

# Skills Without Stigma: Using The JURIST Method To Teach Legal Research And Writing

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## Introduction

Common to every practice area of the law is the need for clear, concise writing to convey the relevant legal principles and precedents. However, practitioners constantly report that their new associates are unprepared for the work required of them upon graduating from law school,<sup>1</sup> a dilemma consistent with data indicating that law schools are not improving students' legal information literacy skills.<sup>2</sup> A legal writing expert<sup>3</sup> recently surveyed a group of partners in major law firms by asking, "What are the writing problems you see most often in associate work product?" The most frequently-stated problems were:

- Poor structure/rambling organization
- Passive voice/awkward sentences/ambiguous clauses
- Clutter/wordiness

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1. See Susan Hanley Kosse & David T. ButleRitchie, How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study, 53 J. Legal Educ. 80 (2003).
2. Ian Gallacher, "Who Are Those Guys?" The Results of a Survey Studying the Information Literacy of Incoming Law Students, 44 Cal. W. L. Rev. 151, 153 (2007).
3. Ross Guberman, founder and president of Legal Writing Pro, <http://www.legalwritingpro.com/services/>.

- Grammar/usage/proofreading/attention to detail
- Ineffective use of authorities<sup>4</sup>

Law schools put students through legal writing programs, and writing plays an important role in helping or hindering a lawyer's career advancement,<sup>5</sup> yet students graduate grossly underequipped to meet the demands of this crucial aspect of their chosen professions. Add to these troubles the debate over skills training<sup>6</sup> and the expansion of the material which is expected to fit into a first-year legal writing class,<sup>7</sup> and one can see the growing need for new and more efficient teaching methods.

Employers of recent law school graduates have had to take on the burden of providing new lawyers with the tools to perform their jobs quickly and properly. Many larger firms have either hired full-time writing experts<sup>8</sup> to develop intensive in-house tutorials or have chosen to pay thousands of dollars in consulting fees for outside experts to come in and hold legal writing seminars for associates.<sup>9</sup> A group of businesses exists to serve these firms' needs, and aside from the fact that it seems preposterous that such education needs take place at the new graduates' places of employment, what of those whose employers cannot afford to pay for such training?<sup>9</sup> "Firms may recognize that law school graduates are not competent practitioners when they are hired, but many legal employers lack the resources to provide in-house skills training."<sup>10</sup> Small and even mid-size firms generally do not have the resources to develop in-house programs or to pay the sizeable consulting fees, and what about those graduates who accept positions with public defenders' offices, non-profits, or other public interest organizations? The disparity in resources between public and private-sector legal services grows ever-wider if the duty to teach new lawyers to research and write competently and persuasively is placed on the employer. Consequently, some new tactic must be employed to arm students with the ability to research and write effectively so that upon graduation, they

4. Marcia Pennington Shannon, *Helping Associates Improve Their Writing Skills*, 34 *L. Prac.* 60 (Jan. 2008), available at <http://www.abanet.org/lpm/magazine/articles/v34/1st/pg60.shtml>.
5. Kosse & ButleRitchie, *supra* note 1, at 97 (citing Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 *J. Legal Educ.* 469, 475 table 2, 489 table 10 (1993)).
6. Gallacher, *supra* note 2, at 155.
7. See Louis J. Sirico Jr., *Advanced Legal Writing Courses: Comparing Approaches*, 5 *Persp.: Teaching Legal Res. & Writing* 63 (1997).
8. Benjamin Opipari, *From Global Lit(erature) to Global Lit(igation)*, *Chronicle of Higher Education*, Jun. 18, 2008, available at <http://chronicle.com/jobs/news/2008/06/2008061801c.htm>.
9. See *supra* note 3.
10. Gary A. Munneke, *Legal Skills for a Transforming Profession*, 22 *Pace L. Rev.* 105, 122 (2001).

are prepared to develop arguments and support them to advocate for their positions.

This article explores the reasons why the current legal writing curriculum is not meeting the needs of the modern law student, ultimately proposing that instructors consider and implement various aspects of the legal research and writing model pioneered by JURIST (<http://jurist.law.pitt.edu>), the online legal news and commentary service founded by Professor Bernard J. Hibbitts and hosted by the University of Pittsburgh School of Law. Previous scholarship has drawn parallels between the training of journalists and the teaching of legal writing,<sup>11</sup> but much remains to be made of this relationship. Through years of experimentation, JURIST has developed an innovative method of teaching practical research and writing skills to student authors and editors by developing a model product and implementing a structured program with a team of professional staffers and dozens of students on a daily, real-time basis.

The positive results of JURIST's teaching method are evident not only from the student work which is published on the website, but also from the student staffers themselves. They report being better-prepared for classes, feeling more tied-in with the subject matter because they have seen the law in action, and being able to research effectively and write succinctly under pressure. Not every student can write for JURIST, and Pitt is the only law school with such a unique clinic-like law documentation project, but every legal writing professor can use JURIST as a teaching tool by learning from its development and showing students how to go about their work in the same way a staffer would create a legal news story for JURIST's Paper Chase news service (<http://jurist.law.pitt.edu/paperchase>). Practitioners can even use the model to assist their own associates, as "even large firms, struggling to maintain profitability, have experienced pressures to cut back on training."<sup>12</sup> JURIST's model is not meant to replace previous curricula, but rather represents a technique for supplementing existing methods of instruction.

