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Helping Students Understand That Effective Organization Is a Prerequisite to Effective Legal Writing

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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 Amy R. Stein

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Several years ago, a very bright student who had recently made law review came to my office to discuss her grade. She was unhappy that she had received “only” a B+ in my class. When she arrived, she looked very tired, and I asked her how she was feeling. She told me that she was a research assistant for a torts professor and had been up all night finishing an assignment for him. She said that she could not ask him for an extension, because he had already given her several. I asked her if she had run into these kinds of time management problems in preparing her assignments for legal writing, and she sheepishly admitted that she had. Rather than discussing her grade, we ended up speaking for over an hour about specific steps that she could take to organize herself and manage her time more effectively.

This meeting was an epiphany for me because it made me realize that many students are capable of

producing high quality work, but are hamstrung by their inability to figure out the process of managing both time and the material. I have subsequently made it a priority to integrate organizational tips into my class, along with the substantive material.

The problem I am addressing has nothing to do with a student’s academic or intellectual ability to complete a given assignment. Rather, I am focusing on the process that a student uses to tackle the assignment. I tell my students that I am not teaching them just for my class; I am giving them tools that they can use throughout their careers. Are they really helping a client if they first turn their attention to a problem mere hours before it is due? Obviously, the vicissitudes of law practice sometimes give an attorney no choice. But if there is any other alternative, it makes sense to schedule work so that it can be completed in a thoughtful and timely manner.

I started my career at a 350-attorney firm in New York City. There were many times when we worked through the night to complete complicated motions and briefs merely because the assigning partner forgot to assign the work to the associates any sooner. I am perfectly willing to admit that I do not do my best work at 3 a.m. Although I can offer little help to novices abused by a thoughtless partner, I can help students learn to deal with reasonable assignments. I encourage students to take a very logical, step-by-step approach to their assignments. I break the writing process into five separate organizational components:

I. Overall Scheduling: The Master Plan

II. Research: The Great Scavenger Hunt

III. Prewriting: Trying Not to Lose the Forest for the Trees

IV. Writing: The Journey of a Thousand Miles Must Begin with a Single Step

V. Post-Writing: Extreme Makeover, Legal Writing Edition

I. Overall Scheduling: The Master Plan

When I ask students if they have made a schedule for completing their work, they often look at me as if I have asked them to split the atom. Taking a series of complicated tasks and breaking them into manageable pieces is the best way that I know of to deal with the panic that comes from feeling that I have too much to do in too little time. Preparing a calendar will provide a master plan for all tasks, both work and play.

Students can use a paper calendar or find one on a personal digital assistant (PDA), calendaring program, or the Web. For example, Groupwise, Outlook, Incompetech.com, or calendarsthatwork.com are all helpful with calendaring. Students can schedule everything from work sessions to exercise sessions, and by building in breaks, students legitimize them and are more likely to stay on schedule, because they know when the break is coming.

Building a schedule requires a certain amount of honesty. Students must know their own strengths and weaknesses and be able to answer several questions. What strategies and techniques have worked for you in the past that you can use again now? Do you work best in short, intense bursts or longer sessions? Where do you work the best? Are you a procrastinator? Are you a morning person or a night person? A morning person should schedule research in the morning and 30 minutes on the elliptical bike at night.

I urge students to slot in every task and set specific goals for each session. They should be certain to schedule time for proofreading to ensure that they do it. I also implore them to schedule time for preparing their tables, a time-consuming and painstaking task.

Students should review and consult the schedule every night before going to sleep in order to avoid bad dreams. It is marvelously satisfying to cross

off what you have accomplished. The evening is also a good time to reschedule what has not been completed on that day's agenda, and look ahead to see what tomorrow holds.

II. Research: The Great Scavenger Hunt

There are many different ways to approach research, and many different systems for keeping track of it. However, all methods share three common threads. First, students must start with some type of a research plan.¹ This is the scavenger map. Second, they must have some overall system to organize the material as they discover it. Third, they must read and synthesize the material throughout the research process, rather than accumulating an unmanageably huge pile at the end.

