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Modeling: Placing Persuasion in Context

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Teaching Students to Persuade

Used Cars and Recycled Memos

Brian J. Foley (Widener University School of Law)

Persuasion is getting someone to do what you want him or her to do. There are lots of ways to persuade. You can force someone at gunpoint. You can use your position of authority and bark orders. You can pay someone to do something or otherwise bargain. If you are an infant, you can cry. Or you can show the person that her doing what you want her to do will in fact meet her needs.[1]

The last option is the only one relevant to law students learning how to convince judges. Lawyers can't point guns at judges, can't pull rank on judges, can't pay judges or otherwise bargain for a favorable decision (read: bribe). Crying is legal but rarely works.

Given this understanding, I introduce my first-year legal writing students and upper-level advanced brief writing class to persuasion with three baseline principles: persuasion is something we all do all the time anyway; persuading a judge is merely a highly stylized form of this activity; and persuasion is the heart and soul, the fun part, of lawyering. The following exercises are an effective way to convey these principles.

EXERCISE 1: The Used Car Lot

Have your students envision themselves walking onto a used car lot. It's hot, and sun glints off the chrome and glass. Immediately, a salesman struts toward a car and promises, "I stand behind this car, it's great, and it has new tires." Ask your students if they will buy the car. They'll probably say no. Ask them to think why for a moment.

Then move on to present another scenario, with students envisioning themselves walking into a pleasant, climate-controlled showroom. This time, the salesman shows no cars—at least not right away. Instead, he sits the customer down in his office and asks her what she's looking for. Her needs and concerns emerge. Here,

CONTINUED ON PAGE 4

Creating Facts

Bonnie M. Baker (NYU School of Law)

I find that students enter law school with an intuitive understanding that the craft of the lawyer, in role as an advocate, is to persuade. They understand the advocacy function as one of urging a particular view of the law or the facts on a neutral third party. What uniformly comes as a shock to virtually all of my students is that the very *creation* of fact is inextricably linked to advocacy and persuasion.

Law students find this an uncomfortable, controversial proposition because they are accustomed to taking the existence of objective fact for granted. The standard fare for first-year law students consists of a steady diet of appellate decisions, where the facts in the record seem dropped, like manna from heaven, into the laps of the judges. Students are encouraged to give little, if any, thought to the genesis of fact.

In my Lawyering course,[1] I suggest a pyramid-like nature of the factual universe: at the peak of the pyramid lies the narrow slice of fact that is recited in the appellate opinion. This slice is culled from the appellate record, which in turn is drawn from the pool of facts that constituted the evidence at trial in the court below. The facts found at trial come from an even broader source of "fact," the discovery process, which yields facts that are relevant and not, helpful and damaging. At the wide base of the pyramid, facts are born, often the product of interactions between attorney and witness. Thus, it is here that persuasion finds its roots.

To introduce students to the concept

CONTINUED ON PAGE 5

In This Issue

From the Editors

The essays in this issue are timed for those programs that teach persuasive writing in the spring semester of the first year. If your program teaches persuasion in the fall, or if you teach an advanced advocacy course, we think you will still find inspiration here—but you may have more time to consider ways to incorporate these great ideas into your teaching.

We were overwhelmed with the number of items in the "News" section. Thank you for sharing your accomplishments with us. Special congratulations go to The Honorable Karon Bowdre, formerly Professor and Director of Legal Writing at Samford, who has been confirmed as a federal district judge.

With this issue, we welcome Sandy Patrick as an editor of *The Second Draft*. She has recently moved from Wake Forest to Lewis & Clark. We are especially excited about Sandy's background in journalism.

We also appreciate the continued assistance of Donna Williamson (Oregon) and the staff of Florida State University Printing and Mailing Services.

In the next issue, essays will explore the many possibilities of a third semester of required legal writing. We are particularly interested in the experiences of those of you teaching in programs that already have at least three semesters of legal writing. What is the content of each required course? What more have you been able to cover with the extra semester? What have been the benefits of a three-semester curriculum? What is the ideal way to use the third required semester? We look forward to hearing from you. The next deadline for submissions will be March 15, 2002.

Finally, as the year draws to a close, we want to express our continued concern and support for all our colleagues and friends who have been directly affected by the attacks on New York and Washington.

Barbara J. Busharis (Florida State)
Suzanne E. Rowe (Oregon)
Sandy Patrick (Lewis & Clark)

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Reminder: Applications for ALWD research grants for the summer of 2002, in the amount of $5,000 per grant, are due by January 31, 2002. For an application form and guidelines contact ALWD President Nancy Schultz (Chapman) at nschultz@chapman.edu.

The President's Column

Jane Kent Gionfriddo (Boston College Law School)

In this issue, I am going to take the opportunity to highlight important developments, activities and resources of the Institute.

LWI Website

Be sure that you check out the new LWI Website at *www.lwionline.org*. This site has many wonderful resources. These include information about LWI (officers, Board members, committee lists); information about the 2002 LWI conference at the University of Tennessee; information about our journal; information about *The Second Draft* as well as downloadable issues; bibliographies from the 2000 conference presentations; and many other interesting features!

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), bbusharis@law.fsu.edu
Sandy Patrick (Lewis & Clark), patrick@lclark.edu
Suzanne Rowe (Oregon), srowe@law.uoregon.edu

I want to give a very sincere thanks to Jo Anne Durako (Rutgers-Camden) for the immense amount of time and effort she committed last year as Chair of the Website Committee to ensure that the website became a reality. Many other people helped, but special thanks should also go to Dean Rudy Hasl of Seattle for his commitment of resources to support our web site; Bill Galloway (Seattle) for taking on the position of webmaster; Laurel Oates (Seattle) for many hours of behind-the-scenes work; Rick Peltz (Arkansas-Little Rock) for all his efforts in collecting the bibliographies from the 2000 LWI conference and designing the bibliographies page; and Joan Blum (Boston College) who spent so much time obtaining issues of *The Second Draft* in pdf form and creating an index. (Because *The Second Draft* issues are in "pdf" form, you can view, download and print them so that they look exactly like the paper copies you received in the mail!)

For this next year, Joan and Rick have undertaken to be Co-Chairs of the Website Committee, so look for future improvements and innovations. If you have any ideas about the web site, don't hesitate to contact them at blum@bc.edu or peltz@flash.net.

The Second Draft

I want to compliment the editors of *The Second Draft* for the past year, Barbara Busharis (Florida State) and Suzanne Rowe (Oregon). I love our newsletter's new look (thank you, Barbara, for your technological genius!) and content, and I'm sure there will be new surprises in store for all of us in future issues. We will have a new editor on board this year, Sandy Patrick (Lewis & Clark; formerly, Wake Forest) who comes with a background in journalism. She joins Barbara and Suzanne for this fall's issue, and will replace Suzanne next spring as Suzanne turns her attention to her many other national activities in our legal writing discipline. Thank you, Suzanne, for your contribution to *The Second Draft*. If you'd like information about contributing to *The Second Draft*, see the LWI website at *www.lwionline.org*.

2002 LWI Conference

Look for the brochure for the 2002 LWI Conference late this fall. T his next conference takes place at the University of Tennessee College of Law in Knoxville, Tennessee May 29 through June 1, 2002, and the program committee, co-chaired by Dan Barnett (Boston College) and Suzanne Rowe, has prepared, I hear, a very interesting program. Carol Parker (Tennessee) and the rest of the Site Committee have been busy with all the behind-the-scenes preparations, including some great entertainment. Watch the LWI website for updates on the conference.

Golden Pen Award at the AALS Annual Meeting in New Orleans

For those of you coming to the AALS Annual Meeting in New Orleans, don't miss the Golden Pen Award ceremony and reception on Thursday, January 3, 2002 at 6:30 p.m. in the Grand Salon of the Hilton New Orleans Riverside. L WI will be giving its second Golden Pen Award to Dean Don LeDuc of Thomas M. Cooley Law School in recognition of his long-standing commitment to legal writing. Dean LeDuc has been a vocal advocate for the importance of legal writing in the law school curriculum and in the legal profession. He recognized early on that a law school's legal writing faculty deserve status commensurate with the rest of the school's faculty. More important, he made this vision a reality—for the past fifteen years all legal writing faculty members at Cooley have held tenure-track positions. Look for fur ther announcements of this important event on the legwri and dircon listservs and on the LWI website.

LWI Board of Directors Election

Don't forget that there will be an election this spring for seven positions on the LWI Board of Directors. This is a wonderful opportunity to run for a position that will really make a difference to the future of the Institute. In December 2001 or early January 2002, Steve Johansen (Lewis & Clark), President-Elect and Chair of the Elections Committee, will be sending out on the legwri and dircon listservs and placing on the LWI website more specific instructions on how to nominate yourself or others for these positions.

The Journal

Diana Pratt (Wayne State) has made an enormous contribution over the years to LWI's journal, *Legal Writing*. In recognition of her contribution, the LWI Board, at its July 2001 meeting, changed Diana's appointment from Acting Editor-in-Chief to Editor-in-Chief through Volume 9. Cong ratulations, Diana!

As to the current status of the journal issues, Volume 7, the proceedings issue from the 2000 LWI Conference, will be out late this fall, and Volume 8 is scheduled to be completed late in Spring 2002. The Editorial Board of the Journal is currently soliciting articles for Volume 9. See the LWI website for information on submitting articles to the journal.

In the near future, look for issues of our journal to be included in the on-line databases of Westlaw and Lexis!

ALWD/LWI Survey

Don't forget to check out the Survey results on line; the results from the 1999, 2000 and 2001 Surveys are available to be downloaded. This important survey is sponsored by the Legal Writing Institute and the Association of Legal Writing Directors, and provides excellent data on program configurations as well as status and salary issues in our profession. Either go to the new LWI website (again, *www.lwionline.org*) and follow the "survey results" link (see the left hand menu bar) or go directly to the ALWD website at *www.alwd.org*.

If you have any suggestions for the Survey, contact the Co-Chairs of the Survey Committee, Jo Anne Durako (Rutgers-Camden) at durako@camden.rutgers.edu and Kristin Gerdy (Brigham Young) at gerdyk@lawgate.byu.edu.

In addition to all the people mentioned above, I want to thank all my hardworking colleagues in the Institute I did not name specifically, but who are making valuable contributions as members and Chairs of committees, as Board members or officers, as presenters and attendees at our conferences, as editors on the journal or other Institute publications or in a multitude of other ways. As Hillar y Clinton would say, it takes a village to run the Institute!

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Used Cars

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ask your students what they need in a vehicle, and write these needs on the blackboard. They'll probably come up with transportation, reliability, number of people it seats, safety, price range, suitability for a particular function (SUV v. sports car), gas mileage, prestige factor, insurance costs, color. If the salesman can think of a car that meets these needs and concerns, and then takes the customer to that particular car, the odds of a sale are much higher now. The salesman will need to do less "convincing," less huffing and puffing. This will be clear to your students.

Now bridge from cars to cases. Does a lawyer get very far by "standing behind" the argument and huffing and puffing, like our car salesman? The huffing and puffing will succeed only if it carries out the lawyer's main task: meeting the judge's needs. The judge is looking for guidance in making a difficult Yes/No decision—"Maybe" is not an option. The judge wants to be assured that the decision will conform to binding law, that it will carry out the principles inherent in that area of law, that it will be fair, that it will evince common sense, that it will effect good social policy. A lawyer's argument or brief should meet all these needs—the more of these needs it meets, the higher the odds the judge will buy it.[2]

EXERCISE 2: The Job Search

This exercise will help your students keep their newly-minted grades in perspective—and make them feel better about themselves.

