HOW THEY WRITE: OUR STUDENTS’ REFLECTIONS ON WRITING

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How do our students write?

This may seem an obvious question—but do we, as teachers of legal writing, ask it of our students at the outset of our courses? Why might we choose to do so, and what might we, and our students, gain from this inquiry?

As we well know, our students arrive at law school with the preconceived notion that they are good writers. The English majors are often the most confident; the engineers may be more doubtful or less experienced at writing. They all know that they are entering a “writing-intensive” profession, but assume that they will quickly adapt to “legal writing.” They do not grimace at our introductory remarks about how we will teach them to “think like lawyers” and write like them as well.

But most of our students quickly learn that legal writing is a complex combination of analysis, organization, and style. They find that writing like a lawyer may well be unlike any process that has previously worked (or not worked) for them. While the engineer may be pleasantly surprised at her easy transition to legal analysis and writing, the English major may be shocked at how the writing style that he has used so successfully does not help him make the transition into the legal writing process. These results may seem familiar to many of us, and should not be surprising; after all, our students have come to law school from diverse writing backgrounds and perspectives.

So why does it matter how our students write when they arrive at law school? Isn’t what we teach them about writing after they arrive what’s most important?

We usually dive right into legal writing, attempting to mold our students into legal memo writers as efficiently as possible. We may ask or require our students to engage in some kind of evaluation of their work or of their peers’ work during the semester. However, these methods do not take into account where our students are coming from before they enter law school. This essay posits that the more we know about our students’ own views of their writing styles at the outset of our first-year courses, the more we and our students are able to learn as we continue to monitor these reflections throughout the duration of our courses.

At the 1996 Legal Writing Institute Conference, composition studies expert Anne Ruggles Gere3 proposed that the members of the audience—a large group of legal writing and legal research professionals—take a look at how they write by writing a short paragraph about their personal writing styles.4 Professor Gere has also suggested that by having students reflect upon their “own experience” as writers, students can provide their teachers with a “kind of baseline against which course writing can be compared.”

Why not try this in the legal writing classroom?

Having greatly enjoyed participating in Professor Gere’s brief yet engaging group exercise, I decided to implement a “reflective exercise” in my first-year legal writing course at Villanova in fall 1996. During the first month of class, I posed the following question to my 40 students—introduced by my own anecdote to make them more comfortable with the assignment and to let them know that I was by no means a “master” at the writing process:

To write, I ponder for a long time. Just like when I used to have writer’s block and wait for the perfect sentence, now I wait for the perfect time. It never seems to come. Though I’d like to

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3 The 1996 Legal Writing Institute Conference was held on July 18-20 at Seattle University School of Law.

4 Professor of English and Professor of Education, University of Michigan.

5 There has been growing interest in how writers write. See, e.g., Sara Gaines, David Humphries, Vic Mortimer, et al. (eds.), Writing Lives: Exploring Literacy and Community (1996); “How I Write” Essays, 4 Scribes Journal of Legal Writing 1-91 (1993).

write every day, every day is filled with the generally pleasant interruptions of children, aging parents, colleagues and students, and, yes, class preparation.

So I usually can’t write until I isolate myself from interruption. I write in “scheduled spurts.” I grade papers away from the office and away from home; I work on articles late at night and in isolated places as well. I hope to be able to create that solitude more often in more varied environments.

How do you write a letter, a term paper or an article?

The students’ responses were diverse. Some answered tersely; some wrote several paragraphs. Some wrote about their ease with writing, some wrote of anxiety. In all cases, the responses were thoughtful. In any event, I had a better picture of my students’ writing background and “writing self-image.” I knew where my students thought they were “coming from” in writing ability and had a baseline to gauge their views of their growth in this area over the course of the year.

Some seven months later—or to put it in law student terms, approximately three memos, one brief, a host of exams, and many conferences later—I asked my students to review their earlier responses to the writing style assignment, and to respond to the following questions:

Has the way that you write changed since you wrote your fall 1996 response? If so, how has it changed? Please include any effect that you believe your Legal Writing course has had on your writing style.

The students’ responses were again significant, diverse and enlightening. I share them with you to show how thoughtfully law students can reflect upon how they write and how they feel that their writing style has changed after one year of law school and legal writing. The students’ fall 1996 responses appear in normal font; each student’s spring 1997 response appears immediately after the fall response and is italicized.