Formulating a research plan requires students to identify the type of problem they are confronting very early in the assignment, before they dive into the actual research. I ask them to keep a research journal to make sure that the students familiarize themselves with the problem very early in the process. The journal requires them to answer important threshold questions, such as, Whom do you represent? What does the assignment ask you to do? Do you have a question of state or federal law? Is it statutory or common law based? It is important for the students to try and figure out the answers for themselves, rather than having me tell them at the outset.

I grade their research journals to make sure that they are on the right track. After that, we also hold a strategy session where the students discuss their most important cases and other sources. In general, most of the students find most of the sources.

In the research journal that I use for appellate advocacy, I also require the students to prepare a fact chronology. This helps the students to start thinking early about the relationship between the

“When I ask students if they have made a schedule for completing their work, they often look at me as if I have asked them to split the atom.”

¹ I use Amy Sloan's book, *Basic Legal Research* (3d ed. 2006) to teach research. Chapter 11 of that book deals with research plans.

“In appellate advocacy, I require students to prepare a fact chronology with the research journal; here is where they see the payoff for a good fact chronology.”

facts and the law. I tell the students that they will continue to refine this document throughout the semester, but that it will really help them down the line, both in terms of drafting their statement of facts and at oral argument. It is essential to lay the groundwork early on to ensure a stronger work product later.

There are any number of ways to organize the material. However, I stress to students that they must organize the material in some way. The act of properly organizing the material will require them to read and synthesize it.

Students can organize the material with a computer, or the old-fashioned way, by hand. On the computer, students can set up an Excel table organized with relevant fields. For example, if students are confronted with a three-element analysis, they can set up a chart in which they summarize the relevant portion of any given case as it relates to each element. They must create a field that allows them to indicate the entry to which a certain element refers. By setting up a table this way and then sorting the table entries by element, the student has automatically created an outline for purposes of writing.²

Students who choose not to organize their material on the computer can use color-coded index cards, a different color for each element, or highlight the material on the index cards in the relevant color. Students can staple multiple index cards to each case to indicate the elements for which they plan to use them.

Whichever method students use, employing *any* of them requires that they do more at the research stage than simply gather cases. Rather, they must think about how they are going to use the cases: Which case addresses which element or elements of a claim? Which cases are the leading cases? Which

discuss the issues in depth, which merely adopt or repeat the reasoning of other cases? An effective organizational structure will properly set the stage for the next step, prewriting.

III. Prewriting: Trying Not to Lose the Forest for the Trees

Prewriting is absolutely the toughest part of the process. So many students have performance anxiety; they are sitting there with a huge stack of cases and an empty computer screen, and somehow the materials must morph into a (hopefully) coherent memorandum of law. However, if a student has used a good organizational system for research, this step becomes much easier.

I do not require students to turn in an outline for open memo assignments, but I encourage them to create a first draft of their point headings to serve as a *de facto* outline. At this point, I suggest that once they have drafted the point heads, they slot in the portions of the cases that they will use to support each element. I also urge them to list the relevant facts under each subhead.

In appellate advocacy, I require students to prepare a fact chronology with the research journal; here is where they see the payoff for a good fact chronology. This is almost a case of the paper writing itself! What they have before them is a real road map. When they start to lose the forest for the trees, all they have to do is glance at their outline and put themselves back on to the straight and narrow.

IV. Writing: The Journey of a Thousand Miles Must Begin with a Single Step

Whatever technique they use, students must actually start writing at some point. Whether students use some version of IRAC (Issue, Rule, Application, Conclusion) or the paradigm,³ students should find these constructs liberating because they free them to make their legal arguments in a way that the reader

² I prefer Microsoft® Word tables. I generally find them easier to use than Excel, but they do not necessarily have the same sorting capability. When using a Word table for purposes of organizing, I rely on color-coding within the text of the chart. For example, element 1 is green text, element 2 red, etc. This way when you shift to the next phase, prewriting, you have set yourself up for success.

³ The paradigm is an organizational formula for proving a conclusion of law. An in-depth discussion of the paradigm can be found in chapters 10–13 of Richard K. Neumann Jr., *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* (5th ed. 2005).

can easily understand. Moreover, they ensure that the students will never have reason to say “I have nothing to write!”