Have your students transport themselves into the near future, when they are applying for their dream job. An associate at a large law firm? Prosecutor or public defender? An in-house job? Judicial law clerk? Public interest advocate? Ask the students to write down attributes they can bring to this dream job now or after their law school training. Then, ask your class to write down what they perceive to be the needs of this future employer. After that, ask students—given these needs—to think of more attributes they have, or will have, when they apply.

After a few minutes, debrief. When I ran the exercise, I asked students whether their being forced to think about the *employer's* needs had led students to think of additional attributes that they had not thought of earlier, or to stress particular attributes. Many students nodded Yes.

This exercise has benefits beyond teaching persuasion. It helps students think about their goals and lends perspective when grades are being posted. Indeed, many of the attributes listed had nothing to do with grades. For example, students listed "hard working," "diligent," "experience in sales," "strong writer," "experience in legislature," and "good people skills," attributes that, arguably, have more impact on success in law practice than do good grades.

EXERCISE 3: Recycle a Memo Assignment

Here's a way to use your open or closed memo assignment from first semester to introduce students to "theory of the case" arguments—something most law professors would agree is very hard to teach. Here's how I used mine.

My closed memo problem dealt with a high school student charged with criminal threatening. The young woman, Marcia, had written a poem about her ex-boyfriend on the bathroom wall.[3] I asked my students to represent Marcia, and to brainstorm arguments they might make to a jury, "theory of the case" types of arguments a lawyer might make to a jury in an opening statement. After a few minutes I asked them to brainstorm arguments they might bring to the prosecutor a week before the trial, to get the prosecutor to drop the charges.

Then, without debriefing, I asked them to take the other side, to put themselves in the shoes of the prosecutor and come up with "theory of the case" arguments to persuade a jury, and then to brainstorm arguments a prosecutor would make at a pre-trial meeting with Marcia and her lawyer, to persuade her to plead guilty. I gave the class a few minutes to write down these arguments.

Debriefing showed that the students recognized that arguments must be fashioned according to the needs of the particular audience. As Marcia's counsel, students argued to the jury that it should not destroy Marcia's bright future by convicting her for merely writing a poem and expressing her feelings—both inherently good activities. In their efforts to persuade the prosecutor to drop the charges, the students argued that by going to trial, the prosecutor risked appearing to blow a high school breakup out of all proportion—and could be perceived as bullying a heartbroken teen.

Wearing the hat of the prosecutor, students argued that school crime must be cleaned up. They also argued that even colorable threats must be taken seriously, so as to avoid Columbine, Colorado types of tragedies. The students-as-prosecutors' arguments were different vis a vis persuading Marcia to plead guilty. Students considered Marcia's needs: getting into college and avoiding a criminal record. My students thought of "incentives," such as letting her plead guilty to a lesser charge, or to be sentenced to community service.

Wonderfully, students arrived at these arguments on their own—I didn't tell them beforehand what prosecutors' or juries' needs are. In one class period they internalized the idea of persuasion as meeting a "persuadee's" needs and goals. An additional benefit of this exercise was that it helped me show that the "theory of the case" is not a rigid concept but a shifting one, depending upon the needs of the particular audience. ◆

1. Meeting the needs of a person you are trying to persuade is the most important and effective part of persuasion. For an in-depth discussion of this idea, see Norbert Aubuchon, The Anatomy of Persuasion *48-57 (1997) (Chapter 6, "Needs").*

2. How to meet the particular needs of judges is the subject of an article-in-progress of mine, "The Five C's: How to Court a Judge" (the five C's describe the most common needs for anyone in the judicial role: the need to be Conscientious, Conservative, Conformist, to use Common sense, and to Crank out the work). The idea is the basis of one of my CLE programs, "The Art of Persuasion." Please call me at 302-377-2047 or e-mail bjfolz@yahoo.com for a copy.

3. Special thanks to Susan Simms of Capital University Law School, whose problem I adapted.

Creating Facts

(continued from page 1)

of the creation of fact, I ask half my students to leave the room, and tell the remaining students nothing more than that they have been asked by a friend to watch a bicycle that is sitting in the courtyard of the law school. I turn off the lights and begin to play a videotape. For the first minute of the tape, the students see the courtyard and the bicycle. Then, a young man carrying a box walks up the stairs from the courtyard to the front door, stumbling and dropping the box. As he picks himself up, another man walks out through the doors and pushes something—perhaps a wheeled dolly—away from the steps. That concludes the video. I then tell the students who viewed the tape that they have been contacted by an attorney who wants to talk to them about the events they witnessed in the courtyard.

The students who were outside the door are now asked to return. I have given them instructions that they are cast as attorneys for either NYU or Ace Trucking, and that Ace had delivered a small lamp to NYU, but it had arrived broken. These students are told that some of their colleagues had been in the courtyard at the time of the delivery and are available for an interview about what they had seen. Thus, each student interviewer is paired with an interviewee for a fifteen-minute interview, and the whole class then debriefs the process. Students are uniformly amazed at the staggering variety of accounts they have given and received about what happened in the courtyard. The man with the box was 20 or 30, wearing a jacket either red or blue. To some, the dolly was in plain view; to others it was a hidden danger. He either tripped because of the dolly or despite it, the box was both big and small, and he carried it comfortably and awkwardly. Some students inevitably report having heard a rattling sound after the man dropped the box, while others are firmly convinced that the box never made contact with the ground. The contrasts and contradictions continue as to virtually every detail of what the interviewees observed.

A critical revelation students have is that by virtue of their advocacy position they asked, often subconsciously, questions designed to elicit facts that would be favorable to their client. For example, attorneys for Ace asked, "Did the man trip over the dolly?" instead of the more open-ended "What caused the man to stumble?" Other students realize that the dynamics between interviewer and interviewee shaped the account the interviewees gave, and that an interviewer's verbal and non-verbal cues can subtly, but powerfully, guide a witness in a particular direction.

In the next phase of the interview, the students critique an affidavit that is based upon this interview, and they wrestle with the ethical constraints and challenges that are inherent in fact development. By the end of the exercise, students have gained a richer and more nuanced perspective on the subjectivity of fact and the implications that advocacy has at the earliest stages of an attorney's engagement with an issue. ◆

1. At NYU, Lawyering is a required, year-long course for first-year law students. Lawyering routinely places students in role as attorneys in a variety of simulated practice settings, and demands that students rigorously analyze their experiences to begin to understand the sophisticated interactive, fact-sensitive and interpretive work that is foundational in legal practice. As part of this process, Lawyering students engage in legal research, draft memoranda and write briefs on a range of complicated legal issues. They interview, counsel, negotiate, mediate and engage in formal and informal oral advocacy.

Let Bush and Gore Teach Persuasion

Susan Hanley Kosse (University of Louisville, Brandeis School of Law)

Teaching persuasion has its challenges. Not only do you have to teach all the sections of the brief, you also need to get the students to incorporate themes, tell a story, and write with "punch." Almost every legal writing text has sample briefs in the appendix. Although intended to be helpful, the students are unfamiliar with the cases and facts the briefs are based upon so they do not have the necessary context to appreciate the briefs. Last semester I addressed this problem by teaching persuasion using the briefs filed in the *Bush v. Gore* Supreme Court case (531 U.S. __ (2000); briefs can be accessed at *http://supreme.lp.findlaw.com/supreme_court/briefs/index.2000.html*, looking under "October 2000 term"). Because the students were already aware of the issues that gave rise to the lawsuit, the briefs provided very fertile ground to discuss many persuasive writing concepts.

At the beginning of the spring semester I assigned both briefs to be read in their entirety. Each week as I taught a different section of the brief, I asked the students to reread that section in the parties' briefs. Using the editing checklist in our text (*Writing and Analysis in the Law* by Shapo, Walter & Fajans), I asked the students to critique the various sections of the brief. The students did not always agree with the lawyers' drafting. For example, in the Gore brief the questions presented were not framed to suggest an affirmative answer. We discussed the pros and cons of this approach and how the questions could be redrafted. The headings provided another example of an approach that did not meet the textbook guidelines. Both briefs included headings that did not include relevant facts or reasons to support the legal contentions favorable to the client. Again we discussed whether the headings could be made stronger by including those relevant facts or if there may be reasons for not including them.

The briefs were best used to illustrate the various methods of persuasion the lawyers employed. I asked the students to read the introductions to both briefs and tell me which they thought was most persuasive and why. The students were split, but not always along their political ideologies. Most justified their choices because a particular brief's theme was more evident and compelling to them. The theme for Bush's brief was that the Florida Supreme Court was a renegade court trying to change all the rules in a haphazard fashion. To reinforce this theme the words "arbitrary, standardless, selective" appeared

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Let Bush and Gore Teach

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approximately 24 times in Bush's brief and the words "newly fashioned, judicially created, rewrote" were written at least 22 times. In contrast, Gore's theme was that the Florida Supreme Court was simply faithfully applying the state law. The Gore brief's use of the word "consistent" at least 16 times framed the issue entirely differently than the Bush brief. The constant repetition of these words and phrases illustrated to the students how themes should be continually reinforced throughout the brief. Even the statement of case was used to persuade, with Bush's brief including facts about the first Supreme Court review which were noticeably absent from the Gore brief.

The briefs provided many excellent examples of rhetorical devices that make a brief outstanding. For example, look at the well-developed imagery in this sentence from the Gore brief: "Nor does Article II create a 'state-constitution-free' zone in a state's law—even assuming it would be possible to pull the thread of state constitutional law out of the fabric of a state's law when administering or adjudicating questions bearing on elections for President and Vice President." (Gore brief, page 21). Bush's brief is also filled with illustrative writing including: "The unconstitutional flaws in the Florida Supreme Court's judgment immediately bore further unconstitutional fruit . . ." (Bush brief, page 2), and "Indeed, because those counts have been untethered from the minimal statutory moorings that the legislature prescribed for vote-counting . . . ." (Bush brief, page 28).

You could require students to read the court decision, too. Analyzing what the court found persuasive from the parties' briefs might be very enlightening. Did the court cite the parties' briefs? Did the court criticize or affirm the parties' arguments or cited authority? How did the court frame the issues compared to the parties' categorizations? By carefully dissecting the opinion the students can begin to ascertain the effectiveness of certain arguments, rhetorical techniques, and methods of organization in briefs.

The Bush-Gore controversy may be old news now, but there will always be a highly publicized case you can use. Many briefs are now accessible on the Internet. Do not worry about finding the "perfect" brief. Sometimes a brief with deficiencies is more helpful for the students. You can require students to edit those parts and explain to the class why they think their edits improve the brief. Even briefs that do not match up perfectly with the editing checklists reinforce the concept that there is no perfect way to write. There may be legitimate reasons, sometimes, to ignore the checklist guidelines.

In conclusion, using a "real life" familiar case made teaching the multiple facets of persuasion easier, more interesting, and hopefully more enjoyable for my students. ◆

Advocacy Lessons from Madison Avenue

Sue Liemer (Southern Illinois University School of Law)

When I graduated from college, the first job I held was as a copywriter for Young & Rubicam, an international advertising agency, in New York City. I learned many lessons about persuasion literally on Madison Avenue, and I share them with my students now.

Perhaps the most important lesson came from a deceptively simple sheet of paper the company called "Creative Strategy." Before a copywriter and art director could create an ad, the Creative Strategy form had to be filled out and approved. The very concept of such a form is news to most of my students. Even those artsy people in ad agencies, whose work seems so much like play (think Darren in the old TV show, "Bewitched"), are required to have a strategic plan before they start writing! Surely an attorney trying to persuade a judge or jury to "buy" an argument should have a strategic plan before starting to write, too.

