

**Chicago-Kent College of Law**

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**From the Selected Works of Kari L. Aamot Johnson**

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# Scaffolding on Steroids: Meeting Your Students Where They Are Is Harder Than Ever ... And Easier Than You Think

Kari L. Aamot Johnson



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Institute

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**LWI Policy Statement on Law Faculty**  
*Adopted March 2015*

The Legal Writing Institute is committed to a policy of full citizenship for all law faculty. No justification exists for subordinating one group of law faculty to another based on the nature of the course, the subject matter, or the teaching method. All full-time law faculty should have the opportunity to achieve full citizenship at their institutions, including academic freedom, security of position, and governance rights. Those rights are necessary to ensure that law students and the legal profession benefit from the myriad perspectives and expertise that all faculty bring to the mission of legal education.



“You get what you get and you don’t throw a fit.” That’s what my mom used to say, and I’ll admit I’ve used it a few times on my own kids. Well, it applies to this issue of *The Second Draft*.

The call for submissions for this issue sought articles about doing more with less—or just coping with less. In light of declining law-school enrollments and budgets, we hoped we’d get ideas and insights from you, our readers and writers. And we did get ideas and insights, lots of them. But they weren’t about doing more with less; they were about doing more. Period.

So we threw no fits. We adapted, which is what legal research and writing teachers do. Thus, we’re pleased to offer you what *The Second Draft* always offers: great ideas to help you teach better, serve better, and write better.

We’ve also been busy producing a new mission statement for *The Second Draft* and re-formulating its goals—ever so slightly—to be sure we’re aligned with the expectations of the LWI Board and to better meet the needs of our readers. Look for our poster at the LWI Biennial Conference this summer at Marquette.

And with this issue we welcome two new editors: Lindsey Blanchard from McGeorge School of Law and Wayne Schiess from Texas Law.

Your issue editors,

*Steven Schultz*  
*Lindsey Blanchard*  
*Tammy R.P. Oltz*  
*Wayne Schiess*

# Scaffolding on Steroids: Meeting Your Students Where They Are Is Harder Than Ever . . . And Easier Than You Think



Kari Johnson<sup>1</sup>  
*Professor of Research and Writing,  
Chicago-Kent College of Law.  
wkjohnson@kentlaw.iit.edu*

Here are some of the safe assumptions I could make about my legal writing students fifteen years ago:

- Most were drawn from a narrow band of law school applicants and so had similar grade point averages and LSAT scores.
- Almost none were nonnative English speakers.
- Before law school, their writing experience did not include years of composing texts and social media posts.
- None brought a tiny television/virtual shopping center/portal to a gang of chatty friends into the classroom.

Needless to say, I stand before a very different group of students today. You likely do, too. It's taken me a while, however, to identify what has changed and a while longer to find effective pedagogical responses. Here, I will first try to name and describe the challenges today's students present, and then describe four changes I have made to more effectively teach them.

## THE PROBLEM: SCATTERED STUDENTS

In the last fifteen—even ten or five—years, economic and reform pressures on law schools have unquestionably affected admissions. As law schools scramble to secure students from a shrinking applicant pool, the makeup of entering classes has changed. Students come to us with less homogeneous credentials. Add in the swift increase in international J.D. students, and there are few skills—particularly writing skills—we can safely assume all students will bring to law school.<sup>2</sup>

Moreover, technology is now so impactful, and moves so fast, that the 22-year-old student is dramatically different from the 27-year-old student is dramatically different from the 35-year-old student. Of my current students, those who came to law school straight from college have lived comfortably with iPhones and social media since their early teens. Those just a few years older have a very different experience of technology. This matters because, as I have come to appreciate, the technology students use as they move through school (and learn to write!) greatly impacts what kind of learners (and writers) they become.<sup>3</sup>

In short, changes in legal education mean that, from day one, your students are all over the place. They come to law school with a much wider range of writing, communication and analytical skills than we are used to managing.

