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REVIEWING STUDENT PAPERS: SHOULD THE “BROKEN WINDOWS” THEORY APPLY?

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A legal writing teacher begins each year knowing that he or she will need to comment on approximately 1,500 pages of writing each semester submitted by an average of 43 students.¹ When faced with this task, legal writing teachers need to make difficult choices about the extent and frequency with which they comment on student papers.

As they approach another round of papers submitted by first-year law students, many legal writing teachers may feel like a physician assigned to a mobile army surgical hospital (M*A*S*H) unit. The written work needing review may suffer from multiple ailments, and the legal writing teacher may comment on only a few of the more serious “injuries” found in the body of writing. The ABA’s *Sourcebook on Legal Writing Programs* makes a quick reference to a legal writing teacher as a physician. “[A]n effective legal writing teacher knows how to subject a list of student errors to triage.”²

Into this triage and commenting process, I want to suggest the possibility of applying a law enforcement theory—the “broken windows” theory—as a way of creating in students the discipline necessary to achieve the ultimate goal,

¹ Association of Legal Writing Directors/Legal Writing Institute 2003 Survey, Responses to Question 82. The 2003 Survey results are available at <www.alwd.org>.

² American Bar Association, The Communication Skills Committee for the Section of Legal Education and Admissions to the Bar, *Sourcebook on Legal Writing Programs* 43 (1997).

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in the ABA's words, of making "each student self-sufficient, able to independently analyze, research, synthesize, and communicate each new problem."³ Much like the thrust of a recent article in *Perspectives*, applying the broken windows theory to a legal writing course requires a teacher to make students "sweat the small stuff."⁴

The Broken Windows Theory

In a famous article appearing in the March 1982 issue of *The Atlantic Monthly*, James Wilson and George Kelling suggested that police could help reduce more serious crimes and help improve communities by fixing broken windows and emphasizing the order maintenance function of police work. In a line or two, the article summarized the theory by saying, "[I]f a window in a building is broken *and is left unrepaired*, all the rest of the windows will soon be broken. ... [O]ne unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing."⁵ (Emphasis added.) The article suggested "that 'untended' behavior also leads to the breakdown of community controls."⁶

This article appeared at a time when the authors had concluded that police officers had prioritized their crime-solving function over their traditional order-maintenance function.⁷ In the authors' view, police had lost sight of "the link between order-maintenance and crime-prevention."⁸ This also had caused some to "wish to 'decriminalize' disreputable behavior that 'harms no one.'"⁹

When Rudolph Giuliani became the mayor of New York City, he put the broken windows theory into effect. The New York police began confronting individuals who committed smaller crimes or crimes that "harm no one." The NYPD began stopping the infamous squeegee men and

the individuals jumping turnstiles in the subway, and began addressing other smaller quality of life violations. Coincidentally, the city of New York began to see a reduction in its serious crime rate as well.

Applying the Broken Windows Theory to Legal Writing Courses

Without much difficulty, a legal writing teacher can apply this theory when reviewing student writing, and, I think, begin to see positive results within a short period of time.

If one views the student writing submitted as a community suffering from a series of crimes, one can divide the crimes into different categories. Serious crimes include such things as the inability to present a syllogism or to create an analogy. On the other hand, broken windows in student writing would include such things as format errors, misstating basic facts, grammar mistakes, incorrect pronoun usage, incorrect citations, and incorrect punctuation.

The presence of these kinds of broken windows in a student's writing become important because they evidence a lack of discipline and a lack of attention to detail necessary to research, write, and analyze complex legal problems. In short, students who misstate basic facts in a short writing assignment may not be the ones who see careful ways to distinguish adverse cases in later, more complex assignments. Students who do not take the time to master the basic citation rules from either *The Bluebook* or the *ALWD Citation Manual* may be the students unwilling to pay attention to the detail necessary to write professional legal documents.

The presence of broken windows in early writing assignments also may provide a good prediction of high quality writing later for the same reasons. For example, each year, first-year students in my legal writing course receive directions in the course syllabus about the correct format, based on local court rules, for the assignments they submit. They also receive a reminder before the first assignment becomes due. Every year, a small minority of students submit their first few assignments in the correct format. At the end of each year, if I compare the students who received the highest scores at the end of the

³ *Id.* at 8.

⁴ See Stephen V. Armstrong & Timothy P. Terrell, *Sweating the Small Stuff*, *Perspectives: Teaching Legal Res. & Writing* 128–31 (2003).

⁵ James Q. Wilson and George L. Kelling, *Broken Windows: The police and neighborhood safety*, *The Atlantic Monthly*, March 1982, 29, 31.

⁶ *Id.*

⁷ *Id.* at 34.

⁸ *Id.* at 34.

⁹ *Id.* at 35.

year against those students who followed the correct format at the beginning of the year, there consistently exists a high correlation between the two groups. Over time, I have concluded that these students show early in the academic year the ability to pay attention to detail and the discipline to do it consistently throughout their legal research, analysis, and writing.

While describing types of neighborhoods, the authors of the *Broken Windows* article correctly describe types of students most legal writing teachers see each year. First, for the authors, some “neighborhoods are so stable and serene as to make foot patrol unnecessary.”¹⁰ Every year, each legal writing teacher probably has students who already write well and take the class seriously. For these students, very few broken windows exist in their writing assignments, and when noted, the students quickly fix them. For these students, legal writing teachers can focus on solving the more serious crimes in their writing if they exist.

