

WRITING ACROSS THE LAW SCHOOL CURRICULUM IN PRACTICE: CONSIDERATIONS FOR CASEBOOK FACULTY

*Pamela Lysaght**

The theoretical, educational, and practical justifications for incorporating more writing into casebook courses—i.e., non-legal-writing courses—have been advanced by Professor Parker and others.¹ I would like to pick up on two themes from her presentation and the literature—the importance of familiarizing students with the tools of their trade and the reality of law firm economics—and discuss how they relate to incorporating a writing assignment in a casebook course.²

* © 2006, Pamela Lysaght. All rights reserved. Pamela Lysaght is an associate professor of law and director of writing programs at University of Detroit Mercy School of Law. This Article was presented at a symposium hosted by Brooklyn Law School titled *Teaching Writing and Teaching Doctrine: A Symbiotic Relationship?* The Author thanks Professor Marilyn Walter for organizing the symposium, as well as for her extraordinary leadership in the legal writing field. The Author also thanks Professors Kristin Gerdy and Elizabeth Fajans for their invaluable editorial comments on earlier versions of this Article.

¹ In addition to Professor Carol McCrehan Parker's accompanying article, *Writing Is Everyone's Business: Theoretical and Practical Justifications for Teaching Writing-across-the-Law-School Curriculum*, 12 Leg. Writing 175 (2006), see for example Barbara J. Busharis & Suzanne E. Rowe, *The Gordian Knot: Uniting Skills and Substance in Employment Discrimination and Federal Taxation Courses*, 33 John Marshall L. Rev. 303 (2000); Philip C. Kissam, *Thinking (By Writing) about Legal Writing*, 40 Vand. L. Rev. 135 (1987); Pamela Lysaght & Cristina D. Lockwood, *Writing-across-the-Law-School Curriculum: Theoretical Justifications, Curricular Implications*, 2 J. ALWD 73 (2004); and Carol McCrehan Parker, *Writing throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 Neb. L. Rev. 561 (1997).

² This Article uses the terms “casebook courses” and “casebook faculty,” which were coined by Professor Mary Beth Beazley. As used here, the terms describe non-legal-writing courses—i.e., “doctrinal” courses—taught by non-legal-writing faculty. The term “doctrinal”—as in doctrinal courses and doctrinal faculty—is disfavored because it fails to recognize that legal writing faculty, as well as other skills faculty, also teach doctrine. As Professor Amy Sloan has written, there are, in fact, a number of similarities between the “pedagogical goals in a traditional first-year doctrinal class and a typical first-year legal research and writing class . . .” Amy E. Sloan, *Erasing Lines: Integrating the Law School Curriculum*, 1 J. ALWD 3, 3 (2002). One obvious difference, however, is that legal writing courses are not dependent upon traditional casebooks; hence, the preferred terms “casebook courses” and “casebook faculty” more accurately describe non-legal-writing and skills courses and faculty. *But see* Julie Cheslik, *The Battle over Citation Form Brings Notice to LRW Faculty: Will Power Follow?* 73 UMKC L. Rev. 237, 238–239 (2004) (noting the emergence of the term “casebook faculty” but suggesting that the term may be “derisive”). The terms as used in this Article are not intended to be derisive.

In many ways, a writing assignment in a casebook course can function as a bridge or passage to practice in ways that assignments in legal writing courses cannot—at least not as well. This is because casebook courses can introduce students to a broader array of legal documents (the tools of the trade) and sources than the more typical legal writing course, which often by necessity focuses on those types of assignments that provide a basis for teaching objective writing and persuasive writing—typically, memoranda, briefs, and client letters.³ While these are venerable vehicles for teaching legal analysis and writing, they do not exhaust the types of documents lawyers encounter routinely. Students need exposure to these other types of documents before they enter the practice. An assignment in a casebook course also allows students to apply what they have learned about writing and research in their Legal Research and Writing (LRW) courses to new situations.⁴ Furthermore, casebook courses can place more emphasis on the finished product—the documents that the students produce—rather than on the process of writing, which focuses in part on using writing to create meaning.⁵

The reality of law firm economics is that there is no gentle passage that helps students with their transition from law school to law practice. The golden years of partners mentoring newly minted lawyers, if those golden years ever existed, have been vir-

³ According to the 2006 survey conducted by the Association of Legal Writing Directors and the Legal Writing Institute, memoranda, appellate briefs, pretrial briefs, and client letters are the most common assignments in required legal writing courses. *2006 Survey of the Association of Legal Writing Directors and the Legal Writing Institute* question 20 (available at www.alwd.org and www.lwionline.org); see also Eric B. Easton et al., *Sourcebook on Legal Writing Programs* 21 (2d ed., ABA 2006).

