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Better Revision: Encouraging Student Writers to See through the Eyes of the Reader

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BETTER REVISION: ENCOURAGING STUDENT WRITERS TO SEE THROUGH THE EYES OF THE READER

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INTRODUCTION

Revision is an integral part of the first-year legal writing curriculum. Students rewrite most of their writing assignments for a grade, and, in many cases, the rewrites are weighted more heavily than the first drafts. The purposes of a rewrite in legal writing, as with other writing, are to resolve any inconsistencies and fill in gaps, strengthen the analysis and reasoning, and present the information in the clearest way possible.[1] Though legal writing professors devote substantial time to the rewrite phase of assignments, in my experience, law students traditionally treat an assignment as completed as soon as they turn in their first draft for a grade. Rather than making substantive revisions during the rewrite phase, they concentrate on superficial edits to word choice, grammar, spelling, sentence structure, and citation. Thus, it is not uncommon for students to submit rewrites that are substantively unchanged from their first drafts.

These typical revising habits suggest that first-year legal writing students follow the traditional linear model of writing, in which the writing process is organized in a fixed linear sequence and rewriting is the final stage in that sequence.[2] They also suggest that the students severely truncate the rewriting stage by focusing on mostly surface changes while ignoring whether the text makes sense to the reader.[3] When students are taught to use

[1] *See* Christopher M. Anzidei, *The Revision Process in Legal Writing: Seeing Better to Write Better*, 8 Leg. Writing 23, 43–45 (2002).

[2] *See id.* at 41–42 (comparing habits of first-year legal writing students to experienced legal writers and finding that students are "stuck in the correcting mode of the linear stage process theory," *id.* at 42).

[3] *See id.* at 38–39. Anzidei found that the law students in a survey he conducted "overwhelmingly focused their revising processes on micro-revisions," *id.* at 38, including edits to spelling, grammar, word choice, and word order, *id.* at 37–38. He also found that

the linear model of writing or to address mainly surface edits during revision, they are in effect discouraged from revisiting their original decisions. This impairs their ability to see the weaknesses in their writing and to transform the structure to meet their reader's needs. To encourage students to revise more globally and to do so throughout their writing experience, not just at the end, professors need to help students understand that the writing process is recursive, not linear. Under a recursive model, writers continually revisit all aspects of their writing experience so that they can discover the best way to organize and communicate their thoughts to the reader.[4] This model presents an opportunity for law students to see their writing through the reader's eyes and thereby produce better revision.

Part I of this Article describes the problem that prevents law students from revising effectively. Part II addresses the underlying cause of the problem. Part III evaluates the recursive method of composing. Finally, Part IV recommends teaching tools aimed at helping students employ substantive "re-vision" techniques that can raise their writing to the next level.

I. LAW STUDENTS DO NOT REWRITE EFFECTIVELY BECAUSE THEY CONCENTRATE ON SUPERFICIAL "CLEAN UP" CHANGES INSTEAD OF SUBSTANTIVE REVISIONS

The ability to effectively revise their own work is a skill that requires law students to set aside their perspectives as writers and review the text from the reader's standpoint. It is from the vantage point of the reader that writers are able to see whether they communicated the entire analysis and whether the presentation is clear. This allows them to make meaningful, rather than mere superficial, changes to their drafts. In my experience, most first-year legal writing students struggle with this transformation from writer to reader, especially in the fall semester when they have to revise a graded assignment for the very first time. They struggle because they mistakenly believe that a first draft is the most important part of the writing process when it is, in fact, only the beginning of the writer's journey.[5] They also struggle because they

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the students made few macro-revisions—revisions he defines as "altering the substantive meaning of their texts." *Id.* at 39.

   [4] *See* Linda Flower & John R. Hayes, *A Cognitive Process Theory of Writing*, 32 College Composition & Commun. 365, 367 (1981). Flower and Hayes discuss what they call a "cognitive process model." *Id.*

   [5] It is only after many revisions that a first draft even begins to communicate what

have a narrow view of what revision entails. They equate it with polishing—adding topic sentences or conclusions where needed, changing words, editing grammar, and fixing citation.[6] As a result, they rarely use the time before the rewrite is due to step into the legal reader's shoes to discover new legal arguments, reassess their original analysis, and resolve any dissonance in their work.[7]

Because first-year law students spend a great amount of time researching and understanding the subject matter of their writing, deciding on an organization, arranging sentences, and then selecting the precise words to communicate their ideas, they develop a deep knowledge of the origins of their text. This makes it difficult for them to detect faults in their writing.[8] When they do revise, it is not uncommon for them to focus solely on text that has already been marked up by the professor or that contains obvious defects and then leave the remainder of the text untouched.[9] Although the students' line edits are important, they rarely move the students' writing to the next level, and they typically do not cure the documents' more significant problems, such as faulty analysis, lack of organization, or inadequate support for legal rules. In other words, the students' cursory edits mislead them into believing that they have adequately revised the document, when, in reality, they have yet to begin any real revision.

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the writer intended to say to the reader. *See* Richard K. Neumann, Jr., *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* 63, 65–66 (5th ed., Aspen Publishers 2005) (asserting that "the first draft is actually the *least* important part" of the writing process, *id.* at 63 (emphasis in original), because it is only "in subsequent drafts [that] the focus shifts to the reader," *id.* at 65).

[6] *See* Anzidei, *supra* n. 1, at 38–43; John R. Hayes & Linda S. Flower, *Writing Research and the Writer*, 41 Am. Psychol. 1106, 1110 (1986) (finding that novice writers "saw revision largely as a sentence-level task in which the goal was to improve individual words and phrases without modifying the text structure"). Anzidei notes that "even after having progressed through nearly twenty years of schooling, new legal writers are still wedded to correcting the individual words and sentences they write." Anzidei, *supra* n. 1, at 39.

[7] *See id.* at 43–53 (arguing that new legal writers need to incorporate these three re-seeing habits of experienced legal writers into their own writing processes so that they can revise better); *see also* Laurel Currie Oates et al., *The Legal Writing Handbook: Analysis, Research, and Writing* 570 (3d ed., Aspen Publishers 2002) ("[Law students] prefer the safety of tinkering with smaller editing issues such as sentence structure or word choice" over "rethinking the whole document.").

[8] *See* Hayes & Flower, *supra* n. 6, at 1110.

[9] *See* Karen J. Sneddon, *Revising Revision in the Classroom*, 15 Persps. 130, 130 (2007); *see also* Anzidei, *supra* n. 1, at 48. Sneddon notes that "many [law] students are unsure how to revise." Sneddon, *supra* n. 9, at 130. She also notes that "[w]hen confronted with a document that has been reviewed and marked by a professor, many students mechanically input the professor's comments." *Id.* One student in a study done by Anzidei remarked that he only revisits sentences when a subsequent sentence "'logically or syntactically invalidates the already-written sentence.'" Anzidei, *supra* n. 1, at 48. Anzidei's study is discussed *infra* notes 34 to 43, 111 to 114, and accompanying text.

Studies at the undergraduate level show that inexperienced writers focus primarily on surface changes when they revise.[10] Nancy Sommers's study reveals just how narrow an inexperienced writer's view of revision is.[11] Her study was of twenty experienced adult writers—including journalists, editors, and academics—and also twenty college student writers.[12] In the study, she had each writer write three essays and rewrite each essay twice, thereby producing nine written products.[13] The data showed that the student writers understood revision as a rewording activity.[14] Notably, most of the students did not even use the word "revision" or "rewriting" to describe their writing efforts.[15] According to the students' own description, the aim of revision was "to clean up speech."[16] They "place[d] a symbolic importance on their selection and rejection of words as the determiners of success or failure for their compositions."[17] They were unable to see revision as a process in which they review their work from the reader's perspective to assess whether they have communicated their intended meaning.[18]

Lester Faigley and Stephen Witte also examined the differences in revision choices between experienced and inexperienced writers using a taxonomy that separated revision changes into meaning and surface changes.[19] Meaning changes are those changes in which "new information is brought to the text or . . . old information is removed in such a way that it [could not] be recovered through drawing inferences."[20] They divide meaning changes into microstructure and macrostructure changes.[21] Macrostructure changes are changes that "affect the reading of other parts of the

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[10] *See e.g.* Hayes & Flower, *supra* n. 6, at 1110; Sondra Perl, *Unskilled Writers as Composers*, 10 N.Y.U. Educ. Q. 17, 17–18 (Spring 1979). Perl studied five adult unskilled student writers and found that they were "prematurely concerned with the 'look' of their writing; thus, as soon as a few words are written on the paper, detection and correction of errors replaces writing and revising." Perl, *supra* n. 10, at 17.

