

WRITING ABOUT THE LAW: A COMPOSITION COURSE FOR PRE-LAW STUDENTS

"Virtually every American law school adheres to the 'case study method'." The speaker is Scott Turow, formerly a lecturer in the English department at Stanford, who in 1974—"purely speculatively," he told himself—took the Law School Admissions Test. Three years later, Turow had written *One L: An Inside Account of Life in the First Year at Harvard Law School*.¹ The case study method comes up early in his book, because "cases and opinions form the very center of a law student's world."²

Until he entered that world, says Turow, he had not been aware that much of the law is made in the courts, case by case—that is, lawsuit by lawsuit—as judges interpret legislative statutes and as they grapple with questions to which no statute affords an answer. Having reached a decision in a case, a judge may write a judicial opinion. Usually an opinion opens with a short account, in narrative form, of the dispute that brought the litigants before the court. The opinion then turns to exposition and persuasion, defining issues, summarizing the litigants' arguments, sorting out principles of law, citing precedents—and finally proving (at least to the satisfaction of its author) that the application of particular rules dictates the present decision.

If a case is controversial, you and I may see excerpts from the opinion in our daily newspapers. Controversial or not, before long the opinion will probably appear in a case reporter, a volume bearing on its spine a title such as *563 Federal Reporter, 2d Series*, which will be placed alongside similar volumes in the rows of reporters filling the shelves of law libraries. There the opinion may be searched out by law students drafting briefs and

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¹(New York: G. P. Putnam's Sons, 1977.) p. 24.

²*Ibid.*

memoranda for their courses. Should the opinion influence development in a given area of the law, say, contracts, it may be reprinted, entirely or in part, in a casebook, the kind of text toted by law students to and from class.

Law students read, analyze, and write about judicial opinions, as Turow reports in *One L*. A course I teach at Queens College, CUNY, is designed for the undergraduate student who is eager to sample something like that law school experience. The course is English 6.2, "Writing about the Law." Explaining why and how I have adapted the case study method to an undergraduate composition course is my aim in this paper.

At Queens, "Writing about the Law" belongs to a group of courses known as the "special" sections of English 6. These courses date from 1976, when English 6 was added to the college-wide composition requirement. That requirement had previously called for a semester, or in the case of many students, for two semesters, of introductory composition. The new requirement for an intermediate-level course included a new option. Students could elect to take either 6.0, "General Expository Writing," or one of the sections, designated 6.1 through 6.9, offering practice in writing related to their major fields of concentration and their future careers. The special sections, which seem in the past four years to have grown steadily more popular than the general 6.0, now provide training in writing about the subjects of Business and Economics, the Medical Sciences, the Natural Sciences, the Social Sciences, Art, Music, Literature, Education, and Law.

The special 6's constitute a departure from the usual undergraduate writing course, which traditionally is taught as a skills course unrelated to any particular subject matter. While much may be said for the traditional method, its great drawback is that it cannot fully prepare students to meet the requirements of academic writing. The papers our students submit to their subject teachers are graded on content as well as on form—if anything, on content far more than on form. Yet in a traditional writing skills course, content runs a very poor second to form as students are free to write about topics—their families, their favorite records—with which their teacher is unacquainted. In such a course, content does count for something: a paper should be interesting and should have no obvious contradictions or glaring omissions. But the paper needn't be insightful, or thorough, or even accurate, since a teacher unfamiliar with its topic is not likely to remark the absence of these qualities.

Too easily, therefore, a student in such a course may adopt this rule: to solve writing problems, sacrifice content for the sake of form. If a point, though important, proves difficult to write about, being hard to explain or hard to integrate with other points, well then—since the teacher will probably not notice—just drop it or bend it. A shrewd student who relies on this tactic may earn A's in composition, since her clearly expressed,

smoothly organized papers will seem skillful. This student has acquired a healthy respect for, and some skill in achieving, clarity and order. But she has *not* acquired a healthy respect for accuracy and thoroughness, qualities just as important in college writing. For her composition teacher, she has been turning out papers in which content is a minor or at best a secondary consideration. She has felt no pressure to prove her knowledge of the topics she chooses to write about. She has not been composing "real" academic essays.

