

Editor's Note: Student Lawyer often publishes reader essays about issues relevant to law students in our Opinion column. When we received Allen Mendenhall's essay suggesting a way to improve legal research and writing departments, we decided to publish it along with a response from our Legal Research columnist, Travis McDade.

The Importance of Being Earnest

A Serious Proposal to Modify Legal Research and Writing Departments

BY ALLEN MENDENHALL

Robin Earnest is a professor in the Professional Writing Program of the University of Maryland's English Department; she is a former Assistant U.S. Attorney with numerous writing accolades. Her training is in law: she has no graduate degrees in English, but she holds professional degrees from the University of North Carolina at Chapel Hill (J.D.) and The George Washington University (LL.M.). Although she has no professional training in English, Earnest is an excellent "fit" for the English Department: she brings a wide range of experience to the classroom—experience that most students aren't exposed to by their usual English professors.

English departments seem to have realized the value of reaching beyond those with English degrees in certain hiring contexts. A solid English department may boast professors with degrees in philosophy, religion, journalism, or politics, for example.

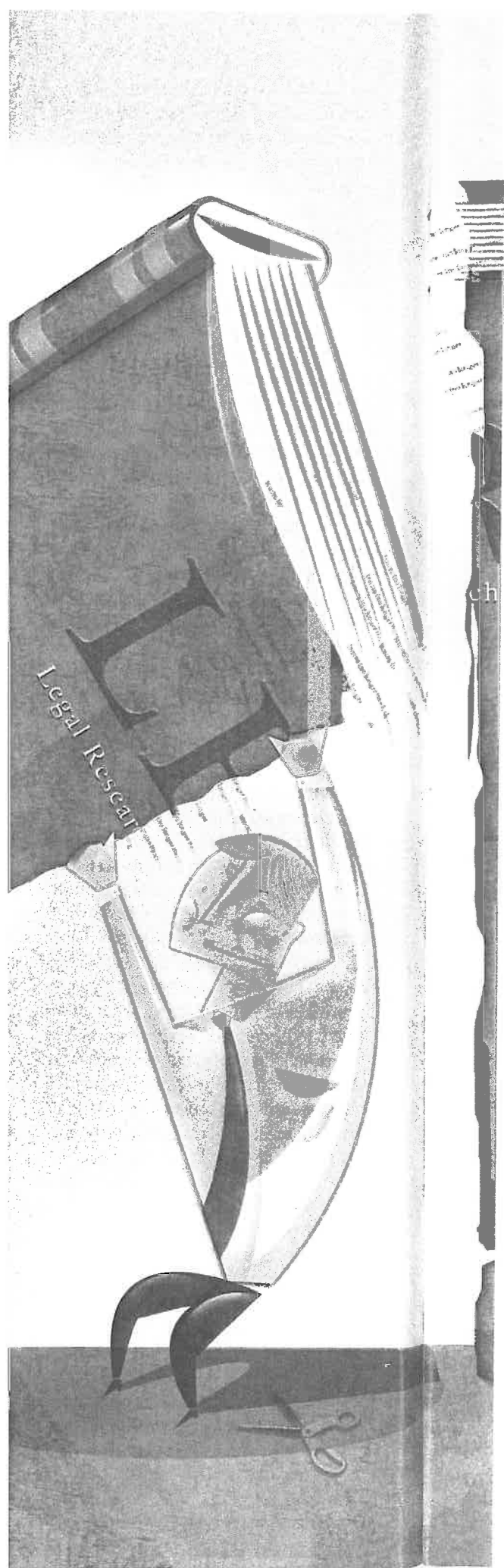
Why haven't legal research and writing (LRW) programs done the same? In an area in which writing skills are imperative, LRW programs frequently have settled for hiring lawyers who can't write. While English departments have hired people like Earnest, who demonstrate writing proficiency, LRW programs have dismissed nonlawyers as untrained, unequipped, or unneeded. Isn't it time that LRW departments look beyond their arbitrary boundaries to hire those professors like Earnest, who may not have the traditional pedigree, but who have demonstrated the ability to excel in the field—perhaps better than those with actual training in the field. Isn't it time, that is, for LRW departments to realize the importance of *being Earnest* when evaluating writing and hiring?

