1-1-1992

Teaching Writing Through Substance: The Integration of Legal Writing with All Deliberate Speed

Michelle S. Simon
Elisabeth Haub School of Law at Pace University, msimon@law.pace.edu

TEACHING WRITING THROUGH SUBSTANCE: THE INTEGRATION OF LEGAL WRITING WITH ALL DELIBERATE SPEED

*Michelle S. Simon**

The stated pedagogical task of the first year of law school is to teach students to "think like lawyers."[1] Legal writing, which is a traditional first-year course, serves this purpose by helping students develop writing and analytical skills that are essential to their ultimate success as lawyers.[2] The greatest difficulty faced by those who teach legal writing, however, is communicating to students that legal writing is a means towards synthesizing the law and preparing them for the complex legal and human problems of modern law practice.[3] To help overcome this difficulty, Pace Law School has developed a course that fully integrates criminal law, legislative process, and legal analysis and writing.[4] This required first-year course provides an integrated educational experience in which the basic

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* Associate Professor of Law, Pace University School of Law.

1. *See generally* Emily Calhoun, *Thinking Like a Lawyer*, 34 J. LEGAL EDUC. 507 (1984) (stating that the traditional first-year curriculum emphasizes teaching basic legal doctrine and the essential skills of case analysis and reasoning).

2. An American Bar Association report states, "Given the central importance of effective writing to a wide range of lawyer work, the Task Force believes that too few students receive rigorous training and experience in legal writing during their three years of law study." *Report and Recommendations of the Task Force on Lawyer Competency: The Role of the Law Schools*, 1979 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS B. 15. The first-year legal analysis and writing course often provides the only training that law students receive on translating analysis and synthesis into effective written work, but this is slowly changing. *See* Barbara J. Cox & Mary Barnard Ray, *Getting Dorothy out of Kansas: The Importance of an Advanced Component to Legal Writing Programs*, 40 J. LEGAL EDUC. 351 (1990).

3. The difficulties faced by those teaching legal writing have been the subject of many articles. *See, e.g.*, Mary Ellen Gale, *Legal Writing: The Impossible Takes a Little Longer*, 44 ALB. L. REV. 298 (1980) (discussing various options for expanding required legal writing courses into the second and third years of law school); Mark Mathewson, *Good Legal Writing Can Be Taught — and the Programs at Three Schools across the Country Prove It*, 16 STUDENT LAW. 1 (1987) (describing how such difficulties were overcome by the University of Puget Sound College of Law, the University of Montana College of Law, and the Illinois Institute of Technology/Chicago-Kent College of Law); Anita L. Morse, *Research, Writing and Advocacy in the Law School Curriculum*, 75 L. LIBR. J. 232 (1982) (discussing several legal writing programs).

4. I taught the first experimental course in 1990-91. After offering it a second time in 1991-92, the school will require it of all first-year students in 1992-93.

knowledge, skills, and values necessary to the beginning lawyer are systematically acquired.

The pilot course, entitled Criminal Law/Legal Writing and Research/Legislative Process, is a mandatory, year-long course. Criminal law, legal writing, and legislative process[5] are completely integrated into one format.[6] The students do not take any other course in legal writing or criminal law. The course is taught by one professor who is skilled in teaching both legal writing and criminal law. Currently, the course is being offered to two sections of twenty students each, for a total of forty students.[7] The professor teaching the course is responsible for teaching the substantive aspects of both criminal law and the legislative process, as well as creating and grading writing projects in the criminal law area. There is an examination at the end of the fall semester that focuses on criminal law and is graded anonymously. Thus, unlike many other models that teach a substantive course and legal writing as a team effort,[8] the

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5. Legislative Process is currently a one-credit, required first-year course that examines the functioning of the legislative process, teaches principles of statutory interpretation, and introduces legislative drafting techniques.

