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## **Tough Love: The Law School that Required its Students to Learn Good Grammar**

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## TOUGH LOVE: THE LAW SCHOOL THAT REQUIRED ITS STUDENTS TO LEARN GOOD GRAMMAR

*Ann L. Nowak*\*

### INTRODUCTION

Law professors across the country frequently complain that their students lack basic writing skills—grammar, punctuation, capitalization, and syntax.<sup>1</sup> This deficiency may come as a surprise to anyone who does not teach in a law school. How can students who are smart enough to gain admission to law school fail to have mastered the basic building blocks of written communication?

Many of us began our law school teaching jobs with no knowledge that this problem existed, let alone how pervasive it was.<sup>2</sup> One veteran law professor aptly described the moment of realization this way:

You are a newly hired legal writing instructor . . . .

. . . .

The semester begins and you receive the first writing assignment from your students. It's a simple two-paragraph draft that required the use of analogical rea-

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<sup>1</sup> See LWIPROF-L, Listserv Archives, <https://listserv.iupui.edu> (last visited Apr. 24, 2012). LWIPROF-L is a discussion forum open only to professional teachers of legal writing. See *id.* Throughout the year on this listserv, law professors share humorous and egregious examples from their students' papers and exams. See *id.*

<sup>2</sup> *Id.* I was one of those professors. Others have discussed their experiences at national and regional conferences of legal writing professors and on the LWIPROF-L listserv; see *id.*

soning.

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[M]uch to your surprise, the deficiencies in understanding what constitutes an effective analogy were dwarfed by the glaring and horrendous number of basic writing errors that appeared in all too many of the papers. These students, you suddenly realize, don't know how to write!<sup>3</sup>

Some legal writing professors, like the author of the above quote, have tried innovative and creative methods of incorporating remedial writing instruction into the legal writing classroom.<sup>4</sup> These techniques, although helpful, are limited in scope due to the time constraint of the legal writing syllabus. Additionally, not all professors incorporate these techniques into their curricula. Thus, as productive and enjoyable as these classroom games are to the limited number of students involved, the use of these games is akin to placing Band-Aids on a hemorrhage.

In theory, remedial writing should not need to be part of a law school curriculum. But if our students have not learned these skills in middle school, high school, or college, who will teach these necessary skills to our law students if we do not? Do we, as educators of the future lawyers of America, have an obligation to the future clients of America—some of whom might be our friends, our family members, or even ourselves? Also, what is the point of trying to teach them how to write cogent legal analysis when they lack the rudimentary building blocks from which to craft their analysis? This is, as one law professor concluded, like “building a brick house upon a straw foundation.”<sup>5</sup>

This issue should be of particular concern to legal educators because much of what law school graduates do involves writing. Lawyers draft many different types of documents including contracts, motions, pleadings, briefs, advisory letters to clients, legislation, and

<sup>3</sup> Edward H. Telfeyan, *The “Grammar Bee” – One Way to Take the Pain Out of Teaching the Mechanics of Writing*, 17 PERSP.: TEACHING LEGAL RES. & WRITING 25 (2008), available at <http://store.westlaw.com/pdf/perspec/2008-Fall/2008-Fall-5.pdf>.

<sup>4</sup> *Id.* I created a classroom game called “Cash for Commas,” in which law students learn grammar and punctuation skills in a game-show format.

<sup>5</sup> Matthew J. Arnold, *The Lack of Basic Writing Skills and Its Impact on the Legal Profession*, 24 CAP. U. L. REV. 227, 228 (1995).

judicial decisions. If these documents are not artfully drafted and, therefore, are ambiguous because of deficiencies in basic writing skills, clients can suffer and litigation can ensue. Thus, good lawyering depends upon good writing.<sup>6</sup>

Occasionally, dire consequences can result from a lawyer's lack of basic writing skills. State courts have cited poor grammar as one of the grounds for suspending and sanctioning lawyers.<sup>7</sup> Courts also have reprimanded lawyers publicly for creating documents with numerous misspellings.<sup>8</sup> Worse than public humiliation, however, is the costly consequence that some punctuation errors can cause. Misplaced commas have launched lengthy, multi-million-dollar lawsuits in which the parties argued over the intended meaning of language in legal documents.<sup>9</sup>

Given the importance of basic writing skills in the practice of law, it seems prudent that law schools should acknowledge the pervasiveness of their students' writing deficiencies and attempt to remediate the problem on an institutional level rather than on a catch-as-catch-can basis by individual legal writing professors.

In March 2010, Touro Law Center, following its reputation as an educational innovator, did just that. At the request of the director of the law school's Writing Center, the faculty voted to adopt an innovative program designed to ensure that all graduates would possess a minimum level of basic writing skills.<sup>10</sup> Under this program, which was implemented in August 2011, all incoming students are required to pass a basic writing skills test as a condition of graduation. The Writing Center administers the test to all first-year students during

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<sup>6</sup> *Id.* at 230.

<sup>7</sup> JUDITH D. FISCHER, *PLEASING THE COURT: WRITING ETHICAL AND EFFECTIVE BRIEFS* 33-34 (2005).

<sup>8</sup> *Id.* at 34-35.

