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Teaching Legislative Drafting in Law School: A Model Course

Robert J. Hopperton

I. INTRODUCTION

Never has so much attention been focused on lawyer competency and the role of law schools with respect to it. Criticisms by Chief Justice Warren E. Burger and others are causing legal educators and practitioners to re-examine what law schools are doing to prepare competent practicing attorneys in areas such as legal writing and trial practice. Most dramatically, the 1979 Report of the American Bar Association (ABA) Section of Legal Education and Admissions to the Bar, *Lawyer Competency: The Role of the Law Schools*,¹ recommends as a top priority the following with regard to legal writing:²

We recommend that law schools endeavor to provide each student at least one rigorous legal writing experience in each year of law study, that they take full advantage of small classes to provide opportunities for development of legal writing and other

EDITOR'S NOTE: The author has been teaching the model legislative drafting course since 1976 at the University of Toledo College of Law, where he is an Associate Professor of Law. B.A., Baldwin-Wallace College (1963); M.A., University of Toledo (1969); J.D., The Ohio State University College of Law (1972).

1. ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, *LAWYERS COMPETENCY: THE ROLE OF THE LAW SCHOOLS 15* (1979) [hereinafter cited as *LAWYER COMPETENCY REPORT*].

2. The *LAWYER COMPETENCY REPORT'S* premises regarding this recommendation are: Given the central importance of effective writing to a wide range of lawyer work, the Task Force believes that too few students receive rigorous training and experience in legal writing during their three years of law study. Despite legal writing courses, seminars and other upperclass "writing" courses, and despite the growing number of courses based on real or simulated lawyer work that include an opportunity to do specialized legal writing such as pleadings, opinion letters, briefs, contracts or wills, and legislation, many students, probably most students, receive very little opportunity to write with close supervision and critique as a continuing part of their law school experience. Most of the writing that law students do is examination writing, done under extreme time pressure without either a chance for self-criticism and self-editing or constructive criticism from the instructor. It offers neither the opportunity to write to the student's own standards nor the possibility of learning much from the experience. The situation may, in fact, reinforce bad habits and poor standards rather than foster improved skills.

Id.

skills, and that they seek to devise and use methods of measuring law student performance in addition to the typical end-of-the-term examination, including, where possible, methods that furnish students detailed critiques of their writing and other elements of performance.³

The two points of the ABA Report regarding legal writing—(1) that law schools must do more; and (2) that there is a need for new teaching materials and techniques—are being heard with increasing frequency. In a recent *Harvard Law Review* Archibald Cox concludes that:

The chief defect in a Harvard legal education is, in my opinion, the inadequacy of instruction in legal writing. Substantially more time and harder work would be required of both faculty and students for effective written work to be required and constructively criticized, but the rewards would also be great. Students would learn relevant skills. Their analytic power would be better developed. Most important, they would be offered more opportunity to do a measure of creative work instead of endlessly absorbing the work of others.⁴

Cox's suggestions, as well as those of the ABA Report, are representative of growing criticism and ferment concerning legal writing.⁵

The problems of teaching legal writing are not new; Professor Reed Dickerson pointed out over fifteen years ago that both the law schools and the practicing bar fail to address the profession's deficiency in basic writing skills.⁶

Professor Dickerson also has been instrumental in pointing out law

3. *Id.* With regard to faculty appointment, rewards, and research, the LAWYER COMPETENCY REPORT also recommends that:

In appointing and rewarding faculty, law schools should place substantial emphasis on potential and performance as a teacher. In addition, experimentation with and creation of new teaching methods and materials that focus on the improvement of fundamental lawyer skills should be valued no less highly than research on legal doctrine.

Id. at 4.

4. Cox, Book Review, 92 HARV. L. REV. 1170, 1179 n.16 (1979) (reviewing J. SELIGMAN, *THE HIGH CITADEL: THE INFLUENCE OF HARVARD LAW SCHOOL*).

5. For an excellent and wide-ranging discussion on legal writing, see *Symposium on Teaching Legal Writing*, 44 ALB. L. REV. 292 (1980).

6. Professor Dickerson stressed the responsibility of law schools in ensuring that their graduates have the ability to write:

The traditional apprentice method has failed either because the typical young lawyer has been apprenticed to the wrong master or because the law schools have been unable to provide enough competent ones. As a result, some law schools have simply thrown in the towel. Others have gone along with watered-down courses in "Legal Writing." Still others have deceived themselves into believing that the problem is merely that of curing a deficiency in pre-law training, to be handled by en-

schools' neglect of significant problems in the more specialized area which is the topic of this article: legislative drafting. Serving four years as chairman of the ABA Standing Committee on Legislative Drafting,⁷ Dickerson helped persuade the American Bar Foundation to sponsor a study of drafting practices in federal agencies,⁸ he chaired the Standing Committee's national conference on federal legislative drafting, and he edited the conference proceedings in which several contributors called for greater efforts by law schools to teach legislative drafting.⁹ Moreover, Dickerson, obviously a ranking expert in the field, has summarized the lamentable history in the area of legislative drafting:

Even the most enlightened law schools have done little to dispel this tradition. Staffed with teachers whose own educational exposure to legislation has been filtered through a system that still views the legal order almost wholly through the eyes of the courts and who are hampered by a lack of adequate pedagogical techniques, the law schools have largely abandoned any significant effort to develop the drafting skill or, indeed, to develop anything more than the shallowest understanding of what drafting is all about.¹⁰

Following up on these efforts, the American Bar Foundation, in 1977, as part of its series of studies on legal education and professionalization, issued an in-depth study, *Legislative Process and Drafting in U.S. Law Schools*,¹¹ authored by Bernard Lammers. The Lammers

trance examinations or by exerting back-pressure on the colleges and secondary schools. And so the problem largely remains.

Legal drafting has aspects of complexity and precision unknown to the great bulk of writing with which the pre-law student makes contact. The differences in degree are so great as to constitute practical differences in kind. For this reason, the law schools should face more resolutely their responsibility to teach a professional skill that every lawyer needs almost daily and that only they can teach on a mass basis.

R. DICKERSON, *THE FUNDAMENTALS OF LEGAL DRAFTING* 150 (1965) [hereinafter cited as *FUNDAMENTALS OF LEGAL DRAFTING*].

7. In 1972, The ABA Standing Committee on Legislative Drafting developed seven principles relating to the drafting of federal legislation which were subsequently submitted to and unanimously adopted by the ABA House of Delegates. See Dickerson, *Professionalizing Legislative Drafting: A Realistic Goal?* 60 A.B.A.J. 562, 562-64 (1974) [hereinafter cited as Dickerson].

8. See Dickerson, *Legislative Drafting in Federal Agencies*, 21 CATH. U.L. REV. 703 (1972).

9. PROFESSIONALIZING LEGISLATIVE DRAFTING 51-52, 61, 87, 94 (R. Dickerson ed. 1973).

10. See Dickerson, *supra* note 7, at 562.

11. B. LAMMERS, *LEGISLATIVE PROCESS AND DRAFTING IN U.S. LAW SCHOOLS* (1977).

report catalogues hit-and-miss efforts of American law schools in teaching legislative drafting and calls upon law schools and law teachers to "develop well integrated material for teaching legislative process and drafting—the sort of material that is soon well known among law professors, tested in many a classroom, and confidently cited as ideal material for a course on legislative process and drafting."¹²

This attention to legislative drafting, as well as legal writing and lawyer competency, are symbolized by the question posed a few years ago by Dickerson: "Professionalizing legislative drafting: a realistic goal?"¹³ Notwithstanding the ferment and discussion, concrete results have been minimal. Few schools have added drafting courses, and legal educators have not developed new teaching techniques or materials.

This article addresses these continuing needs by presenting a model, upper-level course in legislative drafting which has proved to be an effective and rigorous teaching vehicle for both student and professor. It is a course designed to answer Dickerson's query in the affirmative by providing law students with a solid foundation in drafting fundamentals.

