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Teaching Students How to Think Like Lawyers: Integrating Socratic Method With the Writing Process

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TEACHING STUDENTS HOW TO "THINK LIKE LAWYERS": INTEGRATING SOCRATIC METHOD WITH THE WRITING PROCESS*

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INTRODUCTION

Good writing results from good thinking. It makes sense, then, that tools used to teach good thinking should be combined with tools used to teach good writing when law students are learning how to conduct written legal analysis. Legal writing teachers can and should integrate teaching techniques used in law classrooms and in composition courses: from the law classroom, the Socratic method, and from the composition course, the writing process. Integrating Socratic method with the writing process can make the legal writing course the most effective vehicle in the law school curriculum for teaching both analytical and written communication skills.

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We have learned a great deal about legal writing and teaching legal writing from our students and especially from three of our colleagues: Teresa Godwin Phelps, Nancy Elizabeth Grandine, and Julie Jenkins Hadden: "[G]ladly wolde [they] lerne and gladly teche." GEOFFREY CHAUCER, THE CANTERBURY TALES, "Prologue," line 308 (F. N. Robinson ed., Riverside Press 1933) (circa 1387). We wish to thank Kim Town for her insights into composition theory and Teresa Godwin Phelps, Randy Lee, Nancy Rapoport, L. Camille Hébert, and Joseph Kearney for reading and commenting on drafts of this article. Joseph King, Annette Houck, Susanna Brown, and Thomas Grever provided valuable research assistance. Paula Heider of Widener University School of Law provided excellent secretarial assistance.

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Law students practice the same thinking process in the law classroom[1] and the legal writing course, although legal writing students must take the additional step of learning how to communicate their thinking to an audience in writing.[2] Students practice this thinking process in the law classroom through a Socratic dialogue with the teacher: students "think out loud," and the teacher immediately intervenes to question and criticize. But because legal writing students cannot "write out loud," the legal writing teacher cannot conduct an oral Socratic dialogue that duplicates the law classroom's give and take. The legal writing teacher can, however, combine Socratic method with writing process principles to improve on the law classroom dialogue.[3] The teacher can first follow writing process principles and require the students to complete their writing assignments in a series of focused drafts. Next, the teacher can intervene in the students' thought processes by responding to early drafts with Socratic questions that prompt the students to formulate their thoughts precisely.

The first part of this article contains an overview of how Socratic method and the writing process have traditionally been used and how they can be integrated in the legal writing course. The remainder of the article is devoted to an analysis of how this integration can be achieved in a five-step structured dialogue. We have identified these five steps as: (1) the assignment, or "instigating question";[4] (2) the student's written answer, in a series of "focused drafts" with "private memos";[5] (3) the teacher's written response, using Socratic questions whenever possible;[6] (4) the conference, where the teacher can use Socratic method most effectively;[7] and (5) the student's revision.[8]

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1. Although the legal writing classroom is, of course, a law classroom, in this article we will be discussing, for the most part, the learning that takes place outside of the legal writing classroom. Hence, we use the term "law classroom" to refer to classrooms in which students are taught traditional substantive course material (e.g., torts, contracts, etc.) via traditional methods.

2. As Professor Gopen has noted, "[s]tudents come to law school 'to learn to think like a lawyer'; they should also have the opportunity to learn there how best to express those new and complicated thoughts." George D. Gopen, *The State of Legal Writing: Res Ipsa Loquitur*, 86 MICH. L. REV. 333, 362 (1987).

3. *See generally* Donald M. Murray, *Writing as Process: How Writing Finds Its Own Meaning*, *in* EIGHT APPROACHES TO TEACHING COMPOSITION 3, 4 (Timothy R. Donovan & Ben W. McClelland eds., 1980) (writer discovers meaning as it emerges in process of creating and responding to evolving written work); Linda Flower & John R. Hayes, *A Cognitive Process Theory of Writing*, 32 C. COMPOSITION & COMM. 365, 366-68 (1981) (organizational act of composing reflects author's purpose and goals); Linda S. Flower & John R. Hayes, *Problem-Solving Strategies and the Writing Process*, 39 C. ENG. 449 (1977) (problem solving strategies facilitate various elements of writing process); Maxine Hairston, *The Winds of Change: Thomas Kuhn and the Revolution in Teaching Writing*, 33 C. COMPOSITION & COMM. 76 (1982) (new paradigm for teaching writing views writing as nonlinear learning process and focuses on strategies and process skills); Teresa Godwin Phelps, *The New Legal Rhetoric*, 40 SW. L.J. 1089, 1093-98 (1986) (emerging methods of teaching writing focus on process rather than product and utilize research in linguistics and composition).

4. *See infra* Part II. *A.*

5. *See infra* Part II. *B.*

6. *See infra* Part II. *C.*

7. *See infra* Part II. *D.* One stimulus for this article came from an instructional video on teacher-student writing conferences produced by the University of Puget Sound Law School. In the video, it is suggested that teachers use a "gentle Socratic method" to stimulate student participation

I. OVERVIEW

A. Socratic Method in the Law Classroom

The theory behind Socratic method is simple: students learn how to think[9] and learn information better when they are required to think through and figure out answers to questions than when a teacher tells them the answers.[10] In the traditional law classroom, teachers who use Socratic method ask questions designed to challenge their students' assertions and assumptions about cases, laws, and principles.[11] In figuring out the answers to these questions, the students achieve a better understanding of both the legal issues being discussed and the process of legal analysis.[12] One commentator has noted that the goal of any

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during writing conferences. UNIVERSITY OF PUGET SOUND LAW SCHOOL, EFFECTIVE WRITING CONFERENCES (video 1988). We agree that Socratic method can be used effectively during conferences, but we believe that it should be used even earlier, in written comments on student papers.

8. *See infra* Part II. *E.* Obviously, steps 2-5 may be repeated as time allows.

9. Law classroom teachers are teaching their students a skill as much as they are imparting knowledge of the law:

> Perhaps some . . . will object to classifying training in thinking as training in a skill. Certainly it is an element of competence easily distinguishable from such skills as interviewing, counseling, negotiating, drafting, and persuading, and one who so prefers may give it a name other than skill. But it is even more sharply distinguishable from knowledge, and in the present discussion, it is referred to as a general skill of understanding — one that it is essential to develop in some minimum degree before any bridges can be crossed between knowing law and using it in addressing a problem.

Robert Keeton, *Teaching and Testing for Competence in Law Schools*, 40 MD. L. REV. 203, 211 (1981). *See also* James J. Brown, *Honing the Legal Mind: The Classroom Experience*, 12 STETSON L. REV. 653, 668 (1983) (" '[Students] . . . go to a great school not so much for knowledge as for arts or habits.' ") (quoting Dean Monrad G. Paulsen); Richard B. Parker, *A Review of Zen and the Art of Motorcycle Maintenance With Some Remarks on the Teaching of Law*, 29 RUTGERS L. REV. 318, 326 (1976) (book review) ("[M]ost teaching is not the communication of true propositions. It is teaching people to do things . . . .").

10. For a detailed discussion of formal Socratic method, see Richard K. Neumann, *A Preliminary Inquiry into the Art of Critique*, 40 HASTINGS L.J. 725, 728-39 (1989). The use of Socratic method in the law classroom does have its critics. *See, e.g.*, June Cicero, *Piercing the Socratic Veil: Adding an Active Learning Alternative in Legal Education*, 15 WM. MITCHELL L. REV. 1011, 1014 (1989) (Socratic method may intimidate students and lead to silence of women in classes); Frank R. Strong, *The Pedagogic Training of a Law Faculty*, 25 J. LEGAL EDUC. 226, 235-36 (1973) (Socratic method ineffective for developing many skills which should be part of legal education). Most would admit, however, that Socratic method works well for the students who engage in direct conversation with the teacher. We believe that Socratic method is most effective in legal writing courses because the teacher engages in direct conversation with each student.

