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RECENT DEVELOPMENTS

USING ENTERTAINMENT LAW TO TEACH LEGAL WRITING

ROBERT M. JARVIS*

I. INTRODUCTION

Of all the courses taught in the first year of law school, the one most disliked by law students is legal writing.¹ A number of reasons account for this. First, legal writing occupies a lowly place in the law school hierarchy.² It often is taught by adjunct professors, young lawyers, graduate students, non-lawyers, third-year students, or practitioners.³ This leads to the impression that the course is not important enough to warrant the attention of full-time faculty.⁴ Second, many schools grade the course on a pass/fail

* B.A., Northwestern University; J.D., University of Pennsylvania; LL.M., New York University. The author is associated with the firm of Baker & McKenzie (New York City) and is an Adjunct Associate Professor at Fordham University School of Law. The author wishes to thank Leslie S. Newman, Director of Legal Writing at the Benjamin N. Cardozo School of Law, and Judith A. Mellman, a member of the Class of 1989 of the Benjamin N. Cardozo School of Law, for their assistance in the development and implementation of the course described herein.

1. Legal writing courses often have been described as unending drudgery for both the faculty who teach such courses and their students. As to the former, see Gale, *Legal Writing: The Impossible Takes A Little Longer*, 44 ALB. L. REV. 298, 318-20 (1980); Rombauer, *Regular Faculty Staffing for an Expanded First-Year Research and Writing Course: A Post Mortem*, 44 ALB. L. REV. 392, 405 (1980); Comment, *A Student View of the Legal Research and Legal Bibliography Course at Utah and Elsewhere — A Proposed System*, 25 J. LEGAL EDUC. 553, 553 (1973). But see Rombauer, *First-Year Legal Research and Writing: Then and Now*, 25 J. LEGAL EDUC. 538, 550 (1973) [hereinafter cited as Rombauer, *First-Year Legal Writing*]. As to the latter, see Gale, *supra*, at 323; Rombauer, *supra*, at 410.

2. See Achtenberg, *Legal Writing and Research: The Neglected Orphan of the First Year*, 29 U. MIAMI L. REV. 218 (1975); Gale, *supra* note 1, at 317-18; Johnstone, *Student Discontent and Educational Reform in the Law Schools*, 23 J. LEGAL EDUC. 255, 273 (1970); Macaulay & Manne, *A Low-Cost Legal Writing Program — The Wisconsin Experience*, 11 J. LEGAL EDUC. 387, 388 (1959); Moreland, *Legal Writing and Research in the Smaller Law Schools*, 7 J. LEGAL EDUC. 49, 60 (1954).

3. See Johnson, *Legal Writing Programs: This Year's Models*, STUDENT LAW., Feb. 1980, at 11.

4. See Aaron, *Legal Writing at Utah — A Reaction to the Student View*, 25 J. LEGAL EDUC. 566, 566-68 (1973).

basis.⁵ This creates a natural disincentive on the part of students, who are more concerned with doing well in their graded courses. Third, legal writing usually is no more than one or two credits, while other first year courses are weighted more heavily.⁶

In an attempt to make legal writing more meaningful, law schools have tried a variety of approaches. Some law schools now require that full-time faculty teach the course.⁷ A number of law schools have made legal writing a graded course.⁸ At a few pioneering schools, legal writing has been expanded to four or more credits.⁹

Even where these changes have been made, however, legal writing has remained something of an academic stepchild, igniting neither student imagination nor enthusiasm. In the spring of 1986 the author undertook to teach legal writing at the Benjamin N. Cardozo School of Law in a new way specifically designed to interest students. The course was aimed at teaching legal writing through entertainment law. The author felt that entertainment law would provide a means of making legal writing a more glamorous and interesting course because of the immense popularity of entertainment law among students and the ease of transforming entertainment law issues into challenging and effective legal writing assignments. This article will review how that course was taught. Based on the results of the course, the article will suggest that legal writing can be made more interesting, and therefore more effective, by using entertainment law as the basis of class lectures and homework assignments.

II. COURSE OUTLINE AND STRUCTURE

The class was given to 16 students over a period extending from late January to mid-April. At the start of the semester the students were told that they were to assume that they were associates in a large New York City law firm which had just been re-

5. See Dyer, *Whatever Happened to Legal Writing at Utah?*, 26 J. LEGAL EDUC. 338, 339 (1974); Thurman, *Blueprint for a Legal Research and Writing Course*, 31 J. LEGAL EDUC. 134, 136 (1981).

6. See Brand, *Minority Writing Problems and Law School Writing Programs*, 26 J. LEGAL EDUC. 331, 337 (1974); See also Gale, *supra* note 1, at 322; Rombauer, *First-Year Legal Writing*, *supra* note 1, at 550.

