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Meeting Students' Demand for Models of Good Legal Writing

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First-year legal writing students always plead for model examples of the types of writing we teach. Though most legal writing texts include an appendix of sample legal documents, the students invariably ask for more. They insist that a multitude of samples are needed to fully grasp the structure and organizational approach that is expected of them. Their reasons for wanting models of good legal writing are not without merit. Interoffice memoranda, trial and appellate briefs, as well as the other kinds of legal documents we teach in the first-year writing curriculum are unlike anything our law students have previously seen or written.[1] Through studying samples, students are able to identify the analytical framework used to organize the discussions of varied legal issues and then apply it to their writing assignments.[2] The more samples they have at their disposal, the easier it will be for them to emulate that framework.[3] More samples

also reinforce the reality that there is "no one structure which fits all presentations."[4] Because we teach students to analyze legal problems using traditional paradigms like IRAC, particularly in the first semester, they are often misled into thinking that the presentation of legal analysis must be formulaic and rigid. As the writing assignments become more complicated, we want our students to realize there are different and more sophisticated approaches to organization. This can be accomplished through the use of models.

As a practical matter, models serve to validate and, at times, even clarify class instruction, written critiques, and reading assignments. Students will often refer to them to answer questions they might have when we are unavailable. Finally, at least from the students' perspective, the models enable the students to write with greater ease because they provide some insight into what we consider good legal writing. For them, the model is a recipe for obtaining an "A" on their assignment. If they follow the recipe's directions, they are assured that they are presenting their analysis in the "right" way. This lessens the anxiety that they, as novice legal writers, typically experience, resulting in a more positive and productive writing experience for them.

The Drawbacks to Using Models

Supplying students with models, however, presents significant drawbacks for both the teaching and learning of legal analysis and writing. The most obvious one is that students will mimic a model without ever considering whether its structure, organization, and style are appropriate for their problem. Even when we instruct them that there is

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[1] Judith B. Tracy, *"I See and I Remember; I Do and Understand": Teaching Fundamental Structure in Legal Writing Through the Use of Samples*, 21 Touro L. Rev. 297, 309 (2005) (arguing that first-year legal writing programs should incorporate the use of samples). By integrating samples into the curriculum, law professors can "equip students with the ability to prepare clear, logical and reliable presentations of legal analysis, consistent with what will be expected of them in practice. …" *Id*. at 307.

[2] *Id*. at 307–308.

[3] Laurel Currie Oates, *I Know That I Taught Them How to Do That*, 7 Legal Writing 1 (2001). Oates asserts that legal writing professors can help students transfer what they learn in the context of one assignment to another by providing them with a number of different examples that have similar underlying structures and problem solutions but different "surface features." *Id*. at 7. This approach allows students "to develop general schemata that are not tied to specific facts, which increases the chances that [they] will be able to retrieve an analogous example" when working on a new problem. *Id*.

[4] Tracy, *supra* note 1, at 311; *see also* Helene S. Shapo & Mary S. Lawrence, *Surviving Sample Memos*, 6 Perspectives: Teaching Legal Res. & Writing 90, 90 (1998) (arguing that samples can be used "[t]o dispel students' perception that there is but one 'right' approach to writing").

not a single formula that works for all problems, they still attempt to mold their analysis into the model structure.[5] As we know, it is the analysis of the individual legal problem that dictates the written presentation. That analysis turns on the specific facts and law of the problem, which will always differ from the model one, even when the model addresses a similar problem or comparable law. To use my recipe analogy from earlier, the ingredients for the students' assignment—the facts, law, purpose, and audience—will not be identical to the ingredients in the model recipe. Therefore, a strict adherence to that recipe will not necessarily yield the same positive result. The students fail to appreciate this point. The *right* model for their assignment would be the answer, which, of course, the students want, but we cannot give them, at least not before they have completed the assignment.