Furthermore, the scattering problem doesn't stop when the 1L class forms. Today's law students also proceed through the learning curve of first-year legal writing at very different paces, and they do so for two reasons. First, because their starting positions are so varied, it is much harder to get them on the same page. Five or ten years ago, I could spend two weeks acclimating my class to a set of beginning concepts, key vocabulary, and core learning goals for the course. Because ninety-five percent of the students were ready and able to stay with me during those two weeks, the class coalesced. Early on, I was positioned to guide the class *as a group* through two semesters of work. I was Julie McCoy, they were my new batch of nervous-but-excited passengers, and everyone was on the Legal Writing Boat<sup>4</sup> for the full cruise. If I had a straggler or two (and I usually did), I could catch them up with extra conference time and TLC. Now, for the reasons discussed here, more students start 1L year with a deficiency in something (often basic writing skills). I can no longer describe my class as "coalesced" by week three, and it has become harder and harder to "catch up" those who start behind.

The second reason our students proceed at such different paces is because they are So Very Distracted. I don't know about yours, but my teaching is now plagued by what I call Black Hole Syndrome: mysterious gaps in understanding that surface constantly, both in and out of the classroom. Black Hole Syndrome happens when a student raises her hand and asks a perfectly thoughtful and relevant question, the answer to which was plainly covered a few minutes ago.<sup>5</sup> This rarely happened in years past; now, it happens all the time. Other students used to roll their eyes at these questions, but, curiously, they do so less and less. My theory is that today's students just "get" how their colleagues might have missed something the group just covered. Toggling back and forth between "rl" (real life!) and virtual life has become automatic for our students; it's hardly a stretch to compare phone checking to breathing.<sup>6</sup> Our students are toggling all the time, and they are missing things.

Those with the worst cases of Black Hole Syndrome end up with feedback like this on their papers: *I'm seeing a lot of weakness related to X. We talked extensively about X in class, and I'm concerned that the concept doesn't make sense to you. Let's talk about this in conference.* Needless to say, these students are not progressing

as they should be. Indeed, some students bring such fragmented attention to their work that they never really get with the program or catch up to the class.

## THE TOOL: SCAFFOLDED INSTRUCTION

Either instinctively or formally, every teacher knows the importance of scaffolding.<sup>7</sup> To facilitate learning, to move learners from a novice level of understanding into new and more sophisticated territory, the instructor must meet learners where they are.<sup>8</sup> Educational theorists call this using the "zone of proximal development."<sup>9</sup> If I wish to teach Z and my students know only X, all my creative ideas and active learning exercises for Z are useless. I need to teach *from X and through Y* to teach Z. Scaffolding.

The problem is, as I have argued, we've gone from teaching a mostly unified group of students to the classroom equivalent of herding cats. Your students—with their disparate entry skills, various languages, and hit-and-miss powers of concentration—*will never be in one proximal development zone*. You cannot count on students to be similarly situated at start of the year, nor can you expect them to be where you thought you left them after your last class/assignment/semester of work. Hidden in your class may be as many zones of proximal development as there are students. In short, far from being clumped at X, needing to be brought to Z, our students are at A, F, Q, and all points between.

The good news is that scaffolding is an excellent pedagogical tool that still works with today's new teaching challenges. The interesting news is that we must scaffold differently. First, I suggest we stop tilting at the windmill of forcing all of our students to learn at the same pace. I spent a few tiring years trying to march my students in lockstep formation through my learning goals for them (and complaining bitterly about how hard it was). When student work revealed that one wasn't grasping basic organization in October, or another couldn't put together a passable issue question in December, or another was making egregious agreement errors in spring semester, I despaired. Wasted energy.

I had to accept that my class was no longer a collective singular. My students were, at any given time, scattered all over the learning path I was plotting for them. Some were stuck on concepts we covered weeks ago; some were with me, but had missed things; some



had learned everything well and were ready for more. Plunging forward at my planned pace when some students were stuck meant leaving those students scaffoldless, unable to move forward and acquire the skills I was purporting to teach. Not a great outcome.

On the other hand, slowing the whole class meant stalling the progress of the students who were ready for more, who were also in need of scaffolding, just at a more sophisticated level. Also, and importantly, I was loath to lower my standards or water down my course goals. I wasn't about to knowingly release students from first-year Legal Writing without the analysis, organization, research, writing, and citation skills needed for success in practice. But how can I move all of my students all of the distance when they refuse to get into *my* preferred proximate learning zone and stay there?

