E-Commenting: Pros and Cons

Leslie Rose, Golden Gate University School of Law

In the beginning, there was the red pen. The pen became green, then a blue erasable. After dabbling in pencil, and typing a separate sheet of comments attached to student papers, I am now firmly on the electric commenting bandwagon. Despite a few downsides, I now wonder how I survived without comment balloons, in the same way I marvel at how I wrote my first appellate brief on a typewriter.

The Method

For the uninitiated, electronic commenting, or e-commenting, is a method by which you can embed your comments directly into a document. The most direct way to start, using Word, is to select the "Reviewing" toolbar from the "View" menu. From this toolbar, you will be able to (1) correct errors or insert text in another color by using the "track changes" function ("track changes" can also be found

in the "Tools" menu), (2) insert comment balloons in the margin (the "insert comment" function can also be found in the "Insert" menu), and (3) highlight selected material.[1]

Students submit their papers to me as e-mail attachments; I return the papers in the same way. The students will see colored boxes enclosing typed, numbered comments linked to specific text in their papers, along with end comments written in another color. I highlight repeated technical errors in yellow.

The Pros

The paper has a visually "cleaner" look—one that is easier to process than the handwritten comments that often weave around a page. I find I can communicate more information, with less clutter. Students appreciate having typed comments, which are, of course, easier to read than the handwritten comments they are used to. They also like that the comments are right next to the relevant part of the paper.[2]

The students and I both have ready access to the paper and the critique. Students have a copy of the paper, with my comments, on their laptops—they don't have to worry about locating the hard copy, carrying it around, or losing it. I have a copy of the paper, with my comments, easily accessible on my computer when a student comes to a conference, or e-mails me with a quick question. While papers with written comments can be copied

prior to returning them to the students, eliminating this step saves staff time and paper.

I use the "track changes" function when I want to demonstrate a clearer or more concise way of expressing a particular point. This is much easier to write and to read than the interlineated scribbles I've made in the past.

The students can "see" the work I've put into giving them feedback. While the amount of work is not necessarily more than when I would handwrite, the visual, especially the numbers on the comments, gives students a more palpable sense of the time it takes to provide a meaningful critique.[3] The student who can quickly see that I've made forty-two numbered comments on a twelve-page draft argument is often inspired to work harder on the final brief.

The Cons

Although the pros outweigh the cons, two downsides are worth noting.

First, because the track changes function makes it so easy to correct errors, I have to work harder to stop myself from becoming an editor, rather than a coach, especially when I'm short on time. Second, I'm tied to my computer more than I'd like to be. In the days of handwriting, I could sit anywhere with pen in hand, and could carry some papers with me when I went to a dental

Letter from the Editors

Whether you call it critiquing, commenting, constructive criticism or prefer not to call it anything at all, giving students feedback on their writing is an indispensable part of our job as writing professors. From hand-written comments in the margins to voice-recordings or electronic endnotes, our feedback on student writing, more than any other part of our teaching, is likely what causes the most emotional reaction in our students. We have found that while it can be what students appreciate the most about the work we do, it can also be what causes the most negative reaction from some students. In this volume of *The Second Draft*, we give you suggestions from your colleagues which we hope will make what is undoubtedly one of the most time-consuming parts of our job a little easier. From suggestions on avoiding over-critiquing to using podcasts, from peer editing to student mentoring, the topics of the articles below are varied, helpful and interesting.

In the next volume, we hope that you will help us tackle teaching to different learning styles. More information about that topic and the deadlines for submissions will be available at www.lwionline.org later in the fall.

This volume of *The Second Draft* brings in a new editor, and we welcome Julie Baker to *The Second Draft* team here at Suffolk University Law School.

Kathy Vinson
Stephanie Hartung
Samantha Moppett
Julie Baker

SUFFOLK
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The President's Column

*Susan Hanley Kosse,
Louis D. Brandeis School
of Law at the University
of Louisville*

Dear Fellow LWI Members:

What a busy year it has been for the Institute. Our twenty-seven committees have been working very hard and continue to spearhead exciting initiatives. Just some of the highlights for this year include:

The LWI **Professional Development Committee** collected the standards that various law schools use when determining whether to retain, promote and/or grant tenure to legal writing faculty. The results of their efforts have been posted at:
www.lwionline.org/resources/facultystandards.asp

The **Plagiarism Committee** revamped the materials on the LWIONLINE website.

Brooke Bowman is continuing work on the Archives Project. She has catalogued all of the material and will be devising a method to make the information available to you.

The **Scholarship Development Committee** worked closely with ALWD to form a joint process for awarding summer scholarship grants. They also drafted guidelines for *LWI Awards for Excellence in Legal Writing*. You will be hearing more about these awards soon. This committee also plans to build scholarship resources on the LWI website.

The **Upper-Level Writing Committee** has assembled for the website 1) a list of links to conference materials relevant to upper-level writing that currently appear on the LWI website at various places and 2) a chart providing contact persons, upper-level curriculum offerings, texts used, students enrolled, and other valuable information regarding current upper-level offerings. This committee was also instrumental in designing questions included on this year's survey regarding the handling of the upper division writing requirement. Next year the committee plans to compile "hot topic" survey data from this year's survey and include analysis as website content. They also will update the upper-level syllabus bank on the LWI website.

The **Committee on Monitoring Programs** also added a "hot topics" question on the survey to determine which programs have made or are

contemplating making changes in their programs. They will report their findings after they receive the data from the survey.

The **Idea Bank Committee** reports that all of the 2006 submissions are available on-line and have been indexed. Also, a procedure is in place for rolling admissions.

Members of the **LWI Committee on Cooperation Among Clinical, Pro Bono, and Legal Writing Faculty** drafted several questions focusing on clinician's experiences with student writing. Subcommittee members informally surveyed fourteen clinicians from six different law schools. The subcommittee is considering how to address the concerns and possible solutions identified in the informal survey of clinical faculty. In addition, this subcommittee is compiling a list of upcoming national or regional conferences for legal writing or clinical faculty.

Because clinics tend to "follow on the heels" of LRW courses and work with many of the same concepts, a separate subcommittee is developing suggestions and materials to help LRW programs and clinics find common language to talk about legal writing and other skills.

Finally, last year the full **Committee on Cooperation** undertook a national e-survey of legal writing faculty to identify examples of cooperation among clinical, pro bono and legal writing faculty. The subcommittee sought a vehicle for eliciting additional examples of cooperation that was more efficient than the method used last year (posting questions on the ListServ). A new interactive survey tool was developed and is now before the membership. The committee plans to post a pdf report of the updated survey findings on the LWI website.

The **Global Legal Writing Programs Committee** is collecting and developing resource materials on the teaching of U.S. legal writing skills to non-U.S. lawyers for posting on the LWI webpage later this summer. The committee also plans to educate members on teaching opportunities outside the U.S., encourage members to submit presentations for the 2008 LWI Conference on matters related to global legal writing programs, and promote participation in conferences on global legal writing skills. Please contact Cynthia Adams, cmadams@iupui.edu, if you are interested in advancing legal writing skills globally and would like to join the Global Legal Writing Skills listserv.

The **Visitor-Exchange Committee** plans to develop a place on the LWI website for listing possible visiting jobs and also hosting a listserv for those interested in exchanges and visitorships. In addition, the committee is exploring keeping a confidential list each year of

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A = Analysis: Labeling Written Comments to Correspond with Grade Evaluation Sheets

Jan M. Baker, University of South Carolina School of Law

In our Legal Writing program, we use standardized evaluation sheets for grading student writing assignments. We provide the evaluation sheets to students in advance of the paper deadline and review it with them so that they will know *exactly* what we'll be looking for in the final product.

When I first started teaching, I would pour over student papers and bleed comments on page after page, only to have a student arrive at a conference, evaluation sheet in hand, completely bewildered as to how to match my comments on the paper with the different sections of the evaluation sheet.

Over the years, I have developed a routine of labeling my comments to match the evaluation sheet. For example, one section of the evaluation sheet addresses analysis and organization. In my written comments, I circle a capital letter (A for analysis or O for organization), then write my comment. To address a problem with analysis, I might write something like this: "(A) - Good information, but reader needs factual context to evaluate this rule. Explain how the court applied the rule in this case." These labels focus the student on the portion of the evaluation sheet that explains what the paper needed to do in that section.

