In re MacCrate: Using Consumer Bankruptcy as a Context for Learning in Advanced Legal Writing

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Law school pedagogy has faced cyclical calls for reform for decades. The traditional emphasis on Socratic teaching based on the Langdellian model has been challenged on many fronts. Judges and the practicing bar, especially potential employers of law students, criticize law schools for failing to prepare students to function as lawyers. Some scholars view the traditional methodology as distancing and disrespectful of female and minority voices. Scholars of learning theory insist that one approach to learning cannot and will not be effective for all students. Others are concerned that traditional Socratic teaching has been insufficiently effective in instilling professional responsibility, ethics, or a sense of service. Even those who defend the Socratic method for its efficacy in teaching analysis concede that law school curricula should also encompass other teaching methodologies, including upper-level writing and clinical offerings.

In the MacCrate Report, the American Bar Association weighed in on the debate.[1] The original purpose of the ABA Task Force was to address the perceived gap between the legal profession and academia—a perception that the Task Force found to be somewhat distorted.[2] But the Task Force ultimately determined that its most essential task was to identify "the fundamental skills and values that every lawyer should acquire before assuming responsibility for the handling of a legal matter."[3] The report also stressed the need for

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The course described here was first offered in spring 1998. I will teach it again in spring 2001. The course materials are available on request.

1. See Section of Legal Education and Admissions to the Bar, American Bar Association, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development—An Educational Continuum (Chicago, 1992) [hereinafter MacCrate Report].
2. See *id.* at 3.
3. *Id.* at 7.

"further concerted effort . . . to teach writing at a better level than is now generally done."[4]

Much criticism has been directed, appropriately, at the traditional curriculum's disdain for the teaching of legal writing as a central part of legal education.[5] As law schools increasingly recognize the importance of legal writing to the curriculum, they are also recognizing the need for learning through writing beyond the first year.[6] A number of valuable articles have articulated the importance of including learning through writing across the law school curriculum[7] and have advocated full integration of legal writing into the curriculum as part of teaching law as a rhetorical process.[8] Not many such articles, however, have advised readers how to implement new methods to teach specific subjects through writing.[9] This article offers, to those who are interested in alternatives to traditional pedagogy, the design and method of a course that can enable students to develop their legal research, writing, and analysis skills while they gain a solid grasp of a discrete substantive area in the business curriculum: consumer bankruptcy law.[10]

The course is designed to address the critiques that traditional pedagogy does not effectively prepare students for the ethical and competent practice of law. By working through the fact investigation, legal research, and drafting

4. *Id.* at 332.

5. See, e.g., Maureen J. Arrigo, Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs, 70 Temp. L. Rev. 117 (1997); Ralph Brill et al., Sourcebook on Legal Writing Programs (Chicago, 1997); Jan M. Levine, Leveling the Hill of Sisyphus: Becoming a Professor of Legal Writing, 26 Fla. S. U. L. Rev. 1067, 1073 (1999).

6. See, e.g., Philip C. Kissam, Thinking (By Writing) About Legal Writing, 40 Vand. L. Rev. 135 (1987); Lucia Ann Silecchia, Designing and Teaching Advanced Legal Research and Writing Courses, 33 Duq. L. Rev. 203, 208–20 (1995); Barbara J. Cox & Mary Barnard Ray, Getting Dorothy Out of Kansas: The Importance of an Advanced Component to Legal Writing Programs, 40 J. Legal Educ. 351 (1990).

7. Most prominently see Carol McCrehane Parker, Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It, 76 Neb. L. Rev. 561 (1997).

8. See Leigh Hunt Greenhaw, "To Say What the Law Is": Learning the Practice of Legal Rhetoric, 29 Val. U. L. Rev. 861 (1995). Greenhaw argues that writing is not separate from context, that law should be viewed as a rhetorical practice that is best learned from "full integration of legal research and writing into substantive first-year courses. Legal composition and legal subject matter interact in ongoing rhetorical activity and are therefore best understood and best studied together." *Id.* at 867.

9. The courses themselves exist. New courses in lawyering, including writing courses, and new courses in business and commercial law were among the top 25 areas of curricular growth from 1994 to 1997 identified by Deborah Jones Merritt and Jennifer Cihon in New Course Offerings in the Upper-Level Curriculum: Report of an AALS Survey, 47 J. Legal Educ. 524, 537 (1997). The authors noted that the new business courses were less likely than those in other substantive areas to include writing components, but they also noted a significant number of new lawyering courses that taught the skills in a particular substantive context. See *id.* at 541, 549–50.

10. The format used for this course could easily be adapted for other substantive areas. The vision of the course is to design the writing assignments so that they give students useful opportunities not only to develop their writing skills but also to facilitate their learning of major concepts in consumer bankruptcy. I can easily imagine structuring a course in family law, consumer protection, or debtor and creditor rights this way, and I am sure many other subject areas with which I am less familiar could also be effectively taught through practice-oriented writing projects.

common to a chapter 7 consumer bankruptcy, using a simulated case file, the students develop their lawyering skills while learning substantive law.[11] The course stresses the skills identified in the MacCrate Report as essential to the profession: problem-solving, analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute resolution, organization and management of legal work, and recognizing and resolving ethical dilemmas.[12] The students are confronted with ethical issues as an integral part of lawyering. The course also stresses the teamwork that is essential in practice: students engage in peer editing and work together at fact gathering. Finally, although the course does not focus specifically on transactional practice, it does emphasize the less combative aspects of litigation, including negotiation and settlement, discovery, and the creation of documents jointly with one's adversary.[13] The course requires the students, through simulation of a typical consumer bankruptcy case, to develop and employ each of these skills, giving primary emphasis to those skills most fundamental to legal writing—problem-solving, analysis and reasoning, legal research, and communication—while they learn the fundamentals of consumer bankruptcy law and practice.

The Vision and Structure of the Course

Why Advanced Legal Writing?

The importance of legal research and writing to the first-year curriculum is now widely, though not universally, accepted.[14] Nonetheless, upper-level writing courses—other than seminar courses that require production of a schol-

11. Individual chapter 7 filings are also called liquidation bankruptcies. The debtor does not propose a reorganization or repayment plan; rather she lists her income, expenses, assets, and debts and, subject to the specific provisions of the Bankruptcy Code, obtains a discharge of most consumer debts if she satisfies the eligibility requirements for chapter 7.

12. MacCrate Report, *supra* note 1, at 138–40.

13. I use the words "less combative" with some caution. Although the discovery process is certainly based in the adversary nature of litigation, it provides an opportunity to explore the nonadversarial aspects—i.e., the exchange of information, the advantages and disadvantages of different styles of lawyering in the discovery phase (scorched earth versus cooperation), and the demands and purpose of rules requiring self-executing discovery. The negotiation and settlement segment is designed to give the students an opportunity to experience resolving a matter by agreement rather than battle, but it imposes the need to reach agreement on both the substance of the dispute and the language of the agreement. Finally the students are required to produce a joint pretrial statement. This task, as in real life, requires them to cooperate at least to the extent necessary to create a document they will both put their names on. These experiences are intended to develop the students' appreciation for the counseling and negotiating aspects of lawyering that are often neglected in the pure trial practice course. In the process, I emphasize that these skills are truly at the heart of a civil litigation practice, because the vast majority of civil matters are ultimately resolved by settlement and not by combat to verdict.

