2019

A 'Case' Study in Legal Writing Pedagogy: Connecting Doctrine and Skills to Authentic Client Voices

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ARTICLES

A "CASE" STUDY IN LEGAL WRITING PEDAGOGY: CONNECTING DOCTRINE AND SKILLS TO AUTHENTIC CLIENT VOICES

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LEGAL writing faculty have too little time to teach too many skills. To quote one scholar: "Legal writing programs are confronted with brutal choices of deciding which skills to teach, how to teach those skills, and how much time to allocate to each skill."[1] This brief essay will discuss one case, *Epps v. Gober*,[2] that two instructors[3] have found to be a veritable Swiss Army knife[4] offering a range of versatile functions in the legal writing classroom.

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By way of background, the brutal choices in legal writing courses are made in the context of curricula generally focused on teaching legal method or legal process or on the instruction of neoclassical reasoning.[5] For this purpose, most faculty utilize a series of progressively more sophisticated hypothetical exercises that require analyses of different sources of authority, i.e., judicial opinions,

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1. Jo Anne Durako, *Peer Editing: It's Worth the Effort*, 73 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 7 (1999).

2. Epps v. Gober, 126 F.3d 1464 (Fed. Cir. 1997), *aff'g* 9 Vet. App. 341 (1996).

3. By way of disclosure, both authors are part of the integrated faculty at the University of Tennessee College of Law who have taught its first semester legal writing course, Legal Process I, as well as doctrinal courses. This article will not delve into the debates regarding the status of legal writing faculty, as many others have covered the issues thoroughly and cogently. *See, e.g.*, Kristen K. Tiscione & Amy Vorenberg, *Podia and Pens: Dismantling the Two-Track System for Legal Research and Writing Faculty*, 31 COLUM. J. GENDER & L. 47 (2015). *See also* David T. Ritchie, *Reflections, Remembrances, and Mimesis: One Person's View of the Significance of the 25th Anniversary of the Founding of the Legal Writing Institute*, 61 MERCER L. REV. 747 (2010).

4. With a nod to Tracy McGaugh, *The Synthesis Chart: Swiss Army Knife of Legal Writing*, 9 PERSP.: TEACHING LEGAL RES. & WRITING 80 (2001).

5. Kate O'Neill, *But Who Will Teach Legal Reasoning and Synthesis?*, 4 J. ASS'N LEGAL WRITING DIRS. 21, 25-26 (2007).

statutes and constitutions, and administrative law within recognized jurisdictional limits.[6] These analyses must then be presented in a variety of professional documents, including document genres[7] such as office memoranda, court pleadings and briefs, draft legislation, client letters, etc.[8] If instructors are lucky and/or creative, they may find time to introduce other essential lawyering skills, such as interviewing, counseling, negotiation, or oral argument, but they must do so while critiquing student written assignments, meeting frequently with students to provide individualized feedback and discuss their progress, and being attentive and adjusting to individual student learning levels and needs in the classroom and, correspondingly, in course content and assignments.[9]

When both commercially-available or course-tested instructional materials and time are in short supply, instructors are eager to scaffold student learning by leveraging assignments that incorporate material with which students already have engaged. The authors have discovered that the case of *Epps v. Gober*[10] can provide just such a platform for multiple assignments that are designed to introduce and improve a variety of lawyering skills and address numerous course goals. An *Epps*-related assignment package also can incorporate skills-based exercises, both improving student engagement with and comprehension of the material and decreasing, if only slightly, the heavy demands on legal writing instructors.

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Epps v. Gober may seem, upon first reading, to be an uninspiring little case upon which to base a series of legal writing exercises. The facts are depressingly commonplace for those at all familiar with veteran benefits. Mr. Clemment B. Epps served in the U.S. Army from 1961 to 1964.[11] In 1969, the Department of Veterans Affairs ("DVA") determined that he suffered a 10% disability due to service-connected dermatitis of the hands and feet.[12] In 1991, Mr. Epps requested an increase in the disability rating based upon a heart condition that he claimed was a

6. David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 U. KAN. L. REV. 105, 129-130 (2003).

7. For an intriguing approach to preparing students to write any legal document, see Katie Rose Guest Pryal, *The Genre Discovery Approach: Preparing Law Students to Write Any Legal Document*, 59 WAYNE L. REV. 351 (2013). Legal genres include all of the documents that lawyers produce (e.g., a complaint or a motion to suppress) following specific conventions called for by certain rhetorical situations (e.g., the beginning of a lawsuit or the defense of a client). Most legal writing courses are already, if unintentionally, genre-driven, focusing on the teaching of a set of documents (both written and oral) with shared conventions that are important for success in legal practice. *Id.* at 355.

