A COMPOSITION COURSE FOR PRE-LAW STUDENTS

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In October, 1975, I wrote to the deans of 80 law schools in this country asking:

(1) If their University had any courses in composition designed especially for pre-law students;

(2) If they perceived a need for such a course, and

(3) If they or a member of their faculty would be interested in attending a conference on the subject at the University of Utah in February, 1976.

60 deans responded: Two indicated that their students had little or no problem in writing; seven replied that they had no program and could be of no help; the remaining 51 requested and/or offered assistance, and 19 of those expressed a desire to send someone to the conference. Only the University of Oregon indicated it had recent experience in such an experiment.

Four people were selected to attend, based on their previous struggle with the concept.[1] Joined by professors from Utah's Composition program,[2] Communication Department[3], and Law School[4], we conducted a strenuous weekend of meetings, discussing the theoretical and practical problems involved and creating the structure for the course which I taught in the Spring of 1976. We wish to publish here a summary of the conference consensus and an outline of the actual course.

Many of the letters I received complained bitterly of the low quality of writing among law students, and some suggested that the problem has been increasing in recent years. Most felt frustrated that it was "too late" to teach much writing at the law school level. Students concern themselves exclusively with mastering legal thinking and techniques, leaving little time, energy, or interest for developing compositional skills. Moreover, law professors are by no means qualified to teach composition, and many are far too busy even to consider it. Ideally, the university's undergraduate writing program should handle the problem, if indeed a "pre-law problem" can be identified.

Most law schools agree that "pre-law" is a myth, or at best a state of mind. Undergraduates usually believe that courses in constitutional legal history or political science will give them a head start on law school, but when they arrive, they find they must repress much of their hard-won knowledge. They discover it is of minimal importance in law school to know *that* Justice Brandeis said a particular something, and much more impor-

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1 The invited conferees were Constance Bordwell (Univ. of Oregon), Kathleen Cekanski (Notre Dame), John Louis (Univ. of Connecticut), and Oliver Schroeder, Jr. (Case Western Reserve).

2 John Muller, Director.

3 Richard Rieke, Chairman.

4 Assoc. Dean James Beylis.

tant to understand *why* he said it, why his opponents opposed him, and what logical implications were involved. Then they learn that they should have been taking undergraduate courses which stressed logic (philosophy, logic, mathematics, etc.) and a knowledge of words (composition, literature, linguistics, etc.). Of all these, the only courses law school might reasonably make requirements for admission would be composition courses that stressed logic and rhetoric, for without the control of words, the lawyer can neither control nor articulate his thoughts.

The conference members therefore determined to discover the unique needs of "legal writing". We found there were none, for all the writing problems confronting lawyers arise in other professions as well. However, we agreed that lawyers do have a specific *combination* of writing needs that differs from the combination that confronts a scientist or an art historian, and that a course which attended to those particular writing needs would fulfill a legitimate pre-law purpose.

The conferees were able to agree on the following as representing the lawyer's major needs regarding language.

I

(1) *The need for precision and anti-precision.*

Lawyers constantly must seek the word that fits a given context with the greatest precision approaching a total lack of ambiguity; or, from another perspective, they must use words to shape the situation before them to best advantage. Ideally, for instance, there should never be a law suit over a contract; but at the least it is desirable that both parties know they are arguing about the same thing. At the same time, however, there is often a need to be imprecise; situations may arise in the future which cannot be conceived of at the time of drafting, and the law or agreement must be flexible enough to cover those unforeseen possibilities. This careful use of imprecision, or perhaps more accurately, anti-precision, cannot be nurtured without a masterful control of precision itself. The Constitution of this country stands as a monument to the skillful use of anti-precision.

(2) *The need to articulate the steps and connections in a logical argument.*

Poets can meaningfully juxtapose two seemingly dissimilar thoughts and challenge the reader to put them together. Lawyers who do this simply invite disaster. The nature of the advocacy system demands that lawyers spell out in detail how they get from step to step in their progress towards the final conclusion. In our judge-centered court system, each lawyer must make the best possible case for his or her side, leaving it to the judge to decide which argument is the more sound. If a lawyer leaves such a gap of logic between the period that ends one sentence and the capital letter that begins the next, he is doing his client a gross disservice: in the case of a brief for a court, he is hoping the judge will come up with the connection by himself; in the case of a contract, he is hoping the other side will agree to "read in" the thoughts that are still in his mind.

