

# A Reflective Rhetorical Model: The Legal Writing Teacher as Reader and Writer

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Like most writing teachers, the legal writing teacher believes that his reading and response to student work is the most important thing he does,<sup>2</sup> an importance that is underscored by the amount of time it takes.<sup>3</sup> Yet, despite its importance and the hours it consumes, the rhetoric of teacher reading and writing remains relatively unexplored.<sup>4</sup> This article proposes that we begin to apply what we have learned about student reading and writing to our own reading and writing. Our process of reading

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<sup>2</sup> ELAINE P. MAIMON ET AL., THINKING, READING, AND WRITING xvi (1989) (teacher reading and writing is the only way teachers can teach others to write).

<sup>3</sup> See, e.g., Jill J. Ramsfield, *Legal Writing in the Twenty-First Century: A Sharper Image*, 2 J. LEGAL WRITING 1, 7-8 & n.64 (1996) (estimating that legal writing teachers spend 20 hours a week doing face-to-face teaching, including class time and time spent making written and oral comments).

<sup>4</sup> Anne Enquist of the Seattle University School of Law has done the only published study of legal writing teachers' comments on student papers. Anne Enquist, *Critiquing Law Students' Writing: What the Students Say Is Effective*, 2 J. LEGAL WRITING 145 (1996). See also Terri LeClercq, *The Premature Deaths of Writing Instructors*, 3 INTEGRATED LEGAL RES. 4, 8-14 (1991) (recommending critiquing rather than editing and a focused list of criteria for each assignment); Elizabeth Fajans & Mary R. Falk, *Comments Worth Making: Supervising Scholarly Writing in Law School*, 46 J. LEG. EDUC. 342, 349, 352, 362, 366 (1996) (suggesting different roles for teacher feedback at different stages in the student's writing process); Mary Kate Kearney & Mary Beth Beazley, *Teaching Students How to "Think Like Lawyers": Integrating Socratic Method with the Writing Process*, 64 TEMP. L. REV. 885, 898-99 (1991) (recommending focused responses coinciding with the student's movement through the writing process); J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 74 (1994) ("because of the power and authority that lie with the professor, . . . comments can easily discourage students and estrange them from any sense that writing is a generative social activity").

On the need for continuing exploration of teacher reading and response, see, e.g., Janet Gebhart Auten, *A Rhetoric of Teacher Commentary: The Complexity of Response to Student Writing*, 4 FOCUSES 3, 11-12 (1991) (little theory has emerged to describe the rhetoric of teacher commenting); Lad Tobin, *How the Writing Process Was Born—And Other Conversion Narratives*, in TAKING STOCK: THE WRITING PROCESS MOVEMENT IN THE '90s, 1, 11 (Lad Tobin & Thomas Newkirk eds., 1994) (left unexplored, we may continue to "read student essays in very traditional ways—focusing on error, acting as if we are dealing with 'finished' products, isolating ourselves from other readers.").

and responding to student work should be as reflective and rhetorical as the reading and writing process that we suggest for our students. As we read, write, and comment, we should be conscious of the movement of our students and ourselves from meaning to text to reader to writer and back; we should focus as much on planning, monitoring, and revising our own reading and writing as we do on communicating our interpretations of student work; and we should use our own reading and writing experiences to reflect on and respond to what our students are doing.

The article is based on the New Rhetoric school of composition theory and research. It begins with the New Rhetoric theory that reading and writing are processes for the construction of meaning, that "writing" is the weaving of thought and knowledge through language, not merely the clothing of thought and knowledge in language.<sup>5</sup> From New Rhetoric theory comes the view that reading and writing comprise a series of transactions between reader and writer, reality and language, prior texts and this text, the individual and the context. These transactions generate response, response generates reflection, and reflection generates further response and revision.<sup>6</sup> New Rhetoric theory thus suggests that teachers can tap into these transactions, particularly the transactions between students and teachers, to improve student reading and writing.<sup>7</sup>

The article next draws on New Rhetoric research into the composing process. This research created an image of writing as always in progress, a process of discovery that is messy, slow, tentative, and full of starts and stops.<sup>8</sup> Despite recent criticism, this New Rhetoric image retains its power to describe what writers do and to provide a framework for teaching and learn-

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<sup>5</sup> See ANN E. BERTHOFF, THE MAKING OF MEANING: METAPHORS, MODELS, AND MAXIMS FOR WRITING TEACHERS 69 (1981); JANET EMIG, THE WEB OF MEANING: ESSAYS ON WRITING, TEACHING, LEARNING AND THINKING 4 (1983).

<sup>6</sup> See, e.g., Marlene Scardamalia & Carl Bereiter, *Development of Dialectical Processes in Composition*, in LITERACY, LANGUAGE, AND LEARNING 307, 327 (David R. Olson et al. eds., 1985) (dialectical processing is not only a cause of but also the result of reflective thought).

<sup>7</sup> The transactions between students and teachers are the subject of a rhetorical model discussed in Section II of this article. See Auten, *supra* note 4, at 4.

<sup>8</sup> See EMIG, *supra* note 5, at 4; Maxine Hairston, *The Winds of Change: Thomas Kuhn and the Revolution in the Teaching of Writing*, 33 C. COMP. & COMM. 76, 85 (1982); LINDA FLOWER, THE CONSTRUCTION OF NEGOTIATED MEANING: A SOCIAL COGNITIVE THEORY OF WRITING (1994).

ing.<sup>9</sup> Largely because of this image, the writing teacher tries to engage students in the kind of exploratory, recursive, reflective, and responsive process that expert writers describe rather than to steer students from step to step through the production of a finished document.

Finally, the article encompasses a developmental model of writing teacher response.<sup>10</sup> This model places teacher responses on a continuum, beginning with dualistic responses that judge writing as correct or incorrect because of its presentation; moving to relativistic responses that view writing as unable to be judged because of its ideas; and developing into reflective responses that open up the potential for revision of both ideas and their presentation.<sup>11</sup> Reflective response provides an appealing image of the writing teacher as a reader and a writer who "rhetorically sits next to" the student reader and writer as the student navigates the loops of an in-progress writing.<sup>12</sup> Largely because of this image, the writing teacher reads and responds to student work while students are in the process of composing a text rather than after the text has been completed.<sup>13</sup>

Based on these themes, the article proposes a reflective rhetorical model of teacher response that recognizes the complexity of the transactions among the subject, the student reader, the student writer, and the student text, the teacher reader, the teacher writer, and the teacher text-on-text. Acting as readers and writers, teachers can stimulate, support, and guide a reflective conversation between the student-as-reader and the student-as-writer to realize the student text.<sup>14</sup> By responding to his student's work as another writer and another reader, a professor can "enhance students' awareness of the rhetorical nature of

<sup>9</sup> See, e.g., Robert P. Yagelski, *Who's Afraid of Subjectivity?*, in *TAKING STOCK*, *supra* note 4, at 203, 208 (claiming that the idea of writing as process remains "essentially intact" because it "remains the most compelling and useful way to describe what writers actually seem to do").

<sup>10</sup> See Chris M. Anson, *Response Styles & Ways of Knowing*, in *WRITING AND RESPONSE: THEORY, PRACTICE, AND RESEARCH* 332 (Chris M. Anson ed., 1989) (citing WILLIAM PERRY, *FORMS OF INTELLECTUAL AND ETHICAL DEVELOPMENT IN THE COLLEGE YEARS: A SCHEME* (1970)).

<sup>11</sup> Anson, *supra* note 10, at 343-54.

<sup>12</sup> *Id.* at 353.

<sup>13</sup> See Nancy Sommers, *Responding to Student Writing*, 33 *C. COMP. & COMM.* 148, 149 (1982) [hereinafter Sommers, *Responding to Student Writing*].

<sup>14</sup> See Auten, *supra* note 4, at 8-10 (suggesting that more effective communication occurs when both the student and the teacher are operating in the same context, that is, when the student writer has requested the teacher's comments and can treat them as supportive and suggestive).

writing, as a transaction between writers and readers."<sup>15</sup> The professor's comments can act as a model for the kind of reading we ask the student writer-as-reader to do, asking questions, monitoring progress, and provoking second thoughts.<sup>16</sup> The professor's comments can act as a model for the kind of writing we ask the student reader-as-writer to do, writing that is responsive to context, purpose, subject, role, and audience and sensitive to style and tone.

As writing teachers, we are unavoidably engaged in a rhetorical transaction with our students when we read and respond to student work. That transaction happens with or without reflection, but composition theory teaches us that using responses to generate reflection and using reflection to generate responses can help our students and ourselves become better readers and writers.<sup>17</sup>

## I. NEW RHETORIC THEORY AND THE PRACTICE OF TEACHER COMMENTARY

New Rhetoric began in theory about the nature of writing and the relationship between thought and language. In New Rhetoric, writing is a process for creating knowledge, not merely a means for communicating it.<sup>18</sup> Reading is a process for con-

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<sup>15</sup> Rideout & Ramsfield, *supra* note 4, at 73-74.

<sup>16</sup> See Sommers, *Responding to Student Writing*, *supra* note 13, at 148 (commenting on student writing dramatizes the presence of a reader and helps students become better readers of their own writing); Sue V. Lape & Cheryl Glenn, *Responding to Student Writing*, in THE ST. MARTIN'S GUIDE TO TEACHING WRITING 437, 442 (Robert Connors & Cheryl Glenn eds., 2d ed. 1992). "When the teacher reads and responds as critic, writing suffers and sometimes dies. When the teacher becomes a respectful reader, and models that same concerned response for student readers, writing thrives." *Id.* at 444.

<sup>17</sup> Reflective behavior is used here in the sense of monitoring current meaning and adjusting goals, ideas, plans, or strategies when it appears the reader or writer was mistaken; it is the ability to think about a process in process. See Katharine Ronald, *The Self and the Other in the Process of Composing: Implications for Integrating the Acts of Reading and Writing*, in CONVERGENCES: TRANSACTIONS IN READING AND WRITING 231, 234 (Bruce T. Petersen ed., 1986).

Such reflection is a mark of better readers and writers, better learners, and experts. See, e.g., June Cannell Birnbaum, *Reflective Thought: The Connection between Reading and Writing*, in CONVERGENCES, *supra*, at 30, 31 (noting the reflective parallel in reading and writing); Paul T. Wangerin, *Learning Strategies for Law Students*, 52 ALB. L. REV. 471, 477 (1988) (self-monitoring and reflective change are signs of a "good learner"); Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEG. EDUC. 313, 342-43 (1995) (experts are more reflective than novices and more able to make appropriate changes in response to problems detected in their monitoring).

