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Developing legal writing materials for English second language learners: problems and perspectives

C.N. Candlin*, V.K. Bhatia, C.H. Jensen

Department of English, City University of Hong Kong, Hong Kong

Abstract

Although in recent years we have seen a significant increase in the development of resources for legal writing, very few of them are targeted at second language learners. This article reviews currently available legal writing books in terms of their suitability for use in EALP writing contexts. It concludes that, although certain aspects of the available books can be useful, most are generally unsuitable for use in such contexts. Three approaches are then offered for developing legal writing materials that will meet the criteria of suitability. First, the materials can be customized in various ways to meet the needs of second language users studying law in the medium of English. Second, the materials can adopt a more language and discourse-based approach. Third, rather than packaging materials exclusively in book form, they can be made available as a computer-mediated resource bank. This article derives from ongoing work in a 3-year, university-funded project entitled "Improving Legal English: Quality Measures for Programme Development and Evaluation", based at the City University of Hong Kong. © 2002 The American University. Published by Elsevier Science Ltd. All rights reserved.

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1. Introduction

This article derives from a 3-year project entitled "Improving Legal English: Quality Measures for Programme Development and Evaluation" (the Project),

* Corresponding author. Tel.: +852-2788-7262; fax: +852-2788-8894.
E-mail address: enopera@cityu.edu.hk (C.N. Candlin).

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based at the City University of Hong Kong and being undertaken by a team from the Centre for English Language Education and Communication Research in the Faculty of Humanities and Social Sciences (Department of English and Communication) and from the University's Law School. The Project aims to develop and implement enhanced quality measures for university program development and evaluation in the teaching and learning of English for legal purposes to users of English as a second language.[1]

In the context of English for Specific Purposes (ESP), in particular English for Academic Legal Purposes (EALP), there are a number of resources available to teachers and students. In the area of legal writing, one such resource is books on legal writing. One purpose of this article is to briefly review currently available legal writing textbooks in terms of their suitability for use in EALP contexts. A second and more central aim of the article is to offer a principled approach to the design and development of legal writing materials suitable for EALP contexts. In doing so, the article will also raise some of the important issues for the theory and practice of EALP.

2. Existing books on legal writing

After an exhaustive search, we located 56 legal writing books. These are referenced in the Appendix. Our criteria for selection of the books were that: (1) the main (but not necessarily exclusive) focus or purpose of the book is to improve legal writing; and (2) the book was published after 1985, ensuring its current availability to a significant number of teachers and students. Our review is based on 37 books—those available to us—that met these criteria. (These books are marked with an asterisk).

There are, of course, other legal writing resources available, such as Internet sites, software programs, legal study aids, form books (i.e. books of standard legal forms), and individually produced materials. Nonetheless, of all these resources, legal writing books are probably still the most widely available and commonly used for help with legal writing.

The books share some significant common characteristics. Most are written for native English speakers. Most are written for the USA context. Most assume that the reader has at least a basic familiarity with the socio-cultural context within which the subject is being taught, such as the country's system of government, legal system, history, and cultural values. Most target law students. Few, if any, are premised on any type of research-based linguistic analysis of legal texts and language. Finally, although all the books discuss language per se, those books that adopt a principled approach to teaching legal writing use more of a law-based, as opposed to language-based, teaching approach. This distinction is discussed more fully later in this paper.

[1] Details of the Project are available from Professor Christopher N. Candlin, at enopera@cityu.edu.hk.

The books can be placed into four general groups. (The group to which a reviewed book belongs is indicated in parenthesis in the Appendix. In some cases, a book does not fit neatly into one group and has therefore been assigned to two.)

Group One (lexico-grammar based books)

Books in this group are, strictly speaking, not legal writing books at all in that most of the advice they contain relates to writing as a more general concept. Their focus is almost exclusively directed at writing seen as lexico-grammar-on words and sentences. A typical example is *Plain English for Lawyers* (Wydick, 1994), which includes the following chapters: Why plain English?; Omit surplus words; Use base verbs, not nominalizations; Prefer the active voice; Use short sentences; Arrange your words with care; Use familiar, concrete words; Avoid language quirks; Punctuate carefully.

Group Two (rhetoric-based books)

Group Two includes books that extend beyond this lexico-grammatical level of legal writing. In addition, these books address more specific legal writing strategies (such as organizing, drafting, and editing strategies) and take account of discourse level considerations (such as issues of context, audience, and purpose). They also include advice on producing various written legal genres. A typical example from this category is *Clear & Effective Legal Writing* (Charrow, Erhard, & Charrow, 1995), which includes the following chapters: A short history of legal language; The litigation process; Reading, analyzing, and briefing a case; Synthesizing the law from a series of cases; A systemic approach to legal writing; Understanding context; Organization; Writing clearly; Writing effectively; Reviewing and editing; Writing an intraoffice memorandum; Writing a memorandum of points and authorities; Writing an appellate brief; An overview of English sentence structure.

Although these books focus more specifically on legal genres and go well beyond lexico-grammatical considerations to incorporate areas of rhetoric, they are still clearly aimed at native English-speaking legal professionals, rather than the typical second language EALP audience.

