THE INTEGRATED CURRICULUM OF THE FUTURE: INTEGRATING FIRST-YEAR LEGAL WRITING WITH OTHER LAWYERING SKILLS

NANCY SCHULTZ*

Conversations with my colleagues in the field tell me that many Legal Writing programs seem to have moved in the direction of breaking writing skills into ever-smaller pieces to be taught and mastered in isolation with extensive repetition and feedback. Many Legal Writing professors believe deeply in this “building block” approach to legal writing and in the value of repeated drafts and feedback and multiple individual conferences.¹ They start with “closed”² memos, often with two cases that reach opposite conclusions, as a way to teach legal analy-

* Professor of Law, Fowler School of Law at Chapman University. I take an integrated approach to everything I teach. I teach contract drafting and ethics in my Negotiation and Mediation courses; I teach legal writing, ethics, and professionalism in Client Interviewing and Counseling; I taught drafting in Civil Procedure; I coach teams in Mock Trial, Moot Court, Client Interviewing and Counseling, Negotiations, Mediation, Arbitration, and Pretrial Advocacy.

¹ See, e.g., Nancy Millich, Building Blocks of Analysis: Using Simple “Sesame Street Skills” and Sophisticated Educational Learning Theories in Teaching a Seminar in Legal Analysis and Writing, 34 SANTA CLARA L. REV. 1127, 1128 (1994) (discussing a model seminar, which “helps . . . students to develop the building blocks of legal analysis” and “develops the corollary skills through the interactive nature of the classes, which involve weekly writing by the students, extensive written critiques of their assignments, individual oral conferences, and rewriting and recritiquing of each exercise”).

² Meaning that no research is required—the students are provided with the necessary legal authority.

(405)
sis in a controlled way. Then they add open research memos, and that may be the entire first semester.

I used to do those things, as well, and I see value in them. But I learned that a more contextualized approach to legal writing, which focuses on why lawyers actually write various documents, gave me a higher-quality work product. I have developed a mantra for all of my teachings: “Context is everything.” The importance of contextualizing learning is not something I invented, however. Here are just a few examples from the legal writing/legal education literature:

Although the skills of legal analysis, reasoning, and argument are unquestionably important, they are embedded within a much broader lawyering process, which extends from the moment a client walks through the door for an initial consultation through the resolution of the client’s case. 

“Learning in context” is the most effective way to engender long-lasting learning and genuine understanding.

Students understand specific legal issues better when they are placed within a context.

When the contexts are far apart, it is harder for the brain to recognize that learning stored in an earlier schema is appropriate for recall and application in the new situation.

The last quote touches on a problem I have observed as students transition from a first-year Legal Writing course based on the building block model to later writing experiences. Legal Writing students speak of REs (Rule Explanations) and RAs (Rule Applications) as if they have some sort of existence independent of their Legal Writing class. Thus, when I assign a research-based Case Plan in my Client Interviewing and

---


4 Id. (further discussing the “traditional” approach, which, for the first semester, solely involves three legal memoranda assignments: an initial short, closed universe memorandum; a somewhat longer, independently researched memorandum; and a final more complex, more advanced memorandum).


Counseling class, I am asked by the students whether they need to do REs and RAs. Once I figured out what those were, I realized that the students were not internalizing the concepts of finding, understanding, and applying legal rules as necessary parts of any legal analysis. They were things you do in Legal Writing, and then you ask if you “have” to do it in other writing.

This difficulty of transferring skills from one context to another is a challenge long recognized in education.9 At a recent conference session in the summer of 2014,10 attendees had a discussion about why building bridges between educational experiences is both important and frustrating. Those of us with experience know why we need to explain and apply any legal authority to each legal problem—if you just cite authority without explaining it, you are essentially telling the reader to go look it up. If you want your writing to be persuasive, the reader must understand how you arrive at your conclusions.

When I finally taught first-year Legal Writing with the freedom to design the course any way I wanted, I took a very different approach. In the fall semester, we spent the first four to five weeks on research and analysis exercises where the students were required to find legal sources and answer a client question based on those sources. These were very short pieces of writing, no more than a paragraph, but even with those I required the students to think about sources of law as something you use in the service of helping clients.

We spent the rest of the year on a single case. The students got their facts from interviewing the client. I taught one class on client interviewing, and they did the interview as a group, so obviously there is much about the process of client interviewing that we did not discuss. We did not go into the nuances of various questioning or theory development techniques, nor did we talk much about giving advice. The focus was on rudimentary information-gathering strategies and recognizing the human element of where legal cases originate.

The class was split in half, with the two halves representing clients on opposite sides of the dispute, so there were two sides to the story. After they had their facts, the students were required to prepare a research memo analyzing the law as it applied to those facts. I added a

---

9 See id. at 291.
10 Louis J. Sirico, Jr. & Nancy Schultz, What Should We Teach After the First Year?, Plenary at 16th Biennial Legal Writing Institute Conference (July 1, 2014).
section not typically found in first-year memos\textsuperscript{11} called “Strategy” and called the memo a Case Plan. The students were required to think about non-legal aspects of the case, such as emotional, financial, and other influences that affect client decisions and then think about how they would actually recommend to the client that the case proceed. They then wrote a letter to the client, in lay language, explaining the results of their research and outlining their initial recommendations.

