




Fall 2013

A Third Semester of LRW: Why Teaching Transactional Skills and Problems is Now Essential to the Legal Writing Curriculum

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Mika, Karin, "A Third Semester of LRW: Why Teaching Transactional Skills and Problems is Now Essential to the Legal Writing Curriculum" (2013). *Law Faculty Articles and Essays*. 791.

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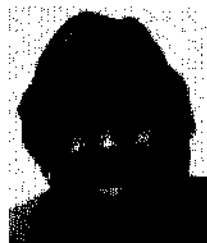
with students to review their written work. An extended conference is all that is required to complete this exercise.

Conclusion

The ability to participate constructively in conversations about the law has become an essential skill for students to

acquire during law school. The evolving legal environment now requires that new attorneys are able to provide supervising attorneys with both a written and oral analysis of their research. Fortunately, legal writing professors can provide instruction on both, further assisting in the transition from awkward law student to articulate attorney. ■

A Third Semester of LRW: Why Teaching Transactional Skills and Problems is Now Essential to the Legal Writing Curriculum



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Legal education must reinvent itself to better reflect the realities of the economy and the ways in which law must be practiced. Legal Writing programs can facilitate this reinvention by incorporating more transactional and problem solving skills into their programs that go beyond the traditional curriculum of litigation-oriented practice skills. The introduction to drafting basic practitioner documents is an integral part of any law school curriculum, as is teaching students about the role of attorney as counselor. By incorporating these skills in a third semester legal writing course, Legal Writing programs can respond to the reality of what is needed within the practice of law and better prepare our students the world they will enter.

There is no doubt that the nature of practicing law has changed during the last few years. Legal consumers now have easy access to information about the law on the Internet and are less inclined to want to spend large amounts of money to pay for the services of an attorney. Thus, attorneys must be more savvy and efficient when

providing advice for today's legal consumer. Where previously, most practices were focused on resolving disputes through litigation after a wrong occurred, attorneys are now increasingly focused on providing the advice necessary to avoid the wrong occurring in the first place. Attorneys are now more selective in their hiring, and now hire only those students (and graduates) who can more easily "hit the ground running" and perform legal tasks with less training and mentoring.¹

My law school adopted a required third semester of Legal Writing during the mid 1990s, after the American Bar Association issued the MacCrate Report calling for an increase in the teaching of practice-oriented skills in law schools.² One of the original third semester Legal Writing courses, which is still a part of the third semester curriculum, is a General Drafting course I helped create. In the General Drafting course (which is, at times, taught by someone else other than me), the focus is on learning about basic documents that a beginning practitioner or an attorney in a general practice might be expected to draft or analyze. These documents (with some variation from year-to-year), include a simple will, a rental agreement, an eviction, basic releases, client letters, demand letters, employment contracts, and analysis of basic miscellaneous contracts and clauses.

Unlike the majority of the general law school curriculum, the course focuses on how to avoid litigation, as opposed to how to analyze cases in anticipation of litigation that is pending or has already been initiated. Traditional models of legal education have focused on litigation-oriented

1 See William D. Henderson, *A Blueprint for Change*, 40 *PEPPERDINE L. REV.* 461, 461-63 (2013).

2 *Report on The Task Force on Law Schools and the Profession: NARROWING THE GAP*, A.B.A. SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR (July 1992) (the MacCrate Report).

study. Textbooks include cases that are primarily decided on appellate levels and where there are arguments about what the law should be. Textbooks tend not to include the reality that, in a real world practice, clients are not interested in engaging in protracted litigation. Few law school classes (in the traditional required curriculum) emphasize that litigation is time-consuming and costly, both on an emotional and a financial level.

The General Drafting course gives me the opportunity to teach my students the reality of the practice of law - that except in a minority of cases, students' lives as attorneys will not be spent in the courtroom or writing arguments. Rather, their lives as attorneys will likely be spent engaging in activities that are specifically geared toward *avoiding* going to court. Thus, the baseline premise for the General Drafting course has been teaching the ability to write a document that is clear enough to anticipate and resolve future complications, as well as analyze documents in order to do the same.

