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12-1-2022

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#### Recommended Citation

Patrick J. Long, *By the Inch, It's a Cinch: The Case for Go-ing Slow in First-Year Legal Writing Courses*, 35 *The Second Draft: J. Legal Writing Inst.* (2022).

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## ARTICLE

# By the Inch, It's a Cinch: The Case for Going Slow in First-Year Legal Writing Courses<sup>1</sup>

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Published: December 2022

Let's slow down. Do less. Aim low. This may be controversial to say, but I believe we legal writing professors need to accomplish less in our first-year courses.

As I finished grading last year's final memoranda, I was reminded of the inkling I had back in December: my students weren't getting it. Sure, the externals were there: proper formatting, accurate citation, even passages of clear prose. But deep understanding of the law and awareness of first principles – those were lacking. What I saw last year, and what I have been seeing for the past few years, is a superficial grasp of content. While the mechanics of legal writing have, for some, improved, fewer students seem able “to think like a lawyer” by May.

The fault, I fear, lies in ourselves as legal writing faculty. As Jerry Garcia once warned, we better watch our speed. We are too ambitious. With our list of

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<sup>1</sup> A favorite saying of Ken Joyce, a beloved University of Buffalo School of Law professor. His course on Gratuitous Transfers remains the best-taught course I took in law school, in large part because he modelled a slow and deliberate method for each step of estate distribution.

learning objectives growing every semester, and new expectations added whenever the ABA meets,<sup>2</sup> we expect too much, too fast, of our students. Every August, the registrar sends us a roomful of people whose only exposure to the United States legal system may be *Legally Blonde*, and we expect these people to do oral arguments on appellate briefs by April.<sup>3</sup>

Is it any wonder we may be disappointed with the results?

## 1. Reading is Fundamental

In reviewing my 2021 syllabus, I see that I spent two class sessions on reading case law. That's about three hours, and half of that time covered the mechanics of briefing. Yet, as Ruth Ann McKinney argues in her wonderful *Reading Like a Lawyer*, critical reading is the single most important skill for success as a lawyer.<sup>4</sup> We know – because our doctrinal colleagues are happy to tell us – that our students seem unable to extract anything valuable from their assigned readings. Yet, by the end of Orientation, before my students had to crack open a casebook, I was already inflicting memo writing on them. Why? What's the hurry? Why not spend a few more hours on developing critical reading skills? Or even – just imagine – two *weeks* of classes?

As grizzled veterans of practice and teaching, we seem to have forgotten how bizarre law school can be for our students. Their textbooks are written in a foreign language; those textbooks contain cases written for purposes inapposite to learning; and in class, rather than being told answers, they are asked questions by someone speaking that same foreign language. Yet, by the time Orientation is over, we expect our students to have mastered the skills necessary to navigate this alien terrain. Why?

Part of our hurry lies in the syllabus. During Orientation, we know our students will be in doctrinal classes soon, so we rush to give them as many tools as possible. But we also want to get to our own “important” stuff, such as build-

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<sup>2</sup> See, e.g., A.B.A. STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 303(b) (2022) (new standard on professional identity). Is there any question that the burden of this requirement will fall on the shoulders of Legal Writing faculty?

<sup>3</sup> Or even as early as March, in some semesters. On the larger issue of student preparation and familiarity with law school, see Laura P. Graham, *Generation Z Goes to Law School: Teaching and Reaching Law Students in the Post-Millennial Generation*, 41 U. Ark. Little Rock L. Rev. 29, 46 (2018).

<sup>4</sup> RUTH ANN MCKINNEY, *READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT* xiii (2d ed. 2012).

ing CREACs. But what is more important for a lawyer than reading? Most lawyers, after law school, will never need to spell CREAC again. But every lawyer needs to read at an expert level. Reading is, I believe, the single most important skill we can teach.

Laura Reilly, a former colleague at University of Buffalo (UB), has a great exercise with her students to teach critical reading.<sup>5</sup> She reads a case in class, sentence by sentence, pausing to explain what goes through the professional reader's mind as she reads. I have stolen her idea, going through a short case, usually on common law fraud if students have Torts in the first semester<sup>6</sup>, or *parol* evidence if they have Contracts.<sup>7</sup> My criteria are that the case must be short; it must contain a clear rule of law; and it should be on a topic frequently tested on the Bar exam. Rather than copy a case from a reporter, or download a Westlaw or Lexis version, I draft my own copy in Word, cleansed of all doodads such as headnotes and key numbers.

I ask the students to read the case the night before and tell them to look up any unfamiliar terms in their legal dictionaries. In class, I encourage them ask any question they might have. We begin with the party names and read every word out loud, stopping frequently. Sometimes, I explain a word or phrase, but I also often ask students to read aloud the definition from their Black's.<sup>8</sup> We discuss the procedural history, the different claims of the parties, and how the court reaches its decision. Even a brief memorandum decision will take an entire class to explicate. But every year, students tell me it was the most important thing they took out of orientation.

What if we had the time to read more than one case? What if we read, as a class, a torts case, a Civ Pro case, and maybe even a Con Law case? The preparation would help every student, and more important, they would see that they can and should transfer the skills from one class to another. *Rules is rules*, and finding a rule in Con Law cases requires the same skills used in Torts class.<sup>9</sup>

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<sup>5</sup> Professor Reilly now teaches in University of Arizona's highly-ranked legal writing program.

<sup>6</sup> See, e.g., *Cudemo v. Al and Lou Const. Co., Inc.*, 387 N.Y.S.2d 929 (App. Div. 1976).

<sup>7</sup> See, e.g., *Zugarek v. Walck*, 388 N.Y.S.2d 756 (App. Div. 1976).