Group Three (books that include legal content)

Group Three includes books with an even broader focus. These books make use of a legal method framework to teach legal writing. Although covering lexico-grammar as well as rhetoric, they are primarily driven by legal method (i.e. legal analysis and reasoning), and sometimes even areas of substantive (i.e. content-based) law. If substantive law is discussed, it usually falls within a narrow range of core subjects and covers only general substantive principles. An example from this category is *Legal Method and Writing* (Calleros, 1998), which includes the following chapters: Statutory and common law analysis; Precedent; Legal method; Writing style; Case analysis; Reorganization, summary, and inductive reasoning; Essay examinations; Office memoranda; Pleadings; Motions for summary judgement; Motions to exclude evidence before trial; Appellate briefs; Contracts; Letters. Such books are typically designed and developed by legal academics, rather than by

language specialists. One of the major problems with such textbooks is that they are heavily biased in favor of legal content rather than the language of the law.

Group Four (EALP books)

The final group includes books designed mainly for second language users. We have found six books that fit into this category: *Introduction to Legal English* (Chroma & Coats, 1996); *American Legal English: Using Language in Legal Contexts* (Lee, Hall, & Hurley, 1999); *English for Law* (Riley, 1991); *English Law and Language* (Russell & Locke, 1992); *English for Law Students* (Van der Walt & Nienaber, 1997); and *Introduction to Legal English: An Introduction to Legal Terminology, Reasoning, and Writing in Plain English* (Wojcik, 1998). Many of these books were specifically written to be used in, or arose out of, some sort of EALP program. Often, the specific purpose for which the book was written dictates the content and approach of the book. For example, Chroma and Coats (1996) was primarily written to be used by law students in the Law Faculty, Charles University, Prague. Its aim is to teach both legal language and basic common law legal content through a content-based teaching approach. Each chapter covers a legal content area, such as sources of law, torts, and criminal law. Each chapter also includes a language section, called "Word Study", such as writing a definition, using conditional clauses, making suggestions, and writing an argumentative essay.

Notwithstanding this presence of a language section, one of the major drawbacks of many of these EALP based books is that, although they often draw on legal content to authenticate their materials, they rarely integrate this legal content with the language that, so to speak, carries it. Further, such materials are frequently written for a specific audience in a particular country and thus may not have equal relevance for audiences from a different country. Law, unfortunately, is not as universal a discipline as, say, business or science and does not travel as well across national, cultural and legal boundaries.

3. Usefulness in L2 contexts

Although most of the books were written with a first language context in mind, they do contain many features of potential value in second language contexts. Their exact value will, of course, depend on the particular teaching context-of-use.

3.1. Writing strategies of general value

The books in Groups Two, Three, and Four identify a number of generally valuable writing strategies, including basic outlining principles, good drafting and related revising and editing techniques. Many of them address the issue of appropriate use of language, or register, including considerations of intended audience and purpose, and a consequent use of particular voice, tone, and style. Further, some books

contain advice on effective paragraph development. Finally, some books discuss pragmatically significant areas of lexico-grammar such as modality. This focus is especially useful because of the central role modality plays in legal language. However, most of the insights provided remain at too general a level and need to be sharpened both in their focus as well as their applicability, for example indicating how particular linguistic strategies are more appropriately and more effectively associated with one legal genre rather than another.

3.2. The IRAC method

A number of books in Groups Two and Three discuss the "IRAC method". The IRAC method is a widely recognized approach to legal analysis in many contexts, both academic and professional. Technically speaking, it is less about legal language than it is about legal method. Nevertheless, it does constitute an integral component of many types of legal writing training, especially as an organizational tool. It teaches that, when analysing and presenting a situation from a legal perspective, it is helpful to use the following formula: identify the *issue*(*s*) (or question(s) presented); state the applicable *rule*(*s*); *apply* the legal rule(s) to the facts of the case; and state the *conclusion*. Some of the books provide their own variations on this approach, but IRAC remains the standard. Its value lies in its usefulness as an analytical and organizational tool that can be applied in a variety of legal writing (and, to an extent, reading) situations, including most of those encountered in law school. For example, the IRAC method can be used in some form when writing problem solving essays in academic contexts (EALP), and legal memoranda, legal briefs, and legal letters in occupational contexts (EOLP).

3.3. Using Plain English

"Legalese" is a term used, often derogatorily, to refer to the unique characteristics of legal English. Legalese is typically criticized for being overly complicated, dense, repetitive, and outdated. As an antidote to this perceived complexity, "Plain English" has established itself as a reform movement focused on making legal language more accessible, in particular to non-lawyers. The movement has not, however, been without controversy and opposition.[2] As a consequence of its widespread advocacy, it features in most of the books under review.