<sup>18</sup> BERTHOFF, *supra* note 5, at 68-69.

structing meaning, not just an Easter egg hunt to find it.<sup>19</sup> These knowledge-shaping processes are complicated and active, a “putting together” of meaning between reader, writer, and text, all of which are embedded in context and language.<sup>20</sup> In contrast, the traditional models of reading and writing were straightforward and passive: the writer began with a main idea, the reader found and followed it, and both could agree on the point of the piece.<sup>21</sup>

New Rhetoric theory thus extends beyond the “process” approach, suggesting not only that writing should be taught as a process but also that the process should be used to make meaning. Beginning in the 1970s, the rhetorical theory was supported by the results of research describing the writing processes of experts. Backed by theory and research, New Rhetoric teachers began to focus their teaching on what writers “do” rather than on what writers “know,” believing that what writers do is how they come to know.<sup>22</sup>

Because of New Rhetoric theory, teachers of legal reading and writing are able to view their subject as the construction of thought rather than the construction of a document.<sup>23</sup> Because

<sup>19</sup> See, e.g., Christina Haas & Linda Flower, *Rhetorical Reading Strategies and the Construction of Meaning*, 39 C. COMP. & COMM. 167 (1988). The construction of meaning depends not only on the reader's knowledge and experience. “[W]hen readers construct meaning, they do so in the context of a discourse situation, which includes the writer of the original text, other readers, the rhetorical context for reading, and the history of the discourse.” *Id.* at 167.

<sup>20</sup> See Anthony R. Petrosky, *From Story to Essay: Reading and Writing*, 33 C. COMP. & COMM. 19, 22 (1982) (reading, response to literature, and composition are similar processes sharing “the essential ‘putting together’ as the act of constructing meaning from words, text, prior knowledge, and feelings”); DAVID BARTHOLOMAE & ANTHONY PETROSKY, *FACTS, ARTIFACTS AND COUNTERFACTS: THEORY AND METHOD FOR A READING AND WRITING COURSE* 12, 15 (1986) (student readers should be viewed as “composers, rather than decoders,” and reading should be viewed as a transaction between reader and text “rather than an attempt to guess at a meaning that belongs to someone else”).

<sup>21</sup> Many students prefer this more straightforward view: they “expect knowledge or information to be given to them rather than taking an active role in obtaining or shaping that knowledge.” Ronald, *supra* note 17, at 235-36.

<sup>22</sup> The field that became known as composition studies “was transformed when theorists, researchers, and teachers of writing began trying to find out what actually happens when people write. . . . The goal has been to replace a prescriptive pedagogy (select a subject, formulate a thesis, outline, write, proofread) with a descriptive discipline whose members study and teach ‘process not product.’” James A. Reither, *Writing and Knowing: Toward Redefining the Writing Process*, 47 C. ENG. 620 (1985), reprinted in *THE WRITING TEACHER'S SOURCEBOOK* 162 (Gary Tate et al. eds., 3d ed., 1994) [hereinafter *THE WRITING TEACHER'S SOURCEBOOK* 3D ED.].

<sup>23</sup> See BERTHOFF, *supra* note 5, at 69 (writing should be seen as a process for constructing knowledge); James F. Stratman, *The Emergence of Legal Composition as a Field of Inquiry: Evaluating the Prospects*, 60 REV. OF EDUC. RES. 153, 215 (1990) (some

of New Rhetoric research, teachers of legal reading and writing bring to the classroom a more complete and complex view of the processes of student reading and writing.<sup>24</sup> Because of New Rhetoric teaching practices, teachers of legal reading and writing emphasize the generation of first thoughts and their revision into second thoughts as much as the polished presentation of thought.<sup>25</sup> Finally, because of New Rhetoric, teachers of legal reading and writing believe their comments should help students realize "the potential for development implicit in their own writing" by inducing in them a sense of the possibilities of revision.<sup>26</sup> Thus, for example, rather than telling a student that she has organized a discussion incorrectly, the teacher poses questions designed to help the student recognize that a different organization would allow her to communicate her ideas more effectively.

Until the introduction of New Rhetoric theory and research in the 1970s, the current-traditional model of writing instruction, with its emphasis on the final product, was reflected in a rule-based, right-or-wrong style of response.<sup>27</sup> Many teachers responded to student writing by emphasizing technical rules that allowed them to judge whether a particular sentence structure, pronoun reference, or word use was correct or incorrect. This response style not only suited the mode of instruction but also was

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research suggests that legal thinking, reasoning, and argument skills can be improved through writing).

<sup>24</sup> See, e.g., Linda Flower & John R. Hayes, *A Cognitive Process Theory of Writing*, 32 C. COMP. & COMM. 365 (1981) (describing the composition process as consisting of elementary mental processes and subprocesses operating as a recursive hierarchy); Teresa Godwin Phelps, *The New Legal Rhetoric*, 40 Sw. L.J. 1089 (1986) [hereinafter Phelps, *The New Legal Rhetoric*] (describing the application of the cognitive process approach to legal writing).

<sup>25</sup> See, e.g., Fajans & Falk, *supra* note 4, at 346 (describing the writer-centered phases, prewriting and writing as learning, as the most complex and creative part of a writing project); ERIKA LINDEMANN, *A RHETORIC FOR WRITING TEACHERS* 105-40, 184-206 (3d ed. 1995) (describing a range of prewriting and rewriting activities) [hereinafter LINDEMANN, *A RHETORIC*]; PETER ELBOW, *WRITING WITH POWER: TECHNIQUES FOR MASTERING THE WRITING PROCESS* (2d ed. 1998) (describing a two-step writing process of creating and criticizing, placing most of the emphasis on prewriting and revising) [hereinafter ELBOW, *WRITING WITH POWER*].

<sup>26</sup> Sommers, *Responding to Student Writing*, *supra* note 13, at 156.

<sup>27</sup> "Throughout most of its history as a college subject, English composition has meant one thing to most people: the single-minded enforcement of standards of mechanical and grammatical correctness in writing." Robert J. Connors, *The Rhetoric of Mechanical Correctness*, in ONLY CONNECT: UNITING WRITING AND READING 27 (Thomas Newkirk ed., 1986) [hereinafter Connors, *Mechanical Correctness*]. See also Anson, *supra* note 10, at 333-38 (describing the dualistic approach in which the student and the teacher see the work in polar terms, right or wrong, good or bad).

the result of practical constraints on the rhetoric of commenting. English composition had "a history of poorly trained instructors pressed by overwork and circumstance to enforce the most easily perceived standards of writing—mechanical standards—while ignoring or shortchanging more difficult and rhetorical elements."<sup>28</sup>

When New Rhetoric theory and research shifted the focus from the composed product to the writers' composing processes, it was supposed to shift the teaching of "composition" away from the pointing out of error toward the teaching of a rhetorical process.<sup>29</sup> If writing was a rhetorical process, the "error" approach paid attention to the wrong thing, focusing on the end product rather than on the ongoing process. If writing was supposed to be exploratory, recursive, and reflective, the error approach did nothing to encourage those activities. If writing was a means for constructing thought, the error approach concentrated on the arbitrary<sup>30</sup> and the trivial, such as grammatical errors or punctuation mistakes, while bypassing the more difficult, more important, and more interesting problems of thinking and learning through writing.

Equipped with their new theory and knowledge of the student composition process, New Rhetoric writing teachers would focus less on mechanical "accidents" and more on rhetorical "essences."<sup>31</sup> Their comments would be designed to help students improve the next paper rather than to justify the grade given to this one.<sup>32</sup> New Rhetoric writing teachers would begin to play

<sup>28</sup> Connors, *Mechanical Correctness*, *supra* note 27, at 28.

<sup>29</sup> The idea that teachers could be "rhetorical audiences" for their students apparently dates back to the early 1950s. Robert J. Connors & Andrea A. Lunsford, *Teachers' Rhetorical Comments on Student Papers*, 44 C. COMP. & COMM. 200, 201 (1993), reprinted in THE ST. MARTIN'S GUIDE TO TEACHING WRITING, *supra* note 16, at 445 [hereinafter Connors & Lunsford, *Teachers' Rhetorical Comments*].

<sup>30</sup> A study of the marking practices of English teachers showed, for example, that despite a collective agreement on some grave errors, other errors were located primarily in the eyes of the beholder. Elaine O. Lees, *The Exceptional Way of the Society: Stanley Fish's Theory of Reading and the Task of the Teacher of Editing*, in RECLAIMING PEDAGOGY: THE RHETORIC OF THE CLASSROOM at 144, 150, 156-57 (Patricia Donahue & Ellen Quandahl eds., 1989).

<sup>31</sup> See EMIG, *supra* note 5, at 94.

<sup>32</sup> In a 1984 article summarizing current views of written response, the author differentiated between summative and formative evaluation and noted that his concern was *only* with formative evaluation. Formative evaluation "is intent on helping students improve their writing abilities," while summative evaluation "treats a text as a finished product and the student's writing ability as at least momentarily fixed." Brooke K. Horvath, *The Components of Written Response: A Practical Synthesis of Current Views*, 2 RHETORIC REV. 136 (1984), reprinted in THE WRITING TEACHER'S SOURCEBOOK 3D ED.,

more rhetorically appropriate roles, such as writing coach or representative reader, rather than only the role of the gatekeeper "charged with admitting or not admitting, approving or not approving."<sup>33</sup>

Despite these views, leading research studies indicated that the New Rhetoric prescriptions were not descriptions of teacher commenting, that what New Rhetoric theory and research suggested was not being practiced in the classroom.<sup>34</sup> Although teachers had become more interested in rhetorical issues such as planning and ordering, invention and arrangement,<sup>35</sup> they commented in large numbers on only two general areas among the more common rhetorical elements, supporting details and general organization, and very few papers contained comments about purpose, audience, or content.<sup>36</sup> Even when rhetorical comments were made, they seemed to follow "rhetorical formulae that are almost as restricting as mechanical formulae."<sup>37</sup> Most global comments served to justify and explain grades; only a little more than ten percent of the comments seemed to advise the student about the paper as a work in progress.<sup>38</sup> Even though three-fourths of the papers contained some kind of rhetorical comments, "[t]he job that teachers felt they were supposed to do" was to look at papers rather than students and to correct and edit rather than to respond as readers or to respond to content.<sup>39</sup>

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*supra* note 20, at 207, 207-08.

<sup>33</sup> Auten, *supra* note 4, at 11-12.

<sup>34</sup> The leading studies involved some 20,000 undergraduate college papers collected in the mid-1980s, from which two separate groups of 3,000 papers were selected for two different studies. The researchers first looked at error-marking patterns in the papers and then at the "global comments," that is, comments that responded to the content or rhetorical aspects of the papers. See Robert J. Connors & Andrea A. Lunsford, *Frequency of Formal Errors in Current College Writing, or Ma and Pa Kettle Do Research*, in THE ST. MARTIN'S GUIDE TO TEACHING WRITING, *supra* note 16, at 390; Connors & Lunsford, *Teachers' Rhetorical Comments*, *supra* note 29. Additional research on teacher commentary is summarized in Anne Ruggles Gere & Ralph S. Stevens, *The Language of Writing Groups: How Oral Response Shapes Revision*, in ACQUISITION OF WRITTEN LANGUAGE: RESPONSE AND REVISION 85, 98-104 (Sarah Warshauer Freedman ed., 1985). In the latter article, the authors report on their comparison of teacher and student comments.

<sup>35</sup> Connors & Lunsford, *Teachers' Rhetorical Comments*, *supra* note 29, at 218.

<sup>36</sup> *Id.* at 208.

<sup>37</sup> *Id.* at 218.

<sup>38</sup> *Id.* at 207.

