.

Homework:

Have students write out the theme or theory of the case that they plan to use in writing their brief and preparing their oral argument. In addition, have students write out why they believe that their theme or theory has the characteristics of an effective theme or theory.

How this class plan promotes transfer:

In drafting this class plan, the authors have incorporated a
number of the techniques that have been found to promote transfer. They begin class by explicitly laying out for their students the characteristics of a good theme or theory of the case. They then provide their students with multiple examples that have different surface features but the same underlying structures or characteristics. Finally, they emphasize those underlying structures by having students discuss how those structures are used in the examples. In addition, they also provide their students with the opportunity to practice what they have learned both in class and then outside of class.

Example 8:

Class Plan for Teaching Students to Use Topic Sentences, Signposts, and Transitions Effectively

This lesson plan was prepared by the following individuals:
• Kim Coats, University of Arkansas Law School at Fayetteville
• Alvin Dong, University of Denver College of Law
• Susan Maxson, American University Washington College of Law
• David Sammond, McGeorge School of Law
• Terry Seligmann, University of Arkansas Law School at Fayetteville
• Claire Winold, Widener University School of Law – Delaware

Before Class:
Before coming to class, students should read the materials in their assigned textbook on topic sentences, signposts, and transitions.

In Class:
5 minutes: Begin class by explaining why topic sentences, signposts, and transitions are so important in legal writing. Legal readers expect that topic sentences, signposts, and transitions will be used to make clear how the discussion section is organized and to signal changes in topic.

15 minutes: Begin by walking students through two or three
pieces of non-legal writing (for example, newspaper or magazine articles) in which the authors have used topic sentences, signposts, and transitions effectively. For each example, highlight the topic sentences with one color of marker and the signposts and transitions in another color. Next walk the students through one or two examples from legal writing. This time, have the students identify and highlight the topic sentences in one color and the signposts and transitions in another color and have students explain why the authors’ use of topic sentences, signposts, and transitions is effective.

15 minutes: Divide students into pairs or small groups. Give each group a handout that sets out two or three paragraphs from their last memo in which the topic sentences, signposts, and transitions have been deleted. Have the students rewrite the paragraphs adding the topic sentences, signposts, and transitions.

15 minutes: Have two or three pairs or groups share their re-writes with the rest of the class.

Homework:
Instruct students to go through the draft that they are currently writing highlighting the topic sentences, signposts, and transitions. Then have them evaluate their own writing. Do they need to add any topic sentences? Any signposts? Any transitions? Do the topic sentences, signposts, and transitions that they have included provide accurate cues to their readers? Have they included too many signposts and transitions?

How this class plan promotes transfer:
The authors of this class plan have used several of the techniques that have been shown to promote transfer. They begin their discussion of topic sentences, signposts, and transitions by having students draw upon their existing knowledge to identify the topic sentences, signposts, and transitions in non-legal types of writing. They then help students transfer this existing knowledge to legal writing by showing their students several different examples of how topic sentences, signposts, and transitions have been used ef-
fectively in legal writing. Finally, they explicitly instruct their students to transfer this existing and new knowledge to their own writing by having them rewrite an example from an earlier memo and the memo that they are currently writing.

Example 9:

Class Plan for Teaching Students to Write Concisely

This class plan was prepared by the following individuals:
- Catherine Wasson, Widener University School of Law – Harrisburg
- Karen Eby, Oklahoma City University School of Law
- Anna Hemmingway, Widener University School of Law – Harrisburg
- Wanda Temm, University of Missouri – Kansas City School of Law

Before Class:
Students should read the material in their textbook on writing concisely.

In Class:
5 minutes: Introduce topic by explaining the importance of writing concisely. Why is it that students must learn to write concisely? If possible, include a story that emphasizes the importance of writing concisely or that illustrates that the profession values concise writing.

15 minutes: Teach four or five techniques that students can use to make their writing more concise. For example, you might want to cover the following:

- Glue words v. working words
- Base verbs v. nominalizations
- Active voice v. passive voice
- Word-wasting idioms, etc. (legalisms)

For each example, provide the students with two or three different examples.
10 minutes: Working as a class, rewrite a paragraph from the memo that your students are currently writing using the techniques that you have just taught.

15 minutes: Divide the class into pairs or small groups and have each pair or small group rewrite a second paragraph using the techniques that you have just taught.

5 minutes: Review for students the importance of concise writing and the various techniques that they can use to make their own writing more concise.

**Homework:**
Instruct students to rewrite their own memo using the techniques that they have just been taught and practiced.

**How this lesson plan promotes transfer:**
In this lesson plan, the authors have used three of the techniques that have been shown to promote transfer. They begin the lesson by explicitly setting out the underlying structures that they want their students to learn, in this instance, techniques that students can use to make their writing more concise. They then provide their students with multiple examples that have different surface features but that share the same underlying structures. Finally, they instruct their students to transfer this information to new situations. Students are first told to transfer to samples provided by the professor and then to their own writing.
USING CLASSROOM DEMONSTRATIONS IN FAMILIAR NONLEGAL CONTEXTS TO INTRODUCE NEW STUDENTS TO UNFAMILIAR CONCEPTS OF LEGAL METHOD AND ANALYSIS*

Charles R. Calleros**

I. INTRODUCTION

In their first semester of law school, students are quickly immersed in a sea of appellate opinions, punctuated with scattered islands of statutory text. With guidance from their classroom instructors, and especially from their instructor in legal method and writing, they begin to see patterns emerging from the judicial opinions, and they eventually begin constructing a working knowledge of the elements of legal method and analysis.

Of course, we instructors know that legal prediction and problem-solving is an inexact science, or perhaps more art than science. When we ask students to discuss the merits of two competing legal approaches or to apply a settled legal rule to novel facts, we usually don’t have a correct conclusion in mind. True, once a court or a jury reaches a decision on an issue, it supplies an “answer” to the question in that forum. But it supplies only “its answer,” and not the only plausible resolution of the issue. Moreover, until the court or jury supplies its answer, attorneys must counsel and advocate for their clients on some basis other than simply discovering the “answer” to a legal or factual issue that the parties reasonably dispute. Accordingly, we hope to develop our students’ abilities to understand the nature of the issue, to recognize competing approaches to resolving the issue, to appreciate and articulate policy arguments supporting each of the competing approaches, and both to predict a judicial outcome despite the uncertainty and to advocate the outcome desired by a client.

Because we spend much of our time developing such skills in

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** Professor of Law, Arizona State University College of Law. The author thanks Brian Louisell for his efficient research assistance, and Professors Tracy Bach and Claire Winold for their excellent editing.
our students, rather than simply conveying settled legal rules to them, we typically assign legal problems that raise issues in the "gray area" of the law or application of law to facts, issues to which we currently have no clear "answer" in the real or hypothetical jurisdiction in which the problem is set. This indeterminacy or uncertainty in the law is mitigated to some extent by the doctrine of stare decisis, pursuant to which courts strive for a measure of consistency and predictability in their development of the common law and their interpretation of enacted law.\(^1\) Stare decisis, however, permits sufficient flexibility in distinguishing or overruling precedent to provide us with ample gray areas for the hypothetical puzzles that we assign to our students.

Students eventually come to realize that their assimilation of the current landscape of settled legal rules is secondary to their mastery of legal method. If legal rules—constitutional, statutory, administrative, and common law—were fish in the ocean, we would have time in three years of law school only to introduce students to a tiny fraction of marine species, and then only to introduce those species briefly in their currently evolved states. With a sound foundation of skills in legal method, research, and writing, however, our students can build a net with which they can perpetually sustain themselves with fish from the ever-changing ocean of the law.

All of this is readily understood by any law school instructor and by most seasoned law students. Some students, however, appreciate the nature of our instruction, and thus the demands of their academic enterprise, more quickly than others. Our challenge is to bring the maximum number of students on board as quickly as possible.

We gain nothing by shrouding our legal pedagogy in mystery. Clearly informing students of their academic task will not deprive them of the intellectual growth required to master the necessary skills. Yet, simply reciting this introduction to them is unlikely by itself to reach the whole class. Unless students can relate our words to some concrete experience within their present knowledge, our explanations will remain abstractions to most students, and many will continue asking the wrong question: "Yes, but what is the correct answer to your assignment?"

To help students understand their academic task, we can try to build on their schemata, their existing foundations of knowledge.\(^2\) By relating a new concept to a student's existing intel-

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2 Robert E. Floden, What Teachers Need to Know About Learning, in Teaching Academic
lectual foundation, we can help the student to assimilate the new concept more quickly. With each such learning experience, the student’s foundation of knowledge grows incrementally, providing a stronger basis for assimilating more new concepts, including increasingly complex ones.\(^3\)

Because law students are the products of diverse intellectual and cultural backgrounds, they bring a wide variety of schemata to the classroom at the beginning of the first semester. If all goes well, most or all students soon will find themselves in the same boat in legal academic waters, sharing a rudimentary understanding of legal principles upon which they can build as they explore additional and sometimes increasingly difficult legal concepts. To reduce the risk of losing anyone overboard at the outset, however, our initial efforts to build a common foundation of knowledge of fundamental legal concepts should recognize the diversity of schemata that students bring to the classroom at the beginning of the year. We can minimize this risk of leaving students behind by relating new concepts in the first semester to familiar events that all students have likely shared, allowing us to more reliably build upon everyone’s starting schema.\(^4\)

In this essay, I give two examples of classroom demonstrations designed to introduce first-semester law students to concepts of legal method that tend to cause difficulty for some of them if expressed only in abstract terms. Specifically, I hope that these demonstrations illustrate:

- the inherent uncertainty or indeterminacy in most legal

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\(^3\) See Anton E. Lawson, What Teachers Need to Know to Teach Science Effectively, in Teaching Academic Subjects to Diverse Learners 31, 42-43 (Mary M. Kennedy ed., Teachers College Press 1991) (analyzing the manner in which the learning process is affected by limits on the number of concepts that a student can manipulate at any one time).

\(^4\) See Charles R. Calleros, Training a Diverse Student Body for a Multicultural Society, 8 La Raza L.J. 140, 150 (1995) (recommending a problem based on parental decision-making as a means of teaching stare decisis in a manner that allows all students to benefit from similar foundational knowledge).
questions, particularly in the problems that we are likely to assign as vehicles for developing skills of analysis and advocacy; and

- the process of deriving a larger legal picture from a series of cases by synthesizing the cases, each of which may build on previous ones in the process of incremental judicial decision-making.

II. USING A NONLEGAL CONTEXT TO DEMONSTRATE UNCERTAINTY IN THE LAW

As a rudimentary introduction to deductive reasoning, we might ask students to learn a settled, simple legal rule and apply it to facts that clearly call for a single, correct conclusion. For example, we might ask students to read a passage that establishes that a certain jurisdiction never awards punitive damages for breach of contract, provide them facts that clearly establish that a plaintiff can bring a claim only for breach of contract, and ask the students to resolve in IRAC form the question whether the plaintiff can secure an award for punitive damages on its claim. As I have formulated it, this exercise has a single correct answer: the plaintiff will not be entitled to an award of punitive damages.

This limited exercise has some pedagogic value. It requires students to restate the issue, summarize the law in their own words, and apply it to the facts to reach a conclusion, all in a clear, concise, well-organized manner. Practicing attorneys, however, spill little ink over such matters. Accordingly, we should introduce our students to problems in the "gray areas" without delay. For example, we might be genuinely uncertain whether a particular liquidated damages clause that we have drafted for a hypothetical contract is punitive in nature and thus unenforceable as a form of punitive damages, or instead is enforceable as a reasonable estimate of actual anticipated injury. Thus, if a student asks us for the "correct answer" to the problem, we can sincerely respond that we "don't know" and that the point of the exercise is to require students to (1) convey an understanding of the issue and the applicable law, and (2) argue both sides of the facts to reach a plausible conclusion.

In such an exercise, we might explain, a full analysis of the facts is critically important, and the conclusion reached is inconsequential, so long as the students can show that they can take a stand and reach some conclusion that is consistent with the analy-

5 See e.g. U.C.C. § 1-106 (2001) (generally excluding "penal damages"); U.C.C. § 2-718 (2001) (setting forth standards for determining whether a liquidated damages clause is enforceable or is "void as a penalty").
sis. But many students won't believe us. Some may say, and many more will silently believe, that if we only stopped playing "hide-the-ball" and provided the correct answer, they would have something useful for their notes.

To bring the students aboard as full partners in our academic enterprise, we must illustrate the nature of their academic enterprise in terms that they can readily relate to familiar experience. Because most are neophytes in the law, a universally familiar experience probably is a nonlegal one. For example, an instructor might draw attention to a fairly evenly matched college football game scheduled for the coming Saturday and might ask the question "Which team will win?" If pressed to go beyond simple team loyalty, students familiar with the teams might have predictions about the outcome and may even support their predictions with reasoned arguments based on facts about the teams. However, they should readily recognize that the question has no "correct answer" before the game is played any more than does a close legal question pending before the Supreme Court.

Still, not all students will be sufficiently familiar with relevant facts to make the sports analogy meaningful. And even sports buffs may complain that the example is not convincingly analogous to legal questions. Thus, it may be worth our time to lead the students in an exercise that is at once more universally familiar and more clearly analogous to a legal question. One that I use is adapted from an exercise developed by Elisabeth Keller and described by Jane Gionfriddo in the Second Draft. In turn, Suzanne Rowe and Jessica Enciso Varn have produced a yet more sophisticated version that serves as a vehicle for examining the court system, case briefs, analogical reasoning, and case synthesis.

My version uses the familiar nonlegal context of a grocery store to illustrate principles of case analysis and uncertainty. With the assistance of another instructor or a student, a classroom instructor might choose to present this in the form of a skit:

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6 Associate Professor, Legal Reasoning, Research & Writing, Boston College Law School.
7 Associate Professor and Director of Legal Reasoning, Research & Writing, Boston College Law School.
8 Jane Gionfriddo, Using Fruit to Teach Analogy, Second Draft (newsletter of the Leg. Writing Inst.) 4 (Nov. 1997).
9 Assistant Professor and Director of Legal Research and Writing, University of Oregon School of Law.
10 Legal Writing Instructor, Florida State University College of Law.
12 A more concise narrative statement of this classroom demonstration is found in
Setting: Small, family-owned grocery store in which the owner ("Grocer") is speaking to an employee about the proper location of produce in the store.

Roles:
Narrator, preferably played by the primary classroom instructor.

Grocer, played by a colleague or a student, although the primary classroom instructor could play both this role and that of the Narrator.

Employee, played by a colleague or a student.

Props (real or artificial): large, bright red apple; unwashed and unpeeled carrot; large bright red tomato; and two surfaces that represent (1) a display case in the window of the store looking out to a busy sidewalk and (2) a display case inside the store in the fresh produce section.

The narrator begins by explaining the purpose of the exercise, which is to adopt a familiar setting in which to apply some techniques of case analysis and to illustrate the absence of clear answers to the bulk of legal problems that students will encounter. The narrator then describes the setting and asks students to look for cases, holdings, and reasoning.

Employee: {approaches Grocer with a small box containing a bright red apple and an unwashed carrot; he or she holds up the apple first} We just received two crates of these apples from the Crosetti farm. Where would you like me to put them?

Grocer: {holding up the apple and evaluating it} If you were just walking by on the sidewalk, not necessarily intending to come into the store, a glance at this apple might bring you in. Make room for this in the window display case; I want to bring in as many impulse shoppers as I can.

Employee: {holding the carrot up to view for the first time} We also got two crates of these carrots. We'll still have room in the display case, if you want me to put them there as well.

Grocer: {after quickly inspecting the carrot} No, those won't...
draw customers into the store. Put those in the produce section inside the store. . . . I'm going to go to the bank. Make sure that all the produce delivered this morning is on display before I get back.

**Employee:** No problem.

{Grocer leaves and Employee then notices that he forgot about the tomato in his box; he holds up the large, red tomato and evaluates it}. I forgot about the two crates of tomatoes that came in. I wonder where I should put these.

**Narrator:** Where should Employee display the tomatoes? On what basis should Employee make that decision?

To introduce the analysis, the classroom instructor should fairly quickly convey several points, through a combination of lecture and discussion:

- The question about the proper location of the tomatoes does not have a single “correct” answer. Instead, assuming that Employee hopes to please Grocer, Employee will want to place the tomatoes where Grocer would place them. If Grocer were present, Grocer could supply Grocer’s “answer.” In the meantime, however, Employee must place the tomatoes *somewhere* before Grocer returns, so Employee must predict where Grocer would place them.
- Employee can look to previous cases, or precedent, for guidance in predicting Grocer’s preference for placing the tomatoes. Assuming that Grocer is consistent in his or her decision-making, the previous cases of the apples and the carrots may provide clues to Grocer’s preferences regarding placement of the tomatoes.
- The previous cases include both holdings and a general standard or policy applied by the Grocer to reach those holdings:
  
  **General Standard** - Grocer likes to reserve the window display case for items that would tend to attract into the store pedestrians who are passing by and might not have planned to enter the store.
  
  **Holdings** - Applying the standard above to the cases, Grocer reached different holdings on different facts. In the first case, Grocer sent the apples to the window display case; in the second case, however, he relegated the carrots to the produce section inside the store.
- Although helpful as a starting point, neither the very general standard nor the holdings themselves provide an obvious answer to Employee’s question. Students should notice that something is missing from the previous cases. They should regret that Grocer did not explain his or her reasoning in applying the standard to the facts and determining that the apples satisfied the general standard but the carrots did not. If students could determine why Gro-
cer concluded that the apples would draw impulse shoppers into the store but carrots would not, they might be able to apply similar reasoning in applying the general standard to the tomatoes. If this were a legal research project, they would want to reread the precedent in search of such reasoning, and they might experience varying degrees of success in finding clearly stated rationales in the judicial opinions. In this exercise, the students do not yet have clearly stated reasoning from the Grocer and thus must speculate. If they can offer some plausible basis for the Grocer's previous decisions, then perhaps they can predict the outcome of the new case, or at least advocate a plausible outcome.

Once the students appreciate the points summarized above, the instructor can ask them to explain Grocer's possible reasoning for the previous cases and then to apply that reasoning to the new case. Of course, a good response from a student will supply reasoning that implements the general standard, consistently explains the differing results in the cases of the apples and the carrots, and helps to resolve the current question about the tomatoes.

I have performed this exercise many times before students, colleagues, and attorneys, and each time I have been surprised at the creativity of participants in offering plausible and consistent rationales for the cases. I'll begin with the two explanations of Employee's reasoning that are perhaps the most popular and that serve to make my point about indeterminacy.

- **Reasoning: Visual appeal.**

  **Previous cases:** The apples are bright, red, and round, and thus are visually appealing, so a display of such apples in the window might catch the eye of a passerby, causing that person to pause and perhaps to look into the store and be enticed to enter and shop. The carrots, on the other hand, are rough, soiled, and dull in appearance. They likely would not catch the eye of passers-by, at least not in a way that would attract them to the store. Thus, the carrots are best placed in the produce section within the store, a convenient location for non-impulse shoppers who are methodically purchasing from a shopping list.

  **Current case:** Like the apples, and unlike the carrots, the tomatoes are bright, red, round and visually appealing. If visual appeal supplies the rationale for Grocer's application of the general standard to the facts in the previous cases, Grocer likely would place the tomatoes in the window display case. Such a result is not inevitable, because the visual appeal of the apples might be more strongly enhanced by proximity to a second, complementary color
rather than more red, but a rationale based on visual appeal provides a consistent explanation for the previous cases and a sound basis for predicting the outcome of the new case.

- **Reasoning: Snackability.**

  *Previous cases:* Alternatively, Grocer may have reasoned that apples would satisfy the general standard of luring impulse shoppers into the store because they are tasty and easily eaten without cooking or other processing; even the absence of a sink in which to wash the apple would not deter most hungry people from eating it. Thus, a passerby glancing at the apples in the window display might be reminded that he is hungry, recognize that an apple would be a quick, convenient healthful snack, enter the store to purchase one, and perhaps find other things to purchase once inside. The carrots, on the other hand, would not likely appeal to a hungry passerby who could be drawn inside by the prospect of a quick snack. Even if the passerby thought that carrots were as tasty as apples, the unprocessed carrot—recently pulled from the soil—would normally require peeling or at least thorough washing before it could serve as an appetizing snack. Thus, the carrots are appropriately stored in the produce section within the store.

  *Current case:* Although tastes may vary, very few people enjoy munching on a tomato as they walk down the sidewalk as they might snack on an apple that was the product of an impulse purchase. Like the carrots, the tomatoes are more likely to be purchased in a planned shopping trip and end up in someone’s salad. Thus, if Grocer decided the previous cases on the basis of the likelihood that a hungry passerby might purchase and immediately snack on the produce, then Grocer likely would place the tomatoes in the produce section inside the store, along with other salad ingredients.

  Both of the rationales described above, visual appeal and snack value, provide a consistent and plausible explanation for Grocer’s holdings in the previous cases. Thus, until Grocer clarifies the reasoning of those cases, Employee could adopt either rationale as guidance in applying the general standard to the facts of the new case, the crates of tomatoes. Put in terms of analogy and distinction, in deciding whether the tomatoes are more like the apples or the carrots in ways that would be relevant to Grocer, Employee might plausibly draw guidance from either of the rationales described above.

  Yet, these competing rationales lead to different predictions.

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13 I confess that I have forgotten which participant coined this priceless term to describe a competing rationale, but I am forever indebted to him or her.
about where Grocer would place the tomatoes. At this point, students should be ready to accept two related points. First, they should be alert for clues to a court's reasoning in a case, its reasons for choosing between competing legal approaches or for finding that certain facts do or do not satisfy the applicable legal rule. Second, if a court has not clearly explained its reasoning in prior decisions, or if clearly explained reasoning in previous cases does not speak directly to novel facts in a new case, even the consistency promoted by the doctrine of stare decisis may not dictate a certain result in the same court in a new case. If students can accept these points, they may stop asking us for the "correct answer" and instead proceed with the tasks of identifying issues, developing arguments for both sides of a legal or factual dispute based on policy and sound reasoning, and either predicting a plausible outcome in the face of uncertainty or advocating an outcome on behalf of a client.

Although I have described this exercise in detail, it need not take up more than ten to twenty minutes of class time, depending on how closely the instructor chooses to control the class discussion. It also lends itself to different or extended treatment. For example, the general standard adopted by the Grocer is not inevitable. Students might consider whether Grocer should adopt some standard for designating locations for produce other than one based on drawing impulse shoppers into the store, just as courts must sometimes choose between competing legal rules. Or, to introduce the students to statutory interpretation, the instructor might provide the equivalent of statutory text, such as some written policy distributed by a parent company that has provided a franchise for the grocery store. Finally, the instructor could permit Grocer to clarify the rationale of the precedent by making a decision in the case of the tomatoes and clearly explaining his or her reasoning. If, for example, Grocer approved the Employee's placement of the tomatoes in the window on the basis of visual appeal, students would have a more specific basis on which to predict the outcome of other cases; indeed, they might reformulate the general standard of attracting impulse shoppers so that it states a more specific rule requiring placement of produce on the basis of visual appeal. Of course, uncertainty would remain: Would a crate of bananas or eggplants have the requisite visual appeal to meet the Grocer's standards for placement in the window display case?

In leading this exercise, a classroom instructor might benefit from anticipating the various rationales, other than the two described above, that students might advance. A sampling from past
presentations may be instructive:

- In my initial presentation of this exercise at the Legal Writing Institute’s summer conference in June 1998 in Ann Arbor, a prominent member of the legal writing academy suggested an interesting rationale for the previous cases: Perhaps Grocer thought that the apple would attract pedestrians into the store on the basis of its place in religion and mythology as a symbol of sexual temptation, one difficult to resist. He didn’t think that the tomatoes would meet Grocer’s standard on that reasoning. Glancing down at the artificial apple, carrot, and tomato that I had put on display, I decided not to “go there,” and managed to steer the conversation in a direction that I perceived to be more fruitful. But another participant advanced a similar rationale at a later presentation, and a colleague at my school in yet another presentation advanced an even more overtly sexual theme: he argued that the roundness and lipstick-red color of the apple and the tomato suggested femininity to him, whereas the carrot struck him as more masculine; on that basis, he recommended putting the tomatoes in the window with the apples. My colleague didn’t explain why his perception of feminine traits in the produce would satisfy the standard of attracting impulse shoppers into the store, nor did he discuss whether both masculine and feminine produce together in the display might be more attractive than two kinds of feminine produce. I was content to acknowledge my colleague for viewing the problem through a “different jurisprudential lens” and to assure him that his reaction was not unique (even though it couldn’t have been further from any conscious thought in my mind when I developed the exercise).

Other participants have suggested that Grocer may have placed the apple in the window on the basis of its status as a fruit, and then placed the carrot inside on the basis of its status as vegetable, reasoning that most people generally find fruit to be more appealing than vegetables. This rationale poses challenges when applied to the tomatoes, because a tomato is scientifically classified as a fruit, but most people view it as a vegetable. Because Grocer’s standard is based on people’s perceptions and their visceral reactions, this rationale probably would call for placement of the tomato inside the store. If Grocer believes that impulse shoppers would not be attracted by vegetables, and if people view tomatoes

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14 See Nix v. Hedden, 149 U.S. 304, 307 (1893) (“Botanically speaking, tomatoes are the fruit of a vine, just as are cucumbers, squashes, beans, and peas. But in the common language of the people ... all these are vegetables ...”); Wingsley R. Stern, Introductory Plant Biology 139 (4th ed., Wm. C. Brown 1988) (“A true berry is a fruit ... Typical examples of true berries include tomatoes ...”) (emphasis in original).
as vegetables, than Grocer presumably would not view tomatoes as an appealing window display item.

Colleagues who have seen this exercise in my teaching workshops have performed the exercise successfully in their own classrooms and have reported some interesting variations on an Internet web page that I created for that purpose. Stephen Shapiro, for example, used real produce for his props and reported that the “props allowed me to show off my juggling skills and provided me with a snack while the students were in small groups discussing the case. . . . At the end, I asked them what was the ‘right’ answer, and bless their hearts they practically shouted in unison that there was no right answer.” He nonetheless needed to lead the students in additional discussion to persuade them to discuss both sides of the dispute on an exam rather than simply choose one plausible answer and support only that conclusion. Roberta Mann found that a small minority in her class voted for a rationale that led to a conclusion different from the rationale advanced by the majority in the class, leading her colleague, Erin Daly, to wonder whether such a split in the class might provide a good opportunity to discuss majority and dissenting opinions. Dan Levin has used the exercise to prepare students for ambiguity in rationales in Supreme Court constitutional case law, asking them later to analyze the constitutionality under the self-incrimination clause of a compelled roadside coordination test in light of precedent that allows officers to draw blood from a suspect but does not allow them to compel oral responses to questions.

15 For example, I performed this exercise as part of a larger workshop at the June 1999 Institute for Law School Teaching in Spokane, Washington. Some participants in that workshop later corresponded in a discussion forum on a teaching-techniques course web site that I created with LEXIS NEXIS Virtual Classroom. To reach that site, go to the following Internet address: <http://www.wcbcourses.com/wcb/schools/LEXIS/law03/ccallero/8/index.html>, click on “Learning Links,” and find the discussion forum for the Spokane Teaching Conference.

16 Professor of Law, University of Baltimore.


18 Id.

19 Associate Professor of Law, Widener University School of Law, Delaware Campus.

20 Associate Professor of Law, Widener University School of Law, Delaware Campus.


22 Assistant Professor of Business Law, Department of Accounting and Business Law, Minnesota State University, Mankato Campus.

23 Dan Levin, Produce Demonstration and Self-incrimination Clause <http://www.wcbcourses.com/wcb/schools/LEXIS/law03/ccallero/8/forums/forum10/wwwboard
If any readers of this article wish to share similar ideas or experiences regarding this demonstration or other simulations, feel free to enter the web site described in footnote 15 and to post a message in the discussion forum for “Simulations, Role-Playing, Live-Client Representation, and Writing Assignments.”

III. USING A NONLEGAL CONTEXT TO PREPARE STUDENTS FOR CASE SYNTHESIS

Conscientious first-semester students acquire extensive experience in briefing cases, and they hear plenty about the importance of synthesizing cases and outlining course materials as a means of preparing for examinations and other writing assignments. Few students, however, have the opportunity early in the semester to appreciate how these tasks and skills relate to one another and represent a coherent plan of study for the first semester.

We can help students prepare for the challenges awaiting them by providing them with a brief overview of the process of briefing and interpreting cases, synthesizing a series of cases, outlining the topic addressed by the cases, and applying the rules derived from the cases to new facts in an essay examination. To enable new students to assimilate such a comprehensive overview in the space of a class period, we can once again set our examples in a simple, familiar, nonlegal context. Once they grasp the concepts in that context, they may be able by analogy to appreciate and execute similar tasks in a more complex and unfamiliar legal context.

A. Case Analysis and Synthesis

This exercise should begin with a quick and simple exploration of a series of cases that incrementally develop a multi-faceted rule, one that reveals itself only as the students synthesize the cases. As with the exercise described in Section II above, an instructor may wish to secure the assistance of colleagues or students and to present this exercise in the form of a skit. Alternatively, an instructor can screen a videotaped simulation, produced by the author of

posted Sept. 23, 1999).

Those who wish to forgo the skit can see a similar summary of the “cases” in Charles R. Calleros, Legal Method and Writing 133 (3d ed., Aspen L. & Bus. 1998). Each of the written case summaries can be copied onto a transparency and projected onto a screen with an overhead projector. The third edition of Legal Method and Writing presents five cases, rather than the four described in this essay. The fourth edition will mirror the four cases in this essay.
this essay, in which a mother and daughter act out the scenes. Either presentation should bring the cases to life and encourage lively class discussion.

**Setting:** Front hallway of family home.

**Roles:**
- **Narrator,** preferably played by the primary classroom instructor.
- **Parent,** played by a colleague or a student, although the primary classroom instructor could play both this role and that of the Narrator.
- **Teenager,** a junior in high school, played by a colleague or a student.

