

# Critiquing and Evaluating Law Students' Writing: Advice from Thirty-Five Experts

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## I. INTRODUCTION

Like all new law school professors, novice legal writing faculty have a great deal to learn about their new profession. Like any new faculty member, they will be selecting texts, preparing syllabi, and thinking through their pedagogical approach to the course. Unlike other new law professors, though, legal writing faculty have the additional challenge of dealing with all of those legal writing student papers that will begin piling up on their desks, even during the first month of their course. Doing a good job of reading, analyzing, and grading these papers is a daunting task, even for the most experienced legal writing professor. Most novice legal writing professors admit to a mixture of dread and trepidation with a touch of curiosity and a dash of expectation as they approach that first stack of papers.

Only a few novice teachers will have had the benefit of some teacher training provided by the director of their legal writing program. A few more may have read a bit of advice on the subject in the teacher's edition of their legal writing text. Still more will lean on the more experienced legal writing faculty members in their law school for some quick tips about what to do. Most, however, will just jump in, hoping for the best.

They will adopt some kind of composite approach based on what they remember about how their own legal writing professor critiqued their writing, how their writing was critiqued when they were in practice or when they clerked, how their writing was edited if they were on law review, and how an undergraduate or even a high school teacher commented on their papers. Add a smidgen of good intentions and a dollop of common sense and that may be all most novice legal

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writing professors have to prepare them to do one of the most challenging tasks of their professional lives.

We can do much better. As a profession, we must take the responsibility to gather the best thinking of the experienced members of the legal writing community of scholars and share that with those who are newcomers to the teaching of legal writing. The foundation has been laid for just such an undertaking. Experienced legal writing faculty have been convening for over fifteen years now at the Legal Writing Institute national conferences to discuss all the aspects of their teaching responsibilities, including critiquing and evaluating law students' writing.<sup>1</sup> While there are some differences of opinion about what is the best way to comment on and grade law students' writing, a consensus seems to be developing based on the experience and insights of those in the profession who have done the job the longest and survived to tell about it.<sup>2</sup>

To help articulate this consensus, I selected thirty-seven experienced legal writing professors and asked them to respond to a questionnaire about critiquing and evaluating law students' writing. My goal was to gather and record their wisdom, insights, and experience for other legal writing professors, particularly those who are new to the field.

My criteria for selecting the thirty-seven was that they must have had five or more years' experience commenting on and grading law

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1. In 1998, for example, Tracy L. McKinzie gave a session, entitled "Commenting Relationship," on the relationship between constructive comments and students' perception of their professors, in 1996, Grace Wigal, Tom Patrick, and Lisa Eichorn presented "Evaluating Student Papers"; in 1996 and 1994, John C. Dernbach, K.K. DuVivier, and Joseph Kimble presented workshops on "Evaluating Student Papers", in 1992, this author presented "Research on Critiquing Students' Writing: What are We Doing and is it Working?"; in 1990, Mary Beth Beazley and Terri LeClercq presented "Evaluating Student Writing Assignments," this author presented "Research on Critiquing Student Papers: A Preliminary Report," and Brook K. Baker and Kristen Woolever presented "Diagnosing Writing Problems: Theoretical and Practical Perspectives for Giving Feedback", in 1988, a two-hour session was offered on "Evaluating Student Papers", in 1986, Mary Lawrence, Ellen Mosen James, Paul Bateman, Renee Hausmann Shea, Christine Metteer, and Jill Ramsfield presented a workshop on "Evaluating Writing Assignments", and in 1984, the program lists a workshop on "Evaluating Student Writing."

2. In recent years, only two studies have been conducted about commenting on and critiquing law students' writing. In 1996, this author published a study of four students' ratings of the effectiveness of the comments made on their legal writing by five legal writing instructors. See Anne Enquist, *Critiquing Law Students' Writing: What the Students Say Is Effective*, 2 LEGAL WRITING 145 (1996). In 1994, the Law School Admission Council and Law School Admission Services published Research Report 93-06, which described a taxonomy of the elements of the legal memorandum and the relative weight each element had in the judgment of the legal writing faculty judges who read and rated 237 legal memoranda written by first-semester law students. See H. Breland and F. Hart, *Defining Legal Writing: An Empirical Analysis of the Legal Memorandum*, LSAC Research Report Series (1994).

students' papers and that at the time they filled out the questionnaire they must be currently teaching a legal writing course that requires that they comment on and evaluate student writing.<sup>3</sup> In short, I was looking for experts who were still in the trenches and who had not left the teaching of legal writing, at least completely, to administrative positions or nonwriting courses.

In addition, because I assumed that there is often a local consensus at individual law schools, I also attempted to ask people from different law schools, even though there may have been more than one legal writing professor with more than five years' experience at a given law school.<sup>4</sup> Thirty-five of the thirty-seven completed and returned the questionnaire.<sup>5</sup>

#### Respondents to the Questionnaire

Professor	School Affiliation <sup>a</sup>
Paul Albert Bateman	Southwestern University School of Law
Mary Beth Beazley	Ohio State University College of Law
E. Joan Blum	Boston College Law School
Susan Brody	The John Marshall Law School
Bari Burke	University of Montana School of Law
Charles Calleros	Arizona State University College of Law
John Dernbach	Widener University School of Law

3 Two of the respondents were not teaching a legal writing course at the time of the questionnaire: Nancy Jones, who is the Director of the Writing Resource Center at the University of Iowa College of Law where she conducts writing conferences with law students, and Mary Lawrence, who no longer engages in classroom teaching because of a disability.

4 The one exception is that two of the respondents to the questionnaire are from Boston College Law School.

5 I wish to extend my deepest appreciation to all 35 respondents to the questionnaire. The generous gift of their time and expertise is testimony to their dedication to teaching legal writing.

Professor	School Affiliation <sup>a</sup>
Nancy Lawler Dickhute	Creighton University School of Law
K.K. DuVivier	University of Colorado School of Law
Jane Kent Gionfriddo	Boston College Law School
Peter Jan Honigsberg	University of San Francisco Law School
Pat Hugg	Loyola New Orleans Law School
Sam Jacobson	Willamette University College of Law
Steve Johansen	Northwestern School of Law Lewis and Clark College
Nancy L. Jones	University of Iowa College of Law
Joseph Kimble	Thomas M. Cooley Law School
Mary S. Lawrence	University of Oregon School of Law
Jan Levine	University of Arkansas (Fayetteville) School of Law
Jethro K. Lieberman	New York Law School
Molly Warner Lien	Chicago-Kent College of Law
Christy McCrary Nisbett	University of Texas School of Law
Kathleen H. McManus	Marquette University School of Law
Kathryn Mercer	Case Western Reserve University Law School
Ross Nankivell	Emory University Law School

Professor	School Affiliation <sup>a</sup>
Richard Neumann	Hofstra University School of Law
Laurel Oates	Seattle University School of Law (formerly University of Puget Sound School of Law)
Alice Perlin	Loyola University of Chicago School of Law
Teresa Godwin Phelps	Notre Dame University School of Law
Diana Pratt	Wayne State University Law School
Jill Ramsfield	Georgetown University Law Center
Nancy Schultz	George Washington University National Law Center
Helene Shapo	Northwestern University School of Law
Ruth C. Vance	Valparaiso University School of Law
Marilyn Walter	Brooklyn Law School
Cathleen Wharton	University of Georgia School of Law

- a. The school affiliations listed were those of the professors at the time they responded to the questionnaire. Several changed affiliations between the time of the questionnaire and the publication of this Article.

The average number of years of experience at the time the respondents completed their questionnaires was slightly more than eleven years.

Respondents' Years of Experience  
Teaching Legal Writing

Years	Number of Respondents
5	3
5.5	1
6	1
7	1
8	3
9	2
10	7
11	3
12	2
13	3
14	1
15	3
16	1
17	2
19	1
20	1
Average years of experience: 11.1 years	

Together, the group represented 389.5 years of experience reading, commenting on, and evaluating law students' writing.

The thirty-five who responded to the questionnaire were generous in sharing their ideas and expertise. Many appended handouts used within their own law schools that summarized individual programs' policies and recommendations about writing comments on and evaluating student writing.

This Article is a compilation of the experts' responses to the twenty-eight questions on the questionnaire. It represents the thinking of some of the most respected and experienced members of the legal writing academic community about what may well be the most important responsibility facing new legal writing professors: commenting on and critiquing their students' writing.<sup>6</sup>

This Article will be divided into seven sections. Section I is the Introduction. In Section II, the Article briefly discusses the importance the respondents assigned to commenting on and grading papers. Section III is a summary of the respondents' advice to new legal writing professors, including their suggestions about teaching strategies, warnings about potential pitfalls, and advice about comments to avoid. In Section IV, the Article discusses how the respondents learned what they know about critiquing papers and how their schools prepare new legal writing professors to critique papers. Section V discusses the differences of opinion among the respondents about critiquing student papers. Section VI describes the need for additional research on commenting on and evaluating law students' writing. Section VII, the conclusion, summarizes the effective teaching strategies, potential pitfalls, and comments to avoid.

## II. THE IMPORTANCE OF COMMENTING ON AND CRITIQUING LAW STUDENTS' WRITING

New legal writing professors may look at the many tasks they are expected to master and wonder where they should begin. Where should they focus their time and energy? According to the experts who responded to the questionnaire, commenting on and grading papers should be at or near the top of their list.

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6. These questionnaires are on file with the author. All quotations from the experts in this Article are drawn from the questionnaires or from materials the experts submitted with the questionnaires.

Of the thirty-four respondents<sup>7</sup> who answered question 24, which asked them to rank the importance of the various activities that a legal writing professor does as part of his or her job, eleven rated commenting on and grading papers as number 1, the most important activity. Another seven respondents rated several things, including commenting on and grading papers, as number 1, for a total of eighteen number one ratings out of thirty-four responses.<sup>8</sup> Of the remaining sixteen respondents to this question, eight rated commenting on and grading papers as number 2,<sup>9</sup> the second most important task, and six rated it as number 3.<sup>10</sup>

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7. One respondent declined to answer the question, stating "I can't rank these. I can't say that preparing for class is more or less important than teaching class, or that commenting on student papers is more or less important than student conferences."

