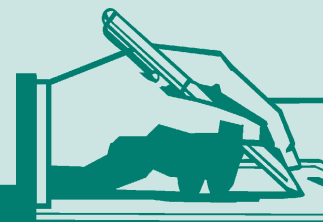




THE SECOND DRAFT

Bulletin of the Legal Writing Institute



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A Third Semester of Legal Writing

A Chance to Teach Analytical Skills Intentionally and Systematically

Linda H. Edwards, Mercer University School of Law

Often when we talk about adding a third semester to a required Legal Writing sequence, we think first of teaching new kinds of documents or adding other lawyering skills. I want to suggest a third alternative: using the added course time to deepen our teaching of the critically important skills already in our syllabus.

The breadth of coverage demanded of a required Legal Writing course sequence is already massive, and we don't have time to do all we're already asked to do. How many times on our listservs do we bemoan, and rightly so, our lack of time to teach research? Often we must forego coverage of important basic legal research sources like administrative regulations and legislative history. Each new year brings new electronic research sources, which are changing dramatically the landscape of legal research. Nor can we give students enough repetition to achieve real facility with the sources we do have time to teach. We certainly don't have time to add nonlegal research, as Tom McDonnell's excellent article suggests we should.¹

Procedural postures also get short shrift. In addition to the basic standards of appellate review, we need to teach students to recognize and manage the differing procedural glosses imposed at such trial-level stages as a motion to dismiss, a motion for summary judgment,

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A Retrospective on Three Teaching Experiences

Nancy Soonpa, Texas Tech University School of Law

I have taught in three different programs, each with its own surprises related to structure, content, and student reaction to course coverage. My first experience was teaching in a three-semester course [Program 1], followed by teaching in a traditional two-credit-per-semester, two-semester course [Program 2], followed by my present position directing a program with a three-credit-per-semester, two-semester course [Program 3].

Program 1 offered objective writing (office memos and the client letter) in the first two semesters and persuasive writing and oral advocacy, both trial and appellate, in a third semester (either the fall or spring of the second year).

Program 2 followed a traditional sequence of objective to persuasive writing with the introduction of skills such as client counseling and negotiation and an introduction to pleadings and discovery, but with little drafting of those documents.

Program 3 follows the traditional sequence, but with a heavy (two credits' worth) ADR component in the second semester that integrates negotiation and mediation with drafting related documents such as contracts and mediation agreements.

In Program 1, we enjoyed the luxury and leisure of time. The first year, students wrote four objective memos, two each semester, with the fourth memo akin to a final exam. A significant teaching challenge was to craft and appropriately sequence the

fact patterns both to focus on different areas of law and development of different writing skills *and* to accommodate the widening gap between students who had more quickly achieved competency in objective legal writing and those who were more slowly figuring it out.

A great and expected advantage of Program 1's first year was the ability to examine and teach everything in depth. For instance, we would spend at least two class periods in the fall just on the question presented. We could spend entire classes on parallelism or sentence structure, and students learned how to write and how to write better. No surprises there.

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From the Editors

We have recently returned from the LWI conference in Knoxville. It's hard to capture in words the effect of spending three entire days surrounded by people who love what we do and are committed to doing it even better...but it's safe to say that the good feelings and good ideas we brought home will give us plenty to do until the next conference in 2004. We had already planned to cover the conference in the fall issue of *The Second Draft*, but, when we found we had some space in this issue, we went ahead and included just a few pictures of some conference highlights; you'll find them on page 19.

If you weren't able to come to Knoxville, you will still be able to reap the benefits of the conference in several ways. Our peer-edited journal, *Legal Writing*, will devote an entire issue (Volume 9) to conference proceedings. To submit an article for possible publication in the proceedings issue, send one hard copy and one copy on disk, in Word, to Diana Pratt, Wayne State University Law School, 471 West Palmer, Detroit, MI 48202. The deadline for submissions is Thursday, August 1, 2002. If you aren't submitting an article for publication, of course, all you have to do is wait for the journal to arrive on your desk! We will also be including more conference-related features in the next issue of *The Second Draft*, along with reports from LWI officers and committees. Finally, bibliographies prepared by most of the conference presenters will be made available on the LWI web site, www.lwionline.org. Bibliographies from the 2000 conference are still posted there—an excellent source of summer reading.

As announced in the last issue of *The Second Draft*, Suzanne Rowe has retired from her editorial position. Even though she was one of the chairs of the conference committee this year, though, she helped plan this issue and recruited many of the people who work behind the scenes to get the newsletter ready: Donna Williamson, at Oregon, who has been updating our mailing list for the last two years, and some excellent student proof-readers. Thank you, Suzanne, for all your help. ♦

Barbara Busharis (Florida State)

Sandy Patrick (Lewis & Clark)



The next issue of *The Second Draft* will be devoted to business of the Legal Writing Institute. The deadline for committee reports and other submissions is September 15, 2002.

Additional Resources

At most law schools, the only writing requirement after the first year is a requirement that students write a seminar-style paper. Some schools, however, require that students take a third semester course covering some form of legal writing. (In addition to the schools represented in this issue, the list includes Howard University, the University of Maryland, New England School of Law, and the University of Nevada.) Recent ALWD/LWI surveys reveal that most schools have advanced legal writing electives, and interest in this area continues to grow. The following list of articles is not exhaustive, but we hope it will provide additional food for thought as you consider your school's program and what an "ideal" experience for your students might include.

Jennifer B. Anderson & Terrill Pollman, *The Lawyering Process Program: Building Competence and Confidence*, 9 Nev. Law. 15 (Dec. 2001).

Jo Anne Durako, *A Snapshot of Legal Writing Programs at the Millennium*, 6 Leg. Writing 95 (2000).

Linda H. Edwards, *Certificate Program in Advanced Legal Writing: Mercer's Advanced Writing Curriculum*, 9 Persp.: Teaching Leg. Research & Writing 116 (2001).

Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 Seattle U. L. Rev. 1 (1996).

Lissa Griffin, *Teaching Upperclass Writing: Everything You Always Wanted to Know But Were Afraid to Ask*, 34 Gonz. L. Rev. 45 (1999).

James E. Moliterno, *Professional Preparedness: A Comparative Study of Law Graduates' Perceived Readiness for Professional Ethics Issues*, 58 L. & Contemporary Problems 259 (Summer/Autumn 1995).

Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 Neb. L. Rev. 561 (1997).

Lucia Ann Silecchia, *Legal Skills Training in the First Year of Law School: Research? Writing? Analysis? or More?*, 100 Dick. L. Rev. 245 (1996).

Lucia Ann Silecchia, *Designing and Teaching Advanced Legal Research & Writing Courses*, 33 Duq. L. Rev. 203 (1995).

Louis J. Sirico, Jr., *Advanced Legal Writing Courses: Comparing Approaches*, 5 Persp.: Teaching Leg. Research & Writing 63 (1997).

Lewis D. Solomon, *Perspectives on Curriculum Reform in Law Schools: A Critical Assessment*, 24 U. Toledo L. Rev. 1 (1992).





The President's Column

Steve Johansen, Lewis & Clark Law School

By the time you read this, the Tenth Biennial Conference will be over, and I hope you will be enjoying a well deserved summer break before gearing up for the fall semester. I would be remiss if I didn't take this opportunity to thank a few people who were responsible for this year's Conference. Carol Parker provided us all with her gracious southern hospitality (or is that border state hospitality?) as our host and Chair of the Site Committee. Suzanne Rowe and Dan Barnett chaired the Program Committee and spent countless hours selecting, planning, and scheduling over sixty programs offered over three very full days. Thank you Carol, Suzanne, and Dan for your extraordinary efforts to make this one of our most successful conferences. Thanks are also due to the many presenters and, of course, to everyone who attended the Conference and shared their experiences and ideas with the legal writing community.

This is an exciting time for the Institute. The Board of Directors is in the process of extensive long-range planning. The results of these efforts will affect the programs and services of the Institute for many years. Among the many issues the Board is discussing are membership, governance, publications, outreach to the practicing bar and other writing professionals, and potentially new ways to achieve our mission of improving legal writing. Those of you who attended the Conference heard some of the ideas the Board is considering. In the months ahead, the Board will continue to explore the future of the Institute and how we can most effectively serve our members.

Of course, the future of the Institute is only as strong as the support of its members. While the Board represents a diversity of viewpoints, our long-range planning efforts will not be successful without the ideas and suggestions of a broader community. In the months ahead, I will be sending out updates of the planning process and inviting member comments about the proposals before the Board. I want to encourage everyone who has suggestions for how the Institute can better serve its members to drop a line or give a call to me or another Board member. We look forward to the opportunity to hear fresh perspectives and the more voices we hear, the better the end result will be.

While long-range planning plants the seeds for the future of the Institute, for that planning to bear the fruit of improved services, we will need the effort of many people. If you would like to become more involved in the Institute activities, there are many ways to do so. I will soon be asking for volunteers to serve on several committees. This is an excellent way to learn more

about Institute programs, and an even better way to get to know other people who are dedicated to our discipline. But the best way to get involved in the Institute is to become an active member. Join the listserv and participate in on-line discussions, or submit a short piece to the next *Second Draft*. Better yet, submit a longer piece to the *Journal*.

The *Journal of the Legal Writing Institute* is the leading journal dedicated solely to Legal Writing issues. For several years, it has led the way in producing superb legal writing scholarship. It is up to all of us to see that these efforts continue to flourish. If you are working on an article about pedagogy, legal rhetoric, or any other topic related to legal writing, I urge you to submit your article to the one journal that is guaranteed to land on the desk of every legal writing professional in the country.

In two short years, we will meet again in Seattle. We will celebrate the remarkable growth of our discipline in the twenty years since the founding of the Legal Writing Institute. I trust we will also celebrate the continued vitality of the Institute that will assure even greater success in the next twenty years. In the meantime, enjoy the latest edition of the *Second Draft* as you begin planning for the next crop of eager law students.



THE LEGAL WRITING INSTITUTE

The Legal Writing Institute is a non-profit corporation founded in 1984. The purpose of the Institute is to promote the exchange of information and ideas about legal writing and to provide a forum for research and scholarship about legal writing and legal analysis.

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The Second Draft is published twice yearly and is a forum for sharing ideas and news among members of the Institute. For information about contributing to The Second Draft, contact one of the editors: Barbara Busharis (Florida State), bbushari@law.fsu.edu Sandy Patrick (Lewis & Clark), patrick@lclark.edu

Three Experiences

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The surprises came in Program 1's third semester: how much the students had forgotten, regardless of whether they took the third semester in the fall or the spring, and how much more they valued legal writing after their summer jobs. I quickly learned that some loss of previously learned information is normal. (I at first feared that their lack of retention was a commentary on my teaching skills, but I had third-semester students from all first-year sections, not just my own. We taught from common teaching plans and a common text. That several students would not remember, for example, the function or content of an analogous case section seemed hard to believe, especially after their having written four objective memos.)

The more pleasant surprise was how much more the students valued the course: they had completed summer jobs, they had been expected to write, they had seen the reality. They were converts, and a third semester of legal writing served them well. However, I wonder whether spending the entire third semester on persuasive writing and oral advocacy (two briefs and three oral arguments) maximized the opportunity that the curriculum both required of and afforded them. I think that some students would have benefitted from a focus on—or at least an introduction to—other forms of legal writing, such as legislative or transactional drafting.