The narrator begins by explaining the students' task, which is to 1) witness a parent making decisions on a case-by-case basis about a teenager's social outings, 2) interpret the parent's statements in an attempt to identify the parent's holding in each case and the apparent policies supporting the holding, and 3) refine their understanding of the parent's rules as the students see multiple cases and ponder how they build upon one another. The narrator concludes by describing the setting of the first case: a teenager returning home at 11:15 p.m. on a Friday night after a football game and a post-game trip with friends to the local pizza parlor.

**CASE 1: The Pizza Hangout**

{Parent is standing in middle of stage with arms folded and with a stern facial expression as teenage offspring, Teenager, enters from one side}.

**Parent:** *{sternly}* “It's past 11. Where have you been?”

**Teenager:** “Oh, after the game, we went out for pizza, and I guess I hung out a little bit with Pat and the others.”

**Parent:** “Well next time, after the game, don’t hang out at the pizza parlor. You need your sleep, and you’ve got plenty of homework to do.”

At this point, Narrator can ask the class to identify the general nature of the problem and of the policy considerations that seem to drive Parent to approve or disapprove of Teenager’s actions. Obviously, the problem seems to be one of determining whether Teen-

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25 For a copy of the videotape, send an e-mail request to the author of this essay at charles.calleros@asu.edu.
ager has satisfied or violated Parent’s standards for returning home after a social outing. Taken at face value, Parent’s statements suggest that Parent is concerned about Teenager’s health and study habits, but it’s always possible that other, unstated concerns, such as a perception that the pizza parlor is an unsafe hangout, are influencing Parent.

Next, Narrator can ask students to describe the narrow holding of the first case, a statement of Parent’s decision in its most limited form. It should soon become apparent that the case is subject to several reasonable interpretations. In its most limited form, the holding might simply be that, by arriving home “past 11,” Teenager has arrived home too late in the circumstances of the case. Such a narrow holding doesn’t suggest whether the curfew is 11 p.m., 10 p.m., or 10:42 p.m.; it simply states the narrow conclusion in this case that “past 11” was a violation of some rule set by Parent for Teenager’s activities. Other students, perhaps striving for a holding that will define a rule and will provide better guidance for future cases, might interpret the holding as something more definite such as: (1) Teenager may return from social activities, such as football followed by pizza, by 11 p.m., but no later; or (2) Teenager can attend the football game and but must come home immediately afterwards rather than going to the pizza parlor; or (3) Teenager can go other places after the football game, so long as it is not the pizza parlor and so long as Teenager returns by 11 p.m.

Narrator should explain that a variety of interpretations of this case, read in isolation, are reasonable and that the class may not be sure of the ultimate precedential effect of the case until the court refines its holding in the context of other cases. The class is now ready for the second in a total of four cases. Narrator should explain that Teenager is returning the following week from the same activities, a football game followed by pizza with friends, but arriving home this time a few minutes before 11 p.m.

**CASE 2: Pizza Reprise**

{Parent stands in middle of stage, contentedly reading and perhaps occasionally looking at his or her watch. As Teenager enters from the side, Parent addresses Teenager.}

**Parent:** “Did you go out for pizza again?”

**Teenager:** “Yeah, we had a great time.”

**Parent:** “Well, good for you. It’s just about 11. If you hurry, you can get to bed by 11:30.”

When questioned by Narrator about the holding of this case,
doubts about the basis for the previous decision disappear. In this second case, Parent decides that Teenager has satisfied Parent’s standards by returning home by 11 p.m. after football and pizza. When the cases are read together, students can conclude that Parent is indeed following a rule related to time: Teenager’s curfew, at least on Friday nights during the school year, is 11 p.m., because returning home “just about 11” in Case #2 brought no parental admonition, but returning home “past 11” in Case #1 brought rebuke. If we assume that Parent is acting consistently, it turns out that Parent was not concerned with the nature of the activities after all. What might have seemed like a rule against going to the pizza parlor, suggested by dictum in Case #1, was simply a statement that Teenager missed the curfew by “hanging out” too long rather than eating and socializing in the time allotted before 11 p.m. In any event, by synthesizing the two cases, by comparing their facts, reasoning, and results, students can derive a rule that consistently explains both cases.

Narrator should set up the next case by explaining that, weeks later, Teenager is at home on a Saturday afternoon, after having engaged in extra-curricular activities twice already in that week, and returning home by 11 p.m. each night.

CASE 3: Saturday Night at the Movies

{Parent and Teenager are near one another on stage. It’s Saturday afternoon and Teenager, in middle of phone conversation with a friend, addresses Parent}.  

Teenager: “Mom {or, Dad}, can I go with Pat to the movies tonight?”  

Parent: “No. You went to the school volleyball game on Tuesday night, and you went to the school musical last night, and that’s enough for one week.”  

Teenager: “But Mom {or Dad} ... !”  

Parent: “I’m sorry, you need to catch up on your homework.”

When queried by Narrator, students should recognize that the holding of this case that going out to the movies on Saturday night would violate Parent’s rules appears to be the product of different factors than those driving the first two cases. Parent now is concerned about the frequency of outings, even if Teenager is meeting the 11 p.m. curfew and even if the first two outings are related to school. Students might reasonably interpret this case as holding that Teenager may participate in social outings no more than twice
in one week. When asked to formulate the full rule or set of rules that students can derive from a synthesis of the first three cases, students might offer the following: To protect Teenager's health and promote Teenager's academic success, Teenager must return by 11 p.m. from social outings and may participate in social outings no more than twice in a week.

The first three cases in the series should help the students to understand more clearly how judicial decisions develop the law incrementally. The students should be ready to abandon expectations that a court will set forth a comprehensive outline of the law in a single case that addresses a limited dispute. Instead, they should be convinced that they typically can assimilate multiple facets of a legal issue or topic only by reading and synthesizing a number of cases.

To introduce the next case, Narrator should explain that, in a subsequent week, Teenager went to the movies with friends on Thursday night and is now returning home from a school dance on Friday night.

CASE 4: The Obligatory Birthday Party

(Teenager enters from the side while Parent waits expectantly to speak with Teenager).

Parent: “How was the dance?”

Teenager: “It was great. I hung around the same friends I saw at the movies last night.”

Parent: “Well, it’s almost 11, you better get to bed; we have to go to your uncle’s 50th birthday party tomorrow night.”

Teenager: {distressed} “What? I thought you’d want me to spend the rest of the weekend doing homework.”

Parent: “Well, you probably should, but the whole family is going. We can’t miss an event like this.”

When queried by the Narrator for the holding and synthesis, some students may succumb to cynicism and complain that the decision-maker is apparently acting arbitrarily, reaching conclusions on the basis of the Parent’s whim or convenience in each case rather than applying consistent rules and principles. Narrator

26 See e.g. Cass R. Sunstein, One Case at a Time: Judicial Minimalism on the Supreme Court (Harv. U. Press 1999) (arguing that many judges engage in “minimalist” decision-making, deciding cases on the narrowest possible grounds and leaving many issues open for further democratic deliberation in other forums).

27 Indeed, skepticism about neutrality and consistency in judicial decisions may increase in the wake of popular perceptions that some judges were motivated by partisan po-
should not brush aside such comments too quickly; students should prepare themselves for the possibility that judges, who after all are only human, may consciously or subconsciously manipulate the law to reach results with which they feel comfortable for reasons that they do not express and that may even be inconsistent with principles announced in precedent.

On the other hand, Case #4 may simply represent the next step in incremental development of a defensible rule that is more complex and multi-faceted than was necessary to determine the outcome in the first three cases. For example, perhaps Parent allows three outings in one week if they all fall on the weekend, and perhaps Parent broadly defines the weekend to include Thursday night as well as Friday and Saturday nights. That's a possible means of distinguishing Case #4 from Case #3, but it's not entirely convincing, because Parent seems to be concerned with Teenager's health and academic progress, and an outing on Thursday night can delay homework and sleep just as well as an outing on Tuesday night. More likely, Parent is simply making an exception for outings that Parent values even more than the early completion of homework and the health benefits of plenty of sleep. Case #4 suggests that an important family celebration meets that standard and justifies an exception to the general rule limiting social outings to two each week.

Accordingly, if asked to synthesize all the cases and derive a comprehensive rule from them, students might conclude that Teenager (1) must return by 11 p.m. from social outings and (2) may not participate in more than two social outings in a week unless the third event is an important family outing. Of course, the 11 p.m. curfew might apply to a family outing as well, and other events might justify an exception to the two-outing limitation even more clearly than a relative's birthday; however, further clarification of the rule must await others cases whose facts raise those questions.

ITICAL CONCERNS IN THEIR RULINGS OR VOTES IN LITIGATION OVER THE RECOUNTING OF BALLOTS IN FLORIDA AFTER THE 2000 PRESIDENTIAL ELECTION. SEE, EG., MSNBC, MSNBC HOME, NEWS, NEWSWEEK POLI: BUSH IS THE LEGITIMATE PRESIDENT, <http://WWW.MSNBC.COM/NEWS/504351.ASP?CP1=1> (DEC. 16, 2000) (REPORTING THAT, ALTHOUGH MOST OF THOSE SURVEYED IN A NEWSWEEK POLL ACCEPTED GEORGE W. BUSH AS THE LEGITIMATE PRESIDENT, 65% BELIEVE THAT "POLITICS OR PARTISANSHIP PLAYED A ROLE IN THE [SUPREME COURT'S] 5-4 DECISION [IN BUSH V. GORE, 121 S. CT. 525 (2000)] TO REVERSE THE FLORIDA SUPREME COURT AND STOP HANDCOUNTING OF THE BALLOTS IN THAT STATE"). EVEN IF THIS PERCEPTION IS IN FACT INACCURATE, IT MAY HELP TO PRODUCE A NEW CROP OF STUDENTS WHO ARE INCREASINGLY PRONE TO ATTRIBUTE CONTROVERSIAL OR SURPRISING RULINGS TO JUDICIAL BIAS, RATHER THAN OBJECTIVE REASONING.
Once the students have synthesized the four cases above, they have taken some critical steps toward producing an analytically useful outline of the topic. Still, students must complete their transition from a focus on individual cases to a focus on the rules derived from the students' syntheses of those cases. Narrator should explicitly invite students to make such a transition by immediately preparing an outline of Parent's rules. They should organize their outlines around rules derived from the cases, with the cases relegated to brief factual illustrations of the highlighted rules. Because time is limited in the workshop, Narrator may be able to give students only five or ten minutes to begin sketching some rough ideas for the outline on scratch paper, but that should suffice to prepare students to evaluate a sample outline projected on a screen, such as the following:

I. Parent restricts Teenager's outings to preserve time for rest and homework.
   A. Teenager must return from evening social outings by 11 p.m.
      1. Example: In week #1, Teenager “hung out” too long on a single outing that week by returning home “past 11,” at 11:15 p.m.
      2. Example: In week #2, Parent approved when Teenager returned by 11 p.m. on the same kind of outing as in week #1.
   B. Teenager may participate in evening social activities no more than twice in one week, unless a third outing is an important or obligatory event, such as a family celebration, whose value outweighs the values of preserving time for Teenager's sleep and homework.
      1. Example: In week #3, Parent permitted Teenager to go out with friends on two nights, returning by 11 p.m. each time, but Parent did not permit Teenager to go to the movies with friends on a third night that week.
      2. Example: In week #4, Parent expected Teenager to attend a special family outing to a relative's 50th birthday party, even though Teenager had already been out twice that week.
The sample outline above begins in Section I with a statement of the general standard and policy considerations guiding Parent's decisions. Section I.A then states a more specific rule about the 11 p.m. curfew, gleaned from a synthesis of the first two cases. Subsections 1 and 2 of Section I.A illustrate the rule by summarizing the critical facts and conclusions of the cases from which the rule was derived. Section I.B states the rule about frequency of social outings, deriving a balancing test from a synthesis of Cases 3 and 4. Presumably, the outline will continue in a Section II with rules on other topics, such as family chores or finances.

Of course, Narrator can substitute some other reasonable outline for a sample. For example, in some years, I have used an outline that consolidates the rules about the 11 p.m. curfew and the two-outing limitation, expressed the rule about special family outings as an exception to the general rule, and added a query about an issue that might arise in the next dispute:

I. Parent restricts Teenager's outings to preserve time for rest and homework.
   A. Teenager generally may not attend evening social outings more than twice in one week and must return from outings by 11 p.m.
      1. Example: In week #1, Teenager "hung out" too long on a single outing that week by returning home "past 11," at 11:15 p.m.
      2. Example: In week #2, Parent approved when Teenager returned by 11 p.m. on the same kind of outing as in week #1.
      3. Example: In week #3, Parent permitted Teenager to go out with friends on two nights, returning by 11 each time, but did not permit Teenager to go to the movies with friends on a third night that week.
   B. Exception: Teenager's mother permits Teenager to go out three nights in one week, if at least one night is a family outing.
      1. Example: In week #4, Parent expected Teenager to attend a family outing to a relative's birthday party on Saturday night, even though Teenager had already been out twice that week.
      2. Query: Would Parent permit Teenager to stay out past 11 p.m. on a family outing? Probably yes, if the significance of the event outweighed
the costs of delayed homework or diminished sleep.

Whatever sample is used, Narrator should emphasize that the sample is only one of many reasonable means of organizing and expressing the critical information gleaned from the cases. If constructed properly, any reasonable version of the outline should bring immediate benefits to the students who authored them. By moving their focus from individual cases to syntheses of series of cases, and then to an outline organized around legal rules derived from the case syntheses, students prepare themselves to analyze a new set of facts in an essay examination, office memorandum, or similar document. In an essay examination, students can more easily recall and express a legal rule that they earlier derived themselves from their syntheses of cases and then expressed in their own words in an outline organized around legal rules. Moreover, the student author of each outline is better prepared to apply the relevant rules to the facts of the essay examination, because the student's fact analysis will be informed by his or her previous activity of concisely explaining how the facts of various cases illustrate the rules stated in the outline. Indeed, Narrator can credibly inform students at this point that the main value of the outline is in its preparation because the resulting knowledge and skills will be more helpful to the author than the tangible product itself.

The organizational skills acquired from outlining in preparation for exams will pay dividends as well when students draft office memoranda. A student who has made the transition from individual case briefs to syntheses of cases and a rule-oriented outline will be better able to avoid falling into the trap of setting forth a laundry list of unconnected case briefs in the discussion section of an office memorandum. Instead, the student will be better prepared to introduce each case summary with a topic sentence that expresses the rule that the case will illustrate or that otherwise expresses a thesis that the case summary will support. And the student will be better prepared to express the transition between case summaries with a topic sentence that summarizes the student's synthesis of the cases. Thus, the discussion is organized around the author's ideas and analysis, rather than around cases, and the case summaries are simply used to illustrate and explain that analysis.\(^\text{28}\)

All of this may become apparent to a student after months of

\(^{28}\) See Calleros, supra n. 24, at 303-308 (providing example of synthesis statements as topic sentences and drawing parallels to student outlining).
experience. The quick overview in a familiar nonlegal setting, however, facilitates quick assimilation of these ideas and prepares the students to apply these concepts to their more difficult and unfamiliar legal studies.

C. Exams - Applying Rules to New Facts in a Nonlegal Setting

In a workshop that already addresses synthesis and outlining in a single class period, students cannot hope for more than the barest of introductions to exam-writing. Nonetheless, they will better understand the value of synthesis and outlining if the workshop at least hints at the manner in which students will apply their analytic skills to new facts. For example, in the final ten minutes or so, the instructor can ask students to (1) read a short question related to the nonlegal issues explored earlier in the workshop and (2) take notes on how they would analyze the question in IRAC form by spotting issues, summarizing the rules that would help resolve the issues, applying those rules to the relevant facts, and reaching conclusions. Unless the instructor skips the grocery store exercise described in Section II, or unless the class extends beyond one hour, students won’t have time to accomplish more than an outline of their response, but they should appreciate the nature of their task in a way that might not have been possible in so short a time with a problem set in an unfamiliar legal context.

An example of a sample exam question for this limited purpose follows:

QUESTION

On Wednesday night, Teenager, who is a junior in high school, attended an evening volleyball competition at her school. She returned home by 10:30 p.m. On Friday night, Teenager went to the school dance with a date, Pat. When Teenager and Pat returned from the dance at 10:55 p.m., they parked in the driveway at Teenager’s house, within view of Parent, who was sitting in the living room. While parked in the driveway, they talked, laughed, and held hands for twenty minutes. After Pat kissed Teenager goodbye and drove away, Teenager entered her house and greeted Parent at 11:15 p.m. On Saturday afternoon, Teenager asked Parent whether Teenager could go with friends to the high school basketball game, to watch Teenager’s brother play in the first of more than a dozen home games in the basketball season. Parent plans to attend some home games during the season, although not this
first one.

Fully discuss whether Teenager's action on Friday and request on Saturday are consistent with Parent's rules regarding Teenager's social activities. For every issue that you identify, summarize the rule or sub-rule that helps to resolve that issue, apply the rule to the relevant facts, and reach a conclusion. Whenever possible, discuss both sides of the question.

Of course, students should immediately recognize that the essay question raises facts that do not fall neatly within the categories established by the synthesis of the previous four cases. In other words, the facts of the question fall within a "gray area," providing grounds for reasonable dispute and plausible arguments for both sides, rather than leading to a single "correct answer." Although students may not have time to fully discuss even this short and simple question within the confines of the class period, the class instructor might encourage them to write their answer at home and might make available a sample answer such as the following:

To promote Teenager's health and academic progress, Parent requires Teenager to return from social outings by 11 p.m., and Parent normally limits Teenager's outings to two in each week. Teenager's Wednesday night outing raises an issue about the 11 p.m. curfew, and Teenager's request on Saturday raises an issue about the maximum number of outings allowed in a week.

1. 11 p.m. Curfew

Teenager must return from social outings by 11 p.m. It's not clear how that rule applies to this case, because Teenager returned to the driveway of her home by 10:55, within the curfew, but did not enter her home until 11:15 p.m., 15 minutes beyond the curfew.

On these facts, Teenager may have satisfied Parent's rule, because Teenager has technically returned home before 11 p.m. by returning to the family property, albeit outside the house. It's likely that one of Parent's unexpressed concerns is simply the safe return of Teenager at night. Therefore, Parent is likely to be content if Teenager has safely returned by 11 p.m. and is appropriately socializing within Parent's view.

On the other hand, if we take seriously Parent's expressed policy of promoting health and academic progress, Teenager's
presence in the driveway may not be sufficient to satisfy Parent's rule. Because Teenager and Pat presumably were not making progress on a homework assignment while parked in the driveway, Teenager cannot perform homework or prepare to sleep until Teenager enters the house. Thus, this case arguably is indistinguishable from Case #1, in which Teenager was admonished for returning home at 11:15 p.m. after football and pizza.

In conclusion, I predict that Parent will honor Parent's expressed policy concerns and will apply the curfew rule strictly, thus finding that Teenager violated the rule by entering the house at 11:15 p.m.

2. Maximum Number of Outings per Week

Parent prohibits Teenager to go on social outings more than two evenings each week, unless a third event is one of such importance, such as a significant family celebration, that its value outweighs its effect on time for sleep and the prompt performance of homework. In this case, Teenager wishes to watch Teenager's brother play in a basketball game, an event that arguably is a significant family event, but not one that clearly creates grounds for an exception to the normal limit of two outings per week.

An exception might be appropriate, because Teenager is obviously closely related to Teenager's brother, and the first home game of the season likely is an important event for the brother and thus for Teenager's family. Nonetheless, Parent doesn't plan to attend the first home game, suggesting that Parent doesn't attach special importance to the first one. Moreover, unlike an uncle's 50th birthday party, which comes only once in that relative's lifetime, Teenager's brother will play in many home games during the season, with some--such as homecoming or possible play-off games--arguably more significant than the first game.

I conclude that Parent will not see special family significance in the basketball game and thus will not permit Teenager to attend.

In sum, I conclude that Teenager's action on Friday and request on Saturday were both inconsistent with Parent's rules. Parent probably would admonish Teenager for entering the home after 11 p.m. on Friday and probably would not permit Teenager to go to the game on Saturday night.
Of course, instructors should reassure students that this sample answer is only an example of many reasonable responses and that it may be more complete and sophisticated than would be feasible for most students in examination conditions. Most important, the instructor should insist that students would receive equal credit for reaching contrary conclusions on either or both of the issues. Indeed, if the instructor doubts that students will believe such a statement, the instructor may wish to replace the sample conclusions with a statement that either conclusion is invited for each issue. Alternatively, for each issue, the instructor could state both possible conclusions, while making it clear that the student should take a position on the exam and choose one conclusion that the student believes is best supported by the facts and law. For example, in addition to the conclusions stated above, the instructor could explain that equal credit would be given for the following conclusions:

I conclude that Parent would find no violation of the curfew rule but would be satisfied that Teenager has returned by 11 p.m. to the driveway of her home, within the view and potential control of Parent.

I conclude that Parent will recognize special family significance in the basketball game and thus will permit Teenager to attend.

The first paragraph of the sample answer goes beyond what might be expected of a student exam, but it provides a convenient overview of the two issues raised by the facts.

In turn, the first section heading identifies which issue will be discussed first. The next sentence states the rule relating to that issue, followed by a summary of the relevant facts, which also serves to illuminate the precise issue or area of dispute raised by the facts.

The next two paragraphs are the most important part of the essay answer for that issue: the analysis of the facts, accomplished by applying the rule to the facts. Of course, each paragraph of the analysis advances arguments for one side of the dispute, ensuring that both sides are fully explored. Once again, the student can choose either conclusion on this issue, so long as the student shows that he or she is able to take a stand and defend one conclusion as more persuasive.

The discussion of the second issue proceeds much like the first
discussion, except that the shorter fact analysis is consolidated into a single paragraph that argues both sides of the case.

IV. CONCLUSION

In the space of 15 or 20 minutes of a class, we can perform a demonstration set in a familiar nonlegal context to help our students to see the uncertain nature of law and fact analysis. In this setting, students may come to abandon their fervent search for certain answers in favor of an exploration of issues, policy considerations, and rationales supporting precedent. Moreover, within a single class period of 55-85 minutes, we can follow that exercise with one that provides our students with an overview of essential analytic tasks in the first semester: case analysis, synthesis of multiple cases, outlining of course material, and the basics of essay examinations.

Of course, such a comprehensive overview would not be possible in a single class period, and likely would not be accessible to students, unless set in a familiar nonlegal setting. If students can comfortably navigate the familiar waters of these nonlegal settings, however, they may more easily survive and even thrive in the stormier seas of their legal studies.
TEACHING SOCIAL JUSTICE THROUGH LEGAL WRITING

Pamela Edwards¹ and Sheilah Vance²

INTRODUCTION

Because the topic of social justice is important to both of the authors, we were pleased to participate in the 2000 Legal Writing Institute Conference,³ even though neither of the authors is currently a legal writing professor; however, we both were in the past.⁴ Incorporating social justice in legal writing assignments provides benefits for professors and students. The first section of this article discusses the parameters of social justice and the goals advanced by incorporating social justice issues into legal writing curricula. The second section provides practical suggestions for creating fact patterns that contain social justice issues either as the background to the assignment or as the body of substantive law. The article then addresses concerns that may arise when professors incorporate social justice issues in legal writing assignments, including issues of academic freedom and job security for non-tenured professors and discusses how to resolve some of these concerns.

I. PARAMETERS OF SOCIAL JUSTICE

Before the article discusses why both professors and students benefit from teaching social justice through legal writing assign-

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³ This article summarizes the presentation the authors made at the 2000 Legal Writing Institute Conference on July 21, 2000.
⁴ Prior to joining CUNY, Professor Edwards taught legal writing at Hofstra Law School for four years. Currently, among other courses, she teaches a Lawyering Seminar course that incorporates legal writing as well as other lawyering skills. Professor Vance taught legal writing at Villanova University School of Law for two years before becoming Director of Academic Support. Currently, she teaches an Education Law Seminar in which students learn legal writing skills through writing seminar papers.
ments, it is important to define the concept of social justice.

A. What issues constitute “social justice”?

Social justice is the process of remedying oppression, which includes "exploitation, marginalization, powerlessness, cultural imperialism, and violence." Issues of social justice include problems involving race, ethnicity, and interracial conflict, "class conflict, gender distinctions, ... religious differences," and sexual orientation conflicts. Social justice also includes public interest work in its many guises.

B. Why teach social justice in legal writing courses?

Several important reasons exist that justify teaching social justice in legal writing courses. Benefits inure to both law students and law professors. This section of the article discusses the benefits to law students.

1. Teaching social justice issues encourages a diverse student body.

Some of the benefits of having a diverse student body accrue not only to members of underrepresented or outsider groups, but also to members of the dominant group or "ingroup." Scholars have argued that by hearing outsider stories, members of the ingroup will develop the ability to understand the different perspectives and experiences of outsider groups. These different perspectives and experiences will help to identify and eventually to eliminate biases in the law.

Many times, members of outsider groups are called upon to educate their ingroup colleagues. Addressing social justice issues in legal writing would expose ingroup students to alternative perspectives while alleviating some of the burden outsider students bear to provide this perspective.

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2. **Teaching social justice issues maintains student interest.**

Students attend law school for a variety of reasons and with differing career aspirations. Even so, most law students cannot see the connection between first-year mandatory courses and their ultimate careers. By introducing issues of social justice early in law school, professors introduce students who entered law school with an interest in practicing public interest law to situations they will face as attorneys. They especially will begin to realize the importance of legal writing and research to practitioners by being exposed to some of the types of writing attorneys engage in on behalf of their clients. While this is extremely important to professors in schools, such as City University of New York School of Law, which are devoted to training public interest lawyers, some students in other law schools also desire to practice public interest law.

In addition, law students who come from backgrounds other than white, middle class backgrounds may find little in law school that bears out their life experiences. In a law review article on his experiences in school, one Ivy League law school graduate has remarked on “how little of the legal academic world intersects even with the everyday world of even middle class African-Americans.” Although he wrote this in the context of his property law course, the observation is true in many law school courses. Law professors typically incorporate in their courses the usually unstated assumption of common experiences that everyone has shared. However, many outsider students do not share in these “common experiences.”

3. **Teaching social justice raises and addresses issues of race, ethnicity, class, and gender in society.**

Issues of race, gender, ethnicity, and class are central social issues, not marginal ones. As adults, law students can best undertake critical scrutiny of their personal values and of their individual culture’s values, assumptions, and beliefs. Therefore, faculty should provide students with “disorienting moments” that will

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cause them to question their values and beliefs. This need to expand our students' horizons is especially critical because legal writing pedagogy silences outsider voices with its emphasis on an audience of attorneys that is largely white, male and allegedly "neutral." By raising social justice issues, professors let students know that their prelaw school experiences and concerns have value in the legal profession.

4. Teaching social justices supports the creation of more sensitive and understanding attorneys.

All aspects of the law school curriculum, including legal writing, should be reviewed to ensure that course content prepares students to serve a diverse client base. To that end, students must

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11 Id. at 51. Quigley defines the disorienting moment this way:

Adult learning theory maintains that when a learner begins describing an experience with the phrase, "I just couldn't believe it when I saw . . . , an opportunity for significant learning has been opened. This phenomenon is called the disorienting moment, when the learner confronts an experience that is disorienting or even disturbing because the experience cannot be easily explained by reference to the learner's prior understanding - - referred to in learning theory as "meaning schemes" - - of how the world works.

Id.

She further explains that the role of the instructor is to provide a three-step process for the disorienting moment to occur. First, "the instructor must design learning experiences that will provide an opportunity for disorienting moments to occur." Id. at 52. This may include class readings and discussions. Second, the instructor must facilitate "the productive assimilation of the experience through reflection and exploration of other information related to the disorienting experience . . . ." Id. at 52. Examples of media for reflection include classroom discussion, with a spirit of mutuality and instructor respect for the student and inclusion in class planning; explicit opportunities for student to student discussion; journals and other forms of self-evaluation; and supervisor-student conferences. Id. at 55, 57-62. Third, reorientation, which is learning, occurs. Id. at 52.


13 See Thomas L. Shaffer & Robert Rodes, Jr., A Christian Theology for Roman Catholic Law Schools, 14 U. Dayton L. Rev. 5, 14 (1998). Professors must let students know that "their moral impulses are useful things for a lawyer to have." Id. These authors address the importance of raising social issues this way:

What we must steadily ask of the world if we are to be truthful teachers and scholars is what effect legal transactions have on the people underneath them. How does our real estate law affect people who need a place to live? How does our law on corporate mergers affect working poor and their families? How does our criminal justice system affect the ability of the urban poor to walk out on their streets? How does the First Amendment affect their ability to teach their children to live decent lives?

Id. at 17.

become more sensitive to, and understanding of, various cultures and social groups.\textsuperscript{15} This sensitivity can arise from making the study of the needs and problems of clients from underserved communities an essential component of legal education.\textsuperscript{16}

5. Teaching social justice broadens students' exposure.

In raising social justice issues, a professor helps students develop a broader sense of the themselves and of the world. Law students are adult learners, and adult learners are in the best position psychologically to develop a broader sense of self.\textsuperscript{17} One of the intellectual challenges of law school should be students' reassessing their vision of what social justice means to them now and what social responsibility will mean to them later as attorneys. Raising social justice issues in the classroom is problem-posing education, which is an adult education theory of challenging learners to critically perceive the world in which they live and their values.\textsuperscript{18} Problem-posing education offers possibilities for critical self-reflection.\textsuperscript{19} Finally, students should be exposed to multiethnic and diverse experiences to appreciate fully the pluralism of contemporary society.\textsuperscript{20}

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schools examine their own teaching and curriculum holistically--with an eye toward the clients that lawyers will be serving in the twenty-first century, or if they do, the assumption is that the clients will be wealthy, globe-trotting megacorporations, not the underserved." \textit{Id.} at 581.
\end{quote}

\begin{quote}
\textsuperscript{15} Phoebe A. Haddon, \textit{Education for a Public Calling in the 21st Century}, 69 Wash. L. Rev. 573, 580 (1994). "Hence, lawyering includes the ability to understand and to critique existing and emerging visions of the profession in relation to interdisciplinary and multicultural perspectives." \textit{Id.} at 581.
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\textsuperscript{16} \textit{Id.} at 585. "Legal education should socialize students to be more sensitive to existing inequities and should provide opportunities for them to think about the problems of mobilizing resources to ensure that the legal system can serve underrepresented poor clients' interests as well as the interests of corporate and other paying clients."
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\textsuperscript{17} See Quigley, \textit{supra} n. 7, at 56.