14. See, e.g., Greenhaw, *supra* note 8. Elite law schools still tend to denigrate the subject by leaving its instruction to other students. See Pamela Edwards, Teaching Legal Writing as Women's Work: Life on the Fringes of the Academy, 4 Cardozo Women's L.J. 75, 79–80 (1997). But this model is fast becoming the exception rather than the rule.

arly paper—are not so common.[15] It is crucial for students to continue to develop their analytical skills through lawyering as well as through scholarship. They should not let their "practical" writing skills atrophy over their remaining law school years, only to be dusted off in the summer or in their first lawyer jobs. They need to build on the foundation of their first-year legal research and writing course by continuing to learn through writing in varied ways in their upper-level courses.

Lisa Eichhorn argues that the lower status of legal writing reflects legal academia's traditional privileging of oral over written communication, and she analyzes how that privileging has limited students' opportunities to learn through writing.[16] There is some irony in this hierarchy: many students come to law school because they have been told they are great talkers, then find themselves in training to become professional writers. Although the first-year doctrinal classes rely on oral discussions for teaching, grades depend almost exclusively on the students' performance on exams. At minimum, we should recognize that writing is an effective means of learning and an essential means of learning lawyering.[17] The writing process is a way of developing legal thought. It is integral to effective legal analysis. As Joseph Kimble succinctly and eloquently has said, "[W]riting is thinking. Thinking on paper. Thinking made visible."[18]

Leigh Hunt Greenhaw argues persuasively that "the saying and the writing of the law are . . . inseparable from its substance and meaning." Not only is the process of writing a learning process, but law itself is "an ongoing, interactive process of responding to situations framed by authoritative texts."[19] Through writing about those situations and those texts, students must understand the texts—which ones are relevant to this situation, to solve this problem; which ones are persuasive, which are not. "[K]nowledge of what constitutes persuasive legal writing is fundamental to analysis of the legal problem presented."[20]

15. The syllabus bank compiled by Mary Beth Beazley, director of legal writing at the Ohio State University College of Law, includes 33 syllabi for upper-level writing or legal research courses from law schools around the country. The packet was compiled in 1997 through submissions solicited through the Legal Writing Institute. It includes nine syllabi for legal drafting of varied documents, one for drafting of commercial documents, one for litigation drafting, and three for legislative drafting; one syllabus for a major scholarly paper with exercises, two for advanced writing techniques, two for memo- and brief-writing, seven for appellate advocacy, one for rhetorical oral technique, and three for advanced legal research. Only two syllabi have a specific substantive focus: the first an advanced appellate advocacy clinic in criminal law and procedure (a live-client clinic in which students write appellate briefs); the second a practicum skills course that uses a simulated employment dispute for the entire semester. It is of course not always possible to identify a course accurately just from the syllabus, but no other syllabi mention a specific substantive context for the course. See Mary Beth Beazley, Legal Writing Syllabus Bank, Packet 10 (Ohio 1997) (on file with author).

16. See Writing in the Legal Academy: A Dangerous Supplement? 40 Ariz. L. Rev. 105 (1998).

17. See J. Christopher Rideout & Jill J. Ramsfield, Legal Writing: A Revised View, 69 Wash. L. Rev. 35 (1994).

18. On Legal Writing Programs, 2 Persp. 1, 2 (1994).

19. Greenhaw, *supra* note 8, at 882.

20. *Id.* at 883.

Thus full learning of substantive law is made possible by incorporating writing about that subject. Writing assignments involve all students, unlike the oral dialog, and require the students to "commit[] to a claim in a more definite and enduring sense . . . . [T]he writer is more likely to appreciate how the situation affects and defines his or her legal response, [and it] gives greater context and direction to the reading of legal authorities than does reading for classroom discussion."[21]

Certainly writing opportunities can be expanded by including writing in traditional courses.[22] Innovative programs integrate skills sections with substantive courses.[23] At Temple one of the most popular upper-level courses is the Integrated Transactional Program in which Trusts and Estates and Professional Responsibility are taught in coordination with skills sections in which students interview and counsel a client about a new will, counsel a mother and son about a prenuptial agreement for the son, assist a terminally ill mother with estate planning (including medical decisions and guardianship of the child), represent an heir through the administration of an estate, assist a client in setting up a nonprofit corporation, and negotiate the sale of a family business.[24] The students' sense of reality is heightened because all but one of the problems arise from the ordinary interconnected lives of one extended family. (The terminally ill mother is not part of this family and is represented pro bono.) Throughout, the students complete frequent writing assignments ranging from memos to the file to team production of a set of corporate formation documents. This methodology allows the T&E and PR teachers to be intimately involved in the students' efforts to use their developing analytic abilities to resolve real-life lawyering issues in the transactional context rather than the trial context.

Clinical courses can be designed as writing courses. Angela Campbell and others have explored the advantages of using a live-client clinical course as a writing experience.[25] In such a course, however, the clinic's responsibility to the clients must drive the writing assignments; they cannot be designed purely around the teaching goals. A simulation cannot fully substitute for the "rich-

21. *Id.* at 885.

22. See, e.g., Barbara Bennett Woodhouse, Mad Midwifery: Bringing Theory, Doctrine, and Practice to Life, 91 Mich. L. Rev. 1977 (1993).

23. See, e.g., John B. Mitchell et al., And Then Suddenly Seattle University Was on Its Way to a Parallel, Integrative Curriculum, 2 Clinical L. Rev. 1 (1995).

24. This course is more fully described in Eleanor W. Myers, Teaching Good and Teaching Well: Integrating Values with Theory and Practice, 47 J. Legal Educ. 401 (1997). The materials and methodology for the skills sections have recently been published in the National Institute for Trial Advocacy Transactional Practice Series by Nancy J. Knauer, who originally developed the course and materials. See The Fields Family: Estate Planning (Indiana, 1998); A Friend in Need: Forming Nonprofit Corporations (Indiana, 1998); Quality Paper Products: Purchasing a Closely Held Business (Indiana, 1998); Suzanne T. Carson: Planning for Incapacity (Indiana, 1998).

25. See Angela J. Campbell, Teaching Advanced Legal Writing in a Law School Clinic, 24 Seton Hall L. Rev. 653, 660 (1993); Maureen E. Laflin, Toward the Making of Good Lawyers: How an Appellate Clinic Satisfies the Professional Objectives of the MacCrate Report, 33 Gonz. L. Rev. 1 (1998).

ness and complexity presented by real cases."[20] But ideally a student should have both experiences: the opportunity to use writing as a means of learning and the opportunity to learn clinical practice through writing as well.

It is most important that students be afforded some means of building on and firming up the skills they have just begun to master when they complete even a rigorous first-year course. Nearly every legal writing teacher has a story to tell about the student who resisted the course (it's too hard, it's not graded, it's too few credit hours so it can't be as important as my other courses[27]) only to return after her first summer in the working world and sheepishly admit that Legal Research and Writing was essential—and she wishes she could do it over now that she can appreciate its importance. Upper-level writing students who have experienced how important writing is to the practice of law have a hunger for experience in research and written analysis that is quite rare among first-years, who are more likely to express revulsion than appetite if they get beyond fear. Even the best, most thorough first-year course cannot and should not touch all of the MacCrate skills.[28] Only a range of upper-level courses incorporating skills elements will allow students to develop the panoply of lawyering skills they must master in the profession.

