**Experiential Learning in Legal Writing Programs**

AALS Section on Legal Writing, Reasoning, & Research

January 5, 2017

**ABA Standards for Approval of Law Schools 2016-2017**

<http://www.americanbar.org/groups/legal_education/resources/standards.html>

**Standard 303**

(a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:

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(3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, a course must be primarily experiential in nature and must:  
  
(i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;  
  
(ii) develop the concepts underlying the professional skills being taught;  
  
(iii) provide multiple opportunities for performance: and  
  
(iv) provide opportunities for self-evaluation.

**Standard 304**

(a) A simulation course provides substantial experience not involving an actual client, that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member, and (2) includes the following:  
  
(i) direction supervision of the student’s performance by the faculty member;

(ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and

(iii) a classroom instructional component.

**COURSE SUMMARIES**

**1) Persuasive Writing**

Professor Helen A. Anderson

Professor Benjamin Halasz

University of Washington School of Law

This optional upper-level course continues where the 1L Spring Advocacy quarter leaves off. Since we are on the quarter system, the advocacy portion of our first-year course is only 10 weeks long—hardly time enough to delve into persuasion in depth. Persuasive Writing allows students to explore written advocacy without the pressure of a moot court competition attached.

The first half of the course is spent studying and practicing the elements of storytelling (writing the facts), arguing from authority, appealing to shared values, and other matters related to Aristotle’s aspects of persuasion—ethos, pathos and logos. Students study examples of written legal advocacy and turn in regular exercises. We use the tools of peer editing and collective commenting in class to review and revise exercises.

The second half of the class is spent researching and writing a summary judgment brief. Half of the class represents the plaintiff, and half of the class represents the defendant. Students work from a simulated case file so that they experience working with facts from various sources. They write three drafts. The first draft is graded with extensive comments, and students meet with the professor to discuss the written feedback before writing their second draft. The second draft is then reviewed in a peer edit exercise with someone representing the opposite party. The third and final draft is graded and weighted most heavily.

This course meets the experiential learning standards because students have multiple opportunities for performance and revision. They revise ungraded exercises after peer or faculty feedback. They revise their summary judgment brief twice after feedback from faculty and from a peer. We incorporate and wrestle with ethical issues that arise in advocacy. In short, they experience much of what it means to write for a client in litigation, but without a real client.

**2) Pre-Trial Practice**

Professor William S. Bailey

University of Washington School of Law

The steep decline in the resolution of civil disputes through jury trial has caused a sharp increase in the volume of motion practice, both procedural and substantive. It has become commonplace for cases to be decided on summary judgment following discovery. This has made effective brief writing one of the most critical elements of successful litigation practice.

Pre-Trial Practice is an optional upper-level course that takes students through the entire pre-trial process of a case from real life, starting at the initial client interviews and culminating in a motion for summary judgment that is briefed and argued. Each student is assigned an opponent on whom to serve their complaint, answer, written discovery, and brief. Students also are grouped into small law firms of 4-5 members to discuss the evolving litigation tactics and strategies as the case proceeds. The classroom experience is dynamic, shifting back and forth between small group work and the whole class, with alternating lectures and skills performance opportunities. There is a constant focus on what will end up in the summary judgment brief.

This course looks closely at legal writing from the viewpoints of behavioral psychology, social judgment principles, brain function, and how people learn best. A basic premise is that judges are subject to the same emotional influences and learning principles as any other human being. What kind of reader experience will the judge have, based on the case story, character development, argument sequencing, framing, policy grounds, and use of cultural norms?

Behavioral psychologists have proven that the brain best retains and is persuaded by information presented in story form. Students are introduced to techniques from creative non-fiction writing to help shape their case stories in the statement of facts. In addition, instruction is given on how images properly can be combined with written arguments, powerfully infusing a film director sensitivity of visual persuasion into brief writing. Rather than the usual manner of attaching exhibits to the end, forcing a judge into cumbersome flipping back and forth between the text and the attachments, this course trains students to incorporate visuals seamlessly into their briefs. They also are exposed to effective oral argument techniques, not simply repeating what is in a brief, along with the use of multi-media tools to capture the judge’s attention.

Thus, this course is experiential in every sense. Students work in teams on a single, course-long simulation that exposes them to strategic and ethical issues in litigation. It gives them multiple opportunities for performance, assessment, and revision.

