

## Peering Down the Edit

*Brutal Choices in Curricular Design ... is a regular feature of Perspectives, designed to explore the difficult curricular decisions that teachers of legal research and writing courses are often forced to make in light of the realities of limited budgets, time, personnel, and other resources. Readers are invited to comment on the opinions expressed in this column and to suggest other “brutal choices” that should be considered in future issues. Please submit material to Helene Shapo, Northwestern University School of Law, e-mail: h-shapo@law.northwestern.edu, or Kathryn Mercer, Case Western Reserve University School of Law, e-mail: klm7@case.edu.*

**By Libby A. White**

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Whenever I read or hear the term “peer edit” I picture a person “peering” quizzically at a document, pencil clenched tightly between the teeth. I’m not so sure this is far from the truth when considering how our students act as peer editors as new law students. In fact, the term is arguably an oxymoron because, as many a student has stated to me when tentatively offering up their edits for review: “I tried, but I really wasn’t sure that I knew what I was doing.” Hence we have the conundrum of teaching students to edit before they know how to write. Yet every year, my colleagues and I force our students to “be us” for their first open memorandum, and to evaluate and edit, anonymously, the writing of two of their peers. Compounding this difficulty is finding the time for the students to perform the peer edits within the short time frame of a strict curriculum.

### The Question Mark

Is the peer edit in a legal writing course worth the effort? This is the annual question that wriggles uncomfortably in our minds. There are so many

problems that can occur as a result of peer editing, especially peer editing less than two months into the first year of law school, that the hoped-for advantages seem to totter in their wake. Does it make sense to create a time-consuming task for the student and one that is often frustrating for the teacher? Will the students tell each other the wrong thing and consequently unravel all the good work done by the teacher up to that point, with the complementary professorial grinding of the teeth and the tearing out of hair?

To complicate matters further, advice from other legal writing professors is often contradictory: do peer edits later since the students will know more and do a better job; do them earlier in the year—the students will learn faster and will retain the knowledge sooner; do them anonymously to encourage the students to be honest editors; don’t do them anonymously because the writers are more likely to do a better job when they know their editors will know who they are; give the students simple objective guidelines to follow so they will feel better as editors and will retain that knowledge; give the student open-ended editing questions so they have to think through the process, thereby coming to a better understanding of legal writing in general. What is a legal writing professor to do?

Is it worth it?

### The Exclamation Point

Just when you think the peer edit is ineffective and of negligible value, in walks a student glowing from the experience. The student has “seen the light!” or “now understands!” or “realizes how poorly (oh dear!)” he/she is doing. Our oft-unrealized hope with the peer edit is to create these epiphanies for the editors. The advantage of peer editing, I tell my students, is for the editor because the editor is the one who must think through all the rules, understand what the writer is saying, and comment coherently. It is less advantageous to the one being edited because that

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person is passive and may only learn more if (a) the edited comments are clear and correct, (b) he or she actually reads the edited comments, and (c) the student editor's comments supplement the comments the legal writing professor has given.

One group of editors that benefits is comprised of those who are probably already doing a pretty good job with legal writing. They have tried to learn the rules, applied them in their own work, and now take their editing job seriously as a result. Their edits are things of beauty: much neater handwriting than mine, serious and constructive comments, and helpful advice.

A second type of editor who benefits is the "raised eyebrow" editor, or one who experiences the true "eureka moment" of "oh, that's how it's done!" These are the students who would have understood eventually, but this awakening experience speeds up their learning. And last comes the formerly arrogant, now humbled, editor who thought that legal writing was "a snap," and turned in a terrible paper, only to discover, not through my comments, but through editing of other, better papers, how poorly he or she has done. These two latter groups benefit only if they edit good papers. If they edit only poor papers, there is probably no epiphany for the slower learners. For the arrogant editor, editing a badly drafted memorandum may instead serve as an unfortunate confirmation of that editor's writing prowess.

For all other editors, the peer-editing process does not seem to make an impact. This is likely connected to the effort put into editing, or the lack thereof. The snowy white spaces on the pages of the edited memorandum are still spotless after the edit, and the responses to the questions on the peer editing checklist are those wonderfully useless comments like "nice try!" or "good introduction!" My threats of receiving a "check minus" for poor edits seem to have no effect on these "editors."

Despite my belief and my comments to my classes that the peer edit is primarily for the benefit of the editor, at times it is equally advantageous to the one being edited. Every once in a while, my memo

conferences start with a student reverently holding a student edit, extolling the virtues of that editor, and telling me how much that editor helped with his or her comments. To my chagrin, my carefully edited (but not so neatly written) comments on that same paper lie forgotten on the table. I fortify my tattered teacher's pride by being very glad that the student is learning and by convincing myself that it doesn't matter that the student seems to be learning more from a first-year student who has only had two months of legal writing rather than from me, who, after all, is the teacher! I have also had poor students realize that their memos were critiqued by three people with comments that consistently identified the same concerns. This recognition brings home to them that (a) I am really not out to get them and (b) maybe they should work harder. A final advantage is that student editors will sometimes pick up problems that I missed, so having a good student edit does supplement what I do, and I'm grateful for that.

