Providing Feedback on Student Writing

Georgetown Law

Goals of Workshop

- Address strategies for effective and efficient feedback on student writing
  * Assess where students struggle most
  * Assess where faculty struggle most
  * Discuss strategies for dealing with student and faculty struggles in the process

Key Take-Aways for Effective Use of Writing in a Course

- Know why you have assigned the document
- Make sure students know why they are writing the document
- Tailor feedback to the purpose of the assignment
Goals of Your Writing Assignment

- Why have you assigned a writing assignment?
  * What is the purpose of the document?
  * To show mastery of material?
  * To show analytical/critical thinking skills?
  * To help students learn?
  * To master aspects of creating a particular type of document?
  * To help the professor know where students are confused?
  * To have students connect practical experiences to theory/ontology?
- Who is the student writing for?
- How does this assignment relate to subsequent assignments for the course?

Goals of the Assignment

- What are you looking for?
  * What characteristics do 'A' papers share?
  * Do you care most about substance? Polishing? Organization? Use of authority? Tone?
  * Completeness? Critical thinking? Depth of research?
  * Following local rules? All of the above?
- Do you have samples?
  * (>1, past student papers, examples in assigned reading, etc.)
  * Make expectations clear to students

Helpful Professor Actions

(1) Setting deadlines that require students to start work early and to work on the papers at a steady pace, while at the same time allowing enough time for each stage in the writing process
(2) Building rewriting into the syllabus
(3) Discussing the writing process and your expectations in class
(4) Intervening in the students' writing process as often as possible to provide feedback and guidance about the students' progress
(5) Giving students checklists or rubrics for each assignment
Discuss Writing Process & Expectations; Give Feedback
- Research
  * Discuss research sources in seminar
  * Look for Research Guides on Library Web Page
  * Enlist the help of GULC's librarians
  * Require research reports before drafts are due – as a separate assignment, or as part of an outline
  * Comment on them or discuss in class
  * Recommend research consultations

Discuss Writing Process & Expectations; Give Feedback
- Help Students to Appreciate the Purpose and Audience for the Document
  * Make your goals for the paper and each assigned part of it clear – in class, in syllabus, in separate handout
  * Have students identify their own goals for the document in advance
  * Have an express discussion about audience for the document and how that audience influences writing choices like tone, stance, scope, and format

Effective and Efficient Intervention in the Writing Process
- Do not edit the student's work or appropriate her text!
  * Exceptions: clinics, live-client situations – but build in opportunity to discuss why you made certain edits
- Make comments text-specific, not generic
- Set priorities and stick to them
Effective and Efficient Intervention in the Writing Process

- Focus on the big picture – 3 most important things student needs to focus on in revising or in the next assignment
  * Comments should highlight and be consistent with these individual student priorities
  * Common examples: depth of research; LSO/SSO; stance/tone/thesis; foundation for normative assertions, recognition of counterarguments; precision in language; more express discussion of relevant sources
  * Include positive feedback – what is working (relatively) well?

Effective and Efficient Intervention in the Writing Process

- Comments vs. Conference vs. Classroom
  * Not all feedback needs to be written comments from the professor
  * Use peer reviews in class – ideally with a form/checklist that focuses the review on your goals for the assignment
  * Go over a model/strong sample in class with a checklist or rubric and then have students rewrite in light of discussion
  * Live commenting and Workshopping
- Address Both Product and Process

Commenting Tips: Provide both general and specific feedback on drafts and help students prioritize

- General feedback in a cover/endor note that identifies rewriting priorities
  * Look for patterns and describe them here
  * Address priorities for the assignment – e.g., overall organization, depth of research and analysis, meeting formal requirements, precision in drafting; tone/stance
- Specific feedback in margins
  * Describe, Question, Remind, Assign
  * Frame comments in terms of the reader’s point of view
**General Tips**

- Assign and discuss an article that addresses writing process and structural options for the particular type of document
  - Refer back to the article in your comments/conferences rather than reinventing the wheel
- Send students to the Writing Center
  - Students can make appointments by signing up online.