[11] *See* Nancy Sommers, *Revision Strategies of Student Writers and Experienced Adult Writers*, 31 College Composition & Commun. 378, 380–383 (1980).

[12] *Id.* at 380.

[13] *Id.*

[14] *Id.* at 381.

[15] *Id.* at 380–381.

[16] *Id.* at 381.

[17] *Id.*

[18] *See id.* at 382.

[19] Lester Faigley & Stephen Witte, *Analyzing Revision*, 32 College Composition & Commun. 400 (1981). Faigley and Witte examined these groups of writers in two separate studies. The first study is described in the text accompanying *infra* notes 20–31. Their second study is described *infra* note 102.

[20] *Id.* at 402 (emphasis omitted).

[21] *Id.* at 403–405.

text," while microstructure changes are changes that do not change the meaning of other parts of the text.[22] Surface changes are all other changes and include both formal changes—such as edits to spelling, punctuation, and format—and meaning-preserving changes—such as additions, deletions, or substitutions of words.[23]

In Faigley and Witte's study, the inexperienced writers included inexperienced students who participated in a writing laboratory designed for students with weak writing skills.[24] The experienced writers included advanced student writers from an upper-level expository writing course and expert adults who were professional writers with journalistic experience.[25] Each writer had one day to plan, one day to write a first draft, and one day to revise.[26] As expected, the inexperienced writers' revisions were mostly surface changes; only twelve percent of the revisions were meaning changes.[27] The experienced writers, on the other hand, made more revisions of every kind during their writing of the first draft than did the inexperienced writers.[28] For example, with respect to meaning changes, the expert adults made on average 15.4 changes per 1000 words and the advanced students made on average 10.4 changes per 1000 words, whereas the inexperienced students made on average only 3 changes per 1000 words.[29]

Moreover, the inexperienced writers made predominately surface changes between the first and second drafts—98 per 1000 words—and rarely made macrostructure meaning changes—only 1.3 per 1000 words.[30] The students' "most frequent single changes were Meaning-Preserving Substitutions (32.2 per 1000 words)," which were "by and large . . . substitution[s] of synonyms."[31] Overall, Faigley and Witte's research shows that inexperienced writers are in serious need of tools to force them to see global issues when they revise.

First-year law students, especially those who come to law school right from college, are not far removed from the undergraduate setting. Similar to the undergraduate students studied by the

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[22] *Id.* at 405.
[23] *Id.* at 402–403.
[24] *Id.* at 406.
[25] *Id.*
[26] *Id.*
[27] *Id.* at 407.
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*

composition theorists, first-year legal writing students make mostly surface changes when they revise.[32] Applying Faigley and Witte's theories to law students, Christopher Anzidei emphasized that revision cannot serve as "the last stage on an assembly line where the writer corrects errors."[33] Anzidei conducted a study in which he compared the revision habits of eighty first-year law students at Georgetown University Law Center with the practices of experienced legal writers there (such as legal research and writing professors, clinical professors, and graduate students).[34] His conclusions illustrate that, for law-student writers, revision does indeed resemble the last phase of an assembly line.[35]

Borrowing from Faigley and Witte's taxonomy, Anzidei divided the revision techniques into two categories: micro-revisions, which include changes "that would correct a perceived surface error in the text without providing new information or changing the substantive meaning of the text," and macro-revisions, which include any changes "that would change the substantive meaning of the text, whether by adding new information or deleting existing content."[36] He found that the law students "overwhelmingly focused their revising processes on micro-revisions,"[37] whereas the experienced writers "saw everything when they revised."[38] Specifically, "eighty-eight percent of the students responded that they revised the content of individual sentences, eighty-three percent changed word choice or word order, and eighty-three percent changed spelling and grammar."[39] Notably fewer students made macro-revisions.[40] "Only forty percent of the law students revised their large-scale organization, forty-six percent made audience-oriented changes related to their rhetoric (including their tone, perception of clarity, style, etc.), and thirty-one [percent] made audience-oriented organizational changes (such as providing topic headings, roadmaps, and outlines)."[41] The data demonstrated that the law students saw in smaller units like sentences and words when they revised.[42] They were not conscious of resolving disso-

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[32] Anzidei, *supra* n. 1, at 38–39.

[33] *Id.* at 25.

[34] *Id.* at 36.

[35] *See id.* at 41–42.

[36] *Id.* at 37.

[37] *Id.* at 38.

[38] *Id.* at 39. Anzidei's data on experienced writers is discussed in the text accompanying *infra* notes 111 to 114.

[39] *Id.* at 38.

[40] *Id.* at 39.

[41] *Id.* (footnote omitted).

[42] *Id.*

nance in their writing and did not view revision as a chance to discover new themes, alternative theories, or solutions to the questions posed.[43]

My own teaching experience likewise confirms that many first-year legal writing students do not view revision as an opportunity to re-see their work. After I comment on and grade on the students' first drafts, they usually have two weeks to revise them before submitting a final draft for a grade. During that time, I meet with the students in individual conferences to discuss how they plan to approach the rewrite. Before I implemented the strategies discussed in Part IV, there were two common themes during these conferences that told me that students were looking to simply polish their work for the rewrite. The first was that students would routinely ask questions regarding surface-level changes that they contemplated. They would not only begin the conference with such questions, but also would use most of our time together on them. They would ask questions about how to cite a particular case, the difference between "it's" and "its," appropriate paragraph lengths, and the use of passive voice, among other inquiries. I do not mean to suggest that these were unimportant or inappropriate questions for students to ask. However, the fact that they asked them with more frequency than questions that contemplated substantive changes and, in some cases, to the exclusion of questions about substantive changes, suggests that the students were unable or unwilling to go back over everything they had written when they revised, or perhaps that they simply did not seriously consider doing so.

The second theme was that students often wanted to use the conference time as an opportunity to gather more intelligence on what I, the professor, not the legal reader (*i.e.*, the supervising attorney in the case of the memorandum assignment), thought about their work. So, I typically was asked some version of the following question: Is there anything else you think I should work on besides what you wrote in your comments? My answer was typically "you should reexamine the entire text" because my comments are meant as a starting point, intended to motivate the students to revisit everything they have written, not just the text I evaluated. In addition to its obvious relationship to their concern over their final grade, this question reveals that students have a narrow view of revision, equating it with correcting what the professor marked wrong. It also suggests that students prefer not to revisit their

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[43] *See id.*

original substantive decisions unless professors instruct them to do so.

The fact that the majority of students submitted rewrites that were substantively unchanged from their first drafts is further evidence that they equate revision with polishing. Many students made primarily superficial changes to the document for the rewrite even though I assigned substantially more weight to the rewrite than the first draft (in the case of the first memorandum assignment, 20% more) and gave them two weeks to revise it. Though the students would make substantive changes when I instructed them to do so, they usually did not apply my instruction to the remainder of their writing.[44] For example, I might have commented that the discussion of a case supporting the rule was unpersuasive because it did not discuss all of the relevant facts. My comment would be written generally so that the students understood that including all the pertinent facts is an important part of explaining the cases that support their rules. I expected that the students would consider such a comment while working on their rewrites as they reviewed all of their rule-support discussions. I also expected that students would make the appropriate changes to their fact discussions where these discussions were inadequate, even if I did not mark them on the first draft. Nevertheless, few students made this leap and used the comments in one part of the document to evaluate another part.[45]

Further, the students' expectation that they should have received substantially better grades after they had simply cleaned up their first drafts also implies that they follow a limited approach to revision. Students were routinely surprised to learn that their grade stayed the same or moved up only slightly from the grade they received on their first draft. Given our vastly different approaches to revision, it is understandable that we had different expectations for the rewrite. As an experienced writer, I treated it as an opportunity to make meaningful or global changes, whereas my students, all inexperienced legal writers, did not yet do so.

