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The Teaching of Legal Drafting

Robert N. Cook

The lawyer today is a counselor, draftsman, negotiator, and planner. In the complicated economic and social structure of our time, with its cross-currents produced by an overlapping of interests, it is the lawyer's forte to be guide and legislator in the solution of these problems. Today's lawyer is an adviser to his client not only on legal matters but on related matters arising from other disciplines.

This article is primarily for present and prospective teachers of a course on legal drafting, that is, a course on the drafting of legal documents, other than memoranda and pleadings. In addition, practicing attorneys should find it of interest, especially those who wish to keep up to date in modern methods of legal education and those who are responsible for a continuing legal education program or a bar association workshop on drafting. The article is based upon the writer's experiences in teaching legal drafting for a number of years at Western Reserve Law School.

1. In what year of law school should legal drafting be taught?

Law students should not have to wait until their second or third year to learn basic principles of good legal composition and to study materials on legal semantics. It is desirable and possible to integrate into the first year program some selected material on (1) legal composition, (2) legal semantics, and (3) specific legal documents. Professor Karl Llewellyn in the

1 Harno, Legal Education in the United States 141 (1953).
2 Western Reserve Law School has four courses on legal writing. Legal Writing I is a first year course on the use of law books and the preparation of legal memoranda. Legal Writing II is a second year course on the drafting of pleadings. Legal Writing III is a third year course on the drafting of legal documents other than memoranda and pleadings. Legal Writing IV is a third year course on the writing of papers similar to law review notes. Legal Writing III is the course on legal drafting. See Cook, Teaching Legal Writing Effectively in Separate Courses, 2 J. Legal Educ. 87 (1949).
Introduction to the writer's book on legal drafting had in mind its use in the first year when he wrote "the book is good for three successive years with no repetition except on the side of theory."

First year students have not had sufficient legal training to draft the more complex legal documents. However, they will gain a better understanding of the law from studying selected legal documents that are referred to or discussed in the cases or texts that they will read for their various courses. For example, a knowledge of the general provisions of a chattel mortgage, realty mortgage, contract for sale of land, escrow agreement, deed, promissory note and other common legal documents should help first year students to understand better the substantive law. A knowledge of these documents would also prepare first year students for the course on legal drafting in their second or third year.

The following procedure might be used to acquaint the first year students with some of the common legal documents. They might be given copies of selected documents in the old and the modern form. It is worth while for law students to learn to read documents in the older, verbose, rambling form because large number of legal documents are still written in archaic and verbose language. After a reading by the students, certain provisions of the selected documents might be referred to and discussed in class by the teachers of the first year courses. The documents might be considered by small groups of first year students in regularly scheduled meetings with teaching fellows or instructors. After the students have studied and discussed a document, they might be given a copy of a similar document with certain important provisions omitted. The students should be able to ascertain what provisions have been omitted and should be able to prepare the omitted provisions for insertion in the document at the proper places. Whenever documents are discussed with a group of law students it is always helpful to project the pertinent portions of the document on a screen so that all the students may easily read them.

The objective in the first year should be merely to acquaint the students with selected legal documents and not to teach them legal drafting. It would not be wise to require first year students to spend their time drafting legal documents when they should be learning substantive and procedural law. However, legal composition and legal semantics should be taught to a limited degree in connection with the usual first year courses, especially in connection with the preparation of legal memoranda by first year students.

Although there are good reasons for teaching a course on legal drafting in the second year, it is probably better, if possible, to teach it throughout

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*Cook, Legal Drafting (Foundation Press 1951).*

*Information on the use of visual aids may be obtained from the National Legal Audio-Visual Center, Indiana University School of Law, Bloomington, Indiana.*
the third year. Third year students have a greater knowledge of the substantive law and, therefore, have less difficulty drafting documents which would require considerably more legal research on their part if drafted in their second year. If the course is taught throughout the third year, the students may be allowed more time to prepare the individual exercises than when the course is given in one semester. Although curriculum committees are unable to grant many of the requests by teachers for additional classroom hours for old and new courses, it is possible that a curriculum committee could be persuaded to allow the teacher of the legal drafting course to meet his class two classroom hours of fifty minutes each per week throughout the year for a course of two or three semester credit hours. The additional classroom time might be justified on the ground that one-fourth or one-half of the total classroom time is similar to time spent by students in preparation for the ordinary course.