<sup>8</sup> I now require all students to purchase and bring to every class the Black's Pocket Edition. See BRYAN A. GARNER, BLACK'S LAW DICTIONARY, POCKET EDITION (6th ed. 2021). If students are not told to look up words in a legal dictionary, and shown how to do so, they will rely on whatever Professor Google tells them a word means (if they even go that far).

<sup>9</sup> My students' inability to see how the skills learned in one course carry over into other courses has been a perennial frustration for me. Every year, students seem to become more siloed in their thinking. For example, it has become a real challenge convincing

The only obstacle to doing this is us.<sup>10</sup> We know the students will need writing samples to get jobs, so we flog them all year to produce acceptable work. But do employers really need a polished appellate brief? Or even a professional Memorandum of Law? Wouldn't a careful, thorough office memo do the trick? Or even a clean client letter? Won't we get more bang for the buck, and do better by our students, to spend more time on the fundamental skills of reading and analysis? No memo, letter, or appellate brief will be worth anything to an employer if the new associate can't read and understand law. We are the only ones who ever said we need to teach objective *and* persuasive writing in one year. What if we spent an entire year on objective analysis?<sup>11</sup> Would our students be any less prepared for their doctrinal classes, or the Bar exam, or practice? I believe they would be *more* prepared, for they would have acquired the ability to read critically, and with that, they can teach themselves whatever else they need to know.

Without the pressure of getting to persuasive writing by January, we could take the time during Orientation to provide all our students with a thorough understanding of the structure of the U.S. legal system. This would be especially important for foreign students, obviously, but also for those in our classes who come from first-generation families. Even students from privileged backgrounds may find the dual sovereignty of state and federal courts surprising. Once structure is covered, we could focus on critical reading for a month. We could model close analysis of cases from each of the students' doctrinal courses, perhaps even collaborating with our doctrinal colleagues.<sup>12</sup> We could incorporate valuable lessons on the different forms of legal argument<sup>13</sup>, or canons of statutory construction<sup>14</sup>, or even examine a recent decision of monumental importance,<sup>15</sup> focusing on the rhetorical and analytical decisions the drafters made in the opinion. By modeling close reading, and providing frequent opportunities for the students to test those skills, we would ensure our students have become expert

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some students that IRAC and CREAC are essentially the same thing, just spelled differently.

<sup>10</sup> As Pogo once said, "We have met the enemy and he is us." WALT KELLY, WE HAVE MET THE ENEMY AND HE IS US (1951).

<sup>11</sup> We could spend an entire month doing nothing but developing critical reading skills.

<sup>12</sup> One can dream.

<sup>13</sup> See, e.g., WILSON HUHN, THE FIVE TYPES OF LEGAL ARGUMENT (2022); see also DAVID S. ROMANTZ AND KATHLEEN ELLIOTT VINSON, LEGAL ANALYSIS: THE FUNDAMENTAL SKILL (2020).

<sup>14</sup> See, e.g., ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2011).

<sup>15</sup> See, e.g., *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 228 (2022).

readers of legal texts by the end of the first semester. If we accomplish only that, then we have done something remarkable.

If we then set our goal as a professional memorandum of law by the end of the first year, we would also open considerable time in the syllabus to work on the fundamental skills of writing and editing we know our students lack. Imagine having the time to spend an hour with each student, one-on-one, polishing one piece of writing. Imagine being able to do that two or three times in a semester.<sup>16</sup>

## 2. The Things They Carry

If your students are like ours at UB, you have no doubt noticed that they struggle to apply what they have learned in one class to another. For example, a student may zero in on a court's rule application in your class, but when asked the same question in Civ Pro, the student has no idea where to begin. Howard Gardner, in *The Unschooled Mind*, argues this failure to transfer knowledge is a sign the student did not *deeply* understand.<sup>17</sup> The student grasped the idea only superficially, and only within the context of her Legal Writing class. The knowledge did not become part of her, and she cannot carry it into a different field. If Gardner is correct, then we absolutely must take the time to make sure our students understand legal analysis *deeply*. There is simply no benefit to rushing on to legal argument until then.

I suspect there are also other causes for this failure to transfer. Our students have been through three years of disruption. They missed at least two years of college and maturation due to COVID. On top of that, the country's toxic politics have caused real harm to many young people and faculty. Add to these ills the ubiquitous malignance of social media in our students' lives. All these headwinds make the journey through law school even tougher. Whatever struggles we had as students, they do not compare to what the people in our classrooms face today. It's a miracle they learn anything at all.

Compounding these issues are those facing undergraduate education in the United States. We know about the "adjunctification" of college classes: far too many college students are taught by overworked, underpaid contingent faculty

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<sup>16</sup> Granted, some students do not need all that much guidance. Some students can be shown an exemplar text and do a bang-up job on their own. In my experience, however, those students are becoming rarer each year, and even they would appreciate being able to polish their writing like a gemstone.

<sup>17</sup> HOWARD GARDNER, *THE UNSCHOOLED MIND* 9 (1991).

who do not have the bandwidth to assign frequent, challenging writing assignments.<sup>18</sup>

So let's slow down. There's plenty of time for appellate briefs and oral arguments. Let's meet our students where they are, not where we think they ought to be. Let's give our students the space they need to understand – at a profound level – what we can teach them. “Move fast and break things,” Mark Zuckerberg's motto, may work for Facebook (now Meta), but it's a lousy way to educate.

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<sup>18</sup> Marc Tucker, *Our Students Can't Write Very Well – It's No Mystery Why*, EDUC. WK. (Jan. 12, 2017), <https://www.edweek.org/teaching-learning/opinion-our-students-cant-write-very-well-its-no-mystery-why/2017/01> (“Our own research tells us that a large fraction of community college professors do not assign writing to their students because their students cannot write, and the professors do not consider themselves to be writing teachers.”).