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[44] Students sometimes failed to apply even surface-level comments to other parts of their writing. Oftentimes, this would happen when a student cited incorrectly. I would correct the error once in the document and instruct the student to fix it throughout. Yet, for the rewrite, I would find that the student ignored my global instruction and corrected the marked error only.

[45] I know this because I collect copies of their first drafts with my comments when they submit their rewrites so that I can compare the two.

II. LAW STUDENTS HAVE DIFFICULTY MOVING FROM WRITER TO READER BECAUSE THEY USE A LINEAR MODEL OF COMPOSING

A. *The Linear Model of Composition Is a Step Approach That Encourages Students to Maintain a Writer's Perspective, Rather Than a Reader's Perspective*

The traditional linear model of the writing process does not adequately reflect how writers actually compose. Under that familiar model, there are three distinct stages of writing organized in a linear sequence: prewriting, writing, and rewriting.[46] That is an oversimplified description of the writing process that follows the development of the written product.[47] The final stage of rewriting is when, among other things, the writer polishes his or her work and fixes mistakes to sentence structure and spelling. However, for years, composition theorists have argued that this description is inadequate because it fails to capture the inner process of the person producing the written work.[48] Research shows that experienced writers are continually planning and revising as they compose, and not composing in clean-cut stages.[49] Therefore, when students compose in stages, they miss the opportunity to revisit their original decisions, which prevents them from seeing their work from the reader's perspective.

By focusing mainly on superficial rather than global changes during revision, inexperienced writers typically ignore whether their text will be understandable to their reader. Because writing is "inevitably a somewhat egocentric enterprise," at some point in the process, most writers will express ideas in the same pattern in which they learned them or stored them in their memory without altering them to meet the needs of the reader.[50] This is referred to

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[46] Flower & Hayes, *supra* n. 4, at 366–367.

[47] *See id.* at 367.

[48] *Id.*; Sondra Perl, *Understanding Composing*, 31 College Composition & Commun. 363, 364 (1980); Nancy I. Sommers, *The Need for Theory in Composition Research*, 30 College Composition & Commun. 46, 47–48 (1979). Sommers argues that the conventional conception of revision as the final tidying up activity of the composing process, one that is "separate in quality and isolated in time from writing," is misguided; rather, educators should view the entire composing process as a process of revision. Perl, *supra* n. 48, at 48. She views revision "as a process of making a work congruent with what a writer intends." *Id.*

[49] *See e.g. id.* at 364 (advocating that writing is a recursive process). Perl argues that "throughout the process of writing, writers return to substrands of the overall process, or subroutines (short successions of steps that yield results on which the writer draws in taking the next set of steps)." *Id.*

[50] Linda S. Flower & John R. Hayes, *Problem-Solving Strategies and the Writing Pro-*

as Writer-Based prose.[51] Although it is a very natural part of the composing process, it is typically ineffective in reaching the reader because the order in which the writer learned or stored the material usually does not carry the same meaning for the reader.[52] "One of the tacit assumptions of the Writer-Based writer is that, once the relevant information is presented, the reader will then do the work of abstracting the essential features, building a conceptual hierarchy, and transforming the whole discussion into a functional network of ideas."[53] Not surprisingly, legal readers are often disinclined to do this. More likely than not, the reader will become frustrated by the text because its meaning is not readily apparent and will reread it in an attempt to fill in the gaps (with little luck) or will stop reading altogether. When students postpone revision until the last stage in the composing process and limit it to superficial edits, they typically do not evaluate whether what they have written satisfies their goals and makes sense to the reader. Thus, their writing rarely shifts from Writer-Based prose to Reader-Based prose.

Writer-Based prose typically manifests itself in two ways.[54] It may reflect either the writer's own discovery process or the structure inherent in the material the writer examined.[55] If it reflects the writer's own discovery process, it is often narrative—the organization of ideas reflects the writer's own thought process, often serving as a substitute for any real analytical thinking:[56]

> By burying ideas within the events that precipitated them, a narrative obscures the more important logical and hierarchical relations between ideas. Of course, such a narrative could read like an intellectual detective story, because, like other forms of drama, it creates interest by withholding closure. Unfortunately, most academic and professional readers seem unwilling to sit through these home movies of the writer's mind at work.[57]

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cess, 39 College English 449, 459 (1977).

[51] Linda Flower, *Writer-Based Prose: A Cognitive Basis for Problems in Writing*, 41 College English 19, 20–21 (1979) (drawing upon the works of Jean Piaget and Lev Vygotsky in the area of child psychology, which show that children sometimes make no concessions to the needs of the listener when they talk, to suggest a source for the cognitive patterns that underlie Writer-Based prose).

[52] *See id.* at 19–20.

[53] *Id.* at 28.

[54] Flower & Hayes, *supra* n. 50, at 459.

[55] *Id.*

[56] *See id.*

[57] Flower, *supra* n. 51, at 25.

Similar to prose that reflects the writer's internal thinking, prose that reflects the structure inherent in the material is often not adapted to the reader's needs.[58] To write that type of prose, the writer simply surveys the information before him or her and borrows whatever structure the source uses.[59] Because the writer fails to transform the writing into a structure easily understandable by the reader, the reader is forced "to do most of the thinking, sorting the wheat from the chaff and drawing ideas out of details."[60]

In addition, Writer-Based prose routinely uses code words, which carry meaning for the writer, but not for the reader.[61] This is very common among subject-matter experts, such as engineers, who become so fluent in their technical language that they lose touch with the needs of less informed readers, as well as among individuals who have a deep connection with the experiences about which they write.[62] For example, a first draft of a summer internship application reads as follows: "By having these two jobs, I was able to see the business in an entirely different perspective."[63] The code term is "different perspective." The reader has no idea what it means to the writer and its meaning is not explored or expressed anywhere in the application. If asked what that "different perspective" involved, the applicant would be able to explain it because the applicant had the experience. That explanation, however, never made it to paper because, as an inexperienced writer, she was unable to uncover the buried meanings of her text on her own. "Taking the perspective of another mind is . . . a demanding cognitive operation. It means holding not only your own knowledge network but someone else's in conscious attention and comparing them."[64] Thus, good revision is the "cognitively demanding transformation of the natural but private expressions of Writer-Based thought into a structure and style adapted to [the] reader."[65] Experienced writers do this by building "a unique representation not only of their audience and assignment, but also of their goals involving the audience, their own *persona*, and the text."[66] This is a

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[58] *Id.*

[59] Flower & Hayes, *supra* n. 50, at 459.

[60] Flower, *supra* n. 51, at 25.

[61] *Id.* at 29.

[62] Hayes & Flower, *supra* n. 6, at 1108.

[63] Flower, *supra* n. 51, at 32.

[64] *Id.* at 36.

[65] *Id.* at 20.

[66] Linda Flower & John R. Hayes, *The Cognition of Discovery: Defining a Rhetorical Problem*, 31 College Composition & Commun. 29 (1980); *see also* Carol Berkenkotter, *Understanding a Writer's Awareness of Audience*, 32 College Composition & Commun. 388, 388, 395 (1981). Berkenkotter conducted a study of ten expert writers, who included profes-

major challenge for new writers who lack the skills needed to set aside their perspective and adopt their readers' instead.