In Program 3, we juggle the riches of plentiful credits and the burdens of a plenitude of students. Three credits each semester would justify a heavier writing workload—more assignments, more drafting, and—oh yes—the concomitant feedback, comments, and conferencing. The reasonableness of asking students to do more work for their three credits, however, is limited by the reality of how much and how fast we can turn that work around.

The surprises here? Students want even more writing assignments in the first semester, especially with conferencing and written comments for feedback. In the second semester, student responses to the integrated ADR/drafting assignments have been overwhelmingly positive: they see the relationship between process and product,

and they often and proudly confide that they “feel like a real lawyer.” The ability to capture and build on that enthusiasm in a subsequent semester of writing—after their first summer out—would benefit them immeasurably. Unfortunately, we offer virtually no upper-level writing courses. This six credits in the first year is it.

Program 2 introduced pleading and discovery documents in the second semester, and students loved those classes. Most of them saw for the first time documents discussed in Civil Procedure and read about in myriad cases. They saw how their research and analysis in an objective memo might lead to filing suit and how those previous assignments related to the pleadings' content. They also enjoyed the negotiation sequence because it made lawyering seem real to them. Program 2, in some senses, also offered a balance that Program 3 lacks: while it offered fewer credits, the curriculum also provided some elective upper-level writing courses. Those opportunities in the second and third year were almost uniformly praised by students, who—pleasant surprise—frequently suggested that a third semester of writing, with a choice among several different courses, should be required.

What, then, might be an optimal three-semester structure? I envision a first year

that includes two or three objective memos and some topically related drafting assignments—perhaps a client letter or demand letter, a complaint and answer, and interrogatories. The third semester would include oral argument(s) and either a trial or appellate brief with rewrites, then move on to drafting assignments—perhaps a will and a contract or a piece of legislation. This three-semester sequence could also accommodate basic client interviewing and counseling skills and various levels of ADR, depending upon credit allocation.

A benefit of this approach is its recognition that while all students' professional lives will require them to write, that writing will likely not be limited to the traditional sequence of objective memos and persuasive briefs. Incorporating other drafting assignments recognizes that professional writing spans a variety of documents, all of which have common characteristics of planning and process, strong organization, good writing, clarity, and conciseness, and gives all students the value of a writing survey. Sequencing assignments and integrating other skills introduces the professional reality that writing not only leads to more and other forms of writing, but also flows from and leads to other activities. ♦

Building on the Basics

Tracy Bach, Vermont Law School

The Vermont Law School writing curriculum spans the first three semesters of law school, beginning with Legal Writing and Research in the first semester, progressing to Dispute Resolution in the second semester, and culminating with Appellate Advocacy in the third semester. Each required course receives two credits, with the first one graded on a pass/fail basis and the last two on the regular A-F scale. In this fashion, for more than a decade VLS students have been gradually taken through the fundamentals of research, analysis, writing, and oral advocacy in both predictive and persuasive formats.

The first semester course, Legal Writing and Research, is taught in two

separate ways. Legal Writing focuses on analysis and writing and is taught by third-year students supervised by the director of our legal writing program. Legal Research is taught by a group of VLS reference librarians. Legal Writing addresses the fundamentals of courts, authority, case briefing, rule analysis and synthesis, and citation. The course also requires predictive memo writing that begins with closed universe materials and ends with an open universe problem. Rewriting of drafts is built into the course schedule, and the opportunity for individual feedback is high given the approximately 10 to 1 student/teacher ratio. Legal Research teaches both hard copy and electronic research from the start, while addressing the usual range of primary and secondary authority. The reference librarians use a variety of engaging exercises to teach research, having recently expanded into video and

Power Point visuals that grab the students' attention.

In the second semester, Dispute Resolution builds on the basics learned in the first semester by requiring students to apply their research, analysis, and writing skills to client problem-solving at the pre-trial level. This course is taught by our four assistant professors of legal writing as well as the program director. While we each use different problems devised on our own or adapted from other writing programs, we have common learning goals and assignments to achieve them. These include a predictive memo set in an open universe, where some non-LRW skills (interviewing, counseling, and negotiation) are used; a persuasive memo (also open universe) on a pre-trial issue; and an oral argument. Students write multiple drafts, conference with professors, and do practice oral arguments. In this manner, second semester students must integrate research skills into their analysis and writing.

In their last required writing course, Appellate Advocacy, students hone their research, analysis, and persuasive writing and oral argument skills. The four assistant professors teach this course using pending United States Supreme Court cases as the basis. Students write a full brief, with various pieces submitted in advance and multiple opportunities for critique and conference throughout the semester. Students then argue the case before a panel of local attorneys and judges sitting as the Supreme Court. Most students take advantage of the "field trip" to the real oral argument in Washington, D.C. and a panel discussion on appellate advocacy hosted by our department that presents advocates from each of the pending cases used during the semester.

The advantages of a three-semester LRW program are many. First, we can address these fundamental skills in a very deliberate manner, working gradually from LRW "boot camp" through trial level and appellate work. VLS students get the time in the curriculum to see the transition from predictive to persuasive writing, and to improve continually their analysis and writing through many redrafting opportunities built into these three courses. The three-semester curriculum also allows us to focus exclusively on appellate advocacy—not only the analysis and writing of a case on appeal, but the

procedure and strategy as well. This opportunity comes at a point when students have a much more developed understanding of appellate decision-making, having read many appellate cases, taken Constitutional Law, worked in a law setting, and explored the mechanics of trial level problem-solving in Dispute Resolution.

Although our students comment every year on evaluations that each LRW course requires more time than the two credits allotted would indicate, both faculty and students agree that a three-semester writing program goes a long way in preparing our students for life in the law post-graduation. ♦

A Practical Education: Putting Research and Writing to Work

Terry Jean Seligmann, University of Arkansas School of Law-Fayetteville

A third semester provides an opportunity to expose students to additional forms of writing, as well as to provide additional feedback to students for whom the first year did not "click."

The first year curriculum at the University of Arkansas School of Law looks much like that at many other law schools. The first semester begins during Orientation Week and focuses on objective legal analysis and fundamental research skills. Students learn to use primary authorities and secondary materials like treatises, encyclopedias, ALR annotations, and periodical articles. The second semester shifts to persuasive analysis in the context of an appellate brief and oral arguments, with research instruction that widens to include unlimited use of computerized databases and internet sources. These two courses carry five credits, three in the first semester and two in the second. The courses are taught in sections of 25-30 by full time members of our Legal Research

and Writing faculty. The LRW faculty generally agree on due dates, type, length and number of major assignments.

The third semester class is a two credit course, limited in size to 15-17 students in each section. Our LRW faculty together defined a set of goals and guidelines for this class. We saw this semester as an opportunity to expose students to additional forms of legal writing that attorneys do, to further develop student research skills in sources and legal areas beyond the limits of the first-year curriculum's capacity, and to assist those for whom the first year did not "click" by providing additional practice and feedback in research and writing. We wanted to allow LRW faculty leeway to structure their own course curriculum and to emphasize legal issues they thought were useful, while still giving each student a common core of practically oriented work.

The model we have adopted reflects the litigation background common to our LRW faculty and covers client letters, pleadings (a complaint and answer), motion papers, and supporting memoranda, including a memorandum on a dispositive motion such as summary judgment. Many of us teach the class by tracking one dispute from initial client contact through the dispositive motion and potential settlement of a claim.

We also include at least one non-litigation drafting assignment. For example, one of our faculty assigned students working on a personal injury case to prepare a settlement brochure. Another, whose students litigated a commercial lease dispute, had students redraft the contested provision preventively. Most recently, as our jurisdiction moved towards adoption of the Multistate Performance Test as part of the bar examination, we have begun devoting some course time to a timed, file-based writing exercise.

To assure sufficient research work, we agreed that there must be at least two distinct legal issues for research during the third semester course. Some of us assign a discovery issue for this purpose. Others have engaged students in preparing a short Continuing Legal Education (CLE) style presentation on a subject they may encounter in practice, such as enforcing a judgment or pursuing a guardianship. I

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And Now For Something Completely Different

Lessons Learned in Revising the Legal Writing Curriculum

*Sonia Bychkov Green & Maureen Straub
Kordesh, The John Marshall Law School*

There is an automatic response to the question whether a legal writing curriculum should have a third semester: of course. More difficult is the question of what it should offer students. We cannot transcend our own history, but with perspective, we can try to make better decisions. The theme of this essay is: don't automatically assume that your third semester should be an appellate advocacy

A Practical Education

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have found the third semester is a good time to create assignments that require research into administrative and legislative history sources.

Student response to the third semester has generally been positive. There is a high demand for the class during the summer session, as students see it as one to take to get ready for part-time jobs. Most praise it as a class that they can readily perceive will serve them as practitioners.

This course could be criticized for not emphasizing more the transactional aspects of legal practice. Our law school, however, has a strong skills-based curriculum that includes classes in client interviewing and negotiation, alternate dispute resolution, and mediation. Recent additions to the skills courses include a Business Planning skills course taught by a corporate law faculty member, and Drafting Legal Documents, a survey course emphasizing drafting principles which I teach as an elective. For our school, our faculty, and our overall curriculum, our third semester appears to successfully meet the goals identified by our LRW faculty and the needs of our students. ♦

course. If you think creatively about what you want to accomplish in your program, you'll come up with something the administration will permit, the faculty will support, the students will value, and you will find unique and exciting. We learned these lessons as we spent the past six months revising the legal writing curriculum.

First: think creatively about the program as a whole. Avoid the add-on mentality. Our initial attempt to restructure our program was tied in too closely to the program we already had. Like the student who cannot take the leap from expressed

*A third semester should truly be more, not just more
of the same.*

holdings in cases to general rules, we initially found ourselves wedded to the current program, to traditional notions of what a third semester should cover, and even to the idea that it should take place in the students' third semester.

Second: if possible, tie the third semester to the students' needs and to the school's strengths. For example, we are trying to do this in our program by allowing for a greater variety of options within our third-semester "drafting" course. While we had the advantage of working within a program that already had more than two required semesters, this may also help convince a more reluctant faculty to add a third semester to a two-semester program.

Third: remember that a third semester should truly be more, not just more of the same. Our proposal, which has recently received faculty approval, is what we hope is a stronger, "leaner, meaner" writing program.

Redrafting the LS Curriculum

The law school asked the Lawyering Skills ("LS") faculty to reevaluate the program to see how it could be improved. Given this general directive, we spent several months discussing the program. Our program had consisted of four required semesters of Lawyering Skills: LS I covered analysis, most manual research and predictive writing; LS II focused on advanced manual and

electronic research, and persuasive writing (mostly at the trial court level, though with an introduction to appellate advocacy); LS III, which covered appellate advocacy; and LS IV, which covered general drafting. We decided that the "new" program should combine research, predictive writing, persuasive writing and appellate advocacy in the first two semesters.¹

We decided that, for balance, a drafting course was still important for our program, but that we could change the current drafting course to allow for more specialization. We hope to retain

some flexibility by planning a required course that has several options: students will be able to choose the general drafting course, or choose a specialized drafting option which ties in to one of the law school's seven Centers for Excellence (offering advanced programs in advocacy and dispute resolution, fair housing, information technology, intellectual property, international business and trade, real estate, and tax). We will encourage that prerequisites be imposed for the drafting courses, so that these courses may be taught at a more advanced level, that is, to fifth- or sixth-semester students. Staying even more flexible, we hope to add some non-traditional "drafting" courses that allow students to focus on litigation.

