

Beyond Offering Examples of Good Writing: Let the Students Grade the Models

Teachable Moments for Teachers ... is a regular feature of Perspectives designed to give teachers an opportunity to describe a special moment of epiphany that changed their approach to presenting a particular topic to their students. It is a companion to the Teachable Moments for Students column that provides quick and accessible answers to questions frequently asked by students and other researchers. Readers are invited to submit their own "teachable moments for teachers" to the editor of the column:

Louis J. Sirico Jr., Villanova University School of Law, 299 N. Spring Mill Road, Villanova, PA 19085-1682, phone: (610) 519-7071, fax: (610) 519-6282, e-mail: sirico@law.vill.edu.

By Louis J. Sirico Jr.

*Professor Louis Sirico is Director of Legal Writing at Villanova University School of Law in Villanova, Pennsylvania. He is author of *Judging: A Handbook for Student Clerks* (2002), and co-author of *Legal Writing and Other Lawyering Skills* (4th ed. 2004), *Persuasive Writing for Lawyers and other Legal Professionals* (2d ed. 2001), and *Legal Research* (2d ed. 2001). He is a member of the Perspectives Editorial Board.*

Using Models

One method of teaching legal writing is to provide the student with a good example and a bad example of a document or a component of a document, for example, a Question Presented or Summary of Argument. For the beginning student, this method helps the student see a clear difference between the examples and offers a model to imitate. Here is an example using bad and good versions of a Question Presented in an appellate brief:

Bad: Did the trial court err in admitting the evidence the officers obtained through the search?

Better: Did the trial court err in admitting evidence voluntarily given to the police by the minor child, when the minor child obtained it

as a result of his independent search of the property and without police direction?¹

With this method, one danger, of course, is that the student will slavishly follow the good model and not consider equally acceptable alternatives. Perhaps all legal writing professors have offered students an excellent brief or memo as a model and then found themselves reading a stack of student papers that verged on being clones of the model.

One possible solution to the problem is to offer several model documents and hope that the student does not focus exclusively on the one that seems most similar to the document that he or she must produce. For example, here are two acceptable versions of an Issue in a memo:

Issue: Whether under Pennsylvania law, a niece who witnesses the aftermath of an automobile accident involving her uncle from a block away can recover for negligent infliction of emotional distress when she arrives at the scene and observes his severe injuries.

Issue: Under Pennsylvania law, can a niece recover for negligent infliction of emotional distress if she is one block away when an automobile accident involving her uncle occurs and immediately after the accident, arrives at the scene and observes her uncle's severe injuries?²

Another problem with using models is that the student may fail to recognize nuanced differences between different work products. For example, a Summary of Argument may be perfectly adequate, but could be improved considerably with a little tweaking. One helpful method is to offer an inadequate example, then offer a slightly improved

¹ Nancy L. Schultz & Louis J. Sirico Jr., *Legal Writing and Other Lawyering Skills* 311 (4th ed. 2004).

² *Id.* at 156–57.

“One method of teaching legal writing is to provide the student with a good example and a bad example of a document or a component of a document. ...”

version, and finally offer a greatly improved version. With this “inadequate–better–best” sequence, the student may become more aware of how to make qualitative assessments. Here is a challenging example focusing on reducing nominalizations, using the active voice, and placing information in a sequence that is easy for the reader to follow:

Inadequate: The capability of the existing transportation network to deliver high-level waste to the proposed repository will also be assessed.

Better: We will assess the capability of the existing transportation network to deliver high-level waste to the proposed repository.

Best: We will determine whether the existing transportation network can deliver high-level waste to the proposed repository.

Using Holistic Scoring

A few years ago, I came upon an effective method of teaching students to consider alternative models and to make evaluations of written work. While engaged in private consulting for a leading testing organization, I received training in holistic scoring.³

With this scoring process, the graders study rubrics (grading guides)⁴ to apply to the papers to be scored, then score a common set of papers, discuss the scoring until they reach a consensus on how they would score given papers, and then begin scoring on a numerical scale, usually one to six. When graders diverge significantly on how they would score a particular paper, a scoring leader assigns the score.

Although I had previously viewed holistic grading with considerable skepticism, once I saw it in practice, I understood that it could work very

well and serve as a counterweight to the sort of technical grading that focuses too much on such items as small errors in spelling, format, and citation form. Just as importantly, perhaps, I realized that I could adapt one element of holistic grading to help teach students to make qualitative assessments. I could let the students score a number of examples of the same passage or document and, in the process, help them gain a richer appreciation of what makes for high quality writing.

