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Getting Dorothy Out of Kansas: The Importance of an Advanced Component to Legal Writing Programs

Barbara J. Cox and Mary Barnard Ray

Nothing is wrong with the prairies of Kansas, but they do not present all the geographic possibilities. Similarly, nothing is wrong with the standard legal writing course, but it does not present all the possibilities of legal writing. Advanced legal writing courses should also be part of the landscape.

Many legal writing programs consist only of a basic required course. The basic course introduces all entering students to legal research and writing. Usually this course emphasizes obtaining a standard level of competence in two major legal documents: the interoffice memorandum and the persuasive brief. Its goal is to ensure that all students can produce adequate legal writing. Other legal writing programs add a remedial component to help students who have more fundamental writing problems, such as difficulties with grammar or syntax.¹ These programs often focus on helping students for whom English is a second language, students who have received little writing experience in their earlier education, and other students whose writing problems cannot be solved within the basic course. Relatively few legal writing programs, however, extend beyond these basic and remedial components.

Programs that contain only basic and remedial elements encourage mediocre writing and lead to a "swamp and prairie" view of legal writing. Remedial students need to be pulled out of the swamp; the rest of the

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1. In 1988 the AALS Legal Writing, Reasoning, and Research Section held a workshop that focused solely on remedial writing programs in law schools.

students need to gain only enough skills to settle on the prairies. A few students may reach higher ground, the Arkansas Ozarks or the Oklahoma Ouachitas perhaps, but few students ever get beyond the prairies to the mountains. Students, faculty, and even the legal writing staff have no real opportunity to consider what lies beyond. The strongest writers are not adequately challenged. A comprehensive view of legal writing, however, would broaden the horizons beyond the swamps and prairies to include some mountain vistas.

Correcting the "swamp and prairie" view of legal writing requires advanced course options. Advanced legal writing courses can take many forms. They can offer focused work in specific aspects of legal writing, such as legal drafting or persuasive writing.² They can offer more in-depth work with topics introduced in the basic legal writing course, such as advanced appellate advocacy.³ They can be separate courses or a writing component of substantive law courses.⁴ They can be required or elective.⁵ Within the variations, however, two aspects of advanced legal writing courses tend to remain the same. First, the courses include feedback from an instructor with expertise in the craft and art of writing. The instructor has specific experience or formal training, or both, in the use of such sophisticated writing techniques as using sentence structure to affect tone, meaning, and persuasion; using repetition for effective but subtle emphasis; and incorporating the reader's motivations and objectives into the organization of persuasive writing. As students apply these techniques on assignments, the instructor gives detailed feedback and guidance. Second, students are held to a higher standard than are students in introductory writing courses. What might have earned an "A" in the basic course may earn no more than a "B" in the advanced course. For example, students who simply manage to use the right format, to present their position in an organized fashion, and

2. Examples are the legal drafting courses at the University of Florida and California Western law schools.
3. Examples that focus on appellate advocacy are the second-year course at the University of Puget Sound College of Law and the fourth-semester course at the University of Montana College of Law. Mark Mathewson, *Good Legal Writing Can Be Taught*, 16 *Student Law*, 11, 11-12 (Dec. 1987).
4. For example, advanced legal writing is taught as a separate course at the University of Wisconsin and at Wayne State University. At Southwestern School of Law, Paul Bateman team-teaches advanced seminars that include an advanced writing component as part of the seminar.
5. At Wisconsin, Advanced Legal Writing is offered as an upper-class elective. We believe that having students choose to take the course increases the likelihood that they will be dedicated to improving their writing and motivated to do the extensive work required in the course. Requiring students to take the course may reduce their motivation. Increasing numbers of law schools, however, are requiring some type of writing component as part of their upper-class curriculum. Examples include the scholarly writing requirement for all law students at California Western School of Law, as well as the required upper-class courses at the University of Puget Sound, University of Montana, Chicago-Kent College of Law, and John Marshall Law School. See Mathewson, *supra* note 3; John C. Dernbach, *The Wrongs of Legal Writing*, 16 *Student Law*, 18, 22 (Oct. 1987). For further discussion of various options for expanding required legal writing courses into the second and third years, see Mary Ellen Gale, *Legal Writing: The Impossible Takes a Little Longer*, 44 *Alb. L. Rev.* 298, 334-42 (1980); Anita L. Morse, *Research, Writing, and Advocacy in the Law School Curriculum*, 75 *Law Libr. J.* 232, 257 (1982).

