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THE BENEFITS OF INTEGRATING STATUTORY CONSTRUCTION AND ANALYSIS IN A FIRST-YEAR LEGAL WRITING COURSE

LAUREN SANCKEN AND MIREILLE BUTLER¹

As a first-year associate at a law firm, one of Lauren Sancken's most memorable assignments involved the statutory interpretation of a newly enacted Washington statute. The client's case would be built around her analysis. It was an exciting, challenging assignment, with one problem: she had never been taught how to interpret an ambiguous statute using legislative history. As a result, she did not have the slightest idea how to locate and use legislative history to build an argument. With the help of her supervising attorney and reference librarian, she was able to locate the legislative history, listen to congressional testimony, and create an argument, but she wished she had possessed the skills already.

That first, insecure experience as a new practitioner made her eager to ensure that as a first-year legal writing instructor, her students would be prepared with statutory analysis skills when they finished law school.

Mireille Butler's experience was quite different. As a corporate securities attorney, she did not have to grapple much with research in her practice. Later, as a professor teaching legal research and writing at various institutions, the curriculum she taught

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focused on case law.² She saw no room to add principles of statutory analysis to an already busy first year.

And she did not see much utility in doing so, until she started teaching Legal Analysis, Research, and Writing at the University of Washington School of Law. There, she soon came to understand that teaching statutory analysis and construction allowed her to deepen her students' understanding of fundamental legal analysis and writing concepts while also teaching them how to develop new, critical skills.

Indeed, teaching statutory analysis to first-year law school students not only reinforces important principles of legal analysis and writing (from gaining a better understanding of the hierarchy of legal authorities to continuing to practice IRAC/CRAC methods of organization), but it also prepares students better for the actual practice of law.

With this goal in mind, each winter quarter, we devote our ten weeks of instruction to a series of exercises that help students learn the building blocks of statutory analysis while continuing to hone their research, analysis, and writing skills. We introduce students to statutes and regulations as primary sources of authority in this second quarter of law school.³ Through a series of four skill areas with accompanying assignments, students learn critical skills in how to locate and analyze a controlling statute and regulations, as well as cases and contextual sources like legislative history needed for interpreting a statute. For those professors teaching legal analysis, research, and writing on a two-semester basis, these skills should likely be added to the second half of the first semester, as

² The curriculum was typical of most other law schools' first-year legal writing programs: predictive, objective writing in the fall, followed by persuasive writing in the spring. See Ass'n of Legal Writing Dirs. & Legal Writing Inst., *Report of the 2019-2020 Institutional Survey*, Question 6.7, available at <https://www.alwd.org/images/resources/ALWDLWI2019-20InstitutionalSurveyReport.pdf>.

³ We include regulations because statutory and regulatory research is often connected and because reading statutes and regulations requires similar analysis.

part of the open-library memorandum universe, and reinforced when introducing persuasive writing in the second semester.

Finding, Reading, and Analyzing a Statute

The first skill we teach students is how to locate, read, and analyze a statute. We design and lead a workshop that walks students through the statutory research process to find the appropriate sections of a state or federal statutory code. Once they have found an applicable statute, we teach students to read the statute slowly and carefully, taking out highlighters and other note-taking tools to flag operable words like “must” and “shall” and “except.” Through this process, students are also able to deepen their appreciation for precise, unambiguous writing, and continue to learn writing techniques. Students realize first-hand that missing commas, passive voice, and misplaced modifiers create ambiguity. And when learning to read statutes, they immediately see that sentences where subjects, verbs, and objects, are close to one another are much easier to understand.

Students learn that statutes have a general anatomy—a title, preamble or purpose, definitions, scope (to whom does it apply?), general rules (what is encouraged or prohibited?), exceptions, and consequences or enforcement mechanisms. When students understand the outline of a statute, they can begin to digest it to see how various parts may apply to their client’s situation. We encourage students to zoom out on a statute and look at it holistically before zooming in on any one section. Missing the forest for the trees is easy to do with statutes, and we try to caution our students against it!

Once students have some familiarity with the statutory research and analysis process, we give them a short, ungraded assignment to help them build confidence in this skill and reinforce basic principles of legal analysis and writing. Students write a short email to a supervising attorney about whether a fictional client may

decline to rent his condo to someone with a service animal. We design a research workshop to guide students to the correct statute and regulation and help them find cases from there. We also use in-class presentations to show students how to structure a response to a statutory question. This is where we reinforce learning of legal writing organizational concepts, albeit in a different setting: it's still all about IRAC (or CRAC or any another acronym for an organizing schematic). The legal rule section is now simply based on the statute. The students find this practical setting enjoyable, as they can relate easily to the issue, the short email is manageable, and they begin to feel like attorneys.

