Emotional Editing

By JoAnne Sweeny

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One of the lessons I try to impart on my students is the importance of proofreading. Skilled legal writers must be able to organize their thoughts in a logical manner, advance arguments that have strong foundations in law and fact, and, most importantly, accurately identify when they have failed to do these things. Proofreading is essential for all writers, and it can be particularly difficult to teach.

Students are quite skilled at finding mistakes in other people’s writing but not nearly as effective when they are reviewing their own work. When going over my students’ work with them in individual conferences, I typically ask students why they focused on one case or what a paragraph is about, and they often tell me they don’t know. Almost as often, when my students come to meet with me after receiving my comments on their work, they tell me that they thought the paper was good until they read it again (with my comments), and they now realize how many mistakes they made. The question is, why didn’t they recognize these mistakes before they handed the paper in? Why can I see these mistakes but they can’t?

The purpose of legal writing classes is to help students become experts in legal writing. As part of that goal, we want our students to be able to evaluate their own work by engaging in metacognition—thinking about how they think—so they can critique the quality of their arguments like experts do. However, I have found that teaching proofreading is one of the hardest things I do.

There is a good reason for this difficulty. Because legal writing professors are experts in legal writing and are unconsciously competent, it is more difficult for us to put ourselves back in the unconscious incompetence or conscious incompetence stages. For example, research has shown that experts can’t describe their reading comprehension strategies, which is described as the “loss of awareness phenomenon” or “paradox of expertise.” To combat this problem, I created an emotional editing exercise that helps gauge law students’ response to legal writing and helps them see my perspective as a legal writing professor.
The In-Class Exercise
The “emotional editing” exercise is a legal memorandum similar in style and length to what I assign my students to complete in the fall. The case involves a relatively simple workers’ compensation claim and the memo includes all the sections typical of a formal memo.5 I used this exercise for the last class before their final memoranda were due, a class that is usually not very productive because the students are so distracted with their upcoming assignment.

The first thing this exercise focuses on is giving students a role for examining the document. Instead of having them simply read the “bad memo” and identify all of its mistakes, I tell my students that they are a partner in a law firm, the client will be there in five minutes, and the client needs to know if she has a case. I tell them to read the questions presented, brief answers, and conclusion to see if they can answer the question (they can’t). I then give them 20 minutes to read the whole memo to see if they can then tell the client if she has a case (they still can’t).

Giving the students a purpose for reading changes their focus dramatically. Instead of reading to spot mistakes—a technical exercise—they read for comprehension and evaluate the writing much like a partner or legal writing professor would. Giving students a purpose for reading automatically makes students read more like experts because experts typically read with a purpose in mind, which affects what parts of a document they focus on.5 Experts want to know how a document will be used and will even create a purpose if none is given.6 Research has also shown that students comprehend more when a purpose for the reading is given.7

As a result of their reading, the students became very frustrated. So, as the second part of this exercise, instead of asking them what the mistakes were, I asked them how reading the memo made them feel and why. This kind of “emotional editing” has received little academic attention, but there is evidence that in order to properly evaluate writing, we must also engage our “emotional brain” as well as our “thinking brain.”8 When the expert evaluates how persuasive or well-written a document is, she considers, in part, her emotional reaction to the writing. Experts interact with the text instead of just taking the text as true, which is a problem many beginning law students have.9

Using emotions is a powerful part of that process. After reading the “bad memo,” the students felt confused, frustrated, and even angry. When I asked them why, it became clear that it was because they were focusing on the purpose of the document instead of its technical mistakes. They needed to tell the client something and, because of the way the memo was written, they knew they couldn’t, which was very frustrating for them. Getting in touch with these feelings while reading was a new experience for them and I told them to pay attention to their feelings when reading their own work.

The Benefits of Emotional Editing
The emotional editing exercise has two main benefits. First, the exercise shows that students can put themselves in the role of an attorney and doing so does affect the way they read a document. Even though we tell students the purpose of legal memoranda, for many novice legal writers, the document remains rather academic, especially if they are accustomed to writing essays from their undergraduate education. This exercise shows them the purpose of the legal memo by forcing them, under strict time constraints, to use the memo for its intended purpose—advising a client.

Second, the emotional reaction students experience while reading the “bad memo” puts them in touch

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4 Thanks to Teri McMurry-Chubb for the workers’ compensation problem upon which this exercise was based.
5 Laurel Currie Oates, Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs, 83 Iowa L. Rev. 139, 150–51 (1997).
6 Christensen, Paradox, supra note 3, at 70–71.
9 Christensen, Legal Reading, supra note 7, at 629.
with the emotional part of their brains, which is essential for good evaluating. In fact, students appear to judge the memo’s quality instead of just reading it, and their feelings guide their impressions of the writing and the substance of the memo. In short, they read more like experts, which should make them better editors. The feelings they experience when reading the “bad memo” echo my own experience when reading poorly written work and would certainly be shared by a partner in a law firm. The ability to tap into these perceptions can make a large difference for students when they read their own work.

A third, lesser benefit to this exercise is that it is fun for the students, despite their frustration with the writing. They enjoy playing the role of “partner” and reading someone else’s work for a change. Using this exercise during the last class before their final memos were due was particularly useful because it kept the students focused and occupied despite their preoccupation with their own memos.

The Downsides of Emotional Editing

The major pitfall of this exercise is how long it takes. The students spend almost half an hour reading the memo and class discussion can double that time. This means that the exercise may take an entire class session that could be used for other things. However, I believe that having the students read the document in class instead of before class is essential. The time constraint adds to the verisimilitude of legal practice and heightens the students’ emotions as they read. It is also useful for them to read the “bad memo” in class so that I can gauge their reactions as they read it.

The second potential detriment to this exercise is the possibility that students will not be able to duplicate the same emotional reactions to their own work and, even if they do, those feelings will not translate to useful editing skills. It may be easy for students to simply revert to technical editing instead of focusing on the big picture of their document and, without monitoring their progress, it is difficult to know whether this exercise will have a long-term impact on the way they read their own work. However, I believe that this exercise is a first step in making students aware of the purpose of their memoranda and showing them how frustrating editing can be if the writer does not keep that purpose in mind. Even giving students a small glimpse of what I go through when I read their papers has been eye-opening for them.

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Another Perspective

"Writing centers are premised on the idea that individualized instruction is an effective way of teaching writing. Put simply, writing centers provide writing instruction through trained student/peer tutors who meet one-on-one with students who are working on writing projects. Conferencing is well-documented as an effective method for writing instruction generally, and writing centers are a formal mechanism in which peer conferences can take place. Writers bring works-in-progress to the writing center, at any stage of development. They do not drop off their papers for mechanical upgrades, like a car owner at a garage: The author of the paper works with the tutor to improve and strengthen both the paper and the writer. Because of this individualized instruction, students often say they learn more at writing center appointments than they do in class.”