



Legal Writing  
Institute

# THE SECOND DRAFT

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### LWI Policy Statement on Law Faculty *Adopted March 2015*

The Legal Writing Institute is committed to a policy of full citizenship for all law faculty. No justification exists for subordinating one group of law faculty to another based on the nature of the course, the subject matter, or the teaching method. All full-time law faculty should have the opportunity to achieve full citizenship at their institutions, including academic freedom, security of position, and governance rights. Those rights are necessary to ensure that law students and the legal profession benefit from the myriad perspectives and expertise that all faculty bring to the mission of legal education.

Dear LWI Colleagues,

I'm having a hard time believing this will be my last Letter from the President before my term ends. The time has flown by, and as a community dedicated to improving the teaching and discipline of legal writing and the status of legal writing faculty, we have done a tremendous amount of good work together.

## UPDATES

### Visual Identity Manual Approved

In October, the Board approved the first visual identity manual for LWI, which will ensure a uniform look and feel to all LWI and LWI-related communications. Many thanks go to the Public Relations and Social Media (PR&SM) Committee, Ruth Anne Robbins (chair), Leslie Culver, Brad Desnoyer, Joe Fore, Kim Hoist, Steve Homer, Susan King, and Tracy McGaugh Norton, as well as Iselin Gambert, Communications and Public Relations Officer, for their expertise, time, and dedication in drafting the manual. The manual is available for review on the website at <https://www.lwionline.org/visual-identity> and will go into effect April 1, 2020.

The PR&SM Committee and Iselin have now turned their attention to developing policies and procedures for LWI to engage actively, intentionally, and strategically with social media, including Facebook, Twitter, and Instagram.

### Professional Status Committee Publishes Article on Eliminating ABA Standard 405(d) and Introduces Toolkits to Help Improve Status

As a follow-up to my last message, we are proud to inform you that the Professional Status Committee's first published article, arguing that all skills-based faculty should be entitled to security of position equal to ABA Standard 405(c), is now available [here](#).<sup>1</sup>

In addition, the first two of four planned *toolkits*, designed to help members dealing with issues relating to salary and security of position are now posted on the Professional Status Committee webpage, <https://www.lwionline.org/resources/status-related-advocacy#Toolkits>. Look for two more kits on workload and voting rights in the coming months.

Thanks to committee members, Mary Bowman (co-chair), Melissa Weresh (co-chair), David Austin, Heidi Brown, Olympia Duhart, Lyn Entrikin, Lucy Jewel, Suzanne Rowe, Amy Sloan, and Craig Smith for this important work.

## 2020 BLACKWELL AWARD WINNER

At the January 2020 AALS Annual Meeting in D.C., the Association of Legal Writing Directors and LWI were pleased to present the Thomas F. Blackwell Memorial Award for Outstanding Achievement in the Field of Legal Writing to Brad Clary, a Clinical Professor of Law at the



University of Minnesota Law School in Minneapolis. Professor Clary served the legal writing community for thirty-seven years at his home institutions, as the President of ALWD, as a principal contributor to the second edition of the Sourcebook on Legal Writing Programs (ABA, 2d ed. 2006), as ALWD Liaison to the Council of the ABA Section on Legal Education and Admissions to the Bar, and as an adored teacher and mentor to students and faculty.

## ONE-DAY WORKSHOPS

Our Fall 2019 One-Day Workshops were a terrific success, with topics ranging from *Ethics and Professionalism in Legal Research, Writing, and Advocacy* to *Developing Life-Long Learners*. Our sincere thanks to the following schools and site chairs for hosting and organizing these workshops:

- Charleston School of Law, Jennifer L. North
- Florida International Univ. College of Law, Margaret Brennan Correoso and Marci Rosenthal
- Gonzaga Univ. School of Law, Kevin Shelley, Sandra Simpson, and Lisa Bradley
- Penn State Dickinson Law, Tiffany Jeffers
- Rutgers Law School, Amy Soled
- SMU Dedman School of Law, Ruth Cross and Dr. Beverly C. Dureus

- St. Mary's Univ. School of Law, Afton Cavanaugh
- Univ. of Alabama School of Law, Anita Kay Head and ary Ksobiech
- Univ. of California–Irvine, Rachel Croskery-Roberts
- Univ. of Iowa College of Law, Chris Liebig
- Univ. of Massachusetts School of Law, Julie A. Baker
- Univ. of Memphis Cecil C. Humphreys School of Law, DeShun Harris and Jodi Wilson
- York Univ. Osgood Hall Law School & Univ. of Toronto Law, Shelley Kierstead, Yemisi Dina, Katherine Lopez, and Alexia Loumankis

## NEW PUBLICATIONS PAGE ON THE LWI WEBSITE FOR SECOND DRAFT, THE MONOGRAPH SERIES, AND LWI LIVES

Spurred on by recommendations from the Second Draft Editorial Board, the LWI Board of Directors has been working for a few years now on how to improve access to LWI publications from our website. To make a long story short, and after reviewing several proposals, the Board decided this fall to pursue the option of building a new publications portal with our current website developer, Brick Factory. Once launched, the portal will make it possible to access individual articles (rather than an entire issue or volume) online and use keywords to search for articles on our website on a given subject across the publications listed above.

The portal is currently in production, and we hope to launch it before the end of the semester. Our major scholarly journal, the JOURNAL OF THE LEGAL WRITING INSTITUTE, will continue to be hosted by Apex on its own site, but as is the case now, our website will link to the journal site from the new publications landing page.

## 19TH BIENNIAL CONFERENCE AT GEORGETOWN LAW



The conference committee looks forward to seeing you all at Georgetown Law July 15-18, 2020 for the 19th Biennial Conference, *Teaching, Writing, and Thriving at All Stages*. For conference updates and registration information, visit the conference website at <https://www.lwionline.org/conferences/2020-lwi-biennial-conference>. Be sure to register early for a discount!

We are particularly excited to be hosting the gala on Friday, July 17, from 6-10 p.m. at the National Museum of Women in the Arts, the only major museum in the world dedicated solely to championing women through the arts.

## EIGHTH APPLIED LEGAL STORYTELLING CONFERENCE IN LONDON IN 2021



We are thrilled to announce that the Applied Legal Storytelling Conference is scheduled for July 14-16, 2021 and will be hosted by The City Law School, University of London. We are grateful for the efforts of Robert Mcpeake, Principal Lecturer and conference co-founder, for his efforts in bringing us back to where it all started! We will inform you with more details as they are finalized.

## LOOKING FORWARD TO THE 20TH BIENNIAL CONFERENCE IN INDY



Last, but not least, we are thrilled to announce that the 20th biennial conference will go back to “the crossroads” at Indiana University, Robert H. McKinney School of Law, July 13-16 for 2022. Congratulations to Dean Andrew Klein and Professors Adams and Schumm for their impressive proposal.

From Boulder in 2019 to D.C. in 2020, to London in 2021, and then back to Indy in 2022, we have many exciting conferences lined up!

### CLOSING THOUGHTS

When you read this message, I will have just a few months left as President before Kim Holst adeptly steps into that role in July 2020. It has been an honor and a privilege to serve on the Board of Directors, let alone become President, of an organization that has given me so much in terms of intellectual and emotional support in my legal writing career over the years.

For this biennium, the major goals we set for the Board were threefold:

- to continue the work of two relatively new Board committees, the Discipline Building Working Group and the Professional Status Committee;
- to improve the professional look and feel as well as the currency and content of all LWI Communications, including the website; and
- to improve Board communication with and provide support for our many members serving on committees, particularly the Diversity and Inclusion Committee.

As for the first goal, we have continued to support our members’ scholarship through grants, workshops, and retreats; introduced new and unique formats for engaging in scholarship and consumption of

scholarship; published an excellent article on the inadequacies of ABA Standard 405(d); and launched two new toolkits on salary and security of position issues. We hope the article and toolkits will serve to strengthen our existing support for members struggling with status issues.

As for the second goal, with the help of the Public Relations & Social Media Committee, we designed and approved the first Visual Identity Manual on behalf of LWI, which will result in a more uniform and streamlined look for our organization’s communications, and we will soon launch a new and improved page to showcase and search LWI publications. Although we have made vast improvements to our website, we have more work to do in addressing the challenges associated with keeping its content current and fresh.

As for the third and final goal, we implemented new procedures for Board members to stay in touch with our member committees and provide support for their work, including monetary support. We have also worked hard to recognize and celebrate new voices. That commitment is reflected in the Diversity and Inclusion Committee’s successful Happy Hour (co-hosted with ALWD) at the ALWD Conference in May 2019, as well as in our new Influential Teaching Award and Emerging Scholar’s Award, to be given for the first time in July 2020. Despite these efforts, I believe we still have more work to do in partnering with ALWD to further diversity and inclusion within our organization as well as in the legal writing classroom.

In closing, I extend my sincere thanks to the 2018-2020 LWI Board of Directors, the members of the Executive Committee, the chairs and members of LWI’s many committees, One-Day workshop hosts, conference chairs and volunteers, and all those who have helped LWI thrive. Many of these contributions go unsung but not unnoticed. We could not do it without you.

Fondly,

#### NOTES

1. See J. Lyn Enriken, Lucy Jewel, Susie Salmon, Craig T. Smith, Kristen K. Tiscione, and Melissa H. Weresh, *Treating Professionals Professionally: Requiring Security of Position for All Skills-Focused Faculty Under ABA Accreditation Standard 405(c) And Eliminating 405(d)*, 98 OR. L. REV. 1 (2020).



# Grammar Can Be Fun: Increasing Student Interest in Applying the Grammatical Rules



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Legal employers and judges expect attorneys to use correct grammar and punctuation,<sup>1</sup> and the ability to write in a style that is clear and direct is an obvious strength in legal advocacy.<sup>2</sup> Thus, while composing substantively compelling arguments is the foundation of the legal writer’s craft, they<sup>3</sup> cannot ignore the function that polished, easily understood writing has on their audience. So why, then, do law students often wish to bypass this important function altogether? Upon announcing the upcoming “grammar workshop” to my first semester legal writing students, I often hear a collective groan coming from the audience. It is not a class they expect to enjoy, and many students would be happy to never revisit the grammatical rules they learned to dread in middle school. As legal writing teachers, however, we have the opportunity to shift this perception and create a positive and engaging learning experience for our students—even when it comes to the dreaded grammar class.<sup>4</sup>

In this article, after discussing student hesitancy in learning the grammatical rules (and methods to overcome this obstacle) and touching on the basic review-and-apply teaching method, I suggest three creative exercises that will get students interested in talking about grammar. These include finding grammatical mistakes in public places; discovering errors within case opinions; and editing children’s books to conform to the legal writing rules, all of which reinforce proper grammar in a creative and interesting way.

## WHY STUDENTS SHY AWAY FROM THIS IMPORTANT SKILL

I often poll my first semester students on whether they love or hate grammar (there is usually very little in-between). Most semesters, more than 50% raise their hand for the “hate it” option. But why? While students acknowledge its importance, most believe that grammar is boring, and they readily admit a preference for discussing exciting substantive topics instead of focusing on the grammatical correctness of their writing. While students may genuinely find the grammatical rules boring, other factors are likely at play. Students may feel intimidated in hearing the word “grammar” because they fear a request to master terminology they do not remember, such as the “dangling participle,” and with that fear comes an apprehension of failure.<sup>5</sup> Most students do not mind *practicing* the grammatical rules; rather, they dread the task of recalling and memorizing the technical language they never really understood in the first

place. Anticipating this problem, I give students reasons to look forward to the grammar workshop. After noting that the workshop will undoubtedly plant the seeds for better, more polished writing skills, I note that some fun exercises will come after the class, with some involving extra credit. I explain that I will not ask students to diagram sentences, and knowing the fancy terminology is not important to me—I just want to see students properly applying the grammatical rules to their writing. As the instructor, I am the role model for my students. If I groan, they will, too. If I display excitement for the material, maybe they, too, will become intrigued.

## TEACHING THE GRAMMAR BASICS

At The University of Tulsa College of Law, we review<sup>6</sup> basic grammatical rules roughly three weeks into the first semester legal writing class. As noted, we call this the “grammar workshop,” and we use learning materials that cover issues such as noun-pronoun agreement, proper placement of commas, active voice, proper comparisons,<sup>7</sup> and parallelism. We require students to review these materials prior to class and complete an exercise applying the rules to sentences containing grammatical or punctuation mistakes, or to those with stylistic concerns. On the date of the workshop, I put the learning materials on the document camera and talk through each topic individually. For example, we discuss the stylistic problem of passive versus active voice, observing that a student writes in passive voice when she makes the object of an action the subject of a sentence.<sup>8</sup> The voice is active, however, when the actor is the subject and the action is the verb. I explain that active voice makes for stronger writing and that students should utilize passive voice only for strategic reasons, such as deemphasizing the actor’s identity.<sup>9</sup> The materials contain examples of sentences written in passive voice, such as “the message was repeated by me,” and together we discuss how to make them active (“I repeated the message”).

After reviewing these materials, I ask students to provide answers to the application exercise they completed prior to class. For example, the exercise may contain the following sentence: “Following deliberation, the verdict was read by the jury foreperson.” I will call on a student and ask her to improve this sentence. If she understands that it contains passive voice, she will modify it to something

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*I often poll my first semester students on whether they love or hate grammar.*

*Most semesters, more than 50% raise their hand for the “hate it” option.*

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like, “Following deliberation, the jury foreperson read the verdict.” I will affirm this change and ask her to identify the specific issue within the sentence, as I want my students both to understand how to correct a problem and to articulate what is wrong in the first place. This review-and-apply method has proven effective in getting students back in the groove of *thinking* about grammar, punctuation, and style as they are writing.

## MAKING IT FUN AND INCREASING STUDENT INTEREST

In my early days of teaching, I considered the grammar teaching complete after working through the grammar workshop’s application exercise. Of course I always noted grammatical mistakes when providing feedback on graded work, but the grammar teaching, itself, was checked off the list. However, as I became more seasoned in the classroom and more aware of my students’ continued need for reinforcement of the grammatical rules, I began to implement additional grammar-related exercises throughout the semester. Students have responded positively to the exercises, and I have found that the key to keeping students interested is to make the assignments fun and to engage them in tasks that are interactive, manageable, and creative. Below are a few ideas that will add some fun and flavor to your students’ application of the grammatical rules.

### Find Grammar Mistakes in Public Places

Ask students to look around them—do they see proper grammar and punctuation used consistently in the public spaces they visit? We have all cringed at finding grammatical or punctuation mistakes on billboards, menus, or corporate signs. When I see a list of rules posted at a business or other establishment, I am drawn to it like a magnet—what problems can I find in this? Rarely, if ever, do I see a list containing zero errors. Truly, it is rare. For

example, I recently took my children to an indoor athletic park, and I spotted a list of rules. I had no choice but to stop what I was doing so I could read it closely. In the trampoline area, the sign noted the following: “Do not jump if you have health limitations or injuries, and are under the influence of drugs, alcohol or are pregnant.” Yikes. The author clearly intended to dissuade individuals from jumping if they have health limitations or injuries, if they are under the influence of drugs or alcohol, or if they are pregnant. However, the wording makes it appear that individuals with health limitations or injuries should not jump only if they are *also* under the influence of drugs or alcohol, or if they are pregnant. Oops! As this demonstrates, comma placement and word choice can completely change the meaning of the intended words. Further, the series in the latter part of the sentence is improperly phrased. The author intended to say “influence of drugs or alcohol, or are pregnant,” but did not. The wording and comma placement make it appear that individuals should not jump while under the influence of drugs, alcohol, or pregnancy. How one can be under the influence of pregnancy is beyond me.