⁴ The importance of students applying what they have learned in legal writing to new situations is itself a justification for providing writing assignments in casebook courses. See Lysaght & Lockwood, *supra* n. 1, at 73 (citing Susan Hanley Kosse & David T. ButleRitchie, *How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study*, 53 J. Leg. Educ. 80, 96–97 (2003); Sam Wineburg & Laurel Currie Oates, *Education's Promise*, 3 Leg. Writing 1, 17 (1997)); see also Easton et al., *supra* n. 3, at 172.

⁵ There is a rich body of legal writing scholarship discussing the shift from emphasizing the finished product to emphasizing the process and social context of writing. See e.g. Busharis & Rowe, *supra* n. 1; Jo Anne Durako et al., *From Product to Process: Evolution of a Legal Writing Program*, 58 U. Pitt. L. Rev. 719 (1997); Parker, *supra* n. 1; Terrill Pollman, *Building a Tower of Babel or Building a Discipline? Talking about Legal Writing*, 85 Marq. L. Rev. 887 (2002); J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 Wash. L. Rev. 35 (1994). For a brief overview of the scholarship, see Lysaght & Lockwood, *supra* n. 1, at 94–100, and nn. 150–182. For an excellent discussion of which theories and types of assignments best promote learning, see Laurel Currie Oates, *Beyond Communication: Writing as a Means of Learning*, 6 Leg. Writing 1 (2000).

tually extinguished under the burden of billable hours.⁶ Employers desire, even seek, graduates who can competently prepare an effective document on behalf of their client, often in a short amount of time.⁷ Law faculties often debate the extent of their ultimate role in preparing students to enter the profession, a debate that may be unique in professional education: Other professional schools routinely incorporate experiential learning into their curricula. Curricular debates aside, individual law faculty who take seriously their students' preparation for the practice of law may find that requiring their students to draft relevant legal documents in their casebook courses promotes their students' transition from law school to law practice.⁸

But, agreeing that a writing assignment in a casebook course is worthwhile is one thing; execution is quite another. As with any new endeavor, there are choices and considerations. This article will consider those choices and considerations a casebook professor may encounter initially. I will first highlight the challenges casebook faculty may face in developing writing assignments; second, I will propose a process or methodology for creating effective writing assignments, focusing on assignments for casebook courses; and finally, I will discuss briefly effective critiquing.⁹

⁶ Byron D. Cooper, *The Integration of Theory, Doctrine, and Practice in Legal Education*, 1 J. ALWD 51, 53 (2002).

⁷ In fact, employers seek far more. "Today's legal employer wants competency, respect, trust, judgment, flexibility, communications skills, resilience, management skills, an ability to work with others, leadership, a strong work ethic, and a commitment to client service." Molly Warner Lien, *Breach of Trust: Legal Education's Failure to Prepare Students for the Practice of Law*, 1 J. ALWD 118, 120 (2002).

⁸ See also Nancy L. Schultz, *How Do Lawyers Really Think?* 42 J. Leg. Educ. 57, 62–66 (1992) (noting that law school graduates have not been adequately prepared to face the realities of law practice). Students' inadequate preparation to enter the profession has, in fact, been a common theme in the literature. The most recent attempt by the American Bar Association's Section on Legal Education and Admission to the Bar to generate curricular changes among law schools is the now well-known *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (ABA 1992). The Carnegie Foundation, as part of its series reporting on professional education, examined legal education. For a summary of its findings, see Carnegie Foundation for Advancement of Teaching, *Summary: Educating Lawyers: Preparation for the Profession of Law* (2007) (on file with the Journal). The book summarizing The Carnegie Foundation's report was published in March 2007. See William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass 2007).