8. Suzanne E. Rowe, *Legal Research, Legal Writing, and Legal Analysis: Putting Law School into Practice*, 29 STETSON L. REV. 1193, 1194 (1999).

9. Ass'n of Legal Writing Dirs. & Legal Writing Inst., *2015 Survey Results, Report of the Annual Legal Writing Survey* xviii (2015), https://perma.cc/E4YQ-UAFK (response to question 82) (study finding that the average legal writing instructor provides feedback on 1,520 pages of student writing each year).

10. *See generally* Epps v. Gober, 126 F.3d 1464 (Fed. Cir. 1997) (one of the authors learned of *Epps* while clerking for Judge Plager on the Federal Circuit).

11. *Id.* at 1465.

12. *Id.*

result of his service-connected dermatitis.[13] After a medical exam, the DVA concluded that Mr. Epps's heart condition was not related to his military service and denied his request for an increased disability rating.[14]

After a series of unsuccessful appeals within the DVA system, Mr. Epps finally appealed to the U.S. Court of Appeals for the Federal Circuit.[15] For teaching purposes, the authors focus on one aspect of the appeal, that involving the court's interpretation of the governing statute, 38 U.S.C. § 5107(a),[16] which at the time required:

> [A] person who submits a claim for benefits under a law administered by the Secretary shall have the burden of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded. The Secretary shall assist *such a claimant* in developing the facts pertinent to the claim. Such assistance shall include requesting information as described in section 5106 of this title.[17]

The issue before the court was the interpretation of the phrase "such a claimant." Mr. Epps argued that this phrase referred to any claimant for benefits and thus the DVA was unconditionally obligated to provide assistance to claimants regardless of whether their claims were "well grounded."[18] According to Epps, whether a claim was "well grounded" was relevant only to the question whether benefits would ultimately be allowed after consideration of all the evidence.[19] Conversely, the DVA countered that "such a claimant" referred only to veterans who had submitted well grounded claims, limiting its duty to assist to only those applicants who met the threshold of submitting well grounded claims.[20]

These conflicting interpretations highlight a particularly interesting feature in *Epps*, a linguistic ambiguity that is nearly perfect. Both sides' interpretations are equally reasonable readings of the statutory language yet are diametrically opposed. Ultimately, however, the court agreed with the government, opining that the text of § 5107(a) did not impose a duty on the DVA to assist a claimant until the claimant met his or her burden of establishing a "well grounded" claim.[21] The parties and the court all relied upon a wide selection of tools of statutory construction to support their positions.[22]

It is this attribute of the *Epps* case that makes it an excellent one with which to explore statutory authority, including enactment and regulatory processes,

13. *Id.*
14. *Id.*
15. *Id.* at 1465-66.
16. *Id.* at 1469 (Mr. Epps further argued that his hearing was procedurally and substantively invalid pursuant to the agency circular that governed benefits hearing procedures and "notice and comment" procedures).
17. 38 U.S.C. § 5107(a) (1994) (emphasis added).
18. *Epps*, 126 F.3d at 1467-69.
19. *Id.* at 1466-67.
20. *Id.* at 1468.
21. *Id.* at 1469.
22. *Id.*

jurisdictional limits and weight of authority, and the canons of construction[23] in the context of an assignment involving an objective memorandum, appellate brief, or pre-trial motion.[24] The opinion does not use academic terms to identify the specific tools of statutory interpretation that the parties and the court wield, and, as such, it is a wonderful example from which students can identify and extract canons/tools.[25]

The case also allows the instructor to point out to students that they sometimes need to look beyond the standard canons to determine whether a special canon might apply in a particular body of law. In this area, the Supreme Court has established a special rule for veteran's cases, requiring that "interpretive doubt is to be resolved in the veteran's favor."[26] The Federal Circuit appears to have ignored this important rule in this particular case, perhaps because Mr. Epps's attorney failed to cite it.