Most psychological human development "stage" theories hold that the development of a broader sense of self as responsibly interactive with outside society is best able to be accomplished in adulthood. Therefore, in human development terms, adult law students are likely to respond to rather than retreat from the challenges of reassessing their vision of social justice and social responsibilities as lawyers.
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\textsuperscript{18} \textit{See} Paulo Freire, \textit{Pedagogy of the Oppressed} (Herder & Herder 1970) (discussing problem-posing education). Freire explains, "In problem-posing education, men develop their power to perceive critically the way they exist in the world with which and in which they find themselves; they come to see the world not as a static reality, but as a reality in process, in transformation." \textit{Id.} at 70-71.
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\textsuperscript{19} \textit{Id.} at 72.
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\textsuperscript{20} \textit{See generally} Linda Karen Clemons, \textit{Alternative Pedagogies for Minority Students}, 16 Thurgood Marshall L. Rev. 635 (1991) (explaining that "[t]he world view of Black and Hispanic students is often different than that of macrocultural students." \textit{Id.} at 635, 636).
6. Teaching social justices develops and provides an outlet for students' voices.

Some of the alternative pedagogies that can be used in teaching social justice, such as journals, diaries, or personal narratives, can provide an outlet for students who feel silenced by traditional legal education.21 Addressing social justice issues can also minimize the potential for, and damage, of muting.22 Using alternative approaches in legal writing teaches the value of both the legal voice and the personal voice, especially the voice of "outsiders."23

Perhaps raising multicultural issues will help those students who, because of their status as outsiders, lose their identity, self-esteem and will to succeed in law school.24 Multicultural law students often feel that they are socially isolated in law schools, that they are invisible, and that they have concerns which are considered unimportant.25 This has a negative impact on students' acclimation to law school, their self-confidence, and their academic performance.26 A number of articles have discussed the alienation that white women, people of color, gays and lesbians, and other outsiders face in law schools.27 One of the manifestations of this alienation is the silencing of alternative voices.28 Incorporating issues of

21 See Marina Angel, Criminal Law and Women: Giving the Abused Woman Who Kills a Jury of Her Peers Who Appreciates Trifles, 33 Am. Crim. L. Rev. 229 (1996) (inject narrative theory in first-year to encourage students to tell their own stories in their own words); James R. Elkins, Writing Our Lives: Making Introspective Writing a Part of Legal Education, 29 Williamette L. Rev. 45 (1993) (have students keep diaries or journals reflecting on their introduction to law and legal theories).
22 Stanchi, supra n. 12, at 52-57) (encouraging the use of alternative pedagogies to minimize and offset the damage of muting).
23 Id. at 18.
24 Haddon, supra n. 14, at 723.
26 Id. at 759, n. 131 (citing Cathaleen A. Roach, A River Runs through It: Tapping into the Informational Stream to Move Students from Isolation to Autonomy, 36 Ariz. L. Rev. 667, 675-676, in which Assistant Dean Roach writes: "[I]n addition to psychological consequences, racial isolation also has academic consequences. Students of color are often excluded from important yet informal networking systems, which means that the student is 'often shut off from the intra-institutional methods by which white students tend to acquire information about how to function in this new role, including advice from upper-class students and faculty members.' (footnote omitted) (quoting Kevin Deasy, Enabling Black Students to Realize Their Potential in Law School: A Psycho-Social Assessment of an Academic Support Program, 16 T. Marshall L. Rev. 547, 562-563 (1991)).
28 Stanchi, supra n. 12, at 7.
importance to these outsider groups in the curriculum will not only encourage ingroup students to examine the law from another perspective but will also encourage students who are members of outsider groups to express their ideas and share their experiences in writing, even if they hesitate to speak up in class.\textsuperscript{29} Students who are members of outsider groups often are made to feel unwelcome in law school. By incorporating social justice issues into legal writing classes, legal writing professors will afford students from outsider groups the opportunity to feel included in law school without a transparent overt effort to do so.

The theme of the 2000 Legal Writing Institute Conference was preparing students for life after the first year of law school. Many schools offer upper level courses on women and the law, on race relations law, or on legal perspectives, such as critical race theory and feminist jurisprudence. Incorporating social justice issues into the first-year legal writing course can help broaden students' perspectives for these courses by providing a broader foundation for these jurisprudence courses. Moreover, an introduction to alternative schools of thought on jurisprudence may encourage students to take one of these elective courses. Even students who do not take one of these elective courses will benefit from an introduction to alternative legal perspectives in the curriculum.

Writers enthusiastic about their topics are more likely to produce a better product. Incorporating issues of social justice into legal writing assignments is more likely to increase student interest in the writing assignment, especially when problems are based on current events. Examples include the issues of racial profiling by law enforcement officials, or gays in the military and the “don’t ask, don’t tell” policy.

Those professors who use the “process” approach\textsuperscript{30} to teaching legal writing try to encourage students to focus on the audience who will read the documents. This approach focuses on predicting how judges and other attorneys expect to receive information; however, this focus frequently results in what has been called “regnant” lawyering.\textsuperscript{31} Regnant lawyering, the opposite of client-centered lawyering, puts the attorney's professional expertise ahead of the client's interests. In teaching law students to think “like lawyers,”

\textsuperscript{29} Clemons, \textit{supra} n. 20, at 635-636.
\textsuperscript{31} Calmore, \textit{supra} n. 5, at 1933.
professors frequently overlook the client’s role in the process. Some professors try to compensate for this omission by having students draft client letters; however, even in a client letter, the attorney’s expertise is still the focus.

Although a client-centered approach may still require attorneys to translate their clients’ stories for other attorneys or judges, this approach encourages attorneys to focus more on the client as a person rather than solely as a legal issue. However, focusing on the client may result in a conflict between the client’s desires and the attorney’s social justice mission. For example, a client’s desire to have his day in court and tell his story may conflict with his attorney believes is the best legal strategy to prevail. It is never too early to assist students in developing strategies to deal with this type of conflict, including deciding whether to represent a client and whether to join a particular law firm, law office or other legal organization.

Social justice should be taught in legal writing, before students have become thoroughly indoctrinated into traditional legal thinking. By the end of the first year, many students will have assimilated the language of the law and will be unable or unwilling to see the biases in the law. Teaching social justice in legal writing will train students to see the social, political, and economic implications of the law and the various legal arguments they make.

7. Teaching social justice introduces students to attorneys’ role in developing law.

As practitioners, legislators, or judges, attorneys play an important role in developing law, primarily through their writing. Many people believe that attorneys have a moral obligation to advance the law’s justice mission to alleviate the effects of oppressive legal and socio-political power structures in society. Attorneys who practice public interest law (and students who aspire to do so) must consider how the law might be “reinterpreted and reformed to achieve social justice.” Legal writing courses are the perfect place in which to introduce law students to this form of legal analysis.

32 Infra n. 70.
33 Stanchi, supra n. 12, at 28.
34 Brook K. Baker, Transcending Legacies of Literacy and Transforming the Traditional Repertoire: Critical Discourse Strategies for Practice, 23 Wm. Mitchell L. Rev. 491 (1997); Omatsu, supra n.8, at 792, 797.
35 Baker, supra n. 34, at 517.
II. HOW TO TEACH SOCIAL JUSTICE THROUGH PREDICTIVE AND PERSUASIVE WRITING

Several methods exist for law professors to use teach social justice through both predictive and persuasive writing assignments. The social justice issue can provide the factual background for the legal issue in the assignment or the social justice issue could be the primary legal issue.

A. Social justice issues can provide the background against which to place the entire fact pattern or the client.

Social justice issues can form the background for legal writing problems throughout the year. For example, problems can be set in a racially tense neighborhood. All memos and briefs can address the legal issues that would or could arise in such a neighborhood including ethnic intimidation, and intentional infliction of emotional distress. Alternatively, a same-sex couple could encounter various legal issues, including contract and property issues, such as a landlord reneging on a rental agreement upon learning that the couple is homosexual. Writing assignments also can demonstrate how the same legal issues are handled differently. For example, an assignment could include a fact pattern based on laws related to obtaining a home mortgage and issues of redlining and zip code discrimination. The problem could illustrate how one family has no trouble obtaining a mortgage, while another has great difficulty because of the family's race or residential area. In addition, the professor can develop one factual scenario but have students research case law in two different jurisdictions to show how states with differing statutes and differing social values would handle the problem. Another example would involve demonstrating how a statute, such as one implementing the flat tax, affects different socioeconomic groups. The social justice issue may add background to a straight legal issue, such as an assignment on the issue of surrogacy contracts between the parties of different races.

B. Social justice issues can be tied to traditional first-year subjects and throughout first year curriculum.

Legal writing professors use issues from the range of doctrinal course subject matter throughout the entire law school curriculum.
Social justice issues, too, can cover the range of first-year subjects and beyond. Consider the following memorandum and brief problems that Professor Vance used one academic year. All memoranda and brief problems stemmed from the experiences of one client and her family. The intent was to replicate what happens in law practice when one client is the source of multiple legal matters. Professor Vance created Ruby Howard, an African-American woman, who was the lead singer of a Motown-type girl group called Ruby and the Gemtones. Ruby had a teenaged daughter and son. Ruby toured on the oldies circuit, but gave it up because she was tired of constantly being on the road. For nostalgic reasons, she opened a 1950s-style diner in an old nightclub where she used to perform. The neighborhood is the racially tense Gray's Ferry neighborhood in Southwest Philadelphia, which is not fictional. Ruby was unaware of the racial tensions in the neighborhood when she decided to reside there. Shortly after Ruby moved in, another African-American family was driven out of their home after racially-motivated verbal harassment, damage to their property, and physical violence. This incident was true.

The writing assignments were handled in the following ways. The issues in the first open research memorandum involved the tort of intentional infliction of emotional distress. Ruby's neighbor, an elderly white woman, harassed Ruby in an attempt to get her to close the restaurant and move. Consequently, Ruby suffered emotional distress and resultant physical symptoms. Professor Vance expected students to address the social justice issue of what standard the court apply to determine outrageous conduct. Should that standard be the way that people act in a neighborhood where overt racist acts are common? Perhaps in that neighborhood racist acts are not considered outrageous. If not, then can the appropriate standard be the way people act in neighborhoods where overt racist acts are essentially nonexistent, and, hence, outrageous?

For the second open research memorandum, one class researched and wrote about a contracts problem involving interpretation of contract terms under the Uniform Commercial Code. This problem arose from Ruby's experience in ordering liquor for the restaurant. The other class researched and wrote about a criminal law problem involving reckless endangerment and terrorist threats, arising from Ruby's son's run-in with the white male his sister was dating and that male's uncle, who was a policeman.36

The appellate brief involved a civil procedure issue that con-

36 Professor Vance rejected a criminal law assignment that involved ethnic intimidation. See infra, section III.A. of this article for a discussion of that assignment.
cerned personal jurisdiction law as applied to the Internet. Ruby had to return to the oldies' circuit because her harassing neighbor caused the restaurant business to slow down. That neighbor took her crusade against Ruby on-line to a restaurant review chat room. Ruby sued the Internet company that operated the chat room.

C. Using social justice as the substantive law to be addressed in the students' work

Instead of including a social justice piece as a side issue in an assignment, a professor may elect to use social justice as the substantive law to be addressed in the students' work. For example, a number of states have enacted bias crime and hate crime statutes that enhance the penalties for crimes motivated by the race, gender, religion, or sexual orientation of the victim. Current prominent litigation can be a fruitful source for social justice issues. For example, the court challenges to the law admissions practices of several public law schools may be particularly relevant and interesting to current law students. Other examples of social justice issues that students may relate to include: (1) renewed attacks on the voting rights in communities of color; (2) environmental justice and the placement of undesirable projects in areas where the residents have little political power; and (3) racial profiling by law enforcement agencies. Several years ago, Professor Edwards based a legal writing assignment on an issue involving the application of The Religious Freedom Restoration Act of 1993 to prison inmates. The problem involved prison dress code regulations promulgated to hinder gang-related activities and whether these regulations violated the right of inmates to wear religious beads.

Professors can use the same process to generate social justice assignments as they do to generate other assignments. Whether the social justice issue is used as background for the assignment or the substantive law of the assignment, professors should take advantage of the opportunity to enrich their assignments by incorporating a social justice perspective. On the other hand, concerns may arise in doing so.

III. ISSUES THAT CAN ARISE IN THE COURSE OF TEACHING SOCIAL JUSTICE IN LEGAL WRITING

When law professors decide to incorporate a social justice issue into a legal writing assignment, they should be prepared for several issues that can arise, including their own discomfort in discussing the issue, student discomfort with the issue, and questions of academic freedom.

A. Teacher comfort with the topic can become a concern.

Social justice problems can touch on issues that are personal to the professor and that may make the professor uncomfortable. Professor Vance's experience with Ruby Howard is a good example. As an African-American woman, one of Professor Vance's goals in using an African-American client was to raise the racial sensitivity of students in the law school where perhaps 10% of the students were minority. Another goal was to use problems that reflected the real world and that would be interesting for the students and the professor alike. The incident in which an African-American woman was driven from her home in a predominantly white neighborhood actually occurred in a Philadelphia neighborhood in the first few weeks of the academic year. Professor Vance was disgusted by the fact that this type of racism still existed. Also around the time of the incident, President Clinton announced his initiative on race. And personally, Professor Vance was feeling disconnected from both the predominantly white law school, where minority faculty were literally a handful, and the surrounding neighborhood, which also was predominantly white.

38 See Maurianne Adams & Linda Marchesani, Multiple Issues Course Overview, in Teaching for Diversity and Social Justice 269-271 (Maurianne Adams et al. eds., Routledge 1997), for a discussion of the relationship between the instructor's comfort level with social justice issues to creating a safe classroom climate.

39 Farrakhan Talks of Grays Ferry Strife, Phila. Inquirer R1 (Aug. 14, 1997). The incidents of harassment lasted for weeks, drew national attention, and prompted Nation of Islam minister Louis Farrakhan to visit Philadelphia. Id. These incidents culminated in a march in that neighborhood against racism and ethnic intimidation that drew a number of marchers. Id.

40 At the same time, Professor Vance's teaching assistant, a white woman, was quite interested in doing a criminal law problem. To have the second assignment build upon the first, which used racial harassment as an issue, Professor Vance considered an assignment that escalated the verbal harassment from a tort to a crime. She also wanted students to understand that racism can be a crime. Professor Vance acknowledges her grateful appreciation to her former teaching assistant Gretchen Witte for raising the issues that caused Professor Vance to question and to resolve her concerns about teaching social justice through legal writing.
Professor Vance's teaching assistant drafted a problem and researched the case law. Some of the language in the problem was and had to be racially inflammatory. For example, words such as "Nazi white trash," "pansy white boy," and "jungle fever" were used in the fact pattern she drafted. Similarly, the case law cited inflammatory language. Courts used the word "nigger" frequently. That caused Professor Vance to wonder whether she really wanted the students to write "nigger" in their papers. She grappled with this issue around the time that the NAACP talked about taking "nigger" out of the dictionary. Did she want to read "nigger" as many times as it would have been necessary to do in those papers? Professor Vance considered whether she could be objective if someone said that calling someone else a "nigger" was not outrageous. Could she agree with opinions which said that it was not? Did she want to perpetuate or encourage that type of jurisprudence?

Moreover, as a year-to-year, non-tenure track professor, Professor Vance had no job security. She was convinced that she would be the one to suffer any repercussions for possibly "inflaming racial passions" with this fact pattern. So she stayed away from that fact pattern because she was uncomfortable with it. This troubled both Professor Vance and her teaching assistant, who questioned why the professor shied away from the fact pattern. The professor pondered the same question, shared her hesitation about the fact pattern with other legal writing faculty, and decided to speak about it at the upcoming legal writing conference. While Professor Vance did not feel that she had the resources to handle that problem adequately then, in the course of preparing for this presentation, she learned some ways that she could have, and should have, addressed the issues.

The format of the presentation of social issues can be controversial because students may feel that the professor is trying to instill her values into the students. However, such concerns should be addressed by using caution in presenting the subject.

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43 Infra section III.D. (on Trying and Applying Alternative Pedagogies).
44 As one writer put it, "[R]etreat from the view of law as an abstract science brings forth the risk of legal education denigrating into an organized attempt to instill instructor values into their students." Quigley, supra n. 10, at 42.
matter rather than avoiding it. Instead of indoctrinating the students, faculty can "invite" students to explore the issues that arise from social justice problems. This approach follows the Socratic concept that persuasion is more of an invitation than a command.

B. Student comfort with the topic may be a concern.

Students may be uncomfortable with issues that are too personal or with issues they do not want to confront. Students may disagree with court opinions that do not reflect their concerns, especially if they are "outsider" students. Although legal writing pedagogy requires students to use "relevant facts," the facts that are relevant to people of different cultures often differ from that the prototypical audience, largely white male judges or attorneys, considers relevant in the context of the dominant law and legal language. Outsider students may become frustrated that what the court deems outcome determinative does not reflect their experience or knowledge. This results in a troubling and unsettling gap between the personal "self" and the professional "self" of outsiders.

In the outrageous conduct problem discussed in Sections II and III, the students did not address the issue of race until Professor Vance instructed them to do so on the rewrite. It seemed that any discussion of race was taboo, perhaps because the professor was an African-American and the students were concerned about what would offend her. Only one student, a white woman, saw the issue that the fact pattern raised involving the neighborhood standard of outrageous conduct. When she raised it with other students, they thought that she was wrong. She told them that there must be some reason why the memorandum problem instructions included the newspaper article about the woman who was forced from her home.

Even the few African-American students in the class did not "get it." Professor Vance thought a great deal about why they did not, or if they did, why they did not raise it. Perhaps they felt unempowered to address these issues because discussions of race did not fit into the values and mores of the law school at that time. The students really were not being exposed to racial issues in other

45 Id. at 42.
46 Id. at 61, 62.
47 Stanchi, supra n. 12, at 10-12.
48 Id. at 34, 35.
49 At the time, there was no course at the law school purely devoted to race, like Critical Race Theory.
classes. Perhaps the dominant culture had silenced them instead of enabling them to accept the richness of their culture.\textsuperscript{50} Perhaps because of their higher income and higher educational level, these students could not relate to a lower income woman who was driven out of her house.

On the other hand, Professor Vance wanted to shield the African-American students from the ethnic intimidation problem. She believed that the African-American students would feel uncomfortable discussing this case with other students. Alternatively, she felt that they would have to spend more time than they wanted educating other students about the impact of racially derogatory language.

\textbf{C. Academic freedom of legal writing professors may be a concern.}

Some legal writing professors may question whether they have the academic freedom, both in the classroom and within the legal writing program, to assign social justice issues to their students, especially if their colleagues fail or refuse to do so. The possibility of complaints from the non-legal writing professors on the law school faculty about controversial social justice assignments may also concern legal writing professors. Professors who incorporate social justice issues in their legal writing assignments may also have to use alternative pedagogies in preparing students to handle these issues.

\textbf{1. Academic freedom in the classroom}

The discussion about the legal writing professor's comfort level in raising social justice issues in the classroom relates to academic freedom. Academic freedom, in this context, concerns the individual First Amendment freedom of a teacher to communicate in the classroom unobstructed by the administration.\textsuperscript{51} While the courts

\textsuperscript{50} See Freire, \textit{supra} n. 18, at 49 ("At a certain point in their existential experience, the oppressed feel an irresistible attraction towards the oppressor and his way of life.")

\textsuperscript{51} \textit{Sweezy v. N.H.}, 354 U.S. 234 (1957). The Court's oft-cited definition of academic freedom is:

The essentiality of freedom in the community of American universities is almost self-efficient. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No
have highlighted academic freedom as a special concern of the First Amendment, they have hesitated to define its scope, particularly in the context of in-class speech in university settings. However, some courts have given professors at law schools the highest degree of academic freedom.

In *Blum v. Schlegel*, the Second Circuit acknowledged the unique aspects of a law school environment and the need to protect speech that is a matter of public concern. In *Blum*, the court considered a tenure-track professor's promotion of the legalization of marijuana and criticism of the nation's drug control policy via in-class hypotheticals to be protected speech regarding an issue of public concern, and regarded such in-class speech as not interfering with the state school's mission as a law school. However, in a footnote, the court cautioned that "politically charged hypotheticals are often confusing." Nevertheless, the court was firm in its position that controversial speech in the classroom was central to the mission of a state university's law school.

A district court's decision in a case involving a graduate business school writing professor could have an impact on the legal writing professor who raises social issues in the classroom. In *Scal-
The court held that a non-tenured professor's in-class speech advocating diversity and using alternative pedagogies was not protected under the First Amendment. The professor was a strong advocate of diversity. He sought to broaden classroom materials and the business community to make them more accessible to women and minorities. The court held that the professor's in-class speech obstructed the mission of the school to effectively deliver a required first-year writing course to its students in a uniform and essentially content-neutral fashion.\(^{58}\)

The *Scallet* opinion is interesting for a number of reasons. First, significant similarities exist in the facts between Professor Scallet's position and those of most legal writing professors. Scallet was a full-time non-tenured instructor at the University of Virginia's Graduate School of Business. He taught one section of a required first-year course in writing and speech called Analysis and Communications (A & C). Although their status is slowly changing, most legal writing professors occupy non-tenure track positions that do not have the protections of job security.\(^{59}\) Second, like many legal writing directors, Scallet also had administrative responsibilities as course head, which included administering the course, managing other A & C faculty, all of whom were adjuncts, and developing the curriculum for the course.\(^{60}\) Third, many law schools have writing programs which require all of the legal writing professors to assign the same problems. A court adopting the rationale of the *Scallet* court might determine that law schools also have a mission to deliver a uniform writing program to their first-year students that would be undermined by professors who add material to their classes.

2. Academic freedom within the legal writing program

Some of the issues raised in *Scallet* are relevant to the amount of academic freedom allowed in a legal writing program, depending on the program model at the school. There is a question about whether one legal writing professor can really be divergent in her class in legal writing programs that are essentially uniform, using

\(^{57}\) 911 F. Supp. 999 (W.D. Va. 1996), aff'd, 106 F.3d 391 (4th Cir. 1997). The district court also held that Scallet's pro-diversity comments made in faculty meetings and his placement of pro-diversity materials on the wall outside of his office were protected forms of expression under the First Amendment *id.* at 1017-1019.

\(^{58}\) *Id.* at 1016.


\(^{60}\) 911 F. Supp. at 1007-1008.
a common syllabus, common textbook, and common due dates for memos and briefs. Can she give her class more assignments than others, such as requiring students to read articles on social issues to inform their understanding of related court opinions and having students keep a journal reflecting their feelings on these issues? Does she run the risk that the students will complain to the legal writing director that their class differs significantly from the other professors' classes? Will the students complain to her? Can she convince her colleagues to support what she is doing and to address social justice issues in their classes?

There is a risk that the legal writing program director or the dean might rein in the professor who addresses social issues in the classroom, especially if the legal writing professor must have her memorandum and brief assignments “approved” by the director or other doctrinal faculty. That professor might be told that the law school policy requires delivery of the same level of instruction to all students in the legal writing course.

3. Academic freedom within the law school

The Scallet opinion also raises the issue of whether other professors will complain that the legal writing professor who uses alternative pedagogies to address social issues in the classroom is giving students materials that are similar to what the professor gives the students in such classes as critical race theory or feminist jurisprudence. No one really owns these issues, but one wonders whether the academic or curriculum committee could legitimately decide, as in Scallet, that discussion of such issues belongs in upper-level jurisprudence courses, not in the first-year legal writing program.

Further, law schools are restricting the number of new hires or making hires with no promise of tenure or job permanency. This policy creates a tenuous position for the legal writing professor who raises social issues in the classroom in a school where the majority of the faculty do not undertake and are not supportive of such an approach. This lack of job security is a real problem for those on year-to-year contracts. Even legal writing professors on the tenure

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61 See 911 F. Supp. at 1015-1017.
62 See id.
63 See Haddon, supra n. 14, at 713. “It need not be paranoid to imagine that in the future contract review can be a time for faculty and administrators to consider whether the candidate has demonstrated the appropriate civility and collegiality warranting renewal—a time, in other words, to isolate and discipline some faculty members.” Id.
track may not have any more security to rock the social justice boat and still obtain tenure. Another question is whether raising social justice issues has a negative effect on the professor's evaluations.\textsuperscript{64} 

D. Questions on trying and applying alternative pedagogies may arise.

In order to incorporate social justice issues into legal writing assignments, professors may have to use alternative pedagogies. As mentioned earlier, traditional legal training focuses more on attorney expertise and professional judgment. In order to address a social justice issue effectively, students will probably have to take a more client-centered approach to lawyering – one that their professors will have to teach them.

Professors may want to change teaching methodology as well. One technique is called "cooperative controversy,"\textsuperscript{65} which is described in a law review article as "a cooperative learning technique which involves having four members in a group who are given study materials on a controversial issue. Two members argue one side while the other two oppose them. Then the teams switch roles and argue the opposite side. Finally the group must come to a consensus."\textsuperscript{66}

The students are given ground rules for exhibiting and maintaining mutual respect for the other participants. This approach not only has been successfully used to teach controversial material, but it appears to be a better approach for teaching students of color.\textsuperscript{67} "Research on constructive controversy indicates that [this method] is more effective than debate or individual study . . . [for retaining] information."\textsuperscript{68}

In incorporating social justice in a legal writing class, professors need to be aware of the silencing of outsider voices mentioned earlier. Legal writing professors may contribute to this silencing by emphasizing the prototypical audience when teaching legal writ-

\textsuperscript{64} Reginald Leamon Robinson, \textit{Teaching from the Margins: Race as a Pedagogical Subtext, A Critical Essay,} 19 W. New Eng. L. Rev. 151, 169 (1997) (providing an excellent discussion on the negative evaluations that can result when a professor raises social justice issues in the classroom).

\textsuperscript{65} Clemons, \textit{supra} n. 20, at 637.

\textsuperscript{66} Id.

\textsuperscript{67} Id.

\textsuperscript{68} Id.
ing. In the process of trying to address the issue in "neutral" terms, students (especially outsider students) may hesitate to incorporate their own perspectives in their writing. It is incumbent on the legal writing professor to allow space for these perspectives. The first step is to be aware of how "thinking like a lawyer" may alter the landscape. In one law review article, a clinical professor tells a cautionary tale of how, in his presenting a client’s case in language that satisfied the existing legal standard and could be readily accepted by his "audience," he omitted facts that his client deemed relevant. Thus, even though the client "prevailed," he felt silenced and deprived of having his day in court.

E. The length of the professor’s teaching experience may influence the decision to incorporate social justice issues into assignments.

When beginning a teaching career, a legal writing professor will focus on developing competencies in teaching the basics of legal writing. However, professors with a number of years of legal writing teaching experience may find that teaching social justice as part of a legal writing class adds texture to the problems they assign.

Many law professors may not have had experience with social justice issues as practitioners. These professors will have to bring themselves up to speed, but that is true of any issue with which they are unfamiliar. The same background information, such as, but not limited to, law review articles, newspaper or magazine articles, and articles from non-legal sources, that some professors may assign to their students will provide sufficient information. Also, professors may be able to get information from the attorneys who handled the case if the assignment is based on an actual case.

Depending on the social justice issue one selects, it is possible that students may have experience with the same issue. Professors should plan in advance how to handle the situation if the experi-

69 Stanchi, supra n. 12, at 28.
70 Clark D. Cunningham, The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse, 77 Cornell L. Rev. 1298, 1299, 1328-1330, 1363, 1365-68, 1375-76, 1385-87 (1992) (discussing a client’s dissatisfaction with the legal system, even after acquittal, when his attorneys failed to raise the question of the role race played in a Terry-stop which arguably led to a pretextual arrest).
71 Id. at 1298-1329.
72 Id. at 1329-1330.
ence was painful or traumatic for the student.

F. Questions on training and preparing students to address social issues may arise.

Traditional legal analysis and legal advocacy encourages law students and attorneys to extract legal issues from the factual backgrounds in which they are presented and to ignore the broader social contexts in which they arose. This is a result of students' immersion in the law, which is the goal of the first year of law school generally, and the "social view"73 method of teaching legal writing specifically. Therefore, professors must take particular care to prepare students to address social issues.

After deciding to assign a social justice issue, professors may want to assess how controversial their students will find the issue. Professors may do so by assigning readings on the topic and having students write reflective opinion pieces about the readings. These opinion pieces will elicit potential difficulties that some students may have with the social justice issue. Even professors who do not have students write reflection memoranda have the option to assign readings that provide background information of the issue and then discuss the readings in class. Moreover, using the cooperative controversy method before distributing the assignment may allow professors to diffuse some of the tension.

As students research and analyze the social justice issue, it may be useful to have them keep a journal of their feelings, thoughts, and concerns about the issue. While these reflections may not appear in the final memorandum or brief, a journal would afford students (especially outsider students) the opportunity to confront the gap between their professional and personal voices. Finally, keeping in mind the tenuous position of too many legal writing teachers (short term contracts, low status, etc.), using reflection memoranda will allow students to express their hostility about the assignment before they complete the course evaluations.

CONCLUSION

Teaching social justice through legal writing can be a reward-

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73 Stanchi, supra n. 12, at 8-9 & nn. 7-14. The social view focuses on assimilating students into the study of the law. The social view has "as its goal the socialization or acculturation of the novice legal communicator into the legal discourse community through the learning of legal vocabulary, legal customs, and legal culture." Id. at 9 (internal quotations and citations omitted).
ing experience for both law students and legal writing professors. With some advance planning, social justice issues can be used successfully as either the main issue or a subsidiary issue in a legal writing assignment. Especially for experienced professors, incorporating social justice issues into assignments can add texture and improve opportunities to challenge students to provide more nuanced analyses. For students who enter law school planning to practice public interest law, the early exposure to social justice issues at or near the beginning of their law school careers will help them to develop the lawyering skills necessary to become creative lawyers capable of using different legal perspectives to achieve their goals. However, even those students who are not initially interested in social justice issues will benefit from the broader perspective gained from some exposure to diverse client problems and situations. Professors who incorporate social justice issues into their legal writing assignments may also benefit from the opportunity to use alternative pedagogies.