Planning

The largest number of students reflected that their legal writing course had a significant effect upon the amount of planning that accompanied their writing processes:

I never evaluated my writing style before now. I wrote for my [college] … paper … for two years … and enjoyed composing articles on subjects of my choice. But I really would like to write editorials, since I like to argue and make my reader think critically. I like to write out a rough draft of my article so I can have another person give me their thoughts. I know what I want to say, but I have trouble organizing the paragraphs. I spend most of my time arranging the sentences and body, because I already know what points I want to make prior. …

My writing style has indeed changed. Legal Writing has made me more organized. Before, I’d sit down and begin writing, without too much thought. Now, I spend much more time thinking about how I will organize my ideas or thoughts. This just transfers the “pain” to an earlier stage, but it is better because I do not have to keep scrapping and reorganizing. With a logically [sic], well-thought-out plan of attack, it is much easier to assimilate arguments. I am less long-winded and, although perhaps a bit less creative, I feel I am better-equipped to articulate my thoughts.

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I usually start a significant piece of writing with a rough outline of what it is I want to say, and in what order I want to say it. Though I would like to say all my supporting ideas come generally at the time of writing, more often than not ideas arrive when I least expect them, forcing me to scribble them on any piece of available paper to be developed and integrated into my writing at a later time. I cannot ritualize when it is I write—in the morning before class, a break at lunch, whenever I feel I can take a few of my jotted down ideas and work them into the article. Only at the beginning, when the path is being created, and at the end, when the product is being polished, must I be in an atmosphere suitable for complete and uninhibited thought.

My writing style, the way I approach a piece of writing, is still generally the same. What Legal Writing taught me, however, is an awareness [of] how much time and effort I must put into a piece of work. Gone are the days of writing a 10 page paper in 2 days; in are the days of rough drafts, revisions, and the awful, mind-numbing drudgery of blue-covering. I now appreciate much more fully the magnitude of effort needed to write an effective piece of work.
**Development and Communication of Ideas**

Other students wrote about how they develop and communicate ideas:

At least in a literature setting, my biggest stumbling block was finding a topic that adequately inspired me—I would spend hours in the library pouring [sic] over the MLA, typing in keywords, reading abstracts, tracking down articles, etc., etc., etc. Usually on the second or third run through this process, I’d actually start writing, but even then my topic would continue to metamorphose and I’d still be frantically doing research at the last minute. Needless to say, I’m hoping that the more structured topics in legal writing will eliminate at least some of this anguish.

...I tend to write down any thought that comes to me, as it comes to me. I am one of those people who often has to leap out of bed to write down things that have occurred to me as I’m trying to fall asleep, and I frequently find myself trying to track down tidbits that I have jotted down in other class notebooks, on scraps of paper from work and the like. ... I then attempt to organize it—breaking my thoughts into a rough outline form and moving the various pieces where they belong. If they don’t belong, I save them somewhere else, just in case. Then I look at my outline, try to figure out what my ultimate argument is and what else I need to say to get there ... and try to keep going until I have something that could generously be called a draft. From there, I may go over my thoughts with a friend, review some more research, and/or reread the works(s) [sic] I’m writing about and then to try to create a more refined draft. Ideally at this point I like to be able to walk away for a day at least before finalizing my ‘masterpiece,’ but too often this isn’t possible (due in large part, of course, to my own tendency toward procrastination).

I can’t say that anything has really changed. I still procrastinate (although less so). As for desperate research at the last minute, I still do that, too. In some ways there’s even more temptation to research indefinitely here[.] ... Paranoia about missing cases is far worse than paranoia about missing yet another of the seemingly endless articles about Moby Dick.

My writing style/method is paradoxical in that I’m writing constantly but spontaneously (both simultaneously). Whether it’s a term paper, an article or fiction, I’m always thinking about what I need to write—and then, when I suddenly get the perfect idea/wording/motivation, ... I rush to jot down my thoughts. Subsequently, I sort and refine these thoughts.

As a former freelancer and now a law school student, I’ve written everything from sports columns ... to concert reviews ... to interviews ... to legal memos to appellate court briefs. One component that pervades each of these different types of writing is unexpected inspiration. ... With each of those documents ... I undoubtedly thought of the perfect transition or conclusion or introductions, etc. when I was eating dinner, or in the shower, or having trouble falling asleep or sitting in class taking notes with my mind somewhere else. And it is at that moment where I will find the nearest piece of paper ... and furiously scribble down the ideas I’ve come up with. In a way the unexpected inspiration is entirely expected, I just don’t know when or where it will strike—and the sooner I get to my computer, the better. ...
Of course the Legal Writing course has affected my writing style. You learn a formula in Legal Writing, I think it makes writing easier, in a way, because like math, you “plug in” the corresponding parts—i.e., conclusion, rule, (application to) facts, conclusion. The course (I think) has improved my writing, for now I know how to communicate precise points much [more] clearly, as well as understand other legal writing I read. …

Benefits and Losses

Some students wrote of their sense of accomplishment—or lamented the apparent lack of creativity they experienced in legal writing:

Writing a book is a pleasant thing. Every time I produce one, I have a feeling of accomplishment. I learn a lot, not only … knowledge, but also of how to think and how to write. Now, in America, at the Villanova Law School, I believe, as a Chinese student, I will learn more. Here I find a different legal system, a different method of legal research, a different method of thinking, and … fascination [with] a different language. All this greatly attracts me.

