Clear the Way to Better Writing: Use a Conference to Cure a Problematic Draft

By Emily Carter

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It is a common scenario. A student walks into my office with a draft of a memorandum, hoping for some insight on how to improve it. When I read the draft, I see that there are large conceptual problems that require a significant redraft. The student, however, labors under the false impression that only a few minor changes are needed. So she focuses her questions on superficial changes, such as punctuation or changed wording.

I have handled this situation poorly numerous times. All too often, I took the student's bait and answered the questions regarding superficial changes. Our conference reached only those superficial concerns, and as a result, I missed the opportunity to fix the student's larger conceptual misunderstandings.

It was only last year that I better understood how to handle conferences about problematic drafts. My school asked me to serve as a writing tutor to students in the bottom quarter of the legal research and writing sections. In this role, I held conferences with many students whose drafts suffered from large conceptual problems. Through this repeated experience, I learned a few tricks. I figured out how to move the student's focus beyond superficial tweaks so that the conferences empowered students to make meaningful improvements to their drafts. Here are a few suggestions on how to conference a problematic draft.

I. Speak plainly when diagnosing the draft's problems.

In my experience the most problematic drafts come from students who misunderstand both the substantive law and the requirements of good writing. Point out both types of issues in the draft, and share your diagnosis in plain terms: This rule statement does not explain the law correctly—you misunderstand the law. This case illustration focuses on facts that did not determine the precedent's analysis (another understanding the law problem) and does not follow the correct structure (a writing problem).

Providing such a direct diagnosis may sound harsh, but it permits the student to move her attention from superficial issues to larger ones. After my diagnosis, I move into a supportive role, trying to quell the student's anxiety. I tell the student that I can help both with understanding the law and with mastering writing concepts, and I assure the student that it is very common for novice legal writers to encounter these sorts of problems. Often a student is comforted by the fact that she is not the only one who faces an adjustment to legal writing.

Beyond quelling anxiety, the conference must also motivate the student. Resolving the draft's larger issues will require a greater measure of time and energy than the student was planning to commit. After all, the student came to discuss minor tweaks, believing that very little work remained in completing the assignment. So, I make sure to explain why the student should make additional efforts to resolve the draft's larger issues.

I tie resolution of the draft's larger problems to both short- and long-term goals. In the short term, tap into the power of points for the grade. Remind the student that tackling these issues head on will

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produce the greatest point gain on the assignment. Plus, in the longer term, resolving these macro issues will better prepare her for practice—it is not possible to be an effective practitioner if you misunderstand the law or lack effective writing skills. And practitioners need the grit to draft and redraft as a case or transaction develops.

II. Shore up legal misconceptions.
Next, work through both understanding the law and the writing problems with the student. To shore up legal misconceptions, I follow several steps. First, I work through the draft explaining how the reader will learn the incorrect law from the student's text. We read the student's text together, and I state explicitly what the reader would understand is the law. Then, if possible, I provide an authority for the student to compare, giving the student time to read the pertinent part of the authority and discuss how the authority frames the law. This is usually a “light bulb” moment. By seeing the difference between her draft and the authority, she gains insight into how to make her work better.

III. Resolve the writing problems.
Next we work on the draft's writing problems, for example, a difficult-to-parse rule statement or an analysis that is unclear. I work first to demonstrate that the text as written creates difficulty for the reader. When the student understands the reader's difficulty, she is in a better position to resolve the problem. To demonstrate why the reader will have difficulty understanding the text, I play act the role of the reader—I read aloud portions of the draft to illustrate that they fall short of the reader's needs. My play acting is specifically aimed to develop the student's awareness of a writing convention. Rule statements are a common problem area. When an assignment involves a rule that requires discussion of several legal concepts, students often draft one mega-sentence covering all of the concepts at once. So when I come across this overly complex sentence, I stop, turn around, go back, and read again—aloud. After seeing me trip over the rule as drafted, the student recognizes that it makes sense to use multiple sentences to describe a complex rule.