<sup>39</sup> *Id.* at 217. One explanation for this discrepancy between theory and practice is that the people doing the grading had other things on their minds. "[I]f the rhetoricians often get the best of the abstract arguments, the traditionalists can still point to savage overwork as an occupational reality for many writing teachers . . . . A teacher with 100



Moreover, studies indicated that even when writing teachers did comment more broadly on the writing process and on organization and style, their responses tended to be general and abstract and to give only vague directions for improvement.<sup>40</sup> Because teachers often address "content only in terms of how it contributes to the elaboration of structure or style,"<sup>41</sup> many teacher comments are so general that they could be rubber-stamped from text to text.<sup>42</sup> In fact, "teachers seem conditioned not to engage with student writing in personal or polemical ways" and to read "in ways antithetical to the reading strategies currently being explored by many critical theorists."<sup>43</sup> When teacher comments fail to engage with what a student actually wrote, they divert the student's attention away from the student's purposes in writing and focus attention instead on the teacher's purposes in commenting.<sup>44</sup> This refusal to engage personally with an actual text<sup>45</sup> is unlikely to lead to the kind of reader-writer responses that will encourage more reflective thinking by the students who are producing that text.<sup>46</sup>

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papers to grade over the weekend, say the traditionalists, cannot possibly respond effectively to each one as communication—and they are right." Connors, *Mechanical Correctness*, *supra* note 27, at 53. Another explanation is that writing teachers have been trained to read and interpret literary texts for meaning, but they are not trained to read and respond to student work in the same way. See Sommers, *Responding to Student Writing*, *supra* note 13, at 154.

<sup>40</sup> See Gere & Stevens, *supra* note 34, at 100-01.

<sup>41</sup> Patricia Bizzell, *The 4th of July and the 22nd of December*, 48 C. COMP. & COMM. 44, 44 (1997) [hereinafter Bizzell, *The 4th of July*]. The Connors and Lunsford study reported that only 24% of the rhetorical comments made any move to argue or refute any content points. Connors & Lunsford, *Teachers' Rhetorical Comments*, *supra* note 29, at 207.

<sup>42</sup> Sommers, *Responding to Student Writing*, *supra* note 13, at 149-54.

<sup>43</sup> Connors & Lunsford, *Teachers' Rhetorical Comments*, *supra* note 29, at 224-25 (citing Robert Schwegler, *The Politics of Reading Student Papers*, in *THE POLITICS OF WRITING INSTRUCTION: POSTSECONDARY 205* (Richard Bullock & John Trimbur eds., 1991) for the conclusion that "professional practices and assumptions have encouraged composition instructors to suppress value-laden responses to student writing and ignore the political dimensions of their reading and teaching practices").

<sup>44</sup> Sommers, *Responding to Student Writing*, *supra* note 13, at 149-50.

<sup>45</sup> The Connors and Lunsford study noted that a quarter of the papers "had no personal comments at all, a third of them had no real rhetorical responses, and only 5% of them had lengthy, engaged comments of more than 100 words." Connors & Lunsford, *Teachers' Rhetorical Comments*, *supra* note 29, at 214.

<sup>46</sup> One author characterized this refusal to engage personally with student work as an attempt to remain objective: "The only way to confront a text objectively is to grade it for superficial errors rather than to dwell within it, seeking its meaning; issues of coherence and significance arise tacitly. If we limit our comments to what we can 'prove,' we purchase our safety at the price of triviality." Sam Watson, Jr., *Polanyi and the Contexts of Composing*, in *REINVENTING THE RHETORICAL TRADITION* 19, 23 (Aviva Freedman & Ian

## II. MODELS FOR READING AND RESPONSE

Unlike New Rhetoric models of the composing process, New Rhetoric models of teacher reading and response are based not on what the experts do but instead on what the experts say. In turn, what the experts say is based less on studies of the effectiveness of teacher reading and response<sup>47</sup> and more on composition theory and research, rhetorical models, and teaching philosophies and practices.<sup>48</sup> As noted in the introduction, this article has a similar basis in New Rhetoric theory and research and, in particular, on a rhetorical model of the student-teacher transaction and a developmental model of teacher response.

First, the article relies on a rhetorical model to apply the New Rhetoric theory that reading and writing are meaning-making processes and that these processes can benefit from transactions that generate response and reflection.<sup>49</sup> This model, suggested by Janet Auten to illuminate the transactions between student and teacher, places the familiar rhetorical triangle for student writing next to a similar rhetorical triangle for teacher response.<sup>50</sup> The resulting image, shown in Figure 1, graphically illustrates that student writing and teacher response are located within different rhetorical contexts that have different rhetorical components.

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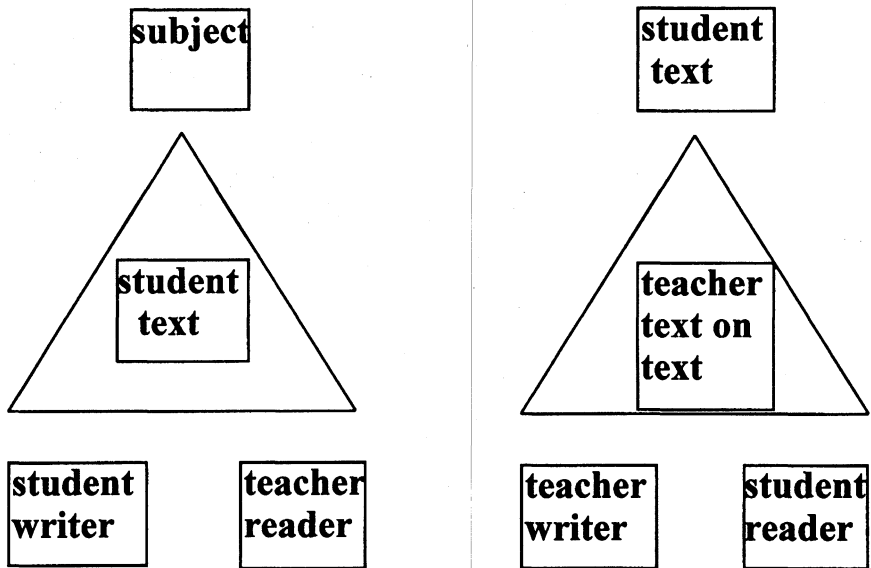
Pringle eds., 1980).

<sup>47</sup> As Erika Lindemann notes, "much research argues against commenting on students' papers—ever." LINDEMANN, A RHETORIC, *supra* note 25, at 228 (citing GEORGE HILLOCKS JR., RESEARCH ON WRITTEN COMPOSITION: NEW DIRECTIONS FOR TEACHING 165 (1986) for the conclusion that "[t]he results of all these studies strongly suggest that teacher comment has little impact on student writing"). Lindemann nonetheless concludes that teacher commenting is useful if the comments are focused and if the students have opportunities to actively apply criteria for good writing to their own work in future revisions. *Id.* at 229. See also Auten, *supra* note 4, at 10 (suggesting that "teachers who have good communication with their students and insert comments into an ongoing dialogue about writing can make commentary an effective teaching tool").

<sup>48</sup> See Louise Wetherbee Phelps, *Images of Student Writing: The Deep Structure of Teacher Response*, in WRITING AND RESPONSE, *supra* note 10, at 37 [hereinafter Phelps, *Images of Student Writing*] for a description of the typical arc from practice to theory to practice as teachers define and attempt to address problems in composition practice.

<sup>49</sup> A transaction differs from an interaction because it is a "dynamic process" that transforms all the elements in the transaction. See Louise M. Rosenblatt, *Viewpoints: Transaction Versus Interaction—A Terminological Rescue Operation*, 19 RES. IN TEACHING ENG. 96, 100-01 (1985).

<sup>50</sup> Auten, *supra* note 4, at 4



**Figure 1: The triangle on the left illustrates the rhetorical context for student writing; the triangle on the right shows that the rhetorical context for teacher response is different.**

By demonstrating that the student text is written in one rhetorical context and read in another and that the teacher's comments are written in one context and read in another, the model shows that each component of the rhetorical triangle—the subject, the text, the reader, and the writer—changes as the student and teacher move from one context to the other. In moving from the student's to the teacher's rhetorical context, the subject shifts from the content of the student text to the student text itself, the student writer becomes the student reader, the teacher reader becomes the teacher writer, and the "text" changes from the student text to "a text about the audience's

own writing.”<sup>51</sup> In the teacher’s rhetorical context, teacher commentary “inevitably and automatically undermines the authority of the student.”<sup>52</sup> Having lost authority as a writer, the student has lost control over the subject and the text.

In addition to showing that student writing and teacher response take place in different contexts, the model indicates that teacher reading and teacher writing themselves occur in different contexts. That is, as a reader, the teacher is reading not only the student text, but reading through the student text to the student’s subject. As a writer, however, the teacher no longer has any subject other than the student text itself. Finally, the model helps to categorize the kinds of comments that teachers can make about their reading of student texts. That is, teacher comments can relate primarily to the student’s *subject*, to the student *text*, to the student *writer*, or to the teacher *reader*.<sup>53</sup>

Second, the article draws on a developmental model of teacher response, a model that grew out of an empirical study comparing teacher response styles to William Perry’s charting of the development of undergraduate students’ ways of looking at the world.<sup>54</sup> Perry described nine distinct stages beginning with the dualistic stage in which the world is seen in polar terms of right and wrong, progressing to the relativistic stage in which the student recognizes that not all areas of knowledge are subject to absolute answers, and moving to the final stage of commitment where the student recognizes that there are no right answers but begins to find at least tentative order within this relativism.<sup>55</sup> The study found that teacher responses fell into a similar continuum, apparently reflecting their “different visions of classroom writing and of learning to write.”<sup>56</sup> The majority of

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<sup>51</sup> *Id.* at 4-5.

<sup>52</sup> Not only does the teacher “naturally exert the authority of writers over their subject” to “appropriate” the student’s work, but also the teacher’s text is backed by traditions of textual commentary, in which the critic has greater authority than the author, and teacher-student interaction, in which the teacher initiates action, the student responds, and the teacher evaluates the response. *Id.*

<sup>53</sup> Auten suggests that comments that use “it” relate to the student text; comments that use “I” relate to the teacher reader; comments that use “you” relate to the student writer. *Id.* at 10-12. Auten does not delineate a category of comments relating to the fourth focus on the triangle, the student’s “subject.”

<sup>54</sup> Anson, *supra* note 10.

<sup>55</sup> See *id.* at 334-39. Anson uses the term “reflective” to describe this final stage. *Id.* at 360 n.2.