For students who struggle with basic organization and simple analysis, the graded paper will be littered with circled As and Os. When a student sees those letters repeated throughout the graded paper, she can start to identify problems on her own and focus on the major issues that plague her writing.

For students who have a good grasp of the analysis and organization needed in the problem, I tend to add more comments that address citation (C),

grammar (G), and style (S). Providing pointed comments on those errors helps these students learn the difference between proofreading and editing and helps them produce a polished document.

The labels also help in conferences because students arrive at the conferences aware of the problem areas in their papers. In conferences, I sit with each student and match the labeled comments to the evaluation sheet. With this approach, even the few students who come to the conference with a defensive tone will concede that the comments directly address problems in their papers and that my evaluation was fair. For law students, who perceive any difference as a disadvantage, using labeled comments has enabled me to give consistent feedback and has boosted my credibility with the students concerning their grades. It takes a little more time, but the payoff is worth the effort.

Since I began using the labeling system in my comments, I have noticed a sharp decline in the number of uncomfortable conferences I've had to conduct. Rather than coming to the conferences angry and bewildered by the amount of ink in the margins, students come to the conferences with an understanding of and an appreciation for the comments directed at different requirements for the assignment. It is music to my ears to hear a student say, "I understand your comments, and I appreciate the feedback." With the labels in place, I've heard more of those in the last couple of years!

One last comment – "GJ" = good job!

The President's Column

schools looking for visitors and of individuals interested in making a visit.

To assist members with identifying opportunities for scholarly presentations, the **Scholarship Outreach Committee** has posted calls for proposals and information about upcoming conferences under the link "Other Conferences" on www.lwionline.org. The committee has also received Board approval to (1) establish a formal list of LRW Scholarship Mentors and Resources, (2) assemble a list of critiquing guidelines for scholarship exchanges, (3) set up a Works-in-Progress Reading/Discussion Group via a specialized listerv or blog, (4) compile a list of available grants and stipends, (5) gather a list of useful written and electronic resources on scholarship for beginning writers, and (6) put together a Speakers' Bank for conference planners.

The **New Member Committee** has created an abbreviated bibliography of works the committee believes would be useful to new members and included it with all New Member packets. New members were contacted by a committee member welcoming them to the Institute and also are welcomed at all regional conferences. A list of pictures and biographies of committee members is posted on the website as a resource for new members.

All of these projects would not be possible without the hard work of the Board and the many, many committee chairs and members. Thanks to all of you for everything you do to keep the Institute moving forward. Please remember to read all of the committee reports and our board meeting minutes posted on the web.

Providing Effective Feedback to Legal Writing Students: Practicing What We Preach

Frank Gulino, Hofstra University School of Law

I have lasting (albeit distant) memories of the frustration I felt as a first-year Legal Writing student, when I received such vague criticisms as "this could be stronger" or "not persuasive enough" without elaboration or advice for improvement. Those memories inspired me to want to teach Legal Writing, and to teach it in a different way.

One of my goals was to provide students, both in writing and in one-on-one conferences, with feedback that would let them know not only *what* in their writing needed improvement but *why* it needed improvement and *how* it could be improved. And from the reactions I have received from students over the years, it is that sort of detailed feedback on their writing that makes the longest-lasting impression on them as they move on in their careers.

Nor should it come as a surprise that students learn the most from feedback that is clear and detailed. For do we not preach clarity and completeness as among the most important traits of effective Legal Writing?[1] Why, then, should we not practice what we preach when we critique our students' work?

When we do otherwise–that is, when we ignore the precepts of clarity and completeness in our critiques of student writing–we not only abrogate our responsibility to be *instructive* but fail to be *constructive*. For what can a student learn from criticism–no matter how well intentioned–that fails to convey why a specific piece of writing is ineffective or how it could have been done better? And what can be more *destructive* than criticism that denigrates a student's writing but fails to demonstrate how the writing might have been done better?

Also not constructive is feedback that gives undue praise or avoids appropriate negative criticism. We learn from our mistakes, and to avoid negative criticism for whatever reason–whether out of a sense of not wanting to hurt the feelings of the student author or otherwise–is to deprive the student of our expertise and his or her chance to fix mistakes and avoid repeating them.[2]

As important as the words we use to convey our criticism of a student's work is the manner in which we convey that criticism. The temptation is great to limit written critique to a few comments scribbled on the last page of a brief or memo. But that kind of feedback would be as unhelpful to a student as an unclear, poorly cited brief would be to a court.

> *One of my goals was to provide students… with feedback that would let them know not only what in their writing needed improvement but why it needed improvement and how it could be improved.*

The most effective written critiques consist of copious marginal notes and interlineations, annotating the precise places within a student's work where specific, constructive criticism is warranted. Such feedback is obviously essential whenever a student has an opportunity to redraft a piece of work. But such feedback is no less essential in a "final" draft, because it allows the student author not only to avoid repeating mistakes but also to improve the work further for use as a writing sample.

Nor does effective feedback end with the return of a critiqued paper to a student. For what we may deem clear, specific written feedback may not be so clear or specific enough for some students. For all students, but particularly for those who have questions about our feedback, the one-on-one conference is a perfect forum for elaborating upon our written commentary and suggesting improvements.

The best and most constructive conferences are those in which the student is encouraged to ask questions about the written critique and to take an active part in coming up with ways to improve the writing. In the end, however, it is the Legal Writing professor who must impart, clearly and completely, the ways in which a student can improve his or her work.

To be sure, imparting effective, constructive feedback requires much more work on the part of the Legal Writing professor than providing limited, generic feedback. But the rewards for the extra work–for professor and student–are great.

1 Indeed, in the Teacher's Manual to the current edition of his iconic work, *Plain English for Lawyers*, Richard C. Wydick notes that "producers and consumers of legal prose want the same things. . . . Whatever they write must be Clear, Correct (in law, fact, and language), Concise, and Complete. Those are the characteristics of good legal writing style." R.C. Wydick, *Teacher's Manual to Accompany Plain English for Lawyers*, 2-3 (5th ed. 2005).

2 This is not to say that we should not point out where a student has successfully incorporated the principles of good Legal Writing in his or her work: Positive reinforcement, when appropriate and deserved, is every bit as instructive as pointing out an author's mistakes. But like negative criticism, positive reinforcement should be specific and detailed if it is to be effective as a learning tool.

Sending the Message to Students That Revising Means Seeing Their Work Through New Eyes

Patricia Grande Montana, St. John's University School of Law

In my experience, students have a narrow view of what revision entails. They typically equate it with polishing–changing words, editing grammar, and fixing citation. In their minds, it is the final clean-up stage in the process before the assignment is due. If we want to encourage our students to treat it differently–that is, to treat it as an opportunity to discover new legal arguments, resolve dissonance in their analyses, and question their original decisions–then our comments on their drafts need to show that revision entails seeing their work through new eyes.

Because the ability to effectively revise one's own work turns, in part, on the law student's ability to set aside her perspective as a writer and review her work from the reader's standpoint, our comments need to reflect comments that the legal reader, and not a professor intimately familiar with the subject, would have. To that end, when I comment on student papers I take the role of the legal reader and frame my questions and comments accordingly. This means that I act as the supervising attorney when I review their memoranda, and as the judge and opposing counsel when I review their briefs.

For example, if the writer failed to include a fact from one of the cases that would be beneficial to the analysis, I will not simply point out that a fact is missing or ask why the writer did not include it. Rather, I will write a comment that forces the student to "see" how what they put in words does not adequately communicate to the legal reader how the cases are analogous because an essential element of the case is lacking. So, I might write: "It doesn't seem like this case is analogous enough to support your point? Is there a better case?" Now, as the professor, I know that there is no better case and that all that the writer needs to

do is complete the analogy; yet, as a supervisor or a judge, I would likely not have this knowledge. My comment pushes the student to answer that there is no better case and explain why. The "why" is what the writer will need to revise, making explicit the factual similarities between the authority and our case.

I also try to encourage students to think about revision in a more meaningful way by limiting the number and type of comments I make relating to surface issues such as spelling, grammar, punctuation and even bluebook. I do not want

> *My comment pushes the student to answer that there is no better case and explain why.*

to reinforce their misconception that revising is a tidying-up activity. So, I will try to avoid making those comments in the margins and instead write a global comment at the end asking the student to address those issues on the rewrite. If the issue is pervasive, I will refer the student to an example in the draft and illustrate how the student can correct it. If there are other end comments, I will put this type of comment last. My intent is to emphasize that sound analysis and coherent organization take priority over microchanges.

