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Lights! Camera! Law School? Using Video Interviews To Enhance First Semester Writing Assignments

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All legal writing assignments share some essential features: they present analytical challenges to help our students develop their thinking about the law; they present technical challenges – how to cite sources, for example -- to help the students learn about the importance of technical precision in their work; and they contain facts to give the problem context and to stress the importance of legally material facts and their synthesis with precedent. The importance of facts to legal writing problems is hard to underestimate: without facts, assignments would be sterile, lifeless, and ultimately unhelpful exercises in abstract legal analysis.

But how should students receive the facts of an assignment to the students? We could, of course, simply give them a memo summarizing the key facts. That approach gets the ball rolling by giving the students the essential information they need, but it spoon-feeds the students. It gives them no experience in the crucial skill of selecting the material facts from the irrelevant ones, or in expressing those facts in their own voices.

To give them such experience, many of us tell the story of the assigned problem through a series of documents -- transcripts, letters, emails, police reports, and so on -- and ask the students to extract the relevant facts from those documents. This approach works particularly well in advanced, second semester assignments, and we use at Syracuse for some assignments. But I wanted to engage the students more directly in their writing assignments early in the first semester.

* Thanks to Dean Hannah Arterian for her continued support, to the four former students -- Emily Brown, Domenic D'Imperio, Kate Reid, and Jennifer Scordo -- who played the roles in the two videos we produced this year and who were generous with their time and patience, to the LCR faculty at Syracuse -- Elizabeth August, Elton Fukumoto, Andrew Greenberg, Lynn Levey, Aliza Milner, Kathleen O'Connor, Deborah O'Malley, Lucille Rignanese, Richard Risman, and Shannon Ryan -- to Lynn Oatman, who keeps us functioning, and to Joel Whitney, whose skill and expertise made the project described here possible. And thanks to Craig Smith for his careful and thoughtful editing. As always, this is for Julie McKinstry.

Besides, I've always wanted to produce a movie. So in 2012 my Syracuse colleagues and I shot two videos showing initial attorney-client interviews. In the interviews, the clients explained the facts that caused the problem for which they were seeking legal advice. The attorneys, in fact-gathering mode, asked the follow-up questions that most obviously presented themselves. The students watched the videos and heard the facts of the cases, but had to express them in their own words when writing their analysis of the problem.

This approach had both direct and collateral benefits. Briefly stated, the direct benefits included: (1) helping students to develop their listening and note-taking skills early in law school, and (2) requiring them to put the facts of a case into their own words, rather than largely copying material facts from an assignment memo. The collateral benefits included: (1) an early introduction to the client interviewing process, (2) increased student engagement in legal writing assignments, (3) the chance for an in-class discussion of the interviewing technique seen in the video, and (4) the opportunity to teach something more than just legal analysis and writing skills with legal writing assignments.

This article will discuss these benefits in detail below. First, however, it will situate our video approach within the context of Syracuse University College of Law's Legal Communication and Research ("LCR") program, explain how we produced the videos, and share some advice on video production. The article will argue that, while technology is not a panacea for all problems, it offers an interesting and valuable alternative to traditional fact description and can enliven the semester for both students and faculty. Preparing and using assignments with video interviews is both effective and a lot of fun.

1. Context

Syracuse's legal research and writing program requires three semesters, with two credits for each semester. The first two semesters are in the students' first year, and the third semester is either in the following summer or in the students' second year. Most first-year LCR sections are tightly coordinated, with each section studying the material at the same time, and each working on the same assignments with the same submission deadlines. Some first-year sections, however, also draft of an international persuasive

document in the Spring semester. These international LCR sections did not participate in the video assignments described here.

All first-semester assignments are "closed universe." We get the students writing early and often: the first assignment -- an email summarizing the facts of the first analysis memo -- is due two weeks after the start of class, with the memo itself following a week after. Two more writing assignments follow, each with a rewrite.

We used the video interviews, each about 15 minutes long, to present the facts for the first two assignments. Both assignments presented clients as lawyers in trouble: the first client was a lawyer who had been disbarred in another state and who was wondering if this meant that he would be automatically disbarred in New York as well; the second client was a recent law school graduate facing (with good reason) the bar's Character and Fitness Committee.

