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IRLAFARC! A Survey on the Language of Legal Writing

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INTRODUCTION

Language, like law, is a living thing. It grows and changes. It both reflects and shapes the communities that use it. The language of the community of legal writing professors[3] demonstrates this process. Legal writing professors, who stand

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3. We use the term "legal writing professors" to designate those who consider teaching legal writing or rhetoric as their primary professional focus. Although the current trend is away from the title "instructor," some schools have denied the title "professor" to legal writing teachers, or they have reserved the title for directors. A recent survey reports that among the one hundred and seventy-two schools responding, fifty-one percent include the term "professor" in legal writing faculty's title. Eleven percent use the title "lecturer"; twenty-six percent retain the title "instructor." The final twelve percent have some other title not described above. ASSOCIATION OF LEGAL WRITING DIRECTORS & LEGAL WRITING INSTITUTE, 2003 SURVEY RESULTS 41 (2003) *available at* http://www.alwd.org (last visited Oct. 31, 2003) (on file with the authors) [hereinafter ALWD/LWI Survey]. Our survey was distributed to legal writing professors attending the Legal Writing Institute's Conference in the Summer of 2000. *See infra* note 22.

Further, we use the pronoun "she" because legal writing is a gendered field. As Professor Chused noted in 1988,

> [t]he lower pay and prestige of the contract legal writing slots, together with the low rate of hiring for traditional teaching positions, creates an impression that some schools "track" women into lower status legal writing jobs rather than into classroom or clinical work, pay them less than they are worth, and then let them go.

Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537, 554 (1988). Gender imbalance remains a problem. *See generally* Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313 (2000); Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 J. LEGAL EDUC. 562 (2000); Lisa Eichorn, *Writing in the Legal Academy: A Dangerous Supplement?*, 40 ARIZ. L. REV. 105 (1998); Pamela Edwards, *Teaching Legal Writing as Women's Work: Life on the Fringes of the Academy*, 4 CARDOZO WOMEN'S L.J. 75 (1997).

at the heart of an emerging discipline in the legal academy,[4] are creating new terms, or neologisms, as they struggle to articulate principles of legal analysis, organizational paradigms conventional to legal writing, and other legal writing concepts. This new vocabulary can be both beneficial and detrimental. It can be beneficial because it expands the substance of an emerging discipline. It also can be harmful, however, because not everyone understands the new terms, and that lack of understanding can hinder communication about legal writing.

Although non-legal writing law faculty may experience this same difficulty in communicating about legal analysis, they all have some other area of substance with a developed, understood vocabulary. For example, in contracts, "consideration" has a well-accepted meaning generally understood and shared by all contracts professors and all contracts students. For legal writing professors, however, legal analysis and legal writing *is* our area of substance; without a developed, commonly shared and understood vocabulary, the discipline struggles and communication failure is common. The challenge for legal writing professors becomes how to improve understanding and thereby enhance communication without limiting the expansion of the new discipline.

One of the first steps in meeting that challenge is to study the state of the language of legal writing today. We need to know more about whether legal writing professors are creating a new professional vocabulary, and whether the language they use in teaching legal writing fosters the kind of sophisticated discourse about writing that will be helpful to other users of that language—students, lawyers, judges, and law professors. To that end, we created a survey to gather information about the language legal writing professors across the country use in their legal writing classes.

At the outset, we sought to document the new vocabulary being created by legal writing professors and to test, based on our combined experience, several theories about the development and use of the language. We decided to use primarily descriptive statistics[5] to report the survey findings. With that data, we can

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4. Many articles have described the history of legal writing instruction in the academy. *See, e.g.*, J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 Wash. L. Rev. 35, 41-48 (1994); Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 Temp. L. Rev. 117, 123-30 (1997). Arrigo notes that law schools first recognized the need for legal writing instruction as early as the 1950s, although serious inquiry into the nature of the field did not begin until the late 1980s and early 1990s. *Id.* at 134-37. *See also* James F. Stratman, *The Emergence of Legal Composition as a Field of Inquiry: Evaluating the Prospects*, 60 Rev. Educ. Res. 153, 155-57 (1990); George D. Gopen & Kary D. Smout, *Legal Writing: A Bibliography*, 1 J. Legal Writing Inst. 93 (1991) (noting that from 1970 to 1979, eighty-three legal writing books or articles were published, but that from 1980 to 1991, 207 were published); Jan M. Levine & Kathryn M. Stanchi, *Women, Writing & Wages: Breaking the Last Taboo*, 7 Wm. & Mary J. Women & Law 551, 553-65 (2001) (including a history of surveys of legal writing programs, faculty, and salary information). As of December 2002, seventy percent of all legal writing programs were staffed by full-time writing professors, many of whom are tenured or tenure-track. *See* Jan Levine, *LRW Program Design and Faculty Status for the 2002-2003 Academic Year*, at http://www.alwd.org (last modified Dec. 2002).

5. Descriptive statistics depict "people, situations, events, and conditions as they now exist." C.M. Charles, Introduction to Educational Research 33 (3d ed. 1998). Descriptive statistics produce "a number or a figure that summarizes or describes a set of data." Chris Spatz, Basic Statistics 2 (7th ed. 2001). Descriptive statistics include measures such as the mean, median, mode, standard deviation, and quartiles. *Id.* at 36-55. For a more detailed discussion of these measurements, *see infra* notes 23, 84-87.

begin the conversation about how legal writing professors use legal writing terms, share definitions, and perceive their own confidence in their understanding of a long list of those terms.

Four important insights emerge from the study. First, terms that appear in multiple sources are most likely to be recognized. Second, very experienced legal writing professors are more likely than very inexperienced legal writing professors to recognize specialized terminology. Third, legal writing professors are teaching a narrow range of the existing vocabulary by consistently using only one term for a concept. This means professors are not teaching students the broad vocabulary students need to talk about legal writing with those trained by other teachers. Finally, many legal writing professors have developed terms that are variations on the organizational acronym IRAC,[6] and those variations are not broadly recognized.

Beyond these results, the study suggests that legal writing professors are not consistently confident that they understand many of the terms used in the legal writing literature and in conversation among colleagues. Survey responses were unpredictable and varied widely. Although a significant majority of survey participants responded with confidence to a few terms, less than one half of participants expressed confidence in their understanding of many other terms. Some terms inspired confidence in only a few participants. Most significantly, for the majority of terms, the spread among responses was quite large, indicating that while many participants felt very confident with a particular term, an equal number of participants were not at all confident in their understanding of the same term.

As we had theorized, some factors, such as inexperience or choice of textbook, affected participants' confidence in their understanding of some of the terms some of the time. However, the survey data did not bear out our theories concerning which legal writing professors would express confidence in their understanding of a certain term, even given information about the backgrounds of the particular legal writing professors. Whether taking into account the region in which each legal writing professor graduated from law school, the region where she works or has worked, what she reads, the text she uses, or how much experience she has in the practice of law, basic inferential statistical analysis[7] suggests that one cannot predict with certainty the level of confidence of any particular legal writing professor about any particular term. The survey responses also show that legal writing professors neither use nor define terms in the same way. Finally, the survey data demonstrate that acronyms representing organizational paradigms present their own unique set of challenges.

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6. Some legal writing professors use the acronym to teach conventions of organization in legal writing. It is usually decoded I (issue); R (rule); A (application or analysis); and C (conclusion). *See infra* notes 62-64 and accompanying text.

7. Inferential statistics allow researchers to generalize from the data they have obtained and reach conclusions, with varying degrees of probability, about the population in general, even when the entire population cannot be measured. SPATZ, *supra* note 5, at 2; RICHARD G. LOMAX, AN INTRODUCTION TO STATISTICAL CONCEPTS FOR EDUCATION AND BEHAVIORAL SCIENTISTS 6 (2001). Correlational research, the one employed in this study, is a common inferential statistical tool that allows one to measure the "degree of correlationship between two or more variables." CHARLES, *supra* note 5, at 33.

In Part I of this Article, we briefly examine the challenges and uncertainties inherent in a new and developing legal writing vocabulary. In Part II, we describe the survey design and distribution methodology. Part III presents a profile of the legal writing professors who responded to the survey. Part IV analyzes the survey results using descriptive statistics. Part V reports correlation analysis and two-sample *t*-test analysis of the survey data. Finally, we focus on the lack of confidence among legal writing professors that they understand or share a professional language. We suggest a number of ways in which legal writing professors may begin to develop a shared vocabulary and, thus, enhance their common understanding and their ability to communicate effectively.

I. SIGNS OF A LIVING, GROWING DISCIPLINE

Legal writing professors have become aware that, as their discipline grows, a new vocabulary is emerging.[8] Terms like "organizational paradigm," "phrase-that-pays," and "processed rule" have begun to appear in the conversation of some, while others speak of "CREAC," "rule proof," or "textual fusion." But as the new vocabulary grows, communication difficulties threaten its continuing vitality. Legal writing professors, students, and others in the legal community may not understand the new terms or be confident that they share a common language. The problem, at its most basic level, is a failure of communication. And, because teaching students to communicate *about* writing is an integral part of teaching students *to* write, the development of a shared understanding is critical to the learning process. Without a consistent, well-understood language, legal writing professors will fail to help students develop that important skill.

Moreover, the failure to develop confidence in a common legal writing language threatens the legal writing profession itself. If the legal writing community lacks a professional language that reflects a specialized skill set, others are more likely to regard legal writing as a topic without substance which requires no special expertise to teach. For example, either "large scale organization" is a term of art, with a precise definition, or we must view all claims regarding its meaning, from any writer, with equal merit. And if the latter is true, some may view the legal writing community's claim to professional status as weakened.[9]

In spite of the challenges it presents, however, the new vocabulary of legal writing has significant benefits. Indeed, in an emerging discipline like legal writing, the benefits of a professional vocabulary may be particularly compelling, even necessary, for the healthy growth of the discipline. If language and writing con-

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8. The impetus for this Article was a conversation among three alumni of the University of Arizona College of Law who all teach legal writing. We were surprised to learn that our conversation became laborious when the topic turned to teaching legal analysis. We quickly saw that we did not share the same vocabulary.

9. This is analogous to what is usually labeled as "essentialism." Essentialism finds that certain characteristics are fundamental and therefore necessary to define a group. It does not recognize diverse experience of group members. *See* Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990) (defining "gender essentialism"). The Essentialist and Anti-Essentialist debate focuses on the problems caused by reducing a subgroup to one definition versus the difficulty of claiming that the group merits study or status as a specialized group without the limiting definition. *See generally*, Jane Wong, *The Anti-Essentialism v. Essentialism Debate in Feminist Legal Theory: The Debate and Beyond*, 5 WM. & MARY J. WOMEN & L. 273 (1999).

struct meaning, as modern rhetoricians, literary theorists, and composition theorists maintain,[10] the process of creating language in a new area of study may actually create the substance of that new area. Consequently, legal writing professors may be creating the discipline as they create the new language, whether spoken in the classroom or written in texts and articles. Because language both reflects and shapes thought, creating a new professional language is a healthy sign of growth, despite its detrimental aspects.

Moreover, the new terminology may be necessary to adequately communicate the new concepts, or new combinations of old concepts, that legal writing professors teach. Interpreting law, writing law, and practicing law require unambiguous precision.[11] The need to be precise, often offered as a justification for legal jargon,[12] no doubt is particularly important when legal writing professors are articulating legal writing principles for the first time. However, the diverse language in legal writing literature and the growing number of legal writing texts thwarts efforts to achieve greater precision in legal writing.

Over a dozen new texts have been published in the last fifteen years[13]—many using different terms for similar concepts.[14] The reasons for the wide variations in terminology are not clear. However, because legal writing professors teach the rules of ethical attribution, they may be extraordinarily sensitive to plagiarism concerns. Those concerns may lead authors of legal writing texts to avoid using terms created by others[15] and, instead, to create new terms for the same concept. Additionally, status differences among legal writing faculty and within the legal acad-

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10. Terrill Pollman, *Building a Tower of Babel or Building a Discipline? Talking about Legal Writing*, 85 MARQ. L. REV. 887, 900-05 (2002).

11. Robert W. Benson, *The End of Legalese: The Game is Over*, 13 N.Y.U. REV. L. & SOC. CHANGE 519, 559 (1985) (citing E. GOWERS, THE COMPLETE PLAIN WORDS 19-20 (Pelican ed. 1962)).

12. Walter P. Armstrong, Jr., *Point: In Defense of Legalese*, 3 SCRIBES J. LEGAL WRITING 33, 34 (1992).

13. *E.g.*, CHARLES R. CALLEROS, LEGAL METHOD AND WRITING (1st ed. 1990); LINDA HOLDEMAN EDWARDS, LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION (1st ed. 1996); BRYAN A. GARNER, LEGAL WRITING IN PLAIN ENGLISH (2001); TERRI LECLERCQ, GUIDE TO LEGAL WRITING STYLE (1st ed. 1995); RICHARD K. NEUMANN, JR., LEGAL REASONING AND LEGAL WRITING: STRUCTURE, STRATEGY, AND STYLE (1990); LAUREL OATES ET AL., THE LEGAL WRITING HANDBOOK: RESEARCH, ANALYSIS, AND WRITING (1st ed. 1993); JILL J. RAMSFIELD, THE LAW AS ARCHITECTURE: BUILDING LEGAL DOCUMENTS (2000); MARY BARNARD RAY & BARBARA J. COX, BEYOND THE BASICS: A TEXT FOR ADVANCED LEGAL WRITING (1991); DAVID S. ROMANTZ & KATHLEEN ELLIOTT VINSON, LEGAL ANALYSIS: THE FUNDAMENTAL SKILL (1998); DEBORAH A. SCHMEDEMANN & CHRISTINA L. KUNZ, SYNTHESIS: LEGAL READING, REASONING, AND WRITING (1999); NANCY L. SCHULTZ & LOUIS J. SIRICO, JR., LEGAL WRITING AND OTHER LAWYERING SKILLS (1989); HELENE S. SHAPO ET AL., WRITING AND ANALYSIS IN THE LAW (1989).

14. For example, compare the terms various legal writing scholars use to describe the introductory paragraph that states a thesis, sets out the general rules that apply to the analysis, and outlines the general organization that follows. Helen S. Shapo, Marilyn R. Walter and Elizabeth Fajans use the term "thesis paragraph." HELENE S. SHAPO, MARILYN WALTER, AND ELIZABETH FAJANS, WRITING AND ANALYSIS IN THE LAW 109-16 (4th ed. 1999). Linda Edwards uses the term "umbrella rule section." LINDA HOLDEMANN EDWARDS, LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION 138 (2d ed. 1999). Nancy Schultz and Louis J. Sirico call the introductory paragraph a "road map paragraph." NANCY L. SCHULTZ, LOUIS J. SIRICO, JR., LEGAL WRITING AND OTHER LAWYERING SKILLS 107 (3d ed. 1998).

15. Anecdotal evidence supports this conclusion. Several authors told us that they went to particular pains not to reproduce another's language.

emy present a separate set of challenges. Low status and the resultant high turn-over rate hinder the kind of stability in the profession that would result in the long-term experience that fosters confidence in a shared language.[16]

Thus, the challenge is how to minimize the negative effects of the lack of a common legal writing language on the professional community, while simultaneously encouraging the growth of the discipline that occurs when legal writing professors create a new vocabulary. The choices at each extreme are not helpful. Self-imposed strict limits on creating new legal writing terms might encourage standardization, but such limits likely would stunt the growth of the discipline. Ignoring the problem, or doing nothing to improve communication about writing, is equally untenable. It remains true that if legal writing professors are to establish a usable professional lexicon, they must be confident that they understand legal writing discourse and are giving their students the tools needed to talk about writing in a sophisticated and meaningful way.

The first step toward creating that essential confidence is to learn the state of development of the language of legal writing today. The survey we designed is our effort to gather the information necessary to gain that knowledge.

II. SURVEY DESIGN

The survey took shape through three phases. The first phase was to determine who would comprise the survey population. The second was to decide on the content of the survey. The third, and final, phase was to choose the distribution methodology. The survey is reproduced in Appendix A.[17] We turn first to the survey population.

A. Survey Population

We decided at the outset to limit the survey population to the community of legal writing professors. Although it would be helpful to know how all legal professionals talk about their writing, we designed the survey exclusively for legal writing professors for several reasons. First, legal writing professors alone devote full time to the teaching and study of legal writing. Second, many (perhaps most) judges, practitioners, and non-legal writing faculty graduated before law schools

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16. Note that a significant number of survey participants had taught 0-1 years. *See infra* Part III, Section A. Also, experience teaching was a demographic factor that produced statistically significant results in the *t*-test analysis. *See infra* Part V, Section B(1). The turnover rate for legal writing positions has been extraordinary. For example, in 1988 Professor Chused reported the turnover rate for various sorts of law school personnel who began teaching in 1980-81. Chused, *supra* note 3, at 543. By 1987, approximately nineteen percent of tenured professors had left their positions; thirty-two percent of tenure track professors had left their positions; and seventy-six percent of legal writing faculty with contracts had left their positions. *Id.*

17. The format for data collection was a questionnaire via a written survey. The format for various questions, as described over the next several pages, varied. Questions 1, 2, and 7 used an ordinal scale. SPATZ, *supra* note 5, at 10-11; LOMAX, *supra* note 7, at 9. Questions 6 and 10 through 15 used dichotomous variables. LOMAX, *supra* note 7, at 7. Questions 3 through 5 and 18 through 27 used a nominal scale. SPATZ, *supra* note 5, at 10; LOMAX, *supra* note 7, at 8. Question 17, the most significant question in terms of analyzing uniformity in the understanding of various terms and phrases, used a semantic differential scale as part of the written survey questionnaire. CHARLES, *supra* note 5, at 157. A semantic differential scale involves a continuum between a pair of adjectives related to a word or phrase. *Id.*

began to teach legal writing as a separate discipline.[18] Moreover, those legal professionals no doubt devote scant time to thinking about the legal writing language they use and, thus, are unlikely to have a highly developed vocabulary. Additionally, because legal writing professors influence how future lawyers will talk about legal writing, it is important that the conversation begin with them.

B. Survey Content

Our goals in conducting the survey, as discussed above and further explained below, determined its content. We began designing the survey with the goal of documenting the new lexicon that legal writing professors are creating. A further, pragmatic goal was to create a survey short enough to encourage a healthy response, but detailed enough to gather information about the key issues discussed below. Yet another goal of the design was to test our hypotheses about the reasons for the variations in legal writing terminology already in use. The discussion that follows articulates those reasons in the context of each issue targeted by the survey. We also wanted the survey to include language from a range of sources, both old and new, published and word-of-mouth. Thus, we began the process of survey design by researching law review articles on legal writing, materials we had collected from conferences we attended, and legal writing texts.[19] We compiled lists

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18. *See supra* note 4.

