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# EXAM WRITING AS LEGAL WRITING: TEACHING AND CRITIQUING LAW SCHOOL EXAMINATION DISCOURSE

Adam G. Todd\*

## I. INTRODUCTION

When I first started teaching legal writing some eight years ago, I did not include teaching law school exam writing or “blue book exam” writing in my curriculum.<sup>1</sup> In fact, I disdained anything having to do with law school exams. Law school exams had caused me so much anguish in law school that I could not bear the thought of revisiting them as a teacher. In addition, I did not believe the writing done in law school exams was sufficiently related to the work I had done as a practicing attorney to merit teaching.<sup>2</sup> Instead, I chose to focus on what I saw as “real world” writing<sup>3</sup>: writing encountered in the everyday practice of law.<sup>4</sup> I saw this practical writing as “real” writing compared to what students were doing in their other first-year law school classes.<sup>5</sup> My class was the “real

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1. When I use the term “law school exam” or “blue book exam” in this article, I am referring to the conventional examinations that are usually given at the end of the semester in many traditional doctrinal courses. These examinations usually account for most, if not all, of a student’s grade for the course. The typical law school exam consists of one or a series of essay questions that must be answered within a time constraint ranging from two to three hours. In this article, I adopt this definition of “blue book exams” and am much indebted to the arguments found in Philip C. Kissam’s excellent articles defining and scrutinizing law school exams, *Law School Examinations*, 42 VAND. L. REV. 433, 437 (1989), and *The Ideology of the Case Method/Final Examination in Law School*, 70 U. CIN. L. REV. 137, 153 (2001) [hereinafter Kissam, *Ideology*]. See generally Steve Sheppard, *An Informal History of How Law Schools Evaluate Students, With a Predictable Emphasis on Law School Final Exams*, 65 UMKC L. REV. 657, 658 (1997) (describing evolution of law school examinations questions from “brief didactic questions designed to measure rote memory to complicated hypotheticals designed to measure application”); Greg Sergienko, *New Modes of Assessment*, 38 SAN DIEGO L. REV. 463, 468 (2001) (asserting that essay examinations may misrepresent students’ knowledge).

2. See *infra* notes 17-26 and accompanying text for a discussion of the apparent lack of relevance of the blue book exam to the actual practice of law. This point is made explicit by Kissam in *Law School Examinations*, *supra* note 1, at 437.

3. This phrase is used by other legal writing professors. See, e.g., Jan M. Levine, *Leveling the Hill of Sisyphus: Becoming a Professor of Legal Writing*, 26 FLA. ST. U. L. REV. 1067, 1081 (1999) (differentiating between practical and scholastic legal writing).

4. “People seek the opportunity to teach legal writing because they like being lawyers, because they understand how much of our profession is inextricably linked to our being professional writers, and because they want to guide students into this wonderful world.” *Id.* at 1071.

5. See, e.g., *id.* at 1078 (describing that author’s law school experience).

thing”—what students were going to be doing as lawyers.<sup>6</sup>

In my class, I believed, students were able to do what they could not in their other first-year classes, that is, learn about and be like practicing lawyers.<sup>7</sup> Indeed, I would pepper my classes with “war stories” involving my and my friends’ practice of law. I would develop my class materials and assignments around situations and issues I had encountered in practice. I stressed what was useful to the practicing attorney. In addition to the standard writing assignments of memos and briefs,<sup>8</sup> I would spend time on real world writing such as client letters, requests for admissions and interrogatories, and settlement agreements. Finally, my comments on their papers and the emphasis I put on grading the assignments also focused on the practice of law once out of law school. I rarely spoke of the writing I had done as a law student, except perhaps in a passing, self-deprecating manner.

The textbooks I used were consistent with this approach.<sup>9</sup> They did not cover exam writing. Nor did they discuss other types of writing encountered in law school,<sup>10</sup> but instead focused on the writing done by attorneys. My legal writing colleagues also shied away from teaching, or even talking about, exam writing with me or their students.<sup>11</sup>

In my classes, students reacted favorably to this “real world” approach. They zealously advocated positions when role playing as attorneys. They met in small groups outside of class to work on ungraded discovery exercises or

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6. Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 NEB. L. REV. 561, 562 (1997) (“Words are the tools of a lawyer’s trade.”).

7. My assumption had been that the other doctrinal classes were being taught in the traditional Langdellian method with the primary assessment being at the end of the semester with an in-class final exam. My belief, however, was inaccurate. Some of my colleagues, in fact, were using teaching techniques and assessment mechanisms that fall out of this traditional model.

8. Many law schools’ legal writing programs require students to write objective memoranda during the first semester legal writing and advocative trial and appellate briefs during the second semester. See ASS’N LEGAL WRITING DIR. & LEGAL WRITING INST., 2002 SURVEY RESULTS, at iii, 5-12 [hereinafter SURVEY RESULTS] (reporting data on writing program curricula), available at <http://www.alwd.org> (last accessed Mar. 7, 2003); see also RALPH L. BRILL, ET AL., SOURCEBOOK ON LEGAL WRITING PROGRAMS 13-14 (1997) (describing content of first-year writing programs).

9. LAUREL CURRIE OATES ET AL., THE LEGAL WRITING HANDBOOK: RESEARCH, ANALYSIS, AND WRITING (1993); HELEN S. SHAPO ET AL., WRITING AND ANALYSIS IN THE LAW (3d ed. 1995). There are a number of legal writing textbooks that do address exam writing. See, e.g., CHARLES R. CALLEROS, LEGAL METHOD AND WRITING 149-66 (3d ed. 1998); RICHARD K. NEUMANN, JR., LEGAL REASONING AND LEGAL WRITING: STRUCTURE, STRATEGY AND STYLE 263-67 (4th ed. 2001).

10. There is some passing mention of writing and oral argument in moot court. Case briefing, which is done for preparation of doctrinal classes, is also addressed.

11. Some legal writing professors have been integrating exams and legal writing. See Nancy Millich, *Building Blocks of Analysis: Using Simple “Sesame Street Skills” and Sophisticated Educational Learning Theories in Teaching a Seminar in Legal Analysis and Writing*, 34 SANTA CLARA L. REV. 1127, 1128 (1994) (describing model upper division seminar in legal analysis and writing that helps students develop their analytical skills). See generally Herbert N. Ramy, *Two Programs are Better Than One: Coordinating Efforts Between Academic Support and Legal Writing Departments*, 9 PERSP. TEACHING LEGAL RES. & WRITING 148 (2001) (discussing how academic support program helps with legal writing assignments and exam-taking skills), WL 9 PERSPEC 148.

continued class discussions after class time on settlement negotiations.

Despite the success of this method to teaching legal writing, I felt that my class was disconnected from the rest of my students' law schoolwork. I felt this disconnection most acutely with students at the lower end of the class. These students, who were struggling in their doctrinal classes, were less concerned about writing for law practice and were more concerned with writing for their doctrinal law classes.<sup>12</sup>

As I became a more experienced legal writing teacher, I altered my approach. I began to spend more time in my classroom, in the development of my assignments and in my comments on students' written work, on the writing students do *in law school* and less on what they would do in the actual practice of law. While I did not change the fundamental nature of my teaching of legal writing, I dropped my disdain for teaching law school exam writing. In fact, I began to make it an increasingly important part of my legal writing curriculum. I did not drop the practical component and emphasis of my legal writing class, but cut it back to make room for teaching exam writing and addressing the immediate needs of student writing, analysis, and discourse as it applied to the writing the students faced in the next three years of study.