We hope that this curriculum will more effectively address the need our students have for writing and practice skills. Re-envision your whole program, weave yourself into your school's web, and be bold. Your faculty and dean just may end up wondering why they did not act sooner.

¹ *John Marshall allows both fall and spring admission, and also runs a part-time program. Therefore, a significant number of students do not fall into the traditional three-year model, and it is more helpful for us to think about how many semesters a student has completed at any given point.* ♦

The Third Time is the Charm

The Structure and Benefits of a Three-Semester Legal Writing Program

Randall S. Abate, Rutgers School of Law-Camden

Three-semester legal writing programs offer a broad range of pedagogical and institutional benefits. These programs typically involve more credits, more time to cultivate essential skills, and more institutional resources committed to legal research and writing (LRW). In addition, they promote more opportunities to cultivate productive ties with alumni and prospective employers, and enhance institutional confidence that students who complete the program are well prepared to succeed in their legal careers.

Most LRW programs are only two semesters by default, not by design. LRW programs typically are confined to the first-year curriculum either because of law schools' lack of financial or pedagogical support for LRW program, or from a lack of flexibility in the law school curriculum. Beyond the first year, most schools merely require a scholarly paper as the only formal writing a student must complete prior to graduation. Though valuable, preparing a scholarly paper and completing a two-semester LRW program is insufficient training to prepare students for the rigors of legal writing in practice.

From 1989 to 1992, I was a full-time faculty member in a three-semester LRW program at Vermont Law School. Many of the benefits I cite in this article are drawn from my experience with the Vermont model. From 1998-2001, I directed a two-semester LRW program at Widener-Harrisburg, the weaknesses of which underscored in my mind the strengths of the Vermont model. Consequently, in my second year as director at Widener-Harrisburg, I proposed a three-semester LRW program, largely patterned after the Vermont model. Although my proposal was tabled on the Harrisburg campus, it was approved and adopted at Widener's Delaware campus, with minor variations concerning the

timing and content of the third semester. At Rutgers-Camden, where I currently teach, the two-semester program is well established. A third semester, however, could both reinforce and extend the strengths of the current program.

The Standard Model

Those programs fortunate enough to consider the advantages of implementing a three-semester model should start from the premise of the "standard" model. The standard model is a consecutive sequence of LRW courses spanning the first three semesters of law school. The first semester of the sequence addresses objective writing, focusing on basic principles of analysis, organization, and research. The second semester is an introduction to advocacy in the pre-trial context. It addresses more sophisticated techniques of analysis, organization, and research. It also includes an introduction to oral advocacy, involving a short oral argument before LRW faculty and teaching assistants (or other upper-level students). The third semester is designed to deepen and expand the range of skills addressed in the first two semesters. It introduces appellate advocacy and addresses even more sophisticated techniques of analysis, organization, research, and persuasive writing than those addressed in the second semester. It includes a longer, more formal oral argument as the capstone of the course.

Staffing, Curriculum, and Timing

Despite its advantages, the standard model may not be the best choice for all three-semester programs. The standard model draws on existing LRW faculty and teaching assistants to teach the course sequence. Programs may want to consider hiring new full-time LRW faculty or adjuncts to meet staffing needs. Some schools may be able to draw on a supportive and qualified corps of doctrinal faculty who may be willing to teach in the third semester of the program. The potential costs associated with implementing a third semester may doom an otherwise worthy proposal. Therefore, staffing strategy must be given careful consideration.

Curricular and timing considerations are important as well. The standard model involves placing an appellate advocacy course taught by LRW faculty in the third

semester. Variations on this approach could include a "menu" of courses that would satisfy the third semester requirement, taught by LRW faculty or full-time doctrinal professors. Such courses might include Drafting (transactional or legislative), Judicial Opinion Writing, Advanced Brief Writing, and Advanced Legal Research and Writing. Proposals should also consider the possible impacts of such programs on other components of the curriculum and on intra- and interschool moot court competitions. Finally, the possibility of allowing students to fulfill the third semester requirement in another semester (during the fourth, fifth or sixth semesters, or during summers) should be considered.

Benefits to Students

A three-semester program benefits students of all abilities. Excelling in the LRW program gives all students a better sense, as compared to in-class final exams, of their ability to succeed as lawyers. A third semester of LRW is a confidence-builder and resume-enhancer for many strong students. A three-semester program also benefits students in the bottom half of the class. Having the second and third semesters separated by a summer allows concepts to sink in and slows the pace of coverage for students who may struggle in a two-semester model. After holding summer jobs where the importance of LRW becomes clear, some of the less motivated students approach the third semester with a renewed sense of enthusiasm and focus.

Benefits to LRW Faculty

For financial or pedagogical reasons, some schools pride themselves on cramming three semesters of work and LRW skills into two semesters. Even assuming this approach is pedagogically sound, it comes with high hidden costs—student disenchantment and LRW faculty burnout. Students who are overwhelmed lose focus and enthusiasm for learning in their LRW courses. Attempting to do too much in too short a time frame exhausts LRW faculty and sends a message to the students that the course objectives are unrealistically ambitious. A three-semester program can be structured so that workloads are manageable for both students and instructors.

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The Third Time is the Charm

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Three-semester programs also offer LRW faculty an opportunity to diversify their teaching packages. Under the traditional model, a diversified teaching package would involve teaching an advanced advocacy course. Under the menu model, a diversified teaching package could entail teaching a new course, such as Drafting, Judicial Opinion Writing, or Advanced Legal Research and Writing. Both models involve encountering a different segment of the student body—upper level students. Virtually all doctrinal professors enjoy these two aspects of diversity in their teaching packages—teaching different courses and teaching different segments of the student population.

Benefits to the Law School

Law schools enjoy significant institutional benefits with three-semester programs. The third semester can be a showcase for the talent of the “finished product” of the program. Second-year students who have a sound grasp of analysis, research, and advocacy skills can put these skills on display for the local bench and bar in oral arguments in the fall of the second year, during the peak recruiting season for the summer jobs. Typically among the local attorneys and judges who sit on the panels for these arguments are alumni of the school. LRW program directors should work closely with directors of alumni development and career services to harness this synergistic relationship among oral arguments, alumni involvement, and prospective employment opportunities.

Three-semester programs also typically involve more credits for the LRW program, and more credits promote internal and external confidence in the program. Internally, the program earns the well-deserved recognition from the doctrinal faculty that the LRW program is a centerpiece in the students’ educational development and enhances the students’ job prospects. Doctrinal professors often pay lip service to this reality by telling first-year students that LRW courses are the most important ones in the curriculum, but without the credits to reflect this perception, the students are reluctant to

embrace that mindset. Externally, schools with three-semester programs, and credits to correspond to that commitment, are successful in attracting and retaining students and enticing prospective employers to reap the benefits of the institutional commitment to LRW. It is often these important institutional benefits that impel law school deans to consider the prospect of implementing a three-semester LRW program. ♦

Using a Third Semester to “Pull it All Together”

Constance Hood, Western State University College of Law

Western State University College of Law (WSU) has a required three-semester program and allocates three units of credit to each semester. Three-semester programs provide options that are difficult to attain in two semesters. Having three semesters makes it possible to build skills slowly and spend more time developing them. This has been the approach followed at WSU for the last two years; we have expanded instruction in basic analysis and reserved advocacy instruction for the second year. For a number of reasons, however, we will be using the three semesters differently in the 2002-2003 academic year. The first-year course will introduce the students to both objective and persuasive writing, while the final course in the sequence will pull all of those skills together in the second year.¹

In the current program, following the “build the skills slowly” approach, the first semester focuses on legal analysis, as well as basic research and citation skills, but the analysis is limited to single-issue problems. We can spend time making sure the students understand analysis, adding more and more law to the problems as the semester progresses, before we complicate the number of issues.

A three-semester program provides options that are difficult to attain in two semesters: building skills slowly, or adding a simulation to put a practical face on doctrinal subjects.

The second semester then places the student in a more realistic environment with multiple-issue problems. The problems require students to engage in an “if-then” analysis (because the client hasn’t yet provided all of the needed information), and also require them to consider the client’s stated goals and needs in addition to what the law provides.²

Finally, the third semester introduces students to advocacy. The students do an appellate brief and oral argument, with multiple exercises to prepare them to do those tasks.

Beginning in the fall of 2002, we are switching to the “pull it together in the end” approach. We have re-sequenced Advocacy and will be introducing a new course for the required third semester. Under the new sequence, the first semester will remain essentially the same, except that students will deal with problems that have more than one issue. Advocacy will be introduced in the second semester, which will include a brief in support of a motion, an appellate brief, and oral argument on both. The new third-semester course is a simulation course, set at the trial level, which will expose the students to many of the documents they will be required to create in practice. The third semester will pull together all of the skills from the prior semesters and give a practical face to some of the doctrinal subjects like civil procedure and contracts.

In the simulation course, the students will manage two client files.³ The first requires a client letter, an attorney letter and a settlement agreement. The client letter is essentially an objective document, while the attorney letter is a persuasive document. This demonstrates nicely the shift between the two, using the same set of facts and the law. It also demonstrates the need to consider tone and audience. The second file requires a letter to the EEOC, complaint, answer, in-class discovery exercises and a complete summary judgment motion.

Students are not permitted to use forms to create the documents. Instead, we work with the Federal Rules of Civil Procedure and the Code of Federal Regulations. The course makes sense of civil procedure as the students see its practical application.

Moving advocacy instruction into the first year means that students will have some exposure to persuasive writing before the first summer, during which they may be working in a legal position, and they can compete earlier in moot court competitions. Another reason for the shift is our realization that most of the students here work in small firms or go into solo practice without much exposure to many of the documents they'll be required to prepare in practice. Finally, we also recognized that the new course will expose our students to a number of documents that have been required on the performance portion of the bar examination, more so than in previous organization of the courses.

I have great admiration for all those who must provide similar instruction in a two-semester program, frequently with fewer units allotted to each semester, and am grateful that I need not attempt to do so myself!

¹ *While most of us would agree that our courses already do that, sometimes our students miss it.*

² *I focused the problems on these particular areas because they are frequently tested on the performance test portion of the California Bar Exam. Two common test questions are (1) to specifically identify what additional information would be helpful in evaluating a case and from whom (and sometimes how) it should be obtained; and (2) to write a letter or memorandum explaining the law on an issue and the options available to the client, taking into account the client's specific concerns.*

³ *This course was originally developed when I was teaching under Jan Levine's direction at the University of Arkansas. That program was also a required three-semester program, but the teachers were given autonomy in creating the third course. Thus, some focused on transactional work, some on litigation, and others on legislation.*

A Better Opportunity for Mastery Learning

Susan McClellan, Seattle University School of Law

The Program

Seattle University School of Law requires three semesters of legal writing and provides four additional electives: advanced legal writing, advanced legal research, legal drafting, and advanced appellate advocacy. The required program includes two semesters of Legal Writing I (LW I), which forms the objective portion of our program, and one semester of Legal Writing II (LW II), which is the advocacy portion. Although we are always striving to improve the program, the three-semester curriculum provides significant benefits.

In LW I, students generally research and write four to five objective/interoffice memoranda, write an opinion letter to a client, and complete research projects in an area of their choice. Students also take examinations in grammar, citation, and research.

