

*The following article was originally prepared for an Association of American Law Schools conference on "Effective Legal Writing Programs." It was included in the materials distributed for our recent "self study." The adequacy of our legal writing program is often a topic of discussion. This article should provide background for these discussions.*

## **A DESCRIPTION OF THE LEGAL WRITING PROGRAM**

### **Historical Background**

The term "legal writing" generally is understood today to encompass a fairly broad range of skills considered essential in the lawyering process, including legal analysis and problem solving as well as written and oral communication. The historical development of legal writing in its present format at the University of Wisconsin Law School probably has followed a pattern not too different from the development in other law schools.

Practice in oral argument as part of case clubs and practice in the drafting of legal documents such as pleadings, deeds and wills go back well beyond the start of this century. However, the semblance of a first-year required legal writing program did not appear until the 1914-15 academic year. The Law School Bulletin for that year lists a first-year required one credit course in "Briefmaking". The course is described as "use of law books ... training in the art of legal research and the collection of authorities, use of the various source books, digests, etc." By 1916-17, the course credits had been increased to two and written and oral legal arguments had been added to the contents. In 1921-22, however, the course credits were dropped back to one and the name changed to "Legal Bibliography". The course appears to have remained essentially in this form until the early fifties.

In 1954 the course again became a 2-credit offering, with one credit allotted to each semester of the first year. The name was changed to "Legal Writing (a)" and "Legal Writing (b)" and content emphasis had changed to legal analysis and problem solving "with some objective exercises in the use of law books." The second semester portion of the course was described as "a continuation of the first semester course and consists of three or four written projects, including an appellate brief, which will be argued in Moot Court." Finally, in 1971, the course credits were increased to three, all of them listed for the 2nd semester. However, it was understood that legal bibliography exercises would continue to be done in the first semester. This is essentially the present structure of the course.

Special tutorial services for those students having problems with grammar and composition were added in the early seventies. And in 1974, writing exercises were incorporated into the first-semester small section program. This is a program started in 1969 to give each first-year student the opportunity to have one small section in one of his or her substantive courses. The original sections contained 30 to 35 students in each, but this was reduced to 15 to 20 when the writing component was added. The first semester small section program has never been well coordinated with the second semester Legal Writing course.

The staffing pattern for the basic Legal Writing course dates from the fifties. The first-year class is divided into sections of about 15 students in each. Each section is taught by a teaching assistant who is a second or third year student selected and trained for the job. A recent law graduate is hired to serve as general supervisor of the course, and a faculty member serves as advisor.

The Wisconsin staffing format was touted initially as an effective and inexpensive way to teach legal writing. It still is relatively inexpensive in view of the student-teacher ratio of 15 to 1

(about \$65,000 per year in salaries). The first-semester small section program would cost about twice as much, if the net costs of the program were attributed entirely to the writing component.

## **The Present Legal Writing Program**

The first year Legal Writing Program at Wisconsin consists of several formal coursework requirements and of informal, voluntary tutorial assistance through workshops and individual tutoring.

### **The First Semester Small Section Program**

Although the formal, three-credit first year Legal Writing course does not begin until second semester, first year students are exposed to legal writing and research in the first semester.

In their first semester, first year students take four courses: Torts I, Contracts I, Civil Procedure I, and Substantive Criminal Law. Three of the four are large lectures. The other is taught as a "small section" of approximately twenty students. First year schedules are determined by lottery; students have no choice as to professor, time, or subject matter of the small section to which they are assigned. Small section professors generally assign several writing exercises during the semester. Type and number vary by professor, some assigning as many as four or five papers; in past years, some professors assigned none. The exercises may include a case brief, mid-term examination, office memorandum, court brief, or an essay. One professor requires his students to present a short oral argument based on a written assignment. Feedback also varies by professor; some comment on both analysis and composition, some on analysis only. Lack of coordination among small sections and between small sections and the Legal Writing course has, in the past, required that Legal Writing address the problems of students who have had little or no exposure to legal writing formats or conventions.

Methods or coordination are now under study with a view toward consistency among small sections and consistent transition from small sections to Legal Writing.

