

# Using Composition Theory and Scholarship To Teach Legal Writing More Effectively

*Nancy Soonpaa*<sup>1</sup>

As teachers of a specialized kind of writing, legal writing professionals sometimes forget that others not only teach writing, but consider themselves its primary educational providers. The research on composition and writing theory from English scholars can provide perspective and understanding for those teaching legal writing as the legal writing field develops its own theory and scholarship.

This article shows how scholarly work in composition is both applicable and helpful in understanding and thus more effectively teaching law students who are learning a new kind of writing. Three broad categories provide a useful overview:

- I. What Teachers Should Know: Composition Theory
- II. What Students Do: Explaining Product and Attitudes Towards the Writing Process
- III. When the Two Meet: Commenting on Student Papers

Each of these sections is followed by some practical ideas about applying the theory or scholarship in the legal writing classroom.

## INTRODUCTION

One reason that composition scholarship is so useful is its reassuring effect. Students everywhere follow patterns and make choices that their teachers never imagined, let alone encouraged or endorsed. Taking student failures and struggles personally can drive teachers to frustration, despair, and burnout. For teachers (and consequently for their students), the explanations provided by much of the scholarly work help to make the classroom and the students more understandable and more manageable. Understanding and applying that scholarship

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<sup>1</sup> Lawyering Faculty, Albany Law School. Formerly Legal Writing Instructor at University of Puget Sound School of Law; Lecturer in Composition and Technical/Business Writing, Department of English, University of North Dakota; Law Clerk, U.S. District Court for the Eastern District of Texas, the Ninth Judicial District of Minnesota, and the North Dakota Supreme Court.

makes the classroom experience and the students' writing more effective. In short, everyone wins.

### I. WHAT TEACHERS SHOULD KNOW

The last thirty-five years have seen a significant shift in orientation of composition courses and in the focus of scholarly journals.<sup>2</sup> While writing courses were traditionally prescriptive and product-oriented, that focus began to change for several reasons: First, the "New Education" movement of the early to mid-1960s heralded an interest in questioning and restructuring traditional methods of instruction.<sup>3</sup> Second, a perceived decrease in the quality of students' product led to an increased interest in their composing process.<sup>4</sup> Third, an increase in the number of students going to college, as well as the number of non-traditional students, led to increased workloads for writing professionals, who began to question the effectiveness of their teaching methods for classrooms of students with disparate writing competencies.<sup>5</sup> Thus researchers<sup>6</sup> began to question the prod-

<sup>2</sup> Patricia Bizzell, *Composing Process: An Overview*, in *The Teaching of Writing* 71, 72-73 (Anthony Petrosky & David Bartholomae eds., 1986). In fact, most research on the composing process dates back no earlier than 1970. *Id.* at 73. Janet Emig's landmark study of students composing processes, published in 1971, has been acknowledged as fundamental in the shift to "the consciousness of writing as process that prevails in today's composition theory and pedagogy." Ralph F. Voss, *Janet Emig's The Composing Processes of Twelfth Graders: A Reassessment*, 34 *C. Composition and Comm.* 278, 278 (1983). By 1967, a prominent journal had published an article rather sarcastically questioning whether anyone could still think that teaching grammar was the key to good writing. See Bernard Baum, *Some Thoughts on Teaching Grammar to Improve Writing*, 18 *C. Composition and Comm.* 2 (1967).

<sup>3</sup> Bizzell, *supra* note 2, at 72; Robert J. Connors & Cheryl Glenn, *The St. Martin's Guide to Teaching Writing* 101 (1995).

<sup>4</sup> Bizzell, *supra* note 2, at 72.

<sup>5</sup> Maxine Hairston, *The Winds of Change: Thomas Kuhn and the Teaching of Writing*, 33 *C. Composition and Comm.* 76, 81-82 (1982).

<sup>6</sup> An interesting parallel exists between those early composition scholars and legal writing professionals. The rest of the academy viewed them with something less than respect. They were frequently graduate students or those on the low end of the faculty totem pole—perhaps even part-time teachers (cf. adjunct), and they produced little "serious scholarly work." But these little-respected pioneers changed the focus of freshman writing from grammar drills to process, and in doing so, changed writing courses everywhere. See Bizzell, *supra* note 2, at 73. Another scholar noted the common (but erroneous) "assumption [] that anyone with a Ph.D. in English is an expert writing teacher[.]" Hairston, *supra* note 5, at 79, an attitude certainly parallel with the one that any law school graduate could competently teach legal writing. Furthermore, the same perceived skills/theory dichotomy and its resultant disproportionate distribution of professional respect exists in both English departments and law schools with respect to those teaching writing and those teaching "substantive" courses. See *id.*

uct-oriented composition course, began to teach their classes with a student-centered focus, and began a new age in teaching writing at the college level.

The introduction of the theory of transformational grammar (which looks at the rules of language generation) signalled a willingness to look anew at assumptions about rhetoric, production of text, and the process, rather than the product, of writing.<sup>7</sup> In the mid-1960s, the stage-model theory became the new interest of composition researchers; it sets out the familiar linear process that is used in many writing courses: pre-writing —> writing —> re-writing.<sup>8</sup> By examining and emphasizing process rather than product, an early theorist argued, teachers could shift focus to creation from recognition, to method from content, to thought from meaninglessness.<sup>9</sup> While the three-part model has been criticized as too linear, with other models showing how recursiveness should modify the lineality of their model,<sup>10</sup> the basic scheme is still commonly used today.<sup>11</sup>

Through the 1970s, the tension became apparent between the traditional interventionist pedagogy and the student-centered maturationist pedagogy.<sup>12</sup> Coupled with an increased emphasis on process and the worth of process as an object of study, classroom dynamics and the student/teacher relationship changed significantly, becoming less formal.<sup>13</sup> The suggested shift in emphasis—from attempting to get students' texts to match some ideal to examining the relationship between what

<sup>7</sup> Hairston, *supra* note 5, at 81.

<sup>8</sup> Bizzell, *supra* note 2, at 74; Connors & Glenn, *supra* note 3, at 101-02; see D. Gordon Rohman, *Pre-Writing: The Stage of Discovery in the Writing Process*, 16 C. Composition and Comm. 106 (1965). James Britton sets out another similar stage model: Conception —> Incubation —> Production. James Britton et al., *The Development of Writing Abilities* (11-18) 22-32 (1975).

<sup>9</sup> See Rohman, *supra* note 8, at 106-07; see also Connors & Glenn, *supra* note 3, at 102.

<sup>10</sup> Bizzell, *supra* note 2, at 78; Connors & Glenn, *supra* note 3, at 103, 104-05; Nancy L. Sommers, *The Need for Theory in Composition Research*, 30 C. Composition and Comm. 46, 47 (1979); Sondra Perl, *Understanding Composing*, 31 C. Composition and Comm. 363, 364 (1980) (exploring the idea of recursiveness in eloquent detail).

<sup>11</sup> See, e.g., Laurel Currie Oates et al., *The Legal Writing Handbook* 89-250 (1993) (organizing the objective memorandum writing task into prewriting, drafting, revising, and editing stages, while noting that the basic process is not linear, but recursive).