11. *See* Steven A. Childress, *The Baby and the Bathwater: Salvaging a Positive Socratic Method*, 7 OKLA. CITY U. L. REV. 333, 335 (1982) (" '[C]ore' of the method . . . is a question-and-answer . . . framing of dialogue and an open, critical classroom inquiry into cases, principles, law and values."); Jon Richardson, *Does Anyone Care for More Hemlock?*, 25 J. LEGAL EDUC. 427, 435-36 (1973) (classes using Socratic method to teach analytic skills should be supplemented by courses using other methods more effective at teaching substantive law); Irvin C. Rutter, *Designing and Teaching the First-Degree Law Curriculum*, 37 U. CIN. L. REV. 9, 26-33 (1968) (in Socratic method as practiced, critical questioning by teacher leads to student understanding by incorporating student participation in the process of analysis).

12. *See, e.g.*, Rutter, *supra* note 11, at 26-33 (students do not usually resolve substantive issues, but achieve understanding of process and subject matter through struggling with issues).

valid teaching method should be "[b]uilding up a student's confidence" to the point "where he can begin to train himself."[13] Using Socratic method gives students the tools necessary to train themselves to analyze legal problems on their own outside the law classroom.

B. The Writing Process in the Composition Course

In addition to employing Socratic method, legal writing teachers should exploit the vast research into rhetoric and composition pedagogy that has been conducted over the last forty years. This research has resulted in a gradual change from teaching writing using the "product" method to teaching writing using the "process" method. Product-method teachers usually did not work with their students as the students composed. Instead, they taught students the rules for good writing and evaluated the students' written work only when the students had completed a formal, finished draft. Students were to learn by emulating good writing and by applying the teacher's critique of one assignment to their work on the next, different assignment.

Today, in contrast, most writing teachers use the "process" method of teaching writing. This method allows the writing teacher to intervene in the students' work while the students are in the process of composing. The theory underlying the process method is that people write better if they do not try to produce a finished draft at one sitting.[14] Rather, good writing results when the writer focuses on different tasks at different stages of a "writing process." The pedagogical purpose of replacing the product method with the process method has been explained by Donald M. Murray, one of the process method's earliest proponents:

> The process of making meaning with written language cannot be understood by looking backward from a finished page. Process cannot be inferred from product any more than a pig can be inferred from a sausage. It is possible, however, for us to follow the process forward from blank page to final draft and learn something of what happens.[15]

Murray admits that breaking down the writing process — "a process of interaction" — into stages is an "unnatural" act. He argues, however, that breaking down the stages is necessary; that "[t]o study those interactions within . . . our students, we must stop time (and therefore the process) and examine single elements."[16] Thus, rather than give feedback to students on their final drafts alone,

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13. Parker, *supra* note 9, at 326 (emphasis removed).

14. *See* sources cited *supra* note 3.

15. Murray, *supra* note 3, at 3.

16. *Id.* at 4. Both legal writing scholars and composition scholars agree that the writing process can be divided into at least three stages. In the first stage, usually referred to as "prewriting," the writer decides what to write about and gathers any information necessary for the writing. In the second stage, generally referred to as "writing," or "composing," the writer produces, by writing one or more drafts, a writing that expresses, at least in his own eyes, the message that he intends to express. In the third and final stage, usually called "revising," "rewriting," or "editing," the writer edits and polishes one or more drafts to create a formal, finished document that communicates his message to a reader. *See, e.g.*, VEDA R. CHARROW & MYRA K. ERHARDT, CLEAR AND EFFECTIVE LEGAL WRITING 4-7 (1986) (discussing three-stage writing process); MARY B. RAY & JILL RAMS-

writing teachers who use the writing process "stop time" and give their students feedback throughout the composing process. The students can use the teacher's feedback, not when writing some future, unrelated assignment, but to understand and remedy the specific communication problems in the current document. In doing so, the students train themselves to write more effectively in the future.

C. *Integrating Writing Process with Socratic Method in the Legal Writing Course*

Integrating Socratic method with the writing process yields the most productive teacher-student interaction available during law school.[17] The structured Socratic dialogue that takes place between the legal writing teacher and students allows the teacher to focus on the learning needs of each of those students to a degree that is impossible to achieve in the law classroom. At least one commentator has noted some of the limitations inherent in using Socratic method in the law classroom:

> [W]ith large classes, much of the student "doing" must be vicarious. Despite indulgence of an assumption that when the method is properly explained each and every other student will learn when a classmate and the instructor are in dialogue, there is reason to be highly dubious of the effectiveness of vicarious classroom practice . . . .[18]

In the legal writing course, the participation is never vicarious: each student must create legal documents in response to the teacher's questions, each student receives personal feedback from the teacher, each student must actively participate in the conference, and each student must revise his or her writing to remedy the problems that teacher and student have identified. This participation inevitably results in students' gaining a better understanding of how to conduct legal analysis than they can in the law classroom.[19]

FIELD, LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN 247-49 (1987) (discussing five-stage process: prewriting, writing, rewriting, revising, and polishing).

17. Admittedly, the legal writing teacher cannot hope to cover the amount of material through four or five writing assignments that the law classroom teacher covers in fifty class meetings over the course of a semester. Nevertheless, legal writing students can understand the substance of legal analysis in greater depth and with greater precision when writing several drafts of a document than they can during a one- or two-hour classroom discussion.

18. Strong, *supra* note 10, at 235; *see also* Cicero, *supra* note 10, at 1018 (active learning provides "participant pleasure" and thus enables students to learn more effectively). Vicarious learning is also ineffective in the legal writing classroom. One commentator, who studied student evaluations of writing courses, noted that "[s]tudents seemed to perceive all class[room] activities as devoted to 'writing in general' and found none of them directly relevant to their individualized writing problems." Thomas A. Carnicelli, *The Writing Conference: A One-to-One Conversation*, *in* EIGHT APPROACHES TO TEACHING COMPOSITION 101, 106 (1980). One typical student comment: " 'Although valuable information was disseminated during class, I learned about *my* writing in my biweekly conferences.' " *Id.* at 105.

19. One commentator has noted that "while the teaching of analytical art is disappearing from classrooms after the first year, clinicians and other critiquing teachers have begun to find ways of teaching analytical art more thoroughly and more convincingly than might have been possible in the classroom even during the Langdellian golden age." Neumann, *supra* note 10, at 744. He further

Engaging legal writing students in a Socratic dialogue is useless unless the legal writing assignments are structured around writing process principles. Teachers who use the product method, responding only to final, finished drafts, intervene in their students' thought processes too late: the students have already finished their thinking and writing, and have no opportunity to remedy the problems identified by the feedback. Using the writing process allows the teacher to "stop time" and respond to early drafts. The teacher can then intervene in the students' thought processes and ask Socratic questions while the students are formulating their legal analysis. The students learn because they must use their teacher's feedback to figure out what is wrong with their writing and fix it.

Law classroom teachers have recognized implicitly that students must be forced to "revise": few would respond to a student's incorrect oral analysis by telling the student what the answer should have been. Instead, the teacher guides the student, through questions and critique, to rethink and revise that initial answer on the spot. Similarly, when responding to a student's early written work, the legal writing teacher should not tell the student what he or she should have written. Instead, the teacher should use Socratic questions and critique to enable the student to rethink the analysis, realize any errors, and revise the writing.[20] This individualized, interventive approach to teaching legal writing is one of the best ways to teach students not only how to communicate legal analysis, but also how to conduct that analysis.