The hardest item to complete on the Creative Strategy sheet was always the first line. After weeks of meeting with the account managers, client representatives, and market research experts, researching the product from every possible angle, and trying to learn everything about how the product in question could solve a problem or fulfill a need the American public did not yet even know it had, I had to write the purpose of the ad in a single sentence. I wrote and rewrote and rewrote, trying to figure out the purpose of the work assignment.

I encourage my legal writing students to discipline themselves and hone their thinking in much the same way. I tell them to research, take notes on, discuss, and analyze their client's problem. And then, when they think they are ready to start writing, they should sit down and ask themselves what they are trying to do. What is the purpose of the document? If they have really developed a strategy of the case, they should be able to write out the purpose of their document in one succinct sentence.

The Creative Strategy sheet also required a succinct description of the target market for an ad. An entire department of experts provided the background research for this crucial part of the strategic plan. Any kind of persuasive writing is more effective if you know all you can about the people with whom you are trying to communicate, how they are likely to perceive what it is you are trying to say, and the lingo they use to talk about such things. I urge my legal writing students to write down who their audience is and everything they know about that audience.

At first my students think these steps are so intuitive that they do not need to bother writing them down. In class we go through the exercise collectively, and they come to realize that they have to make conscious, strategic choices to hone their sense of the purpose of their document. Likewise, they come to realize that each document potentially has multiple audiences, some of which they did not think of right away, and that they know quite a bit about those audiences to factor into their writing. They come to appreciate that a strong sense of "purpose" and "audience" sells both Brand X and their client's case. ◆

Take My Garbage—Please!

Teaching Persuasion Through Arguments Anyone Can Make

Sheila Simon (Southern Illinois University School of Law)

If your school is like ours, you have to force some students to be "objective" in the first semester. Some do it naturally, and some have to work hard at avoiding the Perry Mason moment of their dreams. Then the first semester ends, and we shift gears into persuasion. Again some students find it easy, and some clam up just at the thought of a Perry Mason moment. And if shifting into persuasion isn't scary enough, they all know about the one harrowing act they will have to perform during the semester—an oral argument.

I use a quick exercise that helps people understand that they come equipped with some persuasive skills, and helps them realize that public speaking will not yield instant death.

At the beginning of the first class of the second semester I give each student a slip of paper just a little bigger than a fortune cookie message. The slip of paper describes an argument the student must present to the class. None of the arguments are about legal topics, but all of them help illustrate a point about persuasion. Each student is asked to come to the front of the class and present her or his argument. It takes a minute or so per student.

Two students get assignments to send a child to bed. One student is told she is the child's babysitter and the next student is told she is the child's parent. Each student makes a short persuasive speech to the class. The babysitter often tries to cajole the child to go to bed, sometimes offering him- or herself as incentive: "If you don't go to bed on time I don't know if I will be allowed to be your babysitter anymore." The parent is usually more direct: "You will lose television privileges for Saturday morning if you don't high tail it into bed right now!" After both are done I note that the difference between a babysitter and a parent is one of authority. A babysitter uses persuasive authority and a parent uses mandatory authority. This shows the students that they already recognize difference in authority and can use it to their advantage.

Two other students receive assignments to persuade a roommate to take out the trash. In the first scenario it is the roommate's turn to take out the trash because she didn't do it last week. In the second scenario the student is asking for a favor because she is not feeling well. She is a bit hung over from the night before and knows that the roommate disapproves of alcohol consumption. The first task is easy. The second task takes much more finesse. Sometime students given the second scenario leave out the reason for feeling poorly. Others acknowledge it as a way to avoid a potentially bigger problem, and try to turn it to their advantage. "I know you don't approve of drinking, and I think I am learning why. Could you possibly take out the trash for me?" After these students are done I point out that we all know good facts from bad facts, we all assess the different ways facts can be used, and we put those skills to work in persuasion every day.

One student is given a trick assignment: ask the Dean for permission to take an open can of soda in to the classroom. At our school everyone understands the context—we just got new carpet—and you might as well be asking to pour grape juice directly on the carpet. The message here is that just because you *can* ask for something doesn't mean you *have* to ask, and long term interests suggest that you just smile and nod at the Dean and put the can in the recycling bin.

These real life argument slips are easy to make and tailor to characters or circumstances of any school. For my list as a starting point, e-mail me at ssimon@siu.edu. Your students will appreciate having a little fun while learning, and they will all have put one developmental milestone behind them. For the rest of the semester you will have examples to refer back to when you are illustrating a point about choosing authority, working with facts, or selecting strategies. You will also have an insurance policy for the students who change colors or sweat profusely before speaking in public: evidence that they can present an argument and survive. ◆

Modeling: Placing Persuasion In Context

Myra G. Orlen (Western New England College School of Law)

Students often ask for models. Last year, we devised an approach that provided our students a model of both persuasive writing and oral argument and, at the same time, satisfied our desire to place persuasion in a more realistic context.

At Western New England College School of Law, we have historically introduced persuasion in the spring semester of our year-long course. Working with a single fact pattern, students have drafted a major objective memorandum and then converted that objective memorandum into a persuasive memorandum, either in support of or in opposition to a pre-trial motion. The pre-trial motion has then become the subject of the students' oral argument.

We have often struggled with the notion that requiring students to simultaneously draft opposing motions on any given issue does not accurately reflect what happens in the real-world practice of law. We considered and then discarded the idea of providing half of the students with a pre-trial motion and requiring them to draft supporting memoranda, leaving the remaining students with the task of drafting responsive memoranda. That scenario seemed to result in an uneven learning experience in the context of an open research assignment.

Last year, instead of beginning the semester with students drafting an objective memorandum, we presented

CONTINUED ON PAGE 8

Know the Audience

Teach to Your Audience

Ruth Anne Robbins (Rutgers School of Law—Camden)

We know that the starting point of any persuasive writing course should be the underlying principles of legal writing and not just the rules. We remind our students to think of the document's goal and the document's particular reader. We emphasize that the more the student knows about the reader, the more she can tailor her argument to that reader's needs and goals. We talk about the difference between a trial court reader and an appellate court reader.

These ideas are not abstract to us: after all, many of us clerked for and practiced in front of different courts. We hope that most of our students will remember our lessons as they start their summer internships or their post-graduation clerkships. The trick may be making the lesson more concrete during the actual course itself.

I realized this past year that we can reinforce the idea of knowing one's audience by adapting our own teaching methods as we learn more and more about the particulars of any given class. The more closely we can zero in on our own audience's needs and goals, the better we can persuade our audience to accept the message we are trying to convey.

My own teaching has improved (I like to think) since I started to consciously incorporate the principles into my lesson plan. As I plan each class, I spend some time thinking about this particular body of students in addition to reflecting upon what has worked in the past. As the semester progresses, I might change a lesson plan from previous years if I think that this particular group needs more experiential learning or more modeling of sample answers. I may even retry something that previously received a lukewarm reception. For example, in my upper-level brief writing course this year, I am using excellent student papers as the basis for selected classes. This has allowed me to prepare a class even during weeks when I am commenting or conferencing on papers. Whether I do this next year, however, will depend on what my upper level students have already absorbed from other courses before taking my course.

This audience-centered approach helps explain why some of us will look at an exercise and think it is fabulous, whereas others might disagree. Undoubtedly the exercise *is* fabulous for a particular audience of students. This approach also explains why some law review articles are selected for publication and why others aren't; why I looked over this article several times before submitting it, wondering whether it would appeal to the editors of *The Second Draft*; and why certain schools win national moot court competitions year after year. A few years ago, one of our own national moot court teams placed very high in the brief portion of a competition. I asked one of the team members what she had done so that I could use the information to teach others. She laughed and told me that she and her partner had emulated previous winning briefs. Know your particular audience.

Modeling Persuasion

(continued from page 7)

them with a pretrial motion and supporting memorandum on a "drop away" issue. The students' first task was to respond to the pretrial motion. Thus the students had a model memorandum to follow to assist them in drafting their first persuasive memoranda. They also had a head start on the necessary legal research, because the memorandum in support of the motion contained citations to appropriate legal authorities.

During the week that the students turned in their memoranda opposing the initial pretrial motion, the legal research and writing faculty "argued" the motion before a "judge" in class. This plan allowed us to model oral argument for our students well before they were required to conduct their own oral arguments at the end of the semester. Later in the semester, while the motion was "pending," the students attempted to negotiate the claim.

Our fact pattern involved a school-aged boy who was mistakenly dropped off by his school bus driver at the wrong stop. The boy wandered in an unfamiliar neighborhood until a vagrant forced him into an open basement and beat him. The boy and his parents sued the municipality as the operator of the bus and the owner of the building in which the assault took place. The claim against the municipality provided the "drop away issue." The drop-away issue was whether the plaintiffs had provided sufficient notice of their claim to the municipality under the applicable tort claims act.

Adopting the modeling approach had a variety of benefits. It was beneficial to begin the semester by teaching persuasion with a model memorandum that fit within the context of our fact pattern for the semester. We were able to provide a model that complied with both the format and structure that we wanted our students to use in their memoranda. The students were appreciative.

Second, this approach allowed us to introduce persuasive writing incrementally. We were able to introduce our students to persuasive writing, using a straightforward legal question. Additionally, the students were able to see how persuasive writing fits within the context of a legal case.

Third, on the date that we modeled oral argument, the students were encouraged to ask questions regarding the oral argument. Students asked candid questions of the attorneys and the judge. Oral argument was made a little less threatening to most students. When the time came to prepare our students for their own oral arguments, we were able to refer back effectively to the model oral argument.

The use of a contextual model to teach persuasion has proven successful in our classes. This is an approach that can be used along with other techniques and exercises to teach persuasion to first-year law students. ◆

My students are aware that I "teach to the audience." I tell them up front that I will be tinkering with the lesson plan as I learn more about their needs. I have found it gives the students more incentive to complete their assignments on time and with a best effort. I can use my own actions as an example of persuasive technique. "Were you persuaded to use more rule explanation after I showed you a great example and we discussed why it was so good? Yes? Well, the judge would probably feel the same way!"

I am not advocating catering to every whim of a class. My course still has required reading, exercises, deadlines, mandatory conferences, and drafts with rewrites. The boundaries are not going to change. Not everyone is going to get an "A," either, unless everyone deserves an "A." The student's appointed goal of writing a great brief is still the same goal each year. What can change, though, is the approach I take to help students accomplish the goal. ◆

Ask the Audience

Patricia A. Legge (Rutgers School of Law—Camden)

I believe students best learn to refine their writing by gaining insight into the principles behind the rules of legal writing. When teaching persuasive techniques, such as Richard Neumann's list of fourteen "Argumentation Techniques,"[1] it is essential that the student also learn more about the audience for any given document. In the case of brief writing, that audience is the court.

Recently, I conducted a very informal poll of judges and law clerks at the federal courthouse across the street from Rutgers. I asked what persuaded these individuals when it came to the briefs submitted; the results were, in a word, comforting. As a fairly new teacher of legal writing, I was comforted to know that the basics of what we teach the students provide a solid foundation for persuading their eventual audience. The top five responses were clarity, a good introduction, an objective tone, technical perfection, and explanation of the writer's analysis.

Overwhelmingly, the judges and law clerks indicated that they were persuaded by clarity. Telling students this should help them understand why we harp on such things as logical organization and careful editing. Our students are, or should be, aware of the backlog of cases that today's judges face. Students should be taught that it is imperative that their points be conveyed in a single, cursory read, out of respect for the premium that a judge's time represents.

