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CERTIFICATE PROGRAM IN ADVANCED LEGAL WRITING: MERCER’S ADVANCED WRITING CURRICULUM

BY LINDA H. EDWARDS

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It’s spring again. The azaleas are in glorious bloom, but you are inside, sitting at your desk, grading yet another appellate brief. Does what you are reading fill your heart with contentment? Make the sun seem brighter and the warm spring air even balmy? When you put down that last brief, are you left with the feeling that all is as it should be?

Or maybe you teach in a three-semester program. Imagine yourself, then, in December. All around you are holiday decorations, and you still have many gifts to buy. But that’s all right, because you’ve just finished grading that stack of briefs, and you know that your students have learned what they will need to know about legal writing. They are ready to present their client’s case powerfully, draw a contract precisely, and draft a complaint competently. Their documents will be complete and their reasoning will be thorough.

If these pictures are just fantasies, then you are in good company. Every year Legal Writing professors across the country bid goodbye to another class of students who have completed the required writing courses. Yet, rarely do we feel satisfied that the students have learned everything they will need to know. Rarely do we think that they have mastered the critical skills of analysis and communication.

Rather, the great majority of our students have barely begun to master the reasoning and writing skills they’ll need. Even our best students have not yet been exposed to sophisticated writing strategies that can put power into their prose. Will they learn to write masterfully during their service on

the law review, we wonder? If we open the most recent volume, what answer comes to mind?

What about the students who struggled through their required writing courses? Many of those students are still lost in a muddle of untamed words. They probably received low grades in our courses, and their GPAs probably place them toward the bottom of the class already. How likely are they to choose an upper-division writing elective? They surely are not looking forward to repeating the painful experience of floundering in a writing class. More likely, they will graduate without any additional writing experience at all. If they must take a seminar, they will choose a professor who does not require a rigorous writing experience.

In reality, the excellent required courses we teach can only fairly be characterized as introductions to a broad array of information and a set of exceedingly complex skills. After all, we must cover legal research; the conventions of several kinds of legal documents; citation form; miscellaneous legal method information; editing skills; various modes of legal reasoning; a standard paradigm for legal analysis and common variations from that paradigm; clear style; techniques for using authorities; and even occasional reviews of grammar and punctuation. Our required courses are like survey courses in Western Civilization—they are foundational, but they don’t make students into history scholars. To master any subject area, students need an upper-level curriculum.

Advantages of a Coordinated Upper-Level Curriculum

A Certificate Program is one strategy to encourage students to continue their writing education. The Mercer Certificate Program offers students career services advantages that make upper-level writing courses attractive. Completion of the program provides a certificate to hang beside the J.D. diploma and a résumé entry that is particularly appealing to employers. In addition, the writing portfolio showcases both the quality and the breadth of their writing experiences, constituting a far more impressive writing sample than their first-year appellate briefs.

The coordinated nature of the curriculum offers students some assurance that the payoff in improvement will be worth the effort. Many students sense that they simply need more time for basic writing concepts to come into focus. Others are attracted to the small groups and non-hierarchical structure of writing groups. Students who did not do well in their required courses often blossom in this less competitive, more intimate environment. As a matter of fact, the biggest advantage of the Certificate Program probably is the enhancement of a student's self-image and self-confidence as a writer.

Even strong writers benefit from the depth and breadth of the curriculum, which offers both advanced techniques for brief writing and experience in drafting a broad array of documents. Students can tailor the drafting projects to the kind of practice they expect and to the doctrinal areas of their interest. Also, the program does not significantly interfere with their ability to take nonwriting courses of their choice.

The Certificate Program offers institutional benefits too. In addition to the obvious and significant career services advantages, the Certificate Program offers admissions advantages. The program is an effective marketing tool because prospective law students know how important good writing is to law practice and because these students are already thinking ahead to making themselves attractive to employers.

