

we could make the changes I have suggested above, our pupillage training programme will be truly world class and beyond the reach of

just criticism in our quest for transformation at the Bar. None of the changes suggested will require any great adjustment to the processes

we are already administering and with which we are familiar. With a little effort we could implement them in 2007.

#### Endnotes

- 1 The *Workbook Instructor Guides* for 2007 will have to be adapted to follow suit.
- 2 Legal Writing; Civil Procedure (High Court); Civil Procedure (Magistrates' Court); Criminal Procedure; Motion Court; and Ethics.
- 3 With legal writing the exception.

- 4 A pupil would have to achieve 7 credits for the NBEB Examinations to be able to achieve the pass mark of 15 credits.
- 5 I do not know of any training or educational regime where the failure in a single subject results in the pupil having to repeat the whole year, in all subjects, even those which have been successfully

- negotiated the first time around. It beggars belief that we are still clinging to such an idea.
- 6 I say this with the greatest admiration for the success of that programme.
- 7 This assessment guide is reproduced here with Ron's kind permission. 

## Teaching for quality learning: A report on the Analytic Legal Writing course 2006\*

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### Background

We were asked by the Johannesburg Bar Council (JBC) to develop and implement an English language course that would address the high failure rate of the 2005 Legal Writing exam. The perceived cause of the failures was primarily poor language skills of pupils whose home language was not English. After discussion with representatives of the JBC it was agreed that a 'quick fix' English language course would do little to equip the pupils for the demands of legal writing, neither to pass their exams nor to practise as advocates.

Integral to their competence as advocates are the fundamental skills that constitute reading and writing: *comprehending, analysing, selecting, synthesising, summarising, and applying knowledge*. While correct grammar and punctuation, and appropriate tone and style are imperative, none of these is sufficient to produce a good piece of legal drafting.

### Approach

Two concepts underpinned our approach to teaching and learning: *integration* and *active learning*.

Integrating the skills to be learnt into the context of their use is essential for transfer from one situation to others. Therefore, only authentic and relevant legal texts, predominantly from past exam papers, were used

to apply and practise the skills. It would be ineffective to teach any skill out of context or in relation to a text that is irrelevant to the pupils' purposes, as it is unlikely that the skills would be transferred.

Active learning involves pupils' questioning, discussion and feedback on a series of increasingly complex interpretative tasks. This enables pupils to construct their own meaning, to form hypotheses and to subject their arguments to criticism. Being required to talk (and write) helps to clarify thoughts. To think for oneself and to express thoughts in speech and writing is the ultimate goal. But getting there involves evaluating and criticizing others' thinking. For this whole process to succeed there must be a safe and trusting environment in which pupils are reassured that their knowledge is valued.

### Methodology

Our classes therefore took the form of tutorials in which we facilitated the pupils' own construction of meaning inductively, through questioning and discussion, rather than imparting knowledge deductively through lecturing. In this way, the pupils did the thinking themselves. The pupils then applied their knowledge and literacy skills to the actual tasks they were required to do and the texts they were required to read and write.

After analysing all the legal writing exam papers from 1996 we decided to focus on the four genres (text types) that appeared most frequently: opinions, particulars of claim, pleas and heads of argument. We dedicated as much time as the pupils required to each genre.

Our aim was to clarify the processes of legal writing:

1 *understanding* the texts provided in the exam questions (instructions, pleadings, state-

ments, judgments, precedents, law) by breaking these down linguistically and semantically where necessary;

2 *analysing* the texts by breaking them down structurally;

3 *selecting* and *summarising* the relevant facts, issues and evidence;

4 *synthesising* these in a logical argument;

5 *applying* the law (case law and/or legal principles) appropriately to substantiate the argument.

6 *following* procedural rules and genre formats.

Pupils were divided into two groups of 20-30 each. There were 14 weekly sessions of three hours per group. Towards the end of the course, attendance fell substantially so we combined the groups to generate better discussion as this formed the basis of our method.

Typically a task would take the following form:

#### Session 1:

- Facilitators would provide a model of the genre from a past exam paper.
- In groups of three to six, pupils would analyse the genre, identifying its structure and form.
- Pupils would report back in plenary.
- Drawing on Marnewick's *Litigation Skills*, facilitators would supplement the information if necessary.
- In their subgroups, pupils would analyse the question and texts provided, identify the key facts and issues, and discuss how they would go about answering the question.
- Facilitators would circulate and join these discussions. It was important that the facilitators knew what was being discussed so that different or additional points could be elicited in the subsequent plenary session.
- One group would then report back in plenary. This would always generate lively discussion.