7. See Dyer, *supra* note 5, at 338; Rombauer, *supra* note 1, at 392.

8. See Squires, *A Writing Specialist in the Legal Research and Writing Curriculum*, 44 ALB. L. REV. 412, 418 (1980).

9. See Gale, *supra* note 1, at 334; Kalven, *Law School Training in Research and Exposition: The University of Chicago Program*, 1 J. LEGAL EDUC. 107 (1948).

tained to represent Cable Visions Unlimited, Inc. ("CVUI") and its parent company, Mellman Communications Corporation ("MCC"). CVUI and MCC had been served during the past week with a complaint arising out of CVUI's cable wiring of the City of Jamestown, New York. The suit was brought by a group of Jamestown residents who lived in that part of the city known as Old Towne and who had banded together to form a group known as Citizens Against the Breaking of Legal Entitlements ("CABLE").

The gist of the complaint was that CVUI, which some time earlier had been awarded a franchise by the city to wire and provide cable service to the entire city, had improperly decided to forego wiring Old Towne. The complaint originally stated three causes of action: 1) a common law contract claim; 2) a statutory claim arising under the recently passed Cable Communications Policy Act of 1984;¹⁰ and 3) a first amendment claim. A fourth cause of action relating to the city's charter was added later. The complaint sought both damages and injunctive relief.

At the first class the students were provided with copies of the CABLE complaint and *Warth v. Seldin*,¹¹ a case dealing with the issue of group standing. The complaint and the concept of standing were discussed in depth during class. At the end of class the students were asked to prepare a case brief of *Warth* of no more than three pages in length and to turn it in several days later.

During the second class the students' case briefs were returned and reviewed. Typical errors were pointed out and improvements suggested. Copies of a model case brief were distributed so the students would get a sense of what should have been included in their briefs. The previous week's discussion of standing was continued and various trends in legal writing were described.¹²

The most important part of this class was preparation for the next class, at which the client, Judith A. Mellman, president of MCC, would be present to discuss the case. The students were asked to prepare a list of questions that they wanted to ask Ms. Mellman about the case. The students were also asked to prepare a letter to the attorneys for CABLE requesting a short extension of time to file an answer to the complaint. Both assignments were due a few days after the class.

10. 47 U.S.C.A. § 521 (West Supp. 1986).

11. 495 F.2d 1187 (2d Cir. 1974), *aff'd*, 422 U.S. 490 (1975). Students were given the Second Circuit's opinion for class discussion and then were asked to locate that of the Supreme Court.

12. The basis for the discussion on legal writing trends was R. WYDICK, *PLAIN ENGLISH FOR LAWYERS* (2d ed. 1985).

A final matter taken up during the second class was the distribution and review of various handouts. Each student was given a manila folder which contained the following materials: a copy of the complaint, a copy of a map of the various federal judicial districts in New York (including Jamestown), a short biography of the judge assigned to CVUI's case,¹³ two recent opinions by that judge dealing with standing,¹⁴ a letter prepared by the public relations department of the client outlining the rather complicated corporate structure of the client, and a cover memo briefly describing these materials. The students were told to place all future handouts in the file folder, which was designed to simulate a typical case file maintained by law firms.

At the third class the client was present.¹⁵ Before the client arrived the questions prepared by the students were reviewed, and the students were told that they would be expected to prepare a memorandum to the file recounting the meeting with the client. The students' letters to opposing counsel were returned and reviewed, and a model letter was distributed. The heart of this expanded 2-hour class was Ms. Mellman's interview. At the conclusion of class the students were instructed to limit their memos to five pages and were given a due date for the assignment.

During the fourth class the students' memos on the meeting with the client were returned and reviewed in-depth, along with a model memo. The model served as the basis of a discussion on the fundamental structure of intra-office memos, their purpose, and various "do's and don'ts." At the end of class the students were asked to prepare a report letter to the client regarding their assessment of the case (and, in particular, whether a motion could be made to dismiss the case on the grounds that CABLE lacked standing). The letter was due within a few days. Each student was also given a copy of a recent issue of the *Annual Survey of American Law*, which contained an article on standing.¹⁶ The students

13. The judge selected was the Honorable Michael A. Telesca. The biography and circuit map were both taken from FEDERAL BAR COUNCIL, SECOND CIRCUIT REDBOOK 1984, at 429 (T. Kingsley ed. 1984).

14. *Wilson v. Uttaro*, 623 F. Supp. 1158 (W.D.N.Y. 1985); *Sierra Club v. SCM Corp.*, 580 F. Supp. 862 (W.D.N.Y.), *aff'd*, 747 F.2d 99 (2d Cir. 1984).

