Critiquing Law Students' Writing: What the Students Say Is Effective

*Anne Enquist**

Legal writing instructors spend a great deal of time emphasizing to their students the importance of audience and purpose in writing.[1] "Think of your readers," they say. "Work at reaching them!" "Remember what this piece of writing is trying to accomplish," they exhort. "If it doesn't accomplish your goal, then it doesn't matter how much research you did, how eloquently it reads, or how cleverly you analyzed the issue."

And they are right. Attention to audience and purpose are two of the most important concepts taught in legal writing; indeed, they are the touchstones of every piece of writing.[2] Why? Because writers who remember their readers and their writing objectives are much more likely to use good judgment about the thousand

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* Anne Enquist is the Writing Advisor to the Legal Writing Program at Seattle University School of Law. She thanks the four students and five legal writing faculty members who participated in her study. She also thanks Professors Laurel Currie Oates, Paula Lustbader, Jessie Grearson, and Marilyn Berger for their helpful suggestions on this article.

[1] The importance of lawyers developing communication skills that include "tailoring the nature, form, or content of written . . . communication to suit [t]he particular purpose of the communication . . . [and] [t]he audience to which the communication is directed . . . ." is discussed in *Legal Education and Professional Development—An Educational Continuum* 163 (student ed. 1992), commonly known as "The MacCrate Report," named for Robert MacCrate, its editor and the chairperson of the ABA Task Force on Law Schools and the Profession. In addition, most, if not all of the currently used legal writing textbooks discuss at length the importance of considering audience and purpose in legal writing. *See, e.g.*, Veda R. Charrow & Myra K. Erhardt, *Clear & Effective Legal Writing* (1986); Richard K. Neumann, Jr., *Legal Reasoning and Legal Writing: Structure, Strategy, and Style 2d ed.* (1994); Laurel Currie Oates, Anne Enquist, & Kelly Kunsch, *The Legal Writing Handbook: Research, Analysis, and Writing* (1993); Helene S. Shapo, Marilyn R. Walter, & Elizabeth Fajans, *Writing and Analysis in the Law* (1989).

[2] The importance of audience and purpose has been stressed by virtually all rhetoricians from Aristotle to Kenneth Burke. Edward P.J. Corbett, *Classical Rhetoric for the Modern Student*, 3d ed. (1990). Nationally noted rhetorican, Maxine C. Hairston, summarizes the position of many modern rhetoricians when she states that "[i]f one had to pick out the piece of advice that recurs most often in books about practical writing in nonschool situations, it would be *remember your audience*" (emphasis in original). Maxine Hairston, *Successful Writing: A Rhetoric for Advanced Composition* 45-51 (1981). Her discussion on purpose can best be summarized by three questions writers should ask themselves: Why am I writing? Why is my audience reading? What do they want from me?

small and large decisions that go into creating an effective piece of writing.

That's true for legal memoranda, briefs, and opinion letters, and it is equally true of the comments legal writing instructors write on students' papers.

Surprisingly, though, what remains unexplored territory is whether legal writing instructors effectively practice what they teach about audience and purpose in their own comments on student papers. Although some work has been done on this topic from the legal writing instructor's perspective[3], little or no attention has been given to the perspective of the intended audience of these comments: the students.[4]

For this reason, it seemed worthwhile to study the comments legal writing instructors put on students' papers and ask the readers of those comments—the students themselves—which comments were the most useful. This article describes such a study that was conducted by the author using students and faculty at the University of Puget Sound School of Law.[5] The results should be useful to new legal writing faculty who are striving to learn how to critique their students' writing effectively, as well as to experienced legal writing faculty who are interested in whether the conventional wisdom about critiquing is borne out when examined from the student's perspective.

The discussion that follows begins with a description of the design of the study, including profiles of the student and legal writing instructor participants and a description of the evaluation

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[3] Terri LeClercq, Ph.D., the Writing Specialist at the University of Texas School of Law, appears to have written the only published article on critiquing law students' legal writing. Terri LeClercq, Ph.D., *The Premature Deaths of Writing Instructors*, 3 *Integrated Legal Res.* 4 (1990-91). In addition, presentations on the written critiques of law students' legal writing have been made at several professional meetings. *See, e.g.*, A. Enquist, Remarks at the National Conference of the Legal Writing Institute (July 31, 1992); M. Beazley and T. LeClercq, Remarks at the National Conference of the Legal Writing Institute (July 27, 1990); A. Enquist, Remarks at the National Conference of the Legal Writing Institute (July 28, 1990); D. Pratt, Remarks at the National Conference of the Legal Writing Institute (August 4, 1988); C. Metteer, Remarks at the National Conference of the Legal Writing Institute (August 4, 1988).

[4] With the possible exceptions of informal feedback instructors receive in student conferences and formal feedback for individual instructors in student evaluations, the conventional wisdom about effective commenting is based on what legal writing instructors say to each other about what is effective. No one seems to be asking the students what they think is effective.

[5] I am grateful to Professor Laurel Currie Oates, the Director of the Legal Writing Program at Seattle University School of Law (known at the time of the study as the University of Puget Sound School of Law), the legal writing faculty, and Dean James E. Bond for supporting my work in this study.

sheet the students used to assess the instructors' critiques. It then moves to an analysis of the data that was compiled in the study, examining the features of the more and less effective critiques and a discussion of the importance of end comments, in-depth explanations, and positive feedback. This section includes a breakdown of the number of margin and interlinear comments on each paper and some tendencies that these numbers suggest. Also included in this section is a categorization of the margin and interlinear comments and how the students rated comments from the various categories. The discussion concludes with some inferences that can be drawn about critiquing law students' writing based on the students' responses.

I. Design of the Study

The basic idea underlying this study was to have several legal writing instructors critique the same student papers and then ask the student authors what was and was not effective about the different critiques. The assumption was that although different instructors may perceive roughly the same strengths and weaknesses in a given student's writing, they would have different ways of commenting on these strengths and weaknesses.[6] By asking the audience for these comments — the students — which comments were more effective, my hope was that was legal writing faculty could learn how to improve our critiquing of and commenting on student papers.

To make the test circumstances as realistic as possible, four students who were enrolled in the second year legal writing course, Persuasive Writing and Oral Advocacy, were selected as the student participants. Photocopies of the actual papers these students wrote for that course, a brief in support of or in opposition to a motion (trial brief) and an appellate brief, were used as the basis for the study. In addition, legal writing instructors who were currently teaching that course were selected to do the critiques of the papers for the study. Because all students in Persuasive Writing and Oral Advocacy write about the same problem in any given semester, the legal writing faculty members in the study were intimately familiar with the research, issues, and analysis of that problem.

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[6] In my experience as the Writing Advisor to the University of Puget Sound Legal Writing Program, I had frequently observed the differences in commenting styles among the instructors in our program and had also observed the relative effectiveness and ineffectiveness of some of these commenting styles.

Logistically, the plan was quite simple. At the time the students turned in their legal writing papers to their own teachers, they turned in a copy for the study. Each paper then had the student's name removed and a random number assigned to it. All the papers were then photocopied and distributed to the five legal writing instructors in the study. Their instructions were to read the study papers with the stack of papers from their own students. Their instructions also asked them to read and critique the papers just as they would the ones that came in for their class. The only difference was that they were asked only to critique the papers, not assign grades.[7]

In short, the plan was to have real students in a real legal writing course write the real papers for that course, have those papers critiqued by a number of different legal writing instructors who were really teaching that course and really critiquing papers based on that assignment, and then have those students evaluate those critiques for their usefulness.

A. Profiles of the Student Participants

In order to draw definitive conclusions about what makes the most useful critique, it would have been ideal to do this study with thousands of students[8] and hundreds of legal writing instructors. Because that was not feasible, the study was done with students whom the author saw as representative of certain types of students commonly found in law school.

The selection of these students was based on the assumption that there are several factors that may affect how a student might respond to a critique of his or her work. Among the factors considered were the age and maturity of the student, how the student felt about himself or herself as a writer, how well the student was

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[7] To avoid problems within the University of Puget Sound's legal writing program, I decided to have the papers in the study critiqued and not graded. Obviously if the student papers in the study received grades from the instructors in the study that differed from the grade they received from their own legal writing instructor, there would be demands for the grades to be changed.

[8] In 1988, Robert J. Connors and Andrea A. Lunsford published an analysis of patterns of error in 3,000 student papers. Robert J. Connors & Andrea A. Lunsford, *Frequency of Formal Errors in Current College Writing, or, Ma and Pa Kettle Do Research.* 39 C. Composition and Comm. 395-409 (1988). Returning to the same data base, Connors and Lunsford then analyzed the "global comments" made by teachers of these papers. This second study is the first large-scale examination of the comments teachers make on college student papers. Robert J. Connors & Andrea A. Lunsford, *Teachers' Rhetorical Comments on Student Papers*, 44 C. Composition and Comm. 200-223 (1993). To date, no such large-scale study has been done on law students' writing.

doing in law school, and how well the student had done in the prerequisite first-year legal writing course.[9]

The selection of students was also based on the assumption that individual student personalities play an important role in the way the students react to critiques of their papers. It seemed obvious, for example, that some students' personalities inclined them to resent criticism and comments on their papers while others saw criticism as an opportunity to learn.

For these reasons, the author selected students whom she knew fairly well[10] and who represented a variety of student perspectives. None of the students received any compensation for participating in the study, and all were promised that their names would be kept confidential.

"Mark" (a 30-year-old white male) was selected for the study because he represented the "almost perfect"[11] law student. His law school professors consistently described him as "bright," "articulate," and "self-confident." Mark was clearly enjoying law school and finding that it suited him. His grades were just shy of being able to "grade on" to Law Review, but he was able to "write on" and later served as one of the editors. Mark had had a short career in real estate and sales management before law school. His outgoing personality and salesmanship style made him a well-liked, highly visible student on campus.

Mark had earned a B in the first-year legal writing course, and when asked on the preliminary questionnaire distributed to all four students whether he considered himself a good writer, his response was "Yes" followed by "B.A. English undergrad, writing research as clerk, also work experience called for writing persuasive, informative correspondence—Plus, it is very *important to me* to communicate clearly and effectively" (emphasis in the original).

"Kathy" (a 38-year-old black female) was a very promising special admission candidate to law school. Kathy had been an admissions recruiter for a major university before coming to law

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[9] At the University of Puget Sound Law School, students are required to take a year and a half of legal writing. The students in this study were all second-year students who had already taken the first-year, two-semester legal writing course in objective writing.

[10] As the Writing Advisor at the University of Puget Sound Law School, I had had writing conferences with all four of the students in the study. Determinations about their suitability for the study in terms of their personal characteristics were based on what I knew about the students from these conferences and from conversations about these four students with other faculty.

[11] The phrase "almost perfect" law student was used by one of Mark's first-year law professors to describe him.

school, so it was not surprising that she brought a warm, gregarious self-confidence with her to law school. Even though she was ranked in the top half of the class, Kathy was struggling with law school, especially exams, and working closely with the Academic Support Program faculty to figure out how she could improve.