6. We chose the area of criminal law for several reasons. First, criminal law involves a substantial amount of statutory analysis that provides an excellent vehicle for teaching both rhetorical and organizational principles of legal writing. *See Teaching Statutory Research & Analysis,* SECOND DRAFT: BULL. OF THE LEGAL WRITING INST., Apr. 1991, at 5. Second, because of its statutory scheme, criminal law is also an effective model for teaching legislative process. Third, criminal law involves many philosophical questions that can be taught in ways other than the traditional casebook approach. *See* Peter Alldridge, *What's Wrong with the Traditional Criminal Law Course?,* 10 LEGAL STUD. 38 (1990). Finally, the number of credit hours allocated to criminal law (four) made it less of an administrative nightmare than some of the other first-year courses which are accorded a greater number of credits. The writing aspect could, of course, be successfully combined with other first-year courses such as civil procedure, contracts, or torts. *See* Douglas E. Abrams, Integrating Writing Exercises into Civil Procedure, Presentation at the AALS Annual Meeting (Jan. 3, 1991) (unpublished manuscript, on file with author); Scott J. Burnham, Integrating Writing Exercises into the Contracts Course, Presentation at the AALS Annual Meeting (Jan. 3, 1991) (unpublished manuscript, on file with author); Oklaner Dark, Integrating Writing Exercises into Antitrust and Torts, Presentation at the AALS Annual Meeting (Jan. 3, 1991) (unpublished manuscript, on file with author).

7. Although the enrollment in the course could be increased slightly, the interactive and grading requirements mandate a small section.

8. For a discussion of an approach that teaches a substantive course and legal writing as a team effort, see James D. Gordon III, *An Integrated First-Year Writing Program,* 39 J. LEGAL EDUC. 609 (1989). Duke Law School, Iowa Law School, and Boalt Hall also use this team approach. *Id.* at 609 n.3. The team approach usually involves a legal writing section that is attached to a first-year substantive law course. The professor for the substantive course supervises student teaching assistants. The student teaching assistants give lectures on legal writing topics, devise the writing assignments, and grade the papers. Every writing assignment deals with the course subject matter of the small substantive section to which the legal writing section is attached. *See generally* Margit Livingston, *Legal Writing and Research at DePaul University: A Program in Transition,* 44

Pace model actually merges the courses to create a course that teaches the substance of criminal law and legislation through the process of writing.

The course teaches substance through the process of writing in two distinct ways. First, like a conventional legal writing and analysis course, the students complete various writing assignments that are graded. In the fall semester, these writing assignments focus on objective writing techniques[9] and include a "closed" office memorandum[10] and two research memoranda.[11] The subjects of these

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ALB. L. REV. 344 (1980) (discussing how DePaul's team approach was unsuccessful and how it subsequently changed).

Generally, the three principal approaches for teaching legal writing are the faculty model, the graduate assistant model, and the student teaching assistant model. *See* Jack Achtenberg, *Legal Writing and Research: The Neglected Orphan of the First Year,* 29 U. MIAMI L. REV. 218 (1975).

9. In most law schools, the first writing assignments concentrate on objective writing, such as an interoffice memo between an associate and a partner. This kind of assignment involves analysis and evaluation of both sides of the factual and legal issues relevant to the problem. It also involves a type of writing that is more familiar to students — allowing them to concentrate on learning analysis, organization, and synthesis. Finally, it may help students to respond to examinations. For examples of other law schools' experiences with objective writing assignments, see Robert N. Covington, *The Development of the Vanderbilt Legal Writing Program,* 16 J. LEGAL EDUC. 342, 346-47 (1964); Gale, *supra* note 3, at 331; Peter W. Gross, *On Law School Training in Analytic Skill,* 25 J. LEGAL EDUC. 261, 285 (1973); Stewart Macaulay & Henry G. Manne, *A Low-Cost Legal Writing Program — The Wisconsin Experience,* 11 J. LEGAL EDUC. 387, 390 (1959).