The goal of our conferences together is also to ensure that the writer's legal analysis and presentation is accurate and clear to the reader. Thus, I avoid beginning a conference with a discussion of

surface issues, such as the difference between "its" and "it's." And, more importantly, I instruct the students to prepare for the conference like it is a meeting with their supervisor. This means that they must come prepared with answers to any questions posed in their drafts and a detailed plan on how they will approach the rewrite. All together, these conference requirements and the reader-based comments reinforce the idea that revising is an important operation that requires a lot more time and attention than simply cleaning up errors on a first draft.

E-Commenting: Pros and Cons

appointment, or while commuting. My solution has been to continue to require students to hand in a hard copy. I can still carry it with me and make notes, which I can later turn into more thoughtful comments on the computer.

If you have questions or want to see what a marked-up paper looks like, e-mail me at lrose@ggu.edu.

1 For tips on using both Word and WordPerfect, along with sample macros, see Ken Chestek & Mimi Samuel, *E-Commenting Made Easy*, 2004 LWI Conference <www.lwionline.org>.

2 I use Microsoft Office Word 2003. In older versions of Word, the comments may appear at the bottom of the page, or may pop up when the cursor is moved over the highlighted material. I've had no experience with the new Word 2007.

3 See Tracy L. McGaugh, *Generation X in Law School: The Dying of the Light or the Dawn of a New Day?* 9 Leg. Writing 119, 139 (2003)

Feed Forward: Prior Students Serve as Ghost Mentors to Current Students

Julie A. Oseid, University of St. Thomas School of Law

Students are in the best position to articulate what feedback is most effective. My students would say the most helpful advice I give to them is the "feed forward" information from prior students. Two aspects of feed forward information make it particularly useful: the information is given at the beginning of the assignment, and the information comes from my prior students. I serve as a conduit between the past and the present as my prior students serve as ghost mentors to my current students. Two specific feed forward practices have been especially successful: time estimates and reassurances that the students' struggles are normal.

Feed Forward Tip No. 1: Time estimates.

In my first year of teaching, I handed out the first writing assignment which included five cases from the controlling jurisdiction, a fact situation, and an assigning memo requesting a five-page office memo. One student asked, "How much time will it take to complete this assignment?" I thought to myself, "I have no idea. It would take me about two hours, but I am used to writing these memos. Maybe I should double the two hours and say it will take four hours. Wait a minute. These are first-year law students. When I was in their shoes, it would have taken me at least an hour just to read each case. I guess I'll tell them it will take about ten hours." I
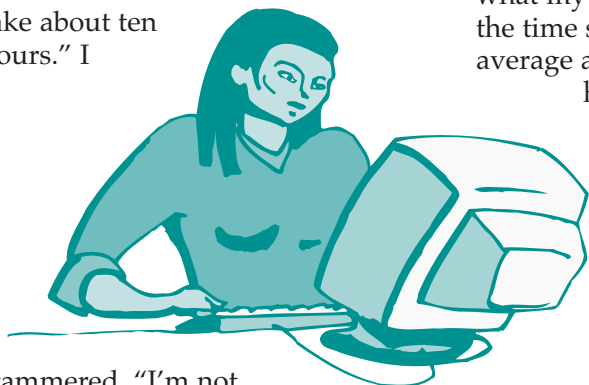
stammered, "I'm not

sure, but I think it will take about ten hours."

For the first time ever, I saw every single student write down something I said. It must have been critical information because everyone wrote "ten hours." Unfortunately, it took most of my students twenty hours to complete the assignment. Needless to say, no one was happy with me.

From this experience, I learned Feed Forward Tip No. 1: give a fair estimate of the amount of time required to complete the assignment. I now use actual student time records from the prior year to give my time estimates. On the day each assignment is due, I ask my students to fill out a time report for the assignment. Here is an example of a time report:

Approximate time spent on the Ungraded Legal Memo:

1. Time spent reviewing the assigning memo and the facts:
2. Time spent reading the case law and briefing the cases:
3. Time spent prewriting (thinking of arguments, organizing, outlining):
4. Time spent writing:
5. Time spent revising:

I thought the most difficult part of this assignment was:

_____.

When handing out each assignment I now tell the students what my prior students reported on the time sheets. I include the average amount of time and a high/low time range. Providing the range is always good for a laugh because typical results are a low of five hours and a high of "forever."

Feed Forward Tip No. 2: You are normal.

I live with teenagers, and current psychology advises that teenagers need reassurance that they are normal. First-year law students need the same reassurance. Using Feed Forward Tip No. 2, I am able to reassure my current students that their struggles are normal because I report where prior students have struggled. I do this by creating a question and answer memo and a final comments memo.

> *For the first time ever, I saw every single student write down something I said.*

In Year One, I keep a list of the most commonly asked questions and answers from each assignment. After I grade all the memos or briefs, I evaluate the students' work and write a memo outlining my final suggestions about the assignment. In Year Two, I post both Year One's common questions and answers and Year One's final assignment comments.

Experienced teachers know that student questions do not change dramatically from year to year. By anticipating questions and common problem areas before the assignment is due, I can help students work through some of the problems early in the assignment and reassure my students that they are struggling in the right places.

My prior students serve as ghost mentors to my current students. I am simply the conduit for their pearls of wisdom. If teaching does not work out for me, perhaps I have a future as a medium!

The Sound and Flurry of Words

Kimberly Hausbeck, Nova Southeastern University Law Center

One way of giving students oral feedback on their writing is to encourage students to read their work out loud. This method of "self-critiquing" is often an eye-opener, or rather, an ear-opener for many students. Students can sometimes become lost in their heads while preparing legal memos and briefs. If a student fails to focus on the words and sentences that they are committing to the computer screen because they are thinking too hard about what they plan to write next instead, they may produce a paper that generates comments from the professor such as "need to proofread and edit before turning in paper."

When students are encouraged to read their work aloud, their focus shifts away from what they plan to do to what they have actually done, and they then have the opportunity to really see what they have written. They also get to hear out loud how their work sounds, which can make a difference. What seems appropriate in the silence of the mind can be revealed as awkward or misleading when the voice sounds out the words, giving students a clear signal to alter their text. Reading out loud then becomes a form of proofreading and editing that creates better papers.

Some students will initially be reluctant to read their papers out loud, either because they are too self-conscious or because they believe that reading out loud is a remedial technique that is below them. To these students, I suggest using the ReadPlease program located at www.readplease.com. The program is effective at convincing students that reading a document out loud is easy and can produce significant results with little effort. The ReadPlease program attracts students because not only does the use of technology to read a paper out loud give a sophisticated air to the entire process, but students can choose among several different voices to have the computer read their paper out loud to them, and they can even control the speed of the voice.

> *When students are encouraged to read their work aloud, their focus shifts away from what they plan to do to what they have actually done, and they then have the opportunity to really see what they have written.*

Additionally, the program is easy to use. Just download the ReadPlease program to your computer, then cut and paste the document that you want your computer to read to you into the ReadPlease window. Like on a CD player or an iPod, a listener can then change the volume of the speaker's voice and rewind or fast forward through the document. Best of all, it's free!

