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TOTO, I DON'T THINK WE'RE IN PRACTICE ANYMORE:¹ MAKING THE TRANSITION FROM EDITING AS A PRACTITIONER TO GIVING FEEDBACK AS A LEGAL WRITING PROFESSOR

BY EMILY ZIMMERMAN

Emily Zimmerman is an Assistant Professor of Legal Writing at Villanova University School of Law in Villanova, Penn.²

One of the most challenging aspects of teaching legal writing is providing written feedback to students on their writing assignments. After practicing law for several years, I was used to going over my colleagues' written work with a fine-tooth comb in order to produce the most effective documents for our client. When I left practice to start teaching legal writing, the practitioner in me continued to focus on the perfection of the document and had the urge to show my students how to improve their writing by “fixing” their writing assignments myself. I could show my students how to improve their documents by example—my example. Although I certainly did not rewrite my students' papers for them, there is no question that I erred on the side of noting any aspect of a student's paper that warranted revision and I probably line-edited my students' work more than I should have. As a result, my students received papers that were not only heavily commented on in the margins but also intensively marked throughout the text.

Thinking about the substance of my comments on my students' papers, the extent of my handwriting on my students' papers, and the time

spent marking my students' papers has led me to a very conscious appreciation of the differences between the type of editing that I did as a practitioner and the type of feedback that I should be providing as a teacher. It is neither practicable nor constructive to edit our students' papers as we would drafts of documents in practice. First, it takes a long time to edit one brief, much less 40 briefs. More significantly, editing a paper for a student usurps the student's role in assessing and improving his or her skills. Inputting edits into a computer does not learning make. Additionally, to the extent that our students use their legal writing assignments as writing samples, these samples should reflect our students' work, not our editing ability.

While we may readily acknowledge that we should not edit our students' papers as we would drafts of documents in practice, it can be harder to avoid this temptation in reality. I frequently tell my students to think about the “audience, purpose, and content” of their documents before they start writing. Following my own advice has helped me more fully understand the difference between my former role as a practitioner and my current role as a teacher in providing written feedback and has helped my comments better reflect this transition.

Purpose

In practice, the primary purpose of editing was to create a document that was as perfect as possible in order to accomplish the goals of the document. Whether I was editing an appellate brief, a contract, or a letter, my foremost concern was with the document itself because I was responsible for representing my client as well as I possibly could. Of course, I was also concerned with training and providing feedback to my colleagues regarding their writing, but that was not the primary purpose of my edits.

In teaching, on the other hand, the document itself is not of utmost importance. My students do not represent actual clients, and my students'

¹ With apologies to *The Wizard of Oz* (Metro-Goldwyn-Meyer 1939) (motion picture).

² The author thanks Diane Edelman for her helpful feedback on this article.

briefs are not going to be filed on anyone's behalf. The purpose of my students' briefs is not to achieve the result sought in the briefs themselves, but to be the means by which my students can learn, develop, and refine their analytical and communicative skills to become effective lawyers. It is highly unlikely that my students will ever file a brief on the exact issue that they have written about in their legal writing class. In fact, many, if not most, of my students may never draft an appellate brief in practice, and, frankly, I don't care whether they do. I do care, however, whether my students learn to think critically and communicate their ideas clearly and logically. Developing the ability to think critically and communicate effectively is the purpose of my students' writing assignments, and my feedback on their assignments must reflect this goal.

Audience

When providing feedback on a draft, there are really two audiences to consider: the drafter of the document to whom the *feedback* is directed, and the person to whom the *document itself* is being directed. In practice, the ultimate target of the document—judge, opposing counsel, vendor—was the dominant audience. Although I considered how my colleagues would receive the *feedback* that I was providing, the goal of the *document itself* and, thus, the ultimate audience of the document, were foremost in my mind. As a professor, however, my students are the dominant audience. My feedback is important because of what it can teach my students, not because of the revised document per se that could result from my feedback. Although I might craft my feedback to give my students insight into the mind of the ultimate audience of the document (e.g., by noting where and explaining why an analysis is incomplete, by indicating where a point is unclear), the students themselves are my real audience—the audience whose actions I am seeking to affect with my feedback.

