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Students as (Re)Visionaries: Or, Revision, Revision, Revision

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STUDENTS AS (RE)VISIONARIES: OR, REVISION, REVISION, REVISION

*Susan M. Taylor*¹

I. INTRODUCTION

Well-written prose is a rare commodity in first-year legal writing classes. Many students have the impression that good legal writers sit down to a computer and type out their legal documents perfectly the first time. Nothing could be further from the truth. Most legal writers spend more time revising their work than it actually took to write it in the first place.

The light bulb goes on and, suddenly, it hits the student. His idea is fresh, innovative and a great premise for that first legal writing assignment. He cannot wait to get to the keyboard. He slaves over the first draft, but it is a willing bondage because this assignment is promising. Then, finally, the student is finished, just in time to hand it in. Yes, that is something that feels pretty good, because, as a writer (even as a novice writer), the student knows with hard work, good editing and multiple revisions, this piece will have a chance at earning that most coveted “A.” Then, the paper comes back with red blood pouring out of every paragraph. The student’s heart sinks.

What happened? One of three things: 1) the student ran out of time for revision, 2) the student was in denial that there was anything wrong with the writing in the first place, or 3) the student

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just did not know how to edit his own work. Perhaps the most difficult step in the drafting process is editing, especially editing one's own work. Even the best writers must revise many times before they have a "finished product." Generally, any writing project can be broken down into at least four stages: Planning, Drafting, Revising and Editing. This paper will focus on the latter two stages.

Self-editing and revision is a process most neophyte writers do not like. However, the professionals, particularly the ones in this talent-dense profession who consistently turn out smart, polished briefs, know it is the editing and revising that separate good legal writers from the mediocre writer wannabes. The tendency in writing is to either quit too soon or to read over the same mistake. Editing and revising are important stages in the writing process. Unfortunately, some legal professionals skip this stage altogether or give it only cursory attention. It is wise to remember that a lawyer is paid a substantial fee for legal writing and a client may long remember a misspelling or a grammatical mistake.

II. THE STUDENT AS MACRO EDITOR

Legal writers commit a wide gamut of mistakes ranging from simple misspellings to critical errors in logic and case analysis. When editing, the student must catch all these mistakes. A student should, first, check the broad picture, which is a process that involves looking at the flow of an argument or considering

whether a transaction will work. This is called “macro editing.” Here, the student will generally check for order, sense and coherence.

Before the student puts the final document in the professor’s hand or on the judge’s desk, a number of issues must be addressed. The first is the issue of tone. Tone is the expression of attitude through writing. For instance, a letter to a client can be too formal or too informal. A brief can be written with too much sarcasm. A memorandum of law can be written with too much levity. Emotions usually filter through to one’s writing.

In some legal writing, the tone is deliberately neutral, such as in an office memorandum or in a contract. In other forms of writing, such as court briefs, some emotion will be deliberately injected into the brief to persuade the court. The basic concern should always be the appropriateness of the tone. The tone usually reflects particular character and personality traits of the writer.² Some traits are appropriate in nearly all situations, traits like trustworthiness, knowledge, skill, experience, reliability and diligence. Tone is created primarily by content choices, attention to detail, word choices, placement choices and sentence formats. The content choices made by a writer and the attention paid to detail help to “establish many of the most important traits of the lawyer.”³ When tone is intentionally inserted, the document should be read and reread from the standpoint of the audience.

² LINDA EDWARDS, LEGAL WRITING AND ANALYSIS 145 (2003).

³ *Id.*

The writer should not assume the reader shares the same bias on the issue being presented.⁴

When writing, one must consider the audience. Legal writing instructors spend a great deal of time emphasizing to their students the importance of audience and purpose in writing.⁵ “Think of your readers,” they say. “Work at reaching them!” Attention to audience and purpose are two of the most important concepts taught in legal writing. Indeed, they are the touchstones of every piece of legal writing.⁶

Writers who remember their readers and their writing objectives are much more likely to use good judgment about the multitude of small and large decisions that go into creating an effective piece of writing. That is true for legal memoranda, briefs

⁴ MARY BETH BEAZLEY, A PRACTICAL GUIDE TO APPELLATE ADVOCACY 2-3 (2002).

⁵ Robert MacCrate, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development - an Educational Continuum*, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISS. BAR 1, 172-76 (discussing the importance of law students developing communication skills that include “tailoring the nature, form, or content of written . . . communication to suit the particular purpose of the communication . . . and the audience to which the communication is directed”) [hereinafter *MacCrate Report*]. In addition, most if not all the currently used legal writing textbooks discuss at length the importance of considering audience and purpose in legal writing.