to explain their legal analysis clearly have not yet achieved all that they might. They are also expected to find eloquent phrasing, to choose graceful and apt transitions, and to select the most telling points for emphasis. Thus the advanced writing course adds new components to law students' writing, and the new components change the way in which students view their own and others' writing. What used to satisfy them is no longer enough. Students who choose to scale these mountains view legal writing from a new perspective, and that perspective changes their opinion of legal writing forever.

This article explains why an advanced writing component is an integral part of the complete legal writing program, not merely a supplement. It argues that an advanced writing component is as essential to a complete writing program as are the remedial and basic components. The first section outlines the problems caused by the omission of an advanced writing component and explains how incorporating advanced legal writing into existing programs helps all law students, not just those taking the course. The second section describes the advanced legal writing course at the University of Wisconsin Law School⁶ and explains how the structure of the course helps students attain an advanced level of writing expertise.

Advanced Legal Writing Is Essential for the Larger View

The two-component structure of most legal writing programs focuses teaching energies on bringing students' writing skills up to an adequate level and on teaching students to master basic legal writing forms. Once that mastery has been obtained, students focus on substantive law; extending their legal writing expertise is not an option. This limited view has serious consequences for the legal profession, because language is its primary tool. Lawyers spend much of their time writing the countless documents that the legal system requires. Given the focus on writing in lawyers' day-to-day practice, one would expect that lawyers would be good writers. Some are; most are not. Law professors, senior partners, and judges alike complain about the poor writing endemic in the field.⁷ Sometimes added is the complaint that we would not have to be teaching writing at the law school level if undergraduate schools had done their job.⁸

6. The advanced legal writing course we describe was originated and team-taught in 1980 by Mary Barnard Ray and Nori McCann Cross. Since then, it has been team-taught and revised by Mary Barnard Ray and Mary Ann Birchler Polewski (1982-84, 1987-90) and by the authors (1985 and 1986).
7. Articles in journal after journal lament the poor writing in the legal profession. See, e.g., Mark Mathewson, In the Thickets of Bad Judicial Writing, Two Judges Show That It's Possible to Give Opinions Style and Substance, 17 Student Law. 9 (Oct. 1988); Steven Stark, Why Lawyers Can't Write, 97 Harv. L. Rev. 1389 (1984); George H. Hathaway, The Plain English Movement in the Law—Past, Present and Future, 64 Mich. B.J. 1236 (Nov. 1985); William A. Bablitch, Writing to Win, 5 Compleat Law. 8 (Winter 1988); Irving Younger, Persuasive Writing: Symptoms of Bad Writing, 35 N.C. St. B.Q. 28 (Spring 1988); Mark Rust, Mistakes to Avoid on Appeal, 74 A.B.A. J. 78 (Sept. 1988); Ira A. Brown, Jr., A Judge's Brief on Briefs, 8 Cal. Law. 72 (Dec. 1988); Gary Kinder, Editors Are Coming to the Law Firm, 42 Wash. St. B. News 35 (Sept. 1988).
8. Constance Frisby Fain, A Comprehensive Legal Communication Skills Program: The Thurgood Marshall Model, 1982 S. Ill. U.L.J. 1, 1-2.

The common lament treats writing as only a basic skill, implying that once a student gains basic competence, the student should move on to more substantial pursuits in law. Whereas constitutional law, property law and other topics are worthy of ongoing study, writing is something to get through and move beyond.

Legal writing, however, does offer challenges, subtleties, and evolution comparable to other areas of legal study.⁹ It draws from many disciplines.¹⁰ It presents ethical questions.¹¹ It offers intricate matrices of interrelated objectives.¹² Thus, it is inaccurate to characterize legal writing as an unfortunate necessity or a rudimentary skill. To settle for a view that never rises beyond the good to the excellent is to settle for much less than can be attained.