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Better Research Instruction Through "Point of Need" Library Exercises*

James B. Levy**

Introduction

Teaching legal research is difficult. It is a very labor-intensive type of instruction that requires the teacher to give each student a lot of personal attention.¹ To properly learn this skill, students need individual guidance from their teacher as soon as they begin their research assignments. Because of high student-teacher ratios at most law schools, however, we are simply unable to provide them with that kind of instruction. Instead, we teach the subject by delivering undifferentiated advice to a large classroom of students and then assign library exercises that, for the most part, leaves it up to students to figure out on their own.

This is a terribly inefficient way to learn for both students and teacher. As teachers, we may spend hours preparing class lectures, making visual aids, and taking students on library tours only to be later inundated with questions about the most basic information already covered in class. The students, on the other hand, do not get much out of passively listening to a lecture on legal research when they may not practice these skills until many days, or even weeks, later. Consequently, the hours spent preparing the most

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¹ Jan M. Levine, Leveling the Hill of Sisyphus: Becoming a Professor of Legal Writing, 26 Fla. St. U. L. Rev. 1067, 1068 (1999) (noting that legal writing courses require a low student-faculty ratio to deliver the kind of intensive instruction required by the subject matter); see also Margit Livingston, Legal Writing and Research at DePaul University: A Program in Transition, 44 Alb. L. Rev. 344, 361 (1980) (suggesting that this kind of teaching requires close supervision to provide meaningful feedback to students since low student-teacher ratios promote the best learning).
scintillating lecture ever delivered on legal research will be of little benefit to students if they delay the start of their assignments which they almost always do. And we can be sure that no matter how much effort we put into class preparation, when students finally end their procrastination and begin working on their assignments, there will be plenty of knocks on our doors asking: “So, what was it you said again about how to start a research project?”

After observing this phenomenon for several semesters, I recognized that one of the fundamental problems with the way we teach legal research is the temporal gap that occurs between classroom instruction from the teacher and the actual practice of those skills by the students. In thinking about ways to address this problem, I realized that any solution would involve finding a way to deliver instruction to every student in the class as soon as each one begins working on their respective research assignments. It then occurred to me that the prerecorded, self-guided audio tours used by many museums and tourist attractions were designed to solve the very same problem I was facing: providing a large group of people with an individualized, self-paced learning experience. Accordingly, this article describes a “point of need” research exercise I created that draws upon the techniques used by those museum tours to provide law students with more personalized research instruction at the moment they need it most. This “point of need” research exercise consists of a library map, flow chart and research log that provides students with written instructions for finding and using all the major library tools they will need to complete their open memo writing assignment.

Unlike more elaborate Computer Assisted Legal Research

2 James B. Levy, Escape to Alcatraz: What Self-guided Museum Tours Can Show Us about Teaching Legal Research, 44 N.Y.L. Sch. L. Rev. 387 (2001). In another article, I discuss the idea of creating both interactive computer and audio library tours as a way to better teach law students legal research. The instant article instead focuses on adapting those techniques to create better written research exercises. Other professors have considered similar ideas. W. William Hodes, Legal Research: A Self-Teaching Guide to the Law Library xvii (2d ed., Natl. Inst. for Tr. Advoc. 1988) (containing six written, self-guided “tours” of the law library that were designed to emulate prerecorded audio museums tours); Ruth Ann McKinney, Legal Research: A Practical Guide and Self-instructional Workbook (2d ed., West 2000) (containing written instructions designed to “walk” students through using the research tools needed to solve the hypothetical problems contained in the book).

3 Ellen M. Callinan, Simulated Research: A Teaching Model for Academic and Private Law Librarians, 1 Persps.: Teaching Leg. Research & Writing 6, 6 (1992) (Professor Callinan coined the term “point of need” to refer to the notion that instruction and assistance that is delivered at the moment students attempt to learn research will be most effective because that is when students are most motivated to learn.).

4 The term “open memo” refers to the objective office memorandum assignment, usually distributed during the first semester, where students receive a hypothetical fact pattern from their instructor and then must find the relevant authorities on their own.
Better Research Instruction

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(CALR") approaches that require "smart" classrooms or computer labs large enough to accommodate great numbers of students at once, this is a low-cost, easy to implement solution that every teacher can start to use right away. Student response to this exercise has been excellent. Indeed, since I began using the "point of need" exercise, students have become more confident and self-reliant in their research abilities earlier in the semester than when I used more traditional research exercises.

To help understand why this exercise is so effective, this article begins with a brief discussion of basic learning principles relating to research instruction in law school. Then, this article discusses traditional research exercises as well as their advantages and disadvantages. In Sections II and III, I describe in detail the "point of need" exercise I created for my class, why it represents an improvement over traditional research exercises, and how to create your own such exercise.

I. BACKGROUND

Despite agreement that good research skills are vital to the practice of law, many commentators report much dissatisfaction with the research abilities of new law school graduates. In a well publicized report, Joan Howland and Nancy Lewis found that "the

5 Students have consistently told me in their course evaluations how helpful they find the "point of need" exercise. In fact, some students have suggested that I cut back on the amount of class time devoted to research skills since the "point of need" exercise already gives them plenty of guidance on using the law library.

6 ABA Sec. Leg. Educ. & Admis. to the Bar, Legal Education and Professional Development - An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap 138 (ABA 1992) (Known as the MacCrate Report, this study was commissioned by the ABA to examine the relationship between what law schools teach and the needs of the bar. The study concluded that learning good research skills is fundamental to the practice of law.); see Toni M. Fine, Legal Writers Writing: Scholarship and the Marginalization of Legal Writing Instructors, 5 Leg. Writing 225, 227 (1999) ("legal research and writing are among the most important skills for a young attorney to possess"); Lucia Ann Silecchia, Legal Skills Training in the First Year of Law School: Research? Writing? Analysis? Or More?, 100 Dick. L. Rev. 245, 269 (1996) ("[R]esearch and writing . . . have been repeatedly identified as the two most basic skills needed by competent attorneys. They are at the heart of what attorneys do in practice."); Thomas A. Woxland, Why Can't Johnny Research? Or It All Started with Christopher Columbus Langdell, 81 L. Lib. J. 451, 451 (1989) (noting that attorney surveys "show that they rate legal research as one of their most essential functions").

7 E.g. ABA Sec. Leg. Educ. & Admis. to the Bar, Sourcebook on Legal Writing Programs 20 (ABA 1997) [hereinafter Legal Writing Sourcebook]; Davalene Cooper, Adopting the "Stepchild" into the Legal Academic Community: Creating a Program for Learning Legal Research Skills, in Expert Views on Improving the Quality of Legal Research Education in the United States 11, 12 (West 1992) ("Every commentator on the issue agrees that recent law school graduates are not prepared to do the legal research required by the practice of law.").
research skills of law students and recent law school graduates are painfully inadequate and are perhaps becoming increasingly so." 8 Commentators have suggested several reasons for this having mostly to do with the reluctance of law school administrators to treat the subject more seriously.9 A discussion of those issues is beyond the scope of this article. From a pedagogical standpoint, however, poor research skills may be partially the result of inadequate teaching methods. Just like tennis players need feedback from their coach at the moment they attempt a backhand shot, so too do law students need research instruction from their teacher immediately upon engaging in their assignments.10 Unfortunately, we teach far too many students to provide them with that kind of individual attention and instead leave it up to them, in large part, to figure it out for themselves.

Not surprisingly, students find this frustrating. They complain that, without more personalized guidance from their teacher, they feel overwhelmed and abandoned when they enter the library to begin their open memo research assignments.11 The stress that results from this often leads to loss of confidence in their ability to successfully complete the assignments which further affects their

8 Joan S. Howland & Nancy J. Lewis, The Effectiveness of Law School Legal Research Training Programs, 40 J. Leg. Educ. 381, 383-389 (1990) (study compiling the results of surveys completed by 458 mid- to large-sized law firms librarians throughout the United States). The Howland and Lewis survey asked these librarians to assess the skills of summer and first-year associates in four areas: (1) their level of expertise in basic research tools and strategies; (2) their competency in computer research (e.g., LEXIS and Westlaw); (3) the attitude of summer and first-year associates towards the importance of legal research; and (4) their perception of the research training they received in law school. The study concluded that 80% of the summer associates and 65% of the first-year associates lacked knowledge about basic resources and were unable to develop efficient research strategies. Id.; see Robert C. Berring & Kathleen VandenHeuvel, Legal Research: Should Students Learn It or Wing It?, 81 L. Lib. J. 431, 438 (1989) (noting that “current legal research training is abysmal”); Silecchia, supra n. 6, at 272 (“[R]esearch skills . . . have become the target of very pointed criticism.”).

9 See Legal Writing Sourcebook, supra n. 7, at 20 (discussing how the “orphan” status of legal writing programs at many law schools has led to insufficient support and attention to teaching research skills); I. Trotter Hardy, Why Legal Research Training Is So Bad: A Response to Howland and Lewis, 41 J. Leg. Educ. 221, 223 (1991) (noting that teaching research is a very resource-intensive undertaking that requires a high faculty-student ratio, and substantial clerical and administrative support and funding, which law school administrators are not willing to fully support); Richard K. Neumann, Jr., Donald Schon, the Reflective Practitioner, and the Comparative Failures of Legal Education, 6 Clin. L. Rev. 401, 426 (2000) (discussing the fact that the skills portion of the law school curriculum generally not valued by administrators: “Among professions, legal education stands nearly alone in its contempt for the idea of a reflective practicum.”).

10 Infra n. 16.

learning.\textsuperscript{12} Compounding this stress is the paradox of all first-year research assignments which is that they are difficult to complete in an efficient manner until students develop a professional judgment about the subject matter that comes only with experience.\textsuperscript{13} All of these factors contribute to a generally poor atmosphere for learning.

Much of the problem could be eliminated by hiring additional teachers to provide students with more personal attention. Unfortunately, that is not likely to happen anytime soon.\textsuperscript{14} Rather than lament these circumstances, this article instead suggests an easy-to-implement way to address these problems by designing better research exercises. To understand why the “point of need” exercise works, it is important to understand basic principles of learning theory related to research instruction in law school.

\textbf{A. Pedagogical Theory Related to Research Skills Training}

All commentators agree that legal research is a skill.\textsuperscript{15} The best way to teach it, like any skill, is to demonstrate it for students, give them a chance to try it for themselves, and then give them immediate feedback at the moment they are engaged in the activity.\textsuperscript{16} Educational psychologists note that students indeed retain

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\textsuperscript{12} \textit{Infra} n. 25.
\textsuperscript{13} See Neumann, \textit{supra} n. 9, at 408 (Students do not know what they are doing and their teacher cannot tell them because what the teacher knows how to say to students could not at that point in their experience be understood. Students need to have the experience of trying to do the thing before they would be ready to understand the kind of explanation that the teachers could give them about what they were doing.).
\textsuperscript{14} Hardy, \textit{supra} n. 9, at 223.
\textsuperscript{15} E.g. Wesley Gilmer, Jr., \textit{Teaching Legal Research and Legal Writing in American Law Schools}, 25 J. Leg. Educ. 571, 571 (1973) (“The skills of legal research and legal writing are akin to the skills of playing . . . the piano and guitar, and the skills of driving an automobile.”); Hardy, \textit{supra} n. 9, at 223 (“legal research is a skill”); Michael J. Lynch, \textit{An Impossible Task but Everybody Has to Do It – Teaching Legal Research in Law Schools}, 89 L. Lib. J. 415, 429 (1997) (noting research is a skill which, “[l]ike most skills . . . must be used or it will decay”).
\textsuperscript{16} David Perkins, \textit{Smart Schools: From Training Memories to Educating Minds} 45 (The Free Press 1992) (noting that good teaching is like good coaching: provide students with a clear explanation of the performance expected, give them an opportunity to try it for themselves, and then give them prompt feedback on their mistakes); Maureen F. Fitzgerald, \textit{What's Wrong with Legal Research and Writing? Problems and Solutions}, 88 L. Lib. J. 247, 259 (1996) (“It is unlikely that a student would be able to drive a car or fly an airplane on the basis of classroom instruction alone. In the same way, it is extremely difficult to learn about research and writing from words alone. The lecture method is not effective for teaching skills.”); see Boyd K. Dyer, \textit{Whatever Happened to Legal Writing at Utah?}, 26 J. Leg. Educ. 338, 338 (1974) (“To 'teach' this type of skill is very different from teaching information. It cannot be taught by explanation. A tennis coach could spend hours explaining the game to his students in detail, and it wouldn't accomplish much. Practice is essential.”); Ernest R.
more information that is “actively discovered” rather than passively observed.\textsuperscript{17} It follows, therefore, that legal research cannot effectively be taught solely through assigned readings and class lectures any more than tennis can be taught by having students read a book about it.\textsuperscript{18}

However, it is just not enough to engage students in the material; they also need feedback from the teacher at the moment they try it for themselves.\textsuperscript{19} This is sometimes referred to as the “teachable moment” because it is the time students are most receptive to learning.\textsuperscript{20} In the context of research instruction, this would mean that teachers would walk through the library with each student as they work on their assignments to answer questions and correct their mistakes as they come up.

In addition, students also have to be motivated to learn skills like research.\textsuperscript{21} That motivation can arise either because the material is inherently interesting to students or because it relates to certain goals they want to achieve. Educational theorists recognize that adult students, in particular, learn skills better when they see

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Hilgard & Gordon H. Bower, \textit{Theories of Learning} 481, 562-563 (3d ed., Appleton Century Crofts 1966) (effective learning depends upon the student actively engaging in the activity, frequent repetition of the skill followed by reinforcement from the teacher); Thomas M. McDonnell, \textit{Joining Hands and Smarts: Teaching Manual Legal Research Through Collaborative Learning Groups}, 40 J. Leg. Educ. 363, 364 (1990) (“Teaching legal research through the lecture method suffers from the same disadvantages as would teaching tennis by lecturing. To learn how to conduct legal research or to learn how to play tennis, one must practice the skill.”).
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\textsuperscript{17} Barry J. Wadsworth, \textit{Piaget for the Classroom Teacher} 104 (Longman, Inc. 1978) (students who engage in the activity being taught have a better understanding than those who are taught by means of a verbal description of the same information); see Joseph D. Harbaugh, \textit{Simulation and Gaming: A Teaching/Learning Strategy for Clinical Legal Education}, in \textit{Clinical Legal Education: Report of the Association Law Schools – American Bar Association Committee on Guidelines for Clinical Legal Education} 191, 192-193 (ABA 1980) (noting that leading educational theorist John Dewey and developmental psychologist Jean Piaget both observed that the active discovery of information by students is at the heart of all meaningful learning).

\textsuperscript{18} \textit{Supra} n. 16.

\textsuperscript{19} McDonnell, \textit{supra} n. 16, at 364 ("Research . . . demonstrates that students learn best if they receive feedback and reinforcement immediately after they study and practice the task."); see Terri LeClercq, \textit{Principle 4: Good Practice Gives Prompt Feedback}, 49 J. Leg. Educ. 418, 421 (1999) (when the only feedback comes at the end of the semester, students feel frustrated and confused).

\textsuperscript{20} Barbara Bintliff, \textit{Teachable Moments . . . “Shepardizing Cases,”} 4 Persps: Teaching Leg. Research & Writing 19 (1995) (the term refers to "a brief window of opportunity when – because they have a specific need to know right now – the students or lawyers asking the questions may actually remember the answers you provide").

\textsuperscript{21} Perkins, \textit{supra} n. 16, at 45 (meaningful learning cannot take place unless the student is motivated to master the knowledge being taught); Robert S. Redmount, \textit{A Conceptual View of the Legal Process}, 24 J. Leg. Educ. 129, 140, 165 (1972) (noting that learning cannot take place without motivation or relevance. Motivation “is the vehicle that provides drive, inquisitiveness and persistence.” Without motivation, learning cannot take place.)
how the information relates to their professional development.\(^{22}\) One commentator refers to this as the “so-what” factor, meaning that adult students have difficulty retaining information that is too abstract or not obviously connected to the skills they will need as lawyers.\(^{23}\) Thus, a realistic library exercise that shows students how the books can be used to solve the kinds of legal problems they will encounter in practice is more effective than an exercise that attempts to impart the same information in a more abstract context. As one commentator noted: “That which is relevant is retained. That which is retained can be applied.”\(^ {24}\)

However, no matter how interesting or relevant you make your research exercises, students will nevertheless have difficulty learning if the experience is too stressful for them. It is well recognized that stress leads to loss of confidence which, in turn, impedes learning.\(^ {25}\) Several studies have shown that law school—especially the first year—is an extremely stressful experience for most students.\(^ {26}\) Some of this stress is caused by the teaching methods used, which often leaves it up to students to figure out the material on their own.\(^ {27}\) In particular, students find learning how to use the law li-

\(^{22}\) Fredric H. Margolis & Chip R. Bell, Managing the Learning Process: Effective Techniques for the Adult Classroom 17 (Training Books 1984) (adult learners are characterized by a motivation to learn as they develop new needs and interests); see Fitzgerald, supra n. 16, at 263 (adult students need “to relate tasks directly to preparation for future social and professional roles”).

\(^{23}\) Jane Thompson, Teaching Research to Faculty: Accommodating Cultural and Learning-Style Differences, 88 L. Lib. J. 280, 284 (1996) (referring to Margolis & Bell, supra n. 22, at 17, Ms. Thompson calls this the “so-what” factor: “[A]dults need to feel that the training is relevant to their work, and they will place any information that they learn into the framework of their experiences to date.”).

\(^{24}\) Callinan, supra n. 3, at 6 (“Relevance should be the guiding principle in research instruction because it fosters effectiveness.”).

\(^{25}\) Redmount, supra n. 21, at 150 (“[A]n excess of anxiety, whether from personal or pedagogical sources, shatters confidence, incites fear and may inhibit or prevent performance.”).

\(^{26}\) Woxland, supra n. 6, at 457 (“Few educational experiences can compare with the intensity, excitement, and sometimes sheer panic of the first year of law school.”); see Barbara A. Glesner, Fear and Loathing in the Law Schools, 23 Conn. L. Rev. 627, 631 (1991) (“The few studies investigating the psychological aspects of law school confirm the stress of legal education. [Two researchers] concluded from their study of law students that ‘law students have higher rates of psychiatric distress than either a contrasting normative population or a medical student population.’” (quoting Stephen B. Shanfield & Andrew H. Benjamin, Psychiatric Distress in Law Students, 35 J. Leg. Educ. 65, 69 (1985))); see also Cathaleen A. Roach, A River Runs through It: Tapping into the Informational Stream to Move Students from Isolation to Autonomy, 36 Ariz. L. Rev. 667, 670 (1994) (data showing that “[t]here is widespread, well-documented evidence of acute psychological distress among many ... first-year students”).

\(^{27}\) See Paul D. Carrington & James J. Conley, The Alienation of Law Students, 75 Mich. L. Rev. 887, 899 (1977) (study suggesting that alienation in law school, especially in the first semester, could be reduced through smaller class size that affords more contact with
library stressful because they sometimes feel that the teacher has failed to give them enough guidance.

B. Traditional Research Exercises

Because of the importance of active learning, it has always been incumbent on legal writing teachers to use library exercises that give students hands-on experience using the research tools. Traditionally, we have relied on two types of exercises: the “bibliographic” approach and the “process-oriented” approach. The bibliographic exercise may be more commonly known to many as the “treasure hunt” exercise. These are designed to familiarize students with the law library by asking them to locate a particular resource and then answer a series of questions about it. Thus, a “treasure hunt” exercise on statutes might ask students to use the word index for their jurisdiction to locate, for example, a particular law on criminal assault. Once they find it, the exercise might ask them to answer questions about the text of the statute, the legislative history that follows it, and the case annotations that follow that. The advantage of such an exercise is that it shows students details about the books they might not otherwise discover on their own.

On the other hand, such exercises are generally criticized because they only teach students how to move around “within a discrete law book or within related sets of law books” but do not show students how to use them to solve the kind of legal problems they

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28 Wren & Wren, supra n. 11, at 57.
29 Helene S. Shapo, The Frontiers of Legal Writing: Challenges for Teaching Research, 78 L. Lib. J. 719, 725 (1986) (this “format includes lectures to large groups of students, usually once a week over the semester or a shorter period of time. Following the lectures, students do short-answer exercises that require them to use the library resources discussed in the lecture. These expeditions were labeled, not so affectionately, ‘treasure hunts.’”).
30 Excellent examples of bibliographic-style exercises can be found in a book by Lynn Foster & Nancy P. Foster Legal Research Exercises (4th ed., West 1995). It is a soft cover supplement that accompanies copies of How to Find the Law (9th ed., West 1989) by Morris L. Cohen, Robert C. Berring and Kent C. Olson, as well as copies of Finding the Law (11th ed., West 1999) by Robert C. Berring and Elizabeth A. Edinger [hereinafter Berring, Finding the Law]. The Foster text includes great exercises that cover the use of several major library resources including state and regional case reporters, federal case reporters, federal legislative materials, administrative law materials, Shepards, and other materials.
31 Lynch, supra n. 15, at 435 (The advantage of bibliographic exercises is that they “can provide experience with using all the important components of each important research source. This simply cannot be done in a typical brief-writing or memo-writing exercise.”).
will encounter in practice. The "so-what" factor also suggests that any knowledge gained from these exercises will not be retained by students because it is too abstract. Studies involving undergraduate students confirm this conclusion.

Because of these shortcomings, many legal research teachers prefer to use a "process-oriented" approach. This approach seeks to teach students how to use the law library in the context of solving hypothetical legal problems. This is usually done in connection with an "open universe" writing assignment during the first semester of law school. Instructors often ask students to record the results of their research in a log or diary that is turned in with the memorandum they produce. The research portion of the assignment is usually accompanied by readings and class lectures explaining how to use the relevant tools.

A "process oriented" approach is generally deemed superior to a bibliographic approach because "students learn research skills better when they are taught in the context of the writing and analytic skills that inevitably accompany legal research in the practice of law." This approach also avoids the "so-what" factor more common to bibliographic exercises because students see how the skills being taught relate to their professional development as attorneys. Consequently, learning theory suggests that students

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32 Wren & Wren, supra n. 11, at 10.
33 Shapo, supra n. 29, at 726 (the knowledge acquired through the use of bibliographic exercises may not be meaningful to students because it is unrelated to legal problem solving); supra n. 23, discussing the "so-what" factor.
34 E.g., Constance A. Mellon, Process Not Product in Course-Integrated Instruction: A Generic Model of Library Research, 45 College & Research Lib. 471, 477 (Nov. 1984) (In this study, the University of Tennessee integrated library instruction into the undergraduate curriculum in the context of solving research assignments generated by other course work rather than rely on traditional "scavenger hunts." Instructor comments about this new approach "graphically illustrate the growing confidence and pride expressed by students as they begin to search for, retrieve, and use information in a more proficient, process-oriented way. Demonstrating, discussing, and guiding students through the research process was time-consuming, but rewarding. One composition teacher declared that the effort paid off handsomely. Students were responsive and exhibited growing confidence in their own abilities."); see Lori L. Arp & Elizabeth A. Wilson, Library Instructor's View—Theoretical, 2 Res. Strategies 16, 20-21 (Winter 1984) (undergraduate library instruction should be integrated into classroom research projects).
35 Lynch, supra n. 15, at 432 (The process-oriented approach appears to be more popular "since at most schools research instruction, whether taught by librarians or legal writing instructors, is integrated into a legal writing course, and the students use the information they acquire regarding bibliographic tools in the preparation of briefs and memos."); see id. at 434 ("There are probably only a few law schools that use [the bibliographic] method in isolation, without a complementary research and writing program.").
36 Legal Writing Sourcebook, supra n. 7, at 20.
37 Professor Shapo observes that the major weakness of [the treasure hunt] exercise is that even the more sophisticated
should better retain information learned in a process-oriented context.

Nevertheless, the process-oriented approach is not without its own shortcomings. For one thing, it may not expose students to many important research tools. Instead, students learn only about the books they need to address the specific issues raised by their writing assignments. Many first-semester writing problems involve relatively straightforward legal issues that often concern the law of only one jurisdiction. Therefore, students may not learn how to use many of the resources routinely relied upon by practitioners such as the Decennials, the General Digests, *American Law Reports*, *American Jurisprudence*, *Corpus Juris Secundum*, the Index to Legal Periodicals, Restatements and the like. 38

In addition, a "process-oriented" approach might not expose students to many of the bibliographic details of the books they find. Although such an exercise requires students to find the books they need to complete their writing assignment, they might overlook important features like "stop cites." 39 Finally, the process-oriented approach is sometimes criticized because it fails to give students a strategy for solving legal problems. 40 It does not teach them how to

Shapo, supra n. 29, at 726.

38 The "point of need" exercise discussed here is a comprehensive approach to research instruction that tries to avoid these pitfalls by giving students a writing assignment that requires them to use, or at least check, most of the major library resources. *Infra* at II.; Lynch, supra n. 15, at 432-433 (most memo and brief writing exercises do not ensure that students will use important research tools).

39 For an excellent explanation of "stop cites," refer to C. Edward Good, *Legal Research... Without Losing Your Mind* 76-79, 150-153 (Word Store 1993). See Lynch, supra n. 15, at 432-433 (process-oriented research exercises do not require students to become familiar with important bibliographic features like the "defendant-plaintiff name table," "the descriptive word index," or the "topic outline").

40 As the title of their article implies, *Legal Research: Should Students Learn It or Wing It?*, authors Berring and Vanden Heuvel argue that a process-oriented approach leaves it up to the students to figure out on their own how to use the law library. Unless a process-oriented approach is carefully planned and supervised, legal writing instructors might be abdicating their teaching responsibility by leaving it up to students to develop for themselves an efficient and comprehensive research strategy.

A process-oriented research program gives students tunnel vision. They learn only the
make use of cases, statutes and secondary sources as part of an overall research strategy.

An overarching drawback to both the bibliographic and process-oriented approaches, however, is that they fail to address the students' need for instruction from their teacher as they undertake their research projects. Any guidance they get comes in the form of written comments from the teacher when the exercises are returned to them several days, or even weeks, later. By then, the value of any feedback may be greatly diminished because of the time that has passed.

II. THE "POINT OF NEED" RESEARCH EXERCISE

The "point of need" research exercise is an attempt to remedy this problem by giving students a process-oriented-type exercise that includes written instructions for using the law library that students can carry with them as they engage in their research. The exercise consists of a map, flow chart, and research log given to students in connection with their open memo writing assignment. The map shows students where to find the books they will need to research their topic, and the flow chart and research log explain how to use them. The written instructions included in the log are intended to eliminate the "temporal gap" that normally exists between classroom instruction from the teacher and the practice of those skills by the students. The log portion of the exercise includes short bibliographic questions for each resource and therefore incorporates the best aspects of the bibliographic and process-

narrowest, and often most ineffective, paths to solving their research questions because they have no idea what the larger picture of legal research looks like. Students will not, as [proponents of a process-oriented approach] claim, extract all the information they need about the research books merely by engaging in the process of research. . . . We should lay to rest the tired myth that engaging in the mere process of answering legal questions can teach students how to develop effective and practical research strategies.

Berring & Vanden Heuvel, supra n.8, at 439-440.

41 Callinan, supra n. 3, at 6.

42 Please contact the author at james.levy@colorado.edu if you would like a copy of these materials.

43 Recognizing that this temporal gap is a fundamental problem with the way research is taught, one commentator suggests the following approach is the only effective way to teach the subject. First, assign a textbook reading about each resource. Next, discuss that resource in class and, immediately following that, retire to the library where students can work on an exercise under the instructor's guidance. McDonnell, supra n. 16, at 365 (discussing teaching method that provides student with immediate "interaction, feedback and reinforcement"); see Cooper, supra n. 7, at 15 (teacher needs to be available to provide student with immediate feedback and guidance).
oriented approaches into one exercise. Finally, the writing topic I give students in connection with this exercise always involves a sufficient number of resources—case reporters, statutes, and secondary sources—so that students get a comprehensive overview of the law library. Discussed below are all components that comprise this exercise.

A. The Map

The first item I give students as part of the “point of need” exercise is a map of the law library that identifies the location of each resource I want them to check as part of their memo writing assignment. Although new students at our law school must take a library tour during orientation at the beginning of the semester, starting law school can be such an overwhelming experience that most students remember little about the tour. Once classes start, I also take students through the library to show them how the different research tools work. Nevertheless, students say that having a map they can carry with them that notes the location of everything they will need to complete their open memo assignment is very helpful.

Librarians at many law schools may already have a map prepared that you can use. If not, it does not take much effort to create a simple hand drawn map yourself. It is also time well spent because it will save you and the librarians much time answering repetitive questions about where to find things in the library. There is another benefit to giving students a map; it will enable you to explain more clearly during class where the research tools are located by referring to the map.

On the one that I use, I include hand-written numbers next to the major resources I want students to find. These resources include the case reporters and statutes for our jurisdiction, the West

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44 See Berring & Vanden Huevel, supra n. 8, at 440 (“Competent, well-supported instructors will not limit themselves to one single approach, either bibliographic or process-oriented.”); Lynch, supra n. 15, at 418.

45 One legal writing professor observes that to effectively teach research, the course materials should incorporate the following: (1) an overview of the total research process; (2) substantive information about each resource; and (3) examples of ways in which research is conducted. Fitzgerald, supra n. 16, at 270. The “point of need” exercise, I believe, meets all of these criteria. The flow chart, together with the research log, shows students how case reporters, statutes, and secondary sources can, and should, be used as part of an overall research strategy. The log also includes substantive information about each resource that students must “visit” as part of their trip through the library. Finally, the instructions included at the beginning of the log contain general advice about research strategy and provide brief examples of how strategy might vary depending on the legal issue involved.
Practice Series for our jurisdiction, the Decennials and General Digests, the major secondary sources (like *American Law Reports*, *American Jurisprudence*, and *Corpus Juris Secundum*), the Restatements, the location of the computer terminals where students can access the online card catalogue, important miscellaneous materials (like the model jury instructions for our jurisdiction) and last, but not least, Shepard's. The hand-written numbers correspond to the flow chart I give them, discussed below, that provides a schematic diagram for using each resource. The numbers on the map also cross-reference the research log. For instance, the research log tells students that if they want to begin their research with the case reporters for our jurisdiction, they should locate "#1" on their law library map. Once they find that place in the library, the research log describes what the case reporters look like and how to use them.