II. GENERAL DESCRIPTION OF THE MODEL COURSE

"Law school—they scare you to death and work you to death the first year and then bore you to death the second and third years." This old saw is heard all too often. Unfortunately, there is much truth in it. After the initial year, law school becomes routine and repetitious for many students. Many substantive, upper level courses follow a monotonous pattern while students sit passively waiting for class to be over so that more realistic activities can begin. Students understandably look forward to legal clinics, focusing on the development of litigation, interviewing and counseling skills; law review and moot court, student activities that provide active writing and advocacy experiences; or part-time jobs downtown that offer on-the-job training and compensation as well as good placement contacts. For many, the last two years of law school per se become dreary, time-killing experiences.¹⁴

The Model Course in Legislative Drafting,¹⁵ however, is a fundamental departure from traditional, upper level substantive offerings. It provides active, authentic work experience in legal writing—the prin-

12. *Id.* at 64.

13. See Dickerson, *supra* note 7, at 562.

14. See LAWYER COMPETENCY REPORT, *supra* note 1, at 16-17. See also note 17 *infra*.

15. See Appendix A *infra* for a list of assignments in the Model Course. This list gives an overview of the order of assignments and of the various phases of the Course.

The Model Course is also adaptable to the teaching of legal drafting in law school

cial medium for the expression and practice of legal thought and analysis.¹⁶ Students are constantly required to analyze and write legislation on a topic of substantial current interest and familiarity to them, such as landlord tenant law. Workshop type classes in which both enacted legislation and student drafts are torn apart and put back together complement out-of-class writing assignments.¹⁷

Planning, organizing, and constructing such a course is time-consuming and demanding but student performance in both drafting assignments and class discussions indicate that they are interested and are learning not only much needed basic drafting skills but also how to apply the analytical skills talked about in other courses.

The critical elements of the Model Course are: (1) A thorough grounding in the principles of legislative drafting;¹⁸ (2) a problem approach that derives its principal drafting "problems"¹⁹ from the specific

generally and to teaching legal drafting in continuing legal education programs for practicing lawyers. Dickerson and Nutting are correct, I think, when they conclude that:

[L]egislative drafting is not a functionally discrete discipline that needs to be taught separately from other kinds of legal drafting. Although every lawyer drafts legal instruments and thus needs to acquire competence in this discipline, it makes little difference whether he learns it by drafting wills, leases, contracts, statutes, or constitutions and by-laws for private organizations; they are all definitive, expository documents in which the emotive element is minimal and for which the architectural, semantic, and syntactic problems are generally the same.

C. NUTTING & R. DICKERSON, *LEGISLATION: CASES AND MATERIALS* 666 (1978) [hereinafter cited as NUTTING & DICKERSON].

16. See Gross, *On Law School Training in Analytic Skill*, 25 J. LEGAL EDUC. 261, 266 (1973).

17. The Model Course is designed as a four-hour, one-quarter course or as a three-hour, one-semester course; i.e., for between 40 and 45 class hours. Enrollment should be limited to between 12 and 20 students. I have found the optimum to be around 15; enough students for a variety of opinions and approaches for class discussion and yet not so many as to impose intolerable time burdens relative to the grading and discussion of student work. I once taught the course with 28 students and found that number to be unworkable from a time standpoint.

18. Dickerson's *FUNDAMENTALS OF LEGAL DRAFTING*, note 6 *supra*, is used for these purposes. See also NUTTING & DICKERSON, note 15 *supra*.

19. Copies of the problems used in 1980 are provided; see Appendix B *infra*. The following comment regarding the inclusion of such problems in a law journal article appears in an article by Professor Justin Sweet of the University of California (Berkeley):

When I once described this seminar to Professor Stewart Macaulay of the University of Wisconsin Law School, he stated that any article describing it would be useless without a copy of *specific* problems used. Those readers bored by the Appendix need not read it. Those readers who are *still* irritated should write Professor Macaulay.

Sweet, *Contract Drafting: Seminar Style*, 21 J. LEGAL EDUC. 464, 466 n.5 (1969) (emphasis in original).

Any readers of this article "irritated" by the inclusion of Problems may write either Professor Macaulay or Professor Sweet.

statutory law reform objectives of a fictional client;²⁰ (3) substantial student writing—the course includes twenty writing and drafting assignments²¹ about two-thirds of which are graded, the remainder of which are prepared for in-class discussions; and (4) significant continual, individualized feedback to students on particular drafting problems and suggested solutions.²²

The blending of these elements into the various phases of the course discussed below creates opportunities not only for interesting and productive class discussions but also rigorous client interviews, and highly valuable, one-on-one meetings with students to review legislative drafts. As law students critically analyze their own writing (many for the first time), acquire the vocabulary and concepts necessary to critically analyze already-enacted legislation (always for the first time), and draft solutions to legislative problems, they become enthusiastic and highly verbal users of their new skills and abilities. It is this phenomenon that leads to lively classes and useful meetings with students. In short, the Model Course offers both student and professor the possibility of a class as interesting, albeit in different ways, as any substantive law course in the curriculum.

III. GOALS OF THE MODEL COURSE

It is not uncommon for both professor and students to have unrealistically ambitious expectations regarding a course such as legislative drafting. However, no single course can produce seasoned, finely tuned, professional draftsmen. The ability of the mature professional can be developed only through extensive first-hand experience and on-the-job training. The Model Course, designed to provide an intensive and in-depth drafting experience, only starts law students on their way. In doing this, however, the course also provides a special opportunity to foster sound work habits, attitudes, and values as well as to teach good methodology in difficult and demanding legislative drafting tasks.²³ Recognizing both the inherent limitations and the

20. For an excellent discussion of a similar approach developed for the teaching of creative writing, see Kraft, *Bike Riding and the Art of Learning*, CHANGE, June-July, 1978, at 36 [hereinafter cited as Kraft].

21. See Appendix B *infra* for the problems used in the Model Course.

22. Phase Six, see notes 51-53 and accompanying text *infra*.

23. The ABA has noted the special value in offering such a course to upper-level law students:

The Task Force does believe, however, that important opportunities exist to enhance the nurture and support given to high professional standards and constructive work habits by the working environment in most law schools. There is a disturbing sense in which the hidden curriculum of law schools conveys the impression to some students that diligent work and high standards do not pay. Cycles of extended periods of lethargy followed by bouts of cramming characterize the up-

available opportunities, the Model Course is designed to achieve five principal goals: (1) Sensitizing law students to the existence and difficulty of legislative drafting problems; (2) developing legislative and legal drafting skills to a professionally acceptable level; (3) developing sound professional judgment on legislative drafting problems; (4) fostering sound methodology, work habits, attitudes, and values;²⁴ and (5) demonstrating that drafting tasks can be interesting and satisfying, and that difficult, painstaking work, when well done, is highly rewarding.

Again, the Model Course is designed to start students on their way; to provide active classroom experiences that can awaken and enlighten and that can boost students' professional confidence by correcting significant problems and pointing students toward their own successes.

IV. COURSE MATERIALS

Law book publishers offer a vast array of casebooks and other classroom materials, but none publishes legislative drafting teaching materials per se. Fortunately, this specific deficiency was not an obstacle in the development of the Model Course. Excellent materials that well serve the Model Course's goals are already available or have been specially prepared. These materials include: (1) *The Fundamentals of Legal Drafting* by Reed Dickerson;²⁵ (2) *Plain English for Lawyers* by Richard C. Wydick;²⁶ (3) a state legislative drafting manual;²⁷ (4) a body of enacted statutory law that serves as a target for the client's law reform efforts;²⁸ (5) a coordinated set of legislative drafting prob-

perclass behavior of many law students. During the second and third years of law study, student effort declines and disbelief in value of the standard techniques and expectations of legal education increases. On too few occasions is a student called upon to do and redo a task until a professionally acceptable job has been done. More individualized instruction, more detailed critique of student work, and more comprehensive methods of measuring student performance should furnish greater reinforcement for the development of these important personal and professional qualities. . . .