And the upper-level course described here is not one that limits the writing experience to producing a seminar paper or an academic essay. Although scholarly writing can provide an effective learning experience, the focus of this course is on lawyering, not scholarship. Some MacCrate critics have argued that skills teaching should not be the focus of law school education but should be the province of the employers; law schools should concentrate on theory and leave practice to the practitioners.[29] But this limited view ignores the educational value of learning by applying theory to practice through performing and communicating legal analysis, instead of just talking about it. Legal employers, of necessity, must focus on the use they get out of their employees. The pressures of practice and the size of caseloads do not allow the learning aspects to dictate training; instead of the projects' being designed to teach the associate the necessary law and skills, the work assignments determine what the associate will learn.

In designing my course, I wanted to simulate the tasks and speed characteristic of the law office environment but provide the academic opportunity for

26. Campbell, *supra* note 25, at 660.

27. The lower status of legal writing courses has a direct negative impact on many students' willingness to exert effort in the course, effort they feel will be better directed toward higher-status "real" classes that carry more hours and are graded. See Arrigo, *supra* note 5, at 143–44, 149–50; Eichhorn, *supra* note 16, at 113–15, 132–33 (1998); Jan M. Levine, "You Can't Please Everyone, So You'd Better Please Yourself": Directing (or Teaching In) a First-Year Legal Writing Program, 29 Val. U. L. Rev. 611 (1995).

28. See generally Cox & Ray, *supra* note 6; Silecchia, *supra* note 6. Trying to stuff every possible research and lawyering skill into a two-hour first-year course will most likely dilute rather than inform the students' understanding of the fundamentals of research, analysis, and communication. See Silecchia, *supra* note 6, at 214–20.

29. See J. Harvie Wilkinson III, Legal Education and the Ideal of Analytic Excellence, 45 Stan. L. Rev. 1659, 1666–67 (1993). Timothy W. Floyd reviews and criticizes this attitude and the often accompanying disdain for law practice in Legal Education and the Vision Thing, 31 Ga. L. Rev. 853, 854 (1997).

feedback, editing, and reflective learning, for learning and mastering the process of writing. Although the course does not incorporate actual representation, I modeled the case file on real people I had represented through my eleven years as a consumer specialist in a neighborhood legal services office in Philadelphia.[30]

Why Focus on a Single Substantive Area?

Teaching upper-level writing in a single substantive context gives students a richer opportunity to develop their analytical and other skills while learning the fine points of a specific area of law. The effect is synergistic: students learn doctrine by using it practically and learn practical skills through an increasingly familiar branch of doctrine.[31] Their ability to confront more difficult analytical issues grows as their grasp of the substance increases.[32] It is easier to incorporate realistic ethical and professional responsibility concerns when the students learn enough of a substantive area to become familiar with its inherent issues and can understand its cutting-edge concerns. The students must get deep enough into the area to recognize how much they do not know.[33]

30. The only structured teaching/supervising I did in practice was connected with a bankruptcy course taught at the University of Pennsylvania Law School where students, as part of their course work, were assigned to work with a practitioner handling two fairly routine chapter 7 bankruptcies. I participated in that course as a practitioner-supervisor for a year or two but was not at all involved in the substantive teaching. My memories of that experience helped inform the design of the writing course.

31. Greenhaw stresses that "students need to understand the problem presented to write well" and the need to write to understand the problem. Greenhaw, *supra* note 8, at 885. She demonstrates this with the teaching of *Marbury v. Madison* in Constitutional Law. The fundamental point is that separation of legal writing as a skill divorced from a substantive context reduces the value of learning a subject area that is gained by writing a solution to particular problems. See also Paul Barron, Can Anything Be Done to Make the Upper-Level Law School Courses More Interesting? 70 Tul. L. Rev. 1881 (1996) (describing this synergistic effect at work in an advanced bankruptcy course taught through simulations).

32. Gary Blasi, in urging exploration of the relevance of cognitive science to lawyering expertise, notes that "a person with an engaged, active stance and the perspective of a problem-solver inside the problem situation acquires an understanding quite different from that of a person with a passive stance and the perspective of an observer. It is not only that an engaged problem-solver learns more from both instruction and experience but also that she learns something quite different." What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory, 45 J. Legal Educ. 313, 359 (1995). Blasi points out that this insight underlies even the case-method approach of active student involvement in case analysis in contrast with lectures. *Id.* Simulations offer a different and potentially deeper means of engaging the students as "situated" problem-solvers.

33. Blasi's discussion of the development of lawyer expertise compares the ability of an experienced litigator to see a specific client problem—whether to file a motion for summary judgment that on the law looks promising—within the global picture of the effect of that tactic on the client's case, taking into account such factors as the judge's possible distaste for summary judgment, the judge's recent history with appellate reversal, and the potential for such a motion to alert opposing counsel that he has failed to proceed with discovery in the case, with the less expert and less experienced view of the new associate who approaches the summary judgment problem without the larger context. See *id.* at 322–33. Simulations in law school certainly won't give the student the expertise available to the experienced litigator, but they will give the student more opportunities to examine a specific legal issue within the broader context of the hypothetical client's history and desires and, for this course, the entire bankruptcy process.

It is certainly possible to teach advanced legal writing without a particular substantive context. Some upper-level writing courses focus solely on types of documents common in the general practice of law—e.g., a memo on custody, a will, a contract, a statute.[34] This model either requires the analytical issues to be very simple or recognizes that the students will merely skim the surface of the substantive law.[35] This approach works in a highly sophisticated writing course focusing on technique but risks superficiality if the students are expected, primarily, to be learning basic drafting skills.[36] It also fails to give students an opportunity to learn a substantive area through writing in and about it.

Why Consumer Bankruptcy?

Consumer bankruptcy was a useful choice for two primary reasons. First, I know the area well both as a practitioner and as a scholar.[37] Second, bankruptcy lends itself well to this type of simulation, as demonstrated by the small but significant number of business bankruptcy courses using this type of methodology.[38] Bankruptcy is a generalist field in specialist clothing: a bankruptcy practitioner must cope not only with the contracts, secured transactions, and debt collection issues that one would expect, but also with the not-

34. See Beazley, *supra* note 15.

35. LRW professionals have engaged in a similar debate over how best to teach research—by search exercises designed to expose students to different resources but not otherwise related to each other or part of a larger context, often described as treasure hunts, or by teaching research integrated with writing and analysis. See Jan M. Levine, Designing Assignments for Teaching Legal Analysis, Research and Writing, 3 Persp. 58 (1995).

36. Because, as Greenhaw, *supra* note 8, explains, the process of writing creates law and allows learning of law, then that process will be most effective in realistic rhetorical situations—with all complexities of actual life. It is easier to reproduce a realistic situation if the substance is consistently present, not scattered among widely varying rhetorical situations.

