

“What Were You Thinking?”: Using Annotated Portfolios to Improve Student Assessment

*Steven J. Johansen**

I. INTRODUCTION

For many years, I have been interested in how to make assessment of student work most effective. As a writing teacher, I have spent hundreds (thousands?) of hours assessing student work. Most of the time, I felt those hours were well spent. After all, my students' writing did get better, eventually. And, over the years, I became more adept at making meaningful comments that my students could understand. Still, I felt that I was not getting the most of the assessment process—that much time should produce more measurable results. This led me to explore alternative assessment techniques, including annotated portfolios.

This paper illustrates how portfolios can improve student assessment in law school writing courses. In Section II, I examine some general ideas about the purpose of assessment. At the outset we must distinguish assessment from ranking. That is, evaluating student work is different from applying a grade to that work. This paper, and portfolios generally, have little to do with ranking students. Section II also asserts that assessment is primarily a tool for learning. This assertion carries with it a number of implications. First, students will learn most from assessment that involves them. When students have greater participation in the assessment, they will learn more from it. Second, reflection itself is a powerful tool. These fundamental notions about assessment provide the pedagogical foundation for using annotated portfolios.

In Section III, I explore the use of portfolios for assessing student writing. This involves two key steps, one before the stu-

* Assistant Professor, Director of Legal Writing; Northwestern School of Law, Lewis & Clark College. This article was made possible through a summer research grant from Northwestern School of Law, Lewis & Clark College. Special thanks to Amy Delaney for her extraordinary research efforts, and to Daryl Wilson for her insights, patience, and tact.

dent writes and one after. First, the teacher must define concrete objectives for each writing assignment. If students are to gain control of, and accept responsibility for, their own writing, they must have a clear picture of what their writing should accomplish. By identifying specific writing objectives, and supplying ample models to follow, the teacher gives the students the power to assess their success at achieving those objectives.

After students have written, they are ready for the second step—explaining their work through annotations. Annotations are student comments about their writing—explaining the choices they have made in reaching their final product. These can include reaction to reader comments, explanations of how they have incorporated writing techniques discussed in class, and points of concern that they still have about their work.

While portfolios are commonly used in elementary, secondary, and even undergraduate education,¹ they are relatively rare in graduate and professional schools.² We who teach at the most advanced level of education could learn a lot from those who have taught our students before us. By incorporating anno-

¹ For a general discussion of portfolio use in elementary education, see Joseph Abruscato, *Early Results and Tentative Implications from the Vermont Portfolio Project*, PHI DELTA KAPPAN, Feb. 1993, 474, 475; Beverly Bimes-Michalak, *The "Portfolio Zone,"* EDUC. DIGEST, May 1995, 53, 55; Robert C. Calfee and Pam Perfumo, *Student Portfolios: Opportunities for a Revolution in Assessment*, 36 J. OF READING 532, 533 (1993); Elizabeth Hebert, *Portfolios Invite Reflection—From Students and Staff*, EDUC. LEADERSHIP, May 1992, 58, 60; Dennie Palmer Wolf, *Portfolio Assessment: Sampling Student Work*, EDUC. LEADERSHIP, Apr. 1989, 35, 37; Dennie Palmer-Wolf, Paul G. LeMahieu, and Joanne Ersh, *Good Measure: Assessment as a Tool for Educational Reform*, EDUC. LEADERSHIP, May 1992, 8, 9. For a look at portfolio use in secondary education, see Giselle O. Martin-Kniep, *Alternative Assessment: Is Such a Reform Possible?* Presentation at the Annual Meeting of the Social Science Education Consortium (June 1995). For portfolio use in undergraduate education refer to Bruce C. Barnett, *Portfolio Use in Educational Leadership Preparation Programs: From Theory to Practice*, 19 INNOVATIVE HIGHER EDUC. 197, 198 (1995); Ann Bradley, *Teacher Board Providing Valuable Lessons in Using Portfolios*, EDUC. WK., May 31, 1995, 12; Michele L. Simpson and Sherrie L. Nist, *Toward Defining a Comprehensive Assessment Model for College Reading*, 35 J. OF READING, 452, 456 (1992).

² Medical schools have used performance-based assessment methods since the 1960s. These assessment methods, which closely resemble the types of work that may be included in a portfolio, include: written clinical simulations, computer-based clinical simulations, oral examinations, and standardized patients. David B. Swanson, Geoffrey R. Norman, Robert L. Linn, *Performance-Based Assessment: Lessons From the Health Professions*, EDUC. RESEARCHER, June/July 1995, 5; "Portfolios have been used by . . . graduate students wanting to document their formal classroom and field-based learning experiences." Bruce C. Barnett, *Portfolio Use in Educational Leadership Preparation Programs: From Theory to Practice*, 19 INNOVATIVE HIGHER EDUC. 197, 198 (1995).

tated portfolios into our writing courses, we too can draw on the powerful tools of self assessment and reflection.

II. WHY DO WE ASSESS STUDENTS?

A. *How Assessment Differs from Grading*

This is not a paper about grading. Letter grading is an exercise in ranking—deciding how well students appear to have mastered a subject compared to other students.³ Assessment, on the other hand, is the process of determining what a student understands, how that student can improve that understanding, and how she can apply that understanding to future experiences. When we read and comment on student drafts, we are assessing. Our purpose is not to rank, but to help the student learn. Our goal is not to decide who goes to the head of the class, but to have all our students achieve mastery, that is, to be competent beginning lawyers.⁴

While our assessments are often the basis for letter grades, the two need not be inextricably intertwined. Indeed, some would suggest that the two serve contradictory goals.⁵ This paper will not examine the implications of improved assessments on grades for this simple reason: while improved assessment can lead to more meaningful grades, grades themselves do not improve assessment. While grades may tell us how one student compares to another student, they do not tell us what that student has learned, what that student has not yet mastered, or how well that student knows her own strengths and weaknesses. However, whether one values ranking or not, improving assessment is a good idea. The better we can determine students' progress and understanding, the more accurately we can help them learn, and if necessary, rank them.

