

Using Appellate Clinics to Focus on Legal Writing Skills

By Timothy Pinto

Five years ago, I went to lunch with a colleague. I was teaching a legal writing course to 1L students, and he taught in a clinic in which 2L and 3L students were required to write short motions and briefs. Several of his students had taken my writing class as 1Ls, and he had a question for me.

“What the heck are you teaching these students?” he asked as we sat down. He explained that several of his students were struggling with preparing simple motions. They were not laying out facts clearly. They were not identifying key legal rules. In many cases, they failed to begin their motions with a simple statement of what they were asking the court to do. He wanted to know how these students could have taken a full-year course that focused on legal writing and yet struggle with basic writing tasks.

This, of course, echoes a sentiment frequently offered by practitioners: young attorneys are terrible writers. It’s a refrain I hear whenever I speak about the state of legal practice with practicing attorneys and judges. Bryan Garner, a leading voice in the world of legal writing, feels the same way. In his view, “[L]awyers on the whole don’t write well and have no clue that they don’t write well.”¹

It’s not as if law schools are unaware of this issue or ignoring it. Every law school, in some way or another, requires its first-year students to take a legal writing course.

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Indeed, the American Bar Association requires that every law school provide “one writing experience in the first year and at least one additional writing experience after the first year....”² Most schools provide more than required, especially in the first year. In my class, for example, 1L students have many opportunities to develop and improve their writing skills: they prepare two formal memos (two drafts of each), two short email memos, two briefs (two drafts for one of them), and a section of an employment contract. Each of my University of Michigan colleagues, and the vast majority of legal writing professors across the state and nationwide, impose similar requirements on their 1L students.³

But one year of legal writing instruction does not seem to be enough. In the best of circumstances, improvement in writing occurs gradually. The 1L students may advance even less swiftly, as they are (understandably) spending a lot of time and attention on their other classes. And even when they do improve, students often struggle to transfer lessons from one class (or experience) to the next.

It would be best if students produced a lot of legal writing after the first year to avoid atrophy of the skills they developed then. But in the 2L and 3L years, students may not have as many writing opportunities. Many 2L and 3L courses satisfy the ABA’s upper-level writing requirement⁴ by assigning an academic paper—an essay of some sort. Even in courses that require practically oriented legal writing, the focus may be more on the substantive law and less on basic writing skills.

Appellate clinics: A focus on writing

Of course, some upper-level courses provide legal writing opportunities that address this educational gap. One particularly effective category of classes is growing in

popularity—appellate clinics.⁵ Like other clinics, appellate clinics offer students the chance to work on real cases involving real clients under the supervision of an experienced attorney. But unlike students in a traditional litigation clinic, appellate clinic students usually do not spend large portions of their time interfacing with clients, learning courtroom procedure, or collecting facts. Instead, they work with a fixed record, drafting an appellate brief. Because this is their primary task, appellate clinic students have a unique opportunity to focus on writing.

My colleague and I decided to design just such a clinic. We agreed that the first priority for our students would be improving their writing. While we still allocated class time to discussing the underlying law and a number of client-based practical skills, we dedicated the majority of student assignments and class time to specific aspects of legal writing. We found the clinic offered a great platform to utilize a number of helpful pedagogical techniques—techniques many law schools use today to enhance student writing skills and (hopefully) get them ready to produce the sorts of work product expected of new lawyers.

Nuts and bolts of the appellate clinic experience

One challenge to teaching (and learning) writing is that there are many individual skills involved. For a typical student, there is usually not one simple element he or she must fix; instead, the student may be simultaneously struggling with grammar, large-scale organization, and clarity of phrasing. It can be difficult for the instructor to diagnose problems and frustrating for the student who can easily become overwhelmed.

One useful strategy is to break up the training into as many discrete pieces as possible and work on them one at a time. In

our clinic, we developed assignments designed to work on specific skills, and we try to focus our feedback to match each assignment's goals. For instance, an early lesson in class addresses how to tell a more persuasive story. We choose three specific elements for students to focus on: choosing the right point of view, providing specific compelling details, and using active voice. Of course, there are other elements to telling a good story, but we save those lessons for a later day. Our feedback focuses on just these three elements.