Ah, but, like Clark Kent, *Epps* sheds its street clothes to become a classroom superhero when transposed to different contexts. Continuing with the statutory construction theme, the issues at play in the *Epps* saga do not end with the Federal Circuit opinion, offering students a glimpse of the political process in action. Several Federal Circuit panels, unhappy with the way the *Epps* decision created problems for veterans seeking disability, attempted to limit its scope in order to require the DVA provide more assistance with the benefit process. However, the results were mixed, and barriers for veterans remained high. Frustrated, veterans' groups persuaded Congress to step in and resolve the problem legislatively. It did so in the form of the Veterans Claims Assistance Act of 2000 ("VCAA"), which imposed a duty on the DVA to assist *all* claimants by making "reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant's claim for a benefit[.]"[27]

When launching any course module on legislation and its interpretation, and always adding the standard caveat that there may be as many interpretive approaches and results as there are courts, many faculty begin with language from the Supreme Court, i.e., the Horse's Mouth:

> [C]anons of construction are no more than rules of thumb that help courts determine the meaning of legislation, and in interpreting a statute a court should always turn first to one, cardinal canon before all others . . . . [C]ourts must presume

23. WILLIAM N. ESKRIDGE JR., DYNAMIC STATUTORY INTERPRETATION (1994).

24. *See generally* Almas Khan, *Teaching a Master Class on Legislation to First-Year Legal Writing Students*, 19 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 195 (2011).

25. Mr. Epps refers to "legislative history" and "anomalous results" in support of his arguments, *Epps*, 126 F.3d at 1467-8; the DVA relies upon the history and structure of the statute; *id.* at 1468; and the court pointed to the explicit statutory language and its structure and purpose, while it disagreed that there would be an anomalous result or that its legislative history provided illumination. *Id.* at 1468-69.

26. Brown v. Gardner, 513 U.S. 115, 118 (1994). The rule traces back at least to the Court's 1943 decision in Boone v. Lightner, 319 U.S. 56 (1943). *See* Fishgold v. Sullivan Drydock & Repair Corp., 328 U.S. 275, 285 (1946) ("This [veteran's] legislation is to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need." (citing Boone, 319 U.S. at 575)).

27. 38 U.S.C. § 5103A (2018).

> that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.[28]

Pedagogically, this "cardinal" canon is unpacked before proceeding to other canons of construction.[29] The authors still use the traditional lexicon of textual, extrinsic source, and substantive canons[30] rather than introducing the more complex organizational scheme devised by Scalia and Garner.[31] Depending upon the time available, professors so inclined may even delve into the theoretical debates regarding statutory construction, including those over the appropriateness of textualism, contextualism, intentionalism, or purposivism, and of course, descriptive versus normative approaches.[32]

After the basic introduction to statutory interpretation, *Epps* can be incorporated into any number of assignments that require students to interview and counsel clients; draft legal document genres such as client letters; research and engage in simulations involving administrative procedure; present an oral argument; engage in legislative advocacy and draft legislation; and consider ethics and professionalism issues inherent in particular lawyering settings. A description of just a few of the *Epps*-related assignments and exercises that the authors have used in their classrooms follows.

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Faculty can utilize *Epps* to design a traditional objective memorandum, appellate brief, or pre-trial motion assignment, but with variations. For example, the problem might include cases or could "reserve" the actual *Epps* opinion and present the appellate issue as one of first impression, directing students to focus their arguments solely on those pertaining to statutory interpretation. One author includes an oral argument component to the "first impression" version, dividing the class so that students represent either the DVA or Mr. Epps and inviting other faculty to class to judge oral arguments.

As a follow-up, or in an advanced course, another possibility is to assign students the drafting of either the majority or the dissenting opinions (or both) in an appeal of *Epps*. As one professor has remarked, this type of exercise allows students to advocate both sides of an issue and to practice "tone" in judicial

28. Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253-54 (1992) (citations omitted).

29. For those whose recall of the canons of statutory construction may be rusty, *see* ESKRIDGE, *supra* note 22, at 276.

30. *See id.*

31. Scalia and Garner organized the canons according to principles applicable to all texts and principles applicable to government prescriptions, and they include "examples illustrating each of the 57 doctrines they espouse and the 13 they reject." Lawrence M. Solan, *Is It Time for A Restatement of Statutory Interpretation?*, 79 BROOK. L. REV. 733, 740-41 (2014).