Assessing writing is a difficult, imprecise task. No assessment method will eliminate all the vagaries of the process. However, by involving students in the process through guided, thoughtful reflection, annotated portfolios can make assessment easier for teachers and more useful to students.

³ Some experts recognize three stages of grading: criticism, evaluation, and ranking. Criticism is the method by which a teacher analyzes student work. Evaluation is the process of measuring a student's work against a standard. Letter grades serve only to rank students. Jay Feinman & Marc Feldman, *Pedagogy and Politics*, 73 GEO. L.J. 875, 919 (1985). Under this approach, assessment would include criticism and evaluation.

⁴ *Id.* at 895.

⁵ *Id.* at 920-21.

B. *Designing Assessment to Improve Learning*

If our goal is to prepare our students to be competent lawyers,⁶ then we should use assessment strategies that further that goal. In other words, we should design assessment strategies that will help students learn to be competent lawyers. Assessment then becomes merely another teaching tool to help our students learn. It stands with modeling, lecturing, collaboration, and all the other tools we have for improving our students' ability to think and write. Effective assessment will allow the student to see how he succeeded and where he still needs to improve. Through assessment, the teacher can help the student to better understand the thinking and writing concepts inherent in good lawyering. When we use assessment as a teaching tool, we provide greater opportunity for student learning. By placing greater emphasis on assessment, we may also reduce the anxiety inherent in rank-based grading.⁷

If we start from the premise that our goal is to produce competent legal writers, we must then determine how assessment can further that goal. That is, we should design our assessment for the benefit of our students.⁸ In this light, the long term interest of the student—a solid preparation for the practice of law—becomes paramount. Consequently, those assessment strategies that are counter-productive to that goal (e.g., those that discourage independence, accountability, and reflection) are replaced with processes that will better serve the long-term interest of the student.

We must also remember that assessment, no matter how it is done, carries with it many unspoken messages. For example, students learn whether their teacher respects their ideas. Students learn whether they should have confidence in their own writing and reasoning skills. Students learn whether form is more important than content. Because these lessons are often not part of the teacher's intended range of assessment, there is greater likelihood that the students' perceptions in these areas

⁶ Feinman and Feldman, *supra* note 3 at 876.

⁷ For information on the impact of rank-based grading, see Douglas A. Henderson, *Uncivil Procedure: Ranking Law Students Among Their Peers*, 27 U. MICH. J. L. REF. 399, 407 (1994); D.W. Johnson, L.Skon, and R.T. Johnson, *Effects of Cooperative, Competitive, and Individualistic Conditions on Children's Problem-Solving Performance*, 17 AM. EDUC. RES. J. 83, 93 (1980); Thomas R. Guskey, *Making the Grade: What Benefits Students?*, EDUC. LEADERSHIP, Oct. 1994, at 14-16.

⁸ See INTERNATIONAL READING ASSN. AND NATIONAL COUNCIL OF TEACHERS OF ENGLISH, STANDARD FOR THE ASSESSMENT OF READING AND WRITING 13 (1994).

will be misguided.⁹ For example, a teacher who criticizes a student's work as sloppy or unprofessional may be trying to encourage the student to take more time with the details of editing and proofreading. The student, on the other hand, may interpret the comments as an irrelevant personal attack, or accept responsibility for the poor work, but feel unable to correct the problem.¹⁰ A greater awareness of these and other impacts of assessment should also help us improve the accuracy of these perceptions.

Once we accept that assessment should be designed to benefit the student, i.e. to help prepare her to be a competent legal writer, we must next determine how to achieve that goal. In other words, what can a student learn from assessment that will make her a better lawyer? Of course, the answer to this question will vary greatly from one project to another. However, assessment of writing can improve a student's learning by exploring four general factors:

How well she understands the substantive issues of a particular project. How well she has communicated that understanding. How well she can apply her knowledge to future work. How she can continue to improve her understanding of the material and her ability to apply it. Any assessment can provide the student with some semblance of this information. Even a letter grade will tell a student whether the teacher believes she understood the material. It may provide a hint of what she can expect in future situations. Certainly, a teacher's written comments can provide even greater insight for the student. But these forms of assessment have limitations. Foremost among these is that they place the responsibility for assessment, and consequently for learning, in the hands of the teacher. When assessment is done solely by the teacher, it undermines many of the goals identified above.¹¹ It does not encourage students to apply their knowledge to future situations. It does not require students to identify weaknesses in their understanding of the law or its application. It does not encourage independence. Rather, it encourages stu-

⁹ Guskey, *supra* note 7, at 16.

¹⁰ *Id.*

¹¹ Margo Gottlieb, *Nurturing Student Learning Through Portfolios*, TESOL J., Autumn 1995, 12; Therese M. Kuhs, *Portfolio Assessment: Making it Work for the First Time*, 87 THE MATHEMATICS TCHR. 332, 333 (1994); Darlene M. Frazier & F. Leon Paulson, *How Portfolios Motivate Reluctant Writers*, EDUC. LEADERSHIP, May 1992, 62, 64; Joseph Prus & Reid Johnson, *A Critical Review of Student Assessment Options*, 88 NEW DIRECTIONS FOR COMMUNITY C. 69, 81 (1994).

dents to accept their lot—as determined by those wiser than themselves—as either brilliant rising stars, hopeless losers who never should have gone to law school, or faceless additions to the mass of mediocrity called the middle of the class. To give students more control over their learning, we can shift of some the responsibility for assessment into their hands. This, in turn, allows students to focus their efforts toward improving their work, rather than toward defending against perceived external (and unfair) attacks upon their efforts.