### I. What is Paper Chase?<sup>13</sup>

JURIST is made up of several different sections, one of which is the student-written Paper Chase service. Paper Chase posts are real-time legal news stories written in a two-paragraph<sup>14</sup> loose inverted pyramid style, meaning that the most important information is put first and is followed by background information to put the story in context. Stories are chosen for their substantive importance, and Paper Chase follows every development over time to document the "arc"

11. See Natalie A. Markan, *Bringing Journalism Pedagogy into the Legal Writing Class*, 43 *J. Legal Educ.* 551 (1993).

12. Munneke, *supra* note 10.

13. See Appendix for two sample Paper Chase posts written by the author.

14. Note the similarity between the format of a Paper Chase post on a court ruling and the style of case brief proposed as a pedagogical tool in H.P. Southerland, *English as a Second Language—or Why Lawyers Can't Write*, 18 *St. Thomas L. Rev.* 53, 70 (2005).

of a given case, statute, or individual. Like legal documents, Paper Chase posts are highly formatted pieces of writing,<sup>15</sup> but students are encouraged to express their own style and voice within that structure.<sup>16</sup> An experienced editor can tell which student has written a post without checking the byline. Students like this approach, and find that they are able to be creative while taking ownership of their original research by finding new and interesting sources for posts.<sup>17</sup> Student writers, called “anchors,” must quickly locate primary source materials—the judicial decisions, legislation, testimony, reports and releases behind the legal news—and present them objectively for readers’ direct scrutiny. JURIST stockpiles fact—the documentary record of the law in progress.

As a result, Paper Chase posts are more than simple news reports. Every JURIST Paper Chase post can be understood as a mini-casebook, a set of research readings with a short “theme” (disguised as news) introducing and focusing it on specific circumstances. JURIST produces ten to twenty of these mini-casebooks a day, on demand as circumstances require. This is why they have been cited in scholarship and sometimes show up as assigned reading in traditional courses at other institutions. All those posts are related to each other in a vast web of archived material.

JURIST began inviting students to write for Paper Chase during the 2004–2005 school year, but JURIST itself has existed in various forms since 1996. The staff has grown to include about 20 active anchors at any one time, with ten to fifteen additional student staffers contributing to the site’s other services and addressing its technical needs. The application process has become increasingly rigorous, and now begins with prospective anchors (usually first-year students) submitting resumes and letters of intent describing their reasons for wanting to join the staff. Next, a selected group of applicants complete an audition testing their research, writing, and editing skills, and those who show promise are invited to interview with the professional and student staffers. Approximately ten students are offered positions as anchors each semester, and they must complete several hours of training held on a Saturday

15. As with legal writing, the Paper Chase structure and style “do not change with the context of the writing or the topic to be written about. In legal writing, the format requires that certain sections appear in a certain order, and that the style be objective and relatively formal. The objective memorandum doesn’t look and read one way for a torts issue and another way for a contract issue.” Karen L. Koch, *A Multidisciplinary Comparison of Rules-Driven Writing: Similarities in Legal Writing, Biology Research Articles, and Computer Programming*, 55 *J. Legal Educ.* 234, 238 (2005).
16. A Paper Chase post is still objective, however, unlike the highly-personal blog posts whose own scholarly and service-oriented merits are often debated. *See* Howard J. Bashman, *The Battle over the Soul of Law Professor Blogs*, 84 *Wash. U. L. Rev.* 1257 (2006).
17. “With the introduction of computer technology in our lives and in our educational experience, law students are used to and may well learn best by receiving information in ways that are more multi-sensory, stimulating, creative, and interactive than the printed textbooks of the previous generations.” Joanne Ingham & Robin A. Boyle, *Generation X in Law School: How These Law Students Are Different From Those Who Teach Them*, 56 *J. Legal Educ.* 281, 288 (2006).

before beginning to write practice posts on a test blog under the guidance of JURIST's research director. After they have completed four practice shifts, they go "live" and begin writing actual posts intended for publication. More experienced anchors and the research director edit these posts and provide detailed feedback so that the new staffers can identify their weaknesses and work on their research and writing skills. The research director assigns stories to anchors based on their skill level, and—when time permits—tries to give certain stories to those who can read foreign languages or who have particular areas of interest.

## II. The Difficulty of Developing Legal Research and Writing Skills

### A. *The Origin of the Problem*

The foundation for mediocre legal writing is laid before students ever reach law school. As children, the majority of today's law students were educated in a system aimed not at holding them accountable for meeting rigorous performance standards, but rather at boosting self-esteem by rewarding effort with good grades.<sup>18</sup> With increasing regularity, students began to leave high school without having mastered the fundamentals of research or writing, forcing undergraduate professors to spend a substantial amount of time on remedial lessons<sup>19</sup> before teaching the students any advanced techniques for refining their work. Despite having completed their undergraduate educations under such conditions, law students seem overly sure of their abilities: 19.9 percent of incoming law students surveyed in 2006 responded that written communication would be the easiest skill to learn in law school, with another 21.2 percent stating that they believed legal research would be the easiest skill to master.<sup>20</sup>

### B. *Learning to Write in Law School*

Professors who teach first-year legal writing courses often end up with unprepared but overconfident students, and must make up for the lessons which should have been learned at the undergraduate level. They also work with a group of students who have diverse educational backgrounds. A student who majored in engineering and entered law school hoping to do patent work will likely have a great deal less research and writing experience than a student who majored in history, for example.<sup>21</sup> Because American legal education is offered as a graduate degree, many students already have substantial work or life experience, and despite the fact that "asking these students to erase their

18. Joan Catherine Bohl, *Generations X and Y in Law School: Practical Strategies for Teaching the "MTV/Google" Generation*, 54 *Loy. L. Rev.* 775, 788–89 (2008).

19. Kosse & ButleRitchie, *supra* note 1, at 98–99.

20. They do recognize the importance of legal writing, however, as 25.1 percent of those surveyed responded that written communication would be the most important skill they expected to learn in law school. Gallacher, *supra* note 2, at 160–161.