⁹ Most of this material draws heavily on my own experiences in helping to develop and implement University of Detroit Mercy's Writing-across-the-Curriculum Program, which was begun in 1998, as well as many discussions over the years with colleagues at other law schools that were considering developing a writing-across-the-curriculum program. In particular, the characteristics of, and the process for, creating effective writing assignments in a casebook course discussed in part 2 are based on workshops conducted at

I. THE CHALLENGES

Casebook courses share certain common features in how they are traditionally taught and in how they are typically staffed. First, most casebook courses are taught using casebooks. Second, most casebook courses generally culminate in a final exam—often an essay-style exam. Third, many schools staff casebook courses with traditional tenure-track or tenured faculty who have often distanced themselves, in pre-disposition as well as in years, from the practice of law. Yet the very structure of casebooks, the typical examination style, and the distance from practice can make creating meaningful assignments more challenging.

First, casebooks are filled with appellate decisions from various jurisdictions. These decisions are supplemented with, for example, sections from a restatement, law review excerpts, statutes, possibly uniform laws or model codes, and even the occasional international treaty or law. But the reality of law practice is that clients pose questions that must be resolved in the context of a particular jurisdiction. Professors teaching from a casebook may not be as sensitive to jurisdictional issues and hierarchy of authority principles as are legal writing professors and real-world lawyers. Thus, just thinking in terms of creating a problem within a jurisdiction may pose a challenge.¹⁰

Second, casebook faculty often rely on Socratic dialogues or lectures to deliver the material, but they just as often test by the problem method, using essay questions.¹¹ In other words, professors teach students how to tear apart a case, but they test on their ability to synthesize a number of cases and other sources in the casebook.¹² On exams, students typically are provided a fact pat-

University of Detroit Mercy.

¹⁰ See also Cooper, *supra* n. 6, at 61; Easton et al., *supra* n. 3, at 22.

¹¹ For a general critique of law school examinations, see Nancy B. Rapaport, *Is "Thinking Like a Lawyer" Really What We Want to Teach?* 1 J. ALWD 91, 99–102 (2002). For a brief discussion of the "unintended consequences" of relying on the case-dialogue method of teaching law students, see Sullivan et al., *supra* n. 8, at 5–6.

¹² There is a disjuncture between these two methods that has not been adequately discussed in the legal literature. (And, the topic is beyond the scope of this article.) There are, however, proponents of teaching through the problem method. See e.g. Susan Kurtz et al., *Problem-Based Learning: An Alternative to Legal Education*, 13 Dalhousie L.J. 797 (1990); Myron Moskowitz, *From Case Method to Problem Method: The Evolution of a Teacher*, 48 St. Louis U. L.J. 1205 (2004); Myron Moskowitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. Leg. Educ. 241 (1992); Steven J. Shapiro, *Teaching First-Year Civil Procedure and Other Introductory Courses by the Problem Method*, 34 Creighton L. Rev. 245 (2000).

tern designed to incorporate a multiplicity of issues. Students are required to identify an issue, provide the relevant rule from the casebook or supplemental source, and develop the arguments. Students then move on to the next issue in the fact pattern. Moreover, students are often encouraged to focus on developing the potential arguments rather than the bottom-line conclusions. Additionally, students are usually required to write an essay rather than communicate their answer through a type of legal document. Even if the students are required to structure their essay as a legal document, it is most often in the form of a client letter or memorandum—two documents already familiar to students and thus less challenging than new genres.

Writing assignments, on the other hand, often require a more complex synthesis and analysis than what is expected in a typical in-class examination. Instead of focusing on numerous issues, the student is presented with one or two issues, requiring in-depth research and analysis. Moreover, the conclusion is often very important in a writing assignment that seeks to provide advice to a client. Finally, the resolution of that analysis is communicated through a type of legal document—not an essay.

Even if individual casebook faculty create highly nuanced examinations that require students to develop sophisticated analyses that ultimately advise the client on how to proceed in the given situation, it is unlikely the professor provides substantive feedback and suggestions for improvement—in analysis, writing, and organization—on each student's examination. Yet, meaningful feedback is important to the learning process.¹³ Indeed, the time it takes to evaluate a writing assignment, which is considerably more than the typical essay exam, can act as a restraint for many casebook faculty with healthy scholarship agendas.

Put another way, experience in creating and grading essay examinations does not necessarily translate into developing writing assignments that require students to prepare a type of legal document on behalf of a client with a problem in the subject area.¹⁴ Thus, the structure of casebooks and the evaluation process in

¹³ See *infra* pt. III.

