

The Future of Trade School Legal Communicators

Twenty years ago, lawyers communicated through lengthy client opinion letters or settlement demand letters transmitted via fax or FedEx, briefs filed with the court (often hand-delivered by couriers), and perhaps the occasional press release carefully crafted for high profile cases. Today, in our fast-paced, media-saturated, and tech-driven world, we see lawyers like Michael Avenatti advocating for his clients through Twitter soundbites. Pleadings and briefs – once buried in dusty court filing cabinets – are electronically accessible for the world’s review and “Monday-morning quarterback” scrutiny. Attorneys conduct negotiations, conferences, and depositions with their national or even international counterparts over Skype, GoToMeeting, or Zoom. Lawyers establish permanent digital footprints through LinkedIn, Facebook, and Instagram. Legal communication is rapidly changing because of technological advances, disruptive business models, and globalism – forces that are transforming the 21st century world of law.¹ The legal profession and legal educators – famously slow and often resistant to adaptation – must evolve with the times. Standing still, clinging to the “business as usual” status quo is not a luxury we can afford.

In 1816, late in his life, America’s third president and renowned lawyer, Thomas Jefferson, wrote:

[L]aws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors.

Over 200 years later, societal change happens faster and will continue to do so at accelerating speed. This is the “new normal” to which the legal profession must adjust.

A widely held, if not universal, view of anyone actively engaged in legal practice – employers, judges, clients, recent graduates, and senior supervisors – is that effective communication, including legal writing and oral expression, is among the most important skills that any

lawyer must possess to succeed. The Institute for the Advancement of the American Legal System (IAALS) is a “national, independent research center at the University of Denver dedicated to facilitating continuous improvement and advancing excellence in the American legal system.”² Educating Tomorrow’s Lawyers is an IAALS initiative focused on aligning legal education with the needs of the legal profession.³ In July 2016, IAALS and Educating Tomorrow’s Lawyers issued a report summarizing a national, multi-year project called Foundations for Practice. The report noted:

The current dichotomous debate that places “law school as trade school” up against “law school as intellectual endeavor” is missing the sweet spot and the vision of what legal education could be and what type of lawyers it should be producing. New lawyers need some legal skills and require intelligence, but they are successful when they come to the job with a much broader blend of legal skills, professional competencies, and characteristics that comprise the whole lawyer.⁴

The findings gathered from a survey of over 24,000 attorneys indicate that “[b]y and large, foundations in the Communications category were considered necessary in the short term by a majority of respondents.”⁵

Paradoxically, law schools historically placed a lower priority on teaching fundamental communication competencies (like legal writing) than other core subjects. This trend is reflected in fewer credits traditionally allocated to writing courses in the 1L year of law school, in addition to less job security, much lower salaries, and limited or no faculty voting rights for many legal writing professors. While many schools have made great strides toward achieving professional equity for professors who teach these courses, the academy as a whole still has much work to do in that regard. The tectonic shifts shaking the foundations of law offer an opportunity for law schools and post-graduate training programs to innovatively teach essential communication skills in ways that can transform the profession, and honor this critical component of legal education and practice.

Baby Boomers and Generation Xers often criticize Millennials and members of Generation Z – who comprise

aining Powerful

By Nicholas W. Allard and Heidi K. Brown

the current cohort of law students in this country – as overprotected or entitled, yet most of today’s law students are digital natives who, in many cases, are more comfortable with technology and adaptable to change than many of their teachers, mentors, and critics. Forcing a new generation of law students to learn law the way we did – decades ago – is a shortsighted and risky endeavor. Renowned choreographer, dancer, and author Twyla Tharp said, “If you only do what you know and do it very, very well, chances are that you won’t fail. You’ll just stagnate, and your work will get less and less interesting, and that’s failure by erosion.” Medical teaching obviously has evolved with scientific advances; business education has adapted to the needs of emerging online markets and the growth of the tech industry. Architecture and engineering schools are using remarkable new tools – from 3D printing, to virtual reality powered by artifi-



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cial intelligence, to gamification – to reimagine effective ways to teach skills increasingly in demand in forward-progressing markets. For a learned profession like ours to refrain from adapting to new technology and classroom dynamics is analogous to only teaching 21st century photography students how to develop film negatives in a darkroom. Legal education must move beyond “the way we’ve always done things.” Instead, we should meet our next generation of lawyers where they are, strive to speak a common language, and help our students outgrow us. This can be achieved through institutional support for: (1) innovating legal communication curricula; (2) advancing the role of technology in legal education; and (3) honoring diversity and inclusion in our classrooms and the language of law.