<sup>12</sup> Barry M. Kroll, *Developmental Perspectives and the Teaching of Composition*, 41 C. English 741, 747 (1980).

<sup>13</sup> Bizzell, *supra* note 2, at 75; see Lil Brannon & C. H. Knoblauch, *On Students' Rights to Their Own Texts: A Model of Teacher Response*, 33 C. Composition and Comm. 157, 161 (1982).

the writer intended to say and what the text actually conveyed—required a recognition (and perhaps increased respect for the fact) that even “inexperienced writers operate with a sense of logic and purpose that may not appear on the page but that nonetheless guides their choices.”<sup>14</sup>

A developmental perspective on teaching composition, interactionism, sought to unify the field by drawing on aspects of both the traditional product-oriented and new process-oriented approaches to teaching composition.<sup>15</sup> Interactionism views development “as a dynamic interaction between individual and environment, between internal and external influences.”<sup>16</sup> Its attraction as a theory for teaching composition is in its refusal to view the classroom as an “either-or” choice between product and process, recognizing that both skills and confidence are needed to improve writing.<sup>17</sup>

The late 1970s and 1980s also welcomed other new areas of research into composition theory, including cognitive analysis of composing and examination of social and cultural contexts of composing.

In developing their well-known cognitive approach, Flower and Hayes attempted to address the inadequacies of the stage model by focusing on the stages of mental processes that occur during composing, rather than the stages of the written product.<sup>18</sup> By having students talk aloud while completing a task (“protocol analysis”),<sup>19</sup> they were able to divide the composing process into a model with three separate components: the task environment, the writer’s long-term memory, and the larger writing process, which encompasses several subprocesses.<sup>20</sup>

<sup>14</sup> Brannon & Knoblauch, *supra* note 13, at 161. They note the dangers of a teacher’s having an “Ideal Text” in mind that makes it difficult to give authority and control over to students to say what they want to say in their own writing. *Id.*

<sup>15</sup> Kroll, *supra* note 12, at 748.

<sup>16</sup> *Id.* Kroll relies on Piaget’s interactive theory of development for the basis of his model. *Id.*

<sup>17</sup> *See id.* at 750-51. Kroll explains that the interactionist approach emphasizes writing as communication, with special attention paid to audience and purpose. *Id.* at 751.

<sup>18</sup> Linda Flower & John R. Hayes, *A Cognitive Process Theory of Writing*, 32 *C. Composition and Comm.* 365, 367 (1981); *see* Bizzell, *supra* note 2, at 77-78; Connors & Glenn, *supra* note 3, at 116.

<sup>19</sup> A technique criticized in a 1983 article reassessing Emig’s study. Voss, *supra* note 2.

<sup>20</sup> Flower & Hayes, *supra* note 18, at 369-70. As Flower and Hayes explain their model:

The task environment includes all those things outside the writer’s skin, starting with the rhetorical problem or assignment and eventually including the

Their model, recursive and hierarchical,<sup>21</sup> met the challenge of another researcher who had demanded a model that described process rather than product and operations rather than stages.<sup>22</sup> While their model demonstrates the potentially overwhelming number of tasks that a successful writer must control,<sup>23</sup> creating a network of smaller goals can help less-experienced writers to prevent overload and avoid omissions that would weaken their writing.<sup>24</sup> Building on Flower and Hayes's research by using their protocol method, later research has suggested that the model be expanded to recognize writers' use of pre-text, "a 'trial locution' that is produced in the mind, stored in the writer's memory, and sometimes manipulated mentally prior to being transcribed as written text."<sup>25</sup>

Other cognitive theorists examined basic writers' writing for error patterns on the theory that errors are indicative of the mental processes occurring during writing. This cognitive approach suggests a fundamental shift in the way that writing teachers can view error—not as carelessness or ignorance but as an opportunity to understand how a student thinks—and the attendant opportunity for instruction.<sup>26</sup> The two-part inquiry requires first investigating the error to determine how the students made the mistake and then applying that insight to help move the students toward a more appropriate choice.<sup>27</sup> Teaching strategies can be tailored to redirecting the thinking leading to error, rather than at some other thinking or at an assumption

growing text itself. The second element is the writer's long-term memory in which the writer has stored knowledge, not only of the topic, but of the audience and of various writing plans. The third element in our model contains writing processes themselves, specifically the basic processes of Planning, Translating, and Reviewing, which are under the control of a Monitor.

*Id.* at 369 (emphasis omitted).

<sup>21</sup> Flower & Hayes, *supra* note 18, at 375-76; Connors & Glenn, *supra* note 3, at 117, 118.

<sup>22</sup> Nancy L. Sommers, *The Need for Theory in Composition Research*, 30 *C. Composition and Comm.* 46, 47 (1979).

<sup>23</sup> Connors & Glenn, *supra* note 3, at 119.

<sup>24</sup> *Id.*, at 120.

<sup>25</sup> Stephen P. Witte, *Pre-Text and Composing*, 38 *C. Composition and Comm.* 397, 397 (1987).

<sup>26</sup> Barry M. Kroll & John C. Schafer, *Error-Analysis and the Teaching of Composition*, 29 *C. Composition and Comm.* 242, 242-44 (1978); Connors & Glenn, *supra* note 3, at 114-115.

<sup>27</sup> Kroll & Schafer, *supra* note 26, at 244. Kroll and Schafer provide examples based in part upon their experiences with ESL students and focus on grammatical errors. See *id.* at 244-46.

that the error was based on simple ignorance.<sup>28</sup> This approach also helps foster a respect for students: an error based on thinking, however misdirected, is infinitely preferable to an error based on carelessness or irrationality.<sup>29</sup>

Somewhat analogously, working with college-age students who may not have reached full cognitive development can pose challenges when teachers ask them to perform tasks that require forming abstractions or conceptions.<sup>30</sup> While errors related purely to cognitive development are not quite like those of the basic writers whose application of their own rules leads to unconventional results, a similar inquiry can work as well. A student who does not understand the concept of synthesis needs different help than does a student who understands synthesis but not the underlying subject matter.

While the cognitive approach can be characterized as inner-directed, social constructivism and related theories can be seen as outer-directed models for the development of language and thought.<sup>31</sup> Simply put, social construction theory asserts "that entities we normally call reality, knowledge, thought, facts, texts, selves, and so on are constructs generated by communities of like-minded peers."<sup>32</sup> As a composition theory, social constructionism sees writing as primarily a social act, for a writer's lan-

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<sup>28</sup> See *id.* at 247.

<sup>29</sup> See Mina P. Shaughnessy, *Errors and Expectations: A Guide for the Teacher of Basic Writing* 105 (1977). This classic book proposed a whole new approach to error in writing by examining errors for patterns that could be related to erroneous assumptions about rules or self-generated rules, rather than simply a random or careless action. Another researcher, Donald Bartholomae, also examined Basic Writers' errors for evidence of intentional choices, trying to identify and look for patterns in that grammar or dialect that the student was purposefully, if not standardly, using. Donald Bartholomae, *The Study of Error*, 31 C. Composition and Comm. 253 (1980). He categorized three types of errors: 1. evidence of an intermediate system—being stuck with an idea that the writing works or being unable to see the error, 2. true accidents that the student can self-correct, and 3. dialect interference between the student's natural language and the academic one. *Id.* at 257-58. Written language is everyone's second language; its acquisition is visual, not aural, and has more interference in the form of the writing process itself, conventions, and error avoidance patterns. *Id.* at 324.