19. RUGGERO J. ALDISERT, WINNING ON APPEAL: BETTER BRIEFS AND ORAL ARGUMENTS (1996); JUDICIAL ADMIN. DIV. AM. BAR ASSOC., JUDICIAL OPINION WRITING MANUAL (1991); STEPHEN V. ARMSTRONG & TIMOTHY P. TERRELL, THINKING LIKE A WRITER: A LAWYER'S GUIDE TO EFFECTIVE WRITING AND EDITING (1992); URSULA BENTELE & EVE CARY, APPELLATE ADVOCACY: PRINCIPLES AND PRACTICE (3d ed. 1998); CAROLE C. BERRY, EFFECTIVE APPELLATE ADVOCACY: BRIEF WRITING AND ORAL ARGUMENT (2d ed. 1999); GERTRUDE BLOCK, EFFECTIVE LEGAL WRITING: A STYLE BOOK FOR LAW STUDENTS AND LAWYERS (5th ed. 1999); NORMAN BRAND & JOHN O. WHITE, LEGAL WRITING: THE STRATEGY OF PERSUASION (3d ed. 1994); SUSAN L. BRODY ET AL., LEGAL DRAFTING (1994); STEVEN J. BURTON, AN INTRODUCTION TO LAW AND LEGAL REASONING (2d ed. 1995); CHARLES R. CALLEROS, LEGAL METHOD AND WRITING (3d ed. 1998); VEDA R. CHARROW ET AL., CLEAR & EFFECTIVE LEGAL WRITING (2d ed. 1995); BRADLEY G. CLARY, PRIMER ON THE ANALYSIS AND PRESENTATION OF LEGAL ARGUMENT (1992); JOHN C. DERNBACH ET AL., A PRACTICAL GUIDE TO LEGAL WRITING AND LEGAL METHOD (2d ed. 1994); ALAN L. DWORSKY, THE LITTLE BOOK ON LEGAL WRITING (2d ed. 1992); EDWARDS, *supra* note 14; MARTHA FAULK & IRVING M. MEHLER, THE ELEMENTS OF LEGAL WRITING (1994); JAMES A. GARDNER, LEGAL ARGUMENT: THE STRUCTURE AND LANGUAGE OF EFFECTIVE ADVOCACY (1993); BRYAN A. GARNER, THE ELEMENTS OF LEGAL STYLE (1991); RONALD L. GOLDFARB & JAMES C. RAYMOND, CLEAR UNDERSTANDINGS: A GUIDE TO LEGAL WRITING (1982); TOM GOLDSTEIN & JETHRO K. LIEBERMAN, THE LAWYER'S GUIDE TO WRITING WELL (1989); C. EDWARD GOOD, MIGHTIER THAN THE SWORD: POWERFUL WRITING IN THE LEGAL PROFESSION (1989); GEORGE D. GOPEN, WRITING FROM A LEGAL PERSPECTIVE (1981); MARGARET Z. JOHNS, PROFESSIONAL WRITING FOR LAWYERS (1998); TERRI LECLERCQ, GUIDE TO LEGAL WRITING STYLE (2d ed. 2000); J.M. LEVINE AND K.A. SAMPSON, ANALYTICAL ASSIGNMENTS FOR INTERGRATING LEGAL RESEARCH AND WRITING (1996); DAVID MELLINKOFF, LEGAL WRITING: SENSE AND NONSENSE (1982); MYRON MOSKOVITZ, WINNING ON APPEAL (3d ed. 1995); RICHARD K. NEUMANN, JR., LEGAL REASONING AND LEGAL WRITING: STRUCTURE, STRATEGY, AND STYLE (3d ed. 1998); LAUREL CURRIE OATES ET AL., THE LEGAL WRITING HANDBOOK: RESEARCH, ANALYSIS, AND WRITING (2d ed. 1998); TERESA GODWIN PHELPS, PROBLEMS AND CASES FOR LEGAL WRITING (2d ed. 1990); DIANA V. PRATT, LEGAL WRITING: A SYSTEMATIC APPROACH (3d ed. 1999); JILL J. RAMSFIELD, *supra* note 13; MARY BARNARD RAY & BARBARA J. COX, *supra* note 13; MARY BARNARD RAY & JILL J. RAMSFIELD, LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN (3d ed. 2000); DAVID S. ROMANTZ & KATHLEEN ELLIOTT VINSON, *supra* note 13; MARJORIE DICK ROMBAUER, LEGAL PROBLEM SOLVING: ANALYSIS, RESEARCH AND WRITING (5th ed. 1991); DEBORAH A. SCHMEDEMANN & CHRISTINA L. KUNZ, *supra* note 13; SCHULTZ & SIRICO, *supra* note 14; SHAPO ET AL., *supra* note 14; LOUIS J. SIRICO, JR. & NANCY L.

of the terms that we found in those sources and chose most terms from the list for the survey.

The first sixteen questions of the survey gathered information about the participants' experience and behavior. Those questions were designed simply to obtain information about the habits of legal writing professors. However, we drafted the questions to test our own theories about environmental influences on the development of a particular legal writing vocabulary. We asked where the participants went to law school, where they were currently teaching and where they had taught in the past, which legal writing texts they were familiar with, whether the legal writing department at their current school uses the same text, and whether they had recently practiced law. We wanted to know whether participants read certain professional periodicals, whether they regularly attended legal writing conferences, and whether they were members of a legal writing listserv.

The remainder of the survey asked participants about their level of confidence in their understanding of certain terms and about their own choice of terminology in their teaching, including organizational terms and the terms they use to identify certain features of a document. The survey concluded with an open-ended question that asked participants whether they had personally created terms and, if so, to identify and define an example. The survey assured confidentiality of individual responses.

C. Survey Distribution

When completed, the survey was eight pages long. We tested it twice: first, with fifteen colleagues at our own schools; and then, at the Notre Dame Conference on Legal Discourse in June 2000. Respondents took no more than fifteen minutes to complete the survey in those practice runs. We adjusted the survey slightly, based on the responses we received, without altering the survey length, and made plans for its wider distribution.

Our goal was to distribute the survey to a large percentage of the population[20] of legal writing professors, with the further goal of receiving a representative sample.[21] To those ends, we distributed the survey at the Eighth Biennial Confer-

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SCHULTZ, PERSUASIVE WRITING FOR LAWYERS AND THE LEGAL PROFESSION (1995); LYNN B. SQUIRES ET AL., LEGAL WRITING IN A NUTSHELL (2d ed. 1996); WILLIAM P. STATSKY & R. JOHN WERNET, JR., CASE ANALYSIS AND FUNDAMENTALS OF LEGAL WRITING (4th ed. 1995); LARRY L. TEPLY, LEGAL WRITING, ANALYSIS, AND ORAL ARGUMENT (1990); UCLA MOOT CT. HONORS PROGRAM, HANDBOOK OF APPELLATE ADVOCACY (Lawrence Brenna et al., eds., 3d ed. 1993); HENRY WEIHOFEN, LEGAL WRITING STYLE (2d ed. 1980); ROBIN S. WELLFORD, LEGAL ANALYSIS AND WRITING (1997); RICHARD C. WYDICK, PLAIN ENGLISH FOR LAWYERS (4th ed. 1998).

20. The group of legal writing professors, in its entirety, is termed the "population" in research terminology. LOMAX, *supra* note 7, at 5; RICHARD JOHNSON & GOURI BHATTACHARYYA, STATISTICS: PRINCIPLES AND METHODS 7 (1985); SPATZ *supra* note 5, at 6. The entire population of legal writing professors in the United States and Canada is estimated to be 1,400, according to the Legal Writing Institute. Electronic memorandum from Lori Lamb, administrator for the Legal Writing Institute (Sept. 30, 2002) (on file with authors).

21. "Sample" refers to the sub-group of the population who actually participated in the survey. LOMAX, *supra* note 7, at 5; JOHNSON & BHATTACHARYYA, *supra* note 20, at 7; SPATZ, *supra* note 5, at 6. Here, "sample" means the 110 participants who responded to the survey. The goal of inferential statistics, described in footnote 7, is to generalize to the entire population from the responses obtained from the sample. The population means for various questions are reproduced in Table 1, *infra* Appendix B, Section B.

ence of the Legal Writing Institute during the summer of 2000 in Seattle, Washington.[22]   We chose that conference because it is the most well-attended and therefore the most likely forum for us to meet our goals.

III. DEMOGRAPHIC DATA—PROFILE OF SURVEY PARTICIPANTS

Approximately 350 legal writing professors attended the Seattle conference, and we received 110 responses. Thus, we base our findings on those 110 responses. When possible, we report data from all responses; however, not all responses were usable for purposes of description or correlation analysis. As a result, the pool of responses for any question ranges from 105 to 110.

As described above, the survey reflected our theories about a number of possible influences on legal writing professors' language choices and their understanding of legal writing terminology generally. Based on the survey design, we anticipated a broad range of responses in several categories, including experience, regional differences, choice of text, and reading habits of participants. The responses did not disappoint those expectations.

A. Experience

Survey participants, on the whole, were experienced in the legal profession. The average[23] survey participant graduated from law school between 1986 and 1990, thus establishing over ten years experience as a lawyer. Only one participant graduated between 1996 and 2000, and twenty-two graduated "before 1980."

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22. The Legal Writing Institute was founded in 1984 by Seattle University School of Law (formerly the University of Puget Sound School of Law). The Institute is currently housed at Mercer University School of Law. "The Institute is a non-profit organization dedicated to improving legal writing by providing a forum for discussion and scholarship about legal writing, analysis, and research." *Background Statement at* http://www.lwionline.org/about/background.asp (last visited Oct. 31, 2003). To this end, every other year since 1984, LWI, which has over 1,400 members, has hosted a national conference; these conferences are very well attended. Electronic memorandum from Lori Lamb, administrator for the Legal Writing Institute (Sept. 30, 2002) (on file with authors).

23. "Average" throughout this article refers to the mathematical average, or *mean*. The "mean" is the mathematical average of the responses. All responses are added and then the total is divided by the number of responses. SPATZ, *supra* note 5, at 2.

The "median" is the middle observation in the data set; it is determined by ranking the data from lowest to highest and then selecting the data point exactly in the middle (at the fiftieth percentile mark). For each question, half of the responses are at or below the median, and half are at or above the median. *Id.* at 39.

The "mode" is the most frequently received response. *Id.* at 40. For example, if a question asks twenty-five participants to rank their answer on a 1 - 5 scale, and five respond "1," two respond "2," five respond "3," eight respond "4," and five respond "5," the mode would be 4. The mean for that same data set would be 3.24, and the median would be 4.
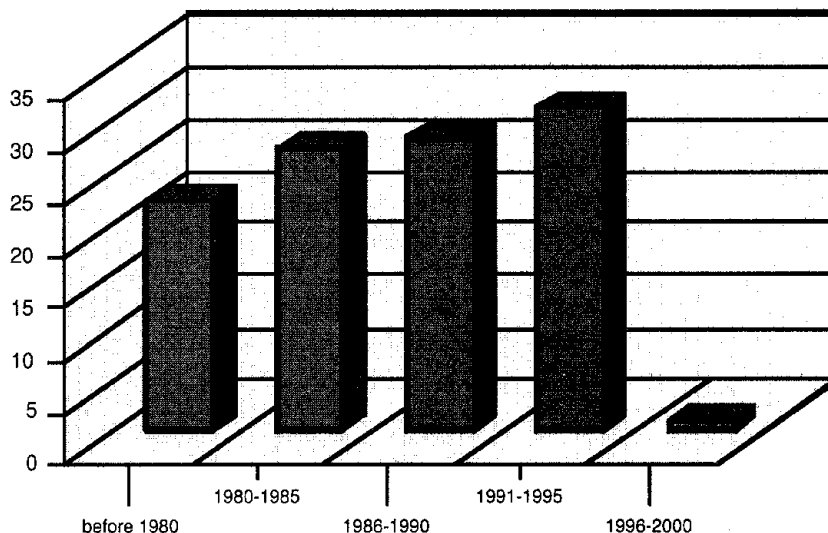
Figure 1: When Graduated from Law School

Survey participants were not as experienced in teaching legal writing as they were in the legal profession at large. Only twenty-nine participants, or twenty-seven percent, responded that they had taught "ten plus" years. The average participant had been teaching legal writing between five and seven years.[24] Nineteen of 109 participants, or seventeen percent, responded that they had taught "zero to one" years. In addition, over one third of all participants, thirty-nine of 110, taught legal writing at another law school prior to completing the survey. That percentage, however, may not capture all those with substantial experience. An additional indicator of a high level of legal writing experience is experience directing a legal writing program, and forty-four of the 110 participants, or forty percent, responded that they were directing or had directed a program.
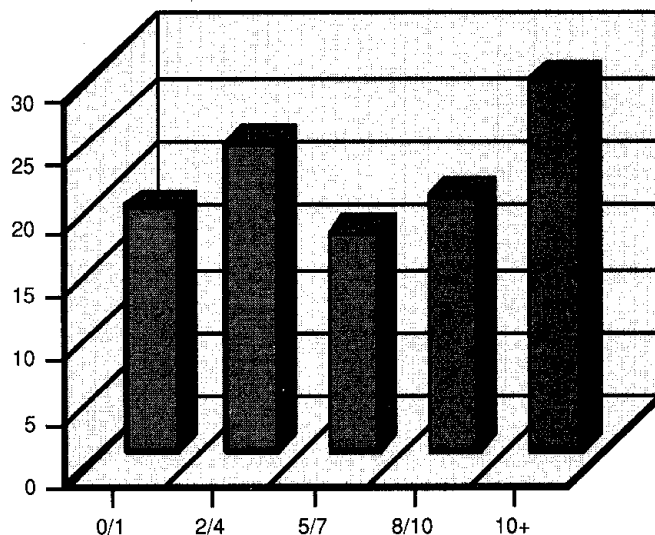
Figure 2: Years Teaching Legal Writing

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24. The mean response was 3.15 and the median was 3, with "3" meaning "five to seven" years.

In contrast to the experience shown by the few participants who had graduated in the last five years, a high percentage of participants, nearly a third or thirty-five participants, indicated that the Seattle conference at which they completed the survey was their first legal writing conference. This figure may demonstrate the poor institutional support and low status that many contend results in a high turnover rate for legal writing professors.[25] Thirty-two participants had attended more than five conferences, and only six of those had attended ten or more.
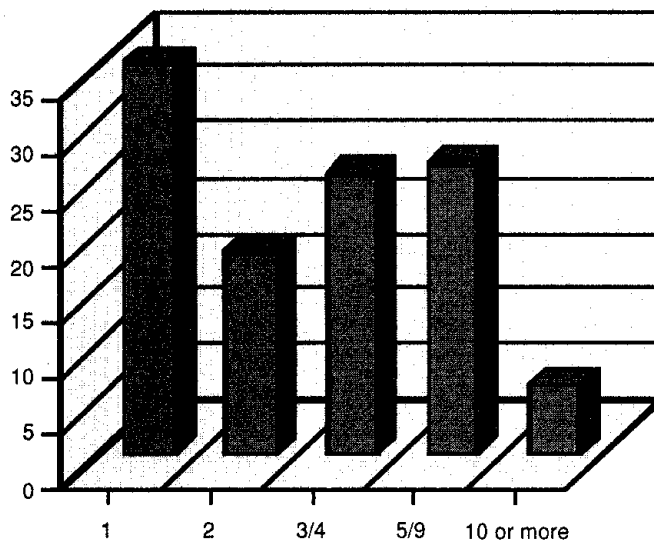
Figure 3: Number of Legal Writing Conferences Attended

Thus, while generally an experienced group, the survey participants varied greatly in teaching, directing, and conference experience.

B. Geographic Background

The second demographic characteristic the survey targeted was the geographic distribution of the sample. Our theory was that regional differences might influence confidence in understanding various legal writing terms. Participants self-identified geographically, listing where they attended law school and where they taught, including current and previous positions.[26] The responses provided a geo-

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25. A high turnover is not surprising because during the 1980s and 1990s some number of legal writing programs maintained a cap on the length of time a legal writing professor could teach there, and such caps force high turnover. According to the 2003 ALWD survey, only nine percent (eleven schools) capped the number of years a legal writing professor could renew a contract. ALWD/LWI SURVEY, *supra* note 3, at 40.

26. Participants listed schools individually, but because the number of responses per school was so low that any results would be statistically unreliable, we converted their answers to the following regions: Northeast, Southeast, Midwest, Plains, and West. We used the regional division plan used by the American Bar Association. American Bar Association, *ABA Approved Law Schools: Law Schools by Location at* http://www.abanet.org/legaled/approvedlawschools/map.html (last visited Nov. 11, 2003). According to this division by the American Bar Association, the Northeast region includes the following states: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. *Id.* The Southeast region includes: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.

graphically diverse sampling for both questions: thirty of the 107 usable responses indicated that the participants obtained their legal education in the Midwest; twenty-nine in the Southeast; twenty-seven in the Northeast; twelve in the West; and eight in the Plains states. Similarly, the location of participants' current and prior teaching position was varied: twenty-nine of 109 usable responses indicated that participants were currently employed in the Northeast; twenty-six in the Midwest; twenty-five in the Southeast; seventeen in the West; and twelve in the Plains.
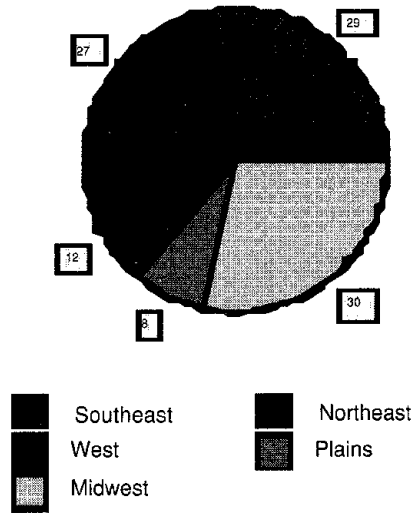
Figure 4: Law School Degree by Region
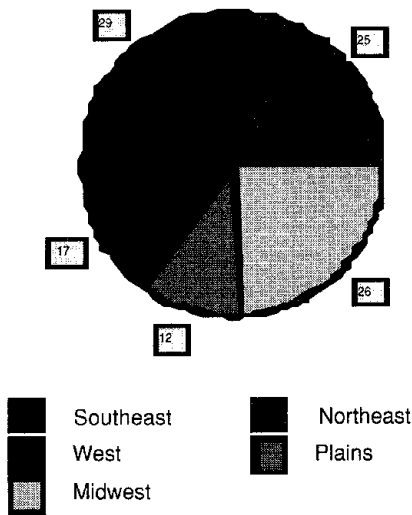
Figure 5: Where Currently Teaching by Region

Id. The Midwest region includes: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. *Id.* The Plains region includes: Arizona, Colorado, Idaho, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming. *Id.* The West region includes: California, Nevada, Oregon, and Washington. *Id.*

C. Texts

We theorized that a legal writing professor's choice of text exerts considerable influence over the language a professor uses and that writing professors are most familiar with the terminology of the text they assign. The survey asked several questions about legal writing texts, including the texts with which participants were familiar and the degree of standardization of texts within their legal writing departments. Eighty-four of the 109 participants, or seventy-seven percent, used the same text as others in their legal writing program; sixty of those were required to do so. The remaining twenty-five, or twenty-three percent, used different texts for classes within one legal writing program.