<sup>56</sup> The study was intended to find out whether the teachers shifted their response styles to match the development of the students whose papers they read. Instead, the

the teachers were “dualistic” and “focused almost entirely on the surface features of the students’ texts, and did so consistently, in spite of the differences in the essays’ contents.”<sup>57</sup> They suggested few alternatives for revision, said little about the student’s rhetorical decisions or composing processes, and often ignored the student’s intentions or meaning.<sup>58</sup> Instead, these teachers viewed their job as acting as judges who applied uniform standards for correctness. For example, one teacher wrote the following end comment on a very short student paper:

There are some serious problems with this paper. For one thing, it is far too short, and the ideas in it, if any, are at the moment barely articulated. All you have done is merely tell us what happened, in the starkest outline. Why? If this event was an important and educative one for you, surely you should have written on it some more? One obvious reason why you did not write more is that you have very serious deficiencies in your knowledge of the mechanics of writing. I am referring here to *tense, spelling, punctuation, and sentence structure*. I strongly recommend that you see me *immediately* about your problems.<sup>59</sup>

On a more developed paper, the same teacher still focused primarily on technical matters:

Overall, the paper shows sensitivity and understanding. What the paper does not have is a coherent paragraph organization and composition. . . . Try to organize your thoughts in terms of paragraphs that explore and describe *one* thought at a time. . . . The paper also has an awkward, contradictory and repetitive sentence. You make a free use of contractions that are much too casual and not used in formal writing, you have clauses in the same sentences that contradict each other, and you make the same statement several times without adding anything substantial to what you have already said . . . . So, overall I would say, in future exercise more caution in planning your paper and more control in writing clearer, more precise and effective

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study found that each teacher had a consistent response style no matter what the differences in the essays themselves. *Id.* at 343.

<sup>57</sup> *Id.* at 343-44.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 344.

sentences.<sup>60</sup>

At the next stage on the continuum, a much smaller group of “relativistic” teachers wrote little or nothing in the margins of the student text and appended casual, apparently unplanned, responses to the end of the essays. For example, a relativistic teacher’s comment on the same, very short, essay was as follows:

Bobby, you certainly had a hard teacher. Did you get a ticket? What happened when Mom came home? Did your brother snitch on you? What happened to you? This kind of thing eventually happens to all of us, but what did you do? How angry was your mother? I’ll bet she was hot when she got home, or was she calm and very understanding because she knows how important it is to be with someone you care for. If you had to do it all over again, would you? Tell the truth.<sup>61</sup>

These responders “seemed entirely unconcerned with giving the students anything more than a casual reaction, as if this is the only kind of response that can have any validity in a world where judgment is always in the eye of the beholder.”<sup>62</sup> The relativistic teachers emphasized the meaning or the intent of the student over the text itself and provided no options for revision.<sup>63</sup>

The final small group of teachers were classified as “reflective” responders; they acted as representative readers, viewed the student text as in-process, and suggested and preferred options for revision. Unlike the dualistic and the relativistic responses, their responses concerned not only the ideas in the paper but also the way they might be presented in the text. For example, a reflective response to the same short essay follows:

The first thing that strikes me before I even read your story is that it’s very short. I don’t really like to compare one student’s work with other students’ work, but it’s the shortest one I’ve seen so far. So right away, I’m wondering if it’s short for a good reason, or is it short because you just couldn’t think of things to say. It’s possible for a piece of

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<sup>60</sup> *Id.* at 347.

<sup>61</sup> *Id.* at 349.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 350-51.

writing that's very short to be very good. Poetry is that way, certainly. On the other hand, the more you put in, the more chances are that your reader is going to be able to get into the story. Stories generally—and this essay is a story—are fairly well detailed, and one of the reasons is that the reader wants to experience the event in some way. If you just keep it short and don't put in many details then we never really get into your story at all. . . .

It has the potential to be a good story. . . . Maybe you could think more about the events that happened and break them down into more, smaller and smaller events, and describe more, explain more. Maybe just some more details so we understand more about what kind of person your mother is . . . . Now, you could also develop that whole [middle] part there, maybe with some dialogue . . . .<sup>64</sup>

The reflective responses placed more responsibility on the writer “not just in the style or form of [the] response but in its focus on content.” The comments were “simultaneously tentative and goal-driven”; these teachers tossed the responsibility for making decisions back to the writer, and they offered possibilities for a potentially better text.<sup>65</sup> In tone, the reflective teachers tended to “rhetorically sit next to the writer, collaborating, suggesting, guiding, modeling.”<sup>66</sup> In terms of the Auten model, the dualistic teachers appeared most concerned with their own rhetorical context, the relativistic teachers placed primary emphasis on the student's rhetorical context, and the reflective teachers seemed to use the transaction between the two contexts to open up the potential for revision.<sup>67</sup>

Through a reflective rhetorical model of teacher response, the legal writing teacher may more thoughtfully conduct her reading and writing transactions with her students. In this view, the teacher's reading and response are interruptions by another reader-writer in the reflective conversation between the student-as-reader and the student-as-writer that help produce a better student text.<sup>68</sup> The teacher's reading and response break

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<sup>64</sup> This response was tape-recorded, not written. *Id.* at 351-52.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 353-54.

<sup>67</sup> See *id.* at 333 (“a student's writing and a teacher's response to it represent a transaction through which two separate epistemologies come together, interact, and grow or change in the process”).

<sup>68</sup> Because the conversation is the student's, the teacher's interruptions should not be the first or the last word. See Nancy Sommers, *Between the Drafts*, 43 C. COMP. &

into the conversation and further unsettle the idea of a "finished" piece, by their very presence showing that reading and writing are "always approximate, a changeable, flexible, and above all interpretable medium of communication."<sup>69</sup>

### III. APPLYING THE REFLECTIVE RHETORICAL MODEL TO TEACHER READING AND WRITING

Every disruption we make in student reading and writing is rhetorical: our text-on-text carries considerable rhetorical weight, bearing our intentions to affect student reading and writing and our audience's fear of judgments on their competence or worth.<sup>70</sup> As an expert reader and writer, the legal writing teacher will be judged by his rhetorical effectiveness. That being the case, he had better understand his context, his purpose, his subject, his role, and his audience. The following analysis is suggested as a way to improve teacher reading and response as well as to relieve some of the frustration and exhaustion from writing teachers' lives.<sup>71</sup>

#### A. *Situating yourself in context: who are these people and what am I doing in this classroom?*

Our teaching inevitably reflects our view of our students and of "the job we are supposed to do" in the legal writing classroom. This view informs the decisions we make throughout the writing course: from the structure of our syllabus, to the textbook we choose, to the assignments we create, to the responses we make, to the physical arrangement of the classroom, to the behaviors and performances we reward and censure. Everything we say to our students "about writing is saturated with the teacher's values, beliefs, and models of learning."<sup>72</sup>

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COMM. 23, 30 (1992) (suggesting that students should be "given a turn in the conversation"); Jeffrey Sommers, *The Writer's Memo: Collaboration, Response, and Development*, in WRITING AND RESPONSE, *supra* note 10, at 179 [hereinafter Sommers, *The Writer's Memo*] (suggesting that students should be given the "first say" about their work).

<sup>69</sup> Auten, *supra* note 4, at 13.

<sup>70</sup> Auten, *supra* note 4, at 8-10.

<sup>71</sup> See LeClercq, *supra* note 4, at 4 ("Instructors are . . . spending too much energy editing papers in the belief that more feedback produces better writers; in the process, we're killing ourselves and destroying both the teaching field and our students."); Connors & Lunsford, *Teachers' Rhetorical Comments*, *supra* note 29, at 214 ("[T]hese papers and comments revealed . . . a world of teaching writing . . . whose most obvious nature was seen in the exhaustion on the parts of the teachers marking these papers.").

<sup>72</sup> Anson, *supra* note 10, at 354.



Thus, even the teacher who does not adopt a theory will be governed by a theory for teaching and learning legal reading and writing. Most often, by default, the teacher will teach as he was taught and for most of us, that means the current-traditional, result-oriented "product" view of writing.<sup>73</sup> Novice teachers of writing unconsciously adopt the current-traditional view and its corresponding dualistic, right or wrong, response style.<sup>74</sup> They focus primarily on grammar, usage, and punctuation, where correctness can be objectively judged. For the first few years, this theory and response style will appear to work: each year the teacher will be able to identify more and more errors.<sup>75</sup> Soon though, the teacher will begin to recognize that marking all the errors and explaining all the rules and formulas is not improving the students' writing; in fact, many errors will begin to seem trivial, problems in the students' writing will be seen beneath the surface, rules and formulas will improve the presentation but not the thinking or the learning. At this stage, the teacher must look to the theory and research of other disciplines, and to his students, for a new approach to which he can make a tentative commitment.<sup>76</sup>

College composition, the discipline to which most legal writing teachers turn, offers a range of theory, research, and practice perspectives. In theory, the current-traditional view has been largely displaced by the New Rhetoric theory that reading and writing are processes for the construction of meaning.<sup>77</sup> The resulting "process approach" has subdivided into at least two schools, an inner-directed school ("cognitive process") and an outer-directed school ("social construction").<sup>78</sup> The inner-directed school is interested primarily in the composition and cognition

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<sup>73</sup> The "current-traditional paradigm" is marked by an "emphasis on the composed product rather than the composing process; the analysis of discourse into words, sentences, and paragraphs; the classification of discourse into description, narration, exposition, and argument; the strong concern with usage (syntax, spelling, punctuation) and with style (economy, clarity, emphasis)." Richard Young, *Paradigms and Problems: Needed Research in Rhetorical Invention*, in *RESEARCH IN COMPOSING* 31 (1978).

<sup>74</sup> Most of us learned to comment the same way that we learned to teach: "by first surviving and then imitating the responses of teachers to our own work." LINDEMANN, *A RHETORIC*, *supra* note 25, at 225.

<sup>75</sup> See Anson, *supra* note 10, at 356-57; ELBOW, *WRITING WITH POWER*, *supra* note 25, at 224.

<sup>76</sup> See Anson, *supra* note 10, at 357-59.

<sup>77</sup> See, e.g., Hairston, *supra* note 8, at 85 (predicting a paradigm shift from current-traditional theory to the process approach).

<sup>78</sup> See Patricia Bizzell, *Cognition, Convention, and Certainty: What We Need to Know About Writing*, 3 *PRE/TEXT* 213, 214-15 (1982).

processes of individual writers; the outer-directed school analyzes the conventions of particular discourse communities.<sup>79</sup>

In addition to current-traditional theory, cognitive process theory, and social construction theory, college composition teachers have been categorized according to which elements in the composition process they view as most important. Thus, for example, expressivists emphasize the writer's personal expression through language; rhetoricians are most interested in the transaction between reader and writer through language; the epistemic or knowledge-shaping perspective emphasizes the transactions between the writer, language, and reality.<sup>80</sup> These theories and perspectives are reflected in teaching practices that range from the teacherless writing workshop, in which students read and respond to each other's work,<sup>81</sup> to the teacher-managed "substation in the cultural network," small shops that produce particular kinds of readers and writers such as literary critics or scientists.<sup>82</sup>

Based on recent scholarship, most legal writing commentators have adopted the cognitive process or the social construction theory.<sup>83</sup> As a result, the remainder of this article will as-

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<sup>79</sup> See *id.* at 218. Linda Flower, a leading cognitive process researcher, has suggested a "pedagogy of literate action" that would bring together the social, cognitive, and rhetorical strands and focus on the writer "as an agent within a social and rhetorical context." Linda Flower, *Literate Action*, in *COMPOSITION IN THE TWENTY-FIRST CENTURY: CRISIS AND CHANGE* 249 (Lynn Z. Bloom et al. eds., 1996).