<sup>30</sup> See Andrea Lunsford, *Cognitive Development and the Basic Writer*, 41 C. English 38 (1979). Lunsford draws on the research of psychologist Lev Vygotsky, who posits that concept formation occurs in three phases; the final stage, true concept formation, may occur well into post-adolescence (mid-20s). *Id.* at 39.

<sup>31</sup> Patricia Bizzell, *Academic Discourse and Critical Consciousness* 76-82 (1992). Bizzell particularly criticizes Flower and Hayes's model because it describes *how* the writing process occurs as if that also explains *why* the writer makes certain choices at certain times. *Id.* at 84.

<sup>32</sup> Kenneth A. Bruffee, *Social Construction, Language, and the Authority of Knowledge: A Bibliographical Essay*, 48 C. English 773, 774 (1986).

guage grows from his or her community; language is used primarily to join new communities and to cement membership in old ones.<sup>33</sup> Outer-directed theorists examine the social context that conditions thinking and language and look at discourse conventions as occurring within the context of a particular community, rather than as being universally held.<sup>34</sup> Only when writers understand a new discourse community, such as the academic or professional discourse community, can they set operational goals that will allow them to meet the conventions of that new kind of writing.<sup>35</sup>

Along with the more complex writing-process theories came other ideas about the nature of writing, at the same time infinitely simpler, yet grander in scope: the notion that regardless of how it occurs and in whatever stages, writing exists as a unique mode of learning.<sup>36</sup> While writing, one deploys all three modes of dealing with actuality: enactive (by doing), iconic (by depiction in an image), and symbolic (by restatement in words).<sup>37</sup> Writing is organic, functional: it uses both sides of the brain.<sup>38</sup> Writing provides immediate feedback on process by generating product, writing fosters learning by keeping pace with it, and writing "connects the three major tenses of our experi-

<sup>33</sup> *Id.* at 784.

<sup>34</sup> Bizzell, *supra* note 31, at 79.

<sup>35</sup> *Id.* at 92. Ann Berthoff says that people use language to make sense of themselves and the world, and carefully "assisted invitations" could encourage students into the composing process. Bizzell, *supra* note 2, at 81-82. Shaughnessy saw the process emphasis of composing as a socialization process into the academic world, and she thought that a teacher's pedagogy should mediate a student's introduction to the academic world while respecting what the student has brought to it. *Id.* at 82, citing Shaughnessy, *supra* note 29. Overall, though, basic writers are most affected and challenged by the academic context. The more disparate their home community's standards and the academic community's standards, the more difficult their initiation process. One method of easing them into their new academic world is through the use of student tutors and peers. *Id.* at 84. The related technique of collaborative learning, although predating the social-constructivism theory, is associated with it in composition pedagogy. Connors & Glenn, *supra* note 3, at 127.

<sup>36</sup> Janet Emig, *Writing as a Mode of Learning*, 28 *C. Composition and Comm.* 122 (1977). Compare this thesis with the observation that when deciding when to move away from legal research to writing, "Writing tells you when you have enough because writing determines what you need." Richard K. Neumann, Jr., *Legal Reasoning and Legal Writing* 116 (2d ed. 1994); see also Linda S. Flower and John R. Hayes, *Problem-Solving Strategies and the Writing Process*, 39 *C. English* 449, 457 (1977). And this: "An essential part of the writing process is explaining the matter to oneself—and that is a highly idiosyncratic affair." Britton et al., *supra* note 8, at 28 (emphasis omitted).

<sup>37</sup> Emig, *supra* note 36, at 124, employing the ideas of Jerome Bruner.

<sup>38</sup> *Id.* at 125.

ence to make meaning.”<sup>39</sup>

Understanding how views about the composing process and the nature of writing have developed since the 1960s can help legal writing educators anticipate the attitudes toward writing and the skill levels that their students bring to the legal writing classroom. Some practical implications suggested by the research include the following ideas:

1. The writing background the students bring to the legal writing classroom can provide great insight into their present attitudes about writing, as well as explain their written product. Teachers can distribute student information sheets, get LSAT scores and GPAs from the admissions office, and talk to the students. Do they like to write? What kind of writing experience have they had? Are they comfortable with being in a professional school? Early assignments can provide a basis for assessment purposes. During orientation or on the first day of class, students could write about an experience that they have had with the legal system or the three most important lessons they want to learn in law school (choosing a topic that is not naturally chronological is useful in assessing organizational skills). When teachers know about their students' writing backgrounds, they can make the classroom into an effective teaching and learning environment.
2. Teachers can read about teaching writing and learn the language and techniques that professionals use and how they “translate” that knowledge for their students.
3. Depending upon students' previous writing education, concerns such as structure, argument development, and organization may initially be secondary for them. They may have come from an undergraduate composition background that emphasized a personal-style pedagogy, or grammar drills, or the five-paragraph theme, or exploration of personal experience. They may not have forgotten how to write in an organized fashion; rather, they may never have learned about it. They may not have trouble developing a legal analysis because of the complexity of the law, but rather because they had never written any kind of structured and supported argumentation before the first law school assignment.

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<sup>39</sup> *Id.* at 125-27.



4. Students who have significant trouble with concepts and abstractions may be operating at a lower cognitive level (very young law students, for example, may be struggling simply because true concept formation is a relatively recently or not-yet-mastered skill). Modified exercises may be a help to them. For instance, writing exercises can help students to practice inferential reasoning better than attempts to teach them by drills or rote memorization of rules.<sup>40</sup>

## II. WHAT STUDENTS DO

The difficulty of researching and analyzing writers in the process of writing is that the features of turning thought into written word are hidden in each writer's mind.<sup>41</sup> While one may identify a process leading to thought, followed by a post-thought analysis, one struggles to describe the actual moment of thought's genesis. Hence, research on the act of writing—not what leads to it, not what follows it, not how scholars comment on and analyze it—tends to focus on identifying real-life processes, examining product, facilitating production, and drawing inferences from those activities.

In contrast to the complex and increasingly refined theories about the intricate, multi-level process of writing is the reality of how college students actually write. In a study that sought to determine students' actual writing process rather than some idealized writing process, researchers found that most students not only followed a strictly linear process, but demonstrated one with severely truncated pre-writing and re-writing stages.<sup>42</sup> Students tended to perform minimal research, re-copy and make mechanical corrections rather than re-write, and fail to consider their audience as other than the teacher.<sup>43</sup> Other studies have found similar patterns and group writers into two variously named categories that generally correlate with those writers who follow something like the idealized writing process model

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<sup>40</sup> Lunsford, *supra* note 30, at 41-46.

<sup>41</sup> While thinking-aloud protocols arguably capture the details of writing itself, they have been criticized as interrupting the normal writing process, an interference exacerbated by the artificiality of the assigned writing situation. See, e.g., Lester Faigley & Stephen Witte, *Analyzing Revision*, 32 C. Composition and Comm. 400 (1981).

<sup>42</sup> Sharon Crowley, *Components of the Composing Process*, 28 C. Composition and Comm. 166, 167 (1977).