Each memorandum assigned builds on the skills taught in the previous assignment. The first memo, for example, generally involves statutory analysis, which requires students to determine the elements in the statute, identify the rules or tests used to determine whether each element is satisfied, show how courts have applied the rules in factually similar cases, and build and evaluate arguments for each side. The second memo usually involves a common law issue, in which the general rule must be synthesized from several cases. The third memo often involves an issue of first impression for the students' jurisdiction, an issue that has split the circuits. This type of memo requires first determining what the rule should be and then applying the rule to the facts of the case. One of the memo assignments generally requires the students to conduct interviews or complete negotiations.

In LW II, students write two briefs and present three oral arguments. All briefs and arguments are based on a case that is

currently before the Washington State Court of Appeals.

During the first half of the semester, students work on the pretrial motion phase of the case. Given a limited number of cases, students present a practice oral argument in the second week of class. The argument gives students the opportunity to argue in an ungraded atmosphere, and they quickly become involved with both the facts of their case and the basic law. The students then open the research and write a pretrial motion brief, or memorandum of points and authorities, which usually has two issues. After submitting the brief, the students present their graded oral arguments on the motion.

We then skip the trial phase entirely. Students receive another packet of materials that includes clerk's papers and a transcript from the trial. Students must identify issues for appeal, write the appellate brief (with one or two new issues), and present an appellate oral argument.

The Underlying Principles

Several basic principles underlie the structure of this program. First, students cannot learn a skill well by performing it only once or twice. Research has shown that more mastery learning occurs when students have increased opportunity to practice skills. In this program, the spiral curriculum reinforces skills students have already learned as it teaches new skills. Students build skills with each assignment.

Second, the teaching context is real world. Students are more likely to research and write office memoranda, motion briefs, and appellate briefs to a state court of appeals than they are to present briefs or oral arguments to the United States Supreme Court. By requiring that students locate and use local court rules in briefing and presenting oral arguments, the program helps students hit the deck running in their first legal jobs. Realistic practice leads to real-life success.

Finally, the curriculum focuses on the process lawyers use to research, analyze, write, and prepare oral arguments. This process-based learning aids in long-term learning—learning for life, not learning for the individual assignment. ♦

A Chance to Teach Intentionally and Systematically

(continued from page 1)

a motion raising a pure issue of law, and a procedural motion placed in the court's discretion.

Nor do we have enough time for thesis sentences, paragraphing, and transitions; yet we know that these topics are not “merely” matters of writing style. They are, in fact, critical tools for clear thinking. Oral argument is another important skill for which we have only a couple of class hours and often only one opportunity for student practice.

Not only do we need more time to cover our current syllabus well, but we need to think seriously about adding some important content. As we learn more about the writing process, we are beginning to identify the analytical skills good legal writing requires. We're starting to realize just how many, how varied, how complex, and yet how truly teachable those skills are.

A three-semester program can give us the chance to take our students to a significantly deeper mastery of analytical Legal Writing. We could both teach our current syllabus content more thoroughly and add express, intentional,

and systematic coverage of the most important analytical skills.

Imagine a course sequence that could include such segments as (1) synthesizing a rule from a line of mandatory authorities; (2) using policy to evaluate rules from other jurisdictions; (3) interpreting statutes; (4) using facts in rule application; (5) using cases for analogies in rule application; (6) framing a narrative theme; (7) organizing the analysis of multiple issues; (8) explaining and applying a factors test or a balancing test; (9) using policy in rule explanation and rule application. Each of these segments could include both studying examples and practicing the skill.

Analytical legal writing—that is, writing an expository document that analyzes a legal issue using the basic forms of normative legal reasoning—is the hardest form of writing to learn and the form least likely to be learned well in practice. Perhaps before we take on other genres or lawyering skills in the required course sequence, we should be sure that we are doing all we can to teach this vital form of writing and the research that is its essential foundation.

¹ Thomas M. McDonnell, *Playing By the Rules: A Realist and Rhetoric-Based Approach to Researching the Law and Solving Legal Problems*, 67 Mo. L. Rev. 285 (1998). ♦

Students Should Have a Choice

Ruth Anne Robbins, Rutgers School of Law-Camden

Rutgers School of Law-Camden unfortunately has not yet joined the ranks of the enlightened schools requiring a third semester of legal writing. Nevertheless, several of us have spent a lot of time thinking about the need for a third semester, and working on a grassroots campaign for one. Plentiful and persuasive arguments abound for a third semester of legal writing, as we all know. If we were teaching students to become great musicians, we would not

Any approach that involves completing formal writing education a full two years before students are expected to write for a living only handicaps them.

think of sending them to orchestra auditions unless we were certain that the students had practiced their instruments more than just during their first year of school. Likewise,

Gaining a Practitioner's Perspective

Pamela Zanel, Ave Maria School of Law

Ave Maria School of Law, which opened its doors to students in the fall of 2000, offers a distinctive legal education enriched by the rich heritage of legal thought within the Catholic intellectual tradition. Ave Maria is committed to providing the professional and technical skills that will permit its graduates to take their places in the finest law firms and corporate, public-interest, and government law offices in the country. Part of this commitment is a requirement that Ave Maria students take three semesters of Legal Research, Writing and Advocacy.

The first two semesters of the LRWA Program follow the traditional model employed by other law schools throughout the country. Students prepare research

memoranda and appellate briefs. The third semester, taken in the students' second year, introduces students to legal writing and advocacy from the perspective of a practitioner. The second-year students draft a variety of civil court documents, such as pleadings, discovery requests, and motion papers. In addition, students in the third semester course are schooled in oral advocacy at the trial court level to complement the appellate skills acquired during their first year.

This course, unlike the traditional two-semester model, enables law students to follow and handle an actual civil dispute from the first client contact to the reading of jury instructions. To most accurately simulate the actual practice of law, students are divided into plaintiff and defense law firms, with each firm representing fictional opposing clients. Students within the same firm are considered one another's associates and are therefore encouraged to confer as

a group at various points throughout the course. Students are assigned peers within their firm who, in addition to the instructor, review and critique their work. Each student is also assigned an opponent from the competing law firm. Throughout the semester, students will serve papers on their opponents and respond to the papers served on them by their opponent. Employing this method rather than using form pleadings and motions ensures that each student gains a personal experience from the course.

With the addition of a required third semester of legal writing, upper-level students get to see a more practical view of the law. The timing of the course is especially effective; students will most certainly utilize the knowledge and skills gained in the third semester during their summer employment in the important “second summer.” We expect that this, in turn, will make graduates of Ave Maria attractive candidates for permanent employment. ♦

we owe our students the ability to practice and expand their practical writing skills throughout more of their law school years. Any approach that involves completing formal writing education a full two years before students are expected to write for a living only handicaps them. The primary

hurdle—beyond money—is making a proposal attractive to both faculty and students.

Our fundamental task as legal writing professionals is turning out lawyers who understand that they write for a living and who, one hopes, enjoy doing so. If we cannot

help students enjoy writing and have a sense of pride and confidence in their work, what service have we done for the profession? The best way to address that broad teaching goal, I believe, is intertwined with allowing students to develop their skills and encouraging their desire to continue striving for higher levels. I think that upper level law students would be more receptive to additional writing instruction if they had more of a say in their own education. For that reason, I believe that the third semester should not be one unified program, but rather a choice of several different options offered by legal writing faculty. So long as the legal writing faculty all agree on basic pedagogical goals, such as making sure the students get plenty of specific feedback, the students should all have a net positive learning experience. That same choice would also help the legal writing faculty explore and teach according to their own interests.

Our law school already offers several upper level writing courses that cover a broad base of areas. A feasible proposal would simply offer more sections of these offerings and require students to take at least one some time during their upper level years. Some students simply do not want to take another litigation-based writing course because they are more interested in transactional work. For those students, we should offer several sections of the legal drafting course. Other students may be drawn to the moot court process. Various competitions could form the basis of other courses, so long as the faculty can figure out a rule-abiding way to offer meaningful writing feedback to the students. For those students, we already offer an advanced brief writing course each semester: more sections would help accommodate additional students who want to focus solely on their persuasive writing skills. There is room in this concept to offer an additional option in the vein of a traditional third semester course involving one case file taken from pleading to memo to brief and oral argument.

Moving away from a unified curriculum is not so outrageous when one considers, for example, the great variety of trial or pretrial advocacy courses, clinical programs, and externship possibilities offered at many law schools. We should take our cue from the other lawyering programs and offer the same sort of scholastic smorgasbord. ♦

Walking in Our Shoes: Instruction Through Simultaneous Performance

Linda A. Shashoua, Rutgers School of Law-Camden

Getting started is the hardest part—developing a theory, identifying the issues, constructing a research plan, and organizing, organizing, organizing the arguments. As they struggle to approach each stage of writing, students often look to us and ask how we would handle these tasks in their assignments. And just as often, as a practitioner I am tempted to show them. In a third semester of required legal writing, I would no longer resist my temptation—I would teach through simultaneous performance.

The first-year advocacy instruction is properly geared toward teaching new skills. Yet, as students feel their way through strange, new, thinking-pathways, even their success is often a surprise to them. Which of the myriad decisions they made along the way were most effective, and will they be able to repeat their success when faced with new and varied writing tasks?

To affirm their knowledge, and present other efficient options, I would conduct a workshop-like semester, where I would roll up my sleeves, crawl into the writing trenches, and dig my way out right alongside my students. Alternating between group and independent work, we would simulate the conditions of facing real-world writing tasks with the benefits of classroom conferencing. Each assignment would proceed along a mirrored track, where we would brainstorm and strategize in class, while the students worked independently outside of class.

An opening assignment could present a single-issue brief, typically requiring a quick turnaround. By approaching the assignment “out loud” in class, the students would think not only about the best direction to proceed, but as importantly, about the best questions to ask themselves to trigger the possibilities. After initial brainstorming in class, students would then be assigned to follow up with independent research. In the next class, students and professor would share their results, immediately troubleshooting while the students would still be immersed in the process. The writing stages would proceed in tandem until completion. Each stage of the brief, from beginning to end, would offer the students an opportunity to see how the professor and other students might approach the very project they are completing.

A second writing assignment might repeat the single-issue brief scenario to provide students with an opportunity to test their understanding in familiar territory, while adding a new component: perhaps the students would simply be provided with a new fact pattern and have to discern the issue at stake. In this way, the students could at once reinforce what worked for them, while building in a new skill of issue identification. Again, the process would begin as a group, and proceed by comparing notes at each stage. Thus, instead of providing a lifeless sample of the assignment after the students have already attempted it, the students would be part of a working sample of the project at a time when they still have a stake in completing it.

Through discrete writing assignments, our goal would be to help the students achieve a sense of familiarity in how to approach and complete new writing tasks. By the end of the third semester, the students would not even realize that the training wheels had come off.

A Three-Semester Skills and Values Program

Jean G. Zorn, Florida International University College of Law

This August the first students will arrive at Florida International University's new College of Law, the entering class in the first state-supported law school in the rapidly growing, richly diverse Miami area. And the students will have the benefit of a legal writing program that represents an ambitious effort to incorporate more than the traditional elements.

The new FIU program was shaped by Leonard Strickman, founding dean of the College of Law. He was aided in his thinking, I'm sure, by Jan Levine and Terry Jean Seligmann, who directed the legal writing program at the University of Arkansas-Fayetteville while Strickman was dean there. The central elements of the new program are that it will be a three-semester program and that it will be entirely staffed by full-time teachers on long-term contracts, with a tenured Director of the program. Dean Strickman also decided that, while research, writing and analysis would form the core of the FIU program, it would also include other skills and professional values.