**Resources**

- Sample checklists and peer review forms in your packet
- Email me to brainstorm ideas: rossi@law.georgetown.edu
- Books, Articles, and Other Resources:
  - [http://www.law.georgetown.edu/faculty-staff/](http://www.law.georgetown.edu/faculty-staff/)
  - Subject-specific books/articles for teaching upper level writing: [http://guides.it.georgetown.edu/teaching/supercifi-le-box-1726137](http://guides.it.georgetown.edu/teaching/supercifi-le-box-1726137)
Prof. Ross

WRITING AND REWRITING CHECKLIST
FOR FIRST MEMO ASSIGNMENT ("MEMO 1")

___ Have you answered the partner's question?

[For more on this, see TeachingLaw, Legal Documents/Memorandums of Law and TeachingLaw, Legal Documents/Memorandums of Law/Formal Requirements/Conclusion]

___ Have you informed the reader of the applicable rule(s) of law (here, the applicable statute) at the beginning of your Discussion?

[For more on this, see discussion and examples of "Roadmaps" in TeachingLaw, Writing Process/Rewriting/Large Scale Organization]

___ Is your Discussion organized around the elements of the statute that you are analyzing?

[For more on this, see TeachingLaw, Legal Analysis/Statutory Language and the discussion of organizing around legal rules in TeachingLaw, Legal Analysis/Understanding Legal Rules]

___ Does each paragraph of your memo have a clear purpose that is conveyed by the topic (first) sentence?

[For more on this, see TeachingLaw, Writing Process/Rewriting/Paragraph Organization]

___ Have you stated rules that explain to your reader how each particular element is defined/applied by the legislature or the courts?

[For more on this, see the discussion of organizing around legal rules in TeachingLaw, Legal Analysis/Understanding Legal Rules and the first subsection in TeachingLaw, Writing Process/Rewriting/Paragraph Organization]
__ Do you have legal or other authority to support your rules for interpreting each particular element of the statute that is relevant to the question posed by your supervisor in the context of the client’s particular situation?

[For more on this, see the discussion of analysis within a paragraph in TeachingLaw. Writing Process/Rewriting/Paragraph Organization and TeachingLaw. Legal Analysis/Constructing Legal Analysis]

__ Do you expressly explain how the authorities you rely upon support your assertions?

[For more on this, see the discussion of the application of authority in TeachingLaw. Legal Analysis/Constructing Legal Analysis and TeachingLaw. Legal Analysis/Case Analysis]

__ Are obvious counter-arguments considered?

[For more on this, see the discussion of counterarguments in TeachingLaw. Legal Analysis/Constructing Legal Analysis]

__ Do you identify specific factual information that must be gathered from the client in light of the applicable legal rules for interpreting the statute?

[For more on this, see TeachingLaw. Legal Analysis/Constructing Legal Analysis]

__ Is the tone of your writing objective?

[For more on this, see TeachingLaw. Legal Documents/Memorandums of Law]

__ Is your use of legal terms consistent throughout the paper?

[For more on this, see TeachingLaw. Writing Process/Rewriting/Small Scale Organization]

__ Have you avoided use of legal jargon, contractions, rhetorical questions and surplus words?

[For more on this, see TeachingLaw. Writing Process/Rewriting/Small Scale Organization and TeachingLaw. Writing Process/Rewriting/Conciseness]
Checklist for Writing the Brief

Prof. Ross

Legal Research and Writing

Checklist for Brief

✓ Tables of Contents and Authorities
  □ Are all headings included in your TOC, including each of your point headings?
  □ Are all authorities you cite included in your TOA in proper Bluebook form?

✓ Statement of Issues Presented for Review
  □ Does it concisely but accurately state the precise issues to be decided?
  □ Does it state the governing law and most pertinent facts without assuming ultimate issues?
  □ Does it subtly suggest what the court’s conclusion should be?

✓ Statement of the Case
  □ Does it include a brief statement of the nature of case, course of proceedings, and disposition below?
  □ Does it present the legally significant facts persuasively, without arguing?
  □ Does it include all facts relied upon in the argument?
  □ Does it include citations to evidentiary materials supporting all statements of fact?
  □ Does it avoid lengthy paragraphs and place important facts in positions of emphasis?

✓ Summary of Argument
  □ Does it introduce your “core theory” or theory of the case?
  □ Does it briefly summarize the main points made in the argument section?
✓ Argument

- Standard of Review
  - Does it briefly state the applicable standard in the jurisdiction?
  - Does it include citation(s) to authority?

- Research
  - Is it sufficient to provide legal rules and effective case comparisons?
  - Is binding precedent cited where available?
  - Is persuasive authority used to supplement binding authority where gaps exist in the binding precedent?
  - Are cases updated through KC/Shepards to make sure they are good law?
  - Is it focused on the issue(s) you were specifically asked to address and not on issues that have been waived or excluded from the scope of the brief?