I generally introduce the concept of reading documents out loud during the first week of class. While I do take several minutes to demonstrate the ReadPlease program in class, it initially makes just a temporary impression because students then quickly become overwhelmed with mastering the intricacies of CRuPAC, CREAC, or the like. However, during a conference, if I discover that a student has poor editing or proofreading skills, I will ask if they read their paper out loud. Their answer is usually "no" during the first round of conferences and critiquing, followed by the declaration, "I forgot to do that." By the second round of conferences, however, I can usually count on fewer negative answers to my question and more memos with better editing. And by the end of the semester, I always know that I will have some "read out loud converts" in class who will go out and spread the technique to others.
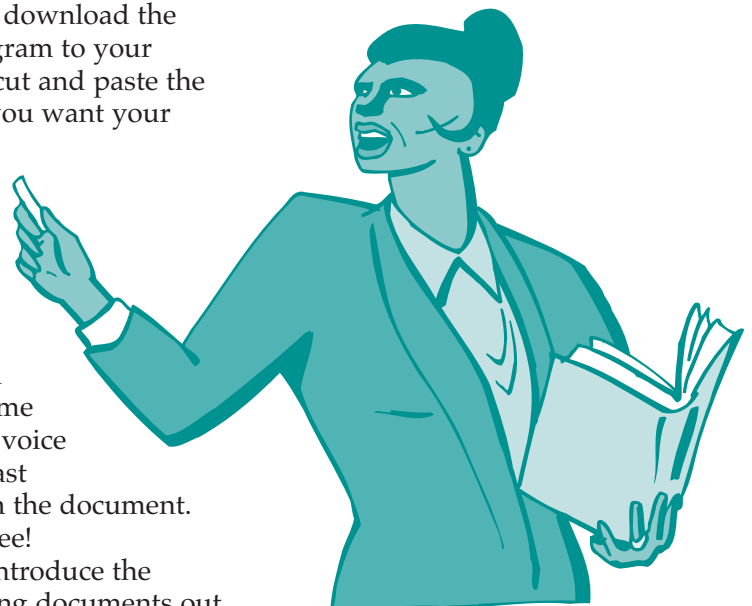
From the Desk of the
Legal Writing Specialist
Can the Windowpane Speak?
Re-evaluating Orwell's Metaphor

Natalie Tarenko, Texas Tech University School of Law

George Orwell's "Good prose is like a windowpane"[1] remains a popular metaphor in legal writing and other contexts. However, this metaphor is, I believe, inaccurate, misleading, and even harmful regarding writing as process, regarding writing as medium of communication, and regarding the status of teachers of writing. The windowpane metaphor does not recognize the contributions of language and writing and, by extension, of teachers of writing. The remedy is to substitute another metaphor, such as a metaphor of dialogue.

A windowpane is static. However, adherents of writing as process revel in the dynamic aspects of writing—its cycles, circles, and movement toward an ever-better product. Actually, we are now in a post-process era of writing instruction theory. However, approaches that are post process emphasize aspects of writing that are even more dynamic and fluid.[2]

A windowpane is an "it": silent and, ideally, invisible. However, writing, like all media, contributes to and changes its messages, according to Marshall McLuhan.[3] Media are akin to form, and Justice Cardozo, among many others, argued that form and content cannot be separated.[4] The windowpane metaphor misleads students into expecting and demanding from writing instant obedience and transmission without modification—the same as generations of bosses and authors have demanded from writing implements and from the copyists who wielded them: scribes, clerks, secretaries. To want our technologies to get out of the way of the user is commonplace; to

want writing to get out of the way of the user is harmful, creating erroneous expectations that frustrate students and shortchange students from writing's potential to contribute to their argument.

The windowpane metaphor attaches associations of silence, invisibility, and non-participation not only to writing but to those who teach it. If writing is figured as a copyist, good only for transcribing and not for contributing to content, then teachers of writing get figured as secretaries of academia. If writing is a windowpane, then teachers of writing are all too often looked upon by the rest of the professoriate as the window washers. Aren't window washers subject to different pay scales than the executives inside the building? Don't window washers cling to precarious heights with little safety gear? Aren't these associations all too common regarding those who teach writing, not only in law schools but throughout academia? Aren't our programs, curricula, and courses often seen as "less than" and "outside"?

Metaphors are tricky; the windowpane metaphor joins our lot with that of secretaries and window washers, who themselves, of course, do not deserve poor treatment.

The remedy for the ills of the windowpane metaphor is substituting a different metaphor. I encourage students to think of writing as a partner to be respected and the writing process as a dialogue. When there is a problem in the document, what is the writing problem telling us? How is writing a stand-in for the document's audience?

The most helpful resource about dialogue is Martin Buber's *I and Thou*, in which Buber distinguishes between I-It relationships (self-centered, one-sided) and I-Thou relationships (respectful, a dialogue).[5]

Beyond writing, dialogue is also a useful metaphor for other aspects of law school, student life, and the work of lawyers and teachers. Few of us would lecture and forbid students to speak, for we believe in the two-way avenue of student participation. We ought to (and, I believe, we usually do) teach that writing is also two-way. Students should recognize that every writing situation, writing difficulty, and client is a voice to be listened to and learned from, although not necessarily obeyed. Many clients will be seeking legal redress precisely for/from not being heard, being treated like an "it." For teachers, likewise—every student, course, and coworker (faculty, staff, or "other") is also a voice to pay attention to and learn from, although what we learn may not necessarily be what the speaker had in mind. Nothing and no one should be written off as having nothing valuable to contribute.

Comparing writing errors to smudges on a windowpane is convenient, but harmful; clarity is a fine ideal, but I do not believe it is advanced by the windowpane metaphor.

Particularly because legal writing instructors and legal writing specialists and advisors have struggled for so long to be heard, seen, recognized by the legal academy—to be treated as a "Thou"—it behooves us to employ metaphors that treat all their terms justly.

Teaching Novice Legal Writers to Complete Their Arguments: A Useful Metaphor

Paul Figley, Washington College of Law, American University

As I was reviewing draft appellate briefs from my first-year students, I noticed that several had formulated solid arguments or found key distinctions to adverse case authority, but left it for the reader to draw the final conclusion. They failed to drive home the point in their own words and thereby missed their best chance to persuade. By reminding the class of the lessons taught by the late Professor Abraham Van Helsing, I help them appreciate the need for pointed argument.

By way of example, our appellate problem this year involved a citizen's request that police investigate a nighttime disturbance on her property. The police brought a drug dog that signaled that a hot tub compartment contained drugs. The police opened the compartment without a warrant and found cocaine. The case raised two Fourth Amendment issues: whether the owner consented to the dog's presence; and whether police could open the compartment without a warrant.

On the consent issue prosecutors cited *United States v. Reed*, 141 F.3d 644 (6th Cir. 1998), in which a resident approved use of a police dog to search his apartment for an intruder after neighbors heard burglar alarms and breaking glass. *Id.* at 646. Instead, the dog found drugs. *Id.* at 649. The opinion held that there was no illegal search by the canine team, either because of the resident's consent or the team's hot pursuit of a burglar. *Id.* at 650.

Students representing our defendant found another nugget in the opinion. While arguing the second Fourth Amendment issue (failure to secure a warrant), several briefly noted that the police in *Reed* had obtained a warrant.

Their brevity caused them to miss a golden opportunity.

Carefully explained, *Reed*, the prosecution's own authority, significantly undermines its position on the warrant issue. The discussion could have gone like this:

> The government has relied on *United States v. Reed*, 141 F.3d 644 (6th Cir. 1998), as important authority for the Fourth Amendment. But the Reed court recognized that police there had honored the Fourth Amendment's warrant requirement, noting that while some officers "left to obtain a search warrant, other officers guarded the house." *Id.* at 647. The same procedure could have been followed here; one officer could have gone for a warrant while the other guarded the hot tub. Unlike the police in *Reed*, Officer Blaine disregarded the Fourth Amendment's warrant requirement.

To succeed they must set forth clear arguments with explicit, case-specific conclusions and, in doing so, drive a stake through the heart of their opponent's case, figuratively speaking.

Our students must learn to explain arguments with the same care they use in synthesizing rules from cases, and for the same reason. At its best, legal writing presents the reader with a finished product all tied up with a bow, rather than a listing of somewhat-related facts, holdings, and legal principles.

I explain this need for thorough, explicit argument by bringing to mind Professor Van Helsing, a man who could finish an argument. His example is something our students understand. As his greatest critic acknowledged, "For one who has not lived even a single lifetime, you're a wise man, Van Helsing." Part of his wisdom lay in realizing that it is not sufficient to follow the clues, find the answer, and put all the pieces before the reader. In the end, you have to drive the matter home.

Professor Van Helsing, of course, is the man who recognized that Count Dracula was a vampire. Our students are familiar with vampire lore. They know that garlic and wolfsbane are not sufficient: to kill a vampire one must drive a wooden stake through its heart. Likewise, halfway measures will not work in students' arguments. To succeed they must set forth clear arguments with explicit, case-specific conclusions and, in doing so, drive a stake through the heart of their opponent's case, figuratively speaking.

Obviously, the Van Helsing metaphor is imperfect. It is violent, and Dracula returns in a sequel no matter what the good professor does. Still, my students seem to enjoy the reference, and they do get the point.