Kathy had earned a C in the first-year course, and when asked whether she considered herself a good writer, she answered, "No!! My skills in English are atrocious, and I realize what a handicap this has been for me and will continue to be unless I work on it."

"Tom" (a 24-year-old white male) represented another fairly typical law student. Tom came to law school straight from his undergraduate education, and for the first time in his educational career, he was disappointed in his work. He was ranked in the bottom third of his class, and his lack of success was having a negative effect on him.

Tom had earned a C+ in the first-year course, and his legal writing instructor remembered him vividly as a student who was "defensive, occasionally almost hostile" about critiques of his legal writing. When answering the question about whether he considered himself a good writer, he responded, rather surprisingly, "Yes. My sentence structure is usually good and I think I can be concise. I have problems grasping the law and applying it, hence C."

The fourth and final student, "Sarah" (a 39-year-old white female) can best be summarized as "the hard-working student." Sarah had a quiet, low-key personality, and as a result, was a rather low profile student. She had been a nurse before law school, and although she had risen through the ranks in nursing, she was tired of her first profession and longed for something that she considered more challenging.

Sarah had earned a B- in the first year course and was well remembered by her legal writing instructor as someone "who worked hard to use the suggestions and guidance [he] gave her." Sarah ranked in the top third of her class, but when asked whether she considered herself a good writer, she wrote, "No. My writing style tends to be very dry and often lacks clarity. Although I have seen improvement over the past year in these two areas, I am not happy with my final drafts."

STUDENT PROFILES

	Grade In LW1	AGE	CLASS STANDING	CONSIDERS SELF GOOD WRITER?
"Mark"	B+	30	37/270	Yes
"Kathy"	C+	38	164/270	No!!
"Tom"	C+	24	186/270	Yes
"Sarah"	B-	39	85/270	No

B. Profiles of the Legal Writing Instructor Participants

The selection of the legal writing instructors to participate in the study was based on the hypothesis that at least two different factors might be significant: gender and years of experience teaching legal writing. Two additional questions the study hoped to address were whether students were generally more receptive to comments written by male or female instructors and whether more experience commenting on papers tended to make the comments more effective.

For these reasons, six different legal writing instructors at the University of Puget Sound Law School were asked if they would be willing to participate in the study. Even though they were not compensated for the extra work, five of the six[12] agreed to participate. The chart below gives the profiles of the five who did participate in the study.

FACULTY PROFILES

Instructor 1	female	first year of teaching
Instructor 2	male	first year of teaching
Instructor 3	male	second year of teaching
Instructor 4	female	third year of teaching
Instructor 5	female	five+years of teaching

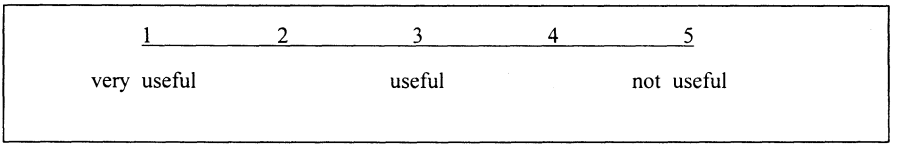
[12] The sixth instructor, who declined to participate, was a male in his third year of teaching. Had he agreed to participate, the study would have had better male faculty representation and better representation of more experienced teaching.

The students participating in the study had no information about the instructors participating in the study other than that they were legal writing instructors at the University of Puget Sound Law School. Similarly, the legal writing instructors had no information about the students other than that they were all second-year students at the University of Puget Sound Law School enrolled in the second-year legal writing course.[13]

C. The Students' Evaluation Sheet

Based on advice and suggestions from legal writing instructors other than those participating directly in the study[14], an evaluation sheet for the instructors' comments was developed. It contained four parts: A) Overall Evaluation, B) The End Comment, C) Margin and Interlinear Comments, and D) Miscellaneous. (A copy of the evaluation sheet and its instructions can be found in the Appendix A.)

A key feature of the evaluation sheet was a horizontal scale for rating the relative usefulness of an instructor's comments.



A form of this horizontal scale appeared in all four parts of the evaluation sheet: It was used in Part A to rate the comments as a whole, in Part B to rate the end comment, and in Part C to rate each margin and interlinear comment.

Right below each horizontal scale was a section where the student could check whether comments were "illegible," "confusing," or "harmful." Below that was a separate "Remarks" section.

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[13] To preserve anonymity and still keep the data straight, the student papers were assigned random number codes when they were turned in. Even though each student had two papers in the study, each paper had a different number code so that the instructors would not know which of the second batch of papers, the appellate briefs, could be matched to the trial briefs in the first batch. Similarly, the instructor critiques were all assigned different letter codes, including a different letter code for each instructor's critique of the trial brief and the appellate brief.

[14] It seemed obvious that if the instructors participating in the study saw the evaluation sheet beforehand, they might somehow change their critiquing style to match the evaluation sheet.

The instructions on the evaluation sheet told the students to choose one of the five levels and "not create new levels midway between two points." Students were also instructed to use the Remarks section to explain any time they had chosen the very highest (1) or very lowest (5) ratings for a comment or any time they had checked that the comment was confusing or harmful. They were told that they could use the Remarks section for any other comments they wished to make.

The chart below shows how the horizontal scale appeared on the evaluation sheet.

Comment #1
1 2 3 4 5 very useful useful not useful useful (Check the following **only** if applicable.) _____illegible _____confusing _____harmful Remarks:

The following discussion of the term "useful" was also included in the instructions.

Obviously the term "useful" may have a variety of meanings. For example, you may find a comment useful if it helped you to understand something about your writing; will help you the next time you write; or motivated you to work on your writing. You may have other reasons for rating a comment as useful. Again, please use the Remarks section whenever you need to explain a particular meaning of "useful."

To be sure that none of the comments were missed and that it was clear which critiques went with which comments, each comment on the students' papers was numbered.

Finally the students were instructed to "[r]ead all the comments from one instructor before beginning to mark the evaluation sheet for that instructor's critique." They were also asked to read each instructor's comments at different sittings so that they would not be unduly influenced by the way they had evaluated another instructor's comments.

Immediately after the instructions portion of the evaluation sheet and after a second boldfaced reminder to "READ THROUGH THE ENTIRE CRITIQUE BEFORE BEGINNING TO FILL IN THIS SHEET," students encountered Part A., Overall Evaluation. Here they were asked to rate the instructor's comments "taken as a whole" using the horizontal rating scale. They were then asked four essay/short answer questions about what they saw were the instructor's "top priorities for legal writing," about what the comments suggested were "the chief strengths" of the paper, about what the comments suggested were "the chief weaknesses" of the paper, and about what the comments suggested that they needed to work on.

Part B, The End Comment, simply asked students to checkmark if there was no end comment to the critique and if there was an end comment, to rate it using the horizontal scale complete with the Remarks section.

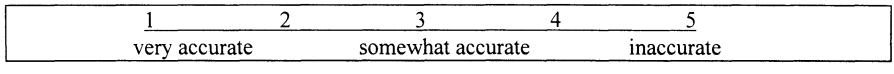
Part C, Margin and Interlinear Comments, had a rating scale complete with Remarks section for each margin and interlinear comment.

Part D, Miscellaneous, asked students to critique the number of comments on the paper, the tone of the comments, the accuracy of the comments, and effectiveness of the instructor's critiquing style.

In the question about the number of comments, the students were asked to determine whether the comments were "too few," "about right" or "too many," and space was provided for their remarks about the number of comments.

In the question about the tone of the comments, students were asked to select adjectives from the following list to describe the critique's tone: "harsh," "encouraging," "professional," "condescending," "discouraging," "empathetic," "sarcastic," and "friendly." They were also invited to supply their own descriptive word or words to describe the tone of the comments and provided a Remarks section.

For evaluating the accuracy of the comments, they were given a different rating scale and accompanying Remarks section.



The evaluation form ended with two two-part questions and two opportunities for comments: 1) What was the most effective quality of this instructor's critiquing style? Why? 2) What was the

least effective quality of this instructor's critiquing style? Why? 3) Additional comments about the instructor's critique? and 4) Comments about the evaluation sheet or the evaluation process?

In short, the evaluation sheet was rather long and comprehensive. Even though a great deal of the evaluation could be done by circling ratings on the scales or checkmarking points, the students were also asked for their additional remarks and comments in many different ways. Fortunately, all the students involved in the study appeared to take their tasks seriously and appeared to be extremely conscientious in evaluating the critiques.

II. Analysis of the Data

In all, critiques of 40 different papers were read and analyzed. These critiques included 30 different end comments and 1,416 margin and interlinear comments.[15] What emerged from the students' reactions to the critiques were seven points about effective critiquing, several of which confirm what experienced legal writing faculty have long believed:

1. Writing an end comment is essential to effective critiquing;
2. Students want in-depth explanations, examples, or both;
3. Students need positive feedback;
4. Too many comments can overwhelm some students;
5. Critiquers should pace themselves so that they have some commenting energy left for the end of the paper;
6. Some types of comments are far more effective than others: illegible, coded, cryptic, and labelling comments are less effective than comments that identify a problem and suggest a solution or go even further and offer a rationale for the solution;
7. Comments phrased as questions can be effective, but they also can draw negative reactions from students.

Surprisingly, the study did not show that experienced legal writing faculty generally write more effective comments than do novice teachers. Indeed, many of the comments and critiques written by first-year teachers received the students' highest ratings.

Perhaps the best news of the entire study was that the overall ratings showed that the students found almost all the instructors' critiques to be useful. Seven of the critiques received a 1, the highest rating of "very useful"; twelve critiques received a 2, the second highest rating; nineteen received a 3, or "useful" rating; one re-

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[15] I am grateful to my research assistant, Karen Rogers, for her conscientious and cheerful help in compiling much of the data for this study.

ceived a 4, which is a rating lower than "useful" but above "not useful"; and one paper was not given an overall evaluation rating. Notice that two of the instructors in their first year of teaching (Instructor 1 and Instructor 2) each received two number 1 ratings from the students. (See the chart below.)

OVERALL EVALUATIONS

	Instructor 1	Instructor 2	Instructor 3	Instructor 4	Instructor 5
Mark					
trial brief	1	3	3	3	2
appellate brief	2	2	3	2	1
Kathy					
trial brief	1	1	3	2	2
appellate brief	2	1	3	3	--
Tom					
trial brief	3	4	3	3	3
appellate brief	3	3	3	3	3
Sarah					
trial brief	2	3	3	1	2
appellate brief	2	2	3	2	1

Equally surprising was that the students' perception of the accuracy of the comments did not seem to be an overly significant factor in the overall rating of the critique. Perhaps this was not a factor because, in general, the students rated all the critiques as accurate. Four critiques were rated as 1's, "very accurate," 7 critiques were rated as 3's, "somewhat accurate," and all the remaining critiques were rated as 2's, which meant something between "somewhat accurate" and "very accurate."

The study was also unable to show that gender is or is not a factor in effective critiquing.[16]

A. The Importance of End Comments

Instead, what quickly became obvious was the importance of the end comment and the effect it had on the overall evaluation the students gave the critiques.