10. In a "closed" office memo assignment, the student is given a packet that includes a fact pattern and a question from a senior partner, along with a group of statutes and cases that are used to analyze the problem. The benefit of this type of writing assignment is that the students are not required to do any research, and can therefore concentrate on their analytical and writing skills. By carefully drafting the assignment, the professor can focus the students' attention to areas of specific weaknesses. As Professor Gilmer observed:

> Rather than turn the student loose, with the fact problem in the wilds of the law library, a few given, selected precedent cases, which either directly, or obliquely, bear on the problem case, will introduce the student to analysis and synthesis. [A student] can manage six or eight precedents a lot easier than he can manage a full network of research material . . . . A few weeks, spent working with those precedent cases, attempting to use them to write an objective memorandum of law about the problem case, will assist the student in developing at least a small amount of ability and confidence, before he is introduced to the complete research maze.

Wesley Gilmer, Jr., *Teaching Legal Research and Legal Writing in American Law Schools,* 25 J. LEGAL EDUC. 571, 572-73 (1973). Favorable experience with this type of assignment has been reported in the following articles: Richard I. Aaron, *Legal Writing at Utah — A Reaction to the Student View,* 25 J. LEGAL EDUC. 566 (1973); Gross, *supra* note 9, at 290-91; Harry Kalven, Jr., *Law School Training in Research and Exposition: The University of Chicago Program,* 1 J. LEGAL EDUC. 107, 111 (1948); Macaulay & Manne, *supra* note 9, at 390-91; Daniel R. Mandelker, *Legal Writing — The Drake Program,* 3 J. LEGAL EDUC. 583, 584 (1951).

11. The progression of assignments throughout the semester teaches different aspects of legal writing and analysis. In addition to analysis and synthesis, the research memo also tests research skills. Although the Pace model currently uses general research tours to teach research, we plan to also teach research in the criminal law context by next year.

memoranda parallel the substantive criminal law material that is being covered in class. The closed memorandum involves the problem of mistake of law and mistake of fact in criminal cases. These areas are often confusing to students. Although the area of mistake provides a useful tool for teaching analytical reasoning through the socratic approach, its theoretical and unrealistic nature makes it difficult for students to conceptualize. The memorandum, written at the same time as the students are reading the cases and discussing them in class, helps the students to work through the analytical process and to organize and understand the material. In the spring semester, the students write persuasive writing assignments, including a trial memorandum, an appellate brief, and an oral argument.[12] These writing assignments parallel the areas of criminal law being covered in class at the time. Thus, the first assignment may involve inchoate crimes, while the brief may involve murder and conspiracy.[13] All of the writing assignments are extensively edited and graded, with an emphasis on the development of self-criticism. There are frequent opportunities for rewriting the assignments[14] as well as mandatory individual conferences with the professor to discuss the critiques.

The second way the course teaches substance through the process

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12. The progression of assignments now requires students to adopt the perspective of the advocate. Although some legal writing programs use the same fact pattern for all of the assignments, we have found that this approach causes student enthusiasm to wane. Further, although it arguably allows for an in-depth analysis of one issue, it fails to allow an in-depth analysis of several issues. *But see* Kenneth B. Germain, *Legal Writing and Moot Court at Almost No Cost: The Kentucky Experience 1971-72*, 25 J. LEGAL EDUC. 595, 596-97 (1973) (advocating a legal writing program which bases both of its major assignments on one fact pattern, "thus saving time and enabling the students to probe deeply into one particular area").

13. The appellate problem this year involved a complicated record dealing with the extreme emotional disturbance defense in New York, which is an affirmative defense that reduces murder to manslaughter. In addition to covering appellate advocacy, we were able to discuss standards of proof, standards of review, theories of punishment, the purpose of crimes, harmless error analysis, and many other criminal law and appellate review concepts that may not get addressed in a traditional criminal law or writing course.