In other words: Just how many scaffolds am I expected to provide around here, anyway?

The answer, it seems, is: as many as are needed to get the job done. My students were clearly in different places, so I had to figure out how to teach them from

all those places, all at once. And I had to figure out how to do this for most of the year. So I resolved to try to meet any student wherever she may be at any given time, while keeping my list of goals for first-year legal writing the same. Their pace; my finish line.

## THE TWEAK: PEDAGOGICAL TIME TRAVEL

Luckily, this is not as impossible as it sounds. Like you probably do, I have a list of skills I want students to acquire by the end of the year, and I use assignments, classes and conferences to move through the list as the year progresses. What's new is *I've learned how to be here, there, and everywhere on my pedagogical timeline, depending on individual students' progress.* Below are four changes I've made to my teaching to meet the challenge of working with a more diverse and distracted law student learning community:

- **I conference more and differently.** When I conference with students, I listen first and I listen more. I make no assumptions about what they "should" have learned but scan for clues about what

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they *have* learned. When I think I've identified the edge of their learning, I go there with them. I pull out a blank sheet of paper and diagram a paradigm pattern for analyzing an issue if that's what they need (no matter that it's a skill they should have mastered months ago). I re-explain how the common law works, or what jurisdiction is, or how to know a case is still good law.<sup>10</sup>

The time travel goes both ways. In another conference, I might work with a student on explanatory parentheticals before introducing it in class because it perfectly solves a writing problem for her. Or I might hash out an argument with a student that is beyond most of the class, but that, done well, is great lawyering. In short, I do in conferences what I've always done, but, depending on the student in front of me, I might be doing September work in April, or April work in September. And because one-on-one time is best suited to sussing out where a specific student is, I do more of it than I used to, adding five or ten minutes to conferences and offering extra rounds of optional conferences each semester.

- **I have them do even more group work.**

I've always been a heavy user of group work, but in recent years, I've developed a classroom rhythm that constantly moves between full class discussion and small group discussion. I do this because my class is full of students who are better positioned than I am to teach their peers.

The most effective teacher is one who has just learned the skill herself.<sup>11</sup> Because I know my students are always in different places, I also know that a lot of learning will happen when they talk to each other. The utterly lost student will learn from the student just starting to figure it out will learn from the student who's mostly got it figured out will learn from the student who's mastered it. For sheer

volume of learning, nothing gives you more bang for your buck than small group discussion.<sup>12</sup>

Group work is easy to incorporate. I often use it for two or three minutes before covering something complicated; I assign a small group discussion question as a warm up. This loosens tongues and ideas, coaxing out the "dumb" questions students will ask their peers (but never me) and honing them for the full class discussion to follow. I also do at least one longer, formal group exercise during almost every class, which supplies a more extended opportunity for the same kind of learning. Finally, I've turned one of my major assignments entirely into a group project. I assign the groups randomly, which avoids the strong and weak students grouping with each other and ensures that peer teaching will happen.

- **I have a class website.** For years, I used TWEN to post class materials. Three years ago, I moved to my own website, created and maintained with ample help from our technology librarians.<sup>13</sup> It has greatly improved my teaching effectiveness. My site looks like a chalkboard scrawled with nine links with names like *Organization*, *Research*, *Memo I*, *Writing*. The links lead to folders of handouts and slides from class. Wonderfully, the materials are all Google docs and Google slides, which means I can update them any time and my students have continuous and instant access to the latest version of everything.