<sup>80</sup> See, e.g., Kenneth Dowst, *The Epistemic Approach*, in *EIGHT APPROACHES TO TEACHING COMPOSITION* 63, 66-69 (Timothy R. Donovan & Ben W. McClelland eds., 1980); Richard Fulkerson, *Four Philosophies of Composition*, 30 *C. COMP. & COMM.* 343 (1979), reprinted in *THE WRITING TEACHER'S SOURCEBOOK* 3D ED., *supra* note 20, at 3, 3-6.

<sup>81</sup> See, e.g., PETER ELBOW, *WRITING WITHOUT TEACHERS* (1973); PETER ELBOW & PAT BELANOFF, *A COMMUNITY OF WRITERS: A WORKSHOP COURSE IN WRITING* (1989).

<sup>82</sup> See, e.g., David Bartholomae, *Writing with Teachers: A Conversation with Peter Elbow*, 46 *C. COMP. & COMM.* 62, 66 (1995).

<sup>83</sup> See, e.g., Philip C. Kissam, *Thinking (by Writing) About Legal Writing*, 40 *VAND. L. REV.* 135, 151-70 (1987) (describing a critical writing process and proposing that critical reading and writing be extended to all parts of the law school curriculum); Phelps, *The New Legal Rhetoric*, *supra* note 24, at 1094 (describing the process approach as emphasizing that writing is recursive, rhetorically based, and judged by how well it communicates the writer's message and meets the reader's needs); Joseph M. Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development*, 1 *J. LEGAL WRITING* 1, 9 (1991) (good thinking and good writing are a "set of skills that can be deliberately taught and deliberately learned in a context that we can describe as a 'community of knowledge' or a 'community of discourse'"); Bari R. Burke, *Legal Writing (Groups) at the University of Montana: Professional Voice Lessons in a Communal Context*, 52 *MONT. L. REV.* 373, 397 (1991) (describing approaches designed to teach writing as a cognitive process as well as a professional skill); Kearney & Beazley, *supra* note 4, at 888 (describing the process approach as one that allows the writer to focus on different tasks at different stages of a writing process and one that allows the teacher to in-

sume that most legal writing teachers apply one or both of those theories to their teaching practices.

B. *Defining your overall purposes: why are you reading and writing?*

The writing teacher's view of "the job he is supposed to do" will determine which purpose is predominant in his reading and response to student work. Corresponding to the four focuses of the student's rhetorical triangle, a writing teacher may read to analyze the *subject* (or the meaning of the text); he may read to respond as a *reader*; he may read to improve the *writer*; and he may read to judge the features of the *student text*.<sup>84</sup> The Auten model indicates that the teacher who reads solely to judge the text has pushed aside the student's rhetorical context: the student text has simply moved into the teacher's rhetorical triangle to become the teacher's "subject." In contrast, the teacher who reads to analyze the subject, to respond as a reader, or to improve the writer remains within the student's rhetorical context as he reads.

Just as they have more than one purpose for reading, writing teachers have more than one purpose for responding to student papers, whether orally or in writing.<sup>85</sup> Their overall purpose may be summative, to sum up and let the writer know where his writing stands at this moment, or formative, to help

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tervene throughout the process); Rideout & Ramsfield, *supra* note 4, at 51-61 (defining the traditional view as "formalist," the more progressive view as the "process perspective," and the emerging view as the "social perspective"); Jo Anne Durako et al., *From Product to Process: Evolution of a Legal Writing Program*, 58 U. PITT. L. REV. 719 (1997) (describing the process approach as designed to teach lifelong skills adaptable to new writing situations).

<sup>84</sup> Alan Purves identified these four reasons for reading student work and eight corresponding roles: to read and respond (as a common reader); to read and judge the text (as a proofreader, editor, reviewer, or gatekeeper); to read and analyze the text (as a critic or from an anthropological, linguistic, or psychological perspective); and to read and improve the writer (as a diagnostician or therapist). Alan C. Purves, *The Teacher as Reader: An Anatomy*, 46 C. ENG. 259, 260-62 (1984). Purves also suggested that "a good teacher would consciously adopt each of these roles or a combination depending on the stage at which the composition is read," the context in which the writing is produced, and the attitude of the students. *Id.* at 263-64.

<sup>85</sup> All comments on student work are to some extent evaluative. The reasons for evaluating student writing range from predicting students' future grades or placing them in certain classes to making diagnoses and guiding students to improvement to measuring student growth and determining the effectiveness of a writing program. EVALUATING WRITING: DESCRIBING, MEASURING, JUDGING ix (Charles R. Cooper & Lee Odell eds., 1977).

the writer form and improve his writing in the future.<sup>86</sup> The New Rhetoric image of a writing project as always in progress carries with it the assumption that the formative purpose is always more important, at least until the grading of a final paper. With a summative purpose, the teacher moves completely into his own rhetorical context because only the student's text can be the focus of his comments. With a formative purpose, the teacher's response can focus not only on the student text, but also on the student's subject, on the student as writer (and reader), and on the teacher as a reader (and writer).

The Auten model thus helps teachers identify different bases for their responses to student papers, bases that are located in both the student's and the teacher's contexts. A teacher may want to let the student know what strong points and shortcomings she sees in his arguments or explanations (feedback based on analysis of the student's *subject*, content, or meaning); she may want to let the writer know what she has determined are his major strengths and weaknesses (feedback based on diagnosis of the *student writer* and communicated to the *student reader*); she may want to let the student know how his paper affected her (feedback based on the reactions of the *teacher reader* and communicated by the *teacher writer*); or she may want to let the student know how his paper measured up to a set of textual criteria (feedback based on the features of the *student text*).<sup>87</sup>

Teacher reading and writing purposes are related: the reader who reads to analyze will be more likely to give content-based feedback; the teacher who reads to improve will be more likely to provide diagnostic feedback; the reader who reads to respond will be more likely to give reader-based feedback; the reader who reads to judge will be more likely to give text-based feedback. But a teacher can choose to respond on a basis that is different from the purpose for which she read. That is, for example, the teacher who reads to respond can choose to base her response on textual criteria, writer diagnosis, or content analysis as well as reader response.

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<sup>86</sup> See Horvath, *supra* note 32, at 207-08. Some comments seem to be written for other reasons: "to damn the paper with faint praise or snide remarks, to prove that the teacher is a superior error hunter, to vent frustration with students, to condemn or disagree with the writer's ideas, to confuse the writer with cryptic correction symbols." LINDEMANN, A RHETORIC, *supra* note 25, at 225.

<sup>87</sup> See Auten, *supra* note 4, at 11-12.

C. *Narrowing your subject: what paper are you reading?*

Like the teacher without a composition theory, the teacher who does not have a clear view of her subject—the paper that she is reading—will choose a subject by default. By default, she will view the paper as a final product or as a paper that does not match up to the ideal final product. As a result, her comments may fail to recognize that “what one has to say about the process is different from what one has to say about the product.”<sup>88</sup>

The writing teacher who has examined her context and her purposes in reading and responding will choose another view of her subject. That is, rather than reading the text as complete in itself, the teacher will choose to view the paper as part of a work in progress, as a sample excerpted from a portfolio of writing, or as part of a rhetorical situation or field of discourse.<sup>89</sup> No matter which view she takes, the teacher should read and respond not to the average text nor to an ideal text but to an actual text, a particular draft produced at a particular time by a particular student.<sup>90</sup>

A strong focus on subject and on actual text will reduce the danger that teachers will make, and that students will misunderstand, an avalanche of unfocused comments.<sup>91</sup> Instead of an avalanche, teacher comments should “be suited to the draft we are reading,”<sup>92</sup> not only in the sense of where most of our students are in the writing process but also in the sense of where a particular student is in his own writing process. The Auten

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<sup>88</sup> Sommers, *Responding to Student Writing*, *supra* note 13, at 154.

<sup>89</sup> Louise Phelps writes that these views represent a continuum of development in teacher perspectives on the student text. That is, in the evaluative or summative attitude, the text is read as complete in itself; in the formative or process attitude, the text is read as one of a set produced during a composing process; in the developmental attitude, the text is read as a sample excerpted from a portfolio of writing stimulated by the writing class; and in the contextual attitude, the text is read as part of a rhetorical situation or field of discourse. Phelps, *Images of Student Writing*, *supra* note 48, at 49-59.

<sup>90</sup> Student-teacher ratios can make particularized reading and response seem impossible or unbearable: “I must read every piece to the end. I must say to every student those magic words that every writer wants to hear: ‘I couldn’t put your writing down,’ only I say it through clenched teeth.” ELBOW, *WRITING WITH POWER*, *supra* note 25, at 224. Commenting on only some things, rather than on everything, can save some of the time needed to respond more particularly, but the only real solution is manageable student-teacher ratios.

<sup>91</sup> Because students “see no hierarchy in our comments, . . . they spend energy ‘fixing’ the little, easily repaired problems in their text, unsure of what to do with the larger questions concerning content.” Lape & Glenn, *supra* note 16, at 440.

<sup>92</sup> Sommers, *Responding to Student Writing*, *supra* note 13, at 155.

model suggests, for example, that early drafts can be read for development of meaning (analysis of the student's *subject* or content), with comments that raise questions or point to "breaks in logic, disruptions in meaning, or missing information" as well as comments that mark strong insights, well developed arguments, and thorough explanations.<sup>93</sup> In other drafts, the focus of reading can shift to the *student writer*, to the *teacher reader*, and to the features of the *student text*. Thus, a particular draft can be read to diagnose the *writer's* problems and improve the *writer's* skills by providing options for revision or to respond as a *reader* by providing insight into areas of confusion or distraction or to point to features of the *text* such as syntax, word choices, and usage errors.

The New Rhetoric image of writing as always in progress and its classroom corollaries support the teacher's focus on subject and actual text. By requiring a series of ungraded drafts before a final paper is due, the writing teacher can assure that most early drafts will be so individual that she will be forced to confront both the content and the structure of any particular paper. By asking students to set the agenda for teacher comments, both in "writer's memos"<sup>94</sup> and in individual or small group writing conferences, the writing teacher can assure that she confronts both the particular paper and the particular writer's concerns.

#### D. *Defining your role in reading and writing: who do you think you are?*

In addition to an overall view of context and purpose and a specific view of her subject, the writing teacher takes on a particular role every time she reads and responds to a paper.<sup>95</sup> New

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<sup>93</sup> *Id.*

<sup>94</sup> See Sommers, *The Writer's Memo*, *supra* note 69, at 179.

