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## ESTABLISHING AND MAINTAINING GOOD WORKING RELATIONSHIPS WITH 1L WRITING STUDENTS

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Effective teaching always depends to some extent on the quality of the relationship between the teacher and the students. Legal writing instructors, however, face at least two important barriers to establishing good working relationships with their students. First, many students are surprised to discover when they get to law school that “writing,” a skill they thought they had mastered (and which some have mastered, in nonlegal arenas), must be “learned” all over again. Students may not realize that “legal writing,” a potentially misleading course title, encompasses a variety of topics, from commas to hierarchies of authority to synthesis of complicated legal rules. Thus, legal writing students may begin the course with a fundamental lack of understanding about what they should expect to learn and what will be expected of them during the year. These misconceptions can lead to confusion and even hostility on the part of the students, which can be particularly damaging when the students must work closely with the instructor and trust the instructor to respond fairly and skillfully to their work.

Second, perhaps somewhat paradoxically, legal writing instructors are in fact responding to students’ *writing*, and many entering law students have not experienced in-depth response to their writing in a number of years. Although college professors may have provided feedback on the content of term papers, they often are too busy to critique grammar, mechanics, and format in any detail. Further, almost all of us have considerable ego involvement in what we write, both in the content and the form. As a result, we can come to

feel, at least momentarily, like either a good or bad person depending on how well we write.<sup>1</sup> In combination, these circumstances tend to put legal writing instructors in a difficult position. Our job is to offer instructive, therefore in-depth, critique of students’ writing, which has the potential to make students feel both angry and miserable, and to do this when most other teachers in their recent educational history have let all their bad writing habits pass, which has the potential to make us seem unreasonable and picky.

Because of these peculiarities of the legal writing course, legal writing instructors must take particular pains to develop good working relationships with their students early in the course. In my own teaching, I have found that explaining a few basic principles about the course early in the year helps me lay the groundwork for positive and productive relationships with students.

### Clarify Purpose and Scope of Course Early

First-year students need to understand right away that their legal writing course is not only about writing. So during the first class, I try to establish that the course is about understanding the communication tools, techniques, and conventions used by a large group of people practicing a particular profession with a particular history. I also discuss the idea that their legal writing course teaches them how to effectively communicate on paper and in oral advocacy the thought processes they are developing throughout their law school experience. The course therefore is integral to the new ways of thinking that they are learning.

In addition, students need to understand that they will probably not master any of these skills in the first few weeks, months, or maybe even years of law school. So I also point out that legal analysis and legal writing, like all complex skills, take practice, which students actually get very little of in

<sup>1</sup> Even we experienced writing professionals must admit that our emotional involvement with our writing is not completely reasonable. For instance, I gave this article to my trusted reader, my husband, to read while I was in the process of writing it. He did not respond in quite the manner I wanted him to. My tender writing ego was sufficiently bruised that I refused to talk to him for the rest of the evening.

the first-year legal writing course. In fact, most legal writing courses assign at most three or four major writing assignments during the year. In the first two weeks of their first job or clerkship, however, students may well write more memos than they wrote throughout their entire first year of law school. I assure them that their legal writing skills will improve considerably once the skills are used regularly. In the meantime, students should have reasonable expectations about the progress they will make between this September and next May: they will grasp the basics, but they will not become expert legal writers.

### Recognize Skills Students Bring to the Course

Most incoming law students have been reasonably successful writers as college students or as professionals in other fields. As I suggested above, however, most do not yet understand the nature of legal writing. The legal writing instructor must therefore undertake the delicate task of recognizing the sometimes accomplished writing skills that students possess upon entering the course, while at the same time convincing students that legal writing presents new audiences, new purposes, and new expectations, which they must now learn to adapt to. Most importantly, students need to understand that they do not yet know how to write like legal professionals, even though they know how to write in other fields.