When a student performs below her expectations (and this would be most law students), the “blame” often falls on the teacher, the “system,” or some other external cause. Students rarely accept that they have control over their performance. By shifting responsibility for some of the assessment to students, they necessarily must accept greater responsibility for their performance.¹² This added responsibility will, in turn, give the students greater understanding of their own learning and how to apply that learning to future tasks.¹³ By giving students some control over assessment, we also give them a greater stake in the learning process, and hence more motivation to succeed.¹⁴ Once assessment becomes meaningful to students—that is, once they value it—they learn even more from the process.¹⁵ Assessment, then, becomes an integral part of how students learn.

What does this mean for writing teachers? It means we should reconsider some fundamental assumptions about how we assess students. For example, should our assessment focus most heavily on the finished product or are there effective ways also to assess how our students reached that product? Consider the primary vehicle we use for assessing student learning: the final version of a student’s writing. Why do we have students write memos, briefs, or client letters? Is it to produce a usable document? Not likely—few of us will ever send a student memo to a partner, a judge, or a client. Rather, it is for the student to display her understanding of synthesis, legal reasoning, fundamental writing skills, and attention to the necessary details of the legal writing genre. Certainly, a well-written appellate brief

¹² Barnett, *supra* note 1, at 202; Kuhs, *supra* note 11, at 335.

¹³ For a more detailed discussion of learner-centered learning theories, see Cathleen A. Roach, *A River Runs Through It: Tapping Into the Informational Stream to Move Students From Isolation to Autonomy*, 36 ARIZ. L. REV. 667, 682 (1994).

¹⁴ Feinman & Feldman, *supra* note 3 at 897.

¹⁵ Frasier & Paulson, *supra* note 11, at 62.

says something about a student's understanding of reasoning, synthesis, and fundamental writing skills. However, exploring how the student produced that well-written brief may do even more toward preparing her for the next time she must use her skills.¹⁶ Thus, we should look for ways to assess the choices the student made creating the brief. Why did she chose to synthesize the cases she did? How did she decide when her research was finished? What editing steps did she go through?

Looking beyond the final product is even more important for students who are struggling. A poorly written paper can be the result of many things: poor fundamental writing skills; misunderstanding the assignment; poor analytical skills, procrastination, disinterest, and so on. Of course, telling a student his paper is poor—or even what's wrong with it—won't make for a better paper unless he also knows how to fix it. And fixing the problem is impossible, unless we know what the root of the problem is.

It is easy, of course, to point out the shortcomings of traditional methods for assessing students. It is harder to offer effective, manageable solutions. However, the road to improvement begins with two simple steps: identify our objective, and then ask how our actions can attain that objective. Our objective for improving assessment is to have our assessment be a positive learning tool that better prepares our students for the demands of law practice. Portfolios are one way to better meet this objective. There are three critical steps to using portfolios successfully: identify the learning objectives; invite students' assessment of their own progress; and demand students' reflection on their progress toward the learning objectives.

III. USING PORTFOLIOS TO IMPROVE ASSESSMENT

A. *Defining Objectives*

Perhaps the most difficult aspect of improving assessment comes before the assessment process even begins—when you explain the assignment's objectives to your students. Before a student can begin to assess her work, she must know, in concrete terms, what the objectives of that work are. Unless your objective is to have the student produce obscene writing, it is not enough to tell them, "I know it when I see it."¹⁷ It is perhaps too

¹⁶ Lauren B. Resnick, *Performance Puzzles*, 102 AM. J. OF EDUC. 511, 523 (1994).

¹⁷ *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stevens, J., concurring).

obvious to mention that a student will learn a task better when she knows what that task is—in specific terms.¹⁸ Yet, too often, we don't provide students with specific, concrete objectives until after they have attempted to meet those objectives. This "guess what I'm thinking" approach is both frustrating and counter-productive. Thus, the first step toward improving performance is to identify the specific objectives of the assignment, and, ideally, to identify the varying levels of success a student is likely to experience. One way to do this is to create a detailed objectives "rubric" that reflects the assignment's goals and various levels of success.

Writing detailed objectives for an assignment is a difficult and time-consuming process. It requires carefully thinking through the objectives of your assignment and explicitly identifying the indicators of success.¹⁹ These objectives should be broken down into individual teachable units.²⁰ Of course, many writing teachers already do this, in some form. If you have used checklists to guide students through their drafts, you are well on the way to developing a detailed scoring system. To create a fully developed system, however, one must identify not only the ideal model, but also identify intermediate levels of success.²¹

An effective scoring system must convert abstract goals into concrete performance. Thus, the first steps in creating a scoring system are to identify a goal, and then ask: how do you know when someone has achieved the goal? What action demonstrates the goal?²² Make a list of as many concrete measures of the goal as possible.

For example, assume one goal for an intra-office memo is for the student to use case law effectively. We first need to identify concrete measures of effective use of case law, such as:

States general principles of law from case.

Explains factual context of general principle.

¹⁸ Feinman & Feldman, *supra* note 3, at 898; Robert Campbell, David Monson, *Building a Goal-Based Scenario Learning Environment*, *Educ. Tech.*, Nov.-Dec. 1994, at 9.