The chart below shows the ratings the students gave the end

[16] Because the instructors were anonymous, the students did not know if a given critique was written by a male or female instructor. Although the students occasionally referred to a given critiquer as "he" or "she" in their remarks, those few designations did not seem to be significant.

comments on their papers.

END COMMENT EVALUATIONS

	Instructor 1	Instructor 2	Instructor 3	Instructor 4	Instructor 5
Mark					
trial brief	1	3	n/a	3	2
appellate brief	2	3	n/a	2	1
Kathy					
trial brief	1	2	n/a	2	2
appellate brief	1	1	n/a	3	–
Tom					
trial brief	3	n/a	n/a	3	2
appellate brief	3	2	n/a	5	3
Sarah					
trial brief	2	n/a	n/a	1	2
appellate brief	1	2	n/a	2	1

Just how strongly all the students felt about the importance of the end comment is best shown by combining the overall evaluations chart with the end comment evaluation chart. Notice first of all that six of the seven critiques with 1 ratings for overall evaluation also had a 1 rating for the end comment. Notice also that the one instructor who did not write end comments, Instructor 3, never received an overall evaluation above 3. Instructor 2 used end comments at times, but did not include one on two of the papers, one of which was rated a 3 and the other was rated a 4.

COMBINED OVERALL EVALUATIONS/END COMMENT EVALUATIONS

	Instructor 1	Instructor 2	Instructor 3	Instructor 4	Instructor 5
Mark					
trial brief	**1/1**	3/3	3/na	3/3	2/2
appellate brief	2/2	2/3	3/na	2/2	**1/1**
Kathy					
trial brief	**1/1**	1/2	3/na	2/2	2/2
appellate brief	2/1	**1/1**	3/na	3/3	--
Tom					
trial brief	3/3	4/na	3/na	3/3	3/2
appellate brief	3/3	3/2	3/na	3/5	3/3
Sarah					
trial brief	2/2	3/na	3/na	**1/1**	2/2
appellate brief	2/1	2/2	3/na	2/2	**1/1**

Bold = both End Comment and Overall Evaluation were 1's

Simply having an end comment, however, did not guarantee that a critique would receive a high rating from the students. Notice that Tom gave the lowest rating, a 5, to the end comment on his appellate brief from Instructor 4. Tom also checked that the end comment was "harmful" and added the following in the Remarks section:

> No need to get on my case that bad. The points are good but HJ[17] obviously feels some good will come from rubbing my face in it. Perhaps that's an effective style but generally adults don't respond well to bullying, at least I don't. (footnote added)

(Instructor 4's end comment for Tom's appellate brief is included in Appendix B. The handwritten comment across the top was Tom's response to the opening line in the end comment.)

It also became clear from the students' notes in the Remarks section that some of the end comments had features that the students found particularly helpful. Mark noted that Instructor 5's critique of his appellate brief "[r]epeated and summed up what instructor had mentioned throughout paper." This technique of beginning the end comment with an overview of the evaluation appeared in several of the end comments and was favorably received by the students. (See examples of end comments in Appendix B.)

[17] "HJ" was the letter code for Instructor 4 for the appellate briefs.

Many of the end comments set out both what the student was doing right and wrong in the paper. This technique appears to be the feature that motivated Sarah to give the highest rating, a 1, to the end comment written by Instructor 4 on her trial brief. In the Remarks section, she wrote that the "[c]omments lay out positive and negative aspects of my memo[18], suggestion for improvement, and one aspect (opposing argument) I totally ignored." (footnote added)

Tom, who was noticeably stingy with high ratings, gave a 2 rating to an end comment that used another teaching technique, listing exactly what that instructor recommended that student work on. In very few words, Tom made it clear what he liked about this end comment: "Gave me *specifics* to work on" (emphasis in the original).

Both Sarah and Mark brought up the importance of end comments again in the Miscellaneous part of their evaluation forms. Commenting on the most effective quality of one of the instructor's critiquing style, Sarah wrote, "Summary comments very direct and, for some reason, made incredible sense." Mark used the additional comments portion of the evaluation form to add, "Typed end notes always impress me—makes me feel the instructor cares by taking the time."

By contrast, both Sarah and Mark were critical of the critiques that lacked end comments. Sarah stated that "[w]ithout Summary of Comments, I get the feeling this was merely an edit." In answer to the question about what the instructor saw as the strengths in his paper, Mark wrote, "It was difficult for me to know what (if anything) this instructor liked. The comments made were generally helpful, but I could have used more depth of critique. . . .Without an end note summary/comments, I'm left feeling 'Is this it?' "

Another variation on end comments that the students rated highly was the use of summarizing comments at the end of sections of their papers. For example, Instructor 4 wrote the following summarizing comments at the end of the Table of Contents for two of the trial briefs.

> Points generally well-written w/favorable selection & use of facts. Organization of II and III questionable, however. Major

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[18] Some of the students and instructors refer to these briefs in support of or in opposition to the motion as "memos" because this jurisdiction called such writings "memoranda of points and authorities" at the time these papers were written.

> points should correspond to issues in case. Here, there are only (2) main issues, not three. Moreover, II is incorrectly phrased; constitutional violation requires both suggestiveness *and* unreliability.
> * * * * *
>
> Good articulation of your ideas in the point headings. It's very important to be "up front" with what you've got—and you do a good job. But a judge might think from heading II that you are applying a *per se* rule of exclusion when you have a suggestive procedure. *Manson* overruled that idea. Excellent format (though consider narrowing right margin somewhat and eliminating . . . . . .: gives more white space—could add readability).

Both students rated these summarizing comments as 1, "very useful."

It seems then that what the students valued about summarizing comments at the end of sections and end comments was that such comments gave them an overview critique. Unlike the isolated margin comment that pinpointed a single problem, end comments gave the students a "big picture" look at their writing. They helped them make sense of the wide array of margin and interlinear comments and develop some priorities to work on the next time they write.

B. Desire for In-Depth Explanation

A review of the ratings and remarks attached to the end comments, margin comments, and interlinear comments suggested another dominant theme in the students' evaluation: The students wanted more in-depth explanation in the comments on their papers.[19]

All the students wrote extensively about the need for more explanation and examples in the comments on their papers, but Mark, the strongest student of the four, was adamant about this point. He consistently rated comments that merely labelled a prob-

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[19] In her 1982 study of comments that undergraduate students choose to use or ignore when revising, Nancy Sommers and her fellow researchers observed "an overwhelming similarity in the generalities and abstract commands given to students." Sommmers comments that this phenomenon suggests that "the teacher holds a license for vagueness while the student is commanded to be specific. The students . . . admitted to having great difficulty with these vague directives." Nancy Sommers, *Responding to Student Writing*, 33 C. Composition & Comm. 153 (1982).

lem without further explanation as a 3 and rated comments with explanation or examples or both as a 1.

The following are representative examples of the types of margin and interlinear comments that Mark saw as lacking in the help or guidance he wanted. Mark's rating of the comment and what he wrote in the Remarks section for that comment follows.

Comment: "Weak move to rules."
Rating: 3
Mark's remarks: "Yes *but* how could I make it better? Stronger?
Comment: "There are stronger words for your POV[20]."
Rating: 3
Mark's remarks: "Yes, but can you give me an example."
Comment: (instructor bracketed "Mr. Wilkerson rightfully disputes the
reliability of the other four factors to be considered.") reword
Rating: 4
Mark's remarks: "Give me an example."
Comment: (circled "the witnesses experienced limited degrees of attention") WC[21]
Rating: 4
Mark's remarks: "What would be better? example?"
Comment: "Although your issue stmts are well-written, this section is very long. I'm not sure that the judge would read it."
Rating: 3
Mark's remarks: But not enough help! How do I shorten it without losing significant emphasis & facts?"

Mark also seemed annoyed by comments that were questions to which he did not know the answer. He seemed to view such comments as another version of the instructor not giving him enough explanation.

Comment: "do these two ideas go together?"
Rating: 3
Mark's comments: "What to do with it? 2 sentences?
Comment: "I'm confused—I'm not sure what you were trying to do in this section. Is it a summary/roadmap? Is it a stmt of the general rules?"
Rating: 3
Mark's remarks: "I need to know what would be appropriate—summary? rules? gen. transition?"

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[20] This instructor used the abbreviation POV for "point of view."
[21] This instructor used "WC" as a coded comment for "word choice."

Similarly, whenever the comments did go into depth, Mark rated them very high and indicated that he found the explanation useful.

> Comment: "I don't think you really mean 'whereby' (look it up), but you should avoid such legalistic sounding words, anyway, *esp.* in Statement of Case. You may also want to consider breaking the sentence into 2 sentences — will make the events seem to occur more quickly (a plus for defendant)."
> Rating: 1
> Mark's remarks: useful suggestions and explanation
> Comment: (instructor bracketed student's language "This is definitely not an indication that the State fulfilled its burden. . . .) "Use stronger, more assertive language, e.g., "This testimony fails to fulfill the State's burden of . . . ."
> Rating: 1
> Mark's remarks: "*Good* to give example."
> Comment: "Good argument in this section, but how do you respond to the State's major arguments: 1) DW waived right to silence; 2) DW 'opened the door' to inquiry re post-arrest silence"
> Rating: 1
> Mark's remarks: "important arguments needed—gave examples—good"

Mark also used the Miscellaneous part of the evaluation sheet to make his point yet one more time. Under the question asking for the "least effective quality of this instructor's critiquing style" Mark wrote about Instructor 3, "Made you question everything with little or no guidance or support." For the contrasting question about "the most effective qualities of this instructor's critiquing style, Mark wrote about Instructor 1: "took the time to write in suggested word choice instead of just saying 'vague' or 'reword' or 'not persuasive' etc."—that is helpful."

The other three students, while not as adamant as Mark about the need for more explanation and examples, also rated lower the comments that did not elaborate and remarked that they often needed more help to figure out how to address the point the instructor was making in the comment. Kathy's remarks reveal the frustration she felt when the comments left her puzzled about what she should have done differently.

> Comment: "If I were the judge, I would have to stop and think—you have missed a step."
> Rating: 3
> Kathy's remarks: "What step is missing?"

Comment: "You have not presented case in light most favorable to client."
Rating: 4
Kathy's remarks: "I believe as the case read that it is favorable to my client. Please explain further why it's not favorable??"
Comment: "Not sure what you are saying"
Rating: 5
Kathy's remarks: "The remarks I made here seem clear to me. Please let me know why they were not clear to you?"
Comment: (instructor circled "three days") "facts"
Rating: 5
Kathy's remarks: "Why the remark/comment? I need more of an explanation, if it's going to be of any use to me."
Comment: (circled the last *es* in "the witnesses degree of attention")
Rating: 4
Kathy's remarks: What exactly is wrong with this word?
Comment: "Point?"
Rating: 4
Kathy's remarks: "What does this comment mean?"

Like Mark, Kathy used the two questions about the instructor's least effective and most effective qualities in critiquing style to emphasize her need for more explanation:

(least effective quality of this instructor's critiquing style?) ". . .the instructor's comments gave the reader no direction."