Billboards and pole-mounted signs are also rich sources for grammatical errors. A Baskin Robbins store in Tulsa, Oklahoma, recently serenaded customers with its Lionel Richie-inspired sign reading, “Hello[,] is it me your looking for,”<sup>10</sup> and a children’s software company advertised the creativity of its

product by announcing it is “So Fun, They Won’t Even Know Their Learning.”<sup>11</sup>

Following the grammar workshop, I share these comical advertising fails with students and present them with a similar task. I ask that they, too, look for grammatical and punctuation errors while living their daily lives. Look at the dinner menu more closely—did the author use apostrophes correctly? Are there errors in comma placement? At the pool, do you see

a list of rules? Scrutinize it. I typically give students five days to find such a mistake. I require students to take a picture of the mistake with their own camera, and I note that the mistake cannot come from the internet, as a 30-second google search would produce this. I want them to treat this task like a scavenger hunt and not take the easy way out. To get credit for the assignment, I specifically require in writing that students: (1) take a picture of the mistake, (2) paste the picture to a Microsoft Word document, and (3) print the document with a typed and signed acknowledgement that the student “took this picture with [his/her] camera on X date at X location.” I offer this as an extra credit assignment, but an instructor could certainly require it as a course component.

This assignment is a student favorite every semester. Students love to giggle at these mistakes and explain how they found them. My hope is that this exercise will encourage students to think about grammar and punctuation on a regular basis, and they will continue practicing these rules as they carefully scrutinize every sign they read going forward.

## Locate Grammatical Problems Within Case Opinions

It is our sincere hope that case law opinions are flawless, beautiful works of art. After all, these opinions become law, and they should set the standard for perfect writing. However, that is not always the case. The authors of these opinions are human, too, and they sometimes make mistakes. To craft this into a grammatical exercise, the professor could provide students with a short excerpt from a case opinion she knows contains mistakes and ask the students to find them. I typically give this exercise during class and allow students to work in small groups when hunting for the grammar and punctuation errors.

For example, the professor could provide a case containing a glaring comma splice. On page 1326 of *Taylor v. EPOC Clinic, Inc.*,<sup>12</sup> the court provides that “Plaintiff never actually took a polygraph test, therefore the fourth requirement does not apply.”<sup>13</sup> Additionally, on page 1130 of *Aluru v. Anesthesia Consultants*,<sup>14</sup> the court notes that “[i]t is undisputed that Dr. Aluru met with Dr. Wohlner in mid-2008 and raised certain concerns and complaints about her employment, however, the content of this meeting is somewhat unclear from the record.”<sup>15</sup>



Another case with a grammatical problem is *McLin v. Indus. Specialty Contractors, Inc.*,<sup>16</sup> which contains the following explanatory parenthetical following a citation: “[court found that injuries arising out of an employment-mandated trip to a national park for a training program was compensable, although at the time of the accident, the employee was traveling from a friend’s house where he had stayed the night].”<sup>17</sup> Aside from the parenthetical language, itself, not conforming to the typical parenthetical guidelines,<sup>18</sup> it contains an unnecessary comma following “accident” and a glaring subject-verb agreement error (“injuries . . . was compensable . . .”).

Students enjoy this exercise because it pushes them to read case law in a whole new way, and it showcases the importance of thorough proof-reading, as these errors remain in these writings forever.

### Appoint Your Students as Editors of a Children’s Book

Most children’s books are thoroughly edited, and many do not contain grammatical or punctuation errors. However, as I am reading to my children at night, I occasionally find a problem the book’s editor clearly missed. The most common infraction is the author’s failure to place a comma before a conjunction that joins independent clauses. For example, on the third page of text in *Arthur’s Valentine*, the author writes, “P.S. In your lunch box you’ll find a treat. It’s just for you and it’s extra sweet.”<sup>19</sup> With this knowledge, the professor could create a fun exercise by asking her students to edit a children’s book to conform to the legal writing rules. Pass around a copy of the book to each student and request that students mark “approved” or “needs editing” for each page of the book. For those marked “needs editing,” instruct the students to write out a corrected version of whatever sentence needs correcting. Once every student has completed this task, go through the book page by page and discuss the students’ recommendations.

Further, the professor can reinforce material from the grammar workshop even without discussing a mistake. Sometimes I will provide a children’s book that contains passive voice with the hope that my students will catch it. For example, I may present *Franklin Goes to the Hospital*,<sup>20</sup> a story about a turtle

who is injured in a soccer game and has to undergo surgery. On the second page of text, the author writes, “Franklin and his friends were playing soccer. The ball was kicked to Franklin, and it hit him hard in the chest.”<sup>21</sup> When we get to that page, I ask students if the author should have made the sentence active, or if there is a reason the author chose passive voice. For this example, there appears to be a reason. There are times a reader does not need to know who is responsible for an action,<sup>22</sup> because that information is not central to the storyline. Had the author provided the actor’s name, that information would have signaled the importance of his identity. However, the author merely wanted the reader to learn that this accident occurred and that Franklin was injured. The passive voice in that sentence was purposeful. The following sentences of the story return to active voice, which students should recognize is the proper default. This example provides a meaningful opportunity to discuss the rules we learned in the grammar workshop, but in a unique and easily understood way.

## CONCLUSION

I encourage legal writing professors to try one or more of these methods to bring life to the grammar, punctuation, and stylistic rules in a way that increases student interest and enjoyment. It is proven that students learn better and retain more when they enjoy what they are doing.<sup>23</sup> Why not find innovative ways to change the minds of some of those students who enter your class with the notion that they hate grammar? Show them that with a little creativity, grammar can be fun!

## NOTES

1. See *Beatty v. Farmer*, 840 A.2d 856 (N.J. Super. Ct. App. Div. 2004) (holding that an employer was justified in failing to hire the plaintiff-attorney for a position within the Attorney General's office when his writing sample contained "grammar [that] was, at times, awkward"); see also *Sanfilippo v. Commissioner of Social Security*, No. 8:04-CV-2079-T-27MSS, 2008 WL 1957836, at \*4 (M.D. Fla. 2008) (noting that attorney's hourly rate of \$350 was "plainly excessive" when the memoranda he submitted to the court was "poorly written" with "numerous errors").
2. See *United States v. Alkaabi*, 223 F. Supp. 2d 583, 593 (D.N.J. 2002) (complimenting counsel on a "well-written brief, which is of assistance to this Court").
3. In this instance I used "they" as the generic pronoun, recognizing the noun-pronoun agreement issue is an evolving one.
4. Although grammar, punctuation, and style are distinct writing matters, I will often refer to them collectively as "grammar" in this article for ease of writing.
5. Jennifer Recio Lebedev, *10 Reasons Why Students Say They Hate Grammar*, ENGLISH WITH JENNIFER (Jan. 23, 2009), <https://englishwithjennifer.wordpress.com/2009/01/23/10-reasons-why-students-say-they-hate-grammar/>.
6. I say "review" because we expect that students have learned the basic writing rules prior to entering law school.
7. In legal writing, students should compare like things. For example, they should compare a fact to a fact and a holding to a holding. They should not compare a fact to a holding. Although this is not a grammatical issue, it is something we discuss in the grammar workshop, as the workshop covers various legal writing rules and guidelines.
8. *Passive Voice*, THE WRITING CENTER - UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL (last visited Aug. 30, 2019), <https://writingcenter.unc.edu/tips-and-tools/passive-voice/>.
9. For example, if a client is accused of committing the tort of battery, his attorney may not want to name him as the actor when discussing specific case facts. Instead of stating that the defendant hit the plaintiff in the face, the attorney may state that the plaintiff was hit in the face during the scuffle.
10. This sign should have utilized the proper contraction for "you are," instead reading, "Hello, is it me you're looking for?"
11. The irony of the grammatical mistake of utilizing "their" rather than "they're" in this educational advertisement is not lost on me.
12. 437 F. Supp. 2d 1323 (M.D. Fla. 2006).
13. *Id.* at 1326.
14. 176 F. Supp. 3d 1116, 1130 (D. Colo. 2016).
15. *Id.*
16. 1851 So. 2d 1135 (La. 2003).
17. *Id.* at 1142.
18. Legal authors typically phrase an explanatory parenthetical as an incomplete sentence beginning with a present participle ending in "ing," such as "holding that . . .," or as a complete sentence with quoted text from the source. See THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 1.5(a)(i)-(ii), at 64 (Columbia Law Review Ass'n et al. eds., 20th ed. 2015).
19. MARC BROWN, ARTHUR'S VALENTINE 5 (1980). To comply with the noted rule, the author should have added a comma after "you."
20. PAULETTE BOURGEOIS & BRENDA CLARK, FRANKLIN GOES TO THE HOSPITAL (2000).
21. *Id.* at 2.
22. *Passive Voice*, *supra* note 5.
23. Lauren Schiller & Christina Hinton, *It's True: Happier Students Get Higher Grades*, THE CONVERSATION (July 30, 2015), <http://theconversation.com/its-true-happier-students-get-higher-grades-41488>.

# The Zen of Overcoming Procrastination



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Sandra Day O'Connor  
College of Law

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*“The journey of 1,000 miles begins with a single step.”*

~ Lao Tzu

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Whether you are a student or teacher in law school, there are always roadblocks that can keep us from being as efficient as we want. More and more, I find myself in office hours “teaching” students how to overcome procrastination. This article is not just for the “procrastinators” out there, but for everyone who wants to be more effective at getting things done—while also minimizing stress levels. Here are some tips to share with your students (or for yourself) to overcome procrastination.

## HARNESS YOUR ZEN MINDSET

Of course, as with any Zen, it is important to begin with the right mindset. First focus on your internal dialogue—the specific words you tell yourself about why and how the assignment/project matters. The words you choose create different emotional states within the body and the brain.<sup>1</sup> For example, notice the critical distinction between reminding yourself that you don’t *have to* do this, but rather you *get to* do this. During the editing process, remind yourself that you are not *re-doing* or *correcting* your work; you are *improving* your work. Consider how the following two sentences make you feel:

1. I have to spend a lot of time correcting my memo.
2. I get to invest time improving my memo.

The words you choose to speak to yourself can go a long way towards energizing you or depleting you, so choose wisely. If you are in law school, you don’t *have to* do anything; you *get to* do everything.



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*Do a little a lot. It is far more effective to work on something incrementally or in stages rather than sitting for hours upon hours trying to get it done.*

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## FOCUS ON THE PROCESS

Second, further harness your Zen mindset by focusing on the *process* rather than the *outcome*. Focusing on the end result instills a fixed mindset, which only inhibits the process.<sup>2</sup> And, of course, you will be more present (and thus more effective) when you focus on the process, resulting in far less stress along the way.

Regarding process, whatever you do—start! Start immediately, even if it is just one small step. Psychologically, knowing that you have already started something is far better than the thought of not having started at all. Even putting your name on a paper and writing out just one sentence can be emotionally beneficial. Too many of us think that we have to have everything “right” before we start, but this is not true. It is the process that helps us get it “right.” Accordingly, always remember that you don’t have to *get it right* when you get started, but you need to *get started* to get it right.

Once you have begun, keep this mantra in mind: *Do a little a lot*. It is far more effective to work on something incrementally or in stages rather than sitting for hours upon hours trying to get it done. Doing a little a lot gives you more focus when you are working on your project, and it also gives you several chances to revisit your work from a fresh perspective. It also gets you into a routine that can break the cycle of procrastination, as procrastinators are notorious for doing things at the last minute in a large chunk of time—which usually results in more mistakes and a less-than-ideal final product.

## MAKE YOURSELF ACCOUNTABLE

Of course, if you want a true Zen mindset, then you are open to connecting with the universe around you—so use that to your advantage and make yourself accountable. Studies show that when you have to answer to another person you are far more likely to get things done in a timely manner. In fact, one study found that being held accountable by a specific person to a specific timeline increased a person’s chances of completing the task by 95%.<sup>3</sup> So tell someone what you intend to get done and in what time frame. You can also have cross-accountability with a classmate or co-worker (or even a family member) to keep each other in check. Innately, we don’t want to let our friends or family members down, so you can see why the accountability can really work. For best results on a bigger project, such as an open memo, make the accountability incremental (such as, “I will be halfway done in three days”).

## GET A WALK-UP SONG

For those not familiar with baseball, every player has a “walk up” song when he approaches the batter’s box. This is a song the player has chosen to get him motivated before hitting. If you had to choose a walk-up song, what would it be? Make the song yours and make sure that it inspires you. Music has been shown to energize the body,<sup>4</sup> and you are more likely to get into your work/project when you feel good. Additionally, if you play your song every time you start to get to work, you will have a trigger to create a habit, which will go a long way to re-wiring your brain for *action* instead of procrastination.

## FINALLY, FORGIVE YOURSELF

If you find yourself procrastinating, don’t beat yourself up. Research shows that the more you can forgive yourself for procrastinating, the more likely you are to actually stop procrastinating and take action.<sup>5</sup> If you are feeling guilty about not having started earlier, you are living in the past, which doesn’t help anyone—so let that go! Take a deep breath, forgive yourself, be present, and make a decision to take that first step towards getting started. So . . . what are you waiting for?

## NOTES

1. Chris P. Neck & Charles C. Manz, *Thought Self-Leadership: The Influence of Self-Talk and Mental Imagery on Performance: Summary*, 13 J. ORG. BEHAV. 681 (1992); Antonis Hatzigeorgiadis et. al., *Self-Talk and Competitive Sport Performance*, 26 J. APPLIED SPORT PSYCHOL. 82, 87 (2014).
2. Szu-chi Huang & Jennifer Aaker, *It's the Journey, not the Destination: How Metaphor Drives Growth After Goal Attainment*, 117 J. PERSONALITY AND SOC. PSYCHOL. 697 (2019); Pham, Lien B & Shelly E. Taylor, *From Thought to Action: Effects of Process Versus Outcome-Based Mental Simulations on Performance*, 25 PERSONALITY AND SOC. PSYCHOL. BULL., at 250-260 (1999).
3. Kate Matsudaira, *How to Get Things Done When You Don't Feel Like It*, 16 ACM QUEUE 1 (July-August 2018).
4. William Forde Thompson & Lena Quinto, *Music and Emotion: Psychological Considerations*, in THE AESTHETIC MIND: PHILOSOPHY AND PSYCHOLOGY 357 (2011); Anne J. Blood & Robert J. Zatorre, *Intensely Pleasurable Responses to Music Correlate with Activity in Brain Regions Implicated in Reward and Emotion*, 98 PROC. NAT'L ACAD. SCI. 11818 (2001).
5. Lucia Martinčeková & Robert D. Enright, *The Effects of Self-Forgiveness and Shame-Proneness on Procrastination: Exploring the Mediating Role of Affect*, CURRENT PSYCHOL. 10 (2018).

# Six Fresh Ideas for a Class Day That Is Looking Stale



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Here's my confession: I have been teaching legal writing for a long time. I love teaching legal writing. I am very good at teaching legal writing. But once in awhile . . . I need to shake it up. A couple of my recent classes have been in need of being shook, several times. To my great delight, shaking it up energizes both me and my students. Here are six recipes for “class shakes,” each grounded in learning theory, wellness practices, and the like.<sup>1</sup>

## CLASS SHAKE #1: WRITE YOUR OBITUARY

We hit a slump this spring. My students were far enough into the semester to feel committed, but too far away from finals to feel energized by urgency. Their lack of deep engagement was apparent in class. That day, I asked them to spend a few minutes sketching out their obituaries—either what they thought would be written about them or what they hoped would be written about them when they died.

Writing one's own obituary is not a new idea<sup>2</sup>—I had found a great anecdote about how Alfred Nobel, the inventor of dynamite, found his own obituary erroneously written up in the newspaper, and about how he didn't want his enduring legacy to be as the man “who became rich by finding ways to kill more

people faster than ever before.”<sup>3</sup> So he created the Nobel Foundation—bestowing body of the Nobel Prizes--to change his legacy.<sup>4</sup>

As a class, after the students sketched out their obituaries, we shifted to a wellness focus.<sup>5</sup> We discussed making choices and creating legacies and finding opportunities to shape one's life. We discussed the importance of living an intentional life. I was open with them (to a point) about choices that I had made and about changes in my life's path that I had effected.<sup>6</sup> That conversation was facilitated by the obviousness of one life change—to become a single mom by choice. They frequently see my daughter at school events, so my talking about her and about how to integrate personal and professional life demands was made easier. They have other professors who are parents of young children as well, so they are used to seeing us grapple and balance—and talk about the cost and value of our choices.