21. Koch, *supra* note 15, at 236–37.

past lives before learning to become attorneys simply doesn't make sense,"<sup>22</sup> that is exactly what most law professors do.

The legal writing assignments traditionally given in law schools do not truly prepare the students for the rigors of practice, largely because of their slow pace. In a first-year legal writing course, or even in more advanced classes or moot court competitions, a student might have several months to put together a memo or brief. A new associate, however, might be allotted only a few days or even hours for the same task. The closed writing exercises of law school leave students ill-prepared for practice, when they will have a short amount of time to track down their own sources and determine which are irrelevant or duplicative.<sup>23</sup>

### III. Learning in Real Time

Individual Paper Chase posts are researched, written, edited, and published within two hour shifts, but this quick production schedule does not diminish their quality. Like all content on JURIST, Paper Chase posts must be unique, well-researched, and thoroughly documented. Staffers work from primary sources, meaning that an anchor's job is to cover an event, not to cover a report of an event. Two story assignments are emailed to students just before their scheduled two-hour shifts. An assignment often takes the form of a brief description (one to two sentences) of some legally-significant event, or it might be a minutes-old court opinion. In this real-time environment, JURIST student staffers learn critical skills in (a) legal comprehension and analysis, (b) legal research, and (c) legal writing.

#### *A. Legal Comprehension and Analysis*

Development of legal comprehension skills is perhaps the most basic but least obvious aspect of anchors' work. In any Paper Chase shift, staffers could be asked to handle a national or international issue in almost any doctrinal area imaginable. Anchors must pick out the controlling legal points, research the story's background, and then understand it well enough to be able to explain it coherently and neutrally to others. Selecting the most important facts and background developments can be troubling, even for practicing associates,<sup>24</sup> but following the journalistic process teaches anchors to absorb and communicate what readers want to know, and to do so within no more than an hour so as to maintain JURIST's production pace.

22. *Id.* at 251.

23. For insight into other skills deemed important by employers of recent law school graduates, see Elisabeth Peden & Joellen Riley, *Law Graduates' Skills—A Pilot Study into Employers' Perspectives*, 15 *Legal Educ. Rev.* 87 (2005).

24. "What happens is they throw in everything but the kitchen sink. They're so nervous about not giving partners everything they need." *Lawyers Weekly USA*, NY law firm gives new lawyers writing lessons, *St. Louis Daily Record & St. Louis Countian*, May 28, 2006, available at [http://findarticles.com/p/articles/mi\\_qn4185/is\\_20060528/ai\\_n16433193](http://findarticles.com/p/articles/mi_qn4185/is_20060528/ai_n16433193).

The ability to work under pressure is helpful in essentially any profession, but for lawyers “[i]n the professional practice setting, effective time management is not a luxury but a necessity.”<sup>25</sup> Paper Chase anchors are “briefing” legal news and arguing it on their feet, and must navigate the gray area between sensationalizing a story and underselling the point. As several anchors have observed, the exercise is in many respects similar to issue-spotting on an exam or hypothetical, and would be helpful when faced with a client who is trying to tell his or her story in non-legal terms. Lawyers need to understand their audience and their purpose<sup>26</sup> for communication, just as good journalists do in order to make their work understandable, relatable, and useful.

For anchors as well as lawyers, it is only the final product which matters, and it should be free from embellishment, which is often a difficult principle to accept. Most of today’s law students have graduated from an educational system in which they constantly heard the refrain, “show your work,” and many will have realized that they could manipulate teachers into giving them an “A for effort.”<sup>27</sup> Some have come to communicate in overly-formal or ornate ways because they were consistently rewarded by educators who equated precociousness with intelligence. Paper Chase anchors and practicing attorneys must learn to suppress the urge to “see writing projects as a chance to show...how much research they have done.” In a law firm environment, “partners don’t want to see the work that went into the memorandum; they want to solve the problems on their desks. Nor do partners want the intellectual pontifications that many associates include to make themselves look clever.”<sup>28</sup> Similarly, Paper Chase readers do not care about anchors’ research processes, do not want a post to be linked to every web page under the sun, and have no need for showy rhetorical flourishes. Instead, they want to get the relevant information and the links to the documents they need.

### B. Legal Research

Paper Chase posts are value-added products made by providing readers with research results, which are really the hallmark of the service. The news is just an “excuse,” a framework on which to hang the research product. The most fundamental and groundbreaking aspect of staffers’ research is that it is done entirely online. At first this technique seems unremarkable, because most students and practitioners are familiar with accessing Lexis or Westlaw online. However, these are not really internet services *per se*, but rather “legacy” structures made up of databases from the 1970s and 1980s which cannot be

25. Munneke, *supra* note 10, at 139.

26. Lawyers Weekly, *supra* note 24.

27. Bohl, *supra* note 18, at 790-91.

28. Ross Guberman, Why Johnny, Esq. Can’t Write: Ten Causes and Ten Solutions, Prof. Dev. Q. 1, 2 (Nov 2006), <http://www.legalwritingpro.com/pdf/guberman-pdq.pdf>.



accessed without a subscription.<sup>29</sup> They carry basic cases and legislation, but they do not even try to collect vast chunks of procedural content, studies, academic analyses (papers, blogs, etc.), briefs, multimedia material, etc. There is also often a long lag time before information becomes available on these subscription services, which adds nothing new to their content. Whereas most material from international tribunals or United States appellate courts is made immediately available on their own official websites, such documents may never be provided through Westlaw or Lexis.<sup>30</sup>

An anchor begins researching his or her story by working backwards from what JURIST has already published on the topic, which involves searching JURIST's archive of over 28,000 past Paper Chase posts. This exercise echoes the experience of an attorney using his or her firm's past work product as a guide for developing new memos or briefs, while also providing a sense of security and guidance for new staffers. Everything on JURIST is tied to something else, in a mind-mapped or web-type format, so anchors also search JURIST's commentary services for related content. For a student working with an unfamiliar story, this step quickly provides the background information needed to develop the proper search terms<sup>31</sup> for finding additional outside materials.