2. What is the objective of a legal drafting course?

The objective of a law school course on legal drafting should be to prepare law students to draft legal documents that are (1) adequate, (2) well organized, (3) written in apt language, (4) easily understood by the persons who are expected to sign them and to carry out their provisions and (5) acceptable to these persons. Documents in form books and documents drafted by lawyers do not always meet these standards, and it is generally not easy for a law student, law teacher, or lawyer to draft an adequate, well-organized, aptly phrased, easily understandable, and acceptable legal document without some previous training or experience along that line.

An adequate legal document is one that properly covers the specific points upon which the parties to it should agree in order to avoid litigation and unnecessary delays in its execution. Only persons familiar with the applicable law and pertinent business practices will know what specific points should be covered in a particular document.

The preparation of a well-organized, aptly phrased, and easily understandable legal document requires a knowledge of the techniques that may be used to set forth specific provisions of a document in the proper manner. These techniques have been discussed in law review articles and books.

The preparation of acceptable and equitable documents is extremely important for in the long run it is likely that business relations will not be harmonious and profitable if any party to an agreement uses his bargaining power to secure for himself rights or privileges that fair-minded persons

\[5\] In addition to the selected materials in the writer’s book, LEGAL DRAFTING, the law review article entitled A Manual for Drafting Federal Legislation, 11 FED. B.J. 238 (1951) and the book, THE ELEMENTS OF DRAFTING (Stevens & Sons Ltd., London) by Piesse and Smith contain helpful suggestions as to the proper phrasing of legal documents.
would regard as unwarranted, improper, or undesirable. A course in legal drafting should not instruct law students how to use the pen to obtain for their clients rights, privileges or powers to which they are not justly entitled. Basically, this is a problem of legal ethics but it is one which will confront the legal draftsman in particular, and a discussion of this point is necessary to the teaching of a well-rounded legal drafting course.

Legal documents that have been drafted conscientiously by law students probably will contain mistakes because of the inherent difficulty of legal drafting. Furthermore, legal drafting is especially difficult for some students, because they are unable to write with clarity. It is not reasonable to assume that students with a "C" average will draft perfect, or even almost perfect, legal documents. The important thing is that the teacher of the course on legal drafting point out to the class the defects of specific document so that the students will not later make the same mistake. It is also important that the teacher present to the class examples of good legal drafting so that the students will know why a specific provision is aptly phrased.

A course on legal drafting is not given primarily because it enables the students to consider the substantive law from new points of view and to realize the close interrelationship of the various fields of law. However, the studying and the drafting of legal documents will necessarily integrate the law that the student has learned in a number of separate courses. For example, the drafting of a contract for the sale of land might integrate the law with respect to contracts, conveyancing, negotiable instruments, mortgages, business associations, taxation, personal property, insurance and equity.

The objectives of a continuing education course on drafting for practicing lawyers should be the same as the objectives which have been stated above for a law school course on this subject.

3. Some suggestions on how to teach legal drafting.

A coursebook is necessary for the most effective teaching of legal drafting. However, it is not possible to print in a single coursebook everything that a student should read as part of his work in a law school course. Therefore, some of the assignments by the teacher should include, in addition to materials in the coursebook, pertinent outside materials such as Practicing Law Institute booklets, booklets of the American Law Institute Committee on Continuing Legal Education and other selected materials.

During the first week of the course on legal drafting, the students should be paired according to their cumulative averages so that the student with the lowest cumulative average is paired with the student with the highest cumulative average, the student with next to the lowest cumulative average with the student with next to the highest cumulative average, etc.
The pairing of students according to their cumulative averages has some justification, because as a general rule the students with the low cumulative averages are not as good draftsmen as the students with the medium or high cumulative averages. It is possible that in order to pair more precisely the poorer draftsmen with the better draftsmen, all students should be required to submit a draft of a legal document to determine the ability of each student in this field.

The purpose of pairing the students is to help the poor student to do better work. The poorer student learns how to draft better documents as an inexperienced lawyer often learns by critically studying a legal document submitted by an experienced lawyer for approval and by having the experienced lawyer critically read a draft submitted by the inexperienced lawyer. However, in order to encourage competition, it might be advisable to pair students on a different basis for certain exercises so that good draftsmen will be paired with good draftsmen.

Each student in the writer's course on legal drafting is given a copy of the special instructions that are reproduced in the Appendix of this article.