On the other hand, some students are suspicious of other students' critiques and only want to hear from me, so they don't give much credence to the edits, even if the edits are quite good.

### The Semicolon

I also have a selfish motive in requiring a peer edit; it is one that I only discovered and used this year. Despite recommendations from highly respected colleagues to wait until later in the year to do peer edits, I decided to schedule a peer edit the second week of class, and before the students handed in their first piece, a closed memorandum. My goal was to embed the objective legal writing conventions in the mind of the peer editor and, as a result of the edits, to prevent the legal writing professor (me) from quietly going mad from writing in the margins, for the umpteenth time, "do not use first person," "spell out numbers 1-99," or "a court is an 'it,' not a 'they.'"

Prior to this year, I assigned the closed memorandum and gave my students a sheet detailing the legal writing conventions they should use when writing the memorandum, and these conventions

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were crystal clear and nonnegotiable. Nonetheless, and this is a mystery right up there with the perennial question of “don’t they read their e-mail?” my students almost universally ignored these conventions in producing their closed memoranda. My idea, therefore, was to make the student editors write those repetitive comments on the closed memoranda, to have the writers incorporate the comments, and then to have the writers turn in the old, peer-critiqued memorandum and the new edited version. The ideal result would be that everyone would learn those pesky but necessary conventions, that I would not have to repeat myself on every paper, and that I actually might be able to comment on legal analysis and produce brilliant legal writers.

Alas, the results were mixed. Thankfully, I had to comment much less than I would normally have had to because the editors caught many of the omissions and mistakes by the writers. However, these catches were scattered and inconsistent. While the papers were cleaner and more in line with legal writing conventions, they were not as clean as expected, even though I had given the editors defined lists with boxes to check.

While part of the problem was that my expectations were too high, I also believe that lack of time to edit caused the inconsistencies. I scheduled the peer edit session, to be supervised by my teaching assistants, for one 50-minute session the day before the paper was due. The students have since told me that this was not enough time for them to edit a four-page memorandum and that they were frustrated by this time restriction. My surprise at this complaint shows me that I had forgotten how unfamiliar they are with this process and how insecure they are with learning new skills. I also think that they may have been more tentative in editing papers of writers they knew since I did not make this peer edit anonymous. Next year, I will give them more time and perhaps make it anonymous. Maybe, then, my dream of commenting more on legal analysis than on legal writing conventions in the closed memorandum will come true.

### The Comma

Aye, there’s the rub, and that’s the downside of the newbie editor commenting on the newbie legal writer. The editor may say the wrong thing, thereby complicating a learning process that is already steep and challenging. In addition, the editor may either be too effusive, causing false expectations in the writer, or too harsh, deepening the insecurity of the new legal writer. The editor may also suffer from critiquing only poor papers because there may be so much wrong with the papers, the editor may feel overwhelmed. The best edit would be to critique a good memo and a bad memo and to understand the differences, but in our world, it is almost impossible to make sure each student gets one of each. These are major negatives, and they can create more work for the teacher in trying to correct the problems. This is also why a lot of people recommend doing peer edits in the second semester or not at all.

A teacher can reduce, although not eliminate these problems, through careful preparation before the peer edits. To reduce the first problem, incorrect comments, I provide checklists for the editors that list the specific requirements for each section. I also tell the students that I will review the peer edits for incorrect comments and cross them out before returning them to the writers and that I will make a note of the incorrect comments and discuss them in our conferences on the open memorandum. Unfortunately, I sometimes get editors who completely miss the point and criticize a good memo for those very reasons that make it a good memo. In those cases, I have to start from scratch with the student editor in explaining why those items the editor is criticizing are the very ones that make a good memorandum. While it is a little disheartening to discover a student who really has not understood what I’ve been teaching, ultimately it’s a positive to catch the student’s misconceptions early and certainly well before the graded memo assignment.

For the second problem, the editor being too complimentary or too harsh, I tell the students that there is no paper that will be “perfect” and no paper that will be “horrible” (although that may not always be true). I explain to them about the problems with

inducing false expectations or insecurity in the writer and that what I would like them to be is constructive and fair. For the most part, they get them. If not, I hold back the papers that are too effusive or too harsh, and I talk to the editors about them. Of course, reviewing the peer edits, eliminating incorrect comments, and discussing these with the editors and writers take a lot of time.

The third problem, where editors may critique only poor papers, is a difficult one to solve. I have thought about trying to pull a good paper and a bad paper and copying them for everyone to edit. My problem is that my peer edit on the open memoranda occurs two or three days after they are handed in because the conferences on the memoranda begin the next week. A possible solution would be to have the conferences begin later so that I would have time to find the appropriate memoranda to edit, but then the rewrites run up against the graded memo assignment. In the end, what has stopped me from doing this is that I still think that it is valuable for some people to be peer edited in addition to acting as peer editors. As noted under The Exclamation Point above, the editing of a student's paper can reinforce or enhance my comments (or even surpass them). Because of this advantage, I have retained the anonymous peer edit of everyone's papers, with all of its inherent faults.