⁶ The importance of audience and purpose has been stressed by virtually all rhetoricians from Aristotle to Kenneth Burke. EDWARD P.J. CORBETT, CLASSICAL RHETORIC FOR THE MODERN STUDENT (3d ed. 1990). MAXINE HAIRSTON, SUCCESSFUL WRITING: A RHETORIC FOR ADVANCED COMPOSITION, 45-51 (1st ed. 1981) (summarizing the position of many modern rhetoricians when she states that “if one had to pick out the piece of advice that recurs most often in books about practical writing in nonschool situations, it would be *remember your audience*”). Her discussion on purpose can best be summarized by three questions writers should ask themselves: Why am I writing? Why is my audience reading? What do they want from me? *Id.*

and opinion letters. It is equally true of the comments legal writing instructors write on students' papers. (Teacher comments will be discussed later in this article.)

After spending considerable time researching the law on the case, the student gains insight into that area of the law that the reader lacks. For instance, the judge may know little about the particular issue, so the writer needs to present enough background information to educate him. The writer needs to read all documents to determine whether a thorough background has been provided for the reader. The reader should be led through the steps of the writer's logic. The writer should never assume that the reader knows everything the writer wants to convey.

Another question concerns coherency. The conclusion in a legal memorandum should flow from the proof. In the brief, the argument should be coherently developed. It is always difficult to spot one's own errors in logic. Some common errors are:

- improper cause and effect
- wrong proof, right conclusion
- right proof, wrong conclusion
- absolute right and wrong
- insufficient sampling
- the personal attack

Coherency is also a concern in legal documents, especially in transaction documents. Every transaction document should be read to see if the deal will work. The transaction document engineers a relationship and the relationship must be workable. The writer needs to see the transaction as a series of events and make sure these events appear in a logical order. You must edit

transaction documents looking for ways a transaction might be misinterpreted and for any loopholes that the opposing side might spot. In checking for coherency, you must ensure that all the concepts are consistent. If there are related documents between the parties, they each must be checked against the others to be sure all are consistent.

Sometimes, in the time crunch everyone is under, a writer leaves out a critical point. When editing, one must ensure that all critical provisions have been included. A court presumes that omissions are intentional, so the writer who omits an important provision should make sure it was done intentionally.

Finally, in editing, one must make sure the document complies with all the laws and local court rules. For example, the most cogently drawn complaint will not be accepted by the clerk for filing if the complaint is typed on the wrong size paper. Also, a brilliantly crafted legal brief will not be accepted for filing if it is presented too late. Therefore, one must be familiar with all requirements affecting the legal document being drafted to make sure it satisfies all applicable legal requirements.

III. THE STUDENT AS MICRO EDITOR

Revising is writing and writing is revising; the two processes cannot be separated.⁷ Not only does the legal writer

⁷ Donald M. Murray, *Internal Revision: A Process of Discovery*, in RESEARCH ON COMPOSING: POINTS OF DEPARTURE 85, 87 (Lee Odell ed., 1978). Murray argues that writing is rewriting. He defines revision as “what the writer does

have to see the big picture, but he or she also has to check all the details of a drafted legal document. Tackling detail work is not fun, especially if the writer has already spent too much time drafting the document. There is a point in the drafting process when the writer simply cannot read the draft “one more time.” The following suggestions might help when the writer reaches that point.

One suggestion is to check the style. It is tough to look at one’s own document to see if the style is clear. But, there are several ways in which a writer can diagnose his own writing flaws, such as:⁸

- Circle all prepositions. Pick a page at random and circle all the prepositions. If there is more than one preposition for every four words, passive voice has been overused.
- Underline nominalized words. On the same page where all the prepositions were circled, all words ending in *-ance*, *-ity*, and *-ant* should be underlined. These are nominalized words. These nouns should be converted back into their original verb and adjective forms and the sentence should be rewritten without nominalized words.
- Circle all sentences with the verb “to be”. Each of these sentences should be rewritten without that verb. “To be” is an inert verb

after a draft is completed to understand and communicate what has begun to appear on the page.” *Id.*

⁸ This was taught to me by Professor Terry Phelps, Director of the Legal Writing Program at the University of Notre Dame Law School. As a first year legal writing adjunct, I attended workshops given by Professor Phelps, in which she stressed the technique of targeting specified things in a paper. By circling those things, the writer could see the errors and then revise.

and the fewer of these used, the better the document will read.

- Strike all unnecessary words. Look for windups, superfluous nouns and verbs, and unnecessary modifiers. Deleting words is one of the most difficult tasks for most writers.
- Count words in sentences and paragraphs. Experts disagree on the optimal length of paragraphs. Some advocate four to six sentences and some like seven sentences. Still others specify 75 to 125 words per paragraph. Actually counting the words in the sentences will help in determining whether the length is within reason.

Another micro editing technique is to check the spelling and grammar. Almost all law offices use sophisticated computer systems that have spell-check and grammar-check features. However, the writer should make sure to use this feature, but not depend upon it. Legal writers must also edit their work, checking for punctuation errors. Punctuation breaks up material for the reader. Without punctuation, reading is difficult.