14. The importance of rewriting is well documented. Karl Llewellyn stated that in teaching students to write, it is the "*redoing after critique* which is the crux of the learning." Karl N. Llewellyn et al., *The Place of Skills in Legal Education*, 45 COLUM. L. REV. 345, 373 (1945); *see also* Gale, *supra* note 3, at 332-33 n.130 (discussing the importance of the rewriting experience); Kalven, *supra* note 10, at 113 (discussing the benefits of intermediate writing assignments without the necessity of complete drafts). Another writer commented as follows: "More important, the rewrite convincingly demonstrates to the student that what he considers a finished work can be improved by editing and revision. . . . This vigorous and extensive criticism gives all students in law school much of the experience once reserved for the law review member." Macaulay & Manne, *supra* note 9, at 395-96.

of writing is through the teaching methodology. The students are assigned readings in a criminal law casebook, and some of the material is taught in the traditional socratic, question-and-answer approach. Other aspects of the material are taught using a problem-solving approach.[15] With this method, students are given in-class problems that involve the areas of law being taught. By solving the problems, the students learn both the substantive law and the analytical and organizational skills necessary for writing. The problems may resemble examination-type questions, or may involve creating jury instructions or drafting statutes.[16] Students are frequently divided into small groups so that they can collaborate and learn from one another.[17] Although these problems are not collected or graded, the various approaches towards resolving the problems are reviewed and discussed extensively in class.

The benefits of teaching substance through the process of writing are extraordinary. Traditional legal writing courses have been plagued with problems. These problems have been the subject of many articles, conferences, and discussions.[18] The most pressing

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15. A myriad of articles have been written on the benefits of the problem-solving approach. *See, e.g.*, June Cicero, *Piercing the Socratic Veil: Adding an Active Learning Alternative in Legal Education*, 15 WM. MITCHELL L. REV. 1011 (1989); Roger C. Cramton, *The Current State of the Law Curriculum*, 32 J. LEGAL EDUC. 321 (1982); Marc Feldman & Jayne M. Feinman, *Legal Education: Its Cause and Cure*, 82 MICH. L. REV. 914 (1984); Eleanor M. Fox, *The Good Law School, The Good Curriculum, and The Mind and the Heart*, 39 J. LEGAL EDUC. 473 (1989); Stephen Nathanson, *The Role of Problem Solving in Legal Education*, 39 J. LEGAL EDUC. 167 (1989); Gregory L. Ogden, *The Problem Method in Legal Education*, 34 J. LEGAL EDUC. 654 (1984); Paul J. Spiegelman, *Integrating Doctrine, Theory and Practice in the Law School Curriculum: The Logic of Jake's Ladder in the Context of Amy's Web*, 38 J. LEGAL EDUC. 243 (1988); Stephan M. Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL EDUC. 243 (1988).

16. Writing exercises such as drafting statutes and creating jury instructions are usually relegated, if they are covered at all, to advanced writing courses. *See* Cox & Ray, *supra* note 2, at 358-59. These types of exercises, however, are extremely helpful to first-year students. Drafting statutes teaches them legislative process and statutory interpretation as well as the need for both accuracy and readability when writing. In order to write jury instructions, students must learn the importance of understanding the law before they can write about it.

17. The use of collaborative learning, or learning in groups, has also sparked discussion. *See, e.g.*, Jay Feinman & Marc Feldman, *Pedagogy and Politics*, 73 GEO. L.J. 875, 907-09 (1985); Thomas Michael McDonnell, *Joining Hands and Smarts: Teaching Manual Legal Research Through Collaborative Learning Groups*, 40 J. LEGAL EDUC. 363 (1990); Roark M. Reed, *Group Learning in Law School*, 34 J. LEGAL EDUC. 674 (1984).