In an introductory composition course, needless to say, the "skills" approach is practical, perhaps necessary. But we must, I think, concede that for as long as our students are handing us papers about their families and favorite records, their training in the attributes of successful college writing is limited. They receive little or no instruction in how to treat complex material in an accurate and thorough manner, and even the lessons they do learn, about clarity, order, grammar, and usage, may have slight value unless they are taught to apply these lessons to the types of writing ordinarily assigned in a subject course.

Do students really need to be taught to make the transition from autobiographical writing to writing about texts? Can't they make that transition on their own? Obviously some can; but in my introductory composition courses, many students stumble when taking that step. My English I students begin writing about their own ideas and experiences. Eventually, toward the end of a semester, I ask them to write about material in an anthology of essays, to summarize, for instance, one essay's argument and then compare that with another—a standard academic exercise. At this point my perspective on their work changes. Because I am now familiar with their topics, I can evaluate their papers as a subject teacher might. Even the papers written by my best students may now seem sadly lacking. Typically, the analysis of an assigned essay is inaccurate and incomplete; minor points are given too much play, while major ones are missing. Paraphrasing is not only rough but halfhearted, since quoting comes easier and plagiarism is easier still. Moreover, under the pressure of assignments demanding as much attention to content as to form, writing skills mastered earlier in the term abruptly break down. Errors in grammar and punctuation, overloaded sentences, undeveloped paragraphs, lack of organization—these mistakes now reappear. Moving from the relatively modest demands of the short personal essay to the more complex operations of critical writing, many students need help that cannot be provided in a few quick classes. They need, not just another semester of composition, but a course combining the perspective of the subject teacher *and* the writing skills teacher.

At Queens, the special sections of English 6 offer students this

opportunity. In addition, each section gives students and their teacher the chance to pursue a genuine interest. Law school is the aim of most students who sign up for 6.2. My own interest in the law began in graduate school, where I did a fair amount of legal research on the topic of literary censorship. In recent years, many of my former graduate school classmates have, like Scott Turow, belatedly enrolled in law school. Their firsthand acquaintance with the "case study method" has influenced the design of my course, "Writing about the Law."

Needless to say, my first consideration in selecting opinions for the 6.2 syllabus is that they be cast in language comprehensible to readers not trained in the law. Second, they should be concerned with issues that appeal to the interests of undergraduate students; and third, they must be capable of serving as the basis for reading and writing assignments proper to an intermediate-level composition course.

To satisfy these requirements, I look for cases dealing with constitutional rights of students in grammar school, high school, and college. Each semester I narrow the focus even further, to rights protected by a particular constitutional amendment. Thus, one term may be devoted to cases stemming from a clash between students and school authorities over the right to freedom of speech and of the press protected by the first amendment; another semester may focus on cases concerned with the right to privacy protected by the fourth amendment and possibly violated by locker and dormitory inspections and body searches of students; or the course might consider the right to freedom from cruel and unusual punishment protected by the eighth amendment and possibly violated when students are punished corporally.

Cases best suited to my lessons and assignments are those that have generated more than one opinion each, either because a disagreement among the members of a court has resulted in majority, dissenting, and concurring opinions, or because a dissatisfied litigant has pressed an appeal to a higher court. In a given semester, my students might work with about ten opinions arising from perhaps four cases. Included in the group will be at least one opinion stating a major decision in our area of constitutional law and other opinions arising from a case either recently in the news or local in origin, or, with luck, both.

One semester, for example, when the focus of the course was on rights protected by the first amendment, we began with *Tinker v. Des Moines Independent Community School District*, 393 U. S. 503 (1969), a landmark decision of the U.S. Supreme Court. In that case, high school and junior high school students had been suspended after refusing to remove the black armbands they wore to express their opposition to the war in Viet Nam. Justice Fortas, speaking for the majority, vigorously upheld the right to

free expression in school; Justice Black vehemently dissented. We ended the semester with several opinions arising from a suit brought by the editor of the student newspaper at New York City's Stuyvesant High School against school officials who had banned a proposed survey and newspaper article about student attitudes toward sex. In *Trachtman v. Anker*, 426 F. Supp. 198 (1976), Judge Motley explained why the ban was in part constitutionally permissible and in part impermissible, concluding that 11th and 12th graders—though not 9th and 10th graders—should receive the questionnaires and have their anonymous replies published in the school newspaper. A year later the judgment of the trial court was reversed by the U.S. Court of Appeals. In *Trachtman v. Anker*, 563 F. 2d 512 (1977), the majority opinion asserted that the ban was proper in its entirety, while the dissent found the ban utterly unacceptable, a violation of the first amendment rights of all students at Stuyvesant High.