Even when a structure, organization, and style similar to the model might work for their assignment, the students often "slavishly follow the good model and [do] not consider equally acceptable"[6] or superior alternatives. The students "fail to recognize nuanced differences between different work products."[7] Consequently, the students' final drafts might be perfectly adequate, but not excellent. Their writing could be improved considerably if they revised and polished it without referring to a model for guidance.[8]

A related problem is that students blindly imitate the word choices, sentence structure, tone, and mechanics of the models. In doing so, they liberally lift language and dump it into their writing no matter how grammatically incorrect or awkward sounding it might be.[9] And, oftentimes, the students slip back and forth between their voice and the one they adopted from the model, creating confusing shifts in their writing. The result is a document that lacks internal consistency, clarity, and conciseness—areas that are critical to the legal reader's understanding of the analysis.[10]

The use of models, however, can hinder students from developing complete confidence in their own analytical and writing skills. Students over-rely on the ability to "check" their writing against the models we provide because they can easily, though superficially, assess whether they are on the right track or not. Though such a comparison might have some utility in the law school setting, it is not always feasible or possible in practice. Supervising attorneys typically do not give their junior attorneys samples of the type of legal work they assign. Relevant and good models will not always exist. And, if they do exist, finding them can be time-consuming and costly. Thus, a student's unhealthy dependence on models can have long-term consequences on his or her professional performance.

Finally, using models can also be problematic for a professor's credibility. Despite the many disclaimers that professors give about over-relying on models to write their assignments, students still use them, rather than their analysis, to decide on a structure for their writing. They do this, in part, because they assume it will result in a good grade. When a professor does not reward a student for strictly adhering to a model, that student will almost certainly feel cheated. The professor endorsed a model, but expected something totally different.

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[5] Shapo & Lawrence, *supra* note 4, at 90. Shapo and Lawrence assert that models create "major hazards" for new legal writers because students tend to "mimic [them] mechanically." *Id*. Students follow a "model's organization with a dogged literal-mindedness regardless of subject matter and context." *Id*.

[6] Louis J. Sirico Jr., *Beyond Offering Examples of Good Writing: Let the Students Grade the Models*, 14 Perspectives: Teaching Legal Res. & Writing 160, 160 (2006) (suggesting that students evaluate sample answers using holistic scoring to encourage the effective use of models in legal writing).

[7] *Id*.

[8] Shapo & Lawrence, *supra* note 4, at 90. Models also "divert students' attention from analytical processes and can impede students from developing self-editing skills." *Id*.

[9] *Id*. "Like Cinderella's ugly stepsisters in the Grimm tale, [the students] cut off their heels and toes, mutilating their sentences to match the sentence patterns in the model, often with absurd results." *Id*.

[10] This partially explains why we see so many strange organizations, incoherent sentences, and grammatical issues in the assignments we grade. The more time students spend on trying to emulate the model writing, the less time they have to revise and cure these problems on their own.

As a result, the student is less likely to trust that professor's instruction and guidance in the future.

The Solution: How to Use Models Effectively

The disadvantages associated with giving students models can be substantially minimized when professors take a practical, hands-on approach to their use in the curriculum. Professors must treat them as opportunities for the students to learn and practice important analytical and writing skills, not as examples of good legal writing. This requires that professors meaningfully integrate the models into their classroom instruction and dialogue; they cannot simply distribute them without discussion or refer to them only casually. Professors must engage the students with the models. Basing samples on past work and asking students to draft their own models can help ensure that students use them appropriately.

Provide Models of Past Work or Completed Assignments

Professors should limit the models they distribute to those addressing problems with which the students are familiar. When students know the factual scenario and law of the model assignment, they are better able to understand the organizational choices that the writer made. In other words, "the student[s] will be able to see how the process by which the analysis was developed—through reading and class discussion of the authority—was transformed into a structure which successfully explains that analysis."[11] Without that context, the students will only see a formula; they will not see that the writer selected that formula because it was the best way to communicate the analysis of the particular problem.[12]

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> **"As with any model a professor distributes, there must be a rich discussion about all of the writer's choices—from large-scale organization to sentence and word selection."**

and word selection. As part of this discussion, professors should explore alternative ways the writer could have presented the material, assessing the positive and negative attributes of those alternatives. To accomplish this, professors could give students comparative models of the entire document or a portion of it so that the students can concretely evaluate why the model approach is superior. Additionally, professors can ask the students to write the alternate approach so that they can experience for themselves why that approach is less attractive than the model one. And, finally, the students can always compare and contrast their own drafts to the model writing to see how their approach matched up. No matter which route the professor takes, exploring alternatives to the model will remind students of the many factors that influence a writer's decision about presentation. In turn, this process will help them recognize and produce good legal writing.[13]

Annotating the models is another effective way to explain the writer's choices to the students. Professors can give the students a model with margin annotations that, among other things, identify the analytical elements, comment on rule explanations and analogical reasoning segments, and explain paragraph, sentence, and word choices. These annotations would reveal the many important substantive and technical decisions the writer confronted in drafting the model. Alternatively, professors can ask the students to annotate the model on their own or in groups, following instructions on which areas to identify and explain.