32. *See* Robert J. Martineau, *Craft and Technique, Not Canons and Grand Theories: A Neo-Realist View of Statutory Construction*, 62 GEO. WASH. L. REV. 1 (1993).

opinions, particularly dissents; it also has the potential to inspire students to pursue judicial clerkships.[33]

Assignments that simulate the administrative process are also possible. Students would receive a packet of material that includes § 5103A of VCAA as well as mock Social Security records, service personnel and treatment records, and DVA and private treatment records. Students might be assigned the role of a DVA official or as counsel for the claimant and would be asked to advise clients of their rights and duties and to predict the likely result.

The legislative activity that followed the *Epps* opinion provides an opportunity to acquaint students with legislative drafting. One author assigns students the task of drafting amendments to the legislation cited in the opinion itself or entirely new legislation to clarify that Congress intended to impose a duty on the DVA to assist veterans in substantiating claims and receiving benefits.[34] The expectation would not be to produce perfect models, but rather to demonstrate the difficulty of anticipatory drafting and of avoiding vagueness and misunderstandings.[35] As part of a drafting project, or independent thereof, faculty might organize mock legislative hearings at which students would interrogate witnesses or "testify" in defense of or in opposition to proposed legislative changes in order to offer a different oral advocacy experience than their "steady diet of courtroom oral argument assignments[.]"[36]

A good follow-up to this exercise (or an alternative, for a less advanced class) is to study what Congress actually did to address the issue that *Epps* created. As one author approaches this, the first step is to identify why the problem arose. One good explanation is that the original statute tried to pack too much into a single provision. One way to fix this, then, is to separate the important parts and thus give each its due, which is exactly what Congress did here. First, the revised § 5107 is streamlined and now deals primarily with the burden of proof (formerly found in § 5107(b)).[37] Next, the new § 5100 specifically defines "claimant" as anyone applying for benefits.[38] Finally, the new § 5103A clearly spells out the duty to assist and goes into some detail as to what it entails.[39] In particular, subsection (a) imposes upon the DVA a duty to assist all claimants, unless "no reasonable possibility exists that such assistance would aid in substantiating the claim."[40] The

33. Gregory Johnson, *Controversial Issues in the Legal Writing Classroom: Risks and Rewards*, 16 PERSP: TEACHING LEGAL RES. & WRITING 12 (2007).

34. *See generally* Terrence T. Griffin & Thomas D. Jones, *The Veterans Claims Assistance Act of 2000: Ten Years Later*, 3 VETERANS L. REV. 284 (2011).

35. Numerous resources exist for those interested in adding a drafting exercise to their writing class, *e.g.*, LAWRENCE E. FILSON & SANDRA L. STROKOFF, THE LEGISLATIVE DRAFTER'S DESK REFERENCE (Washington, D.C.: CQ Press, 2d ed. 2008); BRYAN A. GARNER, GUIDELINES FOR DRAFTING AND EDITING COURT RULES (U.S. AOC, 2002).

36. Johnson, *supra* note 33, at 17.

37. 38 U.S.C. § 5107 (2018).

38. *Id.* § 5100.

39. *Id.* § 5103A.

40. *Id.* § 5103A(a):

(a)Duty to assist.—

fact that Congress responded to the DVA's veteran-unfriendly interpretation by changing the law and its approach to doing so provide a fairly simple introduction to these issues for newer law students.

Although Congress reacted relatively quickly in this particular instance, legislative solutions typically take significant time to enact. This lag creates another teaching activity for those using the *Epps* multi-tool in the classroom, an assignment which asks students to consider what might be done in the "meantime." One possible approach is to assign students the role of a judge who is unhappy with the result in *Epps* (or, alternatively, a lawyer attempting to argue a veteran's case with the *Epps* case as negative precedent), then to ask how their character might work around its restrictions. After allowing them some time to wrestle with the question, the instructor can provide students with an opinion that actually does so and can engage in a group analysis of the court's approach. An example of this can be found in *Hensley v. West*,[41] in which the Federal Circuit struggles with the *Epps* court's rule on the duty to assist.