Content

I tell my students that the purpose and audience of a document play a large role in controlling its content. This applies equally to feedback, and I try to keep my purpose and audience foremost in my mind as I give feedback to my students. This heightened awareness of purpose and audience has helped me refocus my comments away from those that characterize a practitioner to those that reflect a teacher. Specifically, I am better able to restrain my impulse to comment on every aspect of my students' work and to concentrate instead on providing feedback to help my students develop the transferable skills that they will need as they continue their legal careers.

To be sure, my comments still respond to what my students have written; my comments are not completely abstracted from my students' work. However, I am careful that the way in which I communicate my feedback to a student does not usurp the student's role as writer *and* rewriter. I provide my students with guidance as to how they can improve their writing; I do not rewrite their documents for them.

I still mark grammatical, punctuation, and spelling errors on my students' work. I even continue to edit what my students have written. However, when I line-edit now, I do so more selectively and deliberately to illustrate a particular point (e.g., writing persuasively, communicating clearly, avoiding run-on sentences). My goal is not to correct my students' writing, but to guide them to improve their own writing.

Consciously identifying and focusing on the purpose and audience for my feedback has affected not only the substance but also the quantity of my comments. I still provide a lot of feedback on my students' papers, but my comments are generally less copious than when I began teaching. Although I never received any complaints about the number of my comments, I had been concerned that the sheer quantity of my comments—particularly of the editing variety—would make it physically

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difficult for my students to decipher my feedback. Also, the quantity of marking might dilute the impact of my comments, by (1) overwhelming my students and discouraging them from reading any of my comments, and (2) making it difficult for students to determine which feedback was most significant. Always remembering the purpose and audience for my comments helps me to focus my comments on those pertaining to the skills that my students need to develop and limit the extent of my correcting comments.

In the heat of marking, one can lose sight of the forest (the teaching purpose of our comments) for the trees (all of the individual aspects of our students' papers on which we might want to comment). As I mark, I continually regroup to make sure that I have not lost sight of my purpose and audience. I have developed the following questions to help ensure that, like me, my comments have made the transition from practice to teaching:

1. *Do my comments reflect their teaching purpose and are they addressed to my student audience?* This is, obviously, the overarching question. The following questions are designed to lead me to an affirmative answer to this bottom-line inquiry.

2. *Do my comments reflect what I have taught my students?* The material taught in class should introduce students to and help students develop the skills that they are required to use for their writing assignments. Our students should understand what we expect from them, and our comments should reflect these priorities.

The priorities that determine what we teach in class and the expectations that we identify for our students should correspond to the characteristics of a successful paper. Any strategy for effective commenting requires that we understand just what it is we expect a paper to accomplish (e.g., argumentative thesis sentences, persuasive analysis, accurate descriptions of cases). Before we start reviewing an assignment, we must resolve the question: Do I know what I am looking for in this paper? Answering this question can help ensure

that our comments are focused on the most significant aspects of our students' writing, which should be elements that we have covered in class.

3. *Have I made clear how my comments extend beyond this particular document and relate to legal writing generally?* Another way to ask this question is: Will my comments help my students improve their writing generally or are my comments solely geared toward improving the particular document that I have reviewed? Specific comments regarding what a student has written and comments geared to helping a student improve his or her writing generally are not mutually exclusive. Comments can both help a student improve the particular document reviewed and apply to documents drafted in the future. We should be sure that our students understand that our comments apply beyond the particular document that has given rise to them. For example, while I might tell a student that he or she has not provided any support for a specific conclusion, I will also explain why it is important to provide such support (e.g., to tell the judge not only the result you want but also why that result is correct). Similarly, I will not only note that a student has made repeated punctuation or spelling errors, but also explain the possible consequences of these types of errors to the student's goal of being an effective advocate and counselor (e.g., by undermining the student's appearance of professionalism, by impeding the reader's ability to understand the student's point). We may think that the applicability of our comments to our students' future legal writing is crystal clear, either by virtue of our classroom teaching or common sense. However, our students might not realize the transferability of our comments as they review their marked assignments. Therefore, we should make this relationship explicit to our students.