\* The title of this article is taken from Biggs, J Teaching and Quality Learning at University The Society for Research in Higher Education and Open University Press (2003). Toni Gottlieb (083-266-3575/tonigottlieb@mweb.co.za); Lorraine Chaskalson (011-884-3456/l.chaskalson@megaweb.co.za)

- Facilitators would redirect questions and comments back to the class and only contribute finally if necessary (eg to synthesise related points further).
- Each group would then write an outline, the clearest or most comprehensive of which would be written on the board.
- Pupils would write up the document in class or for homework.

#### Session 2:

- At the following session, pupils would distribute copies of their draft document to the members of their subgroup.
- Pupils would read and give feedback to each other. This was a crucial stage and facilitators would encourage discussion.
- Pupils would then amend their drafts if they wished and hand them in.
- Facilitators would respond in writing to each draft, focusing primarily on pupils' competencies in the fundamental literacy skills (comprehension, analysis, selection, synthesis, summary, and application). If these were satisfied, facilitators would then respond to language, tone and style. (Too often, only superficial feedback is given and pupils are under the misapprehension that by correcting their punctuation or spelling they will produce a good document.) A merit (M – distinction), credit (C – pass) or not yet competent (NYC – fail) was awarded.
- Facilitators would also provide general feedback, having collated their comments.
- If necessary (particularly if there were numerous NYCs), another exercise on the same genre would be given.

This process was repeated for each exercise. Interspersed with these were a few sessions on language and style, specifically on plain English. The pupils were also given notes on simplifying language and on grammatical rules.

#### Facilitators' perceptions of the pupils

The most noticeable improvement was in the pupils' confidence and willingness to participate in class discussions. Even the most reticent of pupils was contributing by the end.

Those pupils who submitted all the assignments showed definite improve-

ment in their approach to legal writing, particularly in their analysis of the cases, their selection and inclusion of only relevant information, and their accurate and insightful application of the law.

Some of the most prevalent errors, which appear to have been rectified as a result of repeated direct feedback, were (i) the inclusion of factual detail of a case that had been cited as case law, instead of including only the outcome or judgment, and (ii) poor application of the law to the case.

There was also consistent improvement in marks as illustrated by one pupil who progressed from NYC (not yet competent) to a credit (pass) and finally to a mark just short of a merit (distinction).

#### Self reflection

As lay people with no knowledge of legal practice, we spent a lot of time doing preparatory reading to familiarise ourselves with the various legal genres. However, we realised early on that the most useful aspect of this course was our necessary reliance on the pupils to educate us. The pupils readily supplied us with information and increasingly drew on their own knowledge.

As time went on, their confidence grew and there were few who did not have an opinion about a particular issue, leading to animated discussion and often moments of revelation. Pupils were visibly excited about their understanding, which emanated not from being told or given an explanation but from being involved in discussion with their peers around a practical issue on which they were working. Discussion helped pupils test their views on one another and see clearly where a breakdown in logic or appropriate approach existed. In addition, the process of writing, on which the course focused, generated tremendous understanding ('I write to know what I think').

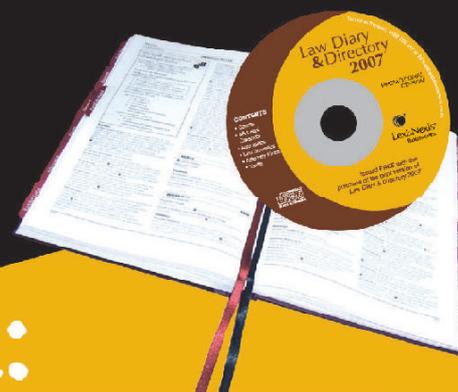
The course could be improved by aligning it with the legal writing course and reordering the tasks. Also attendance levels could be maintained if the course was conducted earlier in the year.

#### Conclusion

Pupils' comments testify that the tutorial type approach of active learning, which involves practical application, group discussion and ample feedback on relevant and integrated tasks, achieves far deeper understanding and learning than the traditional lecturing mode. Given the relatively small number of pupils, this type of methodology is completely feasible. 



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