Professors often oppose using and manipulating models of completed work for two reasons. First, it is burdensome to draft models of all of the assignments they teach. Second, distributing model answers to an assignment precludes professors from using that assignment in the future (or at least in the near future) as the "right answer" is now available

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[11] Tracy, *supra* note 1, at 316. "Further, if students are given a sample memorandum on a matter on which they have already written, the sample will serve to confirm their work and will become part of the critiquing and feedback process." *Id.*

[12] Also, this method lets the students compare what they wrote to the model answer, allowing for additional feedback on their writing.

[13] Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 Neb. L. Rev. 561, 583–84 (1997) (suggesting that law professors should discuss the comparative strengths and weaknesses of many model documents to help students recognize and emulate good legal writing).

to students, making it impossible to ensure that they do not plagiarize.

One way to address these concerns is to distribute models of completed assignments that are *ungraded*. In the first month of my first-semester legal analysis and writing course, I assign a series of three ungraded exercises. For each assignment, the students are asked to analyze a factual scenario using three to four short, edited cases. The students are then instructed to organize their analysis in writing following a traditional CRAC format. After each assignment is completed, I distribute a model answer, which we discuss using a combination of the teaching methods described here. As this is their first formal introduction to legal writing, the students are eager to figure it out on their own. Because it is so early in the semester, the students are also unaware of what I have taught in previous years. Even if the students learned that I posted models of similar exercises in the past, they gain no real advantage from using the models, as the assignments are not graded. This eliminates most motivation to plagiarize, allowing me to reuse the ungraded assignments and models in the future.[14]

Have the Students Create Their Own Models

When professors are unable to provide models of good legal writing, they should still encourage students to draft their own models of the various ways their problem could be organized and written. This is a particularly useful exercise when students are working on their graded assignments. By writing out different versions of the assignment, the students can engage in the same comparative analysis they would if they were given a model sample to compare. Having isolated the different ways the assignment could be written, they can pick the version that best communicates their analysis to the reader. That version is the "model"—the one they should then revise, polish, and ultimately submit to the professor for a grade.

Professors should emphasize to students that they can self-model an entire assignment or just the parts with which they are struggling. For example, early in my first-semester legal writing course, we discuss how it is usually most effective to explain analogous cases in support of a rule before distinguishing ones. However, there are instances when this organization might not be desirable, for example, when a distinguishing case is the leading authority on the issue or the most illustrative of the rule. Though the students understand this logic, they are uncertain about how to apply it to their assignment. Thus, I tell my students to write it both ways—one where the analogous cases are discussed first and another where the distinguishing cases are discussed first. The students then have two written drafts to compare. The visual comparison helps them see and decide for themselves which organization is most effective.

These self-modeling exercises are extremely time-intensive and, for that reason, students often resist them. To drive home the value in doing them, I require the students to rewrite sections of their first draft of the memorandum assignment (after it is graded) *in class* so that they can experience firsthand the benefits of writing it both ways. The students usually have that exciting "aha" moment in class, as they are able to answer their own questions about revision without needing the aid of a model or the professor's input.

There are many ways to engage students with the models we assign so that they resist the temptation to blindly imitate them and instead learn how to choose the best method for organizing and presenting the legal analysis of their problem. By encouraging students to understand what factors influenced the drafting of the model example, they will develop the confidence and skill needed to successfully apply what they learned to new scenarios without having to depend on a model for guidance. Because the benefits to using models are important and the drawbacks can be controlled through skillful lesson planning, professors should strive to meet the students' demands for them.

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[14] Even though the exercises are ungraded, I review and comment on their assignments. I have yet to see an assignment that copied a past model in any way. This tells me that the students are unaware that they exist or, if they are aware, do not wish to plagiarize them because they want feedback on their own writing before they work on their first graded assignment.

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