This adjustment in my teaching came out of two changes in my personal circumstances. First, as a full-time professor of legal writing, I was becoming more removed from the regular practice of law and thus my war stories were becoming old and the immediacy of teaching writing geared for the practice of law became more challenging for me. Second, I began to oversee the academic support programs at the school where I teach, and my academic support perspective made me pay more attention to the immediate needs of my students—particularly their need to prepare for the writing they do in law school as opposed to the writing they do in the practice of law.

I found my students very receptive to this change in my teaching. For many of my students, my class took on an even greater importance in their overall law studies. These students saw how my class directly connected to the skills needed in their other classes. Additionally, I was better able to engage students at the lower end of the class. To these students, exam writing was more practical than the "practical" writing I had been teaching previously that was geared solely for law practice. To these students, exam writing was "real world" writing; it was writing that was crucial to their immediate real world.

Having taught exam writing as a formal part of my legal writing curriculum, I have come to believe that exam writing is an area that legal writing professors should be teaching and discussing to a greater and more formal extent. Both students and the legal academy as a whole would benefit from the expertise of legal writing professionals in the teaching and academic study of one of the most widely used forms of legal writing.

Teaching the law school exam is, some would argue, a step backward in the

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12. Because students in my class receive only 1.5 credits as compared to the three credits they receive in their doctrinal classes, it was not surprising that many of these students would spend more time and work harder on the classes worth more credit.

fight to make legal education more responsive to the diverse learning methods of students and the needs of the profession.<sup>13</sup> While the MacCrate Report<sup>14</sup> and other authorities call for more practice and skills in the law school curriculum,<sup>15</sup> I appear to be advocating the opposite. Devoting valuable time in my legal writing class to the conventions of the limited and imperfect assessment tool of the traditional law school exam used in doctrinal courses and away from explicit lawyering skills arguably perpetuates and “enables” this flawed component of the legal academy.<sup>16</sup>

I certainly do not advocate, however, the perpetuation of the traditional blue book exam. In fact, the single-exam at the end of the semester regime that is used in many law school courses is an atrocity in many respects. Some argue that law school exams do not accurately assess the skills connected to law practice or legal analysis.<sup>17</sup> Overall, this assertion is true. There is a multiplicity of skills not assessed on a blue book exam that can be found in outstanding lawyers in practice. Key skills such as the ability to counsel troubled clients, negotiate favorable settlements, and be persuasive to a jury are not assessed.<sup>18</sup>

Professor Philip C. Kissam identified four intellectual functions tested, on the surface, in a blue book exam: (1) issue spotting; (2) identification of relevant legal authority; (3) application of legal authority to facts; and (4) organization of

13. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 38 (1992) (stating that students will be unprepared for legal practice if they only take theory courses); see also Levine, *supra* note 3, at 1070 n.15 (noting disjunction between law school and practice of law).

14. The “MacCrate Report” is the popular name for LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992).

15. See, e.g., Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109, 113-25 (2001) (documenting flood of articles addressing MacCrate Report); see also Suzanne Darrow-Kleinhaus, *Incorporating Bar Pass Strategies into Routine Teaching Practices*, 37 GONZ. L. REV. 17, 20 (2001-02) (stating that legal educators should incorporate practical skills into their teaching methods).

16. See similar analysis of academic support in Adam G. Todd, *Moving From Academic “Enabler” to Academic Support[er]: A Systemic Approach to Providing Academic Support*, 38 GONZ. L. REV. (forthcoming 2003).

17. “[T]he classical discipline manifest in our Blue Book [exam] system does seem unnecessarily harsh and inhumane, and we should strive instead to develop pluralistic disciplines within university law schools.” Kissam, *Law School Examinations*, *supra* note 1, at 503; see also Nancy B. Rapoport, *Is “Thinking Like a Lawyer” Really What We Want to Teach?* 1 J. ASS’N LEGAL WRITING DIR. 91, 99-100 (2002) (stating that law school exams measure student’s mastery of course material in comparison to others enrolled in that course and student’s ability to perform well in skill of answering exam questions).

18. A joke published in the student newspaper at Chase College of Law subtly makes the point about the disconnection between grades one achieves in law school and their connection to successful law practice. The joke states: “A’s make professors; B’s make judges; C’s make money.” RES DERELICTA, Dec. 2002; at 1; see also Stanley E. Cox, *Teaching Conflicts: An Essay About Conflicts in Teaching, With Application to the Teaching of Conflicts*, 27 U. TOL. L. REV. 593, 604 n.24 (1996) (“The old saw that the ‘A’ students make law professors, the ‘B’ students make judges, and the ‘C’ students make money, while hopelessly out of date on grade inflation grounds, may still describe the reality of limited candidate pools that are available for the law teaching profession.”).

material.<sup>19</sup> A legal writing professor who teaches large- and small-scale organization<sup>20</sup> and IRAC,<sup>21</sup> in essence, teaches these same intellectual functions. Professor Kissam goes on to point out, however, that the blue book exam involves deeper and more insidious components that are less connected to legal practice and a typical legal writing class; for example, a blue book exam's emphasis on speed, surprise, comprehensiveness of course material, and focus and privilege of a narrow form of discourse.<sup>22</sup> The type of writing found on a typical law school or bar exam answer is overly reductive.<sup>23</sup> It focuses on "paragraph" writing and thinking.<sup>24</sup>

Furthermore, there is often a disconnect between what is assessed in the traditional blue book exam and what is taught in the classroom.<sup>25</sup> Students are expected to understand course material in a comprehensive way for a traditional law school exam when the course materials are taught in a piecemeal fashion.<sup>26</sup> Much of the instruction and learning in the classroom is oral and aural, while the blue book exam assesses written discourse. Additionally, many professors emphasize analogical analysis in the classroom through extensive discussion of the facts of a given appellate case, but then assess the students' deductive analysis on the exam where the expectation is for a recitation of "Black Letter Law." It is these deeper insidious components of the blue book examination that make it an imperfect assessment tool and, in ways, a destructive force in legal instruction.

While some scholars have begun to bring the limitations of traditional law school exams to the academy's attention, it is naive to believe that the blue book exam will disappear overnight.<sup>27</sup> Both law faculty and students are inclined to

19. Kissam, *Law School Examinations*, *supra* note 1, at 466.

20. "Large- and small-scale organization" refers to the part of the writing process where material is organized. Large-scale organization requires the identification of the legal issues involved in a document. Small-scale organization requires defining the legal rules applied to the issues. HELENE S. SHAPO ET AL., *WRITING AND ANALYSIS IN THE LAW* 75-108 (4th ed. 1999).

21. IRAC is an acronym for a widely used organizational structure found in legal writing. It refers to issue, rule, application, and conclusion. See Terrill Pollman, *Building a Tower of Babel or Building a Discipline? Talking About Legal Writing*, 85 MARQ. L. REV. 887, 898 n.52 (2002) (stating that IRAC is an attempt to articulate a step-by-step guide to analytical organization).

22. Kissam, *Law School Examinations*, *supra* note 1, at 453.

23. *Id.* at 454.

24. "[T]he basic notion that 'rules' rather than 'practical judgments' solve problems and, more subtly, a notion that 'legal analysis' requires strict adherence to a careful, precise, and comprehensive analysis of legal forms and objective authorities that avoids more abstract, more imaginative, and nonlegal considerations." *Id.* at 491-92 (footnotes omitted).

25. See *id.* at 466 ("Law school course work and its relationship to exams can be characterized by two themes: fragmentation and discontinuity."); see also Linda R. Crane, *Grading Law School Examinations: Making a Case for Objective Exams to Cure What Ails "Objectified" Exams*, 34 NEW ENG. L. REV. 785, 786 (2000) (pointing out inconsistency between the method of teaching law school subjects and the testing of those subjects); Kissam, *Ideology*, *supra* note 1, at 155 (noting that case method provides little practice for students on major examination task of issue identification).

