



ARTICLE

Abandoning the College Essay: Teaching Students to Write Like Lawyers

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Published: April 2021

Each fall, I tell my incoming class of law students that succeeding at legal writing will require them to shed many of the writing habits that they acquired in college. I tell them that the process of learning to be an effective legal writer will start in my class but will continue throughout their careers. I tell them not to get discouraged because learning to write like a lawyer is hard work.

Yet I had never truly conceptualized the basis for the specific hurdles that my students confront transitioning to legal writing until my own children began attending college. It was then that I came face to face with the academic college essay.¹ Reading my children's essays clarified the types of challenges my students encounter in my first-year legal-writing class, and importantly, provided me with a better understanding of the reasons behind those challenges. This article will examine some of the specific differences between writing a college-level essay and writing legal analysis and suggest ways in which I have been able to help my students transition more easily into legal writing.

¹ The four genres of essays are: argumentative, expository, descriptive, and narrative. At the college level, argumentative essays are most common. Argumentative essays build an evidence-based argument consistent with research on a particular topic. *Essay Writing*, PURDUE UNIV. ONLINE WRITING LAB, https://owl.purdue.edu/owl/general_writing/academic_writing/essay_writing/index.html (last visited Mar. 29, 2021).

1. The Uncertain Prediction vs. The Definitive Thesis:

For many reasons, students struggle in the first semester of legal writing, which traditionally focuses on predictive memo writing. One of the biggest hurdles students face is grasping the idea that memos require the neutral evaluation of the strengths and weaknesses of a claim rather than a persuasive argument about that claim. I had always assumed that students had difficulty with this concept because they come to law school eager to act as advocates for their clients. They are just following their burgeoning impulses to argue like lawyers, I thought.

It turns out, many students struggle with predictive writing because they have never done it before. From high school through college, students have been programmed to write essays that require the writer to take a position and then support it.² The first step on the path to writing a good college essay is to develop a thesis. To develop a strong thesis, students must read and interpret the sources and arrive at an innovative and supportable claim to argue. They develop their thesis prior to beginning the writing process and then organize and focus their sources around advancing that thesis.³

In contrast, researching a legal issue to arrive at a prediction for a legal memo does not involve argument or innovation and should be viewed as a process rather than as the first step. Lawyers are searching for an answer, no doubt, but finding that answer can be slow and complex. Often, the writer does not fully understand the answer until she completes all the research, drafts the outline, and sometimes even after she begins the writing process. It is not unusual for the prediction to develop after the lawyer sits down to draft the memo and delves deeply into the analysis of the case precedent and case facts. It goes without saying that the conclusion may be contrary to the client's desired outcome. Finally, often the conclusion is uncertain because the facts of the case are novel, and the law may be unclear.

First-year law students are terrified of the uncertainty that is the hallmark of predictive legal writing. That uncertainty exists both in the process of discovering what the answer might be, as well as in the validity of the ultimate prediction. Students are accustomed to seeing an issue through the lens of building and supporting an argument rather than through the lens of investigating a claim. As a result, students are often uncomfortable reserving judgment. Further, once they reach the juncture where they should be able to make a prediction, they may struggle because the prediction is not definitive. Compounding this, they sometimes

² The French form of the word essay comes from the Latin verb *exigere*, which means "to examine, test, or (literally) to drive out." Thus, the essence of the academic essay is to "encourage students to test or examine their ideas concerning a particular topic." *Id.*

³ Kathy Duffin, *Overview of the Academic Essay*, HARVARD COLL. WRITING CTR. (1998), <https://writingcenter.fas.harvard.edu/pages/overview-academic-essay>.

feel unqualified to make predictions given that they are just learning to read cases and doubt their own ability to interpret the law.

