Reflections of a Legal Writing Advisor

By Paul Von Blum

Paul Von Blum is a Senior Lecturer in African American Studies and Communication at UCLA

Legal writing is a major feature of the American law school curriculum. For generations, this has been an emotional burden for thousands of law students who have struggled with the mysterious language and process of legal discourse. In recent years, however, progressive changes in the legal writing curriculum that align course requirements with the practical demands of legal practice have lessened the emotional toll and made legal education more relevant to what they will do as lawyers. Still, from my personal experience as a longtime legal writing advisor, more changes in those directions are necessary. Moreover, legal educators—and the public—should be wary of the desires of many students for easy solutions to their writing problems and to their growing lack of intellectual curiosity.

For almost thirty years, I served as a legal writing advisor at Loyola Law School in Los Angeles. Typically, I met individual students for 30 minutes to three hours a week; occasionally, I came to campus more than once a week when legal writing assignments were almost due. And because Loyola Law School has an evening program, I occasionally held extra conferences on weekends in order to accommodate students who had work responsibilities during weekday hours. I sometimes met with the legal writing faculty and also gave the occasional presentation on specific features of legal writing. In short, I came to know the culture of the legal writing community there as well as the law school community in general.

Now, after 49 years of faculty service at the University of California, I will devote my entire time to my regular undergraduate teaching responsibilities in African American Studies and Communication Studies and my own scholarly endeavors, largely in the humanities and the arts. My legal writing advisor responsibilities have always been an ancillary but gratifying feature of my professional life as an educator; throughout my long academic career, I have mostly taught undergraduates. Many of my students have gone on to law school and successful legal careers. I have also been fortunate to publish extensively in the humanities and social sciences, and I brought this background to my efforts as a legal writing advisor. Teaching and research have always been my chief professional focus since graduating from law school, even though I have also been an active member of the California State Bar since 1969. I will also continue, in a reduced way, my pro bono work as a lawyer in civil rights and related areas.

I generally enjoyed the one-on-one interactions with students, and I think highly of the legal writing faculty at Loyola Law School (L.A.). Over the years, however, I began to question the basic structure of its legal writing curriculum, which is similar to that of many other law schools throughout the country. Moreover, I began seeing distressing changes in the character, attitudes, and intellectual preparation of the law students, especially the entering students with whom I had the most contact.

Throughout my time as a writing tutor, I worked with students mostly on objective memoranda and persuasive points and authorities papers. Typically at Loyola Law School, first year students have been required to write two objectives memos and one persuasive paper. Until recently, they wrote one objective memo in Fall Semester and then the other in Spring Semester. Then students were assigned the persuasive brief. For the past few years, the legal writing faculty changed the schedule so that students wrote the two objective memos during their first semester.

Variations of these requirements are common in American legal education, although many law schools have responded vigorously to calls in
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recent scholarship about offering more practical legal writing instruction. Many law schools have expanded their legal writing programs to include exercises and assignments geared to actual legal practice. There is, of course, some value in these exercises dealing with legal memoranda and persuasive briefs. Some law students will work in law firms and their supervising attorneys will assign them memoranda. Points and authorities, moreover, are staples of legal practice. In the first year of law school, moreover, such writing assignments reinforce the mode of legal analysis that is new—and often very disconcerting—to most entering students.

When I worked with the students, I emphasized that both objective and persuasive papers were highly formulaic, but the formula was extremely unfamiliar and would take time and practice. The ultimate objective is to master the formula as much as possible and understand and play to the personal, often idiosyncratic, differences of each writing professor. That is no different from learning the formulas of law firms and courts and the idiosyncrasies of legal supervisors and judges. I helped students structure their papers, instructed them on how to avoid using passive voice, encouraged them to transform wordy sentences into more concise prose, cautioned them to avoid the first person “I” and contractions (although I find these both archaic practices), offered editorial suggestions on headings and topic sentences, provided guidance on applying legal precedents to specific facts, and generally did all the other things that writing tutors in law schools do throughout the country.