The "swamp and prairie" view of legal writing has also led to a perception by students, writing staffs, and law schools that advanced writing courses are frills that are hard to justify when a writing program has already severely stretched its resources. Law schools hesitate to implement an advanced program before the basic and remedial components are fully funded. Writing staffs and law school administrators may also object to allocating resources to help a few students attain excellence when so many still need help attaining adequacy. They often fail to see how substantial the benefits of outstanding writing capability can be. They may see writing capability as important, but not career changing. They may also fail to see that the benefits of advanced legal writing classes extend not just to the students in the classes but to the whole student body. We have found, however, that the benefits of an advanced course are extensive. In addition to the improvement attained by students in the course, benefits flow to students who have not taken the course, to instructors who teach the course, to the legal writing program as a whole, and even to the legal profession.

The benefits to students who take the course are generally greater than most people realize. The students' greater finesse at writing leads to higher quality writing in other courses, both in papers for courses and on exams written under time constraints.¹³ Similarly, their writing on the job

9. Dernbach, *supra* note 5, at 19.

10. Jane Bowers, How to Improve Associates' Writing, 34 *Prac. Law.* 35, 36 (April 1988) (advocates programs on interdisciplinary skills).

11. For example, given concerns about potential discovery requests, how much specific information should lawyers include in letters to their clients? When a lawyer gives advice in an opinion letter, how much of the decision-making process should be granted to the client and how much should the attorney retain?

12. For example, conciseness is a virtue unless the writing becomes so dense that readability is impaired. Thus, noun strings are discouraged even though they are concise. Similarly, even accuracy can be detrimental if the quantity of detail creates a condescending tone.

13. One student was asked by her Trusts and Estates professor if she would allow her version of a will-drafting assignment to be copied and circulated to the class as an excellent example; she had drafted it at the typewriter the night before it was due. Some students have attributed their no longer feeling nervous when writing exams to the weekly in-class exercises. Other students have been convinced that their higher grades in subsequent semesters are a result of stronger writing skills.

improves.¹⁴ Both professors and employers notice the improvement, and students receive compliments, higher grades, and job offers. These benefits are substantial. They instill in students the conviction and confidence needed for the sustained effort required to produce excellent writing.

Beyond the substantial benefits to students taking the course, students throughout the school benefit by having their legal writing horizons broadened. Advanced legal writing students talk to their friends. Even in the largest law school, this word of mouth is a most effective form of communication.¹⁵ Students who have not taken an advanced writing course begin to value writing more highly. These students at Wisconsin have used the writing tutorial program, petitioned the administration for more writing courses, purchased the texts used in the course, and enlisted advanced legal writing students to teach them how to improve their papers.¹⁶ The very presence of an advanced legal writing course communicates to students that more is possible with writing. Having advanced legal writing as an option, even just its appearance on the course list, communicates that writing skills can be developed beyond those learned in the basic writing course. Students become less complacent about their writing and more open to the possibility of improving it.

Instructors also benefit, because teaching advanced legal writing increases personal learning and professional development. It is generally hard for writing teachers to find time to read professional journal articles when there are so many student papers to grade. Teaching an advanced legal writing course, however, provides papers that themselves present new challenges, allowing the teacher to grow while analyzing assignments. The quality of writing can be inspiring, much in the same way the writing of peers can be inspiring. Thus, advanced legal writing in particular provides an opportunity to learn by teaching.

Teaching an advanced legal writing course can also make us better teachers of beginning students. Teaching basic legal writing requires reading piles of papers that try and fail to exhibit adequate legal writing. As a result, when a paper comes along that does manage to avoid all of the usual errors, there is a certain tendency to give it an "A" and not to see the significant ways in which it could be improved. Because it is so much better than all the rest, it can look excellent. Working with advanced legal writing papers, however, makes it easy to see how an "A" paper can be improved and leads to improvements in the way we teach the stronger students in the basic course. We are also more likely to teach some advanced writing

14. See *infra* p. 360. See generally, Dernbach, *supra* note 5, at 20 (applicants' writing skills are an increasingly important part of the hiring decision).