Why does this help with the problem I've identified? It lets me "teach" my students 24/7.<sup>14</sup> The site is an intuitive, comprehensive, fully updated repository of everything we've covered in class.<sup>15</sup> The student who tuned out during our intermediate citation skills session last week can tune into the session the night before a deadline.<sup>16</sup> He can easily find the PowerPoint, the group exercise we did, and the

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*To facilitate learning, to move learners from a novice level of understanding into new and more sophisticated territory, the instructor must meet learners where they are. Educational theorists call this using the “zone of proximal development.”*

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answers to the exercise we constructed together in class. When I detect Black Hole Syndrome while supplying feedback on a paper, I can refer the student to a specific document on the site and encourage her to teach herself a skill or concept she didn't learn the first time around. The website has become my virtual doppelganger, available 24/7, ready to repeat concepts from class whenever the more distracted students are ready to listen.<sup>17</sup>

- **I module-ized the teaching of writing mechanics.** For years, I told my students that I expected them to have solid writing skills, and if they lacked those skills, they would need to acquire them on their own because lawyers must be able to produce error-free, readable writing. Several years ago, that approach to mechanics became inadequate for enough of my students that I began teaching grammar, punctuation, and style lessons in class.

Even as I saw the need to do this, I wanted to limit class time spent on writing so as not to crowd out more advanced topics. While many students needed the writing instruction, others did not. Per the new normal, calibrating my instruction to best meet students' needs (not too much, not too little) was tricky. I landed on the idea of breaking the instruction into roughly 15 mini-lessons, which I sprinkle through class.<sup>18</sup> The lessons take five to fifteen minutes, and I generally get to all of them by the end of the first semester. I call them NMMA's, which stands for Never Make That Mistake Again.<sup>19</sup>

For stronger writers, the in-class refresher on semicolons or apostrophes or passive voice is enough. Other students will struggle with the skill long after the ten minutes of in-class instruction has passed. For the latter group, the NMMA's have

proven a very sturdy learning tool. I can flag a writing problem on a paper and simply refer the student to NMMA #5 or NMMA #11. The student can go to the website, look up the slides from class, and review—and do this as many times as needed over the year. I find if I persist in pointing out he's making the same mistake (easy enough to do with the lessons online and my quick NMMA nickname), I usually eventually wear down his resistance enough<sup>20</sup> that he puts in the effort and learns the lesson. As long as this happens before he leaves my classroom,<sup>21</sup> I figure I've done my job.

None of these strategies are particularly groundbreaking; you likely use some or all of them yourself. But I recommend intentionally cultivating these sturdy teaching tools at this particular time because all four essentially allow you to deliver teaching in more diverse ways, at more diverse times, than you have needed to before. A more expansive approach to conferences reclaims time wasted talking past lost students, time you can use instead to essentially create a miniature classroom, in which to tutor students over the course of a year at whatever pace is best. In group work, you can set up opportunities for more advanced students to teach less advanced ones, which moves all students forward more efficiently than big room teaching alone can do. With a user-friendly, up-to-date website and easy-to-find mini-lessons on writing mechanics, you can take one-and-done in-class teaching lessons and stretch them out over the entire year. The lessons are there and available to students long after (and sometimes before) you hit them in class. Students can learn at their own pace and access what they need when they need it.

Some will say I am coddling my students, but I don't think so. In my experience, the alternative to this flexible approach is not more rigorous learning but no learning. The reason I abandoned the Julie McCoy teaching style was because I was leaving students on the shore (and, at the risk of taking the metaphor into morbid territory, losing them along the way). There was no way for those students to catch up. Now there is.

Moreover, the changes have not lessened the rigor of the course for those who are ready for and capable of top-level work from day one. In class, students get a mix of learning experiences, many pitched to the middle-to-high performers. The group exercises

provide a chance for me to reach those a bit behind through the stronger students, and the latter also advance by taking on that teaching role. Outside of class, I can provide learning experiences—whether in person (conferences) or virtually (website)—that are even more narrowly tailored to individual students’ progress along the learning curve.

Finally and importantly, the changes have not made me crazy. I do see my role now less as cruise director than Sherpa guiding thirty mountain climbers. However, surprisingly and happily, I do not feel like I spend two semesters frantically racing up and down a mountain. Recalibrating my teaching really took two forms: 1) upping my technology game, and 2) letting go of my one-size-fits-all timetable for my students’ progress. With better tools and a more flexible mindset, I’ve gotten much better at meeting students at the growing edge of their understanding, wherever it happens to be. Turns out, building thirty scaffolds isn’t all that hard to do. ’