Pronoun problems are another focus for editors. Personal pronouns include subjective case and objective case pronouns. Subjective case pronouns (I, he, she and they) are used when the pronoun is the subject of the sentence or clause. Objective case pronouns (me, him, her and them) are used when the pronoun is the object of a sentence or clause, or the object of a preposition. The correct choice between the objective and the subjective

personal pronoun can be made by mentally reciting the pronoun and verb together.⁹

As a legal writer, one must also check capitalization. In legal documents, there are some unique practices regarding capitalization. For instance, one must capitalize titles and headings of court documents, capitalize introductory words and phrases in legal documents and capitalize trade names and names of corporate and governmental entities. However, one should not capitalize words to make them more important.

It has been customary in legal drafting to use enumeration and tabulation as a means to express coordinate ideas.¹⁰ Careful enumeration eliminates equivocation problems and serves as a useful drafting tool. When enumeration is used, parallelism should always be maintained. The enumeration system must not be varied. Overuse of enumeration can inhibit readability, so the writer should limit enumeration to places where it enhances understanding. Tabulating simply means setting materials in an indented format such as columns or rows. Tabulating provides visual variety for the reader and often makes the material more readable. But, again, it should be used sparingly.

Finally, all legal writers must check details.¹¹ Some often-missed details include dates, ages and weights. Also, citations and quotations must be scrupulously checked, as well as definitions.

⁹ F. REED DICKERSON, FUNDAMENTALS OF LEGAL DRAFTING (1965).

¹⁰ *See generally* GERTRUDE BLOCK, EFFECTIVE LEGAL WRITING: A STYLE BOOK FOR LAW STUDENTS AND LAWYERS (3d ed. 1981).

¹¹ E.L. PIESSE, THE ELEMENTS OF DRAFTING 35 (5th ed. 1976).

Definitions are too often abused as a drafting device. The simplest use of definitions in a legal document is the abbreviated word or phrase indicating what the topic or subject will subsequently be called. This method is commonly used to refer to parties or real property after the legal description has been given. A frequent problem with definitions arises when the writer substitutes another word for the defined term. Adherence to the consistency doctrine obviates this problem.

Often there is little time to edit and revise due to deadlines. The easiest solution is to anticipate deadlines by beginning to write as early as possible. The more time the writer devotes to writing, the better job he can do when revising. The longer the writer works on a document, the harder it is to revise the final document. To change the routine, the writer might try the following:

- Set the piece aside after first drafting it and let it “cool” prior to editing.
- Read and hear your words.
- Have a good grammar resource book with you at all times during editing.
- Proofread for typos.
- An old proofreading trick is to read a piece backwards, one word at a time. This forces you to consider every word out of context, helping you to identify errors and choose more appropriate words. But, do not use the first word that comes to mind. Good diction makes for good writing.

Because writing is a recursive process that calls upon the writer to “see” many things at once, revision must serve more than

the last stage on an assembly line where the writer corrects errors.¹² Instead, revision, literally “re-vision,” is a process by which the writer becomes the reader with new eyes in order to see in his work what the audience will see.¹³

Revision, in a recursive model of the writing process, is a tool for discovery. The writer switches roles and becomes the reader to see the work from a different perspective. The novice writer must abandon any allegiance to the traditional model of the writing process, the “correcting errors” phase, because this does not adequately explain the complexities of the writing process. Writers need to reconceive the possibilities of their texts.¹⁴ All writers must attempt to craft their work with just the right combination of words, style, point of view, audience and facts. The old cliché “practice makes perfect” is a self-evident truth in the legal writing profession. The art of writing is really in the art of “rewriting.”

¹² See *infra* this section which emphasizes the dynamic role of revision in a recursive model of the writing process.

¹³ Nancy Sommers, *Revision Strategies of Student Writers and Experienced Adult Writers*, 31 C. COMPOSITION & COMMUN. 378 (1980). In her case study of college freshmen, in their first semester of composition, Sommers notes that inexperienced writers have a certain “blindness” when they write, which is the “inability to ‘see’ revision as a process: the inability to ‘re-view’ their work again, as it were, with different eyes.” *Id.* at 382.

¹⁴ Carol Berkenkotter, *Decisions and Revisions: The Planning Strategies of a Publishing Writer*, 34 C. COMPOSITION & COMMUN. 156, 162-163. In her study of composition theorist Donald M. Murray’s revision habits, Berkenkotter explained that Murray often “collapsed planning and revising into an activity that is best described as *re-conceiving*.” *Id.* at 162. She defines “re-conceiving” as scanning and re-scanning “one’s text from the perspective of an external reader and to continue re-drafting until all rhetorical, formal, and stylistic concerns have been resolved, or until the writer decides to let go of the text.” *Id.*

Revising one's work can be a traumatic experience. No one likes eliminating a quote, a strong paragraph or a case analysis that is dear to his heart. But, revision often casts the writer in the role of the mercenary: anything that does not advance the understanding of the case is a candidate for excision. This is an integral part of editing and revision. The writer must be able to stand outside his work and view it objectively. Without objectivity, revision cannot and will not work. It is a difficult skill to master.

Self-revision can be likened to judging a beauty contest that one's sister has entered. A brother loves his sister and in his eyes, she is beautiful, talented, and an accomplished contestant. But, in reality, is she really all those superlatives, or is she seen through the rose colored glasses of a loving brother? When rewriting one's own work, any affection for it must be put aside. Read and listen to it with the eyes and ears of a stranger. That brilliant passage may not be as thought provoking as previously thought. Also, the judges reading the work will not be biased in the client's favor.