For legal writing teachers, the program can be an effective vehicle for developing good working relations with doctrinal faculty and for involving more doctrinal faculty in the school's writing program. It can serve as a good fund-raising opportunity, impressing endowment trustees, university administrators, and private donors as well. Finally, because the Advanced Writing Group is not labor-intensive for teachers, they offer refreshment for legal writing teachers weary from the unrelenting burdens of traditional classroom teaching. The level of discourse and analysis in the writing groups is significantly higher than in the introductory courses, and the teacher's role as group facilitator is much less onerous than the teacher's role in a classroom setting.

Certificate Program Requirements and Logistics

To earn the Certificate in Advanced Legal Writing, Research, and Drafting at Mercer University School of Law, students must complete the following requirements:

1. Participate in three semesters of Advanced Writing Group (one credit per semester, graded).
2. Take Advanced Research (two credits, graded).
3. Take a litigation or transactional drafting course of their choice (two credits, some graded and some pass/fail).
4. Complete four additional drafting projects done in conjunction with doctrinal courses (no additional credits or separate grade).
5. Achieve a passing score on a grammar and style examination.
6. Prepare a writing portfolio.

Advanced Writing Groups: Students meet in groups of five (plus a teacher) for one hour each week. The writing groups are loosely modeled after Peter Elbow's description of a community of writers.¹ The teacher serves as a group facilitator and provides the activities for the semester, but the group as a whole functions with minimal hierarchy. The primary challenge for the teacher is to remain quiet enough to leave room for student leadership.

The usual group activity is reading and responding to text—sometimes a text written by a group member and sometimes other texts. Through studying their own reactions and the reactions of other group members, students develop and internalize standards of good writing, which they then practice in their own writing.

Usually the first project is to rewrite the final appellate brief from their last required writing course, preparing it for use as a writing sample. Each week, several students bring to the group a part of their brief. The student identifies a particular concern he or she has with that part of the brief and what kind of feedback he or she wants from the group. The writer provides group members with copies of the text and reads the text aloud to the group, sometimes several times.

¹ Peter Elbow & Pat Belanoff, *Sharing and Responding* (2d ed. McGraw-Hill, Inc. 1995).

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At first, students are shy about reading their text aloud, but within just a few weeks, they do not mind at all. Reading the text aloud requires the writer to take responsibility for it and fosters development of a group trust level. Also, a writer often learns important information about the text simply by reading it to others.

After the writer has read the text, the group's primary function is to share with the writer the response the text prompts. While the group can offer advice, the advice is only secondary, and must never precede or substitute for sharing the readers' responses.

The groups function according to two seemingly inconsistent ground rules: (1) the reader is always right;² and (2) the writer is always right. The reader is always right because the reader is describing only his or her reaction to the text. The writer cannot say to the reader, “No, you didn't have that reaction.” However, the writer is always right because the responsibility for the text remains with the writer. The writer is the only person with the authority to decide what, if anything, to do with the reader's reaction. The reader cannot say to the writer, “You should do this or that.” The writer is in charge of the text. As Peter Elbow discovered more than 30 years ago, putting the writer back in charge of his or her own text is remarkably empowering for students.³

In order to allow the writer the room to make real decisions about the text, grading must be flexible enough to accommodate the writer's freedom. Usually this flexibility can be accomplished by including in the course grade a component for effort and contributions to the group and a component for the student's own improvement. Grading criteria that require strict compliance with a teacher's standards stifle the writer's authority. Also, grading criteria that compare students to each other prevent the formation of the kind of supportive writing community that is critical to the group's function.

After the first writing sample is ready, the group goes on to other reading and responding activities.

The group reads texts written by group members (specifically for the group, for a legal employer, or for another course) as well as texts written by others (usually briefs written and filed by lawyers in real cases).

Over the summer between the second and third year, the students read a novel in preparation for their fifth-semester study of advanced techniques for dealing with facts. They begin the fall by discussing the techniques the novelist used to establish motivation, create characterization, and communicate theme. Then students read and respond to fact statements from real briefs filed in the United States Supreme Court. They write a fact statement of their own, present it for group response, and then rewrite it based on what they learned.

