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Review of Tammy Pettinato Oltz, *Lawyering Skills in the Doctrinal Classroom: Using Legal Writing Pedagogy to Enhance Teaching Across the Law School Curriculum*

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Book Review

Tammy Pettinato Oltz, *Lawyering Skills in the Doctrinal Classroom: Using Legal Writing Pedagogy to Enhance Teaching Across the Law School Curriculum,* Durham, North Carolina: Carolina Academic Press, 2020, pp. 386, $40.00.

Reviewed by O.J. Salinas

Introduction

I have a background in counseling. I received my master's in counseling after several years of practicing civil litigation in Texas. I enjoy teaching and working with students to help develop their interviewing and counseling skills. I even enjoyed doing so in my legal research and writing classes.

Some of the exercises that my legal research and writing students most appreciated were client interviews. The exercises were a fun way to engage students in multiple lawyering skills that were easily incorporated into my course curriculum and helped satisfy my course objectives. I had my students perform some initial legal research on a substantive area of law. They knew that the substantive area of law related in some way to a writing task that they would soon complete, like an objective memo or a motion for summary judgment. But they didn't know the facts of the case yet. They had no summary of the facts. They had no affidavits or depositions. They had only me—as the mock client.

I provided some basic guidance on conducting initial client interviews. And I encouraged the students to just try to have a conversation with me (as the client). I allowed all the students an opportunity to ask questions—they'd raise their hand if they had a question, and I'd signal with a nod of my head or a point of my finger that they could now ask their question. We tried to have an organic conversation, but the students knew that they needed information from the client to help them with their writing task. They also knew that they needed to build rapport with the client, as I had told them that I was not going to spill every factual detail after just one question like "Tell me how we can help you."

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So, the students got some general information about me and my potential claim, and then they used some of their legal research to direct the interview toward more specific questions that they felt they needed answers to. Students used the information they received from the client interview to further build their legal research, and then the client revisited the classroom later to obtain some legal advice. Students soon realized that they were generating an outline for their writing task as they conducted the interview. They were having to discuss the relevant rules with the client and identify how such rules applied to the client's case. These experiential exercises helped the students develop not only interviewing and counseling skills, but also a plan for what they wanted to say for their writing tasks. The students and I felt these exercises were win-win situations.

All Law Faculty Work with Legal Doctrine, and All Law Faculty Can Incorporate Experiential Skills in Their Courses

I've worked at the University of North Carolina School of Law ("UNC") since 2011. I started teaching primarily in UNC's 1L legal research and writing program. I taught two sections of our Research, Reasoning, Writing, and Advocacy courses ("RRWA") per semester. Fall RRWA focuses on objective writing and state court law. Spring RRWA focuses on persuasive writing and federal law. Both experiential courses provide extensive individual and group feedback to students on the essential lawyering skills that students will use during their summer jobs and in their professional careers.

When I first started teaching at UNC, Craig T. Smith was the assistant dean of the Writing and Learning Resources Center, a center that houses UNC's legal research and writing and academic excellence programs.[1] Craig is still the assistant dean of the Writing and Learning Resources Center, and he has been serving as the associate dean of academic affairs since July 1, 2021.

Craig has often encouraged folks to use the phrase "podium faculty" to distinguish faculty who teach traditional so-called "doctrinal" courses from faculty who teach skills-based courses, like legal research and writing. Craig often says that it is more appropriate to focus on *how* someone teaches a law school class than on *what* class a professor teaches. Podium faculty primarily teach near a podium in front of the class, and they often engage their students using the traditional Socratic dialogue. Faculty teaching skills-based courses, on the other hand, tend to engage students in a variety of ways to help the students better understand the law and experience what lawyers do in practice.[2] Both types of faculty work with legal doctrine.

1 I started directing the Academic Excellence Program in 2017. As Director of Academic Excellence, I oversee academic support programming for all UNC law students and graduates. I now primarily teach upper-level courses focused on preparing students for the bar exam, as well as courses focused on negotiations and client counseling.