I want my students to be thoughtful and intentional and empowered and in control. This exercise helped.

Variations on the exercise are easy: It could be made more positive by having students describe how they would want to be remembered in the event of an award or at their retirement, rather than at their death.<sup>7</sup> This exercise could also be used purely as a persuasive writing exercise. For example, the students could write an obituary (or simply a description) of the each of the two opposing parties, from different points of view.



## CLASS SHAKE #2: SPEED RESEARCHING

In the fall semester, we had an extra class period amongst the drafting classes as my students were writing their open objective memos. They had finished the research arc and were at a drafting stage where executing, not discussing, was what they needed to be doing. Several of them were feeling overwhelmed and a bit discouraged as they felt themselves to be at the bottom of an all-too-steep learning curve—rather than realizing that they were actually partway through the climb.

To help them to recognize their progress, I held a class focused on speed researching. Based on neurocognitive science about spaced repetition, I knew that successfully repeating a skill helps to create effective neural pathways to mastery.<sup>8</sup> I told them to bring their laptops to class, and I came armed with five or six little research scenarios (taken from prior years' open memo assignments, from my Family Law course, and from recent headlines).<sup>9</sup> I divided the class into small groups and gave them about 20 minutes to find the answers and to be prepared to discuss *how* they found the answers.

All of the groups had the correct answers within 20 minutes! They worked collaboratively, they shared research strategies, and they found the law. Just as exciting were the lessons shared and questions raised as the groups shared their research processes. They learned that effective search terms mattered. They learned that Wikipedia has its appropriate uses, as well as limitations. They compared the merits of Westlaw and LEXIS. They were surprised at the variety of paths to the correct answers. And they thickened their myelin sheaths around their axons as well!<sup>10</sup>

Along the way, we also discussed the vagaries of and policies behind the laws that they researched, to pique their interest and to satisfy their curiosity. (E.g., Should the owner of a companion animal be able to recover damages for the wrongful loss of that animal? Is common-law marriage recognized in a specific jurisdiction? Should it be?)

They realized how much they had learned in the two-and-a-half months since they started law school, and they left class proud, excited, and sporting thicker myelin sheaths.

## CLASS SHAKE #3: ELEMENTARY ANALYSIS

My students have met my eight-year-old daughter at school events, so they know her, and they also recognize her importance in my life. Given that they are, most of them, closer to her age than to mine, sometimes I bring her experiences (and my parenting experiences) into the classroom.

For example, each year her school has a pig race for charity. This is a race using mechanical pigs that oink and wiggle and strut their way across a small race track. The first year of the race, I bought my daughter a vintage pig because it was rainbow-colored—her favorite. Little did I know that the mechanism of the vintage pig has different and faster timing than current pigs. Rainbow Dash won handily—in kindergarten. In first grade. In second grade. Presumably will do so for the rest of my daughter's lower-school years as well.

I asked my students: is this fair? Then . . . was it fair when one older boy put his pig on skates? Then . . . would it be fair to modify the mechanism to power-boost the pig?<sup>11</sup>

We had a great discussion about rules, about policy, about intent. I had them write a paragraph about ethical considerations in pig racing. And, I confess, I then played them the video of Rainbow Dash winning the race.

Another example: Last year, the second grade at my daughter's school prepared and presented its annual program, profiling the presidents of the United States. Each student drew a name from a hat to determine whom that student would profile. However, one student (more likely, his parents) objected to the president whom he had been randomly assigned. While the teachers told him that he had to profile the president whom he had picked regardless of objection, as had been the norm in previous years, the new headmaster ultimately allowed the student to offer alternative content. The objected-to president was also a recent president, and as a result of the concession to objection, that president simply went unmentioned in the program.

That scenario led to a lively discussion about how to present /represent someone with whom one disagrees, about the importance of precedent, about the circumstances under which conscientious objection is appropriate, and about the hierarchy of authority (the new headmaster overruled the second-grade teachers). Our discussion linked directly to professionalism concerns and legal concepts, but was packaged in a fun and accessible review.<sup>12</sup> (For the record, every one of my students would have made the objecting second-grader present on the president as assigned, and no one thought that the “high court” was correct.)

## CLASS SHAKE #4: WHY IN THE WORLD WOULD THEY . . .

Each year when I teach about professionalism and about plagiarism, I use reported cases to reflect the significance of these issues, based on the idea that adult learners favor contextualized learning.<sup>13</sup> A few years ago, I started adding a new component: I researched the attorneys who were parties in those cases. I did so because I thought that my students too easily concluded that those attorneys were somehow far removed from them and that they (my students) could never “do anything like that.”

For example, I use Precision Specialty Metals v. Mikki Graves Walser, 315 F.3d 1346 (Fed. Cir. 2003), to talk about plagiarism and time management. The case involves the review on appeal of a lower court’s reprimand of an attorney, Walser, arising out of Walser’s motion for an extension in filing a brief. The lower court had denied the motion for extension and ordered Walser to submit the brief “forthwith.” Walser submitted the brief 12 days later and the court then granted opposing party’s motion as unopposed. Walser moved for reconsideration, arguing that the earlier brief had met the court’s required “forthwith” submission, but that later motion contained “miscitations” that included a misquotation and a failure to fully and accurately quote judicial opinions. She defended the earlier brief’s “forthwith submission” at oral argument for reconsideration and then later, defended the latter brief and its alleged misrepresentations at a subsequent hearing related to the resultant potential contempt sanction against her. She was reprimanded, appealed *pro se*, and the reprimand was affirmed.

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*Each “shake” is grounded in relevant research about learning theory, law student psychology, or wellness.*

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The case works well because it illustrates the snowball effect of bad choices: leaving a task undone until it’s too late to complete it, asking for grace (an extension), being unable to manage its denial, desperately trying to mitigate damages, making more bad choices, etc.

I also show them pictures of Ms. Walser’s photo at an alumni event at The Yale Club in New York City the next year.<sup>14</sup> There is more information about her to be found, and I have considered having them research her more to see the trajectory of her career post-sanction as well.

In another admonitory reported example, a court publicly reprimanded an attorney for his poor writing and required him to attend remedial writing and law office management training.<sup>15</sup> News articles have reported similar situations over the years. At times, I have researched the disciplined attorney, once learning that he was a long-time practitioner and had been prominent in the local bar.

For both of the examples set out above, I brought that information to class, and we talked—and speculated—about how those attorneys “got there from here.” Everyone agreed that none of them planned to be an exemplar of unethical behavior for future generations of lawyers, and all of them speculated that neither of the attorneys mentioned above had planned to be so either. We talked about stress, about ethical boundaries, about choices and consequences. We talked about how quite unintentionally, those attorneys might have “gotten there from here” and about how they—my 1-L’s—could consciously check in with themselves as they grew in the profession to be sure that they did not.<sup>16</sup> We touched upon the school’s Honor Code and the expectations for them as law students as well.

## CLASS SHAKE #5: ACTING VERBS<sup>17</sup>

Each spring, when I teach about persuasive writing techniques, I talk about effective verbs as a powerful means of conveying meaning. The power of verbs—and the myriad shadings of meaning conveyed—are well illustrated when we act out verbs.

Consider these:

- an entire class walking—strutting—tiptoeing—staggering across a room.
- an entire class tasting—licking—savoring—gulping a treat.
- an entire class taking—snatching—grabbing—yanking a ball.

The power and nuances of verbs are reinforced as they are acted out, and students get to move around in class too!

## CLASS SHAKE #6: SAFETY IN ANONYMITY

When a major assignment is coming due, I often hold a Q-and-A session or a writing workshop. The benefit of those activities is sometimes limited by students' hesitance in sharing their questions (often worded as, "this is a dumb question, but") before their classmates.<sup>18</sup> My routine now is to have them submit their questions in writing, and I open each slip of paper/read each email or text and answer it in turn.

Doing so has several benefits:

- I get a good sense of the class as a whole—10 questions on standard of review means that I need to re-teach that topic! Indeed, this approach acts as a quick formative assessment for me—it tells me what I may not have effectively conveyed.
- Students feel emboldened to be honest because no one knows who asked "that dumb question." (And a question is almost never received as "dumb" by the class. More typically, I see expressions of relief and miniscule nods.)
- If I know that there is a lingering concern or a common error that they have not asked about, I can just, ah, make pretend that it is on the piece of paper that I'm reading from, and address it.
- Finally, it shows them that I care about their learning and am willing to meet them wherever they are.

These six class shakes have added liveliness and value to my class, and they are now a standard part of my teaching. Even better, each "shake" is grounded in relevant research about learning theory, law student psychology, or wellness. Energized, I now look forward to creating more shakes each year. I invite you, too, to shake it up!



## NOTES

1. Indeed, I recently read a book that advocates for (and substantiates with research) the merits of small (but powerful) changes in class sessions, a course, or course design in order to facilitate student learning. Or in other words, shaking it up. See generally James M. Lang, *Small Teaching* (2016).

2. See, e.g., Marelisa Fabrega, *Wake-Up Call: Write Your Obituary*, <https://www.lifehack.org/articles/lifestyle/wake-up-call-write-your-obituary.html> (last visited January 1, 2020).

3. *Id.*

4. *Id.*

5. “9 Ways to Support a Culture of Wellness in Your School,” teachthought (November 26, 2019) <https://www.teachthought.com/learning/9-ways-to-support-a-culture-of-wellness-in-your-school/> (although the site is geared toward K-12, it offers cross-educational advice about engagement, creativity, and ongoing conversations that promote wellness—it also has an amazing graphic!).

6. See Lad Tobin, *Self-Disclosure as a Strategic Teaching Tool: What I Do—and Don’t—Tell my Students*, 73 *College English* 196-206 (November 2010).

7. Thanks to my teaching ideas group at ALWD’s 2019 conference for coming up with this more-positive idea.

8. *The Reason for Repetition: How Repetition Helps Us Learn*, <https://medium.com/peak-wellbeing/the-reason-for-repetition-how-repetition-helps-us-learn-10d7eea43e95> (last visited January 1, 2020).

9. Here are three of the research scenarios:

- **Error! Main Document Only.**\* You are a Texas family law attorney. A client comes to you distraught because he and his wife went through IVF due to his sperm-quality issues and now have seven frozen embryos at the local fertility clinic. His wife has just told him that she wants a divorce and that she’s pregnant by her new boyfriend, so she won’t be needing those embryos and will seek to have them discarded. What are his options? Please 1) identify any Texas statutes that address ART (assisted reproductive technology) and 2) identify any Texas cases that have addressed embryo disposition when the parents/partners disagree.
- You have a general, small-town law practice in Texas. A client comes in and wants to know what his options are b’c a neighboring rancher shot his beloved farm dog, Shep. The client says that Shep was like another child to him and wants to know whether he can sue and what damages he might recover. Please 1) find some secondary authority on this topic, 2) identify what damages can be recovered, and 3) find the most recent Texas case on this topic.
- [This is a go-to-the-library exercise! Yay!!] You are on permanent retainer for a local business owner in Lubbock. He comes to you because he allowed people to come onto his land for picnicking and other outdoor recreation, and someone got hurt. He wants to be sure that he’s protected for opening his land up for recreational use. Please find 1) the applicable statute and be prepared to discuss its most recent amendments and 2) some recent cases.

10. *Id.*

11. See, e.g., yahoo!answers, <https://answers.yahoo.com/question/index?qid=20071115163753AAcVOBo> (last visited January 1, 2020).

12. Teaching legal ethics using creative hypotheticals, role plays, and non-traditional teaching methods is used at other law schools as well. See, e.g., Sara Galer, *New Ethics Class Gives Law Students More Realistic Dilemmas*, The University of Chicago / The Law School, <https://www.law.uchicago.edu/news/new-ethics-class-gives-law-students-more-realistic-dilemmas> (last visited January 1, 2020).

13. See generally Kim L. Niewolny & Arthur L. Wilson, *Are all Contexts Learning Contexts? Rethinking the Relationship between Learning and Context in Adult Learning Theory*, Adult Education Research Conference, <http://newprairiepress.org/aerc/2011/papers/74> (2011) (exploring the meanings of learning contexts) (last visited January 1, 2020).

14. See Arthur J. Morris Law Library Special Collections, <http://archives.law.virginia.edu/records/rg/107-06/digital/29376> (last visited January 1, 2020).

15. *In re Hawkins*, 502 N.W.2d 770 (Minn. 1993).

16. The debate about how to “grow an ethical lawyer” goes back more than 30 years, to a time when the mandate to include professional ethics instruction in law schools was new. See Elizabeth D. Gee & James R. Elkins, *Resistance to Legal Ethics*, 12 *J. LEGAL PROF.* 29, 29-31 (1987). Suggestions included enhancing student ethical self-identity, teaching legal ethics in the first year, and infusing ethics across the curriculum. *Id.* at 33-34.

17. Legal education often fails to draw on kinesthetic learning principles to engage students. However unusual such an approach may sound, those principles can easily be woven into and enhance legal education. See generally Susan Liemer, *Embodied Legal Education: Incorporating Another Part of Bloom’s Taxonomy*, 96 *U. DETROIT MERCY L. REV.* 69 (2017).

18. This hesitation is often related to imposter syndrome. See, e.g., *Imposter Syndrome*, <https://lawstudents.ca/forums/topic/53979-imposter-syndrome/> (a forum for law students) (last visited January 1, 2020); Kathryn M. Young, *Pushing the Bully Off Your Shoulder*, Stanford University Press blog (November 28, 2018), <https://stanfordpress.typepad.com/blog/2018/11/pushing-the-bully-off-your-shoulder.html> (identifying imposter syndrome as the bully and describing the fear that “if anyone knew how clueless you were, you’d be exposed as a fraud”).

# Assessing Legal Research Skills: An Online Research Exam



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I have asked myself many times, “Self, could my first-year law students research a legal issue without any guidance from me?” You have probably asked yourself a similar question if you teach a skills-based course. Last fall semester, I decided to create a new assessment measure to answer my question: *an online research exam*.

## SUMMARY OF HOW I TEACH LEGAL RESEARCH

In my Legal Reasoning, Writing, and Research course, students learn to research the law through multiple methods. Students first read the assigned chapters of my textbook, *Legal Research Demystified: A Step-by-Step Approach*,<sup>2</sup> and then jump online and answer multiple-choice questions on Core Knowledge for Lawyers (<https://coreknowledgeforlawyers.com>).<sup>3</sup> Core Knowledge automatically grades each answer and provides feedback to students (similar to Core Grammar) to reinforce basic research concepts. Next, students complete interactive research exercises that cover common law and statutory issues. These exercises help students navigate the research process on Westlaw and Lexis Advance through many screen captures.<sup>4</sup> During class, I discuss the commonly-missed questions and answer their questions. Last, students must apply their research skills to the open memo problem—once again, with guidance from me.

## PURPOSE OF ONLINE RESEARCH EXAM

Despite those formative assessments, I wanted a higher degree of confidence that my students could “fly the research nest” and answer a legal question on an unfamiliar issue. To that end, I created an online research exam that my students took in Fall 2019. I had one primary purpose: determine whether my students could find—and understand—relevant statutes and interpretive cases without guidance from me.

## CONTENT OF ONLINE RESEARCH EXAM

For my research exam, students resolved a client’s legal question using Westlaw or Lexis Advance; they did not simply answer questions on research concepts (e.g., What is KeyCite?). Students researched state statutes and updated them, which involved confirming their validity, checking effective dates, and reviewing amendments. They also found cases that had interpreted the statutes. Last, students synthesized the relevant rules of law and predicted the client’s likelihood of success.