To be sure that participation in the Certificate Program does not significantly impact the opportunity to choose other electives, Advanced Writing Groups are scheduled after students have selected their other courses. Once schedules are set, students are assigned to groups meeting at times left free on their course schedules. It is almost always possible to avoid undesirable meeting times and still defer to schedules for other courses.

Advanced Research and Drafting Courses: At Mercer, the Advanced Research course was already a popular elective taught by excellent teaching librarians. The Certificate Program requires participating students to take that course. The program requirement probably has slightly increased the already significant student interest in the research course, but most students who enroll in the Certificate Program probably would have wanted to take the research course anyway, so the impact on the enrollment in Advanced Research has been minor.

Several advanced drafting courses were already offered at Mercer, but the Certificate Program has probably been a factor in encouraging new course offerings and additional sections of existing courses. Currently, Mercer offers multiple sections of Advanced Litigation Drafting, Advanced Transactional Drafting, Real Estate Drafting, and

² *Id.* at 6–7.

³ Peter Elbow, *Writing Without Teachers* (Oxford U. Press, Inc. 1973).

Pretrial Practice (which includes several other litigation skills in addition to litigation drafting). Soon we will also offer Advanced Brief Writing, partly in response to the large student demand for advanced writing courses.

Additional Drafting Projects: In addition to projects completed for the advanced drafting course, students complete four drafting projects in conjunction with doctrinal courses of their choosing. For instance, if a student elects to take Decedent's Estates and Trusts, the student can draft a will and trust. If a student takes Domestic Relations, the student can draft a property and custody settlement agreement. These drafting assignments are based on real cases handled by lawyers who practice in that area, and they require the student to understand both the doctrinal law and the conventions of the relevant documents. Drafts are reviewed by some combination of the doctrinal professor, a practitioner, and the writing professor.

Grammar and Style Examination: At various points in the program, students in Advanced Writing Groups work on issues of grammar and style. Then in the sixth semester, students take a grammar and style examination. The examination covers common grammar and punctuation errors and basic elements of style. Students can retake the exam until they pass it, but they must pass it in order to earn the certificate.

Writing Portfolios: Finally, students compile all of their writing into a spiral-bound portfolio. The law school provides a glossy color cover sheet with the school seal and the title "Writing Portfolio, Certificate Program in Advanced Legal Writing, Research, and Drafting." The portfolio begins with a table of contents listing all of the kinds of documents included—usually all of the legal writing the student has done for the Certificate Program as well as appropriately redacted writing done for legal employers, writing done for other courses, and law review or moot court writing. The portfolio, usually about an inch and a half thick, constitutes an impressive writing sample.

Students turn in a copy of the portfolio to complete the Certificate Program requirements, but the portfolio's greatest value is in the job search. The law school provides multiple copies

of the cover sheet so students can prepare as many copies of their portfolio as they would like. When students mail a résumé and cover letter to a potential employer, they can include a copy of their portfolio and a copy of Mercer's legal writing brochure describing the Certificate Program. Feedback from employers has been overwhelmingly positive.

Do employers read all those documents? Surely not. Most likely they read the table of contents, turn to one or two key documents, and read part of the appellate brief. But the value of the portfolio does not depend on whether the employer reads it through. The portfolio has served its career services purpose just by demonstrating the breadth and depth of the student's writing experiences.

Feedback About the Program's Success

Mercer's Certificate Program began in 1997, and the results have been at least as positive as we had hoped. Lawyers and judges are pleased with our students and with the training they have received. Graduates of the program are writing and calling to tell us how well it prepared them for practice. Current students are clamoring for the limited number of seats available in the program. The student demand is three times the number we can currently accommodate, requiring us to use a lottery to select each new group of students.

The University administration and the trustees of our endowment are so impressed that they have funded an additional tenure-track writing position so we can expand the program. Several doctrinal teachers who have visited Advanced Writing Groups have volunteered to help by taking a group of their own. Other doctrinal faculty are loudly proclaiming to prospective students that the legal writing program is the most important reason to choose Mercer.

But the best part is watching students develop confidence as writers and shaking their hands at graduation, knowing that they are ready to practice law.

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