15. In preparation for the meeting, the person who played the role of the client reviewed various profiles of the cable industry, including those on cable advertising, revenues, expenses, and customer base. The idea of using a client in connection with a legal writing course is not new. Nearly thirty years ago it was utilized in the first-year writing program, on an experimental basis, at the University of Washington School of Law. See King, *Legal Aid Combined with Legal Writing for First-Year Students*, 11 J. LEGAL EDUC. 111 (1958).

16. Note, *Federal Courts: Standing to Sue*, 1985 ANN. SURV. AM. L. 179. Exposing

were asked to incorporate material from the article into the letter.

At the fifth class the students' letters to the client were reviewed. The students were also provided with a model letter to the client which had been drafted based on the students' letters (which were treated as drafts). This allowed the students' mistakes to be noted. Copies of letters received from the client also were distributed.¹⁷

The sixth class, which was also a 2-hour class, focused on the fundamentals of legal research, including case reporters, the West key system, and the organization of statutes. At the end of class the first major writing assignment, the "canned memo," was distributed. The assignment required the students to go to the library to locate five designated cases which dealt with the issue of standing in the context of cable franchise suits,¹⁸ and to prepare a memo, of not more than twelve pages, discussing those cases in light of CABLE's decision to amend its complaint to include the fourth cause of action (alleging that the city violated provisions of its charter).

The seventh class consisted of a 2-hour tour of the library, given in groups of four students. At the conclusion of the tours students were given a short library research exercise. Prior to the beginning of each tour students were provided with a copy of a letter received from Ms. Mellman in response to the firm's report letter to her.

In class eight the students were required to turn in their canned memo and library research exercise. Class time was spent discussing proper legal citation. A *New York Times* article regarding the social impact suffered by persons who lived in areas not served by cable was also discussed.¹⁹

students to a law review article proved extremely beneficial as it gave them a sense of how secondary research sources are used by practitioners.

17. Letters from the client provided an important touch of realism to the class. In addition, the letters provided a means for adding new facts to the case based on class discussion, news developments, and previous assignments.

18. The five cases were: *Teleprompter of Erie, Inc. v. City of Erie*, 567 F. Supp. 1277 (W.D. Pa. 1983); *Three Rivers Cablevision, Inc. v. City of Pittsburgh*, 502 F. Supp. 1118 (W.D. Pa. 1980); *Philadelphia Community Cable Coalition Ass'n v. Telesystems Corp.*, 461 Pa. 471, 336 A.2d 883 (1975); *Kornegay v. City of Raleigh*, 269 N.C. 155, 152 S.E.2d 186 (1967); and *Orth-O-Vision, Inc. v. City of New York*, 101 Misc. 2d 987, 422 N.Y.S.2d 781 (Sup. Ct. 1979).

19. Geist, *In Cable TV-Less Queens, Satellite Dish is King*, *N.Y. Times*, Mar. 8, 1986, at 29, col. 1. This article was distributed and discussed in connection with the third cause of action. Like the article discussed *infra* note 20, this article appeared while the course was being taught. As such, its use in the course helped students understand the importance of reviewing newspapers and other non-legal sources.

The ninth class was devoted to the students' library research exercises and canned memos. Copies of a letter to the client, which recapped the canned memos and provided the students with a model of what had been expected of them in their canned memos, were distributed. Also handed out were another article about cable which appeared in the *New York Times*²⁰ and the students' first major research assignment. The assignment asked the students to prepare a memorandum evaluating the likelihood of CVUI obtaining partial summary judgment on the first amendment cause of action in the complaint. The students were given ten days to complete the assignment, which was not to exceed ten pages. The students were also given a citation exercise to complete.

The students' memos on the first amendment issue were reviewed at the tenth and final class. At the conclusion of class the second major research project was distributed. This assignment required the students to write a memo on the issue of whether CVUI had in fact violated the Cable Communications Policy Act of 1984, as alleged in the second cause of action in the complaint. One of the materials handed out in connection with this assignment was a telex from the CVUI project manager who had overseen the installation of cable in Jamestown. This telex served as the starting point for a lecture on other essential forms of office writing, such as telexes, telephone notes, and informal office memoranda.

During the next few weeks two 20-minute conferences were held with each student. The first conference was a diagnostic conference designed to discuss their first amendment memos. At the second conference the client was present. The student was required to summarize his or her findings regarding the Cable Communications Policy Act, and to field questions from the client. At the end of this conference the students turned in their memos on the Act.