The Potential of Podcasts

Karen J. Sneddon, Mercer Law School

A line of students with angst-ridden faces weaving through a law school's hallways signals the impending due date of a legal writing assignment. Students recognize that the writing process is enriched by constructive, insightful feedback. Feedback in a legal writing course is composed of: class discussions, comments on drafts, and clarifications during office hours and conferences. Yet students, especially before an assignment is due, clamor for even more feedback. While a legal writing professor cannot be cloned, technology presents outlets to provide additional feedback.

Podcasts provide a convenient outlet for students to receive effective oral feedback outside the classroom and after office hours. Podcasts are digital media files that can be played on a personal computer or MP3 player. Professors in all fields are capitalizing on the potential of podcasts as teaching tools.

> *Podcasts provide a convenient outlet for students to receive effective oral feedback outside the classroom and after office hours.*

Podcasts are relatively easy to create, post, and access. Podcasts are created using a portable MP3 voice recorder. Most law schools have the recorder and the necessary software. Podcasts can be posted on a coursepage, and the students can access podcasts by clicking on the link. The law school's IT Department or CALI (the Center for Computer-Assisted Legal Instruction accessible at www.cali.org) can provide assistance.

An entire lecture can be a podcast, or a podcast can be a summary of specific points. Students find the greatest assistance when podcasts are packaged in two- to ten-minute increments on discrete topics, rather than a recording of a lecture. These small podcasts allow students to tailor the use of podcasts to their own needs. Some students may review all podcasts, while others may listen to podcasts targeting a particular skill.

Potential topics are practically infinite. Podcasts could be a summary of major concepts discussed in class. Inspiration for podcasts can be drawn from common errors seen on an assignment or answers to common questions asked during conferences. Podcasts could even be a list of the professor's pet peeves. Podcasts that I use include: eliminating wordiness, strategic word choice, comma conundrums, persuasive paragraph structure, and oral argument tips.

Free podcasts are also available for use in a legal writing course. "Grammar Girl's Quick & Dirty Tips for Better Writing" by grammar guru Mignon Fogarty helps students remedy grammar gaffs. Her free podcasts are available at www.grammar.qdnow.com. To build vocabulary, a free podcast of Merriam Webster's Word of the Day is available at www.merriam-webster.com. These podcasts provide the definition, etymology, and, of course, the correct pronunciation of each word—a great help to those of us who have difficulty reading pronunciation marks!

In addition to providing useful information, podcasts are easy to access. Podcasts can be listened to at the students' convenience, which is often at night or during weekends. Students can listen to podcasts through their personal computer, or students can download podcasts onto an MP3 player and listen to them while commuting or exercising. This accessibility and portability maximizes the likelihood that students will listen to helpful podcasts rather than having them be an unused tool.

Podcasts are not a substitute for class time, conferences, or reviewing the professor's comments, just as skimming Cliff Notes are not a substitute for reading a novel. Podcasts reinforce key concepts analyzed during class, epiphanies realized during office hours and conferences, and constructive critiques written on assignments. In addition, students can listen to podcasts as many times as needed. Podcasts can even serve as a quick review while students complete the final edit of an assignment.

A line of angst-ridden students weaving through a law school's hallways will always signal the impending due date of a writing assignment. Podcasts, however, have the potential to provide students with additional effective oral feedback that will hopefully alleviate some of the inevitable angst.

Over-commenting—Why Do We Do It and How Can We Cure It?

Amy Neville, Wayne State University Law School

I have always struggled to combat my tendency to over-comment on student papers. To avoid the painful consequence of my over-commenting, the excessive number of hours I spent doing it, I sought to learn how to be more efficient in my critiques. Colleagues told me to "write fewer comments." Articles on the subject taught me that over-commenting has negative consequences, such as overwhelming and discouraging students, and that ideally I should not make more than three comments per page. Although I was left with an even firmer conviction that I needed to "cure" my over-commenting problem, I was still baffled as to how, in practice, to do it and still use my written comments as an effective teaching tool. How could I only write three comments on a page that screamed out for eight?

Eventually, I found a way of reducing the number of written comments to a level that straddles that line between too many and too few. The number of comments that qualify as too many will necessarily vary based on the assignment being evaluated and the teaching style of the evaluator. To find my answer, I looked at my own teaching process for written comments, which generally follows four steps:

1. Identify the error or problem.
2. Explain why it is a problem.
3. Explain how to fix it.
4. Provide an example of how to fix it.

Breaking my process down showed me that I could reduce the comments generated by steps 2, 3 and 4 by providing only one explanation and example for fixing the error for each type or category of error. Then, when the same category of error is made again, I need only identify the error and cross-reference the student to my previous detailed explanation.

In practice, it did indeed reduce the length of my written comments but I still struggled with the number of comments I was making, particularly in the first semester, when student memos suffer from a wide variety of problems. I concluded that it was the first step that was driving the number of comments I was making. Over-commenting results when you comment on the majority of errors you detect, possibly generated by a fear that if you don't identify an error the student will assume it is correct and repeat the mistake in the future. In reality, identifying too many errors in work submitted by novice legal writers is more likely to have the negative consequence of causing students to feel overwhelmed and discouraged about their ability to master the skills required.

> *In reality, identifying too many errors in work submitted by novice legal writers is more likely to have the negative consequence of causing students to feel overwhelmed and discouraged….*

I found that an effective way to reduce the number of my error-identification comments was to design assignment specific grading/commenting rubrics for each major assignment. Designing your own assignment-specific rubric yields several benefits. First, it forces you to concretely identify your pedagogical goals for the assignment. In developing a rubric for an initial, closed universe memo draft assignment, I had to identify the foundational skill set necessary to provide students with the building blocks for the more complex skills taught as part of the final draft memo assignment.

Second, designing a rubric forces you to determine how your pedagogical goals can be achieved in the specific legal and factual context of the assignment. For example, if your assignment has an issue requiring the use of several rules but not an illustrative rule case, your rubric can focus more on assessing the accuracy and clarity of the rule statements and the relationship between those rules. A great starting point for creating your own rubric is to look at the sample rubrics available on the LWI website, http://www.lwionline.org/.

The third benefit of designing a detailed rubric is that it allows you to communicate to the students the primary skills they should focus on, those skills you will be evaluating. Providing this information to students up front also helps to convey to them that you will prioritize your feedback and will not comment on every error they might make.

Ultimately, developing detailed, assignment-specific rubrics serves to focus your view by filtering out those errors that are unrelated to the target skill sets. Understanding, concretely, the relative importance of student errors provides a check against the urge to comment on those errors that are peripheral to the target skills, resulting in fewer but more helpful comments for the student. As I grade a paper, I highlight the applicable comments on the rubric for each task or criteria, which provides the students with a big picture assessment of the more specific points I may have commented on. While I may still exceed three comments per page, I no longer write too many comments on every paper and do not stray beyond the targeted skill sets.

Readying Ourselves to Provide Effective, Timely Feedback

Craig T. Smith, Vanderbilt University Law School

When students submit papers, the critiquer's clock starts ticking. Students want constructive comments and instructive assessment quickly. How can we ready ourselves to provide such feedback at these crucial times, despite a deadline's pressure?

First, we should remind ourselves regularly that we can hardly exaggerate the value of timely feedback to students. The Carnegie Foundation for the Advancement of Teaching, in its recent study of legal education, noted that "studies of how expertise develops . . . are unanimous in emphasizing the importance of feedback as the key means by which teachers and learners can improve performance."[1] The Carnegie authors praised legal writing courses for counteracting the paucity, in most law school courses, of "meaningful feedback to the student about progress in learning."[2] They were especially "impressed by how often students raised the topic of legal writing. One student's comment summed up many others. She noted, 'It is the feedback you receive from the teachers, as opposed to just so much reading' in . . . doctrinal courses that made the writing course so important . . . ."[3]

Second, we should regularly cultivate good judgment. Stamp in mind, and meditate upon, the golden rule

for our field: Critique the writing of others as we would have them critique ours. That means, in short, with respect. Despite a paper's exasperating passages or confounding omissions, and despite our fatigue or overflowing to-do lists, our critique's explicit and even implicit messages must remain for rather than about the writer. Though emotions ebb and flow as we read, our evaluations must fit our students' developmental levels, our criticisms must promote our assignment's pedagogical goals, and our comments must avoid anguished exclamations—"SERIOUSLY?!!" or the like—that may spring to mind. Our field's version of the golden rule suggests a clarity of purpose that can help us critique judiciously despite the many challenges that arise.

