

1-1-2014

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### Recommended Citation

Moritz, Deborah (2014) "Think and Suggest: Bringing the Real World to the Legal Writing Classroom," *Hofstra Law Review*. Vol. 43: Iss. 1, Article 7.

Available at: <https://scholarlycommons.law.hofstra.edu/hlr/vol43/iss1/7>

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## THINK AND SUGGEST: BRINGING THE REAL WORLD TO THE LEGAL WRITING CLASSROOM

Deborah Moritz\*

*Legal education is experiencing its biggest shake-up in decades. Applications to law school are down about 45 percent since 2009, and millennials—more than any previous generation—are rejecting law school. This ‘crisis’ has caused much soul searching in the legal academy, but the problems are clear: We are using the same old approach to teaching students that schools used over 100 years ago, tuition is higher than ever, and traditional legal jobs are scarce. So how can we fix this?*

– Monré D. Carodine<sup>1</sup>

I recently asked the University of Wisconsin Law School, where I teach Legal Research and Writing (“LRW”), if I could order a box of the pens that I like to use to grade papers. My request was rejected, and I was given a handful of leftover pens to use. The reason my request was rejected was because it is a time of fiscal austerity, and pens, apparently, come under attack in such times. My first job after graduating from Hofstra University School of Law in 1979 was with the New York City Corporation Counsel’s Office (“Corporation Counsel’s Office”). This also was a time of tight budgets and governmental austerity. And the Corporation Counsel’s Office took an even harsher position on pens: it did not provide them at all (this, of course, was when we handwrote all of our work). Instead, we received pencils with the phrase “Think and Suggest” printed on the side. At the time, I found the phrase a little

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1. Monré D. Carodine, *Fix Legal Education: Send Law Profs Back to the “Real World,”* OZY (Mar. 6, 2014), <http://www.ozy.com/c-notes/how-to-teach-law-to-millennials/6645.article#ixzz2vZ9KHKGG>.

annoying. But over the course of my career, I have come to appreciate that this little phrase concisely explains what lawyers do.

Just last summer I experienced an important “Think and Suggest” moment. I was walking to my car one beautiful summer evening past the door that leads to the section of the law school building where the clinic offices are located. Clinical Professor Mary Prosser, then acting director of the Frank J. Remington Center at the University of Wisconsin Law School, was standing outside and stopped me. She had an idea, she said, that she had gotten from a recent conference. She wondered if I was interested in a collaboration between LRW and the clinics. I was interested and asked what it would involve. She responded that the LRW students would work with one of the clinic’s clients on a real issue. Professor Prosser explained that she had seen a presentation done on such a collaboration, and she had been impressed by how excited the students were about it. I was intrigued.

Law schools have been criticized in recent years for the inability of their graduating students to obtain jobs. In the past, employers were willing to pay new attorneys and train them in the skills they needed to actually practice law—this appears to be changing.<sup>2</sup> So, I have been thinking over the last few years about how to change my LRW assignments to help students learn more skills, and particularly, to be better prepared to work with facts.

My first attempt involved using a problem based on the political protests that were happening in Wisconsin at the time. The issue did not require the students to take a political position, but it did involve being aware of the events that had actually occurred. This problem did not achieve my goal. First, the students—even the ones who had lived near the center of the events—were not as familiar with the events as I had assumed. Second, they did not think to look at real news sources to discover the facts. They assumed it was a hypothetical situation and treated it that way.