**3)** **Intensive Legal Writing Workshop**

Professor Kathleen McGinnis

Professor Benjamin Halasz

University of Washington School of Law

This course, an upper-level elective, is primarily a “pure” writing course—one that uses the law as a backdrop for in-depth practice in composition and revision. The course focuses on law-trained readers’ needs for clear, concise, cohesive writing, and on how to satisfy those needs in a variety of rhetorical settings. Students practice critical reading skills and techniques for self- and peer-editing. They receive direct instruction and practice in grammar, syntax, sentence structure and paragraph structure. In short, the course is a sort of “writing boot camp” aimed at skills that some students lack—skills that cannot always be mastered in the first-year writing course, which focuses so much on legal analysis and problem-solving.

Assignments in the course include writing short journalistic-style articles or case reports; revising judicial opinions; and revising legal writing students have submitted previously for a course, a competition, or a job. We do *not* ask students to do significant legal research or analysis, but instead use legal documents with which they are already familiar as a starting point for writing or revision. In addition, students read and do exercises from the text: *Style, Lessons in Clarity and Grace*, by Joseph Williams. (Williams created the highly-regarded writing curriculum at the University of Chicago). The Williams approach to professional writing lends itself to the law school setting; it allows students to develop basic writing skills they may have missed in their undergraduate experience, while learning to apply higher-level rhetoric and composition theory to the legal writing task.

The course also reinforces the collaborative skills students developed in their first-year legal writing course. They work in pairs or small groups on editing projects, and do group editing assignments in most class sessions. They learn by listening to how the professor and their peers would revise a particular passage of prose. They also learn to give feedback that helps their peers. They develop a shared vocabulary to use when making editing suggestions, and typically leave the class knowing that the best editors resist the urge to rewrite, and can instead guide their peers toward improvement.

The array of assignments means that the course does not qualify as a simulation course that would satisfy ABA standards, but it *is* experiential in the sense that students perform tasks that lawyers do in real life. We believe that teaching a combination of composition fundamentals and more sophisticated revision techniques is a terrific formula, based on the progress we see students make in this course.

**4) Legal Drafting**

Professor Deborah Cupples

University of Florida Levin College of Law

Legal Drafting is a required, upper-level, experiential course involving simulations. While representing fictitious clients in a law-firm setting, students evaluate, draft, and edit documents that are fundamental to the practice of law: **1)** **binding documents** (e.g., contracts and legislation) and **2)** **litigation documents** (e.g., complaints and answers). To draft the documents, students must analyze and apply case law, statutes, and procedural rules.

Professors regularly give written feedback on students’ work. Due to how courts construe documents, professors emphasize critical reading, word choice, grammar, and clarity.

Binding documents comprise about two-thirds of the course. Students benefit from working with those documents and from learning how courts construe them because client advocacy often involves analysis and interpretation of binding documents—whether statutes, regulations, or contracts.

The litigation segment exposes students to documents and processes that all lawyers should be aware of because access to justice typically starts with the filing of a complaint or similar written statement of a claim. The segment also gives students a practical context for understanding material from courses such as Civil Procedure and Evidence.

The course addresses requirements of ABA Standard 303 by giving students experience in:

• Reading closely and evaluating text as a court would;

• Applying substantive law during client representation;

• Developing facts based on client interviews and written material;

• Drafting and editing text so that it is clear, unambiguous, precise, and correct;

• Working collaboratively with peers;

• Managing time efficiently by meeting regular deadlines; and

• Considering ethical rules when representing clients.

Experiential learning is meant to help students become practice-ready; thus, input from lawyer-employers may be helpful as we strive to meet Standard 303. Recently, I found the **Foundations for Practice Survey** (2016), which involved 24,000 lawyers who rated certain traits and skills in terms of which are necessary when new lawyers *start working* and which are less so. A pdf of the Foundations of Practice report is located at http://iaals.du.edu.

**5) & 6) Two Public Policy Practicums**

Professor Jon Mills

Professor Deborah Cupples

University of Florida Levin College of Law

**Both Courses**

Both courses are upper-level, elective, experiential courses. Roughly equal class time is devoted to (1) discussing substantive law and (2) team writing- and editing-exercises. Due to how courts construe constitutional provisions and legislation, we emphasize critical reading, word choice, grammar, and clarity. Both courses address requirements of ABA Standard 303 by giving students experience in:

• Reading carefully and analyzing text as courts and diligent lawyers do;

• Considering the impact of case law, statutes, and constitutional provisions on students’   
 own written work;

• Drafting and editing text so that it is clear, unambiguous, precise, and correct;

• Working collaboratively with peers; and

• Advocating for a position through oral presentations.