1st Quarter

▨ Shapo		☐ Neumann
■ Edwards		▨ Oates
☐ Dernbach		▨ Schultz
■ Calleros		⊞ Own Materials
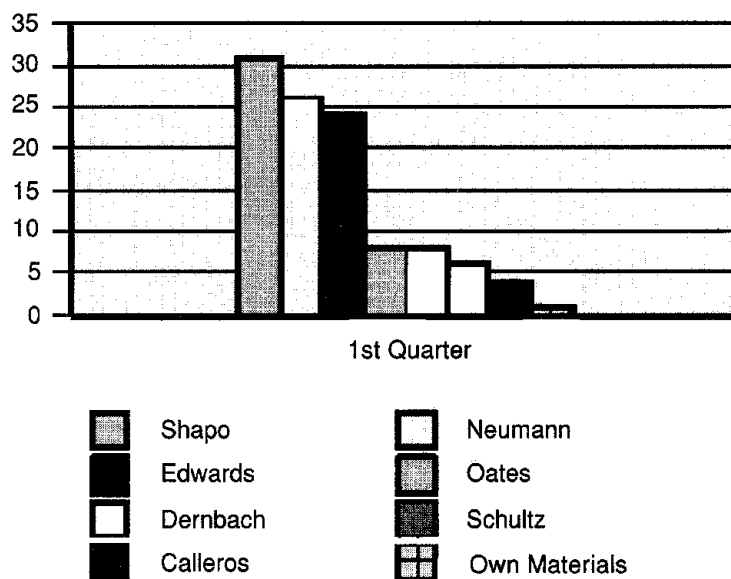
Figure 6: Texts Assigned by Participants to First Year Students

We considered the choice of assigned texts of such importance that we asked the open-ended question, "Which text do you use?" Participants identified eight texts,[27] although seventy-five percent used one of three popular choices. Thirty-one of the 108 participants responding to this question used *Writing and Analysis in the Law*, by Helene S. Shapo, Marilyn R. Walter, and Elizabeth Fajans;[28] twenty-six participants used *Legal Reasoning and Legal Writing: Structure, Strategy, and Style*, by Richard K. Neumann, Jr.;[29] and twenty-four participants used *Legal Writing: Process, Analysis, and Organization*, by Linda Holdeman Edwards.[30]

Knowing from our own experience and conversations with others that professors often prepare for class using texts not assigned to their students, the survey

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27. CALLEROS, *supra* note 19; DERNBACH ET AL., *supra* note 19; EDWARDS, *supra* note 14; NEUMANN, *supra* note 19; OATES ET AL., *supra* note 19; SHAPO ET AL., *supra* note 14; SCHULTZ & SIRICO, *supra* note 14. In addition, one participant used materials prepared by his or her own legal writing department.

28. SHAPO ET AL., *supra* note 14.

29. NEUMANN, *supra* note 19.

30. EDWARDS, *supra* note 14. Note that *The Legal Writing Handbook*, unlike most other texts, includes a glossary defining terms, not simply a glossary of usage. OATES ET AL., *supra* note 19, at 915-22.

also asked which supplemental texts, if any, participants used.[31] Participants identified twenty-two separate texts, although half of the participants did not indicate that they used any additional text.[32] Twenty percent of participants indicated that they used two or more supplemental texts.

Finally, the survey asked participants to identify which books of a group of popular texts they had "substantively reviewed."[33] The data show that participants, generally, read such texts broadly. Ninety-one of 109 participants had reviewed Richard Neumann's text, *Legal Reasoning and Legal Writing: Structure, Strategy, and Style*. Eighty-four had reviewed Helene Shapo, Marilyn Walter, and Elizabeth Fajans' *Writing and Analysis in the Law*. Seventy-four had reviewed Linda Edwards' *Legal Writing: Process, Analysis, and Organization*. Seventy-three had reviewed Laurel Oates, Anne Enquist, and Kelly Kunsch's *The Legal Writing Handbook: Analysis, Research, and Writing*. Forty-three participants had reviewed Nancy Schultz and Louis Sirico's *Legal Writing and Other Lawyering Skills*, and far fewer, twenty-eight, had reviewed *Legal Writing in a Nutshell* by Lynn B. Squires, Marjorie Dick Rombauer, and Katherine See Kennedy. In sum, most participants had "substantively reviewed" at least four of the texts identified by publishers as their most prominent.

D. *Journal Reading and E-mail Habits*

Finally, the survey asked participants about their journal reading and e-mail habits. Listservs are a widely used way to stay informed about current developments in the profession.[34] Eighty-eight of 109 participants belong to a legal writing listserv.

The question about professional periodicals, Question 15, demonstrated that sample participants read professional journals regularly, although the data was unusable for purposes of correlation analysis. Of 110 responses, eighty-five regularly read *Perspectives*, a publication dedicated to legal research and writing and distributed free of charge by the West Publishing Company.[35] The publications of the Legal Writing Institute were also favored, with eighty-two participants regularly reading *The Second Draft*, the newsletter of the Legal Writing Institute, and eighty-one reading *Legal Writing: The Journal of the Legal Writing Institute*. Other professional publications scored nearly as high. Seventy-six participants regularly read newly published legal writing texts,[36] and sixty-three kept up with recently published law review articles on legal writing.

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31. Responses were too diverse for statistical analysis, but the information was useful in identifying additional materials and teaching patterns. Interestingly, experienced teachers were as unlikely (or likely) as newer teachers to supplement their teaching with additional texts, whatever those additional texts might be.

32. Fifty-five of the 110 participants either left this question blank or wrote "none."

33. We chose the texts to include in the list for Question 14 by contacting several publishing companies and asking which were their most popular writing texts. Aspen Publishing was very helpful, but some of the other companies were reluctant to provide specific information regarding sales. Therefore, we relied on their representation that these texts were "among their most popular."

34. The legal writing community primarily uses two listservs. DIRCON, the listserv of the Association of Legal Writing Directors (ALWD), is a closed listserv for members of that organization. LWIONLINE is a closed listserv for members of the Legal Writing Institute.

35. The first issue of *Perspectives* was published in August, 1992. It is published three times per year.

36. See *supra* note 13 for a sampling of textbooks created in recent years.

Bar journals are a popular place for legal writing professors to publish, and sixty-two participants included articles in bar journals on their list of professional reading. *The Scribes Journal of Legal Writing*[37] had fewer readers, with thirty-one responding that they read it regularly. Even fewer—only twenty-five participants—read journals on general writing, i.e., journals on writing not specific to the legal profession.[38] Fourteen participants responded to a category entitled "other," listing articles from journals on rhetoric or linguistics, or noting that they also read widely on non-writing law-related topics.

IV. SURVEY RESULTS-DESCRIPTIVE ANALYSIS

The survey responses provide a variety of information about legal writing professors and the language they use. First, the responses document the new lexicon that legal writing professors are creating. Second, many responses indicate each individual's perception of her own confidence in her understanding of a list of thirty-two terms.[39] Third, some survey responses provide measures of whether participants use or teach the same term to identify certain organizational and analytical features of a document. Fourth, the survey supplies information about whether, when provided with limited choices, survey participants agree on the definitions of a small group of terms, and whether they use multiple terms for the same concept.

The results for many of the questions are detailed in Appendix B. In Part V, we include correlation and *t*-test analyses.[40] We first discuss briefly the new vocabulary that legal writing professors are creating.

A. Creation of a New Vocabulary

We gathered evidence of the new vocabulary legal writing professors are creating as we combed legal writing texts for terms to include in the survey. The survey results provide further evidence of new legal writing language development. More than one quarter of survey participants, twenty-six percent, responded that they had created new legal writing terminology, and they furnished examples of new terms they had created. Some participants defined their examples; others did not. The responses are colorful proof that legal writing language is alive and growing as the area of study gains status as a discipline in the legal academy.

Consider these examples. To *ping pong* is to organize the discussion section of a legal memorandum by giving first the plaintiff's arguments, and then the

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37. *Scribes* is published annually by the American Society of Writers on Legal Subjects and is printed and distributed by Matthew Bender. Volume 7, covering 1998-2000, includes a symposium on the politics of legal writing. 7 SCRIBES J. LEGAL WRITING (2000).

38. For example, some legal writing directors follow the publication of the Council of Writing Program Administrators, WPA: WRITING PROGRAM ADMINISTRATION. The Council is an affiliate of the Association of American Colleges and the Modern Languages Association.

39. Question 17 asks participants to indicate their level of confidence that they understand a term. See Appendix B for an explanation of the origin of each term, and an analysis of each term individually.

40. We do not attempt to correlate Question 9, supplemental texts assigned, with other questions, as the twenty-five different responses given varied too widely to be of statistical use. In addition, we did not attempt to correlate Questions 3, 4, and 5, describing where participants went to law school, currently teach, or have taught with other questions. As with Question 9, the results are too varied to be useful, and the regional labels are for demographic purposes only.

defendant's, for each issue or sub-issue. *Interstates, highways, and county roads* are further examples of organizational terms. *Positive proof* and *negative proof* are terms based on Richard Neumann's neologism, *proving the rule. Case-by-case-itis* means to organize the analysis of an issue by explaining cases individually rather than synthesizing the law. *Private memo* is a memorandum from the student to the legal writing professor in which the student explains the decisions made in the course of writing the assignment. Other examples include: *mega-rules; stacking brief; cases as donuts; setting the factual stage; toolboxes; boxes; spectrum;* and *document architecture.* Additionally, many examples included acronyms for organizational paradigms such as BaRAC or IRLAFARC.[41]

B. Self-Perception of Confidence in Shared Understanding

A considerable portion of the survey is devoted to determining whether survey participants feel confident that they understand legal writing terminology. Question 17 of the survey asks participants to indicate their level of confidence in their understanding of thirty two terms and phrases. Participants choose a number on a sliding scale, with 1 being "not confident at all" and 5 being "very confident" that they understand the term. For descriptive purposes, we label responses of "4" or "5" as "more confident than not," and responses of "1" or "2" as "not confident."

Question 17 is narrowly drawn; it measures only the individual's perception of her confidence that she "understands" each term. It does not define the term or attempt to determine how the individual respondent defines the term. In fact, two individuals could define the term quite differently, yet express the same level of confidence in their understanding of the term.[42] For example, one participant could define "container" as an organizational term that denotes a section of a document that provides the reader with context for the information to follow, while another participant could define it as "a synonym for holding." Both participants could answer that they were highly confident that they understood the term, although the reality is that what they understand the term to mean is very different.

We decided to measure individual levels of confidence in understanding of the selected terms and phrases for a number of related reasons. First, so many new terms have flooded the legal writing field that we suspected many, if not most, legal writing professors lack confidence in some of the terms. That lack of confidence, we further suspected, causes frustration and confusion, and ultimately dampens communication among legal writing professors. Lack of confidence, therefore, is itself an independent impediment to effective communication and professional development, regardless of whether legal writing professors actually share a common vocabulary.

We designed Question 17 to include a variety of categories of terminology—terms describing organization, legal analysis, grammar, and writing style—with some terms belonging in more than one category. We also wanted to compare

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41. For more examples of organizational paradigm acronyms, *see infra* Part IV.C.3.

42. Nor did the question provide further explanation when a term could have a common dictionary meaning as well as a specialized meaning in the legal writing context. Thus, some participants may have needed more context for a word like "container." We are unable, given the survey design, to separate those participants who responded to a standard, that is non-legal-writing, definition of the word "container," from those who saw it as a legal writing term of art.

terms from newer, more popular texts with terms from older, less widely used texts. Finally, we looked for terms that appear in multiple sources, and terms that are spread by word-of-mouth. The results for individual terms are set out in Table One in Appendix B. Appendix B also explains the source of each term and the definition provided in the source.

Few terms generated uniformity in responses regarding levels of confidence in participants' understanding of the terms. Analysis of the survey results by category of terminology revealed just one such category—terms that appear in multiple sources. Those were the only terms that elicited uniformly high levels of confidence. The only other discernible pattern in the survey results was participants' responses to a sub-category of organizational terms—variations on the standard IRAC organizational acronym. Those terms elicited a uniformly low level of confidence.

1. Analyzing Multi-Source or Ubiquitous Terms

The survey included at least nine terms that appear in more than two sources: "analogical reasoning," "IRAC," "rule based reasoning," "nominalizations," "passive voice," "rule sub-parts," "rule application," "paradigm," and "holding." Three of the terms, "passive voice," "nominalizations," and "paradigm," also appear in sources that are not legal writing texts.[43] The survey results for Question 17 show that terms appearing in several sources are most likely to be recognized by legal writing professors. For all nine terms, the mean response was over "4" on our scale where "5" indicated "very confident." Over eighty percent of participants were more confident than not that they understood these terms. Participants' responses to those ubiquitous terms, the strongest overall response in the survey, suggest that to develop a common legal writing language, legal writing professors need to encounter the same term in multiple sources.

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43. *See, e.g.,* WILLIAM STRUNK, JR. ET AL., THE ELEMENTS OF STYLE 66 (4th ed. 2000) ("Avoid passive voice."); JOSEPH M. WILLIAMS, STYLE: TOWARD CLARITY AND GRACE 30 (1990) ("There is a technical term for a noun derived from a verb or an adjective. It is called *nominalizations.*"); THOMAS S. KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS (2d ed. 1970); John Henry Schlegel, *Of Duncan, Peter and Thomas Kuhn,* 22 CARDOZO L. REV. 1061, 1062 (2001) ("The world was awash in 'paradigm shifts,' 'new paradigms,' and sententious utterances designed to be 'paradigmatic.'"). In fact, although the analogy does not hold up completely, Kuhn's work may have application to the language dilemma we have described in the legal writing world. For example, one scholar describes the Kuhnian cycle and its effect on language:

> The Kuhnian cycle—competing schools . . . a competing paradigm and paradigm debate—have great epistemological implications. At some points in the cycle, communication among members of the discipline becomes particularly difficult. It is difficult between competing schools. It is very difficult between those who can and cannot see the significance of anomalies and counter-instances. It is extremely difficult between competing paradigms. If a discipline can assess its position in relation to the cycle, it can provide insight into its current and future epistemological situation. The type of communication difficulties identified by Kuhn also suggest rational responses by a discipline to avoid the most divisive expressions.

Edward J. Conry and Caryn L. Beck-Dudley, *Meta-Jurisprudence: The Epistemology of Law,* 33 AM. BUS. L.J. 373, 408 (1996) (footnote omitted).

2. Analyzing Organizational Terms, Analytical Terms, and Grammar,
Writing Style, and Composition-Process Terms

a. Organizational Terms

Fourteen terms included in Question 17 of the survey are organizational terms. They are: chronological lead; IRAC; road trip; CRuPAC; paragraph block; FORAC; horizontal coherence; TEC Pattern; CREAC; dovetailing; rule application; paradigm; umbrella section; and containers. With the following six organizational terms, most participants were more confident than not: umbrella section; paradigm; IRAC; paragraph block; dovetailing; and rule application. Survey participants were not confident with the remaining eight organizational terms: chronological lead; road trip; CRuPAC; FORAC; horizontal coherence; TEC pattern; CREAC; and containers. For the most part, a pattern or guiding principle for predicting high levels of confidence in understanding organizational terms does not emerge. One negative pattern does appear when one looks only at the organizational terms that derive from the IRAC acronym: CREAC; CRuPAC; and FORAC. These were all terms that inspired low confidence.[44] In sum, other than the predictable confusion for organizational acronyms, there was no consistent response to organizational terms.

b. Analytical

Thirteen terms included in Question 17 could be categorized as analytical terms. They are: analogical legal reasoning; textual fusion; fact weaving; branch points; rule based reasoning; base point; processed rule; rule subparts; rule application; prevailing view; holding; phrase that pays; and inherited rule. On average, the participants were more confident than not with the following six terms: analogical legal reasoning; rule based reasoning; rule subparts; prevailing rule; fact weaving; and holding. One term, inherited rule, produced an even split between "very confident" and "not confident at all." Survey participants were not confident in the remaining five analytical terms: textual fusion; branch points; base point; processed rule; and phrase that pays.

Looking at analytical terms, it is again difficult to draw conclusions about why participants are more confident in one than another. For example, one might assume that using compounds of popular, easy-to-understand words might evoke broad confidence. That principle might explain "fact weaving." But the components of "fact weaving" seem no more common, understandable on their face, or descriptive than those of "textual fusion." And both terms relate to the analytical process. In sum, survey participants did not respond consistently to analytical terms.

c. Grammar, Writing Style, and Composition-Process Terms

Six terms included in Question 17 of the survey are grammar, writing style, or composition-process terms. They are: natural word mutation; pre-writing; litter words; nominalizations; dovetailing; and passive voice. Two of these terms, "pas-

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44. *See infra* Appendix B, Table 1.

sive voice" and "nominalizations," were broadly recognized. For "passive voice," ninety percent of survey participants responded that they were "very confident" with the term; for "nominalizations," seventy-two percent responded that they were "very confident" with the term. Two other terms, "pre-writing" and "dovetailing," produced a less confident response, but the average survey participant was more confident than not with these two terms. With the final two terms in this category, "natural word mutation" and "litter words," the average participant was not confident.

Once again, other than the principle that terms appearing in multiple sources evoke more confidence, it is hard to generalize from the responses to the survey terms. The response to "passive voice" and "nominalizations" might lead one to suppose that most legal writing professors perceive themselves as understanding writing style or writing process terms, but that assumption does not explain why "pre-writing" or "litter words" are not as recognized. As with the other categories, although terms that appear in multiple sources inspire confidence, no other principle for predicting confidence in grammar and style terms emerges.

3. Analyzing Terms from Texts by Popular Authors

We looked at terms from three texts written by popular authors: *The Legal Writing Handbook*, by Laurel Currie Oates, Anne Enquist and Kelly Kunsch;[45] *Legal Writing: Process, Analysis and Organization*, by Linda Holdeman Edwards;[46] and *Synthesis: Legal Reading, Reasoning, and Writing*, by Debra Schmedemann and Christina Kunz.[47] At the time of the survey, the Oates text had been a popular text for over ten years. The Edwards text, on the other hand, was first published in 1996, approximately two to three years before we distributed the survey. We also wanted to choose a text published the year of the survey. Christina Kunz and Debra Schmedemann are popular authors in the legal writing community, but at the time of the survey they were most known for the legal *research* text, *The Process of Legal Research*. The Kunz and Schmedemann legal *writing* text had only been published for about two months when we distributed the survey.