<sup>9</sup> Grant Robertson, *Comma Quirk Irks Rogers*, *THE GLOBE AND MAIL*, Aug. 6, 2006, <http://www.theglobeandmail.com/report-on-business/comma-quirk-irks-rogers/article838561/> (describing how a Canadian company waged an 18-month court battle to avoid paying an estimated \$2.13-million in additional fees caused by "the [mis]placement of a comma in a contract"). See also Kevin Grover, *Indian Country Today*, *Oneida, N.Y., Kevin Gover Column*, *KNIGHT RIDDER TRIBUNE BUS. NEWS*, Mar. 15, 2002, at 1, available at ProQuest, File No. 110580010 (describing how a misplaced comma in legislation caused the federal courts to shut down the Tigua Indians' casino in Texas, resulting in economic devastation to the tribe).

<sup>10</sup> I was the director of the Writing Center who made the request because numerous students who needed help with basic writing skills were not seeking help voluntarily.

orientation. Those who do not pass are required to enroll in a semester-long Writing Skills Workshop. The Writing Center administers a retest at the end of the semester. Students who do not pass the retest are required to repeat the Writing Skills Workshop and attend weekly tutorials to practice each week's lesson with a member of the school's writing center. The students then retake the test at the end of the semester.

In August 2010, prior to beginning the program, Touro's Writing Center administered a different type of diagnostic writing skills test—not for placement but merely to determine the level of writing skills of that year's incoming students. The results of this test confirmed the anecdotal experience of faculty members—that many law students are extremely deficient in basic writing skills. Part I of this article discusses the results of that test and the reasons why the school changed the format of the test for the subsequent year. Part II of this article discusses the semester-long beta test of the online component of the school's required Writing Skills Workshop, which used discussions about professionalism and choice-making as the platform for learning basic writing skills.<sup>11</sup> Part III of this article discusses the implementation of the full program in August 2011, how and why it differed from the beta test, and the outcome that surprised both students and faculty. Part IV of this article discusses what the law school administrators learned from the experience with this innovative program and what the school will be carrying forward into the future.

## **I. RESULTS OF THE DIAGNOSTIC WRITING SKILLS TEST**

Two hundred and thirty first-year law students took the writing skills test in August 2010. It consisted of three parts. Part A re-

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<sup>11</sup> Each week, I posted short lesson about basic sentence construction (commas, semicolons, subject-verb agreement, etc.) and also a short story about something that happened to me during my nineteen years of law practice before I joined the law faculty. In each story, a lawyer was forced to make difficult choices between doing what was right and doing what was easy. Often, there were no clear-cut ethical choices. Students were required to discuss in their online classroom how they would have handled the situation, what they would have been thinking, and what the "down side" would have been for the choices that they made. Students were not told what the lawyer did; nor were they told what a "correct" choice would have been.

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quired students to correct errors in grammar, punctuation, capitalization, and syntax in fifteen sentences. Part B required students to fill in the blanks in five sentences by choosing between two words. (Example: “principal” or “principle.”) Part C required students to write a persuasive essay. The results confirmed the faculty members’ findings from reading their students’ papers and exams.

**A. Results of Parts A and B**

- Sixty percent of students confused possessives with plurals.
- Sixty-two percent of students thought that they would one day put their name on letterhead “stationary.”
- Seventy-eight percent of students thought that “between you and I” was grammatically correct.
- Seventy-nine percent of students agreed that the test was too much to “bare.”
- Eighty-four percent of students chose the word “principle” as being synonymous with “main” or “primary.”
- Eighty-five percent of students failed to identify noun-pronoun disagreements. (Example: “a student . . . they.”)
- Ninety-four percent of students thought that professors “illicit” responses from their students.
- Ninety-seven percent of students could not identify and correct misuse of the passive voice.
- Ninety-seven percent of students could not identify misplaced modifiers and correct their location.

The students did not perform much better with capitalization:

- Eighty-two percent of students thought that it was acceptable

to write “Facebook” with a lowercase “f.” Additionally, sixty-three of 230 students thought that it was acceptable to write “Touro” with a lowercase “t,” and seventy-three of 230 students thought that it was acceptable to write “dean Raful” (the name of the school’s dean) with a lowercase “d.”

## **B. Results of Part C (Essay)**

### ***1. Essay Instructions***

The essay instructions read as follows:

There is an expression: “Life isn’t fair.” Do you agree or disagree? Take a position and argue it in a two-page persuasive essay. That is, persuade your reader that your position is correct and that the opposing position is incorrect. Give examples of why your position is correct and the other position is incorrect. These examples can be from your own life, the life of others, or from literature/films/history/current events. Remember that your reader may not have held any position on this subject prior to reading your essay or may have held a position in opposition to yours. Your job is to be persuasive enough to make your reader agree with you.

### ***2. Essay Answers***

The essay answers demonstrated that either a majority of the test-takers were not able to follow instructions or they could not distinguish between an expository essay and a persuasive one. Not only were most of the essays expository, but they also exhibited circular logic that lacked depth of reasoning. That is, the test-takers wrote something akin to, “Life isn’t fair because many unfair things happen to many people and, although fair things also happen to many people, the unfair things make life unfair.” Or, alternatively, “Life is fair because life is what we make of it, and, for this reason, life is fair.”