My perspective on the course combined with my ability to teach it more often in recent years has also brought several modifications to the course content. Since the time the course was first introduced, technology had changed drastically along with the economy. Because of the availability of the Internet, most people who were interested in drafting their own basic legal document no longer needed an attorney to provide guidance. Forms could be downloaded and filled in. Computer programs could be purchased. Various government sites even provided the very forms that needed to be filed for a particular cause of action. Thus, the course needed to be more of a holistic view of the practice of law.

In addition to teaching students how to draft certain documents, the course has matured into one in which the students were taught the underlying concept of the practice of law - the "why" of the particular document as drafted for an individual client. I attempt to teach that the relationship of the attorney to client has, in some ways, gone full circle, being comparable to the time of the family doctor - an individual who knew the members of the family he was treating intimately and was involved in every aspect of their care, sometimes from birth until death, and sometimes multi-generational.

This type of relationship is now more expected of an attorney, at least in terms of developing and retaining trust.

If the attorney wishes to retain the business of a client, the attorney should strive to "know" the needs of the client, to advise appropriately, and to keep the client secure. Thus, the General Drafting course now concentrates on appreciating client-centered relationships, and how it is essential to know clients as individuals and draft documents that suit the needs of the individual clients. Students are made to understand that litigation is often the last resort to correct something that went wrong previously, and that correcting the wrong before it occurs creates clients who are more inclined to repeatedly seek out the advice of an attorney.

Moreover, students are taught that although it is actually quite easy to find forms for any particular legal concept on the Internet, it is not always easy to personalize the form so that it reflects the true needs of the situation or the client. I explain to students that it is for that reason that the attorney is not becoming superfluous, but rather has more opportunity than ever to be relevant in helping clients.

There is no debate that legal education must reinvent itself to better reflect the realities of the economy and the ways in which law must be practiced. This view can be jump started by Legal Writing programs that have already recognized that learning practical skills and integrating theory and practice is more than writing memos and legal writing arguments. The introduction to drafting basic practitioner documents is an integral part of any law school curriculum, but teaching this subject matter should be coupled with a recognition that even fields relying on primarily document drafting and document submission have changed because of the wide availability of a variety of basic legal documents on the Internet. Thus, even basic drafting courses must be modified to incorporate the underlying theme of attorney as counselor who knows a situation through and through and can advise appropriately. ■



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Mon Oct 28 11:58:36 2019

Citations:

Bluebook 20th ed.

Karin Mika, A Third Semester of LRW: Why Teaching Transnational Skills and Problems is Now Essential to the Legal Writing Curriculum , 27 Second Draft 8 (2013).

ALWD 6th ed.

Karin Mika, A Third Semester of LRW: Why Teaching Transnational Skills and Problems is Now Essential to the Legal Writing Curriculum , 27 Second Draft 8 (2013).

APA 6th ed.

Mika, K. (2013). third semester of lrw: Why teaching transnational skills and problems is now essential to the legal writing curriculum Second Draft, 27(2), 8-9.

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Karin Mika, "A Third Semester of LRW: Why Teaching Transnational Skills and Problems is Now Essential to the Legal Writing Curriculum ," Second Draft 27, no. 2 (Fall 2013- Winter 2014): 8-9

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Karin Mika, "A Third Semester of LRW: Why Teaching Transnational Skills and Problems is Now Essential to the Legal Writing Curriculum " (2013) 27:2 Second Draft 8.

MLA 8th ed.

Mika, Karin. "A Third Semester of LRW: Why Teaching Transnational Skills and Problems is Now Essential to the Legal Writing Curriculum ." Second Draft, vol. 27, no. 2, Fall 2013- Winter 2014, p. 8-9. HeinOnline.

OSCOLA 4th ed.

Karin Mika, 'A Third Semester of LRW: Why Teaching Transnational Skills and Problems is Now Essential to the Legal Writing Curriculum ' (2013) 27 Second Draft 8

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