8. Laurel Oates, for example, gave a number 1 rating to designing assignments, preparing for class, commenting on and grading papers, conferences with students, and teaching class. Her comment on her rankings was "Sorry, but I can't separate out the 1s. They are all interrelated and equally important."

9. For nine of the respondents, designing assignments was the number 1 task. Somewhat surprisingly, only four respondents selected teaching class as number 1. Two selected preparing for class as number 1, and one respondent selected conferences with students as number 1.

10. Several respondents complained about being asked to rank the tasks and felt that any ranking was somewhat arbitrary. Several noted that the different tasks were so interrelated that it was difficult to rank them separately. Others said that although they themselves ranked activities that involved direct student contact (teaching class, conferences with students, and commenting on and grading papers) as top priorities, their institutions had somewhat different priorities and would rank scholarly writing number one for tenure. Kathleen H. McManus noted that

[t]he ranking options . . . force us to choose between students, professional growth, and institutional collegiality. I think that ranking any one of these professional faces above the others places us between a rock and a hard place. There is a synergy of professional growth and development that links these three areas [students, legal research and writing colleagues, and institutional colleagues] so intimately that to rank one above the others, diminishes the whole. . . .

## Question #24

Rank the importance of the various activities that a legal writing professor does as part of his or her job, using 1 as the most important.

- designing assignments
- scholarly reading
- attending/presenting at conferences
- committee work for your institution
- commenting and grading papers
- other (please specify)
- conferences with students
- preparing for class
- teaching class
- scholarly writing

Comments about your rankings?

Even the two respondents who rated commenting on and grading papers as number 5 and number 6 in importance among the legal writing professor's activities still checked that written comments on student papers were "of the utmost importance" on question 23, which asked "How important do you consider written comments to be on student papers?" Indeed, on that question, twenty-nine of the thirty-five respondents checked "of the utmost importance," five checked "very important," and only one checked "somewhat important."<sup>11</sup>

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11. Richard Neumann checked all of the top three ("of the utmost importance," "very important," and "somewhat important") and commented that it "depends on the teacher's style and ability. Some students learn in conversation; some learn by comments."

## Question #23

How important do you consider written comments to be on student papers?

- of the utmost importance
- very important
- somewhat important
- not very important
- unimportant

Why?

The tag question "why?" on question 23 elicited many responses about why written comments on student papers are so important.

Sam Jacobson responded, "How else will students know how they can improve? They thought they were doing it right when they wrote it; without comments, they won't know what or how to change for the next assignment."

"Our feedback helps the students get used to what's expected in the legal culture," added Ruth Vance.

"Students quickly exhaust the benefit that they can derive from lectures and textbooks. They learn much more by participating in the writing process and getting specific feedback on their work," replied Charles Calleros.

"With classes as large as ours, they [written comments] are the best way I have of communicating with the student about his or her writing, specifically. Writing is a very individual process; individual feedback is crucial," answered Cathleen Wharton.

The teaching opportunity that written comments afford was yet another common and related theme in responses to the question about why comments are so important.<sup>12</sup>

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12. A few of the respondents pointed out that student-teacher conferences were even more effective than written comments. For example, Steve Johansen said that although written comments are "the primary form of interaction between students and myself . . . , individual conferences tend to be *more* helpful. Unfortunately, the time for individual conferences is more

Mary Beth Beazley wrote,

I checked "of utmost importance" because I think that student papers are the legal writing equivalent of the law classroom's Socratic dialogue. In the classroom, the student engaged in the dialogue learns the most. In legal writing, students learn the most when they are engaged in dialogue with their teacher about their writing, and, unlike the classroom discussion, every student is engaged in the writing process. Classroom work in legal writing is fine for presenting the many universal truths about legal writing, but unfortunately most students don't recognize their strengths and weaknesses in a classroom discussion. As I put up examples of bad writing on the overhead, I can almost hear some students thinking "I'm sure glad *I* don't have that problem." Individual comments bring home to the students the specific problems that they have—as well as the specific strengths.

Nancy Schultz pointed out, "It's [written comments on the last paper] what students will have in front of them the next time they sit down to write."

"*This* [written comments] is the ultimate one-on-one text for teaching," advised Jill Ramsfield.

In short, the experts agree that providing written individual feedback on law students' papers is one of the most important, if not the most important, teaching moment legal writing professors have. Consequently, it is critical that new legal writing professors begin their careers with the best information available on how to go about critiquing student papers. The section that follows outlines what the experienced legal writing professors believe novice teachers should know.

### III. ADVICE TO NEW LEGAL WRITING PROFESSORS

If experienced legal writing professors consider commenting on and grading papers an extremely important part of their work, then it follows that new legal writing professors should concentrate on developing these skills. To help new teachers develop these critiquing and evaluating skills, the experts offered suggestions about effective teaching strategies, warnings about potential pitfalls, and advice about comments to avoid.

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limited than I would like." Paul Bateman commented that the importance of written comments "depends. Sometimes 'see me now' will work better than a two-page comment. . . ."

### A. *Effective Teaching Techniques*

#### 1. Limiting the Number of Comments

Highest on the experts' list of teaching strategies were the practices of limiting the number of comments on a given paper<sup>13</sup> and using positive feedback both to point out the student's strengths and to encourage. In their responses to question 21, "Are there particular strategies for commenting on and grading student papers that you think novice legal writing faculty should be made aware of?" eleven of the experts advised against marking everything that is wrong with a student's paper.<sup>14</sup> These respondents noted that novice teachers, in an effort to be complete, were often guilty of overkill. The effect of too many comments, they warned, was overwhelmed, frustrated, or angry students. Instead, they advised that legal writing professors should either (a) read the paper through and then decide the major areas of concern on which to focus the comments, or (b) determine the critiquing priorities before critiquing a set of papers and then limit the comments to those areas.

"Don't think you have to mark everything," said Richard Neumann. "There is a limit to what a student can learn from a given paper. Skim read before you start to mark so that you have a sense of what is most important to mark."

"Students can easily be overwhelmed with too many comments," added Mary Beth Beazley. "It's better to get them to learn one or two things well than give them scattershot instruction on 40 things that don't stick."

Teresa Godwin Phelps agreed. "Focus on important issues," she said. "Correct or comment on only those things students have been taught."

"Less can be more," added Susan Brody. "Don't try to correct everything at once. It's impossible. Just make sure the students know you are not correcting everything at once and there is always more to improve even if you assign an 'A.'"

Like Brody, several other respondents also urged novice teachers to emphasize to their students that they were not marking everything

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13. While there was considerable agreement that limiting the number of comments was more effective than marking every conceivable problem, it was unclear from the responses just how many comments were too many.

14. Another sixteen respondents made essentially the same point about the problem of writing too many comments on a paper when they commented on potential pitfalls for new teachers.

and that simply making the noted changes and corrections did not guarantee the student an "A."

If a legal writing professor is making extensive comments on student papers, though, Nancy Schultz suggested that the professor "warn the students ahead of time that they may experience a certain amount of shock at the condition of their papers" when they are returned.<sup>15</sup>

Although many, but not all, of the experts recommend limiting the number of comments on students' papers, this advice is only somewhat helpful to novice teachers. While almost everyone seems to agree that it is a mistake to mark everything, the obvious question is how much is too much. At what point does a student reach a saturation point where he or she cannot absorb another criticism or suggestion? At what point might a student feel so overwhelmed by the comments that he or she simply stops reading them?

Other follow-up questions to the advice about limiting the number of comments also beg to be asked. What about the interaction between classroom teaching and paper critiquing? Is it possible that students may be more receptive to, and therefore able to benefit from, extensive critiques if the legal writing professor has established a good rapport with the class? How do student expectations about critiques affect their ability to learn from more comments? What effect do grades have on a student's ability and willingness to learn from extensive comments?

These questions warrant further study. In the meantime, however, we should remember that commenting on and evaluating papers do not occur in a vacuum. They are part of the larger learning environment. Consequently, when we begin to conclude that, in general, limiting the number of comments is an effective teaching technique, we must

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15. Two of the experts who responded to the questionnaire added cautionary notes to the building consensus that limiting the number of comments on student papers was an effective teaching technique. "Because of some of the results from Anne Enquist's earlier research on the number of comments, recently I have consciously tried to cut back on the number of comments I write on student papers, and for the first time, I have had a few comments on my evaluations that I'm not writing enough comments," said Laurel Oates. Kathryn Mercer agreed,

I have often thought about commenting less as students may be overwhelmed and defensive with so many suggestions. Past [national] conferences have suggested that too many comments is a disservice to students. But my own experience, and my yearly evaluations suggest otherwise. For the last 7 years we have asked students to evaluate whether my and other instructors' written comments are effective. We receive the highest ranking in this area. So I am reluctant to change.

Elsewhere, Mercer added, "I realize that some students are overwhelmed by the purple ink. But *most* seem to be able to absorb the information and revolutionize their writing."

remember that paper critiques are one piece—albeit a terribly significant piece—of a larger whole.

We also need to remember that there is strong agreement among the experts that it is effective to limit the number of comments on student papers and that a comprehensive, comment-about-everything approach to critiquing is often counterproductive. In choosing what not to comment on, however, the experts did not eliminate comments about what the student had done well. In fact, their next most common piece of advice was to remember to write positive comments when they are deserved.

## 2. Giving Students Positive Feedback

Eleven respondents to the questionnaire recommended giving students positive feedback as an effective teaching technique.<sup>16</sup> Many of these experts said that novice teachers often focus exclusively on the weaknesses in a paper and neglect to discuss its strengths.

