

growing diversity in the profession, the varied types of practice settings, the continued demand for higher salaries, the demand for higher billable hours to maintain law firm profitability, the advent of lawyer multi-millionaires, the legislative backlash against lawyers, the lack of loyalty of lawyers, the growth of law as popular culture, the advent of lawyers as media stars, and the continued growth of law as a business.

One consequence of the values dilemma is that the profession increasingly relies upon the law schools to build professionalism among its students. In the absence of a uniform regulatory structure that would mandate the SSV for every lawyer, it has been difficult to fulfil the promise of a continuum of training from law school through the profession. This is disturbing because it raises questions about the commitment of the profession to the core values of the SSV. Perhaps the biggest problem is that we treat skills as if they are separate from values. Skills are easier to convey and values too amorphous to expect that they will be taught and learned together.

What is required is a campaign by all interested parties, including law schools, the bar and the judiciary, to have these organisations make professionalism personal by adopting missions that explicitly embrace the skills and values of the SSV. Each should create a plan to (1) do training in the SSV; (2) define professionalism within the organisation; (3) create a mentor system linking young lawyers with experienced lawyer role models; (4) link the organisation to law schools, CLE programs etc.; (5) describe the organisation's internal training system; (6) describe how it will monitor progress and performance on its system; (7) create methods for fulfilling service obligations to the public; (8) describe the steps it will take to ensure justice, fairness and morality, as well as to eliminate bias in the profession; and (9) appoint a senior respected member of the organisation to monitor its progress on this plan.

The commitment to skills and values education advocated over the last ten years has impacted on legal education. We have made real improvements in skills education and even begun to address the fundamental values of the profession. However, the need for an educational continuum between law school and the profession has not lessened over this period.

New York Law School's plan is to build stronger skills and values in its students and asks its students to embrace innovation, contemplating that they must continue to learn. In essence, its commitment is to teach students to use the skills and knowledge they are gaining as lawyers to do something valuable for others, as well as to foster integrity and professionalism. These goals are the beginning steps to make the SSV a part of every student's education. What remains an imperative for every lawyer is to take good intentions and make them a way of life.

SKILLS

Exam writing as legal writing: teaching and critiquing law school examination discourse

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76 *Temple L Rev*, 2003, pp 69–89

When first started teaching legal writing, the author did not include teaching law school exam writing or 'blue book exam' writing in the curriculum, because he did not believe the writing done in law school exams was sufficiently related to the work he had done as a practising attorney to merit teaching. He chose to focus on what he saw as 'real world' writing, believing that students were able to do what they could not in their other first-year classes, that is, learn about and be like practising lawyers, and that students reacted favorably to this 'real world' approach.

Based on experience, the author altered his approach, not by dropping the practical component and emphasis in the legal writing class, but by making room for teaching exam writing and addressing the immediate needs of student writing, analysis and discourse as it applied to the writing the students faced in the next three years of study. He found his students very receptive to this change in teaching and that they saw how the class directly connected to the skills needed in their other classes. This approach also better enabled him to engage students at the lower end of the class.

Exam writing is an area that legal writing professors should be teaching and discussing to a greater and more formal extent. Devoting valuable time in a legal writing class to the conventions of the limited and imperfect assessment tool of the traditional law school exam used in doctrinal courses and away from explicit lawyering skills arguably perpetuates this flawed component of the legal academy. Some argue that law school exams do not accurately assess the skills connected to law practice or legal analysis. Key skills such as the ability to counsel troubled clients, negotiate favorable settlements and be persuasive to a jury are not assessed.

Four intellectual functions are tested, on the surface, in an exam, those being: issue spotting; identification of relevant legal authority; application of legal authority to facts; and organisation of material. A blue book exam's emphasis is on speed, surprise, comprehensiveness of course material, and focus and privilege of a narrow form of discourse. The type of writing found on a typical law

school or bar exam answer is overly reductive. There is often a disconnect between what is assessed in the traditional blue book exam and what is taught in the classroom. Including exam writing is pedagogically sound, practical, and advances good legal writing in law school and practice. Here are some arguments for including the teaching of exam writing in the legal writing curriculum.

Teaching the law school exam is, some would argue, a step backward in the fight to make legal education more responsive to the diverse learning methods of students and the needs of the profession. Teaching exam writing provides the student with the tools necessary for success in school, the bar exam, and practice. If the student cannot effectively write a law school exam, she will most likely not graduate or pass the bar exam. Exam writing also helps students succeed in practice. Most lawyers, particularly those who earned their degrees from law schools lacking formal or developed legal writing instruction, initially learned much of their legal language and discourse through the law school essay. As part of the training to enter the discourse of the legal profession, the law student is well served to understand and master the specific requirements of law school exam writing.

There is not necessarily a dichotomy between teaching legal writing for the type of writing students will do in law school and the writing they will do in practice. However, good exam writing should be good legal writing. This basic skill is one that is at the core of a good legal writing class. Indeed, legal writing classes are as much about legal analysis as they are about writing. While writing exams, the student will consider the audience, purpose, length and time constraints of the assignment, format, and style of her writing in determining what to write on the exam. Because the core components are essentially similar, legal writing professors should use the similarities between the writing taught in their classes and the writing done in doctrinal exams to strengthen and develop students' writing and analytical skills.

Scholars identify three theoretical approaches to teaching legal writing that have been influential in law school curriculums: the formalist or instrumental approach; the process approach; and the social context approach. Under the instrumental approach, the teacher and the writer are focused on the final product of the writing as opposed to the process of writing. Writing, under this approach, begins once the thought process is complete, and is not viewed as a thinking process. Writing courses that focus on a product approach have been criticised as too narrow in scope and deficient in instruction. Similarly, exam writing workshops put on by academic support professionals or doctrinal professors as part of a review session often focus on the final text of a good exam answer without explicit instruction on the drafting process to get to the good answer.