18. *See, e.g.*, Dierdre Alfred, *Legal Writing Faculty: Status and Professional Future*, LEGAL WRITING, REASONING & RESEARCH NEWSL., Oct. 1986, at 8; Allen Boyer, *Legal Writing Programs Reviewed: Merits, Flaws, Costs, and Essentials*, 62 CHI.-KENT L. REV. 23 (1985); Ralph L. Brill, *Building a Better Research and Writing Program*, SECOND DRAFT: NEWSL. OF THE LEGAL WRITING INST., July 1986, at 6; Kathleen Carrick, *Research and Writing Programs Warrant Investment in Faculty*, SYLLABUS, June 1986, at 3, 5; Susan L. Brody, Need For Effective Legal

pedagogical problem is the lack of credibility given to legal writing courses by students because of low academic credit, low status of the teachers, little faculty support, and insufficient instruction time. As the legal community slowly gains insight into these problems, strides are being made toward improving the status of the course and those teaching the course.[19] These strides, however, are slow and do little to send the institutional message that legal analysis, no matter how brilliant, is only useful if it is communicated well.

By teaching the substance of criminal law through the process of writing, the problems associated with traditional writing programs never materialize. There are various reasons for this phenomenon. First, students are taught how to write by a full-time, "real" faculty member[20] and the course is a year-long, nine-credit, graded

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Writing Programs and Some Models, Presentation at the Conference Making the Competent Lawyer, Models for Law School Action (Nov. 1-3, 1990) (unpublished manuscript, on file with author).

"Legal Writing Throughout the Law School Curriculum" was also the subject of the day-long mini-workshop at the 1991 Annual Meeting of the AALS. The teaching of legal writing was explored through presentations on communicating to first-year legal writing students, and teaching writing after the first year of law school. The growing awareness of the importance of legal writing is evident among practitioners and judges as well. *See generally* George H. Hathaway, *The Plain English Movement in the Law — Past, Present and Future,* 64 MICH. B.J. 1236 (1985) (explaining the legal profession's movement away from "legalese" and toward the use of "plain English"); Steven Stark, *Why Lawyers Can't Write,* 97 HARV. L. REV. 1389 (1984) (asserting that the nature of the law and of lawyers causes bad legal writing); Irving Younger, *Persuasive Writing: Symptoms of Bad Writing,* N.C. ST. B.Q., Spring 1988, at 28 (1988) (discussing five of the basic symptoms of bad legal writing); Jane Bowers, *How to Improve Associates' Writing,* PRAC. LAW., Apr. 1988, at 35 (giving tips to partners in law firms on how to improve their associates' writing); Mark Mathewson, *In the Thickets of Bad Judicial Writing, Two Judges Show that It's Possible to Give Opinions Style* and *Substance,* STUDENT LAW., Oct. 1988, at 9 (discussing the characteristics of a well-written judicial opinion).

19. A comparison of surveys on these issues done in 1973 and in 1990 reveals that legal writing programs and professionals have achieved greater recognition over the past seventeen years. *See* Gilmer, *supra* note 10, at 571; Jill J. Ramsfield, *Legal Writing in the Twenty-First Century: The First Images,* 1 LEGAL WRITING: J. LEGAL WRITING INST. 123 (1991); Marjorie Dick Rombauer, *First-Year Legal Research and Writing: Then and Now,* 25 J. LEGAL EDUC. 538 (1973). However, the average pay for legal writing professionals is between $20,000 and $30,000 a year, and status is usually temporary, with only ten schools offering tenure-track positions or long-term contracts. Ramsfield, *supra* at 126. This low pay and status persist even though legal writing professionals average six to eight years of legal practice before they begin teaching. *Id.* Teaching substance through writing has the added advantage of providing the incentive some law school administrations need to give legal writing professionals the same status as the rest of the faculty.

20. A legal writing program taught by faculty provides the most effective model for instruction. Boyer, *supra* note 18, at 33. The difficulties of using instructors or students to teach legal writing have been written about extensively. *See, e.g.,* Michael Botein, *Rewriting First-Year Legal Writing Programs,* 30 J. LEGAL EDUC. 184, 190 (1979); Brill, *supra* note 18, at 6; John Dernbach, *Good Legal Writing: A Matter of Course,* STUDENT LAW., Dec. 1987, at 21. A constant turnover of instructors creates "legal writing programs [that] are poorly thought-out and organized, effec-

course.[21] These factors immediately communicate the importance of the subject matter to the student. Conversely, the student gets a sense of the professor's view of the importance and the usefulness of legal writing and research. Second, the student has the opportunity to participate in a small section of a substantive course. A small section fosters a sense of support and community for the student with both his peers and with the faculty member teaching the course. The faculty member is given the opportunity to encourage those students who might otherwise be reticent to come forward, to try teaching techniques that might be impossible in a large section, and to inject some humanity into legal education. Thus, teaching substance through writing strengthens the intimate bond between analysis and communication while solving many of the pragmatic problems associated with traditional writing courses.