“New legal writing faculty need to concentrate on the need for positive comments and a positive tone,” pointed out Molly Warner Lien. She added,

They are often coming from a large firm environment where their writing has been subjected to very critical review, and have an understandable belief that students need similar “real world” guidance. However, they forget that learning to write well is a process and that students need practice and *constructive* criticism, as well as an understanding of the standards applied in practice.

Even when some positive comments are included in a critique, a few of the experts note that the extent of the comment is often a token “good” in the margin.

K.K. DuVivier responded, “Over time I have tried to make my comments more specific—instead of writing ‘good’ next to a paragraph, I’ll write ‘good thesis paragraph, but the conclusion could be stronger.’”

Looking for what a student writer has done well and commenting on it requires a mental shift for some critiquers who may have consciously or subconsciously viewed their critiquing role as one who spots mistakes or shortcomings. And once this mental shift is made, it may be dismaying to learn “good” or “well done” in the margin adds little beyond a pat on the head. Like most good comments, those

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16. Four additional respondents made this same point in their answers to other questions.

expressing specifically what or why something is well done take time, energy, and insight. Perhaps staying focused on one's critiquing priorities—the next suggestion made by the experts—is the best way to stay aware of how the writer has fulfilled the goals of the assignment and met, or even exceeded, reader expectations.

### 3. Developing Teaching and Critiquing Priorities

Nine different experts discussed the importance of the legal writing professor having a clear sense of his or her priorities and conveying these priorities to the students, both before the students write and again in the comments on their papers. Several recommended using a critiquing checklist to help keep these priorities in mind.

"Teachers must be clear about their criteria, and specific in their description of those criteria, in advance," advised John Dernbach. "Students appreciate this, and respect teachers more for doing so, even if they don't like their grade."

Helene Shapo emphasized that it is important to plan an assignment for particular purposes and then comment on the students' papers with those purposes in mind. "Prioritize," added Laurel Oates. "Know what it is that you want to 'teach' both to the class and to individual students and then look for those things."

Once a paper's weaknesses have been identified, Paul Bateman recommended that the legal writing professor "order the weaknesses so [the student] understands which have priority." A "hierarchy of concerns needs to be identified," added Jan Levine. "Deal with the big picture first." Jethro K. Lieberman pointed out that a top priority that is often forgotten "is whether the student has achieved a strategic purpose."

To develop one's priorities, Sam Jacobson suggested that the legal writing professor "go from broad to narrow. If the analysis is off, so will be the organization. Curing the organization won't improve the analysis, but improving the analysis may cure the organization problems."

Priorities, then, should be clear at the outset of an assignment and they should be used to evaluate students' work. Consequently, teaching/learning priorities often become the basis for another much-touted teaching technique: writing end comments.

### 4. Writing End Comments

The importance of writing end comments appeared in responses to question 21 about effective teaching strategies and in responses to question 13, "Do you write end comments on student papers?" and

question 14, "Which do you consider more important—margin comments or end comments? Why?"

Thirty-four of the thirty-five respondents<sup>17</sup> write end comments and, when asked which is more important,<sup>18</sup> eighteen of the thirty-five said that end comments are more important than margin and interlinear comments.<sup>19</sup>

There was considerable agreement about why end comments are important. Most felt that end comments served the special purpose of giving the student an overview of his or her writing ability.

Alice Perlin explained:

End comments [are more important] because they give students detailed information about the general areas they need to work on as well as the areas in which they have done well. I think students pay more attention to the end comments because they reflect overall patterns. Many students look at the margin comments as isolated comments not related to a pattern.

"I find the specific margin comments easier to do, but think the end comment is probably more important because it gives the student a more complete sense of how the writing worked or didn't and is probably more representative of how the average reader (judge/senior partner) will come away from the piece," added K.K. DuVivier.

Many mentioned that students read the end comments more carefully than the margin and interlinear comments and, because many

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17. The one respondent who does not write end comments, E. Joan Blum, uses some margin and interlinear comments on the paper and then focuses most of her commenting energy on oral comments, which she gives to the students on tape cassette. "These oral comments," said Blum, "replace some of what I might say in margin or interlinear comments, and also replace the end comment." Blum's technique is to read each paper at least twice from beginning to end. She begins the taped critique after the first reading by giving a general summary of the paper's strengths and weaknesses. She then goes back through the paper for the second reading, making oral comments. A typical taped critique is 20-30 minutes in length. On her questionnaire, Blum listed numerous good and bad points about the cassette tape critiques. Among the good points, she said that "oral critique combined with nominal written critiques reaches students of more than one learning style" and that students like the oral critiques. At the top of her list of bad points about oral critiques is the problem of managing all the tapes. Steve Johansen offers students the option of oral taped critiques.

18. Four of the seventeen who said end comments are more important seemed distinctly reluctant to pick one over the other because they consider both so important. "A close call," said Mary Beth Beazley. "End comments win by a nose because when done well (not always easy) they give the student a picture of his or her writing ability as opposed to the problems with a particular document."

19. Only one respondent thought margin comments were more important than end comments. Fourteen felt that margin and end comments were equally important. One respondent did not answer this question, and one uses taped comments in lieu of an end comment and most margin comments (see footnote 17).

legal writing professors use the end comment to outline for the student what he or she needs to work on next, students use the end comments when they revise or begin the next writing project.

Cathleen Wharton believes,

End comments . . . are most carefully read by students, in my opinion. Some students don't read margin notes at all, and it takes some time to really reread the paper and consider the margin comments. I have found it effective to integrate the two by referring to specific margin notes in my end comment, *e.g.*, "Your analogization needs to be more specific, see note p. 5."

"End comments are more important because the students read them first. They can then look at the marginal comments for specific examples," replied Diana Pratt.

"End comments [are more important] because you can prioritize matters for the student and be sure to present an appropriate mix of positive and critical comments. You can provide some direction to the student for the next assignment," advised Kathleen H. McManus.

A few respondents offered variations on end comments: Christy McCrary Nisbett writes a cover sheet rather than an end comment<sup>20</sup> because she wants the students "to look at them first so they can put margin comments in context," and Jane Kent Gionfriddo writes end comments at the end of sections of the paper. Gionfriddo worries that end comments at the end of a paper may be too vague and general "because it's difficult to spend that extra time drawing everything together for the student." Instead, said Gionfriddo,

I have tended to make "end" comments at the conclusion of logical sections of the memo. For instance, in a memo to a supervisor, I try to make an end comment at the end of the thesis paragraph, at the end of each issue, perhaps at the end of each issue's analysis of the law and then application prediction on that analysis.

When asked to describe a typical end comment, including its length, and any special features of these comments, the experts' responses yielded several consistent teaching strategies. Most begin the end comment on a positive note by discussing the strengths of the paper and then follow with the weaknesses. The weaknesses are often presented as a ranked, ordered list that the student should concentrate on when rewriting or writing the next paper. Many try to conclude the end comment with a word of encouragement. Many try to tie the

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20. Molly Warner Lien and Richard Neumann also attach "end" comments to the front of the student's paper.

margin and end comments together. A few include an assignment, such as rewriting a section, to be done before a conference.

Susan Brody responded,

I always say something positive—even if I must strain to do so. I then will identify three (maximum) types of errors that recur in the paper, citing to the pages where they occur. I will ask the student to rewrite some of the places indicated. If one type of error is one that requires a lot of attention, I will limit the end comment to that error, again asking the student to rewrite for our conference. . . .

Steve Johansen described a typical end comment:

My end comments summarize my feelings about the paper as a whole. I always try to start with what the student did right—"John, you've done a good job of organizing the first issue. Your rule paragraph was clear and you applied your rule effectively." I then try to point out areas of weaknesses—"However, you neglected the most important case on the second issue and seem to confuse binding and persuasive authorities (see comment p.6)." Finally, I try to give a positive, overall comment—"On the whole, a very solid first draft. I look forward to your next version."

A number of the respondents have developed a specific structure that they use when writing end comments. Jill Ramsfield uses the structure outlined in the "Principles of Good Legal Writing" from *Legal Writing: Getting It Right and Getting It Written*.<sup>21</sup>

Content

Purpose

Organization

Style

Polishing

Christy McCrary Nisbett's cover sheet for the students' first full memorandum has a subheading for the basic skills the student worked with in the assignment. Below is an example she attached to her questionnaire:

Identifying and focusing on the issue

Identifying and working with the rules of law (including synthesis for two-case memo)

Giving key facts of the precedents to shed light on the rules

Analogizing and distinguishing cases

Providing counter-analysis

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21. MARY BARNARD RAY AND JILL J. RAMSFIELD, *LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN* 235-37 (2d ed. 1993).

- Coming to a legal conclusion
- Organizing the discussion: T R u P A C C<sup>22</sup> for each issue (or subissue) to be analyzed
- Introducing a legal discussion
- Introducing paragraphs and case descriptions with effective topic or transitional sentences
- Using an appropriate tone and style (objective and professional, but not stilted)
- Citing authority effectively (use, placement, form)

John Dernbach uses a grading guide in which students get a numerical score for discrete parts of their paper as well as the analysis in the discussion or argument. He adds an end comment on the back of the grading guide.

The length of typical end comments from each respondent ranged from two to three sentences to several pages. A few of the respondents said that the length of their end comments is fairly consistent from student to student while others said that the length of the end comment varies greatly, depending on the individual student's needs.

### 5. Writing Margin and Interlinear Comments

Every respondent to the questionnaire writes margin and interlinear comments on student papers.<sup>23</sup> Furthermore, a substantial number of the questionnaire respondents felt that end comments and margin comments were equally important and that a good critique required both. The consensus was that end comments provide an overall perspective while margin comments point out specific instances.

"They are equally important—one speaks of the forest, the other the trees. Writers and readers need to operate with both perspectives," answered Nancy L. Jones.