¹⁹ Rebecca Simmons, *The Horse Before the Cart: Assessing for Understanding*, *EDUC. LEADERSHIP*, Feb. 1994, at 22-23.

²⁰ J. Block, *Operating Procedures for Mastery Learning*, in *Mastery Learning: Theory and Practice* (J. Block, ed. 1971).

²¹ Dennis Hold, *Holistic Scoring in Many Disciplines*, 41 *C. TEACHING* 71, 71 (1992).

²² For a general discussion of designing and measuring goals, see ROBERT F. MAGUR, *GOAL ANALYSIS* (2d ed., 1984).

Explains how facts of authorities compare to facts of problem.

Pinpoints the legal significance of those comparisons.

Considers policy behind express principles.

Anticipates and refutes counter-arguments.

Reaches conclusion that is consistent with legal and ethical principles.

Reaches conclusion that is consistent with application of law to facts.

Once the teacher has defined these specific objectives, the next step is to convert this list of concrete objectives into a form that is useful to students. Of course, each student will achieve the objectives with varying levels of success. The rubric will provide the students with the guidance necessary to assess their progress fairly. It also reinforces the concepts they have heard in class and read about in their texts. Thus, when it is time for the students to assess their work, they will have yet another opportunity to internalize the intended lessons of the assignment.

One approach of identifying differing levels of success is to create a checklist that measures the frequency of success in meeting each objective:

Objective	Seldom	Frequently	Always
States general principles of law from case.			
Explains factual context of general principle.			
Explains how facts of authorities compare to facts of problem.			
Pinpoints the legal significance of those comparisons.			
Considers policy behind express principles.			
Anticipates and refutes counter argument.			
Makes sure conclusion is consistent with those policies.			
Reaches conclusions that are consistent with legal and ethical principles.			
Reaches conclusion that is consistent with application of law to facts.			

An alternative approach is to identify the characteristics of papers that reach varying degrees of competence for each aspect of an assignment. For example, effective legal reasoning relies on some form of authority. To be effective, the student must explain that authority. If dealing with a case law problem, the student needs to explain the facts of the authority. Perhaps synthesis is required—combining principles from several cases to develop a general rule. Of course, all of these things would be covered in class, in the assigned text, and possibly in a hand-out. What then, would the scoring system add? Consider the following approach for a “rule” paragraph:

- **Marginal:** Asserts a general principle of law. Does not properly identify the source of that authority. Assertion is conclusory, ambiguous, or unsupported by evidence.
- **Basic:** Correctly identifies general principle of law and its source. Explains the factual context of that principle, but doesn't explain significance of that context. Principle is generally sound, yet use of rule to resolve future problem may lead to ambiguous results.

- **Proficient:** Correctly identifies general principle of law and its source. Explains factual context of that principle and why that context is significant. Anticipates potential ambiguities and alternative interpretations and reconciles with general principle and factual context.

The student now has a target to shoot for, with concrete objectives. While this won't guarantee that all students will produce a "Proficient" rule paragraph on their first draft, it will allow the students greater control over (and hence responsibility for) their work. If a student misses the target, the scoring system will help both the teacher and the student assess where the student went awry. Thus, by starting with concrete, defined objectives, we improve learning as students are planning their writing, and again when they assess their writing as part of the portfolio project.

Of course, even our most concerted efforts at creating concrete criteria cannot anticipate every aspect of a concept as varied and sophisticated as "effective reasoning." But the better we are able to reduce abstract ideas to concrete objectives before our students write, the more quickly the students will be able to internalize these objectives and move on the continuum toward expertise.

Identifying the objectives ahead of time—telling the students what to aim for—is hard to argue with. Few teachers admit to consciously playing the "guess what I'm thinking" game. Nonetheless, some may have concern about spoon feeding the answers to students. After all, law students need to learn to think for themselves. The challenge of law school is to be able to reason effectively. The study of law cannot be reduced to objective bits and bites that can be spewed back in accordance with a formula. So, do we demean the study of law by giving our students concrete targets? Absolutely not.

Recent studies about expert/novice learning theory help explain the importance of identifying concrete objectives for novice legal thinkers. Novices need concrete examples to understand new ideas.²³ While an expert has internalized many of the subtleties that go into legal reasoning, a novice has not.²⁴ A novice

²³ William D. Rohwer, Jr. & John W. Thomas, *Domain Specific Knowledge, Metacognition, and the Promise of Educational Reform*, in *COGNITIVE STRATEGY RESEARCH: BASIC RESEARCH OF EDUCATIONAL APPLICATIONS* (Christine B. McCormick et al. eds., 1989), 107.

²⁴ Mitchell, *supra* note 16, at 292.

still has to expressly think about each step of her analysis—and is never sure whether she has remembered everything, or whether she is taking each step correctly. Providing specific guidance gives the novice information in a form she can grasp: concrete goals that fit with her prior experience.²⁵ If you want students to be able to synthesize cases, of course, you will work on that skill in class. You should also reinforce that learning by providing concrete objectives regarding synthesis—before the students attempt to incorporate synthesis into their work. Until the students have internalized the concept of synthesis, they will have to think through every step of the process.

To illustrate this idea, think back to when you first started learning to drive: everything about a car seemed new. You had to think about how to put the key into the ignition, how hard to push the gas pedal to start the car, how soon to brake before making a turn—is that car far enough away to turn safely in front of it? On top of all that, you suddenly forgot how to get home!

Compare this with how you now drive your car—you do it without thinking. You know how much space you need to pass, you know when it's time to flip the turn signal, you even know where to punch the radio to change the station. Does this mean you have forgotten all those concrete steps you struggled with as a novice driver? No. It means you have internalized the skills, including sound judgment, that go into driving a car. However, if given a new challenge, say driving a school bus, you could once again draw on those concrete skills, and learn perhaps a few new skills as well, to adapt to the new experience.

