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.

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, persuasion is the heart and soul, the fun part, of lawyering. The following exercises are an effective way to convey these principles.

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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, 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

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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 Koran Bower, formerly Professor and Director of Legal Writing at Sanford, 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. Başhart (Florida State)
Yaranne E. Rawe (Oregon)
Sandy Patrick (Lewis & Clark)

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.

In this issue, I am going to take the opportunity to highlight important developments, activities and resources of the Institute. 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!
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 website; Bill Galloway (Seattle) for taking on the position of webmaster; Laurel Oates (Seattle) for many hours of behind-the-scenes work; Rick Pelza (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 website, don't hesitate to contact them at blum@bc.edu or pelza@flash.net.

The Second Draft
I want to compliment the editors of The Second Draft for the past year, Barbara Bushbaris (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. 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. LWI 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 further announcements of this important event on the legwri and dincon listerves 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 dincon listerves 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. Congratulatons, 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/ALW 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 ALWD website (again, www.lwionline.org) and follow the "survey results" link (see the left hand menu bar) or go directly to the ALW 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@law.gatech.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 Hillary Clinton would say, it takes a village to run the Institute!
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.

**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... When I debriefed, 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 the 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 that the trial should be postponed and extending the ASP program. The Nominating Committee is the Section Executive Committee: Chair, Steve Johansen (Lewis & Clark) (recently from private practice), who will also be heading the school’s ASP program. The Nominating Committee is the Section Executive Committee: Chair, Steve Johansen (Lewis & Clark) (recently from private practice), who will also be heading the school’s ASP program. The Nominating Committee is the Section Executive Committee: Chair, Steve Johansen (Lewis & Clark) (recently from private practice), who will also be heading the school’s ASP program. The Nominating Committee is the Section Executive Committee: Chair, Steve Johansen (Lewis & Clark) (recently from private practice), who will also be heading the school’s ASP program. The Nominating Committee is the Section Executive Committee: Chair, Steve Johansen (Lewis & Clark) (recently from private practice), who will also be heading the school’s ASP program. The Nominating Committee is the Section Executive Committee: Chair, Steve Johansen (Lewis & Clark) (recently from private practice), who will also be heading the school’s ASP program.

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**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. 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 “persuader’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 Schonberger, 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 Cs: How to Court a Judge” (the five Cs describe the most common needs for anyone in the judicial role: the need to be Conscientious, Compassionate, Conformist, to use Common sense, and to Crack down the weak). 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 ljlaffe@sun oral.com for a copy.

3. Special thanks to Susan Yorim of Capital University Law School, whose problem I adopted.
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.

Let Bush and Gore Teach Persuasion

Swan Hanley Katz (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 (Introduction to Legal English (2d ed., West 2000)), the students began to understand the sophisticated interplay of fact, argument, and logic involved. Each week we discussed whether the headings could be made stronger by including relevant facts or reasoning 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 to jot down notes about what made each 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 rogue court trying to change all the rules in a haphazard fashion. To reinforce this theme the words “arbitrary, standardless, selective” appeared in the briefs. The Gore brief’s theme was that the decision was not arbitrary, and it was based on law and on precedent. Not only did the briefs provide specific examples of persuasive writing, but they also included 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.

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 interplay of fact, argument, and logic involved. Each week we discussed whether the headings could be made stronger by including relevant facts or reasoning for not including them.
Let Bush and Gore Teach
(continued from page 5)

approximately 24 times in Bush's brief and the words "newly fashioned, judicially created, revote" 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 farther unconstitutional fruit . . ." (Bush brief, page 2), and "Indeed, because those counts have been untouched by 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 Lamer (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 within the context of an open research assignment.

Last year, instead of beginning the semester with students drafting an objective memorandum, we presented...
Teaching students to manage sentence structure habits offers three sons. Joseph was forty-two, Howard was thirty-four, and Aaron was twenty-four. His one daughter, Sarah, was... died on July 16, 1999. His will had created a trust. Under the trust, the grandchildren received $8,000 annually.

Overused, however, it can become hard to read. It can also create an impatient, rather cranky tone.

During the week that the 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 reviews. 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,” 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 client’s 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.

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 be preaching to the choir. 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.


Persuade with Precedent
James P. Feyer ( 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 the 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

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**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:

> He should proceed gradually from Things already allow’d to those from which Assent is yet with-holded, 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 main 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/AFCG46%2EPpt.

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. 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
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. Green’s death was the thirteenth at the factory in the last 25 years. Widget, though investigating new safety measures after a large industrial accident in 1976, has still been plagued by serious accidents at the factory. 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 square 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 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.1 Reading the words of a dissenting justice who compares himself to John the Baptist—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—

By analyzing the characteristics of the audience and looking at the ways that the same “facts” are shaped to the various audiences, students begin to see how black and white shades into gray and how truth can have more than one look.

For the most part, students seem to present facts with an emphasis that favors the writer’s position. 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.

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For the most part, students seem to present facts with an emphasis that favors the writer’s position.
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 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.”

I ask the students, then, to write a first draft of the “Goldilocks” hypothetical, see Steven V. Armstrong & Timothy P. Terrell, Organizing Facts to Tell Stories, 9 Perspectives 90, 90-91 (Winter 2001). I give them an additional week to work on their drafts, and 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 that 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 had been invisible before. By calling their attention to this, we help them see their progress and continued capacity to

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**Utilize the Facts**

(continued from page 11)

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1. For a longer 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 ULI 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).
The bottom line is that, unless the facts about the case are presented in a compelling manner, the judge may be swayed by other factors such as the manner of presentation or the manner in which the case is argued. Therefore, the art of persuasion is not about “telling” but “showing” why there should be a particular result. This 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.

