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Internationalizing Legal Research, Writing, and Oral Advocacy

Diane Penneys Edelman*

Good morning, everybody. Thank you to Professor Del Duca for inviting me to participate on this panel. I am excited to be here, and all of the other speakers' ideas are making my head spin so quickly that I hope I can speak coherently this morning. After listening to my four learned colleagues, I can tell you that I had a relatively *easy* job of integrating international law into the first-year curriculum. My talk is going to be very nuts-and-bolts oriented, and I have materials that I hope will be helpful to you. I hope that when you leave you will be committed to internationalizing your legal writing program.

Over the past few days, you have heard a lot about this topic. Wednesday was devoted entirely to internationalizing the first-year curriculum, and today, we are going to focus on internationalizing the law school curriculum in additional ways involving specific skills courses. I will talk about this in the context of first-year research and writing courses.

The idea of integrating international law into a legal writing course is not an original one. As you can see, I have a reprint in the back called *It Began at Brooklyn: Expanding Boundaries for First-Year Students by Internationalizing the Legal Writing Curriculum*,¹ which discusses the internationalized legal writing program at Brooklyn Law School, where I went to law school a certain number of years ago. At that time, Brooklyn legal writing professors had already taught one or more sections of internationalized legal writing during the second semester for a few years. I had the international law "bug" long before I entered law school, and I was delighted to see that my law school had an international law

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1. Diane Penneys Edelman, *It Began at Brooklyn: Expanding Boundaries for First-Year Law Students by Internationalizing the Legal Writing Curriculum*, 27 *BROOK. J. INT'L L.* 415 (2002). For further information or course materials, e-mail edelman@law.villanova.edu.

option for first-year students. Back then, the topic, which we learned ahead of time, was delimitation of the continental shelf. Those of us who had thought or hoped that the problem would deal with international human rights had mixed reactions about writing a major assignment about the continental shelf. However, I decided to enroll in the program and the rest is history. I went on to get involved in a variety of international law activities at the law school and taught the first-year course at Brooklyn as an adjunct following graduation.

When I entered full-time law teaching, I already believed that internationalizing legal research, writing, and oral advocacy would broaden the horizons for first-year students, and I still feel that way. At Villanova University School of Law, as at Brooklyn, we internationalized the legal writing program by introducing international law in the second semester of the legal writing course, which is typically a moot court or appellate advocacy course. At first, students were curious about the course and sometimes reticent to enroll because, as we all know, there are many students who wonder what international law is and whether it is actually enforceable. Unfortunately, but fortunately for those of us who teach international law, world events in the past decade have made international law all too concrete for our students. Now, the many students who fill our two sections of the first-year international law moot court program each year are aware of international law and are more secure in the soundness of their decision to enroll in a nontraditional first-year course. Students no longer find it difficult to enroll because they see international law in their lives all the time. In addition, the course is a great way of turning on the first-year students to our upper-level courses in international law.

We have heard from the first four speakers about the political capital often needed in discussions with deans and faculty to integrate international law into the law school curriculum. When I came to Villanova thirteen years ago, it simply took a ten-minute conversation with the dean. Our dean was interested in international topics and thought the idea of introducing an international law legal writing section “sounded okay.” Thereafter, I spoke with my writing colleagues who were at first hesitant because, historically, our program provided students with the same legal writing professor for the entire academic year. Adding an international law oriented section forced electing students to switch into a new section and, thus, change professors mid-year. My colleagues were a little nervous at first; however, accommodating students into the international section has proved fairly easy and become common practice. Students who are already in my section, or that of my

colleague Emily Zimmerman² who also teaches an international section, have priority for remaining in our sections in the spring, and we take other students by lottery. This process should be smooth for law schools that currently switch students between writing professors in the spring semester. Furthermore, the switch does not necessarily disadvantage the students; in fact, having different professors for torts, property, or legal analysis might provide students with varying but helpful perspectives on their work.

Internationalizing the legal writing course is a natural way to internationalize the first-year curriculum. Why? Because instead of addressing the difficulties in integrating international law into the doctrinal courses or creating entirely new courses, research and writing professors can create discrete research and writing assignments that deal with international or comparative law and simply “drop” them into an existing skills course. Skills courses have *fluid* content, and by that I mean that we annually change course assignments because, of course, we want to avoid tempting students to do the unthinkable—cheat. If we do recycle assignments, we do so after the class has graduated, or we modify it by changing the jurisdiction. It is easy for us to develop a significant number of problems—international or otherwise—and incorporate them as we see fit.

We have referred to the *newness* of integrating international law into the first-year curriculum. But does anyone want to venture a guess as to how long this has been going on? If you are anything like me, do not think too long as it might make you feel old. How many decades or that sort of thing? The answer is: at least twenty-five years. It is shocking to learn this began more than two decades ago. To the best of my knowledge, Brooklyn was the first law school to internationalize a portion of its writing program. Now, at least Syracuse University College of Law and Villanova have internationalized writing programs, and other schools have expressed interest in doing so or internationalizing skills courses in the upper level curriculum.³

So let’s talk a little bit more about the nuts-and-bolts that I referred to earlier. During the first semester, it is very easy to incorporate international or comparative law into the legal writing curriculum. Whether in an integrated research and writing course or a separate writing course like the one that we have at Villanova, both the law librarians and the legal research and writing professors can integrate a

