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What lawyers can teach their employed law students about ‘impactful legal writing’

Douglas E. Abrams

In the March/April 2023 issue of the Journal of The Missouri Bar, I observed that many law students take part-time legal employment outside the law school building.

During that part-time employment, law students often write to fulfill assignments. By closely reviewing the student’s written product, the employer can assume the rewarding role of a teacher.

This article picks up where the most recent one left off and concerns the value of teaching employed law students about the potency of “impactful legal writing” – legal writing that can have a substantial impact on someone other than the student writer. Much of the employer’s most instructive teaching about impactful legal writing occurs at the beginning of an assignment, rather than solely during review after the student has completed the assignment. This article identifies four ways an employed law student’s impactful writing when fulfilling assignments differs from the effect of students’ academic writing in law school. Each of the four ways enables the employer to deliver practical lessons about impactful legal writing – lessons that can serve present clients and enhance the student’s legal career.

Impact people other than the student

At all accredited law schools, students’ writing instruction begins with a required first-year legal research and writing course. Some professors also integrate a practical writing exercise into their first-year and upper-class doctrinal courses. Writing experience may also extend to upper-class skills courses, including arbitration, mediation, and contract drafting. The faculty may also require each student to complete one or more graded research and writing papers in select upper-class doctrinal courses.

That is not all. For 2L and 3L students who qualify, research and writing mark membership on the law school’s primary law review, specialty law reviews, and intramural and inter-school moot court teams. Upper-class students may also participate in faculty-taught clinics that frequently require writing on behalf of clients.

Classroom hypotheticals, moot court submissions, and most other non-clinical student writing in law school tend to share a common characteristic: This writing typically names only fictional, non-existent people. A student’s written law review note or comment may name actual people, but the writing usually has little or no immediate or long-term effect on their rights and liabilities. In most academic contexts outside the clinical realm, no one suffers adverse impact for the law student’s incorrect, incomplete, or otherwise deficient research and writing. No one, that is, except sometimes the student, whose adverse consequences typically extend no further than critique, correction, or a lower grade.

When the employer assigns a law student to research and write a memorandum about a particular point in an actual legal matter, however, the employer can help the student see that the impact may be fundamentally different. Perhaps for the first time, the student’s legal writing may intimately impact not only the student, but also other people, especially the client.

The employer must teach the student that awareness of this broader potential impact should motivate lawyers to exercise a greater measure of care throughout a career marked by writing at the bar. The student’s early lesson is that real-life legal writing carries the prospect of real-life legal consequences to real people. This responsibility for other people brings pressure to meet special challenges. Context counts.

“... legal writing that can have a substantial impact on someone other than the student writer.”

Confront deadlines and time pressures

In law school, students face academic deadlines and time pressures that seem never ending. For example, students must keep current with reading assignments and appear on time for school appointments, class sessions, and examinations. Adverse consequences may accompany failure to remain on schedule, but, once again, the consequences normally extend no further than the student. The employer should stress that during part-time employment and throughout the student’s legal career, adverse consequences for failing to complete research and writing on time may extend beyond the student writer. Other people such as the client (or the other members of the writing team on bigger projects) may forfeit the benefits of the research and writing that might have influenced the outcome if the student writer had

finished the assignment on time.

Deliver “bad news”

Academic hypotheticals presented in the classroom, on exams, or in moot court packets can create “middle ground,” reciting facts and law designed to leave room for students to plausibly argue a range of positions and to learn from the academic give-and-take.

Part-time legal employment, however, can teach the student that law in the real world is different from academic exercises. For example, the employer may assign the student to research and write a memorandum about whether the employer should cite a particular line of decisions, or whether the line the employer contemplates includes some potential outliers that may warrant fuller discussion, change of direction, or even abandonment.


The student writer who senses the answer the employer would like to hear may feel reluctant to return the “bad news,” a contrary answer. The student may feel a natural impulse to please the supervisor or may worry about being labeled a dissenter rather than a “team player.”

At the beginning of the assignment, the employer must dispel this reluctance by teaching the student that law practice values candor among colleagues, and responsible lawyers award no points to colleagues who sugar-coat the potential outcome with answers unsupported by meaning or context. The student thus learns the positive impact of early, candid delivery of “bad news.”

Edit a supervisor’s writing

In legal writing class, students learn that, like other writers, lawyers benefit from constructive editing of their preliminary drafts. British novelist and former lawyer M.J. Hyland makes the point: “I’ve never read or written a perfect first draft. Perfect first drafts don’t exist.”¹

Lawyers commonly write facing deadlines and time pressures, but where time permits, competent third-person editors, including employed law students, can be valuable members of the “team.” For example, a student editor may help proofread a written draft for such flaws as inaccurate quotes, inelegant expression, incorrect citations, typographical errors, misspellings, and grammatical stresses.²

Where an employer assigns a law student to participate in editing, the “reluctance impediment” recited above may lurk. The student may hesitate to pinpoint errors unflagged by seasoned lawyers. At the outset, the employer must explain that, in law practice, colleagues serving as skilled editors remain the writer’s allies. Lawyer and client both feel the positive impact when a draft’s errors are corrected before the final product appears for the court and opponents to inspect. Candor among colleagues who are working to achieve a common goal remains a virtue. 



Douglas E. Abrams, a University of Missouri law professor, has written or co-written six books, which have appeared in a total of 22 editions. Four U.S. Supreme Court decisions have cited his law review articles. His writings have been downloaded more than 49,000 times (in 153 countries). His latest book is Douglas E. Abrams, EFFECTIVE LEGAL WRITING: A GUIDE FOR STUDENTS AND PRACTITIONERS (West Academic 2d ed. 2021).

Endnotes

- 1 M.J. Hyland, *How to Write Fiction: M.J. Hyland on Revising and Rewriting*, THE GUARDIAN (London), Oct. 23, 2011, www.theguardian.com/books/2011/oct/23/how-to-write-fiction-mj-hyland.
- 2 Douglas E. Abrams, EFFECTIVE LEGAL WRITING: A GUIDE FOR STUDENTS AND PRACTITIONERS 77 (West Academic 2d ed. 2021).



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