#### NOTES

1. Professor of Research and Writing, Chicago-Kent College of Law. [wjohnson@kentlaw.iit.edu](mailto:wjohnson@kentlaw.iit.edu)
2. See generally Courtney G. Lee, *Changing Gears To Meet The “New Normal”* In *Legal Education*, 53 *DUQ. L. REV.* 39 (2015).
3. See generally Janna Anderson & Lee Rainie, *Main Findings: Teens, Technology and Human Potential in 2020*, PEW RESEARCH CENTER REPORT, 8-13 (2012).
4. Decidedly less sexy than its 80s counterpart.
5. For an alarming but realistic glimpse into your students’ experience of your class, read about Lara Law Student in the opening paragraphs of Shailini Jandial George, *Teaching the Smart Phone Generation: How Cognitive Science Can Improve Learning in Law School*, 66 *ME. L. REV.* 163, 164 (2013).
6. As I write this, a new cell phone distraction study is in the news. Subjects who heard a lecture and took a test with their phones nearby (face down and silenced) performed a full letter grade below those entirely without access to their phones. Experts surmise that the mere proximity of the phone drains one’s complex thinking ability. Nicholas Carr, *How Smart Phones Hijack Our Minds*, *WALL ST. J.*, Oct. 6, 2017.
7. Christine M. Venter, *Analyze This: Using Taxonomies to “Scaffold” Students’ Legal Thinking and Writing Skills*, 57 *MERCER L. REV.* 621, 635 (2006).
8. Shaun Archer et al., *Reaching Backward and Stretching Forward: Teaching for Transfer in Law School Clinics*, 64 *J. LEGAL EDUC.* 258, 265, 283 (2014).
9. Educational theorist Lev Vygotsky’s term for the edge of a student’s understanding where learning is both possible and dynamic. See Elizabeth M. Bloom, *A Law School Game Changer: (Trans)Formative Feedback*, 41 *OHIO N.U. L. REV.* 227, 235 (2015).
10. Last week, I conferenced with a student who brought in a folded pile of papers containing handwritten, fragmented notes related to the office memo she’d been assigned. She was terribly behind, and in the past I might have used conference time and energy frantically trying to get her up to

speed, and in the process entirely overwhelmed and discouraged her (and me). Instead, I found a few places where I could help her take what she had and move it forward. The memo she handed in reflected the progress we made in conference and some improvements she was able to make extrapolating from the feedback. And while she’s still behind, she’s working and improving, I believe because she knows she’s on a learning path.

11. Bloom, *supra* note 9, at 246.
12. Elizabeth L. Inglehart et al., *From Cooperative Learning to Collaborative Writing in the Legal Writing Classroom*, 9 *LEGAL WRITING* 185, 189-95 (2003).
13. Shout out to Emily Barney and Debbie Ginsberg, resident library technology wizards at Chicago-Kent.
14. While I am now, in a sense, always teaching different versions of my class to different students at different paces, the richest, most organic, and best version of the class is still the one I pace via the syllabus and lead in scheduled classes. I do not think the changes I describe here have weakened the effectiveness of the traditional experience of class for students who are consistently prepared and attentive, nor do I think the changes have discouraged students from coming to class (at least, attendance hasn’t fallen off).
15. And many things we have yet to cover because I keep my core materials on the site at all times. I can and sometimes do refer students to materials or concepts they may be ready for before the rest of the class is.
16. Without emailing me!
17. In fact, the site allows me to extend my teaching beyond the end of my class, a nice perk. My former students can access the site any time and take a look at my slides on dangling modifiers, or reread a handout on “Tips for an Effective Email Memo,” or review my “Paradigming Part II” lesson for guidance when organizing a troublesome section of a brief.
18. As a bonus, the lessons have become a great aid to class planning. I can always and easily reach for one to change the pace of a low-energy class or to stretch a class that ends up being too short. The lessons are available here: <https://drive.google.com/drive/folders/OB5lGdLOgsEU5fnlSazkyd1BCWlNLVFRielBoNmRmUXlrY1R4UFIMZFp0NGtNcU93Q-jVzN2s?usp=sharing>.
19. Spoiler alert: they do.
20. Or pique his curiosity enough (what IS this mysterious NMMA #3 of which she speaks so insistently?).
21. Or even after; *supra* note 17.