"It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." So wrote Justice Fortas in *Tinker*, adding, "This has been the unmistakable holding of the Court for almost 50 years."³ In fact, however, virtually all of the leading judicial decisions on the constitutional rights of students have come in the ten years since *Tinker*. Case by case, the courts are still defining the constitutional protections to which students are entitled. The evolving case law is especially newsworthy because of its potential effect on every American community. Information about current cases usable in 6.2 often appears in the daily and weekly press, notably *The New York Times* and Nat Hentoff's column in *The Village Voice*. For a comprehensive view of the issues involved in the application of a particular amendment to public school students, I have drawn repeatedly on a 1976 publication, *The Constitutional Rights of Students: Analysis and Litigation Materials for the Student's Lawyer*,⁴ which, notwithstanding its title and quite apart from its usefulness to a course such as mine, should be of interest to teachers generally.

Getting hold of a published opinion isn't hard if one has access to a law library. A librarian can explain how to locate the opinion in a reporter and how to look up subsequent cases making reference to it. Pertinent earlier cases are cited in the opinion itself. Preceding the text of an opinion are headnotes supplied by the publisher of the report volume. Typically, headnotes state the key facts in a case, list the legal issues raised, summarize

³p. 506.

⁴ed. P.M. Lines (Cambridge, Mass. : Center for Law and Education).

the court's reasoning and conclusions—and thus perform tasks I may plan to assign in 6.2. My usual procedure, therefore, is to make a copy of the entire opinion, cut away and save the headnotes, and recopy the opinion for distribution in class. Also, my practice is to hand out copies of only one opinion at a time, so that if, for example, my students are to summarize the argument of one opinion, they will not be tempted to lean on a subsequent opinion that happens to perform that very task. Later on, we may compare their work with the summary in the second opinion or with the one originally supplied in the headnotes. By the end of a term my students have received a total of perhaps 50 or 60 pages copied from reporters, for which they pay a small copying fee. Their other purchase is a composition handbook; at present, we use Frederick Crews' *The Random House Handbook*.⁵

During our first class, my students and I talk about the case study method of American law schools and define the terms "case" and "judicial opinion." I point out that a course in law school typically deals with scores of cases and covers a broad range of issues, whereas our course will focus on just a few cases involving issues that are limited in number and closely related; that even so, a question we can't answer may come up now and then; but they will find, in our group of judicial opinions, all the information needed for a knowledgeable response to my writing assignments. Writing not only well but knowledgeably is to be their aim in 6.2. We talk about the relative ease of writing autobiographically, as most of them did in English I, and the more difficult task of writing an academic paper about material in which the teacher is well versed. To a teacher grading such a paper, we observe, content is at least as important as form. So it will be in our course, I explain. Except for the first paper, all writing assignments will be based on the opinions we read and analyze. Accuracy and thoroughness in the treatment of this material will influence their grades quite as much as will sound organization, clear style, and correct grammar and usage.

My students do write an autobiographical paper at the start of a term. This paper gives me an early indication of their basic writing skills. Because of its topic, it also serves as an informal introduction to issues with which the course will be concerned. Clashes of the kind dealt with in *Tinker* and *Trachtman* are not rare or remote from daily life. On the contrary, all young people have had comparable experiences. All have had their speech

⁵Second Edition (New York: Random House, 1977).