Professor Edwards' text provided three terms that were not found in the other chosen texts: "processed rule," "inherited rule," and "umbrella section."[48] The other terms in Question 17 from the Edwards text, "rule application," "analogical reasoning," and "rule based legal reasoning,"[49] appear in numerous other texts. Survey participants were more confident than not about the terms that the Edwards text shared with other texts, and sixty-four percent of participants were more confident than not that they understood "umbrella section."[50] "Inherited rule," however, produced an even split when survey participants indicated their level of con-

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45. OATES ET AL., *supra* note 19.

46. EDWARDS, *supra* note 14.

47. SCHMEDEMANN & KUNZ, *supra* note 19.

48. EDWARDS, *supra* note 14, at 40-43 ("processed rule" and "inherited rule"); *id.* at 138-40 ("umbrella section").

49. *Id.* at 5 ("rule based reasoning" and "analogical reasoning"); *id.* at 105-19 ("rule application").

50. In her 1996 text, Edwards notes that she borrows the similar term "umbrella rule" from Richard Neumann's text, *Legal Reasoning and Legal Writing: Structure, Strategy, and Style*. Edwards, *supra* note 14, at 69 n.1.

fidence that they understood the term, and only thirty-eight percent were more confident than not that they understood "processed rule."

Deborah Schmedemann and Christina Kunz's *Synthesis: Legal Reading, Reasoning, and Writing* was published early during the year in which we distributed the survey.[51] The survey chose three terms from the new text: "textual fusion," "fact weaving," and "branch points."[52] Survey participants were most confident that they understood "fact weaving," with fifty-nine percent responding that they were more confident than not. Further, survey participants were generally not confident in their understanding of "textual fusion" and "branch point."

The survey also asked about two terms from the text by Oates, Enquist and Kunsch, *The Legal Writing Handbook*: "paragraph block" and "dovetailing."[53] Survey participants were only slightly more confident than not with both terms, with fifty-six percent asserting they were more confident than not with "dovetailing" and fifty-one percent asserting they were more confident than not with "paragraph block."

In sum, when texts create new terms, legal writing professors probably cannot be certain that the terminology they teach students will be confidently understood by others, regardless of whether the text is established or new.

4. Analyzing Terms from Texts Aimed at Practitioners

A small sampling, only three terms from two of the books that were sources for terms in Question 17, are terms from treatises written for an audience of practitioners, not students. "Horizontal coherence" and "containers" are terms from *Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing* by Stephen V. Armstrong and Timothy P. Terrell.[54] "Chronological lead" is a term from *The Lawyer's Guide to Writing Well*, by Tom Goldstein and Jethro K. Lieberman.[55] For all three terms, survey participants were not confident that they understood the terms.

5. Analyzing Word-of-Mouth or Terms Used at Legal Writing Conferences

Question 17 of the survey included four terms, that at the time of the survey, we knew of only by word-of-mouth or by attending conferences in the last twelve years. They included two variations on the "IRAC" acronym: "CruPAC," and "FORAC." Additionally, the survey asked about "litter words" and "the phrase-that-pays." We expected that these terms would inspire little confidence in participants, and generally that proved to be true.

"CRuPAC" and "FORAC" were the least recognized, with fewer than twenty percent of the participants indicating that they were more confident than not with the term. "Litter words" and "the phrase-that-pays" fared a little better, with twenty-eight and thirty-eight percent of the participants respectively indicating that they were more confident than not with the term. Hence, it appears that using terms in

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51. SCHMEDEMANN & KUNZ, *supra* note 19.

52. *Id.* at 44 ("textual fusion"); *id.* at 140 ("fact weaving"); *id.* at 124-25 ("branch points").

53. OATES ET AL., *supra* note 19, at 159, 557 ("paragraph block" and "dove tailing").

54. ARMSTRONG & TERRELL, *supra* note 19, at 3-18 ("horizontal coherence"); *id.* at 3-3 ("containers").

55. GOLDSTEIN & LIEBERMAN, *supra* note 19, at 90.

conference presentations or depending solely on word-of-mouth education will do little to establish a common vocabulary.

C. Using and Teaching Legal Writing Terminology: Shared Understanding

The survey addressed how legal writing professors use legal writing terminology in two ways. The survey first asked participants whether they consistently use the same term to identify a concept when teaching,[56] and second, what terms they use to describe certain features in a sample document.[57] Generally, the response to these questions supported our theory, based on our own experience, that different legal writing professors often use different terms for the same concept. Most marked was the response indicating that legal writing professors often create new acronyms to describe an organizational paradigm, and that these acronyms are not broadly recognized.

1. Teaching Consistent Terms vs. Teaching a Broad Vocabulary

Question 16, which asked whether participants teach a variety of terms for the same concept, may have confused some participants,[58] but the responses provided strong evidence that legal writing professors consistently teach one term for a particular concept and do not teach students the variety of terms that students may encounter when they enter practice. Of all responses, only one participant answered that she varied terminology. Over eighty percent of participants stated that they "often" or "almost always" use one consistent term when teaching a particular concept. Despite the possible confusion, the response to this question indicates that legal writing teachers often use one term to teach a concept. If the term that the legal writing professor uses is one she has created,[59] then her students are not gaining a vocabulary with which they can talk to others in the legal community about their writing.

2. Labeling the Parts of a Document

To respond to Questions 18 through 25, participants read a two page interoffice memorandum with portions of the text bracketed and identified how they would label the bracketed material by choosing one of four offered terms or by choosing the category "Other."[60] In contrast to Question 17, which attempted to measure participants' self-perceived levels of confidence in their understanding of the chosen terminology, these questions addressed how survey participants actually use organizational and analytical terms. When compared to the "confidence in understanding" data, this series of questions produced more consensus among respondents.[61]

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56. *See* Question 16 in the survey reproduced in Appendix A.
57. *See* Questions 18-25 in the survey reproduced in Appendix A.
58. Nearly five percent of participants indicated they did not understand the question.
59. Nearly twenty-five percent of participants created their own terminology. *See infra* Part IV.C.3.
60. *See infra* Appendix A.
61. This response, however, may have been influenced by the fact that the participants' choice was limited to four responses and "other." In spite of this limitation, however, most terms did not evoke overwhelming agreement.

The results generally confirmed our theory that legal writing professors use different terms for the same concept. Out of the eight questions, only one evoked agreement from over three quarters of the participants; eighty-eight percent of participants identified the part of the document that set out the statute early in the discussion section as the "rule." Although far from unanimous, participants greatly agreed to the use of terminology in two other instances: labeling the top of the memo that identifies its author, recipient and topic as the "heading"; and labeling the section that explained how the rule applied to the facts of the present case as "application."

Other responses were in the range of forty to fifty percent. About one-half agreed to the same label for the introductory paragraph of the discussion section, "thesis paragraph," and that "rule explanation" was the correct label for the section that described the statutes and cases that illustrate the rule. Similarly, responses for the last paragraph of the memo were nearly evenly divided between "conclusion" and "mini-conclusion." Finally, in the case of organizational acronyms, participants resorted to choosing none of the offered options, choosing "other" to indicate that they use different organizational acronyms than those offered. Taken together with the responses regarding legal writing teachers' confidence in understanding organizational acronyms, this result suggests that creating new acronyms for organizational paradigms is a common practice and may increase misunderstanding in legal writing conversation. Appendix B catalogs more detailed results for Questions 18 through 25.

3. IRAC and Its Progeny: A Source of Confusion

The survey results indicate that organizational acronyms are an area of considerable confusion.[62] The responses to organizational acronyms, IRAC and the others that legal writing professors have created to teach paradigms of organization, consistently evoked varied responses from survey participants. Although participants are highly confident that they understand the IRAC acronym, they express low confidence in the IRAC variations—CREAC, CRuPAC, and FORAC.[63] Yet despite this confidence in understanding IRAC and their lack of confidence in understanding other acronyms, when the survey asked participants to apply organizational acronyms to features in a document, participants most often indicated by choosing "other," that they bypass IRAC in favor or other acronyms.[64]

Question 28 allowed us to cross check consistency with the responses to Questions 17 and 22. It asked survey participants to indicate whether they use certain organizational acronyms, allowing participants to indicate that they use more than one term. The responses to Question 28 supported the earlier responses. Sixty-seven percent teach, either alone or in conjunction with other organizational terms, the acronym "IRAC." However, fifty-three percent teach organizational acronyms other than or in addition to the four listed here. Nineteen percent teach the organi-

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62. Acronyms are a favorite form of professional jargon. *See* ROGER ANDERSON, THE POWER AND THE WORD 144 (1988) ("The problem with acronyms is they are easy to invent but less easy to decode, especially for outsiders."); WALTER NASH, JARGON: ITS USES AND ABUSES 20 ("Acronymy is rife in all the species of modern shop talk.").

63. *See infra* Appendix B, Table 1.

64. *See supra*, Part IV.C.2.

zational acronym "CREAC." Four percent teach the organizational acronym "CRuPAC," and two percent teach "FORAC."

These responses all suggest that many legal writing teachers are creating their own organizational acronyms. It remains for further study whether this indicates a difference in the organizational paradigms they are teaching, or whether they are teaching the same concepts with different names for the same parts of the document.

The variations in acronyms for organizational paradigms highlight the fact that although neologisms may hinder understanding some of the time, legal writing teachers are indeed creating a rich and varied vocabulary as the discipline grows. Survey participants listed the following acronyms in response to a variety of survey questions: FHRO; T/R/RE/RA/C; CRAC; IRLAFARC; RREACC; TRAC; FIRAC; TREAC; CRPA; IREAC; RREACC; IRAAAC; BaRAC; and C/RAC.

D. Shared Understanding of Definitions

Two questions in the survey sought to discover whether participants shared a common definition for phrases that legal writing professors regularly use.[65] The questions set out two terms that are frequently used in legal writing texts and conversation: "large scale organization" and "small scale organization."[66] As references to the size of a chunk of text, these terms may be somewhat elastic by nature. Nevertheless, the variety in the responses for this question is disquieting to those who use these terms assuming that other legal writing teachers understand them without further definition. They also undermine the notion that legal writing professors can reliably cure the professional terminology dilemma by using a term that appears in more than one source, because although these terms appear in many texts, the survey shows there is little consensus about their definition.

A slight majority, fifty-one percent, defined "large scale organization" as "whole document organization" in Question 26. A substantial minority, twenty-two percent, defined it as "large section organization." Only two percent chose "organization of one piece of analysis," and no one chose to define the term as "paragraph organization." Fully one quarter of participants, twenty-five percent, indicated that they would choose an alternative to the choices listed. Hence, nearly one-half of survey participants did not share the same meaning for the phrase "large scale organization."

Question 27 produced an even more fractured response. It asked each participant to define "small scale organization." The largest group choosing one response represented less than one third of participants. Thirty-two percent defined "small scale organization" as the "organization of one issue." Twenty percent chose the response "organization of one sub-issue." Similarly, nineteen percent indicated the phrase meant "paragraph organization." Only one percent chose to define it as "sentence organization/structure." Again, as in Question 26, twenty-seven per-

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65. It is difficult to generalize from the results of this section of the survey because the survey contained only two questions that asked directly for participants to define a term. Further complicating the analysis, the questions asked each participant to choose one of four meanings for the phrase or to indicate that none of the offered choices defined the term as the participant would define it by choosing "other."

66. *E.g.,* SHAPO ET AL., *supra* note 14, at 90-119.

cent, more than a quarter of survey participants, preferred a definition not offered for the phrase. Hence, sixty-eight percent of survey participants did not share a common meaning for the phrase "small scale organization."

V. SURVEY RESULTS: CORRELATION AND *T*-TEST ANALYSIS

We ran two types of statistical analyses on the survey data: correlation analysis and *t*-test analysis. Correlation analysis determines whether a relationship exists between two variables. Although somewhat related to correlation analysis, *t*-test analysis allows us to divide all participants, and hence, our entire sample, into smaller groups based on the response to each question. Once we have the smaller samples within each question, we can then compare how sub-groups within one question respond to another question. To illustrate the difference, consider the following examples. Correlation analysis can discover whether there is a relationship between how long it has been since a writing professor graduated and whether she expresses confidence in understanding a particular term. On the other hand, *t*-test analysis predicts whether writing professors who graduated between 1980 and 1985 are more likely to express confidence in understanding a particular term than those who graduated between 1990 and 1995. The existence of a statistically significant correlation does not necessarily produce statistically significant *t*-test results for those sub-groups, and vise versa, although the two are often related. In the present study, whether looking at demographic data or the seemingly important question of which text a professor chooses to assign, both correlation analysis and *t*-test analysis provided scant information from which we could predict, generalize, or identify important patterns.

A. *Correlation Analysis*

Correlation analysis attempts to discern whether there is a connection between two variables.[67] A positive correlation exists between two variables when an increase in one variable accompanies an increase in the other variable.[68] A negative correlation exists when an increase in one variable accompanies a decrease in the other variable.[69] Thus, a positive correlation would exist if an increase in the number of years a legal writing professor has taught accompanied an increase in the confidence in understanding expressed with a particular term in the survey. Likewise, a negative correlation would exist if an increase in the number of years a legal writing professor has taught accompanied a decrease in the confidence in understanding a particular term. Significantly, correlation analysis can only predict whether it is likely that two variables are related; it cannot predict which variable "causes" the other to change.[70]

We ran correlation analyses on 288 separate data combinations. We considered the level of confidence with the thirty-two terms in Question 17 and compared those thirty-two individual data sets with six separate demographic factors and three common textbooks assigned to 1L's. The demographic factors on which

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67. R. MARK SIRKIN, STATISTICS FOR THE SOCIAL SCIENCES 429 (2d ed. 1999).

68. *Id.* at 444.

69. *Id.*

70. SPATZ, *supra* note 5, at 319; CHARLES, *supra* note 5, at 106.

we ran correlation analyses were: how long the professor had been teaching legal writing; when the professor graduated from law school; whether the professor directed a writing program; the number of legal writing conferences the professor had attended; whether the professor subscribed to a legal writing listserv; and whether the professor had practiced law within the past five years. The three common textbooks were: *Writing and Analysis in the Law*, by Helene S. Shapo, Marilyn Walter, and Elizabeth Fajans; *Legal Reasoning and Legal Writing: Structure, Strategy and Style*, by Richard K. Neumann Jr.; and *Legal Writing: Process, Analysis and Organization*, by Linda Holdeman Edwards.[71]

The survey data generated few correlations. Although the textbook assigned by the participant proved to be somewhat more significant than demographic factors, no logical patterns emerged. Further, some of the correlations generated may not reflect an actual relationship between the variables tested, but a "spurious relationship."[72]

Of the 288 correlation analyses we ran, only twenty statistically significant correlations emerged. This is less than seven percent of the potential relationships we examined. For example, there was no correlation between the length of time since the professor graduated, whether the professor directed a program, or whether a professor was on a legal writing listserv, and the level of confidence expressed for any of the individual terms in Question 17.

1. Correlations Between Level of Confidence with Particular Terms and Demographic Data

Two terms in Question 17, "pre-writing" and "CREAC," correlated positively to how long a professor had taught and how many conferences she had attended. That is to say that the longer a legal writing professor has been teaching, the more probable it is she will express confidence that she understands the term "pre-writing." Similarly, the more conferences she has attended, the more probable it is she will express confidence that she understands the term "pre-writing." The same holds true for the acronym "CREAC." The longer a legal writing professor has been teaching, the more probable it is she will express confidence that she understands the term "CREAC"; and the more conferences she has attended, the more

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71. SHAPO ET AL., *supra* note 14; NEUMANN, *supra* note 19; EDWARDS, *supra* note 14.

72. Even when the correlation is large enough to be deemed significant based on the sample size, there is no guarantee a relationship between the two variables actually exists. The significant correlation simply makes it less likely that the connection appears by chance. In some instances, however, a "spurious relationship" exists. SIRKIN, *supra* note 67, at 163; JOHNSON & BHATTACHARYYA, *supra* note 20, at 66. A spurious relationship occurs when the "relationship between two variables is the product of a common independent variable." SIRKIN, *supra* note 67, at 163. For example, the highest correlation in the survey was between those professors who assign the Calleros text and those professors who teach the term CRuPAC. This is in fact a spurious relationship caused by an independent third variable (an "extraneous variable"): teaching at Arizona State University. All professors at Arizona State University assign Charles Calleros' text, which relies primarily on IRAC as the organizational paradigm and does not mention CRuPAC. However, the director at Arizona State University at the time of the survey had formerly taught at the University of Illinois College of Law where the CRuPAC acronym was commonly used to teach Richard Neumann's organizational paradigm. She brought the term with her to Arizona State University, and thus, this correlation has more to do with working with a particular director than using the Calleros text.

probable it is she will express confidence that she understands the term "CREAC."

There was also a positive correlation between whether a legal writing professor had practiced law in the last five years and the level of confidence with the term "fact weaving." The correlation makes little sense if you view "fact weaving" as a term of art with a highly specific definition. It may make complete sense, however, to legal writing professors who have practiced law more recently, and use the words not as a term of art, but to express the skill of entwining facts with law as an important tool of successful advocacy in practice.

The only negative correlation between level of confidence with a particular term and any demographic factor was with the term "textual fusion." A negative correlation, although not a strong one, existed between the number of conferences attended and the term "textual fusion." The negative correlation means that the more conferences attended, the less confident the legal writing professor was likely to be in her understanding of the term.

2. Correlations Between Level of Confidence with Particular Terms and Text Assigned

Although generally correlations based on textbook choice were largely inconclusive, our theory that textbook choice would generate the most correlations proved true. Our results were limited by our inability to know which textbooks would prove most popular when we developed the list of terms in Question 17. Nevertheless, there were fourteen correlations between the various terms in Question 17 and the texts by Edwards, Neumann, and Shapo, et al.

There were four correlations between whether the professor assigned the Edwards text and the level of confidence with individual terms in Question 17. A positive correlation existed between assigning the Edwards text and level of confidence with "processed rule," "umbrella section," and "inherited rule,"[73] meaning that professors who assigned the text were more likely to express confidence in their understanding of these terms than those who did not assign that text. This makes sense because all three terms appear in the Edwards text.[74] Generalization becomes more difficult, however, because there was no correlation between Edwards users and the term "rule-based reasoning," which also appears in the Edwards text.[75] Similarly, we are at a loss to explain the fourth correlation. There was a negative correlation between assigning Edwards and level of confidence with the term "textual fusion," meaning that a professor who assigns the Edwards text is less likely to express confidence in her understanding of that term than one who does not assign the Edwards text.