37. I addressed the current effort to rewrite the Bankruptcy Code in Once Is Not Enough: Preserving Consumers' Rights to Bankruptcy Protection, 74 Ind. L.J. 455 (1999). While I was a staff attorney at Community Legal Services, Inc. from 1985 to 1996, I specialized in consumer protection and home ownership cases. The most effective forum to protect my clients' rights and their homes was the bankruptcy court. I handled hundreds of consumer bankruptcies, mostly under chapter 13 and mostly for the primary purpose of saving a client's home, but I also represented a substantial number of chapter 7 debtors and, on rare occasions, represented consumer creditors in chapter 11 bankruptcies. Representative cases I litigated include Hammond v. Commonwealth Mortgage Corp. (In re Hammond), 27 F.3d 52 (3d Cir. 1994); Ralston v. Zats, 1997 WL 560602 (E.D. Pa. Aug. 26, 1997) (Civ. A. 94-3723). The last-named case is described in L. Stuart Ditzen, Lawyer's Methods, Debtors' Nightmare, He's Relentless, No Matter How Small the Debt. His Tactics Are All Legal, He Says, Philadelphia Inquirer, June 12, 1994, at 1A. See also Meet the Meanest Lawyer in America, Nat'l Enquirer, Aug. 30, 1994, at 19. The "meanest lawyer" is Zats.

38. See, e.g., Barron, *supra* note 31. Indeed there is a movement towards the problem method of teaching and away from traditional case-method teaching in both bankruptcy and secured transactions courses. See William J. Woodward, Jr., Empiricists and the Collapse of the Theory-Practice Dichotomy in the Large Classroom: A Review of Lopucki and Warren's *Secured Credit: A Systems Approach*, 74 Wash. U. L.Q. 419 (1996). See also Elizabeth Warren & Jay Westbrook, The Law of Debtors and Creditors, 3d ed. (Boston, 1996), a casebook for large bankruptcy classes which takes a similar problem-based approach.

so-occasional family[39] or estates law problem,[40] landlord-tenant issues,[41] environmental issues,[42] tax law,[43] pawnshop disputes,[44] mental health issues,[45] property ownership disputes,[46] and difficult jurisdictional and procedural concerns.[47]

The typical consumer bankruptcy involves a fairly ordinary individual or married couple, neither exceptionally wealthy nor exceptionally poor, with more debts than they can pay. The debtor wants relief from collection activities—either for peace of mind or to protect her assets, typically her furniture, home, or car. Her creditors of course want to protect their interests too, by getting their fair share of any available assets or by getting a particular debt excepted from the discharge so that the creditor can still go after the debtor after the bankruptcy is over. Once the debtor files for bankruptcy, her assets become property of the estate subject to the jurisdiction of the bankruptcy court. Each creditor must then look to the Bankruptcy Code for protection of its rights, or it must convince the bankruptcy court that grounds exist to allow the creditor to pursue collection actions despite the bankruptcy. Disputes commonly arise over whether property is owned by the debtor and thus part of

39. See, e.g., Farrey v. Sanderfoot, 500 U.S. 291 (1991). Numerous cases struggle to interpret language in divorce decrees or agreements to determine whether an obligation is nondischargeable child or spousal support or whether it is a dischargeable property settlement. See, e.g., Brody v. Brody (In re Brody), 3 F.3d 35 (2d Cir. 1993). More recently courts must determine whether circumstances justify discharge of the property settlement too, under 11 U.S.C. § 523(a)(15) allowing discharge if the debtor lacks the ability to pay or the benefit to the debtor outweighs the harm the spouse will suffer if the debt is discharged. See, e.g., Johnson v. Rappleye (In re Rappleye), 210 B.R. 336 (Bankr. W.D. Mo. 1997).

40. See, e.g., Sattin v. Brooks (In re Brooks), 217 B.R. 98 (Bankr. D. Conn. 1998) (determining validity of debtor's attempt to protect assets in a self-settled offshore trust).

41. See, e.g., 48th Street Steakhouse, Inc. v. Rockefeller Group, Inc. (In re 48th Street Steakhouse), 835 F.2d 427 (2d Cir. 1987) (holding that a landlord's effort to evict a prime tenant violated the automatic stay protecting a subtenant whose right to possession of the leased premises could be affected by termination of the prime lease).

42. See, e.g., A.M. Int'l Inc. v. Datacard Corp., 106 F.3d 1342 (7th Cir. 1997) (resolving whether the debtor's earlier bankruptcy discharged its obligation to pay for cleanup costs of the site on which it spilled toxic chemicals for years before and after the bankruptcy).

43. See Rigney v. United States (In re Rigney), 216 B.R. 65 (Bankr. N.D. Ala. 1997) (rejecting the IRS's argument that the debtor intended to defraud when he filed a late tax return in the midst of an audit and testified that he had relied on his accountant's advice in completing the return).

44. See, e.g., Cash America Pawn v. Murph, 209 B.R. 419 (E.D. Tex. 1997) (determining whether the rings, VCR, and Nintendo set the debtor pawned before filing for bankruptcy were part of the debtor's bankruptcy estate once the debtor's right to redeem the goods had expired).

45. See, e.g., In re Murray, 199 B.R. 165 (Bankr. M.D. Tenn. 1996) (holding that a seven-year-old child was eligible to file for bankruptcy protection); In re King, 234 B.R. 515 (D.N.Mex. 1999) (holding that a missing person was not eligible to file for bankruptcy).

46. See Fokkena v. Tripp (In re Tripp), 224 B.R. 95 (Bankr. N.D. Iowa 1998) (determining that the debtor was required to disclose his ownership interest in 15 pounds of marijuana which, though contraband, had value and was part of the debtor's estate).

47. For example, the bankruptcy courts have recently been struggling with the application of the Supreme Court's ruling in Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996), to bankruptcy jurisdiction over state government units. See, e.g., Sacred Heart Hospital v. Pennsylvania Dept. of Public Welfare (In re Sacred Heart Hospital), 133 F.3d 237 (3d Cir. 1998).

the estate or whether it belongs to a nondebtor; over the validity of liens on property; over whether a creditor should be allowed to pursue collection despite the bankruptcy; and over whether certain debts should be discharged at all. All of these common disputes are useful teaching tools; they provide the context for students to wrestle with statutory language, interpretation, legislative history, and policy considerations as they try to gather necessary factual information, to perform research adequate to allow them to effectively spot issues and advise their client, to draft effective documents, to negotiate appropriate settlements, and to effectively resolve disputes within the bankruptcy proceeding.

And the nonbankruptcy practitioner needs to have bankruptcy on her radar screen. In our credit-dependent society, bankruptcy filings have expanded exponentially as consumer credit has exploded. All law students can benefit from some basic knowledge about the impact bankruptcy has on the legal universe in which they find themselves. The narratives involved in bankruptcy are remarkably compelling and rich.[48] Although the media image of a bankrupt person is the deadbeat consumer who overspends and won't take responsibility for her profligate behavior, the actual stories are much more nuanced. The amount of human pain is remarkable and is gripping to any student who is at all motivated by the service aspects of the profession. The most common disputes are essentially about fairness and striking the appropriate balance between the goals of forgiveness and rehabilitation of the debtor and equity among creditors. As courts of equity, the bankruptcy courts operate with a level of common sense that is easily grasped by the novice, even when the legal issues are complex. Despite its somewhat pedestrian image, bankruptcy is also a rich source for the "practical" scholarship and pedagogy advocated by Harry T. Edwards.[49] Bankruptcy is a policy-driven, statute-based field, the product of legislative fight and compromise, but with a history reaching back to ancient times. It is currently the subject of intense political debate. It requires a student to think about how the law came to be and to challenge whether the rules should remain static. In short, consumer bank-