26. Crane, *supra* note 25, at 786.

27. This is because

most law professors are likely to have a significant attachment to the modern examination

maintain the status quo.<sup>28</sup> Thus, until there is a fundamental change in the assessment mechanisms in the law school classroom, legal writing professionals best serve their students and the legal academy by taking on rather than shunning the teaching of exam writing.<sup>29</sup> Teaching the beneficial components of exam writing has a sound pedagogical and practical basis.<sup>30</sup> Indeed, it is only through the teaching, studying, and critiquing of this form of legal discourse that its detrimental effects over students and the academy can be reduced and ultimately changed.<sup>31</sup>

## II. PEDAGOGICAL AND PRACTICAL REASONS TO TEACH EXAM WRITING

Including exam writing is pedagogically sound, practical, and advances good legal writing in law school and practice. Below are eight arguments for including the teaching of exam writing in the legal writing curriculum. First, teaching law school exam writing is directly teaching students what they need to achieve academic and professional success. Second, the discourse involved in exam writing is not inconsistent with the discourse taught in a standard legal writing class, because a good law school exam answer, on a certain level, requires that basic forms and conventions of legal writing and analysis be incorporated into its form. Third, including exam writing in the legal writing classroom fits within and promotes existing legal writing pedagogy. Fourth, addressing exam writing creates a “teachable moment” for a legal writing teacher. Fifth, the line between legal writing and doctrinal classes can be erased by legal writing professionals addressing exams in the classroom and scholarship. Sixth, the process for altering and ultimately improving the blue book exam regime should be developed through an assessment and critique of its conventions by legal writing professionals. The exam writing process can be transformed across the curriculum through the appropriation of exam writing into the legal writing

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system based on instinct and emotion as well as rationality. . . . Students are admitted to law schools today primarily on the basis of their prior successes with competitive and objective examination systems. . . . [M]ost contemporary law students probably enter the law school community with an inherent appreciation for competitive and quantitatively scored exams that approximate those examinations which served as a basis for their admission in the first place.

Kissam, *Law School Examinations*, *supra* note 1, at 462-63; *see also* Kissam, *Ideology*, *supra* note 1, at 137-38 (stating that legal education has been essentially the same for the past 100 years and there is reluctance to change it). I had the experience of law students complaining when I sought to incorporate a number of writing assignments into a criminal law class. The complaints came most stridently from some members of law review, whose journal work, they stated, could only get done and depended on only having a single exam at the end of the semester.

28. *See* Kissam, *Ideology*, *supra* note 1, at 137-38 & n.3 (noting that clinical legal education and writing programs face formidable skepticism and other obstacles from law faculties).

29. *See infra* Part II.A-B and D-E for a discussion of how the student and the law school are best served by the teaching of exam writing.

30. *See infra* Part II.C for a discussion of how including exam writing in the legal writing curriculum fits within and promotes existing legal writing pedagogy.

31. *See infra* Part II.F-G for a discussion of how the teaching, studying, and critiquing of blue book exam writing can lead to a transformation of the examination process.

curriculum and legal writing scholarship. Seventh, in addition to transforming and improving exam writing within the academy, legal writing professionals can have a significant impact in transforming the bar examination process, which relies on similar forms of legal discourse. Finally, legal writing professors, by teaching exam writing, can help improve academic support services in the legal academy, thereby helping students and the law school community.

### *A. Students Need to Learn Exam Writing to Succeed*

As a legal writing instructor, my primary mission is to prepare my students for law practice. This mission is thwarted if my students are not able to succeed in the written discourse of law school examinations.<sup>32</sup> Teaching exam writing provides the student with the tools necessary for success in school, the bar exam, and practice.<sup>33</sup> It is an unfortunate reality that the way law schools and bar admissions processes function is through an inordinate reliance on the law school essay exam.<sup>34</sup> By addressing exam writing, the legal writing instructor is, therefore, addressing a fundamental legal "skill" or set of skills. If the student cannot effectively write a law school exam, she will most likely not graduate or pass the bar exam. In addition, law school exam grades open the doors to key opportunities for law students.<sup>35</sup> Indeed, it is the grades from first-year courses (not the grades from legal writing classes<sup>36</sup>) that usually lead to law review, moot court, and clerkships with judges and large law firms.<sup>37</sup> Preparing students to succeed on exams, particularly in the first semester of the first year of law school when students do not fully appreciate the nature of the law school exam process, allows students to achieve their full potential in law school and the profession.

Exam writing also helps students succeed in practice. Most lawyers, particularly those who earned their degrees from law schools lacking formal or

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32. See Lucia Ann Silecchia, *Legal Skills Training in the First Year of Law School: Research? Writing? Analysis? Or More?*, 100 DICK. L. REV. 245, 275 (1996) (noting that sound writing is needed to do well on law school exams).

33. To use the parlance of Northern Kentucky University's mission statement, it is "learner-centered." *Defining Our Future: Northern Kentucky University's Five-Year Strategic Agenda*, at <http://www.nku.edu/~visions/stagenda1.html> (last accessed Mar. 8, 2003).

34. See *supra* notes 17-28 and accompanying text for a discussion of the apparent irrelevance of the blue book exam to the actual practice of law and the dim prospects for change.

35. "[G]rades in substantive courses help students obtain starting positions, but it is research and writing which makes careers." Allen Boyer, *Legal Writing Programs Reviewed: Merits, Flaws, Costs and Essentials*, 62 CHI.-KENT L. REV. 23, 24 (1985), quoted in Lorne Sossin, *Discourse Politics: Legal Research and Writing's Search for a Pedagogy of its Own*, 29 NEW ENG. L. REV. 883, 885 n.13 (1995).

36. Legal writing classes usually do not award much credit for their courses and thus account for only a small percentage of the student's overall grade average in his or her first year. See SURVEY RESULTS, *supra* note 8, at 5 (listing data on credit hours awarded each semester for legal writing programs). Many employers and most law reviews invite the students with the highest overall GPA and usually do not separately examine legal writing grades.

37. James R.P. Ogloff et al., *More Than "Learning to Think Like a Lawyer": The Empirical Research on Legal Education*, 34 CREIGHTON L. REV. 73, 187 (2000); see also Kissam, *Law School Examinations*, *supra* note 1, at 463 (noting that law school grades and class rank are used to select students for "prestigious extra-curricular activity").



developed legal writing instruction, initially learned much of their legal language and discourse through the law school essay.<sup>38</sup> Those in practice, having graduated from law school and passed the bar exam, are themselves fluent in the conventions of exam writing. As a result, it is likely they have expectations about the type of writing that is appropriate in the practice of law. Some of these expectations may very well have sprung from the learned conventions of exam writing. As part of the training to enter the discourse of the legal profession, the law student is well served to understand and master the specific requirements of law school exam writing.

### *B. Good Exam Writing Is (Or Should Be) Good Legal Writing*

A legal writing instructor should include exam writing as part of the legal discourse taught because good exam writing is, or should be, good legal writing. There is not necessarily, or should not be, a dichotomy between teaching legal writing for the type of writing students will do in law school and the writing they will do in practice.