Using these search terms, it is the anchor's job to find relevant secondary sources which add real explanatory depth to the story. In addition to the JURIST archival content, secondary sources might include issue backgrounders, profiles of individuals important to the story, State Department country reports, etc. Although Paper Chase posts are brief, they are rich with detail, and as with any research project, "[t]he problem should be in a topic sufficiently specialized that the students cannot proceed successfully without first grounding themselves through the study of commentary."<sup>32</sup>

Although news reports are obviously helpful in initially orienting anchors to an assigned story topic, only minimal attention should be paid to existing news coverage of a story. Anchors are not at all bound to the angles taken by other news services, and should derive their facts from primary sources in order to interpret the story and write their own post with a legal emphasis

29. See Bernard J. Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. Rev. 615 (1996).

30. Pamela Lysaght & Danielle Istl, *Integrating Technology: Teaching Students to Communicate in Another Medium*, 10 *Legal Writing* 163, 172 (2004).

31. This process is quite similar to the "Descriptive Word Method" taught to first-year law students. "Thomson West, the publisher of the majority of legal materials in the United States...based [it] loosely on the six questions beginning journalists are taught in their entry level classes (who, what, when, where, why, and how)." William A. Hilyerd, *Using the Law Library: A Guide for Educators Part V: Finding Legal Materials by Topic*, 34 *J. L. & Educ.* 533, 534-35 (2005).

32. Spencer L. Simons, *Navigating Through the Fog: Teaching Legal Research and Writing Students to Master Indeterminacy through Structure and Process*, 56 *J. Legal Educ.* 356, 368 (2006).



appropriate to Paper Chase.<sup>33</sup> Thus, once they are sufficiently versed in the fundamentals and context, students go on to search for the primary sources which drive the story. Depending on the particular event, these documents vary greatly. They might be judicial opinions, legislation, reports containing new human rights findings, official statements, briefs, transcripts, or some other firsthand material.

Soon after training, Paper Chase anchors begin discovering “where the bodies are buried.” They find out which internet-based sites and services—legal, governmental, NGO, advocacy, etc.—are biased,<sup>34</sup> and which to use for getting the best information on substantive issues. They also learn how to deliver that information to others via hyperlinks,<sup>35</sup> which is actually harder than it looks, because linking to some of this material is technically difficult. Certain enterprising staffers go beyond that level of research: they actively solicit materials from sources by getting attorneys to send them briefs, asking government representatives to send them studies and comments, etc. This kind of advanced research experience will be a real money-saver once students graduate and begin to practice law, because “common sense suggests that law firms will increasingly integrate [free information sources] into existing research conventions.”<sup>36</sup> The Lexis or Westlaw accounts provided to incoming law students often become a crutch (which of course is the reason they are given to law students free-of-charge), and most graduates will not have had to think about how to maximize results while minimizing search fees. Even if a lawyer is employed by a large firm, not all search costs can be passed on to the clients, and those practitioners already familiar with free internet research procedures will have quite an advantage.

### C. Legal Writing

From the students’ perspective, the third key benefit of working on Paper Chase is the writing itself. Paper Chase’s written content is independent coverage of substantive legal developments written in plain language with a focus on making primary sources easily accessible to the public. Staffers write, edit, and conduct correspondence continuously and under pressure. To be strong Paper Chase anchors, students have to navigate unfamiliar topics in order to organize their research into writing which is fluid, accurate and concise. We as a society are increasingly pressed for time to produce and

33. Many law students have the misconception that research papers and law review notes are created by piecing together many different scholars’ works. The process of writing a news post using primary sources forces them to let go of such ideas and breaks the habit of “collage” writing.

34. See Lorraine Bannai & Anne Enquist, (Un)Examined Assumptions and (Un)Intended Messages: Teaching Students to Recognize Bias in Legal Analysis and Language, 27 Seattle U. L. Rev. 1 (2003).

35. A process which is not dissimilar to footnoting an academic article or citing to authority in a brief.

36. Lysaght & Istl, *supra* note 30, at 165.

consume information, meaning that we need to put a premium on teaching students how to write quickly, correctly, and concisely. For many students it is easy to get overwhelmed by research, and so the most confusing part of the legal writing process is determining when to actually begin putting something on paper.

Paper Chase anchors are told to return to the basic model if they get lost, and to write down “who did what” just to get started. The first paragraph of a standard two-paragraph post essentially conveys a modified “5W’s” (and 1 H) of an important development in current legal news:

- Who did What When and Where?<sup>37</sup>
- Why is the development of legal significance?
- How does the development tie into the subject’s background?

For the truly confused, simply asking, “What happened?” can often allow a student to pull the essence of the story from the volumes of information. Explaining the events and facts to someone else can clarify information in a way writing notes on paper cannot.

The remainder of the first paragraph fleshes out the details alluded to in the first sentence by explaining legislation, giving procedural posture, describing the court’s reasoning, or elaborating on evidence cited by a particular advocacy group. Students are told to stay away from politics and maintain neutrality, but learn a skill they will need for arguing a point in a brief by playing the Devil’s advocate. Since issues generally have at least two points of view, they are instructed to provide both the main argument and its rebuttal. When lawyers ask appellate courts to rule a particular way, they have to understand how such a ruling would affect greater bodies of law as a whole. JURIST staffers, therefore, generally include in their first paragraph a “look forward” with information about how the development could alter precedent or result in meaningful consequences.