<sup>43</sup> *Id.* Personal anecdotal evidence from reading hundreds of freshman compositions (and from the ensuing student conferences) and from mentoring new graduate teaching assistants supports Crowley's study.

(Experienced Writers, Reader-based Writers) and those who follow something akin to the students' process mentioned above (Basic Writers, Writer-based Writers).<sup>44</sup>

Why might students write this way? Perhaps because basic teaching techniques have not changed since the seventeenth century: Teachers 1) describe the characteristics of writing in a particular rhetorical situation, 2) provide good examples (usually professionally written) and bad examples (usually student-written), and 3) encourage the student to emulate the style and conventions of the group for which the student is writing.<sup>45</sup> Students are not told, however, how to go about the activity of production, such as negotiating trouble spots or generating alternative strategies when the first (or second, or third) does not work.<sup>46</sup> The classroom setting hides the stark reality that the writing experience can be a terrifying and messy process.

Without help in the process of writing, inexperienced writers tend to see only three strategies for writing: prescription (how the text says it is done), inspiration (how the writing muse causes it to occur), and writer's block (what is employed if the first two options fail).<sup>47</sup> Using problem-solving strategies emphasizes writing as thinking, rather than writing as arranging, and helps inexperienced writers to expand their thinking techniques in order to write more effectively.<sup>48</sup> By conceptualizing thinking as occurring in two levels—first-order and second-order thinking—and constructing strategies to maximize each kind of thinking, teachers can help students to reap the benefits of both creative, exploratory writing and careful, critical revision.<sup>49</sup> But those students whose *modus scribendi* is to churn it out the night before tend to turn in assignments that have capitalized on only one level of thought. Either their work is creative—a

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<sup>44</sup> See, e.g., Linda S. Flower, *Writer-Based Prose: A Cognitive Basis for Problems in Writing*, 41 C. English 19 (1979); Shaughnessy, *supra* note 29.

<sup>45</sup> Flower & Hayes, *supra* note 36, at 449.

<sup>46</sup> *Id.*

<sup>47</sup> See *id.*

<sup>48</sup> See *id.* at 450-51. For example, Flower and Hayes demonstrate heuristics in three categories: Planning, Generating Ideas in Words, and Constructing for an Audience. *Id.* at 453-60. In each category, they narratively explain a specific goal/purpose of that category and then suggestions and techniques to enable the student to meet that goal in writing. *Id.* Peter Elbow suggests a fundamental shift in attitude towards the idea of writing: "not as a way to transmit a message but as a way to grow and cook a message. Writing is a way to end up thinking something you couldn't have started out thinking." Peter Elbow, *Writing Without Teachers* 15 (1973).

<sup>49</sup> Peter Elbow, *Embracing Contraries: Explorations in Learning and Teaching* 55-63 (1986).

mishmash of bits of ideas, creative insights, and direct language—or disciplined—connected, developed, and controlled, but not both.<sup>50</sup>

The difference in approach between the inexperienced writer and the experienced writer is captured in theory that begins with characteristics of each group's product. In writing, what one means does not always translate into a communication of the same idea to a reader.<sup>51</sup> Recognizing that truth, effective writers do not merely express, but transform their ideas to meet the needs of their audience.<sup>52</sup> The distinction between writer-based writing and reader-based writing develops from this premise.<sup>53</sup>

Writer-based prose is characterized as undertransformed verbal expression, with its focus of expression on the process of thought.<sup>54</sup> Writer-based prose in a legal memorandum, for example, may lecture the reader on basic legal analysis or hierarchy

<sup>50</sup> *Id.* Elbow also explains how writing enhances the thinking that occurs at both levels and suggests that the rhythm of generating (first-order thinking) followed by criticizing (second-order thinking) in a decreasingly recursive pattern is an effective strategy to inculcate. *See id.* at 61-62.

<sup>51</sup> Flower, *supra* note 44, at 19. Rohman writes that an essential activity for the writer in the formative stages of writing is a conversion of event into experience, first for oneself, then for others to take as their own. Rohman, *supra* note 8, at 108 (building on Dorothy Sayers, *Towards a Christian Aesthetic, in The New Orpheus: Essays Towards a Christian Poetic* 14-15 (Nathan A. Scott ed., 1964)). To the extent that one cannot convert experience past oneself, then, one would be writer-based.

<sup>52</sup> Flower, *supra* note 44, at 19.

<sup>53</sup> *See generally Id.* Flower's ideas find their genesis in the research of Jean Piaget and Lev Vygotsky, whose research examined the inner speech and egocentric characteristics of young children. Young children's oral monologues are a precursor to adult mental speech and demonstrate these characteristics:

1. being elliptical,
2. dealing with the sense of words, rather than their specific meanings, and
3. having an absence of logical and causal relationships. Children use "complexes" that relate objects, not "concepts" that relate abstract ideas.

*Id.* at 21. Flower notes that "the ability to move from complexes of egocentric speech to formal relations of conceptual thought is critical to most expository writing," so Flowers analogizes the adult writer-based prose as the adult written analogue of egocentric speech that draws on a natural phase of development but is not presently appropriate. *Id.* at 22.

<sup>54</sup> *Id.* at 19-20, 26-32. Writer-based prose has these characteristics:

1. function—written to, for, and by the writer, this prose is egocentric.
2. structure—following the writer's narrative path of his/her own confrontation with the subject matter, this prose often has a survey or idea/source structure. The writer simply copies the structure of information without considering whether it is appropriate to or needs adaptation to the reader's needs' or the writer's intent.
3. language—with privately loaded terms and a shifting context, this prose may be cryptic for the reader.

of authority—a concept that the student writer may have needed to think through, but that a practicing attorney long since would have internalized.<sup>55</sup> Reader-based prose, however, is a deliberate attempt to communicate to a reader, with its focus of expression on the purpose of the thought or idea.<sup>56</sup>

Writer-based prose, then, is not without logic and structure, nor without function.<sup>57</sup> However, that logic and structure are tied to a writer's efforts in thinking about a new or complex subject.<sup>58</sup> It serves as a problem-solving medium for thinking and allows the writer to manipulate stored information into acceptable patterns of meaning.<sup>59</sup>

The implications of writer-based prose begin by an understanding that it does not simply indicate a problematic piece of writing, but rather a functional stage in the composing process and a powerful intermediate, though not end, strategy.<sup>60</sup> But while experienced writers are able to transform and constantly re-examine their writing to fit the demands of the writing situation, inexperienced writers get stuck.<sup>61</sup> Poor planning, an inability to view writing from the audience's perspective, and sometimes simple confusion about what the writing situation demands stymie inexperienced writers from sorting wheat from

<sup>55</sup> See Neumann, *supra* note 36, at 112.

<sup>56</sup> Flower, *supra* note 44, at 20. Reader-based prose has these characteristics:

1. function—written to a reader to convey an idea, this prose is other-oriented.
2. structure—with an issue-centered rhetorical context, rather than a replay of the writer's discovery process, this prose conveys more than just facts—it also conveys concepts.
3. language—when the writer creates a shared language and shared context between the writer and reader, the language used is vigorous and appropriate.

*Id.*

<sup>57</sup> *Id.* at 26.

<sup>58</sup> *Id.* at 27.