**5) Legislative Interpretation and Drafting Course**

Students learned about the legislative process, how courts construe legislation, the interplay between state and federal law, and the Florida and U.S. Constitutions’ impact on legislative interpretation and drafting.

We conducted simulations of Florida House floor debates, based on House rules. Students played roles: committee member, bill sponsor, lobbyist supporting the bill, or lobbyist opposing the bill. The final exam was a teaching tool as well as a test, which included 1) short-answer questions and 2) exercises requiring evaluation, editing, and drafting of legislation.

**6) Florida Constitution Revision Commission Course**

Students learned about 1) the Florida Constitution Revision Commission, which is appointed every 20 years to review the state constitution and propose amendments; 2) the initiative-petition process; 3) the interplay between the Florida and U.S. Constitutions; and

4) how courts interpret constitutional provisions. We also presented case studies about adopted amendments and related litigation.

For the final project, each student drafted a proposed state-constitutional amendment and wrote a paper supporting its passage. Students also advocated for their positions during in-class presentations, which included question-and-answer sessions.

**7) Health Regulatory Process**

Associate Professor Jessica Mantel

Assistant Clinical Professor Lauren Jansen Simpson (Lawyering Skills and Strategies)

University of Houston Law Center

This course explores how legal and policy considerations, intra-governmental relationships, and political dynamics influence health regulatory policies. The course satisfies the Law Center’s upper-level writing requirement, as a “Writing Course.” In such courses, students draft multiple practical-writing assignments, such as articles akin to those appearing in professional or bar journals, client letters, office memoranda, demand letters, pleadings, contracts, wills, etc. Each assignment is generally limited to 2,500 words, when possible, and students must complete at least 5,000 words of writing over the course. In the Health Regulatory Process course, students write two client-advice letters: the first from an aide to a U.S. Representative evaluating proposed legislation, and the second from a federal agency’s office of general counsel to agency officials evaluating a draft decision notice. They also write a professional journal article.

The Health Regulatory Process course was a prototype when introduced, as it was the first Writing Course at the University of Houston Law Center in which doctrinal and Lawyering Skills & Strategies faculty collaborated on the class’s writing component. Professor Simpson, an Assistant Clinical Professor for Lawyering Skills and Strategies, advised Professor Mantel on types of practical writings that could meet the course’s pedagogic goals and on the timing and order of writing assignments; compiled writing reference materials; lectured and facilitated an in-class exercise on drafting client communications; reviewed and provided detailed feedback on the first draft of students’ initial client-advice letters; conducted an in-class workshop designed to address the writing difficulties observed in the first drafts; and consulted with students as requested. Professor Mantel designed the course syllabus, including selecting assigned readings; taught all health-law classes; and reviewed, gave detailed written and oral feedback on, and graded all student writing assignments. The collaboration produced significant economies and synergies for the faculty and significant improvement in student writing.

The course satisfies ABA Standard 303(a)(2)’s requirement for an upper-level writing course, but not for a simulation course under ABA Standard 304. Nonetheless, the collaborative process used in this writing course provides an effective model for a simulation course under Standard 304. The collaborative model could allow efficient creation of simulation courses in a cost-effective manner.

**8) LLEAP Curriculum**

Professor Lisa Wood

Professor Tim Duff

Case Western Reserve University School of Law

In 2013, our faculty approved a required three-year integrated writing, experiential, and skills-based curriculum known as LLEAP, which stands for Legal Writing, Leadership, Experiential Learning, Advocacy, and Professionalism. The curriculum consists of four semesters designed to help law students develop the skills required by practicing attorneys.

**LLEAP 1 & LEAP 2** together comprise a two-semester, eight-credit, first-year course. These courses constitute the traditional first-year legal research, writing, and analysis course, requiring the students to draft objective legal memoranda and persuasive briefs. The curriculum, however, varies from traditional first-year courses in three notable ways: 1) students learn the basic rules of contract drafting and are required to analyze and draft several contracts, 2) students engage in simulated client interviewing, client counseling, and negotiation sessions, and 3) students, under the supervision of faculty and practicing attorneys, assist legal community organizations (such as the Legal Aid Society) by conducting client-intake and other interviews.