Many books in all four groups discuss Plain English. These books include the following recommendations for simplifying legal language. Avoid nominalizations by using strong verbs instead of weaker nouns. (For example, instead of "please provide an explanation" say "please explain".) Use active, not passive, voice. Use short sentences. Use short and familiar words and expressions. Avoid long paragraphs. Keep modifiers close to the words they modify. Label and use terms in a

[2] For a discussion of the history of this movement, see Asprey (1991, pp. 32–38). For a discussion of criticisms of this movement, see Danet (1980, pp. 541–548) and Penman (1992). For a discussion of the dangers and fallacies of trying to "simplify" legal language, see Bhatia (1983a, pp. 44–45).

consistent way throughout the document. Do not use negatives, especially double negatives, unnecessarily. Do not over-quote. Maintain parallel sentence structures (i.e. nouns with nouns, infinitives with infinitives, noun clauses with noun clauses). Avoid compound prepositions such as "by reason of" (use "because"), "for the purpose of" (use "to"), and "subsequent to" (use "after"). Use concrete instead of abstract words, and specific instead of general words. Generally speaking, if a word can be cut without affecting meaning, do so. For example, do not use repeat words (i.e. tautologies such as "cease and desist" or "aid and abet"); avoid unnecessary modifiers; and avoid "throat clearing" wordy sentence beginnings (i.e. "It is often said" or "The issue that we must explore in this case").

Now, however useful such recommendations might seem on the surface of legal discourse, they are not without their accompanying problems. Broad, uncritical application of Plain English principles is not always desirable. For example, one of the main concerns in legal writing is the need to specify the appropriate legal scope of application of a statement or rule. The generalizing tenets of the Plain English campaign may undermine that objective and consequently mislead learners, causing them to disregard this valuable aspect of legal writing.

3.4. Systems of legal genres

Most of the books in Groups Two and Three provide helpful training to L2 law students in the production of specific legal text types, or genres, commonly used in law school (and often later in practice). Such written legal genres are often unfamiliar to L2 law students. For EALP, however, the relevance of a given written legal genre will depend on the teaching context. For example, those written legal genres commonly taught in law school vary somewhat between USA and UK systems.[3] The major written legal genres covered in the books cited (which tend to concentrate on the USA system) are discussed later.

3.4.1. Case briefs

One such key genre is case briefs.[4] These are summaries of case judgements or opinions. Judicial decisions, known as case law, are an important source of law in common law systems. Analyzing and discussing such cases in class is also an important pedagogical technique used in common law legal education. Students must therefore learn how to accurately read, analyze, and brief cases. The books

[3] The USA legal education system is a 3-year post-graduate program, which leads to a Juris Doctorate (J.D.) degree. The UK legal education system is divided into two parts, the Bachelor of Laws (LLB) and the Postgraduate Certificate in Laws (PCLL). The LLB tends to focus on teaching legal theory and content and the PCLL on developing legal skills. Examples of written legal genres which are often taught in PCLL programs but which are often not taught in USA law schools are contracts, letters, pleadings, and affidavits. An example of a genre commonly encountered in USA but not UK-oriented programs is the appellate brief. Instead of the appellate brief, UK-oriented programs have a case theory and/or skeleton brief, which is a sort of truncated version of an appellate brief.

[4] In British legal jargon, a case brief is called a case note.

discuss such useful points as the typical structure of a case, the purpose of a case brief, and its structure and content.

3.4.2. Problem-solving essays

A second genre is that of problem-solving essays, by far the most common type of examination in law school. Here, students are usually given a scenario—a fact situation—and are asked to analyze the scenario in light of the relevant law(s). Helpful recommendations from the books identified include: only answer the question(s) presented; pay close attention to the facts (since the instructor has almost certainly included them for a reason); and engage in real (i.e. not mechanical) legal analysis by using the IRAC method to spot issues, apply relevant rules (laws) to the facts, and discuss the possible results.

3.4.3. Appellate briefs

A third written genre is appellate briefs. This is useful as many common law-based law schools hold a moot court competition. In USA law schools, this involves writing an appellate brief and making an oral argument in a mock courtroom situation. Its purpose is to argue a position persuasively to a judge. Appellate briefs can be quite long and complex, and useful general advice from the books includes: the structure and purpose of the brief; outlining and writing the draft; general language considerations, especially use of persuasive language; and how judges read appellate briefs.

3.4.4. Office memoranda

Since writing an office memorandum is extremely common in legal practice, its potential value as a genre for EALP is considerable, especially as this genre is often never covered in law school. Its usual purpose is to analyze one or more legal questions, often from a more general legal perspective (i.e. not in light of specific facts), and to predict legal outcomes based on the analysis. It should be objective but often includes a section of recommendations. It is almost always written for purely internal office use. Useful points from the books include the memo's purpose, structure, and method of analysis (which usually includes the IRAC method).

3.4.5. Legal letters

Letter writing is another genre often not covered in law school but first encountered in actual legal practice. Some of the books devote space to this genre, in particular the various types of legal letters (e.g. opinion letters, advice letters, status letters, and demand letters); the structure of a letter; and the use of appropriate registers in relation to content, purpose, and audience. Here books typically emphasize matters of mood, specific lexis, and to an extent cross-cultural variation in letter styles.

3.4.6. Other genres

Finally, some books discuss other written genres which, although potentially important, are not normally covered in USA law schools (although they may be

covered in the PCLL portion of UK-oriented programs). These include contracts, pleadings, affidavits, trial briefs (i.e. motions and memoranda of points and authorities).

4. Developing legal writing materials for L2 contexts

Although most of the books contain much useful material, in many ways they are not suitable for L2 legal writing contexts. This is because they target L1 students or, if they do target L2 students, they focus on a narrow EALP context, such as a specific country, program, or purpose.

