

# Education & Practice

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## Fall 2022

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## Chair's Message

by David H. Spratt

Associate Director, Legal Rhetoric Program

Professor of Legal Rhetoric

American University, Washington College of Law

Another year of legal education is ending. We have weathered the challenges of COVID-19 and are now settling into a not-so-new normal. Although many of us fear change, we have proved we are adaptable and can face the unexpected with grace. Despite our personal resilience, some resist a professional growth mindset, holding steadfast to outdated, dare I say archaic, practices, particularly in legal writing.

On May 5, 2023, the Section on the Education of Lawyers will co-sponsor the **5th Annual Legal Writing Workshop** with the American University Washington College of Law Legal Rhetoric Program and the Virginia Bar Association Law Practice Management Division. This well-regarded workshop serves as a basic refresher of contemporary grammar rules and legal writing best practices and is designed to make you a better and more confident legal writer. Until then, to celebrate the season and offer an early “gift” to section members, I created a top-ten checklist that any legal writer should review before finalizing a legal document. If some of this advice conflicts with your current writing style, remember how much has changed in the last two-and-a-half years and adopt a growth mindset. Implementing this checklist will ensure you have dotted all the “i’s” and crossed all the “t’s” and allow you to communicate more clearly and effectively.

1. Think about audience and purpose, as failing to consider each leads to unnecessary, useless text.
2. Proofread carefully; sloppy typos detract from even the soundest legal analysis and affect your credibility with the reader.
3. Tighten up your writing to rid it of redundancies, e.g., “any and all,” eliminate throat clearing, e.g., “It is interesting to note that,” and unnecessary words, e.g., “whether or not” should become “whether.”
4. Embrace the Oxford comma to ensure clarity, particularly with respect to legal elements, by using a comma to separate the last item in a series, e.g., “A contract requires offer, acceptance, and consideration.”

5. Extol the virtues of the more concise and clearer active voice, and only use passive voice when you have a reason to do so, e.g., you need to downplay your client's role in an action or event.
6. Remember that lawyers are wordsmiths meant to clarify, not confuse; choose each word carefully, and make sure that each word conveys its intended meaning.
7. Use quotation marks correctly; commas and periods go inside the end quotation mark unless you are practicing law or writing in England or other foreign countries.
8. Keep it simple; as lawyers or educators do not get paid by the word, there is no incentive to "sound like a lawyer" or climb atop an ivory tower. We do not help our reader by using words they will not understand or making them pause and re-read to figure out what we are saying.
9. Put modifying words and phrases as close to the words they modify as possible to avoid misplaced modifiers, confusion, and having someone laugh at your writing.
10. Recognize the importance of multiple drafts, as there is no such thing as good legal writing, only good legal re-writing.

Happy Holidays!

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*David H. Spratt*  
*Section Chair, 2022-2023*

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## Nominations Open for 2023 Rakes Award

The VSB Section on the Education of Lawyers seeks nominations for the **William R. Rakes Leadership in Education Award**, honoring an individual from the bench, the practicing bar, or the academy who has, through exceptional leadership, made a significant impact on the education of lawyers in Virginia.

Past recipients, criteria, and the nomination process can be found on the [Nomination Form](#).

Nominations should be addressed to David H. Spratt, Chair, Section on the Education of Lawyers, and submitted with your nomination letter to the Virginia State Bar: 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

**Nominations must be received no later than December 2, 2022.** For questions about the nomination process, please contact Section Liaison Mallory J. Ralston: (804) 775-0514 or [mralston@vsb.org](mailto:mralston@vsb.org).

*Pictured: 2022 award recipient Dean A. Benjamin Spencer (left) and William R. Rakes (right) stand with a photo from the inaugural award where then-Section Chair, Ben Spencer presented Bill Rakes with the inaugural award.*

## PIF: The ABA Adopts a New Standard to Include Professional Identity Formation in Legal Education

In February, 2022, the American Bar Association’s Section of Legal Education revised its standards for accreditation to require law schools to “provide substantial opportunities to students for ... the development of a professional identity.” ABA Standard 303(b)(3). This revised Standard was placed with the existing requirements for law schools to “provide substantial opportunities to students for: law clinics or field placements [and] student participation in pro bono legal services, including law-related public service activities.” ABA Standard 303(b)(1) and (2). The ABA is rolling out new Standard 303(b)(3) in a two-step process, requiring law schools to develop and adopt an implementation plan during the 2022-2023 academic year, which must be put into effect no later than 2023-2024.