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On a positive note, there were four excellent essays and almost two dozen more that were quite good. Additionally, some students told compelling personal stories to support points of view. Those essays, although sometimes deficient in basic writing skills, showed that the students understood the art of persuasion. This was heartening and would be helpful to their success as lawyers.

## **II. THE BETA TEST**

The following describes the author's experience creating and running the beta test of the writing skills workshop<sup>12</sup>:

### **A. Development of the Online Workshop**

In order to reduce the time constraints caused by an additional class-attendance requirement, I decided to teach a large part of the writing skills workshop online. I considered teaching the entire workshop online but believed that an in-person component was necessary to personalize the learning/teaching experience.<sup>13</sup>

There are no online classes at Touro Law Center, so I did not have an in-house model to follow. For this reason, and because the program would not begin until August 2011, I decided to beta test the online portion of the workshop during the Spring 2011 semester. This, however, posed a logistical difficulty. I needed to recruit twenty first-year students as volunteers for the beta test. Students were in the middle of finals, and I needed to devise a quick way to attract their attention and secure their pledge to participate.

I did this by offering them something that I believed most first-year law students wanted: a good law-related credential to add to their resumes. I chose sixty students on the basis of their performance on the diagnostic test earlier that year and invited them by email to become members of the "Research and Development Team

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<sup>12</sup> I believe this program to be innovative based upon my inquiries among participants in the LWIPROF-L listserv discussions.

<sup>13</sup> Before joining the Touro faculty, I taught online writing classes at Axia College of the University of Phoenix. Through this experience, I realized that weekly face-to-face interactions with students are beneficial to help ascertain that students are not using surrogates to participate in the class.



for the Beta Test of Touro's Innovative Online Writing Workshop." I said that I would accept the first twenty students who agreed to participate, and I told them that if they participated in at least ninety percent of the online class assignments and discussions, they could list the team membership on their resumes. Within forty-eight hours, I had twenty acceptances (and a waiting list).

Stephanie Juliano—the Assistant Director of the Writing Center—and I met with the students for an initial one-hour session in the school, during which we explained the beta test and administered a twenty-question multiple choice exam. We administered a similar exam during a one-hour wrap up session in the school at the end of the semester. In between, we conducted all classes online and used written class discussions as the vehicle for students to practice and demonstrate their mastery of the class lessons.

I used a Blackboard platform for the classes, which I obtained for free through LexisNexis.<sup>14</sup> This is similar to what I used at the University of Phoenix when I taught writing online.

What made Touro's workshop innovative was that I used discussions about professionalism and responsible choice-making as a vehicle for teaching basic writing skills. I chose professionalism and responsible choice-making as topics after discussions with practicing lawyers about what they wished they had learned in law school.

Each Sunday, I posted two things in the online classroom. The first was a short story about something that happened to me during my nineteen years of law practice before I joined the Touro faculty. The second was a short lesson about basic sentence construction (commas, semicolons, subject-verb agreement, etc.). In each story, the lawyer was forced to make difficult choices between doing what was right and doing what was easy. (The latter, I told the students, was often financially more productive.) I explained that sometimes it was hard to know what was right and that these situations did not always involve clear-cut ethical dilemmas. In the online workshop, the students were required to discuss how they would have handled the situation if they had been the lawyer, what they would have been thinking, and what the "down side" would have been for the choice(s) that they made. I did not tell the students either the option that I

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<sup>14</sup> I chose the Blackboard platform because that was the platform on which I taught persuasive writing and research writing classes at Axia College of the University of Phoenix.

chose in the actual scenario or whether there was a correct option.

I required the students to post responses of at least 150 words in the online classroom. I also required each student to post a 120-word reply to each of two classmates' responses. Students were not required to either agree or disagree with their colleagues. The purpose of the replies was to generate in-depth thought and additional discussion.

Further, I required the students to incorporate the week's writing lesson into each of their posts. For example, one week's lesson was about different methods of using commas and required students to use commas in four specific ways in each post. If a student made a mistake with the writing skills, either Stephanie Juliano or I wrote a private email to the student to offer more help. We also occasionally jumped into the class discussion to facilitate it—usually by asking questions designed to make the students think more deeply about how they might handle the situation and why.

At first the students were guarded in their responses. But, after two weeks, the students began to thrive in the online classroom. They were very respectful of each other's responses, even if they disagreed. The students also were very supportive of each other. It was clear that they enjoyed brainstorming about what they would have done in these professional situations. Not only were they learning basic writing skills from the lessons and practice, but they were learning from each other to think deeply about the ramifications of decision-making in professional practice. For me, the experience was both interesting and gratifying to watch, as the students built a learning community and grew not only as writers but as thinkers.