II. USING STRUCTURED SOCRATIC DIALOGUE TO TEACH LEGAL ANALYSIS IN LEGAL WRITING

A. The Assignment

The structured Socratic dialogue between teacher and student begins when the teacher assigns a research and writing project to the class. The assignment of the project is, in essence, the teacher's "question" to the students. Just as the law classroom teacher may begin the classroom discussion with a question designed to prompt thinking about a case or a legal issue, the legal writing teacher begins the structured dialogue by asking students a question to inspire their thinking and their writing about a legal issue.

The typical legal writing assignment contains a set of case facts and other materials that culminate in an "instigating question," usually one that requires students to assess the viability of a hypothetical client's case or cause of action. This instigating question will be broader than the type of question asked in the law classroom, where the teacher usually asks a series of more focused questions

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notes that "written work may be more fertile than performances for the teaching of analytical art." *Id.* at 763 n.114. *See also* Carnicelli, *supra* note 18, at 105 ("[N]ot one of the 1,800 students [in author's study] found classes as useful as conferences.").

20. One commentator has observed that guided revision encourages student confidence: "Skill in action can only be acquired by practice. In order for the practice to be effective, students must have sufficient confidence to act, make mistakes, realize they have made mistakes, and then come back and do it again." Parker, *supra* note 9, at 326.

to guide the students through the process of legal analysis. The legal writing teacher, in contrast, must design an instigating question that allows students to begin their legal analysis without the teacher's immediate intervention. When the legal writing teacher designs this question, the teacher should consider how each component of the assignment will promote or discourage the students' ability to formulate written legal analysis independently.

The students' ability to achieve this independence will depend in large part upon how the teacher designs these components. For example, the legal writing teacher must decide whether to identify the specific legal issues for the students,[21] whether to require the students to conduct research,[22] whether to set the case facts in a real jurisdiction,[23] and whether to ask a question whose "correct" answer is settled in the law.[24] Most teachers limit the responsibilities that their assignments impose on neophyte students; as students become more sophisticated, however, the teacher can create assignments that demand more independent decision-making. However sophisticated the assignment, the instigating question starts the dialogue and requires students to begin the process of written legal analysis.

B. The Students' Responses: Focused Drafts and Private Memos

One legal writing professor has asserted that "[t]eaching writing is like teaching someone to drive. You can lecture and assign readings, but the only way to learn is to get behind the wheel."[25] Legal writing teachers must allow

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21. The teacher may decide to identify the specific issues for neophyte students to make sure that they spend their time analyzing the issues rather than trying to identify the issues. When students are more sophisticated, however, requiring them to identify the legal issues challenges them to conduct this important first step in legal analysis themselves.

22. Some teachers may not require students to conduct their own research either because students do not have enough research experience or because library resources are limited. Requiring students to research the problem, however, gives them practice in the analytical skills necessary to find and select the relevant legal authorities.

23. Setting the legal writing problem in a hypothetical jurisdiction allows students to conduct in writing the same type of legal analysis they may be conducting orally in the classroom. Problems set in a hypothetical jurisdiction usually require students to discuss the general legal standards relevant to an area of law. In contrast, problems set in real jurisdictions demand that students make realistic decisions about how existing precedents in that jurisdiction apply to the facts of the assignment. *See, e.g.*, Mary Ellen Gale, *Legal Writing: The Impossible Takes a Little Longer*, 44 ALB. L. REV. 298, 311 (1980) ("If students deal with the law as it actually exists, paying attention to jurisdictional boundaries, legal writing and research courses can counteract 'the tendency of a national law school to underemphasize the degree to which the law of a particular jurisdiction limits and controls a given case.' ") (footnote omitted) (quoting Harry Kalven, Jr., *Law School Training in Research and Exposition: The University of Chicago Program*, 1 J. LEGAL EDUC. 107, 119 (1948)); *see also* Marjorie D. Rombauer, *Regular Faculty Staffing for an Expanded First-Year Research and Writing Course: A Post Mortem*, 44 ALB. L. REV. 392, 394 (1980) (problems set in a particular jurisdiction force students to work within constraints imposed by specific precedents and statutes).

24. *See* Gale, *supra* note 23, at 311-12 (well-designed assignments help students learn the differences between settled and unsettled issues and correct possible misperceptions that no issues are settled).

25. Steven Stark, *Law Schools Must Teach Writing as a Discrete Skill*, LEGAL TIMES, Sept. 19, 1983, at 16.

students to "get behind the wheel" of their writing — to make decisions for themselves with only necessary guidance from the teacher. In order to get students behind the wheel as soon as possible, the legal writing teacher should not only assign a writing project early in the term, but must also require the students to provide some sort of written response early in their composing process. This early response gives students the opportunity to articulate and to receive feedback on their most embryonic thoughts.

Unlike students in the law classroom, who have the opportunity to think out loud under their teacher's guidance, legal writing students cannot write out loud. The legal writing teacher can, however, simulate in two ways the step-by-step thinking process in which students participate during the law classroom dialogue. First, the legal writing teacher can require students to produce their written work in a series of focused drafts. Second, the legal writing teacher can require them to create "private memos" while writing those drafts. In those private memos, the students should evaluate their writing and articulate questions about the writing that arose during the writing process.[26] Together, these techniques allow students to reveal to the teacher the thought process that they engaged in while trying to answer the teacher's instigating question.

1. Focused Drafts

Using the writing process allows legal writing students to focus their early drafts on substantive concerns; only in later drafts should that focus broaden to include stylistic, mechanical,[27] and other communicative concerns. In the law classroom, good teachers often focus their class discussions on two or three important themes. The law classroom teacher controls the discussion to prevent it from wandering into the myriad issues that are present in any legal problem. Legal writing students also contend with myriad issues when completing their writing assignments. In addition to the many possible legal issues, they must also confront issues of effective written communication. Writers who ignore concerns of style, grammar, and mechanics do not effectively communicate their ideas. Although the students cannot avoid these communication issues, the legal writing teacher can help them to address these concerns at an appropriate time by allowing the students to focus their attention on substance alone during the early stages of the writing process.

Students who are learning to write using the writing process usually write a series of drafts that the teacher reviews and responds to. The students' first writings do not give a final "answer" to the instigating question. Instead, the students first write a series of focused drafts that serve as provisional answers.

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26. Composition scholars have used other methods to discern what writers are thinking about as they write. *See, e.g.*, John R. Hayes & Linda S. Flower, *Identifying the Organization of Writing Processes*, *in* COGNITIVE PROCESSES IN WRITING 3, 3-29 (1980) (writers dictate into a tape recorder everything they think while writing, thereby creating a map of their writing process for others to analyze).

27. "Mechanics" can include anything from grammar and punctuation to spelling and citation form. Of course, mechanics are an important part of any formal, written work, but we believe that students must understand their analysis before they address mechanical concerns.