The initial step in meeting that challenge was to convince three imaginative and talented teachers—David Walter, Sharon Barnett and Angie Ortega Fridman—to sign on. The four of us met last month for a marathon bonding and planning session. We had little trouble deciding which skills to introduce. Client interviewing and counseling, negotiation, and mediation were easy choices. They are skills most lawyers use most of the time, and they introduce students to two key notions: one, that lawyering can be client-centered, and two, that dispute resolution does not necessarily involve adjudication and an adversary process. Moreover, when each writing project begins with a client interview, problems become mini-simulations. In role, students will experience the urgent need to learn how

to do the research, how best to do the writing, in order to best serve their (make-believe) clients. Also, interviews, judicial conferences, plea bargaining sessions and other activities will give students a variety of different forums in which to hone their communication and analytic skills.

Borrowing from the clinical model, we will try to make each issue in professional responsibility come from the student lawyer's relationship to her clients and their problems. A settlement discussion, for example, might include facts that provoke a discussion about lying to the other side. Trial preparation will raise the issue of the guilty defendant. Experiencing these issues in role will, we hope, give students a deeper understanding of the complexities and shades of gray in any lawyer's choices.

But how could we accomplish all of this in an already ambitious legal research, writing and analysis program? The three-semester arc will be our saving grace. By stretching out the research, writing and analysis program, we will have an extra fourteen weeks to add other skills and values, and even to build in some additional research and writing.

We'll begin during the first week orientation program with short intensive workshops in reading and analyzing statutes, reading and briefing cases, precedent, rule synthesis and problem solving. Subsequent research and writing assignments in the first two semesters will not be unusual—predictive memos in the first semester, persuasive writing

in the second (both pre-trial and appellate briefs and oral arguments). Each problem will begin with a client interview and will introduce students to at least one other skill as well. We'll focus on torts, contracts and constitutional law problems in the first semester, because those are the subjects being taught in the doctrinal classes that semester, and on problems involving criminal law and criminal procedure in the second semester, when students will be taking the criminal law course. We'll include issues in international and comparative law in every semester because, in keeping with the international flavor of Miami, the law school at FIU intends to incorporate international law throughout its curriculum.

The third semester will consist of a single semester-long pre-trial simulation, combining objective and persuasive writing, as well as client interviewing and counseling, oral argument and mediation. The writing assignments will begin with an inter-office memo, move from there into drafting pre-trial documents and then to a brief and oral argument for or against a motion to dismiss. We expect that the focus on pre-trial work will reinforce the lessons of the first two semesters, while giving us the opportunity to revisit basic themes in legal writing and introduce some more advanced skills and concepts as well.

We are embarking on this exciting new venture with a healthy level of trepidation, and a great deal of enthusiasm. ♦

2002 ALWD/LWI Survey Results Released

Jo Anne Durako presented the results of the 2002 ALWD/LWI Survey at the LWI business meeting held during the biennial conference in Knoxville.

This year's results are based on information from 154 law schools, representing an 83% response rate.

One of the most dramatic trends revealed in the current survey is the move away from "caps" on legal writing positions, and towards more job security for legal writing faculty. Of the schools responding, 20 have legal writing faculty who are tenured or tenure-track; 17 grant their writing faculty section 403(c) status; and 15 use long-term contracts for writing faculty.

Only 9 of the schools responding still have caps on legal writing employment. These schools may be among the 10 schools at which legal writing faculty still do not attend faculty meetings. At 61 schools, however, legal writing faculty now have voting rights.

Detailed results will be published in Volume 9 of Legal Writing, and additional highlights will be included in the Fall 2002 issue of The Second Draft.

An Elective Advanced Course

Jeanne Kaiser & Beth Cohen, Western New England College School of Law

At Western New England College School of Law, there is no required third semester of legal research and writing. Although the students must complete a qualified writing course, there was, until recently, no general advanced legal research and writing course. However, for the last three semesters, we have offered an Advanced Legal Research and Writing tutorial as an elective. This course is taught by a member of the Legal Research and Writing faculty on a rotating basis.

Our plan with this course was to offer the same type of experience that a required third semester might offer—a more complex and sophisticated legal research and writing experience to build upon the foundation of skills acquired in the first-year course—but absent the requirement. The advanced LRW course is designed to further develop and refine the research, analysis, citation, and writing skills introduced in the first-year course. For instance, in the first-year required course, students write and argue a trial court brief for the final assignment. Consequently, we assign an appellate brief as the final project in the advanced LRW class. Similarly, while the research in the first-year class focuses primarily on statutes and case law, the advanced LRW course seeks to incorporate more sophisticated research. With close supervision and guidance, students are expected to develop their own research strategies using a wide range of materials such as regulations, legislative history, and advanced secondary sources. Students also have the opportunity to design their own independent research projects and present their findings to the class in the form of a detailed bibliography and an oral report.

Offering the course as an elective, rather than as a requirement, has both advantages and disadvantages. On the positive side, because the course is not required for every student, we are free to limit the class size. Enrollment in each section is limited to approximately twelve students. The small class has proven, not

surprisingly, to be ideal for this experience. With a small number of students, we approach the class as a collaborative-learning seminar. The class includes peer assessment, self-editing, small group projects, group and individual conferences, and multiple presentations. There are also the obvious benefits of more individual attention to research and writing issues and a greater amount of time for individual student conferences with the limited number of students.

Other less obvious benefits include the greater level of comfort and collegiality which can be developed in a small group setting that incorporates a collaborative learning approach. Students grow comfortable working together on a variety of projects in a small and supportive setting. In some classes we have been able to do live, on-screen editing of student work using a laptop and projector without an undue level of discomfort for the student whose work was being reviewed. This has been an effective tool to teach line-by-line editing that would not be as constructive in a large group where the students had not bonded through the small group experience. Also, most of the students who sign up for the course are beyond their third semester in law school. Consequently, in addition to having completed numerous electives on a wide range of topics, many students have practical work experience to bring to the class as well. This provides greater flexibility in choosing the substantive law that forms the basis of the advanced writing assignments. Instructors feel less confined to limit assignments to the more familiar topics covered in the first-year curriculum and instead can explore more compelling issues.

There have also been some unanticipated twists. Many students who elected to take the advanced LRW course are students in their very last semester of law school. These students often state their motivation for taking the course bluntly: “I’m in the last semester of law school and I’d better learn how to research and write now!” Faced with impending graduation and entry into the work-force, it is no real surprise to us that students suddenly seem to recognize the far-reaching significance of the first-year LRW curriculum. The power of hindsight! They

go on to say that they feel as though they have forgotten what they did in the first-year, that their moot court argument was “so long ago,” and that they have only the dimmest memory of how to begin and to shepardize.

In response to this, the first part of the advanced class has necessarily been a review of the first-year basics. Students need to be refocused and refreshed on rudimentary book and computer research, as well as in basic legal writing methods. This experience has confirmed our view that students ideally need to exercise their research and writing muscles every semester, lest they wither. Thus, although an advanced LRW class is helpful, a required third-semester that provides students with a more immediate opportunity to build upon the first-year LRW course might help to alleviate this phenomenon. An advanced course that follows a required third semester could then be tailored to provide a more in-depth and arduous experience.

In conclusion, although we are pleased to be able to offer our students an essential supplement to the first-year legal research and writing experience, it is still not enough of a good thing. Ideally, all students would have the opportunity to research and write every semester of law school, either through advanced LRW courses, qualified writing courses, a required extra semester of LRW, internships, or more writing across the curriculum. Our advanced LRW elective is an effort to provide at least one more of these opportunities for our students. ♦

2004 LWI Conference

*Seattle University
School of Law
Seattle, WA*

*Wednesday, July 21–
Saturday, July 24, 2004*

Special Feature

Experimenting in the Legal Writing Classroom: The “No Page Limit” Memo

Janice Farrell Pea
Staff Attorney, Illinois Supreme Court

After two years of teaching Legal Research & Writing and Introduction to Advocacy at my alma mater, the University of Illinois College of Law, I left. Facing the three-year “cap” on Visiting Assistant Professorships plus family ties that made it impossible for me to relocate, I could not refuse a terrific job offer that came my way. But, like others who still face a “cap,” I would have liked to stay. One of the things I valued highly about teaching legal writing and advocacy was the opportunity to experiment with teaching methods, including a successful experiment with a “no page limit” assignment.

Page limits on legal research and writing assignments serve a variety of purposes. Teachers use page limits to ensure that students will invest approximately the same amount of effort in a particular assignment (and, frankly, to limit the number of pages we will have to read and grade). In some contexts, such as the writing of an appellate brief, a page limit helps to make the experience more “real world.” When the assignment involves a research memorandum, however, the “real world” explanation for a page limit does not carry as much weight. After all, when a partner hands you an assignment, he or she does not typically include an absolute page limit. The partner may give you an idea of the length of the memo expected, but the length of the work product will often have more to do with the deadline and the complexity of the issue than with the partner’s expectations.

Artificial page limits on research memoranda may cause students to invest time in formatting and word games (such as replacing “therefore” with “thus” throughout the document), rather than in analysis, organization, and writing. And first year law students can often be heard to complain about the arbitrariness of the assigned page limit, particularly if it is a fixed limit (“no more than ten pages”) rather than a target (“approximately eight to ten pages”).

During my second year of teaching, therefore, I assigned an open research memorandum without imposing a page limit of any kind. I told the class that the issues could be addressed properly in 20 pages. In the written materials and repeatedly in class, I reinforced the idea that I would be looking for conciseness as well as thoroughness and that if a paper were rather long, I would be examining it closely for excess verbiage.

In our curriculum, both the first and final drafts of the open research memorandum are graded. Thirty-six first drafts were turned in. The range was 14 to 46 pages. The mean was 22. The highest grade (95/100) went to three students whose papers were

26, 26, and 17 pages long. The lowest grade (66/100) went to two students whose papers were 15 and 21 pages long. The 14-page papers earned a 71 and an 80. The 46-page “treatise” earned an 87.

Actually, the 46-page paper was quite good. The writer anticipated several issues that the attorney would eventually have to deal with if the matter were to be litigated and offered excellent strategic advice. He also provided a more scholarly analysis of the legal issues. I urged him to trim most of this from his final draft, but to consider turning the paper into an article.

I shared these statistics with the class as I returned the first drafts, and again discussed the importance of writing well rather than writing long. As expected, the range narrowed substantially for the final draft. The mean was about the same (22.4 pages), but 16 papers had gotten longer and thirteen, shorter. The range was 16 to 28 pages. The highest grade went to a 17-page paper.

That was in mid-November. In late March, I surveyed the students to see how they felt, in retrospect, about the experiment. At the time they completed the survey, they were working on the final draft of an appellate brief, which did have a strict page limit.

Twenty-six of the 35 students in the class completed the survey. A majority (16 students) expressed a preference for having a page limit, either because they would know when they were “getting too long-winded,” or because they would know “everyone is doing about the same amount of work.” Eight preferred having no page limit.

I count the experiment as a success because it forcefully conveyed the message that one of the skills new lawyers must develop is the ability to balance the need for thoroughness with the equally important value of brevity. If I were to have the opportunity to teach legal writing again, I would give at least one major “no page limit” assignment.



Please make sure all of your legal writing colleagues are getting The Second Draft by filling out the coupon on the back page or by e-mailing lwiaddresses@law.fsu.edu. Address information sent to that e-mail address is forwarded to both editors of The Second Draft and to Lori Lamb, LWI Program Assistant, Seattle University.