## **B. Theory and Scope of the Online Workshop**

The easiest way to understand the theory and scope of the workshop is to read the initial email that I sent to the participants before they began. This email explained the workshop's content, procedure, expectations, and rules, while also setting the tone for the beta test:

*Hi, Everyone,*

*Here are the important details about what we'll be doing:*

*You'll be logging onto LexisNexis. Look for the web course called "Online Writing Workshop." I will be granting access to all of you, so this course should be displayed by late Sunday afternoon. If it isn't, email me right away.*

*This course will be the vehicle for us to hold our online class discussions. You will be posting your responses within the online course. By late Sunday afternoon, I will have posted all of the instructions on the course page. The technique of participating in online class discussion isn't hard to learn; don't worry. And if you have questions after reading the instructions, just email me. Remember that this is a beta test, so I need to know if any of this is confusing or if it can be improved (and in what ways).*

*We'll be together online for 12 weeks of the 14-week semester. We'll meet again for a 50-minute session in school the week after our last online week.*

*As I discussed with you, I will be posting two things at the beginning of every week that we're online: a brief story from my years of law practice and a brief lesson about a writing skill. The stories mostly will be about either an ethical dilemma or about dealing with bad behavior by a lawyer, a judge, or a client. All will be true stories that happened to me. The writing lessons will include punctuation, grammar, noun-pronoun agreement, misplaced modifiers, capitalization, sentence structure, proofreading, and editing.*

*You'll be asked to read my brief story and write at least 150 words in response. (Please do not write more than 250 words.) I'll suggest some possible areas of discussion. For example, I might suggest that you discuss how you would feel if this situation happened to you and how you might try to deal with it. You might want to discuss the pros and cons of strategies or tell us about a situation that happened to you in your life where you had to deal with similar kinds of bad behavior. How did you cope or not cope? What do you wish you had*

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*done? These are just some examples of the kinds of responses that you can make to my stories. The goal in all of this is to get you to react and to weigh options.*

*To try to generate discussions, Stephanie Juliano (my assistant director) and I will jump in to post some food-for-thought questions after some of your posts. Feel free to use our questions as jumping off points for your responses to your colleague's posts. You'll have to post at least two responses each week. And each response must be at least 120 words. (Please do not write responses longer than 220 words.) Please feel free to post more than two responses, but you don't have to. I would love it if you enjoyed our discussions so much that you participated more than the minimum. If you do, you'll get more writing experience and develop stronger writing skills faster.*

*As I discussed in our session on Tuesday, your initial post and all of your responsive posts must include at least one use of that week's writing lesson. Each week, I'll explain in detail what you need to do to incorporate the writing lesson into the posts.*

*I'll post each week's materials by Sunday at 5 PM. You'll have until Tuesday at midnight to post your initial discussion. You'll have until 3 PM on Friday to post at least two responses to other people's posts. You may post your responses before you post your initial discussion. But please try to get your initial discussion postings done as soon as possible so that your team members will have ample time to respond. If you all leave your discussion postings until the last minute, this will prevent everyone else from posting responses right away. Then we'll all be scrambling to make all of our responses at the last minute when we also have school work, job obligations, family obligations, etc. So please be considerate of your teammates and try to post as early as you can.*

*As I discussed at our session on Tuesday, you can put team membership on your resume if you don't miss any more than one initial response (i.e. the discussion post) and two follow-up responses during our twelve weeks online. This is non-negotiable. There are no exceptions. Please note that late postings count as missed postings. A late posting is any posting that is late, even if it is only one minute*

*late, even if the power goes out, even if the server goes down, even if the computer crashes, even if the cat jumps up on the table and knocks over the mug and it spills coffee all over the keyboard. (And, yes, all of these things happened when I was teaching writing online at the University of Phoenix.) So please try to get your required postings done early. (If too many missed postings cause you to become disqualified from listing team membership on your resume, you may still participate as a team member and reap the benefits of strengthening your writing.)*

*Although I am not setting a maximum number of posts for each person, please try to be considerate and not dominate any discussion. If you do, I'll send you a gentle reminder about the need for balance in our online discussions. I'm not saying that you shouldn't take active roles in any discussion. But please allow others to jump in, too.*

*Additionally, please try to be supportive and sensitive in your responses to your teammates. I reserve the right to remove any post that is insensitive or unprofessional. Please refrain from "calling out" teammates whom you think aren't playing by the rules or who aren't getting the writing skills right. You can always send a private email to me if you have concerns. I will send private emails to any team member(s) who need guidance in any aspect of this joint venture.*

*Please remember that because this is a beta test, I am looking for your input. If you have any ideas about how we can improve the process, or if there are parts of it that aren't working for you, please send me an email.*

*I'll be asking for your evaluation in the end. I'll also be giving you another 20-question multiple-choice test to measure your skill level when we're done. The purpose of the test is not to evaluate you individually. The purpose is to measure your progress as a group.*

*I know that this is a lot of information to digest, but please don't worry about it. Just come along for the ride. The process won't be painful. And I'm hoping that we'll all have a good time while learning.*

*And finally, please remember that all postings have to be written in*

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*business English. That means that you have to try your best to write in whole sentences with appropriate capitalization and punctuation. I don't want to read anything that looks like texting lingo. (altho i like riting like ths it isnt helpfl forimprovg mi wrtng skls.)*

*Thanks, everyone. Feel free to email me with questions and/or concerns. Otherwise, look for details on our LexisNexis course page ("Online Writing Workshop") beginning on Sunday. The course probably won't be visible to you until mid-to-late afternoon.*