¹⁴ For discussions of how casebook faculty's lack of experience in designing writing assignments presents opportunities for coordination and collaboration with legal writing faculty, see Lisa Eichhorn, *The Role of Legal Writing Faculty in an Integrated Curriculum*, 1 J. ALWD 85, 90 (2002); Lysaght & Lockwood, *supra* n. 1, at 105–106; Suzanne E. Rowe & Susan P. Liemer, *One Small Step: Beginning the Process of Institutional Change to Integrate the Law School Curriculum*, 1 J. ALWD 218, 222–224 (2002).

most casebook courses pose challenges for the casebook professor who is not experienced in developing and grading writing assignments.

The third potential challenge—intellectual distance from practice—can be especially difficult. This is because, if we are honest with ourselves, distance from practice can involve ingrained attitudes about the practice of law. How often do we hear faculty—or ourselves—make disparaging remarks about the everyday practice of law?¹⁵ Similarly, some faculty are openly hostile to the “skills” side of legal education, which often accounts for certain attitudes about legal writing and clinical faculty.¹⁶ Thus, it may be a particular challenge for them to see how a writing assignment can have intellectual integrity yet teach students how to prepare a legal document. And, unless a writing assignment is mandated in certain courses or across the curriculum, this challenge may prove insurmountable.

The temporal distance from practice is relatively easy to overcome: Casebook faculty can consult with legal writing faculty and

¹⁵ An obvious disdain, or at least an obvious indifference, for the practice of law sometimes seems to be a prerequisite for hiring: “What qualifies a person, therefore, to teach law is not experience in the work of a lawyer’s office, not experience in dealing with men, not experience in the trial or argument of cases, not experience, in short, in using law, but experience in learning law.” Joel Seligman, *The High Citadel: The Influence of Harvard Law School* 37 (Houghton Mifflin Co. 1978) (quoted in Rapaport, *supra* n. 11, at 101 n. 36); see also Daniel B. Hinshaw, *Models from Other Disciplines: What Can We Learn from Them?* 1. J. ALWD 165, 181 (2002) (“In a discussion group this morning, a comment was made that most individuals who join law school faculties don’t like to practice their profession. I would suggest that this statement is worthy of some reflection. If you could come to a real understanding of why you don’t like to practice your profession, you may come to the heart of what you need to do to fix it.”).

¹⁶ Hostility to skills faculty can manifest in status issues for legal writing faculty. While this attitude is changing, it remains a serious problem in the legal academy, especially because women dominate the legal writing field, which in turn raises the specter of gender discrimination. See generally Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 Temp. L. Rev. 117 (1997); Mary Beth Beazley, “Riddikulus!”: *Tenure-Track Legal-Writing Faculty and the Boggart in the Wardrobe*, 7 Scribes J. Leg. Writing 79 (2000); Cheslik, *supra* n. 2; Jo Anne Durako, *Dismantling Hierarchies: Occupational Segregation of Legal Writing Faculty in Law Schools: Separate and Unequal*, 73 UMKC L. Rev. 253 (2004–2005); Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 J. Legal Educ. 562 (2000); Jan M. Levine & Kathryn M. Stanchi, *Women, Writing & Wages: Breaking the Last Taboo*, 7 Wm. & Mary J. Women & L. 551 (2000–2001); Susan P. Liemer, *The Hierarchy of Law School Faculty Meetings: Who Votes?* 73 UMKC L. Rev. 351 (2004–2005); Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. Leg. Educ. 313 (2000); Kathryn M. Stanchi, *Who Next, the Janitors? A Socio-Feminist Critique of the Status Hierarchy of Law Professors*, 73 UMKC L. Rev. 467 (2004–2005); Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools’ Dirty Little Secrets*, 16 Berkeley Women’s L.J. 3 (2001); Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 J. ALWD 12 (2002).

practitioners of the subject area for ideas. Graduates are an invaluable resource.

II. CREATING EFFECTIVE ASSIGNMENTS IN CASEBOOK COURSES

The characteristics of an effective writing assignment depend on the purpose of the assignment. If the purpose of the assignment is to teach legal writing, then there is an additional challenge for the casebook professor not discussed above in Part 1. Unless the professor is also an experienced legal writing professor, he or she is probably not familiar with learning theories, composition theories, and the literature on effective critiquing—all of which inform the modern legal writing course.¹⁷ This lack of expertise is in no way fatal, but it cannot be ignored. In my view, the teaching of legal writing as a discipline is best left to legal writing professors, especially where law schools have invested in the program and the professors so that the professors can gain the expertise to teach writing effectively.