Perhaps more importantly, however, teaching substance through writing communicates to the students that legal writing is a means towards synthesizing the law and a skill that is integral to the development of a proficient attorney.[22] The fully integrated approach accomplishes this purpose by concurrently teaching students the law,

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tive materials are not developed, and few instructors develop the expertise or teaching skills needed to effectively teach legal writing." *Job Security for Legal Writing Instructors,* NEWSL.: LEGAL WRITING INST. (Legal Writing Inst., Tacoma, Wa.), Jan. 1985, at 3. When nontenure track instructors teach legal writing, students believe that legal writing is not as important as other courses. *See* Willard H. Pedrick et al., *Should Permanent Faculty Teach Legal Writing? A Debate,* 32 J. LEGAL EDUC. 413, 423 (1982) (stating that students take legal writing more seriously when taught by a professor than when taught by a student or young practicing lawyer). There is a widely held belief that most law professors are unwilling to teach a legal writing course because of its low status and the work involved, and that those who teach legal writing "burn out" after a few years. The empirical data, however, do not support these beliefs. *See* Rombauer, *supra* note 19, at 538. It is the low status and low pay associated with teaching legal writing that cause legal writing professionals to look for greener pastures. However, teaching writing is stimulating and exciting.

21. The Pace model combines a four-credit criminal law course, a four-credit legal writing course, and a one-credit legislative process course. The course could, however, be adequately covered in fewer credit hours.

22. The integrated approach, or tying legal writing into a substantive course, is the wave of the future. "The best approach . . . appears to be tying a writing program onto one or more major courses." Botein, *supra* note 20, at 191. Many discussions on curricular reform include ideas for subject matter integration, sometimes the specific integration of legal writing and another substantive course. *See* Curtis J. Berger, *A Pathway to Curricular Reform,* 39 J. LEGAL EDUC. 547, 550 (1989) (discussing the logistics of curricular change at Columbia Law School). For a discussion of the benefits of giving writing assignments in regular law school classes, see Kathleen S. Bean, *Writing Assignments in Law School Classes,* 37 J. LEGAL EDUC. 276 (1987); Philip C. Kissam, *Thinking (By Writing) About Legal Writing,* 40 VAND. L. REV. 135 (1987); Christopher Rideout, *Applying the Writing Across the Curriculum Model to Professional Writing,* CURRENT ISSUES IN HIGHER EDUC., 1983-84, No. 3, at 27, 29-31.

teaching students the skills of analysis and organization, and providing students with an understanding of the connection between law school and the practice of law.

As students write a memorandum on an area of criminal law, or do an in-class problem involving an area of criminal law, they must think about the substantive material. The students learn that writing involves the process of thinking, and that poor writing often is an indication of poor thinking.[23] By the time students have addressed the issues presented in the writing materials, they have used, organized, and expanded their substantive knowledge greatly. They begin to understand the importance of facts and why a result can be dictated by the way the facts are portrayed. They begin to understand the need for a complete and thorough analysis of the issues. The effectiveness of this teaching technique is demonstrated in the final examination, where the students perform extremely well on questions that have been previously covered by a writing exercise. Finally, the students are introduced to the relationship between skills and theory, alleviating some of the discord between legal education and law practice.[24] They are given the opportunity, during