To combat their discomfort with the process, students often jump to assume that the client's desired outcome should be the "thesis" of the memo—even before they have fully researched, analyzed, and outlined the claim. This leads them to ignore cases that are contrary to their "thesis" about how the court will rule. They inevitably look for an analysis, even if flawed, that supports their "thesis." They leave out the portion of the reasoning of a case or the relevant facts of a case that call into question their "thesis." Finally, they fail to consider facts of their own case that hurt their "thesis."

Anticipating and appreciating my students' need for certainty has helped me better address some of these initial misconceptions. When we first learn how to research and write a legal memo, I explicitly tell my students that the process of reaching a prediction is wholly distinct from the process of developing a thesis. To help them conceptualize these differences, I ask them to brainstorm a list of principles that will guide them through the process of finding the answer to their legal problem. Some of these ideas may include:

- Do not tie myself to a prediction until after my research and outlining is complete.
- Be evaluative and neutral based on the facts of my case and the controlling law.
- Follow the law, even if that means concluding that my client does not have a strong case.
- Research and read every case that is relevant to the legal issue, regardless of whether the case comes out favorably for my client.
- Consider how my facts both hurt and favor my client's position.
- Write the final prediction after I write the outline or first draft of the memo.

After creating a list of principles, we discuss how these principles depart from the process of developing a thesis. Having students take ownership of the ways in which researching and drafting the answer to the legal question is distinct from developing a thesis is one of the first steps in helping them to abandon the college essay.

2. Deductive vs. Inductive Structure:

When it comes to structure, college students are taught that "there is no blueprint for a successful essay."⁴ Often, to the extent the professor suggests a particular structure, it is inductive. An inductive structure begins with facts, moves into

⁴ *Id.*

the presentation of supporting source material, and then ends with a conclusion. Inductive structure is encouraged if the writer wants the reader to discover ideas at the same time as the writer—like when reading a good novel.

Though lawyers use inductive reasoning to help them develop and synthesize rules when analyzing a series of cases, they use a deductive structure to articulate their legal analysis or argument. Legal writing requires lawyers to begin with a proposition, support it with the precedent, and then consider their client's facts. This deductive structure is the animating force behind the fundamental IRAC or CREAC formulas. Unlike the college essay, which embraces different styles of structure as long as the essay exhibits "insightfulness, reason, and clarity,"⁵ legal writing is less forgiving in organization, forcing students to follow this consistent deductive pattern in almost all instances.

In my first-year legal-writing class, regardless of the number of times I instruct students to extract and state the rules and principles first, I often find students interspersing rules with the facts, holdings, and reasonings of cases. And regardless of the number of times I tell students to begin their application of facts with a factual conclusion or a broad comparison to precedent, students will bury their conclusions or comparisons in the last sentence of the application of facts after leading me through a winding road of factual observations. Unfortunately, I frequently find myself, like the reader of a mystery novel, discovering the controlling law and conclusions like clues buried deep within the text.

I had always assumed that my students' difficulty with adopting a deductive structure of analysis was due to either their stubborn resistance to follow the basic organizational rules or my own failure to teach it properly. I am aware now that many students struggle with basic IRAC/CREAC format because they are accustomed to communicating information inductively or, worse yet, with no particular structure at all.

Explicitly addressing the difference between deductive and inductive structure has been extremely helpful in clarifying this problem for my students. Using simple examples to explain this difference is useful. In one exercise that we do, I have students transform the following paragraph from an inductive to a deductive structure.

My dog Blue barks and chases all the small animals she sees whether it is the cats in the house or rabbits and squirrels in the backyard. Sources indicate that this is a behavior typical of German Shorthaired Pointers. While Blue is a mixed breed dog, she is approximately the same size and has many of the typical markings of a German Shorthaired Pointer. Based on these facts, we assume that Blue is indeed at least part German Shorthaired Pointer.

⁵ *Id.*

We work together to achieve something more like this:

Blue is, at least in part, a German Shorthaired Pointer. Indeed, she exhibits many of the behaviors that are typical of German Shorthairs. For example, she barks and chases all the small animals she sees, whether it is the cats in the house or rabbits and squirrels in the backyard. Further, while she is certainly a mixed breed dog, she is approximately the same size and has many of the typical marking of a German Shorthaired Pointer.