I also include on the map a hand-drawn compass at the top of the page. This allows me to describe, both during class and in the log itself, the location of various books by reference to the compass. Accordingly, I can say to students: "Go to the northeast corner of the library" to find, for example, the statutes for our jurisdiction. Students tell me they find it very helpful to have a map they can take with them to the library that marks the location of all the research tools they will need to complete their open universe writing assignment.

**B. The Flow Chart**

The next thing I give students is a single page flow chart that shows them how to use each book they will need to complete their writing project. With up-to-date software, it is easy to create a flow chart on your own computer or with the help of the faculty secretaries if necessary. For example, Microsoft Word for Windows Office includes a "draw" option that makes creating a professional looking flow chart relatively easy. Several textbooks provide good exam-

46 In our legal writing program at the University of Colorado School of Law, we primarily cover the use of state research tools (both primary and secondary authorities) as well as federal case reporters during the first semester. During the second semester, we introduce federal legislative materials (including statutes, United States Code Congressional and Administrative News ("USCCAN"), the Federal Register, and the Code of Federal Regulations ("CFR") as well as other miscellaneous materials not covered first semester like loose leaf services. Students are also trained in Westlaw and LEXIS during the spring semester. *Getting Results with Microsoft Office '97*, at 159 (Microsoft 1997) (manual included with Microsoft Office 97 – "Professional Edition" software that describes how to use "draw" option).
amples of flow charts that can help inspire your own design.\textsuperscript{48}

The flow chart I use fits onto a single \(8\frac{1}{2} \times 11\) sheet of paper turned lengthwise so that it is as concise and convenient as possible for students to take with them to the library. It is a schematic diagram that gives students a visual explanation for using each research tool I expect them to find. In the far left margin of the page, I place a box labeled "Begin by Formulating Search Words." The purpose of this is to show students that, no matter which tool they choose, all research projects begin with the formulation of search terms. Inside the box, I include a list of suggestions for brainstorming about search terms based on the "Basis of the Action," or the "Things or Places" involved, or the "Parties or Persons" involved, or the "Defenses" at issue, or the "Relief Sought."\textsuperscript{49}


\textsuperscript{49} Most legal writing textbooks contain a discussion about how to formulate search terms that can be incorporated into your "point of need" exercise. The textbooks I use at the University of Colorado School of Law are Helene S. Shapo, Marilyn R. Walter & Elizabeth Fajans, Writing and Analysis in the Law (4th ed., Found. Press 1999), and Good, supra n. 39. Both Shapo (at 217-218) and Good (at 60-63) contain very good discussions of how to formulate search terms.
From the box labeled "Search Terms," I draw arrows to an adjacent column of boxes that run from the top of the page to the bottom. Each box represents a different library resource I want students to use. At the top of the column is a box labeled "cases," the one below that is called "statutes," then "secondary source: state materials," "secondary source: AmJur," and so on down to the last box in the column, which is labeled "Index to Legal Periodicals." The order in which these resources are listed can be tailored to reflect their relative importance as research tools, the order you want students to use them, or they can be listed randomly.

Inside each box, I include the name of the index for that resource so students will know what to look for when they go to that part of the library. For example, inside the box labeled "cases," the flow chart shows students they must find the "Descriptive Word Index" for their jurisdiction. For American Law Reports, students should look for the volumes marked "Index Digest" on their spine. With respect to statutes, students are directed to find the "General Subject Index." Because the map, flow chart, and research log all cross-reference each other, each box in this column is assigned a number that corresponds to its location on the law library map. American Law Reports, for example, is represented by box #5 in the column listing all research tools. If students want to begin their search with American Law Reports, they need to locate "#5" on the law library map. Once they find it, the flow chart tells them that they must begin their search by formulating search terms and plugging them into the "Index Digest."

The column to the immediate right of the one listing all the research tools contains a row of corresponding boxes that shows students how to use each resource. Thus, to the right of the box for "cases" is one that explains that the "Descriptive Word Index" should lead students to find "Digest Topics" and "Key Numbers" that relate to their legal issue. For cases, the flow chart continues from left-to-right across the page by directing students to: (1) Look for case annotations corresponding to the "Digest Topics" and "Key Numbers" they found; (2) to read the full-text decisions; and (3) "Shepardize" the cases they plan to rely on in their final memoranda.

As the above illustration shows, the flow chart I use provides a similar schematic diagram for all of the resources students are expected to check while researching their open memo problem. Because each resource on the flow chart is assigned a number that corresponds to its location on the law library map, both can be used together to show students where to find and how to use all the
books they will need. The flow chart also provides students with an important visual reminder that the final step in any research project is to Shepardize. Shepard's is also assigned a number on the flow chart that corresponds to its location on the law library map so students can easily find it.

C. The Research Log

The most important part of the exercise is the log that includes written instructions for finding and using each research tool students will need to complete their open memo problem as well as the space to record the results of that research. The log contains instructions that direct students to stop at several research "stations" throughout the library. At each stop, the log explains how the resource found there works and how to locate and use the index for it. The log then asks students to record the results of their research in the space provided. I also ask students to answer a few bibliographic questions about each resource to highlight some of the details they might otherwise miss.

1. Include Some Introductory Instructions

New law students typically feel overwhelmed at the start of any research project because they do not know how to begin. They are faced with so many research choices and possibilities. Although most teachers during class discuss research strategy in connection with their open universe writing assignment, much of that advice may be forgotten by the time students actually get into the library to begin work.

Accordingly, the "point of need" exercise addresses this problem by including a section at the beginning of the log that provides general advice about research strategy. The log explains, as I do in class, that students can begin their research either with cases, statutes, or secondary sources. The log tells them that whichever they start with will depend on the nature of the problem they are researching. The instructions further explain that with experience, they will develop professional judgment about whether a particular legal issue will likely involve statutory or common law, or whether it makes more sense to begin with a secondary source given the

50 Supra notes 11 & 26.
51 For authority noting the importance of creating a temporal connection between instruction by the teacher and practice by the students, refer to supra n. 16.
volume of authority or its complexity.\textsuperscript{52} To illustrate the point, the instructions include a few examples of issues that are usually statutory-like criminal or environmental issues—and ones that are typically common law-like negligence.

Because research strategy will vary depending on the issue assigned, the log has to be flexible enough to permit students to begin with cases, statutes, or secondary sources. Therefore, it is organized into these three discrete sections that reflect the general categories that almost all research tools fall into. The instructions at the beginning of the log explain to students that they can begin with any section they want but they must eventually complete the entire log before turning it in.

2. Case Reporters

The first section of the log pertains to case reporters. Students are directed to find the place on their map where the case reporters for their jurisdiction are kept and go to that area of the library. Once there, the log gives them step-by-step instructions for using the case digests.\textsuperscript{53} Students are first told to brainstorm for search terms and then record them in the space provided. The directions remind them to look at the flow chart if they need any help formulating those terms.

The log then describes what the Descriptive Word Index looks like for our jurisdiction, where to find it on the shelf, and how to use it. After plugging their search terms into the index, students are told to record any helpful Digest Topic or Key Numbers they find in the space provided for that purpose. The log then explains how the Digest Topics and Key Numbers can be used to find helpful case annotations. As shown below, the log provides a separate space to record citations to any relevant annotations they find. The

\textsuperscript{52} See Neumann, supra n. 9, at 408, (one of the paradoxes of professional education is that to perform successfully, students need a judgement they do not yet possess). There is some debate about whether it is best to introduce students to legal research by starting with secondary sources. Compare Joyce M. Janto & Lucinda Harrison-Cox, Teaching Legal Research: Past and Present, 84 L. Lib: J. 281, 292 (the first research "class is devoted to secondary material: legal encyclopedias, journals, treatises, and A.L.R. annotations. We think this is a logical place to begin, since these are the resources a researcher would consult to learn about a new area of law." (footnote omitted)) with Wren & Wren, supra n. 11, at 43 n. 121 (By presenting secondary materials first, students might tend to over rely on them and accord them an importance they do not deserve.).

\textsuperscript{53} Since Colorado no longer publishes an "official" case reporter, the instructions I include relate to the use of the "Colorado Reporter" published by West. Professors in jurisdictions that still use both "official" and West case reporters may want to consider including instructions that explain how to use each and the differences between them.
instructions also remind them to check all pocket parts and other supplements to ensure their research is up to date.

Once students have the citations in hand, the log next directs them to locate the case reporters containing the full-text opinions for those citations. The log contains several pages formatted like the example below that gives students plenty of room to record information about each citation they find.

**Case Law**

**ISSUE NO. 1:**

(Fill in the issue you are researching here)

<table>
<thead>
<tr>
<th>In spaces below, record the “descriptive words” and “key numbers” you used</th>
<th>Citations Found</th>
<th>Was case positive, negative or useless?</th>
<th>Shepardized/Date</th>
</tr>
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</table>

Once students have completed researching cases in our jurisdiction, the log next directs them to the Decennials and General Digests to check for analogous authority from other jurisdictions. The log reminds them that these cases, while not binding, may nevertheless be persuasive authority, especially if they find cases that are more factually analogous than anything they found in our own jurisdiction.

Directing students to use the Decennials also teaches them the very important lesson that key numbers found in one jurisdiction can be used to locate similar authority throughout the regional reporter system. To reinforce this point, I design the open memo topic so that the assignment cannot be fully answered under the law of our jurisdiction. Instead, I want students to use the Decennials and
General Digests to locate the most analogous authority they can find from other jurisdictions.

The research log also explains the difference between the Decennials and the General Digests. Students are told that the General Digests function like a “pocket part” that fills in the gap until the next edition of the Decennials is published. The log explains that to use the General Digests, students must check the “Key Number Index” contained in every tenth volume which will give them references to any relevant cases published in the preceding ten volumes.\(^\text{54}\) Again, this gives students important experience in how to use the West Key Numbers to locate the most current authority available throughout the regional reporter system.\(^\text{55}\) Because students learn about the Key Number System in a “process-oriented” context, they should retain that information better and therefore be better able to apply those lessons to their next research project.

3. Statutes

Once students have exhausted their research possibilities with the case law, the log directs them to research the statutes for our jurisdiction.\(^\text{56}\) Like the section devoted to case law, students are told to refer to their map to find the place in the library where the codes are kept. The log describes the exact location of the codes and how to use the General Word Index. The log also provides space, just like the case law section, to record any helpful citations they find. Students are told that looking for relevant statutes is like any other research; they must begin by formulating search terms. They are referred to the flow chart (as well as relevant pages in their textbook) if they need any help formulating those terms and given space on the log to record them.

Once they have done that, the log instructs students to plug their search terms into the General Word Index and record in the log any helpful citations they find. Students are next told to look up those citations in the statutory compilation and note how the publi-

\(^\text{54}\) For an excellent explanation about how the Decennials and General Digests work refer to Berring, Finding the Law, supra n. 30, at 104-107 or to Good, supra n. 39, at 133-39.

\(^\text{55}\) I explain in class how to use the “stop cite” in the last volume of the General Digests, or any regional reporter for that matter, to locate the most recent published authority available in the advance sheets. See Good, supra n. 39, at 153-154 (explaining “stop cites”).

\(^\text{56}\) Although the statutory section follows the section devoted to case law research, the log is organized into discrete sections that allow students to start with either type of authority. We discuss in class whether it makes the most sense to start with cases, statutes, or secondary sources depending on the writing topic they have been assigned.
lisher includes, following the text of the statute, annotations to secondary authorities, and the cases that interpret the statute. The log provides space to record any helpful citations they find.

Also included in this section are some brief questions for students to answer that are designed to familiarize them with some of the bibliographic details of the statutes. For example, students are told to note the legislative history that follows the text of each statute they find. They are then asked to record in the space provided the date of the last legislative action affecting the statute. The log also reminds them to Shepardize any helpful annotations they find to validate those citations and as a way of finding even more authority. The log provides a space to indicate to the instructor that they have indeed Shepardized.

Statutes

ISSUE NO.1: (Fill in the issue you are researching)

<table>
<thead>
<tr>
<th>STATUTE You Found</th>
<th>CITATIONS You Were Led To (Cases, AmJur, CJS, Law Reviews West Digest #’s, etc)</th>
<th>WAS THE CITATION POSITIVE, NEGATIVE OR USELESS?</th>
<th>SHEPARDIZED/ Date</th>
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4. Secondary Sources

The final section of the log is devoted to secondary sources. Students are reminded at the beginning of this section that it sometimes makes sense to begin with a secondary source. The instructions state: "Rather than sift through hundreds of case annotations in a state digest on a broad topic like 'negligence,' a good secondary authority will summarize the law for you and provide citations to the leading cases on that topic." Students are further told that while secondary authorities can be tremendously helpful research tools, they merely reflect a commentator's view of the law on a particular subject. Thus, students need to keep in mind that secondary authorities do not carry the weight of primary authority and should therefore not be relied on as such in their memoranda.

Rather than try to cover every secondary source in the library, students are directed to the ones most commonly used by practitioners. These include the West Practice Series for their jurisdiction, American Law Reports, Corpus Juris Secundum, American Jurisprudence, the Restatements, the Index to Legal Periodicals, treatises, and model jury instructions. For each resource, students are told where to find it in the library and how to use its index. The log also has space for the students to record the results of their research.

Accordingly, this section of the log is divided into subparts reflecting each secondary source students must use. At the beginning of each subpart, students are asked to record the search terms they plan to use for that resource. The instructions remind them that the search terms they already have developed and written in other portions of the log will probably work with most of the secondary sources as well. Nevertheless, they are told that they might have to develop alternative search terms because the various legal publishers sometimes index topics differently.

Once students record their search terms, the log tells them where to find the index for that resource and the log gives them a space to record any relevant sections, articles, or annotations they find. The log also reminds students to check the pocket part, or any separately published supplement, for that resource and to record

57 Supra n. 52.
58 See Berring, Finding the Law, supra n. 30, at 301 ("Only a fool cites to legal encyclopedias as persuasive authority."); Good, supra n. 39, at 65-66 (secondary sources can be "godsend in the real-world practice of law").
59 In Colorado, this resource is called the Colorado Practice Series. West publishes similar volumes for many other jurisdictions.
any additional citations they find. Like the other portions of the log, some bibliographic questions are included that are designed to familiarize students with some of the details of these books that they might otherwise miss. With American Law Reports, for example, the log asks students to locate the Annotation History Table located in the back of each volume of the index. The log then tells them that this is a way for them to check whether any helpful American Law Reports annotations they found in the main volumes have been superseded by more recent annotations. They are then told to record citations to any superseding annotations. Students are asked similar bibliographic questions about Corpus Juris Secundum. For example, they are told to note and record the “stop cite” for the regional reporter that covers our jurisdiction by checking the pocket part of any helpful main volumes. Students are directed through similar steps with respect to American Jurisprudence.

The final subpart of the secondary source section of the research log directs students to the Restatements and the library’s online Index to Legal Periodicals. With respect to the Restatements, the instructions include a brief explanation about what they are and how to use them, and a space to record any relevant sections they find. Students are told that even if they find no Restatement sections related to their issue, they should note that in the log anyway. Thus, the log is designed to make them at least look through the most commonly used secondary sources even if they find nothing.

When students are finished with the Restatements, they are instructed to move onto legal periodicals. The instructions tell them that it is often a good idea to check legal periodicals because they can be a great source for citations, general background information or as a way to understand an especially complex area of law. Students are told to consult their law library map to locate the computer terminals where they can access our library’s online Index to Legal Periodicals. The log then directs them to record citations to

60 Berring, Finding the Law, supra n. 30, at 124; Good, supra n. 39, at 88-89 (both describing the Annotation History Table).

61 Supra n. 39.

62 Students are told that before they can use the Restatements, they have to know what area of law they are looking for. Even then, it is not easy to find relevant sections. There is a table of contents for each volume, but it is generally not very helpful because it only lists section numbers and titles. The titles of the sections, unfortunately, often do not correspond to the common name of the legal concept codified therein. As a practical matter, therefore, students are told that Restatements are most useful when the students have already identified a relevant Restatement section. If that is the case, it is always a good idea to check that section and any comments that follow it to see if there is anything helpful.
at least three articles they find. However, if they do not find any articles, they should note that as well. Finally, the log provides a brief explanation concerning the value of treatises to their legal research, instructions for finding them with our library's online card catalogue, and a place to record any helpful citations.

Since Shepard's is the last step in most students' research, the final paragraph of the research log reminds students, again, to Shepardize any citations they plan to rely on in their memoranda. The instructions inform students that not only can they Shepardize cases, but that there are also several specialty Shepards that can be used to check statutes, Restatements, law reviews and other materials.63

III. FINDING APPROPRIATE WRITING TOPICS

The "point of need" exercise depends on the teacher developing an open memo writing topic that involves a sufficient number of library resources so that students are exposed to most of the major research tools they will use in practice. It is not as difficult as you might think to come up with such topics. On the other hand, if you are not inclined to develop such comprehensive writing topics, the "point of need" approach will still work very well with more narrow topics that involve fewer types of resources. Thus, if you prefer to assign memo topics that only involve the law of one jurisdiction, you can give students scripted instructions for using just the resources pertaining to that jurisdiction and still get the benefits of a "point of need" approach.

Assuming you use the more comprehensive approach suggested here, you will need to create a writing topic that includes at least one common law and statutory issue. Although you also need to expose students to several major secondary sources, you likely will not have to design a problem with those sources specifically in mind since almost any first year subject you choose will receive some treatment by them anyway.64 Thus, by focusing your topic on a common law and statutory issue suitable for first-year students,

63 For a recent list of Shepard's specialty citators, refer to Berring, Finding the Law, supra n. 30, at 86.

64 As already discussed, I ask students to check with several resources as part of their trip through the library and note the results in the spaces provided for that purpose in the research log. Even if a particular resource, like a Restatement, contains nothing, they are instructed to note that as well. The purpose of the log is to expose students to several resources in connection with the solving of a hypothetical legal problem. Accordingly, it is not necessary that every resource in the library contain a treatment of the open memo topic in order for the "point of need" exercise to work successfully.
you will almost certainly be able to incorporate several secondary sources into the exercise as well.

In my law school’s legal writing program, students are limited to ten pages for their first semester open universe writing project. Accordingly, for the “point of need” exercise to work, I need to find a relatively straightforward topic that involves both a common law and statutory issue and can be written about in ten pages. With a little effort, it is not difficult to find such a topic. Several tort issues, for example, will nicely fit the bill since the causes of action are usually based in common law in most jurisdictions, while many tort defenses are often statutory. For example, I created an open universe writing problem one year that asked students to consider whether urbanites who move next to a small family-run hog farm in a rural community can bring a nuisance action based on the smells coming from that farm. In Colorado, like many jurisdictions, nuisance is a common-law cause of action which satisfies that requirement of the exercise. To add a statutory issue, I asked students to also consider whether the Colorado Farm Protection Act, which has a similar counterpart in many jurisdictions, would serve as a defense under the particular circumstances of my hypothetical. Because these common-law and statutory issues receive treatment by several secondary sources, this topic works very well with a “point of need” approach. Topics involving criminal law work nicely for the same reason. Think about creating a fact pattern that gives rise to both criminal and civil liability such as assault or battery. Since most criminal issues are statutory and most tort issues common law, these types of topics will also work well with a “point of need” approach.

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67 Using one of the more bizarre statutes found in the Colorado criminal code, I asked students to consider whether an artist who dressed dead bodies stored at the city morgue in party hats, and then took photographs of them as part of a “shock art” project, had committed abuse to a corpse under Colorado Revised Statutes § 18-13-101 (West 2000). To add a common-law issue to this assignment, I asked students to also consider whether that same conduct could give rise to a claim for intentional infliction of emotional distress after the families of the corpses learned about the photographs. This assignment worked very well with a “point of need” approach since, somewhat surprisingly, there was some very good secondary source treatment of these issues. James B. Levy, Dead Bodies and Dueling: Be Creative in Developing Ideas for Open Universe Memoranda, 7 Persps.: Teaching Leg. Research & Writing 13 (1998).
To brainstorm for ideas for the open memo writing topic, I often rely on library resources to help inspire me. Rather than developing a writing topic in the abstract and then conducting some preliminary research to see whether it works, consider instead quickly scanning the indexes of some good secondary sources to get ideas. A great place to start is the topic index for *American Law Reports*. Choose a general area of law that appeals to you like "negligence," "product liability," or "assault." Within that general subject matter, the American Law Reports index should include references to several articles that could serve as good writing topics. By looking up promising titles in the main volumes of *American Law Reports*, you should be able to tell at a glance whether enough authority exists to allow you to develop a well-balanced fact pattern that will require students to use a number of different resources. Because *American Law Reports* articles often include practice pointers for attorneys, they might include information on defenses that could serve as the inspiration for introducing a statutory issue into your writing problem.

**CONCLUSION**

As this article noted at the outset, it is difficult to provide students with the kind of personal instruction they really need to learn research well. Nevertheless, with a little ingenuity, we can use what resources we already have available to us to provide our students with better, more personalized research instruction. The "point of need" exercise described in this article is one solution that does not rely on high tech wizardry nor does it break the law school budget. Rather, it represents an easy to implement technique that has helped my students become more self-reliant and confident in the use of the law library more quickly than when I used more traditional research exercises. As an ancillary benefit, it has greatly decreased the amount of time I spend answering routine questions about material already covered in class. Consequently, it is an exercise that has made both my students and me a lot happier with the quality of the research instruction they receive.
SYNERGY AND SYNTHESIS: TEAMING "SOCRATIC METHOD" WITH COMPUTERS AND DATA PROJECTORS TO TEACH SYNTHESIS TO BEGINNING LAW STUDENTS

Craig T. Smith*

"Socratic method" or dialogue remains, despite many critics, a vaunted and venerable law-school teaching tool. Exploring "concepts through questions posed by the teacher and responses from students" is a fundamentally sound process. It challenges students to take responsibility for their learning, prepare thoughtfully for

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1 I use this term somewhat reluctantly because it is what law professors and students most commonly call the questioning technique widely used in law school classrooms. I recognize, however, that it may be a misnomer for what would better be termed "Langdellian" or even "Protagorean" method. "'Socratic' often is used misleadingly to identify a style of classroom teaching in which a professor interrogates students. As actually practiced in the classroom, however, this method is not Socratic at all: the accurate term would be 'Langdellian' or even 'Protagorean.'" Richard K. Neumann, A Preliminary Inquiry into the Art of Critique, 40 Hastings L.J. 725, 728 (1989); see Ruta K. Stropus, Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century, 27 Loy. U. Chi. L.J. 449, 453-454 (1996) (using "Langdellian" method). Neumann helpfully explains, however, why law professors should strive for "true Socratic dialogue," which "can better teach analytical art to individual students while avoiding the hazards of the Langdellian technique." Neumann, supra, at 730. Accordingly, I often will use the phrase "Socratic dialogue" in this article.

2 A 1996 survey of 383 law professors by Steven Friedland corroborated "the common assumption that the Socratic dialogue dominates law teaching methodology." Steven I. Friedland, How We Teach: A Survey of Teaching Techniques in American Law Schools, 20 Seattle U. L. Rev. 1, 28 (1996). In particular, "an overwhelming majority [97%] of those who taught first year classes used what they perceived to be the Socratic method," 30% of them "most of the time" and 41% "often." Id.

3 Gerald F. Hess, Principle 3: Good Practice Encourages Active Learning, 49 J. Leg. Educ. 401, 406 (1999). Martin Louis described the method this way:

[I]t's just simply a matter of asking the student—usually we start with a general question and we refine it. If the student is doing well in answering the more general, easier questions, then you try something a little harder; you probe somewhat more deeply into the subject matter, and you see how far the student can go. Usually, the student will get lost or find himself or herself unable to answer the question after awhile. Then, I suppose you have to offer some hints, some helps, some rephrasing of your question in order to try to bring the student toward an understanding of what your latest question is.

class, and learn actively. It also challenges them not simply to "re-
gurgitat[e] facts and theories" and "give an overall impression of
[their] awareness of the subject," but to articulate legal analysis
precisely and cogently.5

But Socratic method also has serious shortcomings. As an often slow, primarily oral method, it can shortchange students who do not learn best by hearing. It can bore "Internet-generation students," who expect visual stimulation or even "edutainment."6 Because it demands prompt and "reflective responses" to "incisive questioning," it can sputter when students are unwilling or unprepared. Because student responses can suddenly steer the dialogue onto tangential detours, the method requires patience and intellectual agility of both professors and students.8

Finally, Socratic method enhances a professor's power and students' vulnerability, so professors can abuse it to dishearten or humiliate students.

These shortcomings pose a special risk when professors teach synthesis. Synthesizing pronouncements of legal authorities to articulate a single set of rules is a terrifically complex skill. It baffles many beginning law students. Yet it is indispensable. This "binding together of several opinions into a whole that stands for a rule or an expression of policy"9 lies "at the heart of teaching legal writ-

8 We might well say that, like the path of an electron, the path of a Socratic dialogue is governed by an "uncertainty principle": though we can chart a probable course, we cannot predict where the dialogue will be at any given moment. See John Gribbin, The Search for Superstrings, Symmetry, and the Theory of Everything 36 (Little, Brown & Co. 1999) ("If you could measure exactly where an electron was, . . . you would have no idea . . . where . . . [it] would pop up next." emphasis in original)).
9 Richard K. Neumann, Jr., Legal Reasoning and Legal Writing 131 (3d ed. Aspen L. & Bus. 1998). A good beginner's guide to synthesizing explains the process this way:

Rule synthesis is a process that formulates a complete rule from its component parts.

Carefully read [the] applicable cases, and identify the holdings and any rules articu-
ing.” Legal analysis or advocacy cannot be well-organized or convincing if the writer has failed to synthesize well.

Consequently, legal writing professors seem to face a dilemma: Teach synthesis using Socratic method, thereby frustrating or alienating many students, or spurn the method, thereby robbing the professor and students of its pedagogical power. Which is the better choice?

The answer is neither. The dilemma is more apparent than real. We can indeed teach synthesis effectively using Socratic method if we enhance that method with a computer and a liquid-crystal-display (LCD) data projector—that is, a device that projects onto a wall screen exactly the images that likewise appear on the computer’s monitor. These technological tools permit us to guide and record in-class Socratic dialogue in a rigorous yet student-friendly manner. The data projector projects, onto a large wall screen, easily created and stored, instantly editable, color-coded texts and charts that reside on the professor’s computer. This enhancement helps us harness the power of Socratic method without either unduly consuming precious class time on tangential discussion or engendering angry, hurt, or lost students. It thus helps us “enable [e] students to discover knowledge for themselves” so that we become effective “learning facilitators, intervening when needed and selectively providing motivation and assistance to students.”

lated. Look for a relevant thread . . . Then blend relevant cases to develop a holistic rule that incorporates all the holdings . . . [The text then sets forth six simple criminal-case holdings.]

. . . Pull out the rule from each case by determining the fact-neutral legal principle derived from each case. A rule for Cases 1 and 2 might state: A defendant must intend the act. A rule for Cases 3 and 4 might state: A defendant must damage or destroy property. A rule for Cases 5 and 6 might state: A defendant must damage or destroy the property of another.

Combine each component to develop a holistic rule that incorporates all the holdings . . ., [for example:] to [commit] malicious mischief, a defendant must intend to damage or destroy the property of another.


11 This is an example of what some authors call "computer-enhanced instruction," in which educators "bring additional dimensions to traditional teaching methods." William C. Bozeman & Donna T. Baumbach, Educational Technology: Best Practices from America’s Schools 27 (Eye on Educ. 1995).


Part I of this article briefly examines Socratic method. It comments on excerpts from three Socratic dialogues of varying success: Plato’s report of Socrates’s interchange with Euthyphro regarding the meaning of “piety”; a fictional confrontation, from The Paper Chase, between legendary Professor Kingsfield and struggling Mr. Hart; and a colloquy, reported in Scott Turow’s One L, between Turow and a Harvard Law School professor. These dialogues demonstrate why Socratic method is not only useful but also difficult and risky. They also suggest why enhancing Socratic dialogue with a computer and a data-projector is desirable, particularly when teaching difficult skills such as synthesis.

Part II introduces using computers and data projectors in a non-technical manner. It then explains how doing so can help a professor use Socratic dialogue effectively and supportively while teaching synthesis.

Part III provides an example of teaming Socratic dialogue with computers and data projectors to teach synthesis. It shows how projecting illustrative charts and text onto a classroom screen can help professors guide students through the process of synthesizing a rule from three cases.

I. SOCRA TIC METHOD

Traditional Socratic method, in American law schools, is an in-class inquiry that is (1) guided by a professor’s probing questioning, designed primarily “to draw out limitations or nuances in . . . interpretations of the law,” 14 and (2) propelled by student responses. Beneath this broad definition lie many varying, more detailed definitions. These tend to be quite idiosyncratic, however, and based almost exclusively on personal experience. 15 Hence, a few examples are in order. They will concretize what I mean by traditional Socratic method, identify some of its difficulties, and illustrate the need to adapt and enhance it—a need which, I will then argue, computers and data projectors can do much to satisfy.