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3. One such upper-level course is offered by the University of the Pacific, McGeorge School of Law. McGeorge has offered this course for many years, as part of a very highly structured and sophisticated appellate advocacy curriculum.

section on international or comparative law research. In the first-year, we try not to introduce students to the entire panoply or breadth of international law subjects, but rather expose students to the fundamental concepts of international law to provide something other than state or federal law. In the first semester of the traditional first-year writing course, during which students typically prepare predictive office memoranda, writing professors can incorporate assignments that introduce topics that examine United States law in a foreign law comparative context by creating problems, for example, involving *forum non conveniens*, the Foreign Sovereign Immunities Act, the PATRIOT Act, the Alien Tort Claims Act, and state and federal discovery rules that deal with the application of foreign law. Structuring analysis around these subjects causes students to think, "Okay, there *is* something else out there—there are other legal viewpoints different from those of the United States courts." Thus, students are exposed to traditional statutory and case law research, but with an international or comparative law flavor.

I focus primarily on the second semester because internationalizing this part of the legal writing course is something that I have been doing for thirteen years at Villanova. The initial hesitancy of switching students between teachers is long gone. In November, after the students are "broken in" to law school, we have what I call the "full disclosure" meeting. I inform the students that the international law oriented legal writing course is harder and requires a few more classroom hours than does the typical spring term legal writing course, i.e., they must learn to research international law and find the international law resources in the library. Additionally, students observe and critique a Jessup Moot Court Team practice round and critique it in writing.⁴ The most effective selling point is the conversation students have with the second-year course alumni. As much as I express how I love teaching the course and how they will love it too, students inevitably will be more persuaded by the second-years who have already taken the course—and those students typically say, "Yes, it requires more work than the traditional domestic law legal writing class, but it's worth it." This year, a total of more than 450 students have participated in the program. Students continued and growing interest proves that internationalizing the writing program wasn't just a passing fad or wild craze. It is something that has persistently interested students. I hope that next year we break the 500 number, and I'll have to come up with some suitable way to celebrate.

So, what materials do we use to teach the course? Writing

4. We also occasionally had a live guest speaker who had clerked at the International Court of Justice; now, we have a videotape of that speaker.

professors use any of the many standard legal research and writing texts and create a course supplement that has background readings on international law and a variety of writing assignments. We also assign a citation manual and provide sample memoranda or briefs from past students of the international writing course, rather than a Jessup brief that has been worked on for ten months, so that the students have a realistic look at what they are expected to do as first-year law students. Additionally, I have been working for some time on a text for this course to supplement any traditional legal writing text.

What kind of assignments do we prepare? At Villanova, we assign typical legal research and writing problems that focus on predictive and persuasive analysis and writing. Students who are concerned they would not learn traditional (i.e., non-international) legal advocacy skills will develop those skills, and we tell them so before they decide whether to enroll in the course. However, all of the assignments are internationalized. The students prepare a closed research problem based on a treaty and journal articles to produce sections of an international brief. Students perform peer review editing critiques and schedule conferences with professors to discuss difficulties. Additionally, students prepare and electronically post an assignment that helps them grasp the prevalence of international law in the world today. This assignment forces the students to find news articles that deal not with a dispute or current development relating to international politics, but to international law. The student must identify the source(s) of international law discussed in the article (e.g., treaties or customary international law) and must identify the facts and legal arguments that each party to the dispute might analyze or address. Thus, through this exercise, students see the daily presence of international law in the news and hone general writing and advocacy skills at the same time.

For the major research and writing assignments, I have developed about a dozen problems over the years. My favorites involve the death penalty and the taking of evidence abroad because those topics demonstrate major divergence in jurisprudence between the United States and the rest of the world or the International Court of Justice. When we compare cases in the United States Supreme Court with decisions of international and foreign courts on these topics, students say, "I always thought that the rest of the world believed as we do about this area of law. Now, I see that that is not quite accurate." Of course, this is a very satisfying comment to hear from a student.

Legal writing professors should not use Jessup, Niagara, or other official competition problems for graded assignments because the best

briefs and bench briefs are published annually.⁵ Writing professors should assign topics that they want to read about, but keep them interesting to the students. Learn from my example. One problem I greatly enjoyed developing and teaching deals with the recognition of new states. I loved reading about this topic and hearing students argue about the recognition of a state in cyberspace, but students could not relate to the subject, so I no longer use that problem. Instead, I usually develop problems that focus on “hot topics” in international law.⁶ It is also easy to enlist for the students’ oral arguments because the judges, as my colleagues can attest, *really* like being called “Your Excellency” instead of “Your Honor.” We make available several videos of prior students’ international law based arguments, which give the students a realistic view of a first-time oralist.

At Villanova, students receive several collateral benefits for enrolling in the international writing course. Students may choose a course in their first year, which is still unusual in the first-year curriculum. The students are also exposed to and “turned on” by international law and can talk about their interesting international law assignments in job interviews.

Who can teach this course? Anyone with some interest and background in international law will be a successful instructor. During the hiring period, law schools should review resumes for experience on an international law journal, an international law moot court team, or in an international clerkship or practice. You will find people who are very interested, in fact, crazy about teaching this subject.

Thank you.

5. These materials are, however, useful to demonstrate high quality research, analysis, organization, and writing.

6. After you “retire” a problem, you can use it as a source for creating in-class or other assignments.