(most effective quality of this instructor's critiquing style?) "Additionally, this instructor made it a point to illustrate my problem areas, which I found very helpful."

Tom was less likely to write why he rated a comment as he did, but his Remarks included one interesting exchange:

Comment: "There is an excellent point here which needs more development."
Tom's remark: "a bit mysterious"

Tom also used the Miscellaneous questions about critiquing style to criticize comments that lacked in-depth explanation:

"Comments don't elaborate so I'm not always sure what he means."

"Doesn't say what I should do or how I should find answer."

Like Mark, Sarah rated comments without further explanation as useful (3) and those with more explanation as very useful (1).

Comment: "Your issue section is so long that if I were the judge I would just skip it. The content is, however, very good."

Rating: 3
Sarah's remarks: "Would have been more helpful to point out how issue statements could be improved."
Comment: "This section is somewhat repetitive. Why not explain rationale behind 2-pt test? (E.g., corrupting effect, balancing of all _____[22], etc.) Why not discuss the psychology of suggestion here?
Rating: 1
Sarah's remarks: "Suggestions would improve introduction. I can see that memo [is] short on rationale."
She also used the Miscellaneous part to emphasize this point: "A few comments were too brief."
"Instructor raised important points, but I had to read comment 4-5 times before I got it."

Like the other three students, Sarah wanted more explanation in the comments, but unlike the other three who at times seemed to be saying "tell me what you want" or "show me how to do it," Sarah distinguished between an in-depth explanation that made the change for the student and an in-depth explanation that discussed the reasoning behind the suggested change. In her answers to questions about the instructors' most effective and least effective critiquing qualities, she wrote the following:
(most effective quality of this instructor's critiquing style?)
"question format rather than merely providing explanation or answer"
"able to point out problem area without merely supplying answer or fixing it"
"Overall, the comments give reasons for changes without actually making changes."

The value of more in-depth explanation was most apparent when two or more instructors commented about the same problem in a student's writing, and the student understood what one instructor was saying but not the other.

For example, Tom had written the following in his appellate brief: "This is an appeal from the judgement of the King County Superior Court, by a jury, that the defendant was guilty of Assault in the Second Degree." Instructor 4 had merely underlined "the judgement" and "by the jury." Tom's rating of this comment, a 4, showed that he probably did not understand what the instructor meant. Instructor 1, however, wrote the following comment about

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[22] Parts of this comment were illegible.

the same problem: "Watch your language. A jury convicts or acquits but cannot render a judgment. The ct. enters judgment on the jury's verdict." Tom rated this comment a 3, indicating that the comment was now useful to him.

In another instance, Sarah had written the following: "Admission of unreliable and unnecessarily suggestive evidence, said the *Manson* court, offends constitutional due process requirements of fairness. U.S. Constitution, amend. XIV." Instructor 4 had written the comment, "add pinpoint cite," but Sarah had marked this comment as "confusing" and had asked in the Remarks section, "Isn't *Manson* sufficient citation? Do I omit cite to Constitution?" Her confusion was cleared up when she later read Instructor 1's comment on the same problem: "cite to *Manson* for this prop, not const." Sarah rated this comment as a 1 and added, almost ironically, "clarifies HJ's comment."[23]

One more pair of comments about the same problem demonstrates that it is difficult to anticipate just how much in-depth explanation some students need. In the case the students were working on, the rule was that the court should look at five factors to determine reliability of the witnesses. Tom chose to discuss only three of the factors and omit the two that hurt his case. Instructor 5 commented on this problem by writing, "What about the other 2 requirements?" Tom rated this comment as a 4, below "useful," and asked in the Remarks section, "Why put them in? They kill my case." Later, he understood the error of his ways when he read Instructor 1's comment on the same problem: "You've omitted 2 of the 5 factors. The State will seize on your omission and argue your lack of candor to the ct." He rated this comment as a 2.

The most extreme versions of comments that lacked in-depth explanation were situations where instructors underlined or circled parts of the student's writing without further explanation. Invariably the students marked these comments as "confusing," "ambiguous," or both. Not much better were coded comments, such as using a circled T to indicate a need for a transition, and cryptic comments such as the single word "confusing," "point?" or just a question mark or checkmark in the margin. Despite the instructors' protestations in conversations that followed the data analysis that their own students had the key to the codes and knew what they meant by the short form marks they were using, the students in the study were far less enthusiastic about these "more efficient"

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[23] "HJ" was the letter code for Instructor 4 in this batch of papers.

ways of commenting on their papers.

C. Positive Feedback

The students were also unanimous in their remarks indicating that positive feedback is an essential part of their learning. Sarah made the point about balancing positive and negative comments in her answers for three different instructors to the question "what was the most effective quality of this instructor's critiquing style?"
"Instructor balanced positive and negative qualities of my writing while addressing multiple aspects of memo, for example, transitions and arguments."
"helpful to summarize major defects and positive aspects"
"Good balance between positive and 'negative' comments throughout. It's helpful to know when your writing is effective as well as ineffective."

The way both Mark and Kathy expressed their need for positive feedback indicated not only their appreciation of the encouragement but also the personal nature of commenting on a student's writing. Mark wrote the following in his Remarks about several positive margin comments:"Thank you—good to know what you like or what you find persuasive." " 'OK'—is good to say before critique—I then know I'm on the right track." "Praise is always welcome & uplifting!"(first comment on the paper was positive) "Starts me off by giving me confidence. No big deal but appreciated."
(Instructor wrote "good-but just try to start even more forcefully")
Mark: "I like the way this instructor motivates."
Similarly, Kathy wrote the following:
"Thank you for the positive feedback as well as your constructive criticism."
"It was nice of WO[24] to comment favorably on my use of details."

Tom, who was the student with the history of being somewhat hostile toward criticism of his writing, made the strongest statement of the four on the need for positive feedback. He reserved the highest #1 rating almost exclusively for positive, encouraging comments. He also thought of a half dozen ways to say the same thing: he needed positive comments to enable him to continue improving his writing. "Positive remarks essential to figuring out what is good." "Positive comments essential to improvement." "Good comments essential." "Good comments ▷ understanding of how to suc-

[24] "WO" was a letter code for one of the instructors.

ceed." "Must point out any good stuff to give me guidance." "Necessary for improvement, confidence"

The question in the Overall Evaluation part that asked the students to list the chief strengths of their paper based on the comments also elicited several answers about the critiques that lacked positive feedback. Sarah's and Kathy's terse responses of "cannot tell" and "N/A. The instructor did not give me any positive feedback, thus this section does not apply" seem to disguise their disappointment over working hard on a project for someone who does not find anything good to say about it.

Mark, on the other hand, lets his disappointment and anger show in his comments:

"I'M NOT SURE- almost everything seems to be questioned. Only a few 'goods' to indicate strengths—nothing of significance—" (emphasis in the original)

"Couldn't really tell!"

Mark returned to this point when he was writing about the least effective quality of this instructor's style.

"Not enough encouragement—I don't know if he liked anything about my paper—(besides 'good start')"

"Do I have any strengths in this brief?"

Tom's answers to the question about what the comments told him are the chief strengths in his paper seemed stoic and sarcastic by comparison:

"No indication of strengths"

"Good printer"

From the individual ratings the students gave to positive comments, however, they demonstrated that they wanted positive feedback for more than just encouragement and a pat on the back. They wanted to know *why* something was good, presumably so that they could build on these strengths and use them again when appropriate.

A comment in the margin that was a simple "good," for example, usually rated a 3[25]. Comments that said something was "good" and added the reason why usually rated a 2 and occasionally went as high as a 1.

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[25] On one occasion one student rated a simple "good" as a 2 but then added in the Remarks section: " 'Good' although in this case, it might be additionally helpful to include why you thought the assignments of error were good."

RATINGS FOR POSITIVE COMMENTS

"Good"	Rated 3 over and over
"Good choice of facts"	Rated 2
"Good selection and use of favorable cases"	Rated 2
"Good description of cases"	Rated 2
"Strong opening"	Rated 2
"Good opening!"	Rated 2
"Good" (next to a circled T)	Rated 2
"Effective repetition of quote"	Rated 2
"Effective Pt. Hdg."	Rated 2
"Good detail--initial impression is thorough + hard-hitting"	Rated 1

Comments that started with a "good" followed by a "but" usually rated a 2 or a 1.

"Good that you attempted to preempt the State's arguments. But you needed to use specifics from the record to support your assertions." Rated 2

"Effective argument except for reader's lack of knowledge about facts. What did DW tell the police and what did he say trial?" Rated 2

"Good argument in this section, but how do you respond to the State's major arguments: (1) DW waived right to silence (2) DW 'opened the door' to inquiry re post-arrest silence." Rated 1

In short, all four students—no matter whether they were at the top of the class, middle of the class, or bottom of the class—wanted positive comments on their papers. Over and over again they said that they needed to know what they were doing right, as well as what they were doing wrong, partially because they needed the encouragement and partially because they needed help identifying their strengths so that they could build on them.

D. Tone of the Comments

Closely related to the issue of positive feedback in the critiques was the overall tone of the comments. Here, however, the data was more erratic; consequently, it is more difficult to draw useful inferences.

Of the four students in the study, Mark was by far the most expressive of his feelings about the tone of the critiques. Like the others, he checked several adjectives from the list to describe the

tone of each paper's critique.[26] In addition, he used the Remarks section following this question to make several additional comments about tone. Note that the other students, with one exception[27] did not add more remarks about tone.

Below is a chart listing the adjectives that he and the other three students chose to describe the tone in the different instructors' critiques and the remarks that they added for each critique.[28]Words to describe the tone that were not on the list in the question but that were the student's own choice are indicated by parentheses. When a student added a remark to the adjectives he or she chose, an asterisk or asterisks appear to direct the reader to the accompanying remarks.

[26] There was no apparent reason why he skipped this section for Instructor 5's critique of his trial brief.

[27] Tom also added a remark about the end comment that he found so devastasting.

[28] Mark did not answer the question on tone for his trial brief as critiqued by Instructor 5; Kathy did not answer the same question for the trial brief critiqued by Instructor 2.