In addition to the four substantive courses, first year students must complete in the first semester Legal Bibliography, a no-credit course run by the Law Library staff. The course runs about three weeks and is divided into three parts: Secondary Sources, Reporters and Digests, and Federal and State Statutes. Students buy a packet of materials containing short reading assignments and several exercises. This year, West's Nutshell on Legal Research and the "Uniform System of Citation" were required. Students read materials pertaining to the exercises and then complete the exercises which are unrelated to each other and of a scavenger hunt nature. Because, Legal Bibliography is a short course run early in the first semester and for no credit, students tend not to take it seriously or to remember the skills. Legal Writing teaching assistants find they must either teach or extensively review Legal Bibliography second semester before they can introduce students to comprehensive legal research exercises.

## **The Second Semester Legal Writing Program**

In the second semester, first year students take Legal Writing for three credits and three substantive courses for eleven credits: Property, Criminal Procedure, and one of Contracts II, Civil Procedure II, Legal Process, or Constitutional Law I.

Legal Writing is a required three credit course. Students receive a letter grade of A, A/B, B, B/C, C, D, or F. The letter grade is not averaged into the cumulative grade point which is based on numerical grades given in substantive courses. Students must attain a "C" average in Legal Writing to pass. Students who do not attain a "C" average must retake the entire course; no "in-completes" are given which might allow a student to make up only

those assignments missed, although extensions on individual projects may be granted for good cause. The original grade of a student who retakes Legal Writing is not superceded by the grade received for the rewritten course.

The three credit Legal Writing course is supervised by a recent graduate and taught by second and third year law student teaching assistants. For several years, twenty teaching assistants have taught sections averaging fifteen first year students. The sections meet three times each week early in the semester for fifty minute periods. As the students become more involved in research and writing, the sections meet as a group less frequently; in lieu of classes, teaching assistants run research workshops in the library for small groups and schedule individual conferences for each paper.

Students were assigned readings for class discussion and as background information for written assignments and in-class exercises. Teaching assistants individually developed many in-class exercises or used exercises they had been assigned as Legal Writing students. The major writing assignments were developed by groups of four teaching assistants, with the exception of the "Canned Memo".

The "Canned Memo" is a "closed universe" problem for which students receive a case sequence upon which their memos are based. No outside research is allowed. The memo format is a law office memo to a senior partner, requiring facts, issues, conclusions, and discussion. This year the supervisor assigned a sequence of four New York cases on the emergency doctrine in negligence suits; the memo facts were adapted from a recent New York case not part of the assigned sequence. The sequence demonstrated development of the doctrine in one jurisdiction; the problem required student analysis and projection of that development. The teaching assistants believed the problem conceptually difficult so required an outline before the memo was due in order to spot problems of analysis and

organization. All students were required to rewrite the Canned Memo; most teaching assistants graded the original memo either satisfactory or unsatisfactory to avoid discouraging students on their first attempt. Rewrites received letter grades.

The other three writing assignments, Research Memo, Trial Brief, and Appellate Brief, were related by a core fact situation. Five core problems were developed. Four teaching assistants worked on each problem set during the first semester; the teaching assistants divided by twos so that two sections represented the plaintiff and two the defendant for all three assignments. The objective of this coordination was to give students insight into the development of a case from the client's first interview to an appeal from trial disposition. All assignments were given as a memo from a senior partner requesting work of a junior associate. Students worked individually on the Research Memo and Trial Brief, and in teams of two on the Appellate Brief, both members of the team receiving the same grade.

Research Memos were designed to make students familiar with the general substantive law in the area by applying their own research and analytical skills to several specific issues. In general, the memos were to be approximately fifteen pages in a law office memo format. Statutory interpretation issues were incorporated where possible. If a statute was not in issue in the Research Memo, teaching assistants incorporated statute or rule interpretation into the Trial Briefs.



Trial Briefs were less lengthy and involved pretrial or trial motions to dismiss, to join a party after the statute of limitations had run, for change of venue, and for summary judgment. Trial Brief problems were presented as a continuation of the case students had researched for the Research Memo. Teaching assistants provided students with applicable court documents and additional facts in a memo from the senior partner.