I first tried my new method on a Saturday morning before a packed house in a voluntary session on writing law school exams. First, I had the students complete an essay exam on a property topic that I had earlier asked them study for this purpose. Afterward, I handed out an outline of my answer, explained it, and let the students self-score their answers. Next, I tried out my new technique. I gave the students six versions of the first part of the answer and asked them to score each version on a scale of one to five, with five being the highest score.

All the versions varied in quality, and none offered a perfect answer. One version stated correct legal conclusions, but offered no analysis. Another offered a policy justification, but no legal analysis. Still another offered an answer that seemed to be based on a common sense argument without any reference to the law. It also discussed an issue that the question did not raise. Another got the law wrong and completely missed the issue. Another offered an analysis that was partly correct and partly incorrect, and the final version was completely correct as far as it went, but omitted one issue.

After scoring each answer, the students disclosed their evaluations with a show of hands. We then discussed why they voted as they did, and I disclosed my score and reasons. The students generally turned out to be harsher graders than I. They learned how difficult grading could be. Still, we usually reached a loose consensus. More importantly, they encountered a variety of answers that were qualitatively different and had to make comparisons. Many students have told me that they found the exercise to be extremely helpful and worth sacrificing a lazy Saturday morning.

“I gave the students six versions of the first part of the answer and asked them to score each version on a scale of one to five. ...”

³ For a discussion of holistic scoring and the procedure for using it, see Willa Wolcott, *Holistic Scoring*, 13 *Perspectives: Teaching Legal Res. & Writing* 5 (2004).

⁴ For a discussion on using rubrics in grading, see Karen J. Sneddon, *Armed with More Than a Red Pen: A Novice Grader's Journey to Success with Rubrics*, 14 *Perspectives: Teaching Legal Res. & Writing* 28 (2005); Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 *Mich. St. L. Rev.* 1.

“We then discussed the scoring, and although we did not entirely agree on the scoring, we usually had a general basis of agreement.”

I also used this technique in running a workshop for trial judges. Because I have found that most opinions begin with unsatisfactory introductions, I wanted to encourage the judges to begin their opinions with introductions that describe the case, identify the issues, and state the disposition.

In the workshop, I gave the judges a simple fact pattern for the cases as well as the disposition and analysis and asked them to write an introduction. We then discussed their efforts. I then took the next step and handed out five possible introductions for the opinion and asked the judges to score them on a scale of one to five. Here are the two high scorers in my order of preference:

Introduction: In this landlord-tenant dispute, Angel Realty, the landlord, sought to exercise its rights under the lease to reconfigure the floor space of the tenant’s restaurant, taking away some space, but adding other space. The tenant refused to comply and now faces eviction.

The tenant, Two Brothers Corp., raises two defenses: First, the notice of default was insufficiently particular in describing how the tenant had defaulted. Second, the lease did not permit the landlord to mitigate the effect of taking some space by adding other space.

We reject these defenses and award the landlord a judgment of possession and a warrant of eviction.

Introduction: The plaintiff, Angel Realty, has brought an action seeking a judgment of possession and a warrant of eviction against Two Brothers Corp. We find for the plaintiff and reject Two Brothers’ defenses. Two Brothers argues that the notice of default lacked sufficient particularity. Two Brothers also argues that the contested lease provision does not permit Angel to reconfigure the leasehold’s floor space in the manner that Angel proposes.⁵

We then discussed the scoring, and although we did not entirely agree on the scoring, we usually had a general basis of agreement.

I have also used this technique in my advanced legal writing course with an exercise using a question from an old Multistate Performance Test (MPT). After the students answer the question at home under exam conditions, they score their respective answers in class. Then I hand out several possible answers to part of the question and ask the students to score them on a scale of one to five. This teaching technique seems to work best with the MPT exercise. The students are holistically scoring a longer document than in the previous settings I have discussed. Thus they must make a general assessment that focuses less on specific qualities and defects and become more sensitive to nuances in the writing and analysis. The students have been very complimentary about this exercise, I think in part because the commercial bar prep courses have yet to perfect a method for teaching how to deal with skills questions. On the other hand, although I am happy to help students prepare for the bar, I also view the exercise as an effective way to teach about analytic writing.

Conclusion

These scoring exercises have proven extremely effective and popular. By inviting the students to become the evaluators, they offer an interactive, noncompetitive, and interesting way to learn and the revelation that there is more to legal writing than imitating the teacher’s model answer.

© 2006 Louis J. Sirico Jr.

⁵ The hypothetical case is loosely based on *White Angel Realty v. Asian Bros. Corp.*, 706 N.Y.S.2d 583 (N.Y. Dist. Ct. 2000).