ADJECTIVES DESCRIBING TONE OF CRITIQUES

Mark's Assessment

Mark/trial brief

Inst.1: encouraging, professional, empathetic*

Inst.2: encouraging, professional, empathetic, friendly**

Inst.3: (None of the above)***

Inst.4: encouraging, professional, discouraging****

Inst.5

Mark/appellate brief

Inst. 1 encouraging, professional, empathetic, friendly

Inst. 2 encouraging, professional, empathetic, friendly

Inst. 3 discouraging*****

Inst. 4 encouraging, professional, empathetic, friendly, (thoughtful)

Inst. 5 encouraging, professional, empathetic, friendly

Mark's Remarks:

* Was firm but I didn't feel any harshness. Only best intentions

** Tone was excellent and encouraging

*** I did not enjoy this one at all--extremely frustrating

**** (Only where I felt needed more understanding. In general Not unfriendly-but also not friendly--even--this critique more distant at times)

***** No encouragement. Very impersonal. Felt very frustrated. Raised many q's. could use examples.

ADJECTIVES DESCRIBING TONE OF CRITIQUES

Kathy's Assessment

Kathy/trial brief

Inst. 1: encouraging, professional, friendly

Inst. 2:

Inst. 3: professional (very distant)

Inst. 4: encouraging, professional, friendly

Inst. 5: condescending, sarcastic

Kathy/appellate brief

Inst. 1: encouraging, professional, friendly

Inst. 2: encouraging, professional, emphatic, friendly

Inst. 3: (not encouraging; remarks made but usually no substantive comment to enable student to correct)

Inst. 4: professional

Inst. 5: encouraging, professional

ADJECTIVES DESCRIBING TONE OF CRITIQUES

Tom's Assessment

Tom/trial brief

Inst. 1: professional, empathetic

Inst. 2: professional, friendly

Inst. 3: professional

Inst. 4: harsh, condescending, sarcastic, professional, friendly

Inst. 5: professional, (necessarily tough)

Tom/appellate brief

Inst. 1: encouraging, professional, friendly

Inst. 2: encouraging, professional, friendly

Inst. 3: (just fine)

Inst. 4: professional, condescending*

Inst. 5: condescending

Tom's Remarks:

* Comments good, end note a little on the harsh side

ADJECTIVES DESCRIBING TONE OF CRITIQUES **Sarah's Assessment**
Sarah/trial brief
Inst. 1: encouraging, professional (to the point)
Inst. 2: encouraging, professional (very direct, pointed)
Inst. 3: (neutral tone, very objective)
Inst. 4: encouraging, professional, friendly (on point)
Inst. 5: encouraging, professional
Sarah/appellate brief
Inst. 1: encouraging, professional, friendly
Inst. 2: professional (neutral, objective)
Inst. 3: professional (neutral, objective)
Inst. 4: encouraging, professional, friendly
Inst. 5: encouraging, professional

Notice that Mark chose negative adjectives to describe the tone in both of Instructor 3's critiques. (Remember that different letter codes were used to identify the instructors' critiques, so unless Mark remembered that instructor's handwriting, he had similar, independent reactions to the tone in that instructor's comments.) While the other students did not describe that Instructor's comments negatively, they used words such as "professional," "neutral," "objective," and even "very distant" to describe the tone of those critiques.

Instructor 3's overall evaluations were the lowest of the five instructors, apparently because that instructor did not use end comments; however, the students' collective assessment of the tone of Instructor 3's comments suggests that tone may have been another factor in those lower evaluations. (A representative page of Instructor 3's critiques is in Appendix C.)

E. Number of Margin and Interlinear Comments

Legal writing instructors often wonder just how much com-

menting they should do on a given student's paper.[29] While being comprehensive may seem to be the best approach, the worry is that too many comments may overwhelm some students or that the students will have difficulty determining which of many comments are the more important ones.

Analysis of the number of margin and interlinear comments[30] the instructors put on the papers in the study suggests that there is a wide range in the number of comments instructors write on papers and that from the students' point of view, more comments does not necessarily mean that the instructor did a better job critiquing.

The chart below shows the number of margin and interlinear comments each instructor wrote on each paper. Notice that the range is from 18 comments to 156 comments. The students were asked on the evaluation form if the number of comments was "too many," "about right," or "too few." Five critiques were evaluated as having too few comments, and four critiques were evaluated as having too many comments. In the chart, those marked as too few are in bold and those with too many are underlined.

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[29] Terri LeClercq argues that excessive editing of law students' writing is counter-productive, leading to an intolerable workload and teacher burn-out. LeClercq also argues that when students are overwhelmed by the number of comments on their papers, they retreat into simple and safe writing to avoid a barrage of teacher comments. 3 LeClercq, *Supra,* at 4, 9. Muriel Harris of Purdue University states that "of all the failures of communication between teacher and student, the saddest is that which results from an overload of diverse bits of information on the graded paper." Harris concludes that "the major problem with the overgraded paper is that the instructor has lost both a sense of focus and a point of view." Muriel Harris, *The Overgraded Paper: Another Case of More is Less, How to Handle the Paper Load,* 91, 92 (NCTE 1979),

[30] One difficulty in counting the number of margin and interlinear comments is determining whether to call some words or marks on the page one or more comments. For this study, we counted all of the words grouped together in some meaningful way as one comment even though the comment may be long enough to fill the entire margin. However, a lone question mark in the margin or a single added comma in a line of text was also counted as one comment.

NUMBER OF MARGIN AND INTERLINEAR COMMENTS

	Instructor 1	Instructor 2	Instructor 3	Instructor 4	Instructor 5
Mark					
trial brief	52	**18**	138	65	80
appellate brief	**30**	**58**	76	54	87
Kathy					
trial brief	103	20	156	117	89
appellate brief	60	31	**109**	103	134
Tom					
trial brief	47	**28**	75	76	69
appellate brief	**34**	70	**43**	87	113
Sarah					
trial brief	37	25	**52**	73	58
appellate brief	43	42	62	67	113

The following chart again shows the number of margin and interlinear comments each instructor wrote on each paper. Those critiques that were rated number 1, "most useful," have their number of comments underlined.

	Instructor 1	Instructor 2	Instructor 3	Instructor 4	Instructor 5
Mark					
trial brief	52	18	138	65	80
appellate brief	30	58	76	54	87
Kathy					
trial brief	103	20	156	117	89
appellate brief	60	31	109	103	134
Tom					
trial brief	47	28	75	**76**	69
appellate brief	34	70	**43**	**87**	113
Sarah					
trial brief	37	25	52	73	58
appellate brief	43	42	62	67	113

The charts also suggest that, not surprisingly, more experienced instructors tend to write more comments than new instructors. Instructor 5, who had far more experience teaching legal writing than any of the other four, averaged 93 comments per paper. Instructors 1 and 2, both of whom were in their first year of teaching legal writing, averaged 51 and 34 comments per paper respectively. Instructor 3 averaged 89 comments per paper, and Instructor 4 averaged 80 comments per paper.

Yet another interesting statistic was the number of comments each student averaged on his or her papers. Mark, Tom, and Sarah averaged 57, 58, and 52 comments per paper respectively, but

Kathy, who was having extreme difficulty in the second-year legal writing course averaged 92 comments per paper. Indeed, six of her ten critiques had over 100 comments apiece. The obvious question, of course, is whether a student can reasonably assimilate all the information contained in 100 or more comments on a paper and whether such extensive commenting does more harm than good.[31]

One additional observation can be made about the number of margin and interlinear comments. When the comments were counted in the first, second, and third thirds of each of the papers, approximately half of the papers showed a tendency for the number of comments to decrease as the instructor moved from the beginning to the end of the paper.

In the chart below, the total number of comments in each paper is broken down into the first, second, and third thirds of the paper. Those that show a trailing off tendency are underlined. Those that drop off rather drastically are also in boldface type.

PAPERS WHOSE NUMBER OF COMMENTS DECREASED

	Instructor 1	Instructor 2	Instructor 3	Instructor 4	Instructor 5
Mark					
trial brief	18/14/20	**12/5/1**	52/47/39	28/17/20	29/31/20
appellate brief	15/6/9	**43/13/2**	18/18/40	26/14/14	31/26/30
Kathy					
trial brief	35/28/40	**15/4/1**	60/51/45	**58/38/21**	**45/34/10**
appellate brief	22/24/14	9/14/8	16/46/47	38/37/28	35/59/40
Tom					
trial brief	**25/17/5**	**18/9/1**	31/31/13	38/21/17	**36/26/7**
appellate brief	21/3/10	29/22/19	5/19/19	**54/19/14**	35/43/35
Sarah					
trial brief	15/11/11	6/13/6	13/20/19	20/32/21	34/18/16
appellate brief	16/11/15	13/24/5	13/28/21	27/26/14	41/48/24

In a post-evaluation discussion with the instructors involved

[31] In Kathy's case, it was clear that extensive commenting was doing more harm than good. In fact, after Kathy went through the five evaluations of her trial brief, she was so overwhelmed by both the number of comments and by being told again and again that her writing was poor that she initially declined to do the second half of the study, which was to evaluate the critiques of her appellate brief. (Remember too that had it not been for the study itself Kathy would not have heard five times over that her trial brief had many problems. In a normal situation, she would have heard that only once from her own instructor.) Almost six months after the course was over, however, Kathy reconsidered her earlier decision not to complete her work on the study and, at that time, did the evaluations of the critiques of her brief.

in the study, they speculated about why so many of the papers showed the decreasing number of comments as the critique progressed. While all agreed that commenting fatigue was probably the main reason from the trailing off tendency, some other plausible reasons were offered:
(1)The facts and rules, which come at the beginning, are crucial and deserving of extensive critique;
(2)When a problem in a student's writing occurs repeatedly, some instructors only comment on it the first time it appears;
(3) The most significant arguments come early in a brief, and they deserve more extensive critique; and
(4) The end comment is coming up, so instructors save their last comments to include them there.

F. The Relative Success of Certain Types of Comments

While there were a few inconsistencies in the students' ratings and remarks, by and large a pattern seemed to emerge about which types of comments were least successful and which were most successful with the students. The comments themselves tended to fall into approximately six[32] categories: illegible comments, coded or cryptic comments, labelling-the-problem comments, identify-the-problem/ suggest-a-solution comments, and suggest-a-solution plus give-the-rationale-for-the-solution comments.

Not surprisingly, illegible comments were invariably rated a 5. Coded and cryptic comments usually rated a 4, although occasionally they rated a 3. Comments that merely labelled the problem were most commonly rated a 3, although they were occasionally rated a 4 and sometimes a 2.

[32] Positive comments were not considered a separate category because most of the other types of comments included some comments that contained positive feedback.

EXAMPLES OF LABELLING COMMENTS

Comment:	"This discussion is confused + confusing."
Rating:	4
Student Remarks:	"How can this discussion be improved?"
Comment:	"Very long and detailed and generally unpersuasive"
Rating:	4
Student Remarks:	"I need specifics and not generalities"
Comment:	"Research sketchy"
Rating:	4
Student Remarks:	"Explain this comment? Why is research sketchy?"
Comment:	"You are missing the point"
Rating:	4
Student Remarks:	"In what way am I missing the point. It would be more helpful to me if you could give me an example."
Comment:	Presentation needs to be more sophisticated"
Rating:	4
Comment:	Facts need to be explained more clearly"
Rating:	4

Considerably higher ratings were given to comments that actually revised and edited the student's writing. Although most were rated a 3, some were rated a 2 by the students. An example of such a comment occurred on one paper where the instructor wrote in the margin "You need to finish the thought" and then proceeded to show the student exactly how to finish the thought by adding in "As in *Cuttererge*, the court cannot say that the jury would have disbelieved Mr. W's story without the damaging testimony about Mr. W's credibility."

The students also tended to give 2 ratings to comments that identified the problem and suggested a solution.

Comment: "use cases to support these arguments"

Rating: 2

Comment: "anticipate and respond to the state's arguments—what else could the police have done?"

Rating: 2

Student Remarks: "informs me that more analysis c/have been used."