Along those lines, the judges look for a good introduction (perhaps just in case there is not enough of that premium time to read the entire brief before argument). The principle that the students can derive from this is that all readers appreciate context before detail. The students probably do not begin relating anecdotes to their friends "in the middle of the story." Similarly, they will better persuade a court by giving the clients' arguments some context in which to judge them.

While providing context is essential, providing drama is not. The judges are often won over by a succinct, non-partisan version of the facts followed by an argument section containing a spartan use of adjectives and adverbs. Students should know that their audience has "been around the block" a few times, and most judges will reveal that they have "heard it all." I tell my students that there is a world of difference between television lawyers playing to a jury and the real-life lawyers writing briefs for judges.

Judges like the basics: clarity, a good introduction, an objective tone, technical perfection, and explanation of the writer's analysis.

The judges feel strongly that credibility is enhanced by using flawless citation style (citing cases that actually stand for the proposition advanced) in a brief void of grammar or spelling mistakes. Students can understand the principle that they want to create a user-friendly document to sell their client's position; legal writing teachers can find comfort that emphasis on details is not in vain.

Finally, it is persuasive when a brief-writer actually applies the law to the facts of the case being argued after including enough detail from the reported cases that the reader can see the logic of the argument. We teach students about "Rule Proof" or "Rule Explanation," but we may need to teach them more about how to explain their analysis with the Goal and Reader in the forefront. The argument that connects all of the dots for the judge has a better chance of persuading her.

As legal writing instructors, we often begin by teaching tried-and-true rules: "Use thesis sentences to begin each paragraph, stick to the four-part paradigm, avoid the use of passive voice." When students ask for a "rule" for a particular situation, though, it may be useful to take a step back and ask, "well, what would make the most sense in light of the Goal and Reader?" The rules we teach provide the framework for persuasion, but taking it one step further can give the students a more complete picture. Learning about the intended audience can enable students to master the principles of effective writing rather than just following the rules. ◆

1. Legal Reasoning & Legal Writing: Structure, Strategy, & Style *288-289 (4th ed., Aspen L. &. Bus. 2001).*

Persuade with Precedent

James P. Eyster (Ave Maria School of Law)

The secret to a compelling case-based legal argument is the comparison of the specific facts of the case being considered to the facts of precedent cases. While students can often analyze cases and present generalized conclusions about them, they regularly fail to persuasively apply the same cases to the facts at issue.

Even beginning first-year students often show a masterful understanding of the meaning and significance of precedent cases, a keen ability to synthesize the emerging legal standards, and a facility in applying appropriate standards to the case at hand. These same students, however, routinely omit both the relevant facts and

CONTINUED ON PAGE 10

Persuade with Precedent

(continued from page 9)

the actual holdings of precedent cases. Instead, they generalize both the facts of the cases and the legal rules, which results in presentations that are both unpersuasive and uninteresting.

Benjamin Franklin wrote in *The Pennsylvania Gazette* in 1773 that, if a writer wishes to persuade,

> (H)e should proceed gradually from Things already allow'd to those from which Assent is yet with-held, and make their Connection manifest. If he would *inform*, he must advance regularly from Things known to things unknown, distinctly without Confusion, and the lower he begins the better.

Dr. Franklin's advice remains valuable today, especially for lawyers. A legal writer should first state what is known, i.e. the facts of the precedential case, and establish a clear connection to the facts of the current controversy. The greater the similarity of relevant facts, the clearer the connection between the earlier case and the current fact pattern.

To persuade then, a legal writer should proffer to the reader viscerally memorable facts instead of bland, forgettable paraphrasing. If the defendant in a case was an "established pathologist with privileges at six area hospitals" say so, rather than refer to her only as "a medical professional." In discussing a case in which a grocery clerk told a customer "If you want to know the price, go look for yourself. You stink to me," the student should quote the offensive language, rather than merely stating, "a company employee insulted a customer."

After offering memorable facts, the student should clearly show how the facts of the precedential case are connected to those of the current case. Thus, in discussing the claim of a mentally retarded man for intentional infliction of emotional distress, a student should explain the plaintiff's retardation. Where the plaintiff in an earlier IIED case was a child, rather than merely referring to her as "a minor," the writer should make clear that the plaintiff was "a six-year-old girl." Most importantly, the writer should link the traits of both plaintiffs, making clear the connection between the two. "Just as the plaintiff in the earlier case was an innocent six-year-old girl, the plaintiff here has the IQ of an eight year old. And just as the young girl was in her home alone when the adult defendant unexpectedly came to her house and harassed her, the retarded plaintiff in the present case was alone in the front yard of his group home when the defendant insurance agent attempted to persuade the plaintiff to cancel his disability coverage." As a final example, if a court enunciated a three-part test for liability, that test should be imparted verbatim, and the writer should show how the facts of the current controversy either fit or diverge from each part, rather than merely concluding to the mystified reader that the facts in the current case do not satisfy the test.

How does one teach students to persuasively communicate precedent? Two methods can be used. Students can analyze a family of real cases, detecting the legally significant facts and relating them to the specific holdings of the cases. This teaches skills in spotting and characterizing important elements that might be concealed in a multi-layered array of facts. The instructor can then elicit those facts that are similar to or vary from the operative facts of the case at issue.

The second method presents the students with a "no-frills" exercise containing the facts and holdings of two or three simple cases. Students are asked to compare the facts and ruling in each situation to those in a hypothetical case. Readers may access an example I constructed at *www.avemarialaw.edu/community/handouts/ACFC463%2Eppt*. These two methods may be successfully employed independently, or together, reinforcing the skill of linking facts to holdings.

To persuade with precedent, legal writers must compare and contrast the specific facts of the current controversy with those of relevant cases. The details make the connection "manifest" and persuade the reader of the justice of applying the holding of the prior case to the current controversy. Through targeted classroom exercises, students can be taught this important skill. ◆

Just the Facts

Writing Facts Persuasively: An Active-Learning Exercise

Sharon Pocock (Quinnipiac University School of Law)

Teaching persuasive writing through short exercises, such as those found in legal writing texts, can be difficult, precisely because students don't know the law involved in detail and thus may not realize what facts need to be emphasized or downplayed. Another difficulty is that textbook exercises that are multiple choice in form put students in a passive, rather than an active, role. Instead, I do an in-class exercise that, while short, actually obliges students to write themselves. This gives the students practice in applying persuasive techniques and enables the class, as a group, to evaluate different ways of presenting the same facts.

For the exercise, I choose a problem that students know from an earlier objective writing assignment. I prepare a handout that reminds students of the governing legal test and that sets up the procedural history (e.g., defendant is filing a motion to dismiss, challenging satisfaction of one prong of the test that governs the claim asserted). The remainder of the handout presents discrete facts about plaintiff and defendant. Sometimes I add additional facts to those that students already know, presenting all facts in a list rather than in paragraph form.

All students receive the same handout, but half of them are assigned to write the Facts from the perspective of the plaintiff, and the other half, from the perspective of the defendant. I

remind students to begin by introducing their client to the court, and to tell the story of the events leading to the lawsuit from their client's perspective. I generally pass out to students plastic overhead transparencies and pens for writing on them, so that we can review their drafts from the overheads. (If you have access to an Elmo projector, you can simply have students draft on paper and then project students' papers.)

Students can do a fairly good job on the first part of this exercise in about 20-25 minutes. While the whole exercise could be completed in one class hour, I generally have students write the exercise in the last part of one class, and then we review and discuss selected results together in the next class. The interim period allows me time to review the results and to pick out those examples that provide the greatest basis for discussion. Usually four examples for plaintiff and four for defendant are sufficient to show the contrast between the stories of plaintiff and defendant. For example, the last time I did this exercise, one student writing for the defendant, Widget Corp., presented her client in this manner:

Founded in 1910, Widget, an iron- and steel-producing corporation, is a leader in worker safety. To enhance on-the-job safety, Widget has voluntarily adopted safety measures beyond those required by state and federal law. Widget has a great safety record in that the death of Plaintiff's decedent was the most serious accident since 1986.

A student writing for the plaintiff portrayed Widget differently:

Mr. Grove's death was the thirteenth at the factory in the last 25 years. Widget, though instigating new safety measures after a large industrial accident in 1976, has still been plagued by serious accidents at the foundry. The last two such accidents occurred shortly after Widget was acquired by an international conglomerate.

The exercise also enables the class to discuss various characterizations and uses of the same facts. It is usually easy to find one example that simply advances facts, without any attempt at characterization or "spin," and another example, written from the same perspective, that illustrates how to present facts with an emphasis that favors the writer's position.

For the most part, students seem to understand and retain the points about fact writing developed through the exercise. I think that this is because they are actively engaged in writing, and they are working with a familiar factual scenario (even if the memory of the problem and law has somewhat faded over time). They have the added benefit of evaluating classmates' efforts from the perspective of having grappled with the same choices themselves. Once students understand how it is possible to tell the same story from different perspectives and with different emphases, they are usually capable of doing a good job with the Facts section of a brief. ◆

Teaching Students to Utilize the Facts Section

Ken Swift (Hamline University School of Law)

When I began teaching second semester persuasion, I focused almost exclusively on legal analysis. As time has gone on, however, I have focused more and more on the presentation of the facts. The powers of perception, omission, and word choice are particularly important for effective fact statements, and so I focus on these aspects of presentation.

The reality is that often the law is not in dispute, particularly at the trial court level, and the task before the judge is to apply the law to the facts. The most important thing at that point is the judge's *perception* of the facts. For example, if you are arguing an illegal search motion, the judge is going to have his or her own definition of an illegal search. The only question is whether the judge perceives that the facts equate to an illegal search.

Therefore, one of the first aspects of presenting facts persuasively is a sense of perspective. Every client has a perspective on what occurred to create the conflict leading to litigation. It is the attorney's job to make the reader understand how the case unfolded from his or her client's perspective. The attorney must "humanize" the client, even if it is a big corporation and, in most cases, illustrate how the client acted reasonably. Often, this will mean starting the facts at a place other than the main conflict.

A helpful vehicle for discussing perspective is assigning students to write the facts section for the case of *The Three Bears v. Goldilocks*, where the Three Bears are suing Goldilocks for trespass and conversion, and she is asserting a defense of necessity.[1] I divide the class in half and assign a client to each half with instructions to write the facts from the perspective of their clients. The students hand in the assignment at the beginning of the next class, and I read a few of the submissions aloud. Invariably, we have stories of a frightened, cold, and hungry girl searching for shelter contrasting with stories of a bear family whose peaceful family home was forever disrupted by an intruder. I then lead a discussion about the perspective that each client has in the students' appellate brief problem.

Another aspect of presenting facts persuasively is the power of omission. A reader's perception of what occurred is shaped by what the reader both knows and does not know. A wonderful example of the power of omission can be found in *Walker v. City of Birmingham*, 388 U.S. 308 (1967) and *Shuttlesworth v. City of Birmingham*, 394 U.S. 149 (1969), two decisions that evolved out of the same civil rights protest and were written by the same person, Justice Stewart.[2] Reading the facts sections of these two cases gives the students a sense of two very different marches, one unruly (*Walker*) and one peaceful (*Shuttlesworth*), a result of omitted facts. For example, in *Walker* the court notes that the march was accompanied by 1000-1500 onlookers who were "clapping, and hollering, and whooping," while the *Shuttlesworth* opinion only notes that there were spectators, but not the number. On the other hand, the *Shuttlesworth* opinion begins by noting that the marchers were led out of a church by three ministers, while the *Walker* opinion never mentions the church or the ministers.