Novice legal writers face a similar challenge. There is so much to learn, to internalize, that it cannot happen at once. The students have to think about each step. By providing that explicit guidance before they write, you give them the opportunity to learn the dashboard; to test the power steering; to remember to put in the clutch before shifting. Later, when they have practiced legal reasoning, when they have written many legal memos, when they have developed expertise as legal thinkers, they won't need to consciously run through the concrete checklist for every writing assignment. Rather, like the experienced driver who "just knows" when to slow down for a tricky curve, they will have internalized what makes for sound legal reason-

²⁵ *Id.* at 283.

ing. Eventually, they too, will “just know” when their writing is right. However, when faced with new writing challenges, they will be able to draw on those concrete foundations, just as experienced drivers would adapt their car driving expertise when learning how to drive a school bus.

Before moving to portfolios, it is useful to reflect on how well this first step of identifying concrete objectives meets our defined objectives of assessment. First, by sharing specific objectives, before the students write, we recognize their need, as novices, for concrete guidance. We ease the transition toward expertise by giving them a manageable, defined target. More importantly, we recognize that the primary purpose of assessment is to improve learning. We give the students greater ability to assess their own work—properly placing responsibility for learning on the student. The concrete objectives better allow them to see their progress by identifying a continuum of improving skills. Finally, we make it easier for students to make future improvements by providing concrete measures of excellence. Of course, identifying objectives before students write will not, by itself, guarantee success. The most important assessment occurs after the students have put pen to paper.

B. *The Annotated Portfolio*

1. *What Is a Portfolio?*

In its most basic form, a portfolio is simply a collection of self-selected student work. Its primary purpose is to provide a vehicle for students to reflect upon their writing as the writing class draws to a close. At the end of the course, a student chooses samples of his writing that he thinks best reflect his progress during the course. There are different kinds of portfolios.²⁶ Perhaps most common is the “best work” portfolio. For this, the student selects pieces he thinks represent his finest hour. Another approach is the “work in progress” portfolio, which may chronicle a single piece from first draft to final copy.

I prefer a combination of the two. In my Advanced Legal Writing class, students complete five projects. I have them select at least two projects to include in their portfolios. I ask them to pick projects that best reflect how well they achieved the goals they set for themselves at the beginning of the course. They

²⁶ For an interesting survey of different portfolio experiences see PORTFOLIO PORTRAITS (Donald H. Graves & Bonnie S. Sunstein, eds.) (1992).

need not select their best work, but rather those pieces that best reflect their learning. However, the portfolio is more than just a collection of the student's work. Its most essential function is to encourage self-reflection. Consequently, I encourage students to comment on their work in a number of different ways. I request that the students include the following information:

1. A general letter of introduction. This letter explains what the student's goals were for the course, what he worked on in the class, a brief description of the projects he selected for the portfolio, and why he selected those projects.

2. The drafts and final versions of selected projects. This section includes three parts. First, for each project, the student includes a summary of his goals for the assignment and how he achieved or struggled with those goals. Second, the student includes an early draft of the assignment that has received reader comments. This draft is included primarily as a reference point for the third part, the student's final version of the project. The student must annotate the final project, including reflection on a number of potential areas. These annotations are the most important aspect of the portfolios and are discussed in greater detail below. The annotations include responses to reader comments on drafts, examples of ideas taken from the course texts, organizational strategies, substantive choices, and other comments the student finds enlightening.

3. An overall assessment of the student's performance in the class, including his final grade. Remarkably, many students are reluctant to assign a letter grade to their work, although they can provide very thorough assessment of their work product. I suspect this reluctance may have several causes, including an expected internal conflict between modesty and self-interest. However, I also believe that students who have spent a full semester carefully assessing and reflecting upon their writing come to view letter grades as generally superfluous to their learning. Because they can recognize the growth they have made in their writing and thinking, they do not measure their success by the letter grade they receive. Simply put, learning surpasses grading as a motivator for most students.

2. *Using Annotations Effectively*

The process of writing is about choices. Writers must choose an organizational structure, a voice, a style of writing. All of this, of course, is in addition to substantive choices. Indeed, in a simple five page intra-office memo, we will make hundreds of

conscious choices, and untold subconscious choices. How we make those choices—the knowledge we draw on, the objectives we set, the alternatives we consider—determines what kind of writer we are. The more aware we are of what our choices are, the better we can choose wisely.²⁷

When students annotate their work, they begin to recognize, and gain control over, the choices they make. Thus, the most important step in creating the portfolio is the annotations the students add to their work. I encourage students to annotate every draft they turn in to me. Throughout the semester, students become more adept at talking about their writing—at reflecting upon it while they are in the drafting stage. Annotations in the portfolio, however, are written weeks after an assignment has been initially completed, assessed, and returned to the students. This leads to a different level of reflection for two reasons. First, the student has distance between writing and reflecting that allows greater objectivity. Second, the student has the added perspective of the entire semester of thinking, writing, peer review, and reflection. Consequently, the portfolio annotations tend to show greater student awareness of their own writing processes.