B. Law Students Get Stuck in Writer-Based Prose

1. Student Writing Reflects Their Private Process of Discovery

Legal readers expect the writer to identify the legal issue, explain the entire applicable legal rule, and then apply it to resolve the issue.[67] The biggest challenge for first-year law students is to organize their analysis into this structure, commonly referred to as IRAC.[68] Students often omit, combine, or blur the analytical elements of IRAC because they typically organize the material in the order in which they found it.[69] In my experience, one common problem with a draft that mimics the order of the legal authority is that it does not lay out an explicit statement of the rule. In its place is usually an overly detailed description of the relevant cases. Although this occasionally happens because the student does not understand the rule and assumes (wrongly) that if he or she tells the reader everything about the cases, the reader will figure out the rule, it primarily occurs because the student lacks the ability to transform his or her discovery process into an issue-centered rhetorical structure.

That transformation is particularly difficult because the student's own discovery process follows a sequence that is not congruent with the way legal readers expect the analysis to be written.[70] Based on my conferences with students, the students' discoveries seem to follow these steps: reading each case, examining all of the information (relevant and irrelevant) contained within each case, synthesizing the cases, distilling a rule, and then applying the rule to the facts at issue in order to reach a conclusion. In contrast, the

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sors who published on rhetoric and composition as well as other disciplines. *Id.* at 388. She found that these expert writers "all formed a rich representation of the[ir] audience." *Id.* at 395.

[67] *See* Mary Beth Beazley, *The Self-Graded Draft: Teaching Students to Revise Using Guided Self-Critique*, 3 Leg. Writing 175, 177–178 (1997) (describing how there are predictable "intellectual locations" within legal documents and how such documents usually follow a prescribed format).

[68] Legal writing professors use paradigms other than IRAC, including, for example, CRAC (**C**onclusion, **R**ule, **A**pplication, **C**onclusion) and BARAC (**B**old **A**ssertion, **R**ule, **A**pplication, **C**onclusion). All of these paradigms share the common feature of first identifying the issue and explaining the relevant legal principle before applying it to reach a conclusion.

[69] Terri LeClercq, *Re-vision before Editing*, 49 Tex. B.J. 838, 838 (1986).

[70] *See id.*

legal reader expects to see the conclusion first, followed by the rule and an explanation of it (including only the relevant information from the cases), and then an application to the question posed.[71] When it comes time to write the analysis, if the student organizes the material in the order in which he or she learned it, the writing will not satisfy the reader's expectations.[72]

2.   *Code Words Are Widespread*

Moreover, because first-year legal writing students are caught up in their discovery process, they are unable to recognize when they have used code words. Students frequently lift terms of art that they learned from their examination of the cases without ever describing what the terms mean, even when their meaning is essential to a complete understanding of the analysis. For example, in a recent memorandum assignment, I asked the students to decide whether a female reality television personality was a limited-purpose public figure for purposes of a New York defamation claim.[73] If she thrust herself into a public controversy with a view toward influencing it, the New York courts would treat her as a limited-purpose public figure, thereby requiring her to allege actual malice in her defamation claim against the publisher of the false statements about her.[74] The terms "public controversy" and "thrusting . . . with an intent to influence" have special meaning under New York defamation law.[75]

In order to assess whether she fit that standard, the students needed to develop a rule for each term and explain how these rules were applied in analogous situations. The majority of the students, however, failed to include any explanation of what constitutes a public controversy or the requisite influence. They stated the general requirement—that the reality television personality is a limited-purpose public figure if she thrust herself into a public controversy with a view toward influencing it—but then immediately skipped to a discussion of the cases.[76] Furthermore, because they

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[71] *See e.g.* Teresa J. Reid Rambo & Leanne J. Pflaum, *Legal Writing by Design: A Guide to Great Briefs and Memos* (Carolina Academic Press 2001).

[72] Writer-Based prose is also apparent when students borrow the structure of the cases—that is, the way the courts have framed the problem—without adapting it to the question they must resolve.

[73] My colleague, Elyse Pepper, Associate Professor of Legal Writing at St. John's University School of Law, designed this creative problem.

[74] *See e.g. James v. Gannett Co.*, 353 N.E.2d 834 (N.Y. 1976).

[75] *See e.g. Wilsey v. Saratoga Harness Racing, Inc.*, 528 N.Y.S.2d 688 (App. Div. 3d Dept. 1988); *White v. Berkshire-Hathaway*, 759 N.Y.S.2d 638 (Sup. Ct. 2003).

[76] Even in the better drafts that discussed all (and only) the relevant material from

did not see the importance of explaining the key concepts, they neglected the facts and reasoning of the opinions that related to them. The natural consequence was a draft that confused the reader, who did not share the same knowledge base as the writer.

3.   *Students Fail to Reevaluate Conclusions and Analysis*

The students' inability to critique their work from the reader's viewpoint also prevents them from reevaluating their original conclusions and analysis. Students often get stuck with what they wrote in the first draft because they cannot imagine any other alternatives.[77] I usually see this when students reach the "wrong" answer on the first draft of the memorandum assignment. Even though I encourage students to reread the precedent cases and reconsider the reasoning that led to their conclusions, most students are hesitant to change their original ideas. For some, they do not want to waste their hard work by starting over. For others, despite my encouragement, they are unsure whether a change will really pay off in the end. They are not used to turning their writing on its head because the linear approach to writing leads them to polish, not rework, their writing once they have produced a draft. Thus, they are afraid to take the risk of being more "wrong" the second time. They would rather make what is "wrong" less "wrong" by working within their original framework. As a consequence, they do not notice that they have not fully discussed the relevant facts and reasoning of precedent cases or have included irrelevant cases. Without the correct or complete information, their analogies are usually faulty and unpersuasive. Thus, their decision to stick with the analysis in their first draft means that any improvements to the document are likely superficial in nature.

III. TEACHING STUDENTS A RECURSIVE MODEL OF COMPOSITION WILL HELP THEM MOVE FROM WRITER TO READER

In an attempt to address the inadequacies of the linear model, composition theorists began studying the stages of mental processes that occur during composing, rather than the stages of the writ-

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the cases, the students' writing still put the onus on the reader to synthesize the cases to extract a rule.

[77] *See* Anzidei, *supra* n. 1, at 46. For example, one of the students surveyed in Anzidei's study stated, "'[I] tend to get stuck with what I first write and it's hard to really change it.'" *Id.* (alteration in original).

ten product alone, and found that writing is a recursive process. Linda Flower and John Hayes, leaders in this effort, developed a well-known cognitive process model based on "protocol analysis"— that is, they ask the writer to think aloud during the act of composing itself, rather than asking the writer to reflect on the process after it is complete.[78] They learned that "writing is best understood as a set of distinctive thinking processes which writers orchestrate or organize during the act of composing."[79] Separate stages do not exist; instead, writers write, plan, and revise throughout the composing process.[80] The writing processes "are hierarchically organized, with component processes embedded within other components," but, unlike in the linear organization, the writing does not occur in rigid stages.[81] This means that a writer can call upon any process at any time, as needed, during the writing process.

Flower and Hayes proposed that the act of writing involves three major elements: (1) the task environment (the rhetorical problem and the written text); (2) the writer's long-term memory; and (3) the writing processes, which include planning, translating, and reviewing.[82] Each of the writing processes may occur at any time in the composing process, and all are under the control of the writer's internal "Monitor."[83] The "Monitor" acts as a "writing strategist" and tells the writer when it is time to move to a different writing process.[84] The first process, planning, occurs when "writers form an internal *representation* of the knowledge that will be used in writing."[85] It involves generating ideas, organizing, and goal-setting.[86] The second process, translating, involves transforming those ideas into written language.[87] And, finally, reviewing involves evaluating and revising:

> Reviewing, itself, may be a conscious process in which writers choose to read what they have written either as a springboard to further translating or with an eye to systematically evaluating and/or revising the text . . . . [T]he reviewing process can also occur as an unplanned action triggered by an evaluation of

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[78] *See* Flower & Hayes, *supra* n. 4, at 368.