"We lawyers do not write plain English," Richard C. Wydick asserts in his book *Plain English for Lawyers*. "We use eight words to say what could be said in two. We use arcane phrases to express commonplace ideas. Seeking to be precise, we become redundant. Seeking to be cautious, we become verbose. Our sentences twist on, phrase within clause within clause, glazing the eyes and numbing the minds of our readers."

If lawyers are categorically bad writers, then why do they continue to teach LRW? Why don't English Ph.D.s, who are professionally trained writers, teach in our LRW classrooms?

Of course, not *all* lawyers are bad writers; indeed, many lawyers are good writers.

continued on page 23




At the University of Illinois College of Law, all six members of the Legal Writing faculty practiced law before teaching. This makes them invaluable at answering the sort of specific questions about practice that first-year law students routinely have. Even those professors who didn't practice law usually have some sort of experience, either as summer associates or law clerks.

My LRW professor routinely sprinkled his lectures with cautionary tales about what happened to lawyers who *didn't* write concisely. In my own Legal Research class I regale (or bore, if you like) students with a nightmare scenario involving a judge, senior partner, and summer associate in which one of them didn't know the difference between a regulation and a statute. It is because I've made embarrassing mistakes that I can counsel my students on how to avoid them.

Despite Mendenhall's faith in the "latest pedagogical trends and techniques," there is no secret to good teaching. Fully 90 percent of what makes a professor good is a thorough knowledge of the subject. The ability to speak clearly, correctly, and with authority on the subject at hand is far and away the most important aspect of the job. That doesn't come from quick training and it isn't divinely inspired. It is the result of old-fashioned hard work and practice.

Mendenhall appears not to think very highly of his LRW professors. He may not be aware of this, but getting a job teaching in a law school is quite difficult. It's a buyer's market with far more people wanting to teach than there are slots available. LRW programs, as a consequence, have their pick of candidates. These folks are not washouts; they are smart and well-trained and usually have résumés of the sort that most law grads envy.

Can Ph.D.s in English teach in LRW programs? Certainly they can.

Right after they go to law school. 

Travis McDade (mcdade@law.uiuc.edu) teaches legal research at the University of Illinois College of Law, where he is an assistant professor of library administration.

Earnest

continued from page 20

Nevertheless, most lawyers are not professional writers, and fewer lawyers are professional teachers. Nearly every English Ph.D. is trained as a teacher. In fact, I don't know of an English department that doesn't require its Ph.D.s to study pedagogy and teach as graduate assistants. LRW departments (and law schools generally) would benefit from professors privy to the latest pedagogical trends and techniques.

One argument for not employing English Ph.D.s in an LRW classroom is that English Ph.D.s have no legal training. Yet that argument actually justifies the hiring of English Ph.D.s. After all, how often do LRW professors command that students write to a nonlegal audience, to a layperson? What law student hasn't heard an LRW professor instruct her to write so that any old Joe on the street could understand the facts and arguments of her case? Although English Ph.D.s aren't laypeople, they don't have training in the law. They are therefore closer to laypeople than former lawyers, who may scrutinize legal issues and theories rather than concentrating on what LRW programs are supposed to remedy: bad writing. Law students already have a plethora of core classes that focus on legal issues and theories. Why add another where another isn't needed?

Which leads me to another question: Is the aim of LRW to improve students' writing or to improve students' formatting? Writing and formatting are not

mutually exclusive: formatting may be a prerequisite or subcategory of writing. One can't write well without formatting well; however, one can format well without writing well. An English Ph.D. is likely practiced in both writing and formatting, as the former is necessarily dependent on the latter. A lawyer is likely practiced in formatting, as the job of a lawyer entails pinpointing relevant law, interpreting it, itemizing it, and arranging it into a logical argument. Still, a lawyer isn't as likely to be practiced in writing *per se*, and the English Ph.D. is more prepared than the lawyer to counsel about the various aspects of writing.