The assignment of a number to each student in the course facilitates handling the drafting exercises by the teacher. The drafting exercises for each assignment can easily be arranged in numerical order by student number and bound together with an Acco or other fastener.

Until this past year, the writer required the students who were paired to exchange their drafts of legal documents for almost every assignment. All students drafted a particular document as the attorney for the person who usually has the document prepared. The students turned in their drafts which were then discussed in class, noted in the record of student exercises turned in, and given to other students with whom they were paired. The student to whom another student's draft was given, (1) carefully read it (2) marked defects such as poor or inadequate language, misspelled words and omissions, and (3) indicated on the first page of the draft whether he would advise his client to sign it. If he advised his client not to sign the document, the reasons for its nonacceptance were stated on the back of the first page.

A student should be informed promptly of his failure to protect his client if he reads a document and fails to find provisions in or omissions from the document which are of such a nature that his client should be advised not to sign.

One way to make the students realize the importance of carefully reading documents that are submitted to them for criticism is to project a student draft of a document that another student has read and has advised his client to sign, and then point out to the students specific provisions or omis-
sions that should have caused the student who read it to advise his client not to sign.

Also, a teacher may duplicate an inadequate draft of a document, give each student a copy and ask him to read the document and note its inadequacies within a limited time — for example, half of the class hour. After the students have turned in their copies of the inadequate document with their suggested changes, the document may be projected on a screen and discussed word by word and provision by provision.

All of the student drafts for one or more of the drafting assignments ought to be returned to the same students who drafted them so that each student may improve his draft by making changes in ink. The student should write his initials after each change because he may have made other changes in ink before turning in the draft the first time, and he should not know in advance which exercises will be returned to him. When changes are made in ink, as indicated, and the document is not retyped, it is possible for the teacher to see easily the changes that have been made by the student.

If a student returns a document with no changes marked on it, the document should be projected for the class to read to determine whether it contains mistakes. Of course, whenever a document is projected for class consideration, the teacher should use the usual methods to encourage class discussion. The teacher might ask a question about one of the provisions of the document to direct the attention of the class to what the teacher considers poor drafting. Or, he might detect a serious omission and direct the attention of the class toward omissions by asking what important matter has not been included in the document.

Although the writing of documents is an excellent way for students to learn how to draft, it is possible to learn much about drafting a particular document without actually writing it. For example, the judicial decisions and text materials in the legal drafting coursebook can be used by the teacher to point out to the students the specific mistakes in drafting and how these mistakes might have been avoided. The documents that are reproduced in the coursebook may be advantageously discussed in class by the students and the teacher after they have studied them. The check lists in the coursebook may be used by the teacher and the students to ascertain specific points that a lawyer must consider when he drafts a particular document.

One type of drafting exercise might consist of listing the specific provisions that should be included in a document. This exercise is useful for the longer documents which would require too much of the student's time to draft but which lose their mystery when the students read them and analyze their provisions. For example, a will containing a testamentary trust for a large estate would require a great deal of time to draft. But students might
be asked to list the provisions that should be included in a will of this type and also might be asked to draft one of these provisions.

Although the main emphasis in a course on legal drafting is upon learning how to draft legal documents, in drafting a particular document students must necessarily know the applicable law and business practices. If a student has a general knowledge of the law, he may be able to avoid legal research on some points by writing his document in such a way that this research is unnecessary. For example, the student may include in his draft of a lease a specific provision that the landlord agrees to put the tenant into possession. This provision makes it unnecessary for the student to look up this point of law to determine whether by statute or judicial decision a landlord must put his tenant in possession. However, the student should not fill a document with unnecessary provisions. For example, if he is not certain whether a document must be attested or acknowledged or both, and tries to avoid research by requiring the document to be attested and acknowledged when in fact neither is required, he has placed an unreasonable burden upon the parties by requiring them to waste their time to have it attested and acknowledged.

In the assignment of a drafting exercise, the teacher may reduce some of the time that the students would have to spend on legal research by stating some or all of the applicable law. Furthermore, the teacher may avoid special legal research on his part, by restricting the exercise to areas of law of which he has knowledge.

If most of the students of a law school intend to practice in the state in which the school is located, these students should know applicable local law. In fact, it is good legal training for all students, regardless of where they intend to practice, to draft instruments as though they were practicing attorneys in the state where the law school is located.

The drafting of legal documents often requires a knowledge of federal and state tax laws. It is important that law students learn about and keep up to date in the aspects of federal and state taxation that must be considered when drafting certain documents.

