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## Moving from Class to Chambers: Five Tips for Training New Clerks to Write for You

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# Moving from Class to Chambers:

## Five Tips for Training New Clerks to Write for You

Sara B. Warf

For eleven years, I have taught new legal writers. I primarily teach UNC Law's 1L research, writing, and advocacy class, but in recent years have also taught an upper-level seminar titled Judicial Clerkship Writing for those students interested in learning to write like a clerk.<sup>1</sup> The students in both classes differ in skill level, naturally, but they have in common that they have never before done the type of writing the class requires of them.

Judges do much the same. Each time a new clerk or intern joins your chambers, you start training and guiding anew. Below are five increasingly specific tips on how to make that process as smooth as possible.

### TRAIN THEM TO BE GHOSTWRITERS; TEACH THEM YOUR VOICE.

In one of Rex Stout's delightful Nero Wolfe mysteries,<sup>2</sup> a woman perpetrates a scheme in which she would write a slightly different version of a recently published novel, plant it among the rejected manuscripts inside the publishing house itself, and then sue the publishing house for plagiarism.<sup>3</sup> Wolfe reads all the rejected manuscripts and realizes based on subtle style cues that they were all written by the same person, and that the same person had written a novel published by one of those houses. Wolfe gathers all the players together into his office, and—as he is dramatically exposing the woman's crimes—she explains: “I realized how stupid I had been not to write them in a different style, but you see I didn't really know I had a style. I thought only good writers had a style.”

Most law clerks, I believe, become law clerks because they love to write. In law school, students—particularly the good writers—develop their own writing style and voice as they write seminar papers, law review articles, etc. Inevitably, when they become law clerks, it's an adjustment to adopt the voice of their judges. But the first step, of course, is for them to notice that their judge *has* a particular voice.

When I introduce my seminar students to the fictional judge for whom they'll be clerking over the semester, I give them three of “her” opinions and have them fill out a style sheet as to the judge's preferences as evidenced by those opinions. The style sheet is broken into four categories and includes specific questions:

- *Overall structure.* How long do the judge's fact sections tend to be? What general internal structure does she use for the discussion of each distinct legal issue? How does she sepa-

rate arguments (e.g., Roman numerals? signal words?)?

- *Formatting/small-scale structure.* What is the judge's standard paragraph length? Does she seem to prefer the use of block quotes? In citing, does she use (citation omitted) or not?
- *Word choice.* Does she prefer *defendant*, *Defendant*, *defendant-appellant*, etc.? What transition phrases does she often use (e.g., “Here” to move back to the case at hand)? Does she use many adverbs? How does she feel about starting sentences with “And” or “But”?
- *General qualities.* How would you describe her tone?<sup>4</sup> Does she focus on the moving/appealing party specifically or give equal time to both parties' arguments? How much dicta appears in her opinions?

The more you can memorialize instructions, FAQs, and style guides, the more time you will save with the orientation of each new clerk or intern—and the more consistency your chambers style will have from year to year.

### BE EXPLICIT ABOUT WHAT YOU EXPECT FROM THEM.

One night, when my son was 3, I was sitting on a chair in his room trying to apply his post-bath lotion—a task I would wish only on my worst enemy—and he refused to stay still, dancing out of reach every few seconds. Like exasperated mothers everywhere, I put on my stern voice and said: “Come back here! Be still!”<sup>5</sup> After several rounds of this, I planted my feet on the floor shoulder-width apart, pointed to the carpet between my feet, and said: “Come stand right here.” He came straight to that spot and stayed there for the duration.

I realized belatedly that “come here” and “be still,” which encompass abstract concepts like “be within arm's reach” and “then wait for an unspecified amount of time,” meant nothing to him. When I gave him a specific, concrete, achievable goal, he was able—and happy—to comply.

The more transparent and explicit you are about your expectations—both in terms of process and in terms of the ultimate product your clerks or interns need to produce—the easier it'll be for your new hires to fit smoothly into your chambers. Be mindful about telling the clerk or intern which exact thing you want. Some points to consider about helping your clerks and interns transition from a law school environment:

In law school, almost all writing assignments involve writing a document for a client for one purpose and then

### Footnotes

1. My very first legal job was as a law clerk at the North Carolina Court of Appeals, and I stayed there for five years. I could not have loved it more.
2. REX STOUT, PLOT IT YOURSELF (1986).
3. She also murdered three people, but this is neither here nor there.

4. Because I drafted the opinions, the correct answer to this one is “snarky.”
5. Punctuated by that perennial favorite: “We could be done by now if you'd just listen!”

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not revisiting or reusing it. In chambers, pieces of writing might get used repeatedly for different reasons; for example, some judges like for their clerks to produce bench briefs solely to prepare for oral arguments, meaning that they don't want a particularly thorough or formal bench brief, while others expect a bench brief to be essentially a draft opinion. Tell them which you prefer.

In law school, email assignments and memos are sent straight to a professor, they go no further, and they're evaluated on their merits; in chambers, you only ask for such things when you're going to use them for a particular reason. If you've requested an email analyzing a specific legal question, are you going to use it to inform your end of a phone conversation, or are you going to forward it to the person involved? When you ask for that evaluation of a circulating opinion, is it with an eye toward concurring or dissenting or just to help you make up your mind?

In law school, we draw very specific boundaries around how much students may collaborate and how they should format submissions; tell your clerks and interns what you expect from them in terms of collaboration and what they send you. Should your clerks edit each others' writing before you see it, and should they edit interns' work first too? Do you prefer seeing drafts on paper or by computer? Should they save progressive versions of opinions or just change the same file? Do you like to see redlined subsequent drafts?

