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## Foreword - Teaching Legal Writing

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## FOREWORD

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### SPECIAL ISSUE

Welcome to this issue of the *Legal Education Review*, Australasia's leading legal education journal. The papers in this issue centre upon the special topic of legal writing.

This issue contains three papers first presented at a Legal Writing Symposium hosted by Melbourne Law School in December 2015. The event was designed to highlight the diversity of approaches to teaching legal analysis and writing in law school, and the creative and inspiring people who think deeply about these topics. When Kate Galloway, current Editor in Chief of the *Legal Education Review*, heard about the symposium she approached me to suggest a special edition to highlight the papers presented. This edition is the result of her creative suggestion, the generosity of the editors at the LER, and the commitment of the authors.

Before I introduce the three articles, I would like to situate them in the context of that symposium. The symposium hosted 22 presenters from 11 different law schools located in Australia, New Zealand, and the United States of America, and 47 additional participants. The experience confirmed that faculty, in a diversity of teaching environments, are thinking carefully about how we teach legal analysis and communication with the goal of preparing law graduates for the multiple career paths they might pursue.

When I first put out the call for presentations, I was nervous about whether there would be enough interest to generate a full day of sessions. However, we received enough proposals to put together two streams, and each session was so interesting I think our participants genuinely struggled with deciding which ones to attend. I was keen to model the kinds of formats I had seen successfully implemented in the conferences for Global Legal Skills,<sup>1</sup> the Legal Writing Institute,<sup>2</sup> and the Association of Legal Writing Directors<sup>3</sup> so I encouraged a mix of presentation styles – from analytical papers to interactive

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<sup>1</sup> For more information on the GLS conferences see: <<http://glsc.jmls.edu/2017/>>. The conference is in Australia for the first time in December 10 – 12 2018. Past conferences were in Chicago and Washington USA, Monterrey Mexico, Verona Italia, and San Jose Costa Rica.

<sup>2</sup> The Legal Writing Institute 'is a nonprofit organization dedicated to improving legal communication by supporting the development of teaching and scholarly resources and establishing forums to discuss the study, teaching, and practice of professional legal writing.' The 3,000 members include law professors, judges, lawyers, researchers, consultants, and undergraduate professors from several countries. For more information, visit the website: <<https://www.lwionline.org/>>. The LWI has a vibrant listserv and I highly recommend subscribing if you are interested in this topic.

<sup>3</sup> The Association of Legal Writing Directors 'is a non-profit professional association of directors of legal reasoning, research, writing, analysis, and advocacy programs from law schools throughout the United States, Canada and Australia. ALWD has more than 300 members representing more than 150 law schools.' For more information, visit the website: <<http://www.alwd.org/>>.

demonstrations of specific teaching techniques. Thus, our keynote speaker was Lurene Contento, Assistant Professor and Director of the Legal Writing Center at The John Marshall Law School in Chicago. She kicked off the day by demonstrating how we might use games in legal education to improve student engagement and learning – within minutes we were set up for a lively day of teaching, learning, and laughing.

The sessions that followed ranged from careful deep dives into the theoretical foundations of teaching legal analysis and communication to entertaining and transformative activities designed to inspire us all in the classroom. Every presentation triggered energetic discussion and enthusiasm for the ideas and techniques presented. I want to acknowledge all the amazing presentations and offer a brief snapshot here:

- Samantha Kontra, James Murphy and Brendan Grigg (Flinders University School of Law) Engaging first year law students in a compulsory legal research and legal writing skills topic
- Tania Leiman (Flinders University School of Law) Is Drawing OK? Communicating legal ideas effectively using pictures and symbols
- Suzanne McMeekin and Janine Lay (Auckland University of Technology) Honing students' data base research skills and speedy assimilation of information from cases (in a statutory interpretation context)
- Kylie Fletcher Johnson (Bond University, Faculty of Law) First semester student: Legal Problem Solving Apprentice
- Gina Curro (College of Law and Justice, Victoria University) Staying on the Right Side of the Law: a relational model for integrating academic literacies into first year
- Linda Haller (Melbourne Law School) Identifying Ratio and Weighting Obiter
- Tammy Johnson and Kim Weinert (Bond University, Faculty of Law) Project Story Circle
- Julia Davis (University of South Australia Law School) and Colette Langos (University of Adelaide Law School) Transforming Legal Writing: The Student Law Review of the University of South Australia
- Peter Gray (Monash University, Faculty of Law) Teaching Lawyers How to Communicate Samantha Kontra and Brendan Grigg (Flinders University School of Law) AGLC Bingo: Using Games to Encourage First Year Law Students to Engage with the Australian Guide to Legal Citation
- Suzanne Ehrenberg (Chicago-Kent Law School) Teaching the Neglected Art of Written Persuasion
- Rosemary Langford (Melbourne Law School) Using client letters to demonstrate legal analysis and drafting

- Paula Baron (La Trobe University) and Lillian Corbin (University of New England School of Law) A Transformative Approach to Legal Writing
- Alex Steel (University of New South Wales Law) Reading Law – a Smart Casual professional development module on approaches to teaching reading to students
- Louise Parsons (Bond University Faculty of Law) Written submissions as pedagogical tools in teaching analytical and writing skills to law students
- Cosima McRae (Melbourne Law School) Reflective Practice: using reflective, debriefing and peer-reviewed writing to develop critical reflection in Street Law
- Kay Lauchland (Bond University Faculty of Law) What's your Point? Developing a Thesis Statement with Peer and Instructor Feedback through Online Discussion Boards

The three articles in this issue are examples of what was so exciting about the symposium: a combination of analytical rigour and suggestions for practical steps to implement the insights offered.