A sensible place to start defining Socratic method is with Socrates. The following excerpt is from Plato’s report of Socrates’s colloquy with Euthyphro at the court where Socrates soon will be tried, convicted, and sentenced to death for impiety. 16 Though no student of Socrates participates, the dialogue nonetheless “provides

14 Eichhorn, supra n. 7, at 107 (describing Langdell’s version of Socratic method).
15 See Paul Bateman, Toward Diversity in Teaching Methods in Law Schools: Five Suggestions from the Back Row, 17 Quinnipiac L. Rev. 397, 401 (1997) (“What we mean by the Socratic method is debatable.”).
16 Plato’s Euthyphro v (John Hare trans., 2d ed. Thomas Library Bryn Mawr College 1985). Another charge was corruption of youths.
an excellent picture of the Socratic method of inquiry.” Socrates ceaselessly challenges Euthyphro, a “well-meaning yet fundamentally unenlightened” man and a supposed expert on Athenian religious matters, to define piety:

Soc. ... [W]hat is piety, and what is impiety?

[Euthyphro provides examples.]

Soc. ... I would rather hear ... a more precise answer .... I did not ask you to give me two or three examples of piety, but to explain the general idea ....

E. Piety ... is that which is dear to the gods, and impiety is that which is not dear to them.

Soc. But ... let us examine what we are saying. ... [Socrates paraphrases artfully.] Was not that said?

E. It was. ...

[Socrates next supplies hypotheticals, to which Euthyphro assents, and these suggest contradictions in Euthyphro’s definition.]

Soc. [Thus,] people regard the same things, some as just and others as unjust ....

E. Very true.

Soc. Then the same things are hated by the gods and loved by the gods ...?

E. True.

Soc. And ... [thus] the same things ... [are] pious and also impious?

18 Laszlo Versenyi, Holiness and Justice: An Interpretation of Plato’s Euthyphro 26, 33 (Univ. Press of Am. 1982).
E. So I should suppose.

Soc. Then ... you have not answered the question .... For I certainly did not ask you to tell me what action is both pious and impious .... [T]ell me once more what ... piety really is ...

E. I really do not know, Socrates, how to express what I mean. ...

Soc. ... [I]s that which is pious all just, but that which is just, only in part and not all, pious?

E. I do not understand you, Socrates. ... Piety or holiness ... appears to me to be that part of justice which attends to the gods, as there is the other part of justice which attends to men.

Soc. ... [Y]et ... [w]hat is the meaning of “attention”?

[Euthyphro attempts to answer.]

Soc. [A]re you not saying that what is loved of the gods is [pious]; and is not this the same as what is dear to them ...?

E. True.

Soc. Then either we were wrong in former assertion; or, if we were right then, we are wrong now. ... [So] we must begin again and ask, What is piety? Speak out then, ... and do not hide your knowledge.

E. Another time, Socrates; for I am in a hurry, and must go now.

Soc. Alas! ... will you leave me in despair? ... I was hoping that you would instruct me in the nature of piety and impiety; and [that] ... I would have ... been enlightened by Euthyphro and given up rash innovations and speculations, in which I indulged only through ignorance, and that now I [would] lead a better life.

Socrates and Euthyphro are not examining texts, as we generally are in a law class.²⁰ Nevertheless, much of the dialogue should

²⁰ This distinction is one of the chief objections to using the term "Socratic method" to describe what occurs in law classes. Neumann, supra n. 1, at 749. "Protagoras, the leading Sophist and Socrates' rival," used "questions centered on the interpretation of textual mate-
look familiar. Phrases and rhetorical techniques appear that law professors repeat routinely in classrooms:

- give a more precise answer;
- let's examine your statement further;
- consider the following hypothetical . . . ;
- do you mean . . . ?;
- define what you mean by the term __;
- but your answer contradicts your previous answer, which was . . ;
- let's go back to the beginning.

Socrates’s responses appear to come easily and quickly. But we should recall what we are reading: not a classroom transcript but Plato’s stylized, edited account of Socrates’s method and beliefs. Socrates has reflected deeply and at length on the meaning of piety. He also has practiced and mastered this method; this is neither his first such dialogue nor his first spirited discussion with others regarding piety. He has, in short, superbly prepared himself to respond to all of Euthyphro’s answers. For law professors, therefore, emulating Socrates requires tremendous preparation and skill. Using Socrates’s skills effectively “live” in class can be very difficult, especially for beginning professors. 21

Even more difficult is using these skills respectfully, in a manner that is fair to the students being questioned. Look again at how Socrates ends the dialogue. Is he truly “in despair,” having confounded and stymied Euthyphro? Had he truly hoped that Euthyphro would instruct and enlighten him, prompting him to cease “rash speculations” and lead a better life? To the contrary, Socrates appears to have known precisely what he wanted to accomplish, and he did it. It seems fanciful to assume that he had any real hope of learning from Euthyphro, of abandoning his inquiry, or of changing his life. Soon after this dialogue, showing no signs of despair, 22 he would rebuff his friends’ attempts to help him avoid his trial and execution - leaving Crito to lament this “crowning absurdity” and complain bitterly, “you might have saved yourself.” 23 Hence, Socrates’s final words in fact publicly mock Euthyphro, who therefore must leave the dialogue, though instructed and perhaps even editorial, a method Socrates scorned [and one calculated] not to help the student gain self-knowledge (which was Socrates’ goal), but to teach . . . the skills of rhetoric.” 21 Id.

21 “New teachers learning to critique generally fail to conduct effective Socratic dialogues.” Neumann, supra n. 9, at 38. “The success of each dialogue depends on the teacher’s ability to structure the conversation and frame questions according to the basic Socratic principles,” structure, sequence, economy, diction, rhythm, and alliance. Id. at 735-736.

22 Socrates will soon tell Crito, “[w]hen a man has reached my age he ought not to be repining at the prospect of death.” Crito, available at <http://classics.mit.edu/Plato/crito.html> (Benjamin Jowett trans.) (visited Mar. 6, 2001).

23 Id.
fied, also upset and perhaps even deeply hurt or angry. This anger may linger above him, eclipsing any lesson he might have learned. If that is true, then Euthyphro illustrates a serious risk in Socratic method: However much the participants or an audience may profit, the person questioned also may be publicly humiliated or hurt. That may not have bothered Socrates, but it ought to bother law professors.

Euthyphro's responses to Socrates likewise should look familiar to law professors:
- an example posing as a rule;
- an appealingly simple but inadequately considered rule;
- sheepish admissions that hypotheticals show the rule creating absurd results;
- anguished expressions of inability to express "what I mean."

Reviewing this list, we might ask what would happen if Euthyphro were to return to Socrates's questioning the next day, the day after that, and so on throughout a law-school semester. We might imagine, too, that Euthyphro knows Socrates will grade Euthyphro's efforts, and those grades will affect Euthyphro's career opportunities. Recalling also our own experiences as beginning law students, we might mentally place our many, varied students—all novices—in Euthyphro's shoes and again sense the difficulty, intellectually and emotionally, of their role.

Two further examples of Socratic method transport us to a law school and a recent era: Harvard in the 1970s. Two books, John Jay Osborn, Jr.'s The Paper Chase and Scott Turow's One L, described the experience of studying there in that time, a century after Harvard's Christopher Langdell had "transformed the law professor from a lecturer into a 'Langdellian Socrates.'" These books provide vivid images of Socratic method from a student's perspective—something the Euthyphro dialogue only hinted at. Neither image suggests a method that would win the professor prizes for pedagogy.

The Paper Chase gave readers the imposing Professor Kingsfield, whom John Houseman later portrayed chillingly on film. The following excerpt suggests important limitations on Socratic method:

"Mr. Hart, . . . will you relate the next case to the summary we've been building?"

"I think I'll pass," Hart said quietly.

"I don't have anything important to say about the case," Hart said. "I'll raise my hand when I do." . . .

"You don't have anything to say?" Kingsfield said, for an instant puzzled. . . . "All right," he said, gripping the lectern with one hand, "I'll tell the class the significance of the case myself."25

Here, as in Euthyphro, law professors may recognize a familiar scenario. Some students will not or cannot engage in the dialogue as felicitously—perhaps we should say compliantly—as Euthyphro did with Socrates. They do not enjoy verbal fencing, and they would rather display defiance or feigned ignorance than genuine confusion or lack of comprehension. Accordingly, they may adopt an attitude that can take us aback, leaving us, like Kingsfield, "for an instant puzzled." That in turn can tempt us into Kingsfield's response: I'll just do it myself. Though that sometimes may be a sensible response, most often it is not. For starters, it may encourage future student attempts to maneuver the professor into answering. Moreover, it is hardly a Socratic response. It prevents the student from arriving at the insight and, crucially, from formulating it in the student's own words. Instead, it attempts to impose on the student the professor's insight, in and on the professor's terms.

*The Paper Chase*, therefore, likewise illustrates some risks of Socratic method. One is the unwillingness or inability of students to advance the dialogue. Another is the professor's frustrated and detrimental abandonment of the method once it grows difficult, as it surely will. A third is the emotional cost of such a breakdown of the method. It can poison the classroom, causing pain to students and the professor and lessening the likelihood of future constructive Socratic dialogue.

Scott Turow's *One L* reminds us also of Socratic method's risks. Turow recounts one of his voluntary attempts, in a crowded classroom, to play a constructive role in the dialogue:

[Professor] Mann . . . had asked if [certain facts amounted to] attempted manslaughter . . .

"It can't possibly be attempted manslaughter," I said. "At-

tempted crimes have to be intended and manslaughter's an un-
intentional offense.”

Mann . . . looked at me kindly.

“Don’t you hear the wind whistling behind you?” he asked.

I froze.

“I’m afraid you’ve gone through the trapdoor,” he said.26

These images, too, are likely to be familiar. A “frozen” student
is in free fall, seeming to hear only an unpleasant wind whistling.
The professor, “kindly” perhaps, is not warming the crowded class-
room enough to rescue the icebound student. For the student, the
Socratic method has devolved into what looks like an absurd, un-
winnable guessing game. The student crouches at a dead end and
the professor finds no constructive, respectful way to help. Seconds
tick away. Silence grows deafening. The Socratic dialogue has
stalled.

These accounts of Socratic method have important lessons for
legal writing professors, particularly when they prepare to teach
synthesis. First, they remind us above all to avoid the ultimate risk
of Socratic method: the teacher’s breach, by subtle mockery or open
scorn, of respect for the learner. If we do not by our deeds convince
our students that we respect them, then Socratic dialogue may do
more harm than good. Second, they remind us that our classes will
not be a carefully scripted and edited interaction between a soon-to-
be-condemned, long-to-be-remembered martyr and his essentially
anonymous foil. We will likely lack Socrates’s searing, seamless
rhetorical skill. Our students will lack Euthyphro’s relative ano-
nymity and probably his patience and endurance also. They will
not be mere foils, “flat” characters whose questions serve primarily
to spotlight our brilliance. They will not simply walk away when a
dialogue ends. They will be instead our clients day after day, who
pay our bills as tuition now and as donations or tax payments later,
and who bring to the classroom their own emotions, passions, and
learning styles. Ultimately, too, they will measure, in their satis-
faction and success, our success.

Socratic method can help us succeed. Moreover, its risks
should not prompt us to abandon it. They should instead compel us
to respect our students vigilantly, in particular by minimizing the

26 Scott Turow, One L 111 (Putnam 1977).
frequency of a student's shutdown or emotionally disorienting, embarrassing free-fall, and to search continually for tools that can improve in-class Socratic dialogue. Two such tools are a computer and a data projector.

II. COMPUTERS AND DATA PROJECTORS AS A COMPLEMENT TO SOCRATIC METHOD FOR TEACHING SYNTHESIS

Using Socratic method respectfully to teach synthesis means guiding the dialogue deftly, using questions that finely balance guidance and restraint. A computer and a data projector can help by projecting carefully selected text and images. This provides a visual focus and context for Socratic questioning. It thus helps students follow the dialogue yet leaves them ultimately to find and articulate answers.

Law school classrooms increasingly are equipped with a variety of electronically illuminated projectors. These display documents, overhead transparencies, videos, and any text or images that can appear on a computer screen: colored, highlighted, and otherwise manipulated text; slides; videos; Internet sites; etc. These under appreciated devices remedy the main defects of chalkboards: professors can more easily prepare the projected text or images before class and preserve them for future classes; the projections are far brighter and crisper; the text is more legible than chalked handwriting; and erasing is simple and dust-free. One very versatile device is the LCD data projector, used in combination with a personal computer. This projector is wonderfully simple: It projects exactly what your computer monitor displays. Moreover, even typical word-processing software (Word and WordPerfect) permit professors to make useful charts, to color-code sections of tables or highlight passages of text, and to draw simple diagrams.

A computer hooked to a data projector can enhance Socratic dialogue regarding synthesis by projecting information that guides and maintains the dialogue. For example, the professor can project and manipulate a diagram of a crime scene and a deposition excerpt to help students articulate an important factual point. The

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27 Hess and Friedland, for example, closely examined law-teaching techniques in 1999 and did not even address projecting data from a computer screen, a technique that this article examines closely. See Hess & Friedland, supra n. 5, at 81-104.

28 One also could start with the simple overhead projector of transparency film. It probably will seem primitive to your students, however: "[I]t is a tool of the past; it is now replaced by an overhead projector attached to a computer." Richard A. Matasar & Rosemary Shields, Electronic Law Students: Repercussions on Legal Education, 29 Val. U. L. Rev. 909, 910 (1995).
projected visuals "help stem the erosion of interest that occurs when students are fixed to one spot for fifty minutes or more." They help shift students' focus from the professor to the legal analysis itself, making the professor less the "sage on the stage" and more the "guide on the side." That in turn encourages collaborative learning among students. Above all, these visuals "break the tedious stream of words, words, words, allowing students to see what they are hearing . . . ." This is particularly helpful because many students do not prefer an auditory learning style. "The Socratic method is based on the premise that all students have high auditory strengths," yet in fact few do. For example, Professor Robin Boyle, who teaches legal writing at St. Johns University, studied learning styles of her students and concluded that only about one quarter showed "high auditory preference" in learning. Combining that with evidence that only one quarter even of those would "remember 75 percent of what they hear," she estimated that only 8 out of 118 "would internalize and retain the oral exchange between teacher and classmates."

When teaching synthesis, the most powerful visuals are analytical charts and the authoritative legal texts themselves. First, with the computer and data projector, the professor can carefully construct color-coded, comparative analytical charts. In the classroom, a computer hooked to a data projector permits extremely effective and versatile presentation of, and interactive work with, such charts. The professor can project an essentially blank chart, and then, pursuing a Socratic dialogue, help students construct, fill in, and make sense of the chart. The chart thus provides a visible, easily used contextual structure for the dialogue.

This works as follows. The students should arrive in class having already read or discussed the process of synthesizing rules. They also should have attempted already, on their own, to synthe-

29 Elisa Carbone, Teaching Large Classes: Tools and Strategies 31 (quoting John H. Clarke, Building a Lecture That Works, 35 College Teaching 56, 57 (1987)).
30 See id.
31 Janet Whitley & Pam Littleton, One Texas University's Approach to Integrating Learning Styles in Teacher Education: Talking the Talk and Walking the Walk, in Practical Approaches to Using Learning Styles in Higher Education 54 (Rita Dunn & Shirley A. Griggs eds., Bergin & Garvey 2000).
32 Carbone, supra n. 29.
33 Boyle, supra n. 7, at 156.
34 Id. at 159.
35 Id..
36 Other authors have recently described using charts to teach synthesis. E.g., Teresa J. Reid Rambo & Leanne J. Pflaum, Legal Writing by Design 60 (Carolina Acad. Press 2001); Deborah Schmedemann & Christina Kunz, Synthesis Ch. 4 ("Fusing Cases") (Aspen L. & Bus. 1999); Tracy McGaugh, The Synthesis Chart: Swiss Army Knife of Legal Writing, 9 Perspectives 80 (2001); Passalacqua, supra n. 10, at 208-209, 216
size rules using the cases on which class discussion will focus. They therefore should have briefed each case, because understanding the individual holdings is a prerequisite to effective synthesis. They should have compared the cases and holdings, and begun formulating rules. They may also have drawn charts or other visual devices as they sought collective meaning in the cases. Finally, they may have worked in groups to answer basic questions assigned by the professor to prompt them to glean important lessons from the cases. All of this work prepares the students to engage effectively in class in a Socratic dialogue focused on the synthesis process.

Meanwhile, the professor has prepared the in-class Socratic dialogue largely by creating the comparative analytical charts. These charts record analytical points that the professor hopes the students ultimately will articulate in the classroom. Finally, the professor saves entirely blank, although perhaps color-coded, versions of the charts.

In class, then, the professor projects a series of blank charts. Through Socratic dialogue, the professor challenges students collectively to engage in synthesis and to produce a set of completed charts that usefully records their efforts. Students determine first what categories each chart needs—that is, what information one needs to extract from the relevant legal authorities, compare, and analyze. The chart associates the professor's Socratic questions with a visible framework for those questions. As the inquiry progresses, the professor types into the projected chart, by way of the computer keyboard, any student answer that usefully advances the dialogue, be it up a fruitful path or down an instructive dead end. This records these responses visibly within the framework, where they provide a useful, lasting focus for students' attention. The chart is easy to edit, so students can continually suggest, and the professor record, improvements. Moreover, each chart will become not only the students' creation but also their property, for them to use as they promptly write a memorandum. After the class session, the professor can distribute the charts (after editing them if necessary), for example by posting them on a course website.

The second particularly helpful type of visual for teaching synthesis is authoritative legal text itself. A Socratic dialogue is, after all, a dialogue not just between professors and students but also between them and the relevant legal texts—and, more broadly, the

37 "Students often synthesize legal issues and relationships by drawing arrows and diagrams between concepts showing how they relate to each other, by preparing flashcards that contain flowcharts of how legal rules build upon one another, or by creating an outline of an outline that provides short conceptual descriptions of the relationship between concepts." Matasar & Shiels, supra n. 28, at 918.
judges, legislators, or others who wrote those texts. Using simple mouse clicks, the professor can easily alternate between projecting analytical charts and texts, for example a statute or a case. Thus, if students’ answers to a Socratic question are insufficiently precise, for example, the professor can ask where lawyers would look for guidance. The professor can then project important textual passages and remind the students that “[i]n attempting to reconcile cases, you will be looking for clues to tell you whether one of [your putative] resolutions is possible.” 38 This visually emphasizes the necessity of careful and thoughtful reading. If the students still cannot respond effectively to further questions, the professor can use the computer to highlight particular text that contains analytical clues—for example, more precise wording or a crucial caveat. Students thus see the clue, and its source, and the process of extracting it and its meaning.

Projecting text and charts, and challenging students through Socratic questioning to interact with them and one other, helps demystify the difficult, abstract process of synthesis. By asking and answering probing questions, by formulating answers, and by both hearing and seeing how those answers interrelate, the students learn how lawyers synthesize: by selecting, comparing, and critically analyzing various legal pronouncements. This process also helps clarify the professor’s role in Socratic dialogue: to guide students, by questioning, prodding, and recording, through the process of synthesis, so that students create for themselves an immediately useful set of comparisons and conclusions. Finally, this enhanced Socratic method reduces both the risk that students will freeze in free fall, like Scott Turow in One L, and the risk that the professor will give up on the student and simply take over, as did The Paper Chase’s Professor Kingsfield. In short, it increases the odds that students will succeed in comprehending and articulating synthesis.

III. SYNERGY REALIZED: AN EXAMPLE OF SOCRATIC DIALOGUE TEAMED WITH A COMPUTER AND A DATA PROJECTOR

The following example shows how a professor can team Socratic dialogue with the communicative power of a computer and a data projector to teach synthesis effectively and enjoyably. The professor’s students, just a few weeks into law school, have begun to grasp the course’s basic pedagogical premise: Students learn by

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reading, doing, receiving feedback, and re-doing. The students have read about synthesis, discussed it, and practiced it with a simple exercise. They also have received a hypothetical client with a detailed factual scenario. That scenario can be summarized as follows.

A wealthy and politically active homeowner, Ms. Herrera, is irate because a young journalist, Ms. Trapp, has used Herrera’s land to secretly film Senator Zink’s illicit tryst with a young paramour. Trapp then sold her film to new media, they broadcast it, and Senator Zink’s political career lies in smithereens. He has accused Herrera, a longtime supporter, of betraying him. She is torn up: she certainly did not intend to betray him, but unwittingly she fostered his demise by trusting Trapp—the real betrayer. Posing as an ornithologist (she in fact studied ornithology until recently), Trapp had convinced Herrera to let Trapp film birds on Herrera’s expansive, wooded property. Trapp had concealed her true aim, however. In fact she had been tipped off to Senator Zink’s planned tryst. She intended to film it and then to inform the public (and cash in) with the resulting news scoop.

The professor has asked the students to advise a senior partner regarding whether Trapp thereby trespassed on Herrera’s property. The students have received three California judicial decisions. They have briefed and analyzed the individual opinions. Each case addresses the intentional tort of trespass. Each does so differently. Moreover, if the students’ client were to litigate this matter to the state appellate court, the second district would decide the case. The judges of that district decided only one of the students’ three cases, so only that one is a mandatory precedent. Furthermore, only two cases involve newsgathering.

Out of this tangle, the partner is demanding a coherent rule or set of rules, effectively explained and intelligently applied to the client’s situation. After the class discussion of synthesizing the cases, the students will have to write the Discussion section of a memorandum to communicate their analysis.

Some students are synthesizing the cases well but are unsure of their analysis. Others wrongly believe they have all the answers, but in fact their analysis is cursory. Still others feel lost or paralyzed. The moment is ripe for class sessions that team Socratic method with data-projection technology.

In these sessions, the professor will engender a Socratic dialogue to help the students to teach themselves and each other.

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through. The professor will alternately project: (1) the cases, when students need to focus on particular textual passages and (2) various blank charts designed to record important comparisons between the cases and to begin formulating synthesized rules from them. The professor consults, if necessary, personal copies of the completed charts to check the progress of the dialogue. The professor also keeps handy the following list of points. The Socratic dialogue will attempt to challenge the students to articulate these at various points during the sessions:

A. Relative Importance of the Cases

1. We have only one **mandatory** precedent: *Miller*.
3. All cases were decided within the last 15 years.

B. Gleaning Rules from the Cases

1. The one **mandatory** precedent addresses only unauthorized entry.
2. The **non**-mandatory cases (also) address unauthorized acts **after** entry: while the actor is on the land with the owner’s consent, which may be “limited as to purpose or place.”
3. Both time frames are relevant: Trapp entered, Herrera may have limited her consent, & Trapp may have exceeded the limit while on the land.
4. **Mandatory** precedent thus leaves a gap in the law: It does not address trespass by exceeding limited consent. No **mandatory** rule governs events after entry.
5. So, we must predict whether a court in our jurisdiction would use the **non**-mandatory precedents to fill the gap.
   a) Does the *Miller* rule or anything else prevent a court from accepting the “limited consent” rule of *Mangini & Baugh*?
   b) If not, would a court likely accept the “limited consent” rule? Why or why not?
6. If a court would likely accept it: Synthesize.

C. Synthesizing the Rules

1. Intentional, unauthorized entry is trespass. *Miller*.
2. Authorized entry is not trespass, probably even if the en-
terer gained the authorization by lying to the landowner. *Miller & Baugh.*

3. Trespass **most likely** also occurs if one enters land, pursuant to consent that is limited (at least as to purpose or place), and then exceeds the limited consent while on the land. *Mangini & Baugh.*

4. Trespass **may** not occur if an owner consents to filming for one purpose, but the filmer, after leaving the land, uses the film for a different purpose. *Baugh.*

**D. Crucial Passages in Cases**

1. *Miller:* “The essence of the cause of action for trespass is an ‘unauthorized entry’ onto the land of another.” “[T]he intent required as a basis for liability as a trespasser is simply an intent to be at the place on the land where the trespass allegedly occurred. . . . The defendant is liable for an intentional entry although he has acted in good faith.”

2. *Mangini:* “[A] trespass may occur if the party, entering [land] pursuant to a limited consent, i.e., limited as to purpose or place, proceeds to exceed those limits by divergent conduct on the land of another. ‘A conditional or restricted consent to enter land creates a privilege to do so only in so far as the condition or restriction is complied with.’”

3. *Baugh:* “Baugh admits that she consented to the entry . . . and to their videotaping her discussions with Lopes . . . .” “[T]he crew acted within the scope of Baugh’s consent while they were on the premises.”

The professor first elicits from various students the kinds of information that might be useful in an initial chart comparing the cases. Drawing on prior coursework, students will express the need to rank the relative importance of cases and name characteristics that help us do so, for example:
A. Relative Importance of the Cases

<table>
<thead>
<tr>
<th>Name</th>
<th>Miller</th>
<th>Mangini</th>
<th>Baugh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Type of precedent (mandatory?)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Case's factual or other relationships to the other cases</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

This simple start educates the students about the classroom chart-making process and fosters momentum in the dialogue. It also gives them confidence: They generally are answering the questions with little difficulty. They see immediate fruits of their labor as the professor, perhaps judiciously editing a little while writing, fills in first the categories they name and then the corresponding information they supply:
A. Relative Importance of the Cases

<table>
<thead>
<tr>
<th>Name</th>
<th>Miller</th>
<th>Mangini</th>
<th>Baugh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of precedent</td>
<td>Mandatory</td>
<td>Non-mandatory 'persuasive'</td>
<td>Non-mandatory 'persuasive'</td>
</tr>
<tr>
<td>Date</td>
<td>'86</td>
<td>'91</td>
<td>'93</td>
</tr>
<tr>
<td>Relationship to other cases, etc.</td>
<td>3 rd. re newsgathering; partly followed &amp; distinguished in Baugh</td>
<td>Ignores Miller; not re newsgathering. Follows Zila &amp; Restatement</td>
<td>Re newsgathering; partly follows, partly distinguishes Miller. Distinguishes Magnini &amp; Zila</td>
</tr>
</tbody>
</table>

The professor easily can color-code the chart, for example by choosing a shading or font color from the word-processing menu. The colors can remind students in subsequent charts, for example, that two of the cases are not mandatory precedent.

The professor then projects another chart and, again using Socratic method, guides them to name sensible categories for comparing substantive content of the cases. The categories are familiar to students from the process of briefing cases. The students then fill in the categories. Then, because the projected charts they have created now guide their efforts, the students do not see their interaction with the professor as typical Socratic dialogue. At times the professor nearly steps aside. The students now largely guide one another through their inquiry.
B. Gleaning Rules from the Cases

1. Disposition & Reasons

<table>
<thead>
<tr>
<th>Case name</th>
<th><strong>Miller</strong></th>
<th><strong>Mangini</strong></th>
<th><strong>Baugh</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Court’s action</td>
<td>Reversed summary; for D: P has cause of action</td>
<td>Reversed dismissal; P has cause of action</td>
<td>Dismissed</td>
</tr>
<tr>
<td>Trespass?</td>
<td>Yes (if jury agrees w/ P)</td>
<td>Yes (if jury agrees w/ P)</td>
<td>No</td>
</tr>
</tbody>
</table>
| Reasons | Entering TV crew’s good faith (lack of malice) is irrelevant; any intentional, unauthorized entry is trespass | Lessee trespassed by depositing & leaving waste on leased land if lease didn’t contain that. | 1. Landowner gave consent to entry, & TV crew’s deceit to get it is not relevant.  
2. TV crew exceeded consent (if at all) only after leaving the land. |

The students should be working collaboratively with the professor and each other as they reach more difficult tasks. Nonetheless, the professor continues primarily simply to ask probing questions—about the content of the cases, the nature of the students’ task, the client’s needs, the distinction between the case’s “inherited” and “processed” rules,\(^{40}\) and so forth. As controversy arises among students about how best to complete a cell in the chart, the professor alternates between projecting the charts and the underlying cases. The professor challenges students to focus on and analyze portions of text to support their interpretations. Eventually, the students collectively compile something like the following:

\(^{40}\) Here it is often helpful to use the terms proposed by Linda Edwards in her excellent text: the court deciding the case worked with an “inherited rule,” or “the legal principle that [came from] prior authorities,” but the court’s own decision creates a “processed” rule that “may change the [pre-existing] rule . . . or may simply add more information about . . . what it means.” Edwards, supra n. 38, at 41.
### 2. Rules Used by the Court

<table>
<thead>
<tr>
<th>Case name</th>
<th>Miller</th>
<th>Mangini</th>
<th>Baugh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rules used by the Court</td>
<td>Trespass is unauthorized entry onto another's land, i.e., entry w/o consent. Entry must be intentional, but this means merely intent to be on the land.</td>
<td>Trespass is exceeding a landowner's land, consent by divergent conduct while on the owner's land.</td>
<td>1. Same as Mangini.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2. Like Miller: enterer's motivation – even <strong>bad faith</strong> – is <em>not</em> relevant.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3. Consent need not be knowing or meaningful; it's valid even though gained by fraud.</td>
</tr>
<tr>
<td>Prospective rules that emerge from the decision</td>
<td>Any intentional entry w/o consent (authorization) is trespass. Motivation of enterer is irrelevant.</td>
<td>Trespass can occur on the land <strong>after authorized entry:</strong> Consent can be 'limited as to purpose or place,' &amp; enterer can exceed limit, e.g. dumping beyond what lease permitted.</td>
<td>1. <em>Any</em> consent suffices, even if gained by lying.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2. Trespass after entry occurs only if alleged trespasser exceeds limit <strong>while on land.</strong> Consent limited to filming 'for DA,' &amp; 'not TV,' is not exceeded by broadcasting the film <strong>after leaving the land.</strong> This suggests consent can't be ltd. as to purpose.</td>
</tr>
<tr>
<td>Acts/Time rule addresses</td>
<td>Entry only</td>
<td>After entry, <strong>while on the land.</strong></td>
<td>Both entry &amp; while on the land.</td>
</tr>
</tbody>
</table>
C. Synthesizing the Rules

<table>
<thead>
<tr>
<th>Basic acts that can be trespass</th>
<th>1. Unauthorized, intentional entry</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2. Unauthorized acts (exceeding limits of consent) after entry, <strong>while on the land</strong></td>
</tr>
<tr>
<td></td>
<td>NOTE: Acts <strong>after leaving the land</strong> are NOT trespass</td>
</tr>
<tr>
<td>Entry is trespass when:</td>
<td>1. Intentional (mere intent to enter)</td>
</tr>
<tr>
<td></td>
<td>2. On land owned by another</td>
</tr>
<tr>
<td></td>
<td>3. Unauthorized: w/o owner's <strong>consent</strong></td>
</tr>
<tr>
<td>BUT entry probably is NOT when:</td>
<td>Entry occurs with the owner's consent, even though the enterer gained it via a lie (fraud, misrepresentation, deceit). <em>Baugh.</em></td>
</tr>
<tr>
<td>Acts on the land are trespass when:</td>
<td>1. owner gave only <strong>limited</strong> consent to enter &amp;</td>
</tr>
<tr>
<td></td>
<td>2. enterer exceeded the limit while on the land</td>
</tr>
<tr>
<td>BUT acts on the land may NOT be when:</td>
<td>the owner consents to filming for one purpose &amp; the enterer films for a <strong>different</strong> purpose, but does not use the film for that purpose until <strong>after leaving the land.</strong> <em>Baugh.</em></td>
</tr>
</tbody>
</table>
IV. CONCLUSION

Socratic method is powerful yet also difficult and risky for both students and professors. We should harness its power to teach synthesis, yet seek ways to reduce its risks and improve its effectiveness. Using computers and data projectors, we can enhance Socratic dialogue bringing into the classroom colorful, interactive visual aids. Teaming Socratic dialogue with a computer and a data projector can create a classroom synergy that helps students learn effectively and enjoyably the complex process of synthesizing rules from multiple legal authorities.
ENGLISH FOR LAWYERS: A PREPARATORY COURSE FOR INTERNATIONAL LAWYERS

Teresa Brostoff, Ann Sinsheimer, and Megan Ford*

This article presents our model for an LL.M. preparatory course for international law students. We teach the course to non-native speakers of English at the University of Pittsburgh School of Law. However, the same course could be the basis for an introduction to law and law school for native speakers preparing to enter law school or other legal studies at the graduate or undergraduate level.¹

Our course is a three-week ungraded² course called English for Lawyers (EFL). It includes twenty to twenty-five contact hours per week and approximately ten hours of law-related extracurricular activities, such as tours of the state and federal courthouses, a jail and juvenile detention facility, and law firms; observation of trials; and guest lectures by judges and legal scholars. Our students come from all over the world.³ The majority of our students plan to enter a Masters in Law (LL.M.) program at the University of Pittsburgh or another U.S. institution. They are typically lawyers in their home countries and practice law in civil law countries. Their TOEFL⁴ scores range from 570 to 620. Our course also has included visiting professors and students entering advanced degree programs such as J.S.D. and S.J.D. programs, which are equivalent to a Ph.D. program. The average class size is twelve students.