<sup>59</sup> *Id.* at 28. The characteristic structure of writer-based writing is a narrative or survey style, either of which is easier than developing a hierarchy, causal relationship, or proved or even developed ideas. Such a use of an original organizational scheme seldom results in a focused piece of analytical writing that fits the writer's needs. While this is, however, a good initial step for a writer trying to manage a significant amount of information, it is bad for the reader, who may well abstract and create a hierarchy other than the one intended by the writer. *Id.*

<sup>60</sup> *Id.* at 34. Because the act of writing places tremendous demands on short-term memory, writer-based prose often uses a listing style to generate information. *Id.* at 35-36. It also eliminates the constraint of holding someone else's knowledge network as the writer composes. *Id.* at 36.

<sup>61</sup> *Id.* at 291; Faigley & Witte, *supra* note 41, at 411. For those who get stuck because their cognitive development makes analysis and synthesis difficult, guided classroom activities and assignments that help them to work in analytic and synthetic modes can be helpful. Lunsford, *supra* note 30, at 41.

chaff.<sup>62</sup> But rather than approaching a draft as a hopeless mess, teachers can help students to find the "good parts" in their drafts and then build on them, thereby boosting confidence.<sup>63</sup>

Teachers should also recognize that students vary their composing processes to accommodate the type of writing that they are doing.<sup>64</sup> A common distinction separates self-oriented writing from other-oriented writing. As a form of self-oriented writing, "reflexive" or "expressive" writing is generally characterized as more creative and revealing of the writer, an exploration for meaning, with self as main audience and characteristics of informal talk; students tended to both prewrite/plan and reformulate (correct, revise, rewrite) at least some of the time.<sup>65</sup> Student writing processes are least successful and the most truncated with other-oriented "transactional" or "extensive" writing, in which the student seeks to convey information or argue for a position in an interaction of writer with environment, with teacher as main audience.<sup>66</sup> Therefore, to foster writing development, teachers should first emphasize types of writing in which students are most successful, to stimulate learning and eventually lead to more difficult types.<sup>67</sup> Moreover, teachers should be active writers themselves. As writers developing their own writing, teachers can model for students their writing processes and thus foster students' awareness of their own process—as well as the teachers' greater awareness of process.<sup>68</sup>

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<sup>62</sup> See Flower, *supra* note 44, at 290-91; Faigley & Witte, *supra* note 41, at 411. For writing to actually "work," a student must be able to fit the new writing task into the hierarchical complex of all skills previously acquired, thus making sense of it in order to write effectively in a new rhetorical situation. Britton et al., *supra* note 8, at 22-25.

<sup>63</sup> See Flower, *supra* note 44, at 291; Lunsford, *supra* note 30, at 40 (citing Gilbert Ryle, *The Concept of Mind* 59-60 (1949): "Misunderstanding is a by-product of knowing how. . . . Mistakes are exercises of competences.").

<sup>64</sup> Bizzell, *supra* note 2, at 77; see generally Janet Emig, *The Composing Processes of Twelfth Graders* (1971).

<sup>65</sup> See Emig, *supra* note 64, at 91; see Britton et al., *supra* note 8, at 140-41.

<sup>66</sup> Bizzell, *supra* note 2, at 77; Emig, *supra* note 64, at 91; see Britton et al., *supra* note 8, at 146.

<sup>67</sup> Britton et al., *supra* note 8, at 82-83 (suggesting that building on a basis of expressive speech will allow the learner to become a mature writer who can then successfully write in all three major categories of writing: transactional, expressive, and poetic); Bizzell, *supra* note 2, at 77.

<sup>68</sup> Emig, *supra* note 64, at 98-99; Connors & Glenn, *supra* note 3, at 106; Hairston, *supra* note 5, at 84 (discussing the Bay Area Writing Project's push to have writing teachers be active writers). Emig points to the result of teachers' not being active writers: underconceptualizing, oversimplifying, and truncating the process of composing, resulting in a loss at both the prewriting and rewriting ends of the process. Emig, *supra* note 64, at 98-99.

Seeing that process through, though, can be difficult for student writers, for it requires revision. Not only are inexperienced writers uncomfortable with the idea of revision; the very term "revising" is distasteful.<sup>69</sup> Their changes are mostly surface level: they eliminate repetition, improve word choice, and copy-edit.<sup>70</sup>

Experienced writers see revision as a recursive process with different emphases in different revision cycles.<sup>71</sup> They use revision to rework content, including finding the shape or form of an argument; they reassess and revise in light of their audience's needs.<sup>72</sup> While these strategies are part of discovering meaning for experienced writers,<sup>73</sup> basic writers predefine meaning, and if they alter their drafts at all, they alter them to match that meaning.<sup>74</sup> The essential difference is that inexperienced writers do not see writing as discovery, but as reporting, and revision not as "just begun," but "almost done." This is not to say that all experienced writers revise similarly or revise copiously;<sup>75</sup> however, unlike inexperienced writers' alterations, their revisions do tend to improve their texts.<sup>76</sup>

Several strategies can help students to begin to revise their work more effectively. In Flower's terminology, this effective revision would transform writer-based prose into reader-based prose.<sup>77</sup> She advises assisting students to do the following tasks:

1. Take the reader into account, and do so in a thoughtful manner. Experienced writers develop and think through the needs of their audience to a much higher level of detail

<sup>69</sup> Nancy I. Sommers, *Revision Strategies of Student Writers and Experienced Adult Writers*, 31 C. Composition and Comm. 378, 380 (1980). Student writers in her study tended to use almost any term other than revise to describe what they did after the first draft. See *id.*

<sup>70</sup> See Sommers, *supra* note 69, at 381-82 (she notes that inexperienced writers cling to the notion that "inspired" writing needs little revision); Crowley, *supra* note 42; Faigley & Witte, *supra* note 41, at 407.

<sup>71</sup> Sommers, *supra* note 69, at 386-87.

<sup>72</sup> *Id.* at 384-85; Faigley & Witte, *supra* note 41, at 407.

<sup>73</sup> Sommers, *supra* note 69, at 385.

<sup>74</sup> *Id.* at 385-86.

<sup>75</sup> See Faigley & Witte, *supra* note 41, at 409, 410. Apparently, "[s]ome expert writers are able to develop a text in their minds and to perform revision operations mentally before committing a text to paper." *Id.* at 409. Therefore, some of the expert writers revised less than some advanced student writers. *Id.* However, both groups made more meaning changes than did inexperienced student writers, *id.* at 407, and both groups continued to revise past a second draft, at which point the inexperienced students had mostly quit, *id.* at 409.

<sup>76</sup> *Id.* at 411.

<sup>77</sup> Linda S. Flower, *Revising Writer-Based Prose*, 3 J. Basic Writing 62, 62 (1981).

than basic writers. This task is a concrete and time-consuming development of audience characteristics, not a simple labelling process.<sup>78</sup> Audience-based heuristics (strategies, exercises, and techniques) can help students to focus on audience.<sup>79</sup>

2. Strive for an issue-centered structure of ideas with some hierarchical organization. Student writers need guidance in isolating key points or controlling ideas within their work.<sup>80</sup>

These steps are easier to accomplish by developing assignments with specific, real-world purposes and a realistic audience; by setting up a mutual goal for the reader and the writer; and by asking students to simulate a reader's response to a piece.<sup>81</sup>

Research that analyzes how writers actually write and what messages can be gleaned from their written product can be directly translated into useful classroom strategies. Implications for the legal writing classroom include the following ideas:

1. Flower identifies two major writing goals: understand the audience and organize the message effectively. Law students often have a poor understanding of who a senior partner is, what a judge might do with a brief, and why one would write to a client about legal issues. A teacher could start by describing the audience for a particular writing assignment, then having students role-play that audience.