INNOVATING LEGAL COMMUNICATION CURRICULA

Legal writing programs around the country already are teaching legal communication methodologies in innovative and exciting ways. Professors invest time in crafting ripped-from-the-headlines research and writing assignments, and in teaching students how to engage with sources of law affecting our daily lives across an ever-changing, constantly updating societal landscape. Students learn how to draft memoranda and briefs, which, while reflective of traditional pedagogy, are still important vehicles through which students learn fundamental methods of predictive and persuasive legal analysis. Many professors also incorporate practical legal communication devices such as professionally presented emails to partners, clients, and opposing counsel, and “quickhitter” written reports of answers to discrete legal questions posed under a more pressing timeline in a case. Often these shorter assignments are designed to be read on a supervisor’s Smartphone instead of a lengthy printed document. Our students need to learn how to balance a lawyer’s non-negotiable need to take the necessary time to think, research, reflect, and communicate carefully and thoroughly, against the 24/7 demands and expectations of clients for instantaneous answers to tough questions.

Given the volatility of today’s political climate, and the civics lessons currently engaging American citizens on a daily basis, lawyers can and should play a key role in educating the general public about our system of government and the rule of law. In addition, many students come to law school with a passion for activism and an eagerness to be involved immediately rather than waiting until after graduation to contribute to shaping the policy issues of our day. In that regard, professors are developing new genres of legal research and writing assignments, such as blogs and op-eds, to teach students how to communicate with the general public and explain complex laws and legal concepts in terms non-lawyers can under-

stand. Through these assignments, we can blend the foundations of our legal rules (legislative history, development of case law, etc.) with events happening in real time, to bring the law to life. We can point students to the vibrant role of legal communications on the national stage, as when Idaho Senator James Risch specifically referenced the role of legal writing in a hearing before the Senate Intelligence Committee on June 8, 2017. He complimented former FBI Director James Comey on the quality of the written memorandum he submitted prior to his testimony, stating, “I find it clear. I find it concise, uh, and having been a prosecutor for a number of years and handling hundreds, maybe thousands of cases and read police reports, investigative reports, this is as good as it gets.”

ADVANCING THE ROLE OF TECHNOLOGY IN LEGAL EDUCATION

The legal writing academy also has embraced technological innovations in legal education. Professors are supplementing the doctrine of legal writing by using technology to identify students’ individual areas of needed improvement in legal research, grammar, and legal citation. Available tools include electronic legal research assessments, grammar diagnostics (such as *Core Grammar for Lawyers*,⁶ an “online, self-directed learning tool”), and online introductory legal citation primers (such as the LexisNexis® Interactive Citation Workstation). Legal publisher Wolters Kluwer just launched LawClassFeedback, providing electronic formative assessments for legal research and writing courses, and other subjects. Well-renowned legal writing expert, Ross Guberman, developed a legal writing app called BriefCatch that he proposes “will improve any legal document by generating instant feedback and suggestions.”⁷ Lawyer and author Gary Kinder launched an editing tool called WordRake that helps writers “tighten, tone, and clarify.”⁸ Lest some legal educators suggest or worry that technology should or will supplant teachers, new technological platforms in the legal arena increase rather than decrease the need for, and power of, excellent “hands on” teaching by humans. Students always will need the requisite context for how to take the information gleaned from the diagnostics and incorporate and apply such learnings in the actual writing process.

Going forward, legal educators also can use technology to afford law students much-needed opportunities to engage in lawyering scenarios that offer decision-making circumstances in which they likely will make mistakes, and that require problem-solving to handle and remedy mistakes. Professors and students can use technology-driven simulations to foster dialogue about professional judgment and mistake-making related to the complex doctrines, rules, and procedures that permeate our professional lives. For example, Brooklyn Law School

and the Center for Urban Business Entrepreneurship (CUBE) have convened a consortium of faculty, external technology partners, and public and private legal entities to launch the Brooklyn Law Smart LAB™, a collection of virtual reality tools that will enhance legal education by allowing students to practice a diverse array of legal skills, and experience real-life circumstances in a virtual-reality setting. The consortium's initial concept is a Virtual Courtroom Simulator, which places the student in the role of a defense attorney at trial, encountering scenarios requiring tactical judgment and affording decision-making and mistake-making opportunities in a low-stakes learning environment. This technology easily can be adapted to teach mediation, arbitration, negotiation, client intake, job interviewing, and a wide variety of other lawyering competencies.

HONORING DIVERSITY AND INCLUSION IN OUR CLASSROOMS AND THE LANGUAGE OF LAW

Additionally, the legal academy and the profession must acknowledge that current events in our country are prompting aspiring lawyers from a wide variety of (and likely new) demographics, backgrounds, and constituencies to apply to law school. This positive development requires us to adjust the way we teach and train new lawyers. As one example, foiling the stereotype of the gregarious extroverted advocate with substantial debate experience in high school or college, or a passion for argument since childhood, some new law students are going to be more apprehensive than others toward performance-oriented lawyering activities – such as negotiations, depositions, and oral arguments. This does not mean that these individuals are not cut out for our profession, or that they should be funneled into a certain area of legal practice requiring less public speaking or interpersonal interaction. Instead, they just might need a more thoughtful approach to learning how to step into these scenarios authentically. If we discourage these individuals from particular types of law practice, or the profession as a whole, we will miss out on a pivotal cadre of voices, thinkers, and problem-solvers. Rather, law schools and law practice mentors can, and should, cultivate training environments in which individuals who initially may struggle with performance-oriented lawyering scenarios receive practical guidance in amplifying their advocacy voices in an authentic manner. One suggestion is to provide workshops focusing less on performance style, and more on mental, physical, tactical, and even emotional preparation for these categories of pressure-filled events.⁹ Instead of telling law students and junior attorneys to “just do it” or “fake it till you make it,” thoughtful and innovative educators can help these future advocates first understand why certain lawyering activities spark anxiety in them, and then navigate those scenarios with greater

self-awareness and substantive and procedural action plans.

