

The old method of training was to have the trainee sit next to the trainer, who would go silently about the work. The trainee would silently guess whether each chick was a hen or a rooster and then observe what the trainer did. When the trainee — after a long apprenticeship — found that his or her guesses matched the trainer's guesses, the training was complete. Then the trainers made an amazing discovery — they could drastically improve the use of training time if the trainer talked to the trainee and described why which chick went into which pile.

As I recall, the speaker made an apt connection to old and new methods of law teaching, but I was already drawing my own analogies, to the teaching of legal writing. In the bad old days, students were shown good examples of legal writing and tried to guess how they could reach the same result. They had to figure out for themselves why the writing was “good,” imitating it in small ways and big, eptly and ineptly. There was no doctrine of legal writing to which they could refer when making decisions.

Legal writing professionals, like the chicken sexers, have begun to talk to the trainees. In the classroom, we hold up not baby chicks, but examples of good work and bad, so that we can point out the markers of good analysis and bad analysis. When we critique our papers, we continue the conversation with our comments.

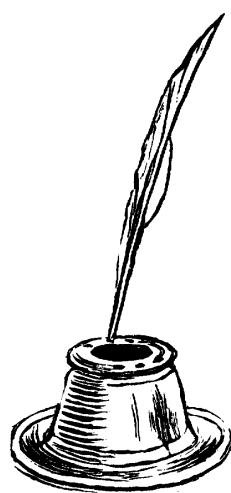
Like those training the chicken sexers, our job is to help our students to see. Our comments are meant to reveal what they have written, why it is good, where it is unclear, and how the

substance or the structure fails to support the writer's legal argument. When we give our students reasons for our comments, we help them not just with the document they are currently writing, but with every document they will write in the future.

Some of the best work in our field in the past twenty years has gone into identifying the markers of cogent legal writing. What is it that makes legal analysis complete? How can we label the elements needed so that we can recognize them, describe them, and talk about them? I can remember, in my own early days, being thrilled to discover the simple label “authority case.” Now, I have several different labels for those authority cases, including “illustrative authority” and “rule authority,” and authors of textbooks and scholarly articles keep coming up with more. This increased vocabulary gives us more ways to talk about what it is that lawyers do when they write, and thus helps us to control that writing and to improve it.

Which brings us back to the new SEC regulations. For too long, lawyers have claimed that the ability to write clearly is a gift that you have or you don't. These regulations do not apply to memos and briefs, and they don't address issues of legal analysis so near and dear to our hearts. But they are a start. They are proof that you can regulate writing. So from now on, those of us who incorporate plain language requirements into our classes can say that we teach a doctrinal course.

* Securities and Exchange Commission Press Release 98-10 (January 22, 1998).



Essays by Members of The Institute on Responding to Student Writing

MATCHING GOALS AND METHODOLOGIES

COMMENTING ON STUDENT WRITING

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At Western New England College School of Law, we have a five-person faculty in the legal research and writing program. The director of our program has been teaching legal writing for more than ten years and our newest faculty member has been teaching for about ten weeks. Given this disparity in our level of teaching experience, the discussions at our weekly meetings have gone beyond administrative

and curricular issues to include a great deal of reflection regarding our process of critiquing student work. Devoting this time to sharing concepts, philosophies, and strategy has benefits for each of us, and ultimately for our students. What follows are some ideas that we have discussed in our efforts to promote good legal writing.

A prerequisite to our discussions regarding how we comment on student work is to articulate the goals of each assignment and the overall purpose of the course. One important goal is to teach students how to edit their own work. Each of us, no matter how much experience we have, agree on the fundamental premise that the key to good legal writing is rewriting.

Those of us who have clerked for judges have seen firsthand how a well-written legal opinion does not leap directly from the judge's mind to the printed page, but rather goes through numerous drafts and revisions before the court issues the final decision. The challenge for us is how best to teach our students not just to be good writers, but good re-writers.

In order to gauge the student process of rewriting, we are requiring students to submit drafts of a number of assignments. We return these drafts with our written suggestions on how to improve the final product. This helps to fulfill one goal — the students must rewrite. In fact, we keep copies of the drafts, and may consider the improvement between the

draft(s) and the final product as part of the grade.

