

ASSESSING WRITING PROFICIENCY IN THE PROFESSIONS

Speaker: William Lutz, Rutgers University, Camden, N.J.

Introducer/Recorder: Louise Silverman, Ocean County College, N.J.

William Lutz, who is a lawyer as well as an English professor, emphasized that law students usually do only minimal amounts of legal writing while they are in law school. Because of the high student-teacher ratio in law schools, law students are only required to write a few papers, final exams, and moot court briefs.

The audience for legal writing tends to be the legal community. Although, in theory, lawyers write for clients or for the general public, in reality, they write for an audience of other lawyers or for judges, who expect legal jargon in legal documents. Use of legal jargon gives access to the "sacred priesthood" of lawyers, but the use of jargon may prevent clients from understanding the content of a legal document. In addition to jargon, legal prose often contains multiple negatives, imbeddings, and prepositional phrases, as well as passive construction, Latin or Middle English phrases, and formal, ritualistic phrases. While special reading strategies are needed for reading legal documents, obscure, ambiguous prose is potentially misleading and harmful.

According to Lutz, legal writing should be the writing used in everyday affairs, with the usual attention to audience, purpose, and context. Law students' writing, therefore, should be assessed by lawyers for form and content. Simplicity and clarity should be the primary concerns in legal writing; a classic example of such simplicity and clarity is Justice Brandeis' dictum: "Danger cries out for rescue." While primary trait scoring can be used for legal writing assessment, Lutz prefers holistic scoring or portfolio assessment. Students can be trained through the reading of models of clear, legal prose; however, topics must test legal knowledge as well as writing skills.◊