The research exam assessed those skills through twelve questions that were based on the same hypothetical fact pattern. While most of the exam consisted of multiple-choice questions, it included a few fill-in-the blank questions. I assigned different points to the questions based on their difficulty level. The following are two questions from the exam:

1. Carefully read the hypothetical below about your client, Mr. Dorn. In the blank below the hypothetical, identify the statute that the driver will most likely rely on in bringing a claim against your client for the driver’s injuries. Write just the section number, such as this: 999.99. Do not cite more than one statute.<sup>5</sup>  
.....
2. Retrieve Fla. Stat. Ann. § xxx.xx.<sup>6</sup> When did the most recent amendment become effective?
  - A. 1949
  - B. 1992
  - C. 1999
  - D. 2019  
.....

The final question was the sole open-ended question. It required students to follow CRAC principles (Conclusion-Rule-Application-Conclusion) and write a few paragraphs to predict whether the client would prevail.

The hypothetical and all legal issues were unrelated to the open memo problem. As a result, students had to research completely unfamiliar legal issues—like they will do at their summer jobs. Professors, however, could assign a similar legal issue from the open memo but require students to research the law of a different jurisdiction.

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*A key benefit of placing a research exam online is that professors can include questions that build upon prior ones, allowing them to assess students’ understanding of different steps of the research process.*

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## DELIVERY FORMAT OF ONLINE RESEARCH EXAM

Students electronically completed my research exam directly on The West Education Network (TWEN), which is my course management system. I had students take the exam outside of the classroom, so they would not be limited to our eighty-minute class periods. Students needed the extra time to discern the relevant from the irrelevant authorities, as well as more time to analyze the application of law to the client’s situation.

Students had a three-day window to start the research exam; once started, they had three continuous hours to answer all twelve questions. A student, for example, could not view the hypothetical and first question and return four hours later. The timer on TWEN started “ticking” after students clicked “Begin.” Because students can read the instructions for the exam before clicking “Begin,” a professor should not include the hypothetical in the instructions; instead, the professor should identify the hypothetical in the first question, which appears after the timer has been triggered.

Because some questions provided the answers to prior ones (as explained below), I established certain limits. Using TWEN’s advanced options, I prevented students from downloading the exam and viewing any subsequent question until they had answered the question on their screen (called “sequential quizzing”). I also had TWEN grade the first selected answer for each question so a student could not change a prior answer based on what the student learned from later questions. If any question relied on a fact from the initial hypothetical, I reproduced the fact pattern within the question.<sup>7</sup>

Other course management systems could be as effective as TWEN—or even more effective. Blackboard and Canvas, for instance, have similar features as TWEN. In Fall 2020, my students will complete the research exam on Carolina Academic Press’s platform, Core Knowledge for Lawyers. That platform allows professors to generate reports summarizing the performance of individual students and the entire class for each question.

## GRADING THE RESEARCH EXAM

Grading the research exam was fairly easy. TWEN automatically graded the multiple-choice and fill-in-the-blank questions. As to the final open-ended question, I could mark the answer correct or incorrect or assign partial credit and then TWEN tallied the student’s score for all questions. After grading all the open-ended questions, I “released” the students’ grades, allowing them to view their individual scores on their TWEN account.<sup>8</sup>

A handful of students reported technological problems with the first two fill-in-the-blank questions. They stated that the first fill-in-the-blank question repeated itself, so that question two was the same as question one on their screen. I was unable to reproduce the issue. Nonetheless, I marked question two correct for all students, as TWEN allowed me to mark an answer correct that the system previously recorded as incorrect.

## BENEFITS OF AN ONLINE RESEARCH EXAM

A key benefit of placing a research exam online is that professors can include questions that build upon prior ones, allowing them to assess students’ understanding of different steps of the research process. For example, suppose a student found the wrong statutes in response to an initial question on my exam. I could still assess whether the student understood how to update the statutes by identifying the correct statutes in subsequent questions and asking about the statutes’ validity and effective dates. Because each question is immediately graded, the students could not use this information unfairly and change their prior answers.

Professors and students benefit from an online research exam in many other ways, such as the following:

- Professors can assess students without giving up an in-person class meeting.
- Professors who assign the exam in lieu of an in-person class meetings<sup>9</sup> could free up an entire week of classes and have more time to provide written feedback on students’ draft memos.
- Professors can ascertain whether students have learned how to do “real” legal research.
- Students receive their exam grade immediately upon completion (if exam did not contain open-ended questions).
- Students discover any weak research skills before the deadline of the open memo.
- Students gain confidence in researching on their own and learn skills that can be applied to the open memo problem.

## POTENTIAL PROBLEMS AND SOLUTIONS

Despite the advantages of an online research exam, professors and students may face a few obstacles. This section identifies some obstacles—and offers solutions.<sup>10</sup>

First, professors cannot physically prevent students from cheating and working together on an exam taken outside of class. But the same is true for other graded assignments in which instructors have implemented a “no-discussion” policy, such as an open research memorandum. An effective approach to minimize cheating is to educate students on the resulting penalties. In class, through email, and in the exam instructions, professors should remind students that discussing the research exam with other students would violate the school’s honor code and result in a zero on the exam.

Second, for exams with fill-in-the-blank questions, a student could write the correct answer but do so in a way that the answer is marked incorrect. Professors need to consider the many different ways a student could complete a blank and list the variations in the answer choices on the course management system. In addition, professors should



provide specific guidance on the expected format for an answer. To illustrate, I included the following guidance for a fill-in-the-blank question: “If no statute applies, write this: none. If one statute applies, then write just the section number, such as this: 999.99. Do not cite more than one statute.”

Third, students may accidentally submit an answer or submit the entire exam before answering all questions. To minimize mistakes, professors can create a practice test, so students can experience taking an online exam on the same platform they will use for the real exam. Additionally, professors may provide detailed instructions on the research exam that students could read before triggering the timer. Here are two examples: “Once you click the ‘Begin’ icon, the timer will start. Further, after you click ‘Submit Question,’ you cannot change your answer to that question.”

Fourth, a student’s computer or internet could stop working during the research exam, preventing the student from completing the exam before the expiration of time. Professors should inform students that technological problems will not be excused and that students need a back-up plan. Students, for instance, could take the exam on campus or have predetermined an alternative location with reliable internet. Professors could give students more time than necessary to complete the exam to preempt those potential issues. With a one-hour “buffer,” students would have time to travel to a new location to finish the exam.<sup>11</sup>

## CONCLUSION

An online research exam is a good assessment tool for first-year and upper-level students. It could be assigned in an integrated research and writing course or in a stand-alone research class. If you would

like a copy of my research exam, please email at [evoigt@faulkner.edu](mailto:evoigt@faulkner.edu). And please contact me if you need assistance with setting up your research exam on TWEN.

### NOTES

1. Eric Voigt teaches legal research and writing at Faulkner University, Jones School of Law. Professor Voigt has authored *Legal Research Demystified*, which breaks down the research process into detailed steps for common law and statutory issues. He has authored CALL lessons and articles on lawyering skills.
2. Eric P. Voigt, *Legal Research Demystified: A Step-by-Step Approach* (Carolina Academic Press 2019).
3. Students who purchase *Legal Research Demystified* receive an access code to Core Knowledge.
4. By late Spring 2020, students will have the option to complete four research exercises electronically on Core Knowledge. They include one Westlaw exercise on common law issues, one Lexis exercise on common law issues, one Westlaw exercise on statutory issues, and one Lexis exercise on statutory issues. Core Knowledge will automatically grade each answer and provide an explanation—similar to what Core Grammar does.
5. I am not reproducing the hypothetical here because I plan to re-use this research exam.
6. The actual question in the exam cites the relevant statute.
7. TWEN has several resources to help professors create quizzes and manage a grade book. They are located at <https://lawschool.westlaw.com/marketing/display/si/1>.
8. To release grades, click on the name of your research exam (under “Assignments & Quizzes”), select “Grade Quiz,” and then scroll to the end and click “Release Grades.” Students have immediate access to the grade.
9. Under Standard 306, professors may deliver one-third or less of a course online, and the course is not a “distance education course.” See *American Bar Association 2018-19 Standards and Rules of Procedure for Approval of Law Schools* 19 (Standard 306(a)) (2018) (“A distance education course is one in which students are separated from the faculty member or each other for more than one-third of the instruction. . .”).
10. I would like to thank Kenneth R. Swift of University of Houston Law Center. He provided helpful ideas for this section.
11. TWEN allows a student to return to the same question, even if the browser was closed.



# Not All Errors Are Created Equal: Tailoring Feedback to Meet Student Needs<sup>1</sup>



Alissa J. Hartig  
*Assistant Professor, Portland State University*

As someone with a background in Teaching English to Speakers of Other Languages (TESOL), I am often asked how to address grammar errors in writing by multilingual students. Students who have learned English as a second or foreign language often make different kinds of grammar errors than those produced by monolingual English speakers. Students who have learned English primarily in a classroom setting often have more knowledge of grammar terminology than their peers who grew up speaking English, but they often have less of an intuitive sense of what “sounds right.” For these reasons and more, the kinds of support that are most effective for multilingual writers often differ from techniques that work well for monolingual English speakers. There is no single, quick and easy approach, however, and deciding on a strategy for helping students improve their grammatical accuracy depends in part on determining what the source of an error is.

Imagine that you have two international students who are writing about the same client problem. Both are multilingual writers who have learned English as an additional language. In both papers, you notice the same grammar error in the main verb of the sentence:

“A structure considered a dwelling house when the occupants intend to return.”<sup>2</sup>

In this sentence, it seems that the student intended to use a passive construction involving the verb “considered” but omitted the auxiliary verb “be.” Where did this error come from? Given that a sentence like this is likely to be common across multiple student papers on the same client problem, let’s give the students the benefit of the doubt and assume that there is no plagiarism involved here. If both students come from similar first language backgrounds, it could be the result of translating a grammar structure from one language into the other. It’s also possible that this error has little in common with either student’s first language and that the error instead reflects a misunderstanding of an English grammar rule or difficulty with applying the rule in context.



Now, let's imagine that each of these students has set up an individual meeting with you to discuss their memo. When the first student comes in, you ask them to take another look at the sentence, and the following dialogue unfolds:

### Dialogue with Student 1

*Writing Specialist:* Take another look at this sentence.

*Student 1:* (silence)

*Writing Specialist:* "A structure *considered*..."?

*Student 1:* Yes. In this case, the structure considered a dwelling house.

*Writing Specialist:* Think about the verb here.

*Student 1:* "A structure considering"?

*Writing Specialist:* Well, "considered" is okay, but remember that we need a "be" verb here too.

*Student 1:* "A structure is considering"?

At the end of this exchange, it's clear that the student still needs additional explanation in order to understand how to revise the sentence. Now, let's look at what happens when the second student comes in:

### Dialogue with Student 2

*Writing Specialist:* Take another look at this sentence.

*Student 2:* Oh. Sorry. "A structure *is* considered."

Despite the fact that both students have produced exactly the same error, the source of this error is different in the two cases. While Student 1 will likely need additional instruction in order to understand how to form and use the passive voice, Student 2 seems to need little more than a reminder to proofread.

Some scholars in second language acquisition make a distinction between "errors" and "mistakes,"<sup>3</sup> and this can be a good starting place for thinking about what the source of an error is and how to address it. For those who make the distinction, an error refers to an incorrect form caused by a gap in the student's linguistic knowledge or difficulty with putting a grammar rule into practice. A mistake, on the other hand, is an accidental incorrect form that comes from inattention rather than a lack of underlying knowledge. In the examples above, the incorrect form in Student 1's text would be an error, while the one in Student 2's text would be a mistake.

The distinction between errors and mistakes has implications for the kinds of feedback that will both be useful to the student and serve as an efficient use of the professor's time. Simply marking the error in Student 1's paper may leave them no wiser as to how to correct it, while providing detailed feedback on the mistake in Student 2's paper would be unnecessary. How can a legal writing professor decide which approach to use when the problem looks the same on the page?



## IS IT WORTH GIVING FEEDBACK ON GRAMMAR IN THE FIRST PLACE?

Before considering how best to provide feedback on language, it's worth asking whether there's any point in doing it at all. Research on the effectiveness of written corrective feedback consistently shows that students who receive such feedback improve their grammatical accuracy significantly more than students who do not receive such feedback.<sup>4</sup> Most writing faculty likely feel that this is common sense, but given some of the arguments that have been made against providing such feedback<sup>5</sup> and the time that it takes to provide it, it's worth noting that teachers' intuitions are supported by research. A recent synthesis of 40 years of research in second language acquisition comparing incidental, immersion-based learning to instruction that is intentionally designed to draw students' attention to linguistic form provides robust support for the benefits of an intentional instructional focus on language.<sup>6</sup> While some have argued that immersion alone is enough for students to become more fluent, research in second language acquisition shows that this is perhaps the least efficient way for students to become more accurate in their use of grammar. The majority of students will not be able to identify gaps in their linguistic knowledge without clear evidence of what they are getting wrong.

Students at all levels of language proficiency make mistakes when they don't have enough time (or haven't budgeted enough time) to plan or complete their written assignments; when the majority of their attention is focused on another aspect of an assignment, such as the content of the arguments they're making; or when they don't subsequently revise their writing. For out-of-class assignments, these students will typically be able to improve the grammatical accuracy of their texts on their own if they are able to allocate enough time for drafting and revising. In contexts with strict time constraints, such as timed exams, it is unrealistic to expect a high degree of grammatical accuracy. Likewise, when students are working through complex arguments or dealing with difficult content, simply giving them structured opportunities to revise their writing after submitting an initial draft will go a long way in allowing students to improve the grammatical accuracy of their texts, even without giving more detailed feedback.

For students who are making consistent errors, though, the kinds of support described above will go only so far. If they don't realize that they're making errors in the first place or they don't have a good sense of how to address them systematically, students are likely to persist in making the same errors in their writing. If there are a number of different kinds of errors in a student's text, which ones should you provide feedback on? How will you know whether these are errors or just mistakes? What forms of feedback are most effective for addressing errors?





## PRINCIPLES AND STRATEGIES FOR GIVING FEEDBACK ON LANGUAGE ERRORS

Scholarship in second language writing and second language acquisition offers some guidance for addressing errors. Existing research suggests that there is no single one-size-fits-all approach that will work best for every student with every language feature in every context,<sup>7</sup> but scholars in these areas do offer some pedagogical recommendations. There is support for using focused feedback, for example, which targets a limited number of error patterns rather than marking every error in the student's text.<sup>8</sup> Focused feedback can be particularly effective for students who struggle with a wide range of grammatical issues or who are in the early stages of an assignment. Focused feedback on early drafts of a student's paper allows the instructor to address patterns that are likely to be relevant to the student even if the content of their writing changes significantly in subsequent drafts. The choice of which errors to focus on can be based on several factors<sup>9</sup>:

- How frequently does the error appear in the student's writing?
- How much does the error affect intelligibility?
- Does the error create the potential for legal ambiguity even if it is intelligible?
- Is the error likely to negatively impact the student's credibility with their target audience?<sup>10</sup>

With more proficient students or on a semi-final or final draft of an assignment, comprehensive feedback can also be helpful, though students are more likely to engage with instructor feedback when they still have an opportunity to revise.<sup>11</sup>

The form of feedback matters as well. There is support for relying primarily on indirect feedback,<sup>12</sup> which is the term used to describe feedback that requires the student to ultimately provide the correct form rather than providing the corrected version to the student. Indirect feedback has been shown to be especially helpful for writers' long-term development and can include approaches ranging from highlighting errors without further commentary to labelling specific categories of errors (e.g., verb tense, articles). Although it can be hard to resist the urge to provide the correct answer, allowing the student to work through the correction, whether in an individual writing conference or on their own, may be more beneficial in the long run.