Third, we should read our colleagues' excellent articles on critiquing. Start for example with Dan Barnett's *Triage in the Trenches of the Legal Writing Course: The Theory and Methodology of Analytical Critique*[4] and Anne Enquist's *Critiquing and Evaluating Law Students' Writing: Advice From Thirty-Five Experts*.[5] These articles are like parachutes for skydivers; before you leap, irrevocably, into the precariousness of critiquing, get familiar with them. Dan Barnett, who has led superb critiquing workshops at Legal Writing Institute conferences,

compellingly recommends and explains a "triage" approach: "focus on analytical problems first" and on "stylistic problems" later.[6] Anne Enquist, who for years has wisely counseled students and writing professors, describes

consensus regarding effective strategies, lurking pitfalls, and types of comments to avoid.[7]

The final suggestion is to practice. Find or create a learning-by-doing opportunity that will not directly affect a student's academic career. A critiquing workshop or seminar offers such an opportunity. The Legal Writing Institute and the Association of American Law Schools typically offer these in alternating summers, at LWI's biennial conferences and the AALS's Workshops for Beginning Legal Writing Teachers. Critiquing workshops also may occur at regional legal writing conferences. Locally, such a workshop may occur at your law school. If it does not, organize it. If possible **teach** it, since teaching peers provides an outstanding learning experience. At the very least, create practice opportunities with student assistants. Have them write papers in response to draft assignments, and critique those papers.

These suggestions require planning and effort. They pay off, however. They prepare us to give, even in difficult circumstances, effective and timely feedback.

1 William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, & Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* 171 (2007).
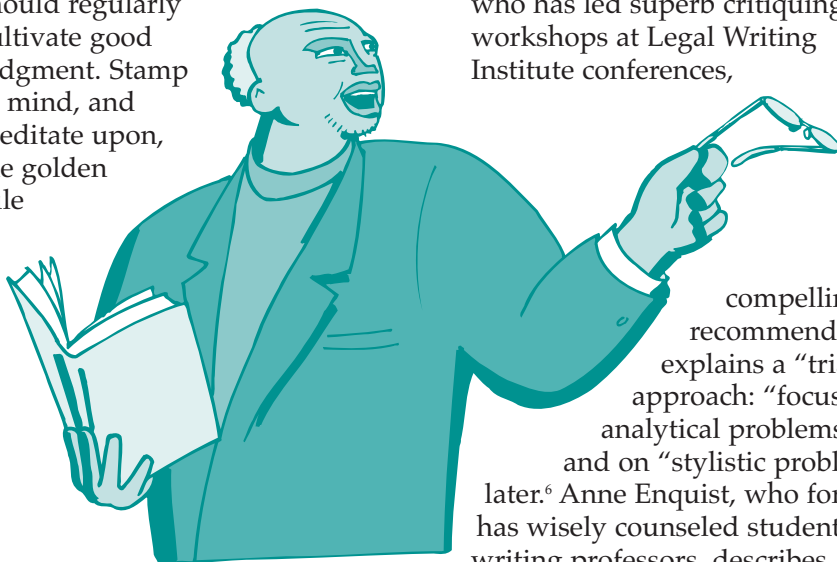
2 *Id.* at 164.

3 *Id.* at 104.

4 38 U. Toledo L. Rev. 651 (2007).

5 22 Seattle U. L. Rev. 1119 (1999).

6 Barnett, *supra* n. 4, at 654-55.

7 Enquist, *supra* n. 5, at 1163.

Commenting and Conversation

Kirsten K. Davis, Stetson University College of Law

When legal writing students get their papers back, peppered by comments, they find us—their legal writing professors—"hanging around" in the margins, waiting to start a conversation. That is, when we painstakingly write those comments in the margins, we hope that students will actually "listen" to the comments, "hear" what is written, and "join in" that conversation about the paper. "Joining in" does not necessarily mean that students will agree with everything we have written; rather, it means that we hope that students think about what we have said, perhaps challenge our ideas (or even reject them), revise based upon those thoughts, and, ultimately, learn something from them that they can use in their future careers. One of our greatest fears, I would venture to guess, is that the end result of our hours of painstakingly writing comments is a failure to engage—we sit silent in those margins, ignored by our potential conversation partners.

What is it that gets student to engage in a conversation with us about their papers? In part, the willingness to engage is dependent upon students' perceptions about the competence, trustworthiness, and caring of their professor.[1] When interacting with us through the words of our comments, however, students cannot assess these qualities in the same way they would if they were in a face-to-face interaction. They cannot see our faces. They cannot hear our voices. They cannot observe our body language. Arguably, in the context of commenting, who we are is conveyed—for better or worse—in the comments themselves. As such, how we craft our comments plays a part in whether students will acknowledge our presence in the margins and agree to give us some attention.

What can we do to enhance our competence, trustworthiness, and caring in the margins of the paper and invite students to engage us in conversation? Three ideas[2] seem particularly relevant when looking at commenting as conversation.

1. **Introduce ourselves**. A good way to set a positive tone for the comments in a paper is to tell the student who is doing the talking. Students value legal writing professors, in part, for our knowledge about and membership in the legal community. Thus, begin the commenting process by expressly stating our "role"[3] as a "real-world" audience member at the top of the first page. If we are reading papers from the perspective of the supervising partner, we can say so. If as a judge, we can let the students know. By expressly telling students the "real world" role we play in reading their work and in commenting on it, students may be more receptive to the comments and find them more credible.

2. **Ask questions**. My mother always told me that one of the best ways to be a good conversationalist is to ask questions of the other person. The same holds true here. We can create an air of goodwill by balancing statements that give students express direction about what to do to revise their work with questions that draw students into thinking about the different possibilities for revision.[4] Asking questions invites students into the conversation, empowers students to take charge of their own work, and helps them learn what questions they should be asking of themselves in the writing process.

3. **Acknowledge the individual**. Students want to know that we care about their work and are talking to them, individually, in the margin comments. Accordingly, the best comments will be tailored to the individual content of each student paper. This means that we should use caution when using "global" comment sheets or macros to comment on student papers. Although these save time and help with consistency, if they are overused, students may perceive that we are not invested in their individual efforts and progress.

Commenting is more than a one-way dissemination of information; it is a two-way conversation. Giving more attention to commenting as a conversation can enhance its effectiveness.

1 For more development of this idea, see Kirsten K. Davis, *Building Credibility in the Margins: An Ethos-Based Perspective on Commenting on Student Papers*, 12 Leg. Writing 1, 10-11 (2006).

2 These ideas, along with an ethos-based perspective on commenting and other ideas for improving commenting practice, are developed in more depth in Davis, *supra* n. 1, at 24-32.

3 For more discussion on defining roles when commenting on papers, see Linda L. Berger, *A Reflective Rhetorical Model: The Legal Writing Teacher as Reader and Writer*, 6 Leg. Writing 57, 78-81 (2000).

4 For more discussion of the idea of using questions in the commenting process, see Mary Kate Kearney and Mary Beth Beazley, *Teaching Students to "Think Like Lawyers": Integrating Socratic Method with the Writing Process*, 64 Temp. L. Rev. 885 (1991).

UPDATE: The AALS Section on Legal Writing, Reasoning, and Research

Suzanne E. Rowe, Past Chair, AALS Section on Legal Writing, University of Oregon

This article introduces newer teachers to the AALS Section on Legal Writing, Reasoning, and Research. It also explains how to become involved in AALS work, describing the role of each Section officer, explaining the selection of the Section's program, and outlining the Section's committees. (If you are one of our colleagues who helped build the Section, you'll be able to read between the lines to see how far we've come!)

The AALS Meeting

Our Section meets once each year, at the AALS Annual Meeting that is held in early January. The 2008 meeting will be in New York City; the 2009 meeting is set for San Diego.

The Annual Meeting attracts thousands of law professors, deans, and administrators from across the country, for four days of workshops, presentations, breakfast and lunch meetings, and evening events. Thus, the Annual Meeting differs from legal writing conferences in both size and scope.

Several events are scheduled specifically for members of our Section. First, the Section sponsors a program—typically a panel of speakers—on a topic of interest to both the legal writing community and the rest of the academy. Recent topics include writing across the curriculum, storytelling, professionalism, and the Americans with Disabilities Act. At a brief business meeting following the program, the Section elects officers and conducts business.