Another memo with documents and trial transcript evidencing the trial outcome prefaced the Appellate Brief assignment. Students were paired, some voluntarily; some were assigned partners, particularly when they failed to pair voluntarily. Often appellate issues were refinements of issues researched for the Research Memo. Teaching assistants found this a considerable obstacle when drafting the appellate problems. Although we wanted to avoid excessive additional research and to have students concentrate on appellate advocacy skills, we did not want mere repetition of Research Memo arguments. We are considering for next year coordinating the Trial and Appellate Briefs but using a separate problem for the Research Memo.

The original rewrite policy required students to rewrite the Canned Memo, Trial Brief, and either the Research Memo or Appellate Brief. The supervisor and teaching assistants agreed that rewriting was more effective than numerous new assignments in requiring students to incorporate critiques. They also agreed that the schedule was too demanding to require rewrites of every assignment, hence the option of rewriting one of the longer papers. As the semester progressed, however, the teaching assistants found the schedule tighter than it appeared on paper. In order to avoid rampant student and instructor frustration, the teaching assistants revised the rewrite policy to make rewrites of the Research Memo and Appellate Brief completely optional. As the original and rewrite grades are averaged, many students have

chosen to rewrite at least one of the longer papers in order to improve their grades.

The supervisor and teaching assistants agreed that oral argument is important to a writing program and a beneficial experience for first year students. In past years, students presented oral argument only on appellate briefs; in some years students argued from a model brief rather than from their own and argued one on one rather than in Moot Court style teams. We made several changes this year. Eight of twenty sections, working with two problem sets, scheduled motion argument on the Trial Briefs. This eased the burden on facilities and gave students an opportunity to practice motion arguments which they will more likely confront in practice than they will appellate argument. Students argued one on one at motion arguments. The remaining sections scheduled appellate arguments, the paired students arguing as a Moot Court team. In all arguments, students argued from their own briefs against students from another section. Teaching assistants from both sections sat on the bench with one or two local attorneys or judges who critiqued the arguments but did not rule on the case or decide best oralist. Outside judges were asked to score the students' advocacy skills, but these scores were advisory only; teaching assistants assigned grades.

We found local attorneys and judges enthusiastic when solicited to judge. A number of outside judges were particularly pleased that some students would argue trial motions rather than appeals. While providing first year students the opportunity to present argument is a good exercise, our schedule does not permit time for argument on both brief exercises; trial and appellate advocacy courses are offered as electives for students who wish to pursue those specialties.

### **Staffing by Teaching Assistants**

It has been the practice at Wisconsin for a number of years to hire second and third year stu-

dents as Legal Writing teaching assistants under the supervision of the Legal Writing Instructor and a full-time faculty advisor. The Instructor is a recent graduate, hired as nontenure-track academic staff for a one year contract, renewable for a second year. Teaching assistants are hired on a third-time basis for second semester. First time second year student assistants often apply to teach again in their third year. This helps overcome some problems of continuity in the writing program. In the fall semester, both new and continuing teaching assistants take a three credit course "Legal Teaching Methods", more properly "Legal Writing Curricula".

### **The Tutorial Service: Supplementary Writing Education**

Use of the tutorial service as supplementary, rather than solely remedial, education has developed gradually at the UW Law School, as demand and potential grew. Until the 1978-79 term, the tutor had been a graduate law student hired for ten hours a week to work with students identified as having the most severe writing problems. In August of 1978, the Law School hired a composition instructor half time, thus increasing both the hours a tutor was available and the emphasis placed on student writing skills. During that term, students were encouraged to come to the tutor to improve writing skills regardless of current ability: the tutor offered workshops in paragraph organization, conciseness, and sentence structure and marked every student's diagnostic exercise to suggest ways to improve his or her writing. As the stigma of seeing a tutor faded, student use of tutorial services increased. This demand led to an increase in the hours the tutor was hired for the 1979-80 term; it also led to an increase in the range of uses of the tutorial service. Graduate students came in for help on theses; workshops were added in case briefing, course outlining, resume writing, and effective word choice; the tutor worked

with students writing briefs for clinical programs, papers for law courses, and occasionally briefs for clerking jobs. Some students came in for weekly appointments for up to a semester, working on organizing quickly for exams or writing cogently for course papers. Accordingly, the tutor worked with professors and teaching assistants to choose sample exam questions or to focus comments on writing habits most critical to the students improvement in a given course. Teaching assistants then began to bring in problematic student papers to discuss ways to attack teaching the student better writing skills. The remedial work was thus integrated into a larger program of supplementary writing instruction.