Publications, Promotions and Other Achievements

Mary Beth Beazley (Ohio State University) published a textbook on appellate practice called *A Practical Guide to Appellate Advocacy* (Aspen L. & Bus. 2002).

Candyce Beneke, formerly at the University of Houston Law Center, is now an Assistant Professor of LRW at South Texas College of Law.

Susan DeJarnatt, Ellie Margolis, and Kathy Stanchi, all Associate Professors in Temple University School of Law's legal writing program, applied for long-term, six-year contracts. The review process, which mirrored the process for application for tenure, included a departmental evaluation, full faculty reviews of class observations and student evaluations, and external reviews of the professors' scholarship. The faculty recommended, in a unanimous vote, to offer the contracts, and the dean has endorsed and passed that recommendation on to the University's Board of Trustees.

Susan DeJarnatt has published two law review articles: *Once is Not Enough: Preserving Consumers' Rights to Bankruptcy Protection*, 74 Ind. L.J. 455 (1999); and *In Re MacCrate: Using Consumer Bankruptcy as a Context for Learning in Advanced Legal Writing*, 50 J. Leg. Ed. 50 (2000). She recently completed a third article, *Law Talk: Speaking, Writing and Entering the Discourse of Law*, which has been accepted for publication in the Duquesne Law Review.

Ellie Margolis published *Closing the Floodgates: Making Persuasive Policy Arguments in Appellate Briefs*, 62 Mont. L. Rev. 59 (2001); and *Beyond Brandeis: Exploring the Uses of NonLegal Materials in Appellate Briefs*, 34 U.S.F. L. Rev. 197 (2000).

Kathy Stanchi has placed for publication five law review articles in six years since joining the Temple program, including: *Gender and Legal Writing: Law Schools' Dirty Little Secrets*, 16 Berkeley Women's L.J. 3 (2001) (with Jan Levine); *Women, Writing & Wages: Breaking the Last Taboo*, 7 Wm. & Mary J. Women & Law 551 (2001) (with Jan Levine); and *Feminist Legal Writing*, forthcoming in the San Diego Law Review.

Jo Anne Durako (Rutgers-Camden) was invited by the Employment and Labor Section of AALS to talk about her empirical research on employment practices in legal

writing as part of the "A Critical Look at the Ivory Tower" panel at the 2002 conference. Her presentation will be published in the Employee Rights and Employment Policy Journal as part of the conference proceedings. Jo Anne was also selected AALS 2003 Conference Program Chair by the Legal Research and Writing Section.

Eric Easton (Baltimore) spoke about "Copyright and Conglomerates" at a symposium on copyright law and the First Amendment, April 15, 2002, at Benjamin N. Cardozo School of Law.

Linda Edwards (Mercer) completed a property book which is now in distribution, *Estates in Land and Future Interests: A Step-By-Step Guide* (Aspen L. & Bus. 2002), as is the recent edition of her legal writing text, *Legal Writing Process, Analysis, and Organization* (3d ed., Aspen L. & Bus. 2002). She spent Spring semester as a Visiting Scholar at Harvard Law School.

Peter Elbow (recently retired from the University of Massachusetts) has published a collection of his best essays called *Everyone Can Write: Essays Toward a Hopeful Theory of Writing and Teaching Writing* (Oxford Press 2002).

Anne Enquist, Laurel Currie Oates, and Kelly Kunsch (Seattle University) have just published the third edition of their legal writing text, *The Legal Writing Handbook* (3d ed., Aspen L. & Bus. 2002).

Christine B. Feak (Michigan), **Susan M. Reinhart** (Michigan), and **Ann Sinsheimer** (Pittsburgh) published a paper resulting from research they conducted as part of the English for Legal Studies program at the University of Michigan. The paper, *A Preliminary Analysis of Law Review Notes*, 19 English for Specific Purposes 197 (2000), shared the Horowitz Prize for the best paper in the volume.

Brian J. Foley (Widener) has been an active voice in the "War on Terrorism" public debate. He presented a paper, *Avoiding War: Using International Law to Compel Rational Problem-Solving*, at the International Symposium on Terrorism and Human Rights in Cairo, Egypt on January 26-28, 2002. The Symposium addressed issues surrounding the events of September 11 and was attended by representatives from several NGO's,

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including the United Nations, Human Rights Watch, and Amnesty International. Brian was invited to the Symposium and represented Lawyers Against the War. His paper was selected for publication and is available on the website for the Cairo Institute for Human Rights Studies (www.cihrs.org), the sponsor of the Symposium. Another article, *Faulty Reasoning Stifles Debate on the War*, was published in: Keene Sentinel (Keene, N.H.) (Nov. 17, 2001), the Harrisburg Patriot-News (Harrisburg Pa.) (Nov. 29, 2001), the website for New Hampshire Peace Action, and was finally picked up by Yahoo! News Full Coverage on December 7. Brian also made a guest appearance in December on the WDEL AM 1150 radio show in Wilmington, Delaware to discuss the international legal implications of the War on Terrorism. His editorial, *Defeating Evil* was published in Alexander Cockburn's and Jeffrey St. Clair's magazine, Counter Punch, on April 12 and was also selected for Yahoo! News Full Coverage as a sidebar link to a news story discussing the costs of the war in Afghanistan. On April 24, Brian publicly debated Doug Bandow, Senior Fellow of the Cato Institute and former adviser to President Reagan, called: *Is the U.S. Campaign Against Afghanistan Justified Under International Law (and does it matter)?* Another editorial, *Does the Pedophilia Scandal Spell an Opportunity for Catholics?*, Counter Punch (Mar. 23, 2002), was also selected by Yahoo! News Full Coverage on that day. An article Brian co-wrote with **Ruth Anne Robbins** (Rutgers-Camden), *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*, 32 Rutgers L.J. 459 (Spring 2001), was reprinted in 51 Def. L.J. 149 (Spring 2002).

Scott Fruehwald (Hofstra) won the Stessin Prize for his book, *Choice of Law for American Courts: A Multilateralist Method*. The university awards the Stessin Prize each year to one or two full-time faculty members, who have not received tenure, for significant scholarship published during the preceding year, and the recipient is chosen from the entire university faculty.

Alex Glashausser (Washburn) recently published an article comparing the *ALWD Manual* and the *Bluebook: Citation and Representation*, 55 Vand. L. Rev. 59 (2002).

Deborah Hecht's (Touro Law Center) essay, *Armies of the Everyday*, has been accepted for publication by The Jabberwock Review. Deborah, with the aid of Jessie Grearson and Ellen Turner, created a Writing Resources Center brochure which discusses writing styles, grammatical and stylistic errors, and tips to improve writing. The brochure is now part of the law school website: www.tourolaw.edu/writingcenter.

Steve Jamar (Howard) has resigned as director of the Legal Reasoning, Research, and Writing Program effective May 15, 2002. Steve plans to teach other courses, focusing on subjects of international development, especially in the IP area, and international human rights, particularly in religion.

Susan Hanley Kosse (University of Louisville-Brandeis) recently completed an exchange program at Johannes Gutenberg University, Mainz, Germany. She co-authored an article, Susan Hanley Kosse, Congressman Romano L. Mazzoli, & Jeffrey K. McClain, *Lessons From the Past — A History of American Law in Times of Crises*, Ky. Bench & Bar 10 (Jan. 2002). A second article, co-authored with Kristen Miller, has also been accepted for publication: *Expedited Appeals in Kentucky*, 4 J. App. Prac. & Process (June 2002). Finally, Susan will be teaching political and legal issues this summer for the Kentucky Governor's Scholars program, a residential, academic enrichment program to meet the needs of the Commonwealth's 1000 highest-achieving high school seniors.

Sue Liemer (Southern Illinois University) recently published *The Quest for Scholarship: The Legal Writing Professor's Paradox*, 80 Or. L. Rev. 1007 (2001).

Adam Milani (Mercer) was selected by the 2001 graduates of the Legal Writing Certificate Program as the first recipient of the Honorary Legal Writing Certificate. The certificate honors contributions to the field of legal writing that directly improved the students' skills in areas such as writing clarity, organization, substantive thoroughness, persuasive techniques, and research. Additionally, the Mercer faculty recently voted to convert his position to tenure track. Adam has two articles that will soon be published: *Playing God: A Critical Look at Sua Sponte Decisions By Appellate Courts*, 68 Tenn. L. Rev. (forthcoming 2002) (with Michael R. Smith); and *The Post-Garrett World: Insufficient State Protection Against Disability Discrimination*, 52 Ala. L. Rev. (forthcoming 2002) (with Ruth Colker) (symposium). He will be talking about the former at the LWI conference in Knoxville. Finally, Adam has accepted an invitation to join **Ruth Colker** (Ohio State) and **Bonnie Poitras Tucker** (Arizona State) as a co-author of their casebook, *The Law of Disability Discrimination* (Anderson, 4th ed. forthcoming 2003).

Marie Monahan, a member of the Lawyering Skills faculty at John Marshall, was promoted from Assistant Professor to Associate Professor.

Jane Muller-Peterson (Penn State-Dickinson) recently co-authored a paper (with Robert Rains), *Comparison of Delivery Systems for Protective Services and Related Legal Services for Victims of Domestic Violence Within a Major American*

State, and that paper has been selected for publication in a book by Hart Publishing in the United Kingdom. The authors presented the paper at the International Society of Family Law's 10th World Conference, which had the theme *Family Law: Processes, Practices and Pressures*.

Deborah Parker (Wake Forest) was promoted to Associate Dean for Students, a position that includes extensive counseling and assisting of students and student organizations with a variety of needs. Despite her substantial administrative duties, she has continued to teach a first-year legal writing course. The Moot Court Board recently honored Dean Parker's dedication to students by establishing the *Debbie Parker Award* which will be presented annually to a Moot Court Board member or competition competitor who is extraordinarily dedicated to service within the law school community.

Ruth Anne Robbins (Rutgers-Camden) co-authored with a judge (and a senior research student) the book, *New Jersey Domestic Violence Practice and Procedure*, which was just released in March by the New Jersey Institute of Continuing Legal Education 2002. The book is part of the Institute's treatise series and includes comprehensive information on the psychology of domestic violence, the process for obtaining restraining orders, and criminal aspects of a domestic violence proceeding, and the book includes brochures which may be copied and provided to litigants. Although the book is designed for practitioners and judges, it also contains information to help pro se victims of domestic violence. The pre-release orders sold out the first printing of the book, but you may get information at: www.njiclc.com/Catalog/books/DomesticViolence_105701P.htm. Ruth Anne will also be co-authoring a book with **Brian Foley** (Widener) on brief writing for New Jersey practitioners, which may also have collaborative pieces from other New Jersey LWI members.

Terry Jean Seligmann (University of Arkansas-Fayetteville) has published two articles: *A Diller, A Dollar: Section 1983 Damage Claims in Special Education Lawsuits*, 36 Ga. L. Rev. 465 (2002); and *An IDEA Schools Can Use: Lessons from Special Education Legislation*, 29 Fordham Urb. L.J. 759 (2001).

Sheila Simon's (Southern Illinois University) song, *Eunice and Pablo*, has been published in a law journal, 5 The Green Bag 2d 233 (Winter 2002). Sheila wrote the song about a trial she watched, and both the words and music were published. You may also hear an audio recording of the song at the journal's website: www.greenbag.org. Sheila also wrote *Austin Powers: A Shagadelic Focus on Family Law, Baby*, for *Picturing Justice, The On-Line Journal of Law and Popular Culture*, and that article may be accessed at www.picturingjustice.com/austinpowers_simon.htm.

