

## TOOLS FOR TEACHING THE REWRITING PROCESS

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One of the most effective (and, believe it or not, popular) teaching techniques in our legal writing curriculum is mandatory rewrites. However, merely requiring students to redo their assignments would be an exercise in futility and frustration for the students without the other methods—including a cut-and-paste discussion exercise and instructor conferences—we use to teach the process of rewriting. Following are some of the ideas that have helped in making the mandatory rewrites work within our first-year curriculum.

### Background: Our First-Year Legal Writing Program

Our entire first-year curriculum centers around the rewriting process. The progression is deliberately slow, with numerous mandatory and optional opportunities for instructor feedback. In the fall semester, the primary assignment is a closed memo. Students write the memo in a series of ungraded building-block assignments. It is not until the ninth week that students turn in the full memo, which is worth 30 percent of the final grade. Students then rewrite that assignment for 70 percent of the final grade. Students also write and rewrite a research memo and trial level brief in the first year.

### Teaching Techniques for Maximizing the Effectiveness of the Rewrite

#### Cut-and-Paste Discussion Exercise

Individual written comments are essential to teaching the rewriting process. However, perhaps

because of the time and effort already devoted to the assignment, some students may feel defensive about their work and have difficulty letting go of the approach they followed in the first draft. These students are so invested in their first draft that they have difficulty re-envisioning the assignment. As a result, they are not able to fully understand and incorporate their instructor's written comments for the rewrite. Alternatively, students may unquestioningly make the changes indicated, without really analyzing or understanding why those changes were suggested.

Recognizing that critiques of individual work may create a barrier to learning, we incorporate portions of all the students' work into a cut-and-paste exercise as a supplement to the individual critique. To create this supplement, instructors use excerpts from all their students' papers to illustrate specific teaching points. Increasingly, the instructors have required students to submit their papers both in hard copy and by e-mail. The electronic version facilitates the drafting of the cut-and-paste exercise. The instructors do not identify the authors in any way, so there is no embarrassment or sensitivity inhibiting the discussion. Instructors try to find examples of strengths and areas for improvement from each paper so no one feels singled out. If an instructor is still concerned about student reaction, the instructor may change the language slightly so that the teaching point is still conveyed without the student recognizing his or her own language verbatim.

We have used multiple formats for these cut-and-paste supplements. One format synthesizes the students' work into one complete memo.<sup>1</sup> Another format uses select portions of each section of the memo, and places two examples side by side, one meant to illustrate a strength and one an area for improvement. For example, this format might include two Questions Presented, two Brief Answers, two excerpts from a Statement of Facts, two umbrella paragraphs, two (or more) sample thesis sentences, two sample case illustrations, two

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<sup>1</sup> Although we use the cut-and-paste exercise for the brief assignment as well, for this purpose, I'm using the memo as an example.

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sample application paragraphs, and two conclusions. Under either structure, the exercise is not labeled or annotated for the students. The “good” examples should be randomly placed in contrast to the weaker examples.

The instructors distribute the exercise and then guide the class in evaluating the different selections. During this discussion, students use the same evaluation criteria that applied to the original assignment. The class works together to identify effective elements, sections that need improvement, and potential revisions that would strengthen the document.

The evaluation of the cut-and-paste document uses a group discussion format rather than a lecture format. The students actively contribute ideas and feedback. This active participation allows students to see the assignment from the perspective of the reader.

However, instructors do need to guide the discussion. Students may identify as “strengths” examples the instructor intended to illustrate areas for improvement (or vice versa). For example, an instructor may include a Question Presented with no key facts as an example needing improvement. The students may identify this as a good example because it is concise. Rather than telling students that they are right or wrong, the instructor can use their comments as a springboard for more guided questions. For example, the instructor might ask specific questions designed to help students think about the purpose of a Question Presented and then to evaluate whether the example met those purposes.

We collect the exercise at the end of the class session. Students are notified of this in advance so that they can take notes on separate paper. Our primary reason is that the exercise has less value when taken out of context. Instead, we encourage instructors to write a separate handout of general comments to summarize the major teaching points. This is helpful in focusing the more free-form discussion that took place during the exercise. Also, we do not want students to feel

tethered to the “good” examples. When students keep the samples, they often try to model so closely that they lose their own voice.