Even when students understand audience, they often do not understand their own power to manipulate and reorganize information to meet the goals of their writing project and the understanding of their audience. Teachers can guide classroom discussion to help students explore the relationship between and among ideas and practice developing a hierarchical structure of ideas.

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<sup>78</sup> *Id.* at 65. However, some studies have shown that basic writers don't consider audience because they don't even understand the assignment or the underlying material or they are afraid to deviate from the survey structure (relying on the underlying structure of the material) or are suffering from a cognitive overload. Their needs are concerns are literally more basic than assessing audience—they either don't understand purpose or are intellectually overwhelmed by the writing task. *See id.* at 66.

<sup>79</sup> Carol Berkenkotter, *Understanding a Writer's Awareness of Audience*, 32 *C. Composition and Comm.* 388, 396-97 (1981); *see also* Flower and Hayes, *supra* note 36, at 453-60 (offering heuristics to assist student writers construct writing for an audience).

<sup>80</sup> Flower, *supra* note 77, at 67.

<sup>81</sup> *Id.* at 68-70; *see* Berkenkotter, *supra* note 79, at 396 (commending a case-based approach to writing assignments used in law schools).

2. The theory of writer-based writing can be a lifesaver in and out of the classroom. It describes the stage of many first drafts, and it explains how they came to look as they do. Even more useful is this theory's accessibility in the classroom. Students understand the notion of a transformative process, and they can use that knowledge to improve their own writing. A teacher can easily either generate or find within student writing myriad samples of writer-based writing, and group work in the classroom can help students begin to recognize its characteristics and then to revise it into reader-based writing.

3. Given that true revision—seeing and assessing anew a piece of extant writing—may be an unfamiliar skill for students, a teacher might decide to model revision for them. After providing students with a draft, the teacher could then discuss or show them (using an overhead projector or computer display) how to revise it. Distinguishing editing for error from revision can help students to do more substantive revision of their own work.

### III. WHEN THE TWO MEET

Writing teachers spend so much time on an activity that is little understood: what is thoughtful commentary and what comments actually help.<sup>82</sup> By viewing errors as occasions for learning,<sup>83</sup> teachers can start to develop effective methods of responding.

The generally accepted viewpoint on how to comment on writing began its shift slightly before the composition-course focus began to shift from product to process.<sup>84</sup> This shift in commenting led away from the practice of simply rating or correcting comments to rhetorical comments.<sup>85</sup> One way to

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<sup>82</sup> Nancy I. Sommers, *Responding to Student Writing*, 33 *C. Composition and Comm.* 148, 148 (1982).

<sup>83</sup> See generally Brooke K. Horvath, *The Components of Written Response: A Practical Synthesis of Current Views*, in *The Writing Teacher's Sourcebook 207* (Gary Tate & Edward P.J. Corbett eds., 2d ed. 1988)(originally printed in 2 *Rhetoric Review* 136 (1984)).

<sup>84</sup> Robert J. Connors & Andrea A. Lunsford, *Teachers' Rhetorical Comments on Student Papers*, 44 *C. Composition and Comm.* 200, 204-05 (1993).

<sup>85</sup> *Id.* at 204; see Emig, *supra* note 64, at 93 (in her 1971 text, she noted, "Most of the criteria by which students' school-sponsored writing is evaluated concerns the accidents rather than the essences of discourse—that is, spelling, punctuation, penmanship, and length rather than thematic development, rhetorical and syntactic sophistication,



distinguish comments is to divide them into two categories, formative and summative evaluation, which serve two different functions.<sup>86</sup> Formative evaluation tries to assist in improvement of writing.<sup>87</sup> It identifies problems and possibilities; its focus is ongoing and developing.<sup>88</sup> Such comments help to create motivation for revision<sup>89</sup> and fit in nicely with a process-oriented method of teaching.<sup>90</sup> Summative evaluation measures ranking, grading, measuring up to expectations.<sup>91</sup> It looks at text as a final product and assesses the writer's skills at a specific point in time.<sup>92</sup>

Formative responses can be grouped into seven categories: correcting, emoting, describing, suggesting, questioning, reminding, and assigning.<sup>93</sup> The importance, however, is not so much in specific labels as it is in a writing teacher's thoughtful analysis of what a comment does towards helping students to improve their own writing.

These categories suggest that teachers' roles change with different types of commentary. For instance, a teacher as commentator may variously fill the roles of editor, average reader, more experienced writer, summative evaluator, and motivator/friend.<sup>94</sup> Knowing which role one is trying to fill with a particular assignment, drafting stage, or student helps to focus the job of commenting and to make the comments on a particular paper more consistent. Responding to text as in-process helps students to follow the behavior of skilled writers.

Research indicates that students respond with varying degrees of enthusiasm towards different types of comments; re-

and fulfillment of intent.").

<sup>86</sup> Horvath, *supra* note 83, at 207-08.

<sup>87</sup> *Id.* at 208.

<sup>88</sup> *Id.*

<sup>89</sup> Sommers, *supra* note 82, at 149.

<sup>90</sup> *Id.* at 154.

<sup>91</sup> Horvath, *supra* note 83, at 207.

<sup>92</sup> *Id.* at 207-08.

<sup>93</sup> Elaine O. Lees, *Evaluating Student Writing*, 30 *C. Composition and Comm.* 370, 370-74 (1979)(providing a taxonomy of response types), *discussed in* Horvath, *supra* note 83, at 208. Lees observes that the first three categories place the responsibility of work on the commenter, while the next three put the burden on the writer. *Id.* at 372. The final category demonstrates how much of the burden the writer has accepted. *Id.*

<sup>94</sup> Horvath, *supra* note 83, at 212 (modifying and expanding upon Greg Cowan, *The Rhetorician's Personae*, 28 *C. Composition and Comm.* 259-62 (1977)(discussing the three roles—experiencer, examiner, evaluator—of the writing teacher)); *see also* Jane Gebhart Auten, *A Rhetoric of Teacher Commentary: The Complexity of Response to Student Writing*, 4 *Focuses* 3 (1991)(discussing reader, coach, and editor roles).

ardless of the amount of time teachers spend commenting, students find some comments helpful—and others, not helpful at all.