To finish the post, anchors must draft a second paragraph tracing the “story arc” behind the most recent legal development. Returning to the archived JURIST content they first consulted to create their search terms, they analyze these materials to build on the past work of other staffers by streamlining and re-faceting it, adding new research and tying facts to other stories or sections of JURIST as necessary to help support their narrative.

Deficiencies in students’ writing abilities are soon discovered by the JURIST professional staff, but can be rapidly remedied by working with peer editors and the professional staff. Early on, shifts can be tense for both editors and writers, as many students have come to “feel entitled to good grades”<sup>38</sup> and are unaccustomed to receiving any kind of real criticism requiring them to conform their work to a paradigm. Initial responses of “confusion and

37. This first sentence is referred to by journalists as the “lede” and begins the paragraph with what is essentially identical to the “rules-first” format of legal writing. Koch, *supra* note 15, at 238.

38. Bohl, *supra* note 18, at 790.

hostility”<sup>39</sup> are commonplace, as today’s students are often reluctant to accept the notion that their work could actually be wrong, and not just “a valid alternative”<sup>40</sup> to their editor’s subjective viewpoint. Butting heads with these new staffers by insisting that there is only one correct method generally does not work. Instead, a member of the professional staff initiates a face-to-face discussion of the reasoning behind the requirement that the student conform his or her work to the model. This encounter must be in person to be effective, but once a staffer understands why things must be done in a certain way, he or she will almost always accept the standard and begin to conform to it.

#### IV. Application to the Learning Style of Modern Students

Studies show that today’s students work best when given clearly-defined standards and that they are accustomed to frequent assistance and supervision.<sup>41</sup> Unfortunately, sometimes professors can mistake these generational traits for stupidity or immaturity. These misunderstandings have the potential to cause instructors to develop contempt for students whom they believe need “hand-holding”<sup>42</sup> in order to accomplish anything. In turn, students looking to their writing instructors for guidance can become angry and frustrated when denied the help they seek. Accordingly, to promote mastery of research and writing methods, professors must show law students how to “self structure” their work.<sup>43</sup> While they are developing that skill, students’ need for external support can be met through collaborative learning, providing a welcome respite from the competitive atmosphere of legal education. Analyzing and explaining real issues rather than evaluating hypothetical scenarios makes for active learning, so that students synthesize information more quickly and retain lessons for future use.

##### A. Self-Structuring

The most important factor that makes Paper Chase work as a legal research and writing exercise is a defined set of standards for good performance.<sup>44</sup> Objective criteria for posts are found in JURIST’s staff manual, perhaps best explained as “*The Bluebook* meets *The Associated Press Stylebook*.” The manual covers everything: the editorial process, writing tips, style, and ethics, supplemented by brief backgrounders on major national and international legal institutions and procedures that anchors are likely to deal with on their shifts. Staffers receive “continuing JURIST education,” and the instruction they receive from recruitment onward closely follows the traditional fundamentals of legal research and writing.

39. *Id.* at 789.

40. *Id.* at 798.

41. Ingham & Boyle, *supra* note 17, at 290.

42. *Id.* at 288.

43. *Id.*

44. *See id.* at 291–92.

Of course, external motivation can only go so far. High-achieving adult students generally demand a great deal of themselves,<sup>45</sup> but for those without such internal drives, their desire to last through their probationary period usually spurs them to focus on getting it right the first time.<sup>46</sup> Eventually, students realize that the staffers who hate to make mistakes because they take pride in their work are also the staffers who rise to positions of responsibility within the organization. JURIST staffers are always reminded that they control their own level of success.

Itemized lists of substantive edits or a couple of suggestions for concrete skills in need of improvement do much more to improve writing in the long term than do vague generalizations about “analysis” or “style.” Accordingly, Paper Chase anchors get specific guidance and feedback on their work and they get to ask questions while they are writing. The process relies on instant messaging so that peer editors can stop problems before they start by monitoring students’ work within our publishing software in real time. After the anchor marks a post “DONE,” an intermediate editor will review it, and will either send it back to the anchor for additional work or will approve it. Prior to publication, the editor sends the anchor a bulleted list of what was changed—and more importantly *why* it was changed—so that the anchor can use this concrete information to improve with each post instead of wondering what happened to his or her work during the editing process. It is then the student’s responsibility to follow up by checking the published post, which he or she then submits to outside aggregation services.

Besides providing readers with news on the JURIST website, a Paper Chase post serves as a valuable demonstration of the general research, writing, editing, publication, and distribution process which is common to practitioners and academics. Due to a post’s short length, a student or recent law school graduate can easily understand its structure, whereas they might have great difficulty seeing the organization of a whole legal research manual or even of a long law review article.<sup>47</sup> The post’s basic structure provides an overwhelmed novice with a defined goal, rather than a hazy ideal, and represents the much-needed basic map for “how to get from here, a fact situation, to there, a comprehensive analysis of the problems presented by the facts.”<sup>48</sup> Directing students to such an easily-embraced model as a Paper Chase post could keep students on a direct path through their writing assignments, improving focus and clarity.<sup>49</sup> The method might solve the problem of how to provide concrete

45. Susan R. Dailey, *Linking Technology to Pedagogy in an Online Writing Center*, 10 *Legal Writing* 181, 192 (2004).

46. “The deeply rooted notion still persists that law students should have learned to write before coming to law school. If they did not, it is somebody else’s fault, and it is too late to do anything about it.” Southerland, *supra* note 14, at 65.

47. “Sometimes projects seem so colossal that they overwhelm the attorney. They become so big that the lawyer cannot get her hands around them.” Munneke, *supra* note 10, at 141.

48. Simons, *supra* note 32, at 356.

49. Hollee S. Temple, *Here’s a Scoop for the Law Profs: Teach Your Students to “Think Like a*

guidelines<sup>50</sup> without creating the impression that professors will be leading students every step of the way.