All too often law students fall into the trap that waits for all amateur debaters: they become so convinced of their argument that they

forget to make it. To their partisan minds, a mere recitation of the facts should convince any clear thinker of the "proper" solution. ("Isn't it 'clear' that capital punishment should be abolished?") It is crucial to learn that if the process is not articulated, the product is most often meaningless.

(3) *The need to recognize that people with varying viewpoints and interests might differ in their responses to words or arguments.*

Words rarely achieve objectivity by themselves. The writer must combine them or explain them to clarify his intent. The man who claims he is "compassionate" might be referring to his tenderness for widows and orphans; on the other hand, he might be referring to his plan to eliminate all members of society whose I. Q. is below 90. It is not enough for the lawyer to know what he meant by a word or phrase; if he fails to communicate it to his audience, he has failed as a lawyer.

(4) *The need to maintain clarity of expression, even in the face of complexity of thought.*

In order to do their business, lawyers need special words (like "demurrer" and "subrogation") and need to agree on special meanings for more common words (like "cause" and "intent"). This esoteric kind of communication, which normally baffles the layman, sometimes leads lawyers to retreat into total professional exclusivity in language. Part of a lawyer's service to the client must be the communication of what has been done, where the situation stands at present, and what can be expected of the future. This requires "plain English", not "Legalese". One state's law makes it a misdemeanor to write a pension plan in anything but "plain English", a requirement that should strike fear in even the most experienced legal heart. Even where clarity is impossible, it should remain the objective.

Since all these needs apply to all professions, the conferees proposed that the course be labeled a "Liberal Education" or "General Education" course; but since these needs strike at the core of a lawyer's proficiency, we felt justified in adding the rubric "especially suited for pre-law students".

II

We then turned our attention to the major objectives of the course. In trying to answer the question, "What should the student be able to do at the end of the course differently than he or she could do at the beginning?", we arrived at the following goals, which correspond to the enumerated needs above.

(1) *The student should have developed a keen appreciation for the shaping powers of words.*

Students will blithely claim they "know what that word means", as if there existed some divine dictionary, some semantical final judge from whom there could be no appeal. This course should emphasize the relativity of words, the relationship between what a word can *mean* and what the word can *do*. To "know what that word means" is to know how it is being used in that particular situation. This general concept

can then be applied more specifically to the Law, which, like Humpty Dumpty in *Through the Looking Glass,* makes words mean what it wants them to mean. (Example: Mr. X negligently starts a fire that eventually destroys ten houses. A given state law might make him pay only for the first two. In a general sense Mr. X might be said to have "caused" the destruction of all ten; but under that state's law he "caused" the destruction of only two.)

(2) *The student should know how to construct a logical argument and how to distinguish that from a statement of conclusion.*

Students who have chosen a career in law often are interested enough in controversial issues to have formed strong opinions. They may also be adept in voicing those opinions; but often they do not perceive that they are *only* voicing opinions. At the beginning of this course they may be able to articulate how they feel about a given issue. By the end, they also should be able to articulate the logical justifications for that position, and even for the opposite position. They should have learned how to distinguish emotion from logic, conclusion from argument, and judgment from report. They should have learned what kind of support is needed for an argument. They should have learned how to persist in asking themselves "why?".

(3) *The student should understand the skill of refutation.*

Perry Mason always gets the right kind of clients—those whose cases are legally, ethically, and morally persuasive. Real lawyers must on occasion represent the side of the case they might not have elected. More often neither side of the case will appear morally or emotionally more attractive than the other: the agreement involving a company that makes lead pipes will hardly make good airport reading. The student not only should learn how to argue both sides of an issue, but also should discover that there is nothing immoral in doing so. Our system requires that each side be represented to the fullest, leaving the decision to the judge or arbitrator. Moreover, the student may well find the process a broadening one, opening up perspectives previously obscured by the pressing moral need to be "right", to do the "right thing".

(4) *The student should have discovered why the law has a need for a special language and a special use of language.*

Society seems to understand that lawyers use funny words and use words in a funny way, but few laymen understand why "all that legal mumbo-jumbo" is needed. By explaining that need, this course can perform a valuable pre-law service.