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. This exercise has several benefits in addition to allowing students to concentrate on the skill of persuasion. One is that revisiting material builds on students’ understanding of the material and helps them see their progress and continued capacity to learn that the art of persuasion is not about “telling” but “showing” why there should be a particular result. This exercise also demonstrates that making an argument requires the same rigorous thinking as predicting a result. Writing this essay pushes the students to think about the subject and to consider the arguments from both sides.

Persuasion is about making others see things from your perspective. It takes time to find an issue like this; time to collect readings; time for students to discuss the issues; time for any additional research. But as with many things in our profession, time spent leads to a great yield.

Gulf War, spousal abuse and police protection, medicinal use of marijuana, 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 was a positive step, 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. Then I 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.

Students that Objective Analysis Persuades

1. For a lengthier example of the “Goldilocks” hypothetical, see Steven V. Armstrong & Timothy P. Terrell, Organizing Facts to Tell Stories, 137 U. PA. L. REV. 1370, 1373 (1989). 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.

Archives of Social Justice

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.

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

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 for 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.”

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Social Justice and Persuasion

Clifford S. Zimmerman (Northeastern 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.

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Five Simple Exercises (continued from page 13)

at www.startribune.com; click on “opinion,” then click on “arguments through the ages,” or try www.assistcourts.com/stories/5519/.

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—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 the facts 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 lawaddress@law.fsu.edu. Address information sent to that e-mail address is forwarded to the editor of The Second Draft and to Lori Lamb, LWF Program Assistant, Seattle University.

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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 Revels & Peterson. A cum laude graduate of Samford University and Cumberland School of Law, she clerked for U.S. District Judge J. Foy Gooe, 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
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 details 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.

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. Subly 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.

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, . . . . . . 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, halting 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

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.

Mary Barnard Ray (University of Wisconsin Law School)

**A Matter of Style**

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 details 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.

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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.
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 Most Court Program at Your Law School.

Jala Anselleim (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 Plan for Rationality and Decency: The Disparate Treatment of Legal Writing Faculty as a Violation of Both Equal Protection and Professional Ethics, 39 Duquesne L. Rev. 529 (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 Estates 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.


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 Ephemera of the Bottom Line in the Termination of Older Worker 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 In Your Case, 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: Deucey 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 t6, 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.


Jessie Grearson, the Writing Advisor from the John Marshall Law School, recently co-authored a book called *Law 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 Hrutt’s (Houston Law Center) article, *Who Will Inherit Citational 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.


While on sabatical 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 Lawrivan law students, *Jurisdiction and Procedure in a Civil Law Context* (2001), and in conjunction with the publication visited Riga, Latvia in 1999 and earlier this year.


Susan Hanley Kosse’s (University of Louisville-Branden) 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.


Karin Mila (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.

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

Deborah M. Mostaghbel (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.
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. The scenario is this: They are outside of the facility you are attending. After a fire alarm, the facility is evacuated. The 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 confronted with these and other questions: What is the ground? The contrasts and contradictions continue as to virtually every detail of what the interviewees observed.

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

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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 Jady Tracy at tracyj@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 resume 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 pollmantr@email.nvueda.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).
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.
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 ALW President Nancy Schultz (Chapman) at nschultz@chapman.edu.

Reminder:

Rejection, or a conditional acceptance pending revision. The initial review process will generally take approximately two months. We will notify authors of a decision, but we will consider submissions which explore an aspect of a work in progress that eventually will be published elsewhere.

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 months. If an article is accepted, it may be further edited for length, clarity, or consistency of style.

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.

The Second Draft is published twice yearly and is a scholarship about legal writing and legal analysis. The Legal Writing Institute is a non-profit corporation founded in 1984. The purpose of the Institute is to promote the exchange of information and ideas about legal writing and to provide a forum for research and scholarship about legal writing and legal analysis. The Editor in Chief is E. Joan Blum (Boston College). The President is Jane Kent Gionfriddo (Boston College Law School) and the Chair of the Board of Directors is William Davis (Washington & Lee University). The Second Draft is edited by Barbara Busharis (Florida State), bbushari@law.fsu.edu Sandy Patrick (Lewis & Clark), patrick@lclark.edu Suzanne Rowe (Oregon), srowe@law.uoregon.edu

Call for Nominations: January 2002
Elections: March 2002

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 biannual 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 news worthy 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 in 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, 8824 College of Law, 425 W. Jefferson St., Tallahassee, FL 32306-1601; or to Sandy Patrick, Northwestern School of Law at Lewis & Clark College, 1001 SW Terwiliger 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 months. 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.
Teaching Students to Persuade

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 gun-point. You can use your position to pull rank. You can pay someone off 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 classes to persuasion with three exercises. The first 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 new and it has all the options you need.” 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, a salesman in a suit greets them and asks if they have a need for a car. The customer responds, “I need a car that can fit my eight-month-old puppy.” Instead, he sits the customer down in his office and asks her what she’s looking for. Her needs and concerns emerge. Here, it’s clear that the car isn’t the only product on offer; the salesman has used the fact that the customer needs space to persuade her to buy the car.

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 that the standard of proof in a civil case is preponderance of the evidence, not “beyond a reasonable doubt” as in a criminal case. They understand that the craft of the lawyer is to persuade the judge, not merely to win his case. They also understand 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 are 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, 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 court. Facts that are not in evidence to the judge are not the same as facts that are not evidence to the judge.

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.