During the last 15 years or so, however, I have also spent increasing time correcting basic grammar, punctuation, and other technical features of language. I am distressed, but hardly surprised, that many law students are seriously deficient in these areas. Many Loyola students have graduated from large research universities like UCLA, USC, and similar institutions. Despite their high grade-point averages, they have often taken classes with minimal writing requirements. Even more disturbing, however, is when I ask to see their upper division “A” papers. These efforts are often full of technical errors that professors and, more usually, teaching assistants, have failed to correct. As the students told me regularly, they received high grades for their “content” and “ideas.”

This is perfectly understandable to me. As a longtime University of California faculty member, I know that there are few incentives, other than emotional satisfaction, for professors to spend numerous hours correcting grammar and punctuation. Promotion and peer respect hardly depend on such professional responsibility and diligence; indeed, spending too much time on student papers can lead to quite opposite consequences. Moreover, many teaching assistants themselves are pressed for time, with multiple obligations far beyond their paper grading responsibilities. More distressing is a reality that many university officials are reluctant to acknowledge: many contemporary native English speaking teaching assistants themselves don't know the basic rules of English grammar and punctuation and cannot, therefore, correct errors in student papers even if willing to do so.

As a writing advisor, therefore, I spent many hours explaining the difference between “there” and “their,” “principle” and “principal,” and “because” and “as.” Many times I also explained that a complete sentence required a noun or a pronoun and a verb (and often, I further explained what those words meant). I showed why “their” had to be replaced by “his” or “her” and why students should change “the Court decided in favor of the plaintiff and I” to “plaintiff and me.” I had many similar examples over the years. I wish that I could say that I'm exaggerating, but I'm not.

I always tell students that this is not trivial. If they make these errors on legal writing assignments, they will lose points and grades. But when they enter legal practice, the consequences are more severe. They will be accountable to legal and judicial superiors who are properly intolerant about such errors. Moreover, their clients may also suffer the consequences of these errors and deficiencies.

Students often asked me to recommend a book that will get them up to speed quickly on technical writing matters; this is, I think, all too typical of the
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Frank stated his critique provocatively:

I will be told—I have been told—that the law schools at most have but three short years to train lawyers, and that these years are already so crowded that there is no time to spend on the sort of first-hand material to which I have been referring . . . . For in most university law schools the major part of the three years is spent in teaching a relatively simple technique—that of analyzing upper court opinions, “distinguishing cases,” constructing, modifying, or criticizing legal documents. Three years is much too long for that job. Intelligent [women and] men can learn that dialectical technique in about six months.¹

He continues by claiming that once law students have learned that technique, they merely repeat it until they graduate. That was certainly my experience in law school. After my first year with such required subjects as torts, contract, property, and civil procedure, I found that I did the same thing with corporations, estates and trusts, family law, and so forth. The biggest consequence was boredom and I was hardly alone in that reaction.

Judge Frank’s argument is specifically relevant to the legal writing curriculum. My years as writing advisor persuade me that a few weeks of conventional assignments would be perfectly adequate. One short objective memorandum and one short argumentative brief in the early part of the first semester should suffice. Students, after all, can take legal drafting, appellate advocacy, and similar writing intensive courses in the next two years, perhaps even preferring such courses to more doctrinal courses.

As Jerome Frank suggests, once students grasp the basic elements of legal knowledge, they should have little difficulty in applying those skills in the future. That principle should apply as well to legal writing. As every lawyer knows, law students really learn how to practice their profession after they graduate. This principle applies no less to legal writing than to any other feature of legal work.

Legal writing teachers have an entire year to encourage and assist students to improve their writing skills. I suggest that they diversify their assignments, especially in areas that actually conform to “real-life” legal experience, making legal writing a fundamental part of Judge Frank’s lawyer-school proposal. The possibilities are enormous. What follows are writing assignments that I

think would better prepare law students for their future professional responsibilities. I’m heartened that many of these suggestions are currently being implemented throughout the country.