- Organization
  - Does it follow the law, instead of individual cases?
  - Does it identify the relevant elements/factors that courts consider in your jurisdiction (and in persuasive jurisdictions, if necessary) and is it organized around those elements/factors?
  - Is it logical?
  - Does it move from general to specific, both at the large scale and within sections?
  - Does it include clear roadmaps and transitions for the reader (both on the large scale and small scale)?
  - Are there persuasive point headings that provide an outline of the argument?
  - Are there persuasive topic sentences that advance the argument?
  - Are there mini-conclusions that wrap up each section and subsection?

- Case Synthesis of Rules of Law
  - Are rules stated persuasively, rather than neutrally, where possible?
☐ Does it include accurate statements of the legal standards/rules based on adequate authority?

☐ Are rules stated clearly and early enough to allow the reader to follow the analysis?

- Case Analysis
  ☐ Is each argument (including policy arguments) supported by case law?
  ☐ Are case analogies and distinctions included where the application of the rule to the facts of our case does not lead to an unambiguous conclusion?
  ☐ Does each case analogy/distinction include sufficient information about the case (facts, holding, reasoning) for the comparison to be effective?
  ☐ Are the analogies/distinctions direct and specific, explaining how the case is similar to or different from ours?
  ☐ Is the holding of the precedent (or finding on a particular issue) used to demonstrate what the holding of the court should be here?

- Conclusion
  ☐ Does it concisely inform the court what relief you are requesting?

✓ Style/Tone
  ☐ Is it persuasive without being too strident?
  ☐ Is the core theory apparent?
  ☐ Are obvious counterarguments (based on facts and/or legal authorities that support the opposite side) adequately addressed?
  ☐ Is the tone affirmative rather than defensive when counterarguments are addressed?
  ☐ Are paragraphs/sentences short enough to avoid burying important information?
  ☐ Are unnecessary words and phrases omitted in order to make sentences direct and concise?
  ☐ Does the brief comply with the rules that govern it (Rule 28, as amended)?

✓ Grammar/Punctuation
  ☐ Does the final product demonstrate that polishing was done?
- Is there noun/pronoun and noun/verb agreement?
- Are commas and semicolons used properly in sentences and citations?

✓ Citation Format

- Do citations follow Bluebook form and local rules?
- Are signals properly used?
- Do quotations comply with Rule 5?
- Do parentheticals comply with Rule 1.5?
- Are proper short forms used?
- Are citations provided every time a fact, rule or rationale from a case is stated?
Peer Review Form for “Objectionable Method” Element Paragraph

Author’s Name: ____________________  Reviewer’s Name: ____________________

Peer Review Exercise

Spend about 8 minutes reviewing your partner’s paragraph(s) and answering the following questions.

➢ Where is the legal rule for this element stated? Please underline what you see as the applicable legal rule for the element. How did you identify it?

➢ Is there a citation to authority after the legal rule? If so, how persuasive is the authority? If not, what authority discussed in the paragraph(s) seems to support the rule?

➢ What is effective about this rule and why? What would you suggest to improve this rule and why?

➢ Locate the conclusion in the paragraph(s). Is the conclusion reached in the paragraph(s) supported by the rule and case discussion that precedes it? Why or why not?
➢ Are the applicable facts, reasoning and holding of the case or cases relied upon in the paragraph(s) included with sufficient detail for you to understand how the case supports the conclusion reached by the author? Please note in the margin where you see the facts (F), holding (H), and reasoning (R) from the cases discussed in the paragraph(s).

➢ Is there an express comparison between the facts of the precedent case(s) discussed in the paragraph(s) and the facts of the client's case?

➢ What are some potential counterarguments to the arguments made in this excerpt that the author could address (e.g., possible distinctions of the authority relied upon or additional authorities that could support a different result)?
Samples for Objectionable Discussion

Element: Objectionable to a Reasonable Person

Samples for Class Discussion before Peer Review: Look at the questions on the peer review form and consider how you would answer them for each of the following sample paragraphs.