Another important pedagogical strategy is to design assignments so students are less likely to feel overwhelmed. In our clinic, the first few assignments do not require students to write on their own; instead, they rewrite existing pieces. To demonstrate how to use perspective when telling a story, we give them a magazine article and ask them to tell the same story from a different person's point of view. To demonstrate how to order a story in a facts section, we give them a poorly written facts section and ask them to reorganize it. These exercises eliminate the pressure to create something from whole cloth and help hone the students' editing skills. Once they can edit other people's writing, they can edit their own.

We also try to ease the student burden by creating assignments that are surprisingly short. We have found that it is often possible to spot areas for improvement in the first paragraph or two of a writing assignment, especially when we are focusing our feedback. After that point, it is likely that the same issue will recur; more comments will simply be repetitive. Thus, our typical assignment requires students to stop writing after two pages, even if the piece is incomplete or stops mid-sentence. This makes the assignment more manageable and makes it likely that the student will spend more time refining and editing the writing on those two pages.

Yet another common pedagogical technique is to encourage students to learn from each other by working in groups, comparing work, or editing each other's work. In our clinic, we meet with students in pairs. Students receive feedback on their own writing and hear feedback on their partner's writing. They get a chance to see the writing choices someone else has made. They may realize their own choices were good

or could have been better. They can consider stealing writing "moves" they like.

This peer review continues when students start working on their briefs. The students work in two-person teams, and we require them to edit each other's work before submitting drafts to the supervising professor. As the brief comes together, the students "workshop" it to the rest of the class, soliciting reactions and questions from other students who can read the brief with a fresh eye.

One final effective teaching technique is to build a writing schedule that allows for multiple rounds of both feedback and editing. When students begin writing their briefs, we develop a plan that includes early deadlines and many drafts. We encourage students to draft the brief section by section, so they can turn in portions more swiftly. Just like with the short writing assignments, we usually provide feedback in a conference so students can ask questions and we can make sure they understand the feedback. Because of the multiple rounds of comments from their supervisor, the feedback they receive from their partner, and the feedback from class workshops, students have many opportunities to improve their writing.

Signs of success

It is difficult to provide an objective measure of how student writing improves from taking a clinic for a single semester. The course has been well received by students; evaluations routinely indicate that students feel their writing has improved, and they feel much more confident about their ability to handle future writing tasks.

From the perspective of my clinical colleague and myself, it also seems like students are making great strides. We have countless examples of student teams that produce an initial draft of a brief that is difficult to read and unpersuasive. Yet by the end of the process, these same students have produced briefs that are clear, organized, and persuasive. In most cases, the final versions of these briefs require few, if any, revisions from us.

And the reaction from judges in our cases suggests that our students are producing excellent briefs. Several judges have commented on the quality of the brief at

the close of oral arguments. More importantly, our students are winning a high percentage of their cases. Typically, the sorts of clients we represent—parents whose rights have been terminated—lose approximately 95 percent of the time. But even though we do not prescreen our cases in any way (courts randomly appoint our clinic to represent our clients), our students have prevailed in almost half of their cases. While some of this is probably due to doing a better job at spotting winning issues to appeal, we also believe our students are doing a better job of communicating persuasive stories and arguments.

Ultimately, it takes years—maybe decades—for most attorneys to become good legal writers. But our experience has been that the appellate clinic is a good mechanism for continuing the development that students begin in their 1L legal writing courses. ■

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ENDNOTES

1. Garner, *Why Lawyers Can't Write*, 99 ABA J 24–25 (March 2013) <http://www.abajournal.com/magazine/article/why_lawyers_cant_write>. All websites cited in this article were accessed March 25, 2018.
2. ABA, *2017-2018 Standards and Rules of Procedure for Approval of Law Schools*, Standard 303(a)(2) <https://www.americanbar.org/groups/legal_education/resources/standards.html>.
3. The Association of Legal Writing Directors and Legal Writing Institute conduct a yearly survey (most recently in 2015) about the writing programs offered nationwide, which includes details about the types of common writing assignments in 1L legal writing courses. See Ass'n of Legal Writing Directors/Legal Writing Institute, *Report of the Annual Legal Writing Survey 2015* <<http://www.alwd.org/wp-content/uploads/2017/03/2015-survey.pdf>>.
4. *2017-2018 Standards and Rules*.
5. In 2015, the State Bar of Michigan released a summary of law school clinics offered by Michigan law schools. At least nine of these clinics appear to involve students representing clients before appellate courts. See State Bar of Michigan, 21st Century Practice Task Force, *Law School Clinics in Michigan* (October 2015) <<https://www.michbar.org/file/programs/atj/pdfs/lawschoolclinics.pdf>>.