Currently, there are approximately 227 graduate law programs

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*Teresa Brostoff and Ann Sinsheimer are Associate Professors of Legal Writing at the University of Pittsburgh School of Law; Megan Ford is a member of the graduating class of 2000 at the University of Pittsburgh School of Law and was a former research assistant in the English for Lawyers program.

¹ For example, our course model could be used for CLEO or similar law school preparation programs designed for J.D. students. The CLEO program held at the University of Pittsburgh School of Law in July 2000 used our course materials for the Legal Methods portion of the program.

² We do not give the students grades for their work completed in the English for Lawyers course, but we do have high expectations of their work product. The students begin to learn about the work ethic required to keep up with assignments given in law school. We award each student a certificate of successful completion at the end of the course.

³ The English for Lawyers class of July 2000 included students from Brazil, Bulgaria, Chile, China, Germany, Kenya, Mexico, Thailand, and Ukraine.

⁴ Most universities require that nonnative speakers take the Test of English as a Foreign Language (TOEFL) as part of their application process. The University of Pittsburgh requires students to obtain a score of at least 550 to be considered for admission.
open to international law students in the United States. Moreover, nonnative speakers are common in J.D. programs at many U.S. law schools. As the number of international students at U.S. law schools grows, law school communities can benefit from preparatory programs that adequately prepare international students for the language and cultural demands these students will face. General intensive language programs and linguistic programs focusing on English for Academic Purposes (EAP) are available, but they are not designed to address the unique needs of law students. A number of linguistic programs and U.S. law school programs exist, and law schools with international students should consider the pros and cons of sending students to an existing program or establishing their own in-house program. Our approach is one of several potential models.

It is our hope that by presenting our course in this article, we will generate further discussion about how to best prepare students for the demands of law school and the practice of law in a culturally diverse environment. This article will first discuss law school generally and the demands on all law students, whether they are native or nonnative speakers of English. We will next present the goals of our program and discuss how our program attempts to prepare students for these demands of law school. Specifically, we will discuss what we cover in our course and some of our classroom exercises. Finally, we will discuss how effective our course has been in obtaining our goals and suggest some areas for further research and development.

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8 See Christine B. Feak & Susan M. Reinhart, ESP for Students of Law, TESOL Case Studies in ESP (unpublished manuscript 1999) (copy on file with the authors); Fredricka L. Stoller, Time for a Change: A Hybrid Curriculum for EAP Programs, 17 TESOL J. 9 (Spring 1999).
9 Some of the other schools offering preparatory programs for International LL.M. students include The English Language Institute at the University of Michigan, The International Law Institute in cooperation with George Washington University Law School, University Extension at UC Davis, the English Language Institute at the University of Delaware, Case Western Reserve University Law School, Pace University School of Law, and Santa Clara University.
I. ISOLATING THE SKILLS STUDENTS NEED TO SUCCEED IN LAW SCHOOL AND THE LEGAL PROFESSION

Our course is short; therefore, we focus our language development exercises on tasks that will help students to increase their comfort in using their existing English language skills and that will expand their vocabulary, particularly their legal vocabulary. We also include skills they will use in law school and in their daily lives in the United States. This includes language skills as well as academic and acculturation skills. Rather than expecting our students to master these skills, we stress to them that the concepts presented in our course will be concepts they will apply repeatedly throughout their legal careers, and that they will have a lifetime to strengthen and refine these skills. The goals of our course are to prepare students for law school, to help students become an integral part of the law school community and the legal profession, and to mitigate any culture shock they experience both within the law school and in their daily lives.

The academic law school environment

In designing our specific course goals, we examined the unique demands on law students as opposed to other graduate students and made the following assumptions. Like most graduate students, law students are novices on a road to becoming experts in their chosen field. They must learn the new vocabulary, reasoning process, and procedures and norms by which the profession will evaluate them. Even when a student enters a degree program with expertise in another field or in a subcategory of a profession, the student must still learn the components of the new field. For example, an international student entering an LL.M. program who is already a lawyer in his or her home country is still a novice in terms of U.S. law. To acquire the needed expertise, law students, similar to other graduate students, are required to actively listen

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10 Stoller, supra n. 8, at 11.
to lectures, take notes, and participate in classroom discussions. They must read and analyze long assignments, sometimes more than a hundred pages a night, and learn highly technical vocabulary. They are required to complete assignments individually and with other students. They must perform orally almost daily in class, but they are evaluated through their written performance on examinations.

The U.S. legal system and law school teaching methodology differ from those in other countries, presenting challenges for non-native law students that differ from those facing nonnative graduate students in other fields. Students in masters or doctoral programs in fields such as art, history, chemistry, mathematics, engineering, or medicine often have been exposed to the vocabulary, norms, and expectations of the fields as undergraduates or through prerequisite courses. Law students, however, will for the most part encounter the vocabulary and reasoning process of U.S. law and the predominant teaching style—the “case method”—for the first time in law school.13 Law schools offer no transitional period for entering law students. The materials a law student reads on his or her first day of class are as difficult as the materials the student will encounter in his or her final day of law school or as a practicing attorney.14

Many U.S. law schools use the case method to present material.15 Rather than reading text and listening to lectures, law students study hundreds of judicial opinions, usually from the appellate court level. From these opinions or cases, students are expected to derive general principles of law by comparing and contrasting cases that have similar facts or apply a similar law. An individual case will recount the facts of a dispute and the legal problem the court was asked to address and will include the reasoning process the court used to reach its decision. By looking at groups of cases and synthesizing the information, students identify patterns or general principles. In class, professors typically ask students questions about individual cases and groups of cases

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14 Mitchell, supra n. 11, at 289 n. 34, 292.
rather than lecturing about the general principles. The students actively derive these principles from the cases in the same way a scientist makes discoveries or establishes principles by analyzing raw materials.

Law students learn to study in this unique style in a highly formalized setting. While clinical programs and electives offer some flexibility in the upper-levels of law school, the first-year curriculum remains remarkably similar to a formalistic program established in the late 1800s. Students take almost exclusively required courses in their first year. Their schedules are determined by the school administration, with input from the accreditation authorities. Schedules leave students little free time for anything but the study of law. Courses are organized by distinct subject matter, and the interrelationship between these courses is not addressed until the second or third years of law school. Students, particularly in the first year, recite the details of cases and show respect for authority. They must show respect for people in positions of authority such as professors and judges and also show respect for precedential decisions or the decisions in prior cases by acknowledging and adhering to this precedent when resolving present disputes.

First-year classes are often large. Professors may introduce background information by lecturing, but most classes also include a series of questions posed to students about the cases. This questioning process is known as the Socratic method. Students explain the procedural and factual history of a precedent case, state the legal problem or question the court was to resolve, and state the court's decision and reason for reaching the decision. After studying a number of cases, students state the general principle these cases represent. The professor often will test this principle by asking a student to apply a principle to a hypothetical situation. The questions, ideally, help students derive the law from the cases.

16 Fox, supra n. 15, at 473.
17 For example, first-year students usually take property, torts, civil procedure, criminal law, criminal procedure, contracts, constitutional law, and legal reasoning and writing. In the second or third years, they will take courses that may address each of the first-year subject areas in greater depth.
18 The Socratic method referred to in law school is perhaps more accurately called the Langdellian method, since the technique developed by Langdell involves the Protagorean theory of argument and persuasion in combination with the Socratic goal of self-knowledge. Richard K. Neumann, Jr., A Preliminary Inquiry into the Art of Critique, 40 Hastings L.J. 725, 728-729 (1989); Stropus, supra n. 15, at 453. Whatever its name, the method is an oral teaching methodology in which students read judicial opinions and then professors use questions to elicit information, challenge assumptions, and raise counter-positions. Id.
19 Mitchell, supra n. 11, at 284-285. Ideally, through this questioning, students become aware of what they do not know and ultimately how the knowledge they do possess can be used to provide the knowledge they lack. Neumann, supra n. 18, at 730. In the law school
To fully participate in a law school class, students must learn how to read cases and extract the necessary information from them. Students also must learn to prepare for and address the questions professors will pose in class. Students must organize large quantities of information and take notes in a way that will allow them to find and recall information about cases quickly to respond to a professor's questions. Additionally, students must follow the interchange between students and professors, since often the relevant information is presented not by the professor but by a student in answer to a professor's question. Students are expected to synthesize all this with relatively little explicit direction. Particularly in the first year, students receive little individual feedback. Their grade for a course is based almost exclusively on one written exam at the end of the class that is usually anonymously graded. 20

The expectation that novices immediately tackle information as though they were already experts contributes to the stressfulness of the law school experience. 21 Students lack the knowledge base to address the assigned task, and this lack often creates confusion and anxiety. Like other professional students, law students are taught through terms and concepts they fully understand only after they have mastered the profession. 22 Heavy workloads and the ambiguity inherent in legal work also take a toll on students. 23

II. HELPING STUDENTS TO ACQUIRE THE REQUIRED SKILLS

Our three-week course is aimed at helping students surmount these difficulties. It is necessarily very intensive. It integrates study skills, lawyering skills, and independent research skills and helps students acquire academic and legal vocabulary. Each day, students are introduced to new ideas and concepts, and they practice and build upon ideas introduced in earlier classes. To help stu-

setting, Langdell sought to train lawyers who could discover patterns of reasoning from cases and use these patterns to solve similar problems. Stropus, supra n. 15, at 453.


21 Mitchell, supra n. 11, at 292.

22 Neumann, supra n. 18, at 726.

udents develop their reading and listening skills, we ask students to summarize a law-related news story from either the newspaper, television, or radio, and turn in a written summary each day. Students also briefly discuss these articles at the beginning of each class, which gives them an opportunity to participate in a classroom discussion while at the same time increasing their awareness of current legal issues. In addition to more traditional legal materials, each week the students also read works of fiction\textsuperscript{24} and cases related to those works, and they culminate the week by watching a film that is related to the work of fiction.

During the first week of class, the students focus on understanding the common-law system and the structure of the U.S. government. The students receive lectures, complete readings, and play quiz-like games to test their knowledge of the American legal system. The students also focus on understanding their role in the law school classroom and what the professors will expect from them.\textsuperscript{25} Specifically, we include information to help students clarify information, participate in classroom discussions, and work in small groups. To help students follow a law school class, we have outlined the parts of a typical class and identified the way definitions of terms and concepts are presented in lectures and in casebooks. We have included exercises on English stress and intonation, since recognizing and learning these language patterns and how they are used to emphasize information may help students follow the parts of a lecture. Recognizing these patterns will also help students to communicate with professors and other students. We have developed note taking exercises based on actual law school lectures. While we conduct the class informally at most times, we expect the students to complete all reading and writing assignments. At times, we inform the students that we will conduct a portion of the class like the traditional law school classroom. The students then get to practice note-taking and to participate in the Socratic method of legal education. We also include three videotaped lectures from first-year classes so students may continue to practice listening and taking notes with speakers unfamiliar to them.

\textsuperscript{24} For example, students will read Scott Turow, \textit{One L} (Warner Books 1977), during their first week of class and Harper Lee, \textit{To Kill a Mockingbird} (J.B. Lippincott 1960), or Lorraine Hansberry, \textit{A Raisin in the Sun} (Vantage Books 1995), in their second week of class.

\textsuperscript{25} At the University of Pittsburgh, international LL.M. students have the same classroom, reading, and testing obligations as J.D. students. While the LL.M. students have many systems of support to assist them in their tasks, the institution maintains high expectations for their ultimate performance. The students' examinations and papers are graded anonymously along with all students in their classes. Despite this lack of differential treatment, several international LL.M students have graduated \textit{magna cum laude} each year.
Because our students must acculturate to both the United States and law school, we address culture shock during the first week to begin to help them adapt to their new environment. We give them general information and information specific to the law school environment, which includes issues such as time management and exam-taking. We have developed exercises to help students interact with each other and native speakers both professionally and socially. These include collaborative projects, exercises on law school slang, reading novels related to law, and watching and discussing legally relevant movies with law students who are native English speakers. The students share their good experiences and frustrations with their adjustment to life in the United States. In this way, the students continue to build bonds with each other through their commonality of experience despite their diversity.

We have also developed exercises on giving and critiquing presentations and ask each student to give a formal presentation of the system of government in their home countries at the end of the first week. This exercise provides the other students with a chance to further practice active listening and note-taking skills. They must also complete written evaluations of each presentation. In addition to helping the students with their speaking and listening skills, these presentations help the students to gain greater understanding of each other.

In the second week of class, students begin to focus on judicial opinions, and we discuss techniques for reading and summarizing the information contained within the opinions. In later exercises, students read multiple cases and synthesize the information to determine the law. They then begin to predict the answers to legal questions based on their understanding of the cases they have read. For these exercises, we select cases from the first-year curricular subjects so students become familiar with legal issues in these subject areas. We look at a variety of ways to define and rephrase vocabulary and include basic legal terminology and vocabulary common to first-year classes.

The students also experience using judicial opinions to form

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26 See generally S.P. de Cruz, Law Teaching, and the Overseas Student: Towards a Practical Critique, 22 L. Teacher 90, 90-91 (1988) (containing observations about culture shock suffered by his international law students in Great Britain).

27 See generally id.; Margaret Coffey, Building Cultural Community in English Language Programs, 18 TESOL J. 26 (Summer 1999).

their understanding of a case prior to conducting a mock client interview and a mock negotiation. Students may be quite comfortable in these settings from their practice in their home countries, but they must adjust to understanding and discussing the law in the common-law context. These exercises help the students to improve their interpersonal communication skills, as each exercise requires precise reading, listening, and speaking skills. The students also gain experience in working together in small groups to complete these exercises.

In the third week of classes, we focus on helping the students to think about their independent scholarship. They work throughout the week to research and prepare an outline for the scholarly paper they would like to present in their seminar during the academic year. The third week culminates in student presentations of outlines of their scholarly papers and their initial research findings. These presentations are similar to those required in seminar classes. Most of the student works compare the law in their home countries to U.S. law in the students' particular areas of interest. The students orally present their research and analysis to their professors, their peers, their teaching assistants, and other interested J.D. students. Through these presentations, the students gain another opportunity to refine their oral communication skills. They also must communicate their suggestions to their peers in writing, after listening carefully to the other student presenters. We find during this final presentation that the students have become more confident in both their public speaking skills and their written critiques.

During the third week, students also continue to refine their reading and understanding of case and statutory law. The students use statutes and case law interpreting them to predict the answers to legal questions. The students also gain experience in persuasion by presenting oral arguments on a criminal and constitutional

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30 Students receive instruction in general legal sources of law and internet research, as well as LEXIS and Westlaw training. Due to the short duration of the course, we do not teach traditional legal research methods. Students receive formal legal writing and research training in their LL.M. programs.

31 It is important to discuss the differences between the use of statutes in civil law systems and in the common law. We use various exercises to demonstrate how the courts construe statutes to answer a legal questions in the common law. We find that the students feel more comfortable in adapting to their new understanding and use of statutes if they are first afforded some opportunity to discuss their backgrounds and use of statutes in their home countries.
law issue. Typically, our students have prepared and presented oral arguments well, despite the complexity of the legal issues involved. Oral arguments give the students another opportunity to understand questions posed to them and to formulate spontaneous yet persuasive answers. This is a skill that the students will need to fully participate in class discussions. By the third week of class, the students feel more comfortable answering questions and have mastered many techniques that help ensure that their answers are understood by their listeners.

In conjunction with formal classroom instruction, we have also found that extracurricular activities and trips have helped our students to fill the gaps in their knowledge about the U.S. legal system and U.S. culture. In addition to providing substantive legal knowledge, these trips help the students to begin to form social bonds with one another. As the students come from vastly different social, economic, political, and cultural backgrounds, they often need encouragement to begin to understand and communicate well with their fellow international peers. Extracurricular activities, such as regularly scheduled pizza lunches with J.D. students, help the international students begin to better relate to their U.S. classmates. We try to include a variety of different experiences in the extracurricular part of our program. Students take tours of courthouses, both federal and state, and if possible, view a portion of a trial or a hearing. Sometimes the students will meet and talk with judges. They also take tours of the county jail, juvenile detention facilities, and a large law firm, where they meet attorneys who practice in their areas of interest. Our student teaching assistants accompany the students on most of these law-related field trips. This lends a less formal atmosphere to these experiences and allows the students to begin to relate to one another without the supervision of their professors.

As the program draws to a close, we help the students to turn their full attention to the year of law school training that awaits them. We help them to understand how law schools function procedurally during the academic year, and we help University of Pitts-

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32 Coffey, supra n. 27 (providing additional information and techniques on building successful international peer interactions).

33 In the summer of 2000, students met and spoke with Judge Joseph F. Weis, Jr. from the United States Court of Appeals for the Third Circuit. They also observed proceedings in the juvenile court and will meet Judge Kim Clark, Administrative Judge of the Juvenile Courts of Allegheny County, Pennsylvania.

34 Our one formal rule for all extracurricular activities is that students must communicate in English with each other and with those whom they meet. This helps students to interact with all other students in the class, not just those with whom they share a native language.
burgh students schedule their classes for the LL.M. program. The students leave English for Lawyers understanding what their professors and fellow students will expect of them in the classroom, and they are better prepared to undertake the tasks before them as students in American law schools. English for Lawyers does not continue throughout the year, but because we are full-time faculty at the law school, the students who study at the University of Pittsburgh feel comfortable seeking our help, guidance and support as they need it. We continue to have contact with the students throughout the year and are always available to help them as they adjust to American law school life.

III. MEETING OUR GOALS AND MEASURING OUR SUCCESS

To evaluate the success of our program from our students' perspective, we asked our research assistant to talk to the LL.M. students from the class of 1999 during the 1998-1999 school year.\(^{35}\) We sought to identify the adjustment difficulties faced by LL.M students as well as determine students' perceptions of the value of the EFL program. Our assistant spoke to both those students who had completed the EFL program and LL.M. students who entered the degree program after a one-week general orientation by the Center for International Legal Education. The students participated in personal interviews after the completion of the fall semester exam period.\(^{36}\) In the spring, the students completed a written survey that we hoped would be less intimidating and more convenient.\(^{37}\) On the basis of the survey, we discovered that students perceived a need for and interest in summer programs like the EFL program and that they were satisfied with the EFL program in particular.\(^{38}\)

\(^{35}\) Under our supervision, our research and teaching assistant, Megan Ford, designed interview questions with the help of our second EFL teaching assistant, Jerry Shoemaker. They spoke with or received written feedback from thirteen out of the fifteen LL.M. students from the 1999 graduating class. Seven of these thirteen students completed the EFL course. Ms. Ford's results are reported in an unpublished seminar paper, Lessening the Impact of Culture Shock: A Summer Orientation Program for Foreign Lawyers Pursuing LL.M. Degrees at American Law Schools (1999) (on file with the authors).

\(^{36}\) Ms. Ford spoke with ten out of fifteen LL.M. students by personal interview. \textit{Id.} at 2.

\(^{37}\) Ms. Ford received written responses from thirteen out of the fifteen LL.M. students, which included three students who had not previously participated in a personal interview. \textit{Id.} at 2-3.

\(^{38}\) In addition to Ms. Ford's study, the Center for International Legal Education at the University of Pittsburgh School of Law asked students to complete a course evaluation form at the end of the three-week program. These evaluations indicated strong student satisfaction with the course, but could not tell us much about students' perception of the course's effectiveness since they had not entered law school at this point. Ms. Ford's study was de-
A. Problems students encountered

The study revealed several aspects of the American legal education System that caused adjustment difficulties for the international LL.M. students. Students who were nonnative speakers of English indicated that they had trouble with English vocabulary, both non-legal and legal. Several students reported difficulties in reading case law. They reported problems identifying issues and holdings, as well as frustration with the time required to read a case. Students also indicated that because it was difficult to know what was really important in the opinions, it was difficult to read efficiently. These difficulties faced by all law students seemed greater for the international students given their unfamiliarity with the technical legal language and subject area.

In response to the written surveys, students articulated the challenges they faced in learning American legal reasoning. Many students found the analytic process of analogizing and distinguishing facts to be extremely different from their civil law systems, and they consequently found American legal reasoning less straightforward than civil law. Students found it difficult to research the law and also reported difficulties with their legal writing both for legal memoranda and on examinations. Students struggled with classroom lectures and discussions. The pace posed a problem, and students were frustrated by the Socratic and case law methods, as opposed to the lecture format they encountered in their home countries. Many students felt uncomfortable participating in class discussions. Nine of the thirteen students, including an Irish student who was a native English speaker, reported that the demands of U.S. law schools were much greater than what was required in their home countries, and students reported having to develop new study habits, requiring them to become more disciplined and organized than they were before.

B. How EFL Participants Benefitted

The students who participated in the EFL program identified several features of the course that helped them adjust to the de-
mands of law school. Generally students felt that the EFL program helped them by providing a realistic model of what law school would be like. At the same time, students appreciated the fact that, while rigorous, the program was small and maintained a friendly, informal atmosphere. Four students felt that the heavy homework demands in the EFL program directly prepared them for their actual law school workload, although these same students reported resenting the workload as EFL students. One student in particular said that the workload in EFL helped him to learn how to budget his time better during law school. This student also found our current events activity helped him to prepare for and be ready to speak in class every day. Students also felt that the presentations required in EFL provided useful practice for the presentations required in the law school seminars. Students reported that they referred to the EFL course material throughout the LL.M. program and that the legal vocabulary used throughout the course proved helpful in law school.41

During the personal interviews, students mentioned several specific components of the course as helpful. They found especially helpful reading and briefing cases, firsthand exposure to the law school classroom, the typical workload, oral arguments, client interviews, and negotiations. Students also said that they felt positively about daily current events reporting, trips to law-related sites, watching law-related movies, and interactions with J.D. students.

The non-EFL respondents to the survey expressed feeling disadvantaged by not having taken the EFL course.42 Specifically, these students said that they struggled at reading and briefing cases and would have benefited from EFL. One student reported that she gained the help of former EFL students to learn how to brief cases. Students also felt that the EFL students were more familiar with legal vocabulary and research. Several non-EFL students expressed a desire to participate in a summer program that would address much of the information and many of the skills taught in EFL: reading and briefing cases, legal terminology, issue-spotting practice, an understanding of the U.S. legal system, public speaking, and legal research methods.

41 Id.
42 At present we strongly recommend EFL for all incoming LL.M. students, but they are not required to take the course.
C. What Students Suggest

While several students reported liking the non-legal field trips and social events, at least three students felt that these events should have been optional, particularly given the heavy workload for the course. Students felt the legally-related trips were helpful and mentioned a desire to visit a law firm, which we added in 2000. Six of the seven EFL students felt that legal writing should be taught in greater depth and that more information on outlining and exam taking should be included in the course. In response to this information, we have in subsequent years decreased the number of non-legal trips, added a law-firm visit, included a short memorandum assignment, and added a guest lecture on Examination Skills by Professor Kevin Deasy, the director of our legal writing program at the University of Pittsburgh. Students also expressed a need to know more about constitutional law and civil procedure, and our program as yet has not addressed this need. 43

While we have not conducted a similarly detailed survey of our L.L.M. class of 2000, informal e-mail communications with some of these students44 have revealed that several of those LL.M. students found their law school experience extremely isolating and found it very difficult to meet U.S. law students. While we have tried in the EFL course to introduce the international students to as many research assistants45 as possible, this information suggests that international students will need more help throughout the year and that our J.D. students should be more directly involved with the international students through school-sponsored events. 46 In addition to continuing to look at our students' perceptions, we also feel

43 See Hanigsberg, supra n. 28, at 600-601 (discussing the incorporation of background lectures in constitutional law and civil procedure into a semester-long course for international students). Ms. Ford suggested that EFL adopt a similar approach by asking in-house faculty members to give background lectures in these subjects. Ford, supra n. 35, at 18. Such lectures could form the basis for note-taking exercises and provide useful vocabulary.

44 Michael Rhodes spoke informally with several of our students. Mr. Rhodes is currently a second-year law student and teaching assistant at the University of Pittsburgh School of Law. He will be continuing to build on Megan Ford's work. He plans this year to design a survey that will help to measure EFL's success and identify the unmet needs of all our LL.M. students.

45 Research assistants are virtually the only J.D. students present in the law school building during the summer months.

46 We believe school events that would involve the J.D. students with our international L.L.M. students would be an excellent way to encourage interaction among the students and promote greater understanding of cultural differences. See William G. Paul, A Vision for Our Profession, 86 ABA J. 8 (June 2000) (president of the American Bar Association stating that he would like to see "the richness and vibrancy of racial and ethnic diversity" in the legal profession).
it is important to talk at some future time with faculty to understand their perceptions of the international students' needs and to determine to what extent EFL is currently or could in the future meet those needs. Since our LL.M. students frequently intern for several months at law firms and with judges at the end of their LL.M. program, these employers could also provide us with valuable insight into our students' needs in the workplace.

IV. CONCLUSION

In presenting this paper, we hoped to offer a workable course model for those considering offering an LL.M. preparation program. While our course time of three weeks is somewhat limited, our students leave the English for Lawyers course better prepared for entering their LL.M programs. They enter American law schools with a better understanding of the American legal system, the language of American law, and what to expect when sitting in the law school classroom. They also begin to address culture shock and its many presentations as they form a support network comprising individuals from backgrounds vastly different from their own. All international LL.M. students need academic support to survive and thrive in an American law school. English for Lawyers has proved to be an integral and useful part of our program for addressing that need.

BIBLIOGRAPHY


Coffey, Margaret, Building Cultural Community in English Language Programs, 18 TESOL J. 26 (Summer 1999).


47 We would be happy to share information about our course and our materials with anyone interested: Professors Teresa Kissane Brostoff, Brostoff@law.pitt.edu and Ann Sinsheimer, Sinsheimer@law.pitt.edu.
Feak, Christine B., & Susan M. Reinhart, ESP for Students of Law, TESOL Case Studies in ESP (unpublished manuscript 1999) (on file with the authors).


Ford, Megan, Lessening the Impact of Culture Shock: A summer Orientation Program for Foreign Lawyers Pursuing LL.M. Degrees at American Law Schools (unpublished manuscript 1999) (on file with the authors).


2000 Survey Results

Association of Legal Writing Directors/Legal Writing Institute

Jo Anne Durako*

This brief article summarizes the 2000 ALWD/LWI Survey Results Report. The 2000 Survey included responses from 137 law schools in the United States. The respondents answered 100 questions about the operation of their legal research and writing programs during the 1999-2000 academic year. The complete report is a snapshot of these 137 programs. It is an admittedly inexact composite picture of many unique programs of great variety and complexity. This summary is more akin to an aerial photo—it gives a fascinating, but very general, overview.

The full 44-page report was sent in August of 2000 to the head of the legal research and writing program at each law school in the U.S. The full reports for both the 1999 and 2000 Surveys are available on the ALWD website (www.alwd.org/resources.htm) and copies may be downloaded from that source.

The 2000 Survey Report covers 11 areas of questions and includes 2 appendices. The survey questions covered the following areas:

I) Submitter Profile
II) Law School Information
III) Staffing Model
IV) Curriculum
V) Upper-level Writing Courses
VI) Technology
VII) Directors
VIII) LRW Faculty Members
IX) LRW Adjunct Faculty
X) Teaching Assistants
XI) Survey

*Jo Anne Durako is the Director of Legal Research and Writing at Rutgers-Camden School of Law. She has chaired the ALWD/LWI Joint Survey Committee since 1998.
Appendix A included a separate report on Gender Data and Appendix B listed the 137 responding law schools. This summary also includes data from the 1999 Survey, where available, to allow rough comparisons between programs in 2000 and 1999. Please realize, of course, that some variations measure real changes in LRW programs from the 1998-99 academic year, while others reflect changes in the respondent group.

Thanks go to all who participated in the 2000 Survey. Your time and effort are valuable to all of us. Thank you.