The legal writing tutorial service now helps meet many education needs in the Law School. It increases student and faculty awareness of the usefulness of good writing skills in law by providing continued opportunities for students to work on improving their writing. These opportunities for workshops, individual sessions, and additional comments on work done for content courses encourage students both to develop and practice good writing skills outside formal legal writing courses and to continue improving their writing throughout the three years of law school. The supplementary information and materials augment the content of legal writing courses. The workshops provide opportunities for practice and feedback of specific writing skills. Finally, the presence of a resident composition teacher draws tools from the disciplines of communication, rhetoric, and education and applies them to the specific writing tasks in the discipline of law.

## **Second and Third Year Writing Program**

Although the University of Wisconsin Law School does not at this time require a formal writing

program for upperclass students, it does offer several advanced elective courses and provides tutoring and workshops under the Legal Writing Tutor, a composition teacher.

*Advanced Legal Writing* - 2 credits. This seminar course is currently team taught by the Legal Writing Supervisor, a law graduate, and by the Legal Writing Tutor, a composition teacher. Students must write in-class exercises, weekly assignments, and multiple drafts of a lengthy final project. Students choose the format and subject matter of the final project (research memo, brief, law review article) and draft a contract specifying tasks to be completed, due dates for each interim and final draft, instructors' duties, and student's objectives. The course emphasizes writing rather than research; students were encouraged to choose projects involving minimal research time, such as revisions of past projects. Several students have coordinated their projects with the Legal Assistance to Inmates Program by updating and revising LAIP research and briefs on issues which LAIP frequently raises in its representation of indigent institutionalized persons. In addition to drafting a contract, students must draft pleadings, jury instructions, and various types of letters. Students receive some instruction on legislative drafting, statutory construction and interpretation, but the Law School offers a separate course in Legislative Drafting.

*Legal Assistance to Inmates Program* - This is a clinical program and not part of the Legal Writing Program. We mention it here because LAIP has retained the Legal Writing Tutor for a set number of hours per week to work with LAIP students and attorneys who are writing and drafting briefs, memoranda, and pleadings for LAIP clients. The Tutor edits student and attorney work and confers with the writers on editorial suggestions.

*Legal Teaching Methods* - 3 credits. This is a first semester course for second and third year students hired as teaching assistants for the first year Legal Writing course in the second semester. Part of the Legal Writing Program, it is open only to teaching assistants. The course covers curricula, policy, and administrative matters for the first year writing course. It is not properly a writing course but does require the teaching assistants to prepare writing and research problems for the first year program.

*Legislative Drafting* - 2 credits. This seminar focuses on the techniques for drafting legislation in clear, concise fashion.

*Law Review* - 2 credits. A number of students each year receive intensive Writing experience and some instruction in writing as part of their Law Review experience.

*General Practice Course* - 8 credits. This course, taken by about 150 third-year students each year, provides instruction and experience in the drafting of a wide variety of documents commonly used by lawyers.

*Appellate Advocacy I and II* - 3 credits each. These are moot court programs involving intensive experience in brief writing and oral argument.

*The Tutorial Service* - In addition to formal course offerings, the Law School offers to all students voluntary individual tutoring by the Legal Writing Tutor. The Tutor also offers small group workshops throughout the year in case briefing, sentence structure, paragraphs, organization, word choice, conciseness, outlining, and exam taking. Although these workshops are directed primarily to first year students, all students are welcome to attend.

*Seminars and Directed Research*  
There are abundant seminars and directed research opportunities for second and third year students. These afford opportunity for writing experience but little in the way of instruction in writing.