I tend to think of the Law occupying the mid-point on a spectrum of problem-solving which has (*e. g.*) elemental mathematics at one extreme and (*e. g.*) poetry at the other. In an algebraic problem there is one and only one answer or set of answers that is "correct". To arrive at any other solution would be, by definition, "incorrect". The objective correct answer must be established as the end-product of the problem, no matter how much stress is placed on the problem-solving process itself. In poetry I find the opposite to be true: not only is

there never a "correct" answer, but the search for such an illusory objectivity will lead the reader astray. To make a final decision why Hamlet does not immediately kill Claudius would be to "pluck out the heart of [his] mystery" (III, 11, 351) and leave the play a corpse. We solve nothing by solving that mystery, and we destroy the play for future reading in the process. I place the Law directly between these two. Like literature, law deals with ambiguous human problems which can be looked at in a multitude of ways. There well may be no solution that will please all parties and protect everyone's rights. However, like algebra, the Law is forced to come to decisions, to draw lines, and to establish labels. If the student, at the end of this course, can understand how the Law *uses* words to draw those undrawable lines—"Mr. X 'caused' the fires in houses 1 and 2, but not in houses 3 through 10."—he or she will be well prepared to deal with the materials of the transmogrifying experience of the first year of law school.

III

There was strong agreement among the conferees that this course should not preempt law school material and training. It should not send students to the law library to look up "what the law is". It should not attempt to teach by the case method any great amount of material. Papers should not require a presentation of previous arguments or knowledge of current developments. Instead, all the material that deals with legal thinking should be generated by the instructor and the students in the classroom. The instructor can use established cases but should present them as hypotheticals, and the goal should be to explore ways of thinking rather than to approximate what the court finally decided. If the emphasis is placed on the students' thought, they will start to discover how well they can think, how poorly they do think, and how differently they think compared even to their own classmates.

We came to regard the choice of substantive material as relatively unimportant. Any legal issue that has some element of popular appeal and that can be approached without prior legal training should work well. We would warn instructors against spending the whole term on only one area of the law lest students be sidetracked into studying (*e. g.*) Torts instead of writing.

We found somewhat less agreement on the question of who was to teach the course. The ideal prospect seemed to be the professional composition teacher who also held a law degree; but should that rather rare combination not be available, some felt the course should be in the hands of the law teacher (or advanced law student), and some preferred the composition teacher (often an English Ph.D. candidate). The former group argued that the composition teacher would not have enough knowledge of the law or the experience of law school to make a meaningful contribution to the legal-flavored materials. The latter group feared the law student would be too involved in what the law is (or is becoming), and that the law teacher is not necessarily prepared by the profession for the teaching of composition skills. I personally imagine it would be easier to train the law student or teacher (who had a substantial background in writing) what to avoid and what new techniques to use than to initiate the composition teacher into the mysteries of legal lore. Moreover, my students in this course were always

interested in whatever I could tell them about the experience of living through three years of law training. The course was taught at Utah last summer by a two-man team, one composition teacher and one lawyer, with substantial success. Perhaps that is the best solution.

In addition, this course presents the opportunity to introduce the student to related legal issues such as the ethics of communication and the need for formal procedures. Some ethical questions seem to be generated automatically through teaching students the skill of refutation. The needs for legal procedures (rules of civil procedure, rules of evidence, etc.) can fit easily into classroom interactions. For example, after dividing the students into plaintiffs and defendants for a classroom debate I simply sat down and told them to proceed. The students soon discovered the need for rules regulating *who* was to proceed, and for how long, and on what subjects, and with what kinds of questions, and when the other side would get a chance, and so forth.

Thus, this course, "Advanced Composition, of special interest to students who are contemplating attending law school", intends to inspire a heightened regard for language and its possibilities, and then to introduce the student to the Law's particular needs concerning language. It leaves legal education to the law schools.

IV

The conference was held in the Winter of 1976. I taught the course the following Spring with most encouraging results. By the end of the term students really did progress in the manner prognosticated in section II above. The student evaluations indicated that not only had they enjoyed the experience, but they had perceived its goals and actually recognized their own progress. The following excerpt from one evaluation is fairly representative of them all.

> I expected to learn about *the Law* as such in this class, researching cases, preparing briefs, and so forth, and was a bit surprised to learn that we would not be concerned with research but with hypothetical cases in which the class participants had to make the legal decisions rather than the courts. The assignments in the class were geared toward developing a respect for the problems which law entails, and the difficulty in finding one right answer for any specific set of circumstances. We have learned in this course to think and write precisely, choosing words with great care. I find that my experience in the course has affected my speaking and writing in other areas as well. We have developed through the assignments a knowledge of the importance of offering thoroughly reasoned arguments for every conclusion and a respect for the weighing and balancing process which is so much a part of the practice of law. I feel that I have gained a remarkable respect for and insight into legal writing and thinking which will be indispensable as I prepare for law school.