The amount of legal research required of the students in connection with individual drafting exercises should depend upon their need for training in legal research. Legal research in connection with a course on legal drafting is important but it should not be overly burdensome so as to defeat the primary objective of the course, namely, learning how to draft legal documents.

The research necessary may extend to more than case law and statutes. For example, in order to acquaint students with a long, but fairly well-drafted contract for the construction of a house to be signed by the owner of the land and a builder, the teacher may require the students to purchase and study Forms A1, A2, and B1 of the American Institute of Architects.
In addition, the students should also be required to read *A Circular of Information Concerning the Fifth Edition of the Standard Documents* (American Institute of Architects Document No. 276) to learn about some of the situations that Forms A1 and A2 may not cover and some of the situations which are supposed to be covered in these documents. Forms A1 ("Agreement") and A2 ("General Conditions") are the AIA standard long form of contract between a builder and owner for the construction of a house under an architect's supervision and in accordance with his specifications which are necessarily part of the contract. Form E1 is a cover with explanatory notes to assist the architect in completing Forms A1 and A2. These explanatory notes contain a list of some of the things that are not covered in Forms A1 and A2. The teacher might require each student to consider Forms A1 and A2 from the point of view of the builder's attorney. Each student should be required to state the specific changes including modifications, deletions, and additions which should be made in AIA Forms A1 and A2 before he will advise his client to sign.

The AIA Forms A1, A2, and E1 may also be used as the starting point for negotiating a specific contract between an owner and a builder. The students are divided into two groups. Group No. 1 represents the builder; group No. 2 represents the owner. After each group has studied these forms one student from group No. 1 is asked to represent the builder and a student from group No. 2 to represent the owner. If possible, it would be helpful to project on a screen the portions of Forms A1 and A2 as they are discussed by the two students. The teacher then asks the student who represents the builder to start the negotiations. This student states what, if any, changes he recommends in the first paragraph of the AIA standard contract (Forms A1 and A2).

The student representing the builder and the student representing the owner finish discussing the standard contract before class comments are allowed. As soon as the two students have finished, and have agreed upon the terms of a document that is acceptable to both students, the other students discuss the various provisions of the AIA standard contract including suggested changes. The class discussion should start with the first paragraph of the standard contract and continue through the various articles to the end of the document. It is possible that the students will not be able to complete their discussion of this document and of other documents in the usual class period of fifty minutes. Consequently, some teachers prefer to have their class on legal drafting meet during two consecutive periods on the same day instead of two periods on different days of the week.

Documents drafted by students may also be used as the starting point for the negotiation procedure outlined in the preceding paragraphs. The student draft that is used as the starting point may be duplicated or pro-
jected on the screen, or both. Inexpensive methods for making plates for quickly duplicating a typed or printed document are now available.

An exercise in working out by negotiation the language of a specific document can consist of pairing all the students and requiring each pair of students to reach an agreement upon the terms of a single document within a stated time, for example, a week. The two students would represent the respective parties who would be expected to sign the document after the students as their lawyers have agreed as to its specific terms.

Another possible drafting exercise is one which requires a group of students, for example four or five, to agree during a stated period upon the terms of a document after all of them have prepared individual drafts. Instead of representing persons with conflicting interests all of the students represent a single client. When the document that is finally agreed upon is turned in, it should have attached to it the individual drafts of the students in the group.

As a general rule the average second or third year student should have no trouble with the legal research necessary to draft documents in the course. However, it is possible that many law students may have difficulty understanding the facts, particularly the applicable business practices, for example, a builder's warranty on a house he has constructed. Therefore, in many instances the teacher may find it advisable to invite lawyers who have specialized in the drafting of certain documents to explain to the students the factual problems which a lawyer must consider when drafting a particular document. Through these talks the students and the teacher can keep up to date on applicable business practices and new provisions that practicing lawyers have devised to meet specific problems.

These talks by practicing lawyers should, if possible, be recorded on tape and transcribed so that they may be read by the students and thus be used from year to year in the course until the transcribed talks become out of date. Students who are familiar with the applicable business practices are not likely to insert in their drafts of documents provisions that are unacceptable to one or both of the parties.