### B. Collaborative Learning

The intense zero-sum competitions which are common among law students have led many to the conclusion that “[l]aw school will not, cannot, be an open sharing of ideas, a collegial learning experience. It is a foot race.”<sup>51</sup> Unlike every other part of the law school experience, JURIST does not pit students against each other, and despite being almost entirely virtual, it instead fosters a sense among staffers that they belong to a community of people with shared goals and values. Rather than concerning themselves with cutting corners to get the best grade, staffers can concentrate on mastering skills and comprehension, exactly as they are supposed to be doing in their “substantive” courses.

Whether fueled by films or their own desire to participate in meaningful debate, many law students envision the law review experience as a time to come together with faculty and other students to engage in intense, theoretical discussions about the law in smoke-filled offices late at night. Accordingly, they strive to grade-on or write-on, only to be disappointed when they learn that they will often merely be responsible for menial tasks such as checking citations. Little interaction occurs among upper- and lower-level law review staffers, and faculty advisors are often nowhere to be seen. The JURIST model stands in stark contrast to this modern law review scenario by providing constant feedback and playing host to a community where they can share information and ideas.<sup>52</sup> In addition, anchors are encouraged to pursue stories which relate to their own interests and pre-law-school selves. All of JURIST’s staffers recognize the value of this outside experience, and capitalize on it to improve not only the site, but themselves as well. When students are invested in the actual subject matter of their research, the skills they learn are more likely to sink in and have lasting impact.<sup>53</sup>

JURIST’s professional staff members do not teach students how to write briefs or follow *The Bluebook*, but—like legal research and writing professors—they teach law students how to conduct research and convey a legal narrative in a specific format. The Paper Chase editing process helps to build confidence while simultaneously resolving any shortcomings. It is as if an encouraging legal writing professor were always looking over one’s shoulders.<sup>54</sup> In a similar

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Journalist,” 81 U. Det. Mercy L. Rev. 175, 185 (2004).

50. See Ingham & Boyle, *supra* note 17, at 291.

51. Southerland, *supra* note 14, at 67.

52. Bohl, *supra* note 18, at 785–86.

53. *Id.* at 785.

54. “A majority of students express a strong preference to work with authority figures. With this understanding, how approachable a faculty member is perceived to be becomes an

but less-intensive manner, several large firms have employed a scaled-down sort of peer review system by assigning summer associates or new hires to a “writing coach,” usually a more experienced lawyer or partner who reads and provides feedback on work product.<sup>55</sup>

JURIST also directly engages staffers with legal newsmakers, activists and commentators—the people who make or analyze the stories we cover. This is vaguely similar to the traditional relationship law review staffers have with legal scholars, but it is significantly more intense, and in real time. In the process of soliciting primary source material or getting reaction to stories, JURIST staffers get a sense that they are more than just observers or conveyors, but rather are active participants in real-world legal process.<sup>56</sup> The sense of community persists even after students leave. Several students have remained actively involved in site operations after graduation, while others continue to stay in touch and take an ongoing interest in JURIST by serving on the board of directors, writing commentary for the site, or providing pro-bono legal services.

### *C. Active Learning*

Clinical legal education programs have increased in popularity and number over the past few decades, as law schools have taken notice that they “add[] value to the entire educational process by supplying a bridge between theoretical concepts acquired in traditional classes and the application of such knowledge in practice settings.”<sup>57</sup> At the same time, many professors at so-called “elite” schools—and those hoping to attain that status—look down on schools providing skills education, asserting that their own institutions rise above mere training and focus on the more theoretical aspects of the law and teaching students how to think like lawyers.<sup>58</sup>

In a clinic, students are supervised in an environment which teaches them practice skills while they are performing a public service. JURIST is not exactly a clinic, as there is no litigation or formal legal representation going on, but essentially the same bridging is happening. JURIST gives students the opportunity to gain real-world research and writing skills by creating a kind of scholarship on Paper Chase. Students serve the public by presenting critical information for academics, practitioners, and laypeople, and in the process they learn about the law as it evolves. Their experience is not marred

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important element in the teaching-learning process.” Ingham & Boyle, *supra* note 17, at 292.

55. Lawyers Weekly USA, *supra* note 24.

56. “Mesmerized by grades, [law students] cannot grasp the critical difference between being taught and learning.... They cannot seem to realize that for all practical purposes they are lawyers already because they are too accustomed to thinking of themselves as students. And the current style of legal education does little to disabuse them of this notion.” Southerland, *supra* note 14, at 68.

57. Munneke, *supra* note 10, at 125.

58. *Id.* at 128–29.



by the stigma which so frequently accompanies practical skills training, but provides all of the benefits of the active learning method<sup>59</sup> found to be most effective for today's students.<sup>60</sup>

## V. Suggested Classroom Applications

The JURIST method of teaching legal research and writing can be applied in numerous ways. Because this article focuses on law school instruction, however, presented here are a few easily-implemented classroom techniques expected to produce the biggest improvement in student skills, an assessment based on personal experience and staffer feedback.

### A. Skills Assessment

During the JURIST application and audition process, students complete editing and writing exercises so that senior staffers can assess their strengths and weaknesses. By the time selected students begin producing content for the site, their problem areas have already been identified and they know where they have to focus in order to improve. Similarly, professors should consider giving their students a skills assessment prior to beginning any legal writing instruction or assigning any projects. It is a sad fact that a large number of students come to law school without knowing the usage rules for homonyms, such as "there/they're/their." Although it may be tempting, complaining about such problems does nothing to improve the students' writing. Thankfully, it is not necessary for the professor to stand at the chalkboard and instruct adult law students on the finer points of dangling participles. Instead, handing out a diagnostic test and going over the correct answers during the very first class of the semester would show students where their weaknesses lie. Some students likely do not realize that they have deficiencies in such fundamental skills as grammar, syntax, or spelling, and pointing out these issues at the beginning of the semester saves the professor the frustration of noting every instance of a misused "it's" or "its" when it comes time to review students' memos and briefs later on.