Tania Leiman's article asks 'Where are the Graphics? Communicating Legal Ideas Effectively Using Images and Symbols'. She begins by making the case for visual representations of legal concepts and reasoning as an aspect of professional legal communication that must adapt to new formats (for example, online delivery of content) because our readers vary in their familiarity and comfort with legal information. Using flow charts, tables, and pictures is an opportunity to present dense, technical, and challenging information in formats that may be easier for our audiences to understand and process. However, as Tania notes in her article, while this topic is not new to law schools, and there is scholarship on the topic, it is an ongoing reality that we rarely create opportunities for our students to engage explicitly with best practices in visual representation. She acknowledges the challenges in using these techniques and then provides her reader with a very helpful review of best practices. In her final section, Tania considers how these techniques might be imbedded in the law school classroom, the challenges in teaching this expertise with respect to creating and interpreting visual information, and provides practical examples from legal educators of how that might be done in a way that enriches the students' learning opportunities, and furthers their professional development as communicators.

In 'Critical Legal Reading: The Elements, Strategies and Dispositions Needed to Master this Essential Skill', Alex Steel, Kate Galloway, Mary Heath, Natalie Skead, Mark Israel and Anne Hewitt join forces 'to make the implicit techniques and strategies of expert critical legal reading explicit and thereby assist law teachers to better articulate them to their students.' They accomplish their goals by first establishing a taxonomy of the elements of critical reading. The important connection between critical reading and critical thinking

provides a foundation for their exploration of what legal experts do when they engage with a variety of documents (examples considered in the article: cases, legislation, private legal documents, policy, reform). The authors explore the complicated and interrelated way in which legal experts approach different documents; this attention to specificity allows them to make explicit the relevant skills: what they define as the mechanics of legal reading (terminology and syntax, abstraction and performativity, text structure); strategic skills (default, problem formation, rhetorical strategies); and critical reading skills (including the ability to critically engage with the text(s) and be self-critical about that process of engagement). The time and care the authors spend on setting up this taxonomy pays off in the next part when they provide extensive and constructive suggestions for how these skills might be taught in the law school classroom, and provoke their readers to additional research.

Suzanne Ehrenberg's article 'Teaching the Neglected Art of Persuasive Writing' makes a convincing argument for embedding explicit instruction in persuasive writing in the Australian law curriculum. She highlights how '[p]ersuasive writing instruction not only teaches students to effectively advance an argument in writing, but it enhances their analytical skills and their understanding of substantive law.' She clearly explains the ways in which persuasive writing differs from the predictive or analytical writing we usually require for our assignments, and provides a detailed and rigorous description of the skills necessary for effective advocacy. As Suzanne effectively and efficiently demonstrates, persuasive writing is a skill that requires: expertise with the material (both law and facts); analytical rigour; a grasp of how ethos, pathos, and logos can persuade; attention to form; a nuanced approach to word choice; a sophisticated appreciation of how both sentence and paragraph structure can influence the reader; and recognition of the relevance of policy and narrative techniques. Her careful explication of the elements of persuasive writing provides the foundation for the final section in which she suggests how we might embed these skills in Australian legal subjects with a practical awareness of the resource and financial limits of the various law programs.

All three articles in this issue provoke the reader to think carefully about what we do 'naturally' at this point in our professional lives. They provide us with conceptual frameworks and language with which we can identify our own processes of reading, analysis, and communication so that we can more effectively teach our students.

Particular thanks to Kate Galloway (Bond University), the Editor in Chief, who both provided the impetus for this issue and guided us all to get it done. I would also like to thank Nick James (Bond University), Executive Editor, Natalie Skead (University of Western Australia), Associate Editor and all the General Members: Matthew Ball (Queensland University of Technology), Allan Chay (Queensland University of Technology), Kristoffer Greaves (Deakin University), Anne Hewitt (University of Adelaide), Sonya Willis (Macquarie

University), Alex Steele (University of NSW), Kelley Burton (University of the Sunshine Coast), and Anne Macduff (Australian National University).

Chantal Morton

#### DEDICATION TO SUZANNE

This issue is dedicated to Suzanne Ehrenberg, Professor of Legal Research and Writing at Chicago-Kent College of Law. Suzanne was a dear friend to many in the legal writing community, a generous colleague, and a scholar whose articles and presentations shaped the way many of us approach teaching legal research and writing. She passed away 27 September 2017.