Writing is really an enjoyment. It is particularly this case when I am using my pen and my intelligence to resolve other people’s, or even a nation’s problems. Just imagine, what a feeling when you know you can be of great use to the society, to the country! The more skilled your hands, and the higher your intelligence, the more of a contribution you can make.

That is just what I got from the Legal Writing course. I made a lot of effort to improve my research and writing skills. I spent a lot of time bettering my reasoning and thinking. Thinking and writing are really indispensable. I deeply understand that every great writing must combine a great pen and a great brain. I also know that a great pen and great brain come from extremely hard work.

I will work harder and harder. I hope a great pen and a great brain come out from me. …

Historically, I have avoided writing unless necessity dictated otherwise. I was never encouraged by family, peers, or my educational system to write for personal expression. Certainly, I was encouraged to write for a good grade in school or for a paycheck at work. Unfortunately, the small frequency of writing requirements at school never developed within me strong writing skills. Any of those skills that I now have were developed in the workplace. …

Often I run into writer’s block at the outset of the writing process. I tend to have all these ideas swirling in my head which I am unable to organize into a first thought to be put on paper. Quiet time to write is a necessity. By the time I am able to organize all these thoughts, I cannot stand any more quiet time. Although my sentence structure generally appears well organized, I labor many hours to attain such results. …

I feel basically the same. Writing is tough stuff!

I write in spurts as well. I really have to be in the “mood” or right frame of mind to write effectively. I also like to have something completely researched before I write about it because, other than proofreading, I do not like to edit something that I have written.

Since I have been writing all of my life, I thought that there was nothing else I could learn about it. I was wrong. I learned more in one year of legal writing than in all of my other writing experiences. For example, I never knew I had a problem with active and passive voice before legal writing, and now I feel I have made great improvements in that area. I have to continuously improve and work on all other problems so that I may become a better writer.

In college, I used to write under the pressure of deadlines. Usually, I would write late at night when I could be alone with my thoughts as well loud music to keep me going.

My writing style has changed dramatically. Thanks to the legal writing course, writing a professional and well-organized paper is no longer a mystery to me. I know it may seem surprising, but I was never taught how to write well. Now I feel confident in my writing. I feel that I have the tools to write a professional, well-written document.

I think my writing style has changed in law school. I used to just sit down and write—in two or three sitting, until the paper was done and without a great deal of forethought. Now, I do a lot more planning before I write because legal writing is so structure-oriented. …

Writing “Rebirth”

Perhaps the most satisfying reflections showed how the students had come to terms with how they write over the course of the year.

Like you, I tend to wait for the perfect sentence and time. Once I do sit down to write, I have to get my introductory thoughts or sentences exactly the way I want them before I feel comfortable to continue. I tend to waste a great deal of time at the outset. I need to waste a great deal of time at the outset. I need to work on “kick-starting” my writing.
Actually, my writing style really hasn't changed. I still take a lot of time to formulate the perfect thesis sentence and intro and the like. But—now I think it's OK. If I take more time at the outset, it saves me a great deal of time during the revision stage. I just need to accept that I write this way—and start early, so that I allow myself extra time to get going.

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... How do I write? I write when I am compelled to do so. I am compelled by school assignments or work assignments. Occasionally, I receive a nice present and am compelled to write a thank you note. (Worse, I sometimes receive a lousy present and am still compelled to write a thank you note.) Because my writing is driven by a sense of duty, it is usually done hastily, late and without much enjoyment. I would like to start to enjoy the writing process. Perhaps that time is now.

I've certainly had no time to do any independent "reflective writing" during this first year of law school. (I guess only that rare creature like Scott Turow finds it helpful to do such additional writing.) In a sense, then, my writing this year has still been driven by my sense of duty—to meet deadlines. Far too much of my writing was done hastily, under the pressure of the looming deadline. The first drafts were still a bit of an ordeal for me.

However, this year has taught me to enjoy the revision process. Once I sketched out my ideas in outline form and grew to like my ideas, I began to get more excited about crafting the language to present the ideas as best I could. So, I believe I met my goal—"to start to enjoy the writing process."

Conclusion

So what do we have to gain from engaging our students in this exercise? Insight into our students' thinking processes. We know that good thinking is an important component of good writing. By having our students pause and reflect for a moment during the year—without fearing judgment—we can help students see more clearly where they're starting from and how far they've come during that first, arduous year of law school. © 1997 Diane Penneys Edelman