The *Hensley* case facts are even more sympathetic than those in *Epps*: Mr. Hensley was a former Army paratrooper during World War II who was exposed *by the U.S. Army* to mustard gas and Lewisite as part of a testing program.[42] He had long since been awarded disability benefits for his "service-connected bronchial asthma and severe anxiety and psychoneurosis."[43] He later developed heart disease, which three doctors and a DVA report all suggested might be linked to his prior conditions.[44] Despite all of this evidence, the DVA and its supervising tribunals (in particular, the administrative Board of Veterans Appeals and the Court of Appeals for Veterans Claims (CAVC)[45]) found that his claim was not well-grounded and that the DVA therefore had no duty even to assist him, much less grant him a further award of benefits.[46]

The *Hensley* case is not only valuable for the "meantime" exercise, but it also is valuable as it presents instructors, particularly in more advanced classes, with the opportunity to explore another interesting concept that veterans' cases embody, the subject of federal jurisdiction and standards of appellate review. First, instructors are able to utilize a concrete example to explore the unique jurisdiction

(1)The Secretary shall make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant's claim for a benefit under a law administered by the Secretary.

(2)The Secretary is not required to provide assistance to a claimant under this section if no reasonable possibility exists that such assistance would aid in substantiating the claim.

(3)The Secretary may defer providing assistance under this section pending the submission by the claimant of essential information missing from the claimant's application.

41. Hensley v. West, 212 F.3d 1255 (Fed. Cir. 2000).

42. *Id.* at 1257.

43. *Id.*

44. *See id.*

45. The Board of Veterans Claims is an administrative body within the DVA, *see* 38 U.S.C. § 7101, while the Court of Appeals for Veterans Claims is an Article I court, *see id.* § 7251. This combination provides a superb opportunity for introducing students to the different types of tribunals that exist beyond the Article III courts, such as the Federal Circuit, a court which itself is different from the other Circuit courts in interesting ways.

46. *See Hensley*, 212 F.3d at 1258-59.

of the Federal Circuit. Additionally, in contrast to most areas of law, the governing statute, 38 U.S.C. § 7292, severely restricts the Federal Circuit's scope of review in cases involving veterans' claims.[47] Under § 7292(a), the court is limited to reviewing only "the validity of a decision of the [U.S.] Court [of Appeals for Veterans Claims] on a rule of law or of any statute or regulation . . . or any interpretation thereof (other than a determination as to a factual matter) that was relied on by the Court in making the decision."[48] To emphasize the restriction, the statute continues: "Except to the extent that an appeal under this chapter presents a constitutional issue, the Court of Appeals may not review (A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case."[49] Such an unusually restrictive standard, one that prevents the court from examining the facts or the application of law thereto, severely limits what the court can do in veterans' cases.[50]

The *Hensley* opinion highlights a variety of interesting policy issues for exploration in class. The overarching issue is the Federal Circuit's delicate dance around the restrictions placed upon it in an attempt to help what it clearly appears to believe to be a deserving veteran.[51] The court appears to have carefully explored the concept of the well grounded claim with two goals: (1) framing as much of its analysis as possible as questions of legal interpretation, to avoid the standard-of-review restriction; and (2) making the test for the well grounded claim as easy as possible to meet so that more claimants will be able to obtain assistance from the DVA under the *Epps* standard.[52] Along the way, it explored not only its own peculiar standard of review, but also that of the other veterans' tribunals, with a nod to its own inability to overturn the decision of a previous panel of the court, i.e., the problems created by *Epps*.[53] In particular, the court criticized the CAVC for overstepping its role as an appellate tribunal and becoming a fact-finder.[54] The differing standards of review, as well as their analysis by the court, are excellent fodder for discussion of appellate review generally. *Hensley* also provides a platform from which to explore the practical and policy consequences of the Federal Circuit's restricted review, which should lead to a thoughtful discussion of the merits of the underlying policy.

Further, *Hensley* and *Epps* give instructors the opportunity to have the students confront what lurks beneath both cases—indeed, what appears to permeate the entirety of veteran claims: the hostility thereto by the very agency

47. 38 U.S.C. § 7292(a) (2018).

48. *Id.*

49. *Id.* § 7292(d)(2).

50. This specific issue was not particularly relevant in the *Epps* case itself, which involved a question of statutory interpretation. *See* Epps v. Gober, 126 F.3d 1464, 1469 (Fed. Cir. 1997). However, it is directly implicated in *Hensley*, in which the Federal Circuit had to confront the restrictive standard of review head-on. *See Hensley*, 212 F.3d 1255.

