Legal Writing in the Practice-Ready Law School

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The Future of Legal Education and Admission to the Bar

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The Legal Writer interrupts its regularly scheduled program — our series on drafting civil-litigation documents. We join, instead, with the other authors of this special edition of the Journal to address legal education and, in particular, the most important course in law school: legal writing.

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The practice of law is experiencing seismic changes, largely for economic reasons. Law firms are downsizing. Some are going bust. Firms are hiring fewer law graduates, delaying their start times, and trimming their partnership ranks. Clients are saying no to funding associate training. Government and public-service opportunities are eroding. Law students are finding it difficult to get even unpaid internships.

Law schools, too, are suffering. Applications are falling. Enrollment is dropping. Faculty is being cut. Students are rightly frustrated with the high cost of legal education and the reduced prospects for employment. Things will get worse for most existing law schools if law students can earn a degree in two years instead of the current three: A third of the schools’ tuition income will evaporate.

Legal employers are setting aside less of their dwindling resources to train law graduates. But because the quality of lawyering may not lessen — breaking 2007 Carnegie Foundation Report on legal education, which emphasized skills training, specifically courses in legal writing, as well as in other major studies on legal education, including the 1979 Crampton Report, the 1992 MacCrate Report, and the 2007 Best Practices for Legal Education Report. But as the practice of law is forever changing, skills-based training has received some serious attention lately.

Many law schools have made significant curricular fixes to prepare their students for practice. None has gone far enough.

This column argues that the best way to make law students ready to practice law is for law schools to enhance their legal-writing courses, programs, and faculty. The legal-writing curriculum, more than any other, bridges the divide between practice and the legal-theory courses like contracts, property, and torts. Wonderful though they are, no internship, externship, clinical experience, or extra-curricular legal writing teaches substantive law. Legal writing puts into practice what other teachers teach. Combining clarity with concision, the goal of legal writing is to produce something effective for the reader, not to regurgitate doctrine. Through in-class participation and feedback, writing students have a meaningful dialogue with their professors, a dialogue no doctrinal course can match. While doctrinal professors use writing — through one final examination — only to assess, legal-writing professors use writing to teach and to assess.

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The three goals of legal education, according to the Carnegie Foundation Report, are analysis, practice competence, and professionalism. Only one law-school course teaches all three: the first-year course in legal writing (or, as Columbia Law School calls it, the Legal Practice Workshop) or the integrated lawyering-skills course that NYU developed for first-year students.
Because of the value of legal writing, law schools should do more to improve their programs. All first-year students at ABA-accredited law schools must study legal writing.8 But although many law schools like New York Law School happily offer so many writing electives that students can take at least one writing course every semester in their second and third year, no law school requires any student to take a writing elective. Students must satisfy a writing requirement in their second or third year, but their papers typically are academic, not practice-based, and are rarely line edited, as are the writing course’s papers. Law schools like St. John’s have writing centers at which students, taught by upper-level students,9 can improve their legal writing. All schools should have them.

Many schools use mostly adjuncts to teach their students legal writing, but students profit when the writing faculty is made up mostly or entirely of full-time teachers, who are more accessible to their students than adjuncts are and who form a professional cadre of specialists. The extra pay that law schools must give to full-time writing professors is worth it, despite today’s economy. Worth it as well is for law schools to treat their writing faculties in line with their doctrinal faculties. Doctrinal faculty has long been held above the skills faculty, and especially against women,10 who form a majority of writing teachers at many law schools. Increasingly, full-time writing professors are being given titles, benefits, and the right to participate in school governance similar to doctrinal professors.11 Yet the writing faculty is still too often given short-term contracts and paid poorly.12

Law schools should offer writing courses that allot a fair number of credits and sufficient class hours for the work their writing students must do. Doctrinal classes, believed to be “more intellectually complex” than writing courses, continue to receive more credits and class time.13 There should be enough academic credit and class time to teach more than objective memorandum and brief writing. The programs should also be broad enough to teach letter writing, legislative writing, how to email, as well as negotiating, interviewing, and counseling.

Law schools must continue to devote themselves to scholarship. Scholarship improves the profession and makes teaching better. At the same time, they must acknowledge that they are trade schools for a noble profession “that depends on flawless writing, logical reasoning, and persuasive argumentation.”14 To teach students their vocation, law schools must now, more than ever, augment their writing curriculum. Doing so will be expensive. Not doing so will be even more expensive.

The Journal’s next Legal Writer column will continue with its series on drafting civil-litigation documents.

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2. Am. Bar Ass’n, Section of Legal Educ. & Admissions to the Bar, Report and Recommendations of the Task Force on Lawyer Competency 15 (1979) (arguing that more students should “receive rigorous training and experience in legal writing”).
6. For an excellent study articulating these concepts, see Sherri Lee Keene, One Small Step for Legal Writing, One Giant Leap for Legal Education: Making the Case for More Writing Opportunities in the “Practice-Ready” Law School Curriculum, 65 Mercer L. Rev. 1 (2013).
9. It’s smart to let students teach one another legal writing through collaborative learning, see Elizabeth L. Ingelhart, From Collaborative Learning to Collaborative Writing in the Legal Writing Classroom, Legal Writing, 13 J. Legal Writing Inst. (2003), and peer conferences, see Sheila Rodriguez, Letting Students Teach Each Other: Using Peer Conferences in Upper-Level Legal Writing, 13 Fla. Coastal L. Rev. 101 (2012). The better (or richer) law schools also use law-student teaching assistants or teaching fellows.
12. See, e.g., Philip N. Meyer, Confessions of a Legal Writing Instructor, 46 J. Legal Educ. 27 (1996). See also, e.g., Catherine J. Wasson & Barbara J. Tyler, How Metacognitive Deficiencies of Law Students Lead to Biased Ratings of Legal Writing Professors, 28 Touro L. Rev. 1395 (2012) (discussing the at times difficult relationship between legal-writing teachers and their students, who misuse the teacher ratings and evaluation process because their own deficiencies prevent them from seeing their own poor performances); Mary Dummewoelf, Establishing and Maintaining Good Working Relationships With ILW Writing Students, 8 Perspectives: Teaching & Legal Writing & Research (1999) (a good piece on working well with students); and Susan Liemer & Hollee Temple, Did Your Legal Writing Professor Go to Harvard?: The Credentials of Legal Writing Faculty at Hiring Time, 46 U. Louisville L. Rev. 383 (2008) (arguing that legal-writing teachers have the same stellar credentials as doctrinal teachers but do not receive the same recognition).