**LLEAP 3** is a one-semester, three-credit, advanced writing course required for all second-year students. Students must elect between LLEAP 3-Litigation and LLEAP 3-Transactions. LLEAP 3-Litigation requires students to, among other things, handle a lawsuit from the first client meeting through settlement discussions—requiring students to obtain engagement letters, analyze facts gathered from clients and witnesses, conduct legal research, draft pleadings, discovery, and motions, and engage in settlement negotiations. LLEAP 3-Transactions requires students to engage in all stages of a business transaction: drafting a letter of intent, conducting due diligence of a fully-developed seller’s data room, negotiating and amending an asset purchase agreement, and completing the escrow closing of that transaction.

Although the two courses place students in different legal settings, both courses prepare the students for their third-year Capstone by requiring them to develop the same legal skills: engaging in multiple research and writing assignments; engaging in multiple forms of legal writing; working with clients through simulated client interviews, client counseling, and negotiation sessions; learning to analyze and use financial statements (e.g. balance sheets and cash flow statements); and keeping track of billable hours.

**LLEAP 4** is a four-credit seminar that requires third-year students to engage in research and analysis concerning the substantive, procedural, administrative and ethical challenges that they face while completing their Capstone. All third-year students are required to complete a Capstone, working as lawyers under the supervision of practicing attorneys on either a full-time basis during one semester or on a part-time basis during both semesters. Most students will complete their Capstone in the Law School’s various in-house clinics, although students may participate in external Capstones developed by the Law School locally, nationally, and internationally, or develop their own external Capstones with the approval of the Law School’s administration.

**9) Public Policy Research and Drafting**

Professor Tara Casey

University of Richmond School of Law

In Fall 2012, I created Public Policy Research and Drafting as an elective upper level class combining both advanced legal research and writing instruction with a project-based experience. This course provides students with an opportunity to explore advanced legal research in the public policy field, develop their writing skills in the context of creating an issue paper, and engage with nonprofit organizations from the greater Richmond community. On a broader scale, this course assists nonprofits with scarce resources and time constraints. Furthermore, the students acquire valuable lawyering skills while contributing significantly to needs in our community.

In the past five years, students have engaged in high level issues of statewide and national importance, such as: criminal justice debt and its effects upon persistent poverty and recidivism, domestic violence laws in the context of 2nd Amendment rights, whether source of income could be a protected class to eliminate housing voucher discrimination, and raising the grand larceny threshold to $500 to reduce felony culpability. The students consistently receive positive reviews from their respective organizations and clients, including invitations to present their findings and papers to larger meetings and audiences even after the semester has concluded. Beyond the scope of our original vision, students also had the opportunity to engage with their organization’s broader collaborations during the legislative session of the Virginia General Assembly or administrative/regulatory policy processes.

Based upon the success of this course, and the positive feedback from both students and partners, the course was certified as part of Richmond Law’s Law Skills IV program in 2016. All Richmond Law students must complete a Law Skills I, II, III, and IV course prior to graduation. A Law Skills IV course requires the following criteria: , 1) a primary focus of the course must be on teaching lawyering skills through multiple drafting assignments that are practice-oriented, 2) a significant portion of student-faculty interaction must be devoted to the discussion and analysis of those assignments, 3) faculty must give students individualized feedback oriented toward the development of particular lawyering skills, 4) the course must be at least two credits and capped at sixteen students. This course meets this criteria because: 1) students draft multiple writing assignments, including a letter to the editor, a research outline (i.e., annotated bibliography), a first draft, and a final draft, as well as written feedback on their classmates’ work, 2) the course is divided into 2/3 of the meeting time teaching of the substantive public policy concepts, with the remaining 1/3 devoted to workshopping their individual projects, 3) feedback is delivered on a weekly basis in live time, as well as in written feedback for the assignments, and 4) the course is a three-credit course requiring far more work than three credits).

The creation of this hybrid clinical experience has provided students with the opportunity to sharpen their writing and analytical skills, to expand their research skills, and to engage in critical proofreading and editing. In a small seminar setting, students receive intensive instruction and feedback on their research and writing, while also learning how to provide critical feedback themselves. Additionally, this course provides students with an exposure to the legal work performed in the public policy field. For those students whose interests lie outside of the litigation or transactional arenas, this course serves as good preparation. This course connects students with, and showcases their work to, nonprofit organizations, thus opening the door for future networking opportunities.