2 The majority of UNC's doctrinal professors do engage students in more ways than just the Socratic dialogue. We have had many professors engage students with methods and assignments similar to those described in this book pre-pandemic. But more and more

Even though they may not be considered doctrinal professors, faculty teaching skills-based courses still work with legal doctrine. It's not as if skills-based courses are in some vacuum totally isolated from the law. Legal writing assignments have students research and apply legal doctrine to a set of facts. Client interviews often have students orally explain how legal doctrine applies to a real or mock client's case. Negotiations often have students trying to resolve a legal dispute outside of the courtroom.

The American Bar Association formally acknowledges the importance of "professional skills" and requires that law graduates take at least six credits focused on experiential learning.[3] Each of these skills-based courses and others integrate the skills that lawyers do in practice with legal doctrine. But integration of skills and doctrine is not limited to skills-based courses. Doctrinal faculty can integrate professional skills in their courses to better facilitate their students' learning and engage their students in the type of skills that they will be doing as practicing lawyers.

Tammy Pettinato Oltz's book *Lawyering Skills in the Doctrinal Classroom: Using Legal Writing Pedagogy to Enhance Teaching Across the Law School Curriculum* provides an outline for doctrinal professors who want to integrate professional skills in their courses. Oltz credits a message on the Legal Writing Institute group e-mail list for partially inspiring her to edit the book. As Oltz recalls, "Someone had posted a question asking for suggestions regarding the best way to hold student conferences, a staple of legal writing classrooms."[4] As a former legal research and writing professor, Oltz had incorporated a variety of experiential and skills training in her family law class, such as negotiations and drafting exercises. But she hadn't incorporated individual student conferences. As she read the various responses relating to individual student conferences and the legal writing classroom, Oltz had a bit of a "lightbulb" moment—that individual conferences and other pedagogy traditionally used in the legal writing classroom could help her and others in teaching doctrinal classes.

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faculty throughout the country are doing so now. Perhaps, the pandemic and the transition to remote teaching helped open the eyes of faculty to looking at teaching the law and assessing whether a student understands and can practice the law in different ways. This is the type of progress that I suspect the authors of the Carnegie Report wanted to see in legal education. *See* William M. Sullivan et. al., Educating Lawyers: Preparation for the Practice of Law (2007).

3 *ABA Standards and Rules of Procedure for Approval of Law Schools §§ 302, 303(a)(3), 314*, American Bar Association (2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2020-2021/2020-21-aba-standards-and-rules-chapter3.pdf. ABA Interpretation 302-1 identifies "professional skill" as including "interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation."

4 Tammy Pettinato Oltz, Lawyering Skills in the Doctrinal Classroom: Using Legal Writing Pedagogy to Enhance Teaching Across the Law School Curriculum xv (2020).

Now, many of us are members of various academic group e-mail lists. We receive e-mails after e-mails, many of which include insightful and creative thoughts that can help us in our teaching and scholarship. Unfortunately, we are often too busy to appreciate the multiple e-mails that we receive. Oftentimes, we—at best—quickly skim some of our messages before deleting or archiving them.

Many of us should be glad that Oltz didn't skim through the message on legal writing student conferences too quickly. She has gathered work from an impressive group of contributors who provide timely and concrete examples of how to incorporate legal writing pedagogy in traditional doctrinal classes.

The book is nearly 350 pages long, and it is divided into four key parts. Each part highlights various strengths in the pedagogy taught by legal writing and other skills faculty. Each part also provides helpful resources for doctrinal professors to incorporate lawyering skills into their courses. As skills professors often do in the classroom, the book not only tells doctrinal professors what they can be doing in their classroom to better engage students, but also *shows* doctrinal professors what they can do as well.[5]

Part I: Exploring Teaching Methods

In "Exploring Teaching Methods," the first part of the book, contributors Molly Fergusson, Jane Bloom Grisé, Charles R. Calleros, Aliza M. Milner, Jennifer Rosa, and Jennifer E. Spreng set the stage for the importance of engaging law student learners using methods that are typical of legal writing pedagogy, including the use of storytelling, visual aids, and group work.