15. Mathewson, *supra* note 3, at 13.

16. We see the impact advanced legal writing has on students outside the course from the student demand to register for the course. Even though we limit enrollment to fourteen students, usually two to three times that number register to take the course, despite the heavy workload required. The demand has grown so large that we have had to require students to fill out a questionnaire to apply for the course and to complete an interview with the teachers. Even then, a random lottery is used to select the students from the remaining applicants.

techniques to these students as soon as they are ready to incorporate the techniques successfully. Thus, more students learn advanced techniques and see excellence as a possibility.

The final benefit to teachers is that teaching an advanced legal writing course provides a change of scenery, which is particularly important for avoiding burnout. With beginning students, so often we are just trying to pull them toward a norm, to make their writing conform to minimal acceptable standards. We comment on the correctness of format, the inclusion of all needed pieces, the need for shorter sentences, and the clarity of the paragraph's organization. When we are helping an adequate writer move his or her work from adequate to excellent, however, the direction of teaching changes. Rather than leading students to standardize, we encourage them to individualize. For example, we may teach one student how to use the bluntness of her short sentences to underscore important points or to create a terse, dynamic pace. We may teach another student to exploit his preference for a formal style by teaching him to make better use of parallel structures. We may teach a student who loves sarcasm how to use wry understatement without losing the literal meaning of her point. This change of direction broadens our perspective, keeps us seeing each new student with a fresher eye, and helps make the job less tedious.

The legal writing program itself also benefits from having an advanced legal writing course. With a course on the same level as other upper-class seminars, the status of legal writing as a field of study is enhanced. The advanced course allows us to explore and refine more sophisticated writing concepts that may be of interest to other law faculty. Because the course includes a longer paper on a legal topic that acquaints us with current topics in the law, it also offers a passport to content courses and further opportunity to explore common ground with our colleagues.

In the end, the legal profession as a whole also benefits from advanced legal writing courses. Advanced courses help inform the profession of the power of written language. Most legal writers do not fully realize the potential of the written word to communicate clearly and to influence the reader. When advanced students realize how much control they can have over their content—simply by choosing words, organizing ideas, and structuring sentences—when they realize they have learned much and can learn more, their eyes sparkle. Years later, they are still empowered by their writing skills. These excellent and inspired writers, sprinkled throughout the legal world, can have a substantial influence. Much learning about writing occurs on the job after law school, and much of that learning comes through imitation.¹⁷ When students with advanced writing skills become lawyers, they not only write well, they also can explain their strategies and techniques to others. Because they are confident and excited about the challenges of legal writing, they also have the ability to inspire. They expand the view, and others then see the possibilities for their own legal

17. Bowers, *supra* note 10; Terri LeClerq, Help or Hinder: Partners Affect Associates' Writing, 50 Tex. B.J. 984 (Oct. 1987); Veda R. Charrow, How to Teach Your Associates to Write Better, 2 Cal. Law. 49 (March 1982).

writing.¹⁸ Perhaps this new perspective will foster a significant revolution in the profession's view of what is acceptable writing. In this way, the quality of legal writing throughout the legal profession might change.

In summary, advanced legal writing courses are not a luxury; rather, they are needed to prevent a distorted view in which legal writing is something to learn adequately and move beyond. Advanced courses communicate the importance and potential of legal writing to students, to faculty and staff, and eventually to the legal profession. Legal writers can focus on attaining the excellence that is possible, sustainable, and needed.

An Advanced Legal Writing Course in Action

The advanced legal writing course at the University of Wisconsin is designed to prepare students to be skilled enough, disciplined enough, and motivated enough to be excellent legal writers. It teaches students the skills necessary for excellence by addressing a different legal writing task each week, ranging from drafting contracts to writing collection letters. It teaches students how to discipline their use of time so that they can draft a sound document in a hurry and an excellent document when time to revise is available. It provides ample opportunities to rewrite in response to the teachers' feedback, so that students are motivated to keep learning and improving. The course emphasizes learning by doing. The students write every week, both in and out of class.

The course is cotaught by two members of the legal writing staff, one with a law degree, the other with a degree in teaching writing. Both teachers comment thoroughly on each piece of writing the student submits. Class time focuses on practice writing and on discussion of the results of that practice, rather than on content presented in lecture. Although the class is offered for three credits, it meets once weekly for only two hours. Students invest the extra time in reading the extensive written comments they receive; the teachers invest it in writing those comments. Although we hold regular office hours and periodic required conferences with the students, the focus remains on the students' repeated, constant practice writing and on the teachers' written feedback.