Nonetheless, we find that commenting on these drafts requires us to walk a fine line and balance the competing factors of teaching by doing and demonstrating, and teaching by explaining and instructing. An example of this balance is what we do when faced with that entity familiar to legal writing teachers everywhere — the awkwardly constructed and nearly incomprehensible sentence. Faced with a tortured, confusing sentence, we have all been tempted simply to rewrite in order to show the student that it is indeed possible to communicate a concept clearly and directly. Nevertheless, we hesitate. We fear that this method will simply enable the student to rely on us to do their rewriting instead of learning the important art of editing their own work.

On the other hand, simply circling a sentence and indicating that it needs reworking may provide little guidance to the student. The student probably already knew that the sentence was broken, and is looking to us to fix it.

There is little doubt that showing the student how to write the sentence in a direct, comprehensible way is a helpful teaching method. Because of the value of direct illustration, most of us do some direct rewriting of student work.

However, this cannot be the only method. We use different comments to achieve the goal of teaching our students to do their own rewriting. Sometimes, we will rewrite one or two sentences and then identify the other problem areas in the paper.

Hopefully, students can use the edited work illustratively to help them rewrite their own sentences. Other times, we will identify the grammatical errors in the sentence and give the student enough information or direction to correct the errors.

We also instruct students to consider our written critique in conjunction with the class discussions and assigned readings. We discuss the writing assignments in class and go through some of the most common errors. In addition to the

individual comments on each paper, we often distribute a list of the most common errors and problem areas with some general instructions. This has the impact of helping the students realize that they are not the only ones experiencing difficulties.

Another tool that we use to supplement our written comments is to distribute sample paragraphs that we write ourselves. Alternatively, we collect sample student written papers from each section and put these on reserve in the library. By providing a variety of short samples, students are able to compare their own work to something that may be more effectively organized and presented. By including a variety, we are enforcing the notion that there is not just one correct way to construct a good piece of writing.

Comment or grading sheets also provide a helpful way to structure comments. We discuss the content of the evaluation sheet and share samples with each other. Some of the sheets are very detailed, while others include topic headings with more room for narrative comments. These comment sheets are attached at the end of each paper and supplement comments throughout the text. These sheets ensure that we are commenting on each component of the writing, substance, form, and mechanics.

Furthermore, positive presentation of the comments, together with enduring optimism, are important considerations. We realize that students may become resistant, frustrated, and, proprietary if they perceive our comments as too critical or as an attack. Therefore, we remain sensitive to the different skill levels and backgrounds of our students, especially in light of the potentially demoralizing impact of first-year law school. Proper phrasing of each comment is essential; the glass is half full. We are here, after all, to help our students learn to understand the process of becoming better writers, not to alienate them from the process. We try to convey to our students that lawyering does not have to be an isolating profession, that we are here as a resource. We try to share information generously.

In any event, our primary goal is to teach the students to look at their own writing more critically. As the year progresses, it is always satisfying to see certain students fix their own mistakes and improve the quality of their work before they submit it. This permits us to use our favorite comments — those that tell the student they have done excellent work.

WRITTEN FEEDBACK ON STUDENT WRITING

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Giving effective, individualized feedback on writing is a difficult art, especially when giving it to first-year students. There is no difficulty finding things to comment upon. On the contrary, the problem is selecting which of many possibilities are most important. Over the years I have found the following guidelines useful.

1. Keep in mind the psychological needs of the students. In my experience, most students' egos are heavily invested in their writing and most students think they write well. Many of the tips that follow provide techniques for addressing the psychological responses of the students to written comments.

2. Emphasize that legal writing is different from whatever writing they have done before — they are writing to different audiences for different purposes. I balance this focus on differences with the idea that it is not as much a matter of throwing out what they brought with them as it is adapting to new requirements. An example of a written comment which is sensitive to these concerns would be, "In legal discourse we assume a change of word carries a change in meaning, so use the same word unless you intend such a change. I know that you may have been taught something different in your undergraduate major."

3. Emphasize something that was done well. This technique helps address the sense of some students that a critique of the writing is an attack on the person. I try to find something for which a