Cross-Section Peer Review in First-Year Legal Research and Writing

By Elizabeth Frost

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We all talk to our students about “the audience” in legal writing. We ask them to think about the reader’s needs as they organize their analysis. We write “the reader won’t follow this” when we comment on their papers. But no matter how hard we try, many students continue to think their audience is the professor who knows the problem backwards and forwards. Some never seem to get past the fiction of the legal writing course to understand what an educated but uninformed reader needs. Have you ever wished that you could introduce your students to “the reader”?

A cross-section peer review is one way to do it.

I am a firm believer in the power of peer review in legal writing courses. Through peer reviews, students hone their editing and polishing skills. Acting as an audience for others’ legal writing can be instructive for their own writing. And learning to give and get constructive feedback is important for young lawyers. Guided by Kirsten Davis’ article, “Designing and Using Peer Review in a First-Year Legal Research and Writing Course,” I frequently engage my students in structured peer review assignments. Students are generally receptive to these peer reviews, provide helpful feedback to their peers, and are grateful for their peers’ comments. And for those students subject to a collaboration policy that prevents them from sharing their writing with anyone other than the professor, teaching assistants, or writing specialists, peer reviews can reduce anxiety about working “in a vacuum.”

However, same-section peer reviews—that is, peer reviews among students working on the same assignment in the same class—are inherently limited in the legal writing classroom for several reasons. First, when reviewing a paper that they themselves are trying to write, students may be tempted to cheat or may inadvertently borrow analysis or even text from their classmates. Because of collaboration policies and concerns about cheating, many professors limit the text that may be shared. Sharing only a limited portion of a paper may take it out of context, and a critique may be less meaningful. For example, a critique of a Statement of Facts is inherently limited if the reader cannot assess whether every analyzed fact is explained or whether every explained fact is relevant to the analysis.

Second, competition for grades can sometimes yield less rigorous peer reviews. In classes with a forced grading curve, some students who feel they are in competition with their classmates might not always give thorough or helpful feedback on competitors’ papers.

Third, readers who know the material well do not simulate the writer’s audience. Students reviewing a paper on their own topic might be so wrapped up or well versed in the material that they can’t provide an assessment of content as an uninformed reader could. Readers who know the material well might fill in gaps, consciously or not, and therefore might be less likely to say, “hmm, she lost me here,” thinking instead, “I know what she’s trying to say.”

To address each of these concerns, Professor Megan McAlpin and I developed a cross-section peer review. Instead of having our students review their classmates’ work, we asked them to review the work of students in a different section of the same course; the memos they reviewed were comparable in terms of length and complexity but covered

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different topics. We hoped that a cross-section peer review would take collaboration problems and competition out of the review, which could yield a more honest and rigorous reader's response. As writers, students would get the experience of writing for an educated but uninformed reader. As readers, they couldn't fill in gaps as they worked through an analysis of an unfamiliar legal issue. Although we encountered a few small glitches, most of them administrative, the cross-section peer review was a useful exercise for our students on each side of the review, both as readers and writers.

The Structure of the Cross-Section Peer Review

Professor McAlpin and I designed a cross-section peer review to give our students a different—and perhaps more realistic—critiquing experience that addressed the shortcomings of a same-section peer review. In this cross-section peer review, Professor McAlpin's students reviewed open memorandum drafts written by my students; my students, in turn, reviewed her students' drafts. Our open memorandum assignments were on different topics—one on adverse possession in Alaska, the other on social host liability in Massachusetts—but the memos' structures were similar. In both classes, students had written an eight- to ten-page, multi-issue, fact-intensive memo on a common law problem. All students were required to write questions presented and brief answers, a statement of facts, a discussion, and a conclusion.

We gave students two hours outside of regular class to review two student papers. A guided review sheet asked them to consider and comment on each of the components of the memo and each discrete section of legal analysis. The review sheet appears at the end of this article. Students reviewed the papers on two levels: once for technical clarity and once for analytical clarity. We encouraged them to make notes for themselves of writing techniques they found effective or ineffective as a reader and to use those notes to edit their own writing later.

Our Goals and Results of the Cross-Section Peer Review

The cross-section peer review accomplished our two primary goals. First, writers received feedback from an educated reader who was unfamiliar with their legal topic. This reader better reflected the audience they will write for in practice than a same-section peer review reader. Second, reviewers gained a new respect for their audience—the legal reader—and her needs. They experienced the challenge of trying to understand complex legal analysis communicated through sometimes effective and sometimes ineffective writing.