Students need some training in how to obtain factual information by asking questions. A client often does not give his lawyer a complete statement of all the pertinent facts. The lawyer must obtain important information by asking his client specific questions. In a course on legal drafting the teacher may give the students a statement of some of the facts which the students should know before doing a particular drafting exercise. The students should be given a reasonable time within which to question the

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4 It is a common practice for a number of lawyers to work together on a single document. See the drafts of the United States Constitution prepared by committees, infra at pp. 316-317.
teacher in order to obtain from him all the pertinent facts which they should know. If a teacher gives an assignment orally in class some students may object because they fail to put in their notes an accurate statement of the facts as given. The writer believes that these students have no reason to object, because statements by a client to his lawyer are oral and it is the responsibility of the lawyer to make accurate notes.

With respect to most legal drafting assignments the teacher has the choice of either discussing with the students in advance the specific problems which they will have to consider before they draft a particular document, or letting each student find out for himself these problems. In the latter case, the teacher should discuss these problems with the students after they have turned in their drafts. It is possible that the students will learn more about legal drafting if the teacher points out to them the problems that they must consider when drafting their first few assignments and then later shifts to the students the burden of discovering these problems.

The number of drafting exercises that should be assigned in a course on legal drafting depends upon the length of the course and the nature of the assignments. If students are required to draft a long document which would require several weeks to draft, the document may be divided into several parts so that the students can draft each part in one week. If a long document can be divided into separate parts and the students work on each part for a week, they might do better work and learn more than if they had several weeks to work on the entire document as a single assignment. However, it may be undesirable to require students to work this way on separate parts of some long documents which should be drafted as a single unit. Each teacher must determine how many assignments he believes his students should do in a legal drafting course, and the emphasis should always be on quality and not on quantity.

In the course the students necessarily learn more than skill in the use of words in legal documents. They learn to analyze legal problems from all possible legal points of view — contracts, taxation, real property, personal property, insurance, business associations, etc. They learn about negotiation and business practices so that later in the practice of law they will more easily grasp the implications and specific nature of certain fact situations.

The suggestions given above for teaching legal drafting to law students also apply to a drafting course for lawyers in a continuing legal education program.

4. Some Specific Drafting Exercises.

Since the purpose of this article is to set forth general principles and methods with respect to the teaching of legal drafting only a few illustrative problems are presented.
Students in a course on legal drafting should learn to depend upon themselves to create legal documents to fit the specific needs of the parties. They should learn that there are good and bad ways to use standard forms. Therefore, the teacher should assign his students drafting exercises which require much more than the use of a good form book for their completion. Thus, the students might be asked to prepare a warranty as to the condition and construction of a new house. The students represent a builder who desires to give each purchaser a printed warranty. Although as yet there are no forms of a builder’s warranty in the form books, in certain parts of the United States warranties are given by builders. If the teacher has been able to obtain copies of warranties which are now being given to purchasers by builders, he should wait, of course, until the students have turned in their drafts before he shows them these warranties.

In connection with the assignment requiring the students to draft a builder’s warranty, the students should be informed, either before they prepare their drafts or before their drafts are discussed in class, of: (1) the reasons for giving such warranties, and (2) the building practices under which the builder must construct the house. For example, in some areas a builder must subcontract 100% of the plumbing and electrical work. In such a case, of course, the builder has less control over work done by a subcontractor’s employees using materials purchased by the subcontractor than he has over work done by the builder’s own employees using materials purchased by the builder.

The writer has discussed with a builder and a representative of a builder’s association some of the problems connected with the drafting of a builder’s warranty. One of the matters discussed was the possibility of preparing a warranty to the purchaser from the builder as to workmanship and materials with respect to the entire house; and a series of warranties to the purchaser from (1) each of the subcontractors for the work for which he is responsible, and (2) each supplier of material or mechanical items who warrants his goods.

A builder has suggested that the warranty of each subcontractor and each supplier of materials or mechanical items should protect the builder as well as the purchaser. The builder’s warranty would cover the workmanship and materials of the entire house and all its mechanical items. Therefore, in order for the builder to be sure of having a cause of action against a subcontractor or a supplier who fails to make repairs or replacements in accordance with his warranty, the builder should have their warranties made to him as well as to the purchaser.

The warranties of the builder, the subcontractors, and the suppliers might require the purchaser to make requests for service (complaints) in writing except in emergency situations such as the breaking of a water pipe.
When requests for service are made by telephone there is some danger that they may not receive the proper attention and preventable damage may result to the house from a failure to make necessary repairs promptly. The builder's warranty should provide that whenever a request for service is made by a purchaser directly to a subcontractor, the purchaser must also notify the builder by mail of this request so that the builder can determine whether the subcontractor performs his warranty. If a subcontractor or supplier fails to make repairs or replacements in accordance with his warranty, the duty to do so would fall on the builder, who then could collect from the subcontractor or the supplier.