48. Individual bankruptcy stories cover an amazingly wide range. For example, In re Hakim, 212 B.R. 632 (Bankr. N.D. Cal. 1997), presents the fight of Albert Hakim to protect $12 million stashed in Swiss bank accounts, allegedly the proceeds of his involvement in the Iran-Contra scheme, from the hands of the U.S. government. Allstate Insurance v. Dziuk (In re Dziuk), 218 B.R. 485 (Bankr. D. Minn. 1998), in contrast, relates the sad story of a debtor who, to prove to his girlfriend that he loved her more than his icehouse, set fire to that icehouse and inadvertently burned down his landlord's house—in which the debtor meanwhile had fallen asleep. The bankruptcy court determined that Dziuk, though motivated by illogic, did not maliciously intend to harm his landlord, and so the insurance claim arising from the fire was dischargeable despite the debtor's criminal conviction for arson. In re Weisberg, 218 B.R. 740 (Bankr. E.D. Pa. 1998), relates the war to financial death waged by the debtor and his wife, both lawyers, who racked up nearly $1.5 million in legal fees in the course of a protracted divorce battle that did not even gain them a divorce.

49. See The Growing Disjunction Between Legal Education and the Legal Profession, 91 Mich. L. Rev. 34, 35 (1992). As examples see Marianne Culhane & Michaela White, Taking the New Consumer Bankruptcy Model for a Test Drive: Means-Testing Real Chapter 7 Debtors, 7 Am. Bankr. Inst. L. Rev. 27 (1999); Karen Gross, Failure and Forgiveness, Rebalancing the Bankruptcy System (New Haven, 1997); Nathalie Martin, Noneconomic Interests in Bankruptcy: Standing on the Outside Looking In, 59 Ohio St. L.J. 429 (1998).

ruptcy is much more fun than many nonbankruptcy practitioners and scholars think it is.

The Specifics: Advanced Legal Research and Writing in the Consumer Bankruptcy Context

Overall Design and Goals

The main goal of the course is to provide the students the environment to build on the skills they acquired in the first-year curriculum from both their doctrinal and their writing courses—to improve their ability to analyze new legal problems and to use that analysis to produce effective documents that are common in law practice but are not covered in first-year legal writing courses, and to develop the other essential MacCrate skills that they did not learn in the first year of law school.[50] I want them to be intently aware of the need to appreciate local legal culture[51] and to be aware of their ethical obligations to their clients, other parties, and the court. I also intend the course to be a bridge between the first-year curriculum and the students' summer, clinical, or permanent work experience.[52] I hope to address the concern that upper-level writing in law school has traditionally been much more focused on the scholarly writing professors do than on the actual writing lawyers do. This course gives the students the opportunity to write letters, settlement agreements, discovery documents, and pretrial statements—the meat of practice—not scholarly notes or comments. In short, they become, I hope, the problem-solvers envisioned in the MacCrate Report.

The available upper-level writing texts are not well suited to this course because they are designed for general drafting courses, not for those with a particular substantive focus. Too much of the information in the text is not relevant to the bankruptcy documents the students will produce. One of my goals is to have the students work with forms—choosing them, adapting them, being thoughtful about necessary changes. They need to recognize the essential economic value of using forms but the professional need to use them with care. So I assign a book about consumer bankruptcy written for a practitioner audience.[53] It has the added advantage of a computer program for the production of bankruptcy schedules and contains numerous sample forms; it also accessibly provides the basics of consumer bankruptcy and lead cases. The

50. This course is one of several advanced writing courses offered at Temple by the four full-time LRW teachers and the director. The other courses include Advanced Appellate Advocacy, Legislative Drafting, and Advanced Legal Research. We also teach substantive seminars in Law and Feminism and Sexual Orientation and the Law.

51. See generally Jean Braucher, Lawyers and Consumer Bankruptcy: One Code, Many Cultures, 67 Am. Bankr. L.J. 501 (1993).

52. I do not require that the students take a bankruptcy course as a prerequisite. My course can be helpful to either second- or third-year students, whether or not they have had an introductory bankruptcy course, because it focuses as much on teaching them the process of how to educate themselves through research and writing in an area as it does on their learning of the substance of consumer bankruptcy law.

53. Henry Sommer et al., Consumer Bankruptcy Law and Practice, 5th ed. (Boston, 1996).

major writing texts are on reserve, and I assign relevant sections as needed. Because the upper-level writing classes at Temple are small, I can tailor the writing assignments to the needs of the particular class. If the group is weak on communication of analysis, I can assign materials focused precisely on that task. If they struggle with research, we can devote additional time to that. The fixed readings, however, are drawn from the textbook.

I grade the students on the entire portfolio of documents they produce over the course of the semester. The writing projects cover three phases of the bankruptcy—the prefiling process of interviewing, investigating, planning, and advising the client about options, which culminates in effecting her choice by preparing the documents necessary to file the bankruptcy; the processing of the bankruptcy itself, including communication with the debtor and creditors and resolution of issues common to most consumer bankruptcy filings; and finally the process of litigating a particular case within the bankruptcy up to trial, including pleadings, discovery, a joint pretrial statement, and a trial brief. Each of these assignments teaches the students about a significant substantive aspect of consumer bankruptcy and enables them to learn or explore particular skills.

With each submission throughout the semester, the student turns in a cover memo identifying the audience for the document, its purpose, any forms used, alterations made to the form, other available forms, and why he selected the chosen form. The student also evaluates the assignment and provides a list of authorities relied on for each assignment other than the memo, the pretrial statement, and the brief. The cover memo prods the student to self-reflection about his writing choices. I critique each document. The student may, if he wishes, rewrite the document after he receives the critique. The students are encouraged but not required to rewrite. Most do. I emphasize the importance of rewriting: that writing is a recursive process in which their analysis of the problem and their understanding of their research and their analysis will be developed and refined in the process of writing about it. Rarely do students forgo the opportunity to rework the documents following their reflection on my feedback. The original documents must be submitted under strict deadlines set forth in the syllabus, but students have until the end of the semester to turn in rewrites. The firm deadlines give the students experience in one of the fundamentals of professional life—the need to complete tasks under externally imposed restrictions. The freedom to turn the rewrites in on their own schedule gives them some experience in self-directed time management, an equally important feature of professional life.

The documents are to be in professional form, ready for court filing. The students must comply with the local rules on cover sheets, proposed forms of order, certificates of service, and any other supporting document required by the court in which the actual document would be filed. I require the students to research the local rules of bankruptcy procedure to make sure they are aware that such things as local rules exist and they can comply with the requirements.

The Assignments

Fact Gathering, Interviewing, Counseling, Investigation, Research Analysis, and Planning

The students' first job is to engage in research rarely required in first-year writing classes: fact gathering. They have to conduct an interview to get the documents and information necessary to write an opinion letter and to prepare a bankruptcy petition and supporting documents.[54] I play the role of the client, but ideally I would have someone else do it.