CONTINUED ON PAGE 12

Utilize the Facts

(continued from page 11)

In determining which facts to omit, and in writing the facts in general, I caution students to remember their ethical duty of candor and to be concerned with their credibility as advocates. Students readily understand that they cannot lie to the court, but must be taught that they cannot portray something as a fact unless it can be cited from the record. Students must learn that both the arguments and the advocate are judged as a whole, and a judge's perception that an attorney is being less than candid in one area will affect the credibility of the attorney's arguments. When determining which facts to omit, I have my students imagine this question from a judge: "Your opponent has argued that fact X is important. Why have you not included it?" If the student can reasonably answer the question with "Fact X is not relevant because . . . ," then the fact is properly omitted. The credibility line is difficult to draw and depends upon each case and advocate. I do not penalize students for crossing the line unless I feel they have done so by a significant margin.

A final aspect of persuasion is word choice. I ask my students to select the action verbs in the facts section carefully, choosing unusual verbs for emphasis. For example, an attorney wanting to emphasize the significance of an automobile accident may write that one vehicle "smashed" or "plowed into" the other, while opposing counsel may write that the vehicles simply "collided."

An exercise I utilize to emphasize verb choice is to give the students several sentences describing various legal situations, with a verb underlined in each sentence. I ask the students, working in groups, to think up as many alternative action verbs as possible and rewrite the sentences. I usually combine this exercise with exercises dealing with other aspects of writing the facts, such as using greater detail to emphasize favorable facts and placing key facts at the ends of sentences.[3]

The bottom line is that, unless the facts are not in dispute and the issue is purely legal, how the court perceives the facts will be critical. Students need to learn that part of their job is to tell a story, and that story must be their client's story. ◆

1. For a lengthier example of the "Goldilocks" hypothetical, see Steven V. Armstrong & Timothy P. Terrell, Organizing Facts to Tell Stories, *9 Perspectives 90, 90-91 (Winter 2001).*

2. This example is drawn from a LWI conference presentation by Julie Spanbauer (John Marshall), later published in Teaching First-Semester Students that Objective Analysis Persuades, *5 Legal Writing 167, 178-185 (1999).*

3. Several of these techniques are highlighted in Louis J. Sirico, Persuasive Writing for Lawyers and the Legal Profession *(Matthew Bender & Co. 1995).*

Using a Civil Procedure Exam Question to Teach Persuasion

Sophie Sparrow (Franklin Pierce Law Center)

Because studies show that learners master new material more effectively when it builds upon what they already know, we reuse material from the fall semester to teach persuasion in the spring. By revisiting an assignment, students can focus their efforts on persuading, rather than learning new doctrine or facts. Turning a predictive discussion into a persuasive argument also demonstrates that making an argument requires the same rigorous thinking as predicting a result. One way we do this is by assigning students to write an argument based on their fall Civil Procedure exam.

Turning a predictive discussion into a persuasive argument also demonstrates that making an argument requires the same rigorous thinking as predicting a result.

At the beginning of the spring semester we introduce some general principles of persuasive writing, and then spend the next few weeks working on arguments about personal jurisdiction. Using the facts from students' Civil Procedure exam and the cases from their text, students argue that their client does not have the necessary minimum contacts for jurisdiction over an out-of-state defendant.

Working in small groups during class, students compare their matrices of the cases, outline and draft components of the arguments, and read and critique their classmates' drafts. At several times during this module, students also e-mail professors current versions of their arguments. From these we make composites that illustrate particular techniques, such as organizing for persuasiveness, using authorities, making policy arguments and refuting counter-arguments. We also use these composites to illustrate common problems students encounter. Students read the composites on overheads, diagnosing the troublesome areas and identifying strategies to make the writing more persuasive.

This exercise has several benefits in addition to allowing students to concentrate on the skill of persuasion. One is that revisiting material builds students' analytical skills and understanding of Civil Procedure. From talking to our Civil Procedure colleague, we know what she emphasized in class, how students analyzed the material on their exams, and where students need additional coaching. By working through the material collaboratively over several classes, students develop more sophisticated approaches to arguing the minimum contacts rules than they showed in their exams and communicate those arguments more effectively. In the process, students also learn that the art of persuasion is not about "telling" but "showing" why the requested result should be followed.

Another benefit to this approach is that it increases student confidence. As they rework the same material a month after the exam, students recognize where they need to sharpen their writing and organizational skills. Students also begin to realize that they are now identifying arguments, analogies and issues in a way that had been invisible before. By calling their attention to this, we help them see their progress and continued capacity to

grow and develop as future lawyers. This helps students at all levels; students who have done well see how they can improve, and those who were struggling recognize that they can master writing and analysis. Do students groan about having to revisit the minimum contacts cases? Yes, but at the end of the semester those students also note that these exercises helped them really start to "get" what it means to persuade. ◆

Social Justice and Persuasion

Clifford S. Zimmerman (Northwestern University School of Law)

I integrate issues of social justice into my teaching of persuasion to heighten the context in which students learn the technique. The topic triggers added emotional energy on the part of the students, who then immerse themselves into the research, organization, argument construction, and persuasive presentation with great enthusiasm and vigor. With their work self-motivating, I can focus on rhetorical technique. In the end (after two briefs and a moot court), the students are amazed at how much they learned and accomplished and how much fun they had in the process.

Years ago, I merely integrated an issue of social justice (e.g. police brutality, the Gulf War, spousal abuse and police protection, medicinal use of marijuana, or abortion) into the briefing. To me, "social justice" includes a range of ideas, such as issues of race, gender, ethnicity, class, power, or sexual preference. While this had positive results, I realized that I was not utilizing the full potential by adequately preparing the students to address the issue. Thus, I started collecting and assigning non-legal readings (anywhere from six to twelve articles or book chapters) for them to read in advance of my assigning the problem. These articles divide on the issue and are rich in citations to other sources, both legal and non-legal, that can be used in writing the brief.

I ask the students, then, to write a reflective essay on the subject. I expressly tell them that I do not want a recounting or synthesis of the sources, but rather an essay on their thoughts on the subject matter. (They do not know, typically, what a reflective essay is, so some direction here is necessary.) Writing this essay pushes them to read the sources and to think about the subject. These are submitted anonymously (unless the students want to be known) and ungraded. The papers tend to show good insight into the issue and a clear position on their part. Further, it reintroduces them to writing in a non-legal context and jump starts the creative process. I then give them the appellate brief assignment.

I have done this with several problems, using topics such as affirmative action and consumerism. As opposed to years before I assigned readings, my experience has been that the readings and essays add new depth and understanding to the students' legal analysis and arguments in the briefs. Typically, the students complain bitterly about the amount of additional reading, but I see that their conversations, arguments, and briefs are significantly better as a result. Recently, the problem addressed homelessness and free expression, but I did not gather any readings. That year the essays were flat, simplistic, and immature; the briefs were superficial and failed to make any use of insights particular to the issue.

Non-legal readings on issues of social justice add new depth and understanding to the students' legal analysis and arguments in the briefs, while writing reflective essays jump-starts the creative process.

From the implementation perspective, time is a major concern here. It takes time to find an issue like this; time to collect readings; time for students to read the materials in advance of the assignment; and time for any additional research. But as with many things in our profession, time sowed leads to a great yield. ◆

Five Simple Exercises for Teaching Persuasion

Nancy Soonpaa (Texas Tech University School of Law)

These simple exercises for teaching persuasion take less than a class period each, yet convey powerful and concrete lessons about persuasion.

1. First class of the semester

As an introductory exercise, ask the students to pair up and elicit the following information from each other: name, undergraduate school or major or recent job experience, and interesting information that justifies each person's being a member of that year's class. Then have the students introduce each other to the rest of the class, including an explanation of what each person will add to that class—what experience or insight he or she will bring. This simple exercise introduces the students to interviewing and to advocacy as they persuade the rest of the class of each person's worth and potential for contribution. It teaches them about eliciting facts and then shaping those facts into a message that will appeal to the audience—both the rest of the class and the professor—while considering the interests and concerns of the "client."

2. Examining oral advocacy via famous speeches

Many of the rhetorical devices used in well-known speeches throughout the ages can be used in written persuasion as well. Reading those speeches—out loud, as well as silently—and talking about the devices gives students insight into what word patterns make them respond, both intellectually and emotionally, to a persuasive message. One excellent example is Martin Luther King, Jr.'s "I Have A Dream" speech; its powerful, persistent patterns and insistent imagery are easy for students to identify and discuss. For other examples, look to the *Minneapolis Star Tribune*, which has published a series of great speeches. The speeches are available

CONTINUED ON PAGE 14

Five Simple Exercises

(continued from page 13)

at *www.startribune.com*; click on "opinion," then click on "arguments through the ages," or try *www.startribune.com/stories/1519/*.

3. Examining advertisements in the popular media for audience analysis

Another method of examining persuasion in terms of shaping message to audience is to have students look for advertisements for the same product in different publications. The same beer, for example, may be marketed one way for the readership of *Sports Illustrated* and quite a different way for the readership of *Time*. By analyzing the characteristics of the audience and looking at the ways that the same "facts" are shaped to the perceived needs and interests of the various audiences, students begin to see how black and white shades into gray and how truth can have more than one look.

4. Playing out a scenario and interpreting the facts

This exercise requires a bit of theatrical skill and a collaborator. Sketch out a scenario with your partner (perhaps a teaching assistant or another faculty member or an administrative assistant) in which the two of you have some kind of brief altercation or interaction or attention-grabbing discussion near the beginning of class. (For the less bold, you could choose not to participate yourself and have the interaction occur between two others.) Act out the event.

Then tell the students to write a brief statement of what just occurred, starting with a thesis sentence and supporting it with a narrative argument based on what they just saw. Students are amazed that the same event can be interpreted in so many ways, which then leads to good discussions of how an attorney can look at the same facts that another attorney looks at, yet see (or create) a totally different meaning.

5. Looking at memorable published opinions

Each of us has read hundreds, if not thousands, of judicial opinions. Which ones do you remember and why? Take those opinions and use them. Reading the words of a dissenting justice who compares himself to John the Baptist—as a voice crying out in the wilderness—can open a discussion about the possibilities and limits of simile AND appropriate boundaries and how they might differ depending on both the writer and the audience. Opinions whose factual recitations contain legally insignificant information solely to manipulate or persuade the audience can be a powerful example of how specific detail or visual imagery or unadorned fact can first stun and then remain with a reader for years.

If you teach an upper-level course, ask each student to choose an opinion that he or she found memorable, analyze why, and share it with the rest of the class. Better yet, have the students exchange opinions and try to identify what "works" in each opinion. Do the same opinions appeal to most of the class for the same reasons? Trying to identify what persuasive devices work for groups and which ones are more individualized will give the students a better sense of the challenges they face as persuasive writers.

By using these small exercises, you can help students to see the possibilities of persuasion as they consider message, audience, writer, and purpose. ◆

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 the editors of* The Second Draft *and to Lori Lamb, LWI Program Assistant, Seattle University.*

If your contact information or e-mail address has changed, please send updated information. It is crucial that Lori Lamb have your current e-mail address to ensure that you are properly subscribed to the legal writing listserve.

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.

Professor Karon Bowdre Confirmed as U.S. District Judge

Professor Karon O. Bowdre (Cumberland School of Law) was confirmed as a U.S. District Judge for the Northern District of Alabama in November 2001.

Judge Bowdre had been on the Cumberland faculty since 1990 and served as the Director of Legal Writing there. Before joining the faculty she was a partner in the Birmingham, AL firm of Rives & Peterson. A cum laude graduate of Samford University and Cumberland School of Law, she clerked for U.S. District Judge J. Foy Guin, Jr., before entering private practice.