They are responsive to the 2007 Carnegie report on “Educating Lawyers: Preparation for the Practice of Law” and similar critiques of legal education. These and similar reforms are more interesting and reduce the pervasive dread that thousands of law students feel when they take their legal writing classes.

**Drafting Legal Documents**

Students could be assigned to draft such simple legal documents as routine court complaints and pleadings, uncomplicated wills, trusts, sales contracts, rental leases and agreements, and similar writings. While this is common in upper level legal drafting courses, some modest exposure to such documents in the first-year course would be desirable. Thousands of law students graduate with little or no experience with such documents. There is no reason that legal writing instructors cannot correct language as well as provide guidance for proper legal format.

**Letters**

Lawyers write letters regularly in their practices. These documents require the careful and subtle use of language depending on their intended audiences. They provide a powerful opportunity for legal writing instructors to teach their students about rhetorical and argumentative strategies, concise language, verbal clarity, and every other objective they seek to accomplish. Typical letters include client communications, letters to opposing counsel, representation documents, demand letters, and suggested settlement offers. Students could also be encouraged to compose cover letters for possible employment; this would fit in well with the quest for summer positions during the first year of law school. I can add that I have reviewed many hundreds of such letters. Some are superb, but many others are appalling, leading inevitably to swift rejections.

**Email Communications**

In an email universe, clear and effective communications in this medium are crucial. Inter and intra office emails are routine in legal practice. Law students often get experience in this communication medium in summer jobs and externships, but they could develop even better skills in their first year as part of their writing requirements. Proper email protocols, including timely responses and ethical standards, are well within the pedagogical mandate of the legal writing faculty.

**Other Possible Legal Writing Assignments**

Other imaginative legal writing assignments and options can augment the movement towards a more realistic preparation for legal practice. Legal writing faculty can teach far beyond traditional curricular constraints if their law school superiors allow them the academic freedom to do so; they can experiment with different issues and activities that would engage and even excite their students. They might, for example, send students to local courts and ask them to summarize briefly the proceedings they observed. This would have the dual advantage of broadening their writing experiences and exposing them to the actual judicial world. These visits can range from trial to appellate courts; in trial courts provide exposure to the venues where most people have real-life experience with the judicial process. In their efforts, students should be expected to address both technical issues of law and the broader policy issues that the cases may raise.

Teachers might also have students write summaries and critiques of contemporary federal and state court decisions. Controversial cases are common and law students discuss them routinely; there is no reason why first year law students shouldn’t write short and effective analyses of some of these decisions. Finally, teachers could encourage students to write letters about current legal topics to the editor, including school and local newspapers. They could also submit essays to online legal, political,
and public policy journals and blogs, and even contributions to national publications. These short documents, whether accepted for publication or not, are also available for careful instructor scrutiny and evaluation on such criteria as organization, clarity, and legal accuracy. Such assignments might also stimulate a longer commitment to civic activism, one of the historic roles of the legal profession.

I offered these suggestions to many students at Loyola Law School and the response was always favorable. To be sure, they were in the midst of the challenging process of drafting legal memos or points and authorities and, therefore, struggling with the emotional burdens of law school generally. Still, a diverse set of writing assignments that would link them to real world legal problems seemed very appealing.

I want to conclude with some observations about changes I noticed among law students in recent years. Far too many students who signed up for appointments with me merely wanted to know what they had to do to get better grades. They showed little interest in the deeper requirements of effective writing. They wanted my assistance in “fixing” things. When I made better word choices, they merely substituted my word without inquiring why. Some merely wanted me to polish their papers. At the extreme, I received a few emails with the heading “please edit.”