2. The Video Interviews

We enlisted four recent law graduates as actors in the video interviews. We chose them rather than current students or faculty so that the students would more likely accept them as real than they were to encounter them in class or in the lunch line. As it was, several students met the former student who played the former student (someone, I should add, who has the most unimpeachable character imaginable) in a local supermarket. As life in Syracuse constantly reminds me, never underestimate the power of Wegmans.¹

I gave the actors playing the two clients the full story of who they were and what they had done, while I gave the actors playing the attorneys only basic information about their "clients." I asked all four actors to improvise the interviews as much as possible, and told them that embellishment around the basic facts would be fine. Our goal was two-fold: (1) to maintain a natural interview setting, with genuine questions from someone who didn't know the answer and truthful but unscripted responses; and (2) to minimize the preparation time for the four actors, who were extraordinarily generous with their time. A detailed script would have required memorization and

¹ If you don't know Wegmans, your loss! Not so much a grocery store as a way of life.

rehearsing to produce a natural result, whereas a looser approach only required an understanding of the general parameters of the assignment.

We asked the interviewing "attorneys" to work one more detail into their improvisations. The first interview, involving the disbarred former attorney, should be as close as possible to a textbook interview, with open-ended questions, careful follow-up questions, and a realistic ending, with the attorney unable to answer the client's question immediately but scheduling a second interview at which time she would have completed the necessary research. In the meantime, the attorney would send the client retention agreement required by New York law, thereby cementing the attorney-client relationship. By contrast, we wanted the second interview to be a travesty of what an attorney-client interview should be, with inattention, poor questioning, and a disregard for the formalities of establishing an attorney-client relationship.

3. Pre-Production

In movie terms, my role would have been a combination of executive producer and script writer. I developed the concept and the two scenarios, and I wrote the documents that accompanied the second interview. The producer and casting director was my colleague, Rick Risman, who found the four actors and booked the studio -- actually, a reading room in the law school library. The crucial roles of director, sound engineer, lighting director, and cinematographer were taken by Joel Whitney, our incomparable audio/visual expert.

a. The Script and The Actors

Writing the script is probably the easiest part of the entire process, because we do it for every assignment. The format might differ though: it might range from a full-blown script to a plot outline with a few details thrown in. But the supporting research will be just the same as for any other legal writing assignment.

Casting the actors is something that, in an ideal world, happens early in the process. It's hard to write for "the client," for example, if you don't even know the client's gender, and sometimes the characteristics of a particular role can change once you know what actor will be playing that person. As with Hollywood, though, real life can get in the way and sometimes an actor might develop a last minute conflict -- an unexpected deposition, perhaps, or a hearing that doesn't go away as expected. It's

important to stay agile and be prepared for script changes if another actor has to step into the role unexpectedly.

b. The Right Room and Sufficient Time

The "right" room will likely be: quiet, with little or no outside noise to distract either the actors or the audience; large enough to accommodate with comfort the set, the actors, the production crew, and basic video lighting; and bookable for long blocks of time -- an entire morning, afternoon, or ideally an entire day. The room also will have no outside lighting or else outside lighting that can be blocked easily.

Having the room for enough time is important. Shooting a video -- even one of a short interview -- will take longer than you expect, at least the first time. Knowing there's no time pressure will allow everyone to relax, do some rehearsal if that's necessary, get the lighting and sound right, make sure the set is dressed appropriately, and allow you to shoot multiple takes should that be necessary. If you're constantly looking at your watch, you'll make everyone nervous and tense. That might work for some Hollywood directors, but at a law school, a relaxed set is a productive set.

Recording in a single session also means you don't have to address continuity, a complicated challenge that's best avoided. If you need to shoot on multiple days:

- ask the actors to wear exactly the same clothes for the next shooting day, and try to take still pictures of each actor so you have a record of what they looked like on the first shooting day;
- ask them not to make any major changes in appearance -- like changing their hair style or even getting a hair cut -- before the next shooting day; and
- use tape of some sort -- electrical tape works well -- to mark the exact location of the tripod, the lights, and any movable parts of the set, so that you can continue shooting under the same conditions and with the same view through the lens.

c. The Right Equipment

Similarly, the "right" equipment can vary widely depending on your goals. At base, you will likely need a high-definition video camera (and almost all video cameras sold in the last few years are sufficiently high definition for your purposes); a tripod for the camera; a good stereo microphone that can record both parties to the interview with equal clarity; and at least two lighting units.

The tripod is crucial to the process because no one can hold a camera still enough for anything like the length of time necessary to record an attorney/client interview, and the charm of a hand-held camera -- with all its attendant jitters and shakes -- wears thin very quickly. A tripod keeps the camera perfectly still and allows for smooth panning between interviewer and interviewee. Even if you decide to use the "60 Minutes" style of interview, with questions and answers shot at separate times and cuts between one and the other rather than continuous shooting with pans, you'll need a tripod to keep the camera level and jitter-free.