Involving students in the assessment is a critical step toward achieving our assessment goals.²⁸ Most importantly, it encourages students to reflect on their writing and thinking. This, in turn, allows students to expand their understanding of new concepts, recognize familiar ideas, and identify areas of weakness.²⁹ In addition, it reveals to the teacher what the student was thinking about when putting the work together. This improves the teacher's ability to make meaningful comments about what the student was trying to achieve and whether the student was successful. Of course, if the student was not successful, the annotations will often reflect where the student went amiss. This, in turn, makes it easier to direct teacher comments to the areas of greatest need. Finally, involving students in assessment makes it virtually impossible for students to put together a careless, or sloppy product.³⁰ When students annotate their

²⁷ Grant Wiggins, *The Constant Danger of Sacrificing Validity to Reliability: Making Writing Assessment Serve Writers*, 1 *ASSESSING WRITING* 129, 130 (1994).

²⁸ Gottlieb, *supra*, note 11; Kuhs, *supra*, note 11; Frazier and Paulson, *supra*, note 11.

²⁹ Kuhs *supra*, note 11, at 333; Wolf, *supra*, note 1, at 38.

³⁰ Bimes-Michalak, *supra* note 1, at 54.

work, they are, in effect, defending their choices. It is much more difficult for a student to defend sloppy work than it is to just hand it in. Because the student must defend her work, annotating places the responsibility for the quality of the work on the student. Finally, when students must explain the choices they made in arriving at a finished product, we expand assessment to include the process of writing as well as the finished product.³¹ In doing so, we reinforce the importance of the writing process to our students.

3. *Suggestions for Guiding Students in Annotating Their Work*

Annotating work will be a new experience for most of your students. They may have done some self-reflection, but not to the degree that annotation requires. Consequently, it is useful to offer specific instructions as to what is expected.³² Encourage them to begin by identifying the objectives they had in writing the paper, and then explaining how the finished product reflects those objectives. For example, for an intra-office memo, you might suggest the students address the following in their annotations:

1. Identify each step of your organization. (E.g., in the margin of your paper, label the Issues, Rules, Applications, and Conclusions.)
2. Identify and discuss your two best examples of case synthesis.
3. Explain three examples where you effectively compare the facts of your authority to the facts of your problem and explain the significance of that comparison.
4. Identify the most effective counter-argument that you raise and rebut.
5. Identify one case that you considered using, but rejected. Explain why you chose not to use it.
6. Identify three examples of editing that led to more concise writing.
7. Explain the best paragraph of your memo. Why is it effective?

³¹ Wolf, *supra* note 1, at 37; Wiggins, *supra* note 27, at 138.

³² Just as with other assignments, it is important to give students concrete objectives before they begin annotating their work.

8. Explain the paragraph of your paper that gave you the most difficulty. Why was this so difficult to write?

One danger of such specific instruction is that it can easily overwhelm the student. Too many instructions can lead students to see the annotations as too much work. If students perceive the annotations as merely a task to be completed, that is what they will do—complete the task as quickly as possible. Therefore, it is wise to keep the instructions somewhat flexible. For example, from the eight suggestions listed above, I might require students to address a minimum of four. This flexibility allows students to focus on those aspects of their paper that are most important to them. Remember, no one becomes a great legal writer in one paper. The goal is to improve, not to attain an unrealistic goal of perfection. Thus, the student, and the teacher, should select a limited number of goals for each assignment.

This is not to say that the annotations should be taken lightly. Students should expect to spend a considerable amount of time on this reflection process. Thus, it is a good idea to encourage comments on a variety of aspects of a particular assignment: organization, reasoning, style—as well as those things that were edited out of the final paper. Often, that which is deleted will reveal as much about a student's thinking as that which is left in. The goal then, should be to encourage extensive and thoughtful reflection on those aspects of the project that are of most interest to the student.

IV. WHY USE PORTFOLIOS?

Portfolios are not new to education. However, portfolios appear to be used rarely in law schools.³³ It is time for this to change. Portfolios can be a valuable tool for law school teachers, especially those who teach Legal Writing.³⁴ Portfolios provide an essential step in the assessment process by sparking student reflection. This, in turn, promotes self-regulated learning.³⁵ By en-

³³ However, portfolios are not unheard of at the law school level. See Terri LeClercq, *I Use Them! Law School Portfolios*, AALS LEGAL RESEARCH AND WRITING SECTION NEWSLETTER (AALS Washington, D.C.), Apr., 1993 at 3-4.

³⁴ Although portfolios could play a significant part in seminars and doctrinal courses as well, that is a reform that is beyond the scope of this article.

³⁵ SCOTT G. PARIS & LINDA AYRES, BECOMING REFLECTIVE STUDENTS AND TEACHERS WITH PORTFOLIOS AND AUTHENTIC ASSESSMENT 53 (1994). For a different strategy to encourage self-reflection, see Mary Beth Beazley, *The Self Graded Draft: Teaching Stu-*

couraging student involvement in the assessment process, we are able to better meet our objectives of using assessment to improve learning and our ultimate goal of preparing our students to be competent lawyers. More specifically, portfolios are useful for three audiences interested in assessing student growth: the students themselves, their teachers, and potential employers.

A. *Benefits to Students*

Self-reflection is, of course, a tool found in every writing teacher's tool kit. Others have offered numerous ways to get students to think about their writing after they have written. These many techniques may be designed to cover anything from effective reasoning to the final steps of editing. For example, outlining a paper after completing the draft rather than before is a useful exercise for students having trouble with organization. As an editing exercise, I often have students underline every example of passive voice in their drafts and decide if each use is appropriate. Annotated portfolios, however, go beyond these exercises. Annotations require students to reflect on how they moved from initial drafts to finished products.³⁶ Those reflections allow students to explore the choices they made in reasoning, style, voice, organization—all the pieces that go into the writing puzzle. This, in turn, assists both successful and struggling writers to improve their writing.