or expression, or their access to material and information, censored, usually by a parent or a school authority. Accordingly, if 6.2 is to focus on the first amendment, I ask my students to start off by writing about a personal brush with censorship. Similarly, were the course to focus on the fourth amendment or on the eighth, I would ask for a paper about an invasion of their privacy or about a punishment meted out to them at home or at school. In form, the first paper is a persuasive essay that (1) begins with a narrative account of a specific action taken by a parent or a school authority, and then (2) shows why the action was “right” or “wrong,” “justified” or “unjustified”—a judgment to be based not on legal considerations but on principles ordinarily applicable to the behavior of parents and children, of school authorities and students. Identifying the relevant principles and showing how they apply to a specific situation are tasks for each paper’s author. Allowing for certain differences, these tasks can be likened to what is done in a judicial opinion. Around mid-semester, when the class has become familiar with the analytical and persuasive methods typically employed in opinions, I ask for revised versions of the first papers. Often the transformation is remarkable: facts not pertinent to a final conclusion will be cut from the narrative section, while relevant facts will be added; principles of judgment will be better expressed and applied to the facts more carefully; counter-arguments previously ignored will be weighed and rebutted. A distinction glossed over in the original version may now become central; for example, a student whose reading was censored by a parent may newly distinguish between the parent’s aims and methods, endorsing the former while deploring the latter.

Copies of the first opinion are distributed at the end of the first class. I ask everyone to go through the opinion at home, looking up the meaning of any unfamiliar word. Terms such as “appellant” and “certiorari” are defined in a standard dictionary. When supplementary information about the meaning of a term would be helpful, I draw on *Black’s Law Dictionary*,⁶ but this is rarely necessary.

The next few classes are devoted to reading and discussing the first opinion. If my students are at all daunted by the language of the text, the cause is apt to be not legal jargon, but the deceptive simplicity of a passage such as the following, from *Tinker*:

[A student] may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without “materially and substantially

⁶Henry Campbell Black, Rev., Fourth Edition (St. Paul, Minn.: West Publishing Co., 1968).

interfering with the requirements of appropriate discipline in the operation of the school” and without colliding with the rights of others. But conduct by the student, in the class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech.⁷

This passage illustrates one of the chief characteristics of legal writing, which is, as David Mellinkoff observes in *The Language of the Law*, the “deliberate use of words and expressions with flexible meanings.”⁸ The law, notes Mellinkoff, “is not an exact science, and its language must share some of the ambiguity of life.”⁹ Precision is not always possible or desirable. Reading *Tinker*, my students would come to see that in the passage I have quoted, Justice Fortas used abstract and general language deliberately, to formulate a principle applicable to future cases as well as to the one then current. They would see also that abstract and general language requires careful interpretation. “Material disruption,” “substantial disorder,” “invasion of the rights of others”—what do these phrases mean? To what types of “free speech” activity by students would the phrases apply? These and similar questions would be tackled in class during a semester that began with *Tinker* and ended with *Trachtman*. First we would analyze the use of significant “flexible” phrases in *Tinker* itself, noting their application to the specific facts of that case. Turning to opinions which invoke the *Tinker* standard, we would compare and contrast subsequent interpretations of the same language. Definition, interpretation, the interplay of general and specific, abstract and concrete—paying attention to such matters does not seem pedantic to my students in 6.2. They see that questions about meaning can have real life consequences. The students who brought suit in *Tinker* were victorious partly because the key word “disruption” was interpreted by the court in a physical sense. In *Trachtman*, partly because the same word was understood to embrace a psychological meaning, students lost.

My next writing assignment comes after the in-class analysis of *Tinker*. Handing out copies of a second opinion—say, Justice Black’s dissent—I ask my students to read and analyze the opinion on their own and then, using their own words and sentence structure, to summarize the author’s argument, stating (1) the conclusion reached in the opinion and (2) the

⁷p. 513.

⁸Boston: Little, Brown, 1963) p. 11.

⁹*Op. cit.* p. 394.

main grounds on which the conclusion rests. I ask for two summaries from each student, one limited to about 200 words, the other three times as long. Both summaries are to cover the same main points. In one, however, the treatment of the points will necessarily be cursory, while in the other it should be detailed. Calling for a short and a long summary of the same argument helps to focus attention on the nature of thoroughness in academic writing. My students see that the concept is relative, having bounds fixed partly by the terms of an assignment—less is expected of the 200-word summary—and partly by their subject, since the number of main points to be covered in both summaries depends on the number in the assigned opinion; in Black's there are three or four.