Tips for New Teachers

Doing It All—Over Time

Steven D. Jamar (Howard University School of Law)

Don't try to do it all at once!

If you have ever attended an ALWD or LWI conference or if you follow the conversations on the legal writing listserves, you could get the impression that everyone else is doing all of the following:

1. Scholarship;
2. Designing and implementing legal writing and research curricula;
3. Teaching legal writing and research;
4. Teaching doctrinal courses;
5. Doing outreach to all of the following stakeholders or interest groups:
    a. students;
    b. alumni;
    c. judges;
    d. practitioners;
    e. clinicians;
    f. doctrinal faculty;
    g. administrators (law school);
    h. administrators (university);
    i. legal writing and research program teachers;
6. Doing major projects of service to legal writing and research on a national scale;
7. Mentoring junior members of LWI or ALWD;
8. Hiring/supervising legal writing and research faculty;
9. And more . . . .

Like a number of my colleagues, I have done all of these things and continue to do one or two of them—but I have done them over the course of a dozen years.

In my early years I made sure Howard University School of Law's Legal Reasoning, Research and Writing Program (LRRW) was strong; I made sure to do my scholarship; I did the necessary political work within the law school to keep the program strong and to improve my chances of getting tenure when the time came; and I started to make some contacts with the national legal writing community. In those years I did more intentional outreach to students, faculty, and administration than I do now.

A bit later I focused heavily on getting tenure and on doing a few things nationally within the legal writing and research community such as presenting at conferences, working on program committees, and serving on the boards of directors of LWI and ALWD. As I assumed a larger leadership role, I worked primarily on national organizational structural matters, on mentoring other potential leaders, and to a much lesser extent, on supporting the national political efforts with respect to changing the ABA standards.

More recently I have turned my attention back to the law school and university to get rid of LRRW faculty caps. This is an ongoing project and has involved my doing work at the university level to get known by the right administrators.

In the past few years I have also worked to write more about my ideas concerning legal writing and research. (Most of my prior scholarly works have been on subjects I found quite a bit easier to get a handle on.) I have reduced my work at the national level substantially, though I am still contributing in some small ways for certain initiatives for which I can offer some fairly special assistance.

This year I will focus primarily on programmatic design at Howard University School of Law—thinking about it strategically and working to implement some of the ideas, if possible, in our curriculum. I will also try to write a few more of my ideas about legal writing and research in general for publication in a year or so. I will not be doing much outreach and I will not be doing much nationally, other than contributing as a member of the ALWD Citation Manual Revision Committee.

I cannot do everything. None of us can. My advice is that you should determine what is most important for you in your situation—whether that is developing your scholarship, your teaching, your faculty relations, or a national profile—then assess your strengths and apply them appropriately. Get involved nationally at whatever level you can afford now. But do not burn yourself out. We need you and your energy and ideas over the long term.

A significant reason for the growing clout and professionalization of legal writing and research is the growing number of folk who have been around for a long enough time to learn the ropes and to get in positions to pull levers. There is much to be done for our profession at all levels, but no one can do it all, and certainly no one can do it all at once. And none of us need to.

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2002 LWI Conference

University of Tennessee
College of Law
Knoxville, TN

Wednesday, May 29–
Saturday, June 1, 2002

From the Desk of the

Writing Specialist

A Matter of Style

Mary Barnard Ray (University of Wisconsin Law School)

Law students who love creative writing often hate legal writing. They complain that repeating a word is boring, using straightforward transitions is too obvious, writing short sentences is childish, and omitting unneeded detail makes the story uninteresting. In frustration, these students declare that legal writing means writing with no personal style. The students' complaints often seem self-focused, and you want to respond, *That's right. We're here to do a job, not celebrate you.* But stating that would alienate the student, and it would be inaccurate.

Personal style exists in legal writing, and denying its existence would shortchange the genre. Instead, we can teach the students to become better writers by recognizing and managing their own styles. Memos written by different students on the same topic vary in effect even when students use the same cases, legal terms, and objective tone. The memos differ despite starting each paragraph with a thesis and using the same organization. They even differ though making the same errors. Even with so many similarities, personal style creates variations in the overall effect of each memo.

Personal style exists in legal writing, and denying its existence would shortchange the genre. Instead, we can teach the students to become better writers by recognizing and managing their own styles.

In legal writing, personal style lies predominately in patterns of sentence structure. Most student writers have one or two structural habits that mark their personal styles, even if they are unaware of the habits. Over the course of a document, the pattern created by these habits changes the rhythm of the text and affects the way the reader processes the content. Subtly the pattern communicates an impression of the writer: no-nonsense or elegant, focused or wide-ranging in thought. These structural patterns are fundamental differences, yet are acceptable in legal writing.

Each structural pattern, however, has its limitations; successful writers respect those limits. They avoid overusing one structure, knowing how to craft alternatives. If we teach the students to manage their own structural patterns successfully, we improve the quality of their writing without sacrificing personal choice or individual style.

Four common structural habits appear most often, each with its advantages and limitations. For example, some writers habitually start each sentence with the subject and verb.

Summary judgment may be awarded when there is no genuine issue of material fact.

Case law has interpreted this statute to exclude officers and directors of a corporation from the meaning of "employee."

This structure is useful because it is easy to comprehend. The sentence presents the structural heart of the sentence first and adds detail later. When this structure is used repeatedly, however, the text becomes less than clear. With no introductory phrase to provide a transition, the reader has to determine the logical connection between this sentence and the previous one. This task slows the reader, particularly when the logic is complex.

Richard Baxter was killed when he accidentally fell down an elevator shaft. He was working at the Acme Toy Company, a corporation. He had been going about the building to ascertain the quantity of certain items of merchandise kept in stock. The elevator door had been left open while the elevator was being repaired. Baxter stepped into the shaft and fell four stories.

Other students habitually start sentences with introductory phrases.

When there is no genuine issue of material fact, summary judgment may be awarded.

Interpreting this statute, case law has held that "employee" excludes officers and directors of a corporation.

When accurately focused, introductory phrases clarify the logical flow between sentences and between paragraphs. The writer may echo an idea from the previous sentence: *Applying this theory, . . .*or *After the accident, ...* In a thesis sentence, the writer may use an introductory phrase to communicate the paragraph's relation to previous paragraphs: *Unlike other jurisdictions, ...* An introductory phrase can create anticipation, adding interest to the text. For example, the following sentence sounds like the beginning of a story:

While going about the Acme Toy Company to ascertain the quantity of certain merchandise, Richard Baxter fell down an elevator shaft.

But when overused, introductory phrases create a halting rhythm that sounds less assured, particularly when those phrases state caveats. Introductory phrases can also remove energy from the text, lulling the reader into inattention.

In this case, the commission's determination came before the trial court for review under the Uniform Administration Procedure Act. Describing items to be considered during review, this Act includes "experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it." Regarding the Public Service

Commission, this court recognizes its wide experience and technical knowledge in regulation of motor carriers. Furthermore, by provisions of Chapter 194, the legislature has conferred wide discretionary powers upon this commission.

A third group of students habitually divide the subject and verb with a modifying phrase.

Summary judgment, when there is no genuine issue of material fact, may be awarded.

Case law, interpreting this statute, has held that "employee" excludes officers and directors of a corporation.

This structure can add interest and emphasis. When overused, though, it sounds hesitant or stuffy. It is hard to read, so its overuse tires and irritates the reader.

Ajax Truck Lines, at the time of filing the application, had for many years, as a common motor carrier, transported goods in interstate commerce. Ajax, under a permit from the Interstate Commerce Commission, transported goods from points outside the state to Milwaukee, Racine, and Kenosha. It also, under an intrastate private contract motor carrier license, served about ten shippers between these three cities. Therefore Ajax, at the time of filing its application and the hearings thereon, was already operating trucks daily between these three cities.

Finally, some students use short sentences frequently.

The complaint presents no genuine issue of material fact. Thus summary judgment is appropriate.

Case law establishes that "employee" excludes a corporation's officers and directors. Thus Mr. Gregory cannot be the corporation's employee.

This structural habit creates an interesting, no-nonsense pace. Overused, however, it can become hard to read. It can also create an impatient, rather cranky tone.

Jacob Jones made his will on November 16, 1995. He was 65. He had three sons. Joseph was forty-two, Howard was thirty-four, and Aaron was twenty-four. His one daughter, Sarah, was thirty-five. Sarah was married to Jason Sanders. Sarah had two children, Sally and John. Sally was eight; John was eleven. The testator and his children were all on good terms. The testator died on July 16, 1999. His will had created a trust. Under the trust, the grandchildren received $8,000 annually.

Teaching students to manage sentence structure habits offers several advantages. It provides students with an area of choice and teachers with an opportunity to illustrate the variety possible in legal writing. It encourages both to master the language itself, silencing complaints that legal writing teaches only forms and organizational conventions.

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ALWD Manual International and Foreign Law Edition to be Published by Aspen

Diane Penneys Edelman (Villanova University School of Law)
Chair, International and Foreign Law Edition Committee, ALWD

Like the United States, each of the more than 180 nations in the world—and even more international and regional tribunals and organizations—have generated constitutions, treaties, statutes, court decisions, administrative regulations, scholarly and other material that legal practitioners and academics rely upon in their professions. Many of these countries, courts and organizations have also developed their own citation systems to refer to these documents; many have not.

In spite of these facts, American legal citation manuals have for many years superimposed a decidedly American point of view or style of citation upon foreign and international documents instead of acknowledging and using the "indigenous" or "native" method of legal citation and hierarchy of legal authority used in other countries and by foreign and international tribunals and organizations.

Recognizing the need for comprehensive treatment of international and foreign law citations, Aspen Law & Business has announced that it will publish a separate International and Foreign Law Edition of the ALWD Citation Manual in early 2003. The goal of the *International Edition* will be to provide the user with professionally developed guidelines for citation of legal materials used in other countries and by foreign and international tribunals and organizations that *recognize* existing forms of legal citation and hierarchies of authority (e.g., civil law, Islamic law) that are different from the American system. In addition, the *International Edition* will provide the user with easy-to-follow steps for deciphering and composing citations to foreign and international legal materials. Most important, development of the *International Edition* will be undertaken under the supervision of ALWD by a diverse group of international law librarians, legal writing professionals, practitioners and law students.

It is anticipated that the *International Edition* will use, where available, indigenous or internally developed citation formats. It will include diagrams and examples of citation formats, informational "sidebars," and references to relevant web and print sources of citation.

The first edition of the *International Edition* will include citation formats for approximately 50 countries, international and regional tribunals and organizations. The countries and entities included represent a variety of legal systems, geographical locations and sizes. Citation systems for additional countries and entities are in development and will be available at *www.alwd.org*.

NEWS

Publications, Promotions and Other Achievements

Randy Abate joined the Legal Writing Faculty at Rutgers-Camden Law School in July. He previously taught in the Widener-Harrisburg Legal Methods Program, and he served as director of that program for the last three years. In October, he delivered a presentation to the ABA Law Student Division Third Circuit Fall Roundtable titled *How to Enhance the Moot Court Program at Your Law School.*

Jala Amsellem (George Washington) has been named the new Associate Director of the legal writing program.

Bonnie Baker (NYU) has been named Acting Assistant Professor of Law.

Grace Barry (LSU) is the new Director of Legal Writing at Louisiana State University, and will serve as the first full-time director of that program. Grace, who has taught at LSU for two years, has also begun the process of hiring two new teachers, which will give the program a total of six full-time professionals.