When struggling students annotate their work, they begin to see the holes in their writing and reasoning. For example, all students know that organization is important. After all, they have compulsive legal writing teachers pounding this concept into them since the first day of class. Nonetheless, many students write papers that seem to string together independent thoughts in a virtually random order. Such organizational chaos becomes readily apparent when the student is forced to explain his organizational choices.

By demanding that these students annotate their organizational choices, it forces them to make conscious choices. This leads to one of two results: either the student recognizes organizational flaws and is able to correct them, or the student reveals

dents to Revise Using Guided Self-Critique, 3 LEGAL WRITING, J. OF THE LEGAL WRITING INST. 175 (1997).

³⁶ For a more detailed discussion of metacognition, i.e. students learning about their own learning processes, see Paul T. Wangerin, *Learning Strategies for Law Students*, 52 ALB. L. REV. 471 (1988).

that he does not understand what effective organization is. In the first instance, the struggling student achieves success in two ways. First, by having to explain his organizational choices, he has begun to internalize organizational concepts and should be better able to use those concepts on future projects. Second, and equally important, he has taken control of his writing—he may begin to realize that he is not dependent upon the teacher for his success.³⁷

Even where the student fails to recognize his organizational problems, or is unable to fix them, the annotation process is still valuable. The teacher can now identify where and why the student is misunderstanding and offer suggestions aimed at the specific problem the student has. In this regard, the teacher may be able to best help the student by noting what a student does not address in his annotations. For example, the student whose paper rambles aimlessly may have no annotations about organization. This would then alert his teacher that the student may not even be considering this important aspect of writing. The teacher can then direct her comments appropriately, and the student will get the direction that will be most valuable to him.

Annotations can also be valuable to our best writers. We all have some student writers who seem to be “naturals.” Early in their law school career, they have adopted the “voice” of a good legal writer. Their work is well-organized and easily read—and they appear to write with ease. These “natural” writers face different challenges than their struggling classmates. While they may not struggle at the same level as their classmates, they too should be able to improve their work—and yet many cannot even explain how they do what they do—it just “sounds right.” Reflection allows these students to understand what they already intuitively know, while at the same time adding greater sophistication to their reasoning and writing. For these students, their annotations may not focus on basic organization schemes or reasoning strategies. Rather, they may explore choices that add polish to their writing or creative arguments that reflect more subtle understanding of legal principles. Most importantly, student annotations allow for more individualized assessment directed toward the particular needs of each student.

³⁷ Simmons, *supra* note 20, at 33.

Finally, all students benefit from slowing down the writing process and taking time to reflect on what they have written. Thinking and writing about writing forces students to recognize the choices they make in writing, both good and bad. These perceptions are often keener after time has created some distance between the author and the writing project. Thus, by putting together a portfolio at the end of the semester, most students are able to learn much from a writing project weeks or even months after they have finished it.

B. Improving Teacher Assessment

The first time I required my students to provide detailed annotations of their work I was shocked. The students knew more than I did—at least about their own choices. They were able to identify subtle rhetorical devices that we had discussed in class. They were able to identify where they edited to create a parallel structure. They were able to identify arguments that they tried, but didn't like. All of these points, and many more, had escaped the watchful eye of their professor.

I don't think this is a reflection on my inadequacy as reader. After fifteen years of assessing papers, I can bleed ink with the best of them. But I am only a reader. At best, I can only see the ideas as they are expressed on the page—after the revision, after the countless choices that go into a piece have been made. The author, on the other hand, has experienced the entire process of writing.

Put another way, the author knows what she is trying to accomplish. For example, consider the following introduction to a paper on adoption:

In recent years, there have been a steadily increasing number of cases involving the rights of parents and children. Many of these cases involve adoptions. Often, the adoptive parents take custody of the child and bond with him while adoption proceedings are proceeding. The adoptive parents then discover that the biological parents have changed their minds and are seeking to regain custody of their child. A complex battle for custody ensues. The courts are then faced with the difficult decision of whether to uproot the child from the adoptive parents, or to deny the biological parents custody of their child.

This opening sets the stage effectively—it catches the reader's attention, and identifies the issue the paper will address. How-

ever, the student's annotations reveal writing choices that are not readily apparent to a reader:

I decided to organize the work product by starting out broadly and then narrowing it down. I used *Brody's*³⁸ drafting process for this step. I found creating an outline to be especially helpful.

In the next to last sentence, I realized that "for custody of the child" was repetitive and could be discarded.

The decision to create an introduction that moved from the general to the specific was a good one. It was an effective beginning that drew the reader into the issue and created interest in what the student had to say. However, as I was interested in other writing issues, I did not recognize this carefully planned organizational scheme until the writer herself noted it in her final paper. This was a beautiful example of writing that is good because it doesn't draw attention to itself. It set an appropriate tone while at the same time getting the reader off to a good start. It worked, and I had missed it. The author, on the other hand, was able to explain her method—and show me that she really had learned an important concept.

Perhaps even more likely to be missed are wise choices in editing. Here, the student cut out needless words, creating a much more effective sentence. The revised sentence was short and stated the problem dramatically. Without the annotations, however, her skillful editing job may have gone uncredited.

Portfolios not only illuminate skilled writers' work, but can also assist the teacher in helping struggling students. A paper may be so difficult to follow that a teacher doesn't know where to start. We have all had the experience of looking at a paper and wondering how a student could corrupt an entire semester of fine teaching into a garbled mess of poorly written, poorly organized, and poorly reasoned legal analysis. We may be even more amazed and frustrated after we have spent hours commenting on this work and the next draft is only slightly better. When students don't respond to our comments, we are tempted to ask "What were you thinking? Are you stupid, or just obstinate and lazy?" Well, annotations can quickly show that often students are none of these things. Instead, they may have tried to respond to our comments, but simply misunderstood what we were asking. Or perhaps we misdiagnosed the student's prob-

³⁸ SUSAN L. BRODY, ET AL., *LEGAL DRAFTING* (1994).

lem. Of course, it may also be that they remained confused about a particular legal or writing principle. Without knowing why the student made a poor writing choice, it is very difficult to fix the problem.