### B. Providing a Path to Success

Perhaps the easiest lesson to take away from the JURIST model for teaching research and writing skills would be that today's students need concrete guidelines in order to succeed. First-year law students will need the most structure in their assignments, but even more advanced students enrolled in seminars will produce better work if they know exactly what is expected of them. Paper Chase anchors receive a checklist that they must review prior to submitting their posts for editing, so that they can be sure they have met the objective criteria, allowing the editors to focus on helping them with the subtler stylistic points. In the classroom environment, a professor could help

59. See Hugh Brayne, Nigel Duncan & Richard Grimes, *Clinical Legal Education: Active Learning in Your Law School* (Blackstone Press Ltd. 1998).

60. Bohl, *supra* note 18, at 785.



the students and make his or her own work easier by handing out a grading rubric<sup>61</sup> when assigning papers. This rubric would put the students at ease by allowing them to see exactly how their work will be assessed, and if students later dispute their grades, the professor will be able to point to objective criteria as the basis for the score. This method both provides a comforting structure for the student and sends the message that grades are not based on the professor's subjective judgment, but rather are grounded in a quantitative assessment. Professors may also want to try out the JURIST teaching method of giving very few models for what students should do, and instead provide many instances of what they should *not* do. When students see an elaborate and complete example, they often interpret it as the golden standard and may consequently limit their own creativity.

Professors or even law school orientation speakers might try teaching students to prepare for classes by briefing cases in the way that Paper Chase anchors report on new rulings. The traditional Langdellian teaching model is preserved, and the procedure is so simple and intuitive that students might actually brief cases beyond their third week of law school, getting daily writing practice in the process. Moot Court advisors or write-on supervisors might want to recommend that students put together a series of these two-paragraph "briefs" in order to keep a handy synopsis of each of the dozens of cases involved. The first paragraph sets out the law or rule and main issues of the case, while the second paragraph puts the development in context by describing the surrounding facts.<sup>62</sup> Paper Chase posts could also be used to help students to organize<sup>63</sup> longer assignments by "us[ing] this heuristic to frame their issues, begin their research, and synthesize their materials."<sup>64</sup> In this way, students would be able to sort out their research and find their argument by focusing on creating a sort of miniature model for a project without getting overwhelmed by the daunting task of structuring a whole memo, possibly for the first time.

### *C. Many Small Assignments*

Much of the improvement in staffers' research and writing abilities is due to repetition and time constraints. This aspect of the JURIST model would suggest that professors seeking to help their students with deficiencies in these areas should assign students many smaller projects of short duration, rather than allotting them the whole semester to write one or two lengthy papers. Strict time constraints will force the students to focus on only the most important elements, and will simulate the pressure of their future careers more

61. For a discussion of how to craft a grading rubric for student memos, see Karen J. Sneddon, *Armed with More Than a Red Pen: A Novice Grader's Journey to Success with Rubrics*, 14 *Persp.: Teaching Legal Res. & Writing* 28 (2005).

62. This procedure is very similar to "applying the law in two paragraphs." See Donald N. Zillman & Evan J. Roth, *Strategic Legal Writing*, 89-90 (Cambridge Univ. Press 2008).

63. The reader will recall that "poor structure/rambling organization" was cited earlier in this article as being one of the main problems with legal writing. Shannon, *supra* note 4.

64. Markan, *supra* note 11, at 563.

closely than a leisurely-paced progression through a semester-long project. The success of JURIST's approach would also indicate that professors should not make each of those small projects unique, but instead should allow for some repetition in order to promote mastery of skills prior to moving on to other areas. If students are just told to write one case summary, one judicial opinion, one memo, and one brief, then they will be mediocre at writing each of them, and it is incredibly unlikely that any instruction regarding such one-time-only assignments will be recalled later on.

Breaking up large assignments into smaller varied tasks is more likely to hold the students' interest and attention, as well. Class time need not be turned into pure entertainment, of course, but small changes influenced by JURIST's emphasis on making the law seem more immediate and relatable can make a big difference. For example, although the hypothetical fact pattern is a much-loved pedagogical device, professors might have more luck reaching their students if they discussed real people's problems in an evolving area of the law. The "old standard" cases need not be abandoned, but professors teaching any kind of law school course will help their students to identify with their subject matter by occasionally assigning a case handed down yesterday, not seventy years ago, while making clear how the decision changes things for future litigants. Professors will be able to cover the necessary doctrine, and such assignments can even be used as opportunities to incorporate writing exercises into "substantive" classes.

#### *D. Peer Editing*

Feedback is a vital part of an anchor's experience, and the constant reviews produce the greatest changes in students' work. There is no doubt that providing ongoing high-quality criticism is time-consuming, but it is ultimately the only way to generate meaningful long-term improvement. One way to provide students with frequent feedback without overwhelming the professor with reams of compositions is to introduce peer editing exercises in the classroom. In addition to having more advanced anchors edit the raw posts of new recruits, JURIST professional staff occasionally give the same story assignment to everyone in a group and then have the students review each other's work aloud. In the process of editing another person's work, they learn how to better edit their own writing.<sup>65</sup> Merely seeing that others do things differently can open students' minds to new possibilities, and can also help students to realize for the first time that they actually have a personal writing style.