**Sample 1**

Objectionable Means

In deciding whether an intrusion is objectionable courts have considered both the method of intrusion, such as peering in a window, and the nature of the private matter that was revealed. See Lansing Ass'n of School Adm'rs v. Lansing School Bd. of Educ., 549 N.W.2d 15 (Mich. Ct. App. 1996); see also Lewis v. LeGrow, 670 N.W.2d 675 (Mich. Ct. App. 2003). Michigan courts have recognized the circumstantial nature of such cases, noting "Whether the intrusion is objectionable to a reasonable person is a factual question best determined by a jury." Saldana v. Kelsey-Hayes Co., 443 N.W.2d 382 (Mich. Ct. App. 1989). In Michigan, surreptitious video-taping of a sexual act and installing viewing devices above bathroom stalls were both held to be objectionable intrusions. Lewis v. LeGrow, 670 N.W.2d 675 (Mich. Ct. App. 2003); Harkey v. Abate, 346 N.W.2d 74 (Mich. Ct. App. 1983). An Illinois court has held that,...examples of actionable intrusion upon seclusion include invading someone's home, illegally searching someone's shopping bag in a store, eavesdropping by wiretapping, peering into the windows of a private home, or making persistent and unwanted telephone calls.” Benitez v. KFC Nat'l Mgmt. Co., 714 N.E.2d 1002 (Ill. App. Ct. 1999). Opening private mail and searching a wallet are also actionable intrusions upon seclusion. Restatement (Second) of Torts § 652B (1977). Since merely unauthorized searching of a wallet is an objectionable intrusion, it seems all that is required for an intrusion to meet the "reasonably objectionable" standard is that it be surreptitious or anonymous and unauthorized by the victim under circumstances where the victim expected the matter to remain private. Kerrigan's actions are similar to those of the defendants in Harkey and Lewis because in all three situations, the victims did not know that they were being observed or recorded and the defendants’ actions were unauthorized by the victims. Although the nature of the private matter in this case is not as intimate as in Harkey and Lewis, the victims in all three cases did not expect to be observed by people who were not in the room and thought that the activities taking place there were secret and confidential. It is thus likely that the objectionable means
element will be met in this case.

**Sample 2**

**Element 3: Method that is objectionable to a reasonable person**

Several cases indicate that one of the key components to making the method of intrusion objectionable is that the intrusion be committed without knowledge of the plaintiff. In *Lewis v. Dayton Hudson Corp.*, 339 N.W.2d 857 (Mich. Ct. App. 1983), an undercover police officer was taken into custody when a store employee saw that the officer was carrying a concealed firearm by observing him in secret in the dressing room. The court found that the officer’s expectation of privacy was diminished by the fact that there were signs posted in the dressing room warning customers that they may be under observation by employees. Similarly, employers are not liable for intrusion for conducting random drug screenings, when at-will employees have been given notice of such screening. *Baggs v. Eagle-Picher Industries, Inc.*, 750 F. Supp. 264 (W.D. Mich. 1990). The faculty at Carver College knew of the existence of recording equipment in the classrooms and was likely to be aware of the possibility of remote viewing. As in *Lewis*, the faculty had some knowledge of the possibility that they were being observed.

In contrast to *Lewis*, the intrusion in *Hamberger* took place without any notice to those being intruded upon. *Hamberger v. Eastman*, 206 A.2d 239 (N.H. 1965) (finding an intrusion in the case of a married couple whose bedroom was bugged). The couple’s lack of knowledge that they were being intruded upon was found by the court to be among the most objectionable aspects of the intrusion. It is likely that faculty members such as Professor Stromwell were aware of the practice of the A-V department of using the recording devices to look in on classrooms to determine whether it was okay to enter and remove equipment. Though the Disciplinary Committee may not have been fully cognizant of the fact that they were being observed, there was nonetheless some knowledge that observation was possible under the circumstances. This distinguishes Mr. Kerrigan’s conduct from that of the defendant who was found liable in *Hamberger*. Thus, it is likely that Mr. Kerrigan’s method of intruding by listening in on the meeting through equipment the committee members knew was installed in the room will not meet the “objectionable to a reasonable person” element.
Peer Review Exercise

Spend about 20-25 minutes reviewing your partner's memo and answering the following questions, providing explanations for each answer.

Focus on the Discussion Section:

General

- Identify an argument, organizational technique, or section in this paper that you thought was particularly effective and briefly explain why you found it effective.

Organization

- Does the organization of the Discussion section mirror that of the roadmap paragraph? (Explain your answer)

- Is the discussion section organized around the law (elements of the tort) and not around cases? Is the organization logical/easy to follow? (Explain your answer)

- Can you tell what the author's conclusions are to each element? Where are they?

Point of View

- Does the author employ a neutral and objective tone? (Explain your answer)

- Does the author address logical counterarguments? (Explain your answer)
Focus on one element of the tort that is addressed in some depth in the memo (ask your partner which s/he would prefer you to focus on):

Discussion of the Law / Use of Authority

- Is the legal rule for this element stated at the beginning of the analysis? Where is it?