Fergusson's chapter highlights how learning the stories behind the litigation outlined in a traditional doctrinal casebook helps students better understand the cases they read and the relevant rules associated with those cases. "When we hear stories, we are not passive listeners; we are active participants. We identify with the people in the stories, we react to what we hear, we empathize, we feel things. What we experience, we tend to remember."[6]

Calleros' chapter continues to encourage the use of storytelling and other common pedagogies associated with legal writing in traditional casebook courses. In his chapter, Calleros describes his decision to write a contracts textbook that incorporates legal writing pedagogy because he found most first-year casebooks "as excessively focused on law at the expense of fact analysis."[7] He highlights incorporating a staple of legal writing pedagogy—giving students multiple opportunities for formative assessment—as a motivating factor to create his problem-based contracts textbook.

5 The strongest parts of this book are the multiple example assignments, rubrics, and ideas for future projects that the contributors share with the reader. These tools for incorporating lawyering skills in doctrinal classes are highlighted throughout the book, either as chapter appendixes or within the chapters themselves.

6 Lawyering Skills in the Doctrinal Classroom, *supra* note 4, at 3.

7 *Id.* at 46.

The rest of Part I continues to highlight pedagogies common in legal writing classrooms and offers helpful suggestions to engage students in the doctrinal classroom. Grisé describes her positive experience with having students use clip art and visual images to help them better understand and explain legal concepts or important case information. Rosa highlights the benefits of collaborative and cooperative group work, and Milner identifies three steps to increase the reading fluency of students in doctrinal and experiential classes. Last, Spreng describes "anchoring" doctrinal course instruction to trial and appellate court pleadings and memorandums to help students "construct knowledge they are more likely to retain, retrieve, and transfer to new settings, like the bar examination and practice."[8]

Part II: Legal Writing in the Doctrinal Classroom

In Part II, "Legal Writing in the Doctrinal Classroom," contributors Linda H. Edwards, Sherri Lee Keene, Anthony Johnstone, Christine L. Jones, Tessa L. Dysart, and Meg Penrose examine ways that the writing process and legal writing assignments can facilitate law school learning in doctrinal classes.

Edwards acknowledges the struggle that many professors of doctrinal courses face when deciding to incorporate such practical skills as legal writing in their courses. As Edwards describes, professors of doctrinal courses may feel that they are "[v]ery busy" or "have precious little syllabus time."[9] They may feel ill-equipped or unwilling to learn the type of skills needed to be effective teachers of assignments that focus on experiential learning and practical skills. Or they may fear not being able to handle the F-word that legal writing faculty constantly and dependably use to help their students improve their professional skills—feedback. Edwards effectively quashes some of these misconceptions by encouraging doctrinal professors to use about five minutes of their classroom time to engage students in small parts of the writing process, like rule construction and forms of legal reasoning—not necessarily to improve the students' legal writing, but "to double-check and deepen doctrinal learning."[10]

Part II of the book continues with other specific examples on how to incorporate legal writing assignments into doctrinal classes. Johnstone encourages using mini-briefs or mini-moots as a way to break the "divide between the understanding of legal doctrine and the exercise of lawyering skills."[11] He highlights the limitations of the traditional doctrinal classroom as heavily focused on edited cases and final exam essays.[12] He emphasizes that law students can benefit from skills training in doctrinal courses just as

8 *Id.* at 82.

9 *Id.* at 107.

10 *Id.* at 108.

11 *Id.* at 137.

12 *Id.* at 138.

"[l]awyers achieve outcomes for their clients by integrating research analysis and writing with a practical understanding of relevant law."[13]

The theme of mini-briefs and mini-moots continues in Part II with Keene, Jones, Dysart, and Penrose discussing their experiences in incorporating legal writing assignments in their criminal law, constitutional law, and federal courts courses. Whether through editing assignments, reviewing different genres of legal writing, or writing substantive and reflective papers, these contributors' students were engaged "outside of the Socratic box"[14] by being allowed to "assume the attorney role" instead of being passive readers of appellate judicial opinions.[15] As Keene notes, having students assume the role of an attorney in a doctrinal class writing assignment helps "students learn first-hand that their understanding of the law is integral to their success as advocates." As students "improve their writing, they must often improve their understanding."[16] And if the written assignments demonstrate that the students' understanding of the substantive law falls short of a professor's expectations, the professor can help fill in the gap during the Socratic dialogue. In this way, writing assignments in the doctrinal classroom provide students an opportunity to assess their understanding of the material while also giving professors the opportunity to assess their delivery and teaching methods.

