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## Practice Makes Proficient: Writing Classes for Struggling Students

by Peter Nemerovski

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With the days of “look to your left, look to your right” long gone, law schools recognize that the majority of students who struggle academically during their first year will continue to pursue their degrees.<sup>1</sup> To their credit, law schools have developed a wide array of programs and courses to help these students succeed in law school and beyond. At Miami Law, one of those courses is Writing and Editing for Lawyers, a two-credit summer course for rising 2Ls (and some 3Ls) who performed poorly in their first-year courses. My colleague, Alyssa Dragnich, developed the course in 2010, and I taught it for the first time in the summer of 2015.

Teaching a writing course for struggling students was the most challenging, but also the most rewarding, experience I’ve had in six years of teaching. In this article, I’ll share what I learned from teaching this course and offer advice to anyone contemplating a similar course.

### The Student Population

There are three general categories of students who take Writing and Editing for Lawyers.<sup>2</sup> First, our

Academic Support personnel strongly encourage students on academic probation or oversight to take the course.<sup>3</sup> Second, students who are not on probation but who did poorly in their first-year writing courses are eligible for the course. These students self-select into the course, but I check with their legal writing professors to confirm that these students are good candidates for the course. Third, students who did not complete two semesters of Miami’s first-year legal writing course, Legal Communication and Research Skills (LComm), are eligible for the course. This includes students who transferred to Miami from other law schools, students who transferred into the J.D. program from our international LL.M. program, and students who missed part of LComm for personal reasons.

I started the semester with 22 students, but only 17 finished the course. Two students were academically dismissed from the law school when spring-semester grades came out; the other three just stopped showing up. Of the 17 who finished the course, at least four were nonnative English speakers, and nearly half were or had been on academic probation or oversight. To my surprise, three or four of the students had what I consider excellent writing and analysis skills coming into the course. For whatever reason, those skills had not yet translated into grades reflecting their abilities.

Because the course drew such a diverse population, I realized early on that I had to get to know each student and, to the extent possible, tailor

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<sup>1</sup> Ralph D. Clifford, *What Has Happened To Law School Attrition?*, The Faculty Lounge (Feb. 2, 2013, 11:49 AM), <http://www.thefacultylounge.org/2013/02/what-has-happened-to-law-school-attrition.html> (concluding based on ABA data that since 1994, attrition at accredited law schools has been around ten percent).

<sup>2</sup> When she first taught the course, Professor Dragnich deliberately gave it a vague title. Over the years, we have been careful to avoid publicly referring to the course as “remedial.” Our goal is to avoid any stigma associated with taking the course. See [Dionne L. Koller, \*Legal Writing and Academic Support: Timing Is Everything\*, 53 Clev. St. L. Rev. 51, 65 \(2005-06\)](#) (discussing concerns about stigma in the context of designing an upper-level writing course for struggling students).

<sup>3</sup> Miami’s rules on probation and oversight are complicated, but probation generally means the student’s cumulative GPA is below 2.0, and oversight generally corresponds with a cumulative GPA between 2.0 and 2.5. See Miami Law Student Handbook & Honor Code, pp. 23–25 (2015–16) (available at <http://media.law.miami.edu/current-students/pdf/2015/student-handbook.pdf>).

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my instruction to their individual needs.<sup>4</sup> For weaker students, my written feedback and in-person meetings focused on basic grammar and sentence structure, clarity, and the organization of a legal document—for example, the importance of thoroughly explaining the law before applying it to your facts. For stronger students, I focused more on more advanced topics like working with cases effectively and anticipating and refuting counterarguments.

Equally important was setting realistic goals for students based on their starting points. A student who is still learning English is not going to produce a professional-quality summary judgment motion by the end of the eight-week semester.

#### The Substance of the Course

The students in the course wrote a total of six assignments. The first two assignments arose from the same fact pattern. For Assignment 1, the students wrote an office memo on a substantive criminal law issue. For Assignment 2, the students revised their first assignment based on my comments and added a second section that dealt with a criminal procedure issue. Assignments 3 through 5 were a judicial opinion, a motion to dismiss, and a memorandum of law in opposition to a motion to dismiss. For Assignment 6, the students were required to rewrite an earlier assignment of their choosing.