In summary, sessions, participate in two conferences, and prepare:

1. An ungraded case brief;
2. An ungraded set of client questions;
3. A graded letter to opposing counsel;
4. A graded letter to the client;
5. A graded inter-office memorandum;
6. A graded canned memo assignment;

20. Friendly, *Cablevision Seeks New Wiring Schedule*, N.Y. Times, Mar. 23, 1986, at 40, col. 4. This article was distributed and discussed in connection with the first and fourth causes of action.

7. An ungraded library research exercise;
8. An ungraded citation exercise;
9. A graded research memo;
10. A second graded research memo; and
11. A graded oral presentation to the client.

III. COURSE EVALUATION

The course provided students with a healthy mix of writing tasks. While some of the assignments involved lengthy research and provided sufficient time for editing, other pieces were short and were expected to be completed quickly. Additionally, the course required students to write for three different audiences: the firm, the client, and opposing counsel. The course exposed students to four types of law: common, statutory, administrative, and constitutional. Finally, the course required the students to combine original research with prepared materials, cases, law reviews, and newspapers, and to react to an evolving factual pattern.

According to anonymous student evaluations completed after the course, most students who took the course found it challenging and exciting. Forty percent of the students returned the questionnaires, which asked the students to rank three components of the class on a scale of 1 to 10 (10 represented the highest possible score). The components judged were the overall class, the homework assignments, and the lectures. Each component received an average score of 7.2. Eighty-three percent of the students responding to the evaluation indicated that they enjoyed the single case theme, while 67% indicated satisfaction with the partner-associate model. Thirty-three percent of the students indicated that the class should have been taught as an upper-class elective. Only 17% of the students indicated that they were displeased with the course concept.

In particular, students liked the course format and welcomed the opportunity to interact with a client. Undoubtedly, a large part of the reason why students enjoyed the course had to do with the fact that it was focused on an entertainment problem in a law firm setting.²¹ Additionally, the setting allowed the students to more fully comprehend the importance of developing strong writing and

21. Recently, the Syracuse University College of Law experimented with giving its first-year students the option of participating in a "Law Firm" course in lieu of the school's standard legal writing course. Syracuse's "Law Firm" course has thus far been well received by both its faculty and students. Adams, *First-Year Students at Syracuse Skip Writing to Join 'Law Firm,'* NAT'L L. J., Apr. 6, 1987 at 4.

research skills.

IV. CONCLUSION

Legal writing and research skills are vital to effective lawyering. Unfortunately, the current method of teaching these skills during the first year of law school often works against, rather than in favor of, their acquisition. One way to remedy this problem and ensure that legal writing occupies an important place in the curriculum is to tie it to an exciting substantive area of the law. Doing so helps to build and maintain student (as well as faculty) interest and makes it more likely that students will finish their first year of law school with solid writing abilities.

Of all the substantive areas, entertainment law is among the best to choose when teaching legal writing. Because entertainment law is a relatively new field, there are many as yet unresolved issues from which assignments can be fashioned. A sub-field such as cable regulation, for example, allowed the traditional constitutional doctrine of free speech to be presented in the highly novel context of cable regulation and development.

Besides providing a wealth of pedagogical choices, entertainment law allows students to become exposed to traditional as well as contemporary legal authorities. Because entertainment law is expanding quickly, many assignments also require students to consult non-legal sources. By realizing early in their careers that research cannot stop with the law library, students are more likely to develop into effective advocates and counsellors.

A particular entertainment issue often will require students to consider the legal and business ramifications of a particular option or strategy. During the course the students constantly were forced to balance the client's understandable desire to be vindicated with its equally compelling need to maintain its reputation so that future cable franchises would not be jeopardized. In this way the students' natural desire to advocate litigation was tempered by the reality that individual lawsuits must be viewed within the context of an enterprise's overall growth plans.

Perhaps the best reason for using entertainment law issues, however, is the one discussed at the beginning of this article: students' general interest in the field. Even students who do not plan to enter the field upon graduation can be made interested in the subject. Entertainment issues constantly surround our society. Every day we read and hear about the entertainment field and entertainers. No matter where one turns in our society, one comes

into contact with such news. Thus, a legal issue drawn from the entertainment field is at once familiar and fascinating to students. Indeed, in another legal writing course this author drafted a writing problem involving arbitration issues. While this could have turned out to have been a mistake, the central figure in the problem was a well-known sports figure. As a result, many students who were not interested in legal writing became interested because of the sports figure.

In summary, there appears to be universal agreement on two points. First, legal writing and research skills are important. Second, many students find legal writing classes to be dull. Entertainment law offers a means to alleviate the boredom and, in so doing, makes it likely that students will gain more from this class.