<sup>95</sup> See Connors & Lunsford, *Teachers' Rhetorical Comments*, *supra* note 29, at 224 ("[T]eachers invent not only a student writer but a responder every time they comment."). Composition theorists and teachers have suggested a number of roles for writing teacher response. Brooke Horvath describes the roles of "editor, average reader, and more experienced writer" in addition to those of summative evaluator and motivator/friend. Horvath, *supra* note 32, at 212-13. Elbow and Belanoff suggest that "[a] 'coach' or 'editor' is a nice image for the writing teacher. For a coach or editor is an ally rather than an adversary. A coach may be tough on you, but she is not trying to be the enemy; she's trying to help you beat the real 'enemy' . . ." ELBOW & BELANOFF, *supra* note 81, at 271. Erika Lindemann links the roles that writing teachers take for themselves to their theory of writing instruction. That is, "writing as a product" teachers may view themselves as "experts" or "critics." "Writing as a process" teachers may view themselves

Rhetoric research suggests at a minimum that the writing teacher should consciously change her role as the student moves through the process. Thus, the writing teacher should read and write differently depending on whether the student is engaged in (1) generating thought (prewriting, invention, planning, drafting); (2) having second thoughts (monitoring, responding, reflecting, revising); or (3) moving toward rhetorical effectiveness (audience analysis, editing, proofreading).<sup>96</sup> Complicating these changing roles is a necessary multiplicity: the teacher must be reader and writer and different kinds of readers and writers at the same time.

Thus, for example, writing teachers often read as diagnosticians no matter where a particular student is located within his writing process; in this role, the writing teacher reads to improve the writer but first reads for herself, discusses the paper with herself, explains its problems and strengths, and plans a course of instruction.<sup>97</sup> When the student is generating thought, the teacher's most appropriate reading role may be as a coach, a reader who is an expert in the field and who can provide motivation to keep going as well as ideas and techniques to keep thinking. When the student is having second thoughts, the teacher's most appropriate reading role may be as a more experienced fellow writer, a reader who can tap into her own writing experiences to provide guidance about what she as a writer would do next.<sup>98</sup> When the student is moving toward effective

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as "more experienced, confident" writers. "Writing as a system" teachers may view themselves as "facilitators" whose role is to "empower writers to membership" in a discourse community. Erika Lindemann, *Three Views of English 101*, 57 C. ENG. 287, 291, 293, 297 (1995) [hereinafter Lindemann, *Three Views*]. Janet Auten ties the kinds of comments that writing teachers make to three different roles they adopt: in their role as readers, their comments use "I"; in their role as coaches, their comments use "you"; and in their role as editors, their comments use "it" to identify writing problems in the text. See Auten, *supra* note 4, at 11-12.

<sup>96</sup> For example, Donald Murray describes a progression in his writing conference roles as his students move through a project. In prewriting conferences, he helps students generate thoughts. As their drafts develop, he becomes a "bit removed, a fellow writer who shares his own writing problems, his own search for meaning and form." Finally, he becomes "more the reader, more interested in the language, in clarity. I have begun to detach myself from the writer and from the piece of writing . . ." Donald M. Murray, *The Listening Eye: Reflections on the Writing Conference*, 41 C. ENG. 13 (1979), reprinted in *THE WRITING TEACHER'S SOURCEBOOK 3D ED.*, *supra* note 20, at 96, 100.

<sup>97</sup> See LINDEMANN, A RHETORIC, *supra* note 25, at 224.

<sup>98</sup> In the role of "more experienced writer, the instructor offers techniques, tricks of the trade, that the student can add to her repertoire and elaborates upon why certain features of a text—figures used, words chosen, examples employed—worked as well as they did." Horvath, *supra* note 32, at 212-13.

communication to a reader, the teacher's most appropriate reading role may be that of the average reader in the field, the kind of reader who looks to the writer for necessary information but overlooks technical errors that do not affect meaning,<sup>99</sup> or perhaps that of critical expert in a particular discourse community, the kind of reader who can help the writer test his final analysis and turn out a professional final piece.<sup>100</sup>

Moving from the student's context to the teacher's, the teacher-reader then decides what writing role to play. After choosing to play a particular writing role, the writing teacher must establish her authority to speak in that role.<sup>101</sup> Establishing authority to speak in a particular role is not the same thing as establishing the teacher as *the* expert in the classroom. Rather, it means establishing the teacher as a credible and persuasive coach, more experienced fellow writer, average legal reader, or critical expert. Establishing credibility requires the writing teacher to acquire (or to borrow) and then to share her experiences in those roles.<sup>102</sup> Acquiring persuasiveness requires the writing teacher to show that she shares important values with her students, thus allowing her to "be better able to per-

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<sup>99</sup> The role of average reader serves to guard against "excessive response and an unreasonable preoccupation with relative minutia." *Id.* at 213. As an average reader, "the evaluator, though a captured audience, tries to respond as might a real-world reader, consequently not making overmuch of defensible fragments, slightly inexact word choices, contractions, split infinitives, and other slips of mind or pen that would not bother him if they were noticed elsewhere." *Id.*

<sup>100</sup> This critical editor is the kind you would like to have just before publication of a final piece, the editor who "addresses all clear-cut errors and deficiencies." *Id.*

<sup>101</sup> Peter Elbow suggests that writing teachers acknowledge that their roles conflict and tell students when their roles have changed from "Now I'm being a tough-minded gatekeeper, standing up for high critical standards in my loyalty to what I teach," to "Now my attention is wholeheartedly on trying to be your ally and to help you learn, and I am not worrying about the purity of standards or grades or the need of society or institutions." Peter Elbow, *Embracing Contraries in the Teaching Process*, 45 C. ENG. 327 (1983), reprinted in *THE WRITING TEACHER'S SOURCEBOOK 3D ED.*, *supra* note 20, at 65, 75.

<sup>102</sup> Under social construction theory, for example, the evaluator should be a professional in the particular discourse community. See Lindemann, *Three Views*, *supra* note 95, at 298-99. According to one study, the average range of practice experience for legal writing professors is four to seven years. See Ramsfield, *supra* note 3, at 18 & n. 130. For those whose experience is less extensive or no longer current, research into how legal experts read and write can fill some of the gaps. See, e.g., James F. Stratman, *Teaching Lawyers to Revise for the Real World: A Role for Reader Protocols*, 1 J. LEGAL WRITING 35 (1991). In addition, the class itself can become a legal writing community, one that develops its own guide to how an average legal reader would read a memo or brief. This method may help "students internalize and apply criteria for effective writing much more quickly than teacher-controlled assessments do, and it reinforces the principle that students really are writing for . . . the discourse community which will eventually judge their work." Lindemann, *Three Views*, *supra* note 95, at 298-99.



suade the audience to consider . . . her point of view on more controversial matters as well."<sup>103</sup> As in a conversation, where the participants often take time at the beginning to establish common ground, the teacher can establish common ground for her oral and written comments before she makes them. She can, for example, gather information from her students about their reading and writing knowledge and experience as well as about the values they place on reading and writing.<sup>104</sup> She can, for example, let students know more about her own reading and writing knowledge, experience, and values.<sup>105</sup>

E. *Reaching your audience: For whom are you writing?*

Writer-based prose describes what the writer has done, what the writer has learned, what the writer knows, or how the writer feels.<sup>106</sup> Although helpful to the writer, such prose rarely presents information that the reader needs or wants. Yet, "writer-based response" is said to be pervasive among teachers: "[t]he judgments expressed in writing by teachers often seemed to come out of some privately held set of ideals about what good writing should look like, norms that students may not have been taught but were certainly expected to know."<sup>107</sup>

Situated now in the teacher's rhetorical context, the teacher-writer who wants to meet the needs of the student reader should analyze her audience. Just as she expects her students to analyze their potential audiences, she needs to know more about her actual audience's knowledge, needs, beliefs, and values.<sup>108</sup> Because the writing teacher's audience is actual and

<sup>103</sup> Bizzell, *The 4th of July*, *supra* note 41, at 45 (advocating the use of broader cultural knowledge not only to increase the rhetorician's credibility but also to influence the rhetorician).

<sup>104</sup> Writing histories can be obtained through journal assignments, writing conferences, and classroom discussions. In addition to information about writing backgrounds, it may be helpful to gain some knowledge of the cultural backgrounds of students.

<sup>105</sup> Believing that "effective commentary depends on a mutually understood context," Auten advocates that teachers share reader guidelines with their students, explaining the commenting roles they play and the kinds and the purpose of the comments they make. See Auten, *supra* note 4, at 11-12.

<sup>106</sup> See Linda Flower, *Writer-Based Prose: A Cognitive Basis for Problems in Writing*, 41 C. ENG. 19 (1979).

<sup>107</sup> Connors & Lunsford, *Teachers' Rhetorical Comments*, *supra* note 29, at 218. Moreover, teacher commentary "mixes modes and purposes in a haphazard way which resembles the prose of basic writers rather than that of well-trained rhetoricians." Auten, *supra* note 4, at 3.

<sup>108</sup> Analysis of a legal writing student audience should start with the results of the Enquist study of student reaction to legal writing teachers' feedback. The study reached

present, instead of potential and absent, the task should be easier than the task we assign students. The writing teacher converses with his audience, not only in the classroom and in writing conferences, but also in written exchanges. Both orally and in writing, the writing teacher can ask questions of his audience and can respond to questions from the audience. Thus, for example, by requiring students to keep journals or to hand in writer's memos with assignments, the writing teacher can obtain a history of a current draft, a list of specific questions or problems with a current draft, a description of the writer's intended audience and purpose.<sup>109</sup>

As with any writing, the teacher-writer's purpose will govern not only the substance of his message but also its expression. The tone of teacher commentary often reflects only the limited purpose of judging a final product: many teachers appear to construct "a general and objective judge . . . speak[ing] to the student from empyrean heights, delivering judgments in an apparently disinterested way."<sup>110</sup> Here again, role should affect tone. When the teacher's role is to act as coach, her tone should motivate by being encouraging and empathetic. When the teacher's role is to act as more experienced fellow writer, his tone should be helpful, friendly, and informed. When the teacher's role is to act as average legal reader or critical expert, her tone may become more removed, professional, and practical.<sup>111</sup>

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these conclusions: (1) students want a summarizing end comment; (2) students want in-depth explanations or examples; (3) students want positive feedback; (4) students do not want to be overwhelmed by too many comments; (5) students want comments to continue throughout the paper; (6) students want comments that identify a problem and suggest a solution or offer a rationale for a solution rather than label or coded comments; (7) students want comments phrased as questions to be the right kinds of questions. See Enquist, *supra* note 4, at 155.

<sup>109</sup> See, e.g., Sommers, *The Writer's Memo*, *supra* note 69, at 177-79. Sommers notes that specific questions from student to teacher "virtually require a collaborative response from the teacher." *Id.* at 179.

<sup>110</sup> Connors & Lunsford, *Teachers' Rhetorical Comments*, *supra* note 29, at 224.