If, however, the purpose is to supplement the legal writing program¹⁸ and, even more important, to create a bridge to the practice of law, which is my thesis, then I would suggest that effective casebook writing assignments have three characteristics. First, the assignment has a realistic quality to it—i.e., it is not an academic exercise. Second, the assignment requires students to communicate their solution through a type of legal document (particularly not one covered in the required legal writing program). Third, the assignment exposes students to a range of research resources, especially in that subject area.¹⁹

I will offer some examples from my criminal law course. One semester, students prepared an analysis of pending legislation in Michigan concerning the issue of consent in date-rape cases. For a

¹⁷ For a comprehensive discussion of the modern legal writing course, see generally Easton et al., *supra* n. 3, and the sources cited therein.

¹⁸ Indeed, writing assignments in casebook courses should enhance a school's legal writing and research program, not supplant it. See Lorne Sossin, *Discourse Politics: Legal Research and Writing's Search for a Pedagogy of Its Own*, 29 New Eng. L. Rev. 883, 896 (1995) (noting the importance of a separate legal research and writing program).

¹⁹ For a more in-depth explanation of how these characteristics relate to the elements of a comprehensive writing-across-the-law-school-curriculum program and how those promote learning, see Lysaght & Lockwood, *supra* n. 1, at 100–106; see also Easton et al., *supra* n. 3, at 191–193. For a discussion of the characteristics of effective writing assignments in first-year required legal writing courses, see Easton et al., *supra* n. 3, at 22–24.

follow-up assignment, students were told to assume the legislation had passed and they were required to draft standard criminal jury instructions. Another semester, students drafted proposed legislation to address pedophilia with an accompanying bill analysis discussing the need for the proposed legislation. This required them to conduct a thorough review of the current legislation and case law. (In light of the Jessica Lunsford case in Florida, Michigan's laws protecting children from pedophiles looked inadequate.) These assignments were relevant to the subject, involving real-life issues. The students learned how to draft legislation and jury instructions and how to develop a bill analysis report. And, they were exposed to a variety of resources: in addition to statutes, cases, and legislative histories, they looked to statistical data, crime reports, and various media reports. The students were highly engaged and enthusiastic about the projects.

But, creating effective writing assignments with these characteristics requires planning. The following section provides a process that I have employed for a number of years. A caveat: Any time one creates a list of steps, it suggests a linear and sequential process. That is not the case. Some of these steps, particularly the first two, occur concurrently because one informs the other.

A. Determine the Purpose and Context of the Assignment

An effective writing assignment in a casebook course becomes a supplemental text, a "pedagogical partner" to the primary teaching materials.²⁰ Consequently, the goal is to create an assignment that requires students to research the problem, arrive at a solution or strategy, and apply that solution or strategy in the context of preparing a realistic legal document. Early tasks in problem development, therefore, involve determining which doctrines or concepts students will be required to research and the type of document students will prepare to communicate their solution or strategy.

In selecting the doctrine, care should be taken to create a problem that is interesting and has a "real-life" quality to it.²¹ Be-

²⁰ Sossin, *supra* n. 18, at 895; see also Lorraine Bannai et al., *Sailing through Designing Memo Assignments*, 5 *Leg. Writing* 193, 200 (1999). Although this latter article focuses on creating effective memoranda for legal writing courses, the advice offered is applicable to a wide range of assignments.

²¹ See also Bannai et al., *supra* n. 20, at 205–206; Lysaght & Lockwood, *supra* n. 1, at 101–102.

cause students need to practice their researching skills as well as their writing and drafting skills, students should have to research in sources prevalent in that subject area. For example, a problem in a Professional Responsibility course should require students to research ethics opinions. Therefore, in selecting the doctrine, available resources is an important consideration. Moreover, it may be necessary to introduce students to the range of resources available and how to locate and use those resources. This can often be accomplished by asking a law librarian to provide a guest lecture or an out-of-class tutorial.

In selecting the type of document, consider the types of legal documents that may be unique to that area of practice. For example, a course in real estate transactions could require students to draft condominium documents; a course in family law, a divorce settlement; and a course in trusts and estates, a will or codicil.²² Having students prepare documents for which there are readily available forms provides an additional pedagogical opportunity: Students need to learn how to modify forms to suit their clients' needs. Examples that cut across many subject areas include having students draft legislation or jury instructions. If students have not been instructed on how to locate and use the particular type of document in their required legal writing and research course, it may be necessary to introduce the document in the casebook course.