Professor Kissam argues, to the contrary, that the relationship between exams and law practice is minimal.<sup>39</sup> He argues exam writing does not allow a student to acquire effective legal writing skills since the type of writing done on an exam is only a small part of the type of writing found in law practice.<sup>40</sup> Kissam's argument is essentially correct, but I differ on one key point. The type of writing done on a law school exam is one found at the core of what a lawyer is ultimately trained and paid to perform. The basics of legal analysis performed through written discourse are assessed, albeit somewhat imperfectly, in a blue book exam. This basic skill is one that is at the core of a good legal writing class. Indeed, legal writing classes are as much about legal analysis as they are about writing.<sup>41</sup>

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38. See Debra R. Cohen, *Competent Legal Writing – A Lawyer's Professional Responsibility*, 67 U. CIN. L. REV. 491, 516 (1999) (observing that historically law schools have not offered legal writing programs). While some schools have had legal writing instruction for over forty years, see, e.g., Stewart Macaulay & Henry G. Manne, *A Low Cost Writing Program – The Wisconsin Experience*, 11 J. LEGAL EDUC. 387 (1959), developed legal writing programs and instruction in law schools are a relatively recent phenomena. As a result, many of the lawyers in practice did not receive formal instruction or as thorough an education in legal writing. In 1988, however, ninety percent of law schools did have some sort of writing program. Jill J. Ramsfield, *Legal Writing in the Twenty-First Century: A Sharper Image*, 2 LEGAL WRITING: J. LEGAL WRITING INST. 1, 3 n.8 (1996); see also Marjorie Dick Rombauer, *First-Year Legal Research and Writing: Then and Now*, 25 J. LEGAL EDUC. 538, 540 (1973) (finding that courses in legal writing are a recent development).

39. Kissam, *Law School Examinations*, *supra* note 1, at 466.

40. *Id.* at 474-75.

41. See generally Jan M. Levine, *Designing Assignments for Teaching Legal Analysis, Research & Writing*, 3 PERSP. TEACHING LEGAL RES. & WRITING 58 (1995) (discussing how legal research and writing assignments teach research and writing skills in context of legal analysis), WL 3 PERSPEC 58; Thomas R. Newby, *Law School Writing Programs Shouldn't Teach Writing and Shouldn't Be Programs*, 7 PERSP. TEACHING LEGAL RES. & WRITING 1 (1998) (stating that first-year writing courses give students opportunity to develop legal analysis skills), WL 7 PERSPEC 1. Legal writing textbooks devote considerable portions of their content to analysis. See, e.g., CALLEROS, *supra* note 9,

Students are or should be using most of the same tools they learn in a good legal writing class on a doctrinal or bar exam.<sup>42</sup> The student who receives a law school exam performs the same initial tasks as the student who receives a legal writing assignment. She reviews the factual record and identifies the legal issues presented by the facts.<sup>43</sup> By studying and outlining for a law school class, she does a form of "research" using primary and secondary materials in preparation for an exam.<sup>44</sup> A student will "prewrite" both an exam and a legal writing assignment. On an exam, a student will sketch a rough outline of an answer on scratch paper to use it as a guide during the exam. In a legal writing class, the student will similarly prepare an outline of arguments prior to writing a first draft.

While writing exams and legal writing assignments, the student will consider audience (the professor), purpose (maximum points), length and time constraints of the assignment, format, and style of her writing in determining what to write on the exam.<sup>45</sup> She uses IRAC or a similar formula and considers the large- and small-scale organization of her writing.<sup>46</sup> This same analysis is used when writing an office memo, an appellate brief, or an exam answer. Because the core components are essentially similar, legal writing professors should use the similarities between the writing taught in their classes and the writing done in doctrinal exams to strengthen and develop students' writing and analytical skills.

### *C. Teaching Exam Writing Fits the Pedagogical Theories Used to Teach Legal Writing*

Legal writing professors should give greater attention to exam writing because teaching exam writing is consistent with legal writing pedagogical theory. Scholars identify three theoretical approaches to teaching legal writing that have been influential in law school curriculums: the formalist or instrumental approach, the process approach, and the social context approach.<sup>47</sup> All three approaches are found in most law school writing programs,<sup>48</sup> and the teaching of exam writing can play a valuable role in each approach.

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at 51-95 (introducing legal analysis, namely, deductive reasoning and IRAC); NEUMANN, *supra* note 9, at 57-59 (describing analysis stage of legal writing process); *see also* BRILL, *supra* note 8, at 17-20 (stating that the most important skill in legal writing is legal analysis):

42. Kissam, *Law School Examinations*, *supra* note 1, at 466.

43. Alternatively, the student follows the call of the question on the exam question or follows the instructions of the professor (or mock law firm partner in a writing assignment) as to which issues need to be addressed.

44. In a similar manner, in a legal writing class they will use cases, statutes and secondary materials such as encyclopedias. In doctrinal classes, they will use their casebook, restatements, hornbooks, and study guides.

45. Kathryn M. Stanchi, *Resistance is Futile: How Legal Writing Pedagogy Contributes to the Law's Marginalization of Outsider Voices*, 103 DICK. L. REV. 7, 12 (1998).

46. *Id.*

47. Parker, *supra* note 6, at 565; J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 49-61 (1994).

48. Rideout & Ramsfield, *supra* note 47, at 62.

Under the instrumental approach, the teacher and the writer are focused on the final product of the writing as opposed to the process of writing. Writing, under this approach, begins once the thought process is complete, and is not viewed as a thinking process. Writing courses that focus on a product approach have been criticized as neglecting important considerations in the instruction of students and thus as too narrow in scope and deficient in instruction.<sup>49</sup> Many exam-writing workshops provided by law school academic support programs use the instrumental approach. Exam workshops, where the art of learning exam writing is often condensed into one to three hours of instruction, usually focus on the final product—the exam answer. Similarly, exam writing workshops put on by academic support professionals or doctrinal professors as part of a review session often focus on the final text of a good exam answer without explicit instruction on the drafting process to get to the good answer.

Exam writing should be taught in the same way it is taught in many legal writing classes—using the process method.<sup>50</sup> Ideally, it should be taught using the process method in tandem with a social context approach.<sup>51</sup> To write an effective exam answer, the students need to focus not on the final product, but instead on the audience, purpose, and methods of writing an exam answer.<sup>52</sup> They need to analyze how they go about answering an exam question when they read, organize, outline, write, and edit the answer. The writing part of answering the exam is not separated from these other activities, but is intimately connected as part of one process.<sup>53</sup>

In addition, success on an exam and in law school requires an understanding of the context and culture of the audience and institutions connected to the exam answer being written. Having an understanding of the great disparity between the writing done on law school exams and that done in other disciplines, such as undergraduate and graduate social science programs, is essential for success on law school exams.<sup>54</sup> Additionally, students need to have an understanding of both the connection and disconnection between what they do to prepare for and discuss in the classroom and how they are ultimately assessed through the traditional law school exam at the end of the semester.<sup>55</sup> The piecemeal and analogical discussions of the classroom are often very different from the

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49. *Id.* at 50.

50. Stanchi, *supra* note 45, at 11.

51. *See id.* (theorizing that the process and social context methods are complementary to each other).

52. *Id.*

53. The writing process for exams is directly connected to the thinking process for the exam. This can also be characterized as the “epistemic” view of writing, which “teaches that by writing, and concomitantly by analyzing, analogizing, and reasoning, lawyers are intimately involved in ‘constructing’ the law.” *Id.* at 12.

54. A frequent problem for students I encounter in my academic support work, is that they use the techniques that allowed them to succeed in undergraduate social science exams, such as cramming and discursive writing, unsuccessfully on their law school exams.