Exam writing should be taught using the process method in tandem with a social context approach. To write an effective exam answer, students need to focus, not on the final product, but instead on the audience, purpose and methods of writing an exam answer. Understanding the similarities between exam writing and writing in practice make the exam process more meaningful and useful to students preparing for practice. Students benefit from seeing the connection between their law school examinations and the bar examinations they will face upon graduation. No matter which approach is used to teach legal writing, the formalist, process or social context, exam writing fits smartly and can be an effective teaching tool.

Teaching legal writing skills in the context of both the practice of law and exam writing is more compelling to a law student than teaching solely in the context of the practice of law. Students recognise the value of acquiring these skills and want to learn about exam writing. Teaching exam writing is compelling and engaging because the ability to write a good exam is an immediate need for the student and compounds the students desire to learn.

An artificial line exists between 'doctrinal' and 'skills' courses. Both types of classes teach the conventions and methods of legal analysis or legal problem solving and the process of communicating legal argument and analysis, as well as teach a deep understanding of black letter rules of law, including the policy and theory underlying such rules. Finally, both types of classes are geared toward student learning and work best when they take account of the ways students learn best. Incorporating exam writing allows a legal writing class to be more connected to the rest of the student's law school curriculum.

An important role of legal writing faculty is to teach doctrinal faculty about their expectations of student writing and to force them clearly to articulate those expectations. Many law professors have not been taught how to teach, how to write exam questions or to grade exam answers. As a result, students do not receive adequate instruction on how to write a good answer on a law school exam. Incorporating colleagues' exams into the legal writing classroom curriculum enables the jargon of legal writing pedagogy to be shared with colleagues teaching doctrinal subjects.

Teaching exam writing can empower a student and blunt the detrimental effects blue book exams may have on her. By teaching exam writing, the teacher teaches the writer to have an understanding and appreciation of her personal perspective, her purpose in writing, her audience and the conventions

that are expected for the discourse. An educated student is better able to appreciate the limitations of this form of writing and understand that exams are imperfect assessment tools. We can reduce the insidious power of the bar exam over our students and our classrooms by routinely teaching about bar exam techniques. By naming, teaching, and critiquing bar exam skills, we can reduce their power.

Legal writing professionals have an important role to play in the bar exam process, that being the forms of discourse needed for success on the bar exam. Most legal writing teachers achieve this goal on a basic level when they teach a standard legal writing course that covers good legal analysis and the methods of presenting a legal argument.

In schools where the legal writing program does not address exam-writing skills, most likely an academic support program will address the issue instead. However, effective legal writing is given short shrift in some academic support arenas. Additionally, orientation programs, workshops run by academic support staff and study aids oversimplify the writing process needed for effective exam writing. The advice given is often overly reductive. If there is a disconnect between these academic support materials and what is being taught in legal writing, the legal writing class is in danger of becoming less relevant and less engaging to the student. Cooperation and coordination between these two areas of the legal academy can enhance teaching and student learning in the law school.

Legal writing instructors not involved in academic support should be able to integrate issues of exam writing into their curriculum without much effort, in order to make the connection between the skills learned in the this class and the writing the students will be performing during the rest of their law school studies. Integration simply requires adding a few notes to class lectures, making additional comments during student conferences, and writing an additional observation while grading papers, about the connection between the assignment at issue and the typical law school exam. These simple changes are likely to be met with eager interest by students looking to perform well in their doctrinal classes. Additionally, legal writing instructors, as legal writing experts, have a valuable role to play in studying, evaluating and critiquing this important form of legal discourse. Talking about exam writing inside and outside of our legal writing classrooms will benefit our students, the legal academy and the legal profession as a whole.

SKILLS

(Un)examined assumptions and (un)intended messages: teaching students to recognise bias in legal analysis and language

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27 *Seattle ULR* 1, Summer 2003, pp 1–40

Unexamined assumptions are obviously an unreliable foundation for legal argument. Legal argument should be the result of a deliberative process, a careful construction made up of the relevant authorities as they apply to a given set of facts. Inevitably, students inject their own values and beliefs, and sometimes their own assumptions, into that mix. While drawing on such values and beliefs is not necessarily a bad thing, students need to think through the basis for their assumptions and, at the very least, realise that others may not share them.

The cultural conditioning students inject in their legal writing can be beneficial or harmful. It can be beneficial when it serves to pass on a society's acquired knowledge and wisdom, thereby building and enriching a sense of community. Cultural conditioning can also be harmful when the actions and attitudes that are passed on reflect a cultural bias based on untruths, stereotyping, or a simple lack of respect for differences. Unexamined assumptions about gender, race, nationality, class, sexual orientation, and disability pass from generation to generation until someone identifies and questions them.

Realising that words are the tools of their trade, students need to be particularly attentive to their spoken and written language and examine it for imprecision, stereotyping and any potential for unintended offense. Realising that legal analysis and legal argument are the professional services they will offer, they need to probe for cultural bias that leads to faulty reasoning.

Law schools should assist students in recognising bias for a number of reasons, including the potential influence bias has in the legal system. Probing what cultural assumptions underlie an opinion or an individual argument fosters the critical thinking characteristic of good legal analysis. Students will have a deeper understanding of the cases they are reading if they can recognise the cultural assumptions that those cases may contain. Students who are able to recognise the fundamental flaws in arguments that rely on unexamined assumptions will be more effective writers and advocates. The law itself is an expression of social values, so law students need to be aware of the extent to which those values may be culturally biased. Addressing issues of bias throughout the law school curriculum has the added benefit of freeing the voices of students with diverse perspectives. As the law itself is