This reflects, I think, a declining and ominous lack of intellectual curiosity among contemporary law students. I’m perfectly aware of the grading pressures, the problematic job market, and the astronomical debts that students often accumulate. These are real and I don’t discount any of them. But even the most competitive law schools allow for some free time and some reading beyond the regular curricular materials.

As a writing advisor, I usually spent the first few minutes getting acquainted with students. I asked about their lives, their previous education, their interests, their aspirations and so forth. This enabled me to help them more effectively, especially if I saw them regularly. I do this regularly with my undergraduate students at UCLA and I have found it to be an especially useful teaching strategy. Also, it’s enjoyable because it creates a human relationship that can be lacking in institutional settings like large universities and law schools.

Many of the law students responded well, even eagerly. Others, however, seemed anxious to move swiftly to fixing their errors in their papers. That reaction is troubling because a mere “quick fix” avoids a more structural confrontation with defects in writing generally. Until students delve seriously into how they can improve their writing for the long term, they are unlikely to succeed in a legal world where proficiency in language is a crucial factor in professional achievement.

I don’t expect law students to follow my unusual personal path by devoting most of their professional lives to teaching and publication in the humanities and social sciences. Prospective lawyers, after all, like prospective periodontists and certified public accountants, are unlikely to be enchanted by the novels of Albert Camus or the paintings of Jacob

**Micro Essay**

AI will inevitably impact all subjects, including LRW. The question becomes, then, how much of an impact? Legal research will continue to welcome new technologies with open arms. Legal writing will not, or at least should not, be as heavily impacted. Students’ voices are conveyed in their writing through unique styles and approaches and contribute to their individual brands as future attorneys. Students can learn to use AI to collect legal data, but they alone should analyze and convey that data. We should preserve the human voices in legal writing that future clients will relate to on a personal level.

Lawrence. Still, a broader life beyond the narrow confines of professional knowledge actually makes men and women better at their professional work. Among many other advantages, this exposure to humanistic knowledge often equips them with a greater sensitivity and perspective, attributes especially valuable in an increasingly multiracial, multicultural world. More importantly, especially for lawyers, a deeper intellectual curiosity enables them to function much better as active citizens, and with greater public respect, in the perilous environment of the early and mid 21st century.

I have some modest hope that my prescriptions for legal writing changes will come to pass because the legal writing community has begun to embark on some of these reforms. I am, of course, all too familiar with making educational suggestions that students and some colleagues applaud but that rarely make any institutional difference. Still, proposals for change can generate serious conversations among educators and legal practitioners and perhaps even propel incremental changes. For many decades, for example, I have urged University of California administrators to reward teaching as much as they do research and publication. There is considerable rhetoric about this issue, and some modest improvement. But insiders know well that faculty are rewarded, in promotions, money, and prestige, for their research and publication, while teaching remains a decidedly second level priority.

I also recommended in a published article that less reliance be placed on the Law School Admission Test. I know from extensive personal experience with minority students that they are at a powerful disadvantage with this and other standardized tests, for reasons that have been well documented in the literature. The reliance on such examinations will not change in my lifetime. I am heartened, however, that my lifetime of advocacy for increased enrollment of women and racial and ethnic minorities in universities and professional schools has made advances, although much more needs to be done.

My suggestions for legal writing changes might stimulate more legal writing teachers to augment their assignments with some of these suggestions or others of their own making. Whatever they decide, there should be some critical realization about how much of the present arrangement is increasingly ill suited to the new realities of legal work in the next decades.

Micro Essay

Indubitably. Think about spell check! Spell check is proto-AI. Features like autocorrect on your smart phone and autocomplete in your favorite web-based search engine are today so quotidian so as to be unremarkable, but this is AI today. We don’t always think about it, but we already rely on AI to do much of our writing and research. The question is: how much power will HI cede to AI?

Duck.

Duck.

Duck!

You can’t rely on autocorrect to accurately communicate meaning and information. We can teach our students to identify when to interrupt automatic processing with active HI.