[79] *Id.* at 366.

[80] *Cf.* Hayes & Flower, *supra* n. 6, at 1106 (noting that "when people compose, the activities of prewriting, writing, and rewriting do not typically occur in fixed sequence but rather are interwoven with each other in a complex way").

[81] Flower & Hayes, *supra* n. 4, at 375.

[82] *Id.* at 369.

[83] *See id.*

[84] *Id.* at 374.

[85] *Id.* at 372.

[86] *Id.* at 372–373.

[87] *Id.* at 373.

either the text or one's own planning . . . . The sub-processes of revising and evaluating, along with generating, share the special distinction of being able to interrupt any other process and occur at any time in the act of writing.[88]

Flower and Hayes's model thus teaches that revising is not the final stage in a linear process; rather, writers invoke the entire writing process when they revise, regenerating or recreating their own goals in light of what they learn.[89]

Sondra Perl's theory of revision is similarly centered on the belief that writing is a recursive process and is also helpful in understanding how writers revise.[90] She asserts that effective writers consistently return to sub-strands or sub-routines of the overall process in order to yield an end result: "recursiveness in writing implies that there is a forward-moving action that exists by virtue of a backward-moving action."[91] Based on observations of her students and fellow teachers, Perl identified the following common recursive actions of writers: (1) re-reading previously written words; (2) re-reading a particular keyword or topic information; and (3) returning to what has been called "felt-sense."[92] Felt-sense is a physical sensation, generated within the writer, which shifts the writer's attention back on the feelings that surround the words:

> Usually, when [writers] make the decision to write, it is after they have a dawning awareness that something has clicked, that they have enough of a sense that if they begin with a few words heading in a certain direction, words will continue to come which will allow them to flesh out the sense they have.[93]

This internal sensation guides skilled writers during revision and produces images, words, and concepts.[94] The calling up of this felt-sense during the writing process is what Perl calls "retrospective structuring."[95] It is a process that takes what the writer has already written as well as what is inchoate and uses it to bring the text forward by using language in a structured form.[96] First, the writer pays attention to what kind of physical sensations the al-

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[88] *Id.* at 374.
[89] *See id.* at 381–386.
[90] *See* Perl, *supra* n. 48, at 364.
[91] *Id.*
[92] *Id.* at 364–365.
[93] *Id.* at 365.
[94] *See id.* at 365–366.
[95] *Id.* at 367.
[96] *See id.; see also* Perl, *supra* n. 10, at 17.

ready-written words or topic information induces.[97] This evokes felt-sense.[98] Then, as the writer matches words to the felt-sense, he or she begins to generate new ideas and sentences.[99] When the words do not produce the sought-after meaning, the writer goes back, re-reads, and again focuses his or her attention on the text in order to produce felt-sense.[100]

The work of Flower and Hayes, Perl, and others[101] establishes that revision is not a unique stage in composing. Rather, it is a thinking process that can occur at any time the writer chooses to evaluate or review his or her text. It is also a process that encourages writers to evaluate their work from the reader's perspective. A study done by Nancy Sommers of the revision processes of student writers and experienced adult writers illustrates how experienced writers follow the recursive model and evaluate their writing through the eyes of the reader.[102] In that study, experienced writers described their goals when revising as reshaping the organization and content of their argument as well as addressing the needs of their readership:[103]

> The experienced writers imagine a reader (reading their product) whose existence and whose expectations influence their revision process. They have abstracted the standards of a reader and this reader seems to be partially a reflection of themselves and functions as a critical and productive collaborator—a collaborator who has yet to love their work. The anticipation of a

[97] *See* Perl, *supra* n. 48, at 366–367.

[98] *See id.*

[99] *Id.* at 366–368.

[100] *Id.*

[101] *See e.g.* Carol Berkenkotter, *Decisions and Revisions: The Planning Strategies of a Publishing Writer*, 34 College Composition & Commun. 156 (1983); Donald M. Murray, *Response of a Laboratory Rat—Or, Being Protocoled*, 34 College Composition & Commun. 169 (1983) (studying the composing process of the skilled writer, Donald Murray, through think-aloud protocols and his own introspective accounts). The study found that the writer collapsed planning and revising into a single activity that Berkenkotter called "reconceiving." Berkenkotter, *supra* n. 101, at 162. "To 'reconceive' is to scan and rescan one's text from the perspective of an external reader and to continue re-drafting until all rhetorical, formal, and stylistic concerns have been resolved, or until the writer decides to let go of the text." *Id.* It was clear that "the writer move[d] back and forth between planning, drafting, editing, and reviewing" as he wrote. *Id.* at 166.

[102] *See* Sommers, *supra* n. 11, at 379–380; *see also* Faigley & Witte, *supra* n. 19, at 400. In their article entitled *Analyzing Revision*, Faigley and Witte discuss two relevant studies they conducted. In the first study, discussed *supra* notes 19 to 31 and accompanying text, "[b]oth the expert adults and the advanced students made more revisions of all kinds during the composing of the first draft . . . than did the inexperienced students." Faigley & Witte, *supra* n. 19, at 407. Additionally, in their second study, they gave the expert writers three drafts written by inexperienced writers, asked them to revise those drafts, and then compared their revisions to the revisions of the inexperienced writers. *Id.* at 409. Notably, sixty-five percent of the expert writers' changes were macrostructure meaning changes. *Id.*

[103] *See* Sommers, *supra* n. 11, at 384–385.

> reader's judgment causes a feeling of dissonance when the writ-
> er recognizes incongruities between intention and execution,
> and requires these writers to make revisions on all levels. Such
> a reader gives them just what the students lacked: new eyes to
> "re-view" their work.[104]

Thus, experienced writers do not focus solely on surface changes when they revise; they also evaluate whether the text satisfies the reader's needs and attempt to discover a better way to communicate their intentions.

Moreover, in a number of studies discussed by Flower and Hayes, "good writers create[d] a particularly rich network of goals for affecting their reader" and represented the writing problem they were asked to solve in greater breadth and depth than the poor writers did.[105] They created "far more connections among their goals than did the novices."[106] Also, the experts generally spent more time on revision.[107] They "tended to read the whole text through before beginning revision and created global goals to guide the revision process."[108] It was clear that they developed their image of the reader as they wrote.[109] They focused on the effect they, as writers, wanted to have on their reader.[110]

In addition, Anzidei's study at Georgetown University Law Center established that, unlike law student writers, experienced writers see that the form and shape of their writing is affected by how they view rhetorical goals, such as purpose, audience, scope, and stance.[111] "More than seventy-three percent of the experienced writers . . . made changes in large-scale organization, sixty-seven percent made organizational changes designed to better present the material for their audience, and seventy-three percent . . . made rhetorical changes in anticipation of their audience."[112] Moreover, ninety-three percent, as compared to seventy-six percent of the student writers, made changes to small-scale organization.[113] Anzidei concluded that "[i]n sum, experienced writers differ

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[104] *Id.* at 385.

[105] Flower & Hayes, *supra* n. 66, at 30; *see also* Hayes & Flower, *supra* n. 6, at 1109–1110.

[106] Hayes & Flower, *supra* n. 6, at 1109.

[107] *Id.* at 1110.

[108] *Id.*

[109] Flower & Hayes, *supra* n. 66, at 30.

[110] *See id.* at 29–30.

[111] *See* Anzidei, *supra* n. 1, at 49.

[112] *Id.* at 40; *see also id.* at 57.