55. *See supra* notes 25-26 and accompanying text for a discussion of the connection, or lack thereof, between typical classroom learning and the traditional end-of-semester exam.

comprehensive and rule-based forms required in an exam answer.<sup>56</sup>

Similarly, in order to succeed on an exam, students need to understand both the connection and the disconnection between exam writing and the writing done in law practice. Understanding the similarities between exam writing and writing in practice makes the exam process more meaningful and useful to students preparing for practice. Understanding the differences allows students to place less emphasis on their grades as a measure of their self-worth and also allows them to focus on the ultimate audience and purpose of this particular form of writing. Finally, students benefit from seeing the connection between their law school examinations and the bar examinations they will face upon graduation. Each exam in law school allows students to hone skills necessary for succeeding on the bar exam.<sup>57</sup>

No matter which approach is used to teach legal writing, the formalist, process, or social context, exam writing fits smartly and can be an effective teaching tool. The goals of these pedagogical theories is advanced and enhanced with attention to this important form of discourse.

#### *D. Teaching Exam Writing Creates a "Teachable Moment" for a Legal Writing Teacher*

Teaching legal writing skills in the context of both the practice of law and exam writing is more compelling to a law student than teaching solely in the context of the practice of law. It is my experience that students recognize the value of and want to learn about exam writing. Since the students' attention is already focused on the need to excel in this particular skill, a key teachable moment is presented to the legal writing teacher.<sup>58</sup>

Teaching exam writing is compelling and engaging because the ability to write a good exam is an immediate need for the student.<sup>59</sup> It is not distant or even abstract but more "real world" to a student than the "real world" of legal practice. Indeed, the writing done for the practice of law is usually concrete, immediate, and involves high stakes.<sup>60</sup> Exam writing fits those very criteria—it is immediate and very high stakes for the student. The legal writing course, as a result, takes on greater importance for the student, increases the authority of the writing instructor, and gives the course as a whole greater credibility.<sup>61</sup>

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56. Kissam, *Law School Examinations*, *supra* note 1, at 466.

57. In my experience, a student who actively reviews his or her exam answers after they are graded with an eye on improving test-taking skills is likely to gain the most in preparing for future exams and the bar exam.

58. The term "teachable moment" is generally used to mean a time when "conditions for learning are optimum." *DICTIONARY OF EDUCATION* 550 (Carter V. Good ed., 1959).

59. "[R]esearchers agree that a student will more quickly become accomplished if he learns and practices skills in the context in which he will use them." Linda L. Berger, *Do Best Practices in Legal Education Include Emphasis on Compositional Modes of Studying Law as a Liberal Art?* 1 *J. ASS'N. LEGAL WRITING DIR.* 158, 160 (2002).

60. Rideout & Ramsfield, *supra* note 47, at 98.

61. Students are often disconnected from the professors during the exam process because they no longer are in the classroom and have to rely on their own study techniques. See Kissam, *Law School*

*E. Teaching Exam Writing Expands Legal Writing Across the Curriculum*

An artificial line exists between “doctrinal” and “skills” courses.<sup>62</sup> In a recent article, Amy Sloan argues that this line disappears when the pedagogical goals of doctrinal and skills classes are examined. Both types of classes teach the conventions and methods of legal analysis or legal problem solving and the process of communicating legal argument and analysis. Additionally, both types of classes teach a deep understanding of black letter rules of law, including the policy and theory underlying such rules. Finally, both types of classes are geared toward student learning and work best when they take account of the ways students learn best.<sup>63</sup>

Professor Sloan’s article, like much of the scholarship about the need to eradicate the differences between doctrinal and legal writing classes, suggests that doctrinal classes need to be more like skills classes.<sup>64</sup> These articles emphasize that the line should be rubbed away from the doctrinal side. While I agree with this sentiment, I also propose a way the line can be rubbed from the legal writing side.

Incorporating exam writing allows a legal writing class to be more connected to the rest of the student’s law school curriculum.<sup>65</sup> By doing so, I am able to directly connect what my students are doing in the doctrinal classes (e.g., case briefs, outlining, preparing for exams, and writing exams) to the tools of good legal writing that I teach in my legal writing classroom.

Through teaching exam writing by using past exams of the professors at my school, I have been able to engage doctrinal professors in the pedagogy of legal writing in a way that I was not able to when I focused on law practice writing. An important role of legal writing faculty is, in my opinion, to teach doctrinal faculty about their expectations of student writing and to force them to clearly articulate those expectations. Many professors do expect IRAC answers on their exams,<sup>66</sup> but a number do not. For example, I have seen exams that have so many issues the professor can only expect an answer with issue and rule identification but not much analysis. A full IRAC answer for each issue would be nearly impossible in the time allotted. Similarly, other exams contain a number of short questions where a full IRAC answer would not have been appropriate. Model answers to these exams often show that professors expect

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*Examinations*, *supra* note 1, at 466-78 (noting that frequent writing exercises which stress critical analysis may improve students’ exam performance). The legal writing professor can play a valuable role in re-engaging the student and faculty members in the learning process.

62. Amy E. Sloan, *Erasing Lines: Integrating the Law School Curriculum*, 1 J. ASS’N. LEGAL WRITING DIR. 1, 3 (2002).

63. *Id.* at 5.

64. *Id.*; see also Christine Hurt, *Erasing Lines: Let the LRW Professor without Lines Throw the First Eraser*, 1 J. ASS’N. LEGAL WRITING DIR. 30, 32 (2002) (discussing need to integrate mandatory lawyering skills into law school curricula).

65. See Ramsfield, *supra* note 38, at 9 (observing that a number of law schools employ curriculum model in which writing is stressed in all classes).

66. Rapoport, *supra* note 17, at 99-100.

only a conclusion (the answer to the question) and analysis (where the law is mixed with facts). They do not see a need to state the rule at the beginning of the discussion.

In my discussions with professors who write doctrinal exams, I am able to clarify, for myself, and ideally for the professor as well, how their exam is assessing students in relation to the conventions of typical written forms of discourse. As a result of these conversations, my colleagues and I have a better understanding of each other's work and, I believe, have become better teachers as a result.

The dialogue between legal writing professors and doctrinal professors ideally will also educate doctrinal professors about legal writing pedagogy. Generally, students do not feel encouraged to ask doctrinal professors for feedback on their essay exams and few ask for such help. Even if asked, professors are often ill equipped to provide effective assistance. Many law professors have not been taught how to teach.<sup>67</sup> Many have not been trained or taught how to write exam questions or to grade exam answers.<sup>68</sup> Most teach, create, and grade exams based on the way they were taught and assessed in their law school.<sup>69</sup> As a result, students do not receive adequate instruction in how to write a good answer on a law school exam.<sup>70</sup>

As a specialist in legal writing, I believe it is my role in my institution to educate my colleagues about the changing uses and scholarship about language and writing.<sup>71</sup> By incorporating my colleagues' exams into my classroom curriculum, I am able to share and exchange the jargon of legal writing pedagogy with my colleagues. Simultaneously, I am able to learn the language and jargon

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67. The American Association of Law Schools now sponsors a workshop for new law teachers. Many law schools send their newly hired faculty to this workshop. The lack of importance of teaching, however, has been a source of concern among recent scholars. See, e.g., Fred Shapiro, *Symposium on the Relationship Between Scholarship and Teaching: They Published, Not Perished, But Were They Good Teachers?*, 73 CHI.-KENT. L. REV. 835, 838 (1998) (noting almost total lack of commendation for teaching, in articles written about eminent legal scholars); Alice M. Thomas, *Laying the Foundation for Better Student Learning in the Twenty-First Century: Incorporating an Integrated Theory of Legal Education into Doctrinal Pedagogy*, 6 WIDENER LAW SYMP. J. 49, 56 (2000) (noting that educators in fields other than law have some formal education in teaching).