Indirect feedback can take more or less explicit forms, and the decision for which form is likely to be most effective depends in part on the nature of the error and the likelihood that the student will be able to self-correct. Many common structural errors are part of the process of learning a language. There is evidence in second language acquisition research that learners tend to master common grammar structures in a relatively predictable order.<sup>13</sup> While this can vary, many learners of English go through a stage where they omit past tense verb morphology (like the -"ed" at the end of regular verbs) or the final -"s" on third-person singular verb conjugations, for example. Students may be fully aware of what the rule is in each case, but it may not always come automatically. Drawing students' attention to these kinds of features more implicitly through highlighting, error logs, or self-directed practice exercises can help them become more aware of and better internalize these rules. In many cases, no further explanation is necessary for straightforward structural rules like these.



In other cases, students may have more trouble with the meaning or use of a grammatical feature than they do with its form. Definite and indefinite articles in English can be particularly daunting for students who speak languages that do not use these features, such as Korean and Mandarin. Despite many useful rules of thumb provided in writing manuals and textbooks,<sup>14</sup> the use of the definite article in English is more complex than most pedagogical materials can fully capture. Any student who has passed the TOEFL exam with a score high enough to get into a U.S. law school will have studied articles repeatedly throughout their English language coursework, and many would likely be able to summarize the rules that are commonly provided in English textbooks. Knowing these rules is different from applying them in context, however, and students will likely need more explanation to understand how the rules apply to their own texts. Students who consistently struggle with these features will benefit most from grammar explanations that relate directly to the assignments they're working on. Other common grammatical features that rely more on meaning distinctions than simple structural rules include the distinction between the simple past (*went*) and present perfect (*has gone*), the use of prepositions, the choice of tense and modals in conditional constructions (e.g., "If the case goes to trial, a jury *will* likely find..." vs. "If the case *went* to trial, a jury *would* likely find..."), and the placement of adverbials within a clause (e.g., "the defendant *only* touched the victim" vs. "*only* the defendant touched the victim" vs. "the defendant touched *only* the victim").

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*An error-free text isn't necessarily a well-written text, and the more linguistic options students are aware of, the more tools they have for expressing the meanings that they want to convey.*

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As we saw with Students 1 and 2 above, mistakes and errors often look identical on the page. One strategy for dealing with this is to start with more implicit forms of indirect feedback, like highlighting the language that needs to be changed, and then encouraging the student to attempt to correct these issues on their own before meeting with you or a writing specialist individually. In an individual meeting with the student, it is then possible to determine what the student's understanding of a particular grammar feature is by asking them to explain their corrections and moving gradually from implicit to more and more explicit feedback for additional errors until the student is able to correct them on their own. This approach of moving from implicit to explicit feedback is known as dynamic assessment,<sup>15</sup> and it's based on the idea that instruction needs to be calibrated to take into account the student's current level of understanding as well as where they're ready to go next. There's no point in taking the time to explain something to a student in depth if they're already able to self-correct with minimal intervention. Likewise, a student who can't self-correct after a detailed explanation may still need support in other areas before a specific grammar feature will make sense. In Student 1's case, for example, they may need some substantial work with reviewing differences between more familiar verb forms before they're ready to look more closely at the



differences in meaning between the passive and active voice. Dynamic assessment allows an instructor to see what the student can do without assistance as well as exactly how much support the student needs in order to be successful with a particular grammar feature. This kind of diagnostic allows an instructor to offer feedback that will push the student to work at the upper limits of their capabilities, where they're most likely to grow.

While being able to self-correct in this kind of one-on-one tutoring interaction doesn't mean that a student will never make a mistake again, it does help model the decision making process underlying the use of linguistic features. Language learning takes time, and it is often a non-linear, unstable process. Just because an error has been explained or marked or practiced doesn't automatically mean that it has been fully internalized by the student or incorporated into their mental grammar. Students who begin the academic year struggling with a wide variety of linguistic features will not be able to eradicate every error by the end of the year, much less by the end of a single course. They may, however, be able to develop self-editing strategies to help them attend to the language structures that are difficult for them and to gain more control over their ability to convey their intended meanings.

## SUPPORTING LANGUAGE DEVELOPMENT BEYOND ERROR CORRECTION

Giving feedback on errors is an important part of helping students improve their writing, but this isn't the only way to help students learn to use language more effectively. After all, an error-free text isn't necessarily a well-written text, and the more linguistic options students are aware of, the more tools they have for expressing the meanings that they want to convey. Noticing activities<sup>16</sup> are one proactive way to help students expand the range of linguistic options that they have, and the St. John's Legal English blog,<sup>17</sup> which includes posts by faculty with training in both law and TESOL, offers a number of ideas for such activities. Publications by other legal writing faculty with training in applied linguistics offer additional ideas, such as techniques for teaching students how to make their writing more cohesive.<sup>18</sup>

At an advanced level, the linguistic choices that students make are often less about correctness than emphasis. When there isn't a single correct answer, students need to be able to recognize the nuances that each option conveys. Showing students how they can fine tune the meanings that they are trying to express in their own writing can be a powerful tool for demonstrating that these differences matter.

Developing grammatical accuracy and dexterity takes time, but tailored support can help accelerate this process for students. Knowing how to respond to errors effectively depends on variables ranging from the source of the error, the nature of the grammatical feature involved, the student's level of proficiency and grammatical awareness, and the stage in the writing process in which the writing was produced, among other considerations. Writing specialists are uniquely well positioned to provide such support, but all writing faculty can help foster students' language development by helping them recognize patterns of error in their writing.



## NOTES

1. A version of this article was presented as a plenary session at the Global Legal Skills Conference at the Sandra Day O'Connor College of Law at Arizona State University on December 13, 2019.
2. Example based on materials for a West Virginia burglary problem for a closed office memo developed by David Krech and available from the Legal Writing Institute Resource Bank (Retrieved from <https://www.lwionline.org/resources/teaching-materials> on December 31, 2019).
3. S. P. Corder, *The Significance of Learner's Errors*, 5 INT'L REVIEW OF APPLIED LINGUISTICS IN LANGUAGE TEACHING 161 (1967).
4. For an overview, see JOHN BITCHENER & NEOMY STORCH, WRITTEN CORRECTIVE FEEDBACK FOR L2 DEVELOPMENT (2016); DANA R. FERRIS & JOHN S. HEDGCOCK, TEACHING L2 COMPOSITION: PURPOSE, PROCESS, AND PRACTICE (2014); and Jane Russell & Nina Spada, *The Effectiveness of Corrective Feedback for the Acquisition of L2 Grammar*, in SYNTHESIZING RESEARCH ON LANGUAGE LEARNING AND TEACHING 133 (John M. Norris & Lourdes Ortega eds., 2006).
5. John Truscott, *The Case Against Grammar Correction in L2 Writing Classes*, 46 LANGUAGE LEARNING 327 (1996).
6. Hossein Nassaji, *Research Timeline: Form-Focused Instruction and Second Language Acquisition*, 49 LANGUAGE TEACHING 35 (2016).
7. See Bitchener & Storch, *supra* note 2.
8. Marie Yeo, *When Less May Be More: Rethinking Teachers' Written Corrective Feedback Practices: Interview with Icy Lee*, 49 RELC J. 257 (2018).
9. Ferris & Hedgcock, *supra* note 2.
10. While students need to be aware of how readers may react to a particular use of language, it's also worth considering the potential biases that readers bring with them and students' right to choose not to accommodate those biases.
11. Ferris & Hedgcock, *supra* note 2.
12. Ferris & Hedgcock, *supra* note 2. *But cf.* Bitchener and Storch, *supra* note 2.
13. Manfred Pienemann & Anke Lenzen, *Processability Theory*, in THEORIES IN SECOND LANGUAGE ACQUISITION: AN INTRODUCTION 159 (Bill Van Patten & Jessica Williams eds., 2015).
14. *E.g.*, ANNE ENQUIST, LAUREL CURRIE OATES, & JEREMY FRANCIS, JUST WRITING: GRAMMAR, PUNCTUATION, AND STYLE FOR THE LEGAL WRITER (5th ed. 2017).
15. MATTHEW E. POEHNER, DYNAMIC ASSESSMENT: A VYGOTSKIAN APPROACH TO UNDERSTANDING AND PROMOTING SECOND LANGUAGE DEVELOPMENT (2008).
16. See Richard W. Schmidt, *The Role of Consciousness in Second Language Learning*, 11 APPLIED LINGUISTICS 129 (1990) for an introduction to the noticing hypothesis in second language acquisition. For applications of this concept to legal writing instruction for multilingual students, see Stephen Horowitz's webinar, "The Power of Noticing in Teaching Legal Writing to LLMs," from the Global Legal Writing Skills webinar series archived on Michigan State University website: <http://www.law.msu.edu/glws/>.
17. THE ST. JOHN'S LEGAL ENGLISH BLOG, <https://stjohnslegalenglish.com> (last visited Nov. 1, 2019).
18. Elizabeth R. Baldwin, *Beyond Contrastive Rhetoric: Helping International Lawyers Use Cohesive Devices in U.S. Legal Writing*, 26 FLA. J. OF INT'L L. 399 (2014).



# Achieving Writing Independence: Students Diagnose and Edit Their Own Work



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As legal writing professors, we strive to provide guidance to new law students on their written work product. This guidance can take many forms, but we usually provide written comments on memos, briefs and other writing assignments. The comments are designed to help these students write better sentences, structure better arguments and form stronger conclusions. However, we will not follow students into the real world and so, at some point, students must work toward achieving writing independence. Instead of our law students learning this much-needed skill on the job, legal writing professors can help their students work toward independence with a carefully crafted assignment that have the students, not the professor, diagnose their writing assignments' weaknesses and then improve upon the piece.

## GIVE THEM SOME GUIDANCE WITH A STRUCTURED ASSIGNMENT

Two years ago, I created an assignment that had first year law students diagnose and correct the weakest part of their legal briefs. I assigned this task in the middle of the second semester of a full year course, when the students just submitted the final draft of a brief in support of a motion for summary judgment. The assignment required the students to: 1) diagnose the weakest argument/section in their brief; and 2) use Word's track changes to make substantive and grammatical edits. Sample instructions for the assignment are set forth in Appendix A.

Out of a six to eight page argument section, the students selected a particular section of their brief for revision and then explained why they chose this particular section. To help them identify their weakest section, I asked the students to look at each part of their argument and determine whether it adequately followed the CREAC structure for small-scale organization.<sup>1</sup> I suggested that the students highlight in specific colors the different parts of their argument using CREAC.<sup>2</sup> I had the students highlight their conclusions in red, rule in blue, explanations of the rule in yellow and analysis in purple and/or green.<sup>3</sup> If a student, for example, highlighted the various parts of his or her argument section and noticed one section did not have any highlights in yellow, or struggled to determine which color to use, or found

that the colors appeared in the wrong order, he or she may consider revising that part of their argument and provide a greater explanation of the rule.

Once the students selected their weakest argument, they then revised that argument using Word's track changes feature. By using track changes, both the student and I could easily see the original version and then the edited version and what types of changes were made. I then met with each student to discuss his or her choices and subsequent edits.

## TIMING IS EVERYTHING

The self-editing assignment must be timed properly in order to achieve maximum results. This assignment works best when given in the second semester of a full-year course or in an advanced legal writing course. This gives students time to develop at least the basic skills of both legal writing and editing and to be exposed to a professor's edits.

I give students this assignment after they have had six months of legal research and writing with them submitting four written assignments including two legal memoranda. Prior to the student-driven edits, I provided the students with a variety of individualized feedback on their written work, including margin and end comments.<sup>4</sup> I also met with each student individually at least once to discuss his or her written work.

The students diagnose and revise a part of their finished work product, not a draft. Students are graded on this final work product prior to any edits, which amounts to about 30% of their final grade in the class. Students are also graded on the self-editing assignment, which includes identifying their weakest argument, highlighting that weak argument and making subsequent edits. The self-editing assignment is worth about 5% of their final grade in the class. When grading the editing assignment, I looked at three areas. First, I looked at whether the student selected one of the weakest areas of his or her argument section. Since the students submitted a final draft of their brief, which I comment and grade prior to reviewing this assignment, I look to see if they chose one of the sections I perceived to be their weakest. Second, I examine whether the students accurately highlighted the various parts of their argument section. And finally, I look to see if the students made marked improvements in those areas they chose to revise.

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*These students learned that they needed to confront, not ignore, the most significant weaknesses in their writing or analysis.*

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## COMFORT IN BEING CRITICAL

It goes without saying that students have difficulty editing their own work.<sup>5</sup> Even with a full semester of legal writing under their belt, students will struggle to strike a particular sentence and will rarely throw out an entire paragraph.<sup>6</sup> For this self-guided assignment to be successful, students must be more comfortable with being critical of their work. To help with this key skill, legal writing professors may want to provide a few structured peer-editing assignments.<sup>7</sup> For example, I provide my students with two to three structured peer-editing assignments in advance of the self-editing assignment. In these peer reviews, the students are asked to offer one positive substantive comment, one constructive comment and one revision of a sentence. My teaching associates and I review these comments and encourage and coach students to be both supportive and critical of their peers' work.<sup>8</sup> With each peer review, even first year law students learn to look critically at their peers' writing with the goal of developing a more critical eye to their own work.

## ENCOURAGING RESULTS

I have offered this assignment for the past two years and the results are encouraging. Most students were able to diagnose a weak area of their brief for revision.<sup>9</sup> And practically every student improved his or her writing, analysis or research without my feedback. As one might expect, some students successfully identified the weakest area of their brief while other students struggled to do so. Interestingly, a number of my students who generally struggled in the course chose their strongest brief section to revise. When I met with these students to discuss their choice, we had a productive discussion on their

selection. Some of these students explained to me that editing their weakest section proved either too daunting or confusing, so they chose a section they were more comfortable revising. At a minimum, these students learned that they needed to confront, not ignore, the most significant weaknesses in their writing or analysis. For me, I learned that this assignment has its limits and may not work for students who need to completely revamp a part of their argument. However, for most of my students this assignment is a good first step toward writing independence.

#### NOTES

1. While I used CREAC (Conclusion, Rule, Explanation, Analysis, Conclusion), legal writing professors can design a diagnosis tool that works best for their teaching method. See Gerald Lebovits, *Cracking the Code to Writing Legal Arguments: From IRAC to CRARC to Combinations in Between*, 82 NYSBA 64 (July/August 2010).
2. See Mary Beth Beazley, *The Self-Graded Draft: Teaching Students to Revise Using Guided Self-Critique*, 3 LEGAL WRITING J. 175, 182 (1997). Professor Beazley explains when a student physically marks different parts of his or her written work, he or she is forced to “perceive the message that he or she *actually wrote*, instead of the message that he or she *intended to write*.” *Id.* (Emphasis in original).
3. See Appendix A. The students highlight their case law descriptions in green and analogize or distinguish the case in purple.
4. See Anne Enquist, *Critiquing Law Students' Writing: What the Students Say is Effective*, 2 LEGAL WRITING: J. LEGAL WRITING INST. 145 (1996).
5. See Patricia Grande Montana, *Better Revision: Encouraging Student Writers to See Through the Eyes of the Reader*, 14 LEGAL WRITING INST. 291-92 (2008).
6. *Id.* at 293-94.
7. See Cassandra L. Hill, *Peer Editing: A Comprehensive Pedagogical Approach to Maximize Assessment Opportunities, Integrate Collaborative Learning, and Achieve Desired Outcomes*, 11 NEV. L. J. 667 (2011).
8. I ask two of my teaching associates to assist me in class on peer review days. Before a student may return his or her comments to a classmate, either one of my teaching associates or I will review the student's comments, edits and suggestions. If we do not believe the student has provided enough feedback, we will suggest to the student that he or she provide some additional feedback such as rewriting a sentence.
9. See Appendix B for Student Sample

# Appendix A

## SAMPLE SELF-EDITING CRITIQUE ASSIGNMENT AND GUIDELINES

Name:

### Self-Editing Critique

You will select one section of the brief to rewrite. That section should be no longer than 1.5 pages and preferably about a page or less. You cannot pick your Statement of the Case section, summary judgment standard section or umbrella paragraphs. You should select one of your arguments from one of your subheadings. Please answer and do the following:

1. **Please tell me which section you selected to self-edit and why. [WRITE YOUR ANSWER IN BOLD]**
2. **USING CREAC–PLEASE DO THE FOLLOWING: Please go through the section and label and highlight:**
  - a. Conclusion section (Red)
  - b. Rule section (Blue)
  - c. Explanation of the rule (Yellow)
  - d. Analysis –
    - i. Explanatory parentheticals or description of a case (Green)
    - ii. Analogize or distinguish case – (Purple)
  - e. Conclusion (Red)
3. **Now go and pick two areas to improve upon substantively (example: R and A). Please tell me here which two areas you will work on and why:**
  - a. First area: **[WRITE YOUR ANSWER IN BOLD]**
  - b. Second area: **[WRITE YOUR ANSWER IN BOLD]**
4. **Now rewrite those two selected areas (use the track changes feature on word)**
5. **Please go back and check each sentence for and make corrections:**
  - a. Persuasive tone
  - b. Written in active voice
  - c. Shorten sentences to 30 words or less.
6. **Don't forget to make sure your theory of the case is evident here.**
7. **Please use TRACK CHANGES in word for sections 4 and 5 so I can easily see the sentences, phrases and words you have edited.**



# Appendix B

## STUDENT SAMPLE

E. Parties' Marks Have Different Graphic Designs, Font Details, And Coloring On Their Packaging With The Homophone Having A Drastically Different Definition With Zing's Mark Which Contain Descriptive Words and Phrases That Create A Different Overall Impression.