Some of the problems which arise in drafting a builder's warranty are as follows:

(a) For what period of time should a builder warrant the workmanship, materials, and mechanical items in a house?

(b) Should the warranty cover such matters as (1) minor cracks in foundation or walls? (2) warped doors? (3) cracks in concrete walk or drive? (4) heaving or subsiding of concrete walk or drive? (5) cracks or splits in siding?

(c) What about notice of defect as condition precedent to liability?

(d) What about liability for damage to furnishings (carpets, furniture, etc.) from defect in building, such as a leaking roof?

(e) Is a break in the sewer or water pipes covered by the warranty?

This exercise on the drafting of a builder's warranty emphasizes the need to draft legal documents to meet modern needs.

Through informal cooperation between the teacher and the law review staff of his law school, it may be possible to include in each issue of the law review articles or notes relating to the more important legal and business problems which a student should know before completing an assignment to draft a certain document.\footnote{E.g., Note, 4 West. Res. L. Rev. 357, infra.}

Another drafting exercise might require the students to prepare a plan and to draft whatever documents would be necessary to enable a person who does not have the usual down payment to buy a house.

There are at least three solutions to the problem of better housing for persons who lack the usual down payment. First, the contract for the purchase of realty might provide for installment payments on the initial down payment with possession of a specific house to be given the purchaser when the total of these installments equals the down payment. Second, persons who are unable to pay monthly installments toward a down payment might be able to purchase a house under a land contract which contains provisions that would give the purchaser at least the same benefits that the Uniform Conditional Sales Act gives to the purchaser of a chattel under a conditional
sales contract. Third, the person who needs a house may be able to buy a lot and to arrange with a financial institution to finance the construction of a house under an owner-built plan which requires the owner to do much of the work himself.

The documents necessary to carry out these three possible methods of buying a house may be considered in connection with credit instruments and contracts for the purchase of realty. If the students prepare the necessary documents to carry out one of these three methods of buying a house in connection with their study of contracts for the sale of realty the problems involved can later be reconsidered when they study credit instruments.

As an exercise in writing a definition, each student might be required to define the word "manufacturing" as it is used in a statute which reads as follows: "Personal property used in manufacturing shall be assessed at one-half its market value." Under a similar statute, the Ohio Supreme Court held that the incubators of a commercial hatchery are personal property used in manufacturing—a good example of a fringe meaning.

The students might be asked to suggest other words in the statute that are ambiguous, for example, "personal property," "used," and "market value." They might also be asked to suggest another phrase for "market value," for example "book value," "true value," "real value," "replacement value." Obviously each of the suggested substitutes for "market value" has its own defects.

In connection with the material on semantics, the following short exercise may be helpful. John Smith made the following gift in his valid will:

I, John Smith, give all my property not previously disposed of by this will to the First National Bank and Trust Co. in trust to pay the net income to my widow, Mary Smith, for her life and at her death to divide the principal among my grandchildren.

At the time of John Smith's death, he was survived by his widow Mary Smith, his son James, and his daughter Jane. The son James had two children; the daughter Jane had three children. Each student should be asked to state in writing (1) what he believes the testator intended when he made the bequest and (2) what a court will say John Smith intended if the court follows the Restatement of Property.

An entire series of good drafting exercises might also be based on the business and personal problems that are likely to arise during the life of the owner of a small business.

5. Sources of Drafting Exercises.

Problems suitable for use in a course on legal drafting may be found in
many places. For example, national interest in the open-end mortgage and the package mortgage for home financing came to the writer's attention through an article in *House & Home*\textsuperscript{31}—a magazine for builders, architects and other persons interested in the construction of homes. The idea of a builder's warranty first came to the writer's attention through newspaper accounts of Congressional investigations of houses built for veterans and of the possibility of requiring a warranty from the builders as to the construction of such houses. A letter to the National Association of Home Builders to ascertain how many builders now give a warranty resulted in the receipt of forms and a statement from the NAHB advocating the builder's warranty.