Later I distribute copies of a few representative summaries. First we evaluate their clarity, accuracy, and thoroughness. Invariably spotted, and tackled in revision, are the following: (1) erroneous or unclear paraphrasing of the assigned text, (2) presentation of minor points as if they were major, (3) the omission of major points, (4) an admixture of personal commentary by the summarizer.

In addition to clarity, accuracy, and thoroughness, we evaluate the summaries for conciseness. Students will insist that they had to omit major points because of the prescribed word limit. When choosing short summaries to be analyzed in class, I include, therefore, at least one that by being concise has managed to cover all main points, and others that are incomplete and verbose. The latter we rewrite in class, making room for the missing points by eliminating wordiness. We also look at pairs of summaries, short and long, noting that the length of the second summary is due in some instances to added information but in others to verbal padding.

I would deal with conciseness in any writing course, since this quality is one of the more easily learned attributes of good style. I give it extra attention in 6.2, however, in accordance with the emphasis placed on it by those whose concern is good legal style. "Omit Surplus Words"¹⁰ is the first rule in Richard C. Wydick's "Plain English for Lawyers" (*California Law Review* 66 [July 1978]: 727-756), an article containing suggestions and exercises I have found useful. Though geared to a law school writing course, Henry Weihofen's *Legal Writing Style*¹¹ has sections relevant to the aims of 6.2, including a chapter on conciseness.

¹⁰p. 729.

¹¹(St. Paul, Minn.: West Publishing, 1961.)

Verbosity accounts for the missing major points in many summaries. To echo a familiar refrain, “something’s gotta give” when a wordy style meets a prescribed word limit. In the case of other summaries, however, that omission, together with undue emphasis on minor points, stems from faulty reading and analysis of the assigned opinion. The summarizers just didn’t see which points were major. Students entering 6.2 are unused to taking content seriously in a writing course, and some will have missed the major points simply for lack of effort; next time they need only look harder. Other students need to be taught how to spot main points. They require training not only in language but in the process of thought and the structure of argument. A carefully composed text provides verbal signals—topic sentences, transitions, repetition of key words, and so on—corresponding to steps in the author’s argument. Good readers spot the signals not only because they are responsive to language, but because they bring to the text a highly developed sense of the elements standard in argument. Facts, issues, premises, inferences, conclusions, conditions, exceptions—a reader who is slow to recognize such components of arguments will glide unseeingly, uncritically, passively, over the verbal signals associated with them. In 6.2 many classes are spent in analyzing the argumentative structure of the opinions we read. Typical of questions raised in class are these: What is the persuasive purpose of this sentence, this paragraph? Is the author stating facts? Adopting a premise? Reaching a conclusion? Similar questions, of course, could be asked of an “ordinary” essay. But judicial opinions are especially suited to this form of instruction, because each is, or aims to be, a logical, reasoned argument, and because the structure of argument remains similar from opinion to opinion.

After a few assignments in summarization, my students begin to write comparison and contrast papers. I might ask them to identify and discuss two main points of disagreement between two opinions in the same case—say, the majority and dissenting opinions of one court, or the contrary opinions of a lower and a higher court. I might ask for three points of agreement between three opinions. Organization now becomes our primary concern. We outline. For example, we outline and weigh the pro’s and con’s of two possible arrangements, the point-by-point plan:

Point #1 is
Says Opinion A
Says Opinion B
Point #2 is
Says Opinion A
Says Opinion B

And the opinion-by-opinion plan:

Says Opinion A,
 On point #1
 On point #2
Says Opinion B,
 On point #1
 On point #2

We would note that the second plan is more likely to result in either repetition or incomplete comparison. Outlining, though generally unpopular in composition courses, is vital in law school, which makes it easy to sell in 6.2.

Outlining introduces the topic of parallelism. We examine this principle of construction in outlines, in papers, in paragraphs, in sentences. Parallelism, like conciseness, is something I emphasize in 6.2. Writing about the law very often requires a parallel statement of causes, conditions, rules, and the like, as my students discover when reading opinions. Constructing parallel sentences calls for knowledge of grammar and punctuation, and so we begin reviewing these matters early in the term. During this review and while working on parallelism we make use of *The Random House Handbook* and also of illustrations and exercises geared specifically to legal writing, material which I gather in bits and pieces from Weihofen's *Legal Writing* and like sources.