There are strategies for developing materials appropriate for use in many EALP contexts. Perhaps the best course of action, however, is to offer suggestions for what legal writing materials might usefully include, rather than prescribing in detail what a legal writing course might actually teach. Issues of why, what, and how a legal writing course is conceived and taught are highly context-sensitive and will vary greatly across legal systems.

4.1. Customizing the materials for L2 contexts

There are at least three ways in which legal writing materials can be customized for use in L2 contexts.

4.1.1. Materials that employ more effective rhetorical devices

The existing books under review employ for the most part the traditional legal approach of conveying information in descriptive textual form. This is accompanied by a tendency to tell the students what good writing is. Such an approach works against involvement of the students in a discovery process, is less effective pedagogically (especially for L2 students) and may be boring or even intimidating. What one can do to make the materials more interesting and ultimately more effective for L2 law students is to introduce more creative rhetorical devices. These might include writing samples, examples, exercises, diagrams, figures, charts, illustrations, or tables. Such devices can serve at least three important pedagogical purposes: (1) to show what good (or bad) writing is (illustration); (2) to allow students the opportunity to produce their own writing (practice); and (3) to provide students with strategies for producing good writing (strategies). As a caveat when developing and using such alternative rhetorical devices, one should take care not to violate the integrity of the written legal genre being taught by, for example, misrepresenting or oversimplifying it.

In a seminal and influential paper, Bhatia (1983a) suggested new approaches to reading legal texts which could also be applied to legal writing. He suggests using *access structures*, or *easification devices*, to aid comprehension, such as reorganizing the rhetorical structure of a text or using a diagrammatic method to represent the main line of argument on the vertical dimension and the supporting evidence on the horizontal plane. In other words, representing the organization and logic of a legal

text in visual, chart form. This kind of approach is also advanced by Passalacqua (1997), who suggests various visual techniques to teach legal analysis, synthesis, and writing skills to law students. Again, these involve using structural models for organizing legal information in visual chart form.[5]

Any number of alternative rhetorical approaches could be developed and used. For example, setting out in visual form the stages of writing (e.g. pre-writing, writing, post-writing) and the various issues to consider (e.g. audience, purpose, content, length) and techniques to use (e.g. brainstorming, organizing, editing) at each stage. Examples of authentic legal documents, such as contracts, checks, or court documents can be adduced. A third rhetorical device is to choose a common legal language form or function and to set out visually its linguistic realization. For example, connectors/transitions may express contrast (*but, while, on the other hand, nevertheless*, etc.), sequence (*first, second, next, finally*, etc.), result (*as a result, consequently, thus*, etc.), and so on. In sum, there are almost limitless possibilities for presenting information in ways other than in the traditional descriptive textual form.[6]

4.1.2. Learner-focused interactive materials

A number of the books in Group Four (see especially Chroma & Coats, 1996; Riley, 1991; Van der Walt & Nienaber, 1997) involve students interactively engaging with the texts by utilising task-based exercises, questions for discussion and review, role-playing, and simulations, all of which are designed to involve the student actively in the learning process.

Such exercises and tasks can be augmented by including materials that promote student self-access and individual study.[7] For example, such materials could include workbooks with a range of tasks and model writing samples. Materials could be designed to be computer-mediated, either by using currently available computer-assisted language learning (CALL) programs,[8] by designing a CALL program that targets the specific teaching situation, or by using computer-assisted instruction (CAI) programs that have been developed for L1 legal writing courses.[9] In principle, all EALP legal writing materials could be computer-mediated, either as a web site or CD-ROM. Internet-based materials would serve at least four purposes: (1) be

[5] The article presents models for the following genres: (1) understanding a case; (2) understanding a statute; (3) legal analysis structure using IRAC; (4) determining the value of each authority; and (5) a grid for synthesizing cases.

[6] For ideas on how to use graphics and other visual techniques to teach legal analysis and writing, see Edwards and Lustbader (1994), and Blumenfeld (1996).

[7] As part of our analysis of the legal writing books available at City University of Hong Kong we noted each book's recent history of use. With a few exceptions, the books had been checked out very infrequently, an average of only about once a year. It is, however, possible that students used the books in the library without checking them out.

[8] As far as we know, there are at present no CALL programs specifically designed for the EALP context. However, many CALL programs have authoring programs whereby legal texts can be imported into the program and exercises created around these texts. Also, there are a few web sites on legal writing, but, again, these target L1 students.

[9] For a (mostly critical) discussion of these, see Ehrenberg (1998, pp. 14–21).

immediately accessible from anywhere in the world; (2) allow for individual student self-access; (3) allow for inclusion of interactive exercises; and (4) make the materials easier to add to, manipulate, and adapt. One of the goals of the current Project at the City University of Hong Kong is to create just such a legal English web site with these resources and this accessibility.