Along these lines, Jessie C. Grearson argues that legal writing students should see themselves as being in the process of becoming members of multiple “writing worlds.”<sup>2</sup> Further, students can become successful members of the legal writing world by being taught to expect to learn and use new conventions and techniques in *any* new writing situation. Grearson also argues that students can bring important insights and strategies from their other writing worlds into the world of legal writing, thus enriching their legal writing.<sup>3</sup>

Drawing on Grearson, on the first day of class I explain that the legal reader has certain expectations, just as a doctor reading medical charts has certain expectations and a computer scientist reading programming code has certain expectations. I tell them that part of becoming a professional in any field is learning the language

and standard communication forms employed in that field. I stress the point that first-year legal writing is about learning these new conventions and that students may be required to revise some of their previous writing habits in order to be successful as legal writers.

I also explicitly recognize, however, that all law students come into law school as writers, usually fairly successful writers. I assure them that they can draw on their previous writing experiences and that they can become equally competent as legal writers. Further, I tell them that once they master the conventions of legal writing, they will be able to participate fully in the legal discourse community, which may include revising and re-creating the conventions and expectations. Before they can advocate for change, however, they must understand what it is they are changing.

### Convince Students That Legal Writing Is Not Boring Writing

Because the legal writing course necessarily spends considerable time on what can seem to be rule-bound, formalistic topics like the IRAC format, grammar, and editing techniques, students can easily perceive legal writing itself as being boring, uncreative, and mechanical. They may quickly conclude that if they follow this script and apply these rules, they will become successful legal writers. This perception of legal writing can interfere with the student/teacher relationship because the student does not become engaged with the course or with the teacher. I therefore try to dispel these perceptions early by immediately encouraging students to consider legal writing to be a creative endeavor.

First I talk about reading and analyzing cases and how the students’ interpretation and application of the materials can and should be creative and insightful. Their job is not simply to parrot what has been said before but to think about what it means, about what they read “between the lines,” and about all the possible ways to apply their analysis to the problem in front of them. I recognize that this can be

<sup>2</sup> See Jessie C. Grearson, *Teaching the Transitions*, 4 Legal Writing: J. Legal Writing Inst. 57 (1998).

<sup>3</sup> See *id.* at 76.

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difficult for first-year law students because many do not trust their own ability or authority to decide what a case means. However, I encourage them to think of this as an integral part of their job as attorneys, which they must begin learning and practicing now.

In addition to encouraging creative analysis, I provide students with examples of creative legal writing to remind them that once they are technically proficient legal writers, they should strive to become interesting and creative legal writers. My favorite example is the Michigan Court of Appeals opinion *Fisher v. Lowe* written by Judge J. H. Gillis. The complete text of the opinion is as follows:

We thought that we would never see  
A suit to compensate a tree.  
A suit whose claim in tort is prest  
Upon a mangled tree's behest;  
A tree whose battered trunk was prest  
Against a Chevy's crumpled crest;  
A tree that faces each new day  
With bark and limb in disarray;  
A tree that may forever bear  
A lasting need for tender care.  
Flora lovers though we three,  
We must uphold the court's decree.  
Affirmed.<sup>4</sup>

After reading the text of the opinion aloud, I explain that while I do not expect, or even want, students to turn in work in verse this year, I do want them to remember that once they understand what they are trying to accomplish with their legal writing, they can go about accomplishing it in many different ways.

### Convince Students That They Need a Trusted Reader

In *Bird by Bird*, Anne Lamott suggests that writers need readers to respond to their work, but that usually a writer's first reaction to a reader's feedback is to feel hurt and angry.<sup>5</sup> To convince students of the need for a trusted reader (me) and to assure them that their feelings about being “read” are normal and that I recognize those feelings and have them myself, I spend a few minutes reading from *Bird by Bird* on the first day of class. Lamott writes, for example,

<sup>4</sup> 333 N.W.2d 67 (Mich. Ct. App. 1983).

<sup>5</sup> Anne Lamott, *Bird by Bird* 162–64 (1994).