Whatever the nature of the assignment, it should be manageable while enhancing the students' abilities to tackle increasingly more complex problems than encountered in their first-year legal writing course. Creating manageable assignments is an art—not a science—borne of experience. In general, however, manageable assignments are “challenging but not overwhelming to students.”²³ Inexperienced professors may find it helpful to consult briefly with a legal writing professor, who will be able to provide a realistic estimate of how much time the students will need to complete the assignment.

²² See also Easton et al., *supra* n. 3, at 180–181.

²³ *Id.* at 22.

B. Determine the Timing of the Assignment

Two factors inform this determination. First, when can the assignment realistically be returned to students with feedback?²⁴ (This should be before the final exam.) More specifically, where in the semester is there a block of time to grade the assignment, and how large is that block of time? Second, is it necessary to cover certain doctrinal material before the assignment can be handed out?

As to the first, sometimes the block of time available to evaluate students' performance, with appropriate feedback, determines the nature of the assignment. Less grading time means the assignment needs to be relatively short and not particularly burdensome to grade. A number of assignments lend themselves to these limitations—for example, contractual clauses, proposed legislation or amendments to current legislation, pleadings, and jury instructions. Ideally, the course syllabus would provide the date that students will receive their assignment as well as when their graded papers will be returned.²⁵

The second factor—whether certain material has to be covered in class before the assignment is given—may of course influence the doctrinal goal of the assignment. It is always possible, however, to use the assignment to cover material that will not be discussed in class, or to hand out the assignment in advance and time the completion of it to when the material will be covered in class, perhaps at a more sophisticated level since students will already have some familiarity with the concept or theory. All of these timing events work; they just require planning.

²⁴ For a discussion of the importance of providing students with feedback and credit for their writing assignments, see Lysaght & Lockwood, *supra* n. 1, at 103–104; see also Easton et al., *supra* n. 3, at 192–193.

²⁵ I also find it useful to include on the syllabus for the day their assignments will be returned a requirement that they review their copy of the assignment they submitted. This ensures that the material is fresh in their minds and makes the review process, if class time is devoted to discussing the assignment, more meaningful. See also Bannai et al., *supra* n. 20, at 209.

*C. Consider How the Problem Will Be Presented to Students
and the Nature of the Instructions for Completing
and Submitting the Assignment*

Whatever the nature of the assignment, it should be factually complete, i.e., students should have everything they need to complete the assignment (except, of course, research). An exception is when the very nature of the assignment requires students to find out more information before arriving at a solution or a strategy. For example, certain facts may be given to the class, and part of the assignment may be to conduct a client interview.

Another consideration is whether to use a fact pattern or to draft (or appropriate from another source) the necessary documentation, or to use a combination of the two. Canned fact patterns are disfavored because they do not replicate practice. In other words, clients do not walk into an attorney's office with a fact sheet, such as students are presented with for examinations, providing all the necessary facts to solve the problem. Providing a more realistic experience for students involves creating the documents that comprise a record or client file, such as a complaint, an answer, interrogatories, and depositions. Of course for some types of assignments, such as preparing an analysis of pending legislation, very little documentation is necessary.

Considerations in developing the instructions involve determining the role the professor will assume and whether students can collaborate on the assignment—in whole or in part, for example sharing research. The most typical roles that a professor might assume include the client (to facilitate uncovering the facts through an interview) and the senior partner (to provide mentoring). In either case, it is important to communicate to students beforehand what assistance they can expect from their professor—in class and during office hours. Similarly, the degree to which students will be permitted to work together or discuss the assignment with their classmates (or others) needs to be communicated to students, preferably in writing, when the assignment is distributed. There are good reasons to allow collaboration, especially on the actual completion of the assignment. Lawyers in a law firm do not typically work in isolation. They discuss, debate, and collaborate, time permitting. Students need opportunities in law school to

learn how to collaborate in creating documents.²⁶ An added advantage for faculty is fewer papers to critique.

More mundane considerations regarding instructions include whether to impose page or word limits, margin limits, specific formatting requirements, and the like. If the professor chooses to impose requirements, they should be included with the assignment. Another consideration is whether to set a due time in addition to the due date. This involves determining whether students can show up at the end of class to submit the assignment. It is also helpful to have a late submission procedure and policy.²⁷ This helps to avoid having to make difficult decisions by putting the burden on the students to follow a specific procedure, ensuring equality of treatment. (An example of these types of instructions is included in Appendix A.)