To ensure that my students adhere to the paradigm, I encourage a color-coding system very loosely based on the one that Mary Beth Beazley suggests in her book, *A Practical Guide to Appellate Advocacy*.⁴ I tell the students that once they have completed a given section or subsection, they must proofread specifically for the paradigm. They can either change the color of the font, or use highlighters or colored pencils, but they must identify each element of the paradigm to be certain that they have prepared their paper properly. I want to see the conclusion, the rule, the rule proof, and the rule application clearly delineated.

I encourage students that I know are having trouble to bring a marked-up copy to my office so we can look it over together. In appellate advocacy, I recently had a transfer student who was quite concerned about the paradigm. To solve his problem, he wrote the paper as he saw fit, changed the font color for conclusion, rule, rule proof, and rule application, and then literally cut up his draft and rearranged it. I thought his method was a great idea, and he ended up getting an A.

One of the most fascinating discoveries in my job is that almost without fail when I have my first conference with students, and I highlight what I perceive to be their biggest writing problem (wordiness, awkwardness, etc.), they almost inevitably agree with me and say, “My college professors used to say that, too.” If they have a more law-related problem, like difficulty understanding the paradigm, or too much case summary rather than synthesis, the students almost always say that they were aware of the problem while they were writing. As a result, I have started to give students writing prescriptions at their first conferences. A writing prescription is a

form that I made up to identify a student’s most compelling writing problem. I do not actually write the prescription until the conference, after I have engaged the student in the process and we have mutually agreed on the diagnosis. I then encourage the student to make it a priority to focus on improving that particular item in his or her writing.

V. Post-Writing: Extreme Makeover, Legal Writing Edition

We can all admit it. Once we have put something down on paper, we are reluctant to tamper with the perfection that we have created. We need to teach our students to get over this hurdle and become effective self-editors. Self-editing is a critical skill for any lawyer and one that students cannot start to learn soon enough. I devote a significant amount of class time to teaching students this vital skill. It is one of the ironies of teaching legal writing that good teachers give their students significant feedback and guidance, yet that very feedback and guidance work against teaching students how to edit themselves effectively. When commenting on student work, I believe it is important to give students direction but not to actually rewrite their work so that they become completely dependent on teacher input to rewrite.

Every semester, I vary my proofreading suggestions somewhat, based on the strengths and weaknesses of a particular class. Many of the techniques that I use are from the Purdue University Online Writing Lab (OWL)⁵; others I have culled from my own experience, from colleagues, and from students themselves. I teach students to edit in stages, focusing first on the big picture: Does the large-scale structure and organization make sense? Is the writing easily understandable? Next, I ask them to look at their small-scale structure and organization—does their writing adhere to IRAC or to the paradigm? Are there flaws in the legal

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⁴ Mary Beth Beazley discusses the self-graded draft at length in chapter 7 of her text, *A Practical Guide to Appellate Advocacy* (2d ed. 2006).

⁵ The Purdue University Online Writing Lab may be found at <owl.english.purdue.edu> (last visited August 12, 2006).

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analysis or factual inaccuracies? Finally, I ask them to examine general style issues. Is the writing style clear and is it appropriate for the reader? Does the writing reflect proper grammar, punctuation, and syntax? Are there typos? Have they conformed with all class formatting requirements? This last item is an important one, because I stress in class that I am training them for the practice of law. I caution them that no court will accept a late brief or a brief over the page limit, and they should not expect their legal writing teacher to function any differently.

Conclusion

The moment I realized that strong students often write weak papers because of their poor material management was a pivotal one for me as a teacher, one that inspired me to formalize the study skills portion of the course. By presenting students with a wide array of options to help organize themselves at different steps in the writing process, I am helping my students to function more effectively both as law students and ultimately as attorneys.

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Another Perspective

“‘Legal writing’ is a misnomer. Every rhetorical problem that faces lawyers faces other professionals as well; only the particular combination of those rhetorical needs is special to the law. We continue to use the term ‘legal writing’ because we have not found a simple way of defining the combination, and because (as Justice Potter Stewart once said of hard-core pornography) we know it when we see it.”

—George D. Gopen, *Essay: The State of Legal Writing: Res Ipsa Loquitur*, 86 Mich. L. Rev. 333, 334 (1987).