

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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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

an expression of social values, all law students need to be aware of the extent to which those values may be culturally biased.

As professionals in a multicultural society, today's students are required to become culturally competent, that is, they must be cognisant of cultural assumptions that may impact their work and be sensitive to the different perspectives about what is fair or persuasive. Learning to detect when and how life experiences and personal views are being expressed in their analysis of legal problems so that their arguments are the result of conscious, knowing decisions is a skill useful to every lawyer.

All law school courses can offer opportunities for students to examine these issues. Doctrinal courses include cases that may raise these issues while practice-oriented courses can raise these issues as students prepare briefs, make court appearances, and work with clients. It is particularly fitting to discuss bias in language and legal analysis in a legal writing course where it is essential to critically examine the bases of legal analysis and argument, to communicate effectively with the intended audience, and to write and analyse with precision — all skills that might be colored by individual or cultural bias. Discussions about gender bias in language not only set the tone for an ongoing class conversation about bias in language, they also lay a foundation based on two points. To be culturally competent lawyers, law students need to be aware of the bias embedded in word choices, and just as lawyers must be vigilant about updating their legal research, they must also research and update their knowledge about language. Further, such discussion can also pave the way for potentially more controversial bias-in-language issues related to race, ethnicity, national origin, sexual orientation and disability.

Two of the key principles about language and the law are that language can shape perception and that legal writing requires a high standard of precision in word choice. A third principle to add to their understanding about bias in language is that, whenever possible, prefer specific terms to general ones. Whether the issue is one of gender, race, national origin, sexual orientation, or disability, the overriding principles governing word choice are the same. First, realise that what a person is called affects how that person is seen. Second, write precisely and avoid offense. Third, whenever possible, prefer the specific term over the general term. Fourth, prefer terms that describe what people are rather than what they are not. Fifth, note that a word's connotations may change as the part of speech changes. Sixth, emphasise the person over the difference. Finally, avoid terms that are patronising or overly euphemistic or that paint people as victims. Language choices based on these principles are the hallmark of the culturally competent lawyer.

Just as cultural assumptions can be embedded in language, such assumptions may also surface in the analysis of legal problems. Helping students to recognise how cultural assumptions or individual bias can be expressed in legal analysis will strengthen their understanding of cases and other authorities and aid them in constructing and evaluating arguments. Concerns about inserting individual or cultural bias into arguments can generate a discussion about professional responsibility when making arguments.

Students become aware that arguments may contain unexamined assumptions or express bias. What is important is that students recognise and examine arguments based on cultural assumptions or potentially biased views and that they then evaluate the effectiveness or appropriateness of such arguments. Finally, in order to critically evaluate their own arguments, students need to be aware of their own unexamined biases and assumptions, as well as detect bias in the cases they read, in the arguments crafted by others and in their own arguments

While it is important to discuss bias in language and legal analysis, some faculty may be reluctant to incorporate these issues into their law courses, reasoning that there is not enough time to incorporate bias issues into the course, a lack of personal experience with the issues to be explored and/or a fear of raising these sensitive issues in the classroom environment. Recommended responses to these challenges are offered by the authors.

The ability to identify and evaluate cultural assumptions is critical to effective lawyering, and law schools can do much to help students develop this skill. Understanding how bias may be embedded in language serves to make students skilled and sensitive communicators. They need to understand how bias may be embedded into the analysis of legal problems so that they can create sound and effective arguments. If we do not discuss these issues with our students, we risk sending out lawyers whose language skills, arguments, and analysis have cracks in their foundations. There is no question that 21st century law students will live and work in a multicultural society. By encouraging students to examine the cultural biases beneath the surface of language and legal analysis, we can examine assumptions and messages which help our students become culturally competent lawyers.