51. The opinion is authored by Judge Plager, a veteran himself who also has a reputation for having a strong sense of justice and a soft spot for ordinary citizens fighting powerful government bureaucracies.

52. *See generally* Hensley v. West, 212 F.3d 1255 (Fed. Cir. 2000).

53. *See id.* at 1260-61.

54. *See id.* at 1263-64.

empowered to assist in their processing. Instructors can remind the students that the actual question confronting the DVA in each of these cases was whether it had a duty to assist the veteran in developing his or her claim. The DVA, assisted by its tribunals, deployed every technique in its arsenal to avoid having to provide this assistance to veterans. The DVA did not even reach the question of whether the veteran was entitled benefits in either case, deciding only whether it had a duty to help the claimants establish such entitlement.[55] This point has the potential to generate some very animated dialogue regarding why this might be so and why an institution created to help veterans has become such an obstacle to their claims.

Instructors also can challenge students to exercise analogous reasoning in the statutory/administrative context by identifying similar situations in which a claimant might be denied some sort of right or benefit by a designated administrative agency. One author has been gratified by student responses to this challenge, with suggestions such as Social Security disability and supplemental security income benefits,[56] Medicare/Medicaid,[57] Workers Compensation,[58] public housing or assistance benefits,[59] to name just a few. Follow-up assignments that direct students to research the relevant statutes and to find pertinent cases can provide a richer and deeper experiential component to a writing course.

Finally, and perhaps most importantly, the *Epps* and *Hensley* cases also can inject the authentic voice of The Client, writ large or as an individual, into the classroom. This can bring an entirely new dimension to a first-year or other writing course. One of the authors has been deeply inspired to craft assignments that introduce "'human' aspects of lawyering"[60] by the following sobering passage on the tendency toward abstraction in the academy:

> It is the violence underlying all of [the legal] posturing that causes my insomnia. Butler [the defendant in a death penalty case] *dies*. The [Supreme Court in the case] performs a balancing test in such a way that Butler's impending death is never put in the scales . . . . The academy's strange remove from risky, dangerous human life should unsettle us. I won't say we stand apart from real life—I acknowledge that this too is life—but we lead a life nearly immune from the "distinct and palpable" injuries that befall the characters in the cases we read. They are not fictional characters, though as we read about them we sit in the same comfy chairs we sit in when we read novels. They genuinely suffer and frequently die, slipping through the fictional web of doctrine upon which we train our eyes.[61]

While the *Epps* and *Hensley* cases fortunately did not involve a death, any assignment that can breathe life, so to speak, into clients that previously existed

55. *See id.* at 1260-61; Epps v. Gober, 126 F.3d 1464, 1465 (Fed. Cir. 1997).

56. *See, e.g.*, Coskery v. Berryhill, 892 F.3d 1 (1st Cir. 2018).

57. *See, e.g.*, Wood v. Thompson, 246 F.3d 1026 (7th Cir. 2001).

58. *Cf.* Keller Found. v. Tracy, 696 F.3d 835 (9th Cir. 2012).

59. *See, e.g.*, Clark v. Alexander, 85 F.3d 146 (4th Cir.1996).

60. Romantz, *supra* note 6, at 143-44.

61. Ann Althouse, *Late Night Confessions in the Hart and Wechsler Hotel*, 47 VAND. L. REV. 993, 1003 (1994).

only on the pages of case reporters or on computer screens will profoundly affect the ways in which students interact with the material.

In carefully-crafted assignments with focused pedagogical goals, clients walk from the pages of cases and bring with them their historical perspective; their personal, social, and economic situations; and the procedural posture of their cases and litigation strategies.[62] Most students find it impossible to remain remote from these types of assignments, whether the "clients" are live client volunteers or clinic participants or instead are actors or role-players. Faculty could identify veterans in their local community who have experience with the DVA benefit process to visit the class to role-play as Mr. or Ms. Epps (or a similarly-situated hypothetical client) while students conduct interviews as part of one of the projects described above or as a stand-alone exercise. The interview could be in a fishbowl format or could be structured to allow for students to conduct interviews either individually, in pairs, or in small groups. Veteran volunteers could then step out of the Epps role and discuss with the students their lived experiences.