4.1.3. Guidelines for the EALP teacher

Finally, any materials ought to include assistance for the legal writing teacher. This is particularly necessary where teachers are L2 users who may not have a legal background. The absence of such assistance is a significant shortcoming of the books under consideration. Of the 37 books reviewed, only two, both from Group Four, had any sort of teacher's manual (Lee et al., 1999; Wojcik, 1998). Most books assume that the legal writing teacher will be a lawyer, with legal writing and content knowledge. This is rarely the case in L2 legal writing contexts. Indeed, due to their lack of legal knowledge, many L2 legal writing instructors are extremely uncomfortable teaching such courses. As Bhatia states, "most ESP practitioners find it difficult to penetrate the complexities of legal language and thought even with a lot of genuine interest and serious effort" (1987, p. 231). Ways of offering such assistance might be to provide, in addition to the types of materials found in conventional instructor's manuals, information about the *basic* legal concepts underlying the written texts (genres) being studied, including explanations of the legal reasons for different uses of language in different legal contexts. References could also be provided to sources of legal information and to ways of accessing authentic legal texts.

4.2. Developing materials which integrate language and law

Although most of the books surveyed discuss legal language, they often fail to adopt a principled language-based approach to teaching legal writing. The books present the material in a logical progression from a legal perspective, but they do not attempt to establish continuity throughout the materials by linking the materials linguistically or discursively. This can be seen in, for example, Dernbach (1994), whose organization and content is representative of many of the books in Groups Two and Three. Dernbach is laid out as follows: Introduction to Law (sources of law), Basic Concepts of Legal Method (legal reasoning), Basic Concepts of Legal Writing (general legal writing techniques), The Office Memorandum (organization and content of), and Briefs (organization and content of). In terms of language, each section is a self-contained unit essentially independent from the other sections. From a linguistic and discursive perspective, there is no attempt to link the concepts discussed in each section or to build upon concepts previously learned.

Further, when a book discusses writing, it tends to focus on issues of the organization and content of legal documents (genres), but not on the crucial issue of linkage between particular lexico-grammatical and discursive choices and such organization and content. If issues of language and discourse are raised they rarely get past general principles of writing.

A more useful alternative, in our view, would be to focus on the defining characteristics of legal language, as established through linguistic and discourse analysis. Such a language-based approach could infuse the materials with a framework, a thread of continuity, based more on language (i.e. not exclusively on legal) aspects of legal writing. In this paper we illustrate how such materials could be made more language- and discourse-based.

4.2.1. Research-based materials

In arguing for a research base for materials, it is important to go back to a study of the authentic texts, rather than be led astray by general impressions derived from the welter of anecdotal comment about what constitutes legal language. A useful corrective is provided in Swales (1981), where, in investigating the use of definitions in academic discourse, he was surprised to find a wide ranging disparity in the way this rhetorical act of defining was used in different disciplines, not only in terms of its realisation but also in terms of its range of functions and distribution. Parallel variation in the management of interpersonal stance between writer and audience in academic (not legal) writing is evidenced in Hyland (2000), or in the business writing context by Nickerson and Bargiela-Chiappini (1999). The lack of this documentary and evidence base constitutes a serious shortcoming in the books under review. Their approach appears to rely more on conventional wisdom regarding legal language than on any systematic analysis of the language itself. This is despite the wide availability of a substantial amount of linguistic and discoursal analysis of legal language. For example, Levi (1994; bibliography of USA publications on legal language) and other sources listed in the reference section of this paper.

4.2.2. Materials promoting participation in legal community and culture

Following the precepts of Lave and Wenger (1991) and the papers in Candlin and Hyland (1999), we can argue that learning to write legal discourse is part of a process of learning to participate in the affairs of the legal community and its disciplinary culture. On this argument, it is not enough to be able to construct legal sentences as part of the mastery of some specialist genres, but also to be aware of the place of such genres in the disciplinary community; in essence to ask *why* such genres are written the way they are. To do so is to evoke the conditions and processes of legal practice. It is exactly this mix of generic and disciplinary knowledge which constitutes the training of legal specialists.

Accordingly, materials that begin from the position of introducing the students to the institutional and discursive practices of legal discourse community and its culture would be useful to L2 learners. Discourse in this sense is being used both in its linguistic and its social theoretical sense, as language in use (see Brown & Yule, 1983), but also as the means by which particular social and institutional practices are constructed and maintained. In short, discourse is seen as a socially grounded process. Grasping this double focus of discourse is important for L2 law students since, in order to function effectively within their own legal discourse community, they need to understand and master not only its discourses but also the conventions

and socio-legal practices that shape it.[10] As Bhatia explains, "before learners undertake any goal-driven communicative activity, they need to become aware of appropriate rhetorical procedures and conventions typically associated with the specialist discourse community they aspire to join" (1995a, p. 164).

Although the notion of discourse community is not entirely uncontroversial, there is sufficient common understanding of the notion to make it useful for EALP materials. Swales (1990: 9) defines it as socio-rhetorical networks that form in order to work toward common goals. Discourse communities possess their own genres, specific lexis, and even analytical paradigms. But the concept goes beyond language. The discourse of the discourse community is "a form of social behavior, . . .a means of maintaining and extending the group's knowledge and of initiating new members into the group, and. . .is epistemic or constitutive of the group's knowledge" (Swales, 1990, p. 21).