This exercise is a good transition step for students to begin revising their own work. It also helps students think more independently and work collaboratively.<sup>2</sup>

#### **Mandatory Instructor Conferences/ Pre-Conference Assignment**

There is that word again: mandatory. It is not as draconian as it sounds—students consistently evaluate this as one of the most effective teaching techniques. After the cut-and-paste class for each major assignment, students typically have two weeks to rewrite the assignment. During that time, each student must attend an instructor conference to discuss the rewrite.<sup>3</sup>

In addition to commenting on the full paper, the instructor identifies for each student one specific, discrete portion of the assignment to rewrite and submit prior to the conference. The pre-conference assignment is specifically tailored to each student. Instructors look for a section to rewrite that is manageable, and that will provide a good test of how well the student understood the written comments. Pre-conference assignments might range from rewriting one specific section or paragraph block (e.g., one case illustration, one application paragraph, the Question Presented or Brief Answer, the umbrella section) to looking at the assignment more globally (e.g., underlining and rethinking all thesis sentences, outlining the entire Discussion section).

The assignment gives the conference a working agenda and increases the student’s investment in the meeting. Because the students have actively worked with the written comments before the conference, they are more engaged in the session, more likely to realize where they have questions and more motivated to ask them, and more focused (rather than lapsing into generalized

<sup>2</sup> This cut-and-paste exercise can be useful in teaching citation as well. Before the rewrite of each major assignment, our tutors create a cut-and-paste citation exercise illustrating common citation errors from their students’ papers. The class works together to correct those errors.

<sup>3</sup> The conference would not be nearly as effective if conducted after an assignment was completed; students would not have the same motivation or investment.

anxieties, passivity, or frustration). Before meeting face-to-face with the student, the instructor has the chance to assess whether the student “gets” the written comments and is able to incorporate them. The instructor can then better prepare for what still needs to be addressed in the conference, and what needs to be explained further or perhaps from a different angle. The session becomes collaborative—a working meeting rather than a one-sided critique.

The one-on-one conversation during a conference can yield significant insights on both sides. Rather than relying on the “best guess”<sup>4</sup> as to why the student made certain choices, the instructor can go right to the source and ask. The conversation may begin with such open-ended questions as “What did you want to convey to the reader here?” or “Why did you choose to ... ?”

Often the students’ explanations reveal a better understanding of the problem than the instructor would have guessed from the written product. Discussing the student’s verbal assessment of the problem (as if the student were reporting verbally to the assigning partner) can provide a good springboard for approaching the rewrite. The instructor can identify what was effectively conveyed in the oral report and discuss how that can be translated into the written document.

Other times, an instructor may realize that what might have seemed like a careless error or omission was actually the result of a reasoned choice, based on a misapprehension. Without the conference, the instructor might never know the reasons for the student’s choice. For example, a student who failed to include the relevant rule may not have “missed” it, but may have consciously made that choice. The student may explain that “the partner would probably know this and I wouldn’t want to insult her by including rules that would be obvious to her.” (First-year students can credit practicing attorneys with a truly encyclopedic knowledge of the law; flattering but not necessarily accurate.) Another student may

believe that it is unethical to write about a case without disclosing every single fact and issue in the case, even those not relevant to the issue at hand. These are only the tip of the iceberg in terms of the myths and misunderstandings that can be firmly implanted in the students’ mind and entirely unknown to the instructor.

Without the conference, the instructor might attribute these weaker points in the students’ work to carelessness or lack of effort; the student might incorporate the instructor’s comments but never understand the reasons behind the change. An important teachable moment would be lost.

The conference is also the best way we have found to teach the reader-centered approach to writing. Written comments often are interpreted by students in terms of “right” and “wrong” and “what do I need to do to get the A?” In the artificial world of the classroom, it can be hard for students to remember that memos and briefs serve a purpose other than earning a grade. The “real world” audience is the reader who will actually use the document to make important decisions. By physically sitting with and talking to their reader, the students remember that purpose. The instructor can take on the role of the assigning partner (or judge) and identify (a) what the reader needed from the document and (b) what the reader got from the document. The gap between the two helps focus what needs to be done for the rewrite.

Taking notes after meeting with a student can be helpful in commenting on the rewrite. We require students to submit with their rewrite a copy of the written comments they received on the first draft. This policy helps avoid the perception of mixed signals. In addition, reading a rewritten draft side by side with prior comments can be very enlightening regarding the student’s choices. Something that seemed to come from left field in a student’s rewrite might make more sense in light of the original comments on the paper. Knowing why the student made certain choices helps the

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<sup>4</sup> Anne Enquist, *Beyond Labeling Student Writing Problems: Why Would a Bright Person Make this Mistake?* Second Draft (1986).

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instructor to comment more effectively on the rewrite. Keeping notes regarding the conference meetings can serve a similar purpose.

### **Conclusion**

Mandatory rewrites have worked well for us in conjunction with our other teaching methods. The cut-and-paste exercises are not particularly labor-intensive to prepare, and make for very interactive class meetings. The conference and pre-conference assignment, although more time-consuming, offer a unique chance to identify and take advantage of teachable moments that might otherwise have been missed.

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