The prospective client is certain she has a problem but very unsure what she can do about it, quick to offer information about how she defines the problem but not so quick to hear or understand the lawyer's responses. She has a raft of bills which are her motivation for seeking legal help.[55] She has heard from a friend that bankruptcy will solve all her problems. The students conduct the interview as a group; all have the opportunity to ask questions. They learn that open-ended questions can elicit more information than specific ones and that it is not wise to promise anything until they have completed the full interview. In MacCrate terms, this is an opportunity to hear the client's definition of "the problem" and to explore "aspects [or] additional problems that the client may not have perceived . . . ."[56] The students also need to pay attention to the client's concerns, her motivations, and her verbal and nonverbal cues. She does not always answer even direct questions fully, and they must be polite but persistent to get the information they need to counsel her and to complete the bankruptcy papers.

Before I assume my client role, we discuss the interviewing process—that this is the opportunity to hear how the client defines her problem and her goals, to hear her story. I tell them that no advice is to be offered at this interview, although some mild noncommittal reassurance is in order. We also talk about the necessity to know what you need to know before you can interview effectively. Before students can talk to someone about her debt problems with bankruptcy in mind, they must familiarize themselves with the information relevant, at minimum, to completing the bankruptcy schedules. They must be prepared to spot issues from the position of the informed professional—to know enough to know how bankruptcy and nonbankruptcy collection laws intersect and how they may affect the client's concerns; to understand the disclosures required by the bankruptcy debtor; to recognize what property issues may arise; and to understand the client's goals and possible means of achieving them.

After the in-class interview is complete, the students have to advise the client in writing about her options. Writing this first letter requires the student

54. The bankruptcy petition itself is a simple two-page form, but it must be accompanied by the Statement of Affairs and Bankruptcy Schedules—about 20 pages of detailed information about the debtor's assets, debts, income, current finances, and financial history.

55. Students must gather facts not only from the interview but through an evaluation of the debtor's bills and collection letters as well.

56. MacCrate Report, *supra* note 1, at 142.

to consider his audience carefully and to think about how to communicate the key information. The client has shown herself to be relatively unsophisticated in legal matters and somewhat misinformed about what a bankruptcy can accomplish and how the bankruptcy process may hurt her or thwart her goals. The student must assess his audience, convey his advice in a form useful to the client, and consider the balance between directing her and counseling her. The students begin to appreciate how much work and thought must precede even a "simple" advice letter. I allow the students to write or e-mail me with additional questions as, in the process of writing the letter and preparing the petition, they realize they missed some information in the in-class interview. The importance of nondirective questions, the need for understanding the legal arena before the interview, and the importance of being noncommittal at the beginning about what can be done to help can all be crystalized for the student through this process.

It is essential for the student to perform adequate research to provide accurate and ethical advice to the client. Her facts raise issues about her ability to discharge certain debts—including her taxes and her student loan—and her ability to protect her interest in her home, which she owns jointly with her estranged and unreachable husband. The student must understand that accurate counseling includes conveying the bad news that not all desired options are open to the client.

The students' next assignment is to research and write an office memo about the client's exemption issues. One of the crucial issues in most bankruptcies is what property will be made available for distribution to the creditors. The debtor wants to keep as much as possible, and the creditors of course hope to realize some return on the debts. The Code allows debtors to exempt designated types and amounts of property but allows the debtor to choose either the Code exemptions or those available in her state of residence.[57] The debtor's right to engage in prebankruptcy "exemption planning" has been the subject of judicial and scholarly debate.[58] The memo must help the debtor decide whether to use the state or the federal exemptions.[59] The students must dig through the facts they have gathered, identify which assets raise issues, and then direct their legal research appropriately to be able to accurately analyze this issue and to counsel the client. They must employ their skills in legal research, analysis of law and fact, and communications. The existence of the absent husband raises ethical concerns too. Does the lawyer have any obligation to notify him of the bankruptcy? Is he arguably a creditor? Will the client's actions affect his rights? How does the lawyer respond to the client's stated

57. The Code further allows states to opt out of the Code exemption provisions entirely and to limit their residents to the state exemptions in the bankruptcy process.

58. See, e.g., In re Coburn, 175 B.R. 400, 403 (Bankr. D. Or. 1994). See also A. Jay Cristol III et al., Exemption Planning: How Far May You Go? 48 S.C. L. Rev. 715 (1997); Lawrence Ponoroff, Exemption Limitations: A Tale of Two Solutions, 71 Am. Bankr. L.J. 221 (1997).

59. Pennsylvania has not opted out of the federal exemptions so the client has the option. Pennsylvania's exemptions are generally miserly from the debtor's perspective—she can keep up to $300 of personal property, all her Bibles and sewing machines—but arguably provide greater protection of marital property and pensions.

desire to transfer assets without telling the court? These are not particularly complex ethical issues, but they come up frequently in practice and it is helpful to get the students used to thinking through their obligations to the client and to the court, to gain expertise in recognizing and resolving common ethical dilemmas.

The exemption memo is also an opportunity for the students to focus on research skills. I was pleasantly surprised by my students' clamoring for more research guidance and practice. Because this memo comes up early in the semester when the students are still struggling with basic bankruptcy concepts, they benefit from reviewing basic research skills—construction of a research plan or use of secondary sources, for example—in addition to looking at the somewhat convoluted legislative history of the Code itself.[60]

Next the students prepare the bankruptcy petition and schedules. This process requires them to research the local rules, to use complicated forms, and to think about how the information in the schedules may affect the course of the client's bankruptcy. They must take a global view of the entire bankruptcy process and consider how the petition and schedules will affect the direction of the case. We discuss the reasons why the information is requested, who will benefit from this disclosure, and how the information may be used by those to whom it is disclosed. The students must use their legal analysis skills prospectively, considering the effect of the actions they are planning, not just retrospectively analyzing what has already happened. This task also educates them about the importance of good record keeping. The better their records of their interview and document analysis, the easier it will be to complete the fact-intensive petition and schedules. They also must engage in the challenging process of balancing their duty to the court with their duty to the client and her expressed desire to pick and choose among her debts and assets.[61]

Acting on the Plan: Communication, Negotiation, Organization, and Ethics

Once the petition is filed, the students turn to the job of sorting out what creditors can still do despite the bankruptcy filing and what the debtor can do to stop creditors from violating the protections the bankruptcy was supposed to give her. One of the most essential features of the current bankruptcy system is the stay on collection activity, which is automatically effective when the bankruptcy petition is filed. First the student must let the participants know the bankruptcy has happened by sending notice letters out to the client and to her creditors. The client letter involves counseling the client again about the steps in the bankruptcy process and advising her of her rights. The student can use the form letter in his text but must be alert to the specific facts of the client's case that differ from the form and require him to adjust the text. We talk in class about why notice letters are important. What if a creditor does

60. See Kenneth N. Klee, Legislative History of the New Bankruptcy Law, 28 DePaul L. Rev. 941 (1979).

61. Once the students have completed rewrites of the letter and the petition and schedules, I provide them with a completed packet that is the basis for the rest of the course. I do not want the entire semester to be tainted by limited interviewing techniques, so I even the playing field.

take action in violation of the automatic stay? How will the notice letter help the client's cause if they have to resort to litigation to protect her? This task requires the students to use their analytical and communications skills in a planning context, anticipating potential problems and building a record for any later litigation.