My play acting of the reader also includes verbalizing questions the reader would have. I ask questions that remain in my mind as the reader. When reading a rule statement, I might ask aloud: “How does [principle A of the rule] relate to [principle B of the rule]?” Suddenly, the idea of using a transition word between legal principles makes sense to the student.

Another common problem area is analysis. Students often use analogical reasoning that requires far too much of the reader. In perfunctory fashion they compare one of the client's facts to a case name (i.e., the client's case is like Smith v. Jones), assuming the reader will draw the necessary comparison or distinction. So, in my play acting, I read the conclusory analysis and then ask myself—what were the key facts of Smith v. Jones? Then I trace my finger back up to the case illustration for Smith v. Jones and begin to read it aloud again. This allows the student to understand why the analysis must restate the specific fact from the precedent case upon which the comparison relies. After working through the students' misconceptions of the law and after seeing me play act the reader, the student's attention is squarely focused on the draft's big problems.

Now comes the hard work of fixing the draft.

IV. Encourage the student to verbalize.
I encourage my students to begin fixing the big problems as we sit there together—I challenge the student to create an oral rough draft. Using this approach, I have the student talk me through the new analysis. This approach offers several benefits. First, the student's focus moves past the problematic draft and into creating new analysis. With me guiding the discussion, the student cannot work endlessly on fixing the draft's little problems; rather, the student must tackle head on the big problems we have identified. And talking through the new analysis gives the student the necessary confidence to rework the draft once she has left my office.

2 Understanding the text from the reader’s perspective helps students improve their drafting. Patricia Grande Montana, Better Revision: Encouraging Student Writers to See Through the Eyes of the Reader, 14 Legal Writing 291, 310-20 (2008).
Second, this approach forces the student to take into account the reader’s needs. Struggling writers often use so much mental power to understand the authorities that they miss the need to write for a particular audience. When a student talks through the new analysis, she cannot avoid the reader’s needs. You are sitting right there.

Lastly, the oral rough draft helps cement the student’s increased understanding in a very time-effective way. Few students would be equipped to redraft a section in a few minutes in our offices. In fact, few of us instructors would be able to do that. However, it takes just a few minutes for a student to orally run through a new rule, a new case illustration, or a new segment of analysis takes just a few minutes. Once the student has provided an effective oral rough draft, I congratulate her and give her a moment to make some notes on drafting the new version.

V. Free the student of the bad draft.
In the last few minutes of the conference, I address explicitly how to move forward from the problematic draft. I explain that the current draft is holding the student back; it reflects a level of thinking that she has now moved beyond. I encourage the student to take advantage of her clarified thinking and produce an even better version of the assignment.

I also provide the student with coping mechanisms to ease the emotional consequences of deleting her work. Students often struggle to cut large swaths of text from their drafts, having labored so hard to compose them. I tell students that with my own writing, I often cut and paste problematic portions of a draft into a new document. Those problematic portions are still there as a security blanket. However, since I am back to a blank page in that section of my draft, I am freed of my previous cloudy thinking.

Before the student walks out the door, we work on an overall game plan. I hand over a sticky note and have the student draft a “to do” list covering the changes to the draft that we discussed during the conference. This serves as a final conceptual check enabling me to assess whether the student has grasped the takeaways from our conversation. And, as an added benefit, the student walks away with concrete guidance written in her own words.

Armed with these tactics, the student walks away from the conference ready to push past the problematic draft into better writing.

Micro Essay

Who Will Teach Them to Wear Shoes?
I spent time last summer interviewing attorneys around my State to find out how our students were doing in professional legal settings. Most were pleased with the quality of the work our students produced, but many wanted to talk with me about a lack of professionalism that they’ve seen creeping into their law firms, courthouses, and other legal offices. One attorney asked if I could teach our students to wear “real shoes” instead of flip-flops to the office. Who will teach them to wear shoes? Those of us who wear shoes, I suppose. After all, won’t our students be filling ours someday?

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