The new Standard on “professional identity formation” represents an acknowledgement by the ABA of a growing trend among educators in other professions to help aspiring professionals develop a sense of identity within their chosen profession. “Professional identity is represented by an internal adoption of the norms of a profession such that one will ‘think, feel, and act’ like a member of the community.”<sup>1</sup> Law school has long been said to focus on “learning to think like a lawyer.” Now, law schools have an official mandate to teach students not only how to think like lawyers but also to act like lawyers and to feel like lawyers.

The ABA’s official Interpretation 303-5 states that “Professional identity focuses on what it means to be a lawyer and the special obligations lawyers have to

their clients and society. The development of professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice. Because developing a professional identity requires reflection and growth over time, students should have frequent opportunities for such development during each year of law school and in a variety of courses and co-curricular and professional development activities.” Therefore, fulfilling new Standard 303(b)(3) isn’t as simple as developing another required course to put on the class schedule alongside CivPro and Con Law. Helping students develop a professional identity must become integrated into the entire legal education experience.

Appalachian School of Law has developed its implementation plan for meeting the new Standard 303(b)(3) by utilizing some elements and experiences that have long been a part of ASL’s mission while developing and incorporating additional formative and immersive experiences for its students. From ASL’s founding, community service has been a focal point of its juris doctor program. ASL students have always been required to take a course in Community Service during their first semester of law school and to follow that up by performing 25 hours of community service during each of their five remaining semesters of study. ASL is revamping the Community Service course (now called “Building a Professional Identity”) to include exposure to topics such as “What kind of lawyer do I want to be?,” “What character/personality strengths do I possess and what does that mean for my career choices?,” and “How do I make sure that I am keeping my client’s interests and goals at the forefront of my professional advice and decisions?” ASL’s community service requirement, with a preference for law-related service, remains intact.

ASL will continue administering a “Professionalism Oath” to all newly matriculated students during orientation. This Oath is modeled after the oath taken

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1 Welch, B.E, Arif, S.A., Bloom, T.J., *et al.* Report of the 2019-2020 American Association of Colleges of Pharmacy Student Affairs Standing Committee. *Am J Pharm Ed* 2020; 84 (10): Article 8198. Available at <https://doi.org/10.5688/ajpe8198>. See also Cooke, M., Irby, D.M., O’Brien, C. Educating Physicians: A Call for Reform of

Medical School and Residency, 2010 San Francisco, Calif Jossey-Bass, citing a Carnegie Foundation report stating that “professional identity formation—the development of professional values, actions, and aspirations—should be the backbone of medical education.”

by new members of the Virginia Bar and has been administered by role models within the legal profession, such as Virginia Supreme Court Justices, Judges of the Virginia Court of Appeals and Circuit Courts, and the Chair of the Virginia Parole Board.

ASL led the field of legal education from its inception, requiring students to participate in an externship program for a minimum of 200 hours of supervised legal work. ASL has approved more than 700 externship site opportunities for students, allowing them to select from a wide variety of legal practices and careers, such as working with criminal prosecutors or defenders, private practice attorneys, government attorneys, chambers of judges and justices, and non-profit legal services providers. ASL students keep a journal about their experiences during their externship, providing multiple opportunities for self-reflection on their initial experiences working in the legal field, thereby furthering their consideration of what it means to be a lawyer.

ASL's new Professionalism, Leadership, and Transition to Practice ("PLT") program will provide extracurricular experiences throughout the J.D. program to engage students in developing their professional identities in the areas of professionalism (during the first year), leadership within the profession and the community (during the second year), and transitioning to the practice of law after graduation (during the third year). PLT program activities will include: lawyers speaking to students about their own career paths and practice choices, opportunities for government and community leaders to address students' future roles, organized visits to watch courts in session and engage in a dialogue with the presiding judge or attorneys about what the students just witnessed, lunch and learn discussion sessions with practicing attorneys about the skills most commonly needed by new graduates entering law practice, and presentations and opportunities for private discussion with mental health providers to give students the tools for long-term maintenance of a healthy work-life balance.

ASL's implementation plan for the new PIF requirement will be, like that of most law schools, a work in progress, adopting new elements as legal educators across the country collaborate and share ideas for best practices in helping students learn to

"think, feel, and act" like lawyers who are upholding the highest ideals of the legal profession.



***Dawn Figueiras***

*Assistant Professor of Law &  
Associate General Counsel  
Appalachian School of Law*

## 5<sup>th</sup> Legal Writing Workshop

The Virginia State Bar Section on the Education of Lawyers, the Virginia Bar Association Law Practice Management Division, Virginia CLE, and the American University Washington College of Law Legal Rhetoric Program are pleased to cosponsor the Legal Writing Workshop.

