

Connecting the Dots: Using Connected Legal Writing Assignments to Help Students Think Outside of the Assignment and About the Bigger Picture

By Candace Mueller Centeno

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“What do we do next?” is a common question asked by clients. Law firm partners also frequently direct this question to new associates when reviewing case files or legal memoranda with the associates. Although solid writing skills are essential for a successful legal career, a new associate’s ability to manage files and to think beyond an assignment is also essential. By working on connected legal writing assignments with a mock client and ongoing case, law students gain instruction on practical file-handling skills and are challenged to consider the overall strategy through an analysis of a single case with developing issues.

In the fall of 2006, I left a 13-year law practice as a medical malpractice defense litigator to teach legal writing, analysis, and oral advocacy. For several years before making the career switch, I had browsed the Web sites of various area law schools and had dreamed about teaching. On all such occasions, I gravitated toward legal writing because legal writing programs provide important research and writing instruction to help prepare law students for their first jobs. In addition, the broad and flexible nature of a legal writing course presents an opportunity to get law students thinking not only about the law but also about the client’s goals and how a case moves forward factually, procedurally, and analytically.

In our legal writing program, the first semester focuses on objective writing. Students are required to write a closed research memorandum, an ungraded open research memorandum that is then rewritten, and a final open research memorandum that is graded. In addition to these assignments, the

students are also divided into “law firms” (groups of three to four students) to work on exercises outside of class throughout the semester.

Instead of assigning unrelated problems in the fall semester, I developed a related fact pattern that was used and developed in lectures, exercises, and the graded and ungraded open memorandum assignments. By connecting the legal writing assignments and lectures together, several pedagogical moments emerged when students were provided opportunities to expand their thinking beyond the assigned topic for the legal memorandum. Working on connected assignments allowed students to focus on problem solving, to think about the next step in a case, to see the connection between research and a case, and to understand the importance of case progression, procedure, and organization. Legal writing professors can incorporate connected assignments into the framework of an existing legal writing program and such assignments can take on many different and flexible forms.

Pedagogy of Connecting

1. Thinking Beyond the Assignment

When completing a memorandum assignment and working on a file, new attorneys will distinguish themselves if they undertake three types of thinking—short-term thinking, intermediate thinking, and long-term thinking. *Short-term thinking* involves an analysis of the issue raised in the assignment. Once the assignment is finished and provided to the assigning attorney, however, the case is not over.

As such, it is important to move students beyond short-term thinking so that they can develop intermediate and long-term thinking skills. *Intermediate thinking* takes short-term thinking one step further and requires an analysis of what happens next as a

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result of the legal inquiry in the assignment. This requires an analysis of additional steps, including answers to the following questions: What other facts are needed to fully address the issues raised in the memorandum? What procedural steps are necessary, if any, to finish the assignment? In many ways, intermediate thinking is a transition phase between the assignment and the larger goals of the case.

Taking the students beyond intermediate thinking, *long-term thinking* requires students and associates to think well beyond the assignment they have completed and to the ultimate goals of the case. This involves an analysis of the broader picture, including answers to the following questions: What additional facts need to be gathered for this case? What other legal issues may be relevant? What needs to be done to get the necessary facts or to prove or defend other issues? What is the timeline to accomplish these goals, including any relevant deadlines? An analysis of the next steps is an important skill that should be introduced as soon as possible so students are trained to analyze how the issue at hand connects to the case as a whole and to identify what they should do next for the client.

By working on connected assignments, first-year law students are given an opportunity to begin the necessary process of intermediate and long-term thinking because they are being provided examples of how a case progresses. Students can move beyond short-term thinking because they are not limited by the isolated analysis of legal issues in unrelated fact patterns or assignments. As such, students are on their way to learning more about practice and the process involved.

2. The Progression of Connected Assignments and Related Teaching Moments

By using a continuum of assignments, the legal writing instructor can help students master four important skills. First, students focus on problem solving by engaging in a discussion of the issues before embarking on a memorandum assignment.

Second, students gain an understanding as to why the research and legal memorandum is important and how it connects to the case as a whole. Third, connected assignments teach students to be proactive versus reactive lawyers. The question “what do I do next?” should always be on their minds. Even short lectures or smaller assignments assist students in developing their intermediate and long-term thinking. Finally, the exercises and assignments provide an opportunity to highlight procedural issues, to discuss the progression of a case, and to stress the importance of organization, deadlines, and timelines.

The assignments and exercises that I used during my fall semester course on objective legal writing illustrate the teachable moments and the progression of connected assignments. To begin, the students were served with a complaint. The complaint set forth claims of medical negligence and negligent infliction of emotional distress against a physician and hospital for treatment following a car accident. The averments contained some limited additional facts relating to the car accident and a broken seat belt, although the complaint did not identify the driver of the car or assert a product liability claim. The students were instructed to read the complaint, analyze the claims, and ponder, “What do I do if my client has been sued and I am given the complaint?” At the end of the next class, we discussed the issues raised in the complaint, procedure relating to pleadings, and deadline concerns. I then gave the students their first open memorandum assignment and asked them to determine whether the complaint set forth a valid claim for negligent infliction of emotional distress, one of the causes of action in the complaint.

By researching and writing about the validity of the plaintiff’s claim for negligent infliction of emotional distress, the students invoked short-term thinking. When the assignment was completed, however, the students were asked to consider the following questions and discuss them during class:

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Intermediate thinking If the claim is invalid, what do I need to do?

If the claim is valid, what do I need to do?

How is the partner going to use this memorandum?