You're an expert: on the law, on drafting, and on your chambers. As an expert, your experience fills in the gaps for you on big projects or tasks, but new clerks and interns will need those gaps filled in with explicit instructions. Laying out exactly what you need them to produce or accomplish will get you the best results.

#### **AS MUCH AS YOU CAN, PROVIDE CONCRETE WRITING FEEDBACK.**

Every writing professor knows the feeling of having a student submit a first draft that needs improvement on virtually every level. The challenge then becomes triaging your concerns so that you address the most fundamental concerns first, leaving aside the finer points for a later draft.

I explain this to my students with a weeding metaphor: you can spend an hour pulling weeds out of your garden, filling multiple bags with your jagged-leaved enemies, and then—usually just as you turn back to look, satisfied, at your good work—you'll see dozens of tiny weeds in and among your flowers that you couldn't see before because of those larger weeds on top. The only way to root out the problems on every level is to go through many rounds of weeding, looking at a smaller scale each time.

It is immensely time-consuming to identify aspects of a draft that need improvement, explain why and how to make

that improvement, and then review the resulting edits. By far, the easiest thing to do with new writers is to correct their work and move on. But if you can invest the time early on to give them thorough and specific feedback, you will save yourself an enormous amount of work in the long run. If you have the luxury of time, make comments on the first draft and walk through them with your clerk; if not, give them redlines so that they can see the changes between their draft and your version.

Your new law clerks will not be used to the focus and clean lines of judicial opinions, and they will need practice and coaching to get there. One of my most frequent (and most useful) comments on student papers is: *This isn't wrong; it just isn't necessary.* If you can briefly cover this concept in a chambers style guide or an early conversation, you will likely save yourself the trouble of handing back drafts with a third of the pages simply crossed out.<sup>6</sup>

#### **REMEMBER THAT THEY MIGHT NOT KNOW HOW TO WRITE FOR YOUR COURT.**

One of the early classes in my seminar opens with a lecture about the roles of the various courts. As upper-level students, they of course already know the structure of both the federal and state court systems, but it hasn't always occurred to them that those courts' discrete roles will, by necessity, affect those courts' writings.

In that same class, I hand the students two opinions for the same case—one from the North Carolina Court of Appeals, and the subsequent one from the North Carolina Supreme Court—with the lines numbered in the margins. They map out the structure and content of each, noting as they go the line numbers for each chunk of information (e.g., lines 30-40 introduce the issue on appeal). By the end, they've deduced several distinctions: the Court of Appeals opinion is to the point, focuses on the defendant, and emphasizes the facts of this specific case; meanwhile, the Supreme Court opinion is more sweeping, focuses on issues of law, and emphasizes the case's role in the larger jurisprudence of the state.<sup>7</sup> Despite their knowing in an abstract way the roles of the courts, students still tend to be surprised by this discovery, presumably because they simply have not made the conscious connection between a court's role and its output.

Thus, you might find that, despite your providing example opinions from your chambers, your new clerk is producing law-review-style surveys of the law at your error-correcting court, or streamlined resolutions of the case before the court at your policy-setting court. Knowing how to find, read, and

6. This may or may not be, but definitely is, what happened to the first draft I submitted to a clerk as a judicial intern. It was quite possibly the most helpful feedback I could have received at the time.

7. Indeed, despite the opinions being of almost identical length, the Court of Appeals opinion spends almost 60 lines applying the law to the facts of the case, while the Supreme Court spends only 8.

write about the law is a very general set of skills. Even if your clerks have summer experience in chambers—even if it was with *your* chambers—they will need some time and help to get up to speed with the very specific writing expected by clerks for your court.

### HELP THEM MAKE DELIBERATE CHOICES IN STORYTELLING.

I still vividly remember the more colorful cases on which I worked as a law clerk, and your new law clerks will almost certainly be drawn to the fascinating storytelling opportunities afforded by their new caseload in your chambers. They will also—as good legal writers and simply as storytellers—instinctively want to recount the entire story in the opinions they draft for you. The instinct they will need to develop instead is the ability to discern how much of the story to tell.

When my seminar students are drafting their opinions, we have a series of discussions about choosing what to include in an opinion. Part of this is informed by the judge's style, of course, but I emphasize to them the importance of making very deliberate choices in their writing.

This past spring, for example, my seminar students wrote their opinions about a case in which a pizza delivery man was attacked by two assailants with a baseball bat. The issues on appeal—admission of evidence, basis for a search warrant, and duplicative indictments—could easily be addressed without a detailed recounting of the underlying assault. In their first drafts, however, many students spent several hundred words describing the assault in extensive detail, down to the lingering physical effects on the victim. In my feedback, I flagged those sections and left a comment that simply asked: *Why?* That is, why are you spending this much time on the incident? I emphasized that I was not instructing them to change the fact

section, but rather requesting that they consciously decide on the reasons behind it. Later, in class, the students pair up for peer feedback on the fact section; after the partner reads it, the author explains his or her choices, structure, etc., and together the pair discusses improvements.

When we come back together as a class, I suggest that they think of an attorney reading this opinion in the future. What words will he latch onto to supplement his spurious argument? What inferences will he draw from the lengthy discussion of the victim's injuries? Will he argue to a court that because the injuries to the victim in his case were not so severe, this opinion does not apply? Will he latch onto the short window between the assault and police arrival emphasized by your timeline as a distinguishing factor?

This recursive and deliberate (and somewhat cynical) examination of their fact sections is most important as a prelude to the students doing the same with their legal analysis. If I can cultivate in them that mindset of making deliberate choices based on a hypothetical lawyer mining their opinions for implications, policies, or warnings that were never intended, they can edit their legal analysis all the more precisely on their own.



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