There were five positive correlations between whether a professor assigned the Neumann text and levels of confidence with terms from Question 17. The relevant terms were: "rule-based reasoning," "pre-writing," "rule sub-parts," "paradigm," and "phrase that pays." As with the Edwards correlations, some of these terms appear in the Neumann text, and others do not.[76] And, once again, no logi-

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73. The correlation for "processed rule" was .35. The correlation for "umbrella section" was .22, and the correlation for "inherited rule" was .38, the strongest in the survey. For definitions of each of these terms, see Appendix B which tracts the results for each term in Question 17.

74. EDWARDS, *supra* note 14, at 40-43, 138-40, and 40-43 respectively.

75. *Id.* at 5.

76. NEUMANN, *supra* note 19, at 89 ("paradigm"); *id.* at 15 ("rule based reasoning").

cal principle seems to explain these correlations.

Finally, there were five negative correlations between whether the professor assigned the Shapo text and the level of confidence with Question 17 terms. Those who assign Shapo were less likely than those who did not assign that text to express confidence in the terms "paragraph block," "pre-writing," "umbrella rule," "road trip," and "inherited rule."

In summary, correlation analysis produced little generalizable or predictive information. Positive and negative correlations were few and, for the most part, they were scattered and weak. The results do not allow one to predict with certainty the degree of confidence a legal writing professor will express with any particular term, even when knowing something about the professor's background or the text she assigns.

B. t-*Test Analysis*

A "two-sample *t*-test" compares two sample means "to generalize about a difference between the two respective population means."[77] For example, Question 8 asked which text the participant assigned. The *t*-test allowed us to compare the level of confidence regarding a certain term expressed by legal writing professors who assigned the Shapo text with the level of confidence regarding the same term expressed by legal writing professors who assigned the Neumann text. The *t*-test calculates the variances in means between the two sub-groups and considers the sample size for each group, concluding whether there is a statistically significant difference between two groups that is not likely to be a matter of chance. The stronger the statistically significant relationship, the more likely it is to be reproduced in the entire population of legal writing professors. We ran 1792 individual *t*-tests on the survey data. Only 122—or seven percent—statistically significant differences emerged, and as with the probable spurious relationships noted above,[78] some of these differences may have been influenced by extraneous variables.[79]

Furthermore, the *t*-test tells us only whether there is a significant difference between the two sample means; it does not allow us to generalize about the cause of any existing difference. For example, we cannot say that assigning Edwards instead of Shapo "causes" a higher level of confidence with the term "processed rule" or that a higher level of confidence "causes" a professor to assign Edwards instead of Shapo. We can only say that there is a statistically significant difference in levels of confidence with "processed rule" between those who assign Edwards and those who assign Shapo. The strongest pattern to emerge from the t-test analysis is that experience teaching and attending conferences is relevant in predicting the self-identified level of confidence in various terms.

1. *Differences Between Level of Confidence with Particular Terms for Sub-Groups Based on Sub-Demographic Data*

The question that provided forty-one, or one-third, of the significant differences between sub-groups was Question 7, which inquired about how many con-

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77. SIRKIN, *supra* note 67, at 271.

78. *See* discussion of spurious relationships *supra* note 72.

79. *See* SPATZ, *supra* note 5, at 203.

ferences the participant had attended. As stated earlier, this question elicited a broad range of responses, with over thirty-five participants indicating that the conference at which they responded to the survey was their first legal writing conference.

Nearly all of the significant differences that emerged from the answers to Question 7 involved participants at one or the other extreme end of the spectrum (those who had attended 0 - 1 conferences or those who had attended 10 or more conferences) compared to participants in the less-extreme ranges (those who had attended 2, 3 - 4, or 5 - 9 conferences). The terms for which the level of confidence in understanding was most significantly different depending on the number of conferences attended were: "analogical legal reasoning"; "chronological lead"; "textual fusion"; "natural word mutation"; "rule based reasoning"; "base point"; "pre-writing"; "CREAC"; "rule sub-parts"; and "dovetailing." The strongest differences in the *t*-test analysis emerged when comparing the levels of confidence in understanding the terms "analogical legal reasoning," "rule based reasoning," "base point," and "pre-writing" between professors who had attended one conference and professors who had attended ten or more.

The question generating the next largest group of statistically significant differences was Question 1, length of time teaching legal writing. In contrast to the other questions or the correlation analyses, a strong pattern emerges here. To some degree, teaching experience is relevant in predicting levels of confidence in various terms.

There were twenty-three significant differences between sub-groups in length of time teaching, and all but one of those differences involved participants who had been teaching 0 - 1 year. The terms which generated significant differences based on length of time teaching were: "analogical legal reasoning"; "CruPAC"; "prewriting"; "processed rule"; "CREAC"; "nominalizations"; "rule sub-parts"; "rule application"; "umbrella section"; and "holding." In all but one of the twenty-two differences relating to those teaching 0 - 1 year, the less-experienced teacher expressed less confidence in her understanding of the particular term in question.

On the other hand, those teaching 0 - 1 year expressed greater levels of confidence, to a statistically significant degree, in the term "holding" than those teaching 10 or more years. Although this result conflicts with the broad general trend noted above regarding length of time teaching, it is likely that the experienced teacher recognized greater nuances and ambiguity in the term "holding" and therefore expressed less confidence.

Other statistically significant differences between sub-group means were scattered and difficult to categorize. Relative to levels of confidence in the term "fact weaving," significant differences existed between professors who had practiced law in the last five years and those who had not.[80] Regional differences about where one attended law school and where professors were teaching at the time they responded to the survey produced fifteen and eleven statistically significant differences, respectively, but the differences in both demographics were scattered

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80. Anecdotal evidence from legal writing professors about practitioners' complaints regarding the lack of emphasis on fact analysis in law school might explain this result. Also note that correlation analysis revealed a positive correlation between whether a legal writing professor had practiced law in the last five years and the level of confidence with the term "fact weaving."

and showed no discernable pattern.[81] Finally, director status produced only four statistically significant differences regarding terms when compared to non-directors.[82]

2. *Differences Between Level of Confidence with Particular Terms for Sub-Groups Based on Text Assigned*

Another group of *t*-test analyses that produced an interesting response compared the mean for participants who assign one popular text with the mean for those who assign another. We compared those who assigned one of the three most popular texts in the survey, the texts by Shapo et al., Neumann, and Edwards.[83] When comparing the differences in means, by text assigned, in relation to confidence in understanding the Question 17 terms, seventeen statistically significant differences emerged.

The term "rule-based reasoning" generated a statistically strong difference between those assigning Neumann and those assigning Shapo or Edwards. Those assigning Neumann were much more likely to express confidence in the term than those assigning either of the other two texts, even though the term appears in Edwards.[84] Neumann assigners were also much more likely than Shapo assigners to express confidence in the term "prewriting," although the term does not appear in the Neumann text. Edwards assigners were significantly more likely to express confidence in their understanding of the term "processed rule" or "inherited rule" than either Neumann or Shapo assigners. A very strong difference emerged when comparing the confidence levels of Shapo assigners and Edwards assigners regarding "inherited rule." These differences are logical because the terms "inherited rule" and "processed rule" appear in the Edwards text.[85]

CONCLUSION

Legal writing professors, at the heart of an emerging discipline, are indeed creating a new professional lexicon as they teach legal writing. However, common and confident understanding of that language appears to be elusive as the discipline grows. The most salient insight to emerge from survey results was that neither an individual professor's use of professional terminology nor her likely level of confidence in understanding the new legal writing vocabulary can be readily predicted. Nevertheless, four points emerge. First, legal writing professors express the most confidence in understanding terms that appear in several sources. Second, legal writing professors are teaching one term consistently and not instructing students in the varied vocabulary that is developing. Third, experience teaching legal writing does count, although the clearest difference is between those

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81. The terms that produced significant differences between regions where legal writing professors attended law school were: analogical legal reasoning; natural word mutation; base point; traditional interior; TEC pattern; holding; and phrase that pays. The terms that produced significant differences between regions where legal writing professors taught were: analogical legal reasoning; road trip; nominalizations; dovetailing; paradigm; and umbrella section.

82. The terms that produced statistically significant results when comparing directors with non-directors were: pre-writing; processed rule; CREAC; and inherited rule.

83. SHAPO ET AL., *supra* note 14; NEUMANN, *supra* note 19; EDWARDS, *supra* note 14.

84. EDWARDS, *supra* note 14, at 5.

85. *Id.* at 40-43

with very little experience and those with great experience. And fourth, acronyms for organizational paradigms, variations on IRAC, create more problems than any other type of term.

The survey data tells us little about the reasons for these results, although it is likely that they are simply a product of rapid language development typical of a quickly growing field. Nevertheless, the survey results suggest that legal writing professors direct attention to vocabulary development in several important ways. First, survey responses confirm that legal writing professors are creating a rich and varied terminology to describe legal writing and the writing process. Next, legal writing professors should create new terminology only when necessary to convey the user's intended meaning. Scholars and textbook authors should not allow fear of plagiarism to prevent them from repeating the language that others employ when writing textbooks and articles. Additionally, legal writing professors should teach a variety of terms so that students will be familiar with an extensive legal writing vocabulary. Further, legal writing professors should develop the habit of defining terms as they use them, to facilitate the expeditious development of a common language in which the profession shares. Also, because organizational acronyms are the subject of broad variety and confusion, legal writing professors should pay particular attention to how they use these acronyms. Finally, to keep the language rich and vital, we should welcome new terms and adopt them freely when they fill a need. For those whose professional life is devoted to teaching communication skills, it is well worth the effort needed to develop and support a shared language.

APPENDIX A

Confidential Survey

Thank you for taking the time to complete this survey. The estimated time for completion is approximately 20 minutes. Your responses will be completely anonymous, and will be viewed by only Terry Pollman and Judy Stinson, who will use the data for an article on the language legal writing professionals use to teach.

1. How long have you been teaching LRW?

   <u>0-1 yr.</u>   <u>2-4 yrs.</u>   <u>5-7 yrs.</u>   <u>8-10 yrs.</u>   <u>10+ yrs.</u>

2. When did you graduated from law school?

   <u>Before 1980</u>   <u>1980-1985</u>   <u>1986-1990</u>   <u>1991-1995</u>   <u>1996-2000</u>

3. What law school(s) did you attend?

   _____

4. Where do you currently teach LRW?

   _____

5. Where else have you taught LRW? Nowhere (or answer below)

   _____

6. Are you an LRW Director?

   <u>Yes</u>   <u>No</u>

7. How many legal writing conferences have you attended?

   <u>1 (this is my first)</u>   <u>2</u>   <u>3-4</u>   <u>5-9</u>   <u>10 or more</u>

8. What writing/analysis text do you assign to 1L's?

   _____

9. If you supplement your teaching with another writing/analysis text(s), which text(s)?

_____

_____

10. Does your entire LRW department use the same writing/analysis text?

<u>Yes</u>   <u>No</u>

11. Is your entire LRW department required to use the same writing/analysis text?

<u>Yes</u>   <u>No</u>

12. Are you on a legal writing listserv?

<u>Yes</u>   <u>No</u>

13. Have you practiced law in the last five (5) years?

<u>Yes</u>   <u>No</u>

14. Which of the following books have you substantively reviewed? Circle yes or no for each book.

Book	Yes (1)	No (2)
Legal Writing: Process, Analysis, and Organization, Linda Holdeman Edwards	1	2
Legal Reasoning and Legal Writing: Structure, Strategy and Style, Richard K. Neumann, Jr.	1	2
The Legal Writing Handbook: Analysis, Research, and Writing, Laurel Currie Oates, Anne Enquist, and Kelly Kunsch	1	2
Legal Writing and Other Lawyering Skills, Nancy L. Schultz, Louis J. Sirico, Jr.	1	2
Writing and Analysis in the Law, Helene S. Shapo, Marilyn Walter, and Elizabeth Fajans	1	2
Legal Writing in a Nutshell, Lynn B. Squires, Marjorie Dick Rombauer, and Katherine See Kennedy	1	2

15. Which of the following publications do you read regularly? Please check all that apply.

_____ Bar journal articles on legal writing

_____ Journals on writing that are not legal writing specific

_____ Legal Writing: The Journal of the Legal Writing Institute

_____ Newly published law review articles on legal writing

_____ Newly published legal writing texts

_____ Perspectives

_____ The Second Draft

_____ The Scribes Journal of Legal Writing

_____ Other (please describe)

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16. How often, when teaching a particular concept, do you use one consistent term/phrase? (Please do not include giving multiple examples of the same term/phrase as using more than one term/phrase.) Please check only one.

_____ Almost Never

_____ Rarely

_____ Sometimes

_____ Often

_____ Almost Always

17. How confident are you, on a scale of 1 - 5 with "1" being not confident at all and "5" being very confident, with your understanding of the following terms/phrases?

Term/phrase	Circle ONE for each term/phrase				
Analogical Legal Reasoning	1	2	3	4	5
Chronological Lead	1	2	3	4	5
Textual Fusion	1	2	3	4	5
Fact Weaving	1	2	3	4	5
IRAC	1	2	3	4	5
Branch Points	1	2	3	4	5
Natural Word Mutation	1	2	3	4	5
Rule-Based Reasoning	1	2	3	4	5
Road Trip	1	2	3	4	5
Traditional Interior	1	2	3	4	5
CRuPAC	1	2	3	4	5
Paragraph Block	1	2	3	4	5
FORAC	1	2	3	4	5
Prewriting	1	2	3	4	5
Horizontal Coherence	1	2	3	4	5
Litter Words	1	2	3	4	5
TEC Pattern	1	2	3	4	5
Processed Rule	1	2	3	4	5
CREAC	1	2	3	4	5
Nominalizations	1	2	3	4	5
Rule Subparts	1	2	3	4	5
Dovetailing	1	2	3	4	5
Passive Voice	1	2	3	4	5
Rule Application	1	2	3	4	5
Paradigm	1	2	3	4	5
Prevailing View	1	2	3	4	5
Umbrella Section	1	2	3	4	5
Containers	1	2	3	4	5
Holding	1	2	3	4	5
Phrase that Pays	1	2	3	4	5
Inherited Rule	1	2	3	4	5

18 - 25. Please review the following two-page memorandum and answer the multiple-choice questions following the memo.

MEMORANDUM

To: Partner
From: Associate
Date: July 15, 2000
Re: Jonathan Roscoe, CR # 99-2147

⎤ 18

Mr. Roscoe will likely be convicted of Unlawful Use of a Means of Transportation. A defendant is guilty of that offense when he or she "knowingly takes unauthorized control" over another's means of transportation. Ariz. Rev. Stat. § 13-1803(A). The most controversial element will be "control," but whether Mr. Roscoe acted "knowingly" can also be debated.

⎤ 19

Mr. Roscoe likely acted "knowingly." A person acts "knowingly" "with respect to conduct....described by a statute defining an offense" when the "person is aware or believes that his or her conduct is of that nature." Ariz. Rev. Stat. § 13-105(6)(b). Mr. Roscoe purposefully moved the quad runner a total of eighteen feet so he would not be seen. Once the quad runner was secluded behind the dumpster, Mr. Roscoe intentionally pried a flashlight off the dashboard. He then looked around for other items and played with the started. These conscious actions strongly suggest he acted "knowingly." Although Mr. Roscoe was drinking, it does not appear that the alcohol impaired his ability to be aware of his conduct, and hence, the "knowingly" element is met.

20 21 22

Mr. Roscoe likely exercised "control" over the quad runner. "Control" exists when a person excludes an owner form using his or her vehicle, intending to use the vehicle as a means of transportation. See Ariz. Rev. Stat. § 1301801(A)(2); State v. Hoag, 797 P.2d 1233, 1237 (Ariz. Ct. App. 1990).

The statute defines "control" as "to exclude other from using their property." § 13-1801(A)(2). The Arizona Court of Appeals, however, held that "control" for purposes of the Unlawful Use of a Means of Transportation statute requires the defendant not only exclude the owner but intend "to use the means of transportation as such." Hoag, 797 P.2d at 1237. In Hoag, the defendant tried to steal a CB radio from the van. There was no evidence the defendant tired to actually take or drive the van; he merely unlawfully entered the vehicle. See Hoag, 797 P.2d at 1233. The defendant pled guilty to Unlawful Use of a Means of Transportation under Ariz. Rev. Stat. § 13-1803(A), but the appellate court reversed his conviction, finding "no factual basis" for the plea since he never intended to use the van as a "means of transportation." Hoag, 797 P.2d at 1237. The court considered the statute's intent, which was to prevent "joyriding" and its associated dangers. See id. at 1234-35.

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Here, by pushing the quad runner eighteen feet and behind a dumpster, Mr. Roscoe clearly "exclude[d] others from using their property." § 13-1801(A)(2). However, it is less clear whether he intended to use the quad

runner as a "means of transportation." Hoag, 797 P.2d 1237. Mr. Roscoe claims he simply wanted to "see what it felt like to sit in" a quad runner, and he made no immediate attempt to start the quad runner. He drank a beer, took a flashlight off the dash, and claims he was "looking for other potentially interesting items" when he noticed the starter. As in Hoag, simply being in the vehicle and taking the flashlight alone does not constitute "control," since this situation does not present any "joyriding" concerns.

Mr. Roscoe did, however, play with the quad runner's starter "for a minute." Although the engine did not start, playing with the starter may be enough evidence of intent to use the quad runner as a means of transportation. 24

It is therefore likely a court would find this evidence meets the "control" element of § 13-1803(A). 25

Mr. Roscoe is likely to be convicted of Unlawful Use of a Means of Transportation and I recommend he accept the plea offer in this case.

Using the numbers to the right of each labeled section of the memo, please circle the letter preceding the term you most often use to categorize that section when teaching.

18. A. Heading   B. Introduction
    C. Caption   D. Format
    E. Other_____

19. A. Road Map   B. Thesis Paragraph
    C. Umbrella Paragraph   D. Road Trip
    E. Other_____

20. A. Standard   B. Test
    C. Rule   D. Law
    E. Other_____

21. A. Analysis   B. Textual Fusion
    C. Fact Weaving   D. Application
    E. Other_____

22. A. IRAC   B. CruPAC
    C. FORAC   D. CREAC
    E. Other_____

23. A. Rule Description   B. Rule Development
    C. Rule Proof   D. Rule Explanation
    E. Other_____

24. A. Alternative Argument   B. Balanced Analysis
    C. Distinction   D. Counter-Analogical Reasoning
    E. Other_____

25. A. Mini-Conclusion   B. Landing
    C. Conclusion   D. Mini-Landing
    E. Other_____

Moving now away from the memo, please answer the following four questions.