V

I will now attempt to summarize the progress of the course, segment by segment. There is nothing magical about the sequence or nature of the

assignments; it seemed to me one reasonable way of accomplishing the objectives.

Thirty-one juniors and seniors signed up for the course; I set the limit at fifteen. I had everyone write a three-page argument choosing sides in a pornography issue that I concocted, from which I selected the fifteen best to remain, advising many of the others to take a lower level composition course instead. As I had predicted, all the papers explained in rather emotional terms which side they were on and what their final decision in the matter would be; none were able to offer a reasoned argument to back up their conclusions. I delayed returning these papers until the end of the term. When they received them along with their final papers, they had adequate indication of how far they had come in ten weeks.

Segment 1

After discussing at length the ambiguity of individual words, the difficulties of definition, and the distinctions between definition and description, I had them (try to) define "a football team", something banal enough to escape the philosophic complexities of an abstract like "justice", and yet abstract enough to escape the annoying petty ambiguities of a concrete like "chair". Everyone discovered how poorly they read instructions: they all described, instead of defining, "football", instead of "football team". They learned how hard it is to include everything that is essential while excluding everything inessential, and they were on their way to understanding words as limiting agents. I had them exchange their papers and articulate in writing the weaknesses they found.

Segment 2

"Translation" followed. I chose a newspaper article, enticed by the quote of a city official that appeared halfway through: "I think what we've got here is a funny-looking kind of elephant". The article purported to explain that the Manpower Commission of Utah was not doing the job the members were commissioned to do, but rather something else, and that they were not sure what exactly that was either, but that everyone was quite concerned about it and would surely do something about it at some time in the future. On first reading, the entire class was sure the article had said something; but by the time they had finished answering the 30 questions I distributed (questions like "Who are the 'staff' referred to in the fifth line, and how do they differ from 'committee members' in line 7 and 'personnel' in line 14?"), they realized that whatever had been in the writer's head had not clearly made it onto the paper. Then they were asked to re-write the article, assuming whatever facts were necessary in order to fulfill the promises the article's title and first lines had made. Then they exchanged their fabrications and again wrote criticisms. They were elated at how superior they were to the newspaper writer at first, but then confounded when their classmates found multiple difficulties with the "new, improved" version. They began to become healthily paranoid about the difficulties of nailing down words to mean what they wanted them to mean.

Segment 3

Introduction to Consistency: I chose one theory and applied multiple fact situations to it. Theory: "No one may make a left turn onto Main Street from First South". Facts: Mr. A took the illegal turn; he was drinking heavily at the time. Mr. B took the illegal turn; he was rushing his wife to the maternity ward—and twenty more, ranging from maniacs to good Samaritans. Then the question: "The law prescribes a penalty of 'not less than $10 and not more than $25.' As judge, how much would you fine each one of these people, and why?"

Their responses normally took the form of "I would fine Mr. A $25 because he was drinking". When they understood that they were offering conclusions instead of arguments, they were prepared to discover that their reason for letting one fellow off lightly often conflicted directly with their throwing the book at another. *E. g.,* they would let off the expectant father easily because "he knew what he was doing", but would inflict the maximum on the fellow who took the turn on an empty street at 4:00 a. m. because "he knew what he was doing". When they finally started to offer reasoned arguments ("The law tries to prevent accidents and save lives; Mr. B was trying to save the lives of his wife and new child; therefore . . . "), they naturally encountered the problems that consistency places on lawmakers and contractmakers. They had thought this was a particularly simple-minded assignment and that I was underrating their abilities. They discovered that they were nowhere near ready to handle the situation competently. They began to be (again healthily) suspicious of anything that looked easy during the rest of the term.

Segment 4

Introduction to Complexity and the Rule-making Experience: I chose one fact situation and had the students multiply the relative theories. Smedley is running for Congress, and he wants to hire a sound-truck and drive around the street telling people how fine he is and how inadequate his opponent would be. Should he be allowed to do it? They started by writing a short position paper. I still found a great many conclusions unsupported by argument, but the emotional pounding on the table in the first assignment was already receding. They realized they were faced with a situation where two precious rights, the right of free speech and the right of privacy, were colliding. There seemed to be no way of ensuring 100% of each.