Materials published by the American Institute of Architects, the American Bankers Association, the National Association of Home Builders, the American Bar Association, and other organizations are sources for legal drafting exercises. Judicial decisions, statutes, administrative regulations, case notes, law review articles and conversations with lawyers and laymen are also good sources. Solutions by lawyers of a drafting problem are invaluable to teachers of legal drafting. These solutions should be checked carefully for possible flaws and then used in class discussions to challenge the students to find possible defects in them. It is always possible students may see a defect in a lawyer's solution that was missed by the lawyer and the teacher.

Many new provisions and new legal documents have been created to meet the needs of modern society. Consequently, the teacher may wish to emphasize the students' learning the organization and phrasing of the older documents by study and class discussion. Most of the drafting work, on the other hand, may relate to modern documents.


Obviously a course on legal drafting should not overburden the students because overburdened students seldom do their best work. There are a number of ways to avoid overburdening the students in a course on legal drafting. The burden of typing the drafting exercises may be reduced if the teacher recognizes that the draft which a student turns in represents his best efforts within the time available, and the teacher not only allows but encourages students to make limited corrections in ink in their typed drafts. Students are not likely to abuse the privilege of being allowed to correct in ink misspelled words or to rephrase in ink portions of a draft after it has been typed. Furthermore, students probably learn more about legal draft-

\textsuperscript{31} *House & Home* 80 (July 1952); see also Remmers, *Priority Position of Mortgagees for Optional Fixture Advances; Recent Legislative Trends*, *Current Trends in State Legislation* 441 (U. of Mich. Law School 1952)
ing if they are critical in reading their own drafts and make any needed changes in ink before they turn in their drafts.

Students should not be expected to prepare in one week a long and complicated legal document. However, some of the advantages of drafting a long document may be obtained by requiring the students to list the specific provisions of a certain document in the order in which they should appear. The students should number and write an appropriate introductory heading for each provision. In addition to outlining the document in this manner, the students may be required to draft one or more of its specific provisions. In preparing an outline of the provisions of the document, the students must consider the customary provisions and whether any provisions should be deleted or added. They must also consider whether the customary order in which the provisions appear is the best for their particular document.

Another method of reducing the amount of work that a student must do in the course is to vary the assignments by requiring the students to read critically a certain document so that they can discuss its provisions in class, and by using some of the different types of drafting exercises that have been explained above.

Students will probably continue the study of legal drafting as long as they practice law. Lawyers who have been practicing for years are now attending continuing legal education courses and workshops on legal drafting, and many of the materials on legal drafting, including the coursebook, used by law students are also being used by practicing lawyers to help them in their drafting work. Therefore, the teacher of a law school course on legal drafting should not try to cover everything in a coursebook in one semester.

7. Overburdened Teachers.

In many law schools the teacher of legal drafting will be expected to teach the usual number of hours per week in other courses. He may also be expected to teach legal drafting without the aid of an assistant. If the classes are small (not over thirty or forty students) the teacher should be able to teach legal drafting without overburdening himself.

Teaching legal drafting to large classes (forty or more students) involves special problems when all the work must be done by the teacher who also has at least one other course to teach the same semester. Of the various teaching methods that have been explained in this article, special mention should be made of the effectiveness of visual aids in large classes. It would be very difficult to teach legal drafting to a large class without the use of visual aids. The projection of a document, a specific provision, or a phrase so that all the students can read it, helps them to understand the drafting problem and to participate in the class discussion. By creating in each stu-
dent a real interest in solving legal drafting problems, the teacher can obtain many of the benefits of individual instruction yet teach the class as a group.

If during a one semester course on legal drafting each student prepares eight drafting exercises and there are one hundred students in the course, the teacher must go over eight hundred drafts. He will not always be able to read all of the student exercises immediately after they are turned in. Therefore, he should read as many student exercises of a particular assignment as time will allow before the next meeting of the class and should select from those read the exercises which merit comment at the next meeting of the class. Whether a document should be projected for all students to read depends upon the nature of the point that is to be discussed in the document. If the point, for example, is that in a contract for the sale of real property a number of students failed to have the wife of the vendor agree to sign a deed waiving her dower interest, this point can be made without projecting a document. But, if specific language of a document is to be discussed, then it should be projected so that all students can read it.

Another method of assisting the students to learn the various ways of drafting a particular document when the teacher is unable to read and mark errors in all student drafts promptly, is to bind together all drafting exercises of each assignment and then place them on reserve in the law library for the students to study. The teacher should not wait until he has time to go over all the drafts before placing them on reserve, but should make them available to the students as quickly as possible so that the students may read all the drafts of an assignment at the time when they have the greatest interest in them.