Law students would probably work more diligently if they faced greater challenges. In most law schools the upperclass program offers too much repetition and too little challenge.

LAWYER COMPETENCY REPORT, *supra* note 1, at 16-17.

24. *Id.* at 17.

25. See note 6 *supra*.

26. R. WYDICK, *PLAIN ENGLISH FOR LAWYERS* (1979). This book is an expanded and revised version of an article that appeared in 66 CALIF. L. REV. 727 (1978).

27. For example, Ohio Legislative Service Commission, *Bill Drafting Manual* (1977) [hereinafter cited as OBDM].

28. In teaching the Model Course in legislative drafting during 1979-1980, I used the Ohio Landlord Tenant Code, OHIO REV. CODE ANN. §§ 5321.01-18 (Page Supp. 1979). A state landlord tenant statute is an excellent substantive law vehicle because students generally have a substantial interest in the area as well as some familiarity from their

lems²⁹ that require student analyses and solutions; and (6) drafting checklists designed to assist students in preparing and professor in grading legislative drafting problems.³⁰

Dickerson's *The Fundamentals of Legal Drafting*,³¹ although written primarily for the practicing draftsman, is ideal for teaching students the basics of legislative draftsmanship. A description of this process appears below in the section on "Fundamentals of Legislative Drafting."³² *The Fundamentals of Legal Drafting* is also the source of a useful checklist.³³

The Model Course is also designed to provide students the opportunity to do expository writing. For these purposes, Wydick's *Plain English for Lawyers*³⁴ is most useful. This highly praised work written in plain English provides excellent discussion and examples for Phase I³⁵ and Phase VII³⁶ of the Model Course.

A state legislative drafting manual is used to introduce students to typical, local form and style requirements. Problem 3.1 below,³⁷ tailored to the Ohio Bill Drafting Manual, provides the course's first rudimentary drafting exercise and a general idea of what a bill looks like in proper form.³⁸

A body of enacted statutory law, for example, a state landlord tenant code, provides the vehicle for the series of integrated drafting problems generated by the client public interest group's desire to effect major statutory reforms.³⁹

Finally, as indicated above, the problem approach of the course is implemented through a series of writing and drafting problems.⁴⁰ These problems are the heart of the course giving students authentic assignments rather than requiring them merely to absorb the pre-digested work of others.⁴¹

first-year property law class. Other possible areas would include, for example, a state land use planning law, a state condominium law, or a state adoption law.

29. See Appendix B *infra*.

30. See Appendix C *infra*. These checklists are distributed to students for use in "across-the-board checks" in drafting. Many students find them invaluable. They are also most useful for "across-the-board checks" in grading student work. For a discussion of "across-the-board" checks, see FUNDAMENTALS OF LEGAL DRAFTING, *supra* note 6, at 45-47.

31. See note 6 *supra*.

32. Phase Four, see notes 46-48 and accompanying text *infra*.

33. See note 29 *supra*; Appendix C *infra*.

34. See note 26 *supra*.

35. See notes 42-43 and accompanying text *infra*.

36. See text accompanying notes 54-55 *infra*.

37. See Appendix B *infra*.

38. See note 25 *supra*.

39. Phase Five, see notes 49-50 and accompanying text *infra*.

40. See Appendix B *infra*.

41. See Kraft, *supra* note 20, at 41.

V. PHASES OF THE MODEL COURSE

Phase One: Introduction

Phase One starts with two expository writing problems.⁴² Its purpose is to force law students to think critically about legal literature read in law school and their own legal writing and drafting skills. To do this effectively, students are asked to write on the subject of legal writing. Specifically, Problem 1.1 requires a definition of effective legal writing and an application of that definition to a piece of legal literature. Student responses to Problem 1.1 are discussed during the following class with an eye towards having students articulate the rationale for their conclusions regarding effective legal writing.

Having attempted this, the students may turn to Problem 1.2 which is designed to start students not only thinking about, but working with, their own writing skills. This problem requires students to prepare a rewriting of their responses to Problem 1.1 in an effort to conform their writing to their definitions of legal writing. Strong encouragement is provided to students to aim for the goals discussed in Wydick's *Plain English for Lawyers*.⁴³

These two exercises are revelations for most students because so few have critically analyzed from a writing standpoint either the legal literature read in law school or their own writing efforts. Problems 1.1 and 1.2, therefore, begin the process of sensitizing students to the existence and difficulty of writing and drafting problems.

Phase Two: Analysis of Enacted Statutory Law

Teaching legislative drafting requires a substantive law vehicle. Phase Two, therefore, introduces this vehicle by requiring students to complete a substantive analysis of the enacted legislation that the public interest group client wishes to reform through amendment. With this substantive familiarity the student can then more effectively criticize from a drafting standpoint, and then significantly amend this legislation.⁴⁴

Phase Three: Drafting Exercises—Form

As indicated above, most legislatures publish a style or form manual to cover matters of local significance. Phase Three and Problem 3.1 in-

42. The idea for these two problems came from a suggested writing assignment in J. WHITE, *THE LEGAL IMAGINATION* 78 (1973).

43. See note 26, *supra*. This is done by indicating that Wydick's suggested solutions will be used as the criteria for grading all expository work done in the course. See Appendix C *infra*.

44. Phases Four and Five, see notes 46-50 and accompanying text *infra*.

roduce a typical form manual⁴⁵ by requiring completion of a rudimentary but detailed exercise in drafting in proper bill form. Experience in dealing with one of these manuals prepares students for working with any legislature's form manual and also provides early in the course an idea of the general texture and contour of a bill to amend existing legislation.

Phase Four: Fundamentals of Legislative Drafting

Few students possess the tools; *i.e.*, the vocabulary and concepts, necessary to analyze and criticize legislation. Because of these deficiencies, Phase Four and Problems 4.1 through 4.8 are crucial to a legislative drafting course. This phase is designed to provide students with a thorough comprehension of and working facility with principles of legal and legislative drafting.⁴⁶ To achieve this, students are required to analyze from a drafting standpoint, using Dickerson's vocabulary and concepts, the body of the statutory law selected for the client public interest group's law reform amendments.⁴⁷

Problems 4.1 through 4.8 require that students carefully read and, in most cases, brief the critical chapters of Dickerson's book. Students then find that they are able to do the assigned problems which require a description and evaluation of the existing statutory law in terms of consistency, arrangement, ambiguity, vagueness, generality, and readability. These assignments lead to lively and energetic classroom discussions that tear apart and put back together the assigned statute. Students find that when they have a thorough understanding of Dickerson, their powers of analysis and communication increase significantly.⁴⁸

Phase Five: Drafting Exercises

Phase Five is the heart of the Model Course.⁴⁹ Problems 5.1 through 5.5 require application of the principles of legislative drafting learned in Phase Four to the law reform objectives of the client public interest group. This is done in the following way: (1) The faculty member roleplays as the representative of the client public interest group advocating numerous amendments to the body of statutory law; the client's needs are summarized in lay language in a written memo and

45. See note 27 *supra*.

46. See note 6 *supra*.

47. See Appendix B, Problems 5.1 through 5.5 *infra*.

48. These problems are most effective when they follow the substantive analysis required in Appendix B, Problem 2.1 *infra*.