Jane Kent Gionfriddo replied,

I think margin/interlinear comments are valuable because they allow me to interact with what the student has thought/written right at the point that he or she has written it. This may make it easier for the student to understand the comment because the comment is physically tied to the particular word, sentence, paragraph, etc. that I am referring to. In addition, my writing the comment right next

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22 T R u P A C C (thesis, rule, precedent, application, counteranalysis, conclusion) is the organizational mnemonic device Christy McCrary Nisbett uses to fit the class's textbook

23. Although Joseph Kimble does written comments and critiques, he also recommended that legal writing professors "consider reading, critiquing, and grading the papers with the student present." He said that this technique has the benefits of being faster and more effective if the professor sets time limits. He added, "at first it's a little scary, but you can learn to do it well."

to the area which has strength or a problem should mean that I give feedback that is more specific than "labeling" comments such as "ambiguous" or "vague."

In their responses to the request to "describe a typical [margin/interlinear] comment" that was part of question 12, the respondents showed both a range of content that they address and a range in techniques that they use in margin and interlinear comments.

The overwhelming majority of the respondents said that they use margin and interlinear comments, as well as end comments, to discuss the largest issues in the papers, including the analysis, logic, organization, and persuasion. Mary Beth Beazley offered the following example of a substantive margin comment: "Are you saying that no prisoner can be a member of a suspect class? That if the prison chose to discriminate against African-American prisoners, it would only need to pass rational basis of the fact of incarceration?" She offered this example of an organizational comment: "I thought you were done with strict scrutiny. Why do you bring it up here?"

Margin and interlinear comments are also used extensively by the respondents to comment on paragraph and sentence level problems. Although there were two vocal minorities—one which advised against editing and revising and another which advised against imposing one's own style on students—most said that they use margin and interlinear comments on such issues as topic sentences, sentence structure, transitions, passive voice, wordiness, and nominalizations.

While most of the experts said that they marked errors in grammar, punctuation, spelling, mechanics, and citation, at least one expert resisted, particularly the grammar corrections, saying he was not teaching an English class for lawyers. Several cautioned novice legal writing professors about making corrections unless they were sure they were right.

"If you're not sure about a mechanical error, don't mark it. You might get an English major coming up to your office to prove you wrong and then you've lost credibility," cautioned Ruth Vance.

The most commonly recommended technique for margin and interlinear comments was to pose questions.<sup>24</sup> Ross Nankivell offered two examples of pointed questions regarding the quality of analysis: "How would the defendant respond to your last argument?" and "Does

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24. In my earlier study, I noted that while framing comments as questions can be effective, short or terse questions like "why?" "how?" and "are you sure?" can set off negative reactions in some students who feel like they are being cross-examined rather than taught. Enquist, *supra* note 2, at 179-81.

this conclusion logically follow from what you just said?" with an arrow to the flawed analysis.

Kathleen H. McManus also recommended framing "correction comments" as questions like the following: "Where do you apply the standard?" and "What facts might distinguish this case?"

While the experts acknowledged that at times they simply label a problem, several discussed the value of stopping occasionally to explain, illustrate, or suggest solutions. If a student has problems with topic sentences, for example, several say that they would stop and write in one topic sentence for the student but then expect the student to use the example as a basis for correcting the problem elsewhere in the paper.

Nancy Schultz said,

The trick is to offer an explanation as well as criticism, without writing an epic novel between the typewritten lines or in the margins. Students want and deserve to know why something they have written is incorrect, vague, unpersuasive or grammatically improper. This does not mean that you need to go into great detail every time you feel the urge to make a mark on the paper. This is obviously impractical, if not physically impossible.

For sentence structure, grammar, punctuation, and citation problems, the experts employ a few different methods. Some line-edit to show how syntax, word order, and verbosity can be improved. Others merely circle the problem, particularly if it is a grammar, punctuation, or citation error, and then write the rule's page number in the margin. When the same error appears numerous times in the same paper, some make the correction the first time the error appears and then write a margin comment that tells the student that the error appears repeatedly. The paper's author is then responsible for finding and correcting the other instances.

A few use specific strategies like highlighting, numbering, or lettering keyed to the individual student's end comment or master comment sheet to help the student see the pattern in their errors. They then use macros<sup>25</sup> to make writing the end comment more efficient.

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25. The term "macro" refers to a word processing feature that allows the legal writing professors to record some words, sentences, or paragraphs that they anticipate using many times and then assign a few simple keystrokes to retrieve and insert those recorded words. Once a macro has been stored, the professor can add it to new documents without retyping by using the assigned keystrokes.

"I highlight (with different color highlighters) passive voice, nominalizations, unnecessary words, etc.," wrote Bari Burke. In the same vein Kathleen H. McManus wrote,

When circumstances warrant it, I will mark the student text with numbers or letters and link these marks in an end comment. The end comment will address a technique or quality that ripples through the text: inconsistencies, unfulfilled promises, or common patterns of errors. Use of the symbols and the end comment make the evaluation more concrete.

Although all of the respondents use margin and interlinear comments and think they are essential to a good critique, at least one of the experts mentioned some of their potential drawbacks. Jane Kent Gionfriddo believes that

[m]argin/interlinear comments do "fragment" the memo for the student in that they tend to focus the student on individual strengths and weaknesses. They do this both physically and analytically. Writing in the margin may hinder the revision process by being a kind of physical or psychological barrier to the student's interaction with what he or she originally wrote. It's difficult to work with a memo when all over every page the professor has written multiple comments, crossed out ideas, and used arrows to insert ideas.

In addition, margin/interlinear comments by their nature fragment the memo by focusing students on individual aspects of their analysis, organization or writing. Such comments bring up a myriad of individual points, throughout the memo, that may never coalesce into any kind of cohesive point of view on how to revise the memo. Of course, this downside can be mitigated if such comments point out repeating problems, and are in conjunction with end comments that pull everything together.

Unlike end comments, then, which typically focus on the general strengths and weaknesses of the paper, margin and interlinear comments focus on specific spots in the writing that succeed or need improvement. They allow the critiquer to pinpoint exactly where a flaw appears—whether it be in research, analysis, or composition—and then pose a question, offer an explanation, or suggest a remedy. Although margin comments have the potential risk of fragmenting the paper for the student, some margin commenting strategies like highlighting and numbering can be used to help writers tie together several margin comments so that they can see patterns of errors in their writing. They, like end comments, can also be explicit links back to

the textbook, class discussion, or writing conference, which is the next technique recommended by the experts.

#### 6. Tying the Comments to the Text, Class, and Conferences

Many of the respondents to the questionnaire make explicit connections between the comments they make on their students' papers and their other primary teaching vehicles: the textbook for the course, class discussion, and writing conferences.

One common technique for addressing certain problems is to send students directly to specific pages in the textbook. "I noticed several examples of X; review pp. xxx to learn about it" was an example of such a comment offered by Mary Beth Beazley, who added that

many students think that no fixed rules exist for grammar or punctuation—that everything is just 'personal style.' Citing to the texts lets them see that you are not just arbitrarily deciding that their writing is wrong, and also lets them look to those guidelines when writing in the future.

Several of the experts write comments on their students' papers that are short assignments that the student must complete before coming in for a writing conference. For example, Mary Lawrence might require a student to reorganize a paragraph, while Mary Beth Beazley said she might require a student to do a case brief and bring it to the conference.

Beazley also codes certain comments as TTMA ("Talk to me about") comments. When a student sees TTMA before a comment on the paper, that means that this is a point she wants to discuss with the student in a conference.

Jan Levine was even more adamant about the importance of connecting comments on papers with individual writing conferences. "The crucial factor in the student's successful reception of the comments (or understanding of what is behind the comments)," said Levine, "is giving the student a chance to meet the teacher and speak with him or her about the paper, the comments, or life in general."

The key point here is that comments are an integral part of the whole teaching/learning experience. Using them as links between a student's paper and all the other components of the course—textbook, class discussions, individual conferences—helps students make connections and see how to apply what they are learning in their own writing. Making all these connections, identifying key writing strengths, diagnosing and commenting on significant weaknesses, and articulating all in well crafted margin, interlinear, and end comments on many students' papers, however, seems at times to be an over-

whelming, even superhuman task. Fortunately, the experts had a few suggestions about how to make that task a bit more manageable.

### 7. Surviving the Critiquing/Grading Process

Seven of the first eleven questions on the questionnaire concerned the number of students the experts have in a semester, the number of papers they critique, and the amount of time they spend commenting on and grading student papers. It will not surprise other legal writing professors that these numbers are overwhelming. While a lucky few have relatively small numbers of students (four had fifteen or fewer students each semester), seven other respondents have sixty-five or more students per semester.<sup>26</sup> The majority of the respondents—twenty-six of thirty-five—read and comment on drafts as well as finished papers. Although there were great differences in how much time some said they spend on individual papers, a rough average for the group is approximately 45 minutes to an hour per draft or finished paper. Consequently, every respondent to the questionnaire spends a substantial part of his or her time and energy commenting on and grading student papers.<sup>27</sup>

This last conclusion mirrors the experience of the vast majority of legal writing professors in the country: virtually all spend enormous amounts of time and energy critiquing and evaluating their students' work. The question then is what have the experts learned about how to survive this process and, based on their experience, what do they recommend.

To deal with the sheer size of the task, Steve Johansen suggested that novice teachers "plan ahead. It's always easier and more effective to grade a few papers a day than to try to do them all at once."

To counteract the human tendency to procrastinate, Ross Nankivell said,

Do it as soon as possible and as fast as possible. Feedback while the research, analysis, and writing involved are all still fresh in the student's mind is worth much more than a post mortem weeks later. Give yourself a weekend from hell. Stay home, away from colleagues as well as students, and have whole days or a whole week

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26. Four of the seven have teaching assistants or adjuncts helping with some of the critiquing.

27. One of the respondents noted that in a memo to her dean, she had figured out that, in her program, a legal writing professor who has fifty students gives feedback on 4,000 pages per year.

from hell, but turn those papers around fast. Also doing the papers all together makes ranking and grading much easier.