In early drafts, this provisional answer should be focused on legal analysis alone. In later drafts, the focus should broaden to include effective communication of that analysis. This type of answer mimics the responses given by law classroom students, who are unfettered by the formal demands of written English. When the legal writing teacher requires students to write focused drafts, the students are encouraged to master the content of their legal analysis before moving on to the content-dependent questions of style and mechanics.[28]

Composition researchers have found that student writing frequently suffers when students focus on mechanical concerns too early in the writing process. Although these students may produce writing with accurate sentence structure and grammar, the accuracy often comes at the expense of the substance of the writing.[29] These writers can devote so much attention to the mechanics of their writing that they do not spend enough time formulating the substance. It is even more important to allow legal writing students — who are conquering a new subject matter as well as a new thinking process and writing style — to devote their full attention to substance in early drafts. Once they fully understand this substance, they will naturally be better prepared, in later drafts, to write in a way that communicates that analysis more precisely.[30]

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28. Composition research has shown that focused drafts allow the teacher to respond to student writing more effectively; consequently, students can revise more effectively. Nancy Sommers, *Responding to Student Writing*, 33 C. COMPOSITION & COMM. 148 (1982). Kimberly Town, former Director of The Writing Center at The Ohio State University, first suggested this method of requiring focused drafts to one of the authors. *See also* RAY & RAMSFIELD, *supra* note 16, at 247 (identify elements of writing process and improve one at a time to improve writing process); Janet Motley, *A Foolish Consistency: The Law School Exam*, 10 NOVA L.J. 723, 759 (1986) (separate evaluation of substantive legal knowledge and writing or analytical skills may alleviate problems arising from simultaneous testing of knowledge and skills on typical law school exams).

29. For instance, commentators have recognized the difficulty of simultaneously paying attention to all aspects of composing a written document:

> Much of the difficulty of writing stems from the large number of constraints that must be satisfied at the same time. In expressing an idea the writer must consider at least four structural levels: overall text structure, paragraph structure, sentence structure (syntax), and word structure (spelling) . . . . Teaching methods should be designed to allow the beginning writer to practice fewer task components at a meaningful time in a meaningful way.

Allan Collins & Dedre Gentner, *A Framework for a Cognitive Theory of Writing*, *in* COGNITIVE PROCESSES IN WRITING 51, 67 (1980).

30. *See* Carnicelli, *supra* note 18, at 103; Richard Hyland, *A Defense of Legal Writing*, 134 U. PA. L. REV. 599, 620-21 (1986); Rombauer, *supra* note 23, at 393 (apparent problems of grammar or composition often reflect underlying analytical deficiencies). Many good writers have the common misconception that good grammar is all that is needed for good writing. Thus, judges and practitioners exhort the law schools to make sure that their students can "demonstrate the ability to write a composition in logical, clear, unambiguous and grammatical English." Stanley A. Weigel, *Legal Education and the English Language*, 10 NOVA L.J. 887, 887 (1986). "There is no excuse for the failure of law schools to demand that students have the ability to write clear, concise English." *Id.* at 888. If writing is not "clear" or "logical," however, the writing often contains unsound analysis rather than faulty grammar. Certainly, sound analysis can be misunderstood if it is expressed ungrammatically. But unsound analysis is just as unsound when it is presented grammatically as when it is presented ungrammatically. Writing teachers should demand that their students think through their analysis; once the students understand that analysis, the grammar will usually come more

When the legal writing teacher identifies a content focus for early drafts, student-writers receive permission to postpone attention to stylistic and mechanical concerns that distract them from composing. The student-writers are then free to concentrate on mastering their legal analysis.[31]

2. Private Memos

The better that teachers understand the thought processes behind their students' analysis — whether that analysis is oral or written — the more effectively they can guide those thought processes to help students improve their analysis. The law classroom teacher, of course, has a more immediate opportunity to explore students' thought processes than does the legal writing teacher, who is responding to written, rather than oral, work. By the time the legal writing teacher is able to question the student — for instance, in written comments on the paper or orally in the conference — the student may well have forgotten the thought process behind the written analysis.[32] To avoid this problem, the teacher can require the students to create a "private memo" in which the students evaluate their writing and articulate questions about the writing that occurred to them while composing. The private memo can help the students to remember and the teacher to understand the thought processes behind their written analysis.

Although the private memo is a separate writing, it is more likely to ease than to burden the writing teacher's workload. First, it is usually short; a typical length is one-half of a page. Second, it provides insight into the student's thought process; this insight can reduce correcting time because the teacher spends less time struggling to understand the student's meaning. Third, it allows the teacher who must review anonymous student papers to be aware of individual student needs.[33]

Other writing teachers have experimented with similar techniques in an effort to understand their students' writing.[34] One legal writing teacher has encouraged her students to record their thoughts and decisions in a "reflective writing," which can include "consideration of the choices that the student made in role in the [assignment], theoretical issues that were implicated but not explicit in the lawyering tasks, and reflection on the learning goals of the [assign-

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easily. *See* Gale, *supra* note 23, at 303, 304 (sound analysis is a major component of legal writing). Of course, the teacher must demand good grammar and mechanics from her students; she should simply postpone this demand from the first draft to a later draft.

31. Ultimately, of course, each student must unite the issues, the legal analysis, effective legal writing style, and mechanics in a formal, final draft. Maxine Hairston has noted, "[i]t is important for us to preserve the best parts of earlier methods for teaching writing: the concern for style and the preservation of high standards for the written product." Hairston, *supra* note 3, at 88.

32. For example, a student may reply to questioning by stating, "I don't know. I wrote this at two o'clock in the morning three weeks ago — how can I remember?"

33. We believe that anonymous grading is generally not appropriate in a legal writing course precisely because the teacher can respond more effectively when the teacher can become familiar with each student's particular writing problems.

34. *See, e.g.*, Hayes & Flower, *supra* note 26, at 21-29 (authors analyzed students' comments, which were tape-recorded while writing, to determine students' thought processes).

ment]."[35] The private memo, like a reflective writing, is substantively separate from the document that the student-as-attorney writes for the teacher. In the private memo, however, students should both critique their writing and articulate questions about and insights into the substance of the document and the writing process itself. The private memo gives students an opportunity to evaluate their writing at a meaningful time, while they are engaged in the thinking and decision-making necessary to produce a written document.[36]

Private memos can be written in many different ways. Students can write the private memo as a separate document, or they can incorporate the private memo into their legal writing assignment, using brackets or footnotes to identify private memo questions and comments. Students can be required to answer specific questions, or they can decide for themselves what aspects of the document they wish to evaluate or discuss. For example, the legal writing teacher may allow for self-critique by simply asking students to identify the strengths and weaknesses in their writing[37] or by asking students to critique specific elements of their analysis.[38] As students become more comfortable creating private memos, they will inevitably take the initiative in identifying problems and asking questions about their writing without having to answer specific questions posed by the teacher.

The private memo, if effectively written, opens a window for the teacher into the student's thinking process. The view that this window provides should enable the teacher to better understand the student's writing and analytical problems. By itself, the student's draft may not completely explain the student's thought process to the teacher. Although the draft should enable the teacher to identify writing problems, it will not necessarily enable the teacher to understand the reasons for those problems.[39] If the student articulates his or her thinking process in the private memo, however, the teacher is in a much better position to diagnose the student's strengths and weaknesses and to give appropriate advice.[40]

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35. Ellen Mosen James, *Evaluating Writing in the Context of Experiential Learning, in* THE SECOND DRAFT (Legal Writing Inst., Tacoma, Wash.), Jan. 1987, at 7, 9.

36. True, the student does have the opportunity to ask questions during the conference, but by that time the student usually does not remember the questions he once had. He only remembers that he worked long and hard on a paper that got marked up.

37. For example, the teacher may ask: "Identify the strengths and weaknesses in this draft. Which sections in the document contain your best work? Which sections contain your worst work? Why?"

38. For example, the teacher may ask: "What legal standards did you identify and explain for your reader? On reviewing your document, do you see any legal standards that your reader might need to have explained more fully?" Asking specific rather than general questions forces students who might not willingly conduct a self-critique to evaluate their writing more carefully, and encourages them to pinpoint specific strengths and weaknesses in their writing.

39. Hayes & Flower, *supra* note 26, at 9 (teacher can only partially infer from students' writing the underlying processes of analysis).

40. For example, if a student writing an interoffice memorandum failed to mention any authorities adverse to the client, the teacher might think that the student had deficient research skills and write comments about how to conduct research. However, imagine the same teacher reading that student's private memo comment which said, "I had a hard time finding good cases for my client!