Melissa J. Shafer's (Southern Illinois University) article *Student Evaluation of Teacher Performance and "The Legal Writing Pathology": Diagnosis Confirmed*, has been accepted by the New York City Law Review for publication in a forthcoming issue.

Nancy Wanderer (Maine) has published *Writing Better Opinions: Communicating with Candor, Clarity, and Style*, 54 Me. L. Rev. 47 (2002). Also, the University of Maine faculty has increased the full-time professional staff for the Legal Research and Writing Program from one to two people. The new Legal Writing Fellow will have a full-time position (lasting for ten months) and will be hired for one year, with the possibility of a one-year extension.

Mark E. Wojcik (John Marshall Law School) was elected as Chair of the AALS Section on Graduate Programs for Foreign Lawyers. He previously served as Chair of the AALS Section on International Legal Exchange.

Jean Zorn (CUNY) will move to the newly-established College of Law at Florida International University, Miami, FL. Professor Zorn will be the first director of the Legal Skills & Values Program, a required three-semester program. She will be joined by **Sharon Barnett, Angelique Ortega Fridman, and David Walter**.



Program News

The **University of Cincinnati** law school faculty approved a title change for legal research and writing teachers from "Instructor" to "Legal Research and Writing Professor."

The **University of Colorado** legal writing faculty have been given three-year contracts, renewable indefinitely. The program formerly had ten-month contracts, renewable year-to-year. The change gives the legal writing program the same job security as the faculty clinicians and indicates a strong measure of support from the Dean and administration.

Jeanne Kaiser of **Western New England College** recently announced a status change for legal writing teachers. The faculty voted to provide the LRW faculty with a vote at general faculty meetings; however, the faculty retained the right to go into a special executive session upon a majority vote. Although LRW faculty will not vote at all on tenure and promotion or other personnel matters and changes in the governance rules, the faculty did vote to conduct a study about the role

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of LRW faculty in the institution as a whole that may lead to appointment of LRW professors and full voting rights.

Deborah McGregor announced that the **Indiana University School of Law** faculty voted to change the writing faculty positions to tenure-like positions, with clinical professorship titles. This change enables legal writing instructors to have long-term contracts and to vote on all matters except those relating to hiring and promotion and tenure. The measure was easily approved by the faculty and had full support of the school's dean.

The **University of Nebraska College of Law Legal Writing Program** recently received a \$750,000 gift from the children of Harold W. Kauffman, in honor of their father, a Law College graduate who was one of Nebraska's pre-eminent appellate advocates, and whose brief-writing was very much admired by Nebraska's appellate bench and bar. The Kauffman family's generous gift will support Legal Writing by paying for the construction of a five-room legal writing suite, which is now under construction as part of the college's Library renovation project. The gift will also support the hiring of two additional instructors, bringing the student to faculty ratio in the program down to 14:1, and will establish an endowment whose income will benefit the Legal Writing Program. In recognition of the gift, the Law College has renamed its first-year legal writing program as the Harold W. Kauffman Legal Writing Program.

The **University of Missouri-Columbia School of Law** faculty unanimously approved a status change for legal writing faculty. Previously, legal writing teachers were hired on year-to-year contracts without caps, they had no voting rights, and their official titles were "lecturers." Beginning with the 2002-2003 academic year, legal writing teachers will be eligible for long-term (three-year) contracts, they will have voting rights (except on tenure and promotion decisions), and their official titles will be Legal Writing Professors of Law (after promotion from the assistant or associate level).



Other News

The Legal Writing Institute Board of Directors election boasted a record number of votes cast, leading to a very close election. Congratulations to the seven members elected to the Board: **Anne Enquist** (Seattle University), **Elizabeth Fajans** (Brooklyn), **Jane Gionfriddo** (Boston College), **James Levy** (Colorado), **Sue Liemer** (Southern Illinois University), **Judy Rosenbaum** (Northwestern), and **Terry Jean Seligmann** (University of Arkansas-Fayetteville). Members who retired from the Board this year were recognized at the LWI business meeting in Knoxville: **Jan Levine** (Temple), **Susan McClellan** (Seattle), **Laurel Oates** (Seattle), **Deborah Parker** (Wake Forest), **Helene Shapo** (Northwestern), and **Lou Sirico** (Villanova).

The 2002-2003 ALWD Scholarship Grant winners include **James P. Eyster** (Ave Maria), co-authors **Susan Hanley Kosse** (University of Louisville-Brandeis) and **David ButleRitchie** (Appalachian), and **James Levy** (Colorado). **James Eyster** will take a look at how courts actually use precedent and make recommendations for the teaching of legal writing and analysis based on his findings. **James Levy** will study and write on the importance of social-psychological interactions and relationships in the classroom. He will discuss personality traits, characteristics, and classroom behaviors of effective teachers and offer recommendations for handling difficult situations in the classroom. **Susan Kosse** and **David ButleRitchie** will publish the results of a comparative study of the views of legal writing professors, attorneys, and judges on what constitutes good legal writing.

Rebecca Berch, the former director of the Legal Writing Program at Arizona State, was appointed to the Arizona Supreme Court in April. Justice Berch was on the faculty at Arizona State from 1986 through 1994, taking a leave of absence in 1991-94 to serve as the state's Solicitor General. She was appointed to the Arizona Court of Appeals in 1998.



News of publications, promotions, program changes, or upcoming conferences and meetings can be sent throughout the year. Please e-mail news to bbushari@law.fsu.edu or to patrick@lclark.edu.

Reflections and Visions

2002 LWI Conference, May 29-June 2, Knoxville, TN



From left to right, some of the people who worked the hardest to make the LWI conference a success: Micki Fox; Carol Parker, Chair of the Site Committee; Theresa Kachmar (Boston College); and Robin Estes.



Co-chairs of the Conference Planning Committee Suzanne Rowe (Oregon) and Dan Barnett (Boston College).



Jo Anne Durako (Rutgers-Camden), on the right, passes the baton to Kristin Gerdy (Brigham Young), who will assume responsibility for the annual ALWD/LWI survey of legal writing programs.



Mary Beth Beazley (Ohio State), second from left, with three former students, now all teaching legal writing: Carolyn Broering-Jacobs (Cleveland State); Terri Enns (Ohio State); and Kirsten Davis (Arizona State).



At the Women's Basketball Hall of Fame, left to right: Jan Levine (Temple); Richard Neumann (Hofstra); Pam Lysaght (Detroit-Mercy); Coleen Barger (Arkansas-Little Rock); and Jo Anne Durako (Rutgers-Camden).



Samantha Moppett (Suffolk); Terrill Pollman (Nevada); and Chad Noreuil (Arizona State) at the Women's Basketball Hall of Fame.

From the Desk of the Writing Specialist



Just a Quick Question

Deborah Hecht, *Touro Law Center*

Do you have a minute? This is just a quick question!

I'm in my office, reviewing materials for my upcoming Continuing Legal Education presentation on how lawyers can write and sell essays to a general audience. A student pauses at the office door. She has never come to The Writing Resources Center before; we have never worked together. "Do you have a minute? This is just a quick question," she says.

There may be quick questions, but there are few quick answers. Indeed, I've become convinced that taking the time to work within a *context* is the key to offering meaningful help to students.

However, the student doesn't want to come into the office; she doesn't want to sit down. She's a top student who doesn't believe that she needs help with writing. All she needs is the answer to her quick question: when is it necessary to capitalize the word "court" and—if it isn't too much trouble—could I explain the rules of capitalization for her.

In the beginning, when the Writing Resources Center first opened and I was new to the law school, I accepted quick questions as a challenge. Almost every time I walked down the hall, students and colleagues would stop me. Most of their questions were about the rules of grammar: could I please give them the rule for how to pluralize a proper name that ends in an "s." Could I please provide a relevant comma rule and demonstrate its application in one minute or less?

The emphasis on learning the *rules* of grammar puzzled me at first. As a writer and writing specialist, I emphasize that law students must learn a variety of strategies for achieving clear and concise professional-level writing skills. The mechanics (grammar, spelling, and punctuation) are integral to clear legal writing—but law students who want to become good writers and effective communicators must learn far more than the rules.

I was in session with a first year student when it occurred to me: law students are trained to IRAC. As a colleague noted, law students are rule-oriented and rule burdened; rules are essential to their professional performance. Perhaps some students believed that knowing the rules of grammar would make them effective legal writers. I wondered how to satisfy the students' need for rules while also teaching them other skills including how to self-edit and how to revise their work.

My response to the next student who asked for "the comma rules" was to insist on seeing the way she used commas in her legal writing. "Show me one of your already graded papers; let's see how you're using commas."

The student was resistant: she'd already earned an MBA and until she came to law school no one had ever criticized her writing skills. However, when she brought in an already graded paper from her Legal Methods class, I noted that commas were a relatively

minor issue. This student needed to review the fine points of sentence structure, word choice, and parallelism as well.

Context was the key to offering this student the kind of assistance that would last long after she passed her bar exam.

My insistence on answering questions within the context of a completed, graded paper brought students into the Writing Resources Center—and when students came to work with me on a regular basis, their written work began to show real improvement.

The above-mentioned MBA student sent me a note: "Last semester I was lucky to get a C+ on my writing assignments; now I just earned my first A!" Another student set a different goal for herself: she worked with me on polishing her already good writing to a more professional level. Last week, she won a fellowship. She came to the Writing Resources Center to report that in addition to winning the fellowship, she'd received comments on the excellence of her writing.

In addition to specific writing issues, I've noticed that working within the context of students' already-graded assignments and exams indicates that some students need help with their reading skills. These students misread a written assignment or misread the written instructions on an exam. This kind of misreading is evident to me only when I see the actual assignment or exam.

When misreading is part of the problem, I tell students: "We're going to practice the art of staying text-specific."

To keep students text-specific, my ongoing question is: *Where did you get this information?*

The answer is too often a vague one: "It was somewhere in the problem my Legal Methods instructor gave us." And that's when I say to the student, "Help me out here—*point to the place on the page itself where you read this.*"

Once again, *context* becomes the key to helping students.

My office itself provides yet another kind of context. This is where students and colleagues can see *how* I work. When we sit together in the Writing Resources Center, books and journals and my own writing-in-process surround us. There are texts on legal writing and research, books on word usage, several different kinds of dictionaries, and a selection of magazines devoted to the art and the craft of writing. Students learn that no one—not even the "writing specialist"—has all the answers memorized.

The students who work with me learn that I have my own writing issues; they learn that I rely on a variety of texts to help me; they *see* me explore those texts when I need help. They see that there may be quick questions—but they also learn that quick answers rarely work.

The other day I stood outside a colleague's office. She is a professor whose writing I admire. In addition, she is an excellent editor. I wanted her opinion on this essay, but I was reluctant to bother her. Despite my feelings of hesitancy, I knocked at her office door. She looked up and gave me a smile.

"Do you have a minute?" I said. "This is just a quick question."



Tips for New Teachers

Learning From Your First Student Evaluations

Barbara Busbaris, Florida State

If you have just finished your first year of teaching, you may have also just received your first “grades” — student evaluations. Opening that envelope full of forms can be nerve-wracking. And, despite knowing that someone’s first set of “marks” provide only limited information about that person’s performance or potential, it can be challenging to keep those marks in perspective.