It's easy to forget the microphone, especially since your video camera will likely have a built-in microphone. The sound of such microphones, though, is very poor when compared to even a relatively inexpensive stand-alone microphone. In a video where students must derive factual information from the questions and answers of "lawyer" and "client," good sound is crucial.

Careful attention to lighting is also crucial. More than any other single feature (except for an inadequate camera), the lighting will make or break the video. Good lighting depends on many features, including the existing light in the room. Natural light is dangerous, because it can change so rapidly and will certainly change several times over the course of, say, a two-hour shoot. Better to block it out or have a room not lit by natural light in the first place; artificial lighting is much easier to manipulate and control. Ideally, the lighting units you bring should complement the room's lighting, eliminating distracting shadows on the set or your actors' faces, and softening the harsh light artificial room lighting can sometimes produce.

None of this equipment need be especially expensive, and it's likely that your school will have access to an audio-visual locker that will allow you rent the equipment you need for little or no cost. With any luck, you'll also be able to borrow someone with solid audio-visual experience who will remove the technical burden from your shoulders. Shooting videos is not difficult for those who know what they're doing, but the process might be sufficiently daunting to deter those who have to go it alone.

d. Set Dressing

The set can be as simple or as complicated as you want. Keep clutter to a minimum. The set is there only to provide a location for the interviews, and too much detail can easily distract the viewer's eye from the crucial dialog between attorney and

client. For an interview video, the set needs at least a table and two chairs. Basic office equipment might also be desirable, but do not show a computer monitor, which could set up conflicts resulting in a distracting line going up or down the monitor screen when the video is viewed. A bookcase of law books can help to establish the location as a lawyer's office. (How strange is it that case reporters act as a visual metaphor for a profession that now rarely uses books?)

e. Costume

This is probably one detail too many for you to worry about, unless you want the actors to send a particular message through the clothes they wear. If you do, stay within the confines of the actors' wardrobes rather than trying to costume a role from scratch. Depending on when you record, you might also be constrained by what clothes your actors have to wear to work before coming to the shoot unless you can provide adequate changing rooms for them (which means something more than a public restroom).

f. Releases

We did not obtain releases from our actors. We instead told them what we were doing and obtained their tacit consent to use the videos by agreeing to appear in them. If you want to use the videos for something other than instructional purposes, though, especially for profit, obtain releases for all concerned. Also remember that institutions will be unlikely to allow their equipment (or facilities) to be used for profit-based activities, at least not without permission and payment.

4. Production

With any luck, you will have one or more collaborators who can take over the technical part of the production process. That will free you up to pay close attention to what the actors say. If you find yourself having to check the lighting and sound and operate the camera, you should still try to get someone who can listen carefully to what gets said during filming and who can compare the reality with what was planned. It's possible that the actors will stray in small but significant ways from the planned scenario, and while those changes can often be accommodated by a change in the supporting documents, if any, it might be easier simply to shoot another take of the scene with the correction made on the spot.

If you have someone to look after the filming, then in addition to checking the details of what's said, your most important job is to stay out of the way. I have a

tendency to hover, which others can find irritating. So if you're anything like me, your best location during production is out of the sightlines of both camera and actors, listening intently, but surreptitiously, in a corner somewhere.

5. Post-Production

Post-production encompasses everything that happens from the end of production to finished product ready for viewing. For a simple video like this, post-production probably involves little more than converting the footage into a format that can be posted at whatever location you intend to store it, some simple editing, and perhaps adding some opening graphics that explain what the video is. You could add closing credits as well, but that would take away from the reality of the interview.

Before you convert the footage, consider what program you'll use to edit it. If you have a Mac, the choice is easy: iMovie. The program comes with your Mac and is powerful enough for anything you need it to do. If you're using Windows, Live Movie Maker is free and is more than serviceable. Again, it's best if someone else who has experience with video editing works on this for you, or at least with you, but if you don't have that luxury, remember to save often and remember also that unlike in the days of film, it's unlikely that you'll make such a bad mistake that you ruin your footage. Just go back to a point before you made your mistake and keep going.

It's probably best to keep your video as simple and edit-free as possible. High production values are important in Hollywood and network television, but the less "produced" these videos look, the more realistic they will be. Think "Blair Witch Project" with better lighting, no camera jitters, and (hopefully) no death.

Remember also that video files are large. You almost certainly will need to make special arrangements with your IT department before you can decide on a final location to host the videos. We were able to save the videos on the law school's servers, with a link to Blackboard so the students could find and play them easily, but it's important to set that up beforehand.