Second, “[s]ome neighborhoods are so demoralized and crime-ridden as to make foot patrol useless; the best police can do with limited resources is respond to the enormous number of calls for service.”¹¹ Again, each year, most legal writing teachers will have some students whose writing just contains so many errors, both serious crimes and broken windows, that all cannot be addressed at one time. Given the number of pages of writing the average legal writing teacher faces each semester, one probably cannot comment on all the errors in these assignments. Papers with these many broken windows probably foreshadow a year during which the legal writing teacher may spend a disproportionate amount of his or her time attempting to help the student fix serious problems.

Third, most students fall into the next group. As the *Broken Windows* authors describe it, “[t]he key is to identify neighborhoods at the tipping point—where the public order is deteriorating but not unreclaimable, where streets are used frequently but by apprehensive people, where a window is likely to be broken at any time, and must quickly be fixed if all are not to be

shattered.”¹² By applying the broken windows theory to these students early in their first-year legal writing course, one has a better chance of “tipping” these students in the right direction and fostering in them the discipline necessary for later success in legal research, analysis, and writing.

Many students fall into this group for a number of reasons. For some, a first-year legal writing course provides the first time anyone has examined their writing line-by-line or word-by-word with the goal of providing constructive criticism. Others in this group may not view their legal writing course as a “real” course because their law schools either do not grade the course or do not count the grade in their grade point average. Finally, others in this group may not view the effort required by their legal writing course as being commensurate with the units of academic credit awarded for it. Being future lawyers, these students calibrate their efforts to the perceived worth of the class with “broken windows” appearing in their writing as a consequence of that decision. For whatever reason they fall into this group, students here have the ability but not the discipline to produce high quality legal writing initially. These students are “at the tipping point” much like some neighborhoods.

Applying the Broken Windows Theory Effectively

To apply the broken windows theory effectively, one must guard against being seen only as nitpicker or as only interested in fixing broken windows in a student’s writing. Students probably will not react favorably if they perceive their legal writing teacher as only commenting on grammar, punctuation, and citations.

Rather, the legal writing teacher actively should seek to solve the serious crimes in a student’s writing while bringing all the broken windows to the student’s attention as they go along. In this way, the legal writing teacher acts much more like the police officer utilizing the plain view doctrine.¹³ In essence, the legal writing teacher begins reviewing the student work because he or she has probable cause or a reasonable suspicion to

“Students probably will not react favorably if they perceive their legal writing teacher as only commenting on grammar, punctuation, and citations.”

¹⁰ *Id.* at 38.

¹¹ *Id.*

¹² *Id.*

¹³ See *Coolidge v. New Hampshire*, 403 U.S. 443 (1971).

“In general, students will pay more attention to every line or word in their writing if they believe their legal writing teacher will do the same when reviewing it.”

believe some serious crimes may have been committed, but while there, the legal writing teacher finds a series of minor offenses and broken windows in plain view. Just like the police officer, the legal writing teacher should not ignore these items in plain view.

In addition, a legal writing teacher needs to identify these broken windows and minor offenses with consistency before students will take the commenting or suggestions seriously. In my experience, students do not seek to make small errors in their writing assignments, but, except for a few students, they do not take these errors seriously unless they perceive that their legal writing teacher does. For example, law students generally will take the time to learn and use basic citation rules correctly if their legal writing teacher consistently marks incorrect citations or if they see that incorrect citations may have some marginal effect on their score for some assignment. Either way, bringing the student's attention to these broken windows helps create more discipline and attention to detail in each student. In general, students will pay more attention to every line or word in their writing if they believe their legal writing teacher will do the same when reviewing it.

Once a student has this discipline and attention to detail, the need for a legal writing teacher to comment on these types of items in writing assignments declines quickly. Students typically do not lose this discipline once they have it. Students begin to realize that writing samples for jobs and clerkships need a professional quality. Students often look back at their earlier assignments in amusement or horror once they attain this level of discipline. More importantly, this discipline and attention to detail, once obtained, generally transfer to other skills in the legal writing course. Students who pay attention to the small details in their own writing find it easier to pay attention to the small details in other people's writing ranging from court decisions to opposing briefs.

Finally, every legal writing teacher needs to make sure to manage his or her workload effectively. To apply this approach effectively, one should have students write relatively short assignments at the beginning of the course. This becomes important for three reasons. First, relatively long initial assignments (e.g., over five pages) provide students with the opportunity to

repeat mistakes without having received any constructive criticism. A student who struggles with presenting a syllogism in writing, e.g., an IRAC (Issue, Rule, Application, Conclusion) or CRAC (Conclusion, Rule, Analysis/Application of Rule, Conclusion Restated) large-scale organization, does not benefit from having to present it incorrectly multiple times in an initial assignment. Second, relatively short initial assignments allow the legal writing teacher to comment on all aspects of the writing within a reasonable period of time rather than having to prioritize certain major issues with each student. This avoids misleading any student into thinking aspects of their writing that do not receive comments or any attention are fine. Third, relatively short initial assignments allow for repetition. This will result in more frequent writing experiences and more frequent comments from the legal writing teacher. This increased frequency provides an opportunity to create more disciplined legal writers.

Conclusion

The ultimate goal of any legal writing program “should be to make each student self-sufficient, able to independently analyze, research, synthesize, and communicate each new problem.”¹⁴ Achieving this goal requires students to develop a necessary level of discipline and attention to detail. For those students entering law school without these skills, the legal writing teacher can spur the development of these skills during the initial stages of a first-year legal writing course. To do so, a legal writing teacher may need to view himself or herself less like a physician in a triage ward and more like a neighborhood police officer seeking to help the community by ridding it of broken windows. In the legal writing context, this requires the teacher not to ignore the many small errors that infest early legal writing submissions from many first-year students. By bring these broken windows consistently to their attention, the legal writing teacher can help convey and foster the discipline and attention to detail necessary for quality legal research, analysis, and writing.

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¹⁴ American Bar Association, *supra* note 2, at 8.