*Prof. Nowak*

### C. Content of the Online Workshop

Lessons in the online workshop focused on the necessary components of basic writing—grammar, punctuation, capitalization, and syntax. My explanations generally were unconventional and phrased in a friendly and easily-accessible style that was designed to engage the students rather than bore them.<sup>15</sup> The following is an example of one of my lessons in the beta test:

*There are two extremely useful things to know about semicolons:*

*(1) If you don't know how to use them properly, you can avoid using them for the rest of your life and nothing bad will happen to you. (Just rewrite your sentences to avoid having to use any semicolons.)*

*(2) If you learn how to use them properly, you can drop them into sentences in order to shake up the sentence rhythms and keep the reader from getting bored. (Have you ever put your car into cruise control on a highway, then "zoned out" and missed your exit? Don't let your*

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<sup>15</sup> My style grew out of my experience teaching online at Axia College of the University of Phoenix, where we were encouraged to teach in a friendly and accessible manner. Although I embraced the informality in my beta test classroom, I drew the line at the Axia College model in which we were encouraged to use emoticons. The school provided us with an extensive collection of cute little smiley or grimacing faces from which to choose, including one with sunglasses. My personal favorite was a smiley face with a waving hand that moved.

*readers apply cruise control to their journey through your writing. Use an occasional well-placed semicolon to get their attention.)*

*Many lawyers have confessed to me that they don't know how to use semicolons properly. I suspect that this is because no one ever distilled the semicolon rules into two simple principles.*

*Here they are:*

*PRINCIPLE #1: Use semicolons like a coupling for two garden hoses.*

*Imagine two garden hoses. You can link them into one by fastening them with a coupling. A semicolon is a coupling for sentences. Use it to link two complete sentences. Do not use it to link a sentence with anything that is not a complete sentence. That is, don't use a semicolon to link a sentence with anything except another sentence. The test for this is whether the things on either side of the semicolon can stand alone as sentences if you separate them and put a period after the first thing, then add a capital letter to the first word of the second thing.*

*Here are some examples:*

*Correct: All students in this workshop are Touro students; however, not all Touro students are in this workshop. (When you separate the thing on each side of the semicolon, you get two complete sentences. The first is: "All students in this workshop are Touro students." The second is: "Not all Touro students are in this workshop.")*

*Incorrect: All students in this workshop are Touro students; not all Touro students. (When you separate the thing on each side of the semicolon, you get only complete sentence: "All students in this workshop are Touro students." The words on the other side of the semicolon ("Not all Touro students") aren't a complete sentence. Therefore, this sentence should not contain a semicolon.*

*You're probably thinking, "Okay, so I understand this, but when would I want to link two sentences? How will I know when I should*

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*link two sentences?” There is no right or wrong answer here. But if the sentences are related in meaning, and if you want to draw attention to the relation in meaning or you want to draw attention to the second sentence, then link them with a semicolon. The reason for this has to do with rhythms. If you were playing a drum and you just kept playing the same beat over and over again, a listener would get bored. But if you varied the drum beat from time to time, your listener probably wouldn’t get bored. The same is true for writing. Keep your reader interested by varying the sentence rhythms. A semicolon is one way of doing this. But don’t use too many on each page! If you do, you’ll defeat the impact of a well-placed semicolon.*

*PRINCIPLE #2: Use semicolons to avoid confusion in lists where items contain commas.*

*If I don’t use semicolons, a list like this would be confusing:  
Bring the following things to class: a yellow or orange highlighter, pen, black, green, or blue ink only, blank sheet of paper, 8.5 x 11 inches, and a pencil. (Incorrect punctuation.)*

*In order to avoid confusion with all of the commas, stick a semicolon in between each main item:  
Bring the following things to class: a yellow or orange highlighter; a pen, black, green, or blue ink only; blank sheet of paper, 8.5 x 11 inches; and a pencil. (Correct punctuation.)*

*And that’s it, folks. There isn’t anything else that you need to know about semicolons. Now turn to our “Discussion” page and use at least one semicolon in your initial discussion. You may, of course, use more than one. If you use too many, either Stephanie or I will let you know by email. Also use at least one semicolon in each of your responses to your teammates’ posts.*

#### **D. Stories that Accompanied the Lessons**

As an example of the stories that accompanied the lessons, the following was the story that accompanied the semicolon lesson:



*The Lying Lawyer: A True Story About Misrepresentation:*

*When I was a new lawyer, about 22 years ago, I discharged (fired) a client because he failed to show up for a hearing on a civil matter and because he failed to pay me for a large part of my work. He then hired another local lawyer to handle the appeal. That lawyer, who was also new to the practice of law, called me and asked for details about the case. I was cordial and helpful. I even suggested that he ask the client to pay a retainer up front to cover the first few hours of the legal work. (This was based upon my experience where I didn't ask for a big enough retainer and then didn't get paid when I sent follow-up bills.) The lawyer cordially thanked me for my help, and then wrote an affidavit to the court in which he lied about what I'd told him concerning the case. He lied in order to make his client's position stronger, but the lie made me look inept and unprofessional.*

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*Please write at least 150 words about any or all of the following:*