26. What do you mean by "large scale organization"?

A. Whole document organization
B. Large section organization
C. Organization of one piece of the analysis
D. Paragraph organization
E. Other_____

27. What do you mean by "small scale organization"?

A. Organization of one issue
B. Organization of one sub-issue
C. Paragraph organization
D. Sentence organization/structure
E. Other_____

28. Which of these organizational terms do you use in your teaching? (Please circle all that apply.)

A. IRAC
B. FORAC
C. CREAC
D. CruPAC
E. Other_____

29. If you have personally created any terms/phrases to teach LRW, please list and define one such term/phrase below.

_____

_____

_____

THANK YOU for taking the time to assist us on this project!!!

APPENDIX B

The results for Questions 16-25 are detailed below. In addition to the number and percentage of responses in various categories, we include information such as the means, medians, modes, quartiles, range, and standard deviations. Means, medians, and modes[86] are all measures of "central tendency";[87] that is, they reflect, in varying ways, the "average" participant's response. Quartiles resemble the median, but the data points are divided by four rather than by two. Quartiles therefore provide the data points for the twenty-fifth and seventy-fifth percentile marks.[88] Range and standard deviation are measures of "dispersion";[89] that is, the degree to which scores are clustered around the mean or spread widely from the mean.

A. QUESTION SIXTEEN—USE OF VARIED TERMINOLOGY

To discover whether legal writing teachers believed that they, as individuals, use a wide variety of terms for similar concepts, we asked the following question: "How often, when teaching a particular concept, do you use one consistent term/ phrase?"[90] Participants were advised not to consider the practice of giving multiple examples of the same term as "using more than one term." Over half of the participants, fifty-seven of 105, indicated they use one term consistently for the same concept "often." The mean response was 4.10, with "4" meaning "often" and "5" meaning "almost always." Interestingly, not a single participant chose "1," meaning "almost never." This was the only question in the survey where no participants chose the lowest possible option as her answer. Less than one percent, only one participant, chose "2," meaning "rarely," and sixteen percent chose "3,"

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86. Means, medians, and modes are defined *supra* at note 23.

87. SIRKIN, *supra* note 65, at 81-97; LOMAX, *supra* note 7, at 42-46.

88. As with the median, for each question twenty-five percent of the responses will be at or below the first quartile (represented as *Q1*), and twenty-five percent of the responses will be at or above the third quartile (represented as *Q3*). The second quartile, *Q2*, is the median. LOMAX, *supra* note 7, at 31. Quartiles help determine whether the distribution of responses is skewed, either negatively or positively. *Id.* A distribution is "skewed" when the right and left halves of the curve are not balanced. SIRKIN, *supra* note 65, at 104. If *Q3* minus the *Q2* is greater than the *Q2* minus *Q1*, the distribution is positively skewed. This means, simply, that "the scores are more spread out at the high end of the distribution and more bunched up at the low end of the distribution." If *Q3* minus *Q2* is less than *Q2* minus *Q1*, the distribution is negatively skewed. LOMAX, *supra* note 7, at 31.

89. LOMAX, *supra* note 7, at 125-30. "Range" means the highest score within a data set, minus the lowest score within that same data set. SPATZ, *supra* note 5, at 51. "Standard deviation" measures how far the observations in the sample deviate from the mean. CHARLES, *supra* note 5, at 101. The greater the standard deviation, the wider the variation in responses. *Id.* The standard deviation is the most commonly reported measure of dispersion. SPATZ, *supra* note 5, at 53.

Sixty-eight percent of all scores for participants, presuming a normal curve, will fall within one standard deviation (plus or minus) of the mean. CHARLES, *supra* note 5, at 101. Hence, if our scale was 1 - 5, as it is for Question 17 in the survey, and for a particular term the mean response was 2.5 with a standard deviation of .5, we could conclude that sixty-eight percent of all participants' answers would fall between 2 and 3 (2.5 minus .5, or 2.0, through 2.5 plus .5, or 3.0). Similarly, ninety-five percent of all scores fall between +/- 1.96 standard deviations from the mean, and ninety-nine percent of all scores fall between +/- 2.58 standard deviations from the mean. *Id.*

90. This question confused some participants. *See supra* notes 56-58 and accompanying text.

meaning "sometimes." While legal writing professors may consider consistency a virtue, these results also indicate that professors are not teaching students to recognize a broad legal writing vocabulary.

B. QUESTION SEVENTEEN—LEVELS OF CONFIDENCE WITH SPECIFIC TERMS AND PHRASES

In preparation for the survey, we researched legal writing texts and articles, looking for both standard and less common language.[91] We purposefully included terminology that we thought common,[92] as well as some unusual terms. Survey participants responded by indicating, on a sliding scale, their level of confidence that they understood each term. A response of "1" indicated the participant was "not confident at all," and a response of "5" indicated the participant was "very confident."[93] There were 107 useable responses for each of the terms in Question 17. We list these terms, and the reader response to them, below.

Table 1: Summary of Question 17 Responses

Term/Phrase	Mean	Q_1	Median	Q_3	S
Analogical Legal Reasoning	4.17	4	5	5	1.34
Chronological Lead	2.15	1	2	3	1.35
Textual Fusion	1.68	1	1	2	1.06
Fact Weaving	3.52	2	4	5	1.42
IRAC	4.79	5	5	5	0.79
Natural Word Mutation	1.59	1	1	2	1.10
Branch Points	2.09	1	2	3	1.26
Rule-Based Reasoning	4.43	4	5	5	1.02
Road Trip	2.07	1	1	3	1.52
Base Point	1.71	1	1	2	1.15
Traditional Interior	1.28	1	1	1	0.83
CRuPAC	1.73	1	1	2	1.38
Paragraph Block	3.20	1.5	4	5	1.55
FORAC	1.50	1	1	1	1.11
Prewriting	3.89	3	4	5	1.33
Horizontal Coherence	1.74	1	1	2	1.20
Litter Words	2.50	1	2	4	1.45
TEC Pattern	1.36	1	1	1	0.98
Processed Rule	2.66	1	2	5	1.71
CREAC	2.99	1	3	5	1.84
Nominalizations	4.42	4	5	5	1.12
Rule Subparts	4.37	4	5	5	1.11
Dovetailing	3.51	2.5	4	5	1.49
Passive Voice	4.79	5	5	5	0.79
Rule Application	4.80	5	5	5	0.74
Paradigm	4.44	4	5	5	1.02
Prevailing View	4.36	4	5	5	1.05
Umbrella Section	3.79	3	5	5	1.57
Containers	1.59	1	1	2	0.95
Holding	4.67	5	5	5	0.94
Phrase that Pays	2.92	1	3	4	1.54
Inherited Rule	2.98	1	3	5	1.63

Q_1 = First Quartile; Q_3 = Third Quartile; S = Standard Deviation

The survey listed thirty-two terms, which are detailed below:

1. Analogical Reasoning. "Analogical reasoning" is a term often used to describe the logic of legal analysis. Linda Holdeman Edwards uses the term in her delineation of modes of legal reasoning, defining it as reasoning that "reaches a result by showing . . . *direct factual similarities* between case law and the client's facts."[94] The term also appears in other texts, such as the Schmedemann/Kunz text,[95] and Steven J. Burton's legal methods text.[96]

Most participants were confident with this term, as the mean response was 4.17, and the median was 5. The first quartile was 4, meaning seventy-five percent or greater were more confident than not with the term. Sixty-seven participants, or sixty-three percent, were "very confident" that they understood the term. Only twelve participants, eleven percent, were "not confident at all" that they understood the term. The standard deviation[97] of 1.3 was moderately high. Hence, sixty-eight percent of all responses were between 2.87 and 5.

2. Chronological Lead. "Chronological lead" is a term that appears in a practitioner-oriented legal writing treatise by Jethro K. Lieberman and Tom Goldstein.[98] They define a "lead" as the first opening paragraph,[99] and a "chronological lead" as an opening paragraph organized chronologically.[100] They observe that the term is "commonly used by lawyers who have either not thought through their problem or not revised their wording once they have solved it."[101]

Participants in general indicated a relatively low level of confidence with this term. The mean was 2.15, and the median was 2. The third quartile was only 3, indicating that less than twenty-five percent were more confident than not with the term. Fifty-one responded with a "1," or "not confident at all," and another twenty responded with a "2." Hence, seventy-one participants, sixty-six percent, were not confident that they understood "chronological lead." The standard deviation for this term was 1.4, suggesting a moderately wide spread in responses.

3. Textual Fusion. "Textual fusion" is a term that textbook authors Deborah Schmedemann and Christina Kunz define as "word-by-word analysis of the similarities and differences between or among two or more rules drawn from" the precedent to be applied (or rules "to be fused").[102]

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91. *See supra* note 19.

92. Participants may understand certain terms/phrases without reference to a particular definition or narrow interpretation as provided below. This is especially true for terms used outside the legal writing field.

93. For descriptive purposes, we label responses "4" plus "5" as "more confident than not" and responses "1" plus "2" as "not confident."

94. EDWARDS, *supra* note 14, at 5.

95. Schmedemann and Kunz define analogical reasoning as "reasoning by example." SCHMEDEMANN & KUNZ, *supra* note 13, at 81. "In reasoning by example, you compare the facts from a client's case, which has no known legal result, to the facts of a decided case, which has a known legal result." *Id.* at 81-82.

96. Analogical reasoning is one of two types of reasoning discussed in Burton's text. BURTON, *supra* note 19, at 25. While some schools offer a separate legal methods course, in many schools the course that most explicitly addresses the legal system, standard of review, weight of authority, types of reasoning, and similar issues is the legal writing course.

97. *See supra* note 87 and accompanying text.

98. GOLDSTEIN & LIEBERMAN, *supra* note 19, at 90.

99. *Id.* at 55.

100. *Id.* at 90.

101. *Id.*

102. SCHMEDEMANN & KUNZ, *supra* note 13, at 44.

Participants indicated a very low level of confidence with "textual fusion." The mean was 1.68, and the median was 1. The third quartile was only 2, indicating that less than twenty-five percent were either half or more confident with the term. The mode was 1. Only three participants responded with a "5," indicating they were "very confident" that they understood the term. Eighty-three, or seventy-eight percent, indicated a "1" or "2," the lowest levels of confidence in their understanding. The standard deviation was 1.06, indicating a smaller spread in responses and general agreement that this term is not well-understood by legal writing professors.

4. Fact Weaving. "Fact weaving" is another term from *Synthesis*, the text by Schmedemann and Kunz.[103] The text notes that the tasks of the legal writer include "weaving together information from various sources and then sorting out the facts to be included" in the analysis.[104]

Survey participants responded with more confidence to this term. The mean response was 3.52, and the median was 4. Sixty-three, or fifty-nine percent, responded with a "4" or "5," indicating that they were more confident than not that they understood "fact weaving." The first quartile was 2 and the third quartile was 5, however, indicating a wide spread in participants' level of confidence with this term. The standard deviation of 1.42 supports this, indicating the spread for sixty-eight percent of all participants would be extremely large, ranging from 2.1 to 4.94.

5. IRAC. The next term on the survey was the acronym, "IRAC."[105] The term is widely used and appears in many textbooks.[106] It is usually decoded as Issue, Rule, Application, and Conclusion, although some substitute "Analysis" for "Application" when explaining the "A."[107]

However one chooses to explain the "A," the legal writing teachers we surveyed were very confident that they understood the term. The mean was 4.79, and the median was 5, and the first quartile was 5. The mode was also 5. Ninety-six responded with a "5," and another seven with a "4," meaning that ninety-six percent were more confident than not that they understood IRAC. Only four participants answered with a "1," that they were "not confident at all" about the meaning of "IRAC." The standard deviation was relatively low, at .79.

6. Branch Points. We returned to the Schmedemann/Kunz text for the next term on the survey: "branch points."[108] "Branch points occur when an analysis can proceed down one of two 'roads,' each with its own analysis and implications."[109] The text instructs students that rather than choosing one path, they should pursue first one, and then the other path.[110]

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103. *Id.* at 140.

104. *Id.* at 140-43. Schmedemann and Kunz focus on breaking down the process of gathering and classifying information for the student. Students are aided in fact-weaving by creating visual aides such as a "factual matrix" or "timelines." *Id.* at 140-41.

105. Professional jargon often includes acronyms. *See supra* note 62.

106. *E.g.,* NEUMANN, *supra* note 19, at 247 (using "A" for Analysis), OATES ET AL., *supra* note 19, at 520; SCHMEDEMANN & KUNZ, *supra* note 13, at 119.

107. Compare OATES ET AL., *supra* note 19, at 520, with NEUMANN, *supra* note 19, at 247.

108. SCHMEDEMANN & KUNZ, *supra* note 13, at 124-25.

109. *Id.* at 124.

110. *Id.*

Participants were generally not confident with this term. The mean was 2.09 and the median was 2. The third quartile was only 3. Only seven responded that they were "very confident" with the term. With forty-nine responses of "1" and twenty-four responses of "2," sixty-eight percent of participants were not confident regarding the term. The standard deviation of 1.26 demonstrates some spread in the responses, but the vast majority of responses were low.

7. Natural Word Mutation. "Natural word mutation" appears in a legal writing treatise by George Gopen, in a section discussing how the meaning of words change.[111] Gopen uses the term in opposition to "synthetic word mutation."[112] Changes in the meaning of a word are "natural" when they expand the definitions of words already in use."[113] Changes in words are "synthetic" when we create new words.[114]

Survey participants were, for the most part, mystified by the term. The mean was 1.59 and the median was 1. Ninety, or eighty-four percent, were less than half confident that they understood the term. Only five participants were "very confident" of the meaning. The standard deviation of 1.1 demonstrates some spread, but it was not particularly large.

8. Rule-Based Reasoning. "Rule-based reasoning" is an analytical term, that may simply be in common use without reference to a particular definition, although it is defined in both Neumann's and Edwards' texts.[115] Edwards defines it as reasoning that "reaches a result by establishing and applying a rule of law."[116] Neumann uses it as a chapter heading.[117]

Participants were very confident with this term. The mean was 4.43 and the median was 5. The first quartile was 4, and the standard deviation of 1.02 was not large. With seventy-two survey participants responding with a "5," sixty-six percent were "very confident" that they understood the term. Only seven responded with either a "1" or "2," indicating they were not confident.

9. Road Trip. We created the term "road trip" specifically for the survey as a variation on the more common term "roadmap" that many texts use.[118] "Roadmap" denotes the convention of using the introduction of a document or particular section of a document to set out the organization employed.[119] We wanted to see whether a slight variation in a common term would elicit confidence from participants. It did not. Despite the close similarity of the term to "roadmap," only twenty-two percent of participants were more confident than not that they understood it.[120] Sixty-three, or fifty-nine percent, responded "1," that they were "not confident at all." The mean was 2.07, but the median was only 1. The third quartile was 3, indicating at least seventy-five percent of the participants were not confi-

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111. GOPEN, *supra* note 19, at 49-51.

112. *Id.*

113. *Id.* at 49-50.

114. *Id.* at 50-51.

115. EDWARDS, *supra* note 14, at 5; NEUMANN, *supra* note 19, at 15 & n.1 (defining term and giving credit to Steven Jamar).

116. EDWARDS, *supra* note 14, at 5.

117. NEUMANN, *supra* note 19, at 15.

118. "Roadmap" appears in several texts. *See, e.g.*, OATES ET AL., *supra* note 19, at 530-32.

119. SCHULTZ & SIRICO, *supra* note 14, at 106-07.

120. There were seventeen responses of "5" and another six responses of "4."

dent with the term. The standard deviation was quite large at 1.52; hence, while most participants did not feel confident at all with the term, some participants felt very confident with the term.

10. Base Point. The next term, "base point," came from a legal methods text by Stephen J. Burton.[121] The body of law once taught in Legal Methods courses, is now often introduced in legal writing programs. It includes topics such as weight of authority, *stare decisis* and general principles of a common law system. Thus, we wanted to include at least one term from a legal methods text, to see if legal writing professors would feel confident in their understanding of the term. Burton defines a "base point" as consisting of "the relevant facts together with a decision about what someone should do."[122] Students should then describe those "factual respects in which the base point situation and the problem situation" overlap.[123]

Participants in general were not confident with their understanding of this term. The mean was 1.71, and the median was 1. The third quartile was only 2, and the standard deviation of 1.15 was not very large. Only ten percent, or eleven participants, were more confident than not that they understood the term "base point." Seventy participants, sixty-five percent, responded with a "1," that they were "not confident at all."

11. Traditional Interior. More than one legal writing textbook author has analogized the principles we use in building a document to architectural principles of building structures.[124] Jill Ramsfield uses the analogy throughout her lavishly illustrated text, which was newly published when we distributed the survey. Ramsfield writes a chapter devoted to "moving from the outside of the document to the inside," and "designing the interior."[125] She includes a sidebar on linguists' notion of "register,"[126] and delineates the markers of "the traditional interior" of legal writing.[127] The "traditional interior" includes: doublets; Latinisms; nominalizations; passive voice; formal introductions; long, complex sentences; long, complex paragraphs; complex conditional verb tenses; and intrusive phrases.[128] She further explains the term by writing that, "[t]he traditional interior, the legal register that is often referred to as turgid and impenetrable, is a form of fossilized English. Fossilization occurs when terms freeze, or fossilize, into a specific meaning, and remain in use despite the natural evolution of the language."[129]

Survey participants were not confident that they understood the term. The term had the lowest mean, at 1.28, and the median was 1. Participant lack of confidence was so strong that even the third quartile was a 1. The mode was also

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121. BURTON, *supra* note 19, at 26.

122. *Id.*

123. *Id.*

124. *See, e.g.,* RAMSFIELD, *supra* note 19; SCHMEDEMANN & KUNZ, *supra* note 13, at 113.

125. RAMSFIELD, *supra* note 19, at 378.

126. *Id.* at 383 ("Linguists use the specific term *register*, rather than style, to refer to a discourse community's use of the language and instruments of communication themselves. Linguists refer to register as that organization of language used in a special group or field of expertise.").

127. *Id.* at 415.

128. *Id.*

129. *Id.* Compare the notion of "fossilized" language with the notion of "natural word mutation" discussed by George Gopen. *Cf.* GOPEN, *supra* note 19, at 49-51.

1. The low standard deviation, .83, demonstrates uniformity in the lack of confidence with understanding of the term "traditional interior." Ninety-three, or eighty-seven percent, responded with a "1," "not confident at all"; only three responded with a "5," as "very confident."