Follow-up interviews could be arranged if the project were designed to require post-interview research or fact-finding; an assignment to draft a client letter could be assigned in conjunction with the interview and with other assignments or as an independent assignment associated with the interview(s). Facts could be included in the scenario that raise ethical issues for lawyers, i.e., "unfounded" or fraudulent claims, a client with capacity issues, etc., so that first year students have an opportunity to wrestle with professional responsibility concerns, even if only superficially.

A more diverse group of client voices can be projected into a writing class in conjunction with "analogous statutes" assignments. Clients from all races and genders and in all economic and social strata have had negative encounters with the administrative state, and hearing them tell their tales can invoke in students the "emotional and feeling" response that is so critical to experiential learning.[63] These authentic client experiences also can indirectly reveal the social justice impacts of administrative processes and the judicial system, and they can be platforms for considering the evolving dimensions of individual and institutional legal rights, duties, practices, and relations of the administrative state and social actors. Instructors so inclined can plow their fertile ground to challenge students to consider whether law is neutral and to explore how "power" and concepts of "oppression" may manifest in our system and are implicated in individual cases. While not all writing faculty approach the teaching of legal writing as an act of resistance,[64] many are strongly attuned to themes of "exploitation [and]

62. *Cf. id.* at 1016.

63. *See, e.g.*, DAVID A. KOLB, EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT (2014).

64. This language comes from the thought-provoking panel entitled, *It's All Write - Teaching Legal Writing as Resistance*, which took place at the 4th National People of Color Scholarship Conference at American University Washington College of Law in March 2019. Panelists included Professors Teri McMurtry-Chubb (Mercer), Jane Cross (Nova Southeastern), Brenda Gibson (NCCU), Tiffany Jeffers (Penn State Dickinson), Latisha Nixon-Jones (SULC), Shakira Pleasant (Miami), and Saleema Snow (UDC). A video of the panel presentation is available at https://www.pscp.tv/w/1BRJjXwNkLQKw.

powerlessness" in the context of class, gender, and sexual orientation conflicts and hierarchies.[65] Many have personally experienced marginalization in the academy and "institutionalized contempt" for their subject matter and expertise[66] and are keenly aware of their responsibility to teach legal research and analysis within a broad, non-dialectical context.

Taking a less radical tangent, the *Epps* scenario encapsulates numerous other possibilities for the inclusion of authentic voices who might speak to students and share their expertise. Guest speakers might include a legislator, a legislative aide or counsel, a regulator, a lawyer who represents veterans in benefit proceedings, or a lawyer from the DVA.[67] Speakers who can connect the classroom work that students are doing to "real life" work have the potential to inspire, invigorate, and infuse enthusiasm into the legal writing curriculum.

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To conclude, legal writing is "one of the most difficult, demanding, and labor-intensive courses to teach"[68] in the law school curriculum. It is critical for instructors to marshal resources that allow them to present the material to their students as effectively and efficiently as possible. Assignment series that build upon a common set of facts[69] or cases are valuable tools in courses such as legal writing that compel broad coverage within a compressed timeframe.

Assignments that also introduce client voices to less experienced students in a structured format can help bridge the "classroom-to-client" gap without the stress or performance anxiety that sometimes can arise in law school clinical settings.[70] Client experiences, carefully presented, also can stimulate student learning and build confidence in academic achievement and skill acquisition as well as inspire students to examine assumptions about societal norms and existing laws through the lens of potential clients and to become passionate advocates for social justice in their practices.

65. *See, e.g.*, Pamela Edwards & Sheilah Vance, *Teaching Social Justice Through Legal Writing*, 7 J. LEG. WRITING INST. 63, 64 (2001).

66. *See, e.g.*, 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).

67. *Cf.* Johnson, *supra* note 32.

68. Richard F. Devlin, *Legal Education as Political Consciousness-Raising or Paving the Road to Hell*, 39 J. LEGAL EDUC. 213, 215 n.16 (1989) (citation omitted).

69. *See also* M. Lisa Bradley, *Implementation of Collaborative Assignments*, 19 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 186 (2011).

70. *See, e.g.*, Keri K. Gould & Michael L. Perlin, *"Johnny's in the Basement/ Mixing up his Medicine": Therapeutic Jurisprudence and Clinical Teaching*, 24 SEATTLE U. L. REV. 339, 357-60 (2000); Jennifer Howard, *Learning to "Think Like a Lawyer" Through Experience*, 2 CLINICAL L. REV. 167, 178-79 (1995).