Similarity of the mark is determined by comparing the whole mark and the impressions it creates in consumers, rather than specific features. John Harland, 711 F.2d 966, 975. In this determination, appearance, sound and meaning of the marks, and the manner in which the marks are used are compared. Id., at 976. However, the focus should be placed upon non-generic words, as generic words such as "bar" may be used by anyone. Id. Use of the same words in marks do not mean they are inherently similar. Freedom Sav., 757 F.2d at 1183. where the court

determined that even where the word "Freedom" was the dominant word in both marks, it did not mean the two marks were automatically similar. As in Freedom Savings, the words "bond" and "two" in both marks should only trigger a further analysis into the other aspects of the overall impression. The overall impression of the parties' products are entirely dissimilar. Zing's

font, font size, font coloring, and background coloring are all distinct from Fore's which a consumer would likely see as being consistent in the same company. Important to the overall distinct impression of Zing's mark is the word "always" in "Good 4 You always" and the centered placement of "4 Ingredient Gluten-Free Bar". These are primary aspects of Zing's

product, and a focus in the mark, while Fore mark has little focus on the words "energy bar". While both products make use of a graphic design, the graphic further distinguishes the products in overall impression. Zing's design is cartoonish and anthropomorphized with rounded edges. Fore's is a defined, more realistic drawing with sharp lines on the picture and "r" and "e" of "fore". These differences would likely make a customer believe two different companies

designed such distinct graphics with divergent thematic impressions.

Deleted: ing Other

Deleted: Which

Deleted: give

Deleted: which may resemble another

Deleted: |

Deleted: The appearance of parties' products are dissimilar in their overall impression

Deleted: which makes it distinct

Deleted: a

Deleted: |

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More importance is placed on word definitions than their sound, even when they sound similar. See Fla. Int'l, 830 F.3d at 1260, where the court determined that the drastically different definitions of "international" and "national" distinguished the words enough despite their similar sound. In context, the definitions of "4" and "fore" are drastically different. Zing's "4" defines an amount enforcing the number of ingredients placed in its nutritional bar, and is primary to their product and mark. Fore's "fore" defines a golf term enforcing the sport purpose for its energy bar. In Florida Int'l, the lack of relation between these two definitions would likely cause a consumer to see those as pivotal for overall impression. These facts show no genuine issue in dispute regarding the similarity of the marks.

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# Escape the Ordinary: How to Close Out Your Semester with a Challenging "Escape Room" Competition



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Increasingly, law school educators are using game-based learning to foster teamwork, critical thinking, problem solving, and improved communication in students. Escape rooms, which have become popular among the general public in recent years, offer a unique opportunity to engage students with a challenging, yet fun, learning experience. For the uninitiated, an “escape room” is a live game where teams of two to twelve players are “locked” in a room or suite of rooms and have to work together to discover clues, solve puzzles, and complete tasks to accomplish a specific goal in a limited amount of time. When the goal is achieved, the players have “escaped.”<sup>2</sup>

At the University of Arizona College of Law, our annual escape room for 1L students serves as a dual-learning experience because it also satisfies a major project requirement for the program’s upper-level teaching assistants. These Writing Fellows are responsible designing the escape room and creating the various puzzles (based on the 1L legal writing curriculum) that have to be solved for a team to “escape.” They also take turns serving as “game masters” who oversee the room and provide competing teams official hints if necessary.

The competition takes place at the end of the fall semester, in one of the law school’s moot courtrooms, which provides the setting for the “back story.” We divide the 1L class into teams of four to six students, and over a three day period, each team has one hour to “escape” the room by using the skills the students learned over the semester. The teams are given a specific goal that they must complete to “escape” the room. To accomplish that goal, the team must complete a series of puzzles and tasks. The team that escapes in the least amount of time wins the competition and there are prizes for the first, second, and third-place finishers. But because everyone who competes “wins” on some level, all of the competitors are invited the celebratory lunch.

## USING GAMES IN THE CLASSROOM

Using games in the classroom can be an effective strategy for fostering problem solving, motivation, and teamwork<sup>3</sup>—all skills that our students need to be successful lawyers.<sup>4</sup> Indeed, “gamification” has become increasingly popular at all levels of education.<sup>5</sup> It is particularly effective with millennial and Gen Z students, many of whom grew up playing video and online games.<sup>6</sup> The benefits of game-based activities go beyond making class more fun for everyone; they also include physiological and psychological benefits. For example, students engaged in games experience increased norepinephrine, epinephrine, and dopamine in the brain, which not only creates good feelings but make students more receptive to learning.<sup>7</sup> Likewise, games in the classroom can induce what psychologists call “flow”—an immersion in the experience that leads to a heightened state of creativity and performance.<sup>8</sup>

An escape room includes all of the essential elements of a successful game and provides students with immediate feedback.<sup>9</sup> Escape rooms have been used effectively in other areas of higher education. For example, they have been used to instruct nursing and medical students.<sup>10</sup> They have also been used effectively as part of a career preparedness course for undergrads.<sup>11</sup>

If you are interested in taking advantage of all of these “gamification” benefits and helping your students learn these key skills that law schools struggle to teach, consider trading in your traditional end-of-semester review for an escape room. It is not as hard as it sounds, and this article takes you through the process, in 10 relatively easy steps!

### STEP 1: COMMIT AND SHARE THE RESPONSIBILITY

At Arizona, we were inspired to undertake this project after several of us participated in a local escape room with some of our students as part of a fundraiser. At this escape room, we found ourselves in an imaginary jewel thief’s private office and had to solve puzzles and decipher clues to find the plane ticket, cash, and key we needed to “escape.” We had so much fun, that afterwards we almost immediately began thinking about how we might incorporate an escape room concept into our teaching. Several of us had recently

decided to begin using team-based learning in our classrooms, and we liked the idea of having the teams compete against each other in an end-of-semester activity. Initially, the idea was to create it for two of the five writing classes, which would keep it manageable. But as we started talking about the idea, it became clear that all five professors teaching in the 1L class wanted in, so we decided “the more the merrier.” In some ways, that level of commitment meant there was no turning back—we put in on the schedule and made it official!<sup>12</sup>

One of the things that made the project feasible was our decision to share the responsibility with our Writing Fellows. Each Legal Writing class has several upper-level students who earn academic credit for their work as teaching assistants. In past years, their responsibilities included creating an end-of-semester presentation and an in-class activity designed to teach a Legal Writing particular skill or technique. We suggested, and the Writing Fellows enthusiastically agreed, to have the Escape Room satisfy the project requirement. We supervised the project and established deadlines and benchmarks to ensure that plans were progressing, but they had the responsibility of developing a backstory, designing the flow of the room, and creating clues based on the 1L legal writing curriculum.

We found it effective to designate three of the fifteen teaching assistants responsible for the project to serve as the “Creative Team.” The Creative Team took the lead on designing the Escape Room and coordinating the various tasks with the other Writing Fellows. Serving as a member of the Creative Team was strictly voluntary, as the students who did so did not receive any additional class credit; however, they could record the time spent on designing the escape rooms on their individual timesheets so that it counted toward their out-of-class hours requirement. All of the Writing Fellows were responsible for creating the actual clues and puzzles. We assigned each section two clues (for a total of 10 clues) on specific topics from the curriculum to ensure that all of the major skills were covered. Finally, each Writing Fellow was required to supervise four “escapes,” while paired with another teaching assistant.

## STEP 2: PICK A VENUE AND CREATE THE BACKSTORY

To improve the immersive experience for the participants, it is important for escape room to have a theatrical feel. We used the law school moot court appellate courtroom because it not only has a “make believe” feeling but is self-contained, so teams could complete the exercise undisturbed by outside distractions. The Creative Team created a backstory consistent with the venue and had fun taking full advantage of their creative license! The first year we did an Escape Room, it involved a physical altercation between two writing professors that erupted when one of them placed a period outside quotation marks in an email. The assaulted professor sued, but the civil trial was interrupted midstream when a fellow professor who witnessed the assault was conflicted about testifying and attempted to flee the jurisdiction. In 2019, it involved the unexpected discovery of gold ore under the law school and a resulting legal challenge to the University’s title to the land. (Half of the fun of the backstory is that it can completely strain credibility!)

## STEP 3: IDENTIFY THE “KEYS” TO ESCAPE

Once you have the backstory, the next step is to identify the three to four things that competitors have to find in order to “escape.” Our first year, the “keys” were: 1) the witness’s destination; 2) the flight number; and 3) the code to unlock phone so that they could call the airport to stop the plane. In 2019, the students had to find all four pages of a missing Will devising the land to the University. It really can be anything. You just need to make sure to spread the keys throughout the room so that the students have to solve all of the clues or complete all of the puzzles in order to “escape.”

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*Using games in the classroom can be an effective strategy for fostering problem solving, motivation, and teamwork—all skills that our students need to be successful lawyers.*

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## STEP 4: COLLECT PROPS AND LOCKS

Ebay is your friend! One of the most enjoyable parts is letting your imagination run while collecting locks, objects with secret compartments, black-light flashlights, and invisible ink. These items usually can be purchased for very little money (and are reusable in the future), but it is also possible to use things from around the house or office. For example, computers and phones with passwords/codes can unlock clues. The first year, we even hid a Bluebook clue in an old Chapstick tube! The internet is a great resource for escape room ideas.

Moreover, given the limited time-frame of the escape room project, it isn’t a major imposition to press borrowed items into service. Both years I have lent the project an old laptop that I brought from home. After the students, prompted by an “angry” post-it note, organized the unnumbered and scrambled pages of an Office Memorandum into the correct order, highlighted letters revealed the password for the laptop sitting right next to it.<sup>13</sup> Then when they unlocked the laptop, they discovered their next task: an editing exercise that required the students to insert multiple application sections beneath their corresponding rule and explanation sections. Once the students matched the sections correctly, the correct order of the application inserts revealed yet another lock combination.

## STEP 5: DEVELOP THE FLOW OF THE ROOM, THEN ORGANIZE THE CLUES

Fortunately, our Creative Team had some experience with escape rooms and knew to create levels or “rooms” within the courtroom when designing the flow. We ended up with four distinct “rooms” separated by modest barriers (a plastic chain gate with a lock) that teams had to “open” in order to solve the clues and collect the “keys” to escape. Each room had two to three clues that had to be solved.<sup>14</sup> Because our goal was educational, we required each team to solve all of the clues in each room before they could move to the next room. Figuring out lock combinations without doing the underlying legal writing skills work was not rewarded!

Once the areas were defined, the Creative Team arranged the clues. They designated two to three



clues for each room and then notified the Writing Fellows responsible for writing each clue what it needed to unlock or solve for. For example, to get out of the first room, we had a letter lock with the permanent combination of ARYHR. We had the team responsible for a CREAC clue to draft a single-issue legal discussion made up of sentences where the first letter of each sentence spelled ARYHR. We cut those sentences into strips, put the strips in an envelope, and tucked the envelope into the pocket of a jacket hung on the back of a chair. When the students found the envelope, they quickly realized what they needed to do with the sentence strips. Once the students arranged the sentences into CREAC order, they were able to deduce the combination. Some of the other clue/lock combinations we used included a Bluebook rule that the students had to identify to unlock a four-number lock, and two Redbook sections that, when combined, unlocked the phone. The Writing Fellows were very creative in devising the clues and puzzles that would reveal their assigned code.

## STEP 6: INCLUDE DECOYS

It is important to include plenty of decoys among the clues. This can be an important way to flesh out your backstory, as well as a creative outlet. For our backstory of the interrupted trial, we created fictitious exhibit notebooks and deposition transcripts that we scattered among the clues on the counsel tables. For the gallery area, we had fake reporters' notebooks and press credentials. We even repurposed a fake rock with a secret compartment that we had originally intended to house a clue. Not wanting it to "go to waste," we made it a paperweight on the judge's bench. Students would inevitably pick it up and get excited when they discovered the secret compartment. We would watch with baited breath as they opened it up only to find a rolled-up slip of paper tucked inside that said, appropriately, "Psych!"

## STEP 7: BETA TEST

We recruited several former students to beta test the Escape Room a couple of days before the 1L competition was scheduled to start. We were able to identify problems and fine-tune some of the clues. But more than anything, it gave us confidence that it would work!

## STEP 8: HAVE A BACKUP PLAN

Plan for the unexpected. Put together a "first aid" kit of tape, batteries, markers, and extra copies of your clues. Think of everything that could go wrong and develop a backup plan! For us, one of those things meant that my aging home laptop might be slow to wake up and add unearned minutes to a team's score. The room was designed so that once the students solved for the passcode and unlocked the computer, it opened to a screenshot of a Westlaw search result that revealed the flight number (buried in a fictitious case annotation). To be safe, I made a hard copy of the screenshot ready to pull out if a team had the passcode but could not wake the computer. We never had to use it, but just knowing we had it made a big difference.

## STEP 9: CLIPBOARDS, CHECKLISTS, AND RESETS

Another key to success was creating clear instructions for the Writing Fellows who served as the game masters. We had two fellows for each session, and both stayed in the room with the team. One of the Writing Fellows would begin by welcoming the students, reading them the backstory, and going over the official rules.<sup>15</sup> The second fellow would serve as the official room before they moved on. And, both of the Writing Fellows had the list of official "hints" for each clue if a team made an official hint request. Teams were only penalized with additional minutes if they formally requested a hint. Because the Writing Fellows and I were in the room, if a team was struggling or stuck, we had unofficial "nudges" that we would employ at our discretion. For example, one of the clues required students to identify the Bluebook rule that governed an incorrect citation. The rule's three digits would unlock a briefcase sitting on the floor next to the table with the clue on it. If the students read the email asking them to correct the citation and then correctly identified the rule, but weren't sure what to do with the information, one of the Writing Fellows or I would casually wander over and give the briefcase a not-so-subtle kick.

Once a team "escaped" or the hour was up, the Writing Fellows were responsible for resetting the

room for the next session. We prepared a checklist for them to make sure the room was fully reset. We scheduled the sessions one hour and fifteen minutes apart, so there was always time to put things back together before the next team. That also gave us plenty of time to take team pictures!<sup>16</sup>

## STEP 10: LET'S GO!

Now that everything is in place, it is time to start the competition! I will never forget the night before the launch of our first Escape Room. I was suddenly filled with panic! This had been my brainchild and suddenly I felt as though I'd talked everyone into it. Over the next three days, all of our 1L students would be going through the Escape Room. What if all of our plans fell short? What if it was too hard and no one finished it? What if the whole event was a spectacular failure? I braced myself for whatever was ahead.

