Teaching a Master Class on Legislation to First-Year Legal Writing Students

By Almas Khan

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As enacted law continues to supplant common law, law schools are increasingly incorporating a course on legislation into the first-year curriculum. Yet these students must often parse statutes for doctrinal and legal writing courses in their first semester of law school, and without an elementary understanding of how legislation is interpreted, students are apt to misconstrue statutes.

Accordingly, in the fall semester, I try to reserve a two-hour legal writing class for legislation, devoting the first half of class to an introductory lecture replete with visual aids and case illustrations and the second half of class to an interactive exercise with an ambiguous statute. I divide the lecture into four parts: the weight of statutory authority, the enactment process, theories of statutory interpretation, and statutory interpretation in legal practice. In preparing my lecture notes, I track the course's legal writing text, Writing and Analysis in the Law, and supplement my explanations with references to legislation casebooks.

After a humorous example of a poorly drafted statute instigates student interest in the lecture, I remind the class that statutes are subordinate to constitutions at the federal and state levels, listing the following sources of law by order of authority: the federal constitution, federal statutes and treaties, federal executive orders and administrative regulations, state constitutions, state statutes, state administrative regulations, and municipal enactments. From there, I simplify the bicameralism and presentment process for a federal bill and indicate where legislative history is produced, noting that bills are generated in a legislative chamber, placed before the chamber, referred to the appropriate committee and subcommittee, placed on the calendar (for the House of Representatives), brought to the floor for consideration (including debate, amendment, and voting), reconciled in the Conference Committee, and presented to the president for signing.

After refreshing students' memories about how statutes originate, I succinctly discuss the two major theories of statutory interpretation—

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2 Helene S. Shapo, Marilyn R. Walter & Elizabeth Fajans, Writing and Analysis in the Law (5th ed. 2008).


5 The Schoolhouse Rock video "I'm Just a Bill" elicits fond memories of grade school and can be supplemented with more "serious" visual aids depicting the legislative process.
purposivism and textualism—and move into the most pragmatic portion of the lecture: construing statutes, particularly for an assigned legal memorandum or brief. To help students identify the issues implicated by a given statute, in light of their hypothetical problem’s facts, I encourage the creation of statutory briefs paralleling case briefs, though in a more rigidly outlined form. Students can then determine what level of interpretive depth is required for a specific provision. I introduce three primary tools for statutory interpretation: internal aids, extrinsic evidence, and canons of construction. I reference two internal aids: the statute’s single plain meaning (dictionary or technical definition) and its context (title, preamble or statement of policy, date of enactment, other sections, and structure). I focus on legislative history as the predominant form of extrinsic evidence used when intrinsic aids provide no definitive interpretive resolution, describing four major sources from which legislative intent can be gleaned: predecessor statutes, committee reports, hearings and floor debates, and post-enactment legislative action (such as statements or legislation) or inaction.

Canons of construction complete the lecture portion of class, and I underscore that the canons are often used when legislative history is scant, but that they are similarly employed to gauge legislative intent, assuming that legislators drafted a statute with knowledge of certain verbal patterns and substantive presumptions. Students are cautioned that because the canons may yield inconclusive or even contradictory results, statute-specific internal and external aids should be relied upon when possible; the canons tend to function as tiebreakers and are ordinarily not dispositive in isolation.

I classify canons into three categories—textual, substantive, and deferential—and describe the most frequently cited canons in each category. Students have typically encountered the four following textual canons, which are facially neutral, in their doctrinal courses: ejusdem generis (of the same kind), expressio unius (express mention of one thing excludes all others), in pari materia (on the same matter), and surplusage (giving effect to each word). More controversial are the three substantive canons I discuss: the rule of lenity for ambiguous statutes in criminal cases, the “Charming Betsy” canon of not construing a national statute to conflict with international law, and interpretation in light of fundamental values. I close the lecture with two deference canons recognizing that courts are not the exclusive interpreters of law—deference to administrative interpretations7 and the doctrine of constitutional avoidance8—and observe that interpretive techniques diminish in relevance as courts authoritatively construe statutes.

After this primer on statutory construction, I divide students into small groups and disseminate an ambiguous statute whose meaning a case has hinged on and related legislative history materials, if the court scrutinized those in reaching its decision. Students utilize internal and external aids, as well as canons of construction, to advocate for the interpretation urged by the plaintiff or defendant, and they deliver miniature oral arguments supporting their position, after which I collate their contentions on the board. An animated colloquy about the statute follows, and I poll students about their decision as hypothetical judges before revealing the court’s ruling and reasoning at the end of class.

The myriad strategies I use to teach legislation—traditional lecture, visual aids, oral arguments, and small group and large group discussions—help capture students’ attention.© 2011 Almas Khan

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8 This doctrine prevents a court from ascribing an ill motive to a coordinate government branch.