I also make the students switch hats to see the process from the creditor perspective. They are assigned to represent the client's mortgage company, which is concerned that she is delinquent on her mortgage payments. As a secured creditor, the mortgage company will not have its claim discharged by this bankruptcy.[62] But it does not want to wait months for a discharge order before it takes action on the delinquency that may, meanwhile, grow larger. The students must research the grounds for relief from the automatic stay and draft a motion for relief in compliance with the local bankruptcy rules. Once the motion is filed, they resume their representation of the debtor and research and file answers to the motion, also in compliance with the local rules. This assignment again gives the students experience in using their legal research, analysis, and communications skills and adds litigation-oriented drafting skills. Finally, as is typical in practice of most such motions, they resolve it without a hearing. I assign the students randomly to sides and require them to negotiate a settlement of the motion and to reduce their agreement to writing in the form of a stipulation of settlement to be filed with the court. This gives the students a taste of the skills involved in successful negotiation: they must assess possible strategies, decide what the bottom line should be, realistically evaluate what the other side's needs are, and try to frame their positions accordingly. Drafting the stipulation requires them to negotiate and agree on language that both their clients can live with. Again, they must think beyond the moment to consider how this agreement will constrict their client's actions and choices in the future.

The debtor is also concerned because another of her creditors has sent her a threatening letter; it appears to have been mailed shortly after the bankruptcy was filed and thus is technically a violation of the stay. We talk through the options of how to respond, and the students write a letter to the offending creditor. This task seems to bring out the television lawyer in nearly every student. They are eager to finally write the hostile, powerful letter they dreamed of before law school. We talk through the effect of such an approach. Will it intimidate or enrage? Will that reaction make the student's life or, more important, his client's life easier or harder? They must consider the audience and the effect of the communication, and how their choices could come back to haunt them in dealing with this creditor in the future.

I also acquaint the students with another typical result of motion practice: winning by default. The cases students read in law school are those rare cases that are fully litigated and appealed. It is easy for students to remain unaware that the vast majority of legal disputes are settled and that a significant

62. Although the chapter 7 bankruptcy discharge does not affect the mortgage company's security interest in the home and only discharges the debtor's personal liability, in the vast majority of cases the mortgage company is much more interested in receiving the loan payments than in taking over the house.

number of them are not even contested. They research and file a motion to avoid a judicial lien to which no opposition is filed. They then must file the documents required by the local rules to notify the court that they have served the respondent, that no response has been filed, and that relief should be entered. The students learn that they must see the motion through to completion and make sure that they file all the documents necessary to get the relief actually entered by the court, which does not occur automatically just because no one disputes their right to the relief. This assignment also gives us the opportunity to explore why a party might not contest a motion, to discuss the economic incentives to allow default if contesting the motion would cost more than the value of the lien, and to consider the ethical concerns for a respondent who has no good-faith basis to contest lien avoidance.

Litigation: Putting a Case Together

The final segment of the course focuses on litigation of the dischargeability of the debtor's student loan obligation. A student loan is not dischargeable in bankruptcy unless the debtor proves that repayment will impose undue hardship on her or her dependents. This issue is accessible to students and is of obvious interest to them; and the resolution of this case is not clear-cut on the facts available to them. Pedagogically this is an opportunity to focus the students on the effort and tasks necessary to put an entire case together beyond just researching the applicable legal standard. They have to consider the effect of the burden of proof. They need to determine the elements of the cause of action so they can properly allege or contest them. They must decide how to approach the discovery process. They must decide what evidence they need to prove or disprove these elements and what rules govern the conduct of the litigation. They must employ their skills in problem-solving to ultimately determine whether they can obtain or prevent discharge of the debt.

They use their analysis, research, and reasoning skills to find the basis for student loan dischargeability in the Code, its history, and its interpretation by the courts. Through this process they must consider why the Code provides special treatment for student loans. They evaluate the legislative history of this provision, including the role anecdote has played in the Code's treatment of these loans. They must consider the contrast between the professional school loans of concern to Congress and the trade school loans with the aroma of fraud at issue here. Their research will require them not only to review the legislative history of the provision but also to consider how different interpretations among the circuits affect the hierarchy of authority. The binding test from the Third Circuit was adopted from a lead Second Circuit opinion that has also been considered by most other circuits and adopted by the majority of them.[63] But this history leaves the students with the complicated task of

63. See Pennsylvania Higher Educ. Assistance Agency v. Faish (In re Faish), 72 F.3d 298 (3d Cir. 1995). In *Faish*, the Third Circuit adopted the Second Circuit's definition of undue hardship, which requires the debtor to show that her current income and necessary expenses preclude her from paying the loan, her circumstances are unlikely to improve sufficiently to allow her to pay in the foreseeable future, and she has made good-faith efforts to pay. See Faish, 72 F.3d at 300 (adopting the test from Brunner v. New York State Higher Educ. Serv. Corp., 831 F.2d 395 (2d Cir. 1987)).

deciding relevance on the basis not only of fact similarity within their immediate jurisdiction but also of out-of-jurisdiction opinions that have adopted the same test.

The litigation phase requires the students to continue to develop their communications skills. They must inform the client about the debtor's rights and evaluate for her the chances of settlement. They must communicate with opposing counsel formally through pleadings and discovery, and more informally in the process of producing the joint pretrial statement. The pleadings, the joint pretrial statement, and the trial brief itself must also be viewed as communications with the court.

The class is split between plaintiffs and defendants. The plaintiffs must research and draft an adversary complaint. They need to do research to understand elements that must be alleged, the basis for the claim, the burden of proof, and the rule requirements for the form of the document. We talk through the communicative aspects of notice pleading so that the students draft the complaints with consideration for withstanding responsive motions to dismiss while retaining flexibility pending discovery and making the desired impression on the court and the opposing party.

The defendants research and draft an answer which imposes tasks and considerations similar to those the complaint imposes on the plaintiffs. Next the defendants draft interrogatories. This assignment also seems to bring out latent aggression. We have to talk about the issues of ethics and style that are involved—whether you should direct discovery only at gathering the information you need to know or whether it is appropriate, acceptable, or desirable to do what you can to drive your opponent crazy. Should the student succumb to the temptation of creating a paper storm? Is there really a need to define terms like "document" interminably? How does a lawyer approach the task of communicating clearly to a hostile audience?

The plaintiffs draft answers to the interrogatories. They must consider the need and opportunity for counseling the client in addition to the ethics of their response. Should they play games with inartful drafting from opponent or just provide the information? Are they serving their own client effectively if they do not take advantage of the opponent's gaffes? An interesting addition or variation on this assignment could be to require the students to comply with the self-executing discovery rules that apply in federal court.

After the students complete the interrogatory assignment, they turn to the joint pretrial statement. This is one of the most essential parts of the course because it requires the adversaries, as they would in any actual federal court litigation, to work together to produce a document that will control the actual case presentation. They are required to complete a joint pretrial statement in the form typically required in the Eastern District of Pennsylvania. The statement must set forth the basis of jurisdiction and identify whether the proceeding is core or noncore. It must set forth the uncontested and the contested facts. The plaintiff must specify the damages and other relief sought. Each party must identify the legal issues presented and the authorities the party relies on to support its position and must identify who has the burden of proof on each legal issue. Both parties must list the witnesses in the order they will be

called and provide a brief summary of the evidence each witness will provide. The parties must also identify any objections they have to any witness to preserve the objection for trial. Similarly, the statement must list all exhibits by number and must specify objections to any exhibit. The statement must identify all discovery items and depositions that will be introduced. It must estimate the trial time the parties anticipate. Finally, both parties must certify that they have attempted good-faith settlement negotiations without success.