*How would you have handled this situation? Keep in mind that you would not want to prejudice the client's case, nor would you want to disclose any confidential information. (A client is entitled to have information kept confidential if it was told to you in your capacity as the client's lawyer, even if you and the client later severed ties.)*

*How would you have felt if you had been in my position? What, if anything, would you have done to protect your reputation as a lawyer who was neither inept nor unprofessional?*

*Have you ever tried to help anyone, only to have that person betray you? If so, please tell us what happened and what you learned from the situation. You may also talk about a situation where someone you know tried to help someone, only to be betrayed by that person.*

*Would you have called the lawyer who wrote the lies? If so, what would you have said or asked.*

*Please post your discussions (at least 150 words) by Tuesday at midnight. Don't forget to use at least one semicolon somewhere.*

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*Please post at least two responses (at least 120 words each) to any discussion of a teammate by Friday at 3 PM. Use at least one semicolon in each response.*

*And, finally, if you have any questions or are totally confused, email me at [anowak@tourolaw.edu](mailto:anowak@tourolaw.edu)!*

*Prof. Nowak*

The following are synopses of three other stories that the students discussed in conjunction with writing lessons during the beta test:

(a) A client, who was a prominent and well-respected professional in a small town, did not want to spend time driving home to obtain his wife's signature on a contract to sell their house. As a result, he said that his wife was waiting in the car outside the lawyer's office, that she did not feel well, and that he would bring her the contract to sign in the car. The client winked knowingly at the lawyer as he said this. The lawyer could see through the window of the first-floor office that no one was in the car. The lawyer knew that the man's wife most likely would have signed the document. The lawyer also knew that the client was impatient and sometimes difficult, and the lawyer suspected that the client would not have hesitated to switch lawyers if he were annoyed. Should the lawyer have looked the other way, or should the lawyer have confronted the client and risked losing a considerable amount of business at a time when the lawyer was new to the practice of law and needed the income to pay the office rent, a home mortgage, a car payment, and a law school loan?

(b) A client paid his lawyer two thousand dollars to prepare all the necessary paperwork to file a personal bankruptcy petition. As the client was signing the large stack of documents that the lawyer had prepared, the lawyer noticed that the client was wearing a gold Rolex watch. The lawyer told the client that he might have to surrender the watch to the bankruptcy trustee or, instead, pay a sum of money that was equal to the value of the watch.<sup>16</sup> The client, who did

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<sup>16</sup> This was prior to a change in the bankruptcy laws to include a new exemption that would most likely have allowed the client to keep his Rolex. 11 U.S.C. § 522(d)(4) (2006 &

not want to risk losing the expensive watch in the bankruptcy smiled and said that the watch could become lost in the parking lot. When the lawyer said that she could not be a party to a bankruptcy fraud, the client asked her to return his money. The lawyer had earned it by preparing the paperwork and did not want to have to return it. What if the lawyer were a new practitioner who had already spent the money on rent and was not able to return it?

(c) The decision-making exercises were not restricted to dilemmas involving judges, lawyers, and clients. During one week late in the semester, a problem involved a law office receptionist who took off her heavy winter boots upon arrival and donned bedroom slippers – complete with a large stuffed bunny head on the top of each slipper.<sup>17</sup> The students were asked to discuss what they would think, do, and say, as well as whether the receptionist's behavior might reflect an overall lack of good judgment that could adversely impact the lawyer's practice in other ways.

#### **E. Outcome of the Beta Test**

The program proved to be popular among the students. Seventeen of the initial twenty students worked hard enough and completed enough of the program to earn the right to list "beta test team" membership on their resumes. All students but one improved on the exit-test, and many improved significantly. The Writing Center was heartened by the outcome of the beta test and decided to incorporate most of the online material in the next semester's workshop.

### **III. IMPLEMENTATION OF THE FULL PROGRAM**

#### **A. The Revised Writing Skills Test**

Implementation of the full program began in August 2011. The law school's Writing Center administered a revised version of the writing skills test to the incoming first-year law students. The

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Supp. IV 2010).

<sup>17</sup> This scenario occurred in my law firm.

new test did not contain any sentence-correction exercises, fill-in-the-blank exercises, or essays. Instead, it contained thirty multiple-choice questions designed to measure the same areas as the previous year's test. The Writing Center administrators decided to revise the format to expedite the grading process and to eliminate the "gray-area" inherent in grading essays.

Based upon the results of the previous year's test, the Writing Center administrators anticipated that no more than eighty students would need to be placed into the Writing Skills Workshop. The administrators had intended to set the passing score at twenty out of thirty and had assumed that the majority of the students would score higher than twenty. This assumption was erroneous.

Two hundred and sixty first-year students took the test. None scored higher than twenty. One student scored twenty. Two students scored eighteen. One hundred and eight students scored below ten.

The immediate problem with this outcome was that the Writing Skills Workshop had been designed for a maximum of eighty students. The number was not arbitrary; it was chosen so that the students could be divided into four online discussion groups of no more than twenty students each.<sup>18</sup> If the Writing Center set ten as the "passing" score, 108 students would have been required to attend the semester-long workshop. The Writing Center considered setting the passing score lower—at nine—so that the size of the workshop would be smaller. Only sixty-seven students scored eight or below. However, after considerable discussion, the Writing Center administrators decided to set the passing score at ten and allow 108 students into the workshop so that they all could get the help that they needed.