Further, acknowledging the global, interconnected, all-encompassing nature of law, the legal communications classroom also offers a forum to foster inclusiveness in the way lawyers speak, write, and otherwise exchange ideas. A recent movement toward “inclusive writing” in various countries advocates for the adoption of gender-neutral pronouns and replacing outdated gender-biased language in statutes and contracts with inclusive language. This could entail, for example, using the word “spouse” instead of “husband” and “wife,” and adopting “their” as a gender-neutral singular pronoun (which remains the subject of grammar debates). While this inclusive writing movement has encountered resistance in some esteemed language circles such as the Académie Française, the American legal communications classroom presents a prime opportunity for legal educators to effect positive change, or at least spark dialogue with our new generation of lawyers about the importance of language in the law. Acknowledging the global nature of our legal arena, we must be open to, and inclusive of, cultural, ethnic, gender, sexual identity, racial, socio-economic and all other types of diversity in its broadest sense, in our classrooms and our professional interactions. Accordingly, we must cultivate classroom conversations in which all students can experiment with their lawyer voices and gain fluency in an inclusive legal language.

CONCLUSION

We must inspire our law students to regard legal communication as a powerful tool that is immediately at their disposal: not when they graduate, not when they pass the bar, not when they land their first job, but right now. Classrooms that focus on competencies in legal communication inevitably empower students to experiment with their authentic voices, develop confidence in the *logos*, *ethos*, and *pathos* of their messages, and address the legal issues facing our country – which also can have benefits in students' mental health and wellness. In 2016, the American Bar Association Commission on Lawyer Assistance Programs (CoLAP) – in conjunction with several other entities – established a National Task Force on Lawyer Well-Being. In August 2017, the Task Force issued a report¹⁰ reflecting a call to action for members of the profession to commit to “reducing the level of toxicity in our profession.”¹¹ We can start this initiative in the first year of law school by offering courses devoted to enhancing legal communication skills – in an inclusive manner. We can teach all of our students how to communicate in the language of law and help them adjust to unfamiliar terminology and concepts. In doing so, we also will offer a healthy outlet for stressed-out law students, presenting opportunities to channel their mental energy and potential internal conflict over the issues fac-

ing our country in a productive and professional manner. They will learn to fully research facts, law, and policy, and use their writing skills to communicate concepts to colleagues and the public in a civil, clear, thoughtful, well-reasoned manner.

Our profession faces many challenging pedagogical, professional, and ethical issues. These include the different communication preferences and technical prowess of millennial and Generation Z digital natives. These issues further encompass the tension between, on one hand, the expectations of efficiency and immediate response to legal questions in a 24/7 interactive world, and, on the other hand, the fundamentals of professionalism.¹² We must carve out space in our legal curricula to inspire students to take the requisite time to research, reflect, and think, and feel empowered to seek advice from more experienced mentors before responding to an assignment or client request. Through this holistic, forward-thinking approach to legal education and professional training, we can reinvigorate our profession and increase the power of law to meet the challenging, rapidly changing needs of society in the 21st century.

1. Previously referenced in Nicholas W. Allard, Presentation, "The Inevitability of Digital Advances in Legal Education," Seventh Annual St. Petersburg International Legal Forum, Program 6.3 (May 16, 2018), and "The Future of Legal Education," Opening Plenary Session on the Future of the Profession, Seventh Annual St. Petersburg International Legal Forum (May 16, 2018).
2. http://iaals.du.edu/sites/default/files/reports/foundations_for_practice_whole_lawyer_character_quotient.pdf.
3. *Id.* "Working with a Consortium of law schools and a network of leaders from both law schools and the legal profession, Educating Tomorrow's Lawyers develops solutions to support effective models of legal education."
4. *Id.* at 2.
5. *Id.* at 8.
6. <https://coregrammarforlawyers.com/>.
7. <https://briefcatch.com/>.
8. <https://www.wordrake.com/>.
9. See Heidi K. Brown, *The Introverted Lawyer: A Seven-Step Journey Toward Authentically Empowered Advocacy* (ABA 2017).
10. National Task Force on Lawyer Well-Being, "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change," Aug. 14, 2017.
11. *Id.* at 10.
12. Also previously referenced in Allard presentation, Opening Plenary Session on the Future of the Profession, Seventh Annual St. Petersburg International Legal Forum (May 16, 2018), *supra* note 1.

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