<sup>111</sup> The students in the Enquist study used the following adjectives to describe the tone of the teacher critiques: encouraging, empathetic, friendly, professional, neutral, objective, very distant, discouraging, frustrating, condescending, sarcastic, harsh. See Enquist, *supra* note 4, at 170-73. The study noted that the instructor whose comments were ranked least useful by the students also was consistently assessed as having a professional or negatively professional (neutral, objective, very distant or discouraging) tone. *Id.*

F. *Using the right kind of feedback: What effect do you want to have on this paper at this time?*

Having settled on a subject and a role for reading within the student's rhetorical context, the writing teacher must decide more specifically on his purpose and role for responding within his own rhetorical context. Those decisions will govern his overall approach and the basis for his feedback as well as its form, its medium, its mode, and its tone. First, the teacher must decide whether the feedback will be primarily summative, a summary that evaluates the current paper, or primarily formative, a response that helps form the next paper. Second, the teacher must decide whether his feedback will be based primarily on content analysis, writer diagnosis, reader response, or textual criteria.<sup>112</sup>

Third, the teacher must decide whether the feedback should be provided in writing or in person or both; if in writing, he must decide whether to comment primarily in the margins or primarily in a summary or global comment at the end. As for the choice between written and oral comments, the relative permanence of written comments (and of tape recordings), conveying more importance than an offhand remark, can argue for and against their use in a particular response. Thus, for example, feedback based on reader response or content analysis may be better provided in person: the responses are immediate and can be explained, misinterpretations can be corrected, and differences can be negotiated.<sup>113</sup>

As for the choice between marginal comments and summary end comments, the Auten rhetorical model, the Anson reflective teacher, and the Connors and Lunsford study support the use of appropriate marginal comments, in particular when the feedback is based on content analysis or reader response. Marginal comments can effectively point to places where the reader was

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<sup>112</sup> Peter Elbow and others have divided feedback on writing into two more general categories: criterion-based and reader-based. See ELBOW, *WRITING WITH POWER*, *supra* note 25, at 240-51. If a long list of very specific questions is used, criterion-based feedback is especially good for revising, Elbow says. Reader-based feedback, on the other hand, provides "the main thing you need to improve your writing [over the long run]: the experience of what it felt like for readers as they were reading your words." *Id.* Elbow provides examples of criterion-based and reader-based questions. *Id.* at 252-63.

<sup>113</sup> A study comparing teacher comments with peer responses found that peer reader-writers have "the advantage of immediacy in time and space"; they can explain face to face and immediately; they can explain faster and more completely by speaking than they can in writing. See Gere & Stevens, *supra* note 34, at 85.

distracted or confused, where more support was needed, or where good ideas or arguments were raised.<sup>114</sup> As the Auten model indicates, such marginal comments may “pry open” the student text by challenging its completeness and asking for clarification, amplification, and investigation.<sup>115</sup> Similarly, although the Anson reflective teachers did not write many marginal comments, they did use such comments to raise questions that “seemed geared toward rethinking certain decisions” or to praise the writer for an especially effective choice.<sup>116</sup> As the Connors and Lunsford study noted, marginal comments can be effective in calling attention to many different levels of rhetorical concern.<sup>117</sup>

Finally, the teacher must decide what commenting mode and what tone best fits his specific purpose.<sup>118</sup> Among the com-

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<sup>114</sup> The most consistent finding from the Enquist study was that students want summary end comments. See Enquist, *supra* note 4, at 155-56. This finding is not surprising given my assumption that most students believe that the primary purpose for teacher commentary is to provide a summative evaluation, to let the student know where his paper stands and why he received the grade he earned. But when I use summary end comments on works in progress, I find that they are frequently too general or too abstract to help students form the next draft. By endorsing margin comments for reader response and content analysis, I do not mean to endorse interlinear editing or writing “awk” or “subject-verb agreement?” in the margins. Instead, I mean to endorse the writing of margin responses such as, “How does this point relate to the point you made on the last page about duty?”; “This argument develops the contrasts between your case and *Smith*. Have you considered the similarities too?”; “Can you take this argument farther? For example, did Bonnie say she wanted to hurt Clyde?”; “How would it change your analysis if you decided that the court really did mean foreseeable in the sense you have just described?” I also endorse pulling the margin comments together into a few overarching themes, especially when the student has gotten to the point of putting together a revised draft. Cf. Fajans & Falk, *Comments Worth Making*, *supra* note 4, at 366-67.

<sup>115</sup> Auten, *supra* note 4, at 8-9.

<sup>116</sup> Anson, *supra* note 10, at 353-54.

<sup>117</sup> Teachers who make particularized comments on papers can call “all sorts of rhetorical elements—not just very large-scale ones—to students’ attention.” Connors & Lunsford, *Teachers’ Rhetorical Comments*, *supra* note 29, at 460.

<sup>118</sup> Writing teachers use an array of commenting modes that may include the following: (1) correcting, (2) emoting, (3) describing, (4) suggesting, (5) questioning, (6) reminding, and (7) assigning. Elaine O. Lees, *Evaluating Student Writing*, 30 C. COMP. & COMM. 370 (1979), reprinted in THE WRITING TEACHER’S SOURCEBOOK 263 (Gary Tate et al. eds., 2d ed. 1988). Many other classifications of comments have been suggested. See, e.g., Fajans & Falk, *Comments Worth Making*, *supra* note 4, at 347-48 (distinguishing four basic kinds of feedback: exploratory, descriptive, prescriptive, and judgmental) (citing Kristen R. Woolever & Brook K. Baker, *Diagnosing Legal Writing Problems: Theoretical and Practical Perspectives for Giving Feedback*, presented at the Legal Writing Institute Conference (Ann Arbor, July 1990)). The authors suggest that exploratory feedback, helping the writer think through her ideas, should be used in the early stages of the writing process; descriptive feedback, describing the reader’s reaction to the writing, and prescriptive feedback, diagnosing problems and suggesting solutions, in the middle

menting modes, "correcting" the student's text and "emoting" about the teacher-reader's judgment of it best suit the summative purpose of evaluating the current draft rather than the formative purpose of improving the next draft. These kinds of text-based comments place the burden of revision on the teacher, who often has completed the student's task while judging and correcting the paper. Thus, these commenting modes are appropriate, if at all, when the teacher is commenting on a finished or almost-finished product.

The commenting mode of "describing" falls in the middle, where the descriptions may be summative and based on writer diagnosis (what went wrong, why the teacher thinks so) or formative and based on reader response (here's where I got confused, maybe the reason was). Most appropriate to a formative purpose, when the teacher is commenting on an early or middle draft, are the commenting modes of "suggesting," "questioning,"<sup>119</sup> "reminding," and "assigning." The first three shift the burden of revision to the student while the last mode "provides a way to discover how much of that burden the student has taken."<sup>120</sup>

#### IV. TRANSLATING THEORY INTO PRACTICE

The following examples sketch a sequence of teacher commentary, arranged as though every student progresses steadily, in defined stages, through the writing of a paper. Even though New Rhetoric research casts doubt on the certainty or the universality of such a progression, it is a convenient way to talk about student writing as long as we are constantly reminded by our own writing that writing does not often happen that way. Even though I am more interested in ideas at the beginning of a

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stages; and judgmental feedback, evaluating the quality of the work, near the end of the writing project.

<sup>119</sup> Legal writing teachers have suggested that "questioning" deserves special attention in commenting on the texts of legal writing students. See, e.g., Kearney & Beazley, *supra* note 4, at 901 (questions treat the paper as a draft to be revised and place the responsibility for learning on the student). The difficulty is distinguishing between questions which "challenge students to think harder and deeper and write better, and which ones intimidate, frustrate, and antagonize? . . . [W]hich kinds of comments promote lasting learning and which ones simply help the student fix a problem in a given assignment?" Enquist, *supra* note 4, at 190-91.

<sup>120</sup> *Id.* at 265-66. "Much emoting, correcting, and describing now seems to me to fall into the same category as Levi's pressing; not exactly wrong but useless. . . . Our covering students' papers with suggestions and corrections is not the same thing as leading students to revise for themselves, and . . . the difference between them is crucial." *Id.*

writing project, more interested in how to fit those ideas into a structure a little later, more interested in putting the structured ideas into the right words a little later, and more interested in reaching my audience at the end, I am interested as a writer in all these things all the time, and so I am going to read my students' papers with all these things in mind.<sup>121</sup> The rough progression does, however, remind me to shift my focus for reading and response from the *subject* to the *writer* to the *reader* to the *text* and not to emphasize all four all the time.

A. *Reading the "generating thought" draft as a writing coach*

The first example is the teacher who reads an early "generating thought" draft and decides to respond as a writing coach. The focus in reading is on the writer's initial thoughts about the subject. Because the early draft stage is much too early to sum up, the teacher's feedback must be formative, and because few text-based or content-based criteria are appropriate for judging the generation of thought, the feedback should be based on reader response or on writer diagnosis. Most often, after reading such a draft, the teacher will decide that the writer did not go far enough in invention or creation of arguments or support for arguments. Combined with description of what she "read" in the draft, the teacher should use the commenting modes of suggesting additional invention techniques, questioning whether related ideas might be worthwhile, reminding about invention activities discussed in class, and assigning a specific technique or further exploration of a particular idea. To fit her writing coach role, the tone of these comments should be encouraging and empathetic.

*Reader response:* Reader-based feedback should come primarily in the margins or in person so that the reader can point specifically to sections of the draft where ideas are missing or where good ideas need more development. Reader-based feedback begins with description of the reader's response and moves on to suggest, question, remind, and assign:

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<sup>121</sup> See Lynn Quitman Troyka, *Closeness to Text: A Delineation of Reading Processes as They Affect Composing*, in ONLY CONNECT, *supra* note 27, at 187, 194-95. Noting that the writer must be able to read her own text from a great distance to determine her "meaning"; at a middle range for form, organization, and style; and at a close range for words and letters, Troyka points out that operating simultaneously at different ranges is not the same as doing first one thing and then another. *Id.*

When I read this paragraph, I felt like you had identified the major argument about John's negligence, but that there must be more to it. Perhaps it seemed obvious to you, but additional arguments may flow from your main idea or may be necessary to support it. For example, did you think about his prior conduct? What about his purpose in driving too fast? What about the road conditions?

The last section showed close reading of the cases, careful attention to the facts, and good insight in creating arguments. At this point, however, I got the impression that you just ran out of time and energy. That's very natural when you've done a good job with part of a writing project. The passage of time will help, but another thing you might do to get back on track is to go back to your research. See whether re-reading the secondary authorities, for example, helps you come up with some ideas on how to develop this section as well as you did the last section.

I've gotten this far in your draft, and I really believe that the cases are very similar. But so far, I have read only about the similarities between the two cases. Remember our class discussion about considering both the similarities and the differences? What are the differences? What arguments can the government make based on the differences? Generate a list and add the better ones to your draft.

*Writer diagnosis:* If the teacher decides on writer-based diagnosis, she probably will provide it in more global written comments so that she can discuss more generally what invention techniques seemed to work, what constraints may have disrupted the generation of thought, and what additional techniques might open up further generation of thought. Like reader response, writer diagnosis can describe, suggest, question, remind, and assign:

In section B of the paper, your argument showed good understanding of some fairly complicated case law. But it seemed that you were satisfied with the correctness of your understanding and did not generate any alternatives. Remember our class discussion about the danger of obvious solutions? Try listing all the possible plain language arguments and then see whether you can develop any additional support for them. Maybe one of the arguments will surprise

you, upsetting your understanding of the case law interpretations as well.

Section B of your paper shows that you know how to analogize between the *Lee* case and your case. But there are some obvious differences between the cases, and you apparently have not evaluated whether they should make a difference to the outcome. Have you thought about whether it makes a difference that Johnson moved voluntarily and Lee moved because he was forced to? What about the age difference (Johnson was 17, Lee was an adult)? What about the different reasons given for bringing the case in federal court? What does the court say about these factors? Think about these questions and bring a list of the new arguments that you generate to your writing conference.