Writers move back and forth through their work. This "recursive" model of the writing process suggests that writers constantly move back and forth to redo or repeat various composing activities as they progress toward the completed project.¹⁵ The idea behind recursion is that when writers move back and forth in their text, they tear down much of what was written and then re-build the text, making it stronger.

Revising cannot simply be a stage during which the writer “corrects errors.” Yet, the traditional writing (revising) concept has infected writers with exactly that concept. Many students have been taught that being asked to revise a text is an indication that they did not “get it right” on the first draft.¹⁵ This could be attributed to outdated writing textbooks and former teachers who have embedded this attitude in their students. Many students see their writing altogether too passively through the eyes of former teachers or their surrogates, the textbooks, and are bound to the rules which they have been taught.

For new writers, revision consists of a set of rules that are strictly applied in machine-like fashion, as if revision works like a computer’s spell-checker: replace passive voice with active voice, fix sentences that start with conjunctions, use a thesaurus to find the “right” word, and so on. Most students have been taught to revise until they decide that they have not violated any of the rules for revising. This assembly line view of revision as the final, “correcting” phase trivializes its importance and may cause inexperienced writers to equate revision with punishment. For inexperienced writers, the idea of revising conjures up memories of their youth when they learned to spell by writing all the words they spelled incorrectly on their spelling tests over and over again. I vividly remember this practice from my first grade teacher, Mrs.

¹⁵ Lester Faigley & Stephen Witte, *Analyzing Revision*, 32 C. COMPOSITION & COMMUN. 400, 401 (1981).

¹⁶ Larry A. Gentry, *What Research Says About Revision*, 8 CATESOL 96, 98 (Fall 1982).

Emma Gaither. This idea that revision is some sort of punishment for not getting it right the first time carries over into a writer's adult years. In fact, even as writers mature through their undergraduate careers and enter law school, many are unable to revise on their own and rarely move beyond treating revision as one last correcting stage. It becomes a tidying-activity aimed at eliminating surface errors.¹⁷

Re-seeing legal writing requires changes in attitude and a change in perspective. To revise by re-seeing is to embrace the act of writing as a recursive process during which the writer forms and re-forms his ideas to achieve a goal, such as answering a research question, persuading a judge or advising a client.¹⁸

By focusing on writers' overall goals and the rhetorical decisions they make to achieve those goals, re-seeing de-emphasizes the symbolic importance of making changes word-by-word and of blindly following obscure grammar rules. Specifically, new legal writers and, indeed, their writing instructors, must realize that they cannot and should not expect to "see" everything on the first draft. If a writer is not expected to get everything right on the first pass, then revision ceases to be punishment. Far from punishment, new legal writers will begin to view revision as a pleasurable activity and as second chance to explore their ideas and express them more clearly.¹⁹

¹⁷ See Faigley & Witte, *supra* note 15, at 407.

¹⁸ JILL J. RAMSFIELD, THE LAW AS ARCHITECTURE: BUILDING LEGAL DOCUMENTS 288 (2000) (listing some possible purposes for legal documents).

¹⁹ THOMAS COOLEY, THE NORTON GUIDE TO WRITING 88 (W.W. Norton & Co. 1992). Ann E. Berthoff provided this advice in a chapter on drafting and

The pleasure of revision often arises when one refines the intended message and even discovers that there is more to say, perhaps a new solution, a different path or a better presentation. If a writer's ideas are always open to criticism, then they are also open to invention. The revision process frequently generates new ideas or better ways to present existing ideas because writers revise with an eye toward organizing information for their audience. In addition, legal writing is so complex that no writer can be expected to "see" everything on the first draft. The concept of re-conceiving captures the notion that the revision process often leads to discovery. The revision process presents this opportunity for new legal writers to revisit and re-conceive their topics, theses, theories and meanings as they go along to shape an outcome or reach a goal.

A. Zero-Drafting

One way for new legal writers to incorporate the opportunity for discovery into their revising activities is to use the prewriting technique of zero-drafting to explore new possibilities when they arise.²⁰ Zero-drafting involves spending a short amount of time generating ideas on a particular subject in stream-of-consciousness mode, without trying to make the text perfect or

revising, "You need to get some writing down on paper and to keep it there long enough so that you can give yourself the treat of rewriting How can you know what you think until you hear what you say? [S]ee what you've written?" *Id.*

even all that good.²¹ New legal writers can use zero-drafting to explore one issue, one section or to write a rough draft. Zero-drafting can be done before writing, between drafts or to explore a new possibility, if only briefly, while revising a draft. Zero-drafting may be a great re-seeing technique for some new legal writers.