The act of writing the private memo also provides direct benefits to the students. When students articulate their thinking processes in the private memo, they should become more conscious of how they conduct legal analysis as well as how they communicate the results of that analysis. In writing the private memo, students should recognize that they make certain choices when they express their legal analysis in writing and that they must take responsibility for those choices. Ideally, writing private memos will encourage students to make those choices more carefully.

In addition to the direct benefit of a more thoughtfully written document, the private memo provides indirect benefits to the student. One professor argues that "[f]eedback is maximally useful when the student feels he wants and needs it because he has formulated a question the feedback can help to answer."[41] By writing a private memo, the student formulates questions that will be answered through the teacher's feedback. Most teachers find that students who write private memos are receptive not only to feedback to private memo questions, but also to the teacher's other comments and criticisms. The student and teacher are allies in helping the student to formulate and express his or her thoughts. In this way, they become collaborators in the writing process.

Although the private memo often encourages closer collaboration between the student and the teacher, it can also allow the student to maintain some independence from the teacher. In the private memo, the student can record his or her decision-making process and preserve discarded ideas for possible use in later drafts. The private memo thus allows students to have the same independence in their writing that they have in the law classroom, where they are free to change their minds during the course of the classroom discussion. If the law classroom teacher questions a student's response — or even if the teacher's eyebrows shoot up — the student can choose a different response.[42] In contrast, students ordinarily select only one option when committing their thoughts to paper. Recording the other options in the private memo makes it possible to discuss with the teacher both the chosen option and the rejected options. If a student then decides to use a previously rejected option in a subsequent draft, this decision will have been based not only on the teacher's comments, but also on the options the student recorded in the private memo. The private memo thus allows students to preserve their internal debates about the choices that

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Everything seemed to cut against him, so I hardly have any cases in this draft. Or am I missing the point? Should I tell my senior partner about both positive and negative cases?" This teacher would know that the student misunderstood the purpose of the memorandum, and could comment appropriately.

41. Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Supervision*, 40 MD. L. REV. 284, 299 (1981).

42. "Conversation provides the speaker with continuous and immediate feedback from the listener, and it is usually obvious if the message is not being received. Thus the communicator can continually rearrange the information to insure that it will eventually become intelligible. Such an opportunity is not available when communication is attempted with the written word. There is only one opportunity to get the message across, and if it is garbled the first time[,] no second opportunity is available." Dennis J. Turner, *Publish or be Damned*, 31 J. LEGAL EDUC. 550, 552 (1981).

they made and to be confident that their ultimate choices originated in their independent thinking.

C. *Responding to Student Writing*

Responding to student writing is the most important task the legal writing teacher performs. If written effectively, these responses can be a major factor in teaching students how to research, write, and revise their writing independently. Students depend on their teacher's responses so that they may assess their own understanding of the substantive material and assess how competently they have communicated that material to a reader.

Many commentators have identified important pedagogical reasons for providing students with extensive, individual feedback on their written work.[43] Unfortunately for writing teachers, however, the process of providing feedback effectively can be as difficult as the process of writing effectively. For the teacher's response to be useful, it must be specific, and detailed enough for the student to understand the strengths and weaknesses of his or her writing. As one commentator noted:

> [A]ny legal writing course . . . [should] provide [a] detailed, precise, reflective, empathetic, and imaginative response to individual student work. A simple 'yes' or 'no' does not sufficiently inform the student of her strengths and weaknesses in analysis, composition, exposition, or (in brief-writing) argument. . . . Perhaps the most useful criticism is precise, extended commentary on specific sections of student papers, coupled with a more general summary evaluation and supplemented by individual conferences. Nearly every teacher of legal writing has discovered the need for extensive feedback . . . .[44]

The teacher's feedback must be more than extensive; it must be framed in a way that promotes the goals that the teacher has identified for the students. For example, students must learn to pay appropriate attention to the various stages of the writing process. The legal writing teacher helps students to learn this process by focusing teacher feedback the same way that the students were allowed to focus their writing. Students must also learn to read their work with the perspective of an outside reader. The legal writing teacher helps students to gain this perspective by assuming the reader's role and by responding to their writing with Socratic questions. Finally, students must learn to evaluate their own work and to find and apply appropriate standards of content, format, and writing style. The legal writing teacher helps students with these tasks by re-

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43. *See* John C. Dernbach, *The Wrongs of Legal Writing*, STUDENT LAW., Oct. 1987, at 18, 20 (teacher's "detailed written comments . . . . [provide] the basis of much, perhaps most, of the learning that occurs" in legal writing courses); *see also* Norman Brand, *Legal Writing, Reasoning and Research: An Introduction*, 44 ALB. L. REV. 292, 296 (1980) ("[I]t is widely recognized that students improve their writing only when they are subjected to intense, thorough-going, individual critiques of their written product."); Geoffrey C. Hazard, Jr., *Curriculum Structure and Faculty Structure*, 35 J. LEGAL EDUC. 326, 331 (1985) ("The best way to learn to write has long since been proven: [i]t is to write, over and over again, under the tutelage of a critical and patient editor.").

44. Gale, *supra* note 23, at 329 (footnotes omitted).

sponding directly to the students' private memos and by helping students to develop techniques for evaluating and revising their own writing in the future.

1. Focused Responses

As noted above, the legal writing teacher should focus students' attention on substantive concerns in early drafts.[45] In the past, many writing teachers — both "product" and "process" teachers — did not focus their feedback. Rather, they responded to first drafts as if they were final drafts, commenting on substantive, stylistic, and mechanical problems all at once. Instead of responding comprehensively to one or two drafts, the teacher should give focused responses, gradually broadening the focus from the content of the analysis to include the content-dependent questions of style and mechanics.

Focused responses avoid exhausting the teacher and avoid overwhelming and confusing students. Students can be overwhelmed by comprehensive comments that try to address substantive, mechanical, and stylistic concerns all on one draft. They often react to the number of comments on the paper before they even read the comments — they look to see how much the teacher has "bled" on their papers. One professor, discussing teacher-student interaction in clinical courses, contends that feedback that is too detailed or too extensive can hurt the student's performance:

> Even though the feedback is desired, it should not be used to overload the [student] or to unload on him. Overloading may cause despair about the prospect of becoming effective and, therefore, is dysfunctional; some feeling of competence is necessary for professional growth. The . . . [teacher] must be selective in providing feedback in spite of the need to supply specific data about the student's overall performance.[46]

Some students may become so disheartened when they see a vast number of comments that they resist reading and thinking about the content of the comments. The student cannot possibly learn from the comments, and the teacher's hard work is wasted.[47]

Comprehensive comments can also confuse students about which revision tasks are needed. Nancy Sommers, a composition theorist, conducted research that showed that students may not revise effectively when teachers comment on substance, style, and mechanics all on the first draft. Sommers argues that these comprehensive comments send contradictory messages to students:

> The [mechanical and stylistic] comments and the [substantive] comments represent two separate tasks for [the] student; the [mechanical and stylistic] comments encourage the student to see the text as a fixed piece, frozen in time, that just needs some editing. The [substantive] comments, however, suggest that the meaning of the text is not fixed, but rather that the student still needs to develop the meaning by doing

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45. *See supra* notes 27-31 and accompanying text.

46. Kreiling, *supra* note 41, at 299.

47. *See also* Terri LeClerk, *The Premature Deaths of Writing Instructors*, 3 INTEGRATED LEGAL RES. 4, 6 (1991).