Once the letters were completed, the students prepared to negotiate the dispute. Again, I taught one class on negotiations. There was a very interesting side effect of the negotiation assignment—it focused and motivated the research and writing of the Case Plan. Writing professors are familiar with the typical questions like “How many cases do I need?” and “Do I need to research both sides of the case?”\textsuperscript{12} If a student asked me such a question, I would ask what they would be doing after the Case Plan and letter were completed. I pointed out that there were “lawyers” on the other side of the case doing the same research they were doing, with an eye to the negotiation. I asked if they wanted to be prepared to respond to any arguments the lawyer on the other side might make during the negotiation. I could almost see the light go on. And an interesting thing happened—I got better, clearer, more thorough analysis and writing than I had seen in previous formats for Legal Writing classes.

After the negotiation, the students drafted a Settlement Agreement. Again, I taught one class on drafting. Clearly, there is more to be taught in all these areas—client interviewing, negotiation, and agreement drafting. But you can teach in a functional way—just enough to make the assignment you contemplate achievable. As long as your learning goals are clear, you can adjust the teaching accordingly.

So that was the fall semester. In the spring, we assumed that the settlement broke down and litigation commenced. We began with pleadings then moved to discovery, summary judgment, and appeal. For the pleading assignment, the students on the plaintiff’s side drafted complaints and served them on the defendant’s counsel. The

\textsuperscript{11} I have personally never heard of other instructors requiring a “Strategy” section in a Legal Writing memo, though I may not have talked to the right people. And one or more of my colleagues at Chapman has adopted the Case Plan in their Client Interviewing and Counseling courses.

\textsuperscript{12} Based on conversations over the years, when I mention these kinds of questions to my colleagues, there is instant recognition and probably a little frustration.
defense counsel drafted answers and served them on plaintiff’s counsel.

Based on what the students knew about the case, they drafted discovery plans. The students were required to think about what kind of information they wanted and needed and how to use discovery tools to obtain that information. Obviously, I needed to teach a little bit of Civil Procedure—pleadings rules, discovery options, summary judgment, etc. Civil Procedure professors might argue that I could not possibly teach them everything they needed to know about these subjects in the context of making these assignments. That is obviously true to some degree, though I taught Civil Procedure for three years, and I believe I taught my writing students enough to understand what they needed to do.

Once the discovery plan was complete, the students prepared ten interrogatories (obviously not form interrogatories) and ten requests for admission to serve on opposing counsel. The lesson here was to use words precisely—to ask for the needed information in a way that would actually require a useful answer and so that the respondent could not easily evade or object to the inquiries. The students were then required to respond to the discovery requests and serve their answers.

Based on the pleadings and discovery, we then went to a summary judgment motion. The moving party prepared motion papers and a brief in support and served them on the nonmoving party, whose counsel was required to prepare and serve a response. We held short oral arguments on the motion, which was a nice way to get the students prepared for the more formal appellate argument later. I would then grant the motion, and the students would write appellate briefs on their respective sides of the appeal from the grant of summary judgment. We ended the semester with the fairly traditional appellate oral argument.

Readers might suspect that the record on appeal was not terribly extensive, and they would be right. We had no deposition transcripts or other lengthy factual documents. My goal for having the students write in this context was to have them understand how one takes the same law one has researched and applied previously and applies it in a new way—to support or oppose a summary judgment and to convince an appellate court that the summary judgment was valid or that the losing party deserved a day in court. Thus, the students did have to do some new research—they had to understand the standard for summary
judgment and standards of review on appeal, but they did not have to do that in addition to learning a whole new area of law.

Did we get tired of the case by the end of the spring semester? Sure. But I remain convinced that understanding the “real” life cycle of a client matter and understanding when, how, and why lawyers actually write the various documents—memos, letters, settlement agreements, pleadings, discovery, motions, and appeals—was an important experience for the students. I am convinced that this more integrated approach better prepares students for summer jobs and provides a stronger foundation for transferring lessons from the first-year Legal Writing class to later legal writing experiences. When students have a functional understanding of what they do, it is easier for them to take earlier learning and use it as they move forward in their writing careers.

The good legal writer is able to write well in a variety of contexts and understands which type of writing is most appropriate in a particular situation. A variety of exercises will also disabuse students of the notion that writing is something that can be done by rote following of a preset formula. Students will learn that legal writing is best when the writer understands how to use the style of communication appropriate for the particular situation and audience.13

This was a six-credit course, three credits each semester. I graded each assignment and gave feedback before the next assignment was due. Needless to say, conversations about ethics and professionalism are an ongoing part of this course in every aspect—interviewing and counseling, negotiation, research, and advocacy.

There are undoubtedly many variations on this approach that can and have been used in various law schools.14 But the fundamental underlying principle is that integration is the key—integrating skills, context, research, and writing leads to a better-written product and a stronger understanding of the lawyer’s work. “[T]he authors of the Carnegie Report stated that the best legal writing classes they studied focused on learning tasks and contexts that were reflective of and simulated actual legal work . . . .”15

14 Compare, e.g., Durako, supra note 3, at 726 (discussing the “traditional” approach to legal writing education), with Kowalski, supra note 8, at 285–388 (2010) (discussing an approach to teaching legal writing in a clinical setting).
While students no doubt know that whatever legal issue they are presented with in a Legal Research and Writing assignment reflects an underlying set of facts, their analysis of the interaction between facts and rules can only benefit from a broader understanding of the varying contexts in which those facts are developed. . . . In other words, the research and writing instruction will benefit from the students’ broader understanding of what it means to be a lawyer and represent a client.16

I remain convinced that contextualizing Legal Writing assignments in a way that represents what lawyers do as much as possible makes the learning process more effective and, not unimportantly, more fun.