I know what a painful feeling it is when you've been working on something forever, and it feels done, and you give your story to someone you hope will validate this and that person tells you it still needs more work. You have to, at this point, question your assessment of this person's character, and if he or she is not a spouse or a lifelong friend, decide whether or not you want them in your life at all. Mostly, I think an appropriate first reaction is to think that you don't. ...

My first response if [my reader has] a lot of suggestions is never profound relief that I have someone in my life who will be honest with me and help me do the very best work of which I am capable. No, my first thought is, “Well, I'm sorry, but I can't be friends with you anymore, because you have too many problems. And you have a bad personality. And a bad character.”

Sometimes I can't get words to come out of my mouth because I am so disappointed. ... [But w]hen someone reliable gives you this kind of feedback, you now have some true sense of your work's effect on people.<sup>6</sup>

By sharing these passages about the experience of being a writer, some of my own favorite writing on that subject, I hope to let my students know that I understand that receiving writing critique is not easy, but that it is a necessary component of our working relationship. I go on to give them explicit permission to be angry with me and not want to talk to me on certain days, especially after getting their returned assignments. But I encourage them to keep sight of the big picture: my job is to help them learn to be excellent legal writers; I do not offer the extensive critique I do because I have anything against them personally. Rather, all writers must have critical readers who care enough about them and their work to offer meaningful criticism.

I then suggest that students look at the comments on their papers right after the paper is returned to them, but they should then put the paper away for a few days. When they are over being angry and hurt, they should go back to the paper and try to learn something from the comments. *Then*, only after their emotions have cooled, they should come to see me.

### Respect Students As People with Complicated Lives

Kent Syverud, giving advice to new law teachers, recognized a number of years ago that students know whether a professor likes and

<sup>6</sup> *Id.* at 163–67.

respects them, and if they know the professor does not like or respect them, the professor will fail as a teacher.<sup>7</sup> Like Syverud, I believe that demonstrating to students that you respect them and respect the choices they must make during law school is crucial in establishing a good working relationship.<sup>8</sup> A legal writing instructor can show students respect in a variety of ways: by carefully explaining the course and your expectations to them early in the semester, by acknowledging the difficulty of receiving writing critique, and by being consistently available to answer their questions.

Further, in conversations with students, in the amount and difficulty of the work assigned, and in response to students' successes and failures, we instructors need to recognize that our students are whole people, not just legal writing students and not even just law students. Although our job is to help provide students with a rigorous legal education, we must acknowledge that sometimes students face difficult choices while pursuing that education. Sometimes they ignore their legal writing to spend time with their kids, or because they are a month behind in contracts, or because they have to wait tables at night to pay the bills. Although we as teachers may not like the choices students make, and may not think they make the best choices for their educational goals, these are not our choices to make. Thus, I try to recognize on the first day of class that I understand that they have complicated lives and sometimes must make choices that affect their class performance. I also try throughout the year to show an interest in their lives and a willingness to listen when they are having doubts about the choices they make.

Finally, however, I think we also have to admit, if only to ourselves, that in reality we will

not like all of our students. Some of them are difficult, some of them are rude, some are unreasonably demanding, some do not put much effort into our course. However, we will establish the best relationships we can with our students if we recognize two basic truths. First, some students are hard to work with. Second, we will not turn all of our students into good legal writers. I find that reminding myself of these truths, week after week, year after year, helps keep my own expectations reasonable. And if my own expectations as an instructor are reasonable, I can then do my best to respond to each student with respect, insight, skill, and good grace.

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<sup>7</sup> See Kent Syverud, *Taking Students Seriously: A Guide for New Law Teachers*, 43 J. Legal Educ. 247, 247–48 (1993).

<sup>8</sup> See Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. Legal Educ. 524 (1998). Iijima argues that during the legal education process, law students tend to lose their “interconnections” with friends and their “intraconnections” with their own emotional, physical, and spiritual selves. These losses then contribute to law student dysfunction. As part of a solution, Iijima suggests that law faculty need to create a more supportive environment and should encourage students to maintain these connections, which will help them live more balanced lives.