> some more research. Students are commanded to edit and develop at the same time; the remarkable contradiction of developing a paragraph after editing the sentences in it represents the confusion . . . encountered in . . . teachers' commenting styles. These different signals given to students, to edit and develop, to condense and elaborate, represent also the failure of teachers' comments to direct genuine revision of the text as a whole.[48]

Students do not expect teachers to ask them to revise a paragraph for style when that paragraph may be eliminated because of substantive changes, or to revise sentence structure in substantively inaccurate sentences. However, unless teachers phrase their comments carefully, that is what they seem to be asking the students to do when they comment comprehensively on early drafts. When faced with comments of this breadth, most students will focus on the more easily remedied stylistic and mechanical comments and ignore the substantive comments. They believe that when they have addressed the stylistic and mechanical concerns, they have completed the revision that the teacher sought.

Asking legal writing teachers to respond to multiple drafts of each paper immediately raises time concerns for both teacher and student. Requiring teachers to provide focused responses to focused drafts can eliminate some of these concerns. Just as the student postpones attention to style and mechanics in the early drafts, the teacher postpones responding to stylistic and mechanical problems. Following this approach, most teachers can quickly review the students' early drafts and identify problem areas in their analysis.[49] Teachers who are concerned about fitting the required number of assignments into a semester might overlap assignments. For example, while the teacher is reviewing a draft of the students' memoranda, the students can begin their research on the next project. In addition to allowing the teacher to fit more assignments into the semester, this process allows students to practice handling a lawyer's workload.

Comprehensive comments result in students' paying inappropriate attention to style and mechanics during the early stages of the writing process. When this happens, substantive concerns do not receive enough attention, and students labor to communicate legal analysis clearly, even though this analysis may be, at its heart, inadequate. Focused responses give students the opportunity to solve crucial substantive problems before moving on to other concerns.

2. Encouraging Student Independence with Socratic Comments

In addition to focusing responses to the students' writing, the legal writing teacher must also strive to respond in ways that encourage the students' inde-

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48. Sommers, *supra* note 28, at 151.

49. Not all of the "drafts" need be in traditional document form. For example, in Ohio State's legal writing program, some students complete a "research outline" in which they identify the legally significant issues, the answers to those issues, and the cases that support those answers; they then explain how the cases provide that support. The teacher can quickly note whether the student has identified the appropriate issues and answers, whether the student has found the important relevant cases, and whether the student understands how those cases are relevant. This method of drafting and response can give the student important feedback without taking a lot of the teacher's time.

pendence as legal writers. One of the ways the teacher can do this is by responding with Socratic questions, rather than judgmental comments, whenever possible.[50] It is all too tempting for the writing teacher simply to edit the students' writing and tell them what revisions to make. Students do not learn as much from editing because they do not have to think and revise independently — the teacher has done the revision for them. When the teacher responds with Socratic questions, on the other hand, students realize for themselves the problems that the reader has in understanding the meaning of the writing. This realization makes it more likely that students will take responsibility for their own revisions and learn from them.

The Socratic questions that the legal writing teacher asks will be dictated by the dual purposes of the legal writing course: teaching legal analysis and teaching effective writing techniques. Like the law classroom teacher, the legal writing teacher can use Socratic questions to encourage students to rethink their legal analysis and to come to an independent understanding of that analysis. Students in the legal writing course are learning more, however, than just methods for conducting legal analysis. They are also learning to communicate that legal analysis to an audience in the most effective way possible. Thus, the law classroom teacher will usually ask students questions to force them to reconsider only their legal analysis; the legal writing teacher, at least in later drafts, must ask questions to force students to reconsider both their legal analysis and the way they have communicated that analysis.

Accordingly, the legal writing teacher should respond to students' writing not only as the person who designed the assignment, but also as a reader who is seeing the material for the first time. Sommers has noted the importance of providing the student with the reader's perspective:

> [W]e comment on student writing to dramatize the presence of a reader, to help our students to become that questioning reader themselves, because, ultimately, we believe that becoming such a reader will help them to evaluate what they have written and develop control over their writing. . . .
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> . . . Without comments from readers, students assume that their writing has communicated their meaning and perceive no need for re-

50. Few law teachers or legal writing teachers can or will phrase every response as a question. Professor Richard Neumann has observed: "A misconception is worth [a Socratic dialogue] only if it is symptomatic of ineffectual thinking or if the student needs to be persuaded of his or her own ignorance." Neumann, *supra* note 10, at 736. Professor Kristin Woolever of Northeastern University breaks legal writing teachers' feedback down into four categories: (1) descriptive feedback, which reflects the meaning of the text back to the student; (2) exploratory feedback, in which the teacher questions the student to try to "unearth" the student's true thought; (3) judgmental feedback, in which the teacher applies objective performance criteria to the student's work; and (4) prescriptive feedback, in which the teacher gives the student a fairly specific explanation of how to improve a particular piece of writing. Kristin Woolever, Presentation at The Conference of the Legal Writing Institute, Ann Arbor, Michigan (July 29, 1990) (transcript available from Legal Writing Institute). Although comments of all types can be valuable, we believe that teachers should strive to use "descriptive" and "exploratory" comments when possible. These types of comments, like all Socratic comments, keep the responsibility for thoughtful revision in the student's hands.

vising the substance of their text.[51]

When students respond to a reader's questions, they learn to internalize the reader's perspective; this makes it much more likely that they will be able to revise their own writing effectively in the future.

Students must learn to take responsibility for their own revisions; by responding in question form, the teacher encourages students to take this responsibility. The students must try to answer the teacher-reader's questions in their revisions; when they do so, the students should realize how their documents have failed — either in analysis or in communication. Using Socratic questions to comment also helps teachers to strike the proper balance between comments that are so vague that they give students too much responsibility for their revisions and comments that are so specific that they take away all responsibility for revision from the students.

At one end of the spectrum are comments that do not give the students enough guidance for revision. Teacher comments that are too general do not teach the students why their writing is deficient.[52] These comments tell the students that something is wrong, but the students need more than this.[53] Students depend on the teacher to tell them not only that problems exist in their writing, but also what those problems are and why they interfere with the reader's understanding of the writing. When the students take responsibility for correcting these problems themselves under the teacher's guidance, they learn the skills necessary for the independence that is the ultimate goal of the legal writing course.

At the other end of the commenting spectrum are comments that try to appropriate the revision from the student. These comments do as much damage to the student-writer's emerging independence as do vague comments. Appropriating comments dictate specific revisions (for instance, the teacher may strike out the student's words and substitute or add the teacher's own) and thus impose the teacher's version of the revision on the student. Teachers who dictate specific revisions may believe that their students are learning how to revise their writing because these teachers receive "good" second drafts from their students. In creating these second drafts, however, the students do not take responsibility for their own revisions; they merely manufacture the teacher's dictated revision. Their focus switches from communicating legal analysis to the reader to accom-

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51. Sommers, *supra* note 28, at 148-49 (footnote omitted).

52. *See* Neumann, *supra* note 10, at 766 (general observations may "seem inconsistent, arbitrary, and even whimsical"). Most teachers who have corrected writing have, at one time or another, succumbed to the lure of these classic general comments: "vague," "wordy," and "awkward" (a.k.a. "awk"). One commentator, discussing the deficiencies of the law school examination process, has noted why students need more precise feedback: "Assessment which merely states 'You did poorly' will not usually [help students to develop needed skills] . . . . Shortcomings need to be specified and skills need to be taught if assessment is to operate as an educational device." Motley, *supra* note 28, at 729 (footnote omitted).

53. *See* Neumann, *supra* note 10, at 768 ("[A]t the end of the critique the student should understand the themes both theoretically and in terms of performance.").

modating the teacher's demands.[54] Most students do not learn from this technique because they do not understand why the teacher's revision is better.[55] Whenever the teacher revises for the student, the teacher robs the student of the opportunity to engage in independent decision-making, and thus stunts the student's growth as a writer.