I asked each student to prepare a list of fifteen different situations in which a public address system might be used and to judge whether or not it should be allowed. Then I broke up the class into groups of three or four and had them write (as a group) a law concerning the use of loud speakers which would cover all their 45 or 60 situations consistently. The interaction with others struggling with the same problem proved to be a good learning experience. They were amazed to see how many of their situations were duplicated, how many were radically different, how hard it was to combine them all, how hard it was to agree what they meant to say and how to say it, and how long it took them as a group to formulate the law and write an explanation of its intent.

In the next class session I put groups 1 and 2 together in one corner and groups 3 and 4 in another, had them exchange laws within the new groupings and orally criticize each other's. After having spent so much time formulating their own law, each group assumed that it must have arrived at some objective "truth", some "answer" to the problem. Once more they were confounded by how different the other law was, how clearly wrong-headed it was, how unclear and ambiguous it was. After an hour of trying to communicate their differences they found themselves exasperated, yet not angry. They had begun to recognize the enormity of the problem of saying what you mean so that it covers a multitude of possibilities and still communicates clearly to someone else who was not present at its creation.

With some trepidation of being labeled a sadist, I then had groups 1 and 4 exchange laws and 2 and 3 do the same. The individual groups again met outside of class, this time to prepare a written evaluation of the other group's law. Through this they experienced yet a third substantially different approach to the same "clear" problem. They were becoming experts on the subject; their criticisms were more to the point and more incisively stated.

Segment 5

Dealing with the Impossibilities: I gave them an opportunity to try out their new skills on one of the Law's stickiest, most entertaining problems, proximate cause. I gave them the *Palsgraf*,[5] *"Wagon Mound"*,[6] *Polemis*,[7] and *Kinsman*[8] case situations as hypotheticals. We did not read or discuss the courts' decisions, nor did we try to formulate whole concepts of tort law. We did try to keep the argumentation rational, explicit, and consistent. This normally frustrating corner of the Law had the opposite effect of building their self-confidence once more. Although they could not come to any comfortable conclusions about liability in any of the cases, they had a sense that they were understanding issues and articulating their own thought processes. They started announcing by themselves the approach of the brick wall into which they would slam their head, and reacted to it as a football player might to the tackling dummy—harsh, unpleasant perhaps, but all part of the training. I realized how very far they had come when I "hypothesized" the coincidence of an oil spill by a ship with the dumping of cotton waste under a pier with the accidental presence of molten metal all combining to burn Mr. X's house (and, I added, his wife and three children); not a single person in class was willing to argue for Mr. X's collecting a penny from anyone. How strikingly different this was from their first papers, when they knew what the outcome "should" be and did not particularly care how it came about. (We then spent a quarter hour on what *could* be done for Mr. X, lest their own moral sense start to decay.)

[5] Palsgraf v. Long Island R. R. Co., 248 N.Y. 339, 162 N.E. 99 (N.Y.Ct.App.1928).

[6] Overseas Tankship (U.K.), Ltd. v. Morts Dock & Engineering Co., Privy Council 1961, [1961] 1 All E.R. 404.

[7] In re Polemis, [1921] 3 K.B. 560.

[8] Petition of Kinsman Transit Co., 338 F.2d 708 (2d Cir. 1964).

Segment 6

Both Sides Now: Coming full circle, I gave them a second shot at the pornography issue, albeit a different and more complex fact situation from the former assignment. Two of the fifteen were enterprising enough to choose to defend the side they did not personally prefer; those were the best two papers. In general the reasoning was still far from sparkling, but every paper showed a heightened consciousness of the need to articulate the logic in back of the conclusions.

For their final assignment I had them turn around and argue the opposite side of the issue. The only two final papers that did not outshine the penultimate papers were from the two who had previously written on the side they did not personally favor. In other words, all had learned how to write more clearly when they could approach the situation with reason alone, unimpeded by emotion. They were almost embarrassed to see their first papers again.

VI

The quality of writing among law students will not improve vastly because of one course taught to fifteen people. I hope to be able to teach carefully selected law students how to teach the course this year so that 150 students might benefit from it instead. If eventually a large number of universities could be teaching hundreds of pre-law students about the nature of words and the way the Law must use words, then we might indeed make some progress on the quality of writing at law school. Efforts are now underway to arrange a "Second Annual Pre-law Writing Course Conference", which would allow wider participation from interested parties.