Another important event is the Section luncheon, which offers one of the best opportunities to gather with legal writing colleagues. The Section's award, recognizing an individual who has made significant lifetime contributions to the field, is presented at the luncheon.

Other events of special interest to the legal writing community are planned by sister organizations. For example, LWI and ALWD co-sponsor an evening reception to honor the recipients of the Blackwell Award and the Golden Pen Award.

Section Officers

The Section is led by an executive committee. This committee is comprised of four officers (Chair, Chair Elect, Past Chair, and Secretary) and the Program Chair.

The Chair is responsible for the Section's activities. The Chair leads the executive committee, appoints committee members, and acts as a liaison to the AALS administration.

The Chair Elect assists in all Section work, preparing to lead the Section the following year. The AALS provides a helpful manual for the Chair and the Chair Elect; the manual includes copies of the many forms that must be completed in connection with the Section's program at the Annual Meeting.

The Past Chair's presence on the executive committee provides institutional continuity, based on at least two years of experience with the Section (as Chair Elect and Chair).

The Secretary is responsible for producing the Section's newsletter in the spring and fall. Copies of past newsletters are posted online at http://faculty.law.lsu.edu/aals. Knowledge of publishing software (or an assistant with that knowledge) is essential to this position. While the Secretary may be nominated to become Chair Elect, the transition between the two offices is not automatic.

The Program Chair is responsible for all aspects of the Section's program at the Annual Meeting: developing the program theme; securing speakers for the program's panel; working with the Section Chair to complete AALS forms for publicity, travel, and technology needs of panelists; and serving as moderator for the panel. Frequently, the Program Chair arranges to have the panel discussion published in a law journal. The Section's program draws a large crowed and is a marquis event for the Section.

Selecting the AALS Program

Having an excellent program is critical to the Section's showing at the Annual Meeting. The program is selected by the Program Committee, typically comprised of Section members who have attended AALS conferences in the past and know the types of presentations likely to be successful.

The committee often receives five to seven proposals each year. Most of these proposals are strong, so selecting just one is difficult and time-consuming. Considerations include: whether the program will attract a diverse audience; the freshness of the topic; the reputations of the proposed presenters; the thoroughness of the proposal; and the reliability of the person submitting the proposal. The specific criteria that the Program Committee applies to the proposals (and the weight given each criterion) depend on the composition of the committee.

Getting Involved

The best way to get involved with the AALS Section is to volunteer to work on a committee. The committees and their charges are listed below.

- Award Committee – Selects the recipient of the Section's award from nominees; coordinates the award ceremony at the Section's luncheon.
- Nominating Committee – Selects the slate to present for election at the business meeting (held at the Annual Meeting in January) from nominees for Secretary and Chair Elect.

- Poster Committee – Selects the posters to be displayed at the Annual Meeting; answers questions for people interested in learning about poster design; facilitates the presentation of selected posters at the Annual Meeting.

- Program Committee – Selects the Section's program from the submitted proposals; assists the Program Chair with running the program at the Annual Meeting.

- Website Committee – Develops and updates the content for the Section's website at http://faculty.law.lsu.edu/aals.

The Section Chair posts messages on the various legal writing listserves in January, asking for committee volunteers and program proposals. Responding to those messages is the best way to become involved in this important organization. For more information, check the Section's website at http://faculty.law.lsu.edu/aals.

Publication Spotlight

Triage in the Trenches of the Legal Writing Course: The Theory and Methodology of Analytical Critique, 38 U. Toledo L. Rev. 651 (2007).

Daniel L. Barnett, Associate Professor of Legal Reasoning, Research and Writing, Boston College Law School.

Providing feedback to written work is one of the most important and challenging aspects of teaching legal writing. Legal writing professors spend a great deal of time and energy critiquing and grading student work. However, few legal writing professionals begin teaching with any formal training on providing feedback to novice legal writers. Fortunately, giving useful comments on student writing is a skill that can be learned. Teachers must learn to prioritize feedback on the most important analytical problems on draft assignments. Focusing on analytical deficiencies helps students understand that substantive problems must be corrected before writing and stylistic problems can be effectively addressed. The best way to become proficient at prioritizing feedback is to understand the theory of analytical critique and consider a variety of critiquing methods.

This article explores the theory of analytical critique and provides concrete suggestions on how to put the theory into practice when giving feedback on student writing. After discussing the theory and methodology of analytical critique, the article provides a hand-on, workshop-type experience. The article includes a complete student assignment to illustrate the techniques necessary to comment on analytical problems in novice legal writing. The assignment includes client facts, the relevant authority and a student draft memorandum analyzing the legal issues. The article closes with a thorough explanation of sample feedback to the draft memorandum to illustrate the theoretical ideas and critiquing methods discussed in the article.

From the Desk of the Legal Writing Specialist
Can the Windowpane Speak? Re-evaluating Orwell's Metaphor

1 George Orwell, *Why I Write,* in *The Orwell Reader* 395 (Harcourt 1956).

2 Beyond prewriting-writing-revising, post-process writing pedagogies add activities such as paying attention to "the entire cyclical process of production, distribution, and consumption" of discourses. See Bruce McComiskey, *The Post-Process Movement in Composition Studies, in Reforming College Composition: Writing the Wrongs* 43 (Greenwood Press 2000). Attention also is paid to the "public," "situated," and "interpretive" nature of writing. *See* Lee-Ann M. Kastman Breuch, Post-Process "*Pedagogy,*" in *Cross-Talk in Comp. Theory* 97 (NCTE 1997). For a (distance) classroom application, see also Rich Rice, *iRhetoric Placeshifting: A New Media Approach to Teaching Classical Rhetoric,* 11.3 Kairos (2007).

3 Marshall McLuhan, *Understanding Human Media: The Extensions of Man* 23-24 (Signet 1964).

4 Benjamin N. Cardozo, *Law and Literature* 4-6 (reprint, Fred B. Rothman 1986).

5 Martin Buber, *I and Thou* (translated by Walter Kaufmann, Charles Scribner's 1970). While Buber's ultimate "Thou [You]" is the deity, Buber's insights are not solely religious, but Stephen Darwall's The *Second-Person Standpoint* provides a non-religious path to the same ideas. Stephen Darwall, *The Second-Person Standpoint* (Harvard University Press 2006). The author would like to thank Dr. Sam Dragga, Chair, Dept. of English, Texas Tech University, from whom the author first heard about Buber's *I and Thou* in the context of solving ethical problems in communication. The author also wishes to thank the Texas Tech University School of Law and the Legal Writing Institute for providing opportunities to think about how writing and legal principles mesh.

NEWS

Mary Garvey Algero (Loyola New Orleans) published an article, *Will a Decision That has the Potential to Do So Much Good for the People of Louisiana Set a Harmful Precedent?: State of Louisiana v. All Property and Casualty Insurance Carriers Authorized to do Business in the State of Louisiana*, 53 Loy. L. Rev. 47 (forthcoming 2007). This article is an examination of the constitutionality of actions taken by governments in the wake of unusual events, such as natural disasters, when those actions have an impact on contracts entered into by parties in the State.

Julie Baker and **Lisa Healy** (Suffolk) have begun publishing "Write On," a monthly column on legal writing for practitioners in Massachusetts Lawyers Weekly. *Effective Writing by Lawyer Essential for Making a Case*, 35 Mass. Law. Wkly. 1981 (May 7, 2007), addressed eliminating boilerplate to write effectively and persuasively. *The Writer Who Hesitates Need Not Be Lost*, 35 Mass. Law. Wkly. 2195 (June 4, 2007), provided tips for planning and outlining to overcome writer's block.

Daniel L. Barnett (Boston College) published an article, *Triage in the Trenches of the Legal Writing Course: The Theory and Methodology of Analytical Critique*, 38 U. Tol. L. Rev. 651 (2007).

Linda Edwards (Mercer), **Suzanne E. Rowe** (Oregon), and **Kathleen Elliott Vinson** (Suffolk), gave the following presentation, *Expanding Your Thinking and Gaining a New Perspective: Opportunities for Rejuvenation, Rewards, Challenges, and Lessons Learned*, at the Association of Legal Writing Directors National Conference at the University of Denver, on June 16, 2007.