68. Rapoport, *supra* note 17, at 101.

69. *Id.* at 101 (citing JOEL SELIGMAN, *THE HIGH CITADEL: THE INFLUENCE OF HARVARD LAW SCHOOL* 37 (1978); Vernellia R. Randall, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 T.M. COOLEY L. REV. 201, 209 (1999)). The fact that much of the law school teaching faculty across the United States are recruited and hired from elite Ivy League or top tier law schools further perpetuates this problem. These top tier schools are more likely to have faculty that focus on research and not on teaching. Additionally, these top tier schools are likely to have less prominent legal writing and academic support programs compared to lower tier schools. Ramsfield, *supra* note 38, at 20, 73.

70. Kissam, *Ideology*, *supra* note 1, at 154-55; Kissam, *Law School Examinations*, *supra* note 1, at 472-74.

71. See Lisa Eichhorn, *The Role of Legal Writing Faculty in an Integrated Curriculum*, 1 J. ASS'N. LEGAL WRITING DIR. 86, 88 (2002) (noting that legal faculty can bridge the gap between doctrinal classes and legal writing classes). In the same way, I would expect my colleagues who have expertise in copyright law to be a resource for me when I have questions about that area.

of my colleagues in their various disciplines.<sup>72</sup> The exchange and understanding of jargon not only allows for appreciation of one another's work, but also strengthens and enriches our work as scholars and teachers.<sup>73</sup>

#### *F. Teaching Exam Writing Can Humanize the Law School Exam Experience*

Law school exams can be dehumanizing and crippling to a student's self-worth and identity.<sup>74</sup> Even though traditional law school exams test a small portion of the skills necessary for effective legal practice, a student receiving a low grade is likely to perceive herself as unworthy or unlikely to be a good lawyer.<sup>75</sup> Teaching exam writing, however, can empower a student and blunt the detrimental effects blue book exams may have on her.<sup>76</sup> By teaching exam writing, the teacher teaches the writer to have an understanding and appreciation of her personal perspective, her purpose in writing, her audience, and the conventions that are expected for the discourse. More importantly, teaching writing is not about teaching transcription of the writer's thoughts, but instead is about having the writer create meaning for herself.<sup>77</sup> When a student has an understanding of the audience, purpose, and conventions of exam writing, this understanding demystifies the exams.<sup>78</sup> An educated student is better able to appreciate the limitations of this form of writing and understand that exams are imperfect assessment tools.<sup>79</sup> Exams are then understood to be not a reflection of the student's self-worth, but rather a component of an imperfect

72. See *id.* at 88-89 (“[J]ust as LRW faculty have much to impart to their colleagues about teaching analytical, research, and writing skills, they must recognize that they may have something to learn from these same colleagues about teaching theory and doctrine.”) (footnote omitted).

73. See Pollman, *supra* note 21, at 892-93 (“Developing a common professional language about legal writing will enrich the emerging substance of the discourse community, facilitate legal communication, and enable individual legal writers to develop [an] authentic voice.”); see also Ramsfield, *supra* note 38, at 2-16 (listing the large number of legal writing programs that participated in survey of national legal writing programs).

74. Kissam, *Law School Examinations*, *supra* note 1, at 483; see also Stanchi, *supra* note 45, at 20 (theorizing that biases on teaching legal writing may mute voices of students who are members of outsider groups). The psychological and social problems stemming from law study have been repeatedly documented in articles such as Suzanne C. Segerstrom, *Perceptions of Stress and Control in the First Semester of Law School*, 32 WILLAMETTE L. REV. 593 (1996); Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65 (1985).

75. See Kissam, *Law School Examinations*, *supra* note 1, at 480-83 (describing importance students place on their law school grades).

76. Joan Howarth, *Teaching in the Shadow of the Bar*, 31 U.S.F. L. REV. 927, 938-40 (1997).

77. See *supra* notes 50-53 and accompanying text for a discussion of the process method of teaching exam writing.

78. See Kissam, *Law School Examinations*, *supra* note 1, at 446-53 (describing students' desires for model answers and exam explanations).

79. Because legal writing classes are often smaller and more informal than the larger doctrinal classes, a student may have a greater chance to reflect and think independently about the law school process. See James E. Moliterno, *The Secret of Success: The Small-Section First-Year Skills Offering and its Relationship to Independent Thinking*, 55 MO. L. REV. 875, 879-80 (1990) (hypothesizing that independent thinking is more likely to be validated in smaller classroom setting).

ranking system.<sup>80</sup>

Teaching about audience and the purpose of exam writing also helps humanize the educational process by allowing a student to place herself in relation to the discourse community found in law schools. In fact, a discussion of exam writing is a good starting point for discussions with students about having multiple consciousness<sup>81</sup> or bilingualism<sup>82</sup> when approaching law school writing. A number of scholars have urged professors to teach students to develop multiple consciousness or awareness of the differences in their personal rhetorical traditions and the conventions of the rhetoric found in traditional law schools and law practice.<sup>83</sup> Success in law school is enhanced when these students are able to distinguish among their own voices and rhetorical traditions, and the rhetoric needed for success in certain legal writing contexts. The awareness of the differences of these forms of rhetoric is particularly important for non-traditional law students whose voices have not historically been heard in the profession.

Ultimately understanding and demystifying the examination and ranking process can lead students to work for change as they graduate and become the professors and bar examiners of the future.<sup>84</sup> With an understanding of the strengths and weaknesses of traditional exams, the structures that make law school stressful, alienating, and dehumanizing can be changed for the better. This change, however, is not likely to come without the attention of legal writing specialists who understand, examine, and critique this form of legal discourse and then ultimately pass this knowledge on to the students.

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80. Law school exams have been identified as a means of ranking students for the hiring purposes of law firms, particularly large corporate firms. See Douglas A. Henderson, *Uncivil Procedure: Ranking Law Students Among Their Peers*, 27 U. MICH. J.L. REFORM 399, 404 (1994) (noting that employers use class ranks to screen applicants despite rankings' over-reliance on single exams); Kissam, *Law School Examinations*, *supra* note 1, at 436 (stating that law school rankings may be unfairly used for sorting students for purposes of employers); Ogloff, *supra* note 37, at 187-92 (summarizing studies showing imperfections in law school grades).

81. See Chris Iijima, *Separating Support from Betrayal: Examining the Intersections of Racialized Legal Pedagogy, Academic Support, and Subordination*, 33 IND. L. REV. 737, 778 (2000) (noting that multiple consciousness is necessary for students to detach themselves from their own backgrounds and approach law from traditional viewpoints); Mari Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 WOMEN'S RTS. L. REP. 297, 297-98 (1988) (describing student who adopts one approach to issues in classroom discussions but another within support group of women of color); Stanchi, *supra* note 45, at 53 (noting that "outsiders" are required to adapt to law and legal language).

82. Mairi N. Morrison, *May It Please Whose Court? How Moot Court Perpetuates Gender Bias in the Real World of Practice*, 6 UCLA WOMEN'S L.J. 49, 76 (1995); see also Stanchi, *supra* note 45, at 53 (identifying scholars who point to need for acknowledging the many different voices in legal discourse).

83. Stanchi, *supra* note 45, at 53.

84. The Multistate Performance Test ("MPT") is one such change that increased the skills assessed on the bar exam. Stella L. Smetanka, *The Multistate Performance Test: A Measure of Law Schools' Competence to Prepare Lawyers*, 62 U. PITT. L. REV. 747, 749 (2001). For more information about the MPT, see the National Conference of Bar Examiner's web site at <http://www.ncbex.org/tests.htm> (last accessed Mar. 7, 2003).