It is possible for materials to be sensitive to the notion of the legal discourse community and its varying discourses at different levels. At the most basic level, the materials can introduce the student to the concept of *discourse community generally*, emphasizing the existence and status of discourse communities across disciplinary and institutional boundaries, and the way they develop their own language, forms, beliefs, conventions, and traditions, in the processes of communicating.

Becoming more specific, the materials can focus on encouraging learners to explore the *legal profession generally* as one type of (admittedly complex) discourse community. In particular, exploring the rhetorical preferences, analytical paradigms, registers, genres, and system of genres that are specific to the common law legal profession as a whole, and which are more or less to be found across common law legal systems. Materials designed and targeted in this way could both help induct students into the socio-legal practices of the law while displaying the linguistic and discursive conventions of legal writing that underpin and reinforce such practices. The extent of resources for such materials design is, as we suggested earlier, quite extensive.

Even more specifically and more relevantly, such materials could direct themselves at the *professional legal community in their particular country, region, or legal system*—or on the system being studied—on the assumption that these contexts of use will evidence their own unique linguistic and rhetorical preferences, analytical paradigms, registers, and genres. Including materials that discuss discourse community at this level would ensure that they are locally relevant and appropriate. However, as they are so local-context-sensitive, most of these materials would have to be developed and added to the core materials by the local EALP teacher.

The narrowest focus might be to direct materials at the needs of some *local academic legal community*, and to do so from the perspective of academic discourse rather than that of professional practice; in short to focus on the discourses of legal

[10] For an interesting discussion of the American legal profession as a discourse community, see Ramsfield (1997). The article discusses how the American legal discourse community has its own unique language, forms, and traditions. It even has its own unique way of approaching legal logic and language. The author argues that it is important to be sensitive to this fact when teaching foreign law students and to try to adjust the teaching process accordingly.

education (EALP). Students have to learn this discourse in order to function in their law program, and their success in the program depends in no small part on how well they master it.

4.2.3. A genre-based approach

Many of the books, especially those in Group One, reflect the philosophy that the best way to approach legal writing is to focus on "stereotypical" aspects of legal register. They present the legal register as characterized by such features as doublets, repetition, Latinisms, nominalizations, long and complex sentences, double negatives, polysyllabic words, compound and unusual prepositional phrases, and passive verbs. They also present legal register as possessing a high degree of formality, a high degree of modality, extensive use of citations and footnotes, and common terms with uncommon legal meanings.

Although this focus on legal register may be useful in a general way, its usefulness is limited for at least two reasons. First, as Fredrickson (1996) points out, it is questionable whether one can speak of a "legal register" at all, since legal texts are often very different from the "stereotypical" legal language of, say, legislative texts. Second, developing a general competence in legal discourse is only the beginning. To be effective, L2 legal writing materials must target that level of detail and variation posed by the various written legal genres. A genre-based approach can do this. Taking a genre-based approach to materials design in legal writing acknowledges the issue of complex discourses of law that we introduce earlier.

Following now well-established practice in EAP, (Bhatia, 1993; Berkenkotter & Huckin, 1995) such an approach emphasizes the typical characteristics of written legal texts both in terms of their form, their situated use, and their particular purposefulness. They would be set in identified legal contexts and would focus on types of text structure, specific content, and particular lexico-grammatical realizations, showing how such constructs influence each other in the service of nominated legal purposes.

One possible drawback of such an approach is that it lends itself to over-modeling and prescription. Here Bhatia's caveat is relevant: "Whichever way one looks at genre analysis (citations), the most common denominator has always been the conventionalized, institutionalised and allowable (rather than the creative, innovative and exploitable) aspects of genre construction" (1995b, p. 1). However, this perception of genres as static and conventionalised, which does have its undeniable pedagogic usefulness, can be countered by materials which, while reflecting conventionality, still encourage writers to exploit a genre creatively to meet their own particular purposes, local contexts of use, and interpersonal relationships with clients and audiences more generally. "Once a genre is learned and adequately understood, the conventions and procedures can be exploited creatively to achieve private ends within the socially recognized communicative purpose" (Bhatia, 1995a, p. 166).

For example, once students understand the conventions of a genre, they can apply this understanding *intra*generically to recognize and understand other texts from the same genre, as well as to produce their own appropriate texts within that genre. Since legal genres are relatively consistent, students are thus enabled to recognize

and produce examples of genres within the same legal subject area (e.g. problem-solving essay questions for contract law) and across subject areas (e.g. problem solving essay questions for contract, tort, or criminal law).

Such an approach also allows for comparisons across genres, or *inter*generically. As students learn the conventions of new genres, they can improve their understanding of them through comparisons with other genres with which they are already familiar. In this way, students can see how the various genres relate to each other, note their similarities and differences, and understand how, when, and where they fit within the writing practices of the overall legal discourse community.