[113] *Id.* at 40; *see also id.* at 57.

from student writers because they see revision as a deep, dynamic process."[114]

IV. TEACHING THE INTEGRATED RECURSIVE APPROACH

A. Give Reader-Based Feedback That Encourages Macrostructure Meaning Changes

If law professors want to encourage students to treat revision as an opportunity to discover new legal arguments, resolve dissonance in their analysis, and question their original decisions, then their comments on students' drafts, both oral and written, need to show that revision entails seeing their work through new eyes. As research on composition shows, because the ability to effectively revise one's own work turns on the law student's ability to set aside his or her perspective as a writer, and review the draft from the reader's standpoint, professors' feedback needs to reflect comments that the legal reader, not a professor intimately familiar with the subject, would have. If professors can respond to their students' text like the reader would, students should be able to better see where and how their text confused, misled, or did not reach the reader, helping them transform their Writer-Based prose into Reader-Based prose as they revise.[115]

To that end, when professors comment on student papers they should simulate the legal reader's response and frame the questions and comments accordingly.[116] For my first-year legal research and writing classes, this means that I act as the supervising attorney when I review their memoranda and as the judge or opposing counsel when I review their briefs. I not only repeatedly tell my students that I will be assuming these roles when I read their work, but I also make them write "Supervising Attorney" in the "To" line of the heading for their memorandum assignment and turn in a title page addressed to the relevant court for their brief assignments. Although these instructions might seem insig-

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[114] *Id.* at 40.

[115] *Cf.* Nancy Soonpaa, *Using Composition Theory and Scholarship to Teach Legal Writing More Effectively*, 3 Leg. Writing 81, 97 (1997) ("Responding to text as in-process helps students to follow the behavior of skilled writers.").

[116] *Id.* at 103 (suggesting that professors role-play the audience to help students understand the audience's response); Susan M. Taylor, *Students as (Re)visionaries: Or, Revision, Revision, Revision*, 21 Touro L. Rev. 265, 291 (2005) (arguing that one goal for commenting on law students' papers should be to "[d]ramatiz[e] the role of the reader . . . to let writers know whether they have attended to or ignored the targeted reader's needs or interests").

nificant, their purpose is to remind the students that their audience is someone other than me, the professor.[117]

The type of comments professors make on their drafts, however, is far more important than how they address their assignments. It is critical that professors show students how their text needs to be revised to meet the needs of the reader by asking questions that the reader would have. If professors simply correct the text or insert missing information, the students will not see why their text failed to have its intended impact on the reader and will not learn to make the necessary changes on their own. Therefore, when I comment, I ask questions from the reader's standpoint. For example, if the writer failed to include a fact from one of the assigned cases that would be beneficial to the analysis, I will not simply fill in the fact, or point out that a fact is missing, or even ask why the writer did not include it. Rather, I will write a comment that forces the student to see how what they put in words does not adequately communicate to the legal reader how the cases are analogous because an essential element of the case is lacking. Thus, I might write: "It doesn't seem like this case is analogous enough to support your point. Is there a better case? If not, explain why the similarities between the authority and our case directly support your point." Now, as the professor, I know that there is no better case and that all that the writer needs to do is complete the analogy, yet, as a supervisor or a judge, I would likely not have this knowledge. My comment pushes the student to answer that there is no better case and explain why. The "why" is what the writer will need to revise, making explicit the factual similarities between the authority and our case.[118] These types of questions lead students to "feel" that there is a disconnect between what they wrote and what they intended to say, encouraging them to call up their felt-sense, create a new set of goals aimed at communicating their intention, and revise on their own.

Reader-Based comments are also helpful in forcing students to "decode" the code words in their text. To use the defamation exam-

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[117] *See* Linda S. Flower, *Revising Writer-Based Prose*, 3 J. Basic Writing 62, 65 (Fall/Winter 1981). Flower also recommends that teachers design realistic assignments for their students. *Id.* at 68. "Creating vivid, realistic assignments centered around a clearly defined 'real' reader is a first step in leading students towards reader-based prose." *Id.* at 67; *see also* Soonpaa, *supra* n. 115, at 95 (suggesting that law professors "develop[ ] assignments with specific, real-world purposes and a realistic audience"). For this reason, law professors should create real-world problems. Using phony names (like Paul Plaintiff) or creating fake jurisdictions minimizes the effect of a "real" legal reader.

[118] Similarly, if the student writer has adopted the structure inherent in the cases or outlines his or her own discovery process, I will ask questions that reveal that the text is not centered on the questions presented.

ple from above, a writer who explains that New York courts will treat as a limited-purpose public figure any person who influences a public controversy is using a code word, "public controversy," without defining it.[119] Although that expression has meaning to the writer, who read many cases giving examples of what constitutes a public controversy, it has no meaning to a reader unfamiliar with the concept. When professors comment on student papers, they need to ask questions that reveal to students that their use of code words prevents the reader from fully understanding their point. Returning to the defamation example, my comment about the use of the code word "public controversy" might be one of the following: "How do the courts define public controversy?" "What is a public controversy?" "It's unclear to me what a public controversy means." I might follow-up by asking: "Are there any relevant examples of public controversies to support your prediction on this point?" I would ask these kinds of Reader-Based questions instead of simply telling the writer that he or she is missing an explanation of the term public controversy because I want to avoid suggesting that I, the professor, found an error. Rather, I want to convey to the writer that the reader was left in the dark about the meaning of an important element of the limited-purpose public-figure analysis. When the writer revisits the text, one of his or her goals must now be to enlighten the reader.

I also try to encourage students to think about revision in a more meaningful way by limiting the number and types of comments I make relating to surface issues, such as spelling, grammar, punctuation, and even bluebooking.[120] I do not want to reinforce their misconception that revising is a tidying-up activity. Instead, I want to encourage students to make macrostructure meaning changes as they revise. I want them to develop an image of the reader and move beyond the word and sentence level. When commenting on student drafts, professors should not overemphasize errors in usage, diction, and style because "such comments give the student an impression of the importance of these errors that is all out of proportion" to how the errors ought to be viewed.[121] They mislead the students into thinking that all they

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[119] *See supra* sec. II(B)(2).

[120] *See* Soonpaa, *supra* n. 115, at 99–100. Soonpaa suggests that professors should not put marking for "correctness," meaning "punctuation, usage, and grammar," high on their list of priorities. *Id.* at 100. Rather, professors "should have a clear hierarchy of importance in mind" while critiquing. *Id.* at 99. "[G]lobal concerns, such as organization, purpose, [and] idea development [should be] near the top of the list." *Id.*

[121] Nancy Sommers, *Responding to Student Writing*, 33 College Composition & Commun. 148, 150 (1982); *see also* W. U. McDonald, Jr., *The Revising Process and the Marking of Student Papers*, 29 College Composition & Commun. 167, 168 (1978) (encouraging teach-

need to do is "patch and polish their writing."[122] Moreover, they do not give the students a reason to revise the structure and meaning of their text "since the comments suggest to students that the meaning of their text is already there, finished, produced, and all that is necessary is a better word or phrase."[123] Law professors must direct genuine revision of the text as a whole:

> Instead of finding errors or showing students how to patch up parts of their texts, we need to sabotage our students' conviction that the drafts they have written are complete and coherent. Our comments need to offer students revision tasks of a different order of complexity and sophistication from the ones that they themselves identify, by forcing students back into the chaos, back to the point where they are shaping and restructuring their meaning.[124]

In that vein, I limit my comments suggesting surface changes. I also try not to place them in the margins of the page because I do not want to distract the writer from focusing on more important meaning and structure issues. Instead, I will write a global comment at the end asking the student to address those issues on the rewrite. If the issue is pervasive, I will refer the student to an example in the draft and illustrate how the student can correct it. If there are other end comments, I will put this type of comment last. My intent is to emphasize that sound analysis and coherent organization take priority over micro-changes.