K.K. DuVivier added that "[w]hen assigning grades in a curve, it becomes hard to remember over time how one paper differed from another. To avoid this, I try as best I can to block out uninterrupted periods to get as many done at a time without long hiatuses."

But, cautioned Helene Shapo, doing too many papers at once can lead to impatient critiquing. Diana Pratt agreed, "Don't try to do too many at once. It is hard to keep your cool when the fourth paper in a row has disorganized the discussion section."

Even though it is an enormously important and time-consuming task, Nancy Jones advises legal writing professors to set some limits. "It can take over your life if you don't set limits on the time you invest in it."

"Watch the clock," added Jill Ramsfield. "Give each paper about the same amount of time and do not let the mind wander."

Several other respondents offered strategies for maintaining consistency in grading. Some suggested assigning tentative grades on the first reading, putting the papers in rank order, rereading, and then adjusting grades if necessary. Others suggested either reading several papers to get a sense of the group before starting to grade, or going back over the first papers after grading a stack to make sure grading standards had not changed in the process. Several recommended using a grading checklist to ensure consistency.

Several experts made suggestions that may make the process more efficient. For example, a number of them develop macros for common mistakes and key them to a number on the paper. A few use "master comment sheets," which they make up for the whole class after they see what the common problems are and then attach a copy of the master comment sheet to each paper. At least one is experimenting with having students hand in assignments on computer disk and then drafting comments directly on the student's file. E. Joan Blum advises the novice teacher "to experiment to determine what mode of critique is the most effective for the students and the least stressful for the professor."

A few experts suggested using shorthand systems for common comments, but added that it is critical that the students have a list of these marks and abbreviations so that they can decipher the comments.<sup>28</sup> Steve Johansen has gone so far as to develop "Johansen's

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28. In my earlier study, the four students who critiqued legal writing professors' comments on their papers were not overly enthusiastic about coded comments. Using a 1-5 scale (1 being

Dictionary of Legal Writing Comments," which is designed to ensure that his students understand some of the most frequent comments he writes on papers.

There were several strong admonitions not to use red ink when writing on student papers. "I use green ink," said Richard Neumann. "It's easy on the eye and carries no negative baggage."

Four different experts specifically recommended using pencil. "If you are writing comments on the paper itself, use pencil so you can change your mind," recommended Mary Beth Beazley.

"I always critique with a soft, #1, black lead pencil," added Ross Nankivell. "I can (and very often do) erase a comment and either rephrase it or write something different. Also, #1 lead pencil comments are dark and photocopy well, in case I decide I want to retain a copy."

Several also offered common sense advice, such as writing legibly, and reminded novice teachers of important, overarching principles that can be easily forgotten once the critiquing process begins. "Read like a client/judge/associate, etc.," advised Paul Bateman. "Give a 'real world' response to a document submitted to you." In a similar vein, K.K. DuVivier recommended, "Work on getting an overall sense of the piece to see whether it is getting the point across."

Others cautioned novice teachers to remember that their students were novices too and that the comments should take that into consideration. "Don't forget you are dealing with novices," reminded Cathleen Wharton. "Legal writing and analysis are very difficult, so don't expect perfection."

Because few legal writing students come to the course with experience writing legal memoranda or briefs, Mary Lawrence suggested that legal writing professors be explicit about how legal writing differs from other writing: "Be sure students realize that they're learning to write in a new genre."

Finally, the experts said that, in order to survive the critiquing and evaluating process, legal writing professors had to remember that writing comments on student papers allowed them to create a dialogue with students about their writing and to personalize the teaching. Jill Ramsfield, for example, acknowledged that commenting on and grading student papers "is the most exhausting aspect of the job. But I feel I am *teaching, talking, chatting, discussing* the paper. I try to

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the highest) to rate each comment's usefulness, the students tended to rate coded comments as a 4 or occasionally a 3. In a few instances, the students complained that they did not have the key to the coded comments on their papers. Enquist, *supra* note 2, at 165-66, 177.

treat each set of comments like a personal letter. No two are alike. That keeps me engaged.”

Like most huge tasks, then, critiquing and grading requires planning, time management, focus, a few time-saving tricks, common sense, and the right perspective. It also helps to know where the hidden traps and tripwires are, which is what the experts shared when they addressed the question about the potential pitfalls in critiquing.

## *B. Potential Pitfalls*

### 1. Marking Everything

Not surprisingly, responses to the question about potential pitfalls about commenting on and grading students' papers were often the flip side of the coin of an effective teaching technique. Marking everything, commenting only on weaknesses, using problematic assignments, and not developing teaching priorities were all pitfalls that had already come up in responses to other questions. They were also mentioned extensively in responses to question 22, “Are there particular pitfalls about commenting on and grading student papers that you think novice legal writing faculty should be made aware of? If so, please describe.” In addition to the “marking everything” error, the experts identified two other potentially fatal errors that some novices make when they first start writing comments on students' papers: not considering the tone of the comments and using problematic assignments.

### 2. Not Considering the Tone of Comments

Second on the experts' list of potential pitfalls were issues concerning the tone of comments. Nine different respondents specifically named making angry or sarcastic comments as a mistake in critiquing papers. Others cautioned against humor that can be mistaken as sarcasm.

“Don't give in to the impulse to write an angry or sarcastic comment,” advised Cathleen Wharton. “You will wish you hadn't when you cool down.”

“[Avoid] being mean-spirited, which can happen especially if [you] let feelings about papers bleed together—reading the 15th paper that makes the same mistake is not the same as seeing one person make the same mistake 15 times (not that hostility would be warranted there, either),” warned Christy McCrary Nisbett.

While most acknowledged that they sometimes became frustrated when reading a stack of papers, letting the frustration show through

the comments was considered counter-productive. "Don't let your frustration and fatigue show in your comments," advised Mary Lawrence. To maintain some perspective, Laurel Oates suggested that you "constantly remind yourself about how much your students have already learned and not about the things that they still haven't mastered."

"Just remember the students *are* trying," added Steve Johansen, "even if it doesn't always show up in their work. Be patient and as positive as possible."

### 3. Using Problematic Assignments

Poorly designed assignments were also frequently mentioned as pitfalls or even fatal flaws in novices' teaching. Assignments could be poorly designed in a variety of ways, but not understanding the problem thoroughly before critiquing, not considering exactly how the assignment fits with teaching objectives, and, especially, designing an assignment that was too difficult for the students were all singled out as pitfalls to avoid. "Do not set up a potential for failure that's inherent in the assignment—e.g., giving an assignment that's too complex for a novice writer to organize well," warned Mary Lawrence. Jill Ramsfield added, "Poorly designed assignments undermine any other goals. . . ."

### 4. Some General Advice from the Experts

In addition to their advice about effective teaching techniques and pitfalls to avoid, several experts made numerous individual points that would be helpful to novices.

Laurel Oates, for example, identified two common problems for novice teachers: lack of confidence and over-emphasizing problem-specific issues. "Lack of confidence," said Oates, "can result in being overly dogmatic or overly 'loose' or vague. In cases where new teachers spot a problem but are unsure about the solution, I advise them to use reader-based comments like 'I'm having trouble following this argument.'"

Regarding overemphasis of problem-specific issues, Oates said, "The longer I teach, the more I strive to write comments on student papers that will affect the writing students will do five and ten years from now. I want to use the comments to teach decision-making, rather than just to show how to fix a particular problem on a particular paper." Nancy L. Jones agreed and added that while our purpose in commenting is to "help the writer be more effective and efficient in the draft at hand," we are also trying to "serve the writer for the long

term, in the ongoing process of becoming a powerful writer of legal documents."

Teresa Godwin Phelps emphasized two different pitfalls to avoid: (1) comments that reflect personal preferences rather than objective criteria, and (2) comments that reveal that the professor has a fetish about something.

If the commenting uses personal taste or other nonobjective criteria, students justifiably think that good writing means figuring out what the teacher wants. Certain things make clear prose (active voice, subject-verb-direct object order, short-ish sentences). Teach and expect these. *But*, don't fetishize anything. If a student writes a clear long sentence, it's OK. If a student has a reason for using the passive, it's OK—even if you would have done it differently.

In the same vein, Cathleen Wharton advised, "Evaluate what the student wrote on its own merit. Don't compare with what you would have written."

Still other experts offered different yet very practical suggestions. For example, Jan Levine advised, "When papers are truly awful, stop! Talk to the student before totally destroying the paper—get a redraft or a retrospective outline." On the issue of returning papers, Kathryn Mercer counseled, "Never promise papers will be returned before you can realistically complete them." She added that it is wise to "make sure your grading policy is clear and reiterate it throughout the semester."

Jane Kent Gionfriddo shared still another important insight: "Students must learn that revision is holistic. A sentence or paragraph that works in a draft and is 'good' within that context may have to be scrapped or reworked within the context of revising the overall analysis and organization."

And finally, Sam Jacobson reminded us of the important difference between giving students the answer and guiding them toward the answer: "Don't give answers analytically or about research. Give guidance so [the] student will know what to do to complete the research or knows what to think about to cure the analytical problem."

The list of "don'ts" that the pitfalls question generated contains relatively few, yet adamant, general recommendations about what not to do: don't mark everything; don't allow comments to sound mean, angry, or sarcastic; don't use a poorly designed assignment. The companion question about which comments a legal writing professor should avoid writing on a students' paper tended to generate examples of more specific problem comments.

### C. Comments to Avoid

#### 1. Sarcastic, Angry, and Overly Negative Comments

Closely related to the "pitfalls" question was question 17, "Is there any type of comment that you particularly try to avoid writing on a student's paper? If so, describe." Once again, the respondents commented extensively on avoiding sarcastic, angry, rude, and overly negative<sup>29</sup> comments. Several of them also advised phrasing the comments so that they were about the writing, not the writer.