12. CRuPAC. The acronym CRuPAC, a variation of IRAC, was one of several terms that we chose to include because we understood the term to spread only by word-of-mouth. The term derived from the "proof of a conclusion of law" paradigm developed by Richard Neumann.[130] One of the Authors learned the term while teaching at the University of Illinois College of Law. She has used it in her teaching, and as she moved to directing a program, she has encouraged others in its use, so at the time of the survey it had spread only though those teaching at Illinois, or in contact with someone who has taught there.[131]

This term was not widely understood. The mean was 1.73, and the median was only 1. The third quartile was 2, and the standard deviation of 1.38 was relatively high, indicating that while many had very little confidence with the term, some participants were confident with the term. Although eighty-one percent of participants were not confident that they understood the term, at least nineteen participants, or eighteen percent, had heard the term often enough to respond with a "4" or "5," making them more confident than not with the term.

13. Paragraph Block. Marjorie Rombauer was one of the pioneers of legal writing,[132] publishing early legal writing scholarship and co-authoring the West Publishing Company's Nutshell on Legal Writing.[133] An early edition of the Nutshell, published in 1982, used the term "paragraph block."[134] The term is also defined in the glossary of The Legal Writing Handbook, by Laurel Oates, Anne Enquist and Kelly Kunsch, as "a group of two or more paragraphs that together develop a point within a larger document."[135]

Participants were evenly split on this term, and the spread among responses was very large. The mean was 3.2, the median was 4, the first quartile was 1.5, and the third quartile was 5. The large standard deviation, 1.55, demonstrates the degree of spread in responses. To cover sixty-eight percent of all responses, the range was between 1.65 and 4.75. With thirty participants responding "5" and another twenty-four responding "4," fifty percent were more confident than not that they understood the term. Twenty-seven, or one quarter of the participants, however, were "not confident at all."

14. FORAC. This term is another variation on IRAC that, at least at the time of the survey, did not appear in a text and has spread only by word-of-mouth. One

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130. NEUMANN JR., *supra* note 19, at 89-102. After the survey was distributed, the Fourth Edition of Professor Neumann's text was published, and that edition specifically mentions the acronym "CRuPAC." RICHARD K. NEUMANN, JR., LEGAL REASONING AND LEGAL WRITING 96 (4th ed. 2001).

131. Because the University of Illinois has six full-time legal writing professors and it has, for a long time, maintained a cap on the length of time an individual can teach in its writing program, there are a number of legal writing teachers with prior experience teaching at Illinois.

132. For example, the article J. Christopher Rideout and Jill J. Ramsfield wrote on *Legal Writing, A Revised View* appeared in an issue of the Washington Law Review that contained tributes to Marjorie Rombauer. Rideout & Ramsfield, *supra* note 4, at 35.

133. SQUIRES ET AL., *supra* note 19.

134. LYNN B. SQUIRES & MAJORIE D. ROMBAUER, LEGAL WRITING IN A NUTSHELL 33-37 (1982).

135. OATES ET AL., *supra* note 19, at 919.

of the Authors of the survey encountered the term while teaching at Stetson, and was told that it was created by a former teacher. The acronym represents a paradigm of organization that decodes as Facts, Outcome, Rule, Analysis, and Conclusion.[136] As with CRuPAC, this term is likely to have spread only by those teaching at Stetson, or teaching with someone who has taught at Stetson.

Participants were not confident with this term. The mean was 1.5 and the median was 1. The first, second, and third quartiles were all at 1, and the standard deviation of 1.11 was not extremely large. Ten participants, or nine percent, were more confident than not that they understood the term. Eighty-three participants, or seventy-eight percent, were "not confident at all."

15. Pre-writing. Composition theory supporting a "process approach" to teaching writing has influenced legal writing pedagogy in the last ten years.[137] "Prewriting" is a term, borrowed from composition theory, that denotes a stage in the writing process. The Oates text explains "pre-writing" by noting that "the writer begins 'writing' long before the first word is put on paper. . . . The writing process begins with a question that is focused and refocused through research and analysis."[138]

Survey participants were more confident than not with the term: fifty-one responded "5" and twenty-one responded "4," resulting in a total of sixty-seven percent who were more confident than not with the term. The mean was 3.89 and the median was 4. The standard deviation was 1.33, and although the range was from 1 to 5, the first quartile was at 3, and the third quartile was at 5. Only nine percent, or ten participants, responded with a "1," indicating they were "not confident at all."

16. Horizontal Coherence. "Horizontal coherence" is an organizational term Stephen Armstrong and Timothy Terrell use in a text written with practicing attorneys in mind, *Thinking Like A Writer: A Lawyer's Guide to Effective Writing and Editing*.[139] They discuss both "vertical coherence," which they define as "subpoints that are each linked to the document's [main] point but not to each other," and "horizontal coherence," which they define as "the relationship among the subpoints."[140]

The phrase "horizontal coherence" was not widely understood by survey participants. The mean was 1.74, and the median was only 1. The standard deviation was 1.2, and the third quartile was only 2. Sixty-eight responded with a "1" and

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136. The "Facts" and "Outcome" sections combine to form something similar to what other authors have termed "Rule Proof," "Rule Explanation," or "Paragraph or Paragraphs on Case Law." *See, e.g.*, EDWARDS, *supra* note 14, at 85-98; NEUMANN, *supra* note 19, at 90; SHAPO ET AL., *supra* note 14, at 97-98.

137. Jessie C. Grearson, *Teaching the Transitions*, 4 J. LEGAL WRITING INST. 51, 61-67 (1998). The "process approach," or "process based" legal writing teaching, replaces emphasis on a perfect product with emphasis on the writing process itself. Teachers help students identify the writing process, and then teachers intervene at various stages during the process to instruct students. *See id.*

138. OATES ET AL., *supra* note 19, at 82. For example, some of the sub-headings in the section of the text on "pre-writing" include: "Preparing a Research Plan"; "Determining What Law Applies"; and "Drafting a Preliminary Issue Statement." *Id.* at 82-83. According to Oates, pre-writing is followed by "Drafting," "Revising," and "Editing." *Id.* at 109-75.

139. ARMSTRONG & TERRELL, *supra* note 19, at 3-18 to 3-20.

140. *Id.*

nineteen with a "2," meaning that eighty-one percent were not confident with the term. Only seven percent (seven participants) responded with a "5," indicating they were "very confident" with the term.

17. Litter Words. Our source for "litter words" is once again word-of-mouth. We have seen it in writing tips handouts that practicing attorneys have distributed within offices, as well as in conversation with Darby Dickerson,[141] a writing director and the primary author of the citation manual published by the Association of Legal Writing Directors (ALWD).[142]

Survey participants were split on this term. The mean was 2.5, the median was 2, and the range was 1 to 5. The first quartile was 1, and the third quartile was 4. Although the mode was 1, the high standard deviation of 1.45 indicated participants were not in agreement on their confidence with this term. Fifty percent were not confident; twenty-eight percent, or thirty participants, were more confident than not, responding with a "4" or a "5."

18. TEC Pattern. In addition to "paragraph block," the 1982 edition of the Nutshell, by legal writing pioneer Marjorie Rombauer and Lynn B. Squires, contained the term "TEC pattern."[143] It was defined as a standard paragraph block pattern consisting of topic sentence, elaboration, and conclusion.[144]

The term was not widely recognized. The mean was 1.36, the median was 1, the mode was 1, and even the third quartile was 1. The relatively low standard deviation of .98 indicates participants generally agreed on their lack of confidence with this term. Ninety-one responded with a "1" and five more with a "2," meaning that ninety percent of the participants were less confident than not that they understood the term. Although thirteen survey participants graduated in 1980 or before, and therefore may be more likely to have read the early edition of the Nutshell, only four participants responded with a "5" indicating they were "very confident" regarding the term.

19. Processed Rule. "Processed rule" is a term that appears in the text by Linda Edwards.[145] It is defined as "the complete rule as it appears when the opinion concludes."[146] Edwards asks the student to compare the "processed rule" with the "inherited rule," or the rule of law the opinion you are reading inherits from prior cases.[147]

This phrase had one of the highest standard deviations, at 1.71, indicating very little agreement about the level of confidence in this term. Although forty-eight survey participants were not confident at all about the meaning of the term, responding with a "1," twenty-eight participants responded that they were "very confident," indicating a "5." Thirty-eight percent were more confident than not that they understood the term. The mean was 2.66, and the median was 2; the first quartile was 1, and the third quartile was 5.

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141. A handout is on file with the author that I believe was authored by Darby Dickerson, titled *Litter Words: Question Every "of."* Darby Dickerson is the Acting Dean and Director of Legal Writing at Stetson University College of Law.

142. ASSOCIATION OF LEGAL WRITING DIRECTORS & DARBY DICKERSON, ALWD CITATION MANUAL (2000).

143. SQUIRES & ROMBAUER, *supra* note 134, at 39-40.

144. *Id.*

145. EDWARDS, *supra* note 14, at 40-43.

146. *Id.* at 41.

147. *Id.*

20. CREAC. David S. Romantz and Kathleen Elliot Vinson devote a chapter of their short text, *Legal Analysis: The Fundamental Skill*, to this variation on the acronym IRAC.[148] It is usually decoded as: conclusion, rule, explanation of the law, application of the law, and conclusion.

Of all terms on the survey, participants were most divided on this one. The standard deviation was 1.84, and the mean was 2.99. Hence, we would expect sixty-eight percent of all participants to respond between 1.15 and 4.83; this wide gap demonstrates that some participants were very confident with the term and others were not confident at all. Eighty percent of all participants responded with either a "1" or a "5." In fact, forty-one responded with a "5," indicating that they were "very confident" they understood the term, and forty-five responded with a "1," indicating that they were "not confident at all." The median was 3, the first quartile was 1, and the third quartile was 5.

21. Nominalizations. This is one of several writing style terms that we included in the survey. Many texts refer to nominalizations.[149] Richard Wydick, in *Plain English for Lawyers*, defines nominalization as "[a] base verb that has been turned into a noun."[150]

Many survey participants recognized the term "nominalizations," with seventy-seven (seventy-two percent) responding with a "5," indicating they were "very confident" they understood the term. The mean was 4.42, and the median was 5. The standard deviation was 1.12. The first quartile was 4. Only nine percent were not confident.

22. Rule Subparts. Similar to "paradigm," we included this general term to see if participants would express confidence in understanding a generic organizational term in ordinary usage. Another multi-source term, "rule subparts" appears in several texts.[151]

Most participants responded to the survey indicating that they were more confident than not with the term "rule subparts." The mean was 4.37, and the median was 5. The first quartile was 4, and the standard deviation was not high at 1.11. Seventy-one participants, or sixty-six percent, responded with a "5" and another twenty (nineteen percent) responded with a "4." Only seven percent, eight participants, responded with a "1" or a "2," indicating that they were not confident in their understanding of the term.

23. Dovetailing. The glossary of *The Legal Writing Handbook* defines "dovetailing" as "the overlap of language between two sentences that creates a bridge between those two sentences."[152] In describing how to create dovetails, Oates describes "moving the connecting idea to the end of the first sentence and the beginning of the second sentence, repeating key words, using pronouns to refer back to nouns in an earlier sentence, and using 'hook words' (this, that, these, such) and a summarizing noun."[153]

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148. ROMANTZ & VINSON, *supra* note 13, at 89-103.

149. *E.g.*, EDWARDS, *supra* note 14, at 235-36; ARMSTRONG & TERRELL, *supra* note 19 at 7-6.

150. WYDICK, *supra* note 19, at 25. Wydick devotes a chapter to nominalizations, including many examples. *Id.* at 25-27. He notes, "[i]f you use nominalizations instead of base verbs, surplus words begin to swarm like gnats. 'Please *state* why you *object* to the question,' comes out like this: 'Please *make a statement* of why you are *interposing an objection* to the question.'" *Id.* at 25.

151. *See e.g.*, SCHMEDEMANN & KUNZ, *supra* note 13, at 113; EDWARDS, *supra* note 14, at 137.

152. OATES ET AL., *supra* note 19, at 917.

153. *Id.*

This term to describe a writing style was less familiar than nominalizations, but over half of the participants felt confident with the term. Forty participants responded with a "5" and twenty-one with a "4," meaning that fifty-seven percent were more confident than not that they understood the term. The mean was 3.51, and the median was 4. The first quartile was 2.5, and the third quartile was 5. The standard deviation was relatively high at 1.49. Hence, despite the majority of participants responding that they were more confident than not with the term, nineteen participants responded with a "1," indicating they were not confident at all in their understanding of the term.

24. Passive Voice. This writing style term, for many years the hallmark editing comment of law review editors, appears in nearly every writing text.[154] Participants were as confident with this term as they were with "IRAC." The mean was 4.79, the median was 5, and the first quartile was 5. The standard deviation was low at .79. The uniform understanding of this term resulted in ninety-six percent of the participants being more confident than not with "passive voice." Only four participants responded with a "1," indicating they were not confident at all.

25. Rule Application. Some legal writing professors likely regard "application" as the "A" in the "IRAC" acronym, and may think of "rule application" as a variant of this. It is also an explicitly named part of the organizational paradigm in some popular texts.[155] The survey does not tell us whether the survey participants refer to the way "rule application" is used in specific texts, or whether they refer to it as simply a part of the general "IRAC" format.

The survey tells us that legal writing professors are very confident that they understand the term. This term had the highest mean score of all terms on the survey; the mean was 4.8. Demonstrating the uniformity in understanding of this term, the median and mode were both 5. In addition, the standard deviation was only .74. Ninety-six percent responded that they were more confident than not, with ninety-seven responses of "5," indicating ninety-one percent were "very confident." Only three participants responded with a "1," indicating they were not confident at all.

26. Paradigm. Similar to "rule application," survey participants may refer to the word "paradigm" in different ways. They may see it generally, either as a synonym for "model," or as one of the familiar "vogue" words of the 1990's.[156] Or they may see it as a specific term used for an organizational model in popular texts.[157]

Participants in general were very confident with this term. The mean was 4.44 and the median was 5. The first quartile was 4, and the standard deviation was 1.02. Seventy-six participants responded with a "5," indicating they were "very confident" with the term, and only three participants responded with a "1," indicating they were "not confident at all."

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154. *E.g.*, EDWARDS, *supra* note 14, at 234-35; NEUMANN, *supra* note 19, at 216-17; OATES ET AL., *supra* note 19, at 587-93; WYDICK, *supra* note 19, at 29-34.

155. *E.g.*, CALLEROS, *supra* note 19, at 256-58, 277; EDWARDS, *supra* note 14, at 105-19; NEUMANN, *supra* note 19, at 96.

156. *See generally*, KUHN, *supra* note 43.

157. Edwards sets out "the paradigm for legal analysis," which she frequently refers to simply as "the paradigm." EDWARDS, *supra* note 14, at 85, 105. Similarly, Neumann describes "A Paradigm for Structuring Proof," and also then refers to "the paradigm." NEUMANN, *supra* note 19, at 89, 92.

27. Prevailing View. This is another term we choose from word-of-mouth or common usage. Legal writing professors were confident that they understood this term. The mean was 4.36, and the median was 5. Although the range was 1 to 5, the first quartile was 4. The standard deviation was 1.05. Over half of the participants, sixty-four percent, responded that they were "very confident" with the term; another twenty-one participants (twenty percent) responded with a "4." Only eight percent were not confident regarding the term.

28. Umbrella Section. Linda Edwards credits Richard Neumann with the creation of the term "umbrella rule" to describe "the larger rule, the one that establishes the relationships among the subrules."[158] Edwards then expands the use of the term to an "umbrella section."[159] The "umbrella section," she tells us,

> is the material you place between [the] heading and the first of the subsections identified by the rule. The umbrella section has two functions: (1) it states the umbrella rule (with citation to the main authority establishing the rule), and (2) it begins rule explanation by explaining any information that applies to the rule generally rather than just to one subpart of the rule.[160]

If this sounds esoteric to the ordinary legally trained reader, most legal writing professors were more confident than not that they understood the term. The mean was 3.79, but the median and mode were both 5. The first quartile was 3, and the standard deviation was high at 1.57. Fifty-nine participants, or fifty-five percent, responded with a "5," indicating they were "very confident" with the term. An additional nine participants responded with a "4," for a total of sixty-four percent (sixty-eight participants) responding with more confidence than not. At the other end of the scale, twenty participants, or nineteen percent, responded that they were "not confident at all" with the term.

29. Containers. This organizational term is from the practitioner-oriented legal writing treatise by Steven Armstrong and Timothy Terrell.[161] They suggest that you write "containers" to provide context.[162] They also use the term suggesting that you structure the document with introductory "containers" so that the information given the reader "will not slosh around meaninglessly."[163]

This term was not widely understood. The mean was 1.59. The median was 1, and although the range was from 1 to 5, the third quartile was only 2. The standard deviation was relatively low at .95. Only one survey participant was "very confident" with this term. Conversely, eighty-seven participants, or eighty-one percent, were less than half confident.

30. Holding. The term "holding" is probably familiar to most legally trained readers, because every first year law student learns to brief a case by extracting a "holding" from a case. Most legal writing texts address the term in the case briefing context.[164] For example, Nancy Schultz and Louis Sirico define a "holding" as "the court's decision, and thus its resolution of the issue in the case. It usually

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158. EDWARDS, *supra* note 14, at 69. Neumann writes, "the opening paragraph or paragraphs would actually function as an 'umbrella' paradigm structure that covers, organizes and incorporates the subordinate, structured proofs of the elements." NEUMANN, *supra* note 19, at 98.

159. EDWARDS, *supra* note 14, at 138.

160. *Id.*

161. ARMSTRONG & TERRELL, *supra* note 19, at 3-3.

162. *Id.*

163. *Id.*

164. *E.g.,* EDWARDS, *supra* note 14, at 43; SCHMEDEMANN & KUNZ, *supra* note 13, at 34-35; SHAPO ET AL., *supra* note 14, at 29-30.

requires rephrasing the issue from a question to a declarative sentence."[165] They also note that "different professors will have individual preferences on how broadly or narrowly they want you to state the holding."[166]

As one might expect, ninety-three percent of participants were more confident than not that they understood the term. In fact, the responses were so strong that ninety-one participants responded with a "5," indicating that they were "very confident" with the term, and another eight participants responded with a "4." The median, mode, and all three quartiles were 5. The mean was 4.67, and the standard deviation was relatively low at .94. However, perhaps in response to the individual preferences that Schultz and Sirico mention as to broad and narrow holdings, five survey participants responded with a "1," indicating they were "not confident at all" with the term.

31. Phrase-That-Pays. "Phrase that pays" is a term that Mary Beth Beazley has used to refer to the key words or key terms of a rule that the student writer will address in a document.[167] In the time between the survey and publication of this article, Professor Beazley published a textbook that uses the term,[168] but at the time of the Seattle conference where the survey was distributed, she had used the term mainly in conference presentations.[169] Thus, for survey participants, confidence in understanding the term would likely come from word-of-mouth or conference attendance.