Occasionally instructors offered suggestions and provided the rationale for these suggestions. Such comments were almost always rated a 1, possibly because the students realized that the comment

was giving them an insight about legal writing in general and not just about this one writing situation.

Comment: "organize your arguments around legal 'theories' & not cases"
Rating: 1
Student Remarks: "this is the best statement for organization of argument section. Had I thought of it, argument section would have been easier to write."
Comment: (edited out *giving rise to an inference of guilt* from a very long point heading) "save for later. When you try to put too much into heading, it weakens the heading"
Rating: 1
Student Remarks: "This instructor's suggestion for reorganization well taken. I can see that 'giving rise to an inference of guilt' common to both constitutional arguments, could be broken out into separate section and increase reader's understanding"
Comment: "This statement of facts is kind of long. It could have been shortened, for example, by reducing the level of detail on unfavorable facts"
Rating: 1
[student wrote "The defense, however, contends . . . ."]
Comment: "Avoid such qualifying language. Just state your contentions, the ct. knows they are just that"
Rating: 1

G. Comments that Contained Questions

In addition to the six categories of comments mentioned above and the pattern that seemed to emerge from them, another pattern emerged in the comments that contained questions. By and large, questions designed to lead the student to the answer received higher ratings (usually 2's and occasionally 1's) while terse or cryptic questions, such as "why?" "how?" and "are you sure?" received relatively lower ratings (3's and 4's).

The following are a few examples of comments containing questions that suggested to the students how they could have written something:

Comment: "make even better use of facts. How many times did the State comment on defendant's silence?"
Rating: 2
Comment: "You need to set the stage. Who was being questioned?"
Rating: 2

Comment: Effective argument except for reader's lack of knowledge about facts. What did DW tell the police and what did he say trial?"
Rating: 2
Comment: "Does Wilkerson match the description? If not, tell us now."
Rating: 1
Student Remarks: "Good pt."

The effect of overusing comments phrased as questions, particularly when the questions were short and sometimes cryptic, was evident in Instructor 3's critique of Mark's appellate brief. Of the 76 margin and interlinear comments on the brief, 37 were written in question form, and approximately ¾ths of those in question form were short and sometimes cryptic, at least for Mark.

The following are the question comments in this one paper. The first column gives the number of the comment; the second column gives the comment itself.

QUESTION COMMENTS IN ONE PAPER

Number of Comment	Comment
1	"first name?"
3	"first name?"
4	"Do you have the proper sequence?"
6	"by?"
7	"when?"
9	"Why did you break up the parallel structure?"
10	"Why? Isn't this important from your pov?"
11	"POV?"
14	"same thing?"
15	"Why parenthetical? Isn't this important?"
18	"Is this the std?"
21	"shouldn't this come first?"
23	"Where does this paragraph belong?"
26	"Why isn't this parenthetical first?"
27	"Do they have to be?"
29	"is this the std?"
30	"isn't this the key?"
31	"What is the std?"
36	"Do you need to do this? Do the cases require this type of analysis?"
38	"the officer?"
39	"POV?"
40	"how?"
46	"focus on procedure?"
49	"why? support?"
52	"Why? any support?"
54	"Isn't the problem that the procedure singled out an individual?"
55	"Is this the case?"
56	"must it?"
57	"No Wash cases?"
60	"must be both?"
61	"the witnesses?"
62	"No Wash cases?"
64	"What is the std?"
65	"Does it follow?"
69	"Why?"
72	"Where are the details?"
75	"Why?"

The effect of this many questions, particularly so many terse questions, makes the critique feel a bit like a cross-examination. Not surprisingly, Mark did not respond well to this critique.

H. How Comments Affect Rapport with Students

Certain types of comments—such as the terse or cryptic questions discussed above, coded comments, or short labels—tended to provoke negative responses from the students, while comments that suggested an on-going dialogue[33] with the student tended to receive favorable responses.

The following chart is again for Mark's appellate brief as it was critiqued by Instructor 3. The first column shows which comments were coded (co) and which were short, one- or two-word questions or labels (sh). Remember that this critique was also one that used numerous questions (37 out of 76 comments.) Notice how the ratings drop as Mark becomes more and more resentful about the critique. The Remarks column shows his remarks exactly as they appeared. (Use the preceding chart for the actual language in the comments phrased as questions.)

---

[33] J. Christopher Rideout and Jill J. Ramsfield have noted in their discussion of effective classroom methodologies for legal writing courses that "comments are dialogic" and "that responding to a student's paper is an act of writing that, like all writing, is socially situated . . . ." J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 Washington Law Review 74 (1994).

BREAKDOWN IN STUDENT/TEACHER DIALOGUE

	Comment #	Comment Rating	Mark's Remarks
	1	2	
	2	2	spelling
	3	2	Yes, need first names
	4	1	Action seems slow-No, I would now rewrite to make the assault go much quicker
co	5	3	
sh	6	2	Good pt.
co	7	3	Is this wrong? I guess I should have said "1963"?
sh	8	3	
	9	2	Yes, should keep together. I separated for emphasis though age only real significant difference
	10	2	~~Isn't what important?~~ Oh, I see-tell the reader why? Because she was too emotional to go to work.
co	11	?	? I was told to tell both sides of story.
sh	12	2	
sh	13	3	GIVE ME SOME EXAMPLES OF HOW TO MAKE IT BETTER! "Weak" doesn't do it!
	14	3	Maybe not the same
	15		I was told to put parenthesis
sh	16	4	"Weak" again. So, tell me how to change it!
	17	1	Good pt. for persuasion
	18	2	No, its not the standard. Only emotional.
co	19	3	
	20	3	
	21	3	
	22	3	consistency.
	23	3	I guess it belongs at the beginning. However, I'll have to ask you to be certain. You don't tell me.
co	24	3	So?/Useful to the extent that it draws my attention to it. Seems POV check again.
	25	2	Yes- unnecessary-
	26	confusing	Not sure what you want here.
	27	3	not credible
co	28	3	Inappropriate? tell me -How can I change this? Help!
	29	3	
	30	3	

	Comment #	Comment Rating	Mark's Remarks
	31	2	Use the specific words? which ones?
co	32	4	So?
	33	2	
co	34	4	?
	35	3	
	36	3	
co	37	3	not persuasive, right?
	38	3	
co	39	3	
sh	40	3	
sh	41	3	So, which word would be better?
	42	3	
co	43	3	
co	44	confusing	?
	45	3	
	46	confusing	So?
	47	3	
	48	3	Yes, but what other facts?
	49	3	
co	50	confusing	What do you want here?
co	51	3	
	52	3	
	53	3	
	54	3	
	55	2	No its not. Good pt

	Comment #	Comment Rating	Remarks
	56		Yes it must - if suggestive
	57	2	
	58	3	"Good start"
	59	4	"It's the id's. - not the witnesses that are unreliable"
	60	3	
	61	3	
	62	3	
co	63	3	the defendant
	64	3	
	65	4	Yes, it follows - the briefer the time - the less reliable the id.
	66	3	
co	67		
	68		Yes - I believe it follows - Is this your question?
sh	69	3	
co	70	4	
	71	2	In the "instant case"
	72	4	There are no details of Id in this case! - except age - We don't know what defendant looks like!
co	73	4	So?
co	74	4	?
sh	75	3	
	76	3	Is this what you wanted by "std?" Why didn't you tell me sooner?

Early in the critique, Mark appears to be receptive to the instructor's comments. Something snaps, however, at comment 13, where the instructor had simply written "weak" in the margin. Mark's handwriting in the Remarks section said as much as the words did. His all capital letter printing of "GIVE ME SOME EXAMPLES OF HOW TO MAKE IT BETTER!" was written in oversized letters pressed hard into the page.

He calms down for the next two comments only to be irritated by comment #16, another single word "weak" in the margin. His resentment is back again at comment #23, and from there things continue downhill. There are occasional bright spots where Mark accepts the criticism, but these bright spots are fairly few and far between. More common are Mark's defiant "So?" responses and several frustrated "Help!" and "What do you want here?" reactions.

By contrast, Instructor 1's commenting style seemed to build

rapport with students. One unique feature of these critiques was the instructor's occasional use of comments that suggested a dialogue was occurring between the teacher and student.

In the following example, the instructor seemed to anticipate the student's response to her suggestion:

> Comment: "Avoid giving undue attention to State's cases & State's arguments. Yes, you should address the important cases & arguments on State side, but you need to dispense with them more succinctly"
>
> Rating: 1

The same technique appeared in the end comment this instructor wrote for Kathy's brief. Here again the instructor seemed to anticipate what question the student would like to ask after reading the instructor's first suggestion for improvement, and she answers the anticipated question in her parenthetical statement. Later in the end comment the instructor also made an educated guess about why the student made some of the decisions she did.

> Overall, this memo is fairly well-organized and written, and it offers some good arguments.
>
> The persuasiveness of the memo could have been enhanced by, among other things, quoting more from the record. (Extensive quotation from analogous cases is frowned upon; the same is not true of quotations from the record.)
>
> There were several unexplained omissions in the analysis. For example, your heading argues that the show-up was suggestive as to Clipse, but you never addressed that point in the body of the argument.
>
> Perhaps you were constrained by a page limitation. If so, you might have saved space by arguing closely related points together (e.g., Parts IIA and IIB) to avoid unnecessary redundancy.
>
> Rating 1

I. Role-Playing Comments

One additional category of comments, role-playing comments, deserves mention. As was noted in the introduction to this article, legal writing teachers are intent upon impressing their students with the importance of paying attention to their readers. For that reason, some legal writing instructors use their comments to remind students of their reader's likely response to their writing. At times, the comments themselves are written as though the instructor has adopted the reader's role, be it judge, client, or supervising attorney.

The most experienced instructor in the study, Instructor 5, used role-playing in the comments, and judging from the students' ratings of these comments, the role-playing was well received, even when the instructor changed roles several times within the same critique.

At times the instructor took on the traditional teacher role.

Comment: "good-you have begun stmt of facts by setting out the facts that favor your client"

Rating: 2

Frequently, this instructor stopped just short of playing the judge's role, choosing instead to point to a probable reaction on the part of a judge/reader.

Comment: "Your point heading is too long: it visually intimidates the reader. Thus, even though it was good, most judges wouldn't read it.

Rating: 2

Comment: "At this pt the judge would be confused. Is this another summary of the argument or the arguments themselves?"

Rating: 2

Almost as often this instructor slipped into a writer's role.

Comment: "OK, but I'm not sure that I would have included this stmt."

Rating: 2

Comment: "I would include quotes from record here."

Rating: 2

And on a few occasions Instructor 5 played the role of editor.

Comment: "need to make 'tie' [circled the word testimony and added in "testified that"]

Rating: 2

Never once did the students comment that they were confused by the changing persona this instructor adopted.

J. What the Student Evaluations Did Not Say

The biggest surprise in the student evaluations of the instructors' critiques was that the students never criticized the instructors for their own writing errors. Occasionally, different instructors would omit a word in a margin comment, and some even had numerous typographical errors in their typed end comments. Never once did any of the four students mention these errors; instead, they seemed to assume that all the comments were first draft writing and could not be expected to be error-free.