**May 5, 2023**

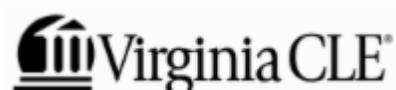
**Bobzien-Gaither Education Center  
Glen Allen, Virginia**

**Registration Coming Soon**

This workshop is an intensive legal writing course, facilitated by judges, legal rhetoric professors, and experienced attorneys. This workshop will serve as a basic refresher and is designed to make you a better and more confident legal writer.

### Featured Faculty:

- Hon. David W. Lannetti
- Hon. Mary Grace O'Brien
- David H. Spratt
- Heather E. Ridenour
- John M. Bredehoft
- Andrea L. Bridgeman
- L. Steven Emmert



# Rethinking Introductory Statutory Research Instruction

As any first-year law student learns, primary law in the United States is found in constitutions, statutes, cases, and regulations. Of course, as experienced legal professionals know, these sources can be quite complex. The challenge in teaching new law students the structure of the law is to give them a foundation that will prepare them for the complexity involved in uncovering the answers to sophisticated legal questions without overwhelming them.

For many students, up until law school, relying on Google searches was often good enough. In law school, the first lesson should be that “good enough” is *not* good enough when comprehensive, accurate, and up-to-date research is required for competent legal representation. Statutory research requires precision.

First-year law students generally learn statutory research by using state codes, the subject-based compilations that we commonly think of as representing statutory law for a given jurisdiction. The problem with this teaching method is that sometimes a statutory code isn’t the complete statutory law of a jurisdiction. Instead, what we call a code may be just a compilation of statutes that is not the law itself, but instead a helpfully organized research tool. A “code” that is officially the law itself can only be designated such by the legislative body of a state, who must affirmatively vote to adopt it. In contrast, a compilation is just prima facie evidence of the law, with the law itself being the Acts or session laws as passed and adopted.

Recently, we have explored how complex publication schemes can complicate understanding a state’s statutory law. (Vendors that publish “official” codes pursuant to contractual agreements and later claim copyright over the product only complicate the problem.) Additionally, free online compilations of statutory sources might be easy to locate but could be less reliable than more official accounts. The versions of state codes offered by Lexis and Westlaw may conflict, moreover, leaving students unsure of which one to use.

The research that we are completing explores how frequently this problem arises, as official statutory publication strategies vary from state to state. While we are exploring the details of this problem in a law-review article, we are also working to translate our scholarly research into practical lessons for William & Mary 1Ls learning how to conduct statutory research for the very first time.

What do all legal researchers need to know about researching state statutes? Here are some themes our research has revealed are critical to teach new law students.

## Statutory codes make a useful starting point.

In a world of research where Google-like keyword searching predominates, legal research instructors should teach students the pitfalls of doing keyword searching for statutes, particularly given that legislative language might be unfamiliar. We teach 1Ls to use statutory codes as a starting point for research, in part because the topical structure can make it easier for students to locate relevant provisions. For example, we show them the useful browsing features of an index and table of contents, so they can try finding relevant statutes without resorting to keyword searching in unfamiliar areas of law. We also use annotated statutory codes and compilations as a starting point to teach students to browse nearby and related sections for additional information (such as definitions), help them understand the broader context and structure of the law, and show them a way quickly to find cases that interpret and apply particular sections.

For example, we may start with a code section covering dangerous dogs. We point out that there is a definitions section earlier in the same chapter that tells us a person does not have to own a dog to be considered an “owner” for purposes of that section. We also point out that other sections in the same chapter set out punishments and relevant procedure. We then show that the section contains notes that describe court decisions covering specific situations involving dangerous dogs.

## Statutory compilations are different from official statutory law.

Statutory codes should be a starting point rather than an endpoint of legal research. That’s because they

may not actually represent the written law of a particular jurisdiction. Here it becomes useful to remind students of the legislative process—that bills become acts that become session laws. More often than not, “codes” are compilations of the law arranged and approved not by legislators themselves but rather by legislative or executive staff charged with organizing isolated items of enacted text into a coherent document. For a compilation or code to take on legal significance, the legislature itself must take action to adopt it as law. Otherwise, a compilation or code at best can only be *prima facie* evidence of the law and not the law itself. Although generally the language in the compilation will mirror the language in the session law, if there is any distinction between the two, students must know that the act or session law is the official version upon which they can rely.

#### Determine the official statutory law for your jurisdiction.

New law students are taught the sanctity of the Bluebook for purposes of citation. As legal research instructors, we don’t want to challenge information that students will need to succeed in law school. We should, however, point out that sometimes what the Bluebook tells students might not reflect the actual law.