I deliberately chose a variety of assignments, including several that are not typically given in first-year courses, so that students would not feel like they were just repeating their first-year legal writing courses.<sup>5</sup> In addition, I made the course very rigorous, with six written assignments, all graded, in an eight-week semester. I wanted students in the

course who were committed to improving their writing and willing to put in the work necessary to do that. In my meetings with the three students who dropped the course, it became clear that they simply did not want to put in the time that the course required. One student in particular was just looking for an easy two credits so he could graduate later that year; he ended up having to look elsewhere.

While the students had to work hard to complete the course, they were generally rewarded with decent (B or higher) grades. I deliberately gave higher grades in this course than I do in other courses. While no one is required to take Writing and Editing, most students in the course are there in part because someone working in Academic Support or I strongly encouraged them to enroll. It would be profoundly unfair to steer a student into a remedial writing course and then give him a C or D because he does not write well.

My focus throughout the semester was on writing—including grammar, punctuation, and style—and legal analysis. In my first-year courses, I teach legal research, professionalism, legal citation, oral advocacy, client communication, and other topics relevant to the practice of law. But in Writing and Editing, I wanted students to concentrate exclusively on improving their writing. Therefore, all of the assignments were closed-research, and I told the students to use any citation format that got the reader to the right page.

The class meetings tended to focus on two things. First, we discussed the substance of whatever assignment was due next. We discussed the applicable cases in-depth, and we made charts to help students keep track of which facts were relevant to which legal issues and which conclusion on that issue each fact supported. I wanted the students to have a clear idea of the legal analysis so that they could use their limited time focusing on how to communicate that analysis in writing, instead of brainstorming to come up with arguments.

Second, once the students started turning in assignments, I used a fair amount of class time discussing their work with them. I went over common problems I saw on the most recently

<sup>4</sup> See Melissa J. Marlow, *It Takes A Village To Solve Problems In Legal Education: Every Faculty Member's Role In Academic Support*, 30 U. Ark. Little Rock L. Rev. 489, 504-05 (Spring 2008) (emphasizing the importance of individualized instruction when working with struggling students).

<sup>5</sup> See Lucia Ann Silecchia, *Legal Skills Training in the First Year of Law School: Research? Writing? Analysis? Or More?*, 100 Dick. L. Rev. 245, 285 (Winter 1996) (arguing that legal writing courses should expose students to as many different types of legal documents as possible).

submitted assignment. On several occasions, we did an exercise called “What’s Wrong With This Sentence?” where I put an actual sentence written by a student on the previous assignment up on the screen—anonously, of course—and we discussed how to improve it.

### Success, or Something Like It

What I want for the students I taught in Writing and Editing for Lawyers—and what I want for all my students—is for them to graduate from law school, pass the bar, and go on to successful and fulfilling careers as practicing attorneys. By that measure, it’s obviously premature to declare the course a success.

A more modest and more realistic goal for this particular course is to produce students who are proficient in legal writing. What I mean by this is that the students, while perhaps not outstanding writers, can write well enough that they can succeed as practicing attorneys if they work hard and adhere to high standards of ethics and professionalism. Based on my experience practicing law in California and Florida, this is not a particularly high bar to clear.

By that measure, I believe the course was a success for most of the students. Either they were proficient legal writers by the end of the course, or they came away with a clear sense of what they must do to get there, and a commitment to do it.

Some of the students in the course, including most of the nonnative English speakers, simply need more writing training than they could get in a two-credit, eight-week summer course. I did what I could with these students—low-performing students in a class for low-performing students—but in the end I had to send them on their way with a recommendation to take several more writing courses in whatever time they have left in law school.

### Regrets, I Have a Few

While the course generally achieved its modest goals, there are several things I wish I had done differently. First, I should not have let any students into the course after the first class meeting. This course, more than any other one I’ve taught, required a strong commitment on the student’s part, a commitment I found lacking in the students who joined late. I faced some pressure from the administration to accept students after the first week—“this student *really* needs the help” or “he’s trying to graduate soon and needs the credits”—but I could and should have resisted that pressure. This same logic applies to students who know in advance that they will have to miss multiple class meetings. I wish I had told these students to choose a different writing course or take Writing and Editing for Lawyers some other semester when they are fully available.