First, as Philip C. Kissam observed, zero-drafting “helps both the writer and the readers of these drafts to make new connections that will improve their thinking and writing about complex, difficult subjects.”²² Thus, the exercise helps writers to identify key issues or obstacles and begin to think about how best to solve them. Second, zero-drafting provides a supportive environment for writers to explore new possibilities because it allows them to “discover what he or she has to say about a topic” without investing a lot of time or energy in the project.²³ In sum, zero-drafting is one example of a technique that encourages writers to re-conceive the possibilities of their texts and to explore difficult issues without expending precious time or energy.²⁴

²⁰ Roland K. Huff, *Teaching Revision: A Model of the Drafting Process*, 45 C. ENG. 800, 803 (1983).

²¹ ELIZABETH FAJANS & MARY R. FALK, *SCHOLARLY WRITING FOR LAW STUDENTS* 48 (2d ed. 2000).

²² Phillip C. Kissam, *Thinking (By Writing) About Legal Writing*, 40 VAND. L. REV. 135, 168 (1987).

²³ See Huff, *supra* note 20, at 806.

²⁴ See Huff, *supra* note 20, at 803.

B. Peer Review

During my teaching career, in almost all of my legal writing classes, I have used a relatively simple process, peer review, designed to make writing a learning experience as well as a means of evaluating performance. Peer review is the editing process in which law students critique each other's written work.²⁵ It is often considered a "secondary" exercise that can be omitted from a first-year legal writing course.²⁶

I distribute to students a packet of information about a case. The case involves a fair amount of detail with the potential for numerous legal questions and disputes relevant to the course. The packet also contains numerous cases and pertinent statutes. I then teach the students how to write a legal document using the packet of information. I encourage students to study the packet of information, ponder what legal questions and problems might arise from the facts given and discuss these things in dyads or triads. The students then prepare the necessary legal document. Once the document is prepared, the students exchange papers and comment on each other's work.

²⁵ See Jo Anne Durako, *Peer Editing: It's Worth The Effort*, 7(2) PERSP. TEACHING LEGAL RES. & WRITING 73, 73 n.1 (1999) (defining "peer review" or "peer editing" as a "structured exercise in which law students critique the written work of fellow classmates by offering both positive and negative comments"); Lissa Griffin, *Teaching Upperclass Writing: Everything You Always Wanted to Know but Were Afraid to Ask*, 34 GONZ. L. REV. 45, 72 (1999) (defining "peer review" as "the process through which students review each other's work").

²⁶ See Durako, *supra* note 25, at 73.

In exchanging papers with other members of the class, students create and work through writing problems and, thereby, gain a better sense of legal writing. Many students find this focused and creative peer review one of the most valuable learning experiences of the semester and one that takes them far beyond what I can teach them about their writing.

Until the late 1960's and early 1970's, teachers and, consequently, students were commonly taught about the tools of the craft of writing — grammar, punctuation, spelling, usage and handwriting — but not about the craft itself. In *Balance the Basics: Let Them Write*, a 1980 Report to the Ford Foundation, Donald H. Graves offered the following arguments for the importance of writing as an effective learning tool:

- Writing contributes to intelligence by requiring analysis and synthesis of information.
- Writing develops initiative by requiring that the student supply everything him or herself.
- Writing develops courage by requiring that the student give up anonymity.
- Writing increases the student's personal knowledge and self-esteem.
- Writing encourages learning in many areas by employing auditory, visual and kinesthetic systems all at once.
- Writing contributes significantly to improvement in reading skills.²⁷

²⁷ Donald H. Graves, *Balance the Basics: Let Them Write* (Report to the Ford Foundation, New York, N.Y.), Feb. 1978, at 6-9, available at <http://www.fordfound.org/elibrary/documents/0123/normal/low/0123norm-low.pdf>.

Advantages of group collaboration in the writing process include the reduction of writing anxiety, overcoming some of the difficulties students encounter in “getting started,” emphasizing the importance of addressing a particular audience, focusing on “getting it right” through multiple revisions and drafts and establishing a norm of critical self-evaluation.

Students have been conditioned to receive only written comments and oral feedback from the professor. By introducing peer editors into the writing process and allowing students the chance to see how other students approach the same legal problem, the peer review experience can teach students writing, editing and cooperation skills. These are skills the student may not learn through the usual student-teacher editing cycle.

Using peer review in the first-semester (first-year) writing course has several advantages. First, peer review encourages cooperation between students, which is an effective learning method often absent from the first-year experience, but an essential part of legal practice. Second, through their roles as readers and editors, students learn to focus on the needs of their audience, a sensitivity that is essential for successful writing to the courts, other lawyers and clients.²⁸ Moreover, peer review reinforces students’ understanding of legal writing and analysis.²⁹

²⁸ Andrea W. Herrmann, *Teaching Writing with Peer Response Groups*, EDUCATION RESOURCE INFORMATION CENTER DIGESTS (ERIC), May 1989, at 2 (“Cooperative writing helps students discover audience”), at <http://www.eric.ed.gov>; see also Durako, *supra* note 25, at 74.