Part III: Transactional Drafting and Other Skills

In Part III, "Transactional Drafting and Other Skills," contributors Adam N. Eckart, Claire C. Robinson May, Cynthia D. Bond, Tenielle Fordyce-Ruff, and Hugh M. Mundy continue to highlight the benefits that students receive from doctrinal courses that are not solely focused on the traditional casebook method. As May notes, clients and legal employers expect new attorneys to do more than simply think like lawyers. They expect new attorneys to know "how to work as lawyers" as well.[17] New attorneys must "hit the ground running"[18] but, as the contributors highlight, the traditional law school curriculum that separates doctrinal and skills courses can limit how fast and far our new attorneys can run.

The contributors provide helpful sample assignments and descriptions of their experiences with incorporating drafting and other transactional skills into doctrinal courses. May describes her experience co-teaching a trusts and estates course that integrated document drafting with learning of the substantive law "to enhance both student understanding of core concepts and preparation for

13 *Id.* at 137.

14 *Id.* at 194.

15 *Id.* at 128.

16 *Id.* at 129.

17 *Id.* at 223.

18 *Id.* at 224.

legal practice."[19] Bond discusses ways she has incorporated training of such skills as mediation, research, oral arguments, and document review in her family law class to "broaden learning, deepen student engagement, and create a more dynamic classroom."[20] Mundy explains the benefit of introducing the narratives of pro bono clients into the 1L doctrinal curriculum to help students recognize that lawyers "pair abstract principles with narrative fluency to offer sound legal advice to a client."[21] Eckart identifies several projects that professors teaching within the 1L doctrinal curriculum can assign to their students that can help them better understand the substantive material, but also counter the disproportionate exposure that 1Ls receive to litigation. As Eckart notes, "Without knowing it, students are disproportionately exposed—and therefore predisposed—to careers in litigation due to the nature of the first-year law school curriculum. Accordingly, 1L students quickly become rising 2Ls without having seen a transactional problem, thinking about the common objectives of a client and a counterparty, or drafting a transactional legal document or provision."[22]

Part III of the book also provides several helpful ideas to incorporate legal research into doctrinal courses. Fordyce-Ruff highlights the use of research assignments in doctrinal classes to help alleviate the "growing dissatisfaction with the legal research skills of new attorneys among employers" as well as the growing dissatisfaction with the "lack of connection between doctrine and research" among law students.[23] As Fordyce-Ruff notes, "Effective research requires noticing nuances in cases, statutes, and other sources; sifting through various sources to determine which law governs a problem; and evaluating how the law applies to specific client's facts."[24] Providing research assignments for doctrinal classes can "help students master the skills most necessary to succeed in doctoral courses: critical reading, rules synthesis, identifying rule structure, and factual analysis."[25] It can also help doctrinal professors "better prepare students for their chosen profession."[26]

Part IV: Lessons in Assessment

Part IV of the book focuses on assessment. Contributors Jamie R. Abrams, Victoria J. Haneman, and Joan M. Rocklin highlight ways that doctrinal courses can incorporate formative assessment not only to help satisfy the ABA

19 *Id.* at 225.

20 *Id.* at 258.

21 *Id.* at 278.

22 *Id.* at 209.

23 *Id.* at 260.

24 *Id.* at 261.