For example, the last paragraph of the session law that enacted the 1950 Code of Virginia published by Michie (now Lexis) designated that code the “official Code of Virginia.” Rule 12.2.1(a) and Table T1 of the Bluebook also recommend citing the 1950 Code of Virginia when referring to a state statute. But in 2012, the Supreme Court of Virginia declared that the Acts of Assembly (Virginia’s collection of session laws), and not the Code of Virginia, are the “complete and accurate statutory law of the Commonwealth.” *Eberhardt v. Fairfax County Employees’ Retirement System Board of Trustees*, 721 S.E.2d 524 (Va. 2012). Indeed, the Virginia Code Commission, which is charged with arranging the Virginia Code, stresses that its work product is not the official law and that the Acts of Assembly are.

#### Session laws frequently include critical context.

Even in jurisdictions where legislatures undertake action to make a code official statutory law, a code

might only include provisions that are of (what’s often called) a *general and permanent nature*, such that a student should still use the legislative acts and session laws to find the full legal record in that jurisdiction. Thus, as painful as it might be for a new legal researcher, instructors should still teach students that they need to be well versed in finding all these statutory sources.

At the federal level, the website of the Office of the Law Revision Counsel, the entity responsible for producing the U.S. Code, explains the concept of “positive law” (which *Black’s Law Dictionary* describes as “typically consist[ing] of enacted law—the codes, statutes, and regulations that are applied and enforced in the courts”) in relation to that source. But confusing codification practices that have resulted in some titles of the U.S. Code constituting positive law and some not constituting positive law can confound even the most experienced legal researchers. For example, in their article *The Shadow Code: Statutory Notes in the United States Code*, 112 Law Library Journal 213 (2020), Shawn Nevers and Julie Graves Krishnaswami do an outstanding job describing the practice of creating federal statutory notes—which, they explain, are “provisions of law placed after the text of a United States Code section” and which can depend on whether the relevant title is positive law or not—and the problems that practice can cause for researchers.

At the state level, it isn’t always clear how statutory text and notes from legislative acts end up included or excluded in compilations of statutory sources by state legislative revision committees and commissions. Sometimes these choices can change the way a researcher should interpret the law.

For example, in Virginia, the Youngkin administration has relied on Virginia Code § 1-240.1 to support greater recognition of parental rights in education policy. The main text of this section reads, “A parent has a fundamental right to make decisions concerning the upbringing, education, and care of the parent’s child.” However, the session law that created this Code section, 2013 Act of Assembly Chapter 668, includes another line, which was added to the Code as a statutory note (and which is not included in the online Legislative Information System version of the Code): “That it is the expressed intent of the General Assembly that this

act codify the opinion of the Supreme Court of Virginia in *L.F. v. Breit*, issued on January 10, 2013, as it relates to parental rights.”

*L.F. v. Breit*, 736 S.E.2d 711 (Va. 2013), involved establishing parental rights for a father who conceived a child through in vitro fertilization and who intended to create a parent-child relationship. Is the omission of this second sentence from Virginia Code § 1-240.1 material? If the legal researcher knows that the official version of the law is the act itself, then the legal researcher can make this determination knowing that the second sentence is also part of the law.

### Conclusion

Legal research instructors should teach students not only how to find and read statutory codes but also how the legislative process works, which statutory sources are actual law, and why all this complexity matters. At William & Mary Law School, we aim to give students a better understanding of statutory law’s structure and exemplary research techniques from the start so that they are well positioned to solve complex legal problems in their future careers.



**Leslie A. Street**  
*Clinical Professor of Legal Research and Director of the Wolf Law Library*  
*William & Mary Law School*



**Fred Dingley**  
*Senior Reference Librarian, Wolf Law Library*  
*William & Mary Law School*

### Would you like to contribute to the next newsletter?

Education Section leaders seek content that will inform Virginia lawyers, educators, and law students and connect section members across the state:

- Topical articles that you have written
- Articles that you have read and think bear reprinting
- Cases that you would like to discuss
- CLE ideas or programs of interest
- Law School happenings



Direct submissions to the newsletter editor, Leslie Haley, at [lhaley@oag.state.va.us](mailto:lhaley@oag.state.va.us)

## SAVE THE DATE



**VSBS 2023 Annual Meeting**  
**June 14 – 17, 2023**

Your section leadership is hard at work, preparing for the Virginia State Bar’s 2023 Annual Meeting. For the third consecutive year, the Section on the Education of Lawyers will present a CLE program, this time co-sponsoring with the Young Lawyers Conference to bring you an interactive lesson on negotiation:

**Butting Heads: Negotiation Tactics and Ethical Boundaries for Lawyers**

[Check back for more information](#) in Spring 2023.



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**Get involved! If you wish to serve on the Board of Governors of the Section on the Education of Lawyers or would like to learn more about available positions, please email Mallory at [mralston@vsb.org](mailto:mralston@vsb.org).**