Some teachers may mistakenly believe that they are "hiding the ball" if they do not tell a student exactly what to do in a revision. The teacher can and should give guidance, but must strike a balance between giving specific guidance and allowing students to make their own revision decisions. To take one example: One section of the Federal Tort Claims Act ("FTCA")[56] preserves the government's immunity from actions that arise out of certain intentional torts.[57] In discussing how this section applies, some students might mistakenly discuss the standards for criminal assault and battery instead of the standards for the civil tort of assault and battery. A comment that is too specific would be, "This should be civil instead of criminal." Students responding to this comment could simply change the discussion to comply with the teacher's command without being required to rethink their analysis on their own. A teacher responding with Socratic questions, on the other hand, would ask, "Does the FTCA waive immunity from actions that arise out of criminal assault?" Most students who read this comment would rethink their analysis: they would look at the relevant provision of the FTCA, see the language relating to intentional torts, realize that criminal assault is not a tort, and further realize that they must change their analysis and discuss the civil standards.

The difference between a dictatorial comment and a Socratic comment is subtle, but significant. In the example above, both comments could lead students to the same revision. The students who revised in response to the Socratic comment, however, would be much more likely to have understood why they revised in the way they did, for their revisions resulted not from the teacher's mandate, but from independent thought, discovery,[58] and decision. The more frequently that teachers comment in Socratic form, the more opportunities students have to practice the independent decision-making that they will engage in as lawyers.

3. Preparing the Student for Life After the Legal Writing Course

Because the legal writing course does not last forever, students must learn how to recognize and remedy their own writing problems without the teacher's guidance. The teacher can help students to do this by: (1) responding to the

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54. *Cf.* Gopen, *supra* note 2, at 359 ("Bright undergraduates spend the first half of any course figuring out what that particular teacher wants and the second half of the course producing it.").

55. Even if the teacher does explain why the teacher's way is better, the teacher still deprives the student of the opportunity to attempt the revision independently.

56. 28 U.S.C. §§ 2671-2680 (1988).

57. *Id.* § 2680(h).

58. *See* Cicero, *supra* note 10, at 1017 ("Thomas Aquinas once said, 'There is a two-fold way of acquiring knowledge — by discovery and by being taught. . . . Discovery is higher.' ") (footnote omitted).

private memo in a way that teaches self-evaluation skills; (2) teaching students how to use relevant legal writing authorities effectively; and (3) encouraging students to create a personal revision checklist.

Students' self-evaluation skills are reinforced when they receive specific, positive feedback on the private memo. In the private memo, the students evaluated their own writing both when they specifically critiqued the writing and when they asked questions of the teacher to indicate their areas of confusion. When the student's self-evaluation in the private memo has been inaccurate, the teacher must point out the inaccuracies, show the student why the evaluation was inaccurate, and identify standards the student can use to recognize similar weaknesses in the future. When the student's evaluation has been accurate, the teacher should praise the student for identifying the problem and make sure the student will be able to identify similar problems in the future. The teacher's specific feedback on the private memo prepares the students to diagnose their strengths and weaknesses accurately on their own.

While teaching students to diagnose their own strengths and weaknesses, the legal writing teacher should also give them the means to independently remedy the writing problems that they diagnose. One way the teacher can do this is to refer students to relevant legal writing authorities.[59] Citing to authority provides two benefits. First, the teacher is relieved of the burden of extensively explaining the appropriate standards for revision.[60] Second, the students get practice in solving their writing problems independently: rather than doing "what the teacher told them to do," they can consult the authorities cited and decide for themselves, based on these authorities, how to revise their writing.

Once students learn to identify their recurring writing problems, and arrive at practical solutions to those problems, they can use this knowledge to create a "personal revision checklist." Many legal writing books and legal writing teachers provide students with standardized revision checklists, which help writers to identify and remedy common writing problems.[61] One inherent weakness of these standardized checklists is that they cannot be geared toward a particular writer's strengths and weaknesses. By the end of a legal writing course, however, students should be able to create a personal checklist in which they: (1) identify individual problems that they encounter in each stage of the writing process; (2) note how they will recognize each of those problems in the future; and (3) note methods they can use or authorities they can consult to remedy each of those problems.[62]

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59. The teacher can and should cite to authority even when phrasing comments as Socratic questions. The teacher's questions, coupled with the information provided by the legal writing authority, enable the student to figure out for himself how to revise his writing.

60. Of course, legal writing teachers do not get all of their standards for revision from textbooks. Most legal writing teachers will pass on advice that they have learned from their years of experience. When possible, however, they should give their students an easily accessible authority to refer to.

61. *See, e.g.*, CHARROW & ERHARDT, *supra* note 16, at 168-69 (editing checklist); TERESA GODWIN PHELPS, 1 PROBLEMS AND CASES FOR LEGAL WRITING 39, 41 (rev. 2d ed. 1990) (revision checklist).

62. Some students create this list in three columns headed "Problem," "How to identify prob-

The legal writing teacher's ultimate goal is to wean students from depending on teacher feedback to revise their writing.[63] By responding to students' writing in question form, the teacher helps them to internalize the dialogue with their readers and to identify writing problems on their own. By responding to students' private memos and citing to relevant legal writing authorities, the teacher gives students confidence in their self-evaluation skills and teaches them how to solve for themselves the writing problems that they identify. Finally, by creating personal revision checklists, students give themselves something tangible to take from the legal writing course. The personal revision checklist is a concrete symbol of what the students have learned in the course and of their ability to take responsibility for their future legal writing.

D. The Conference

In the legal writing conference, student and teacher engage in a Socratic dialogue in a classroom of two. The teacher should design Socratic questions to guide the students to realize for themselves where revisions are needed, rather than telling students what to put in the revision. The hallmarks of the effective legal writing conference are thorough preparation, individualized focus, and active participation. When these elements combine, students learn to take responsibility for recognizing their writing problems and figuring out how to remedy those problems.

1. Preparation

The success of the legal writing conference depends on both the teacher's and the student's preparation for it. In the same way that the law classroom teacher would not expect to conduct a good classroom discussion if the students were not prepared, the legal writing teacher must give the students motive, opportunity, and means for conference preparation to ensure a good conference discussion.

The legal writing teacher can motivate conference preparation by holding conferences while the student is engaged in the writing process. In other words, teacher and student should discuss interim drafts rather than final drafts: "A conference in mid-process is immediately useful. In contrast, a conference after a paper has been graded is an autopsy; it dwells on past failures, not future possibilities."[64] Most students will be motivated to prepare for a conference when they know they can use the conference to improve their writing, and hence their grades.

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lem," and "How to fix problem." For example: "Problem: Bad or non-existent topic sentences." "How to identify problem: Create a topic sentence outline OR read the first sentence of each paragraph/paragraph block, watching out for sentences that begin with 'In *case name* . . . .'" "How to fix problem: Revise to make topic sentences from outline the first sentence of the paragraph and/or revise to make sure the topic sentence illustrates the point of the paragraph and is not a brief description of the case that illustrates the point."

63. One of our students recognized the importance of learning to revise his writing without his teacher's input when he said, "Oh, I have to be my own gardener."

64. Carnicelli, *supra* note 18, at 103.

The teacher may also direct the student's preparation for the conference by making appropriate comments on the student's paper. In addition to commenting on the text itself, the teacher should include an appropriate "final comment" which summarizes the teacher's reaction to the paper.[65] The teacher's numerous marginal comments can seem like so many trees to the disheartened students. In the final comment, the teacher can help them to see the forest by assessing their overall strengths and weaknesses. While the final comment itself may help the student to realize where revision is needed, the teacher may use the final comment to assign specific conference preparation (e.g., reading assignments or supplementary research).