Jo Anne Durako
Survey Committee Chair
Director of Legal Research & Writing
Rutgers-Camden Law School

2000 ALWD/LWI SURVEY HIGHLIGHTS

There were some changes in the 2000 Survey --

- More law schools responded in 2000: 137 schools responded, for a 78% response rate (up from 68% in 1999), thanks to the cooperation of program directors and follow-up by the Survey Committee members.

- The survey included an extensive survey of LRW curricula (part IV) covering such issues as credit hours, grading, research instruction, assignments, writing specialists, and an expanded survey of upper-level writing courses (part V).

- More information was gathered relating to the effect of the gender of LRW directors and faculty on their salary and status (Appendix A).

- Comparisons are included between 2000 and 1999 data, where possible. NOTE: Some differences show progress and positive or negative developments in the field of legal writing, while other differences result from having a different group of respondents in 2000.

Salary Highlights:

The salaries for LRW directors and faculty continue to grow, but still lag significantly behind other law faculty salaries. Salaries for both directors and other teachers vary greatly depending on the geographical region in which the law school is located, with the New York metropolitan area and mid-
Atlantic region reporting higher salaries than other parts of the country.

- **Directors’ Salaries** (averages; Question 49): In 2000, directors’ salaries averaged $75,806. The “average” director graduated from law school 17 years ago, taught in law school for 11 years, and directed at her current law school for 7 years (Questions 3, 4, and 5).

<table>
<thead>
<tr>
<th>Year</th>
<th>Directors’ Salaries</th>
<th>Year</th>
<th>Directors’ Salaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>$75,806, up 7% from '99</td>
<td>1999</td>
<td>$71,016, up 3% from '98</td>
</tr>
<tr>
<td></td>
<td>$77,053 for 12 months</td>
<td></td>
<td>$76,947 for 12 months</td>
</tr>
<tr>
<td></td>
<td>$74,697 for &lt; 12 months</td>
<td></td>
<td>$65,472 for &lt; 12 months</td>
</tr>
</tbody>
</table>

- **LRW Faculty Full-time Entry-level Salaries** (averages, excluding directors; Question 74(b)): In 2000, the average entry-level salary for full-time LRW faculty was $40,325.

<table>
<thead>
<tr>
<th>Year</th>
<th>LRW Faculty Full-time Entry-level Salaries</th>
<th>Year</th>
<th>LRW Faculty Full-time Entry-level Salaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>$40,325, up 2% from '99</td>
<td>1999</td>
<td>$39,731, up 3% from '98</td>
</tr>
<tr>
<td></td>
<td>$42,300 for 1-3 yr. exp</td>
<td></td>
<td>$42,130 for 12 months</td>
</tr>
<tr>
<td></td>
<td>$43,852 for &gt; 3 yr. exp</td>
<td></td>
<td>$38,738 for &lt; 12 months</td>
</tr>
</tbody>
</table>

- **Regional** Differences for Directors:
  Average directors’ salaries reported, by region, ranging from highest to lowest are as follows:

<table>
<thead>
<tr>
<th>Region</th>
<th>2000</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>NYC &amp; Long Island:</td>
<td>$124,333</td>
<td>$113,000</td>
</tr>
<tr>
<td>Mid-Atlantic:</td>
<td>$87,036</td>
<td>$77,375</td>
</tr>
<tr>
<td>Northeast:</td>
<td>$83,179</td>
<td>$68,996</td>
</tr>
<tr>
<td>Far West:</td>
<td>$71,609</td>
<td>$74,000</td>
</tr>
<tr>
<td>Great Lakes &amp; Up. Midwest:</td>
<td>$71,552</td>
<td>$62,621</td>
</tr>
<tr>
<td>Southeast:</td>
<td>$69,615</td>
<td>$64,208</td>
</tr>
<tr>
<td>Southwest &amp; South Central:</td>
<td>$68,746</td>
<td>$69,608</td>
</tr>
<tr>
<td>Northwest &amp; Great Plains:</td>
<td>$65,917</td>
<td>$51,400</td>
</tr>
</tbody>
</table>

* The 8 geographical regions follow, with some variations, the model developed by the Society of American Law Teachers.
- **Regional Differences for Entry-Level LRW Faculty** (excluding directors): Average entry-level LRW faculty salaries reported, by region, from highest to lowest are as follows:

<table>
<thead>
<tr>
<th>Region</th>
<th>2000</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northwest &amp; Great Plains</td>
<td>No reports</td>
<td>$52,500</td>
</tr>
<tr>
<td>NYC &amp; Long Island</td>
<td>$54,000</td>
<td>$45,833</td>
</tr>
<tr>
<td>Mid-Atlantic</td>
<td>$42,500</td>
<td>$45,125</td>
</tr>
<tr>
<td>Far West</td>
<td>$41,583</td>
<td>$39,833</td>
</tr>
<tr>
<td>Southeast</td>
<td>$39,778</td>
<td>$37,700</td>
</tr>
<tr>
<td>Northeast</td>
<td>$39,667</td>
<td>$42,700</td>
</tr>
<tr>
<td>Southwest &amp; South Central</td>
<td>$39,650</td>
<td>$40,073</td>
</tr>
<tr>
<td>Great Lakes &amp; Up. Midwest</td>
<td>$36,857</td>
<td>$34,976</td>
</tr>
</tbody>
</table>
- **Other Variables Related to Salaries**: The survey found that other factors, in addition to region, affected salary. The number of years since graduating from law school, the setting of the law school in an urban, suburban, or rural area, the status of the law school as public or private, the type of staffing model, and the status of the program director all are related to salary differences.

  - **Years Since Earning a JD, Years Teaching, & Years as a Director** (Questions 3, 4, & 5): In general, salaries for directors increase as the director has more years of experience. No comparable data were collected for other LRW faculty.

  - **Setting** (Question 7): Salaries continue to be higher for directors and LRW faculty in the suburbs than in urban or rural areas, and the gaps are increasing.
<table>
<thead>
<tr>
<th>Geography</th>
<th>Average</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban</td>
<td>76,387</td>
<td>20,000</td>
<td>130,000</td>
<td>70,549</td>
</tr>
<tr>
<td>Suburban</td>
<td>82,161</td>
<td>52,750</td>
<td>130,000</td>
<td>74,894</td>
</tr>
<tr>
<td>Rural</td>
<td>48,354</td>
<td>36,470</td>
<td>69,800</td>
<td>52,772</td>
</tr>
</tbody>
</table>

**Director Salary by Setting**

2000 | 1999
--- | ---

**LRW Faculty Salary by Setting**

<table>
<thead>
<tr>
<th>Geography</th>
<th>Average</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban</td>
<td>40,327</td>
<td>26,000</td>
<td>65,000</td>
<td>39,816</td>
</tr>
<tr>
<td>Suburban</td>
<td>41,750</td>
<td>30,000</td>
<td>55,000</td>
<td>41,359</td>
</tr>
<tr>
<td>Rural</td>
<td>39,100</td>
<td>32,500</td>
<td>50,000</td>
<td>34,922</td>
</tr>
</tbody>
</table>

- **Institution Type** (Question 8): Salaries also continue to be higher for directors and LRW faculty in private than in public schools, but the gap is narrowing.

**Director Salary by Institutional Type**

<table>
<thead>
<tr>
<th>Geography</th>
<th>Average</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public</td>
<td>69,841</td>
<td>33,900</td>
<td>122,000</td>
<td>63,855</td>
</tr>
<tr>
<td>Private</td>
<td>79,539</td>
<td>20,000</td>
<td>130,000</td>
<td>75,739</td>
</tr>
</tbody>
</table>

**LRW Faculty Salary by Institution Type**

<table>
<thead>
<tr>
<th>Geography</th>
<th>Average</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public</td>
<td>39,250</td>
<td>30,000</td>
<td>53,000</td>
<td>37,533</td>
</tr>
<tr>
<td>Private</td>
<td>41,081</td>
<td>26,000</td>
<td>65,000</td>
<td>41,273</td>
</tr>
</tbody>
</table>

- **Staffing Models** (Question 10): Average salaries for directors are highest in programs with tenure-track teachers hired to teach LRW ($111,500) and are lower in adjunct-taught programs ($79,916) and complex hybrid programs ($78,164). Salaries are lowest in programs with LRW faculty on contract ($70,601). For LRW faculty, average entry-level salaries are highest in complex hybrid programs ($45,000) (Question 74(b)).
Director Salary by Staffing Model

<table>
<thead>
<tr>
<th>Model</th>
<th>2000 Average</th>
<th>2000 Minimum</th>
<th>2000 Maximum</th>
<th>1999 Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tenure or tenure-track for LRW only</td>
<td>111,500</td>
<td>93,000</td>
<td>130,000</td>
<td>N/A</td>
</tr>
<tr>
<td>Full-time nontenure-track</td>
<td>70,601</td>
<td>20,000</td>
<td>130,000</td>
<td>67,872</td>
</tr>
<tr>
<td>Adjuncts</td>
<td>79,916</td>
<td>33,900</td>
<td>128,000</td>
<td>75,607</td>
</tr>
<tr>
<td>Complex Hybrid</td>
<td>78,164</td>
<td>45,000</td>
<td>122,000</td>
<td>71,593</td>
</tr>
</tbody>
</table>

LRW Faculty Salary by Staffing Model

<table>
<thead>
<tr>
<th>Model</th>
<th>2000 Average</th>
<th>2000 Minimum</th>
<th>2000 Maximum</th>
<th>1999 Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tenure or tenure track for LRW</td>
<td>35,000</td>
<td>35,000</td>
<td>35,000</td>
<td>43,000</td>
</tr>
<tr>
<td>Tenure or tenure-track for LRW and other</td>
<td>41,500</td>
<td>33,000</td>
<td>50,000</td>
<td>42,500</td>
</tr>
<tr>
<td>Full-time nontenure-track</td>
<td>39,337</td>
<td>26,000</td>
<td>55,000</td>
<td>38,892</td>
</tr>
<tr>
<td>Complex Hybrid</td>
<td>45,000</td>
<td>32,000</td>
<td>65,000</td>
<td>44,771</td>
</tr>
</tbody>
</table>

- **Director Type** (Question 45): Directors' average salaries are highest if they are tenured or tenure-track and their primary responsibility is LRW ($95,476) and next highest if the directors' primary responsibility is not LRW ($94,688). Non-tenure track directors earn the lowest salaries ($62,255). LRW faculty average entry-level salaries are highest when their director is tenured...
($42,800) and lowest in programs when the director is an administrator whose primary responsibility is LRW ($36,800) (Question 74(b)).

**Director Salary by Director Type**

<table>
<thead>
<tr>
<th>Director Type</th>
<th>2000</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Average</td>
<td>Minimum</td>
</tr>
<tr>
<td>Tenured primary responsibility is LRW:</td>
<td>95,476</td>
<td>20,000</td>
</tr>
<tr>
<td>Untenured tenure-track primary responsi-</td>
<td>75,640</td>
<td>60,000</td>
</tr>
<tr>
<td>bility is LRW:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nontenure-track:</td>
<td>62,255</td>
<td>33,900</td>
</tr>
<tr>
<td>Administrator or faculty, primary responsibil-</td>
<td>94,688</td>
<td>67,000</td>
</tr>
<tr>
<td>ity not LRW:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrator, primary responsi-</td>
<td>64,188</td>
<td>39,500</td>
</tr>
<tr>
<td>bility is LRW:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other:</td>
<td>80,923</td>
<td>57,000</td>
</tr>
</tbody>
</table>

**LRW Faculty Salary by Director Type**

<table>
<thead>
<tr>
<th>Director Type</th>
<th>2000</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Average</td>
<td>Minimum</td>
</tr>
<tr>
<td>Tenured director</td>
<td>42,800</td>
<td>26,000</td>
</tr>
<tr>
<td>Tenure-track director</td>
<td>39,600</td>
<td>35,000</td>
</tr>
<tr>
<td>Nontenure-track director</td>
<td>38,174</td>
<td>30,000</td>
</tr>
<tr>
<td>Primary resp. not LRW</td>
<td>39,167</td>
<td>36,000</td>
</tr>
<tr>
<td>Administrator whose primary respon. is LRW</td>
<td>36,800</td>
<td>32,000</td>
</tr>
<tr>
<td>Other</td>
<td>40,889</td>
<td>32,000</td>
</tr>
</tbody>
</table>

**Other Highlights:** The full 44-page report includes a wealth of information about program design, curriculum, advanced courses,
staffing, and other salary and status features. Here are a few highlights.

- **Staffing Model** (Question 10): Most programs use full-time, nontenure-track teachers (73 or 50%), adjuncts (25 or 17%), or a hybrid staffing model (33 or 23%). Last year, 5 programs used solely tenured or tenure-track teachers hired specifically to teach LRW and another 4 programs used such teachers in hybrid programs (Question 11(a)).

- **Curriculum** (Questions 12 - 26): Virtually all writing programs extend over 2 semesters, averaging 2.14 credit hours in the fall and 2.08 hours in the spring. In addition, 20 programs have a required component in the fall of the second year, averaging 2.2 credit hours (Question 12). Almost all LRW courses are graded (115 programs) (Question 15). Many programs grade at least some assignments anonymously (78), but 57 programs do not (Question 17). Most programs (111 programs) require rewrites, with 38 of those programs requiring rewrites on all assignments (Question 23). The vast majority of programs integrate research and writing instruction (103 programs) (Question 18). In 2000, 36 law schools employed a full-time or part-time writing specialist, while 6 schools employed more than 1 specialist (Question 29).

- **Common practices** (Questions 12-26): The most common writing assignments are legal memoranda (134 programs), appellate briefs (104), client letters (67), pre-trial briefs (60), trial briefs (32), and drafting documents (28) (Question 20). For oral skills, the most common assignments are appellate arguments (101), pre-trial arguments (39), oral reports to senior partners (16), and trial motions (15) (Question 21). The most common methods of commenting on papers are comments on the paper itself (133), comments during conferences (117), comments at the end of the paper (104), general feedback addressed to the class (87), and feedback memos addressed to individual students (64). In addition, 21 programs have still other forms of feedback (Question 24). The survey found that 34 programs re-
ported having web pages (Question 42).

- **Citation Method** (Question 27): At the time the Survey Report was compiled, 48 programs planned to teach the ALWD Citation Manual as the only method of citation during the 2000-01 academic year, 38 programs planned to teach only the Bluebook, and 21 planned to teach both methods.

- **Tenure** (Question 45): In 2000, there were more tenured directors (24 vs. 21) but fewer tenure-track directors (10 vs. 13) responding than in 1999. About 30% of those responding were tenured or tenure-track. However, 68% of the directors whose primary responsibility is LRW are not on tenure-track (73 of 107).

- **Assistant Directors** (Question 46): While 25 programs have assistant directors, 92 do not. The average salary for an assistant director is $51,965.

- **Academic Title** (Question 48): Over 53% of program directors have a form of “Professor” in their official academic title (73 of 137). “Director” is the next most common title (60 or 44%). For LRW faculty (Question 68), many have some form of “Professor” in their official title (58 or 46%), many are “Instructors” (37 or 29%), with “Lecturer” the next most common title (17 or 13%) (Question 68).

- **Directors’ Workload** (Question 54): In the 1999-2000 academic year, the “average” director taught 34 entry-level students, 3 hours per week, using 3 major and 4 minor assignments, while reading 1,111 pages of student work, and holding 35 hours of conferences during the fall semester. The spring semester workload was comparable. This compares with a heavier workload for the prior year in which the “average” director taught 58 entry-level students, 3 hours per week, using 3 major and 5 minor assignments, while reading 1,226 pages of student work, and holding 42 hours of conferences—a significant workload given the other responsibilities directors have beyond teaching in the entry-level program (See Question 53).
### Director's Workload

<table>
<thead>
<tr>
<th>FALL SEMESTER 2000</th>
<th>SPRING SEMESTER 2000</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>(average) 34 (min 11; max 96)</td>
<td>(average) 33 (min 9; max 96)</td>
<td>a. Number of entry-level students: 1999 Survey: (average) 58 (min 12; max 310)</td>
</tr>
<tr>
<td>(average) 3 (min 1; max 9)</td>
<td>(average) 3 (min 1; max 9)</td>
<td>b. In-class hours of teaching each week: 1999 Survey: (average) 3 (min 1; max 30)</td>
</tr>
<tr>
<td>(average) 3 (min 1; max 6)</td>
<td>(average) 3 (min 1; max 11)</td>
<td>c. Number of major assignments (final product of ≥ 5 pages): 1999 Survey: (average) 3 (min 1; max 7)</td>
</tr>
<tr>
<td>(average) 4 (min 1; max 24)</td>
<td>(average) 3 (min 1; max 15)</td>
<td>d. Number of minor assignments (final product of &lt; 5 pages): 1999 Survey: (average) 5 (min 1; max 32)</td>
</tr>
<tr>
<td>(average) 1111 (min 35; max 3380)</td>
<td>(average) 1154 (min 44; max 3400)</td>
<td>e. Total number of pages of student work read per term (# of students x pages for c+d)=e: 1999 Survey: (average) 1226 (min 30; max 5,000)</td>
</tr>
<tr>
<td>(average) 35 (min 1; max 90)</td>
<td>(average) 44 (min 8; max 90)</td>
<td>f. Total hours in conference required or strongly recommended (# of students x hrs of conference): 1999 Survey: (average) 42 (min 5; max 200)</td>
</tr>
</tbody>
</table>

- **LRW Faculty Members' Workload** (Question 82): In the 1999-2000 academic year, the “average” LRW faculty member taught 46 entry-level students, 6 hours per week, using 3 major and 4 minor assignments, while reading 1,588 pages of student work, and holding 48 hours of conferences. For the 1999-2000 academic year the class size reached for the first time, the maximum
student load of 45 students recommended by the ABA Sourcebook on Legal Writing Programs. This compares with the prior year in which the “average” LRW faculty member taught 53 entry-level students, 5 hours per week, using 3 major and 4 minor assignments, while reading 1,870 pages of student work, and holding 69 hours of conferences -- a much heavier workload.

**LRW Faculty Workload**

<table>
<thead>
<tr>
<th>FALL SEMESTER 2000</th>
<th>SPRING SEMESTER 2000</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(average) 46</td>
<td>(average) 46</td>
<td>a. Number of entry-level students: 1999 Survey: (average) 53 (min 20; max 200)</td>
</tr>
<tr>
<td>(min 12; max 110)</td>
<td>(min 12; max 130)</td>
<td></td>
</tr>
<tr>
<td>(average) 6</td>
<td>(average) 6</td>
<td>b. In-class hours of teaching each week: 1999 Survey: (average) 5 (min 1; max 40)</td>
</tr>
<tr>
<td>(min 1; max 8)</td>
<td>(min 1; max 8)</td>
<td></td>
</tr>
<tr>
<td>(average) 3</td>
<td>(average) 3</td>
<td>c. Number of major assignments(final product of ≥ 5 pages): 1999 Survey: (average) 3 (min 1; max 7)</td>
</tr>
<tr>
<td>(min 1; max 6)</td>
<td>(min 1; max 6)</td>
<td></td>
</tr>
<tr>
<td>(average) 4</td>
<td>(average) 2</td>
<td>d. Number of minor assignments (final product of &lt; 5 pages): 1999 Survey: (average) 4 (min 0; max 17)</td>
</tr>
<tr>
<td>(min 1; max 15)</td>
<td>(min 1; max 15)</td>
<td></td>
</tr>
<tr>
<td>(average) 1588</td>
<td>(average) 1602</td>
<td>e. Total number of pages of student work read per term (a x(pages for (c+d))=e: 1999 Survey: (average) 1,870 (min 40; max 5,000)</td>
</tr>
<tr>
<td>(min 400; max 3600)</td>
<td>(min 400; max 3500)</td>
<td></td>
</tr>
<tr>
<td>(average) 48</td>
<td>(average) 52</td>
<td>f. Total hours in conference required or strongly recommended (#of students x hrs of conference): 1999 Survey: (average) 69 (min 0; max 300)</td>
</tr>
<tr>
<td>(min 1; max 160)</td>
<td>(min 10; max 124)</td>
<td></td>
</tr>
</tbody>
</table>
• **Upper Level Teaching** (Questions 55 & 56): Many directors teach courses beyond the first-year program (77 or 65%). They taught an average of 1.39 upper-level writing courses and an average of 1.47 upper-level non-writing courses. LRW faculty in 58 programs teach other courses during the academic year and faculty at 41 programs teach other courses, but only during the summer. Of these programs, 37 programs have LRW faculty teaching LRW courses, while 63 programs have LRW faculty teaching non-LRW courses. LRW faculty generally earn additional compensation for this teaching, but those in 25 programs do not (Question 85).

• **Faculty Committees** (Question 59): The vast majority of directors serve on faculty committees as voting (99) or non-voting (11) members. For LRW faculty, those in about half of the programs (69) serve on faculty committees, with 64 of those programs affording voting rights (Question 83).

• **Faculty Meetings** (Question 60): The majority of directors also attend and vote at faculty meetings, with 49 voting on all matters and 33 more voting on all but hiring and promotion issues. LRW faculty vote in 39 programs at faculty meetings, with 16 of those programs affording voting on all matters. At 47 more programs, LRW faculty attend, but do not vote (Question 84).

• **Scholarship** (Question 62): For 38 or 37% of directors, there is an obligation to produce scholarship. For 24 there is no obligation, but there is an expectation they will do so. For LRW faculty, there is an obligation in 23 programs to produce scholarship, and in 15 programs they are expected to produce scholarship, while 64 programs impose no such obligation or expectation (Question 81).

• **LRW Faculty Type** (Question 65): LRW faculty in most programs are on short-term contracts, with 57 on 1-year contracts, 21 on 2-year contracts, and 29 on contracts of ≥ 3 years. In 16 programs, LRW faculty are tenured or on tenure track. The overwhelming majority of those on contract have no cap or maximum period in
which they may retain their teaching jobs (79 of 90 or 88% in 2000; up from 63 of 81 or 78% in 1999) (Question 66).

- **Evaluation Standards** (Question 70): Directors in 59 programs reported using written standards to evaluate LRW faculty, up from 21 in 1999. In 2000, 17 more programs have standards under development.

- **Additional Support and Compensation for LRW Faculty:**
  - *Summer grants* (Question 76): In 2000, 55 programs provided LRW faculty with summer grants averaging $6,030, down from $6,411 in 1999.
  - *Developmental Funding* (Question 79): The vast majority, or 89 programs, provide developmental funding averaging $1,981, up from $1,517 in 1999.
  - *Research Assistants* (Question 80): Over half, or 72 programs, provide funding for research assistants, with 57 providing funding for all reasonable request, and 15 providing an average of $2,356, up from $1,965 in 1999.

- **Adjunct Faculty**: See Questions 86-92 in part IX of the report for information about use of adjunct faculty, compensation, student load, prior legal and teaching experience, and workload responsibilities of adjuncts. Of the 51 programs that used adjuncts to teach 25% or more of the students, those programs used an average of 18 adjunct faculty. Adjuncts were paid an average of $3,714 per term for teaching an average of 18 students. The student load ranged from a low of 10 to a high of 43 students. In most programs, assignments were created exclusively or primarily by the LRW director and full-time LRW faculty.

- **Teaching Assistants**: See Questions 93-99 in part X of the report for information about use of teaching assistants (TAs), student load, office hours, training, and compensation of TAs. In 2000, 74 programs used teaching assistants in some capacity. These programs used an average of 10 TAs in the fall to teach an average of 22 students and 15 TAs in the spring to teach an average of 19 students. TAs spend an average of 90 hours
each term on their responsibilities. They are trained an average of 16 hours each term. Some TAs get course credit, while others get an offset against tuition or an average of $1,106 in compensation per term.

- **Survey** (Question 100): Most respondents have used the survey data in the past: 64 used the survey to improve their programs, 40 to improve their own status, and 34 to improve their salary.

**Gender Data Highlights in Appendix A:** The 1999 Survey was the first to look at whether legal writing directors experienced different treatment depending on their gender. It found disturbing differences in the salary and status of female and male directors, with female directors consistently being treated less well than their male colleagues. The 2000 Survey asked additional questions to determine whether the disparate treatment of female and male directors may be related to factors other than gender, such as years out of law school, teaching experience, size of law school, or number of LRW faculty supervised. The results of the 2000 Survey again showed consistent, disturbing patterns of female directors being treated less well in terms of salary, tenure status, academic title, teaching opportunities, and participation in faculty governance and sabbaticals.

No comparable data is available for LRW faculty from the 2000 Survey because it is beyond the scope of this survey to collect salary, status, and gender data on the hundreds of LRW faculty. This survey did discover, as in 1999, that LRW faculty, regardless of their gender, earn lower salaries if their program is headed by a female director than if their director happens to be male.

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*For a further discussion and analysis of the different treatment given female and male legal writing directors, including a regression analysis of the 2000 survey data on salary differences, see Jo Anne Durako, Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing, 50 Journal of Legal Education (forthcoming 2001).

• **Director Salary** (Question 49): Female directors earn less than male directors, when measured by
  • 12-month salaries ($73,171 female; $84,817 male);
  • less than 12-month salaries ($70,480 female; $91,182 male); or
  • salaries reported (combined 12-mon. & <12-mon.: $71,628 female; $87,410 male).
    ➢ In the range of salaries paid, female directors’ salaries have a lower range than males’ ($20,000 to $128,000 female; $50,000 to $130,000 males).
    ➢ Fewer females than males earn more than $100,000 (8 of 75 females, or 11% of females; 9 of 27 males, or 33% of males).
    ➢ Females with comparable years of experience directing at their present schools earn less than their male colleagues (for less than 5 years of experience, $66,411 for females; $83,786 for males; for 6 to 10 years of experience, $70,617 for females; $88,250 for males).
    ➢ Females also earn less additional compensation for teaching beyond the entry-level program ($7,838 for females; $11,375 for males).

• **Salary Range for LRW Professionals** (Question 75): In programs headed by female directors, the salary range for LRW faculty is lower: the averages in the range are lower ($40,186 low to $49,066 high, with a female director; $43,867 low to $53,433, with a male director). In addition, the minimum salaries paid in the salary range are lower in programs directed by females than in programs headed by male directors ($26,000 with a female director; $30,000 with a male director). The maximum salaries paid are also lower ($90,000 with a female director; $130,000 with a male director).

• **Tenure Status** (Question 45): Female directors are somewhat less often tenured than are male directors (20% of females; 23% of males). When tenured and tenure-track directors are combined, the gap widens (28% of females; 33% of males). Significantly more female directors are on contract than males (45% of females; 30% of males).
• **Academic Title** (Question 48): Fewer female directors have “Professor” as their official title than males (45% female; 59% male) or as part of their title, such as “Professor of Legal Writing,” “Visiting Professor,” or “Clinical Professor” (59% of females; 75% of males). More females have titles of “Instructor” or “Lecturer” than males (14% of females; 3% of males). About 20% of both females and males have “Director” as their official title.

• **Teach Upper Level Courses** (Question 55): Fewer female directors teach courses beyond the entry-level writing course than males (64% of females; 82% of males). More female directors teach academic support as their only upper level course than males (9% of females; 0% of males).

• **Faculty Committees** (Question 59): Fewer female directors serve on faculty committees and fewer vote than males (89% serve and 81% vote for females: 100% serve and 88% vote for males).

• **Leave** (Question 64): Female directors are less often eligible for paid sabbaticals (59% of females; 64% of males), more often eligible for unpaid sabbaticals (22% of females; 14% of males), and are more often denied any type of leave than their male colleagues (19% of females; 9% of males).

**Appendix B lists the law schools that responded to the 2000 Survey**

- Alabama University
- Albany, Union University
- American University, Washington Law
- Appalachian
- Arizona State
- Arizona University
- Arkansas, Fayetteville
- Arkansas, Little Rock
- Baltimore University
- Barry U, Orlando Law
- Boston College
Boston University
Brigham Young University
British Columbia, University
Brooklyn Law School
California, University, Berkley
California, University, Davis
California, University, Hastings
California Western
Capital University
Case Western Reserve University
Catholic University of America
Chapman University
Chicago, University
Chicago-Kent, Illinois Institute
Columbia University
Connecticut, University
Cooley, Thomas M.
Cornell
Creighton University
Dayton University
DePaul
Denver University
Detroit Mercy, University
Detroit College at Michigan State University
Drake
Duke
Duquesne
Emory, Atlanta
Florida, University
Florida State
Fordham
Franklin Pierce
George Washington University
Georgetown
Georgia, University
Georgia State
Golden Gate University
Gonzaga
Hamline
Hofstra
Houston
Howard
2001] 2000 Survey Results

Illinois University
Indiana University, Bloomington
Thomas Jefferson
Lewis and Clark, Northwestern
Louisiana State
Louisville, University, Brandeis
Loyola, New Orleans
Maine, University
Marquette
John Marshall
Maryland, University
Memphis, University
Mercer
Michigan, University
Minnesota, University
Mississippi, University
Missouri-Columbia, University
Missouri-Kansas City
Montana, University
Nebraska, University
Nevada at Las Vegas
New England
New Mexico, University
New York Law
New York, State, Buffalo
North Carolina, University
Northeastern
Northern Illinois
Northwestern
Notre Dame
Nova Southeastern
Ohio Northern
Ohio State
Oklahoma University
Oklahoma City
Oregon, University
Pace
Pacific, University, McGeorge
Pennsylvania, University
Pennsylvania State
Pittsburgh
Quinnipiac
Richmond, University
Rutgers - Camden
San Francisco
Santa Clara
Samford
Seattle
South Carolina, University
South Dakota, University
South Texas
Southern
Southern Illinois, University
Southwestern
St. Mary's
Stetson
Suffolk
Syracuse
Temple
Tennessee, University
Texas, University
Texas Tech
Texas Wesleyan
Touro, J.D. Fuchsberg
Tulsa, University
Utah, University
Valparaiso
Vanderbilt
Villanova
Wake Forest
Washburn
Washington, University
Washington
Wayne
West Virginia
Western New England
Western State
Widener, Harrisburg
William Mitchell
Willamette
Wisconsin
Yeshiva