Having learned from these mistakes, I created a different problem for the next year. The new problem involved a factual and legal situation with which almost all of them were familiar: social host liability for underage drinking. The problem was set in the context of a college

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2. See, e.g., Adam Cohen, *Just How Bad Off Are Law School Graduates?*, TIME (Mar. 11, 2013), <http://ideas.time.com/2013/03/11/just-how-bad-off-are-law-school-graduates>; Phillip Reese, *One in Six Recent California Law School Grads Can't Find Jobs*, SACRAMENTO BEE (May 21, 2013, 8:12 AM), <http://www.sacbee.com/2013/05/19/5432793/one-in-six-recent-california-law.html>. One response to this has been teaching more skills in law school. See Katherine Mangan, *Law Schools Revamp Their Curricula to Teach Practical Skills*, CHRON. HIGHER EDUC., Mar. 4, 2011, at 1, available at <http://law.wlu.edu/deptimages/news/thirdyearchronicle.pdf>.

football game. The assigning memo gave them enough information to allow them to begin the legal research, but it did not give them enough information to answer the question asked. They did not have all of the facts that they needed to answer the question, and they were told that in order to determine what additional facts they needed, they had to do some legal research. I also told them that they would have a chance to interview their client, and that before the interview, they needed to email me one question they would like answered, and a list of any additional documents they needed.<sup>3</sup> One of my colleagues then came to class to role-play the client, and the students interviewed her. I also gave the students class time to do any additional factual research they needed to do.<sup>4</sup> This assignment worked better. The students understood the factual context and asked good questions. One of the students commented that the problem was good because it could have really happened. But it was still clear that this particular situation had not really happened—it was a hypothetical.

So back to my beautiful summer evening conversation with Professor Prosser. I was excited about collaborating with the clinics on a real world problem, but concerned about how we could go about implementing it, and whether we could do it that semester. Getting started on this project turned out to be easier than I had anticipated.

First, Professor Prosser and I met with the directors of the programs involved. They agreed that it sounded good, so we met with the LRW and clinical faculty. Everyone was interested, but some had concerns. The LRW faculty was concerned about the timing (it was only a few days before the start of the semester), and they were reluctant to change their assignments for the upcoming semester. The LRW faculty also voiced some concern about not being able to control a real problem the way we control hypothetical facts and questioned how we could ensure that the problem would meet our pedagogical goals. The clinicians were also interested (the University of Wisconsin Law School has a lot of clinics and a lot of clinicians<sup>5</sup>), but raised some different concerns. How would we maintain the clients' confidentiality? How could we meet court deadlines? What role would their students play? They were

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3. One of the documents a student requested was the police report (the underage drinker had been arrested). A former student, who was also a University of Wisconsin police officer, drafted a police report for the problem.

4. Among other things, we had an interesting conversation about how Blood Alcohol Content is calculated.

5. See *Clinical Programs*, U. WIS. L. SCH., <http://www.law.wisc.edu/clinics> (last visited Nov. 23, 2014); *Experiential Learning at UW Law School*, U. WIS. L. SCH., <http://www.law.wisc.edu/experientiallearning> (last visited Nov. 23, 2014).

concerned about how the project would affect their clients, their schedules, and their students.

Two professors at the Wisconsin Innocence Project,<sup>6</sup> however, had a project that met our needs. Professors Keith Findley and Carrie Sperling had recently attempted to obtain some public documents, but their request had been rejected. They wanted to know if the rejection was valid under the law. The legal issue was interesting and appropriate for first-semester, first-year students, and so we went ahead. After some quick research, we determined that the issue was challenging, but workable for the capstone first-semester project. We decided to try it.

Professors Findley and Sperling became the students' clients. The first thing we did was prepare the students to interview their clients. The week before the interview was scheduled, Professor Sarah Orr, a Clinical Associate Professor of the Consumer Law Project, came to class to teach client interviewing. She had two of her students demonstrate client-interviewing techniques. She then had the LRW students practice on each other.