Preparation of the joint pretrial statement forces the students to think through their entire case—the legal background, the results of and effects of the way they handled discovery process, the choice of evidence to be presented—and to work together with their opponent to produce a joint document. It reinforces the students' earlier efforts to thoroughly prepare the case, it highlights omissions and gaps in their preparation, and it drives home the need for careful research and thorough preparation throughout the process, from the initial interview to trial.

Finally the students prepare a trial brief. This final assignment feels familiar at first because they have all written at least one appellate brief in their law school careers. As they move from research, most of which they have long since completed in order to produce the pleadings, they realize that the trial brief, unlike the appellate brief, is predictive in a sense. They are trying to persuasively advise the court of their goals for the trial, not argue retrospectively that a decision below was correct or was flawed. They must anticipate the evidence that will be presented and advocate how applying the law to that evidence should dictate a result in their client's favor. The brief assignment ties together most of the skills the course has focused on: the students must use their research and fact investigation to persuasively communicate their analysis to solve their client's problem.

Evaluation

Teaching and learning substance through writing about it is not only effective; it is hard work. This course met most of its goals, and I was quite satisfied that it was hard work that worked for everyone—students and teacher. The biggest problems arose directly from the challenges inevitably imposed by this means of learning. The students were daunted by the intensity of the time demands they faced in trying to become grounded enough in consumer bankruptcy law to understand the legal issues raised by the early assignments. Of course this problem is inherent in the course design, and it is also part of the course's value. Learning a substantive area through writing about it requires an enormous effort at the beginning to understand enough about the most basic aspects of the issues to accomplish the assigned task. But this is true for any writing project in an unfamiliar area. I tried to stress, and will stress even more in the future, that professional standards require just such an effort, and the effort cannot and should not be avoided. I will, however, make two changes to lighten the students' burden: greater stress on research skills at the beginning of the course and earlier individual conferences.

The assignment that caused the most grief was the interoffice memo on exemptions. I was surprised at how much the students struggled with a project

I saw as rather clear-cut. They spent hours trying to understand Pennsylvania law on tenancy by the entireties and spousal abandonment and other tangents. Their struggle taught me that I needed to concentrate more on research than I had anticipated, that we needed to work in class on issue identification, and that I had underestimated how ill equipped they were this early in the semester to focus their research effectively and to recognize irrelevancies. Next time I plan to build research exercises into the syllabus within the first two weeks, both as a refresher and to give me a benchmark for the students' level of mastery of research. I plan to keep the assignment of an interoffice memo but to greatly simplify the legal issue and to use class time to work through the research strategy collectively. I will also encourage students to research in groups so that they can learn from each other.

I also want to schedule individual conferences earlier in the semester. I thought the students would benefit most from a conference relatively late in the course so that they would have more documents in the portfolio to discuss. This timing also allowed me to finish conferences with my first-year students before I turned to the upper-level class. But the course evaluation forms consistently commented that more or earlier conferences would have helped students improve their analytical process. Ideally I would schedule additional individual conferences, but the demands of my other teaching and administrative obligations preclude that solution. The best compromise seems to be to, at a minimum, schedule the individual conferences within the first half of the semester to give me more involvement in evaluating each student's writing process. The earlier conferences can be supplemented with more peer evaluation of the trial and discovery documents, which already entail collaborative work. This compromise should still allow effective intervention in the writing process to help the students understand how to improve their writing without imposing impossible time demands on me.

The deeper into the semester, the better the course worked. As the students' knowledge of bankruptcy deepened, their ability to use and develop their knowledge in writing zoomed. That is of course what I had hoped for. The most effective assignment of the entire semester was the pretrial statement. This functioned as a capstone for the skills the course taught. It required the students to plan, to work collaboratively, to take a holistic view of the case and what they needed to do to present it effectively, to have a firm grasp of the legal issues and how they analyzed their strengths and weaknesses so that they knew what to dispute, what to concede, and what evidence to present. They rose to the challenge and produced very professional documents. Their trial briefs were also uniformly strong, reflecting their comfort with both the substance and their strengthened writing skills.

The students' course evaluations were consistent with my impressions. Because this was a new course, I asked the students to complete both the general course evaluation used for all upper-level courses and another page I wrote specifically for feedback on this course. The students filled out both forms in detail with thoughtful comments, and their overall evaluation was very positive. The class was equally divided between students who were attracted to the course because of the subject and students who based their

decision on other factors (choice of instructor, desire for a context-based writing course, good scheduling fit). All of them were happy with their decision to take the class. The students and I agreed that the simulated case file context worked very well. The students were uniformly enthusiastic about learning through a realistic set of facts. The evaluation forms repeatedly stressed the value of working with the case file.

> I enjoyed having one file that we worked on throughout the semester. By taking our client through the whole process it was very informative and great experience.
>
> I liked the assignments (i.e. motions, etc.). It was nice to finally get some practical experience in law school.
>
> I really enjoyed the assignments. I value the experience that this course was giving us.

All the evaluations expressed appreciation for the opportunity for revision, but one suggested not "requiring" revision of every project.[64] Every student thought the workload was extremely heavy, and most singled out the memo on exemptions as the most difficult assignment. The students also suggested more research exercises early in the semester, and they wanted individual conferences earlier.

And what would I do in if I taught in a perfect world? Ideally I would like to offer this course in conjunction with a clinical experience in consumer bankruptcy. Having both the controlled learning of the simulation experience and the realism of actual life would greatly enrich the students' understanding of the substance of consumer bankruptcy and of the role of legal research and writing in the practice of law. But that vision would require more course hours and great coordination with practitioners or a very small class. More modestly I dream of using an actor to portray the client during the interview and counseling sessions. This technique would heighten the sense of realism, which is undercut when the teacher does the playacting. I would also love to build time into the syllabus to have the students negotiate in class over either the motion for relief or the adversary proceeding. Although they must jointly produce a stipulation settling the motion for relief and the pretrial statement, there is insufficient class time to conduct the negotiations in class with the other students observing and participating in a critique of the actual negotiation.

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It has been said that all of the other identified MacCrate skills are encompassed within the skill of "problem-solving."[65] Certainly problem-solving is the context of my course. In order to identify and diagnose the client's problems,

64. Revisions were optional according to the syllabus, but this student did not seem to think that was true in reality. I took this comment to express a preference for not allowing any revision of some assignments.

65. Ray Stuckey, Education for the Practice of Law: The Times They Are A-Changin', 75 Neb. L. Rev. 648, 670 (1996).

to generate solutions and strategies, to develop and implement a plan of action, and to remain open to new information and ideas,[66] the students must develop expertise in the bankruptcy law governing the client's problems, and they must be able to analyze the law and communicate their analysis to others. By the semester's end they will have learned about the key concepts of consumer bankruptcy: eligibility for bankruptcy relief, definition of the bankruptcy estate, exemption and retention of assets, the role of the automatic stay, classification and treatment of claims, and the extent and effect of the discharge. The end result should be students who have improved their skills by using those skills in context—learning writing through the substance of consumer bankruptcy and learning consumer bankruptcy through writing about it.

66. These are the components of problem-solving identified in the MacCrate Report, *supra* note 1, at 142–47.