8. Conclusion.

This article on the teaching of legal drafting is intended to give law teachers and practicing lawyers a better understanding of one of the newer law school courses. Neither the teaching nor the learning of how to draft legal documents is easy. However, there has been an attempt to explain the various methods that may be used in teaching the student legal drafting. These methods include (1) actual drafting; (2) critical reading of student drafts and selected legal documents; (3) class discussions; (4) negotiations; (5) special lectures by practicing lawyers; (6) legal research; (7) the study of selected material in their coursebook and in the law library; and (8) the suggestions, illustrations, criticisms and questions of their teacher concerning the relationship of legal, business, and personal matters all of which should be modified by the skilled draftsman in many ways through careful preparation of understandable legal documents to meet the precise needs of the parties.
Appendix

SPECIAL INSTRUCTIONS

1. Typewrite all drafting exercises on 8½ x 11 inch paper. Double space and leave margins of 1½ inches on each side of the paper. If you desire to keep a copy of each drafting exercise, make a carbon copy for your own use.

2. Draft all exercises in simple, direct language. Exercises should contain no misspelled words and no unnecessary words.

3. As a general rule number and use a proper heading for each provision of a document.

4. Documents prepared for specific parties should be complete except for signatures. Do not sign the names of parties.

5. Each exercise will be due at a stated time. You will receive no credit for the course if you do not complete all the exercises.

6. You will ordinarily draft documents as attorney for the person who usually has the documents drafted. For example, the lessor's attorney usually drafts the lease.

7. With respect to certain exercises you, as attorney for the party to whom a document is presented for signature, will read the document drafted by another student. For example, as attorney for the lessee, you will read the lease prepared by another student and will indicate on this lease at the proper place whether it is acceptable to the lessee.

   If a document is not acceptable to your client, write on the back of the first page of the document the reasons why it is not acceptable. Also, if you object to specific words, provisions, or omissions, note your objections on the margins.

8. Cross out all excess words and correct all misspelled words in documents which you read to determine whether your client should sign them. If you can improve the phrasing, do so. But, in rephrasing, do not change the original meaning.

9. You will be assigned a number. The assignment of numbers will be posted on the bulletin board.

10. Type in the upper right-hand corner of the first page of each drafting exercise the following information:

    Student No.
    Exercise No.
    Name
    Date
    Read by Student No.
    Name
    Date
    Document is [not acceptable or acceptable] to my client
UNITED STATES CONSTITUTION

1. Preliminary Draft of August 6, 1787

"We the people of the States of New Hampshire, Massachusetts, Rhode-Island, and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, do ordain, declare, and establish the following Constitution for the Government of Ourselves and our Posterity.

Article I

"The style of the Government shall be. 'The United States of America.'

Article II

"The Government shall consist of supreme legislative, executive, and judicial powers.

Article III

"The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate; each of which shall in all cases have a negative on the other. The Legislature shall meet on the first Monday in December every year."

Article VII

"Sect. 1. The Legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises;

"To regulate commerce with foreign nations, and among the several states "

2. Draft of September 12, 1787

"WE the People of the United States, in order to form a more perfect union, to establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article I

"Sect. 1. ALL legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.


By Committee on Style and Revision (Johnson, Hamilton, Morris, Madison and King) See 3 DOCUMENTARY HISTORY OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA 720, 724 (1900).
"Sect. 2. The House of Representatives shall be composed of

*S* * *

"Sect. 8. The Congress may by joint ballot appoint a treasurer. They shall have power

"(a) To lay and collect taxes, duties, imposts and excises; to pay the debts and provide for the common defence and general welfare of the United States." "but all duties imposts & excises shall be uniform throughout the U. States" [added to Madison's copy in his handwriting].

*S* * * * * * *

3. Article I, Section 8 of United States Constitution

"Section 8. The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;"

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14 The Preamble and Section 1 of Article I of the Constitution as adopted are the same as the draft submitted by the Committee on Style and Revision.

15 The substitution of the comma for the semi-colon after the word "excises" in the Section 8 of Article I at the time the Constitution was engrossed for signing has never been satisfactorily explained. See Murphy, Memorandum on the General Welfare Clause, SEN. DOC. No. 46, 79th Cong., 1st Sess. (1945).