As it turned out, it was incredibly successful! In 2018, we saw 29 teams with a total 129 law students "escape." In 2019, it was 33 teams and a total of 134 students. Both years, we ended the semester with a celebratory lunch where we awarded prizes to the winners and laughed at videos of some of the more memorable challenges. I'm pretty sure it achieved all or most of our educational goals; I know it created a memorable experience for our students. In fact, as this year's Writing Fellows planned for the 2019 Escape Room, they not only relived some of their 1L memories from 2018, they drew on them for inspiration. And, as this year's lunch was winding down, several 1Ls talked about applying to be a Writing Fellow next year so they could help plan the next Escape Room.

## NOTES

1. A litigator for thirty-three years, Joy Herr-Cardillo has taught legal writing at Arizona Law for eighteen years and has been on the clinical-tenure track since 2017. She teaches 1L legal writing, supervises the Writing-Fellow program, and coaches Arizona's Environmental Moot Court team.
2. Escape rooms, inspired by video games, were first introduced in Japan around 2010, and have spread throughout the world. The first escape room in the United States opened in San Francisco in 2012. Now, more than 2300 can be found throughout the U.S. See Lisa Spira, *5 Year US Escape Room Industry Report (August 2019)* (August 8, 2019), ROOM ESCAPE ARTIST, <https://roomescapeartist.com/2019/08/08/5-year-us-escape-room-industry-report-august-2019/>; see also Sally French, *The Unbelievably Lucrative Business of Escape Rooms*, MARKETWATCH (July 21, 2015, 11:28 AM), <https://www.marketwatch.com/story/the-weird-new-world-of-escape-room-businesses-2015-07-20>; Carly Mallenbaum, *Why Escape Rooms Have a Lock on the U.S.*, USA TODAY (May 7, 2018, 1:33 PM), <https://www.usatoday.com/story/life/people/2018/04/25/escape-rooms-trend-us/468181002/>.
3. KAREN SCHRIER, *KNOWLEDGE GAMES: HOW PLAYING GAMES CAN SOLVE PROBLEMS, CREATE INSIGHT, AND MAKE CHANGE* (2016); Lauren Vitale, *Incentive Games and Group Work in the Law School Classroom*, 22 LAW TCHR. 22 (2015).
4. See Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admissions Decisions*, 36 LAW & SOC. INQUIRY, J. OF THE AM. B. FOUND., 620, 661 (2011).
5. Craig Miller, *The Gamification of Education*, 40 DEV. BUS. SIMULATION & EXPERIENTIAL LEARNING 196, 196 (2013).
6. Renee Nicole Allen & Alicia R. Jackson, *Contemporary Teaching Strategies: Effectively Engaging Millennials Across the Curriculum*, 95 U. DET. MERCY L. REV. 1, 28 (2017); Elizabeth A. Cameron & Marisa Anne Pagnattaro, *Beyond Millennials: Engaging Generation Z in Business Law Classes*, 34 J. LEGAL STUD. EDUC. 317, 323 (2017).
7. Miller, *supra* note 5, at 197.
8. *Id.*
9. See *id.* at 196. According to Miller, the five essentials of a game are: "(1) rules, (2) variable quantifiable outcomes, (3) valued outcomes, (4) player attachment to outcomes and (5) effort."
10. Vickie Adams et al., *Can You Escape? Creating an Escape Room to Facilitate Active Learning*, 34 J. FOR NURSES PROF. DEV. E1-E5 (2018); Anna Eva Kinio et al., *Break out of the Classroom: The Use of Escape Rooms as an Alternative Teaching Strategy in Surgical Education*, 76 J. SURGICAL EDUC. 134-139 (2019); Christine Wu et al., *Promoting Leadership and Teamwork Development Through Escape Rooms*, 52 MED. EDUC. 561-562 (2018).
11. Dillon R. Waggoner et al., *Using an Escape Room as Gameful Training with Students*, NACE J. (2019).
12. This project would never have come to fruition without the enthusiastic support of our Legal Writing Director, Susie Salmon. From the first "hey, I was thinking" email to the closing celebration, she was fully on board and encouraging at every turn.
13. I simply created a new user account and set the password for that account to the one that the students selected.

14. Here is the clue distribution we used:

"Room 1" :

American Legal System --\*Destination  
CREAC and explaining the law

"Room 2"

Redbook --\*Phone code  
Hierarchy of Authority  
Issue, Brief Answer and SOF

"Room 3"

Application of Law to Facts  
Bluebook

"Room 4"

Organization of Office Memo  
Effective Editing  
Legal Research--\*Find the flight ...  
...and make the call! (Redbook answer from  
Room 2 unlocks phone)

15. In addition to telling the students the backstory and the specific "keys" they needed to find in order to escape the room, the Writing Fellows read each team the following rules:

- » Each team will have one hour to escape; the team that takes the shortest time wins.
- You may ask for up to 3 hints. If you use a hint, 5 minutes (per hint) will be added to the end of your time.
- We will tell you the number of clues you need per room. You cannot advance from a room until you have discovered/solved all of the clues in that room.
- You may use things discovered in prior rooms as you move from room to room.
- Some general escape room tips:
  - » Make sure you scope out what you are searching and solving for in each room.
  - » It's okay to split into smaller groups.
  - » Carefully read all directions and clues.

16. We had a "step and repeat" with the law school logo set up just outside the Escape Room, and a variety of "We escaped!" "We stopped the Plane!" or "We Saved the Law School!" placards that team members could brandish and pose with in photos to celebrate their success.

# Making the Most Out of Court Observations in the 1L Year



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The case method of legal education has led to the curious conundrum that “[l]awyers are strangely absent from much of the classic first-year curriculum.”<sup>1</sup> Lawyers’ names are edited out of textbooks,<sup>2</sup> and professors rarely use documents written by practicing lawyers.<sup>3</sup> This omission can lead students to “forget that there’s more to the law than lengthy judgments and academic viewpoints.”<sup>4</sup>

The legal writing course is the exception. It is the course where students are asked to play the role of lawyer.<sup>5</sup> It is the course where most professors have considerable practice experience.<sup>6</sup> And it is the course where professors strive to bring lawyers into the curriculum, realizing that students who understand the practical value of what they are learning will put more effort into obtaining those skills. For example, some professors invite lawyers into the classroom as speakers to discuss how the skills they learned in their legal writing course have been useful in their own practice.<sup>7</sup> Many professors include a “report to partner” assignment where the professor plays the role of the supervising attorney in a conference with the student about an upcoming written assignment.<sup>8</sup> And legal writing professors often ask students to read documents, such as trial and appellate briefs, written by practicing lawyers.<sup>9</sup>

Having students observe live court proceedings is another common method of bringing lawyers into the legal writing curriculum. The observation takes students out of the world of legal theory and hypothetical clients and into real world experiences. Students observing a live summary judgment hearing or appellate oral argument are watching real attorneys argue real legal issues, the outcomes of which will affect real clients. Students no longer have to wonder whether or how the skills they are learning in class—legal analysis, persuasion, professionalism—will be useful in practice. They can see those skills being used in front of them. And with a better understanding of how real attorneys use those skills, the students can return to the classroom ready to put more effort into learning them.<sup>10</sup> Moreover, observing court will help students in their other classes, as well: they will be able to see how attorneys use legal theory to craft arguments, view civil procedure in action, and understand how courts work, all of which will inform their legal education as a whole.<sup>11</sup>

Indeed, a well-planned observation of court proceedings can go a long way in helping students better learn the skills of lawyering and understand how legal theory actually works in practice. For the professor planning such an observation, the following considerations may be helpful to ensure that students get the most out of the experience.

## TIMING

Students can benefit from court observations at any point during their education. However, observing court in the second semester of their 1L year is optimal for their learning in legal writing courses and in their other courses. At this point, after completing a full semester of law school, they have a base level of familiarity with the structure of the court system and have likely learned or are learning the steps of the litigation process. With this basic understanding of legal theory and civil procedure, they will have a better context for the proceeding.

Furthermore, when used as a required component of a legal writing course, the court observation best fits in the semester in which students are learning advocacy<sup>12</sup>—traditionally, the second semester of the first year.<sup>13</sup> Professors who place the observation at this time can get the most mileage out of the experience by connecting it to the skills the students are currently learning. Professors can develop writing assignments, in-class exercises, oral presentations, and classroom discussions based on the experience, all of which will help reinforce what students see in their textbooks and learn during class.

## LOCATION

Many courts will visit law schools and hear proceedings at the school.<sup>14</sup> Perhaps the primary benefit to these in-school proceedings is the convenience of the location; it's easy to require students to attend when they are already on campus. No one—students or professor—has to deal with the logistical hassles and extra time it takes to physically get to court, such as fighting traffic, finding parking, and locating the courtroom. It also makes the proceeding easier for everyone on campus to attend—for example, upper-level law students and other faculty members. And if the entire 1L class attends the same session, other 1L faculty may be able to use the experience to enhance their own curriculum, as well.

However, not all schools are able to host a court on campus, whether for geographical or other logistical reasons. And not all courts are willing to visit a campus to hold proceedings. Still, requiring students to go off campus to visit a courthouse can provide significant benefits.

First, the courthouse environment may better drive home the reality of practice—this is a real case with real parties and real consequences. When students watch proceedings on their campus, a familiar physical surrounding, they might be more inclined to stay in that familiar theoretical mindset of academia.<sup>15</sup> Requiring students to go to the courthouse forces them out of the world of theory and into the real world of practice.

And although being on campus may keep students in their comfort zones, it may take attorneys and judges out of theirs. Attorneys and judges are certainly used to speaking in a courtroom with other people who may or may not be paying attention to them. But having potentially hundreds of law students in the room for the purpose of observing them is a somewhat different experience. The attorneys may be inclined to spend more time on background, or the judges may ask questions for the benefit of the audience—questions that might have gone unasked in a courtroom with a smaller audience.<sup>16</sup> Moreover, this audience, combined with the law school campus environment, may, consciously or subconsciously, influence the arguments made, the questions asked, or the answers given. Therefore, observing arguments in the courthouse may help preserve the authenticity of the experience.

Finally, navigating the logistical hassles of leaving campus to visit a courthouse provide some benefits. Students gain experience in budgeting their time to ensure punctuality despite the additional logistical hassles, as well as in understanding and meeting the expectations of proper courtroom attire.<sup>17</sup> Additionally, students will likely get additional practice using “soft skills” when they interact with courthouse staff and other observers during the visit.<sup>18</sup>

## PROCEDURAL POSTURE AND SUBJECT MATTER

Professors should also carefully consider the type of proceedings their students watch. Pre-trial proceedings like arraignments or a general motion calendar will expose students to the realities of law practice, such as how much time a lawyer spends simply waiting in the courthouse. These types of proceedings may also better represent the experience many students will have during their early years of practice. Nevertheless, students benefit more when



they can not only preview the realities of courthouse life, but also observe lawyers making arguments and responding to questions about substantive legal theory. A summary judgment hearing or appellate oral argument both have good potential to provide this substantive experience. When given the option between these experiences, consider coordinating the observation to match the type of oral argument the students are preparing to do themselves. For example, students who will be giving oral arguments on an appellate brief at the end of the semester would benefit more from seeing an appellate oral argument, where the attorneys field questions from several judges, than from seeing a summary judgment hearing with a single judge (and vice versa).

Another related consideration is whether to allow students to attend the proceeding of their choosing at any point during the semester or organize a single visit for all of the students (and the professor) to attend. Allowing the students to attend the proceeding of their choice takes some of the logistical decisions out of the professor's hands. Additionally, the students may be more invested in the experience, having chosen the specific proceeding themselves instead of having it chosen for them. And having just one or two students observe a hearing at a time may be less disruptive for the judges and attorneys.

On the other hand, having everyone attend the same session makes it easier for the class to talk about the shared experience. When everyone has observed the same proceeding, the class can have a richer discussion that delves into the details of that proceeding. There is also a benefit to the professor being there: when students have questions about something that happened, the professor will be better able to answer those questions.

## PREPARATION

Students will learn more from their observation if they are familiar with the factual background and legal issues at play. Therefore, if written submissions such as appellate briefs or motions are available before the arguments, the students should read those in advance.<sup>19</sup> Having reviewed the written submissions in advance, the students will gain a basic understanding of the facts and the law that will be argued. This preparation will help them anticipate the

substance of the arguments, follow the arguments' organizational flow, understand the judges' questions, and distinguish direct answers from evasive ones.

Not only will the students be better prepared to observe the court proceedings if they read the submissions, but there are also pedagogical advantages to having students review actual briefs written by attorneys—rather than reading only briefs written as an academic exercise. Reviewing briefs that were actually submitted to a court “help[s] students understand that as lawyers, their goals will shift from being academic to being problem-solving and results-oriented in nature.”<sup>20</sup> Finally, students also benefit from the opportunity to critically read another person's writing<sup>21</sup>—the same type of writing they will be doing that semester.

Having students answer the following questions, either in writing or orally during class time, may help guide the students' understanding and evaluation of the submissions they read:

- What are the background facts of the case?
- What is the procedural history of the case? What is the court deciding now?
- What are the legal issues being argued?
- What do you think is the strongest argument? The weakest?
- What is the organizational structure of the document? IRAC? CREAC? Something else? Did you think it was well organized?
- How was the grammar? What about citation? Did that affect your perception of the author?
- Did you notice a theme? If so, what was it? If not, what do you think a good theme would be?
- What is your overall impression of the document? On a scale of 1-10, how would you rate the persuasiveness of it?

Naturally, some written submissions will be better than others. Submissions that are not as well written provide a good opportunity for the professor to remind students that these documents were drafted under time and business pressures. The class discussion of these submissions also gives students the opportunity to practice how to give critical feedback respectfully and professionally.

## MEET THE JUDGES/ATTORNEYS

Regardless of where the observation takes place, try to arrange an opportunity for the students to interact with the attorneys—and even the judges if possible. For instance, a question-and-answer session immediately after the proceeding is one way for the students to interact with the participants.

If the observation occurs at the law school, another option is to organize a meet-and-greet reception after the proceeding concludes, while everyone—students, judges, and attorneys—is still on campus. Alternatively (or additionally), professors could invite the attorneys or judges to class afterwards, either that same day or in the following weeks, to share more about the experience.<sup>22</sup>

If the observation occurs at the courthouse, professors can leverage their connections with former colleagues or students who work in the courthouse to arrange a meeting with the participants or even a visit to chambers. Even without any of these connections, such a meeting may still be possible; some court clerks may be willing to arrange one even if they have not yet personally met the professor.<sup>23</sup>

If the students will have a chance to interact with the participants, part of the preparation for the experience should involve a conversation about how the students should interact with the judges and attorneys professionally. For example, the professor will probably need to warn students that the judges will not talk about the cases they just heard. Instead, students can brainstorm other questions to ask, such as questions about effective advocacy and persuasive techniques.

## FOLLOW-UP

After the observation is complete, a professor should follow up with the students to bring the experience full circle. A short in-class exercise could have the students draft a thank-you note for any judges, attorneys, or courthouse employees who interacted with the students or helped facilitate the observation.<sup>24</sup> Such an exercise would demonstrate professionalism and provide additional practice with both writing and soft skills.

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*Regardless of where the observation takes place, try to arrange an opportunity for the students to interact with the attorneys—and even the judges if possible.*

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It's also important to have the students reflect on the experience and connect it to what they are learning in the classroom.<sup>25</sup> This type of reflection “fosters self-awareness, transfer of learning, and planning for future challenges.”<sup>26</sup> An in-class discussion can spur the process of reflection and connection, if class time permits.<sup>27</sup> Alternatively (or additionally), the students can write a reflection paper. Possible questions for the discussion or paper include the following:

- Did anything surprise you about the arguments?
- What do you think was the most effective argument? What made it effective?
- What did you see that made an argument less effective?
- Did any of the advocates evade questions or interrupt the judges? How did the judges react?
- Did you learn anything that you will apply to your own upcoming oral argument?

