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DON'T JUDGE A COURSE BY ITS CREDITS: CONVINCING STUDENTS THAT LEGAL WRITING IS CRITICAL TO THEIR SUCCESS

BY CHRISTINE G. MOONEY

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How many times have legal writing professors been faced with students who believe that legal writing is a less important, if not dispensable, part of their law school curriculum? “I already know how to write or I wouldn’t have been accepted into law school” goes the familiar refrain. Some students are even insulted by the legal writing requirement, believing that a writing class of any kind at this stage of their education is remedial and beneath them.

At Villanova, in addition to student skepticism, we have the added hurdle of a mere two-credit allocation for the entire year-long Legal Writing course. A recurring comment on student evaluations expresses the sentiment that students find the course to be far too much work for only two credits.¹ Students’ preexisting bias, coupled with the tremendous amount of work that Legal Writing requires in an already overburdened law student’s schedule, can tempt some students to give short shrift to their Legal Writing course. This frustration often leads to the (accurate) estimation by our students that, relative to their other courses, their Legal Writing grade will not have a significant impact on their overall grade point average. Therefore, the logic goes, if something has to slip, Legal Writing assignments should be the first casualty.

If left unchallenged, these views can lead students to the erroneous and self-defeating

conclusion that legal writing is not all that important compared to their other courses. Students must understand that the principles they learn in Legal Writing are unique to the legal field, and no matter how skilled students may be at writing, they cannot simply transfer their prior approach to the legal setting and expect to succeed. As we know, most students enter law school with an unrealistic view of what the life of a lawyer is like. It is incumbent upon us to correct those misperceptions and provide students with an understanding of the kind of skills they will need to be successful lawyers.

The challenge we face is how to convince students that they must be able to write well in order to be good lawyers. From the beginning of their law school careers, we need to shape student perceptions about the important role that legal writing skills will play in their legal careers. Specifically, they must know that writing will transcend nearly everything they do as lawyers. Students need to understand that a lawyer’s job is to be an effective advocate and that one cannot be an effective advocate without being an effective communicator. Regardless of the specific area of practice, effective lawyering requires effective oral and written communication skills. Everything from client letters to contract drafting to transactional work to litigation requires clear, concise writing.

More than any other first-year course, Legal Writing requires full student engagement. Although we can teach rules and approaches to writing and analysis, students cannot learn how to analyze and write about legal problems simply by absorbing what we have taught them. If they are to learn how to write well, they must be active participants in the learning process, and they must engage right at the beginning.

I begin this process of persuasion right from the first class. In order to avoid sounding self-serving, it is important to approach this from the students’ perspective. Otherwise, the students may mistake my entreaty as predictable professorial bias toward

¹ In Villanova’s program, in the fall semester alone, students are required to write an ungraded closed memorandum of law, two drafts of another ungraded open memorandum of law (one is a rewrite of the original), and a graded open memorandum of law, as well as numerous other homework assignments and group collaboration exercises.

one's own subject and dismiss me out of hand. Therefore, I focus on the impact that legal writing will have on them, both in the long term and in the short term.

From a long-term perspective, I tell my students that a lawyer's ability to effectively advocate rests primarily on their ability to express themselves clearly, logically, and professionally. I tell them that there is no legal job I can think of where you do not need to be proficient in legal writing and oral communications, and that these skills pervade every other skill and ability a lawyer needs. I point out that the most thorough researcher and brilliant thinker will not be helpful without the ability to clearly communicate the results. Overall, success as a lawyer depends on communication. I give the students a fairly detailed recitation of what lawyers in several different practice areas might do with their day. For example, I describe a practice that involves heavy contract drafting. I explain the importance of precision of language and clarity of sentence structure, providing examples of the havoc that a vague, incomplete, or ambiguous contract provision can wreak upon the contracting parties, whether they be business associates trying to dissolve a partnership, a family member disputing a will provision, or a divorced couple arguing over a custody agreement. I also talk about attorneys who do corporate work, such as mergers and acquisitions, and the 11th-hour breakdown of deals that occurs because the parties have different views of an agreement, which was painstakingly hammered out over a period of months.

I discuss what occurs in litigation and how the client's case is managed largely through written documents. From discovery requests, to demand letters, to memorandums to the court seeking various types of relief, to settlement documents, I stress how important it is for the lawyer to write with precision.

I also point out to the students that the view other professionals will have of them will be largely shaped by their oral and written skills. Oral and

written skills are those that are most visible to colleagues, clients, and just about everyone with whom a lawyer comes into contact. The way lawyers present themselves and their ideas in writing and orally will inevitably have a profound influence on the ways that others perceive them and their abilities.

In an effort to appeal to the students' short-term concerns, I explain that their ability to obtain and retain legal employment depends largely on their legal writing skills. Because most of what a new lawyer does is research and write, employers place a high value on legal writing ability and often make it a litmus test for job applicants. Many employers will forgive a less than stellar grade in one area of substantive law. Conversely, many employers will not consider a student who has performed poorly in his or her legal writing course, even if that student has otherwise good grades. Moreover, many employers require a writing sample as part of the application. This means that, in many cases, a student must demonstrate proficiency in writing before he or she can even obtain an interview.

Once students obtain summer employment, they are on trial. The single biggest factor upon which students will be judged is their legal writing ability. Most employers expect to have to train young lawyers in the specific areas of law, but they do not expect to have to train them to write.²

How can we, as legal writing professors, convince our students of these facts at the outset of their legal education so that they can make the most of their opportunities to maximize their legal writing skills? One way to convey the importance of effective legal writing is to describe personal experiences from law practice. For example, I worked for a law firm that, like most others, placed enormous importance on writing ability. I naively entered practice feeling nervous about my command of substantive law but relatively confident about my writing ability since I had performed well in law school. I share stories with my students about unsettling experiences I had as

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² Bryant Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. Legal Educ. 469, 490–91 (1993).

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a summer and first-year associate when partners extensively critiqued my writing. Fairly early in my employment as a summer associate, I realized that while the firm viewed my writing skills as good for a law student, they were far from meeting the standard that the firm expected from its lawyers. In other words, I had a long way to go. It was only after many arduous (and sometimes torturous) assignments, where I was closely mentored on my writing, that I began to understand the enormous importance of thinking about every word I wrote.

Another way to persuade students that their legal writing skills are important is to have former students come into class to speak about their experiences in the real world. Having these live testimonials is a great way to drive home the point that legal writing skills have a profound effect on success. This type of testimonial from an independent source can be an invaluable way to reach students who may be skeptical. Career counselors can also attest to the importance that employers place on legal writing skills.

Regardless of which method or methods we use, we owe it to our students to impress upon them the uniquely important role their legal writing ability will play in their professional success in both the short term and long term. Once they understand this, rather than engaging in short-sighted calculations about the impact the course may have on their GPA, students can focus on developing their legal writing skills to their best potential before they are in a position where their writing capabilities may well define their available opportunities.

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