The goal of my student conferences is also to ensure that the writer's legal analysis and presentation is accurate and clear to the reader. Thus, I avoid beginning a conference with a discussion of surface issues. Rather, I will begin a conference with a discussion of the writer's legal reasoning because that is what would happen if the students were actually meeting with their supervisor. In fact, I instruct the students to prepare for the conference like it is a meeting with their supervisor. This means that they must come equipped with answers to any questions posed in their

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ers to not identify usage errors on early drafts of undergraduate writers because such comments give students "an impression of their importance that is all out of proportion at this stage in the process"). Sommers, along with some of her colleagues, "studied the commenting styles of thirty-five teachers at New York University and the University of Oklahoma." Sommers, *supra* n. 121, at 149. They "stud[ied] the comments these teachers wrote on first and second drafts, and interview[ed] a representative number of these teachers and their students." *Id.* "All [of these] teachers also commented on the same set of three student essays." *Id.*

    [122] *Id.* at 151.
    [123] *Id.*
    [124] *Id.* at 154.

drafts and a detailed plan on how they will approach the rewrite. This detailed plan is intended to challenge the students to make meaningful changes. The plan must describe all of the global changes the writer will address. These conference requirements and the Reader-Based comments reinforce the idea that revising is an important process that requires a lot more time and attention than simply fixing errors on a first draft.

B. Have Students Re-Read Their Draft with a Single Purpose

Because new legal writers cannot easily step into the shoes of the legal reader when they revise, professors need to give them tools, in addition to Reader-Based comments, that they can use on their own to create the reader's perspective. These tools need to help them transform their private expressions into public Reader-Based expressions. If the new writer is left to revise without help, he or she will likely read and re-read the text to see if what is there makes sense.[125] Given that Writer-Based prose most often reflects the writer's discovery process or the structure of the authority the writer surveyed, it will undoubtedly "make sense" to the writer. My students tell me that when they review their text to check if it makes sense, they evaluate a host of items all at once, including meaning, structure, spelling, citation, and grammar. This proves to be ineffective because it is impossible for them to catch everything when they are not focused on any one thing in particular.[126]

Moreover, the writer "lacks the psychological distance necessary to distinguish between the information on the printed page and the information still inside the writer's head" if he or she simply reads to see if the text works.[127] This phenomenon is referred to as an "eclipse of the brain."[128] When writers revise, "they see the words they wrote, and these (often inadequate) words remind their short-term memories of the complete message they had in mind when they were writing."[129] Next, "[t]he short-term memory . . . 'tells' the brain the complete message," thereby preventing the writer from seeing that the words that he or she actu-

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[125] Beazley, *supra* n. 67, at 180. Beazley states that "[m]any writers review their writing by reading and rereading the document with no definite goal in mind." *Id.* They read it and simply ask themselves, "Is this okay?" *Id.*

[126] *See id.* at 180–181.

[127] *Id.* at 175.

[128] *Id.* at 181 (crediting Professor Nancy Rapoport with the suggestion of this term).

[129] *Id.*

ally wrote fail to communicate the entire message.[130] This explains the shock many students express when they receive feedback that their drafts are missing an essential part of the analysis.[131] It is only after a careful review of their text after some time has passed that they understand that the information never actually made it to paper or, if it did, it was not explained well.[132] In order to prevent this plight, professors must teach students to read their drafts with a specific purpose in mind.

Rather than reading the draft to see if it makes sense—and checking reasoning, spelling, citation, and other areas all at one time—the writer should read his or her draft many times over, each time with only a single goal in mind, ignoring issues in the draft that do not relate to that goal.[133] For example, the student should read his or her draft solely for the purpose of assessing whether the legal analysis follows the IRAC structure. If the student stumbles upon a citation error in the process, the student should ignore it because it does not relate to the defined goal for that read. The student will catch and correct any citation errors when he or she reads for the purpose of checking citation. In subsequent readings, the student should focus on each analytical element of IRAC to check for accuracy, completeness, and clarity. After the student has evaluated his or her analysis, the student can then focus on other important aspects of writing, such as topic sentences, transitions, bluebooking, grammar, and spelling. This goal-oriented approach to reading drafts will force students to concentrate on substantive areas usually overlooked by them because they become so easily distracted by micro-revisions.[134]

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[130] *Id.*

[131] *Id.* at 181–182.

[132] Flower & Hayes, *supra* n. 50, at 458 ("A first draft often satisfies a writer; it seems to say just what [the writer] meant. But when [he or she] comes back a day, a week, or a year later, many of the supporting assumptions and loaded meanings [the writer] brought to the first reading have vanished. The gaps, which [the writer] once filled in unconsciously, now stand out in the writing and demand explanation. This week-after experience is often the plight of our readers.").

[133] *See e.g.* Beazley, *supra* n. 67, at 182–186.

[134] Students must recognize that this approach involves a lot of time and effort. Professors must remind students that their commitment to the revision process is worthwhile as students who devote more time to revision tend to perform better in legal writing. *See* Anne M. Enquist, *Unlocking the Secrets of Highly Successful Legal Writing Students*, 82 St. John's L. Rev. 609, 628–637 (2008) (studying the habits of six law students in a second-year legal writing course). In her study, Enquist found that, among other things, the "highly successful" law students devoted more time to revision than the less successful ones. *Id.* In particular, the two "highly successful" law students spent three-fifths of their writing time on revising, editing, and proofreading while only two-fifths on creating their initial drafts. *Id.* at 21–22. In contrast, the "least successful" students started drafting late and submitted drafts that were only partially revised. *Id.* at 53–54.

C. Use Reader-Based Exercises with a "Sample" Draft

Professors can also help students focus on audience when they revise by designing Reader-Based exercises that direct their attention to specific areas, including the completeness and organization of their writing. I use such exercises with my students after they have turned in a first draft of the assignment.[135] I usually tailor them to the particular assignment the students are revising and include ways to address common problems I saw in their drafts. I divide the tasks into separate exercises so that the students do not fall back into the bad habit of reviewing the text to see if everything makes sense.

To illustrate how Reader-Based exercises work, I will describe a sequence that I recently used with my first-year students to aid their revision of a memorandum assignment.[136] The exercises are attached as Appendix A. I usually have the students complete a version of these exercises on an unmarked, printed copy of a poorly organized sample draft before they complete the exercise on their own drafts. Because they did not produce the sample draft, they have the distance needed to see the weaknesses in the writing. In short, there is no "eclipse of the brain" phenomenon.[137]

The first exercise includes a list of elements, ordered properly, that I want the students to incorporate into their writing. The initial step of the exercise simply asks the students to identify the

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[135] My exercises are modeled after Mary Beth Beazley's self-graded draft. *See generally* Beazley, *supra* n. 67. Beazley's self-graded draft is an exercise in which the writer edits his or her own text. *Id.* at 175. The exercise is designed to focus the writer's attention on two parts of the writer's document: "physical locations, such as beginnings and endings of point heading sections; and 'intellectual locations,' such as the articulation of a rule, the applications of a rule to facts, or the conclusion to the discussion of a legal issue." *Id.* at 177. During the exercise, the writer is to find these locations and physically mark them (with a highlighter for example) so that the writer can objectively evaluate his or her writing. *Id.* at 175–177. With his or her attention focused, the writer is then to consider revision questions that are related to that marking. *Id.* at 177. "The writer will then be able to make any revision decisions based on an accurate understanding of what the draft actually says, rather than on an inaccurate presumption that the draft says what the writer meant to say." *Id.* For a discussion of a similar exercise, see Flower & Hayes, *supra* note 50, at 460 (suggesting that students use a highlighter to isolate the titles, headings, topic sentences, and conclusions in their writing and then to make sure that they correspond to the main points the writer wants the reader to focus on).

[136] The assignment, which I discussed in part earlier, *supra* sections II(B)(2) and IV(A), asked them to evaluate the degree of fault that our client, a reality-television personality, needed to establish in her defamation claim against a web blogger. Although there are several elements to the defamation claim under New York law, the only one in dispute was the degree of fault. Because this element raised two disputed issues—whether our client was a limited-purpose public figure and whether she was a general-purpose public figure—the students had difficulty constructing a coherent thesis. For this reason, the self-editing exercise that I distributed addressed the organization of the thesis in the way shown.