### **Conclusion**

Whatever others might teach them, JURIST student staffers ultimately succeed in their efforts to become better researchers and writers because they are motivated to keep learning. They consistently report that they enjoy what

65. Bryan A. Garner, *Why You Should Start a Writing Group*, in *Garner on Language and Writing* 33 (ABA 2009).

they do because they get to see “the law in action,” rather than just learning it through hypothetical scenarios or 19th century disputes written in what appears to be some sort of foreign language. Particularly in the first year, but throughout law school as a whole, the problems students encounter in the classroom have already been resolved, and the people whose troubles are described in their casebooks are long dead. They rarely get to analyze or engage with exciting new developments, and so their research and writing projects seem dry and tedious. Rather than lamenting what is perceived as disinterest and lack of preparation, professors should seek out new ways to reach today’s students. The legal journalism methods developed by JURIST and discussed in this article represent one possible approach to this ongoing search.

## Appendix

PAPER CHASE | US LEGAL NEWS | WORLD LEGAL NEWS | NEWS ARCHIVE | THIS DAY AT LAW

## PAPER CHASE NEWSBURST

Serious law. Primary sources. Global perspective.

Thursday, September 04, 2008

## Sixth Circuit rules on challenge to EPA regulation of Kentucky waters

Abigail Salabay at 5:44 AM ET



[JURIST] The US Court of Appeals for the Sixth Circuit [official website] on Wednesday ruled [opinion, PDF] on a suit brought by several Kentucky environmental groups, including a chapter of the Sierra Club [advocacy website], against Stephen L. Johnson [EPA bio] in his official capacity as Administrator of the US Environmental Protection Agency (EPA) [official website]. The plaintiffs filed suit under the Clean Water Act [text], seeking to compel Johnson to fulfill his duty to implement anti-degradation requirements for Kentucky. In a complex order, the Sixth Circuit affirmed the district court's grant of summary judgment to the EPA on the challenge to the EPA's approval of Kentucky's selection of regulated waters, reversed the grant of summary judgment to the EPA on the EPA's approval of Kentucky's exemption of six types of pollution discharges from review, and remanded the matter to the EPA. Judge Clay authored the opinion, stating "In my view, the EPA acted contrary to law by relying on [Kentucky's] unenforceable commitments."

In recent months, the EPA has been sued by a number of states seeking either the promulgation of regulations or effective response to problems. In August, twelve states filed suit [press release; JURIST report] against the EPA for its alleged failure to enforce provisions of the Clean Air Act [text; EPA materials] requiring oil refineries to adopt measures curbing the pollution contributing to global warming. In July, California Attorney General Jerry Brown [official website] formally notified [letter, PDF; press release] the EPA that the state had petitioned the EPA three times seeking a regulatory ruling and would file a lawsuit [JURIST report] against the agency if it refused to issue rules regulating greenhouse gas emissions from various vehicles and types of machinery.

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Post available at: <http://jurist.law.pitt.edu/paperchase/2008/09/sixth-circuit-rules-on-challenge-to-epa.php>.

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## PAPER CHASE NEWSBURST

Serious law. Primary sources. Global perspective.

Thursday, September 04, 2008

## Ninth Circuit maintains position on 'first sale' defense to copyright actions

Abigail Salabay at 6:13 AM ET



[JURIST] The US Court of Appeals for the Ninth Circuit [official website] on Wednesday reversed [opinion, PDF] a district court's grant of summary judgment to retailer Costco in a copyright infringement action brought by watch manufacturer Omega [corporate website]. Omega claimed that Costco's unauthorized sale of its imported watches constituted infringing distribution and importation. The decision turned on whether the US Supreme Court's decision in *Quality King Distributors, Inc. v. L'anza Research International, Inc.* [LII materials] required the Ninth Circuit to overrule its precedent that the "first sale doctrine" raised by Costco as a defense provides no protection against an infringement claim involving

(1) foreign-made, nonpirated copies of a U.S.-copyrighted work, (2) unless those same copies have already been sold in the United States with the copyright owner's authority.

The Ninth Circuit held that the Supreme Court's ruling could be reconciled with its own case law:

Perhaps most compelling is the objection that [the precedent] would provide substantially greater copyright protection to foreign-made copies of U.S.-copyrighted works. A U.S. copyright owner, for example, would be unable to exercise distribution rights after one lawful, domestic sale of a watch lawfully made in South Dakota, but, without the limits imposed by [the first sale doctrine], the same owner could seemingly exercise distribution rights after even the tenth sale in the United States of a watch lawfully made in Switzerland. The difference would likely encourage U.S. copyright owners to outsource the manufacturing of copies of their work overseas. [The Court has] resolved this problem by clarifying that parties can raise [the defense] in cases involving foreign-made copies so long as a lawful domestic sale has occurred. Insofar as Costco contends that [the doctrine] should apply to foreign-made copies even in the absence of a lawful domestic sale, the surviving rule... requires otherwise. [citations omitted]

The court went on to find that "because there is no genuine dispute that Omega made the copies of the Omega Globe Design in Switzerland, and that Costco sold them in the United States without Omega's authority, the first sale doctrine is unavailable as a defense to Omega's claims."

The Supreme Court's decision in *Quality King* had reversed the Ninth Circuit's rejection of the first sale defense, holding that "the whole point of the first sale doctrine is that once the copyright owner places a copyrighted item in the stream of commerce by selling it, he has exhausted his exclusive statutory right to control its distribution." Wednesday's ruling does not fall squarely under that precedent, because while Omega's watches were produced abroad, the goods in *Quality King* had been produced in the US, exported, and then returned to the US for domestic sale. The first sale doctrine lies within Section 109(a) of the 1976 Copyright Act [text], and its application is easily in such transactions, which are said to occur on the "gray market" [backgrounds] and involve the resale of goods with US trademarks or copyrights.

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Post available at: <http://jurist.law.pitt.edu/paperchase/2008/09/sixth-circuit-rules-on-challenge-to-epa.php>.