Peter Bayer (UNLV) recently joined the writing program at University of Nevada-Las Vegas. He also published *A Plea for Rationality and Decency: The Disparate Treatment of Legal Writing Faculties as a Violation of Both Equal Protection and Professional Ethics*, 39 Duquesne L. Rev. 329 (2001), arguing that the disparate terms and conditions of employment for full-time writing professors cannot meet even the minimal standards of rational basis theory under Equal Protection and, thus, constitute a violation of anti-discrimination principles.

Peter Cotorceanu (Washburn) published *Estate Tax Apportionment in Kansas—Out With the Old, In With the New*, in volume 70 of the Journal of the Kansas Bar Association, which was published in October.

Christine Nero Coughlin (Wake Forest) was named Director of the legal writing program. The faculty also agreed that legal writing faculty should attend faculty meetings and that the LWR director would have voting rights.

Jo Anne Durako (Rutgers-Camden) was appointed to the editorial board of the Journal of Legal Education. Her article, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, was recently published in that journal, and the article will be part of her presentation at the AALS conference in New Orleans, addressing *Labor and Employment in the Academy: A Critical Look at the Ivory Tower.*

Linda Edwards (Mercer) has authored a book on future interests which will be published in December: *Estates in Land and Future Interests: A Step By Step Guide* (Aspen L. & Bus. 2001). In February, the third edition of her legal writing book will be published: *Legal Writing: Process, Analysis, and Organization* (3d ed., Aspen L. & Bus. 2002).

Suzanne Ehrenberg, formerly of Chicago-Kent, has joined the faculty at Northwestern as Clinical Associate Professor of Law.

Jessica Elliott, formerly at Quinnipiac University, became Director of the writing program at Roger Williams University.

Judith Fischer (University of Louisville–Brandeis) authored an article called *Public Policy and the Tyranny of the Bottom Line in the Termination of Older Workers* which will appear in an upcoming edition of the South Carolina Law Review.

Brian Foley (Widener) and **Ruth Anne Robbins** (Rutgers-Camden) published *Fiction 101: A Primer for Lawyers On How To Use Fiction Writing Techniques To Write Persuasive Facts Sections*, 32 Rutgers L.J. 459 (Winter 2001). They also taught a CLE course, *Storytelling for Lawyers: How to Use the Most Powerful Tool of Persuasion to Win Your Cases*, with novelist Solomon Jones, in Philadelphia, PA.

Brian Foley (Widener) recently published several newspaper articles, including some for the Keene (New Hampshire) Sentinel, where he formerly worked as a reporter: *Editorial, Bombing Fallout: Dissent in U.S. Against Policies Remarkably Quiet*, HARRISBURG SUNDAY PATRIOT-NEWS, October 24, 2001, at B17; *Should I See Airplane Security as a Do-It-Yourself Job?* KEENE (N.H.) SENTINEL, October 17, 2001, at 6; *Editorial, Let's Build Rather Than Bomb,* WILMINGTON NEWS-JOURNAL, September 25, 2001, at A11; *Editorial, Revenge Can Leave a Mighty Hangover*, KEENE (N.H.) SUNDAY SENTINEL, September 16, 2001, at D2; *Editorial, Cards Could Make It Safer for Taxi Drivers*, PHILADELPHIA METRO, August 21, 2001, at 5; *Editorial, What Allen Iverson Has Taught Me*, HAMPTON ROADS (VA) DAILY PRESS, June 19, 2001 (Iverson's hometown paper). He also taught several CLE

courses, including *The Art of Persuasion* in Wilmington, DE.

Scott Fruehwald (Hofstra) authored *The Principled and Unprincipled Grounds of the New Federalism: A Call for Detachment in the Adjudication of Federalism*, which will appear in the February 2002 issue of the Mercer Law Review.

Kristen Gerdy (Brigham Young University) is now the Director of the Rex E. Lee Advocacy Program at BYU's J. Reuben Clark Law School. She has published two articles, *Making the Connection: Learning Style Theory and the Legal Research Curriculum*, 19 Leg. Ref. Servs. Q. 71 (2001), and *The Internet Alternative*, 19 Leg. Ref. Servs. Q. 119 (2001). She also won an award from LexisNexis and the American Association of Law Libraries for an article titled *Teacher, Coach, Cheerleader, and Judge: Promoting Learning through Learner-Centered Assessment*, which will be published in the January 2002 issue of the Law Library Journal.

Jessie Grearson, the Writing Advisor from the John Marshall Law School, recently co-authored a book called *Love in a Global Village* (University of Iowa Press); the book is "a celebration of intercultural families in the Midwest."

Sonia Green, formerly at Chicago-Kent, is now John Marshall Law School's new Associate Director of the LRW program.

Christine Hurt's (Houston Law Center) article, *Who Will Inherit Citation? Network Effects at Work in the Legal Citation Industry*, will be published in volume 87 of the Iowa Law Review (forthcoming 2002). The article explains antitrust strategies used by new products to compete with established products and shows how the *ALWD Citation Manual* uses those strategies.

M. H. Sam Jacobson (Willamette) published *A Primer on Learning Styles: Reaching Every Student*, 25 Seattle U. L. Rev. 141 (2001), and *The ALWD Citation Manual: A Clear Improvement Over the Bluebook*, 3 J. of Appellate Prac. & Process 139 (2001).

Steve Jamar (Howard) has recently published several articles: *Everything Old Is New Again*, 22 Pace L. Rev. __ (2001) (an essay sparked by Anthony G. Amsterdam & Jerome Bruner, *Minding the Law* (Harv. U. Press 2001)); *A Lawyering Approach to Law and Development*, 27 N.C. J. Intl. L. & Com. Reg. 31 (2001); *The Human Right of Access to Legal Information: Using Technology To Advance Transparency and the Rule of Law*, 1 Global Jurist Topics no. 2 art. 6, 1-14 (2001) <*www.bepress.com/gj/topics/vol1/iss2/art6/*>; with Konstantinos Kalpakis & Kenneth J. Markowitz, *Annotated XML Legal Document DTD for ELIS & GLIN, LegalXML Unofficial Note*, <*www.legalxml.org/citations/*> (April 18, 2001); and *Book Review: Struggling To Find Our Way in a Multi-Religion World*, 16 J.L. & Religion 101-105 (2001) (reviewing *Religion and International Law* (Mark W. Janis & Carolyn Evans eds., Kluwer L. Intl. 1999)).

While on sabbatical next spring semester, **Steve Johansen** (Lewis & Clark) will be teaching legal writing at University College Cork in Ireland. He recently published a book on legal writing for Latvian law students, *Juridlsk anal ze un tekestu rakst šana*, and in conjunction with the publication visited Riga, Latvia in 1999 and earlier this year.

Joseph Kimble (Thomas C. Cooley Law School) published an article in Court Review, a journal of the American Judges Association, called *First Things First: The Lost Art of Summarizing*, 38 Ct. Rev. 30 (Summer 2001). He also published a two-part article called *Plain Words* in the Michigan Bar Journal: 80 Mich. B.J. 72 (Aug. 2001), and 80 Mich. B.J. 72 (Sept. 2001).

Susan Hanley Kosse's (University of Louisville–Brandeis) article, *Student Designed Home Web Pages: Does Title IX of the First Amendment Apply?*, has been accepted for publication in volume 43 of the Arizona Law Review (2001).

Terri LeClercq (Texas) published *Teaching Student Editors to Edit*, 9 Perspectives 124 (Spring 2001). She has also been asked to work on a project coordinated with the Federal Judicial Center in which she will draft class action notices in plain English.

James Levy (Colorado) published an article in the Journal of Legal Education titled *The Cobbler Wears No Shoes—A Lesson for Research Instruction*, 51 J. Legal Educ. 39 (2001) (forthcoming).

Karin Mika (Cleveland-Marshall), the Assistant Director of Legal Writing, has been appointed as the Moot Court Advisor for the school's nationally renowned Moot Court team.

Samantha Moppett (Arizona State), a Legal Writing Professor, was recently placed on academic professional tenure track, and **Judy Stinson**, LWR Director, was awarded tenure.

Deborah M. Mostaghel (University of Toledo) authored *Wrong Place, Wrong Time, Unfair Treatment? Aid to Victims of Terrorist Attacks* which will appear in the Brandeis Law Journal (University of Louisville). The article discusses types of aid available for victims of terrorism under our current federal laws.

Sandy Patrick has moved from Wake Forest to Lewis & Clark.

Ruth-Ellen Post, formerly Director of the ABA-approved programs in Paralegal and Legal Studies at Rivier College, has joined the faculty at Franklin Pierce Law Center in Concord, New Hampshire, where she now teaches first-year law students as Professor of Legal Skills.

Norman G. Printer is the new Director of Legal Writing at the University of Mississippi.

Wayne Schiess (Texas) published *Meet ALWD: The New Citation Manual*, 64 Tex. B.J. 911 (Oct. 2001). In October, the law school faculty promoted him to Senior Lecturer.

Michelle Simon (Pace University) was named Associate Dean of Law. Michelle had been the Director of Legal Writing and led the move to establish Pace's integrated Criminal Law, Analysis and Writing Course, taught exclusively by tenured and tenure-track faculty.

Amy E. Sloan, formerly at George Washington Law School, is now the Co-Director of the Legal Skills Program at the University of Baltimore School of Law.

Nancy Soonpaa, formerly at Albany, is now the Director of the Legal Practice Program at Texas Tech.

The **Stetson Law Review** published the works of several legal writing professors in a recent edition: **Terri LeClercq** (Texas), *The Nuts and Bolts of Article Criteria and Selection*, 30 Stetson L.R. 437 (Fall 2001); **Anne Enquist** (Seattle), *Substantive Editing versus Technical Editing: How Law Review Editors Do Their Work*, at 451; **Darby Dickerson** (Stetson), *Citation Frustrations—and Solutions*, at 477; **Toni Fine** (Yeshiva–Cardozo School of Law), *Glory Days: The Challenge of Success Beyond Law School*, at 529; and **David Romantz** (University of Memphis), *Book Review*, at 611 (reviewing Elizabeth Fajans & Mary R. Falk, *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes, and Law Review Competition Papers* (2d ed., West 2000)).

Kent Streseman (Baylor), formerly a Visiting Assistant Professor at Chicago-Kent, has joined the Baylor writing faculty, which is a "directorless" program.

Evelyn Tombers (Thomas C. Cooley Law School) has been elected Chairperson of the State Bar of Michigan's Appellate Practice Section. She has previously served as the section's newsletter editor, council member, Treasurer, and Chair-Elect.

Barbara Tyler (Cleveland-Marshall) has been promoted to Director of Legal Writing. She will also be serving with **Lou Sirico** (Villanova) on a Scholarship Committee for members of LWI whose schools will not pay for them to attend conferences.

Lorri Unumb (George Washington) is the new director of the Legal Research and Writing program. She was formerly with the Department of Justice and taught as an adjunct at GW for two years.

Nancy Wanderer (Maine) authored *Writing Better Opinions: Communicating with Candor, Clarity, and Style*, an article on appellate decision writing which will be published in the forthcoming January edition of the Maine Law Review.

Melissa Weresh (Drake) published two articles: *The ALWD Citation Manual: A Coup de Grace*, 23 UALR L.J. 775 (Spring 2001), and *The Unpublished, Non-precedential Decision: An Uncomfortable Legality?*, 3 J. of App. Prac. & Process 175 (Spring 2001). She also presented the latter article at the journal's symposium, which was directed toward appellate practitioners, in May, 2001 in Little Rock. **Coleen Barger** (University of Arkansas–Little Rock) organized the successful symposium.