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23. There has been some thought and discussion in law schools about various learning theories and how these theories apply to law school teaching. *See* John B. Mitchell, *Current Theories on Expert and Novice Thinking: A Full Faculty Considers the Implications for Legal Education*, 39 J. LEGAL EDUC. 275 (1989). Ideas that have emerged from these articles and discussions include being supportive towards the students, building on simple tasks, keeping students apprised of their progress, and teaching the subject matter as a conversational language. *Id.* at 293-95. Interestingly, these methods are already being used in legal writing courses. As one author stated:

> Writing allows all students in a class, not just the student in the "hot seat," to respond to the question or problem posed. Writing also allows students to place their response into a more clearly defined rhetorical context . . . . Writing assignments can also allow the professor to see what analytical techniques the students are using at any given point in the course . . . and can at the same time permit students to "practice using the language" of a certain area of law . . . . Finally, writing may allow students to better confront the difficult transition from existing schemata to new ones. Writing allows the students to see their thinking "in front of them," where they can examine and reflect on it, rather than doing it only "in their head."

Id. at 295.

For more articles on learning theories, see Peter W. Gross, *On Law School Training in Analytic Skill*, 25 J. LEGAL EDUC. 261 (1973) (discussing a functional analysis of legal education); Paul T. Hayden, *On "Wrong" Answers in the Law School Classroom*, 40 J. LEGAL EDUC. 251 (1990) (discussing the detrimental impact of labelling student responses as "wrong"); Henry Weihofen, *Education for Law Teachers*, 43 COLUM. L. REV. 423 (1943) (discussing the use of educational psychology in legal education).

24. One of the problems involved in teaching legal writing that still exists is the strong but false perception of the law school faculty that there is a dichotomy between "substantive" and "skills" courses. As pointed out by Professor Brand:

> The former are regarded as courses in which "the law" is taught and "legal analysis"

the first year of law school, to use the substantive law that they are being taught. Unlike a traditional writing course, where assignments generally cover different areas of the law, the continuity of the substantive material in an integrated course enables the students to gain self-esteem and confidence in the area of criminal law. Some of the frightening aspects of law school diminish, and the students are better able to concentrate on learning.[25]

Various classroom experiences illustrate some of these benefits. The appellate brief problem involved a situation where the defendant was appealing a felony-murder conviction after a nonparticipant in the crime was shot by a police officer following an armed robbery. The record contained, among other things, a trial transcript of a witness's testimony that included factual inconsistencies and disparities. The students, who were by now second-semester, first-year students, were bewildered by the conflicting testimony. They could not understand how they could draft a statement of facts if the facts themselves were in conflict. Other than through writing assign-

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> is learned, while the latter are regarded as courses in which some quasi mechanical ability is practiced. . . . From the mere statement of the dichotomy it becomes evident that "skills" is a pejorative term and that scarce faculty resources should be devoted to "substantive" courses and not wasted on "skills" courses.

Norman Brand, *Legal Writing, Reasoning & Research: An Introduction*, 44 ALB. L. REV. 292, 295 (1980).

Professor Rutter draws a more helpful distinction between teaching "legal doctrine" and "professional legal operations." Irwin C. Rutter, *Designing and Teaching the First-Degree Law Curriculum*, 37 U. CIN. L. REV. 7, 54 (1968). Norman Brand notes:

> In Rutter's view, doctrine is taught in the "substantive" courses, while "professional legal operations" are what lawyers actually do in practice, (e.g. write briefs) . . . . [T]hrough doing a "professional legal operation" . . . the students learn how to use "the law" they have learned, while at the same time increasing their doctrinal knowledge and putting it into concrete form. Thus, to . . . label legal writing a "skill" in order to separate it from "substantive" areas is to misunderstand its role [in the learning process].

Brand, *supra*, at 295-96. A course that integrates substance and writing illustrates the intimate relationship between learning and writing to the students and is a large step towards dispensing with a meaningless distinction.

Further, there has been increasing evidence of dissatisfaction of new law graduates with their legal careers. Much of this unhappiness stems from graduates' frustration about their lack of preparation for what the practice of law truly entails. *See* Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231 (1991).