D. Test the Assignment

Casebook faculty drafting writing problems for the first time will no doubt note that the process outlined above bears some similarities to drafting essay examinations. But, writing assignments are less forgiving than examinations. Students have the assignment in hand; they are working on the assignment longer than three or four hours, the time of a typical law school exam; and they are, for better or worse, discussing the assignment with each other, at least in broad terms. They will know if the assignment is not working or, worse, is an exercise in futility.²⁸ And, they will resent the waste of their time and the missed learning opportunity.

One of the most helpful ways to test the assignment is to prepare an evaluation checklist before distributing the assignment to students. Drafting a checklist helps focus the objectives of the assignment as well as the range of permissible answers. It is worth noting, however, that checklists for writing assignments, just like checklists for examinations, need to be flexible, allowing the professor to make necessary adjustments after some initial grading of

²⁶ Lysaght & Lockwood, *supra* n. 1, at 105.

²⁷ See also Bannai et al., *supra* n. 20, at 212.

²⁸ On the importance of making sure the assignment works, see Bannai et al., *supra* n. 20, at 206–207.

the papers.²⁹ (An example of a checklist is provided in Appendix B.)

III. THREE TIPS FOR EFFECTIVE CRITIQUING

Critiquing students' work is a powerful teaching tool.³⁰ Indeed, a good critique provides students with evaluative feedback, promotes appreciation of how the reader reacts to their writing, and motivates them to improve.³¹ There is a growing body of literature on critiquing writing assignments.³² While much of the literature is aimed at optimizing learning through assessment in legal writing courses, experience has shown that certain practices are suitable for writing assignments in casebook courses. First, a combination of margin comments and end comments is more effective than simply handing back a checklist.³³ The margin comments focus on specifics, including reader reaction, while the end comments provide a summation of the strengths and weaknesses, along with suggestions for improvement.³⁴ In drafting either type of comment, it is helpful to recall that effective critiquing is not editing; instead, it is a dialogue between reader and writer, mentor and student.

Second, comments should be measured and not exclusively negative.³⁵ The goal is to provide a balance—commenting on both the strengths and weaknesses in the paper.³⁶ In truth, occasionally

²⁹ Easton et al., *supra* n. 3, at 62.

³⁰ *Id.* at 54–55; Steven J. Johansen, “What Were You Thinking?": Using Annotated Portfolios to Improve Student Assessment, 4 Leg. Writing 123, 127 (1998); Gregory S. Munro, *How Do We Know If We Are Achieving Our Goals?: Strategies for Assessing the Outcome of Curricular Innovation*, 1 J. ALWD 229, 237 (2002).

³¹ Jessie C. Grearson, *From Editor to Mentor: Considering the Effect of Your Commenting Style*, 8 Leg. Writing 147, 159–164 (2002).

³² See e.g. Linda L. Berger, *A Reflective Rhetorical Model: The Legal Writing Teacher as Reader and Writer*, 6 Leg. Writing 57 (2000); Anne Enquist, *Critiquing and Evaluating Law Students' Writing: Advice from Thirty-Five Experts*, 22 Seattle U. L. Rev. 1119 (1999); Jane Kent Gionfriddo, *The “Reasonable Zone of Right Answers”: Analytical Feedback on Student Writing*, 40 Gonz. L. Rev. 427 (2005); Mary Kate Kearney & Mary Beth Beazley, *Teaching Students How to “Think Like Lawyers”: Integrating Socratic Method with the Writing Process*, 64 Temp. L. Rev. 885 (1991); Richard K. Neumann, Jr., *A Preliminary Inquiry into the Art of Critique*, 40 Hastings L.J. 725 (1989). For a synthesis of the literature, as well as an overview of critiquing methods, see *Sourcebook*, *supra* n. 3, at 54–63.

³³ Easton et al., *supra* n. 3, at 55.

³⁴ *Id.*; Grearson, *supra* n. 31, 159–164.

³⁵ Nancy Soonpaa, *Using Composition Theory and Scholarship to Teach Legal Writing More Effectively*, 3 Leg. Writing 81, 99 (1997).