²⁹ David Dominguez, *Principle 2: Good Practice Encourages Cooperation Among Students*, 49 J. LEGAL EDUC. 386, 387, 387 n.5 (1999) (noting that peer

Peer review also enhances one's ability to transfer those skills from one writing project to another.³⁰ Peer review teaches students to respect the opinions of peers³¹ and think about how to analyze and evaluate a legal problem and communicate that analysis.³² Peer review can also give students confidence in their editing and writing skills that they may not otherwise gain from the teacher-student editing process.³³ Finally, peer review helps students learn to articulate criticism in a coherent and constructive manner, thoughtfully evaluate feedback from peers and selectively integrate that feedback into their own writing.³⁴

Peer review is a way to provide feedback efficiently. It is less individualized and detailed than individual written critiques and conferences, but far more individualized and effective than the classroom approach. It provides students with an opportunity to rewrite without requiring that the teacher read and comment on each paper.

activities "strengthen" students' grasp on the academic material); Gerald F. Hess, *Principle 3: Good Practice Encourages Active Learning*, 49 J. LEGAL EDUC. 401, 402 (1999) (indicating that active learning, of which peer review is a type, "helps students grasp, retain, and apply content"); Ulle Erika Lewes, *Peer Evaluation in a Writing Seminar*, ERIC DIGESTS, 1981, at 8 (suggesting "peer evaluation helps students internalize the requirements of competent writing").

³⁰ See Lewes, *supra* note 29, at 6 n.7.

³¹ David H. Lynch & Stevens Golen, *Peer Evaluation of Writing in Business Communication Classes*, 68 J. EDUC. BUS. 44, 47 (1992) (noting that peer review allows students to "gain respect for others' opinions"); see also Durako, *supra* note 25, at 74.

³² See MacCrate Report, *supra* note 5, at 25-30, 47-50.

³³ Ronald Barron, *What I Wish I Had Known about Peer Response Groups But I Didn't*, 80 ENG. J. 24, 34 (1981) (stating that peer response groups can "make students more confident and more independent writers").

³⁴ See Griffin, *supra* note 25, at 74 n.2.

A good peer review technique I have used is having students get into small groups of about four. Each group has detailed criteria to follow when critiquing another's paper. For instance, does the topic sentence present the narrow idea of the subsection? Or, does the paper state the correct rule, the one which will give us guidance on the issue in this subsection? Or, does the paper apply the precedent cases to our problem by comparing the facts of the two cases?

The students would read their topic sentences to the group and discuss them. As they do so, the teacher circulates around the room, listening to what the students have to say, coaching them and even interrupting if there is a concern. Each student would read his or her work to the others in the group and receive comments.

Providing feedback in this format has advantages over individualized written feedback that goes beyond saving time. First, the feedback is immediate. Second, because the format allows for a lot of exchange between professor and student, the professor can follow up with students who are having difficulty understanding an explanation. Third, because students applied the peer review criteria to four papers, one after the other, the criteria the professor uses in evaluating the legal analysis becomes familiar to the students. Fourth, students have the opportunity to see a variety of approaches to the problem and hear comments on them from each other and from the professor. After seeing some examples of good work, they gain a better idea of what is expected.

Commenting, like writing, should have a theme and a purpose.³⁵ The theory behind these comments is to help the student become a better writer. For example, with respect to first drafts, one could focus on the students' use of authority and case analysis. The purpose of the written comments is to encourage wholesale rewriting. The idea is that the students will start from scratch. For final drafts, one could focus on persuasiveness or sentence and paragraph structure.

It is far more effective for students to talk to other students about their papers, but to make written comments on their own papers. The prior readings serve as a primer task. A student is more likely to be critical of his or her own paper if that student has seen another paper with which to compare and contrast. As students read their own drafts, they should make comments consistent with the theme. This has many benefits to the student. One benefit is students' self-evaluative comments give the professor something to respond to in his or her comments. Another benefit is giving the students an ownership in the commenting process. This teaching technique helps to promote student interaction. Most important, however, is that the task explicitly reinforces self-criticism.

³⁵ Craig Hoffman, *Involving Students in the Commenting Process*, 15(2) THE SECOND DRAFT (Bulletin of the Legal Writing Institute), June 2001, at 7. Hoffman had "a great deal of success capitalizing on the prevailing interests of the day: the students [were] intensely curious about what other students [had] written; they want[ed] some notion of how they [were] doing relative to the rest of the class; and they [were] desperately eager to explain why they wrote the paper the way they did." *Id.* He made sure to prepare the students in advance

Using peer review helps students to acquire skills in analysis earlier and with considerably less stress than when using the conventional approach of classroom learning. Additionally, the classes would be more enjoyable to the student because of the increased participation that group work requires. Adding a significant peer review experience to a first-year writing course can complement and build upon the core skills taught in a legal writing course, and help students develop practice skills such as cooperation, rewriting and editing, and better prepare students for their careers as lawyers.

C. Student-Teacher Conferences

When the student receives his first writing assignment back from the professor, and sees the red blood pouring all over the page, he will certainly demand a conference with the professor. Remember, students have myopic vision at the law school level. It is all about grades and egos. So, here are some helpful hints on how to make the teacher-student conferences more beneficial for the student.

