

PERSPECTIVES

Teaching Legal Research and Writing

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WHAT THE LEGAL WRITING FACULTY CAN LEARN FROM THE DOCTRINAL FACULTY

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An unfortunate theme often threads its way through discussions among legal writing faculty: We know far more about law teaching than our doctrinal counterparts. "They" teach boring classes in a boring way and do not connect with their students. "They" are not interested in interacting with their students except by way of an outdated Socratic grilling. In fact, "they" are simply uninterested in their students. Another issue seems to aggravate this thread. Because many Legal Writing departments are engaged in a daunting struggle for improved status within the academic community, legal writing professors may tend to regard their association with doctrinal colleagues as an "us vs. them" relationship. However, an us vs. them mentality does not lead to "win-win" results.

Because I move in both legal writing and doctrinal circles, I find the antidoctrinal rhetoric both distressing and unconstructive. To be sure, most law school faculties probably have one or two curmudgeons on the doctrinal faculty who are completely closed to any deviations from what they incorrectly perceive as the classic legal education. However, I have found that most of my doctrinal colleagues care deeply about their students and think deeply about how they can

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improve the educational experience that their students are receiving. Along the way, they have learned some lessons about educating future lawyers.

When legal writing faculty distance themselves from their doctrinal colleagues, they deprive themselves of a source of valuable mentoring. They also deprive their doctrinal colleagues of a rich source of teaching experience and insight.

A continuing dialogue among all faculty members can benefit legal writing faculty in four ways. It can improve teaching, lead to a better understanding of the substantive law that serves as a foundation for student assignments, offer guidance on producing academic scholarship, and help enormously in appreciating faculty politics.

Teaching

When I first entered the market for a teaching position, I was asked a very standard question: When you think back on your law school professors, did any of them employ a teaching style that you would want to adopt? My answer was no. The teachers I liked best were the ones who took the material beyond the conventional learning and offered me insights that I found exciting. My favorite teacher used a harsh Socratic method and even made us stand up to recite. Perhaps the conclusion is that what you learn is more important than how you learn it. However, even though that professor's method did not prevent me from learning, it alienated too many of the other students. In contrast, a successful teaching method would have guaranteed that a larger number of students would have profited from what the professor had to offer.

Today, most of my doctrinal colleagues are better teachers than my old professors. They experiment with different teaching methods, are more in tune with their students, and are far more entertaining. Like their counterparts at other schools, they think about teaching. A search of the literature uncovers considerable scholarship on teaching methods by academics who do not teach legal writing. Just as legal writing professors have something to offer the legal academy, doctrinal professors also have much to offer.

Most legal writing professors are teaching a single subject to a relatively limited number of students. In contrast, almost all doctrinal faculty

are teaching two or three classes per semester to a large number of students. As a result, veteran doctrinal teachers have encountered a greater variety of teaching situations and a greater variety of students. Therefore, they can prove to be a source of wisdom on how to handle many situations, for example, a class that went wrong or an unpleasant dispute among students.

Perhaps the most challenging task for a teacher is dealing with the particularly difficult student. Although I have been teaching for more than two decades, just when I think I have encountered every student personality, I come across a new one. Each student requires a different approach. Discussions with other teachers have always provided guidance.

As more legal writing professors begin to add substantive courses to their teaching loads, they will appreciate the skills of the doctrinal professor who is always juggling several courses. Two courses are a surprisingly heavier burden than one course. Teaching doctrinal courses requires learning the most efficient ways to master the material, the best ways to keep current on the ever-changing law, and how to present substantive material effectively. These are not easy tasks. Fortunately, legal writing professors can consult colleagues who successfully perform these tasks every day.

Even if the legal writing professor is accomplished in employing interactive teaching methods in legal writing courses, he or she may discover that transferring those skills to the doctrinal classroom is no mean feat. An experienced doctrinal professor can prove an invaluable adviser. The legal writing professor may also discover that not all doctrinal professors teach like Christopher Columbus Langdell. Many have developed interesting exercises and teaching methods that their students find enjoyable and helpful.¹

Critical legal writing professors might gain something from auditing a few doctrinal classes. To paraphrase Oliver Goldsmith, they might come to scoff and stay to learn.

¹ For a collection of practical ideas for innovative teaching across the curriculum, see Gerald Hess & Steven Friedland, *Techniques for Teaching Law* (Carolina Academic Press 1999).

The Law

Doctrinal professors also can help in drafting legal writing problems. Running a criminal law problem by a criminal law professor can help ensure that the problem is substantively correct. However, the doctrinal professor can assist in two other ways.