6. Why Bother With Videos

It now might seem as if planning, filming, and preparing videos for viewing is a lot of bother -- more trouble than it's worth, in fact. I don't think it is.

First, the effort needed to produce a video is not as great as this account might make it appear, especially if you have help. And a video project might attract help; your

university might provide resources, both human and technical, to get such a project off the ground, and your colleagues might be interested to explore a new approach to something seemingly as old fashioned as fact presentation.

Second, learning something new is usually time well spent. Besides, the learning curve for video production flattens out pretty quickly; the second video should take less time to produce than did the first. And this is a useful skill to have. The capability of video to speak directly to the viewer, and the many possibilities it opens up for creative teaching, suggests that it will play an increasingly important role in legal education. So becoming familiar with video production now means you will be able to serve as a pathfinder and advisor for your less-technologically-engaged colleagues.

a. The Advantages Of Videos For Fact Presentation

The most direct benefit of the type of video I have described here is that it makes the students frame the facts of a case in their own words, giving them all the information they need without providing any written trail markers to guide them along the way. Employing this technique early in the first semester of law school allows you to set up your expectations that the students must compose all parts of the documents they prepare by themselves, without relying on you to select and express the facts for them.

Aside from this direct benefit, though, there are several collateral benefits to using video interviews to present the facts of a case. Allowing the students to put a face, voice, and personality to the client allows them to more readily enter into the quasi-reality of the fictional world of your assignment, and engages them in a different, and deeper, way than the information-acquisition-through-reading process they're using in their doctrinal classes. It is a relatively unsubtle clue that their legal writing class is about expressing analysis in a practical, rather than theoretical, setting.

Showing the students a recorded interview also allows you to have class discussions about many issues not directly related to the assignment itself. If you choose, as we did, to have the interviewer use "good" or "bad" interviewing technique, you can open up a fascinating discussion with the students about lawyering technique, client-centered lawyering, and the importance of listening carefully to what the client is saying at a much earlier time in the school year than those discussions are usually feasible. As the Carnegie Report has reminded us, it's never too early to begin to help

the students develop their own professional identity, and this is a relatively painless and interesting way to begin those conversations.

b. The Disadvantages Of Videos

There are few disadvantages to presenting the facts of an assignment to the students using video, but there are some potential issues you should consider.

First, and most obviously, it takes more time to produce a video, from pre to post production, than it does simply to write an assignment memo. The learning curve can be steep, especially if you are doing this on your own, and while nothing about this process is especially difficult to do, it can seem daunting the first time through. My best advice here is to trust your instincts: if this seems like an idea you would be interested in, then you're likely to enjoy the problem-solving and to find the whole experience fun, but if this seems like a nightmare to you now, don't start down the video production road.

A less obvious issue -- although not necessarily a disadvantage -- is the power conveyed by seeing and hearing a person telling their story. Unlike a document-based approach, where some documents can cast doubt on the veracity of the client's narrative and give the students a rounded, nuanced sense of the facts of the case, a video interview gives only the client's one-sided view of events, and it presents those facts in a compelling version that is easy for the students to believe. It's possible to ignore this effect, especially if you don't intend your first assignments to present factual ambiguity, or it's possible to use it to your advantage by pressing the students to consider the possibility that the client might not be entirely forthcoming or accurate about the events he or she is narrating. Either way, though, it's good to remember how readily the students believe something they see and hear.

And because seeing and hearing are so powerful, it's also important to remember to make accommodations ready for those who might have difficulty seeing or hearing the video. This isn't any more complicated than making accommodations for sight-impaired students who can't read an assignment memo, and it's something that your office that handles accommodations will certainly be able to help you with, but preparing a workable accommodation -- like a full transcript for hearing-impaired students or providing a visual translator to describe any significant non-verbal gestures -- might take time to get ready, so it's best to think of them well in advance and to get

everyone involved in the process prepared to act if accommodations are necessary. Like almost everything associated with video production, preparation is crucial.

7. Conclusion

Video production is a fun, challenging, and stimulating process for legal writing faculty. It is also an intriguing and different way for the students to learn about the facts of a case. You might not get one of those set chairs with your name stenciled on the back, but you will get the satisfaction of having learned a new and interesting way to present facts and engage your students. In time, maybe the legal writing community could develop a set of awards for excellence in legal educational video production, and you could win a . . . what . . . Barrister Award? an ALWD? a L(e)WI? That would make for a different and interesting end-of-year report to your Dean!