Survey participants were widely divided on their confidence with this term. Although the mean was 2.92, the standard deviation was high at 1.54. The median was 3, but the range was from 1 to 5, the first quartile was 1, and the third quartile was 4. Twenty-five participants, or twenty-three percent, responded with a "5," indicating that they were "very confident" with the term. On the other hand, thirty-one participants, or twenty-nine percent, responded with a "1," indicating they were "not confident at all" with the term. Another twenty-two participants, or twenty-one percent, were in the middle on this term, responding with a "3."

32. Inherited Rule. Professor Linda Edwards' text, which refers to the "processed rule,"[170] also refers to the "inherited rule," or "the rule of law the opinion [you are reading] inherits from prior authorities."[171]

As with "phrase-that-pays," participants varied widely in their confidence with this term. The mean was 2.98, but the high standard deviation of 1.63 demonstrates the large spread in responses. The range was from 1 to 5, with the first quartile at 1, the median (second quartile) at 3, and the third quartile at 5. Survey participants were almost evenly split on this term, with thirty-one responding with a "5" and thirty-two responding with a "1." Overall, forty-five percent (forty-

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165. Schultz & Sirico, *supra* note 14, at 29.

166. *Id.*

167. *E.g.,* Mary Beth Beazley, *The Self-Graded Draft: Teaching Students to Revise using Guided Self-Critique,* 3 J. Legal Writing Instit. 175, 182 (1997).

168. Mary Beth Beazley, A Practical Guide to Appellate Advocacy 54-55 (2002).

169. In 1997, Professor Beazley used the term "phrase that pays" in an article describing a teaching device she calls "the self-graded draft." Beazley, *supra* note 167 at 182. The term has been highlighted in conference plenary sessions where she has presented. *E.g.,* Mary Beth Beazley, Presentation at the 1998 Conference of the Legal Writing Institute (June 18, 1998) (on file with author).

170. Edwards, *supra* note 14, at 41. Edwards describes "processed rule" as "[t]he complete rule as it appears when the opinion concludes." *Id.*

171. *Id.*

eight participants) were more confident than not with the term, and forty-six percent (forty-nine participants) were not confident.

C. RESULTS FOR QUESTIONS 18-25— LABELING AND SHARED DEFINITION

1. Question 18: The Top of the Memo

Question 18 asked survey participants to identify the term they use to label the first portion of the memo, which names the intended recipient of the memo, the author of the memo, the date, and the subject of the memo. This was one of the two parts of the document that elicited broad, but not complete, agreement. Seventy-two percent of participants called this the "heading." Most others, twenty-three percent, labeled it the "caption." Four percent of survey participants identified it as the "format," and one percent have another name for that section of an inter-office memo.

2. Question 19: The Introductory Paragraph

Question 19 bracketed the first paragraph of the discussion section of the memo. The paragraph began with a sentence that predicted that the court would convict the defendant. It then quoted the statute that applied to the fact pattern. Finally, it predicted which element of the statute would be most disputed. Just over half of the survey participants, fifty-one percent, called this bracketed text the "thesis paragraph." Twenty percent called it the "road map." Thirteen percent identified it as an "umbrella paragraph." Finally, sixteen percent had another label for the section.

3. Question 20: Setting Out the Statute

The major portion of the text bracketed in Question 20 was the statute that applied to the issue the memo addressed. Here again, as in Question 18, there was broad agreement about how to label this text. Eighty-eight percent of participants identified this section as the "rule." Other choices elicited a minor response, with two percent choosing either "standard" or "law," and less than one percent labeling it as the "test." An additional seven percent of participants chose "other," which some indicated as "statute."

4. Question 21: Applying the Statute

A healthy majority of the survey participants agreed about how to label the bracketed text in Question 21, which explained how the words of the statute applied to the facts of the present case without further describing how precedent has interpreted that statute. Sixty-nine percent identified this section as "application." Eighteen percent, however, called this section "analysis." Five percent labeled it "fact weaving," and eight percent indicated that they used another label for the text. No survey participant selected the label "textual fusion."

5. Question 22: Organizational Acronyms

Question 22 focused on organization as it bracketed sections 20 and 21, i.e., the statute and the portion of the document explaining how the statute applies to the facts in the present case. Survey participants failed to reach a majority when indicating which term they used for an organizational acronym. Forty percent labeled this section "IRAC," but even more, forty-four percent, marked "other" to indicate they were not satisfied with any of the survey choices. Fourteen percent chose "CREAC" to describe the organization, and less than three percent chose either "CruPAC" or "FORAC."

6. Question 23: Describing Precedent

This section of the text set out parts of the statute, but added a precedent case interpreting the statute. It described the facts and rationale of the interpreting precedent. Again, survey participants fell short of a majority response, although forty-nine percent chose the term "rule explanation" to describe the text. Sixteen percent labeled this "rule proof," and thirteen percent called it "rule development." Only one percent indicated "rule description" as their choice, but a sizable minority, twenty percent, chose "other" to describe this section.

7. Question 24: Arguing Both Sides

Question 24 addressed the portion of the document that offers arguments refuting the thesis stated in the first paragraph of the document. It distinguished the facts of the present case from the facts of the precedent used to support arguments in the paragraph above it. "Counter argument" was not among the choices, and a majority, fifty-three percent, chose "other," indicating that they did not find the term they were seeking among the choices offered. Eighteen percent labeled this section "alternative argument." Eleven percent of survey participants chose "counter-analogical reasoning" to describe this section. Nine percent of participants labeled it "balanced analysis," and similarly, nine percent identified this text as "distinction."

8. Question 25: Ending a Section of the Memo

The last bracketed text contained a sentence that predicted how the court would rule on one particular issue in the memo. Responses were closely split between "conclusion," which forty-four percent of participants chose, and "mini-conclusion," which forty-two percent of participants chose. Less than five percent chose either "landing" or "mini-landing." Nine percent of survey participants rejected these choices in favor of another term.

D. Table 2: Summary of Significant Correlations

This table summarizes the twenty statistically significant correlations. No other correlations were deemed significant at the 95% confidence level.

Term/Phrase (Variable 1)	Demographic Factor (Variable 2)	r
Textual Fusion	Number of Conferences Attended	-.20
Fact Weaving	Assign Edwards' text	-.21
Fact Weaving	Practiced Law within Last 5 Years	.28
Rule-based Reasoning	Assign Neumann's text	.27
Road Trip	Assign Shapo's text	-.29
Paragraph Block	Assign Shapo's text	-.22
Prewriting	Number of Years Teaching LRW	.27
Prewriting	Number of Conferences Attended	.22
Prewriting	Assign Shapo's text	-.31
Prewriting	Assign Neumann's text	.23
Processed Rule	Assign Edwards' text	.35
CREAC	Number of Years Teaching LRW	.34
CREAC	Number of Conferences Attended	.31
Rule Subparts	Assign Neumann's text	.22
Paradigm	Assign Neumann's text	.25

Umbrella Section	Assign Shapo's text	-.23
Umbrella Section	Assign Edwards' text	.22
Phrase that Pays	Assign Neumann's text	.21
Inherited Rule	Assign Shapo's text	-.27
Inherited Rule	Assign Edwards' text	.38

r = Correlation Coefficient

Note: $p < .05$, and $n = 107$.

p is the level of significance, meaning the results are ninety-five percent likely to not have occurred by chance

n = the number of samples

E. Table 3: Summary of Significant *t*-test Results

This table summarizes the one hundred and twenty-two statistically significant *t*-tests. No other *t*-test results were deemed significant at the ninety-five percent confidence level.

t=*t*-test
df=degrees of freedom
Sign.=level of significance for a two-tailed independent *t*-test

Term/Phrase	Sample Group I	Sample Group 2	*t*	df	Sign.
1) Analogical Legal Reasoning	Teaching 0 - 1 year	Teaching 8 - 10 years	2.17	31.75	.038
	Attended NE law sch.	Attended SE law sch.	2.03	47.21	.048
	Attended SE law sch.	Attended MW law sch.	-2.31	39.53	.026
	Attended SE law sch.	Attended West law sch.	-2.81	37.70	.008
	Teach in NE	Teach in MW	2.09	45.39	.042
	Teach in SE	Teach in West	-2.96	24.88	.007
	Teach in MW	Teach in West	-3.41	30.87	.002
	Attended 1 Conf.	Attended 3 - 4 Conf.	-2.34	55.67	.023
	Attended 1 Conf.	Attended 10+ Conf.	-4.25	33.00	.000
	Attended 2 Conf.	Attended 10+ Conf.	-2.77	17.00	.013
	Attended 3 - 4 Conf.	Attended 5 - 9 Conf.	2.38	37.36	.023
	Attended 5 - 9 Conf.	Attended 10+ Conf.	-3.75	24.00	.001
2) Chronological Lead	Attended 1 Conf.	Attended 3 - 4 Conf.	3.41	54.40	.001
	Attended 2 Conf.	Attended 3 - 4 Conf.	2.27	28.26	.031
	Attended 3 - 4 Conf.	Attended 5 - 9 Conf.	2.66	38.55	.011

Table 3 Cont'd

3) Textual Fusion	Attended 1 Conf.	Attended 3-4 Conf.	2.67	56.86	.010
4) Fact Weaving	Grad. 1991-95	Grad. 1986-90	2.17	50.00	.035
	Grad. 1991-95	Grad. 1980-85	2.27	44.60	.028
	No Practice last 5 yrs.	Practiced last 5 yrs.	-2.96	104.0	.004
5) IRAC	Attended 3-4 Conf.	Attended 10+ Conf.	2.14	24.00	.043
6) Branch Points	None				
7) Natral Word Mutation	Attended NE law sch.	Attended West law sch.	2.47	26.00	.021
	Attended SE law sch.	Attended West law sch.	3.66	27.00	.001
	Attended MW law sch.	Attended West law sch.	2.67	28.00	.012
	Attended 1 Conf.	Attended 3-4 Conf.	2.52	45.36	.015
	Attended 1 Conf.	Attended 10+ Conf.	3.53	33.00	.001
	Attended 2 Conf.	Attended 10+ Conf.	2.40	17.00	.028
	Attended 3-4 Conf.	Attended 5-9 Conf.	-2.49	30.42	.018
	Attended 5-9 Conf.	Attended 10+ Conf.	3.28	24.00	.003
8) Rule-Based Reasoning	Attended 1 Conf.	Attended 3-4 Conf.	-2.31	48.33	.025
	Attended 1 Conf.	Attended 10+ Conf.	-3.94	33.00	.000
	Attended 3-4 Conf.	Attended 10+ Conf.	-2.58	24.00	.016
	Attended 5-9 Conf.	Attended 10+ Conf.	-3.08	24.00	.005
	Assign Shapo Text	Assign Neumann Text	-2.95	30.56	.006
	Assign Shapo Text	Assign Edwards Text	-2.85	27.53	.008
9) Road Trip	Teach in SE	Teach in MW	2.10	41.32	.042
	Assign Shapo Text	Assign Neumann Text	-2.97	41.54	.005
10) Base Point	Attended NE law sch.	Attended West law sch.	2.20	36.97	.034
	Attended SE law sch.	Attended West law sch.	2.52	35.44	.017
	Attended MW law sch.	Attended West law sch.	2.22	37.02	.032

Table 3 Cont'd

(Base Point cont'd)					
	Attended 1 Conf.	Attended 10+ Conf.	4.03	33.00	.000
	Attended 2 Conf.	Attended 10+ Conf.	2.36	17.00	.030
	Attended 5-9 Conf.	Attended 10+ Conf.	3.57	24.00	.002
11) Traditional Interior	Attended MW law sch.	Attended West law sch.	2.17	28.00	.039
	Attended 1 Conf.	Attended 3-4 Conf.	2.51	33.00	.017
	Attended 3-4 Conf.	Attended 5-9 Conf.	-2.21	24.00	.037
12)CRuPAC	Teaching 0-1 year	Teaching 2-4 yrs.	-2.62	24.27	.015
	Teaching 0-1 year	Teaching 5-7 yrs.	-2.45	16.90	.025
	Teaching 0-1 year	Teaching 10+ yrs.	-2.34	30.90	.026
13) Paragraph Block	Assign Shapo Text	Assign Edwards Text	-2.01	51.00	.050
14) FORAC	Grad. 1991-95	Grad. 1980-85	2.94	31.58	.006
	Grad. 1986-90	Grad. 1980-85	2.38	27.12	.025
	Attended 1 Conf.	Attended 3-4 Conf.	2.48	36.64	.018
15) Prewriting	Teaching 0-1 year	Teaching 8-10 yrs.	-3.66	28.64	.001
	Teaching 0-1 year	Teaching 10+ yrs.	-2.54	45.00	.015
	Teaching 5-7 yrs.	Teaching 8-10 yrs.	2.10	34.00	.043
	Not a director	Director	-2.00	101.7	.048
	Attended 1 Conf.	Attended 10+ Conf.	-4.15	20.34	.000
	Assign Shapo Text	Assign Neumann Text	-3.39	45.73	.001
16) Horiztontal Coherence	None				
17) Litter Words	Grad. 1991-95	Grad. 1986-90	3.69	54.62	.001
	Grad. 1986-90	Grad. 1980-85	-3.00	46.67	.004
	Attended 1 Conf.	Attended 5-9 Conf.	2.08	55.50	.042
18) TEC Pattern	Attended MW law sch.	Attended Plains law sch.	2.37	28.00	.025
19) Processed Rule	Teaching 0-1 year	Teaching 2-4 yrs.	-3.10	39.63	.004

Table 3 Cont'd

(Processed Rule cont'd)					
	Teaching 0-1 year	Teaching 8-10 yrs.	-3.06	32.26	.004
	Teaching 0-1 year	Teaching 10+ yrs.	-2.57	44.93	.014
	Not a director	Director	-1.99	83.46	.050
	Assign Shapo Text	Assign Edwards Text	-3.65	51.00	.001
	Assign Neumann Text	Assign Edwards Text	-2.75	48.00	.008
20) CREAC	Teaching 0-1 year	Teaching 2-4 yrs.	-3.02	37.53	.005
	Teaching 0-1 year	Teaching 5-7 yrs.	-3.47	26.35	.002
	Teaching 0-1 year	Teaching 8-10 yrs.	-3.69	30.62	.001
	Teaching 0-1 year	Teaching 10+ yrs.	-4.88	45.00	.000
	Not a director	Director	-1.99	105.0	.049
	Attended 1 Conf.	Attended 3-4 Conf.	-2.50	47.77	.016
	Attended 1 Conf.	Attended 5-9 Conf.	-3.36	57.00	.001
21) Nominalizations	Teaching 0-1 year	Teaching 8-10 yrs.	-2.45	20.74	.023
	Grad. 1996-2000	Grad. 1980-85	-2.26	25.00	.033
	Grad. 1991-95	Grad. 1980-85	-2.62	36.74	.013
	Grad. 1986-85	Grad. 1980-90	2.11	30.94	.043
	Teach in NE	Teach in Plains	2.22	14.10	.044
	Teach in SE	Teach in MW	2.13	44.13	.039
	Teach in SE	Teach in Plains	2.65	14.10	.019
22) Rule Subparts	Teaching 0-1 year	Teaching 2-4 yrs.	-2.82	29.95	.008
	Teaching 0-1 year	Teaching 8-10	-3.15	26.90	.004
	Teaching 0-1 year	Teaching 10+ yrs.	-2.12	31.23	.042
	Grad. 1986-90	Grad. 1980-85	-2.15	32.76	.039
	Attended 1 Conf.	Attended 2 Conf.	-2.13	45.42	.038
	Attended 1 Conf.	Attended 3-4 Conf.	-3.46	43.14	.001

Table 3 Cont'd

(Rule Subparts cont'd)					
	Attended 3-4 Conf.	Atended 5-9 Conf.	-2.50	31.38	.018
	Assign Shapo Text	Assign Neumann Text	-2.58	34.27	.014
23) Dovetailing	Teach in NE	Teach in West	-2.08	43.00	.043
	Teach in NE	Teach in Plains	-2.11	38.00	.042
	Attended 1 Conf.	Attended 10+ Conf.	-2.66	16.09	.017
	Attended 3-4 Conf.	Attended 10+ Conf.	-2.17	18.22	.044
	Attended 5-9 Conf.	Attended 10+ Conf.	-2.47	19.84	.023
24) Passive Voice	None				
25) Rule Application	Teaching 0-1 year	Teaching 8-10 yrs.	-2.19	18.00	.042
26) Paradigm	Teach in West	Teach in Plains	2.26	14.65	.039
	Attended 3-4 Conf.	Attended 5-9 Conf.	2.19	35.68	.035
	Assign Shapo Text	Assign Neumann Text	-2.40	33.56	.022
	Assign Neumann Txt	Assign Edwards Text	2.28	25.96	.031
27) Prevailing View	None				
28) Umbrella Section	Teaching 0-1 year	Teaching 2-4 yrs.	-2.72	40.00	.010
	Teaching 0-1 year	Teaching 8-10 yrs.	-3.09	36.00	.004
	Teaching 0-1 year	Teaching 10+ yrs.	-2.06	45.00	.046
	Teach in SE	Teach in MW	2.56	46.97	.014
	Attended 1 Conf.	Attended 3-4 Conf.	-2.14	55.93	.037
	Assign Shapo Text	Assign Neumann Text	-2.16	52.58	.035
	Assign Shapo Text	Assign Edwards Text	-3.01	48.12	.004
29) Containers	Attended 3-4 Conf.	Attended 5-9 Conf.	-2.39	38.06	.022
30) Holding	Teaching 0-1 year	Teaching 10+ yrs.	2.36	27.00	.026
	Attended SE law sch.	Attended West law sch.	-2.36	27.00	.026
	Attended MW law sch.	Attended West law sch.	-2.05	28.00	.050

Table 3 Cont'd

(Holding cont'd)					
	Attended 3-4 Conf.	Attended 5-9 Conf.	2.53	25.23	.018
	Attended 5-9 Conf.	Attended 10+ Conf.	-2.72	24.00	.012
	Assign Shapo Text	Assign Neumann Text	-2.05	29.55	.050
31) Phrase that Pays	Attended NE law sch.	Attended West law sch.	-2.08	52.16	.042
	Attended SE law sch.	Attended West law sch.	2.17	38.00	.036
	Assign Shapo Text	Assign Neumann Text	-2.57	53.00	.013
32) Inherited Rule	Not a director	Director	-2.05	105.0	.043
	Assign Shapo Text	Assign Neumann Text	-2.05	53.00	.045
	Assign Shapo Text	Assign Edwards Text	-4.87	50.97	.000
	Assign Neumann Text	Assign Edwards Text	-2.37	46.16	.022