One reason that student responses to our comments are often unsuccessful is that we are focusing on the symptom of a disease, and not the disease itself. That is, we look at the end product rather than the process that led to it. On the other hand, when we have student annotations, we can better see the disease itself: where the student is making poor choices. We can get the answer to the question: "What were you *thinking*?" And once we diagnose the correct disease, we can fashion a cure: our comments will be directed toward the flaws in the student's thinking and writing processes, rather than only at the result of those processes.

To illustrate this idea, imagine a student who failed to mention a leading case in a research memo. Does this mean her research was incomplete? She thought the case was not important? She couldn't figure out how to distinguish the case, so she just ignored it? It is hard to tell, without knowing the choices the student made. But when the student explains, "I considered using *Smith v. Jones*, but it didn't fit my theory of the law," we know what kind of direction the student needs.

Too often, the final product tells only where the student has ended up, and nothing of the journey that led her there. The annotated portfolio tells the reader, "This is why I made these choices. I understood your comment to mean this—and I disagree." For example, I assigned students to write a plagiarism statute for the law school. After spelling out a range of penalties, one student wrote, "The honor panel will regard each case on its specific facts." I wasn't sure why the student had included this, or even what it meant. In the margin, I wrote, "Is this necessary? Does it imply the honor panel cannot impose a harsher penalty for repeat offenders?" What I meant to ask was whether the honor panel would consider prior offenses in meting out its sanctions. The student's annotation revealed that she understood this comment differently, believing I was suggesting a harsher penalty than her recommendation of expulsion: "Being permanently expelled is really harsh enough . . . The panel could just put out a contract on a repeat plagiarizer, but that might lead to some Constitutional problems." Well, this view, which, I suppose is a reasonable reading of my comment, explains why the student left the language as originally written. It's not that

the student didn't pay attention to my comment, but that she misinterpreted my meaning. Had I communicated better, she might have edited differently. Her annotation allowed me to communicate more accurately. Even though she had completed this assignment, the comment could direct her to more precise writing on future assignments.

Perhaps, in an ideal world, individual student conferences would accomplish much of what is gained through portfolios. We would be able to sit down with all our students and go over their work, line by line. We could have them explain their choices about organization, style, reasoning, and the rest of what went into their work and provide them with instantaneous feedback. However, we live in a different reality and there simply isn't time to do this with every student, on every draft. Annotated portfolios, however, allow us to achieve many of the same benefits of extensive conferencing—we learn what the students are thinking. We see what choices they consciously made, and what ideas they failed even to consider. We can know where they think they are struggling, as well as where they think they are succeeding. Annotations expand the dialogue between student and teacher. Without annotations, the teacher "hears" only the final product. With annotations, the teacher hears about the process that went into the product—talking about writing, rather than at writing, enables us to better assess the progress of our students.

C. *Benefits to Potential Employers*

If portfolios are a rarity in law schools, they are virtually unheard of by prospective employers. However, every employer requires a writing sample from its applicants. The reason is obvious: employers demand law clerks and associates who know how to write. Often, the traditional writing sample is a poor predictor of actual writing ability. Employers are skeptical of student work that may have been heavily edited by professors. On the other hand, an annotated portfolio can portray a student's writing ability at a level of sophistication most hiring partners have rarely seen.

A portfolio aimed at potential employers may differ slightly from one developed solely for a legal writing class. But the concept remains the same. The student should select writing that is illustrative of his entire law school writing experience. This may include such things as his first year moot court brief, a contract from a drafting class, and a scholarly paper written for a semi-

nar. Again, he should include a letter of introduction explaining why he chose the projects he included in the portfolio, and most importantly, detailed annotations for each project. For example, in explaining an opinion letter, one student wrote:

In answering my client's query, I made it a point to be specific. I explained the legal options in a manner that a lay person could understand. After reviewing the facts, I stated my conclusion and then explained how I arrived at it. I made suggestions, but left the decision up to the client.

I thought the outline given to us in class was very helpful. It provided a good template for corresponding with clients. I keep a copy in my desk for reference

The student then included specific annotations throughout the letter, noting such things as his effort to explain legal jargon in a way his client would understand, his disclaimer that his opinion was based on the facts as the client explained them, and his attempt to soften the blow of bad news through effective rhetorical devices.

Imagine the signal such a portfolio would send to an employer: This is a student who is serious about his writing, has had a variety of writing experiences, and is able to recognize his writing strengths. Not only has this student demonstrably strong writing, he is able to talk about writing at a sophisticated level. I submit that a student who demonstrates this level of understanding about the writing process provides a potential employer with the information that employer most needs in making a hiring decision.

V. CONCLUSION

Portfolios will not guarantee complete success for every student. The greatest tools for success remain hard work and dedication to the process by both the student and teacher. However, annotated portfolios can play an important role in improving student writing. When students are able to recognize and defend their writing choices, they are more likely to be able to transfer those choices to future projects. They will also have a better understanding of their strengths and weaknesses. That understanding will, in turn, prepare them to deal with new writing challenges as they continue their legal career. Not only will they have learned much about writing, they will have learned how to continue that learning on their own, after their formal training has ended. When students recognize the power of self-reflection,

they come to appreciate how much they can learn from what they already know.