It was then time for the LRW students to conduct the real interview. We did not tell them the factual or legal context of their clients' issue before the interview. We told them they would be given documents after the interview, but they had to get most of the information from their clients. The students interviewed Professors Findley and Sperling for nearly an hour. After the interview, the students were given all of the relevant documents to review, and they were assigned the memo.<sup>7</sup>

The students went to work and the results were impressive. The memos, as a group, were better than the usual first-semester, first-year class. All of the students did factual as well as legal research to support their arguments. Almost all of the students concluded that their clients were entitled to some relief under the law. Some of the students did extensive factual research as well as legal research. The memos contained many of the writing, analytical, and citation errors common to first-semester writing projects, but the better memos were multi-dimensional in a way that the more traditional LRW memos I have assigned were not. When I asked the students how they felt about the assignment, one of the students replied that she liked it because what she wrote really mattered and would have real consequences. Other students agreed.

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6. For information about the Wisconsin Innocence Project, see *Wisconsin Innocence Project*, U. WIS. L. SCH., <http://law.wisc.edu/fjr/clinicals/ip/index.html> (last visited Nov. 23, 2014).

7. We videotaped the interview and I had my research assistant, Kaitlin Kelly, take notes. Her notes then became the official facts for the exercise.

In the spring semester of 2014, we tried again. This time, the client was a clinical client who wanted sentence credit. His case was one of first impression in Wisconsin. The students received the assignment from Sara Brelie and Jeremy Newman, two clinical instructors. Although the students were given a highly edited version of the record (we changed the names, the jurisdiction, and omitted some of the facts), we still required them to sign a confidentiality agreement, and we discussed with them the importance of client confidentiality. The clinical instructors were available to answer factual questions about the documents and the record. They also addressed some simple questions about criminal procedure in Wisconsin.

As I wrote this Idea, I had just received the motion briefs my students wrote. On the day the briefs were due, I again asked how they felt about working on a real issue. One of my students said that she had done a lot of academic writing in the past, and she assumed perhaps six people had read with varying degrees of interest what she had written. With this project, she said, she knew that the people who read what she wrote would really care about what she said, and for that reason, she thought more carefully about what she said and how she said it.

I believe that these two collaborative projects have had a powerful effect on my students' LRW experience. At a recent conference where I spoke about the project, I was asked if luck hadn't played an important role in the success of this project. My answer was that there may have been a certain amount of luck, but I don't think luck was responsible. The project succeeded because the people involved in making it work were willing to try something new. We all stepped outside of the comfort zone of our established teaching methods. The collaboration did not require additional funding or resources, and it did not take a lot of time. It required flexibility and a willingness to relinquish some control and take some risk. The experience, at least from my perspective and that of the students with whom I have spoken, was fantastic.

It was not until I talked to one of my colleagues about the collaborative project that I figured out what made it such a powerful experience. I think that the students learned from this experience that research is not just about finding a case or statute in a legal database, but is part of the process of solving their client's problem. I believe that giving the first-semester law students the opportunity to make a human connection to legal writing helps them to understand that being a lawyer is more than just the application of mechanical skills to hypothetical facts. The students had a real connection to their clients, their work had consequences other than a grade, and consequently, they had more invested in their work.

And what do the clinics get out of this collaboration? The University of Wisconsin Law School has an intensive summer immersion program for clinical students. Professor Prosser believes that the students will be better prepared for participating in the clinics because they will have had the experience of solving a real problem for a client. It gives the students, she said, an early opportunity to feel like a real lawyer and begin to have a sense of lawyering as a service profession. Professor Prosser also noted that it benefited the younger clinicians by giving them the opportunity to have some creative teaching experiences that they would not otherwise have had.

There was an additional benefit that we had not expected. Professor Prosser said that before this experience, she thought of the LRW staff as just a group of people on the other side of the building. She had not thought about what we knew or what we taught. I, also, had not thought much about clinical teaching or how what I taught affected their work. We have both learned just how connected our work is. The collaborative project has given us a sense of common purpose and new respect for the work we each do.

As I pick up my hand-me-down pen to grade my students' briefs, I think of my old pencil, and the saying inspires me. "Think and Suggest" is what I do when I comment on a paper, it is what Mary Prosser did when she stopped to talk to me about a collaborative project, it is what my students did when they wrote their memos and briefs, and, most importantly, it is what lawyers do every day.