III. Conclusion

Although it is tempting to try to draw some definitive conclusions from this data about what makes a useful critique of a law student's paper, it is also important to remember the limitations of this study. The four law students who evaluated the critiques were representative of several types of law students[34], but they were still just four law students, not four hundred or four thousand.[35]

Furthermore, the student-teacher dynamic in critiquing papers is affected by the classroom dynamic. For example, students often read a tone into the comments on their papers based on what they know about their legal writing instructor from class. Some instructors write comments that refer back to specific discussions that occurred in class. The evaluations in the study were all done without the student evaluators having that connection to the individual critiquing teacher's classroom teaching.

Most law students know the gender of the person critiquing their legal writing. Under the conditions in this study, the gender of the critiquer was not known to the students. It is possible that they may have reacted differently to the comments had they known the comments were "written by a woman" or "written by a man," but the information obtained from this study does not suggest any basis for drawing conclusions about the significance or insignificance of gender in critiquing.

Finally, and perhaps most importantly, legal writing papers usually have comments *and* grades. Adding grades to these papers would have certainly changed the dynamic and affected the students' reactions to the critiques.

Remembering the study conditions and limitations, then, we can draw the following inferences about what the student readers of instructors' critiques think about the comments.

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[34] One type of student that was not represented in the study was the student who ignores or barely glances at the comments and is concerned only with the grade on the paper.

[35] Still, the four students in the study, despite their differences in ability and personality, had a high level of agreement. In fact, approximately a year and-a-half after the data had been analyzed, each of the four students who had participated in the study, all of whom had graduated from law school and had taken and passed the bar, were contacted and briefed about the results of the study. None was surprised by what the study had shown, and to a one, they concurred with the conclusions, or inferences, drawn from the data. As part of this post-study briefing, these former students, now lawyers, were reminded that the results were being written up in an article for publication. When asked if there was anything else they would like to add or anything that they would like to say to legal writing instructors from law schools around the country, they were more than willing to get in a last word. Their final comments are included in Appendix D.

1. A WELL-WRITTEN END COMMENT[36] IS A CRUCIAL FEATURE OF AN EFFECTIVE CRITIQUE.

End comments that began with an overview of the paper and then discussed the paper's strengths and weaknesses received the highest ratings from the students. Several of the end comments with high ratings organized their points in categories (See, for example, the second and third end comments in Appendix B. One used the following categories: overview, content, organization, persuasiveness, writing style; the other used organization, roadmaps & signposts, analysis, persuasiveness, style, and mechanics.) The students also rated highly those end comments that listed what the writers should focus on the next time they write.

2. STUDENTS PREFER COMMENTS THAT ELABORATE OR GIVE EXAMPLES OR BOTH.

Short, cryptic, coded, or labeling comments tended to be far less effective than comments that discussed the writer's problems in more depth. The students also appreciated it when the critiquer gave an example of how to fix a given problem.

3. STUDENTS NEED POSITIVE FEEDBACK ABOUT THEIR WRITING.

Positive comments not only provide needed encouragement, they also point out effective examples in the student's own work that he or she can draw on and use again in other contexts.

4. INSTRUCTORS SHOULD MONITOR THE NUMBER OF COMMENTS THEY ARE WRITING ON STUDENTS' PAPERS.

While it can be tempting for legal writing instructors to comment on everything they see as they are reading a given paper, this practice can lead to excessive commenting, particularly on weaker writers' papers. Excessive commenting may overwhelm the student and create an unnecessary barrier to learning and improvement.

5. INSTRUCTORS NEED TO PACE THEMSELVES AS THEY COMMENT ON A GIVEN PAPER.

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[36] Because none of the instructors wrote "beginning" comments rather than end comments, we have no information from this study about whether the placement of this type of overview critique is important.

Although there may be good pedagogical reasons for writing fewer comments on the last half or last third of a student's paper, instructors should be aware of the number of comments they are making throughout a paper and take care not to run out of critiquing energy.

6. STUDENTS APPRECIATE COMMENTS THAT DISCUSS THE RATIONALE UNDERLYING THE CRITIQUER'S COMMENTS.

Students gave their highest ratings to those comments that incorporate rationale into the comment and use a specific instance in a student's writing to teach a general principle about effective legal writing.

7. COMMENTS PHRASED AS QUESTIONS CAN BE EFFECTIVE, BUT THEY MAY ALSO HAVE SOME HIDDEN DANGERS.

Too many questions, especially too many terse questions, can create an antagonistic reaction from students. Some students are more frustrated than challenged by comments framed as questions when the students are unable to use the question to determine what problem the instructor is pointing out and what solution would be acceptable.

While those of us who teach legal writing would agree with most, if not all, of the points drawn from the students, we are all painfully aware of the various tensions that surround the particular practice of commenting on and critiquing student writing. One of the tensions, of course, is how to incorporate these ideas into critiquing papers and still stay sane, especially given the number of students some of us teach and the number of papers we critique.

Furthermore, even if legal writing instructors had infinite amounts of time and critiquing energy, there is another tension between trying to write comments that explain and elaborate to the extent that the students seem to want and still not write so much that the comments overwhelm the students or rewrite the paper for them. While it is hard to find the right balance, the message from the students seems to be to be more selective about the points raised in comments and then to flesh out these selected comments to be sure that they are clearly explained to the student.

As legal writing professionals, what we need to do next, then, is clear. In addition to exercising whatever collective clout we may have to reduce class sizes so that we can manage the paper load, we need to continue exploring the critiquing frontier. We now

know that end comments are essential, and we have some ideas about what makes some end comments particularly effective. Although we probably will never have, or want, a precise formula for writing end comments, we still need to examine end comment writing in more depth. Some critiquers, for example, use a cross-referencing system that connects margin comments to the overview in the end comment. Still other critiquers insist that beginning comments[37] work far better than end comments because students read these first before they work through all the individual margin and interlinear comments. Are cross-referencing systems effective or confusing? Does it really matter if the overview comment is at the beginning or end of the paper? We should study these questions, and as part of that study, we should ask the students.

We have even more work to do on the issue of comments that offer solutions to students' writing problems. Students seem to be saying "tell us how to fix it," but the conventional wisdom among legal writing professionals has been to resist doing very much revising and editing for the students. Do students learn best when they figure it out on their own or when they see their own prose in an improved state based on their instructor's revisions? How much help is the right amount? We should study this question, and as part of that study, we should ask our students.

And what kind of help works best? If a student has a persistent problem, say with writing topic sentences, is it better for the instructor to write one for the student and then hope the student can use that example as a model for the rest of the paper? Would the student learn more about topic sentences if he or she reads another student's paper that has particularly strong topic sentences? Would it be better to send the student back to the textbook's discussion on topic sentences? Would it be better if the instructor took the time to write a margin comment explaining the underlying rationale for topic sentences? Again, we should study this issue, and as part of that study, we should ask our students.

Given our long standing conviction that asking questions is a better teaching strategy than handing students the answers, we should further explore the use of questions in commenting on student papers. We need to understand the difference between a question comment that suggests to the student writer that he or she made a mistake or overlooked a key point ("Was the roll of bills in a locked glove compartment?" "At what point did the po-

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[37] Beginning comments are similar, if not identical, to end comments except that the legal writing instructor attaches them as a cover page to the student's writing.

lice officer read the defendant his rights?") from a real question that seeks information from the student author ("Did you decide not to include *Smith v. Jones* in your analysis because it was from another jurisdiction?") Obviously not all question comments are equally effective. Which ones challenge students to think harder and deeper and write better, and which ones intimidate, frustrate, and antagonize? We need to refine this part of our collective knowledge about critiquing, and in order to do that, we will have to ask ourselves and our students about which question comments are effective and which are not.

Finally, we need to ask which kinds of comments promote lasting learning and which ones simply help the student fix a problem in a given assignment. Both kinds of comments are "effective," but ones that transfer to other writing assignments both in law school and on into practice are certainly the kinds of comments that we want to identify and learn how to write.

Critiquing law students' writing and commenting on their papers will continue to be a significant part of our work. As such, it deserves all of this attention and more. We have a fairly good idea of what many of the next questions are and what we should study next. As we ask ourselves these questions and study the issues related to the writing we do on student papers, though, let us not forget our own advice: all good writing, including instructor comments on law students' papers, should consider its audience and its purpose. If we keep those two touchstones in mind, we are apt to be far more successful both in studying effective critiquing and in writing effective critiques.

Appendix A:

Evaluation Sheet for Instructor's Comments

Appellate Brief
Evaluation of Critique done by Instructor _____ (fill in instructor code on coversheet) on student paper _____ (fill in your student number code on cover sheet).

READ THROUGH THE ENTIRE CRITIQUE BEFORE BEGINNING TO FILL IN THIS SHEET.

A. Overall Evaluation

1. Taken as a whole, this instructor's comments were

1	2	3	4	5
very useful		useful		not useful

(Check the following only if applicable.)

_____illegible _____confusing _____harmful

Remarks:

2. From all the comments, I assume that this instructor's top priorities for legal writing are the following: (List and number the priorities, that is, number 1 should be the top priority.)

3. From all the comments, I assume that the following are the chief strengths of my paper: (List and number the strengths.)

4. From all the comments, I assume that the following are the chief weaknesses of my paper: (List and number the weaknesses.)

5. Based on all the comments, I assume I most need to work on the following:

B. The End Comment

Many instructors write a comment at the end of each student's paper. If this instructor did not use an end comment, simply check the following and move to section C.

_____ no end comment

If the instructor used an end comment, use this section (B) for your evaluation of it.

1	2	3	4	5
very useful		useful		not useful

(Check the following only if applicable.)

_____illegible _____confusing _____harmful

Remarks:

EVALUATION SHEET FOR INSTRUCTOR'S COMMENTS

DIRECTIONS: Fill out a separate evaluation sheet for each instructor's comments. If at all possible, do each evaluation at a different time so that you will not be unduly influenced by the way you evaluated another instructor's comments.

Many questions ask you to rate an instructor's comment(s) using the following scale:

1	2	3	4	5
very useful		useful		not useful

Please choose one of these five levels. Do not create new levels midway between two points. Some comments may also be illegible, confusing, or harmful. There are additional boxes to check if any comment falls into one of these categories.

If you have chosen the very highest rating (1) or the very lowest rating (5), please explain why in the Remarks section for each question. If you have marked that a comment is confusing or harmful, please explain why in the Remarks section for each question. You may also use the Remarks section for any other comments you have.

Obviously, the term "useful" may have a variety of meanings. For example, you may find a comment useful if it helped you to understand something about your writing; will help you the next time you write; or motivated you to work on your writing. You may have other reasons for rating a comment as useful. Again, please use the Remarks section whenever you need to explain a particular meaning of "useful."

Read all the comments from one instructor before beginning to mark the evaluation sheet for that instructor's critique.

I have used a simple numbering system to keep track of which comments get which ratings and critiques. The number of the comment will appear in a box and be written in orange ink. The box with the orange number should be right above or near the comment. Often an arrow indcates which comment the number goes with. When two or more comments seem tied together, I have given them the same number so they can be rated together.