25 *Id.*

26 *Id.*

assessment requirements,[27] but also to help students better prepare for their final exams, bar exam, and practice of law.[28] The contributors discuss ways that doctrinal professors can incorporate exam preparation throughout their courses with smaller writing assignments that are keyed to legal issues that may be tested on their final exams. As Haneman notes, "There is a disconnectedness from the learning process implicit in hiding the ball for the sake of hiding the ball, without ever pausing to assess whether the ball has indeed been found."[29] The contributors provide useful examples and resources to help students and professors identify when the ball has been found and when additional guidance is needed to find the ball.

Abrams discusses her experience with "deconstructing" old final exams in her torts and family law classes. As part of the deconstructing exercise, students get to interview a mock client from one of her old final exams. The students then use the fact pattern from the interview throughout the semester to practice issue spotting and legal analysis. As the doctrinal course covers the issues in class, the students revisit the fact pattern and write short e-mail analyses to the client explaining how the law applies to the client's case for those issues. This exercise "embeds exam preparation organically in the course" while also providing "soft, collaborative, formative assessment" that students can use and grow from before the cumulative final exam.[30]

Haneman continues to emphasize the benefit of formative assessment and highlights her use of free-writing exercises in her tax, business associations, and wills, trusts, and estates courses. The goal of Haneman's formative assessment free-writes is simple: to assess a "student's ability to synthesize black letter law on a narrow topic."[31] As she explains, "Many doctrinal courses involve classroom discussion at a relatively high level of abstraction, but a respectable performance on the course summative assessment (or the bar exam, for that matter) is not driven by the same level of abstraction. Blending the theoretical with the practical, it is useful to assess whether the students are synthesizing

27 *See* Sullivan et. al., *supra* note 2, at 24. ABA Standard 314 states that a "law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students."

28 As someone who works with and counsels students on academic and bar support, I particularly appreciated Part IV of the book. Law students, especially 1Ls, often wait to prepare for final exams until the end of the semester—which likely is too late for many of them. Exam preparation should be done early and often by students *and* their doctrinal professors. We should all give students multiple opportunities to understand what they will be expected to produce on their final exams *before* their final exams. This can give students the opportunity to seek appropriate interventions when they are not learning what they need to learn for the final exam, and it gives professors the opportunity to periodically adjust their teaching to help maximize student learning.

29 Lawyering Skills in the Doctrinal Classroom, *supra* note 4, at 309.

30 *Id.* at 294–95.

31 *Id.* at 313.

substantive rules and legal principles in a way that will serve them on the final exam, on the bar exam, and in practice."[32]

Last, Rocklin encourages doctrinal professors to teach and model exam writing skills in their courses so that students know what they will be expected to produce on their final exams. As Rocklin notes, "Law professors want their students to expertly apply law to facts, and they want that skill on display in students' final exams. Yet, professors frequently fail to provide the necessary instruction."[33] This failure can create additional psychological havoc to an already stressful and competitive law school environment. Professors who "align their course content with final modes of assessment"[34] can help students more effectively learn the material that they need to learn, and they can help "make the law school a healthier, more welcoming, and more productive place for all of our students."[35]

Conclusion

The pandemic already forced many academic institutions to quickly rethink how they deliver the type of education that they say they deliver. And with the ABA's continued emphasis on experiential skills, the timing seems right for law school faculty to reconsider whether their teaching is effectively helping students learn how to be lawyers.

After all, law schools are professional schools. They teach students—or they *should* teach students—not only about what legal doctrine is, but how a legal professional practices law. If one of the major goals of legal education is to train future lawyers, then all legal educators—whether they teach near a podium or not—should evaluate how their teaching helps to achieve this important goal. Oltz's book provides the research and tools to help law school faculty take the first step toward reevaluation.

Overall, Oltz's book is an impressive piece of work with multiple concrete examples on how doctrinal professors can incorporate lawyering skills into their courses. It's an uplifting read for legal writing and skills faculty who may often feel as if their work may be devalued by their institutions or siloed from the broader doctrinal faculty. More importantly, it's an instructive read for professors teaching doctrinal classes who want not only to further engage their students in the substantive law that they are teaching in their courses, but also to engage their students in the type of skills that lawyers do in practice.

32 *Id.*

33 *Id.* at 342.

34 *Id.* at 332.

35 *Id.* at 343.