While some commenting styles may be unique to a particular teacher or to a particular assignment, one study showed that most comments are essentially interchangeable from one paper to another<sup>95</sup> (e.g., “good statement of issue” or “argument needs development”). But teachers should comment just as they ask students to write: clearly, specifically, with an audience orientation. A later study advocates a student-based analysis of comments’ effectiveness, starting with the premise that the standard for effective comments should be based on the recipient’s evaluation of them, not the drafter-professor’s.<sup>96</sup> And those student-recipients like text-specificity—comments related to a specific assignment, rather than fungible writing comments.<sup>97</sup> They also like student-specificity—comments that are both specific and directed to that particular writer, not simply the group of writers with similar problems. They like clear explanations, not just labels, codes, or descriptive comments. (e.g., “gd ts” or “this topic sentence works well to set up your paragraph” is less well received than “this topic sentence is effective because it clearly explains the relationship between the two analogous cases that you go on to discuss in this paragraph.”)<sup>98</sup> Effective comments should also have “transfer value,”<sup>99</sup> the utility to help the student’s writing beyond the boundaries of a particular assignment.<sup>100</sup> So while comments should be specific to the written work being evaluated, they should also advance the student’s

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<sup>95</sup> Sommers, *supra* note 82, at 152.

<sup>96</sup> Anne Enquist, *Critiquing Law Students’ Writing: What the Students Say Is Effective*, 2 J. Legal Writing Inst. 145, 146 (1996).

<sup>97</sup> Sommers, *supra* note 82, at 153.

<sup>98</sup> Enquist, *supra* note 96, at 155; see Emig, *supra* note 64, at 99 (noting that only some unusually able high school students could translate the abstract comment “Be concise” into a set of concrete writing options to improve their work). However, this conclusion seems somewhat contrary to the advice of another researcher, who advocates a system of “minimal marking” for surface errors. See Richard H. Haswell, *Minimal Marking*, 45 C. English 600 (1983). Haswell advocates simple checkmarks in the margin to indicate all surface error; the student must then correct the error(s) and return the paper before a final grade is recorded. *Id.* at 601.

<sup>99</sup> Horvath, *supra* note 83, at 210 (citing Richard L. Larson, *Training New Teachers of Composition in the Writing of Comments on Themes*, 17 C. Composition and Comm. 152 (1966)).

<sup>100</sup> Lees, *supra* note 93, at 373: She notes that covering a paper with comments is not the same as teaching students to successfully revise—a crucial distinction.

understanding of how to write effectively in order to foster improvement in the next piece of writing.

In addition, the commentator should have a clear hierarchy of importance in mind going into the critique of the paper.<sup>101</sup> That hierarchy would ideally have global concerns, such as organization, purpose, idea development, near the top of the list. Otherwise, the student may fix everything marked, yet still have a poor final product. Margin notes tend to work best for the lower-hierarchy concerns, while the end comment usually works better for the global concerns.<sup>102</sup> The hierarchy also helps to control over-commenting; a student whose paper bleeds red ink may be too overwhelmed to even begin to revise.<sup>103</sup>

Some of the worst commenting sins include these: failing to comment (a lone comment of "C" is not very helpful if the goal is to help a student understand what works in a piece of writing); offering misleading comments ("This is a good draft that needs a couple of changes" when a teacher really means "If you don't completely revise this, you'll get a D"); and substituting personal attacks for appropriate content-based critique ("You obviously put little time into this draft. Your behavior is unacceptable. I'm not only returning this paper without comments, but I will reduce the grade on your final draft by  $\frac{2}{3}$ . . .")<sup>104</sup>

One study of rhetorical comments offered this sobering statistic: twenty-three percent of the papers reviewed contained only negative comments (which one researcher reported had no effect on a student's writing, but a significant effect on a stu-

<sup>101</sup> See Sommers, *supra* note 82, at 151; Lees, *supra* note 93, at 370 ("As an infinite number of lines can be passed through a given point, so in the marking of papers, the fact that an infinite number of comments can touch upon what appears in a paper may not be sufficient grounds for writing them in the margin.")

<sup>102</sup> See Enquist, *supra* note 96, at 156-60. Of Enquist's seven main findings, two related to end comments: they are extremely important to students; therefore, teachers should be careful to save sufficient commenting energy for the end of the paper. *Id.* at 155, 156-60, 173-77, 188-89.

<sup>103</sup> Lees has concluded that of her seven types of comments, most emoting, correcting, and describing comments are simply useless. Lees, *supra* note 93, at 373. Overcommenting has other unfortunate side effects: It harms the "full student-teacher dialogue" by embittering the teacher through too much work and too little result, and it frustrates both parties because being too judgmental unbalances the learning relationship away from the student, who should be doing most of the work. Haswell, *supra* note 98, at 603-04 (discussing the work of Knoblauch and Brannon); see Enquist, *supra* note 96, at 173-76 (citing Terri LeClerc and Muriel Harris).

<sup>104</sup> Horvath, *supra* note 83, at 211-212; Connors & Lunsford, *supra* note 84, at 215; see Enquist, *supra* note 96, at 158.

dent's attitude towards writing<sup>105</sup>).<sup>106</sup> Forty-two percent showed a common response structure of positive comments changing to critical (sometimes labelled "constructive") comments.<sup>107</sup> As for global commentary, usually end comments, the most common went to supporting details and overall organization.<sup>108</sup> The rarest were comments about audience and purpose.<sup>109</sup> Most end comments served to justify a grade, rather than to help a student to become a more effective writer.<sup>110</sup>

A narrow and particularly problematic type of commenting involves marking "correctness"—punctuation, usage, and grammar. A persuasive argument can be made that teachers see such sentence-level error only because they are looking for it; they do not truly read as the audience they try to persuade their students that their work is written for—readers for content—but rather, as readers for error.<sup>111</sup> One approach is to shift the focus from identifying isolated items of error to inquiring whether those errors evidence a flawed transaction between a reader and a writer.<sup>112</sup> When surface errors "shift the reader's attention from where he is going (meaning) to how he is getting there (code)," they require persistence in finding meaning that a reader may not be willing to expend.<sup>113</sup>

Determining which sentence-level errors actually require persistence on the reader's part to overcome their interference with message is not an easy task; in order to effectively comment on correctness, one must first have some basis or hierarchy for determining both what error is and whether any particu-

<sup>105</sup> Connors & Lunsford, *supra* note 84, at 210 (citing George Hillocks, *Research on Written Composition: New Directions for Teaching* (1986)).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 210-11.

<sup>108</sup> *Id.* at 212.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 213.

<sup>111</sup> See Joseph Williams, *The Phenomenology of Error*, 32 *C. Composition and Comm.* 152 (1981). In examining errors in texts by authors such as E.B. White, he demonstrates that even those who write about error often commit the very mistakes that they decry in other parts of their text. See *id.*; see also Maxine Hairston, *Not All Errors Are Created Equal: Nonacademic Readers in the Professions Respond to Lapses in Usage*, 43 *C. English* 794, 798 (1981).

<sup>112</sup> Williams, *supra* note 111, at 153. He concludes that we can discuss error in two ways: by isolating it and separating objective text from the role of uniting the subjective and objective, reader and text, or by considering error only in the context of an ordinary reading of the piece. *Id.* at 158-59.