B. *Reading the “second thoughts” draft as a more experienced fellow writer*

The second example is a “second thoughts” draft and a teacher who chooses to respond as a more experienced fellow writer. The primary focus in reading the draft shifts from the subject to the student writer. Because the paper contains only second thoughts, the teacher still provides primarily formative feedback to help the student monitor her current understanding and decide what to do next. This time, the teacher may decide that the feedback will be based on content analysis, writer diagnosis, or reader response. The tone of these comments is more assured, reflecting the writer’s expertise, but remains helpful and friendly. In this example, the teacher decides that the draft has two primary shortcomings: the writer is having trouble pulling related ideas together and judging the worth of arguments.

*Content analysis:* Modeling the kind of feedback that might be provided by an expert writer in the field,<sup>122</sup> these comments describe and suggest conventional logical and organizational

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<sup>122</sup> If a new attorney shared an early draft with a more senior attorney, the reading lawyer would not write: “Good organization. Analysis is on the right track. Keep developing the arguments. Make sure you edit and proofread critically.” And if the reading lawyer did make those comments, they would not help the writer. Instead, the reading lawyer would pose questions in the margins, mark sections that seemed illogical or inaccurate or poorly thought out, respond positively or negatively to particular statements, perhaps suggest a different organization or a shift in perspective.



frameworks as well as discourse-specific standards for judging the validity of arguments. For example, the teacher might write:

Some of the ideas in this section of the paper need to be better integrated. For example, the argument in paragraph 6 seems closely related to the argument I read earlier, in paragraph 2. Legal readers are used to seeing issues discussed issue by issue and subissue by subissue. Work through your paper and list the main idea of each paragraph in the margin; then see which ideas are big ideas and which ones are just smaller parts of a big idea. Try to rearrange the paragraphs so that the big ideas are in a logical order and the smaller parts of each big idea fit together within that idea, again in a logical order.

As for the writer's problem in judging the worth of arguments, the teacher might write:

Your evaluation of the argument in this paragraph will seem too superficial to a legal reader. The legal reader wants to see support for the rule that you say comes out of the cases. How do you provide that support? See the samples we revised in class last week. In addition, the legal reader wants a fairly thorough comparison of not only the facts but also the reasoning of the cases you say are relevant. Again, see the samples we revised in class last week for an example of how and why you should make such a comparison.

*Reader response:* Modeling the kind of feedback that might be provided by an average legal reader, the teacher can focus on the points of her confusion while reading and let the writer know whether the confusion seemed to be caused by separation of ideas, lack of information, or gaps in logic and explanation.

When I reached this paragraph in your draft, I was confused because the idea seemed to be the same as the one you developed earlier, on page 3. As I continued to read, I saw the same idea again, this time on page 6. Pressed for time and accustomed to step-by-step development of arguments, most legal readers will appreciate seeing all of the discussion of one idea in one place.

At this point in the draft, I am distracted because information seems to be missing. As a legal reader, I want to know what the rule is and where it came from before you start

telling me how it should apply here. So I go looking for the rule, and then I lose track of your point.

When I read this section, I agreed with you up to this point in this paragraph. From this point on, I could not make the leap that you wanted me to make without some more explanation of why the result should be what you say. It's not enough for a legal reader to be told that the facts fit the language; does the reason for the rule fit the facts too?

*Writer diagnosis:* Diagnostic feedback from a writing teacher who is responding as a more experienced fellow writer focuses on strong points in the organization and evaluation of arguments, draws parallels to or contrasts from the weak points, and suggests options for revision. While reader response is provided primarily in margin comments, diagnostic feedback is best provided in summary comments because the diagnoses and options for revision need more support and explanation. For example:

Section C is very well organized, and the arguments are developed and thoughtful. That may be because you wrote it last, after you had figured out what you wanted to say in the first two sections. Now, you should take another look at the structure of Sections A and B, and see whether you can reorganize them in the same way that you did Section C. In addition, look in particular at what you did with the subissue on page 6. See whether you can develop the other arguments as thoroughly.

Writer-based feedback can describe the writer's own experiences working through similar writing problems and assign similar techniques:

When I reach the point in my own writing where it is too long and jumbled to see the big picture, I try to generate a one-page outline (by copying the whole paper and then deleting everything but the topic sentences). Then I can see where to move things and where to delete things and where to add things. Try to generate such an outline; come talk to me if you still have trouble sorting things out.

Regardless of the basis for her feedback, the teacher responding to a "second thoughts" draft as a more experienced fellow writer should supplement her written comments with writing conferences where she and the student can discuss the

student's plans for revision more specifically and more concretely.<sup>123</sup>

C. *Reading the nearly final draft that is "moving toward rhetorical effectiveness" as an average legal reader*

The third example is the teacher who views his subject as a nearly final draft and responds as an average legal reader. The primary focus in reading shifts again, this time to the reader. Because the draft is not yet final, formative feedback continues to be most appropriate; because the draft is almost final, feedback may be based on reader response, content analysis, writer diagnosis, or textual criteria. Reflecting a new distance from the subject and the writer, the tone of these comments becomes slightly removed, professional, and practical. In this example, the teacher determines by reading the draft that the student is still having problems with his analysis as well as with legal writing conventions and textual correctness.

*Reader response:* Because the teacher is acting as an average legal reader, the most natural feedback may be based on reader response. To address the student's problems with discourse conventions, the feedback should take the form of suggestions, reminders, and assignments to observe particular conventions. For example,

At this point in your draft, I am wondering why you did not follow the typical pattern of starting your discussion with the more definite and precise language of the statute. Although it may make sense to you to develop your case law argument before your statutory argument, readers like me are thrown off when they have their expectations disrupted. If you have a good reason, go ahead, but tell the reader what it is.

Right here, at the very beginning of your brief, I am lost. I want to know right away what you think the issue is. Remember that when they read the question presented in an appellate brief, most judges want to know both the governing rule and the important facts.

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<sup>123</sup> See Gere & Stevens, *supra* note 34, at 103 (noting that oral responses by peer groups were more focused on specific suggestions directed at the actual text, a good thing, and more directive, possibly a bad thing).

My reaction to this Statement of Facts is that any analysis based on it is questionable because the facts tell only one side of the story. This section is supposed to include both the bad and the good so that your supervisor, me in this case, will know the full picture and will trust your analysis of what's most likely to happen.

*Content analysis:* At this nearly final draft stage, the teacher may instead view his role as critical expert and choose to provide feedback based on expert criteria for analyzing content. In this role and with this basis for feedback, the teacher's written comments must provide support for the criteria being imposed:

Most judges will not simply apply a case law rule even if the facts are similar until they examine whether the result will make sense in a particular case. Look at what the court does in the *Rodriguez* opinion when it discusses whether the case should be an exception from the reasonable suspicion standard although the facts seem to fit the rule. Try to do something similar in your own argument.

An appellate brief is incomplete without a statement of the standard of review and some explanation of why that standard is appropriate here. See the appellate rules for the requirement, and see the textbook discussion of when particular standards are used. The standard of review often determines the outcome of an appellate case as you can see from reading the *Lewis* opinion. So your very first argument should try to persuade the court to use the standard of review that you think is appropriate for this case.

*Writer diagnosis:* Because the student is still having problems with his analysis, the teacher may decide instead to base his feedback on writer diagnosis.

The draft indicates that you have not yet concentrated on the counterarguments concerning the issue of assumption of the risk. To see both sides, try to put yourself in the other attorney's place. What would you argue about the standard? Can you distinguish the *Brown* case? If you have thought about the counterarguments, but decided they were insubstantial, try to further develop at least the best one.

*Text correction:* As for the student's problems with correctness, because the feedback is still formative, the most appropriate comments are those that describe patterns of errors and then suggest, remind, or assign, rather than those that mark or correct each error.

This draft consistently omits semicolons when they are needed to separate two sentences. I marked a few examples. The rule is that if the sentences could be separated by a period, they need at least a semicolon, not a comma. Do one reading of your draft looking only for this problem.

#### D. *Reading a final draft as a teacher and evaluator*

Finally, every teacher will eventually read, and probably grade, a final draft. The focus during reading makes a final shift, this time concentrating almost exclusively on the student text, and the teacher responds primarily as an evaluator. Teacher comments can still be based on reader response or writer diagnosis, but are more likely to be based on content analysis and textual correctness. At this point, teacher comments should summarize the writer's strengths and weaknesses, be based on objective criteria for judging content and text, and be provided in global or summary written comments. If this primarily summative feedback is to serve any formative purpose, it should be neither too specific: "You missed the point of the *Jones* case," nor too abstract: "You need to work on large-scale organization." Instead, teacher comments should point to a specific problem with content or text and suggest a solution that can be applied to a similar problem in the future:

The memo fails to recognize that in *Jones*, the plaintiff had only a fourth grade education. Next time, make sure you look carefully at the facts of the cases you are relying on to see whether there are differences that might be significant, such as here where your client had a master's degree and might be held to a higher standard.

I marked a number of the sentences in the memo that were too complex or too wordy to follow easily. Remember how we restructured similar sentences in class by finding the actor and the action? Before you revise your next memo, try reading it aloud to yourself. Apply the same principle to the

sentences that “sound” too long or too complicated when they are read.

#### V. CONCLUSION: THE NEED FOR CONTINUING RESPONSE AND REFLECTION

The primary purpose of teacher commentary is to provide students with responses that prompt students to reflect on and revise their own writing. If teachers are to learn to respond in ways that are disrupting and thought-provoking enough to prompt revision, they will also need to gather responses that encourage them to reflect on and revise their own reading and writing of student work.

The first opportunity for reflection is to pick a view of the writing classroom and the job the teacher is supposed to do. The first opportunity for response is to design and test writing assignments that fit that view. While creating an assignment, the writing teacher should decide when to read and respond and what role to play at each point. Before responding to an assignment, the writing teacher should gather information about her audience. While responding to an assignment, the writing teacher should monitor her reading and response, checking to see whether her role and her feedback fit her subject and her student’s actual text. While meeting with students, the writing teacher should monitor her audience’s interpretation of her responses.<sup>124</sup> After a writing project is over, the writing teacher should monitor the effectiveness of her reading and response in achieving her specified purpose with her intended audience.<sup>125</sup> Finally, she should share her responses with and seek responses from her fellow teachers. By gathering such responses, we continue to learn to respond.

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<sup>124</sup> Unless teachers monitor what their students read and hear, they may assume that their audience can easily interpret what they say or write. The students’ context for reading our responses is also shaped by their assumptions: they assume our comments will be authoritative and grade justifying. For example, students in one survey viewed some “reader reactions” as insults; other students felt that “coaching” questions were belittling rather than encouraging; and others reported that questions about their writing choices made them want to respond, “If I knew the right way, I wouldn’t have gotten it wrong in the first place.” Auten, *supra* note 4, at 7.

<sup>125</sup> Without such a monitoring device, “[t]eachers often create idealized images of their own instruction (including their response styles) which suggest to them that they no longer need to participate in ongoing instructional development.” Anson, *supra* note 10, at 358-59 (citing an informal study which found a gap between what experienced teachers believed their response styles to be and what those styles actually were).