- Does the author support his or her arguments with appropriate authority? Why or why not?

- Are all of the steps in the author’s reasoning addressed? Does the reader understand why the author reached his or her conclusion? (Provide examples)

- For case comparisons, are the applicable facts, reasoning and holding of at least some of the cases discussed with respect to the rule that is addressed in this section, and are there clear analogies or distinctions made between the facts of the precedent case(s) and the client’s case? (Provide examples)
Please skim through the entire Interrogation section of the brief that you received from the author identified above and answer the following questions to the best of your ability, focusing on the questions that correspond with the time segment (1, 2, 3, or 4) in which you receive the particular paper. Note that all of the questions in a given section may not be applicable to the excerpt that you were given, so just move on if a question does not apply.

SESSION 1: GENERAL ANALYSIS AND RULE STATEMENTS

- General Analysis:
  - Skim the point headings throughout the excerpt. Do you see all of the most relevant issues regarding the interrogation issue addressed in the point headings? Are there additional factors/issues that you would expect to see analyzed that do not appear in the headings? Identify any "missing" issues below.

- Rule statements:
  - Identify an example of a strong rule for a factor or element (give its page number and a substantive summary of its content) and explain why you think it is strong.
Did you see any rule statements that you thought were too general? If so, identify one and explain how you think it could be more specific.

How could the author’s rule statement(s) be more concise and persuasive? (Give an example here or write on your partner’s paper itself.)

In analyzing factors within a totality of circumstances context, does the author frame rules for individual factors in terms of how that factor weighs? Explain your response using a specific example from the excerpt.
SESSION 2: ANALOGICAL REASONING

○ Are the author’s conclusions supported through legal analysis based on rules drawn from case law and application of the case law to the client’s case? (Give an example to illustrate your response.)

○ Are case comparisons direct and complete? For example, are the facts and reasoning of the case explicitly compared to our case? (Give an example to illustrate your response.)

○ Identify a particularly detailed case analogy (give the page number ________). Does the case analogy actually apply the rule stated at the beginning of the sub-section? If not, how would you suggest editing the rule to be consistent with the conclusion reached from the case analogy?
SESSION 3: COUNTERARGUMENTS

○ Are "harmful" cases and facts adequately distinguished or explained for the reader? (Give an example to illustrate your response.)

○ Are negative factors for the client addressed? If not, identify what factors that support the other side's position are omitted from the analysis.

○ Does the author address the likely counterarguments in a way that emphasizes the rebuttal to the counterargument in the paragraph/sentence rather than emphasizing the opponent's argument? (Explain or give an example)
SESSION 4: STRUCTURE, PERSUASIVENESS, AND POLISHING

Please skim the interrogation section as a whole and answer the following questions. Note that some questions ask you to circle Bluebooking and polishing errors that jump out at you, so watch for those as you skim. Whether or not the reviewer has time to consider all of these questions, the author should consider them as s/he continues to revise the brief and should apply them to the brief as a whole as well as the particular excerpt reviewed in class.

ORGANIZATION

- Does the author provide a clear roadmap for each issue with multiple sub-issues, and are those sub-issues organized in the most persuasive manner for the client (i.e., so that stronger arguments are placed in positions of emphasis and weaker points are minimized)?

- Skim only the conclusions in each subsection, or for each factor if sub-headings are not used, in the excerpt. Does the author include a clearly-stated conclusion on each sub-issue before moving on to the next one?

- Does the author provide a conclusion discussing how a court should weigh factors discussed at the end of the discussion of the interrogation issue? If so, is it clear to the reader that the conclusion is addressing the totality of circumstances?
PERSUASIVENESS

○ Could you identify a core theory in this excerpt? What is it?

○ If no core theory is apparent, can you suggest one that seems to be consistent with the arguments made?

POLISHING

○ Are there citations after every proposition that comes from an authority (including material taken from the transcript) or that states a legal rule? (Indicate in the text where you think a citation would be helpful.)

○ Do you spot any polishing errors, such as inconsistent citation form (regardless of whether you know what the correct form is offhand), spelling or typographical errors? (Circle them in the text)

○ Do you spot any phrases that can be edited for conciseness, such as unnecessary prefices ("It is important to note that...", "The Supreme Court has ruled that...") or wordy phrases ("in order to" instead of "to"; "for the purpose of" instead of "for")? (Circle them in the text)