49. Some ideas for these drafting exercises were derived from FUNDAMENTALS OF LEGAL DRAFTING, *supra* note 6, at Appendix D.

in an in-class client interview; (2) during the client interview students seek to pin down the client's objectives as precisely and completely as possible; (3) students then draft the requested amendments for the next class; (4) these draft responses to Problems 5.1 through 5.5 are graded using Dickerson's principles and the state bill drafting manual requirements as criteria; and (5) these graded exercises are returned at the *next* class session in order to provide students with up-to-date, continual feedback on their strengths and weaknesses. In addition, students are encouraged to discuss on a one-to-one basis any questions, problems, or difficulties.⁵⁰

Phase Six: Personal Supervision and Feedback

Personal supervision is usually the critical difficulty in legal and legislative drafting courses.⁵¹ "Who" and "how much" become key issues because of the substantial time required to grade and discuss student work. On the other hand, as pointed out in *Lawyer Competency: The Role of the Law Schools*, individual attention and one-on-one meetings to discuss specific needs are essential.⁵² The trade-off designed into the Model Course is to supply ample supervision and feedback but to keep enrollment at twenty or fewer so as to prevent unreasonable time demands.⁵³

Phase Six is designed to provide both written and oral feedback on a continuous and up-to-date basis. Written feedback occurs through extensive comments on the graded problems. Oral feedback can occur in two ways: On an informal basis through individual, after-class discussions of particular exercises; or through scheduled one-on-one meetings with students. In the Model Course, three class days at strategic points in the course are devoted to these individual appointments with students. This personal supervision and feedback is a necessary and important aspect of the course, and for students who are having difficulty, it is undoubtedly the most important feature helping them to identify serious problems, evaluate alternative solutions, and develop confidence in their drafting abilities.

Phase Seven: Principal Legislative Drafting Assignment and Expository Memo

The culmination of the Model Course, designed to tie together all previous exercises, is found in Problems 7.1 and 7.2. The former requires students to redraft their submissions to Problems 5.1 through

50. Phase Six, see notes 51-53 and accompanying text *infra*.

51. See FUNDAMENTALS OF LEGAL DRAFTING, *supra* note 6, at 151.

52. See note 23 *supra*.

53. See note 17 *supra*.

5.5⁵⁴ by integrating into one comprehensive bill all the client public interest group's requested amendments. This opportunity for drafting and redrafting, for refining and improving work, in almost all cases produces competent, professionally acceptable final products. In some cases truly excellent student work results.

Problem 7.2, on the other hand, picks up the expository writing exercises begun in Problems 1.1. and 1.2⁵⁵ by requiring a supporting memo, addressed to the client, explaining what was done in the final draft bill. This final expository memo is designed to force students to articulate thoughtfully and self-consciously what they are doing and why they are doing it. The problem usually demonstrates to students that they now understand and can use the fundamentals of legislative and legal drafting.

VI. CONCLUSION

Law schools can indeed respond to the many calls for more attention to lawyer competency and for more emphasis on legal writing and legislative drafting. They can offer a rigorous legal writing experience such as legislative drafting in each year of law study. They can recognize within the promotion and tenure process creation of and experimentation with new teaching methods and materials that focus on the improvement of fundamental lawyer skills.⁵⁶

Legal educators for their part can develop and experiment with new teaching materials that make legal and legislative drafting courses more effective and useful for students. They can demonstrate to law students the benefits of active, authentic work that improves basic skills and personal approaches to professional tasks and that the second and third years of law school need not be a series of passive, time killing classes. Legislative drafting is an excellent vehicle because few courses demand more careful analysis and precise articulation; few courses require students to develop such a complete mastery of substantive materials or provide a clearer sense of student progress. With proper emphasis and with sound teaching methods and materials, law students can be exposed to a kind of learning that will not only help make them competent and responsible professionals but also provide an experience that will have career-long effects on methodology, work habits, attitudes, and values.

Finally, to return to the Dickerson query—"Professionalizing legislative drafting: a realistic goal?"⁵⁷—it is clear that the answer is "Yes."

54. Phase Five, *see* notes 49-50 and accompanying text *supra*.

55. Phase One, *see* notes 42-43 and accompanying text *supra*.

56. *See* note 3 *supra*.

57. *See* Dickerson note 7 *supra*.

Law schools can indeed reverse their long tradition of neglect by offering students significant writing and drafting experiences, students who can then do much in their professional careers to improve the lamentable quality of present drafting obvious from even a cursory look at federal or state statute books.

APPENDIX A

Legislative Drafting

Model Course Assignment Sheets*

- Class Session 1 Phase One — Read *Fundamentals of Legal Drafting* (Dickerson) Chapters 1 & 2
- Class Session 2 Phase One — Read *Plain English for Lawyers* (Wydick) Chapters 1 through 8. — Do Problem 1.1
- Class Session 3 Phase One — Read Dickerson Chapter 4 — Do Problem 1.2
- Class Session 4 Phase Two — Read Dickerson Chapter 3 — Do Problem 2.1
- Class Session 5 Phase Three — Read *Ohio Bill Drafting Manual* — Do Problem 3.1
- Class Session 6 Phase Four — Reread Dickerson Chapter 3 — Do Problem 4.1
- Class Session 7 Phase Four — Read Dickerson Chapter 5 — Do Problem 4.2
- Class Session 8 Phase Four — Read Dickerson Chapter 6 — Do Problems 4.3 and 4.4
- Class Session 9 Phase Four — Read Dickerson Chapter 7 — Do Problems 4.5 and 4.6
- Class Session 10 Phase Four — Read Dickerson Chapters 8 through 10 — Do Problems 4.7 and 4.8
- Class Session 11 Phase Five — Client Interview
- Class Session 12 Phase Five — Do Problem 5.1 — Client Interview
- Class Session 13 Phase Five — Do Problem 5.2
- Class Session 14 Phase Six — Individual Student Appointments
- Class Session 15 Phase Five (cont'd) — Do Problem 5.3 — Client Interview
- Class Session 16 Phase Five — Do Problem 5.4 — Client Interview
- Class Session 17 Phase Five — Do Problem 5.5
- Class Session 18 Phase Five — Review Problems 5.1 through 5.5
- Class Session 19 Phase Six — Individual Student Appointments
- Class Session 20 Phase Six — Individual Student Appointments
- FINAL Phase Seven — Do Problems 7.1 and 7.2 (Due: the Monday after the last day of final exams). (No final examination.)

*Course assignments are based on a one-quarter, four-hour course that meets for two hours twice each week.

APPENDIX B

Problem 1.1 — Effective Legal Writing (not graded)

1. Find a passage of legal literature which you consider to be *effective* legal writing. (This, of course, will require you to define effective legal writing.) Try to find a piece that because of its writing excellence is of real satisfaction and pleasure to you as a reader.

2. Explain your conclusions regarding this passage. Why is it sound writing? Prepare a written *draft*. Please make a photo-copy to hand in.

Problem 1.2 — Effective Legal Writing (graded)

Look at your draft response to Assignment #1. Is *it* effective writing as you have defined effective writing? Can you rewrite it so that it is? For next class, please do so. Please provide a typed copy.

Problem 2.1 — Substantive Analysis of Ohio Tenant Landlord Statute—Sections 5321.01 through 5321.19 of the Ohio Revised Code Annotated (graded)

Problem 2 is designed to do two things: (1) Provide you with a substantive familiarity with the Ohio Tenant Landlord Statute; and (2) Provide another opportunity to practice your writing skills.

Assignment: For next class, please prepare a substantive analysis of the present Ohio Tenant Landlord Statute, pages 21 to 26 of the Supplementary Materials. Your analysis should be typed and not exceed five double-spaced pages.

Problem 3.1 — Form Requirements: Ohio Bill Drafting Manual (OBDM) (graded)

Attached are copies of the Sigma Delta Chi "Model" Sunshine Bill and Ohio's "present" Sunshine Statute, section 121.22 of the Ohio Revised Code Annotated.*

Your assignment is to draft the strongest possible Sunshine Bill based only on the "Model" and the "present" Ohio statute. This draft should be in proper OBDM form.