The course includes three different writing experiences: in-class exercises, out-of-class assignments, and a long-term project.¹⁹ The in-class exercises prepare students to write competently and effectively even when they have to produce a document quickly, a situation attorneys frequently face. The exercises also help students avoid indiscriminate perfectionism and the writing blocks that perfectionism can cause. Almost every class includes at least one writing exercise, which may vary in length from five to thirty minutes. The exercises ask students to apply the techniques discussed in class or in the assigned readings. The class focuses on techniques that are particularly useful in writing the type of legal document that is the topic for the day. For example, the class on pleadings emphasizes organization and thoroughness; the class on contracts emphasizes accuracy and consistency.

18. Bowers, *supra* note 10, at 37; LeClerq, *supra* note 17, at 984.

19. The course is occasionally offered for only two credits; then the long-term project is omitted.

Students also spend much class time discussing the results of the exercises. Sometimes students study other writers' attempts at addressing the problem in the exercise; sometimes they study the exercises they have just completed. The emphasis of the discussions is not on training students to critique but on training them to produce quickly while avoiding significant errors. Discussions are often followed by opportunities for students to rewrite the exercise or complete another similar exercise, applying what they learned during the class discussion.

The out-of-class assignments give students the opportunity to improve their efficiency and effectiveness without severe time limits. They can thus strive for higher quality and more thoughtful application of advanced writing techniques. There are six assignments: statutes and jury instructions, a contract, objective and persuasive issue statements, a short brief, an opinion letter, and a pleading. The students must rewrite three of the assignments. They may rewrite all six and generally do rewrite at least five of the six assignments.²⁰ The option to rewrite each assignment allows the student to put the instructors' feedback to immediate use. The student then receives the higher grade. The grade on the rewrite is always higher than the grade on the original because of the extensive effort the student spends incorporating the instructors' guidance into the actual text.

The long-term project teaches students how to handle more complex organization problems and how to attain the kind of excellence possible only with multiple revisions. The project is on a topic of each student's choice and often is written in connection with a seminar the student is taking. The project includes six stages, one due every two weeks: a project proposal, a progress report, a rough draft, a detailed outline, and two subsequent drafts.²¹ This structure allows us to provide continuing feedback and allows the students to experiment and learn from their errors. Through these stages they learn how to organize the revision process. They also see how much improvement can result from sustained work. Students are encouraged to make the project the best work they have ever done.

Although the syllabus for the course is structured around types of legal documents, the documents are not the emphasis of the course. Rather, they provide vehicles for discussing advanced legal writing techniques that the students can use to increase the effectiveness of their writing. Organizing instruction around the documents has, however, attracted students to the course. They know that memos and briefs are not the only documents they will write in practice and realize that they need broader experience.

What they do not realize at first is that they are not just learning how to write different documents. They are learning how, when, and where to apply specific writing techniques. They learn how to reorder their priorities to adjust to the purpose of each document and the time constraints of each situation. For example, students draft statutes in the first class, something they have had little or no experience doing in law school. The drafting class

20. Because it is due at the beginning of finals week, students often do not rewrite the last assignment.

21. The student chooses whether to turn in the rough draft or the detailed outline first.

emphasizes reconciling the need for readability with the paramount need for accuracy. Students study and redraft various statutes so that word choice, sentence structure, and organization of lists all increase clarity and accuracy.

The next exercise, writing jury instructions, introduces a logical progression from writing statutes to writing statements explaining the law to jurors. The emphasis shifts to techniques that make writing more understandable when it is heard rather than read. We also discuss how to keep jury instructions from becoming argumentative while still writing instructions that are an extension of the lawyer's advocacy. Then comes contract writing, which moves the student from the small-scale concerns of word choice and sentence structure to the large-scale concerns of organization and consistency. The discussion also moves beyond focusing on accuracy and understandability to incorporating concerns about the appeal of the document, such as the appropriateness of the organizational scheme and the aptness of the headings. The same technique-building process occurs again when the class moves from issue statements (focusing on persuasion through word choice) to writing fact statements (focusing on emphasis through sentence structure, tone, and repetition) to writing arguments (focusing on large-scale and paragraph organization).