[137] Beazley, *supra* n. 67, at 181.

different parts of the thesis and analytical elements of each is-
sue—Bold Assertion, Rule, Rule Explanation, Application, Reason-
ing by Analogy, and Conclusion.[138] Using a hard copy of the sam-
ple, the students are instructed to "dive into" the document with
the purpose of identifying the different parts of the thesis and ana-
lytical elements of each issue and labeling them in some fashion.
Some students like to annotate the paper in the margins; others
prefer to use different color highlighting to distinguish the various
parts; and still others like to circle or box out the text using arrows
to explain their markings. How the students label the analytical
elements does not really matter as long as they have done it in
such a way that they can spot the order and check it against the
worksheet.

The second step involves comparing the list I distributed to
their annotations to see whether the draft has all of the elements
and whether they are in the proper order. If they are out of order,
the student must rearrange them. If there is a missing element,
the student must add it. I then project the text on the screen and
use the shading feature in Word to highlight the elements, select-
ing a different color for each separate element. As a class, we move
the highlighted blocks that are out of order and add any missing
information.

Up to this point, the first exercise has focused the students on
the document's organization only, and not on whether the discus-
sion of each analytical part is adequate. For that, the students
have to read with another purpose. The next three exercises ask
the students to "dive into" the document again to assess whether
each analytical element is complete. For the rule, I ask the stu-
dents to check if the writer has synthesized all of the cases. Does
the rule pass the rule test? That is, is the rule consistent with the
holdings of the cases? For the explanation of the rule, I ask the
students to identify whether the writer has discussed the relevant
facts, holding, and reasoning of the cases that explain the rule.
Does this discussion support the rule? And, for the reasoning by
analogy, I ask the students to check whether the writer has ad-
dressed the factual similarities between his or her case and the
rule explanation cases with holdings that are consistent with the
writer's bold assertion. Has the writer distinguished the factual
differences between his or her case and the rule explanation cases
with holdings contrary to the writer's bold assertion? Has the

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[138] I teach a variation of the IRAC formula, called BARAC, which I adopted from Tere-
sa J. Reid Rambo & Leanne J. Pflaum, *Legal Writing by Design: A Guide to Great Briefs and
Memos* 26 (Carolina Academic Press 2001). The acronym stands for the following: **B**old
Assertion, **R**ule, Rule Explanation, **A**pplication, Reasoning by Analogy, **C**onclusion. *Id.*

writer applied the reasoning of the rule explanation cases to his or her case? If there is an authentic counterargument, has the writer presented it and evaluated its likely success? These questions ask the students to focus all of their attention on each distinct analytical element to make sure it is complete and matches up with the writer's legal reasoning.

Having practiced how to test whether the organization and substance of a legal analysis was sound using another's work product, the students are usually more equipped to find, label, and fix their own drafts in the same way. This usually results in many "aha!" moments for students, as they are forced to read their work with a specific goal in mind. If time permits, legal writing professors can have the students complete the Reader-Based exercises on their own drafts in class, or the students can work on these exercises at home.

Regardless of where the students do the exercises, however, it is important that they use a clean hard copy of their drafts for each read. Given their reliance on portable computers, students typically do not review their drafts in hard copy form anymore. They spend most of their time revising on the screen. This custom is a bad one, especially when using a goal-oriented exercise. First, an on-screen review makes it difficult to assess whether the text follows the organizational pattern because only one page appears at a time. Also, with the exception of the "insert comments" feature, the students cannot easily annotate the document. Moreover, it is very easy to get distracted by minor edits because they are so simple to fix on the screen.[139]

The Reader-Based exercises help students develop the discipline of self-editing, allowing them to better see the weaknesses in their writing. The exercises can be tailored to specific macro-revisions and other Writer-Based problems, including the overuse of code words, as well as important micro-revisions.[140] For example, the students can circle and explain any code words.[141] The possibilities are endless but the purpose is the same: to encourage students to imagine their reader when they revise so that they

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[139] Revising on the computer also results in many unrelated distractions, such as checking e-mail and surfing the Internet.

[140] Exercise V of the Appendix addresses the effectiveness of topic sentences and conclusions, which are important for clarifying the text for the reader. Note, however, that this is the last step in the revision exercise because it is less important than the global issues.

[141] Flower, *supra* n. 51, at 32 (recommending that students circle and explain code words because the "process of pushing our own language to give up its buried meanings forces us to make [any] loose connections explicit and, in the process, allows us to examine them critically").

reexamine all aspects of their legal reasoning from the reader's perspective.

CONCLUSION

Professors must teach students to revise for readers as a separate task. They should teach students to write recursively and see through the eyes of the reader. This can take shape through properly phrased feedback along with exercises that train students to go through their writing a number of times and each time with a different goal. Once professors give students the tools to take the reader into account and manage the back and forth motions of the composing process, they will be in a better position to see their writing through the eyes of the legal reader, and more effectively revise the substance, organization, and other parts of their text on their own.

APPENDIX A

Exercise I

STEP 1: IN YOUR DRAFT MEMORANDUM, LOCATE, AND LABEL THE FOLLOWING ANALYTICAL ELEMENTS:

Thesis:

- Claim and elements
- Bold assertions and support on undisputed elements
- Bold assertions and support on disputed issues within the disputed element
- Overall conclusion on the disputed element

Analysis of first disputed issue:

- Bold Assertion
- Rule
- Rule Explanation
- Application
- Reasoning by Analogy
- Counterargument*
- Conclusion

Analysis of second disputed issue:

- Bold Assertion
- Rule
- Rule Explanation
- Application
- Reasoning by Analogy
- Counterargument*
- Conclusion

* This is not meant to suggest that you must address counterarguments in a separate paragraph. It is possible and sometimes more effective to weave them into your application/reasoning by analogy.

STEP 2: REORGANIZE ANY ANALYTICAL ELEMENTS THAT ARE "OUT OF PLACE" AND COMPLETE ANY MISSING ANALYTICAL ELEMENTS. FOLLOW THE ORGANIZATIONAL PATTERN ABOVE.

Exercise II

Examine each rule. Do they all pass the rule test? (Is the rule consistent with the holdings of the cases?)

Exercise III

Find the rule explanations and answer the following questions:

1. Does the rule explanation immediately follow the rule?

2. Is the rule explanation in one place? That is, do you discuss all of the cases that explain the rule before moving on to application and reasoning by analogy?

3. Is there a rule explanation for each case that explains the disputed issue?

4. Does each rule explanation include a discussion of the relevant facts, holding, and rationale, if any? Label or highlight them.

5. Do you discuss the legally significant facts, holding, and rationale of a single case before moving on to a discussion of the next case?

6. Does the rule explanation support the rule?

Exercise IV

Find the application and reasoning by analogy sections and answer the following questions:

Do you use analogies to explain the relationship between the client's facts and the applicable legal rules?

- Label or highlight (using different colors) the client's facts and rule explanation facts in this section.

- Do you compare the client's facts to facts of the rule explanation cases?

- Do you discuss all of the client's facts on each disputed issue?

- Test the use of the client's facts against the Statement of Facts section. Do you use all of the relevant facts in your analysis?

- Test the use of the rule explanation facts in this section against the discussion of those facts in the rule explanation section earlier in the memorandum.

Exercise V

With the exception of the thesis paragraph(s), read each paragraph and answer the following questions in writing:

1. How does the paragraph relate to the conclusion on the disputed issue?

   - What is the purpose of the paragraph?
   - Does it expressly reflect that purpose?

2. Highlight the first sentence of each paragraph.

   - Does the paragraph need a topic sentence? If yes, what information will you want to convey in that topic sentence?
   - If the paragraph does not need a topic sentence, does it continue a discussion from a preceding paragraph? If yes, does it need a transition phrase or sentence? What type of transition is necessary?

3. Highlight the last sentence of each paragraph (in a different color).

   - Does it conclude the point of the paragraph?
   - If the discussion continues to the next paragraph, is there a transition that makes that clear?