Long-term thinking What needs to be done next to defend the case?

What are the deadlines?

Additional teaching moments were also easily incorporated, including a discussion of procedure, deadlines, case progression, and the importance of legal analysis and writing.

I connected the next exercise when I asked students to think about additional issues raised in the complaint and in the memorandum they had already prepared. For example, I asked them what additional issues were raised in the complaint and what other facts were needed to defend the case.

We then discussed these issues in class, and several students noticed the missing facts regarding the car accident that brought the plaintiff to the hospital in the first place. At the end of class, each law firm was assigned a different topic and was instructed to draft 10 interrogatories to obtain the needed factual information. Because this exercise was connected to the memorandum assignment, the students were required to invoke intermediate and long-term thinking skills.

In the interrogatory drafting exercise, some surprising additional teaching moments emerged on the importance of attention to detail in all aspects of writing. Each law firm had to e-mail me its 10 interrogatories one day prior to class. I then chose one well-drafted interrogatory and one not-so-well-drafted interrogatory from each law firm. In a PowerPoint presentation, I placed each interrogatory on a separate slide along with my response or objection. The not-so-well-drafted interrogatories demonstrated how ineffective or careless writing resulted in a nonresponsive answer, an incomplete response, or an objection.

To continue the progression of the “case,” I provided the students with factual information in response to some of the interrogatories, and these facts led to the topic of the second open memorandum assignment—possible joinder of additional parties. As a result, students were given an opportunity to see how research and discovery are interrelated. In addition, they again were provided with an example of case progression and long-term thinking. The topic of the final open memorandum was a *product of the responses to interrogatories*. I emphasized that, if the attorney had not served clear interrogatories, the attorney would not have discovered that another party might also be responsible for the payment of damages. Finally, the topic of this memorandum also provided another opportunity to discuss civil procedure and deadlines.

How to Incorporate Connected Assignments into an Existing Legal Writing Curriculum

Although it may seem a daunting task to work connected assignments into a legal writing course, a legal writing professor can undertake this challenge as part of the needed research for the memorandum assignments that are a part of the course itself. I had never written an assignment for law students and had never taught before the fall of 2006, yet I was able to incorporate connected assignments. By using the existing curriculum as a framework, by adding smaller exercises, and by providing brief lectures on a variety of topics (procedure, progression of cases, thinking about what is next, and organization), I was able to create the related assignments without much extra work beyond what would have been required to create *unrelated* memorandum assignments.

In order to connect efficiently, I found it beneficial to have a “beginning” and an “end.” At the start of the semester, I researched and outlined the topics for the first open memorandum and the last open memorandum. I then created the initial complaint, added the interrogatory exercise, and outlined how I would present the assignments and lectures in class. In many ways, it made the semester less stressful because I knew (at least to some extent) where I was going.

Options and Flexibility When Preparing Connected Legal Writing Assignments

The examples outlined above for connected assignments are just the beginning. As I think about my second year teaching legal writing, I look forward to creating a new series of connected assignments and to incorporating more ways to get my students thinking.

1. The Ethical Component

Although ethics was the subject of only one class session during the fall semester, my first-year law students were riveted to stories of ethical dilemmas and professionalism encountered during my practice, and they enjoyed discussing different ethical scenarios. To further engage the students in this topic, one possible connected exercise would involve an ethical component raised within a now-familiar fact pattern. This would allow the students to think about and discuss an ethical dilemma presented by their own client or by the actions of opposing counsel. Because we, as legal writing professors, are creating the facts, there are many ways to incorporate a related fact pattern that includes an ethical component. By doing so, we can provide instruction on how to deal with an ethical issue that our students may encounter in practice.

2. Incorporation of Civil Rules of Procedure

Based upon observations in my later years of practice, the state and local rules of civil procedure are often a mystery to first-year associates. They know the rules exist, but they do not know when or how to use them. Although not incorporated during my class last year, I plan to introduce the rules of civil procedure for my chosen jurisdiction. This will enable the students to begin navigating the rules they will rely upon in practice. If your students typically practice in one state after graduation, those rules of civil procedure could also be used and discussed throughout the semester as they relate to the assignments or exercises. By using the rules, students will gain a familiarity with them and further instruction on the use and application of the rules.

3. Additional Ideas on Connecting Assignments

There are many ways to incorporate real-world scenarios and to connect legal writing assignments. First, there are many different areas of law that can be the subject of an assignment, including torts, criminal law, civil procedure, contracts, property law, or employment law. In addition, multiple topics can be utilized over the semester by connecting related fact patterns to different areas of the law. For example, a tort issue that is the topic of research for an initial assignment could develop into a contractual issue for the second memorandum through the “discovery” of an existing contract that affects the responsibilities of the parties. Moreover, a brief contract-drafting exercise could also be incorporated.

Second, the connection can start at many different phases in a “case.” For example, the first assignment may involve an initial client interview and end with a discovery issue or privilege issue. Alternatively, if the final assignment involves a pretrial or trial issue, the starting point may be issues raised during the “middle” of a case, that is, discovery. The suggested goal of this article is not the instruction of the complete progression and procedure of a case from the filing of a complaint to the final appeal. Indeed, this would be an overwhelming task.

Rather, the goal of this teaching method is to expand thinking and to include more practical lessons in a manner that can be easily incorporated into an existing legal writing program. By doing so, students gain invaluable instruction on practice skills and an example of how a case progresses in the real world. More importantly, we, as legal writing professors, can challenge students to problem solve and to expand their thought process beyond the assignment so that they can be successful lawyers.

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