What about the Issue, Rule, Analysis, Conclusion (IRAC) system for legal analysis? The traditional IRAC approach to legal writing is simple and convenient; regardless, it lacks direction. Students who meticulously follow IRAC may find themselves encumbered by the confines of a rigid system. Rather than putting their ideas to paper, these students may suffer from the kind of writer's block precipitated by worry—worry that their writing doesn't "fit" within the "proper order." Students need to know that the IRAC system is not a sovereign requirement; it is a basic guide. By shying away from this point, LRW teachers may overemphasize IRAC formatting at the expense of good, confident writing.

English Ph.D.s are better suited to teach the IRAC system because the system is like an accordion that one can expand or compress: it always has a fulcrum, and if a student's writing stretches too far from that fulcrum, a teacher can

**Innovative Ways to
Pass the Bar Exam!**

www.BarWrite.com

compress it back in. Creativity is “the stretch” away from the fulcrum. With their literary backgrounds, English Ph.D.s are more equipped to foster creativity—a much needed relief in the world of legal education. Additionally, persuasive writing involves telling one side of a story, and who better to teach storytelling than those professors most versed in the genre?

Yet creativity can go too far. When that happens, teachers must “compress” the accordion. I can’t say that English Ph.D.s are better at “compressing” writing than lawyers; I can say, however, that they aren’t worse. English Ph.D.s potentially offer more inspiration for students who wish to communicate creatively; and if attempts at creativity backfire, then English Ph.D.s are equally as capable as lawyers to “compress” students’ writing back into shape.

One might say, “Yeah, okay, I can see where English professors would help LRW programs with writing, but what about with researching? Can they really help law students to research better?” I would remind these people that most legal research today is completed on the Internet, through such programs as Westlaw, LexisNexis, or Findlaw. Re-

searching on these programs is not rocket science: English professors who are already trained in researching techniques will easily learn to use these systems. Additionally, both Westlaw and LexisNexis send regional representatives to law


skills necessary to teach students.

I acknowledge that this proposal assumes that English professors are as willing to teach in LRW programs as in English departments. The notion that an English Ph.D. might teach in a law school

The notion that an English Ph.D. might teach in a law school classroom is not outrageous.

schools to train students on the latest researching methods. These representatives also lecture in law firms throughout the country, and many states will offer its lawyers continuing legal education credits for attending these lectures. In short, law students will learn legal research through a variety of sources outside the LRW classroom, and English Ph.D.s are capable of quickly learning the researching

classroom is not outrageous. A quick Google search will reveal the profiles of various English Ph.D.s teaching LRW: Kevin Griffin (Ph.D., Ohio State) of Capital University Law School, Jeffrey Shulman (Ph.D., University of Wisconsin—Madison) of Georgetown University Law Center, Christy H. DeSanctis (Ph.D. candidate, University of Maryland) of The George Washington University Law School, and Robin Nilon (Ph.D., Temple University) of Temple University—James E. Beasley School of Law, to name a few. Admittedly, some of these English Ph.D.s also hold a J.D., but a J.D. is not necessary to teach legal research. Indeed, for the reasons above, it may be detrimental.

LRW should realize the importance of being earnest about writing and hiring. English Ph.D.s are not a panacea to the struggles of LRW programs, but they may offer a sound, feasible alternative to the status quo. Look at the successes of English Departments that have hired lawyers like Robin Earnest. LRW programs, why not try a similar approach? 

Allen Mendenhall is a T.A. in the Legal Research and Writing Department at West Virginia University College of Law, where he is working toward his M.A. in English and J.D. Before entering law school, he taught English in Ogaki, Japan.

Next Month in *Student Lawyer*

What You Need to Know About the Bar Exam

- Which test(s) you should take
- How to start preparing
- How much time and money it will cost
- Which review courses to take
- What to expect on exam day
- How to manage stress
- Whether to take it by hand or laptop