This decision, however, forced the administrators of the Writing Center to reassess the teaching method for their workshop. Stephanie Juliano was to be the sole instructor of the fourteen-week workshop. If she followed the beta test model, and limited the online sections to twenty students, she would have to teach six sections every week for a semester. This would be next to impossible—particularly in addition to teaching 108 students in one physical classroom for fifty minutes every week.<sup>19</sup>

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<sup>18</sup> I knew from my teaching experience at the University of Phoenix that online writing classes with more than twenty students were difficult to manage.

<sup>19</sup> The online sections had been designed as an adjunct to the in-school class.

### B. Revamping the Workshop

To accommodate 108 students, the Writing Center administrators decided to revamp the format of the workshop for just one semester, then reassess the format of the program after that.<sup>20</sup> For the Fall 2011 semester, the main teaching would take place during the fifty-minute session in a physical classroom. The online component would allow the 108 students to participate in extended class discussions and access readings, helpful web links, and other materials to review subjects that were covered in each week's class. Required course work consisted of these assigned readings, worksheets, one-page handwritten journals, and responses to discussion subjects that the instructor posted in the online classroom. The instructor utilized LexisNexis Blackboard for the site of the online classroom because of the Writing Center's success with that site during the workshop's beta test. One of the benefits of this technology was a statistics tracker that showed whether students were reading the required materials.<sup>21</sup>

The decision to eliminate the discussion-driven model of on-line teaching put greater pressure on the workshop instructor to create more worksheets and in-class mini-quizzes to reinforce the classroom lessons. She administered these frequently and then corrected and returned them to her students the next week. She also encouraged the students to meet with her individually to discuss their work; many students availed themselves of this opportunity.

The large size of the class did not deter the instructor from exhibiting creativity in her teaching model. She knew, from her experience working in Touro's Writing Center, that students frequently do not know how to use commas, semicolons, and colons correctly. For these areas, she distributed "hypotheticals"—legal problems similar to those used in law school exams—that contained punctuation mistakes. She asked her students to write an "answer" in the

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<sup>20</sup> During the Spring 2012 semester, the original format would be restored because the class would be taught to those students who did not pass the writing skills retest. The Writing Center contemplated that this number would be less than eighty students.

<sup>21</sup> I would be remiss if I did not publicly thank Natasha Dasani, Touro's LexisNexis representative, for her unfailing patience and exceptional customer service during the beta test as I was learning the quirks and capabilities of the Blackboard program.

IRAC format<sup>22</sup> using the appropriate punctuation rules. This exercise not only gave the students added practice in writing exam answers, but the experience also demonstrated whether each student understood the punctuation rules and how to apply them.<sup>23</sup>

Halfway through the semester, the instructor employed a game show format to boost morale in her classroom during a review class.<sup>24</sup> She incorporated the workshop's reading materials and worksheet exercises into Jeopardy questions. The fast-paced format worked well to show students that they had learned the material because they were answering questions correctly. The instructor reported that the students enjoyed the challenge and that the game became increasingly competitive as students reached Final Jeopardy.<sup>25</sup>

After the success of the Jeopardy review session, the instructor reinforced the students' learning by holding mini-reviews at the beginning of each class. She used a more traditional format of mini-quizzes comprised of five to fifteen questions each. To keep her class of approximately 100 students totally engaged, she employed a variety of interactive techniques rather than just giving the class the correct answers. Numerous students later told her that these quizzes and ancillary discussions were of great assistance in helping them to gauge how well they were learning the material. To further assist her students, the instructor posted the quizzes, answers, and the explanations in the LexisNexis Blackboard classroom after the live session.

The instructor also required the students to submit a one-page handwritten journal on any topic five times during the semester.<sup>26</sup> The purpose of this was to encourage students to embrace writing

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<sup>22</sup> The IRAC format is one of the standard formats that law students use to answer exam questions; the answer is structured as Issue-Rule-Analysis/Application-Conclusion.

<sup>23</sup> The answers from many students indicated that they did not understand the difference between an independent clause, a dependent clause, and a predicate because they were having trouble labeling the parts of speech. As a result, the instructor dedicated another two weeks to teaching comma use, incorporating lessons about parts of speech. This resulted in the students' greatly increased ability to use commas correctly.

<sup>24</sup> The large size of the class and the fact that the class was "remedial" contributed to some unhappiness among its participants, although the majority of the class appeared to be satisfied with the situation.

<sup>25</sup> See Telfeyan, *supra* note 3, at 26-27. Game challenges have proved useful in teaching basic writing skills. *Id.*

<sup>26</sup> The purpose of requiring the journal to be handwritten was twofold: (1) to slow down the writing process so that the students would think through their writing more carefully and (2) to prevent students from using surrogates to write their assignments.

without the danger of writer's block.<sup>27</sup> With the help of her teaching assistant, the instructor read and commented in detail on each of these journals. The instructor reported that the journal-writing exercise was not only helpful to her students, but it also enabled her to become better acquainted with her students.<sup>28</sup>

Although the large size of her class forced the instructor to temporarily abandon plans of teaching writing skills through extensive online class discussions, she was able to conduct some limited class discussions in Blackboard's virtual classroom. Rather than use the topics from the beta test, she experimented with topics that were familiar to first-year students.