NOTE: Included in the OBDM are relevant portions of Chapter 1 of the Ohio Revised Code Annotated and Article II of the Ohio Constitution, each of which contains relevant form requirements.

*Problem 4.1 — Ambiguity, Vagueness, Generality** (not graded)*

You are a member of the Ohio General Assembly. There have been many reports of drownings in the state where there were spectators who did not come to the rescue of the person who drowned. Draft a statute making it a misdemeanor for anyone to fail to aid someone who is drowning. Your provision will become section 2935.01 of the Ohio Revised Code Annotated.

*Attachments not provided.

**See W. STASKY, LEGISLATIVE ANALYSIS: HOW TO USE STATUTES AND REGULATIONS 15 (1975).

*Problem 4.2 — Architecture of Existing Ohio Tenant
Landlord Statute (graded)*

For our next class, and after reading Dickerson, Chapter 5, prepare a (typed) description and evaluation of the architecture of sections 5123.01 through 5123.19 of the Ohio Revised Code Annotated. Please use Dickerson's vocabulary and concepts in your description and evaluation.

Problem 4.3 — Ambiguity (not graded)

Chapter 6 of Dickerson's *The Fundamentals of Legal Drafting* deals with problems of ambiguity in some detail. After reading Chapter 6, please analyze, for purposes of in-class discussion during our next class, sections 5321.01 through 5321.19 of the Ohio Revised Code Annotated to identify any problems of semantic, syntactic, or contextual ambiguity. Please draft tentative solutions to the problems of ambiguity that you identified.

Problem 4.4 — Substantive Clarity: Ambiguity (not graded)

1. Assume 17 U.S.C. § 25 reads as follows:

That hereafter, except as otherwise specially provided by Act of Congress, no action for the recovery of wages, penalties or other damages, actual or exemplary, pursuant to any law of the United States shall be maintained in any court unless the same was commenced within one year after such cause of action accrued.

What problems does this section create? What can a draftsman do to avoid these problems?

2. Assume 23 U.S.C. § 83 reads as follows:*

All radio stations need not run any programs geared to the senior citizen audience nor to the children's audience if written permission not to conduct such programming is obtained from the Commission. Station managers, but not announcers, must obtain a Section 123 clearance license. No hours of broadcasting, except between 12 midnight and 6 a.m., may contain programming with subject matter dealing with sex unless the sexual references consist of quotes from medical doctors or the programming is documentary in character where a copy of the transcript of the program is mailed to the Commission within five days of its airing.

Assume the following facts:

WEZE is a small radio station. It has been charged with violating section 83. The only staff member of the station is Burton Blatt who is station manager, public relations officer, the announcer, and the secretary. He is charged with failing to seek a 123 clearance license; with airing a documentary dealing with sex (a twenty-minute interview by Blatt with a prostitute) at 4 p.m. and not submitting a transcript of the program to the Commission; and finally, with failing to conduct any programs geared to senior citizens without the written permission of the Commission not to air such programs.

Assume you are defending WEZE and Blatt: what interpretations of section 83 would you offer in their defense? Assume you are a legislator: what amendments in section 83 would you propose?

*See W. STATSKY, *LEGISLATIVE ANALYSIS: HOW TO USE STATUTES AND REGULATIONS* 124 (1975)

Problems 4.5 — Definitions (not graded)

Chapter 7 of *The Fundamentals of Legal Drafting* deals with definitions. After reading this Chapter, please describe and evaluate the definitions in section 5321.01 of the Ohio Revised Code Annotated in terms of Dickerson's vocabulary and concepts.

Problem 4.6 — Drafting Definitions (graded)

For next class, please draft definitions of the following terms:

- (1) "single family residence";
- (2) "owner."

Your definitions should be consistent with the in-class "client" interview.

Problem 4.7 — Readability (graded)

Chapters 8 and 9 of *The Fundamentals of Legal Drafting* deal with problems of readability and specific solutions on wording, respectively. After reading Chapters 8, 9, and 10, please analyze Sections 5321.01 through 5321.06 of the Ohio Revised Code Annotated to identify any readability problems and any opportunities for employing Dickerson's specific solutions. Please draft solutions to any problems identified.

Problem 4.8 — General Factors Affecting Readability (not graded)

After reading Chapters 8 and 9 of *The Fundamentals of Legal Drafting* please revise the poorly drafted legislation that appears below, consistent with sound principles of legislative draftsmanship.

SEC. 2744.02. (A) THERE IS HEREBY ESTABLISHED A COURT OF CLAIMS FOR THE HEARING IN ADJUDICATION OF ALL COURT CLAIMS AGAINST POLITICAL SUBDIVISIONS. EXCLUSIVE AND ORIGINAL JURISDICTION SHALL BE VESTED IN THIS COURT OVER EVERY LAW SUIT COMMENCED AGAINST A LOCAL GOVERNMENT. ITS JUDGMENTS SHALL BE REVIEWABLE ONLY BY THE SUPREME COURT OF OHIO AND ONLY TO THE EXTENT THAT THE RULING OF THE COURT OF CLAIMS WAS NOT BASED UPON SUBSTANTIAL EVIDENCE.

(B) THE COURT OF CLAIMS SHALL BE COMPOSED OF TWELVE JUDGES. JUDGES FOR THE COURT OF CLAIMS SHALL BE APPOINTED INITIALLY BY THE GOVERNOR. IN MAKING ANY SUCH OF THE AFORESAID APPOINTMENTS, THE GOVERNOR SHALL GIVE CONSIDERATION TO MERIT SELECTION LISTS SUBMITTED BY THE OHIO BAR ASSOCIATION. FOUR JUDGES SHALL SERVE TERMS OF FOUR YEARS, FOUR JUDGES SHALL SERVE TERMS OF THREE YEARS AND FOUR JUDGES SHALL SERVE TERMS OF TWO YEARS, PROVIDED THAT AFTER THESE APPOINTIVE TERMS HAVE EXPIRED, ALL JUDGES SHALL SERVE ELECTED TERMS OF EIGHT YEARS. THEREINAFTER THE INITIAL TERMS, EACH AND EVERY SAID JUDGE MUST STAND FOR ELECTION IN STATE-WIDE ELECTIONS.

(C) THE COURT OF CLAIMS SHALL NOT HEAR ANY CLAIM UNTIL IT IS CERTIFIED. UPON CERTIFICATION THE CLERK OF

THE COURT SHALL BE REQUIRED TO SET A HEARING DATE AND NOTIFY THE PLAINTIFF AND THE ATTORNEY FOR THE DEFENDANT LOCAL GOVERNMENT OF SAID DATE. THE HEARING SHALL BE TRIED BEFORE ONE JUDGE WITHOUT A JURY.

(D) APPEAL MAY BE MADE BY EITHER PARTY TO THE SUIT. THE APPEAL SHALL BE FILED USING THE SAME FORMAT AS ANY OTHER APPEAL TO THE SUPREME COURT OF OHIO. THE APPEAL SHALL BE FILED WITHIN THIRTY DAYS.

(E) A LOCAL GOVERNMENT IS EMPOWERED TO CONTRACT FOR INSURANCE WITH ANY COMPANY AUTHORIZED BY THE SUPERINTENDENT OF INSURANCE TO WRITE SUCH COVERAGE IN OHIO. COVERAGE OF AT LEAST FIFTY THOUSAND DOLLARS PER PERSON PER ACCIDENT, THREE HUNDRED THOUSAND DOLLARS FOR ALL PERSONAL INJURIES FOR ANY ONE ACCIDENT, AND TWENTY-FIVE THOUSAND DOLLARS PROPERTY DAMAGE MUST BE CARRIED FOR EACH MOTOR VEHICLE REGISTERED TO A LOCAL POLITICAL SUBDIVISION IRREGARDLESS OF WHETHER OR NOT SAID LOCAL POLITICAL SUBDIVISION CHOOSES TO CARRY INSURANCE FOR PURPOSES OTHER THAN THE PURPOSES SPECIFIED ABOVE.

