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IT'S NOT JUST A WRITING PROBLEM

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After the last class of the semester, one of my students stopped by my office to thank me. He wanted to let me know how helpful he had found the class, and not just because he had learned Contracts. He was thrilled because his grades had improved in all his classes, which was a tremendous boost to his GPA and his sense of self-esteem. He said that I taught him what he needed to know, which was “how to write an exam answer.” Sadly, he sees it to be only that. While he recognizes that what might have been the problem earlier was that “he knew the rule” but “could not express it in the form that the professor wanted it,” now he knows “how to organize and write” the answer.

In one sense, he is correct. He has learned how to structure and answer an exam answer. However, being able to do so — to read a question, isolate and identify the legal issues,

select the appropriate rules to address those issues, analyze the facts relevant to those issues and address the competing arguments — is the process of legal thought and analysis and not just “writing an exam answer.”

My student learned to write an exam answer, but in the process he learned much more. You cannot write about something you do not know or understand. When you sit down to write something, you realize what you don’t know when the words do not come or they do not form coherent sentences.

The truth is that you can’t separate the writing from the thinking. Clear, concise, and coherent writing is inseparable from clear, concise, and coherent thinking. Since writing and thinking about the law are integrated activities, we must think of them this way when planning and implementing learning opportunities for our students—whether in legal writing or doctrinal classes.

While it is true that good writing is always good

writing no matter the substance or the discipline, legal writing presents a unique situation for the educator precisely because its structure is linked directly to its substance. In most cases, it is impossible to separate a student’s thinking about the law from what she has written. Correcting errors in mechanics, syntax, and usage will not solve the “writing” problem when the student has a conceptual problem about the law as well. It is one process, not two, and requires that we work with the student’s understanding of the law as well as the words that make their way onto the page.

Certainly, a number of our students benefit solely from revisiting grammar basics and this function of educating law students is part of our mission. However, in most cases, more is necessary. It is not helpful to tell students that we cannot discuss the law when they are struggling with such common problems as disorganization, inappropriate word choices, and a failure to conform to the basic structure of legal writing. These are problems with legal analy-

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sis which manifest in the writing—they are not “writing problems” only. In my experience, the “thinking problem” precedes the writing problem and presents the greatest challenge—for student and teacher alike. After more than a dozen years of working with students at all levels of achievement, I have come to believe that the “thinking comes first.” While it is not the only skill required to become a lawyer, it is almost impossible to succeed without it.

In my experience, even when a doctrinal professor makes the comment on a student’s exam that “you have a problem with writing,” it is not likely to be referring solely to matters of subject-verb agreement, displaced modifiers, or too many commas (while these grammar problems must be corrected, these are not the problems that seriously detract from grades), but

rather, to the substance of what is written and the structure in which it is written. The comment on a student paper, “*The problem is your writing*” more likely translates to, “*Your analysis is disorganized*” or possibly, “*Your discussion lacks substance*” or maybe even “*Your argument lacks focus.*”

These comments transcend the mechanics of writing; it is a matter of how the student thought about the problem, understood the relevant law, and put it down on paper. Frequently, thinking problems masquerade as writing problems and we must be able to address both. With knowledge of writing skills and the law, we can. The question is “how?”

How do we help with the transition process of putting the thoughts to paper? How do we help our students clarify their thinking

about the law?

Is there a point beyond which we cannot go as educators and our students are on their own? If the processes of thinking and writing are inseparable, how can we separate them to teach them? Do we focus on one before the other or do we deal with them simultaneously?

How do we address these issues given our limited time and resources? How do students find the time to add this task given their already overloaded schedules? Yet how can they proceed in their development as law students if they do not?

These are difficult questions, and we must address every one of them if we are to succeed in helping those students who come to us with difficulty in adjusting to law school learning.

***The mediocre teacher tells.
The good teacher explains.
The superior teacher demonstrates.
The great teacher inspires.***

William A. Ward