³⁶ Easton et al., *supra* n. 3, at 57.

a paper is submitted about which there is very little to say that is positive. This problem can be especially difficult for the novice teacher. Moreover, the novice may view the use of negative comments as a way to justify a failing grade. In these situations, however, it is sometimes more useful to summarize the problems and then ask the student to meet with the professor. The individual conference offers an opportunity to discuss the problems in more detail without overwhelming the student by over-commenting on the paper itself.

Third, an in-class discussion of the assignment provides an opportunity to go over the analysis in depth and to discuss the types of problems students had, why they had them, and how to they can avoid them in the future. These in-class discussions should occur shortly after students have received their critiqued papers.³⁷ For those professors concerned with spending class time on this endeavor, another option is to create a general memorandum addressed to all students that covers what would have been said in class. Also, it is often useful to place a few of the better papers on reserve so that students can review their own work in light of these examples.

IV. CONCLUSION

Law firms are increasingly expecting newly minted lawyers to arrive with a tangible portfolio of experience gleaned from law school. Providing students with assignments that replicate practice so as to better prepare them to bridge the chasm between the study and the practice of law need not, and should not, be the exclusive province of legal writing and clinical faculty. Casebook courses offer excellent opportunities for students to expand their writing and research experiences in ways that ease their transition from law school to law practice.

³⁷ See also *id.* at 59.

APPENDIX A

CRIMINAL LAW—P. LYSAGHT
WRITING ACROSS THE CURRICULUM ASSIGNMENT

Assignment and Audience:

You are a legislative aid for a Michigan State Senator who is a member of the Judiciary Committee. The following legislation has been proposed and referred to the committee. She has asked your team to draft a bill analysis report, setting forth a rationale for the bill, as well as its pros and cons. Footnotes to relevant authority that support your analysis of the bill are mandatory. An example of a bill analysis report is attached. Please review the example; we will discuss the general form and content of a bill analysis next week in class.

A bill to amend 1931 PA 328, entitled “The Michigan Penal Code,” (MCL 750.1 to 750.568) by adding section 520n.

The People of the State of Michigan Enact:

Sec. 520n. It is a rebuttable presumption in a prosecution for a violation of section 520(b), 520(c), 520(d), or 520(e), that, if the victim or the actor was married at the time of the alleged violation to an individual other than the victim or the actor, the victim did not consent to the sexual contact or sexual penetration.

Assignment Requirements:

The page limit is six double-spaced pages in 12-point font. Margins must be at least one inch, and the pages must be numbered. The report is due on Monday, February 7, at 9:00 a.m., via TWEN. Late papers will be reduced by 20% for each day the paper is late. A paper is one day late if it is submitted anytime after the due time and before 9:00 a.m. on Tuesday, February 8.

To submit your assignment, save the file with one team member’s mid-term examination number. Do NOT save the file using any other information. On the assignment itself, make sure every team member’s mid-term examination number is indicated on each page of the report. (You may want to use a header.) If you are con-

cerned about information embedded within the file that identifies the authors, then take steps to remove that information.

Teams and Collaboration Policy:

This is a collaborative assignment, which means you may work in groups of up to three classmates. You may not consult other students, state or federal legislators, professors, lawyers, or anyone else. I will be available during office hours to answer questions. I will also hold one open Q&A session immediately after class on Wednesday, February 2.

APPENDIX B

CRIMINAL LAW
WRITING ACROSS THE CURRICULUM
ASSIGNMENT CHECKLIST¹

Student Number:

- **Rationale**
 - problem of proof in acquaintance rape cases
 - protection of marriage
- **Background**
 - role of consent in prosecution of CSC cases
 - role of presumptions in criminal cases
- **Analysis**
 - advantages of proposed legislation
 - disadvantages of proposed legislation
- **Recommendation**
- **Depth of research**
- **Writing**
- **Organization**

Grading Scale:

- 40 = 4.0 (A)
- 35 = 3.5
- 30 = 3.0 (B)
- 25 = 2.5
- 20 = 2.0 (C)
- 15 = 1.5
- 10 = 1.0 (D)
- 5 = 0.5 (F)

¹ Author's Note: For writing assignments, I have found that general checklists that allow me to grade "holistically," as opposed to allocating points for each discrete item on the checklist, work best. Thus, if a writing assignment is worth 40 points, I equate those 40 points to a 4.0 scale and evaluate the overall effectiveness of the paper according to that scale. The checklist in this Appendix follows that format. Conversely, for exams in my case-book courses, my checklists are more detailed with allotted points for each item.