1. Know something about the student. Students should not feel insignificant, so know the student's name and a little about his background before the student walks through the door. During the first day of class, students should complete an information card that requests such facts as prior education, work experience, prior

for the "self-evaluation" exercise by putting it in the syllabus and by handing out questions about their own papers using criteria discussed in class. *Id.*

writing experience and aspirations during law school. Try to make the most of relevant background information and try to relate a student's background to matters being addressed in class. For instance, for a student who was previously an English teacher for a few years, and is frustrated by her performance on a writing project, assure her that by working together, she will make the transition from creative writing to legal writing.

2. Make the student feel more comfortable. Try to relax the student by sitting next to the student during the conference, rather than speaking across a large desk. Perhaps, one could offer the student a cup of coffee or a soft drink. This simple gesture can be a very powerful tool for putting the student at ease and putting the teacher and student on equal footing.

3. Make the conference your top priority. Students are the ones paying the teacher's salary; in essence, teachers work for the students. The students are a teacher's best clients. Therefore, they are entitled to the same significant, undivided attention that would be given to a client asking for legal advice.

4. During the conference, make sure the student receives your undivided attention. Move all work in progress to the side of the desk. If the phone rings during the conference, do not answer it. If the computer beeps to signal receipt of an e-mail, ignore it.

5. Listen to the student, carefully and patiently. Students come to a teacher's office because they need to get questions answered and problems solved. Important work must be done during the precious time of the conference. Minimizing a student's

concerns or rushing a student out of the office is an abuse of power. A student's understanding of the subject matter should be as urgent and important to the teacher as it is to the student.

6. Also, allow the student to vent and complain during a conference. One of the "joys" of teaching legal writing classes is to return graded assignments to the students during the semester. Most of these students will receive only a legal writing grade during the semester and many are likely to challenge it and the teacher's ability. For some, the sheer cathartic effect of speaking their mind to the professor is enough to make them feel better. A student needs to feel safe and unthreatened during the conference.

7. Let the students know they are not alone. Writing is an individual skill that must be mastered; the teacher is their coach and colleague. This is a partnership, and as their partner, the teacher should be available for conferencing. This is especially true during the busiest times of the semester, such as before assignments are due and after assignments are returned.³⁶

IV. CRITIQUING PAPERS: THE PROFESSOR AS MENTOR IN THE REVISIONARY PROCESS

What students need is for legal writing instructors to practice what they preach about audience and purpose in their own comments on student papers. Most legal writing teachers will

agree that commenting on students' papers is one of the most important aspects of teaching writing.³⁷ Legal writing teachers also acknowledge that commenting on student papers is one of their most time-consuming activities.³⁸ Therefore, in order to make the most effective use of the teacher's time, as well as providing the most help to the student, legal writing teachers should tailor written comments to give the amount of information that can be best absorbed by each student, which allows for the maximum insight. If a teacher comments too much, the words may overwhelm students or go unheeded, which simply wastes everyone's precious time and energy. If a teacher comments too little, the students feel lost or unaided.

A. Commenting Goals

There are three generally accepted goals for commenting that teachers often lose sight of when making comments.³⁹

³⁶ See Mark Broida, *Balancing Power in Student Conferences*, THE LAW TEACHER (Newsletter from the Institute for Law School Teaching, Gonzaga University, Spokane, Wash.), Fall 1997, at 8-9.

³⁷ Anne Enquist, *Critiquing and Evaluating Law Students' Writing: Advice from Thirty-Five Experts*, 22 U. SEATTLE L. REV. 1119, 1125 (1999). In a survey gathering information on effective commenting practices of experienced legal writing teachers, all the experts polled on the importance of commenting on student papers ranked the activity "at or near the top of their list" of most-important teaching activity. *Id.*

³⁸ JoAnne Durako, *2000 Survey Results*, Ass'n of Legal Writing Directors/Legal Writing Inst., available at <http://www.alwd.org/alwdResources/surveys/2000> survey. According to the 2000 ALWD/LWI Survey results, the average legal writing faculty member read 1,588 pages of student writing in an academic year. *Id.*; see also Jessie C. Grearson, *From Editor to Mentor: Considering the Effect of Your Commenting Style*, 8 J. LEGAL WRITING INST. 147 (2002).

³⁹ Nancy Sommers, *Responding to Student Writing*, 33 C. COMPOSITION & COMM. 148 (1982). Although these general rules have their roots in several

1. Providing feedback. Teachers want to let the students know whether and how well they are meeting the goals set for them.

2. Dramatizing the role of the reader. Teachers want to reflect the reactions of the reader to let writers know whether they have attended to or ignored the targeted reader's needs or interests.

3. Creating motivation for change in future writing. Teachers want to encourage students to understand and accept the need to approach writing tasks differently in a new draft or a future paper.

A teacher's ultimate goal, the one that unifies these three goals, is to teach students to become their own best critics and editors, as well as professional, flexible and adaptable writers. By providing written comments and questions to the students, teachers hope to encourage them to begin asking such questions on their own and to anticipate the "needs and expectations" of future readers.