4. *Have I highlighted key weaknesses and strengths in my students' writing?* On a paper that is filled with comments, a student might not be able to distinguish more significant from less significant feedback. One way to address this problem is to

limit feedback to particular aspects of a student's writing: commenting on a limited number of identified aspects of a particular assignment (e.g., thesis sentences, CRAC (conclusion, rule, application, conclusion) format) or commenting on only the most pervasive weaknesses in a student's paper.

Providing wrap-up comments at the end of a paper is another way to draw students' attention to particular aspects of their writing. A single failure to provide support for a proposition or include a thesis sentence may warrant a comment, but a pervasive failure to cite authority or use thesis sentences requires a more focused response. Writing comments at the end of a student's paper can identify themes in the student's writing (e.g., effective thesis sentences, insufficient explanations for conclusions) and provide a framework for the individual comments throughout the student's paper. The end comments can also provide some additional explanation for the most significant or recurrent comments written throughout the student's paper.

I like using end comments on major assignments to connect the feedback on the current assignment to future writing efforts. Rather than introduce the end comments as a retrospective of the most significant features of a student's current assignment, I introduce my end comments by saying, among other things, "As you continue your legal writing, be sure to ..." By presenting my final comments prospectively, I am explicitly reinforcing that my comments on a particular assignment do not only relate to that assignment but also apply to future writing projects. Prospective end comments can provide continuity from one legal writing assignment to the next and from our legal writing course to the student's future legal writing projects, whether in school or in practice.

As I read and comment on assignments, knowing that I am going to provide my students with this brief, forward-looking overview may also help to keep me focused on my overarching

purpose of providing meaningful feedback, not editing or correcting each student's particular paper.

5. *Have I left work for the student to do?* In other words, if the student were going to rewrite the paper, would the student only have to input my editorial changes or would the student actually have to do independent work, guided by my comments, to rewrite the paper? Because the goal is to provide feedback, not rewrite the student's paper, my comments should leave plenty of work to do for the student who wants to revise his or her paper. Presenting feedback by asking questions is one way to avoid rewriting a student's paper for him or her. For example, rather than editing a student's paper to state a point more clearly, we can write a comment asking whether the reader would understand the student's point. We might also explain why the reader would be likely to misunderstand the student's point. Although it can be helpful to assume occasionally the role of the writer or editor and show the student how we might rewrite a phrase or sentence, it is generally more useful to assume the role of the reader and give the student insight into the reader's response to what the student has written.³

6. *What would be my immediate reaction if I were the student receiving the paper back with these comments on it?* This question relates less to the substantive comments themselves and more to the sheer quantity of comments on each page of the paper. Are there so many comments on the paper that the student will be immediately overwhelmed and discouraged from reading any of the comments? Are there so many comments on the paper that the student cannot decipher the comments? On the other hand, are there so few comments that the student will feel that he or she received insufficient guidance or will wonder whether the professor, in fact, read the paper at all? If the paper is graded, are there enough comments and explanations so that the student will understand the basis for the grade received?

³ The insight into the reader's mind can be given by the legal writing professor from the perspective of the student's teacher or the document's intended audience (e.g., judge, law firm colleague, client).

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When we start teaching legal writing, we all know that our purpose is to teach. Our practical experiences before we came to teaching play an invaluable role in our effectiveness as teachers.⁴ However, at the same time, it is useful to recognize and remind ourselves of the ways in which the role of teacher differs from that of practitioner. Being mindful of our teaching purpose and student audience is particularly appropriate when we give written feedback to our students on their writing assignments. This mindfulness can help us provide focused feedback that guides our students in improving their own writing and thereby facilitates our students' development as critical thinkers and effective communicators.

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⁴ See, e.g., Mitchell Nathanson, *Celebrating the Value of Practical Knowledge and Experience*, 11 Perspectives: Teaching Legal Res. & Writing 104 (2003).