Using Cases to Analyze a Complex Statute

The second skill we teach students is how to use cases to interpret an undefined term in a statute. Students write a formal memorandum on whether a conversation between two parties is “private” under the Washington Privacy Act, which prohibits the recording of “private conversations” absent certain exceptions.⁴ Because the term “private conversation” is undefined in the statute, students must use case law to find a definition as well as illustrative cases. The same assignment also requires students to investigate whether any exceptions might apply to the scenario that would allow for the recording to be lawful even if it was a private conversation. The assignment requires students to fully analyze a statute to communicate a holistic analysis. It requires student to understand the interplay between various sources of law and to continue practicing the critical skills of organizing and writing a complex legal analysis.

⁴ The Washington Privacy Act is codified at Wash. Rev. Code § 9.73.030.

Interpreting an Ambiguous Statute

The third skill we teach students is how to use a statutory interpretation framework to resolve an ambiguous statutory term. When a statutory term is defined neither in the statute nor in case law, students must understand the process by which a court assigns its meaning. Students learn about the process Washington state courts use to resolve ambiguity—first, looking to identify the “plain meaning” of the ambiguous term through intrinsic sources of construction (related statutes, canons of construction), and then, using extrinsic sources of construction (case law interpreting the term in a non-statutory context, legislative history) if the term is still ambiguous or to further bolster support for the term’s meaning.⁵

We give students an ungraded assignment that requires them to advise the headmaster of a fictional school about whether Twitter, the social media platform, constitutes a social networking site under a Washington statute that prohibits employers from asking to access an employee’s social networking accounts.⁶ Students are supported by a research workshop that guides them through the various steps of statutory interpretation and helps them to find a statute’s legislative history and relevant bill information. Students submit an outline of their analysis showing how they might structure a formal memorandum on the topic, although we do not require students to submit a memorandum due to time constraints.

This assignment is not only intellectually but also organizationally challenging for students, who discover that, even when writing about a more esoteric topic, they are still required to use the same IRAC or CRAC structure they have been taught. The only difference is that (a) now the rules are about how to interpret a statutory term and (b) the application is about applying those statutory interpretation rules to define the ambiguous term “social

⁵ This approach is laid out in *Quadrant Corp. v. State Growth Mgmt. Hearings Bd.*, 110 P.3d 1132 (2005).

⁶ The students must interpret Wash. Rev. Code § 49.44.200.

networking site” and conclude whether Twitter fits under that definition. A bonus to this assignment is that the classes we teach on this topic also allow us to discuss the importance of judicial philosophies and why issues of interpretation are frequently heard by the United States Supreme Court and many highest state courts.⁷

Putting It All Together: Final Summative Assessment

Our final assignment asks students to apply the various skills they’ve learned throughout the quarter to analyze a state or federal statute. Students must locate the relevant statute, then assess and analyze how the statute might answer the legal question, filling any gaps by using case law, legislative history, and other tools. Students have been asked a variety of statutory questions for this assignment, including whether something constitutes “fair use” under the Copyright Act, whether a student debt is dischargeable under the Bankruptcy Act, and whether an employer’s conduct is retaliatory under Washington’s Discrimination Act. Students are supported by various research workshops, group presentations on the statutes and the various cases students have found, and peer reviews, before they submit their final, graded assignments. And as always, class activities also include sentence-level writing practice and citation quizzes.

Conclusion

This series of exercises allows writing professors to integrate seamlessly statutory construction and analysis into their first-year legal writing courses. Students feel initially challenged but soon realize that the legal analysis and writing skills they have already developed can be used in any area of the law. Questions of statutory and regulatory analysis and construction are some of the hardest

⁷ For an interesting example of statutory construction and varied analysis in the Supreme Court, see *Yates v. United States*, 574 U.S. 528 (2015).

legal tasks for newly minted lawyers, yet essential to the practice of law. Teaching students the building blocks of this type of analysis helps prepare students to answer all types of complex legal questions confidently, ensuring that students graduate with the skills to become well-rounded, competent lawyers.