25. The negative effects of law school have been discussed in many articles. *See, e.g.*, Marilyn Heins et al., *Law Students and Medical Students: A Comparison of Perceived Stress*, 33 J. LEGAL EDUC. 511 (1983); Steve H. Nickles, *Examining and Grading in American Law Schools*, 30 ARK. L. REV. 411 (1977); Stephen B. Shanfield & Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65 (1985); Andrew S. Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 91, 127-32 (1968).

ments, their primary experience in dealing with facts was limited to reading appellate decisions in which the court presented an already digested and relatively cogent assessment of the facts. For most of the students, reading the trial transcript provided them with their first opportunity to visualize a case before it became an appellate court decision and to realize that facts are fluid and ever-changing. The experience of marshalling the facts and using them to create a theory on behalf of their client provided a link between analysis and legal theory that many students had never realized existed.

This particular record also contained the court's jury instructions. Although the students had studied burdens of production and persuasion and the constitutional implications of shifting the burdens of proof, reading the trial transcript gave them the opportunity to see how complete jury instructions actually looked. By discussing the cases alongside the jury instructions, the difficult concepts involving burdens of proof and the effect that those burdens have on specific parties began to have meaning for them.

Most traditional writing programs include conferences where the student meets with the professor to discuss the various assignments. Another benefit to teaching writing through substance is that the classroom experience becomes synonymous with a large conference. Not only can the student benefit from critiques by the professor, but also from the insights of other students. When assignments are discussed openly in class, another facet of the benefits of collaborative learning becomes apparent. The students become familiar with the context of the writing problem and with the notion that the future of a particular defendant rests on the way a court interprets a statute. This is a revelation that leads not only to a more thoughtful analysis of the specific writing assignment, but also extends to a more thoughtful analysis in future problem-solving.

There are, of course, some disadvantages to this approach. First, it entails a large amount of work for the professor.[26] Because the

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26. Unlike doctrinal courses, a legal writing course does not permit the professor to develop a set of lecture notes that can be reused. Most of the journals describe the teaching workload as "enormous," "tremendous," "backbreaking," and "incredible." *See* Aaron, *supra* note 10, at 567; Roy Moreland, *Legal Writing and Research in the Smaller Law Schools*, 7 J. LEGAL EDUC. 49, 60 (1954); Rombauer, *supra* note 19, at 547.

A writing course has more peak workloads than a traditional course. Further, "the number of students in a research and writing class has a direct relation to the amount of work required, whereas the number of students in a traditional course has a much smaller impact on the workload, usually only on the examination-grading time." *Id.*

course is not team-taught and does not use teaching assistants, the professor is responsible for a large amount of grading, as well as preparing problems, assignments, and a final examination. The professor must be skilled in teaching legal writing, as well as have a knowledge of a first-year substantive area. A course of this type encourages personal contact between the student and professor; thus, the professor must be fond of teaching small sections of students. Second, nine credits is a large number of credits to be given to one course.[27] As a result, the grade that a student receives in the course could have a disproportionate impact on the student's class rank.

Teaching this course, however, is extremely gratifying. As with any course, the first time it is taught is the most difficult. Many of the assignments can be used from year to year, and the grading becomes less onerous. The students respond to the course with dedication and commitment, as well as a strong sense of cooperation and support towards one another. This alone makes teaching the course a rewarding experience.

CONCLUSION

The legal community has become increasingly cognizant of the usefulness of integrating legal writing into the law school curriculum. Much of the recognition stems from a realization of the poor writing skills of many law graduates. Legal educators are beginning to realize that the importance of legal writing dictates a new approach towards teaching in that area. We have also learned, albeit in a different context, that successful integration necessitates full assimilation, and that "separate but equal" treatment does not adequately resolve the problems. The model developed at Pace Law School, which truly integrates a substantive area with legal writing, is an effective and exciting educational experience that responds to this challenge.

27. Now that the course is going to be offered to all first-year students, the credits have been reduced to three per semester. Instead of meeting for four hours per week, the class will meet for three hours per week.