(F) IF THE GOVERNING BODY OF THE LOCAL GOVERNMENT DEEMS AND FINDS THAT THE TORT JUDGMENT INCURRED WOULD BE ONEROUS IF PAID FROM THE REVENUES OF THE FISCAL YEAR IN WHICH THE JUDGMENT BECAME FINAL, IT MAY ELECT TO PAY SUCH AFORESAID JUDGMENT IN TEN BIENNIAL INSTALLMENTS OF EQUAL PROPORTION PLUS INTEREST FROM THE DATE THAT THAT JUDGMENT BECOMES FINAL. THE GOVERNING BODY MUST ISSUE BONDS TO PAY ANY TORT JUDGMENT.

(G) LOCAL POLITICAL GOVERNMENTS SHALL BE LIABLE FOR AN AMOUNT NOT IN EXCESS OF ONE MILLION DOLLARS PER PERSON PER INJURY OR FIVE MILLION DOLLARS PER TRANSACTION FOR ANY OCCURRENCE.

(H) ANY LOCAL GOVERNMENT OR ITS EMPLOYEES ARE LIABLE UNDER THIS ACT, PROVIDED THAT ALL EMPLOYEES SHALL BE INDEMNIFIED BY THE LOCAL GOVERNMENT, AND PROVIDED FURTHER THAT FOR ANY INTENTIONAL TORT COMMITTED BY AN OFFICER THE LOCAL GOVERNMENT SHALL INDEMNIFY ONLY THAT AMOUNT WHICH THE OFFICER IS INCAPABLE OF PAYING.

(I) ALL TORTS, ACTIONS ON CONTRACTS, NUISANCES AND ANY ULTRAVIRES ACT WHICH CAUSES DAMAGE TO A PARTY LISTED IN SECTION 2744.05 CONSTITUTE A CAUSE OF ACTION UNDER THIS ACT.

(J) ANY INJURED PARTY, MINOR, TRUSTEE, GUARDIAN AD LITEM, CORPORATION, OR OTHER LOCAL OR STATE GOVERNMENT THAT HAS BEEN INJURED BY AN ACT OF THE LOCAL GOVERNMENT IS ENTITLED TO BRING A CLAIM UNDER THIS ACT.

(K) THIS ACT SHALL NOT APPLY TO THE FOLLOWING CLAIMS:

(A) ANY CLAIM FOR INJURY TO OR DEATH OF ANY PER-

- SON COVERED BY THE WORKMAN'S COMPENSATION ACT OF THIS STATE.
- (B) ANY CLAIM FOR DAMAGES INCURRED IN CONNECTION WITH THE TAXING FOR LICENSING POWER OF THE LOCAL GOVERNMENT.
 - (C) ANY CLAIM BASED UPON WEATHER CONDITIONS AFFECTING PUBLIC PROPERTY.
 - (D) ANY CLAIM BASED UPON AN ACT OR OMISSION OF AN OFFICER OR EMPLOYEE EXERCISING DUE CARE, IN THE EXECUTION OF A VALID OR INVALID LAW.
 - (E) ANY CLAIM, EXCEPT FOR FAILURE TO CONTROL A MOB OR PRISONERS, BASED UPON THE FAILURE OF THE LOCAL POLITICAL SUBDIVISION TO ADOPT OR ENFORCE A LAW OR TO EXERCISE THE LEGISLATIVE FUNCTION.
 - (F) ANY CLAIM BASED UPON A FAILURE TO INSTALL REGULATORY DEVICES FOR TRAFFIC CONTROL, PROVIDED THAT, ONCE THE LOCAL GOVERNMENT INSTALLS THE DEVICE, A FAILURE TO MAINTAIN IT IN GOOD WORKING ORDER CONSTITUTES A NUISANCE.
 - (G) ANY CLAIM AGAINST A LOCAL GOVERNMENT AS TO WHICH IT IS IMMUNE FROM LIABILITY BY THE PROVISIONS OF ANY OTHER COMPATIBLE STATUTE.

Problem 5.1 — Shifting By Agreement Certain Landlord Repair Duties to Tenant (graded)

Sections 5321.04 and 5321.05 of the Ohio Revised Code Annotated impose certain duties upon landlords and tenants respectively. The thrust of section 5321.04 places the duty to perform major repairs and maintenance functions upon the landlord. Your client, Save Our Shelter (S.O.S.), wishes to preserve as much of the present housing stock of the state as possible. For this reason, S.O.S., believing that there are many instances when landlords and tenants might justifiably and knowledgeably agree to the shifting of repair and maintenance burdens to the tenant, wishes to create the opportunity for such agreements within the Ohio landlord tenant statute.

S.O.S.'s requests are based upon the assumptions that (1) the landlord occupies, generally speaking, a dominant, if not overwhelming, bargaining position; and (2) that any duty that can be waived by the landlord will be waived. Notwithstanding these assumptions, S.O.S. wants to allow the shifting of maintenance duties in relation to single family residences and also other rental dwelling units as long as certain limitations and controls are observed. Again, the basic purpose of these amendments is to encourage landlords and tenants to maintain and improve the quality of existing housing within the state.

These requests for amendments deal with three separate fact situations: (1) An owner-occupied single-family residence unit from which the owner will be temporarily absent and during which absence the unit is rented to a tenant; (2) single-family residences, nonowner occupied; and (3) other rental dwelling units.

With regard to single-family residence, owner-occupied, S.O.S. wishes an amendment to the landlord tenant statute which will provide that where a single-family residence which is the owner's normal residence is rented during a

temporary absence of the owner of not more than two years, then the landlord and tenant may agree in writing that the tenant is to perform specified repairs and maintenance. Please note that S.O.S. does not wish to provide the opportunity for landlords and tenants of this type of single-family residence to agree that the tenant shall do remodeling or major alterations.

With regard to nonowner occupied single-family residences, S.O.S. desires a statutory provision that allows the landlord and the tenant to agree that the tenant is to perform repairs and to do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition and, in addition, that the parties may agree that the tenant is to do remodeling or make major alterations. The agreements with regard to nonowner occupied single-family residence should be limited in the statute in the following ways: (1) That the work to be done is for the primary benefit of the tenant's dwelling unit; (2) that the tenant is to receive a fair *quid pro quo*; i.e., a reasonable inducement in exchange for his agreement to repair, maintain, alter, or remodel (the statute should make clear that this fair inducement is independent of any of the promises in the rental agreement); (3) that the agreement between the parties must be clearly visible and give notice to the tenant of the agreement (in other words it must be a conspicuous agreement independent of the rental agreement or lease); and (4) that the landlord may not treat a failure by tenant to perform the independent agreement as grounds for terminating the rental agreement. With regard to all non-single-family residences, S.O.S. wishes to provide in the landlord and tenant statute that the landlord and tenant of any other dwelling unit may agree that the tenant is to perform specified repairs, maintenance, alterations, or remodeling so long as (1) the work is not needed to bring the dwelling unit into compliance with any state or local codes; (2) that the agreement is supported by a fair price or adequate *quid pro quo*; (3) that the tenant has access to the areas to be repaired, maintained, altered, or remodeled; (4) that the agreement between the landlord and the tenant be conspicuous and independent of the rental agreement; and (5) that the landlord may not treat any failure by the tenant to perform the independent agreement as grounds for terminating the rental agreement.

Please draft the necessary statutory provisions to deal with S.O.S.'s requests regarding these three specific fact situations.

Problem 5.2 — Prevention of Vacant Dwelling Units (graded)

As before, the purpose of the client, S.O.S., is to encourage tenants and landlords to maintain and improve the quality of existing rental housing within the state. To this end, S.O.S. wishes to discourage tenant absences from, and abandonment of, dwelling units because vacant dwelling units are frequently subjected to damage, vandalism, and deterioration.