Second, I probably allowed too many students into the course. The school would have let me teach the course with as few as 8-10 students. While it’s hard for me to turn away students who genuinely want and need to work on their writing, a course like this should have no more than 12-14 students, as opposed to the 17 students who finished my course or the 22 who were there for at least part of it.<sup>6</sup> The course required me to give a substantial amount of individualized feedback on student writing—probably about three times as much as I normally give during a first-year writing course. The draft-and-revision process, an important element of the course, requires that the professor comment on and return student papers quickly so they can incorporate the professor’s feedback into their final versions. At several points during the semester, I simply did not have time to give as much feedback as I wanted to.<sup>7</sup>

<sup>6</sup> See John F. Murphy, *Teaching Remedial Problem-Solving Skills to Underperforming Law Students* 15 (Last Revised Feb. 24, 2015) (available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2508037](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2508037)) (recommending that sections of remedial courses be limited to no more than fifteen students).

<sup>7</sup> See Koller, *supra* note 2, at 73 (noting the importance of “direct, constructive written feedback” when teaching struggling students); Murphy, *supra* note 6, at 14 (emphasizing the difficulty, but also the importance, of grading student papers in courses with a lot of written assignments).

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A third regret, which relates to the second, is that I let too many students with good writing skills into the course. This happened because students on academic probation or oversight are automatically allowed into the course, and students with good writing skills sometimes get bad grades and end up on oversight. This problem can be fixed quite easily by no longer automatically accepting anyone on academic probation. Rather, I would talk to each student’s legal writing professors and analyze each student’s overall academic record to determine whether he or she is a good fit for the course. Last summer I only did this analysis with students whose qualifications for the course were “borderline,” meaning they were not on probation or oversight but there was some reason to think they might need additional writing training.

Fourth, while I stand by my decision to give relatively high grades, I should not have told students up front of my intention to do so. I essentially made a deal with my students the first week of class: If you work hard and behave in a professional manner, you’ll get at least a B-minus in the class. A few students took this to mean that it was OK if their papers were not very good, as long as it looked like they were trying. A class like Writing and Editing inevitably includes some students who don’t work as hard as they should. It’s important that the professor not give such students any reason to do less than their best.

Finally, I wish I had done more to address the unique needs of the students who were not native English speakers. For example, many ESL students struggle with articles—when you need one and which one (a/an versus the) to use when you do.<sup>8</sup> In contrast, article usage comes quite naturally to the vast majority of native English speakers. Therefore, I could not justify devoting any class time to discussing articles. Ultimately, I’d like to see my law school offer a separate upper-level writing course for nonnative English speakers. Until that

happens, anyone teaching a course like Writing and Editing should educate themselves about the unique challenges these students face. Professors should also be prepared to hold extra class sessions to cover grammar topics of interest to these students but not to the general population of struggling law students.

### Conclusion

I mentioned above that teaching Writing and Editing for Lawyers was the most rewarding experience I’ve had in six years of teaching. What I found most rewarding was the improvement I saw in the students’ writing from the beginning of the course to the end.<sup>9</sup> The following student comments from the course evaluations demonstrated this improvement and the overall success of the course:

- “I took this course to improve my writing. I wasn’t sure how much I could even improve in a summer course, but my improvement exceeded my personal expectations.”
- “This has been one of the most useful classes I have taken in law school. It helped me fill in the serious gaps about legal writing that I did not get out of LComm. My writing has improved exponentially thanks to this class.”
- “The course helped me address some problem areas from LComm I and II, which is what I wanted to achieve when I took the class.”
- “This class was exactly what I was hoping for. I wanted to become fluent in CREAC and I did. I understand it much better now.”

Teaching a writing course for struggling students is not easy, but I would encourage any legal writing professor with the time and the patience to give it a try. Those who do will fulfill an important responsibility to some of our most vulnerable students, and have a unique opportunity to make a difference in these students’ professional lives.

<sup>8</sup> Anne Enquist and Laurel Currie Oates, *Just Writing: Grammar, Punctuation, and Style for the Legal Writer* 259 (3rd ed. 2009) (“Unfortunately for most ESL law students, many of their native languages do not use articles, and others use articles in ways that are different from English.”).

<sup>9</sup> See Murphy, *supra* note 6, at 12 (describing the joys of teaching a remedial course, including “the ‘a-ha’ moment; the little epiphanies; the steady progress toward competence, if not excellence; the rise in students’ GPAs; [and] grateful students thanking you for taking the time to change their academic trajectories”).