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COMMON FIRST-YEAR STUDENT WRITING ERRORS

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“Know your audience” is a fundamental principle we teach our students. This principle also applies to us as teachers, however. When I first started teaching legal writing, I didn’t know my audience well (although I thought I did because I had once been one of them). As a result, I sometimes misunderstood my students’ writing problems and learning needs, and I assumed they already had skills that they actually still needed to develop. But after a number of years of teaching, I like to think I have come to know them at least a little. So in the hope that it will help other new legal writing instructors know their audiences more quickly and thoroughly than I initially did, I’ve compiled a list of a few basic principles that first-year legal writers need to learn.

Think Ahead

Some students are not yet particularly disciplined thinkers. They forge ahead into outlining or even writing without first clearly articulating what they intend to prove. And if they have not clearly articulated what they intend to prove, they usually do a bad job proving it. So students need to think about each assignment in terms of what they must prove to reach a particular outcome. I tell them that a crucial step in the prewriting phase of their work is to write down exactly what they need to prove and keep that reminder posted somewhere in front of them during the writing process. This helps keep them more grounded and on track while writing.

Understand the Structure of an Argument

Many students don’t understand that an argument consists essentially of a proposition followed by proof. Often, students will state a proposition but will follow it with only a few statements of fact without explaining the significance of the facts. To force students to think through the entire structure of their argument,

during the prewriting stage I ask them to write each proposition they intend to prove in their memo at the top of a separate page. Then under each proposition, they must list the reasons that the proposition could be true. The reasons must relate back to the authorities they have read for the project. In particular, they must indicate whether the reasons the court relied on the relevant cases apply in our case. Under each reason, they must list the facts of their case that support application of that reason. When they construct their argument in paragraph form, then, they should start the paragraph with the proposition they intend to prove, state why it is true, then explain why the reason applies. They should then follow this pattern for each additional reason applied. Students could also do this exercise in a flowchart format, bubble-sort format, or any other format that makes sense to them.

Understand the Appropriate Support for a Legal Argument

Many students also don’t initially understand that there are different kinds of “proof” that may support a proposition or outcome. So they need to learn first that there are some basic types of “argument proof” to be made in legal writing. I identify these basic argument proof types as rule-based, analogical, and policy arguments. As students develop their lists of reasons in the exercise above, I require them to consider each of these three types of arguments as reasons supporting each proposition they must prove. Once they have identified the possible arguments, they can decide which arguments are worth making. This exercise thus helps students develop the habit of always considering each basic kind of argument.

Understand Analogical Argument

Students quickly learn that they must make analogical arguments, but when they get down to actually explaining one on paper, they often have trouble. They compare facts that are not comparable or not relevant to the legal outcome. Or they never state the point of the comparison; they simply compare the facts. To help students learn to construct understandable, defensible analogical arguments, I ask them first to state a

reason from a reported case that applies to their case. They must use the language of the court or an appropriate “label” for the court’s reason of their own devising, which they used when describing the case. Once they have identified a reason from the reported case that applies to their case, they then compare the facts of the reported case and of their case to prove that the reason applies. They must pay particular attention to how (and whether) the facts relate to the reason.

So in the exercise described earlier, students learn to think in terms of statement of a reason followed by explanation of why the reason applies. At this point, however, they learn specifically that they can defend application of a reason by showing that the relevant facts from the reported case are the same as or different from the relevant facts from our case.

Focus on a Few Basic Sentence Structure Principles

Many students are not accustomed to considering their audience. As a result, they don’t notice whether their sentences are reader-friendly. But often when I suggest that a student needs to work on sentence structure, the student feels completely overwhelmed and doesn’t know what aspect of sentence structure to attack. Usually, however, if students employ just a few basic principles, their sentence structure will improve considerably and their thoughts will be more accessible. So I give them a handout (printed in a large font) to post by their word processors that reminds them of these basic principles: eliminate passive voice, keep subject and verb concrete and close together, eliminate clutter words, and eliminate prepositional phrases when possible. I specifically direct them to lists of clutter words that they should be eliminating, which are usually available in their Legal Writing textbook. While focusing on these few principles won’t fix everything wrong with a student writer’s sentence structure, it can significantly improve sentence clarity.

Focus on Connectors

Students also need to learn to be kind to their readers by making their organization and flow of ideas obvious. Often, they need to work on both paragraph and sentence connectors. So once they get a handle on basic paragraph structure, I direct students to work on connectors. They need to learn that essentially every paragraph and every sentence must include some overlapping language or a connecting word or phrase so readers can follow their train of thought. If they cannot highlight a connector in a sentence or between paragraphs, or explain why they don’t need one at that point, they need to revise.

A Rule Is Not a Case Illustration Is Not an Argument

Finally, students have trouble seeing the functional differences among a “rule,” a case illustration that explains how a rule has been applied in the past, and an argument applying the rule. A concrete, visual depiction of the relationship between these ideas can help many students more easily grasp the underlying concepts. My particular method is to tell them that the rule is a box with a label on it (the main legal term or idea) that defines the parameters of a legal concept, the case illustrations are stories telling us what facts have fit into the box in the past and what facts haven’t, and the argument is their story to the readers about whether the client’s facts fit in the box or fit the definition. This description also provides me with a convenient vocabulary for discussing the rule, the case illustrations, and the arguments with the students.

There are undoubtedly numerous ways to address the problems I have identified here, and there are certainly more problems than I have identified. I hope, however, that these suggestions will help other new instructors know their audience well sooner rather than later.

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