Therefore, S.O.S. would like a new statutory provision which provides that, unless otherwise agreed, the tenant shall occupy rented premises as his residence and shall continue to occupy the rented premises until the end of the agreed term of the rental agreement.

In addition, S.O.S. would like a statutory provision that allows the landlord to require, in the rental agreement, that the tenant notify the landlord of any extended anticipated absence from the rented premises in excess of seven days. S.O.S. wishes to provide that this notification be received by the landlord not later than the first day of such an anticipated extended absence.

S.O.S. would also like to provide certain landlord remedies for tenant

absence and misuse. For instance, S.O.S. wants a provision that requires the tenant, if so provided for in the rental agreement to notify the landlord of anticipated extended absences in excess of seven days and that the tenant, if he willfully fails to notify the landlord, shall be liable to landlord for any actual damages resulting from his failure to notify.

S.O.S. also wants to allow the landlord to enter the dwelling unit of the tenant as may be reasonably necessary for purposes of inspection, maintenance, and safekeeping during any extended absence of the tenant.

Finally, S.O.S. wishes to provide that unless otherwise agreed, the tenant's use of the dwelling unit for any other purpose than as his residence, or nonuse of the residence, shall entitle the landlord to proceed under the Ohio forcible entry and detainer statute.

*Problem 5.3 — Landlord Duties and Remedies
After a Tenant Abandonment (graded)*

Again, S.O.S. wants to encourage tenants and landlords to maintain and improve the quality of existing rental housing in the state. To this end S.O.S. wishes to provide for certain remedies after a tenant abandonment. First, S.O.S. wishes to provide that if the tenant abandons, the landlord has a duty to mitigate; in effect that the landlord has a duty to rerent the premises at a fair rental value.

Second, S.O.S. wants to provide that if the landlord rents the dwelling unit for a term beginning before the end of the tenant's rental agreement, that the rental agreement terminates as of the date of a new tenancy.

Third, S.O.S. wants to provide that if the landlord fails to use reasonable efforts to mitigate or to rerent the dwelling unit at a fair rental price, or if the landlord accepts the tenant's abandonment as a surrender, then the rental agreement is deemed to be terminated by the landlord as of the date the landlord has the notice of the tenant's abandonment.

Finally, S.O.S. sees the necessity of determining what the length of a given term of a tenancy is and therefore wishes to provide in the statute that if the tenancy is from month-to-month or from week-to-week the term is for a month or for a week as the case may be.

*Problem 5.4 — Tenant Duty to Notify of Defect and
Tenant Remedy of Repair and Deduct (graded)*

Again, S.O.S. wishes to pursue its goal of encouraging tenants and landlords to maintain and improve the quality of existing housing within the state. S.O.S. believes that it is necessary and also fair that the burden of maintaining housing be borne by the tenant as well as the landlord. Recognizing that there is already a strong reflection of this view in sections 5321.04 and 5321.05 of the Ohio Revised Code Annotated, S.O.S. nevertheless feels that the tenant's cooperation is essential in the detection and reporting of defects in the rental premises. The tenant is in a better position than the landlord, especially when no resident landlord or manager or janitor is present, to discover dangerous and defective conditions quickly. Therefore, the landlord wishes to impose upon the tenant a requirement of notifying the landlord of defects in the rental premises.

Specifically, S.O.S. wants to provide that any defect or problem with the rental premises about which the tenant knows, and which the tenant has reason to

believe is not known by the landlord, and which the tenant believes is the landlord's duty to repair, shall be reported in writing by the tenant to the landlord as soon as possible. An exception to this requirement is if the landlord fails to give to the tenant the notice that is required by sections 5321.18 (A) and (B) of the Ohio Revised Code Annotated, no duty to report arises.

Second, S.O.S. wishes to provide to the tenant a self-help remedy: the opportunity to repair and deduct. In effect, S.O.S. wants to provide that if the landlord, after being notified of a defect, fails to repair, maintain, make sanitary, or fails in any way to perform duties imposed upon him by section 5321.04 of the Ohio Revised Code Annotated or as agreed to in the rental agreement and fails to remedy within two weeks or as promptly required, if an emergency arises then the tenant may do certain things. Specifically, the tenant may, if he is current in his rent, further notify the landlord in writing of the tenant's intention to remedy the condition or defect complained of at the landlord's expense. Then, he may proceed as soon as possible to do, or have done, the necessary work as long as it is done in a competent and workmanlike fashion. In addition, the tenant may deduct from his rent a reasonable sum not to exceed one month's rent as long as he submits to the landlord copies of receipts covering any sum deducted.

S.O.S. also wishes to provide, however, that under no circumstances may the tenant repair and deduct when the condition that the tenant is reporting to the landlord was caused by the tenant's failure of due care or negligence, or by a failure of due care or negligence by a family member or guest of the tenant.

S.O.S. also wants to provide that the tenant shall be liable to the landlord for any liability or injury resulting to the tenant as a result of the tenant's failure to inform the landlord of a defect which is the landlord's duty to repair or maintain. In effect, liability should attach to a tenant if the landlord can show that, had the tenant given timely notice, the landlord would have escaped financial harm.

Problem 5.5. — Retaliatory Evictions and Security Deposits (graded)

Again, keeping in mind S.O.S.'s purpose of encouraging the maintenance and improvement of existing rental housing from the state, S.O.S. wishes three additional provisions. With regard to retaliatory evictions, S.O.S. wishes to provide that any tenant who has been dispossessed in violation of section 5321.02 of the Ohio Revised Code Annotated is entitled to recover from the landlord either three month's rent or three times the actual damages he sustained, whichever is greater, plus reasonable attorney's fees.

Second, to give the landlord some relief from the anti-retaliatory-eviction provisions, S.O.S. wishes to provide that tenants are immune from the actions prohibited under section 5321.02 of the Ohio Revised Code Annotated (the retaliatory eviction provision) only for a period of six months.

Finally, with regard to security deposits, S.O.S. wishes to provide that willful retention of a security deposit is a misdemeanor under state law, having a penalty of not more than sixty days imprisonment and a fine of not more than \$500.

Problem 7.1 — Final Integrated Draft (graded)

Please integrate all of S.O.S.'s requests for amendments to the Ohio Landlord Tenant Act (Problems 5.1 to 5.5) into one final draft. This final draft

should be consistent with *The Fundamentals of Legal Drafting* and with all requirements of the Ohio Bill Drafting Manual.

Problem 7.1 — Final Expository Memo (graded)

Please prepare an expository memo for your client, S.O.S., explaining generally what you did in your final integrated draft, and why, to meet S.O.S.'s requests. Please demonstrate your understanding and mastery of *The Fundamentals of Legal Drafting* in preparing your memo.