"I avoid preaching and confrontational or degrading comments—e.g., 'You should know better' or 'This makes no sense'," said K.K. DuVivier. "Typically I avoid the word 'you' whenever I can." Rather than write "You should do this," DuVivier tries phrasing more like "This might be clearer if we moved this word here."

"I avoid sarcasm, attacks on the student's effort (only rarely is this appropriate) and anything that might be seen as an ad hominem attack," added Steve Johansen. "I comment on the writing, not the writer. If something is wrong, I try to ask a question that points the student in the right direction rather than just pointing out the error."

"[Avoid] intemperate criticism, outbursts and exclamation marks, or worse yet, multiple exclamation marks, question marks, and underlining: Comments like 'Ye gods!' 'Dear me!' 'No!' 'What?' 'Eh?' . . ." advised Ross Nankivell. Helene Shapo agreed that legal writing professors should avoid brusque comments. She added that "one or two word comments aren't usually too helpful and they come across as rude."

Several of the experts cautioned against writing comments that were more personal than professional. "I always try to remember that the critique relates to the paper and not the student," commented Molly Warner Lien.

Accordingly, I will write: "The organization of the section on what constitutes extreme and outrageous conduct could be improved by starting with the general definitions and then going to specific illustrations." This is better than: "You failed to use an effective organization in . . ." Based on comments from all our students, the paper-oriented approach produces enthusiasm rather than defensiveness.

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29. Nancy Schultz added that it is possible to soften comments to the point that the comments are not "a realistic appraisal of just how far [the students] had to go to improve their writing." "[T]he trick," said Schultz, "is to try to find just the right balance for each student to give him or her encouragement while being honest in your appraisal. I suspect that we cannot hope to really do this effectively for each student—we just do the best we can."

Jane Kent Gionfriddo confessed,

I try not to phrase comments in a personal or offensive manner, for instance, "give me a break" or "what the hell are you referring to here," although I've certainly had that impulse. However, given my knowledge of an individual student and my relationship with him or her, I have made personal comments to make a point vividly—for instance, "as your reader, I'm about to pull my hair out here—there's been no topic/transition sentence for several paragraphs now, and I have no idea how this idea relates to this idea. Do these cases relate? If so, how do they relate? Does Case X give you any hint to this?"

Richard Neumann tries to avoid comments that refer to himself. An "I" comment, suggested Neumann, "creates unnecessary issues about who gets to say what goes on here."

John Dernbach added that he avoids comments that "generalize in a negative way about the students' abilities."

Rather than give in to the temptation to write sarcastic, angry, or overly negative comments, Diana Pratt advised, "Show you take your students seriously by the professional demeanor of the comments."

While it may seem obvious that legal writing professors should control the tone of their comments and avoid angry or insulting outbursts, it is far less obvious that other comments, some of which may be common to critiquing all types of writing, are equally unhelpful if they are ambiguous to students. What is most unfortunate, too, is that this next category of comments to avoid includes some of the comments that writing teachers have often thought of as handy shortcuts.

## 2. Ambiguous Comments or Marks

Even higher on the experts' list of comments to avoid than sarcastic, angry, and overly negative comments were ambiguous comments, either because they consisted of one-word labels such as "awk," "unclear," or "vague," or because they consisted of stray marks, underlining, or excessive abbreviations. Indeed, "awk" was mentioned as a comment to avoid by no fewer than twelve experts.

"Avoid unhelpful comments such as 'awkward' or 'vague'—tell students what concerns or confuses you," advised Nancy Schultz. "Explain and don't use vague terms like 'tone,'" added Teresa Godwin Phelps. "Do not scribble vague lines, marks, etc.," cautioned Pat Hugg.

"I try not to use a margin comment such as 'huh???' because the student might not see what I don't understand. Instead, I try to formulate a question or give a reader response," explained Ruth Vance. Laurel Oates added that she tries to avoid comments that use terms that have not been discussed in class (e.g., "dovetailing," "flow"). Kathleen H. McManus said she tries to be specific in her comments. Rather than simply write "unclear," she recommended a comment more like "unclear because of placement of modifier." Jane Kent Gionfriddo also agreed, and although she conceded that, in the interest of time, critiquers sometimes have to use labeling comments, "there is a substantial difference between saying 'lack of precise connection' and saying 'the word "and" in this sentence masks the much more precise connection between 'this idea' and 'this idea.' Figure out what the connection is and express it."

### 3. Making Assumptions About the Student's Effort

A significant number of respondents cautioned against making comments that suggested that the student had not worked hard on the assignment or put enough time into it. Many confessed that they had mistakenly assumed a given paper was dashed off with little effort only to find that a student had labored over it.

"I . . . never write 'It's obvious that you neglected this assignment until the last minute and then put no time into it' because I DID write that once and nearly destroyed a student," wrote Mary Beth Beazley.

It turned out that she had worked her tail off on it and was horribly hurt that I thought it looked like she hadn't. When faced with the same type of paper, I say, "it looks as though you did not have the time to devote to this assignment. If you DID devote a lot of time to it, let's talk about how to get more out of that time." It's not much more redeeming, but it does at least admit that the student might have worked hard.

"Assume good faith," advised Pat Hugg.

Taken together, the recommendations from the experts about teaching techniques, the warnings about pitfalls, and the advice about comments to avoid all contribute to a methodology of critiquing papers that is pedagogically sound, student-centered, and practical. The techniques derive their strength from a basic understanding of how people learn and how best to maximize that learning. Remembering to stay focused on one's teaching priorities and limiting the number of comments, for example, are excellent safeguards against common errors made by well-intentioned, novice teachers. A critiquing approach that emphasizes giving positive feedback and avoiding overly negative

comments creates a law school learning environment that is both rigorous and respectful of students. Even the practical strategies for surviving the critiquing/grading process were inevitably tied not just to how to get the critiquing done, but how to do it in ways that were fair, humane, and effective at achieving educational goals. In short, the 389+ years of experience shines through the experts' collective wisdom and advice. However, two questions remain: (1) how did the experts learn how to comment on and evaluate student writing, and (2) do they always agree?

#### IV. TRAINING LEGAL WRITING PROFESSORS TO COMMENT ON AND EVALUATE STUDENT WRITING

When asked how they developed their style and ability to comment on and grade student papers, the thirty-five experts gave candid responses, but several asked that these responses be kept anonymous. Consequently, in fairness to all who responded to the questionnaire, no further attributions will be given in this or the subsequent section.

The most common answers to the question about how they learned to critique were "trial and error," "practice," and "experience." In other words, seventeen of the thirty-five respondents, or almost half of the group, listed some form of "just doing it" to describe how they developed their ability to critique student papers. "I've just learned by 'hit or miss,' and doing what comes natural." "Through trial and error and many years without many mentors or assistance." "Lots of experience." "Practice, practice, practice."

Slightly more than one-third of the group, twelve respondents, listed student feedback as important in developing their style and ability to comment on and grade papers. "In the beginning I wrote what I felt comfortable writing, noticed what had a bad effect, noticed what was meaningful. The evolution [of my style and ability to comment on and grade papers] was shaped by testing informally how students reacted to what I was saying. . . ."

One expert wrote, "I keep working and see how students respond. I realize a comment hasn't worked if in conference the student needs clarification or takes it the wrong way." Another expert commented, "I make mental lists of comments that have worked in the past (ones which elicited the desired response in subsequent papers)."

Only nine of the thirty-four said they developed their critiquing ability, at least in part, by attending national conferences and seminars where commenting on and evaluating student papers were discussed. Six said that they have done some reading about the topic; six said they have benefited from conversations with colleagues about it.

Those who mentioned reading about critiquing listed composition theory, reader response theory, and writing process literature as important to their growth as critiquers of student writing. Specifically named by a few of the experts were Nancy Sommer's article, "Responding to Student Writing," and Joe Williams's work on composition theory.

Three respondents named the English Advisor or Writing Specialist at their school as being significant in their development as critiquers. Three others said that they thought critiquing through on their own and had tried to consider what they themselves would find helpful in comments. Three listed reading other people's comments as helpful; three developed their critiquing ability by teaching English at another level; and only two learned about commenting on and grading papers at workshops at their own institutions. The question, then, is whether things have changed.

Most of the experts who were selected for the questionnaire began critiquing papers ten or more years ago, at a time when legal writing was just beginning to get a serious foothold in the law school curriculum. Now that teaching legal writing is more established as a profession,<sup>30</sup> the question is whether we are now able to professionalize the way we are preparing newcomers to the field. How are new legal writing faculty learning to comment on and evaluate student writing? Are they, like their predecessors, learning informally by trial and error, practice, and student feedback?

Question 20 on the questionnaire addressed the issue of training as it relates to commenting on and evaluating student papers: "Does the legal writing program at your institution have any method by which it attempts to prepare the legal writing faculty to comment on and evaluate papers? If so, please describe. (Please include whether this is a one-time preparation or whether there is ongoing training in critiquing student work.)"

Of the thirty-four schools<sup>31</sup> represented in the responses, seven said there was no method used at their school for preparing legal writing faculty to critique papers.<sup>32</sup> Three additional schools reported

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30 According to a recent survey of legal writing programs in American law schools, all law schools now have legal research and writing courses. J. Ramsfield, *Legal Writing in the 21st Century: A Sharper Image*, 2 LEGAL WRITING 3 (1996).

31 Two respondents from the thirty-five were from Boston College School of Law, so only thirty-four different law schools were represented.

32 While three respondents simply answered the question "no," four other respondents qualified their answer by saying "no formal method" or by describing methods used in the past, but no longer part of their program.

that although they have done training in the past, currently no method is used for training on critiquing. In each of these three schools, the respondents said that all of their legal writing professors were *experienced faculty now, so there was less of a need for training*. Two of the three expressed both a regret that they had not continued the training and a desire to reinstitute some form of training in critiquing.