By this time, we have pushed students for seven weeks to master many particular techniques. We have returned one-sentence exercises with a paragraph of comments on ways to improve. We have returned three out-of-class assignments covered with comments from both of us, and we have returned three parts of their long-term project. They are willing, but psychologically weary. They have not yet coordinated all their skills into a cohesive approach to writing, so revision does not come easily. They are frustrated because they look back at their drafts and see the problems they have not yet resolved. Their expectations have risen, but their abilities do not yet allow them to attain excellence consistently or comfortably.

They are now ready for our class on writing systems, in which students look at the patterns they have followed when writing past assignments. In preparation, students list the things they do when writing, step by step. We encourage them to be honest, to include the delaying habits they have developed as well as the productive ones. (These often include cleaning house before settling down at the desk, shopping for snacks, and even rearranging their closets to get prepared to reorganize their papers.) In class, we discuss their individual writing systems. We laugh at familiar foibles. We share ideas that have worked. We spend much time talking about possible ways to get past each snag. During this discussion, students begin to see both their individual weaknesses and their strengths. After the writing systems class, the students seem more confident. They begin to lose their ego involvement in writing and are more willing to risk new techniques and try new skills. Their skills increase, and they begin to have more success. We see more consistent excellence in their writing. Students move

beyond ego and system problems and spend the second half of the course solidifying their skills.²²

During the second half of the course, we also begin giving students more thorough and individualized feedback on their projects. Two weeks after the systems class, students submit the first revised draft of their project. By now they have struggled to select the relevant content from a massive amount of material, to organize the material coherently, and to begin incorporating the smaller scale techniques to enhance their text. As both instructors delve into a close reading of the revised draft, we comment on what is done well, what needs more work, and what particular problems still need to be resolved. We point out the patterns in the writing, noting the techniques that are used especially well. Each student can see the improvement that has already come and realizes that excellence is possible.

This focused, individualized approach to students' writing has provided excellent results. One student, whose first assignment at a large firm was to draft a contract, astounded her employers by producing a contract that rivaled those of their experienced attorneys. Another student found his briefs used verbatim by his supervising attorney, a man known for his thorough criticism of others' work. A third student found herself comfortably outdistancing other clerks in the race for permanent job offers, even though the others had higher grade point averages from more prestigious schools. Most important, students report feeling confident and comfortable as they face writing tasks on the job and in school. After advanced legal writing, many of them say most writing tasks seem relatively easy. The students are happy, their employers are happy, the law school is happy, and we feel especially gratified. Throughout our years of teaching advanced legal writing, we have found that nothing takes as much time—or gives as much reward—as does teaching each group of fourteen students to become excellent writers. The exhaustion is definite. But so are the results. Rather than viewing legal writing as a necessary evil, the students work harder yet remain eager to learn. They are appreciative, impressed, and sophisticated. They are a joy, and they breathe new life into the work of teaching legal writing.

Conclusion

Students' writing horizons should not be artificially limited by a lack of advanced legal writing courses. Even if Dorothy lives on the prairies, she should have the option to travel. For this reason, we advocate including advanced components in legal writing programs. An advanced legal writing course can contribute much to the field of legal writing. By its very existence, the course reminds legal writers of the potential for quality. It also reminds them of the centrality of writing to the practice and study of law. This reminder alone justifies the existence of the course. The benefits

22. The second half of the course covers general letters and opinion letters; orders, motions, and notices; pleading and interrogatories; and wills and trusts. Again, these are the documents we emphasize. The corresponding writing techniques include ways to soften bad news or sound tough, to include unobtrusive definitions, and to create form documents without legalese.

of an advanced legal writing course, however, are also more tangible. Students who take the class find their careers changed as better writing produces better grades and better job opportunities. Even students who do not take the course become more open to learning to improve their writing. Legal writing instructors gain skill, experience, and inspiration from teaching the course. The legal writing program gains status. Ultimately, the legal profession as a whole benefits as students and instructors put their new skills into practice. An advanced legal writing course completes the complex, engaging discipline of legal writing. Rather than a frill, an advanced course is the pinnacle of a program committed to encouraging student writing achievement at all levels.