Ideally, this genre-based approach would be premised on research-based linguistic analysis of the EALP written genres previously mentioned. Although research into written academic legal genres is still limited, some helpful work has been done. See for example, Bhatia (1983b; legislation); Beasley (1994; problem-solving essay questions); Feak, Reinhart, & Sinsheimer (2000; research papers); Howe (1990; problem-solving essay questions); Iedema (1993; case briefs/case notes); Kurzon (1985; briefs); Tiersma (1986; contracts); Trosborg (1995, 1997; contracts).[11]

In our view, the genre-based approach we advocate can focus both on the integrity of the individual legal genres, and on their intertextuality and interdiscursivity. Although the primary focus may be on the generic integrity of individual legal genres, it is the case that the legal substance of each specific genre and the interdiscursive relations these genres enter into in typical legal contexts of use will depend on local professional (and pedagogic) contexts. This interrelatedness of legal genres can be illustrated in the following EALP activity.

Sample genre-based EALP activity

The teacher begins with the *case brief* genre. Here a summary of a case judgement or opinion is prepared by the student to help the student understand the relevant information in the case, and possibly to participate in a follow-up class.

When the teacher feels the students have adequately understood the conventions of this genre, both discursively and lexico-grammatically, the opportunity arises for a shift to a second genre, such as that of the *problem solving essay question*; that is, an essay question written under examination conditions. The student is given a set of facts and is asked to apply the relevant law to them, to analyze the possible legal results, and to draw a number of conclusions. To introduce this genre while at the same time relating it to the previous genre, the teacher could devise questions that require in their answers part of the analysis information from the case brief previously prepared. This linkage would enable the students to see the interrelatedness of the two genres, in law and language terms, but also would emphasize the continuity of this genre-based pedagogy.

[11] The IRAC method, discussed previously, is a potentially rich area for linguistic genre-based research in the EALP context. This is because the IRAC method, or some variation thereof, is or can be used in various written legal genres.

(*continued on next page*)

From here the teacher might move to the genre of the *legal letter*, again devising scenarios requiring students to incorporate into these letters elements of the previously taught genres. The cumulative effect of introducing new genres while contrastively building on those previously introduced is what is being emphasized. In this way, by the end of the course, students will have been familiarised with a number of written legal genres, will understand the similarities and differences between these genres, and will see how they interrelate, both legally and linguistically/discursively.

This kind of genre-based approach is especially suited to teaching legal writing because of the limited number of written academic legal genres, which have remained relatively constant over time.

4.2.4. Materials that focus on legal language, not legal content

Books in Groups Two, Three, and Four go beyond a focus on writing to include at least some attention to legal method and content. They discuss the common law method generally (i.e. how the common law system of legal analysis works), how to analyze a statute, how to analyze a case, the role of precedent, identifying legal issues, outlining a rule of law, formulating a rule of law from multiple authorities, and basic logic and argumentation. Some of them also include materials on substantive legal areas, such as systems of government, legal systems, sources of law, appellate procedure, criminal law, contract law, constitutional law, and administrative law.

There are reasons why books which are ostensibly about legal writing should also include legal method and content. Firstly, almost all of these books are written by lawyers, for whom it is difficult to resist focusing on the law. Secondly, the book may have been written not only for a course on legal writing, but also for ones which address legal writing and method. Thirdly, although in any discipline language is used to communicate ideas, information, and opinion about the content of the subject matter, in law, language and content are more intimately integrated. Law, after all, does not exist naturally in its own state; it is constructed, interpreted, and negotiated through language. Legal concepts and the language that expresses them form a dense, precisely interwoven texture which blurs the distinction between language and content. Moreover, in law, language does not always simply serve as the vehicle to express the subject matter; on occasion it actually constitutes the subject matter. For example, the language of a statute or contract determines what the law is; i.e. what legal rights, obligations, etc. are created or restricted. Also, all of the major legal skills are language-based: advocacy, interviewing, negotiating, as well as the various types of legal writing.

Clearly legal content must inevitably be part of instruction on legal writing. The issue is one of balance: in our view, core materials (that is, those designed for use in any EALP context as a matrix into which local adaptations and supplements can be added) should be cautious about trying to include too much information on

substantive legal content areas. The reasons for this caution are threefold. Firstly, there already exists an abundance of excellent materials for teaching legal content. Secondly, teaching legal content is normally not the responsibility of EALP writing teachers whose competence in the area is likely to be limited and who might, in consequence, rightly invoke considerable opposition from course instructors in law if they were thought to be encroaching on the latter's proper territory.[12] Finally, and very importantly, by maintaining a focus on the linguistic and discursive aspects of legal writing, the ensuing materials are better able to retain their relevance, *regardless* of the particular EALP writing context. This is so because, although legal *content* varies considerably between legal systems, the conventions of legal *writing* remain more constant.

Avoiding the extensive teaching of legal content does not, however, imply that authentic legal texts should not be a central resource for such materials. They are clearly indispensable. But they should be used for teaching accurate, authentic legal writing, not legal content. Also, they should be integrated into the core materials at the local level. This ensures the appropriateness, relevancy, and accuracy of the materials for the context in which they are being used. If authentic texts are displayed in the core materials, these would serve as exemplary models to guide the selection of corresponding local texts. As with EAP more generally, among such locally relevant texts could be those assigned for legal content courses students of law may be attending. Opportunities exist to encourage a now standard procedure in EAP in many contexts, where discipline specialists and language specialists co-teach or at least cooperate closely in the delivery of content courses.[13]