With respect to our first goal, we found that the quality of the feedback was better than, and different from, the feedback students might receive in a same-section peer review. First, reviewers were simply readers, not editors. Because reviewers weren't familiar with the material prior to reading the memo, they couldn't fill in analytical holes with their own knowledge. Instead of either moving right past the confusion or writing, “what about X fact from the Johnson case,” they could simply offer, “I don't understand how you got to this conclusion; maybe you're missing a trigger fact?” The writer then learned where the analysis became less clear but needed to figure out how to resolve it. While I perceive this difference in feedback as a strength of the peer review, a couple of frustrated students lamented that the comments were less useful because they wanted feedback on how to resolve a hole in the analysis, not just that there seemed to be one.

Additionally, because they were not competing for grades, students may have been more thorough
and honest about their feedback. Accordingly, writers received feedback free from the interference of competition and conflicts of interest.

With respect to our goal of enhancing understanding of readers' needs, the results were just as pleasing. Even after all of the reading, comments on papers, and class discussion, several students reported that the idea of audience finally "clicked" when reading their classmates' papers. One student happened to read a particularly strong memo and a particularly weak memo. She felt frustrated when she couldn't connect pieces of analysis in the weak memo, and she felt confident when reading a strong memo that made explicit connections and transitioned naturally between the issues. After experiencing the contrast between the two, she said she finally understood what she needed to give readers as a writer.

The cross-section peer review yielded a couple of unintended benefits, too. One unintended benefit for both writers and readers of the voluntary review was participants' enthusiasm. Students worked diligently in advance of the review to bring polished, reader-ready drafts. In general, they used every minute of the review period and provided detailed comments to one another. They took the review seriously and read drafts carefully. Students reported higher satisfaction with the comments they received than they generally do with same-section peer reviews. They were grateful to have had a second set of eyes on their paper, which would be prohibited outside the peer review by the school's collaboration policy. Even Professor McAlpin and I received a benefit: participants' gratitude after gaining some perspective into our grading work. After reading just two papers, many said they felt exhausted and sometimes frustrated, and they were grateful for our patience and hard work.

While there were many benefits to offering a cross-section peer review, there could also be some difficulties, most of which are administrative.

The first complication of the cross-section peer review is, perhaps obviously, scheduling it. The timing of a cross-section peer review may depend on the level of sophistication professors want from the critique and on student schedules. At the end of the semester, readers will be more experienced with legal writing and can offer more sophisticated feedback. Their vocabulary for critiquing work will be more developed. However, the end of the first semester tends to be a particularly stressful time for first-year students. As the semester draws to a close, students may feel more pressure to spend time polishing their final memo or studying for finals. As a result, participation in an optional cross-section peer review may be lower than if it were held midsemester. Several students who chose not to participate in our cross-section peer review confessed that they didn't feel they could commit two hours to a peer review at such a stressful time in the semester.

Ensuring even numbers of participants from each class could present an administrative problem. The review works well if each student can review two papers and get feedback from two reviewers. That, of course, requires equal numbers on both sides. Assuming the classes have even numbers of students, making the review mandatory would solve this problem. If the peer review is optional and disproportionate numbers of students sign up from each class, some students may have to review more papers than others, or faculty and teaching assistants may have to participate to even the numbers.

Third, managing the distribution of papers could be difficult if participation is optional. Some professors may prefer to carefully create reading groups in a peer review so that each reader sees a strong paper and a weaker paper, or so that each memo is reviewed by at least one strong writer. An optional peer review may not yield a representative cross-section of the class, and students signing up at the last moment would complicate preselected groups. Again, making the peer review mandatory would allow a professor to control the composition of reading groups. If the peer review is optional, setting a firm deadline well in advance of the review could help give a professor enough certainty of attendance to create groups. However, with an optional review, a professor should expect a number of last-minute dropouts as students reprioritize their time.