Everyone gets negative evaluations. (If you have never gotten one, please contact us immediately about taking over this column.) Most experienced writing professors and directors will agree that it’s normal for a small number of students in any given class to simply dislike their teacher. A member of the doctrinal faculty here once remarked that we should expect 5% to 10% of any given class to react negatively to us. No matter how hard we try, it is extremely unlikely that we will develop the same rapport, or be as effective, with each member of our class.

Still, the comments can hurt. It might help to know that people who have been teaching for years have been on the receiving end of the following: “She was a really nice person who will never be a good teacher”; “I profoundly and earnestly hope that no other student will ever have to suffer Prof. X. She has no business teaching”; “I sincerely wish you all the best in your future endeavors, and I hope they do not include teaching”; and “The best thing about Prof. X’s class was the homemade cookies. Sadly, that was the only good thing.”

We’ll leave for others the discussion of whether writing faculty members are more harshly evaluated than other faculty members. Anecdotal evidence suggests that is often the case, either because of the writing faculty member’s perceived lack of status, gender, or some other characteristic.

What we want to do here is simply say that you’re not alone, and offer a few suggestions for using evaluations constructively.

First, if your evaluations are completed on a standardized form, keep in mind that not all questions are good indicators of your success in teaching legal writing. Legal Writing is a unique course with a very personal spin; giving extensive feedback makes it more likely that you will stir your students’ emotions, both positive and negative.

Take a close look at the underlying numbers, too. Not all students stick around to fill out evaluation forms, and all of your students won’t answer each question on the form. If results are reported in percentages, you might see a result indicating that 50% of students were dissatisfied with something, when actually most students in your class did not care enough about that item to respond to it. You can’t assume too much from a non-response, but it can help put some of the negative responses in context.

Resist the temptation to say “everything worked; I’ll do it again!” or “nothing worked; I’ll start from scratch!” Your next class will have a different personality and will bring different strengths and weaknesses to the course. Your second year will present many opportunities to experiment with new techniques

or assignments. Don’t let your evaluations dictate which ones you will choose.

It’s easy to start dwelling on the most critical comments you receive, but over-analyzing them is not productive. Instead, look for common themes among the evaluations. The most important information you get from them might not be what a few students emphasize.

You usually can’t go back to your first class and discuss their concerns with them, but you can use examples to encourage helpful comments in the future. In my first year, a student wrote under “negative” comments: “Teacher said uh-huh too much.” Because I got my evaluations mid-way through the year (which is no longer the case), I was able to go to my class, acknowledge some of their concerns, and then say “here’s a concern I can’t address, because I don’t know what it means.” It turned out that the students wanted me to tell them when they were wrong. In my effort to make them all comfortable with speaking in class, I was being too indirect about when their comments were off-track. I adjusted, and built a good rapport with that class. Ever since then, I have used that example when I hand out evaluation forms. It illustrates that, to be helpful, criticism and praise should be specific...which is not a bad thing for us to remember in general.

Lastly...keep the best ones on top so you can pull them out easily when you need a quick morale boost.

Are women evaluated more harshly than men?

Strong evidence exists that gender stereotypes affect how students perceive and evaluate faculty. For an illustration, see Christine Haight Farley, *Confronting Expectations: Women in the Legal Academy*, 8 Yale J.L. & Feminism 333 (1996).

The legal writing community is expanding our understanding of this phenomenon. Melissa Shafer, at Southern Illinois, will soon be publishing an article in the New York City Law review, *Student Evaluation of Teacher Performance and “The Legal Writing Pathology”: Diagnosis Confirmed*. Judith Fischer, at the Louis D. Brandeis School of Law, University of Louisville, is currently studying some of the variables that go into writing faculty evaluations and how those evaluations affect subsequent teaching.

Sue Liemer, who directs the legal writing program at Southern Illinois, relates that she encountered gender stereotyping when she taught a doctrinal course in sports law. In response to the question “What was the strongest point about this course and/or teacher?”, one student wrote: “The teacher appeared ready to get the class moving quickly and made progress in alleviating bias against her because of her being a female teaching sports law. I rarely cite gender bias in evaluating teachers but from the onset, a significant number of students made overt pejorative preliminary evaluations of her by “hinting” clearly her gender as being inappropriate to teach this course. I found this bias surprising, consistent, and unfair. (I am not a female student by the way.)”

Professor Liemer comments that she is grateful for the student’s frankness: “He made me realize that some students will not like my work as a teacher simply because of who I am, and at this point in my life, that’s not likely to change much.”

Thomas F. Blackwell, Remembered

Tom Blackwell was tragically murdered on January 16th by a student at Appalachian Law School, ironically one whom Tom had befriended and tried to save from academic dismissal.

A 1986 graduate of Duke University School of Law, Tom practiced law in his home state of Texas for eleven years. He taught Legal Writing as an adjunct at Texas Wesleyan. In 1997, he joined the faculty at Chicago-Kent as a Visiting Assistant Professor, teaching Legal Writing and Law Office Technology, a course in which he developed many of his innovative ideas for the uses of computer technology in legal education. In 1999, he passed up opportunities for more prestigious jobs to join the faculty of Appalachian School of Law. He and his wife, Lisa, were excited about the challenge of helping to build a law school with the laudable mission of providing opportunity for the largely poor population of Appalachia and beyond to realize their dreams of practicing law and bettering their communities, through a curriculum centered on public service. Tom instantly became a key member of the faculty, and played an important role in helping the School attain provisional ABA accreditation. He ran in local marathons and played trumpet in a community band.

Tom also immediately became a leading figure in the Legal Writing field; he was elected to the Board of Directors of ALWD, gave a well-received presentation at the Legal Writing Institute meeting, and set up and maintained ALWD's excellent webpage, www.alwd.org. He also was chosen to be a member of the Board of Directors of CALI.

Following his death, condolences poured in to several legal education listservs. They came from students Tom had taught, from his former teaching assistants, from colleagues with whom he had taught, from legal writing teachers and directors throughout the country who had met him at conferences, from teachers and directors who had benefitted from his work and ideas in online discussions, from his law school teachers and classmates, from some high school classmates, from friends and neighbors of Tom and his family, and from many others who did not know Tom, but simply were touched by the tragic circumstances of his death.

The comments from those who knew Tom were amazingly uniform in their descriptions of him. All agreed, in effect, that if there were an encyclopedia describing the qualities necessary to be an excellent law school teacher, especially one specializing in the field of Legal Writing, a picture of Thomas F. Blackwell would accompany the article. The condolence messages described Tom as caring about students as people; nurturing; witty; demanding but fair; selfless; hard-working; innovative in developing teaching techniques; possessed of a passion for excellence; enthusiastically generous in sharing his ideas and assistance



to other teachers; a man who never hesitated to volunteer for what he regarded as a useful project. Many emphasized his great love for his wife and children, which unobtrusively showed through in his teaching; others stressed his strong religious core.

Melissa Mooney, a former student of his, declared "His enthusiasm for the subject and teaching was apparent and really made a difference. I can attest that he made a significant, positive impact on his students." Referring to their conversations at legal writing conferences, Nancy Soonpaa, Texas Tech, related, "The strongest underlying theme to those conversations was one of passionate professionalism. . . . [H]e not only gave freely of himself, but encouraged everyone to seek out those nascent qualities in themselves and nurture their development in others." Jan Levine, Temple, emphasized Tom's love for his family: "His eyes shone even more brightly whenever he would talk about his wife and children. Anyone who did not know Tom will never have the chance to meet a wonderful man who was a brilliant, selfless, caring, and committed teacher and colleague." And finally, Kent Streseman, Baylor, wrote, "What put me in awe of Tom was the way he had so gracefully figured out the balance between contentment and striving, had keenly discerned the difference between blessings and burdens."

These comments accurately describe the man I knew so well in the two years he spent at Chicago-Kent. He was a great teacher and a wonderful colleague. Lisa, their three children, the students and faculty at Appalachian Law School, the legal writing profession, his many friends and admirers, and the world in general have suffered a devastating loss. We all shall miss him, in ways we cannot begin to appreciate. Rest In Peace, dear friend.

Ralph Brill, Chicago-Kent College of Law

[Ed. note: Several memorial funds have been established for the survivors of those killed at Appalachian School of Law, including a fund that will benefit Tom's children. At the LWI conference in Knoxville, Institute members contributed over \$2,500 to the fund. Contributions may also be sent directly to Blackwell Children's Scholarship Fund, c/o Lisa Blackwell, Rt 1, Box 137, Grundy, VA 24614.

Many thanks to all those who have contributed, as well as to the volunteers who staffed the conference table where contributions were accepted.

LWI has also established a Tom Blackwell award to recognize those who make tremendous contributions within the legal writing community. More information on this award will be published in a future issue of The Second Draft.]

LWI Board Meetings

2003 ALWD Conference
AALS Annual Meeting, January 2003

2004 LWI Conference

2004 LWI Conference, Seattle University School of Law, July 21-24, 2004

Board of Directors Elections

Call for Nominations: January 2003
Elections: March 2003

Legal Writing: The Journal of the Legal Writing Institute

Volume 8: Currently in production
Deadline for submissions to Volume 9 (conference proceedings): August 1, 2002

The Second Draft

Deadline for submissions for Fall 2002 issue: September 15, 2002
Deadline for submissions for Spring 2003 issue: March 15, 2003

Special thanks to Donna Williamson for assistance in updating the mailing list; to Greena Ng and Jennifer Hisey for proofreading; and to FSU Printing and Mailing Services.

Guidelines for Contributors

We welcome unsolicited contributions to *The Second Draft*. Our goals include providing a forum for sharing ideas and providing information that will be helpful to both experienced and novice instructors. Each newsletter will have a "theme," with the exception of newsletters that follow the LWI biennial conferences, but the content of the newsletter will not be limited to a particular theme.

Content of submissions. We encourage authors to review recent issues of *The Second Draft* to determine whether potential submissions are consistent with the type of contribution expected, and with the format and style used. Submissions should be written expressly for *The Second Draft*, but we will consider submissions which explore an aspect of a work in progress that eventually will be published elsewhere. The ideal length for submissions for a "theme" issue is approximately 500 words. Longer articles will be considered if their content is particularly newsworthy or informative.

Deadlines. Material can be submitted to the editors at any time. Submissions received after a deadline for one issue will be considered for a later issue, with the exception of submissions written to respond to a particular "theme." For the next issue, the deadline for submissions will be September 15, 2002.

Form of submissions. We encourage electronic submission. Submissions can be attached to an e-mail and sent to either Barbara Busharis at bbushari@law.fsu.edu or Sandy Patrick at patrick@clark.edu. You may also send a diskette to Barbara Busharis, FSU College of Law, 425 W. Jefferson St., Tallahassee, FL 32306-1601; or to Sandy Patrick, 10015 SW Terwilliger, Portland, OR 97219. If electronic submission is not possible, please mail a copy of the submission to both editors using the addresses given above. Documents in WordPerfect are preferred; for other acceptable formats, contact the editors. Include your name, full mailing address, phone number(s), and any other contact information.

Review and publication. Submissions are reviewed by the editors. One of the editors will notify the author of the article's acceptance, rejection, or a conditional acceptance pending revision. The initial review process will generally take approximately two weeks. Articles that require extensive editing will be returned to their authors with suggestions and their publication may be delayed. If an article is accepted, it may be further edited for length, clarity, or consistency of style.

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