Toward the end of a term my students are writing formal persuasive essays in response to assignments that are modeled on the standard law school examination question. In *Legal Writing: the Strategy of Persuasion* by Norman Brand and John O. White¹² and in Irving Younger's chapter on examinations in *Looking at Law School*,¹³ there are full accounts of the design of such a question and the techniques to be used in answering one. As Brand and White say, "a law examination consists of an essay question offering a hypothetical fact situation and calling for an analysis."¹⁴ The hypothetical fact situation is related to the actual disputes resolved by the courts in cases the law student has read. A typical hypothetical might end with an instruction like this: "Mr. Smith (a party to the imaginary dispute) has asked you to represent him in court. Discuss the arguments you would

¹²(New York: St. Martin's Press, 1976).

¹³Stephen Gillers, ed. (New York: New American Library, 1977).

¹⁴*Op. cit.* p. 3.

raise in his behalf." In response, drawing on her knowledge of actual cases, the law student would extract pertinent facts from the hypothetical situation, would identify the issues arising from these facts, and would apply the appropriate legal principles. "Apply" is the key word. In his chapter on examinations, Younger urges the law student to remember this "single most important point": that she is "not being tested solely on knowledge of the subject matter of the course."¹⁵ Being tested also are (1) her ability to analyze, (2) her ability to organize, and (3) her ability to express her thoughts.

Similarly, my last assignments in 6.2 call upon these three skills while demanding knowledge of the course's subject matter, that is, of our group of judicial opinions. One semester, when that group included the *Tinker* and *Trachtman* opinions, I drew up a hypothetical problem roughly similar to the facts in *Trachtman* but differing from those facts in several significant respects. According to the hypothetical, the staff of a high school newspaper planned to publish the results of a questionnaire which asked students to rate their teachers and courses. The "fact situation" gave details about the planned questionnaire—where and when it would be distributed, what questions would be asked, and so forth—and also about school procedures, mentioning, for instance, that only seniors could choose their courses. The high school principal vetoed the plan, claiming it would interfere with school discipline and invade the rights of teachers. My students were instructed to compose an argument supporting either the students or the principal; grounds for each position were provided in the opinions we had read. This argument they wrote carefully at home. A second hypothetical, shorter and simpler, was answered in class, as practice for taking an essay exam under time pressure. Tips on dealing with that pressure are included in Younger's chapter.

By now, many of my former 6.2 students have gone off to law school. Each semester a few return for a talk with my current class. Speaking with the wisdom of hindsight they weigh the merits, for a pre-law student, of the various majors and courses offered at Queens. Invariably they recommend writing courses. Their conclusion that "Writing about the Law" is particularly helpful makes my work, each semester, much easier. It goes without saying that my adaptation of the case study method is an extreme simplification of the standard law school regimen. Still, the course does give students a taste of what lies ahead when, as Turow reports, cases and opinions will "form the very center" of their world. The reading and writing

¹⁵*Op. cit.* p. 147.

tasks assigned in 6.2 resemble, however modestly, the work done in law school. The qualities my students aim for in their papers—accuracy, thoroughness, clarity, order, correct grammar and usage—are the attributes of good legal writing.

Yet preparing students for law school is not the main purpose of English 6.2. Indeed, each semester some of my students decide not to be lawyers. Their time has not been wasted, however, since the training that would have been useful in law school will serve them well in their remaining years at Queens. To provide training in sound academic writing is the real purpose of all the special sections of English 6. We who teach these courses are primarily concerned with the writing our students must do as undergraduates. Much of our work could be described as reinforcement of lessons taught in English 1. But it is, I believe, our common experience that the special 6's are popular largely because they look to the future, not to the past. At Queens, the general 6.0 is perceived by disgruntled students as a mere repetition of English 1. In fact the two courses are quite different; but admittedly, between English 1 and the special 6's there is a far clearer contrast. That contrast, the sense of something new and different—something linked, moreover, to life beyond college—is one reason for the success of the specialized writing course.