It's also interesting to ask the students to predict how they think the court will rule. If the court observation was early enough in the semester, professors can follow up and see how the case actually turned out. For example, in the last class of the semester, I set aside ten minutes or so to have the students research online whether there have been any decisions in the case. It makes for a good, short research exercise, and the students are usually invested enough by that point to want to know the outcome. And every now and then, when a case turns out differently than expected, the students can learn a good lesson about standing their ground during oral argument despite what seems to be a hostile bench.<sup>28</sup>

## CONCLUSION

Although lawyers may be absent from most casebook classes, they are very much a part of the legal writing classroom. The legal writing curriculum helps bridge the gap between theory and practice, and one way to do so is by making a live court observation a required part of that curriculum. When students observe lawyers in action, they see for themselves that theory and skills are inseparable in the practice of law. Thoughtfully designing the mandatory court observation and helping students connect that observation to what they are learning in the classroom will help students get the most out of the experience.

## NOTES

1. Rachel H. Smith, *From Students To Colleagues: The Legal Writing Classroom Can Create Conscientious & Empathetic Practitioners*, 28 THE SECOND DRAFT 10, 10 (2015).
2. *Id.*
3. Anna P. Hemingway, *Making Effective Use of Practitioners' Briefs in the Law School Curriculum*, 22 ST. THOMAS L. REV. 417, 417 (2010).
4. Sebastian Salek, *You're a Law Student, but When Did You Last Visit a Courtroom?* THE GUARDIAN (FEB. 18, 2015, 6:57 AM), <https://www.theguardian.com/law/2015/feb/18/law-students-courtroom-visits>.
5. Smith, *supra* note 1, at 10.
6. *Id.*
7. See Kelly M. Feeley & Stephanie A. Vaughan, *Yes, You Will Really Use Algebra When You Grow Up: Providing Law Students with Proof That Legal Research & Writing Is Essential in the Real World*, 10 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 105, 106 (2002) (inviting a "panel of practicing lawyers, judges, and law students to relay real-life situations in which research and writing skills are invaluable"); Joanne Sweeny, *Teaching Professionalism and How to 'Act Professionally' by Coordinating Legal Writing with Professional Development*, 29 THE SECOND DRAFT 20, 21 (2016) (inviting local attorney as guest lecturer to emphasize diligence, timeliness, and attention to detail).
8. See, e.g., Alyssa Dragnich, *Small-Group Conferences*, 32 THE SECOND DRAFT 8, 8 (2019); Katrina June Lee, *Mentoring and Legal Writing: How 1L Legal Writing Courses Prepare Students for Mentoring Relationships in the Legal Profession*, 28 THE SECOND DRAFT 23, 24 (2015).
9. See, e.g., Hemingway, *supra* note 3, at 418; Elizabeth A. Shaver, *LRW's the Real World: Using Real Cases to Teach Persuasive Writing*, 38 NOVA L REV. 277, 278 (2014).
10. Feeley & Vaughan, *supra* note 7, at 106. "The more real-world exposure the students get, the more appreciative they are of the skills taught in law school." *Id.* at 108; see also Shaver, *supra* note 9, at 284 ("Making it real gives the students both focus and incentive to improve their writing.").
11. See Salek, *supra* note 4. For example, one student reported that observing court motivated her to consider the "practical applications" of the law and "enabled her to make more well-rounded critical arguments about statutes and precedents." *Id.*
12. But even a court observation that takes place in the fall semester can benefit students. It may not provide as much opportunity for development or relation to the legal writing class, but it does help connect the theory of law they are learning to the realities of practicing law. It can also preview what they can expect in legal writing the following semester (although students may need a reminder not to let the advocate role seep into their objective writing assignments).
13. See Assoc. Legal Writing Dirs. & Leg. Writing Inst., 2017-2018 Survey Results 25 (2018) (available at, <https://www.alwd.org/images/resources/ALWD-LWI-2017-18-Institutional-Survey-Report.pdf>).
14. A number of United States Courts of Appeals hold oral argument on campuses within their jurisdiction. See, e.g., James Jolly, *U.S. Fourth Circuit Judges to Hear Arguments at WVU Law on Feb. 19* (Feb. 12, 2019), <https://www.law.wvu.edu/news/2019/02/12/u-s-fourth-circuit-judges-to-hear-arguments-at-wvu-law-on-feb-19>; Melissa Caperton, *OU Law to Host 10th U.S. Circuit Court of Appeals* (Feb. 13, 2018), <http://www.law.ou.edu/news-and-media/ou-law-host-10th-us-circuit-court-appeals>. Many state courts, including intermediate appeals courts and courts of last resort, also visit local campuses to hold oral argument. See, e.g., Press Release, Louisiana Supreme Court, Louisiana Supreme Court Held Oral Argument at Loyola University School of Law (Oct. 21, 2019), [https://www.lasc.org/press\\_room/press\\_releases/2019/2019-12.asp](https://www.lasc.org/press_room/press_releases/2019/2019-12.asp); Eric Townsend, *North Carolina Court of Appeals Visits Elon Law*, TODAY AT ELON (Mar. 8, 2019), <https://www.elon.edu/u/news/2019/03/08/north-carolina-court-of-appeals-visits-elon-law/>.

15. On the other hand, when a court does come to campus, professors can take steps to make the academic location seem less familiar. For example, the proceeding could be held in an auditorium that does not feel like a classroom or in a different building on campus altogether.

16. For example, I attended an on-campus oral argument in a case that involved personal jurisdiction, and one of the judges asked the advocate about *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). Although the opinion was marginally relevant, it seemed likely that the judge had asked about it because the case was one that the hundreds of first-year law students in the room would have recognized from their civil procedure class.

17. Professors will likely need to address this in class before the visit. Students visiting a courthouse to passively observe proceedings can usually wear dressy business casual attire. That said, if the visit is one in which students will actively interact with the attorneys or judges, formal business attire is necessary.

18. See Elizabeth T. Friedlander, *Stealthily Instilling the Soft Skills*, 32 THE SECOND DRAFT 14, 14 (2019) (“Students entering law school today need more guidance in developing [soft] skills,” which include “verbal communication, listening abilities, problem solving, decision-making, manners, social awareness, methods of assertiveness, responsibility, relationship building, and negotiation.”).

19. Locating the relevant submissions could make for a good research exercise; for example, professors could instruct students to locate the document using Bloomberg Law, which covers all federal dockets and select state dockets. Alternatively, professors can provide the document to the students, perhaps working with their law librarians to find the document through Pacer, Bloomberg Law, or the state electronic filing system. Another option would be to check with the court clerk to see if he or she can simply email the submissions.

20. Hemingway, *supra* note 3, at 423.

21. *Id.*

22. Although the judges will not be allowed to discuss the cases they heard, they will be able to discuss effective advocacy in general, talk about past cases or experiences, and answer other kinds of questions (for example, about their path to the bench or the benefits of judicial clerkships).

23. See *Visit a Federal Court*, UNITED STATES COURTS, <https://www.uscourts.gov/about-federal-courts/federal-courts-public/visit-federal-court> (last visited Jan. 13, 2020) (encouraging teachers arranging a court visit to ask the court clerk if any of the judges would be willing to speak to the students.).

24. See *id.* Depending on the number of students and the number of notes needed, the professor could have the students draft the notes together as class, in small groups, or individually.

25. *Id.* (“Following up on a visit to the court is just as important as the preparation for the visit. Teachers should reinforce learning from the court experience through continued classroom activities on the judicial system. Whenever possible, they should refer to what students learned while at the courts to help them make connections between the court and their classroom experiences.”).

26. Craig Smith, *Making it Stick: Using the Science of Successful Learning in Legal Writing Classrooms*, 29 THE SECOND DRAFT 13, 14 (2016).

27. This type of discussion is more feasible when the students have all seen the same proceeding.

28. See Lawrence T. Gresser & Elizabeth F. Bernhardt, *Lessons Learned from Affordable Care Act Oral Arguments*, N.Y. L. J. (Aug. 27, 2012), <https://www.cohengresser.com/pdfs/publications/50.pdf> (“Questioning, even aggressive questioning, from the bench may not indicate disagreement. . . . And, contrary to the conventional wisdom, silence from the court during oral argument may not denote agreement. Simply put, it is not fruitful to try to guess what a court will do based on the tenor of the oral argument. . . .”).

# A Lesson About Teaching for the Teacher: The Unintended Benefit of Peer Review



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There were pros and cons to the increase in enrollment at my law school this year. The pros, of course, were being able to remain employed. The biggest “con” was that my class size increased to the point where I was not able to give as much individual attention as I would have liked, and my students craved this individual attention to the point where I often felt as though my students would not be happy unless I was spoon feeding each “correct” word to them. During the fall semester, I often found myself falling behind in grading, partially because my grading, even on multiple choice assignments, necessitated a level of explanation regarding incorrect answers that doubled or tripled my grading time.<sup>1</sup>

Given the large size of my class and their overall needs, I decided that I would need to make some changes for the spring semester that would minimize some of my grading time while also preserving my mental health. First, during the spring semester, I had my TAs review some shorter assignments I would usually grade on my own. Second, I decided that I would revamp my longer assignments in order to add work that I did not have to grade. The plan was, admittedly, a little devious (at least from my vantage point). I would, as usual, give my students three weeks to complete what I thought was a simple assignment (a one page email memo), but given the size of the class and time it would take for grading, I came up with a different plan. I would give my students the interim step (and deadline) of having them submit their drafts to two other peers for critique. Then, as part of the final grade, I would ask the students to critique the critique, and to address whether the critique was beneficial to improving their writing. Thus, I would add not only a peer review component to my assignment, but a double peer review component.



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*The peer review seemed to convince most that improved writing could be achieved by thoughtful self-reflection and editing, rather than by being told what was right and what was wrong.*

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Despite the literature suggesting the merits of peer review,<sup>2</sup> I have never been a fan of peer review assignments. In my experience, my best students have done excellent peer reviewing, while my less serious often gave reviews that were not at all helpful and actually harmful to the reviewed student.<sup>3</sup> I had attempted integrating peer review assignments in previous years, but for the most part, students complained vociferously, not only about the peer review, but about being assessed on the review they were given. Thus, when I assigned my students a peer review exercise during the spring semester of 2019, it was not primarily for pedagogical reasons, but for my selfish need to be left alone while forcing my students to complete a draft earlier than they would have. I added the peer review as both a distraction and a hurdle. If my students had that additional task and an additional deadline, they would likely not be procrastinating and then deluging me in the final days before the assignment was due in order to find out “exactly what I wanted.”

I was not so oblivious that I believed there was no merit in the peer review assignment. I knew that a “good” peer review could sometimes be very beneficial to another student (especially when done by an excellent student).<sup>4</sup> As a result, rather than having students review only one paper, I had the students send their papers to two reviewers and, of course, they were to review two other papers. I then used an Excel spreadsheet to finagle the review assignments to make sure the stronger writers were paired with weaker writers so that the weaker writers might receive more extensive feedback.<sup>5</sup> I thought that if the weaker writers received guidance from peers who were working on the same issue, they might better understand how to approach their own work. I also tried to make sure that the weakest

writers were not paired with writers who had similar issues in their writing. This took some personal knowledge of writing styles and issues within the students’ writing. As an example, I tried not to pair students who had issues with verbosity with other students who wrote in the same style.

Because the object of my assignment was making my own life simpler, I did not give the students a reviewing rubric to use when looking at the work of their peers. I asked the students to consider our class discussions regarding organization, succinctness, and clarity, as well as to consider examples we had critiqued as a class. In short, I asked them to pretend to be “me” and provide comments and critique that they thought I would make on the document.

For part two of the assignment, I asked the students to “critique the critiques” they received and to include these when they turned in their final papers. I left this critiquing somewhat open-ended, partially because I wanted to see what my students would say. I wanted them to be honest, and not feel as they were following a required format. I did, however, ask the students to focus on a few questions: Did the (received) critique help? What was useful? What was disregarded? I also asked them to write no more than two paragraphs.

As things turned out, my “ploy” was successful. My students took to doing their peer reviews with zeal, and, being very deadline conscious, all completed the drafts of their memos in a timely fashion in order to provide their peers with a completed product. In addition, the assignment yielded another success that I did not anticipate.

As (somewhat) expected, when my students completed the assignment of “critiquing the critiques,” most were lukewarm to the peer feedback received. Some commented that they appreciated a few of the comments, especially when the comments related to succinctness, clarity, and picking up on misspellings or punctuation errors. However, most students commented that the feedback received did not really cause them to rethink too much of the content or order of discussion in their assignment. At least a few students commented that some of the reviews received were “worthless,” or, if implemented, would have made the writing worse. Predictably, my best students provided extensive

substantive commentary that many students found beneficial. Unfortunately, many of my weaker students provided only a modicum of suggestions, often making comments on a few words, but saying little as it related to organization or clarity.

However, even though this task was not assigned, my students commented about how beneficial it was for them to be able to critique the work of their peers. I was told that seeing the work of others enabled students to be able to look at their own work with “fresh eyes” and look at writing from the vantage point of the reader. I was also told that being able to see others’ work enabled my students to understand that there were various ways of going about completing a task that did not come down to “the right words” or what I, as the teacher, might necessarily want in an assignment.

I do not know whether my ploy to have my students finish their drafts early without needing so much help from me was a stroke of accidental genius, but the end product of the actual assignment turned out to be better than I expected. The quality of that particular assignment was also better than the previous year’s class. In addition, I achieved the goal (albeit unintentionally) of finally convincing my students that their grades were not contingent on getting the right words in the right order to meet my personal subjective tastes, but on the clarity (and accuracy) of each individual’s writing. The peer review seemed to convince most that improved writing could be achieved by thoughtful self-reflection and editing, rather than by being told what was right and what was wrong.

The lesson for me was that that there did seem to be a mechanism that finally worked as far as convincing my students that they really did possess the tools to be able to systematically diagnose, critique, and correct their own writing. Although I am still somewhat skeptical that peer review yields an immense benefit for the student being reviewed, I do intend to expand my use of having students reviewing the drafts of their peers in the hope that they will continue to see that both good and poor communication come in many forms.

At least for the foreseeable future, I intend to continue using the peer review assignment to see if future classes will respond in the same way. I believe, however, I will also give more guidance on what type of reviewing the students should be doing of their peers. Although I do not intend to include a list or a rubric, my directive to be “me” was interpreted very broadly by students with some (apparently) deciding that the main issue was using certain words or transitions without much regard for commenting on substance. In the future, I will give examples of good reviews and not so great reviews, so the students have a better idea of what feedback should be provided. I will also formalize the aspect of the assignment that resulted in students commenting on the benefits of reviewing the work of others. When I ask students to critique the critique, I will ask them to specifically address how looking at the work of others was a benefit in doing their own self-diagnosis. By making these changes, I hope the assignment will be even more effective the next time around.

#### NOTES

1. Page Grossman, *Those needy Millennials. Now they want hugs, too?*, Relate by Zendesk, available at: <https://relate.zendesk.com/articles/needly-millennials-want-hugs-emotional-leadership/> (last visited on March 7, 2019).
2. Dr. Jasmin Schmitz, *Peer Review: Why is it important?*, Open Access Advisory Services, available at: <https://www.publisso.de/en/advice/publishing-advice-faqs/peer-review/> (last visited on March 7, 2019).
3. See *Using Peer Review to Improve Student Writing*, available at: <https://lsa.umich.edu/content/dam/sweetland-assets/sweetland-documents/teachingresources/UsingPeerReviewToImproveStudentWriting/UsingPeerReviewToImproveStudentWriting.pdf> (last visited on March 7, 2019).
4. See Kirsten K. Davis, *Designing and Using Peer Review in a First-Year Legal Research and Writing Course*, 9 J. LEG. WRITING 1 (2003).
5. See Linda B. Nilson, *Improving Student Peer Feedback*, 51 COLLEGE TEACHING 34-38 (2003).



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