4.3. Developing a bank of teaching materials

In the foregoing we have alluded to the classic dilemma in ESP textbook design, that of managing both to be general in their application and yet sufficiently specific for particular audiences and user groups. This is especially true with EALP, and is one of the issues surrounding the books within our Group One. Their general focus precludes local relevance. On the other hand, if the content tries to be more relevant by focusing on a narrow teaching context (e.g. a specific country, a specific type of student, or a specific type of writing) it is not suitable for other EALP writing contexts. This is one of the problems with the books in Groups Two, Three, and Four. Jones' (1990) point is well taken that an ESP textbook with the expansive title of "English for Business" cannot possibly live up to its title. Nor can an "English for Law" textbook, at least not on its own. Indeed, an English for Law textbook is even

[12] This is a classic ESP dilemma: teaching the English of the specific discipline without teaching too much actual content and thereby invading the domain of the subject matter's content course instructors.

[13] "Although a factual and legal background is necessary, a course in legal writing should permit only such research as is compatible with an adequate attack on the relevant conceptual, architectural, and verbal problems. One way to handle this is to select topics that enable the students to write on the basis of substantive considerations that are already in their heads or have already been developed in large part by others" Dickerson (1986: 140).

more implausible because the practice of law varies even more from system to system than does business. As Swales (1982, p. 139) comments:

> Within the province of EALP as outlined here, it is now necessary to concede that as legal systems and Penal and Civil Codes are expressions of national sovereignty (and so tending to reflect local social customs and moral and religious beliefs) EALP courses will rely heavily on local content for text, reference and exemplification. It can therefore be assumed that such courses are unlikely to "travel well" to similar educational settings in other countries—certainly not as well as ESP courses with a more *universal* subject-matter such as those for Science, Mathematics or Engineering.

With regard to EALP materials development, one solution to this dilemma has already been offered: to adopt more of a language-based (as opposed to content-based) approach in the core materials, which can then be supplemented locally with more content- and context-sensitive materials. Another response is to move away from the concept of a book on EALP legal writing as the sole source of learner support and to use a bank of teaching materials approach. Rather than providing teachers with an EALP writing textbook alone, provide them with a core bank of teaching materials to draw from. They can then adopt, adapt, and supplement these core materials with local materials. Jones (1990) suggests that the materials in the (core) bank be cross-referenced so the teacher can see the different uses to which the material might be put. He also suggests producing local overseas guides for teachers on how to substitute locally relevant teaching materials. Whatever approach is used, the point is to develop a useful, expansive core of materials that can be manipulated according to the teaching context.

This is not a new concept, but it is one that is particularly suited to the EALP context and which addresses the typical EAP dilemma. The core bank can contain a larger amount of materials than a textbook alone and these materials can be expanded over time. What such a bank might contain has been alluded to in this survey. At the very least, the core materials should include genre typologies that are common to many EALP writing contexts, along with explanations, samples of authentic texts, exercises, etc. designed to teach and enforce these typologies. Making such a resource bank of authentic data, information about such data, and appropriate learner tasks readily accessible in a timely fashion, and where data, information, and tasks are easily cross-referenceable, is an obvious opportunity for computer-mediated programmes. It is to that challenge that the City University of Hong Kong project we refer to earlier is in part directed.

5. Conclusion

There are a number of legal writing books currently available. Many aspects of these books can be useful in EALP writing contexts. However, most of these books were written with an L1 context in mind and are unsuitable in many ways for use in

L2 contexts. Those books that are written for use by L2 students are typically quite context-specific and are therefore of limited use outside that context.

This paper has suggested three approaches for developing core ESP legal writing materials of more general applicability and use. First, the materials can be customized for use in an L2 context by using more effective rhetorical devices; involving students more in the learning process; and including materials for the teacher. Second, the materials can adopt a more language and discourse-based approach by grounding them in research and evidence-based linguistic and discursive analysis of legal language; introducing the concepts of discourse and discourse communities; adopting a genre-based approach; and by focusing centrally on the discourses of the law, rather than on legal content. Thirdly, instead of packaging such materials exclusively in book form, materials can be made available, desirably computer-mediated, as a resource bank of authentic data, explanatory information, and learning-centered tasks.

Appendix

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Christopher N. Candlin is Chair Professor of Applied Linguistics and Director of the Centre for English Language Education at the City University of Hong Kong. He was previously Executive Director of the Australian National Centre for English Language Teaching & Research and Professor of Linguistics at Macquarie University, Sydney. He has managed a range of research projects in ESP, especially in workplace and professional communication, and published widely in these and other areas of Applied Linguistics. He is currently President of the International Association of Applied Linguistics.

Vijay Bhatia a professor at City University of Hong Kong, is well known for his work on *ESP*, and *Genre Analysis* of language use in legal, academic, business and newspaper settings. His book "Analysing Genre – Language Use in Professional Settings" is widely used internationally. He is on the editorial boards of *English for Specific Purposes* and *World Englishes*.

Christian H. Jensen is a Senior Research Associate on the project "Improving Legal English: Quality Measures for Programme Development and Evaluation" at City University of Hong Kong. He was previously a visiting professor in the Institute of Foreign Language Studies in the Law School at Korea University. He is a lawyer who is licensed and has practiced in California.