First, the doctrinal professor is in a position to explain the legal context of the narrow assignment. An understanding of this context can help the legal writing professor predict where a student might misunderstand the law upon which the problem is based. For example, the legal writing professor might draft a landlord and tenant problem dealing with the implied warranty of habitability for residential property. If the professor is not well versed in property law, he or she may not realize the risk that the student will become embroiled in cases dealing with the landlord's covenant of quiet enjoyment or the tenant's right to repair and offset the cost against the rent in some jurisdictions. The legal writing professor would benefit from discussing the assignment with a property professor who can suggest ways to avoid possible complications.

Second, because the doctrinal professor probably has written many an essay exam, he or she may be able to offer advice on how to draft the problem—which shares essential characteristics with an essay exam question—so that students avoid misreading the assignment or mistakenly focus on irrelevant or nonexistent issues. I suspect that every doctrinal professor can recall at least one essay question that went horribly wrong. He or she certainly can recall essay questions that worked well for most students, but left a significant number hopelessly confused. Mistakes have lessons to teach us.

Scholarship

At any national meeting of legal writing professors, programs on scholarship always draw large crowds. As more schools offer tenure-track positions and long-term contracts to legal writing professors, the ability to produce high quality scholarship grows in importance. Yet many in the legal writing field have never served on a law review and have never attempted to publish a

scholarly article. They may not be entirely sure what makes for a highly regarded academic piece. On the issue of scholarship, doctrinal colleagues can offer assistance.

The fledgling author needs the answers to two questions: In the academic legal community, what constitutes good scholarship? At this particular school, what constitutes good scholarship? It is important to understand the difference between the two questions.

Of course, the second question is more critical. Some schools expect highly theoretical explorations. Others appreciate the value of scholarship that is of practical value to the bench, bar, and teacher. Some schools expect a legal writing professional to write about legal writing and such related fields as classical rhetoric and cognitive learning theory. Others want to see articles that “crunch cases,” perform empirical research, or offer theoretical models in traditional doctrinal areas. Some schools lower the standards for acceptable scholarship for legal writing faculty. Others do not. The time-honored advice is to conform to the faculty's expectations, at least until you have job security. Members of the doctrinal faculty are in the best position to explain what those expectations are.

In addition to giving general advice, the doctrinal professor can provide two specific services. First, he or she can point to examples of scholarship that the faculty has deemed to be excellent—articles by law school professors that resulted in tenure or promotion. Legal writing professors often advise their students to examine model memos and briefs. In like manner, they should study successful models of scholarship.

Second, the doctrinal professor can agree to read and comment on drafts of articles by legal writing professors. This is a common practice throughout academia. Even very senior academicians frequently ask for critiques by their colleagues. At some schools, junior faculty in search of tenure meet regularly in a small group to offer suggestions on one another's drafts. A well-vetted article stands a good chance of success. Every legal writing professor should seek and receive feedback before searching for a publisher.

“Mistakes have lessons to teach us.”

“When launching a new effort, the inexperienced professor must remember that he or she is entering a marathon that probably began some time ago.”

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Law School Politics

Legal writing professors may engage in law school politics for a variety of reasons, ranging from gaining approval of a new course to gaining an upgrade in status. In such endeavors, they should keep in mind the observation of British Labor politician Ken Livingstone: “Politics is a marathon, not a sprint.”² When launching a new effort, the inexperienced professor must remember that he or she is entering a marathon that probably began some time ago. To mix metaphors, even seemingly new issues carry baggage from the past. Seasoned and careworn doctrinal professors can explain what that baggage is.

As an example, take an effort to upgrade the professional status of the legal writing faculty. The doctrinal professor may remember what transpired the last time this issue arose, how various people voted, which arguments proved compelling, and which did not. Even if the legal writing professor was at the law school at the time, he or she may not have been privy to all the public and private discussions and maneuvers that took place. He or she may not know whether any hard feelings resulted from the debate, much less how certain key faculty members now feel about the issue. He or she may not realize that certain faculty members always tend to vote together or on opposite sides of any hotly debated issue. However, a trusted doctrinal colleague may be willing to provide this information, information that is critical to the success of the current endeavor.

In July 2001, the Association of Legal Writing Directors hosted a conference with the theme, “Erasing Lines: Integrating the Law School Curriculum.”³ The participants discussed the many ways in which the artificial line between doctrinal and skills courses is disappearing. One happy consequence of this change in legal education is that both doctrinal and skills teachers will inevitably work more closely with one another and learn from one another. Not only can the doctrinal faculty learn from the legal writing

faculty. The legal writing faculty can learn from the doctrinal faculty.

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² *Oxford Dictionary of 20th Century Quotations* 192 (Oxford 1998).

³ The proceedings are published as *Erasing Lines: Integrating the Law School Curriculum*, 1 *Journal of the Association of Legal Writing Directors* (2002).