In this example, we focus on setting out the guiding propositions first, followed by the support for that proposition. By transforming inductive structure into deductive structure using a simple example, I find that students are better able to grasp the larger concept of IRAC or CREAC and move more quickly into implementing this pattern in their own writing.

3. Thesis Paragraph vs. Introductory Paragraph:

College students are taught that the introductory paragraph should give context to the issue that the essay addresses. Students are instructed to let their reader know what the topic is, why it is important, and how they plan to proceed with their discussion. The college essay introduction is designed to make the reader want to read the paper by engaging the reader and sparking the reader's interest. Students are instructed that they can open with "specific facts and information, a keynote quotation, a question, an anecdote, or an image."⁶

In contrast, the thesis paragraph of a memo is designed to be a concise roadmap of the basic issue, the elements or factors of the claim or defense, and a brief prediction of the outcome. For better or worse, the stated goals are not to spark the reader's interest or to draw the reader in.

When students transition to memo writing, they often use the thesis paragraph to incorrectly restate the basic background facts of the case. They are prone to improperly address narrow rules and principles that are better placed in the analysis of each element or factor. I have even seen students use the thesis paragraph as a place to ask rhetorical questions about the claim or law.

To help clarify these distinctions, I ask students to transform a typical college essay introduction into a memo thesis paragraph. In this exercise, I tell students that the issue is whether athletes who alter their bodies using biotechnology should be allowed to participate in sports.

The debate over athletes' use of performance-enhancing substances is getting more complicated as biotechnologies such as gene therapy become a

⁶ Patricia Kain, *Beginning the Academic Essay*, HARVARD COLL. WRITING CTR. (1999), <https://writingcenter.fas.harvard.edu/pages/beginning-academic-essay>.

reality. The availability of these new methods of boosting performance will force us to decide what we value most in sports—displays of physical excellence developed through hard work or victory at all costs. For centuries, spectators and athletes have cherished the tradition of fairness in sports. While sports competition is, of course, largely about winning, it is also about the means by which a player or team wins. Athletes who use any type of biotechnology give themselves an unfair advantage and disrupt the sense of fair play, and they should be banned from competition.⁷

We work to revise this paragraph into something more like this:

The issue in this memo is whether athletes who use biotechnology to enhance their performance should be allowed to compete in sports. Sport is about winning, fairness, and physical excellence. The court will likely hold that the athlete who uses biotechnology should not be allowed to compete because although these performance-enhancing technologies allow athletes to win, they prevent them from doing so with fairness or true physical excellence.

As we work through re-drafting this paragraph, we discuss the different requirements of the introductory paragraph versus the thesis paragraph. We contemplate which concepts constitute the broad rule. We distinguish from the broad rule those statements that are background facts or narrow principles. We focus on stating a concise conclusion. The goal is to distill this sample introductory paragraph into the more formal and structured components of the thesis paragraph. In this way, students begin to recognize the differences and implement those changes in their own writing.

The realization that many of the difficulties my students face in my first-year writing class are rooted in their mastery of the college essay has made me more patient and understanding in helping them transform their writing. I see their weaknesses less as a failure on my part or theirs, and more as a legitimate outgrowth of the types of writing that they have engaged in for years. Explicitly comparing the college essay to the legal memo in my lectures, addressing those differences with students individually during office hours, and using simple exercises has helped my students overcome some of the roadblocks that stand in their way when transitioning from the college essay to the legal memo and brief.

⁷ Argument Paper, MLA Style (Hammond), MACMILLANLEARNING 1, https://www.macmillanhighered.com/BrainHoney/Resource/6698/digital_first_content/trunk/test/writershelp2e/asset/pdfs/Hacker-Hammond-MLA-Arg.pdf (last visited on Mar. 29, 2021).