In the "early years" we used to get together and grade/evaluate papers as a team in an effort to learn from one another and to "norm" the grading. It would probably be a good idea for us to do it again because I'm sure we've changed a lot and I'd be interested in how the others would view my evaluation of papers now.

The remaining twenty-four schools employed a variety of methods, including formal and informal discussions about critiquing, reviewing and, in some cases, distributing sample critiqued papers, readings about critiquing, and relying on English Advisors or Writing Specialists to train legal writing faculty to critique. Some had one-time training sessions; others had ongoing training programs. Some held formal sessions, and others relied on an informal sharing of techniques, philosophy, and expertise.

Three of the twenty-four schools described a "very informal" training process that consisted almost entirely of office, hallway, and telephone conversations among their legal writing professors. At least one of these three schools felt that using an informal approach had been very successful.

Many of us . . . have been teaching together . . . for long periods of time. . . . [T]hus, through the years, our "training" has been accomplished much more through the collaborative process of translating our experience into a collective culture of the program than through some kind of formal program or series of discussions. As we have developed our curriculum over the years, we have had to communicate both formally and informally on many issues, including giving feedback on memos. I believe that this collaborative process best teaches all faculty members, including new ones. New faculty members must internalize and believe in the goals of the program, before they will be able to "reflect back" those goals in their written (or oral) feedback on memo assignments. Thus, I have tended to trust in the individual development of each faculty member over time, since in this way that member will contribute his or her own unique ideas to the curriculum and the development of all members of the faculty. Of course, it is good to give a new faculty member a basic sense of what is expected so that they and the students don't suffer too much as the faculty member learns how to teach. . . .

Of the twenty-one schools who had “formal” training programs, ten offer one-time training at the beginning of the school year, during the summer, or only when new legal writing faculty are hired. In one case, the “one-time session” is an intensive three-day workshop for student critiquers, and in a second case the one-time session is conducted by the legal writing faculty for student TAs. A third school conducts a one-time training seminar for all adjunct writing instructors. A fourth school’s training consists of readings given to adjuncts and a one-time orientation meeting, and a fifth school trains its adjuncts by circulating the director’s three and one-half page memo on critiquing. Two other schools have one-time meetings between the director and the new person hired. The remaining three have a one-time meeting or workshop on critiquing for the legal writing faculty.

The eleven schools that offer ongoing training in critiquing do so in one or more of three different ways: they hold regular meetings at which commenting on and grading papers is a regular topic of discussion; the director collects and circulates samples of critiqued papers; and/or the director meets with individual faculty members and reviews a sampling of their critiqued papers.

The schools with the most extensive training programs tended to use a combination of methods, including an orientation at the time new instructors were hired, evaluation criteria for the program, a library of materials on critiquing, and meetings throughout the school year for discussing critiquing as it relates to each new assignment.

We have ongoing training throughout the year. We give instructor applicants a memo to critique—that memo is used as part of the training process. Before the semester starts, we have a general meeting which includes training in commenting and evaluating papers. If I have a substantial number of new instructors, we will have a separate training meeting for them. Instructors are given specific evaluation criteria. Training includes both written materials as well as opportunities for instructors to discuss and explain their evaluation process. We have meetings throughout the year to discuss critiquing student work.

First, we meet to evaluate the memo assignments before they’re given to the students—by evaluate, I mean criticize each assignment ruthlessly for what students will learn from it (not subject matter; research strategy; analysis strategy; organization). We discard assignments if they don’t meet the criteria we’ve established for the processes the students must use. Second, we make a detailed analysis outline for use in evaluating papers for each problem before the assignment is distributed. Third, we meet to evaluate student writing both before school starts and during the semester. We

discuss the kinds of comments we'd make on student papers. We discuss the types of follow-up revisions and editing students could profitably accomplish on the basis of written comments. These sessions are run as workshops for the teachers.

Whether done formally or informally, most respondents reported that discussions about critiquing are a regular part of their "training." The second most common method is reviewing, and in some cases sharing, critiqued writing samples. Although one respondent acknowledged that "it is quite a threatening experience to discuss each other's feedback," others emphasized its value. One expert explained, "The best training is probably where someone critiques your critique. 'Why did you say this?' 'Did you think about this?' 'Did you notice X?' 'Why didn't you comment on it?'"

Only three schools mentioned that they have tried norming sessions, or grading tables, to determine if the legal writing professors in their program are commenting and grading consistently among themselves. The expert at one school, which has used grading tables in the past, reported mixed, if not poor, results.

We have tried using a grading table format, which has not worked very well, perhaps for the following reasons: (1) at a time when everyone is pressed for time, the instructors resent having to grade a paper for a grading table; (2) "old hands" competing with each other to the detriment of the grading table; (3) instructors who are unprepared; (4) not good direction on my [the director's] part.

A few schools reported a recent change in the training they are offering their legal writing faculty. One is even planning a CLE for its adjuncts that will focus on techniques for correcting papers and commenting. Another noted,

We are all co-equals, and we have not done as much training as we should. Recently, we have started to change that. (1) From time to time, we give each other a copy of a paper we have marked. (2) We have started to hold meetings at which we go over something that we have all critiqued beforehand. . . . (3) We plan to hold a series of meetings at which one of us "lectures" the others on a subject. . . .

Experts from other schools indicated that their institutions were making plans to develop more of a training program. One expert who is a Director of Legal Writing said, "Next year I will ask each of the new instructors for a copy of a student paper with their comments (in October)." Another director added, "We have future plans . . . to have our writing specialist conduct workshops with us."

The honest answer, then, to the question about whether we have professionalized our training of new legal writing faculty now that legal writing is a more established feature in the curriculum is both yes and no. While it is disconcerting to learn that seven of the thirty-four schools do not specifically attempt to prepare their legal writing faculty to comment on and evaluate papers and three others have discontinued their training efforts, the other twenty-four that do some training on critiquing seem to be getting reasonably satisfactory results. Unfortunately, though, only a handful seem completely satisfied with the training they are offering on critiquing, and a significant number of schools seem to feel that their school needs to continue improving this aspect of their legal writing faculty's professional growth.

#### V. DIFFERENCES OF OPINION AMONG THE RESPONDENTS

Despite the strong consensus on many points from the experts who responded to the questionnaire, two issues drew markedly different opinions: (1) whether or not it was appropriate to comment on writing style; and (2) whether or not it was appropriate to revise or edit a student's writing as part of the critique.<sup>33</sup>

The two issues are related in that they both depend on the answers to some underlying questions: What is the legal writing professor's role when critiquing and commenting on student writing, and does that role include being a teacher of writing (as well as a teacher of legal research and legal analysis)? If so, should a teacher of writing address what are arguably some of the more subjective facets of writing, aspects of the student's writing style? Further, if legal writing professors are teachers of writing, is revising or editing a student's prose an effective or just a time-consuming and possibly even harmful teaching technique?

While the majority, but not all, of the experts seemed to consider themselves teachers of writing, they had differing views about what that meant. A few felt they should comment only on writing problems that were clear cut errors, such as punctuation and grammar errors (e.g., comma splices, subject-verb agreement, and parallelism). Others felt that they should also comment on writing problems that extended beyond grammar and into style (e.g., vagueness, verbosity, passive voice, sentence length) when there was a clear consensus in the

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33. As in the previous section, I have elected not to attribute the responses in this section. My belief is that legal writing professors, including those participating in this survey, are more likely to explore these questions constructively if they do not feel that they or others have already been identified with a certain position.

profession about what is and is not a more effective style. Still, others felt comfortable making recommendations about almost any stylistic issue that, in their opinion, affected overall readability (e.g., adding transitions, changing sentence structure, varying sentence openers), although it was less clear whether the comments were just that—recommendations—and nothing more, and whether the students felt that conforming to these style recommendations affected the paper's grade.

A fair number of the respondents expressed the concern that comments about a student's writing style were often inappropriate impositions of the critiquer's stylistic preferences. For example, when responding to the question about what type of comments to avoid writing on a student's paper, one expert said, "Anything specific to my style. [I] comment as much as possible on analysis, organization, research, etc. and less on style (otherwise my students come to believe that I am trying to 'impose my style' on them)." An equal number of respondents, on the other hand, said that they did comment on writing style and considered it within the legal writing professor's purview for critique. Indeed, numerous experts listed writing style as one of the categories they comment on in the end comment.

Who is right? Before we can address that question,<sup>34</sup> and certainly before we give advice to novice legal writing professors about whether or not to comment on a student's writing style, we need to begin with a definition of "writing style." Is style limited to the range of grammatically correct options a writer has at the sentence level for expressing his or her ideas? Does style extend beyond the sentence level to small scale organization, as some of the experts suggested? Does style include or exclude grammar and punctuation?

Assuming that we can agree on a common definition, perhaps drawing a line between grammar and punctuation errors on the one hand and stylistic options on the other, we then need to refine our thinking about which stylistic options are simply individual preferences and which represent the discourse community's consensus about readability and effectiveness. While there seems to be a consensus about a few stylistic issues, such as precision and conciseness, there is less agreement (or maybe just less reliable information) about a host of other stylistic choices, such as whether to open most sentences with the subject and verb or whether to vary sentence openers; whether

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34. This Article attempts to address that question only insofar as it reports what the respondents to the questionnaire said. The author hopes that further research will explore the question fully.

interrupting phrases create variety and emphasis or whether they break up the flow; and whether short sentences are crisp and reader-friendly or whether they create a choppy style, to name but a few. In short, if we see our teacher-of-writing role as being one who guides students toward stylistic choices that will be viewed by other members of the discourse community as effective writing, then we need to do two things: (1) distinguish between our own individual preferences and those of the discourse community; and (2) clarify, where we can, exactly what is the consensus within that discourse community.

Although the experts responding to the questionnaire were divided on this issue, and it is certainly one that we will need to explore further, one expert offered what seems to represent the compromise position that might serve us well in the meantime:

If your students use an ineffective, but grammatically correct, style, you may want to cite to [the pages in the textbook] and give your students advice on improving their style. (I don't think I'd do this for students who have significant substantive or mechanical problems.) Make sure, however, that you don't impose your personal style on the students. If you think you have an effective style and you want to share your ideas, that's fine; just make sure the students know that they can still be "correct" if they do things another way.