Judith D. Fischer (Louisville) has published the following articles: *Why George Orwell's Ideas about Language Still Matter for Lawyers*, 68 Mont. L. Rev. 129 (2007); *God and Caesar in the Twenty-First Century: What Recent Cases Say about Church-State Relations in England and the United States*, 18 Fla. J. Intl. L. 485 (2006) (with Chloë J. Wallace); and *Dismiss Those Sixth-Grade Hobgoblins*, Ky. Bench & B. 69 (May 2007).

Lisa McElroy (Drexel) just completed a children's biography of Nancy Pelosi, which is due out in the fall. She is moving to Drexel to be an Associate Professor of Law.

Sarah Ricks (Rutgers-Camden) signed a contract with Carolina Academic Press for *Current Issues in Constitutional Litigation: Roles of the Courts, Attorneys, and Administrators* (forthcoming 2009), a civil rights textbook that will include a wide range of materials. She co-authored *Effective Brief Writing Despite High Volume Practice: Ten Misconceptions that Result in Bad Briefs*, 38 Toledo L. Rev. (forthcoming 2007). She presented on federal appellate non-precedential opinions at the 2007 ALWD Conference in Denver and, with **Emily Zimmerman** (Drexel) and **Libby White** (Villanova), co-taught a New Jersey CLE on effective legal writing.

Suzanne Rowe (Oregon) has initiated a monthly column called "The Legal Writer" in the Oregon State Bar Bulletin. Contributing columnists include Joan Malmud (Oregon), Sam Jacobson (Willamette), and Megan McAlpin (Oregon). Links to essays like "Perfect Proofing" and "Comma Power" are available at www.osbar.org.

Tina Stark will be a Professor in the Practice of Law at Emory Law School beginning in the fall of 2007. She will also be the Executive Director of the School's Transactional Law Center, where she teaches contract drafting.

Amy R. Stein (Hofstra) published *Illegal Sex Discrimination or Permissible Customer Preference? Refusal to Hire and Employ Male Gynecologists* (William S. Hein & Co. 2007). This is a hardcover legal research guide, volume 50 in the series.

Kathleen Elliott Vinson (Suffolk) published an article, *Why I Teach*, in THE LAW TEACHER, the publication of the Institute for Law School Teaching. It can be found in the Spring 2007 issue, page 16.

The following LWI members presented at the Conference on the Pedagogy of Legal Writing for Academics in Africa held on March 15-17, 2007 in Nairobi, Kenya: **Kathleen Burch** (John Marshall–Atlanta); **Michele Butts** (John Marshall–Atlanta); **Kirsten Dauphinais**

(University of North Dakota); **Janet Dickson** (Seattle); **Lyn Entrikin Goering** (Washburn); **Paula Hamann** (John Marshall-Atlanta); **Lisa Mazzie Hatlen** (Marquette); **Steve Johansen** (Lewis & Clark); **Carol Langford** (McGeorge); **Jana McCreary** (Texas Wesleyan); **Tracy McGaugh** (South Texas); **Laurel Oates** (Seattle); **Suzanne Rabe** (University of Arizona); **Mimi Samuel** (Seattle); **Nancy Soonpaa** (Texas Tech); **Adam G. Todd** (University of Baltimore); **Grace Tonner**, (University of Michigan); **Catherine Wasson** (Widener); **Emily Zimmerman** (Drexel).

In addition, thirty Africans from seven countries (Ethiopia, Kenya, Malawi, Nigeria, Tanzania, Uganda, and Zambia), representing 11 academic institutions, several Legal Aid Clinics, and two Bar Societies, attended. Keynote speakers included Camille deJorna, Associate Consultant for the ABA's Section on Legal Education, and Okech Owiti, the Dean of the University of Nairobi Faculty of Law. At the end of the conference, the participants voted to create a new organization dedicated to the advancement of the teaching of legal writing in Africa and to the continued exchange of ideas among U.S. and African academics.

Program News

Deborah Mostaghel has joined the faculty of **Golden Gate University School of Law** as the new Director of First-Year Legal Writing. Deborah previously served as the Director of Research and Writing at the University of Toledo College of Law.

Indiana University-Bloomington has hired **Robert Parrish**, formerly of Bose McKinney & Evans in Indianapolis, as a Lecturer. **Cynthia J. Reichard** has been promoted to Senior Lecturer.

This summer's annual meeting of **SEALS** (Southeastern Association of Law Schools) included the panel discussion "The Past, Present and Future of Law Clerks." The panel was moderated by Professor Nancy Kippenhan (Liberty), and featured Professor Todd Peppers (Roanoke), who discussed the research behind his recently published book, *Courtiers of the Marble Palace: The Rise and Influence of the Supreme Court Law Clerk*. Panelists also included Professor William Araiza (Loyola—Los Angeles) and the Honorable Judge Susan Black, Eleventh Circuit Court of Appeals.

This year, **Suffolk University Law School's** Legal Practice Skills Program made great strides: the faculty recently voted to change the long-term contracts of the legal writing faculty to five years (instead of three); also, an additional faculty position was created to reduce the student/teacher ratio to under 45; an additional credit was added to the course (the course is now 4 credits instead of 3); salaries of LPS faculty were increased; LPS faculty had a vote and were actively involved in the dean search process; writing courses for upper-class students were increased resulting in more opportunities to teach an upper-level course; and the LPS program received an award from the University recognizing outstanding service and achievements.

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Consider submitting your finished article to the **Journal of the Legal Writing Institute**. The Journal has a circulation in excess of 2,000 and is read by nearly every member of the Legal Writing Institute. It's the best way to have your scholarship reach the largest audience of legal writing professionals. The Journal is presently negotiating a publication agreement with a major legal publishing company that should increase the Journal's visibility both domestically and abroad. We are also working on a new stand-alone website for the Journal that will launch this summer. Among other features, the website will include a searchable database containing every article published by the Journal from Volume 1 to the present. This will make the website an invaluable research tool for scholars and anyone else interested in legal writing scholarship. In addition, beginning with Volume 12, the Journal will immediately publish new articles on the website as they are finished to enable authors to disseminate their ideas to the legal writing community as quickly as possible. The posting of articles on the Journal's website will not be done in lieu of traditional publication, but instead will be a service to both our authors and those readers who want instant access to the latest developments in legal writing scholarship. Thanks for your interest!

James B. Levy, Editor-in-Chief
Nova Southeastern University School of Law

The Second Draft

Next issue: Spring 2008
Theme: Teaching to Different Learning Styles

2008 LWI Conference

July 2008, Indianapolis, IN

Regional Conferences

The **Central Region LRW/Lawyering Skills Fifth Biennial Conference**, "Learning to Teach and Teaching to Learn," will be held on October 5-6, 2007 at the University of Missouri-Kansas City School of Law, Kansas City, Missouri. For more information see conference website: http://www.law.umkc.edu/writing.htm.

The Vermont Law School will host the December 7, 2007 regional conference of the **New England Consortium of Legal Writing Teachers**. For more information, please contact Professor Tracy Bach at tbach@vermontlaw.edu.

The third **Global Legal Skills Conference** will be held February 29 and March 1, 2008 in Monterrey Mexico, hosted by the Facultad Libre de Derecho de Monterrey. The conference focuses on international legal education and specifically the needs of lawyers and law students who speak English as a second language. Topics covered at the conference also include advocacy, legal research, creating appropriate materials and assignments, cultural issues, classroom teaching, clinical legal education, academic support, and international legal exchanges. The conference is expected to include many attendees from law schools in Mexico and Central America, in addition to attendees from Europe and Asia. The conference presents excellent networking opportunities for those who are interested in teaching abroad, for those who are interested in international legal education, and for those who want to learn how ESL methods can improve teaching in the domestic classroom. Proposals on comparative and international law topics are also invited. Proposals for possible panel or individual presentations may be submitted until October 10, 2007. There is no particular format required for proposals. Send proposals to the conference co-chair, Prof. Mark E. Wojcik, The John Marshall Law School, 315 S. Plymouth Court, Chicago, IL 60604 USA, or by email to 7wojcik@jmls.edu.

2008 AALS Conference

Section on Legal Writing
January 2008, New York, NY

2008 LWI Conference

Indiana University
School of Law
Indianapolis, IN

Monday, July 14 – Thursday, July 17, 2008