### The Colon

So, with all the pros and the cons in mind, here is what I suggest legal writing professors do: if you have time, and if the students have time, the peer edits are worth it. For some of the students, it's how they learn best. For others, it's how they become better self-editors. Admittedly the peer edit is a tool with built-in frustrations, and I don't think there is much to be done about those frustrations. I think also that peer edits can be done very early if you give the editors defined, objective guidelines. Learning to act as an editor makes a student a better writer and a better self-editor, and this can occur at a much earlier stage in the process. But the emphasis should be on providing the students with discrete, realistic tasks. For instance, the professor

may ask the students to first focus on the "big picture structure and overall message" by outlining the piece and then analyzing the outline.<sup>1</sup> The students can then later focus on "small-scale writing" by highlighting the subject and verb in every sentence or by highlighting and eliminating "glue words" such as prepositions.<sup>2</sup>

To counteract bad habits, it is best to take the time to train the students to be good editors.<sup>3</sup> If possible, "pass around a few briefs [or memos], maybe a good one, a bad one, and a mediocre one, and have them critique the briefs [memoranda] as a class so they get the hang of it."<sup>4</sup> One teacher has had his class do peer editing as a group of four, rather than anonymously, as the best way to go, but he notes that time management for the group is a problem.<sup>5</sup> Another echoes this advice by recommending "writing partners" and then conferencing with them on their collaborations.<sup>6</sup>

There is disagreement as to whether the peer edits should be anonymous with some teachers recognizing that first-year law students can be defensive and insecure if their names are on the papers. Others believe that a student putting his or her name on the paper makes that student more responsible for the piece and sets up "an

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<sup>1</sup> E-mail from Marcia McCormick, Assistant Professor, Cumberland School of Law, to LRWPROF-L@LISTSERV.IUPUI.EDU (Aug. 28, 2007) (copy on file with author).

<sup>2</sup> *Id.*

<sup>3</sup> E-mail from Benjamin R. Opiari, Ph.D., Writing Instructor, Office of Professional Development, Howrey LLP (Washington, D.C.) to LRWPROF-L@LISTSERV.IUPUI.EDU (Aug. 28, 2007) (copy on file with author). He calls them "peer reviews," rather than peer edits.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> E-mail from Nancy Wanderer, Director, Legal Research and Writing Program, University of Maine School of Law, to LRWPROF-L@LISTSERV.IUPUI.EDU (Aug. 28, 2007) (copy on file with author).

<sup>7</sup> E-mail from Sue Liemer, Director, Lawyering Skills, Southern Illinois University School of Law, to LRWPROF-L@LISTSERV.IUPUI.EDU (Aug. 29, 2007) (copy on file with author).

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expectation of constructive criticism.”<sup>7</sup> Lack of anonymity also reflects the practice of commenting on documents post-law school.<sup>8</sup>

Those who champion editing in the second semester find that peer edits are more useful and constructive when the students have a semester “under their belt[s].”<sup>9</sup> One editing exercise that I and others use is to have students peer edit the statement of facts for the graded brief in the spring. The students “give each other great feedback about the persuasiveness of the story and theory of the case.”<sup>10</sup> One professor has her students edit their oral argument partner’s brief that is on a different issue; she states that “when a better student teams with a struggling student—or even one who is solid but not as strong as the better student—I find that both of them turn in a better final product. They also comment on how much they learned in the process.”<sup>11</sup>

### The Period

There are many resources available to the legal writing professor that will help provide training for peer editing and there are just as many ideas on how best to implement its benefits.<sup>12</sup> The biggest stumbling block is time management, which I have partially counteracted by having my teaching assistants monitor the peer editing during mandatory sessions that are in addition to my students’ regular class time. I let my students know

at the beginning of the semester that this class time is considered part of the course so that there is less grumbling. The other major problem is training, and that too is time-consuming. My training, by necessity, is through handouts and feedback because I can devote little time in class to editing, and that does limit the quality of the peer edits for many students. Ultimately, I believe that peer editing is a tool that will help most of my students. Either they benefit from it individually as an ignition to understanding or they benefit cumulatively, along with all the other tools I give to them, in the hopes that one or more will help them understand how to be good legal writers.

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<sup>8</sup> E-mail from Opipari, *supra* note 3.

<sup>9</sup> E-mail from Ruth Anne Robbins, Clinical Professor, Rutgers School of Law-Camden, to LRWPROF-L@LISTSERV.IUPUI.EDU (Aug. 28, 2007) (copy on file with author).

<sup>10</sup> *Id.*

<sup>11</sup> E-mail from Kris Panikowski, Adjunct Professor and Lawyering Skills Instructor, University of San Diego School of Law, to LRWPROF-L@LISTSERV.IUPUI.EDU (Aug. 28, 2007) (copy on file with author).

<sup>12</sup> These resources, which are too numerous to list here, include almost all legal writing texts and a number of law review articles on editing techniques, Legal Writing Institute (LWI) Idea Bank submissions, LWI conference materials, and archived e-mails available at <www.lwionline.org>.