The second issue, whether revising and editing were effective commenting techniques, revealed even greater differences of opinion among the expert respondents to the questionnaire. Three "camps"<sup>35</sup> emerged—those who believed revising and editing were effective *teaching because the students learned by modeling the revised and edited writing*; those who believed revising and editing could be effective if used in a very limited way; and those who believed that revising and editing comments did the students' work for them and probably interfered with the students' learning and sense of ownership over their own writing.

#### A. *Camp One—Revise and Edit*

A significant number of the respondents strongly recommended writing comments that revised and edited the students' writing. Their

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35. I want to emphasize that the questionnaire never explicitly asked the expert respondents where they stood on the issue of revising and editing and certainly never asked individuals to declare themselves adherents to one of these three positions. The three "camps" are my summation of the responses the experts made to many questions that elicited comments about revising and editing.

answers to many questions indicated that revising and editing were commenting techniques that they used extensively.

"I line edit and reorganize their papers, particularly drafts," said one expert who was representative of this first group. "Show actual edits," recommended another. "I might offer an alternative sentence structure to help the student identify a grammatical or stylistic problem in the original," added a third. "[I do] line editing to show how syntax, word order, verbosity, etc. can be corrected, curbed, etc.," said a fourth.

Inherent in each of these separate comments is the belief that students learn revising and editing when they see their own ideas in a revised or edited form. Although none of the comments suggests that the legal writing professor add in a margin note that indicates how he or she went about revising or editing a given section or why the new version is better, the belief in this technique seems to include the notion that if students see the end result, they can guess the how and why.

Also inherent in these comments is the belief that just labeling a problem is not good teaching; one needs to demonstrate how the problem can be corrected. One respondent explained as follows: "I don't often write 'wordy.' I try to line something out or edit it down. If the writing is wordy, then you need to prove it through a few examples. Then you can note it in the end comments." This respondent gave the following as an example of an edit he would make: "Prior to commencement of the trial proceedings-> Before the trial began . . ." He added that "you can only do so much of this, [but you should do] enough to provide examples."

Another expert who uses rewriting and editing added the following comment about the most obvious danger in this teaching technique: "I have to be very careful with my commenting to be sure that students learn from the comments and do not just view them as an edit to be corrected without thought."

### B. *Camp Two—Limited Revising and Editing*

The most commonly held position among the respondents was that limited revising and editing was the best approach to take. This approach seemed to be driven by the belief that if a student sees something demonstrated once or twice, he or she should then be able to use that example as a model and apply it elsewhere. This approach also seemed to address the dual concern of keeping the critiquing task manageable and keeping the student responsible for his or her own writing. One expert who subscribed to the limited revising and editing

view said, "I let my students know that I stop marking spelling, cite form, punctuation and such after two pages. After that, they need to edit themselves."

Another said,

When I have a paper that contains consistently poorly written sentences or sentences that are much too long, I will sometimes pick out a few sentences as examples and rewrite them just so they get a concrete example or two of how to improve in areas where they are making the greatest number of errors. For the rest of the sentences that contain the same types of errors, I use a shorthand system of margin notes. I also try to avoid making "corrections" except as an example when the student has made a true error (*e.g.*, punctuation or grammar error). I want the student to think about what works and why rather than merely making changes I've suggested.

To ensure that students are able to learn from the limited revising and editing done on their papers, at least one of the experts requires that students do similar rewriting based on that model and either turn the rewriting in or bring it to a conference. "Sometimes I will do some rewriting to illustrate how a problem that recurs frequently in a paper can be corrected. I will then ask the student to rewrite other parts of the paper where the problem recurs. The student will generally be required to hand in those rewritten sections at a conference."

Even those who use limited rewriting and editing have some ambivalence about it as a teaching method, however, as the following comment demonstrates: "*I confess to sometimes engaging in editing and even rewriting where necessary to demonstrate how a specific problem can be remedied*" (emphasis added).

Ambivalence about this method was also revealed by the seemingly contradictory answers some experts gave to different questions on the questionnaire. For example, one expert said, "I rewrite portions to make the explanation clearer," in response to one question but later in response to a different question said, "Avoid editing the students' work; try instead to make comments that will lead the students to see why a change is helpful and how to make changes themselves." Yet another expert answered one question as follows: "With grammar/style notations I try to only give examples (*e.g.*, if wordy writing, I might edit one paragraph as an example)." The same expert wrote the following, seemingly contradictory, answer to another question: "Don't edit a student's paper. The student ultimately needs to be able to see the problems himself or herself, or the student won't be able to do the work well the next time around. Guidance is great; doing the

student's work is not." These apparent contradictions may indicate that even the experts are having difficulty resolving for themselves whether they would really recommend an absolute ban on revising and editing comments or whether they would recommend deliberate, strict limits on its use.

In a similar vein, a fair number of the experts said that they did far more editing of student papers in their early years and that they have had to learn how to comment in other ways. For example, when answering the question about how her commenting on student papers has changed over the years, one expert said that she now does "less editing. Less telling the student how the paper should have been written." Now she uses "sample passages to illustrate how a paper needs editing."

### C. *Camp Three—Don't Revise and Edit*

A rather vocal minority did appear to recommend an absolute ban on revising and editing, even parts of student papers, as a teaching or commenting technique. Some felt that this practice shifted too much of the responsibility onto the professor and had the critiquer doing the writer's work. As one expert said, "I try not to rewrite. Rather, I label the problem. They [the students] have a reference sheet to the Bluebook and [to the textbook]."

Two other experts felt that the technique should not be used because it was an obstacle to the students thinking through the problem on their own. One said, "I try to avoid rewriting because I don't think it teaches anything." The second one was even more direct: "Don't edit—It's extremely time consuming and not very helpful or effective."

Only a few of the experts who were opposed to revising and editing comments offered suggestions about what to do instead. One felt questions such as the following could lead students to make effective editing decisions: "Is a nominalized verb hiding in this sentence?" A very few felt identifying or labeling the problem was enough in itself, and that it was up to the student to figure out how to correct it.

We should not, in my opinion, be editing our students' work, but rather identifying the flaws, so the student learns what (s)he did wrong, leaving it to the student to do the rewriting. In the law firm setting one edits what an associate has written. There, the principal goal is a usable document, and the education of the associate is incidental and secondary. Also, a law-firm associate's work is more likely to be capable of being made usable by mere editing than is the work of a first-year law student. Very often with student work, one

can identify flaws, but what is needed is not merely editing, but rewriting, and perhaps rethinking.

The consensus among this group of experts was that rewriting and editing were time consuming but otherwise easy to do. Indeed, they seemed to suggest that because revising and editing are easy to do, they are traps that legal writing professors fall into. They felt that expecting students to find their own solutions and not just imitate the teacher's rewrites was the best solution. As one respondent put it, "Teach them to become editors of their own work, not your puppets."<sup>36</sup>

#### VI. NEEDED RESEARCH ON CRITIQUING LAW STUDENTS' WRITING

Based on the information gleaned from these thirty-five experts, we need additional research on at least four issues related to critiquing law students' writing: (1) What is an appropriate number of comments for a legal writing professor to make on a law student's paper? Does that number vary from student to student? Is there a range for the number of comments that we can recommend to novice legal writing professors? When do students reach the saturation point?; (2) Given the resounding endorsement by the experts for writing end comments, are there more effective and less effective approaches to writing end comments?; (3) Should we comment on writing style? As a group, how do we define writing style? Within the discourse community, is there a consensus about what is an effective writing style?; and (4) Is it effective commenting and critiquing when the legal writing professor actually revises or edits parts of the student's paper? If so, how much revising and editing is effective teaching? If not, how else can we teach students to revise and edit?

#### VII. CONCLUSION

The collected wisdom of these thirty-five experts gives new legal writing faculty a chance to begin the important task of commenting on and critiquing law students' writing with a reliable compass. They should feel confident that they can rely on these suggestions as not just one person's idiosyncratic approach, but rather as the emerging

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36. Interestingly, the four students in my earlier study on critiquing gave relatively positive ratings (3s and occasionally 2s on a scale of 1-5 with 1 being the highest) to comments that showed how to revise or edit their writing. Enquist, *supra* note 2, at 178.

consensus of some of the more experienced and respected legal writing professors in the country. Their advice, in a nutshell, is as follows:

1. Commenting on and grading law students' writing is one of, if not the, most important task of a legal writing professor. As such, it deserves time and attention.
2. Consider using these effective teaching strategies:
  - a. limit the number of comments;
  - b. give students positive feedback;
  - c. develop teaching and critiquing priorities;
  - d. write end comments;
  - e. write margin and interlinear comments;
  - f. tie the comments to the text, class, and writing conferences; and
  - g. think through how to survive the critiquing/grading process.
3. Beware these potential pitfalls:
  - a. marking everything;
  - b. not considering the tone of comments; and
  - c. using problematic assignments.
4. Avoid the following types of comments on students' papers:
  - a. sarcastic, angry, and overly negative comments;
  - b. ambiguous comments or marks; and
  - c. assumptions about the student's effort.

In addition to providing a compass for new legal writing professors, the thirty-five experts have also provided all legal writing professionals with an opportunity to consider how far we have come in developing our collective ability to comment on and critique student writing. The next question is, of course, how much further should we try to go. Do we want to continue refining our collective knowledge about critiquing and commenting on law students' writing, or do we consider critiquing "style" in somewhat the same way some talk about writing style, as a matter of personal preference? This question, like so many others in academia, sits between the rock of individual academic freedom and the hard place of working together as a group of professionals. It will be interesting as legal writing becomes more and more established as a reputable part of the law school curriculum to see which way the experts in our field lead us.