Victor Williams (Catholic University) is the new Director of legal writing. The former director, **Michael Koby**, has moved to Washington University to be an associate director of the LRW program there.

The International Law Institute of Washington D.C. published the second edition of **Mark E. Wojcik's** (John Marshall Law School) book, *Introduction to Legal English*, a legal course book for lawyers and law students who speak English as a second language. He also conducted a two-week legal writing program in Washington D.C. and a three-week legal drafting training program in Singapore, and lectured in Indonesia on basic principles of clear legal writing for lawyers who speak English as a second language. He continues to serve as Co-Chair of the International Human Rights Committee of the ABA Section of International Law and Practice and as Vice Chair of the International Health Law Committee of that section. He was also named a Vice Chair of the International Criminal Law Committee of the ABA Criminal Justice Section. In 2002 he will be on sabbatical in Hawaii.

New Legal Writing Faculty

Appalachian welcomes a number of new LW professors this year: **David ButleRitchie** (from Temple's LLM program), who also teaches Dispute Resolution; **Wendy Davis** (Suffolk), who will also be teaching a Real Estate Transactions practicum; **Stewart Harris** (from private practice and the University of Florida's Levin College of Law), and **Taylor Simpson-Wood** (Tulane), who both will

also be teaching Civil Procedure; and **Robert Wood** (recently from private practice), who will also be heading up the school's ASP program.

Claire C. Robinson May (Cleveland-Marshall) has been hired as a Lecturer in Legal Writing.

The **University of Oregon** welcomes **Joan Malmud** and **Kate Weatherly** to its Legal Research and Writing faculty. They practiced with Paul Weiss Rifkind Wharton & Garrison, in New York, and the Native American Rights Fund, in Boulder, respectively, before coming to Oregon.

Program News

After two years of discussion, the faculty of **The Dickinson School of Law of Pennsylvania State University** voted to extend limited voting privileges to Lawyering Skills Professors, who will be able to vote on all issues except personnel decisions, matters affecting promotion and tenure, or amendments to the by-laws.

Southern Illinois University School of Law has given broader votes to clinical faculty (including legal writing faculty) and librarians, who will now be able to vote on most matters other than hiring, promotion and tenure of tenure-track faculty.

Conferences and Meetings

Boston College Law School will hold the **New England Legal Writing Consortium** on Friday, December 14, 2001. At the meetings of the New England Legal Writing Consortium in March and June 2001, the participants agreed that it would be worthwhile to devote the December 2001 conference to "deconstructing IRAC." To learn more about how programs conceptualize and teach the construction of an objective memo, each participating program has been asked to prepare an objective memo based on common authority and facts taken from a closed assignment used for first-year students. (More than one person within a program could prepare a memo, or two small programs could collaborate on one memo.) The memos will be shared at the conference and the participants will discuss their different approaches to the memo problem, while discussing the effectiveness of each. The conference will be held at Boston College Law School, 885 Centre Street, Newton Centre MA on Friday, December 14 from 10:00-3:30. For information, contact Judy Tracy at tracyju@bc.edu or at 617-552-3078.

Several events of interest to LWI members will take place during the **AALS Annual Meeting** in New Orleans, Thursday, January 3 through Saturday, January 5, 2002 *(for more information, see page 2)*. The **Golden Pen Award** ceremony is scheduled for 6:30 p.m. on Thursday, January 3. A legal writing reception will be held at the Columns Hotel in the Garden District on Saturday, January 5 from 4 to 6 p.m. The AALS Section on Legal Writing, Reasoning and Research will elect a **Secretary** to begin serving in January 2002. The Nominating Committee is the Section Executive Committee: Chair, Steve Johansen (Lewis & Clark); Immediate Past Chair, Kate O'Neill (Washington); Chair-Elect, Joan Blum (Boston College) and Section Secretary Dan Barnett (Boston College). The person who serves as Secretary agrees to publish two Section newsletters; attend the annual Section Executive Committee meeting held during the Annual Meeting; assist the Chair and Chair-Elect in carrying out Section activities; and serve on the Section Executive Committee for three terms of office beyond the term of Secretary: first serving as Chair-Elect, then as Chair, and finally as Immediate Past Chair. Nominations closed in November. The Committee will review each candidate's resumé and personal letter, which will serve as the basis for the Committee's nomination at the Section's annual business meeting. For further information, contact Professor Dan Barnett, Boston College Law School, 885 Centre Street, Newton, MA 02459, 617-552-2615, daniel.barnett@bc.edu.

The **Second Annual Rocky Mountain Regional Legal Writing Conference** will be held on March 1 & 2, 2002, at Arizona State University College of Law in Tempe. The Program Committee invites participants to submit proposals for the conference presentations on any subject pertaining to legal research and writing. Presenters may suggest ideas for as many as twelve, 20-minute slots for short, practical presentations on teaching methods or assignments that have been especially successful; or presenters may suggest ideas for one 50-60 minute time slot. Those wishing to propose a presentation should e-mail a brief description of the presentation, as well as your name, address, phone number, fax, and e-mail information to Terrill Pollman at pollman@ccmail.nevada.edu. You may also submit a proposal to Professor Pollman by mail, Boyd School of Law, UNLV, 4505 Maryland Parkway, Box 1003, Las Vegas, NV 89154-1003, or fax 702-895-2482. For more information call 702-895-2407. The deadline for proposals is January 15, 2002.

The **2002 LWI Conference** at the University of Tennessee College of Law, Knoxville, Tennessee starts on Wednesday, May 29, 2002 *(for more information on the conference, see pages 2 and 22)*.

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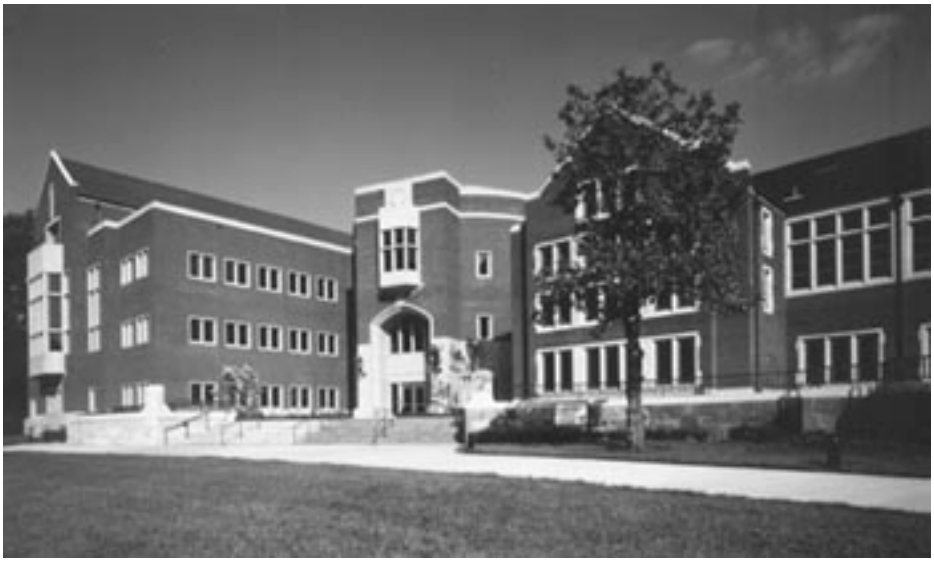
Reflections and Visions:
The Past, Present, and Future of Legal Writing

The tenth biennial conference of the Legal Writing Institute will be held May 29-June 1, 2002, at the University of Tennessee College of Law in Knoxville, Tennessee.



The conference will celebrate the successes our community has achieved within the academy and examine the challenges that lie ahead. The plenary speaker is Professor Terri LeClercq of Texas. (See sidebar this page.)

Over 60 conference presentations will explore curricular design, the intersection of legal theory and legal writing, advances in technology, scholarship works in progress, and much more. Other highlights include:

* Scholarship Roundtables
* Basics Track—Includes the *Workshop on Critiquing Student Papers*
* Technology Track—Includes the technology workshop *Opening Windows*

Registration for the conference is $350 through April 30. This includes entrance to all meetings; breakfast, lunch and dinner on Thursday; and breakfast and lunch on Friday and Saturday. Three exciting social events are also included in the registration fee: a reception at the Knoxville Museum of Art; dinner for conference participants and their families at the Knoxville Zoological Gardens; and a Riverside Reception, as the conference finale. Housing is available in nearby hotels or dormitories.

Conference brochures will be mailed soon. Please send in your registration as soon as possible. All who register will receive information in the spring about participating in the Idea Bank, to be coordinated by Sophie Sparrow (Franklin Pierce) and Ruth Anne Robbins (Rutgers-Camden). Presenters will receive additional information from the Program Committee and the Bibliography Committee several months before the conference.

If you have questions, please contact one of the Conference Co-Chairs, Dan Barnett, daniel.barnett@bc.edu, or Suzanne Rowe, srowe@law.uoregon.edu. Please direct questions about the site to the Site Chair, Carol Parker, at parker@libra.law.utk.edu.

For additional information, please visit the LWI website at *www.lwionline.org*.

2002 Plenary Speaker: Professor Terri LeClercq

Terri LeClercq has taught at the University of Texas School of Law since 1982. Her courses include advanced legal writing, editing for editors, thesis writing for LLM, legal research and writing, negotiations and drafting, and real estate transactions and drafting.

Professor LeClercq has published three books, over sixty articles, poems, short stories, and photographs. She has extensive experience as a writing consultant to law firms, courts, bar associations, and organizations nationwide. She directs the law school's writing center and is the director of international programs. During summers, she is the law school liaison to numerous pre-law programs. In her spare time, she and her husband, Jack Getman, travel extensively to advance labor and human rights issues.

In 1994, Professor LeClercq challenged members of the Legal Writing Institute to re-invent themselves as diamonds, the sparkle of the law curriculum. This year's plenary session is sure to include new inspiration and challenges.

CALENDAR

LWI Board Meetings

AALS Annual Meeting: Saturday, January 5, 2002, 7:00 a.m.
2002 LWI Conference: Wednesday, May 29, 2002

2002 LWI Conference

2002 LWI Conference, University of Tennessee College of Law, Knoxville, TN:
Wednesday, May 29 through Saturday, June 1, 2002

Board of Directors Elections

Call for Nominations: January 2002
Elections: March 2002

Legal Writing: The Journal of the Legal Writing Institute

Status of Volume 8: Anticipated publication Spring 2002
Status of Volume 9: Currently soliciting articles

The Second Draft

Deadline for submissions for Spring 2002 issue: March 15, 2002
Deadline for submissions for Fall 2002 issue (LWI committee reports): October 15, 2002

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 March 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@lclark.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, Northwestern School of Law at Lewis & Clark College, 10015 SW Terwilliger Blvd., Portland, OR 97219-7799. 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.

***The Second Draft:* Bulletin of the Legal Writing Institute**
From: The Florida State University College of Law
Tallahassee, Florida 32306-1601

To help us keep our mailing list current, please keep us informed of changes in your address or in the addresses of your colleagues. You can complete this coupon with any updates to your contact information and mail it to Professor Suzanne E. Rowe, 1221 University of Oregon School of Law, Eugene, OR 97403-1221; or you can send an e-mail to lwiaddresses@law.fsu.edu, and your information will automatically be forwarded to the *Second Draft* editors and the LWI Program Assistant, Lori Lamb.

Name: _____

School: _____

Street Address: _____

City/State: _____

Zip: _____

Phone/Fax/E-mail: _____