<sup>113</sup> Shaughnessy, *supra* note 29, at 12.

lar error truly matters.<sup>114</sup> One of the few broad-based studies attempting to analyze error found the following:

1. Teachers' ideas about what is error varies widely, even for the same teacher.
2. On average, only 43% of the most serious errors were marked.
3. The reasons for marking or not depended on a) the seriousness/annoyance level of error for both teacher and student and b) the difficulty of explaining or marking the error. Perhaps not coincidentally, the most commonly marked errors were spelling errors.
4. Error patterns are shifting; errors show a diminished familiarity with the visual look of the written page— spelling, wrong words, prepositions, its/it's, inflected endings (in other words, students are increasingly less text-wise<sup>115</sup>).
5. The absolute number of errors has not changed from the studies from the 1930s.<sup>116</sup>

The question then becomes, with little evidence that pointing out correctness errors in student writing leads to elimination of those errors in later work, how much time should teachers spend on what may well be an exercise in futility?<sup>117</sup>

To make the case for commenting even weaker, a small contingent of composition scholars asserts that written commentary of any kind—and particularly praise—is simply not useful and does not improve student writing.<sup>118</sup> Those who do not offer a wholesale condemnation of commenting may still relegate comments' effects as a rather small part of the larger context in

<sup>114</sup> See generally Williams, *supra* note 111; 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, 396-97 (1988).

<sup>115</sup> See also Shaughnessy, *supra* note 29, at 80. In addition, Shaughnessy reported that the basic writers in her study, students who entered college in the early 1970s when the CUNY system opened admission to any city resident with a high-school diploma, had written so infrequently that handwriting, spelling, and punctuation provided paralyzing barriers to students who, as a result, had difficulty actually accessing thought through writing. *Id.* at 14-15.

<sup>116</sup> Connors & Lunsford, *supra* note 114, at 402-07. Viewing the discussion about error and correctness from a historical perspective, Connors and Lunsford compared patterns of error in college papers against studies from the last 50 years. See generally *id.*

<sup>117</sup> Emig, *supra* note 64, at 99. But see Shaughnessy, *supra* note 29, at 276 (noting that basic writers can markedly decrease surface error within a semester with classroom or conference help).

<sup>118</sup> Horvath, *supra* note 83, at 212.

which writing is taught.<sup>119</sup> Rather, the atmosphere of motivation and support may be the most significant way that teachers can help students to write more effectively.<sup>120</sup> That supportive atmosphere is also much more than just assigning and evaluating. Students get responses from many other sources: conferences, class discussions, small group work, written peer evaluation, tutors in writing labs, and computer software.<sup>121</sup> These activities should be mutually reinforcing of comments, and vice-versa.<sup>122</sup>

If even thoughtful comments are potentially pointless, thoughtless comments are even more harmful because they can distract students from their own purposes as writers and mistakenly focus attention on the teacher's purpose in commentary.<sup>123</sup> The student, in an attempt to please the teacher, may shift from the revision mode of "this is the message that I was trying to convey" to "this is what the teacher told me to do."<sup>124</sup> So, for example, when teachers focus on correctness before substance, they may receive a technically strong paper with no developed argument or purpose, because the teacher said to watch punctuation and spelling, which the student obediently did. Contradictory comments, some broad and some narrow, similarly may confuse a student who is at a critical stage of development of an idea.<sup>125</sup> When a teacher offers the chance to fix error—a mechanical process—or make meaning—a chaotic and intellectually challenging process,<sup>126</sup> the student may well select the simpler but ultimately less productive path.

Research into the characteristics of commentary and the effectiveness of different kinds of commentary provides some useful guidelines to make a time-consuming activity more productive. Those implications include the following:

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at 213.

<sup>122</sup> Sommers, *supra* note 82, at 155; Lees, *supra* note 93, at 372 ("[W]hen what has been said in class reappears in comments on papers, students come to recognize a coherence among parts of the course.")

<sup>123</sup> Sommers, *supra* note 82, at 149-50; see generally Lees, *supra* note 93.

<sup>124</sup> Sommers, *supra* note 82, at 150; see Lees, *supra* note 93, at 373. Interestingly enough, the students in Enquist's study tended to favor "comments that actually revised and edited the student[s'] writing[.]" Enquist, *supra* note 96, at 178, raising the question again of what standard one should use to determine the efficacy of comments.

<sup>125</sup> Sommers, *supra* note 82, at 150-51.

<sup>126</sup> See *id.* at 156. Multidraft writing provides a good opportunity to move away from an error orientation to a focus on improving the effectiveness of the intended communication. Knoblauch & Brannon, *supra* note 13, at 162.

1. Teachers need to consider audience as they comment on student papers. Relevant inquiries include asking question such as these: What will the student understand? What are the limits of the student's revision potential at that stage? What is the likely reaction that an overly critical comment might elicit? Is that productive? Teachers need to be as sensitive to the needs of their readers—students—as they exhort students to be.
2. Teachers need to identify goals for their students at every stage of the writing process. If they are focusing on large-scale organization or analysis, then commenting on sentence-level concerns might be counter-productive. And teachers should identify their role in a particular classroom or with a particular assignment: Senior partner, writing coach, grammar maven?<sup>127</sup> The inquiry continues: Are the teacher's comments consistent with that role, is that role appropriate, and are the students aware of that role?
3. When deciding how to address correctness, teachers should first look at student work to determine whether the problem is surface error in otherwise decent prose, structural error, a jumble of correct and incorrect usages that seems to follow a mysterious pattern, etc. If student papers consistently demonstrate high levels of surface error in otherwise good writing, a teacher could develop a hierarchy of error—what is important to that teacher (or to the students' primary audience) in that writing assignment, what is not, and what techniques would effectively convey those skills to the students? If the error is structural, what writing background does that student bring to the legal writing

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<sup>127</sup> "Correctness cop" carries its own set of research and debate—to what extent can teachers affect grammar, punctuation, and usage of students at the college level or beyond? Is commenting on those kinds of errors helpful or fruitless? Who (in the "real" world) actually cares about correctness? Aren't students today truly abysmal in their grasp of correctness? A number of articles attempt to answer these questions.

One study assessed the significance of error from the perspective of a professional (non-academic) audience. See Hairston, *supra* note 111. Errors that served as status markers ("brung," "We was," "has went") drew strong and negative reactions from her respondents. Mechanical mistakes constituted the next-most-remarked-upon category (sentence fragments, run-on sentences, and lack of subject-verb agreement). Comma errors got medium to low responses, and usage got the lowest responses of any type of error. The respondents did report their biggest concern as content, especially clarity and economy. *Id.* at 796-98.

Williams criticizes survey methods such as Hairston's as ineffective because people respond more conservatively to such questionnaires, which misrepresent our own talking and writing. Williams, *supra* note 111, at 154.

classroom? Does that student display the same problems in non-legal writing, so cognitive overload might be the culprit? Does the student make consistent and perhaps personally logical choices that are non-standard?

4. At all times, a writing teacher must remember who owns the piece of writing that the teacher has temporary custody of for commenting purposes. Ultimately, the owner/writer has responsibility for revising and improving the written work.<sup>128</sup> The teacher's responsibility is to provide the tools and techniques that enable the student to carry out a writer's responsibility and privilege.

### CONCLUSION

This overview of composition theory and scholarship demonstrates the wealth of information that is easily transferrable from the composition classroom to the legal writing classroom. Rather than reinventing the wheel in trying to understand why their students write and respond as they do in the legal writing classroom, legal writing professionals should welcome the research that already exists and adapt it for their own use—to benefit themselves and to benefit their students.

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<sup>128</sup> See Lees, *supra* note 93, at 373.