### G. Teaching Exam Writing Expands Legal Writing Pedagogy into the Bar Exam

Legal writing professionals have an important role to play in the bar exam process.<sup>85</sup> On one level, legal writing instructors need to teach students the forms of discourse needed for success on the bar exam. Most legal writing teachers achieve this goal on a basic level when they teach a standard legal writing course that covers good legal analysis and the methods of presenting a legal argument.<sup>86</sup>

On another level, legal writing professionals also have an obligation to the academy and the bar to be involved in studying, evaluating, critiquing, and working to improve the bar examination process.<sup>87</sup> By engaging and critiquing bar exam skills, the power of the exam over our students and our schools is reduced and, hopefully, overcome.<sup>88</sup> Joan Howarth, in an article addressed to all law faculty critiquing the bar exam made this point when she stated:

[W]e can reduce the insidious power of the bar exam over our students and our classrooms by routinely teaching about bar exam techniques. By naming, teaching, and critiquing bar exam skills, we can reduce their power. And, perhaps, the routine engagement with and critique of the bar exam in our classrooms will further motivate our campaign to reform the bar examinations themselves.<sup>89</sup>

This appeal to teach our students about the bar exam is particularly relevant to legal writing teachers. As legal writing experts, legal writing teachers can play an important role in identifying students' weaknesses on, and improvement of, the bar exam. Legal writing specialists thus have the opportunity to make significant contributions to improving the bar examination process.

The discourse of writing on bar examinations is an area that has not received much attention by legal scholars and particularly not by legal writing professors.<sup>90</sup> There has been some scholarship on the Multistate Performance Test,<sup>91</sup> but the essay portion of the exam (both multistate and state essays) has been virtually ignored.<sup>92</sup> The importance of this form of discourse in the lives of

85. Howarth, *supra* note 76, at 940.

86. See Darrow-Kleinhaus, *supra* note 15, at 19-20 (noting that most skills tested on MPT "could be incorporated almost seamlessly into what law professors already do in the classroom").

87. There is a paucity of critical scholarship on the bar exam process. See, e.g., Kristen Booth Glen, *When and Where We Enter: Rethinking Admission to the Legal Profession*, 102 COLUM. L. REV. 1696, 1701 (2002) (noting "scant" scholarly attention paid to questioning validity of bar exam).

88. See Howarth, *supra* note 76, at 938-40 (urging professors to neither ignore nor pander to the bar exam but to include it in their curriculum).

89. *Id.* at 940.

90. Ogloff, *supra* note 37, at 187.

91. E.g., Barbara M. Anscher, *Turning Novices into Experts: Honing Skills for the Performance Test*, 24 HAMLINE L. REV. 224, *passim* (2001); Darrow-Kleinhaus, *supra* note 15, *passim*.

92. Some of the articles that touch on the bar exam are: Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Exam Should Change*, 81 NEB. L. REV. 363, 376-378 (2002); Glen, *supra* note 87; Daniel Hansen, *Do We Need the Bar Examination: A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives*, 45 CASE W. RES. L. REV. 1191 (1995). None of these articles, however, focus their attention solely on the essay portion of the exam.

law students and the effect it has on the discourse found in practice makes it important that legal writing professors involve themselves in teaching students and engaging in scholarship about the bar exam. This engagement, ideally, will continue outside the walls of the academy and affect the bar exam itself. Likewise, the state boards of bar examiners, if not doing so already, should be consulting the expertise of the growing ranks of legal writing experts in their states' law schools in order to improve the bar examination process.

#### *H. Legal Writing Specialists Can Improve Academic Support Programs*

In schools where the legal writing program does not address exam-writing skills, an academic support program, most likely, addresses the issue instead. Academic support programs often hold workshops where students are told about the conventions of law school exams and are given a chance to practice the skill.<sup>93</sup> While many of the people involved in academic support programs are gifted teachers, and exam-writing workshops can be of enormous benefit to students, there are instances where this is not the case. In some instances, upper level students, adjunct professors, or others who have been successful in law school but have no formal teaching experience deliver the academic support program. A legal writing teacher, who through his or her daily work has expertise in the teaching of legal writing, is likely to be better at teaching effective exam writing.

My experience, sitting through and participating in exam writing workshops at a variety of law schools, is that complex and effective legal writing is given short shrift in some academic support arenas. Academic support textbooks often bear this out. Many of these books, designed to help students succeed in law school, spend just a few pages on advice about writing exams.<sup>94</sup> Additionally, orientation programs, workshops run by academic support programs, and study aids oversimplify the writing process needed for effective exam writing.<sup>95</sup> The advice given is often overly reductive. For instance, they may offer up the deductive analytical structure of IRAC as the only model for writing. As a result, if a legal writing professor does not teach exam writing in her legal writing class, a student may, in fact, take a wrong approach to exam writing in doctrinal

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93. See LAW SCH. ADMISSION COUNCIL, AN INTRODUCTION TO ACADEMIC ASSISTANCE PROGRAMS 31 (1992) (discussing exam preparation); see also LAW SCH. ADMISSION COUNCIL, A PRACTICAL GUIDE FOR LAW SCHOOL ACADEMIC ASSISTANCE PROGRAMS 20 (2000) (sketching theoretical foundation for academic assistance programs); Paula Lustbader, *From Dreams to Reality: The Emerging Role of Law School Academic Support Programs*, 31 U.S.F. L. REV. 839 (1997) (describing positive effects of academic support programs).

94. There are a number of academic support texts that do a good job of covering legal writing. E.g., JEFF ADACHI, *FIRST YEAR LAW SCHOOL SURVIVAL KIT* (1996); JOHN DELANEY, *HOW TO DO YOUR BEST ON LAW SCHOOL EXAMS* (1982).

95. E.g., ANN M. BURKHART & ROBERT A. STEIN, *HOW TO STUDY LAW AND TAKE LAW EXAMS* (1996); DAVID R. SIMON, *CONQUERING LEGAL EXAMS* (1994); CHARLES H. WHITEBREAD, *THE EIGHT SECRETS OF TOP EXAM PERFORMANCE IN LAW SCHOOL* (1995). These guides to law school exams have value for preparing the student in other ways for exams through suggestions on outlining, stress reduction, and time management, but they do not address exam writing sufficiently.

classes—seeing complex writing reserved for office memos, but reductive analogical syllogisms reserved for exam writing.

There are academic support textbooks and workshops that do an excellent job in teaching students how to prepare for and write law school exams. But even these excellent resources, if not connected to the legal writing program of the law school, can create problems for the students and teachers of legal writing. Without coordination or connection, academic support and legal writing programs are likely to use different terminology or jargon to teach the same thing.<sup>96</sup> Thus, students have to relearn, using different terms, the same things being taught in the legal writing classroom. If there is a disconnect between these academic support materials and what is being taught in legal writing, the legal writing class is in danger of becoming less relevant and less engaging to the student: truly a missed teaching and learning opportunity. The expertise and involvement of legal writing experts in the academic support program is likely to be welcomed by those involved in providing academic support. Cooperation and coordination between these two areas of the legal academy can enhance teaching and student learning in the law school.

### III. INCORPORATING EXAM WRITING DIRECTLY INTO LEGAL WRITING CLASSES

For the past three years, I have directly incorporated exam writing into my legal writing class. I teach a yearlong, three credit class entitled Basic Legal Skills-Writing. In this class, I follow a curriculum very typical of many legal writing classes in other law schools.<sup>97</sup> In the first semester, I teach objective and predictive writing with the two main graded assignments consisting of office memoranda.<sup>98</sup> In the second semester, I teach the same students advocative writing with the main graded assignment consisting of an appellate brief.<sup>99</sup>

During these two semesters, I incorporate exam writing directly into the class. While the primary emphasis of my class is preparing students for writing in the practice of law, I fold in references to the work the students are doing in their other doctrinal classes and make the connections between the doctrinal classes and law practice explicit.