If I have inadvertently missed numbering a comment, please critique it after all the other margin comments and assign it the highest number for a margin comment. Any

numbers that appear on your paper that are not in orange ink are part of that instructor's critique.

Feel free to call me at work (591-2230) or at home (588-8480) if you have any questions. Thanks for your cooperation!

C. Margin and Interlinear Comments

Many instructors write comments in the margins and between the lines of each student's paper. If this instructor did not use margin or interlinear comments, simply check the following and move to section D.

_____ no margin or interlinear comments

If this instructor used margin and interlinear comments, you will notice that they have been numbered with an orange pen. Use the orange numbering system to match each margin and interlinear comment with your evaluation of it.

Comment #1

1	2	3	4	5
very useful		useful		not useful

(Check the following only if applicable.)

_____illegible _____confusing _____harmful

Remarks:

Comment #2

1	2	3	4	5
very useful		useful		not useful

(Check the following only if applicable.)

_____illegible _____confusing _____harmful

Remarks:

Comment #3

1	2	3	4	5
very useful		useful		not useful

(Check the following only if applicable.)

_____illegible _____confusing _____harmful

Remarks:

Comment #43

1	2	3	4	5
very useful		useful		not useful

(Check the following only if applicable.)

_____illegible _____confusing _____harmful

Remarks:

Comment 44

1	2	3	4	5
very useful		useful		not useful

(Check the following only if applicable.)

_____illegible _____confusing _____harmful

Remarks:

Comment 45

1	2	3	4	5
very useful		useful		not useful

(Check the following only if applicable.)

_____illegible _____confusing _____harmful

Remarks:

D. Miscellaneous

Please apply the following to all comments (end comment, margin comments, interlinear comments) on the paper. Use the Remarks section for further explanations.

1. Number of Comments

_____too few _____about right _____too many

Remarks:

2. Tone of Comments (mark all that apply)

_____harsh _____condescending _____sarcastic

_____encouraging _____discouraging

_____professional ____empathic ____friendly

_____ (you supply the descriptive word or words)

_____

Remarks:

3. Accuracy of Comments (i.e., do you think the instructor was right in what he or she said?)

1	2	3	4	5
very accurate		somewhat accurate		inaccurate

Remarks:

4. What was the most effective quality of this instructor's critiquing style? Why?

5. What was the least effective quality of this instructor's critiquing style? Why?

6. Additional comments about the instructor's critique?

7. Comments about the evaluation sheet you are using or the evaluation process?

Appendix B:

Example of End Comments

End Comment with Lowest Rating

DEar #75,

Your brief is very poor. As an appellate judge, I don't know if I would have continued reading past the table of contents. Your cover incorrectly states that this brief supports a petition for discretionalry review, a misstatement that dramatically affects your credibility with the reader. That error, combined with the very complicated table of contents, makes your brief univiting to read. Likewise, your assignments of error and issue statments just continued to put a bad taste in the reader's mouth. INstead of simplifying and focusing the reader's attention, your issues made the case seem more complicated than it really is. As a result, the reader feels burdened, not enlightened.

YOur statement of the case omits legally significant facts and also misstates the facts on p. 5. WHile you chose an effective point of view from whic;h to begin the fact summary, your omissions and lack of an effective organization interferred with reader understanding. Even though you presented some factual details well, your statement needed revision for completeness and accuracy.

Thus, as I have already mentioned, I don't know if a judge would have continued reading much farther. If not, you have totally missed the opportunity to argue your cleint's case because of a lack of attentiveness to detail. MOreover, even if the judge is generous and continues reading, your credibility is shot!

AS for the argument, you needed to work on using thesis and topic sentences and transitions to ties your argument together. You do not effectively introduce each section and explain how it fits within the larger picture. On the silence issue, you tried to addres the state's arguments, but your points were largely unsupported. YOur assertions were merely opinion and carried little weight. Many times the thrust of your argument was diminished or lost because of poor sentence structure. Keeping your subject and verb closer together makes it easier for the reader to quickly comprehend what's going on; more difficult sentences mean that the reader must spend valuable energy dissecting the sentence structure rather than concentraing on what you're saying.

While my overall impression is that y ou understood the law and had some very good arguemnts to make, the presentation was ineffective, so the points were lost. Little things, like graphics, can make or break the reader's perception of your credibility and thus the believability of your points. MOreover, you did not choose an effective organization; as I have already mentioned, the sheer number of subdivisions adversely affected understandin.

THe breif needed revision to catch numerous surface errors and to simplify the presentation and to tie the issues together. You alluded to the second issue when your discussed harmless error re. the first issue, but the connection needed to be much more explicit to really impress the reader and persuade the judge that your client did not receive a fair trial.

End Comments with Highest Rating

Student 65:

The first part of your brief is quite good. Your tables are good, your assignments of error and issue statements are good, and you did a nice job on your statement of the case: you included all of the legally significant facts, and you presented those facts quite persuasively. I also thought that the first part of your argument section was quite good. Your research was good, your arguments were sound, and, for the most part, your presentation was persuasive. I did, however, have substantial problems with your discussion of the second issue. Although it is important to establish that there was an error, this case will be won or lost on the discussion of the exceptions. You should, therefore, have discussed them at length.

My more specific criticisms follow:

Content:

In writing briefs as a practitioner, there are a couple of things that you need to work on. First, and most importantly, make sure that you discuss all of the issues. (In this case, your failure to discuss the exceptions to Doyle was fatal.) Second, make sure that you organize around "arguments" and not case. Set out a legal argument and then use the cases to back up/support that argument. Do not use the "book report" method of setting out one case, comparing that case to ours and then setting out a second case and comparing it to ours.

Organization:

I have two pieces of advice. First, make sure that you set out your strongest argument first. For example, in this case, you should have set out your silence argument before your suppression argument. Second, do not overuse summaries. Although summaries and roadmaps are useful, if you overuse them your writing becomes repetitive and the judge stops reading. (In this case, by shortening the summaries and combining the two "prejudice" arguments, you could have stayed within the page limit.)

Persuasiveness:

Although you used the persuasive devices that we discussed in class in writing your statement of the facts, you did not use enough of them in your argument section. For example, in the future, try to start each section and subsection with either a positive assertion or a rule that clearly favors your client and try to state the rules in the light most favorable to your client.

Writing Style:

On the whole your writing is good. In the future, you should, however, continue working on paragraph coherence and transitions.

If you would like help with any of the items, please feel free to come see me. Even though you have finished Legal Writing II, the writing faculty is still available to help you with your writing.

LWII
Student 08
Assignment: Final draft: Memorandum of Points & Authorities

Comments:

Organization

Good.

Roadmaps & Signposts

Your use of roadmaps & signposts is reasonably good, although you do a better job of providing signposts than roadmaps. As noted on the memo, there are a couple sub-issues that were not sufficiently "previewed" in a roadmap, and, as a result, the appearance of these sub-issues came as a surprise. Also, in the introduction to "I," you started a roadmap but didn't finish it.

Analysis

You make some good arguments, cite some relevant cases, and do a reasonably good job of comparing & contrasting analogous cases.

The principal shortcoming I see is a lack of specificity in some of your analysis. (See, e.g., discussion of the differences in appearance among lineup participants; discussion of discrepancies between witnesses' descriptions and Wilkerson's actual appearance.) The lack of specificity makes your analysis sound conclusory at times. (See, e.g., discussion of Clipse's lack of reliability.)

Persuasiveness

Overall, your memo is moderately persuasive.

The Statement of the Case is fairly good, though it would benefit from simpler, more direct and vivid language. What it lacks now is a sense of immediacy (especially important for the defendant).

Both the point headings and the issue statements require greater specificity to be persuasive. Unless you include some specific facts to support your propositions, your point headings and issue statements will be unlikely to incline the court in your favor. See comments on memo.

"Style"

I detect no serious stylistic problems. Your style would benefit, however, if you would eliminate some wordy phrasing (e.g., "is due to the fact that," "it is evident that," "it

Appendix C:

A Representative Page of Instructor 3's Critiques

and objected strongly that no other individual in the line-up looked like Mr. Wilkerson. (RP 38) Mr. Kellogg also stated that he considered it to be one of the poorest line-ups that he had ever seen. (RP 38) Not surprisingly, Ms. Komotics and Mr. Clipse identified Mr. Wilkerson at the line-up. (RP 63, 92)

d. Prosecutor's Comments At Trial

The State elicited evidence of Mr. Wilkerson's post-Miranda silence during its direct examination of Officer Moffat (RP 112) and during its cross-examination of Mr. Wilkerson. (RP 142) The State also made remarks concerning Mr. Wilkerson's post-Miranda silence in its closing argument. (RP 166) (Additional facts concerning this issue are included in the argument section.)

C. Argument

I. THE TRIAL COURT COMMITTED PREJUDICIAL CONSTITUTIONAL ERROR BY ALLOWING THE STATE TO SUGGEST TO THE JURY THAT AN INFERENCE OF GUILT SHOULD BE DRAWN FROM MR. WILKERSON'S POST-ARREST SILENCE.

Mr. Wilkerson's rights to due process were violated when the trial court allowed the State to use evidence of Mr. Wilkerson's post-arrest silence to suggest to the jury that an unfavorable inference should be drawn as to the truth of his trial testimony. The State, during its cross-examination of the defendant, may not use a defendant's post-Miranda silence for impeachment purposes because that silence is "insolubly ambiguous." Doyle v. Ohio, 426 U.S. 610, 617, 49 L. Ed. 2d 91, ___, 96 S. Ct. 2240, ___ (1976) (Washington has adopted and extended the holding in Doyle to also prohibit the impeachment and substantive use of a defendant's post-arrest silence made during the State's case-in-chief and closing argument. State v. Fricks, 91 Wn.2d 391, 396,

Appendix D:

Final Comments from the Students

Tom

"I don't know how you can teach someone to write. If there is one thing I would recommend is to have students write more."

"I think lawyers learn more about writing on the job than they do in legal writing classes. Perhaps the best way to teach legal writing would be to have students out in the field working and bringing in what they are writing for real clients, real judges, and real bosses and have legal writing instructors work with them on that."

Sarah

"Sit down as a group and develop standards for critiquing. Students compare their critiques and often find that there is little consistency among them. Each instructor seems to have his or her own biases and style. If there is one thing I could say to legal writing faculty from around the country, it would be to develop clearer guidelines and clearer expectations."

Kathy

"Constructive criticism goes a long way, but destructive criticism goes an even longer way. By that I mean, students carry destructive criticism with them for years. Once someone destroys your self-confidence as a writer, it is almost impossible to write well.

Be sensitive. People are open to criticism, but watch how you give it. Lace it with enough encouragement so that the students still feel you are rooting for them.

Mark

"Consider having your students critique their critiques, at least once. I learned a lot from participating in this study, and I think other students would too. For one thing, I started thinking more about how I wanted to be taught. The more responsibility I took for the process, the more involved I got in the process, and the more I got out of the critiques."

All that I would add is what I would call the Golden Rule of Legal Writing--critique as you would like to be critiqued."