These topics included: (a) a discussion of *Bosley v. Andrews*<sup>29</sup> and the effectiveness of the writing in the majority versus minority opinions, and (b) a discussion of whether poor writing on exams reflects a poor understanding of the law (using examples from actual exam answers). In an effort to help her students to think concisely and in a linear manner, she asked them to write an abstract of Justice Breyer's dissent from *Valle v. Florida*.<sup>30</sup>

### C. Outcome of the Retest

Upon completion of the fourteen-week workshop, the Writing Center administered the writing skills retest.<sup>31</sup> The one-hour retest was similar in format and content to the thirty-question multiple-choice test that the students took during orientation. As with the original test, students were required to use Scantron sheets, place

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<sup>27</sup> Students frequently report to the Writing Center that they encounter "writer's block" when attempting to write scholarly articles for school. The aim of the journal exercise was to increase students' comfort level with writing.

<sup>28</sup> With a class of approximately 100 students, this was invaluable. It also helped her to remember the names of all of her students so that she was able to greet each one by name in the hall.

<sup>29</sup> 142 A.2d 263 (Pa. 1958).

<sup>30</sup> 132 S. Ct. 1 (2011).

<sup>31</sup> Ninety-one of the original 108 students were eligible to sit for the retest. The remaining students had either left the law school or had failed to attend the minimum required number of classes to qualify them to sit for the retest. All matriculated first-year students who enrolled in the workshop but were not eligible to sit for the retest were required to enroll in the workshop the following semester.

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their names on the actual exams, and turn in both the answer sheets and the exams at the end of the session.<sup>32</sup>

The Writing Center administrators—Stephanie Juliano and I—graded the tests immediately after the exam. Previously, we had discussed the possible outcomes and decided that we would be happy with a seventy percent pass rate in their initial semester of the new program. We agreed that we would be thrilled with an eighty percent pass rate. As the Scantron answer sheets ran through the grading machine, sheet after sheet showed a passing grade. Much to our surprise and happiness, most of the test scores were at least twenty—and many were well above that. The Writing Center had set the passing score at only ten to make it consistent with the test that the students took before participating in the workshop. With the passing score set at ten on the retest, every student passed. But had the passing score been set at twenty—where we initially wanted to set it—an impressive eighty-five percent of the students would have passed. Only fourteen out of ninety-one students would have been required to re-take the workshop.<sup>33</sup>

The results were good news, but the best news was yet to come. After scanning the answer sheets, we looked through the actual exams and saw widespread evidence that students had not just guessed. Many students had marked up their exams to indicate the reasons for eliminating and selecting choices. This meant that the students had learned their lessons well and were able to apply those lessons in their analysis of the exam questions. Stephanie Juliano's hard work all semester had paid off.

#### IV. CONCLUSION

As with any pilot program, this one was a learning experience—not just for the students, but for the school's faculty and administration. Perhaps the most important revelation was that many students in the workshop felt stigmatized and demoralized by being included in a subgroup of the student body that was required to take a

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<sup>32</sup> We asked students to turn in the exams to ensure that none could be circulated among the student population in case we decided to reuse some of the questions in future years.

<sup>33</sup> That is, fourteen students out of ninety-one did not achieve scores of at least twenty, although most of those students came close.



“remedial” writing program. Additionally, some students who were not required to take the workshop expressed frustration and disappointment because they believed that they had been unfairly closed out of an opportunity to improve their writing skills.<sup>34</sup> Although it is generally not possible to make all students happy all of the time, the students’ feelings concerned the school’s administrators.

After learning that all but one of the first-year students scored lower than twenty out of thirty in the August 2011 exam, Dean Lawrence Raful suggested a solution: require all first-year students to spend a semester in the Writing Skills Workshop. As a result, the Writing Center is working with the law school’s administration to schedule the workshop as a requirement for all first-year students. The law school will continue to require that all students pass a writing skills test as a condition of graduation, and the passing score will be set at twenty.

Administering this program will require a great deal of energy and patience. The program is not a panacea, and it is a work in progress. We have no illusions that the required workshops will transform our students into brilliant writers, but we believe the program to be invaluable in elevating the level of basic writing skills in the student population.

In a perfect world, law schools would not have to offer remedial writing education to their students. But the world is imperfect; secondary schools and colleges apparently are not requiring students to display a mastery of basic writing skills as a condition of graduation.<sup>35</sup> This leaves law schools with the burden of teaching these skills if the administration and faculty care about producing graduates who can write cogent and unambiguous professional documents. For law schools, the first step toward recovery is easy: acknowledge the writing skills problem on an institutional level and take responsibility for fixing it. The Touro model is not the only solution, but it is a solution that seems to be working.

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<sup>34</sup> Several of these students told the Writing Center that they had merely been lucky at guessing and did not actually know the correct answers.

<sup>35</sup> This conclusion was drawn from the fact that many college students arrive at law school with gross deficiencies in basic writing skills. It is unlikely that these students acquired the skills during high school and/or college and then forgot them before starting law school.