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Finally, cross-section peer reviews may be more difficult if students do not share a common vocabulary about legal writing. Despite inevitable variations in how professors discuss and comment on legal writing with their students, students who use the same textbook are more likely to share a common understanding of analysis and organization. A common understanding will help them comment on each other's papers in an easily accessible way. Using different books or organizational structures should not preclude a cross-section peer review, even though it could make the critiques slightly more confusing for students. While the underlying principles are probably quite similar despite the different labels we use, some discussion of the commonalities between organizational styles and analytical methods might be in order to bridge differences. And in fact, with a bit of thoughtful discussion, there could be something quite powerful about students coming to the review with different perspectives from different writing texts. A student might realize that despite alternate labels—CREAC versus CRPApp as an organizational method, or hooks versus topic sentences to begin a case illustration—the goals of good legal writing are the same.

Conclusion
The cross-section peer review is a powerful tool worth trying, despite a few surmountable administrative glitches. The cross-section peer review gives students perspective that they simply cannot get in a same-section peer review. Providing students both the opportunity to write for an educated but uninformed reader and the experience of being a consumer of legal writing—sometimes bewildered and beleaguered but sometimes inspired—is well worth the administrative coordination that a cross-section peer review requires.

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PEER EDITING:
READER RESPONSE
All good legal writing considers the audience's point of view: the reader. One way for you to put yourself in the reader's position is to experience reading other people's work. This editing exercise will give you the experience of reading the work of a writer with legal training similar to yours. As you do this edit, you should give a thorough, honest response to the memo that you're reading. But you should also make notes about the writing techniques that the writer used in order to determine for yourself whether those techniques worked or didn't work. Then, use these observations as you edit your own memo.

As you complete this edit, please be sure that your remarks are professional, respectful, and constructive.

STEP 1: INITIAL REVIEW
Begin by reading through the entire memo once. As you read:
1. Put a QUESTION MARK in the margin beside anything that you find confusing or unclear.
2. CIRCLE words or phrases that cause you to pause or stop reading because the word or phrase seemed unclear or confusing.
3. UNDERLINE any sentence or part of a sentence that is too long, hard to understand, or confusing.
4. Put a STAR next to anything that was particularly helpful or illuminating to you as a reader.
5. CORRECT any grammatical or spelling error that you find.

STEP 2: GUIDED REVIEW
After you have completed the initial review, go back and re-read each portion of the memo, stopping after you have read each one to answer the questions related to that portion of the memo.

Overall Impression
1. If you were the writer's supervisor, would you feel confident making a decision based on this memo?
If not, why not? (Do you still have questions about the law? Do you still have questions about how the writer came to his or her conclusion—in other words, do you still have questions about the analysis?)

Questions Presented and Brief Answer
1. After reading the question(s) presented, do you know what law the memo is based on?
2. After reading the question(s) presented, do you know what the precise legal issue is?
3. After reading the question(s) presented, do you know what the crucial facts in the analysis will be?
4. Did the brief answer(s) clearly and succinctly respond to the question(s) presented? If not, why not? (no clear answer, the brief answer wasn't really responsive to the question presented, etc.)

Statement of Facts
1. Did you understand immediately who the parties were and who the client was?
2. Did you understand what the crux of the conflict between the parties was before the writer launched into the details of the story?
3. Were you able to follow the story and easily understand what happened? If not, why not? (insufficient background facts, facts weren't organized chronologically or in some other logical way, etc.)
4. Is there something you'd still like to know? What?

Discussion
CREAC #1 (students would answer Questions 1 through 6 for each separate legal issue in the memo)
1. Was the rule clear? Did you read it and immediately understand the standard that a court would be using? If not, why not?
2. Was the explanation of the law thorough? If not, why not? (Were the facts too sparse for you to understand what had happened in the case? Was there insufficient reasoning?) For this question, feel free to make notations on the paper where you felt there might have been something missing.
3. Was the explanation of the law clear? If not, why not? (Was the writing dense? Were there insufficient connections between ideas? Insufficient transitions?)
4. In the application, did the writer make clear, specific factual comparisons between the client's facts and the facts of the precedent case? Did you easily see the comparison the writer was making? If not, why not?
5. Did you understand the significance of the fact comparisons that the writer made? If not, why not? (Did the writer fail to explain the significance? Was the writer just vague or conclusory about the significance?)
6. If there was counter-analysis, did you understand the counter-analysis and why the counter-analysis was unlikely to prevail? If not, why not?

Conclusion
1. Was the bottom-line conclusion clear to you?

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