Finally, the teacher must give the students adequate opportunity to prepare for the conference. The students should receive the teacher's responses to their writing early enough to allow them to re-read the paper, review the teacher's comments, and decide what they need to discuss with the teacher in the conference.[66]

2. Individualized Focus

The legal writing teacher can and should focus the conference dialogue on the needs of each student. This focus is impossible to achieve in the law classroom because the classroom teacher has a responsibility to teach a large number of diverse students; one student cannot be allowed to direct the classroom discussion to his or her particular questions and concerns.[67] Because each student in the classroom may be at a slightly different level of understanding of the course material, the classroom teacher must keep the focus of the classroom dialogue broad enough to allow each student to receive the maximum benefit from the discussion. In the legal writing conference, in contrast, there is only one student in the classroom; that student's understanding of the material can and should be the primary focus of the discussion.[68]

Each student helps to determine the focus of the conference by actively participating in it. One commentator has recognized the positive impact of this participation: "Students perceive conferences as more effective when they are

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65. *See* Gale, *supra* note 23, at 329 ("[M]ost useful criticism is precise, extended commentary on specific sections of student papers, coupled with a more general summary evaluation.").

66. Students need to review the paper *before* the conference so they can prepare for the conference and not waste valuable conference time reading and absorbing the teacher's comments. *See* Neumann, *supra* note 10, at 764 (student should have opportunity to "prepare by re-reading [their writing]; reflecting on the teacher's written comments; re-thinking the substance of the writing; and, re-examining the process through which the writing was produced.").

67. Although law classroom teachers can and do take the time to answer student questions that present common problems, students may stop paying attention to the classroom discussion when the teacher spends too much time addressing individual concerns. If students believe that the discussion is irrelevant to their own needs, they mentally "check out."

68. Of course, the dialogue of the legal writing conference should be focused on the same stage of the writing process on which the student's draft is focused. For example, if a content-based draft is the subject of the conference, the teacher and the student should spend most of the conference time discussing the student's legal analysis. *See* LeClerk, *supra* note 47, at 14 (conferences can be focused on particular types of writing problems also).

encouraged to express opinions and ideas and to discover possible solutions to problems."[69] Students express ideas about their writing in the private memo; when the teacher responds in writing to the private memo and to the document as a whole, the teacher may identify other concerns as well. In the conference, teacher and student can discuss these concerns, and the student can ask questions to clarify the teacher's written comments. In this exchange, students seek guidance from the teacher on the strengths and weaknesses that they perceive in their writing and analysis. When the students affirmatively seek the teacher's guidance, they take responsibility for focusing the conference and for their writing as a whole.

3. Active Participation

Each student must actively participate in the conference dialogue; no one else will raise a hand to answer the teacher's questions as might happen in the law classroom. This active participation results in students learning more from the conference dialogue than they might learn from a classroom discussion:

> The learning outcome of a teaching-learning exercise depends heavily on the intensity of the students' concentration of interest and energy throughout the period of the exercise. Levels of intensity of interest and energy tend to be lowest in the passive roles of listening to or reading expositions, somewhat higher in the passive roles of hearing or seeing demonstrations, and increasingly higher when students are involved in discussion [and other participatory activities].[70]

Every teacher has enjoyed seeing the spark that occurs during a classroom discussion when a student realizes that he or she understands a concept. In the legal writing conference, each student has the opportunity to experience that spark of understanding because each student must participate in the conference's Socratic dialogue.[71] The benefits of the conference are directly tied to the student's participation: the more the student participates in the Socratic dialogue with the teacher, the more the student learns.

E. Revision

The revision process takes place throughout the structured Socratic dialogue between the student and the teacher. When the students evaluate their own work in the private memo, when they review the teacher's written responses to their documents, and when they discuss those documents with the teacher in the conference, they develop their legal analysis and learn to see their writing through the eyes of the reader. This process enables students to realize the message that they want to communicate and to revise their writing based on that realization.

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69. Kreiling, *supra* note 41, at 331 (footnotes omitted).

70. Keeton, *supra* note 9, at 218.

71. *See* Cicero, *supra* note 10, at 1016 ("By talking aloud, by presenting her ideas to someone else, and by listening to her own reaction to another person's ideas, an individual clarifies her own position.").

When responding to early drafts, the legal writing teacher asks Socratic questions that enable the student-writers to understand their legal analysis. Once students understand their analysis, they are ready to move on to communication concerns. One commentator has observed that most writers use the process of writing and revision to move from a "writer-based" draft to a "reader-based" draft.[72] Writers of writer-based drafts know what they mean to say, but they express their meaning in a way that only they may understand. These writers do not have to be thorough, do not have to organize the writing, and do not have to use an effective writing style. Once these writers, with the teacher's guidance, formulate a writer-based draft, they can move toward the goal of transforming the document into a reader-based draft: a draft that any reader can easily understand. The legal writing teacher helps the students to create reader-based drafts by asking questions that enable them to see where their drafts have not communicated their analysis effectively to the reader. The hallmark of this stage of the revision process is the writer's conscious effort to re-articulate his or her message — a message that the writer already clearly understands — in a way that enables the reader to understand it just as clearly.

Although the teacher guides the student as the student re-articulates his or her meaning, the teacher does not dictate the student's revision. Students must take responsibility for their final drafts by evaluating the teacher's questions and comments and deciding for themselves how to revise their documents. If the structured Socratic dialogue is effective, the students will learn to independently anticipate their reader's needs. They can then revise their writing based not only on the teacher's response, but also on their own perception of the reader's needs. The students' ability to make independent revision decisions signals their transformation into independent legal writers.

CONCLUSION

We believe that individualized intervention in and discussion of students' thinking and writing processes is the best way to teach students how to communicate legal analysis as well as how to conduct that analysis. Once law schools recognize the learning benefits that occur when teacher and student interact in this way, they must decide how or if they will promote this type of interaction in their own curricula. One obvious way is to devote more resources to legal writing programs. For example, hiring professional staff and providing job security allow a legal writing program to reach its full potential. Another way to promote this type of learning is to integrate the legal writing program, or legal writing teaching techniques, into the other courses in the law school curriculum.[73]

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72. *See* Linda Flower, *Writer-Based Prose: A Cognitive Basis for Problems in Writing*, 41 C. ENG. 19, 19 (1979) ("[E]ffective writers do not simply *express* thought but *transform* it in certain complex but describable ways for the needs of a reader.").

73. For example, some legal writing assignments could be created by substantive teachers and count for credit in both the substantive course and the legal writing course. *See also* Vicki Lutz, *The Advantages of Curriculum-Based Legal Analysis and Writing*, *in* THE SECOND DRAFT (Legal Writing Inst., Tacoma, Wash.), June 1991, at 3-4 (discussion of a more thoroughly integrated program).

Integrating Socratic method with the writing process allows teachers to criticize their students' work in a way that encourages students to take responsibility for their writing and thinking. Teachers use Socratic method when responding to student writing to ensure that they do not merely dictate a "correct" revision to a passive student; they ask students questions that the students can only answer by revising their writing. Through this structured Socratic dialogue, students arrive at their own understanding first, of their legal analysis, and second, of how best to communicate that analysis. Teachers use the writing process to stop time so they can engage the students in this Socratic dialogue while the students are formulating their legal analysis. Using the writing process allows legal writing students, like their counterparts in the classroom, to try again under the teacher's guidance. Teaching students to take responsibility for their writing and thinking during law school is the best way to prepare them for the independent thinking and writing that they will engage in throughout their legal careers.