APPENDIX C

Legislative Drafting

Across-the-Board Checklist/Grading Sheet — Legislation (Dickerson)

- | | |
|---|---|
| <ul style="list-style-type: none"> Consistency (2.3.1) Sound Arrangement (2.3.2) <ul style="list-style-type: none"> Point(s) of View (5.2) Objectives (Clarity, Usefulness, Simplicity, Economy) (5.2, 5.3) Problems of Division (5.4) <ul style="list-style-type: none"> (1) Exclusion (2) Equality (3) One Principle Problems of Classification (5.5) <ul style="list-style-type: none"> (1) Unified Subjects (2) No Functional Dismemberment Problems of Sequence (5.6) <ul style="list-style-type: none"> (1) General Before Special (2) More Important First (3) More Frequently Used First (4) Permanent Before Temporary (5) Housekeeping Last Recurring Situations (5.7) Over Complexity (5.8) Arrangement of Parts and Subparts (5.9) Established Usage (2.3.3) Semantic Ambiguity (3.3.1) <ul style="list-style-type: none"> Multiplicity of Dictionary Meaning (3.3.1) And/Or (6.2) Passive Past Participles (6.4) Number (6.5) Mood (6.6) Problems of Time (6.7) Problems of Age (6.7) Provisos (6.8) Syntactic Ambiguity (3.3.1, 6.1) <ul style="list-style-type: none"> Multiple Modification (6.1) Multiple Reference (6.1) Uncertainty of Pronominal Reference (6.1) Scope of Modifier (6.1) Scope of Thing Modified (6.1) Terminal Because Clause (6.1) Juxtaposition of Two Prepositional Phrases (6.1) And/Or (6.2) | <ul style="list-style-type: none"> Contextual Ambiguity <ul style="list-style-type: none"> Internal Inconsistency (3.3.1) External Inconsistency (3.3.1) Does Particular Implication Arise (3.3.1) <ul style="list-style-type: none"> Conditions and Requirements (6.9) Gilding the Lily (6.10) Incorporation by Reference (6.11) Over-vagueness (3.3.2) Over-precision (3.3.2) Over-generality (3.3.3) Under-generality (3.3.3) Obesity (3.3.4) Definitions <ul style="list-style-type: none"> Use Only When Necessary (7.1) Types — Lexical (7.2) <ul style="list-style-type: none"> Stipulative (7.2) Synonym Analysis Synthesis Denotative Freedom of Stipulation (7.3) Partial or Exhaustive (7.5) Placement (7.5) Don't Recite the Obvious (7.6) Humpty Dumpty (7.6) Degenerate (7.6) One-shot (7.6) Stuffed (7.6) Mood (6.6) Readability <ul style="list-style-type: none"> Brevity (8.2) Long Sentences (8.3) Don't Start Sentence With Exception (8.3) Directness (8.4) Negative Form (no person may) (8.4) Exceptions (8.5) Tense - Present (8.6) Active Voice (8.7) Use Finite Verbs (8.8) Internal Reader Aids (8.9) <ul style="list-style-type: none"> Punctuation Capitalization - Use Sparingly Topic Headings (check OBDM) |
|---|---|

Designation and Numbering of Parts	Preferred Expressions (9.3)
Cross References	Shall (9.4)
Tables	May (9.4, 8.4)
Computations	Any, Each, Every (9.5)
External Reader Aids (8.10)	Such (9.6)
Too Much of a Good Thing? (8.11)	"Respectively"/as the case may be (9.7)
Miscellaneous Specific Suggestions	Placement of the Negative (9.8)
Objectionable Words (9.1)	Avoiding the Undistributed Middle (9.9)
Circumlocutions (9.2)	
Redundancies (9.2)	

Across-the-Board Checklist/Grading Sheet — Legislation (OBDM)

Title	5	Gender	29
Sections Amended	5	Synonyms - Consistent Usage	29
Sections Enacted	5	Avoid Couplets	29
Sections Repealed	5	Surplusage	30
Clear, Concise Expression of Subject Matter	5	Imprecise References (herein, etc.)	30
Inclusive References; When O.K.	6	Words to be avoided	30
Style Clause	8	Heretofore	
Amending or Enacting Clause	8	Hereafter	
Sections Amended	8	Provided	
Sections Enacted	8	Said	
No Inclusive References	8	Duly	
Body	9	Therein	
Section 1	9	Use of Notwithstanding	32
Double-spacing	11	Paragraphs - Lettering and Numbering	33
Paper Size	11	Avoid Long Ones	35
New Matter - Caps	11	Cross References	35
Capitalization		Definitions	36
Underlining		When Used	36
Deletions - Horizontal Line	11	Don't Define Governmental Entities	36
Double Underlining	14	Form - 1st Section	36
Repeal Clause		Capitalization	37
Outright Repeal	14	General Rule - Use Lower Case	37
Non-outright Repeal	15	Indisputable Proper Nouns	37
Emergency Clause	19	Punctuation	
Immediate Preservation of Health, Safety, and Welfare	19	Series Following a Colon	37
Purposes Clauses	20	"And," "or" and "nor" in List	38
Not Used Unless Specific Need	21	Use of Comma	39
Effective Date Clause	21	In a Series	
General Rule - Not Needed	21	Nonrestrictive Adjective Clause - Yes	
Special Problems	23	Restrictive Clause - No	
Amending Section Numbers	23	Parenthetical Phrases - Yes	
Repealing and Reenacting Sections	25	Dependent Adverbial Clauses - Yes	
Words and Grammar	28		
Present Tense	28		
Active Voice	28		
Singular, Plural	29		

Use Commas, Not Parentheses, when Possible		Always Use Full Titles for Constitutional Officials	
Spelling	40	But Not Appointed Officials	46
Standard English Dictionary	40	Inclusive References	46
Hyphenated Words	41	Sections 121.01 to 121.11	
Compound Adjectives - Yes, when they precede a noun		Ohio Revised Code Annotated	46
No, if first word is an adverb	41	References to Other Sections	47
Compound Numbers - Yes, for numbers 21 to 99 when spelled out	42	Refer to Specific Sections	48
Fractions - Yes	42	Do Not Refer to "This Act," "By Law" or "Herein"	48
Quotations	42	Citing Ohio Constitution	49
Use When Context Requires	42	Give Section First, Then Article	49
Comma Should be Within Quotes	42	Penalties	49
Colon, Semi-colon, Question Mark, Exclamation Point - (should be placed inside or outside as appropriate)	42	Use .99 Section, Except in Title 29	49
Numerical References	43	(But Check OBDM p. 49 For Other Exceptions)	
Money, Population, or Percentage: Write Out, Do Not Use Parentheses	43	Form - "Whoever Violates . . ."	50
Numbers Greater than 100	43	Do Not Qualify Offenses in Penalty Clause (e.g., "Willfully")	50
Charts and Tables - Use Numerals	43	Use Form Prescribed	50
Time - Do Not Use "o'clock" - (spell out hours)	43	Single and Compound Penalties	50
Code Section Numbers - Use Numerals	44	Conform to Criminal Code	51
Dates	44	Citation of Federal Statutes	51
In General	44	Cite by Short Title of Popular Name	51
Effective Dates in Code Sections - Avoid General References	44	Numbering of Sections and Chapters	53
Titles of Departments, Boards, Bureaus, Commissions and Public Officials	45	Requires Careful thought - Most Logical Place	53
Use Title in First Reference in Each Section	45	.041 Indicates Supplemental Section	53
Subsequent References Simply "Department" Except Where 2 Departments Referred to	45	Don't Use .04.1	53
		Inclusion in Existing Chapters is Preferable to Creation of New Chapter	54
		One Subject	61
		And/Or	65
		Severability	71

Across-the-Board Checklist/Grading Sheet - Memo (Wydick)

Omit Surplus Words	(I)	Trim Verbose Word Clusters	(IC)
Working Words	(IA)	Shorten Clauses and Phrases	(ID)
Glue Words	(IA)	Avoid Couplets	(IE)
Avoid Compound Prepositions	(IB)		

Established Usage	(II)	Word Arrangement	(V)
Concrete Words	(IIA)	Normal Word Order and	
Familiar Words	(IIB)	Inversion for Emphasis	(VA)
No Lawyerisms	(IIC)	Subject Close to Verb	(VB)
Use Short Sentences	(III)	Verb Close to Object	(VB)
Aid to Comprehension	(IIIA)	Put Modifier Close to	
Guide to Clarity	(IIIB)	Thing Modified	(VC)
Use Tabulation for Long		Avoid Language Quirks	(VI)
Sentences	(IIIC)	Elegant Variation	(VIA)
Use Base Verbs and Active		Noun Chain Confusion	(VIB)
Voice	(IV)	Sexism	(VIC)
Base Verbs v. Derivative		Adjectives - Adverbs	(VID)
Nouns and Adjectives	(IVA)	Throat Clearing	(VIE)
Active Voice v. Passive			
Voice	(IVB)		