The integration of a discussion of exam writing begins on the first day of class when I introduce the students to the subject matter of the course. I explain

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96. Ramy, *supra* note 11 (discussing how academic support programs help with legal writing assignments); *see also* Thomas, *supra* note 67, at 62-63 (recounting value to author's work as legal writing professor when working alongside academic support professional).

97. *See* SURVEY RESULTS, *supra* note 8, at 7 (outlining typical legal research and writing curricula).

98. Students in the class perform a variety of written assignments such as case briefs, client letters, and short legal arguments. The assignments that receive the most graded credit are a memorandum that is written based on a package of cases given to the student (often called a "closed universe memo") and another memorandum that is written based on research the student perform on their own (often called an "open memo").

99. In addition to the appellate brief, students also write a trial practice memorandum such as a memorandum in support of a motion for summary judgment, discovery documents such as requests for interrogatories, and also perform oral argument on the appellate brief.

up front that my legal writing class has fewer credits compared to their other classes,<sup>100</sup> but should be considered as or even more important than their doctrinal classes in their studies for their success as law students and attorneys. I assert that my class will directly help them improve the quality of their performance on exams in their other classes.<sup>101</sup> In the following weeks, as I introduce case synthesis and rule development, I indicate that students should utilize a similar process in their doctrinal classes when reading the cases in their textbooks. The process of developing a course outline in a doctrinal class, in my opinion, requires the tools of synthesis and rule articulation being taught in my class.

Subsequently, when I teach deductive reasoning through the “IRAC” formula, I emphasize the utility of this form of legal reasoning in answering the typical law school exam question. I ask my students to map out the large- and small-scale organization of their writing assignment<sup>102</sup> and then point out how they should utilize a similar process when receiving a law school exam question. I deliberately fashion the short writing exercises I do in conjunction with the first memorandum assignment like a law school exam essay question. The feedback I give on these short exercises directly connects not only to my first assignment but also to the students’ preparation for the conventions of exam writing for the doctrinal classes.<sup>103</sup>

As the semester goes on, I complicate the IRAC organizing structure and begin to integrate other forms of legal reasoning, particularly analogical analysis.<sup>104</sup> At this point, I raise important issues about audience, purpose, and context of a written document. I try to help students understand that they need to tailor their writing and editing to fit the conventions and needs of the reader

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100. Students earn three credits over two semesters in my legal writing class compared to three credits per semester in most of the students’ other classes.

101. An initial diagnostic test I require on the first day of class helps me reiterate this point. I inform students that law schools exams are almost always comparative. A student who misspells words, uses sentence fragments, inappropriate paragraph breaks, etc., will likely not do as well as a student who avoids these errors.

102. See *supra* note 20 and accompanying text for a discussion of large- and small-scale organization.

103. Organizing devices such as raising and dismissing undisputed elements or irrelevant factors of a given legal test are important tools students will use on both my memorandum assignment and law school exams.

104. Part of my goal when teaching exam writing is getting students to break out of the IRAC formula once they have mastered it. I believe that full IRAC’s on each issue raised in an exam question is often very difficult and that they need to think of IRAC as a rough guide. If they are to use a formula, I recommend that they skip the “I” (Issue) and begin with a “C” (Conclusion) and then give the “R” (Rule) and “A” (Analysis). Additionally, I state that they may want to include policy (“P”) briefly at the end of their analysis, particularly if the professor was apt to raise such issues during the semester. Thus I-R-A-C would be replaced with a C-R-A and P or CRAP. The acronym “CRAP” is in ways appropriate because it can remind students that being wedded to IRAC or any formula can be “crap” or not a good thing, because it is too constraining and reductive. Exam writing, like legal writing, requires recognition of many factors such as audience, time and space constraints, subject matter, etc. When students learn this lesson, when they can break out of the rigid constraints of IRAC, they have then truly learned to be good legal writers.

of the document. The comparison of the reader of an office memorandum (usually a senior partner in a law office setting) to the reader of a law school exam (a law professor) is a useful device for making this point.<sup>105</sup>

After the students have written the first memorandum assignment, I give comprehensive feedback. In addition to my regular comments about the quality of their legal writing and whether the writing meets the conventions of an office memorandum, I also point out areas in their writing that may be problematic in relation to a law school exam. This feedback usually coincides with midterms. Students are then able to think about and work on their writing skills from my class in their doctrinal midterm exams. In subsequent conferences regarding their next assignment, I raise questions about strengths and weaknesses the students have encountered in their writing in my class assignments and their exams.

At the very end of the first semester, I devote my last class to exam writing and give my students a chance to practice and receive feedback on an old exam question from one of their professors. Prior to devoting this last class to exam writing, I found it historically to be poorly attended and rather unproductive for those attending.<sup>106</sup> As a result, I make this class and assignment on exam writing voluntary and ungraded and usually have about one half of my students participate. This exam writing class allows me to give a final reiteration of the issues I raised during the semester about good writing and analysis and bolsters the credibility of the subject matter and the class as a whole.

In the second semester, I meet in one-on-one conferences with my students and review all the written work of each student produced in my class during the first semester. In these conferences, I ask most of my students about their performance on their doctrinal exams. Such an inquiry, while needing to be done in a delicate way, can lead to great motivation on the part of students to work on identified weaknesses in their writing. The weaknesses then are worked on during the course of the writing assignments during the second semester.

On the final class of second semester, I repeat the format of the last class of the first semester. I give my students a chance to practice and receive feedback on an old exam question from one of their professors from a second semester course. The purpose of this last class is to yet again make the connection between the skills learned in my class and the writing the students will be

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105. The definition of a "good exam answer" can vary widely among doctrinal professors. See Kissam, *Law School Examinations*, *supra* note 1, at 445-51 (observing wide range in types of exam questions given by law professors); see also Crane, *supra* note 25, at 786 (noting that law professors disagree about the value of different types of exam questions); Steve H. Nickles, *Examining and Grading in American Law Schools*, 30 ARK. L. REV. 411, 443-46 (1977) (describing scholarship pointing to the unreliability of essay-based exams and answers). It is important for students to have an idea of the general conventions of a good exam answer but also to try to develop an understanding of their individual professors' expectations.

106. This class has historically fallen on a day right before the Thanksgiving break and is on the heels of exams. Also, students on this date no longer have any graded assignments due in my class. As Director of Academic Support, I repeat a variation of this class as a workshop for all students at an alternative time.

performing during the rest of their law school studies. It is my hope that my students will credit their success in legal writing not just as practitioners, but also as law students (and bar exam candidates), to their legal writing class.

#### IV. CONCLUSION

Having prepared workshops on exam writing as the director of academic support programs at my law school, I have found making the connection between exam writing and my legal writing class quite easy. Legal writing instructors not involved in academic support, however, should also be able to integrate issues of exam writing into their curriculum without much effort. In many ways, integration simply requires adding a few notes to class lectures, making additional comments during student conferences, and writing an additional observation while grading papers about the connection between the assignment at issue and the typical law school exam.<sup>107</sup> These simple changes are likely to be met with eager interest by students looking to perform well in their doctrinal classes. Additionally, legal writing instructors, as legal writing experts, have a valuable role to play in studying, evaluating, and critiquing this important form of legal discourse. Talking about exam writing inside and outside of our legal writing classrooms will benefit our students, the legal academy, and the legal profession as a whole.

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107. For example, while suggesting improvements on basic IRAC structure in a student's writing, the writing professor can emphasize the importance of mastering this structure for success in writing done for both legal practice *and* for law school exams.