The last goal is, arguably, the most important. As students move beyond the first year of law school (and beyond legal writing class), one common goal for legal writing teachers should be to foster each student's ability to critically review their own writing. Thus, a student must always be taught with an eye to the future, and with an understanding that these students will soon encounter a new audience with new demands and preferences. If we are to help our students become confident, competent and professional

venerable composition articles they are particularly well-expressed in one

writers, then it is critical to understand how a teacher's comments may help (or inadvertently hinder) the ability to critically review one's own writing which is necessary to be able to adapt to future audiences.

On the other hand, over-commenting is just one tragedy of the legal writing profession because it represents a well-intentioned, but misdirected effort and because it frustrates students and teachers alike.⁴⁰ Over-commenting generally means that the teacher is writing more comments than the student can successfully absorb and implement. Teachers often do this because they feel a sense of responsibility to convey a wealth of information to students and they feel a need to justify the evaluation of students' work.⁴¹

Another contributing factor for a teacher's tendency to over-comment has to do with prioritizing. There is a link between over-commenting and under-prioritizing. In other words, the more carefully a teacher selects her priorities (and limits those to a workable number) and conveys them to students (for each assignment throughout the semester), the less likely teachers will fall into the trap of over-commenting.

Jessie Grearson has identified four different problem types. The first is the commenter who has not taken the necessary steps of establishing clear priorities for the assignment before commenting,

authored by Nancy Sommers.

⁴⁰ Terry LeClercq, *The Premature Deaths of Writing Instructors*, 3 INTEGRATED LEGAL RES. 4 (1991) (providing a general discussion of issues related to overcommenting).

⁴¹ See Grearson *supra* note 38, at 151.

and ends up commenting profusely on many different aspects of the paper. This commenter may take the “wait and see” approach, waiting to see what develops as a common problem among the students’ papers, or whatever catches the eye of the teacher. This commenter provides a great deal of inconsistent and scattered feedback, which results in a confused student. It undercuts motivation and does not allow the student to anticipate for the next paper.

The second problem is the teacher who has set too many priorities and who provides too many comments. Here, the student is overwhelmed at the amount of issues that must be addressed (or fixed) in the next assignment. The student is often confused about which is the most important of the priorities. This can lead to writer’s block because the student has no clear sense of direction.

The third problem is the teacher who has too many priorities but has not taken care to convey those priorities beforehand. This commenter may write a few “zingers” to let the student know how far off track or below expectations he or she is without detailing the path back to the priority. This teacher may also suggest that the student “should know this by now.” Students may feel like they are being patronized because the teacher has not bothered to tell them important goals, either before the assignment is due or on the paper itself. As a result, students do not get the feedback they need, they cannot picture the reader to whom they are writing and they are likely to feel apathy toward adapting their writing for the next paper.

Finally, there is the teacher who articulates and conveys very few priorities and who provides very few comments. This problem invariably invokes great hostility from students. The anger is justified because students receive inadequate feedback, they have no identifiable audience for whom to write and they have no incentive or direction for future change.

To avoid these problems, we should analyze where we fall on the continuum of over-commenting and under-commenting. We need to ask ourselves why and when we over-comment and follow these suggestions for making comments effective:

1. Have clearly identified and communicated priorities. Tell the students in class what areas are most important for each assignment. Follow up on these main areas in your comments.

2. Select writing issues to comment on. Follow a hierarchy of concerns by first focusing on content and development of ideas; second, on organization; and finally, on more surface-level concerns.

3. Use comments to reinforce points made in class. Effective comments draw on and extend ideas from previous classes or conferences with students. Comments should be viewed as part of an ongoing dialogue with the students.

4. Use end comments as a way to prioritize tasks for writers. End comments should add coherence to your margin comments so they do not appear randomly. End comments should define and prioritize tasks for the next draft or paper.

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5. Make your comments as specific and as easy to read as possible. Do not use a “rubber stamp” or generic comment for all problems. Treat each student as an individual with individual needs. Also, make sure each comment is reader-friendly so that students can understand and digest what you have written. Focus on the writing, not the writer.

6. Make sure you give some positive points for each assignment. Students respond to praise as long as it is genuine. End notes should begin on a positive note. However, if the paper is written so poorly that there is nothing positive for comment, invite the writer to your office to discuss the paper to find out where the problem lies.

V. CONCLUSION

Writing is revising. These two processes cannot be separated. Legal writers, especially new legal writers, can write better by learning the art of self-editing and revision. One way students can gain editing skills and build confidence is with peer review. The in-class peer review experience reinforces students’ understanding of important legal writing techniques, teaches them to work cooperatively, enables them to better evaluate and edit their own writing, and encourages them to respect the opinion of peers.

Legal writing teachers can further help students by commenting on their work in an effective manner. The underlying purpose of commenting is to teach law students how to become

capable writers and thoughtful readers of their own work. When commenting, it is important to remember that students do listen to teachers and do pay attention to written remarks. A teacher's words are likely to linger long after students have left law school.