

Portfolios in Law School

Creating a Community of Writers

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IN MY WRITING WORKSHOPS WITH FIRST YEAR LAW STUDENTS, I OFTEN GIVE them a completely inscrutable piece of writing and ask them to comment on it. The single paragraph of approximately 200 words is full of legal jargon, unnecessarily long sentences, Latin phrases, and pretentious diction. I always hope to hear the blunt response, “This person needs to write in plain English.” Instead, the students approach the text warily, making timid jabs at its obscurity. “It could be organized better,” one student suggests. “It needs a topic sentence,” another adds cautiously. They seem to be so accustomed to reading prose they don’t understand that this paragraph in part represents to them what it means to “write like a lawyer.”

This story illustrates the problem faced by those of us who teach writing at law schools. Students who will one day depend heavily on their writing to serve their clients and advance their careers seem to lack the confidence to exert control over their writing or recognize the power that language can wield. It is hardly surprising that helping students become “confident and comfortable with legal discourse and composition” is such an important but elusive goal to many legal writing teachers (Rideout and Ramsfield 1994, 39).

Calling for a “revised view of legal writing,” Christopher Rideout and Jill Ramsfield recommend the model of an interactive classroom in which students take responsibility for their own learning and the professor ceases to be “the lone voice lecturing at the front of the classroom” (Rideout and

Ramsfield 1994, 66). Portfolios are certainly compatible with this model “because of the messages they send, the authority they assign, the ways they motivate students, and the insights they challenge students to perceive and articulate” (Yancey 1992a, 105). Portfolios have only recently been introduced into the legal writing classroom, but in many ways they are particularly well suited to meeting the needs of students who are learning to write within a new discourse community.

Writing in the Context of Law School

The contribution portfolios can make to legal writing pedagogy can best be understood in the context of student writing experiences in law school. Collaborative writing, for example, is a customary practice within the legal profession, but it is rarely encouraged in law school (Kunz et al. 1993, 6-7). Students thus miss the opportunity, commonplace in other writing contexts, “to compose with their colleagues, to collaborate in workshops and in peer groups, to learn methods of planning and invention, [and] to share writing with others . . .” (Yancey 1992a, 105). This is one of several factors that contribute to the student perception of isolation, conveyed rather vividly when I asked my students what kind of feedback they found least helpful when revising their writing. Their answer had been firm and unanimous, “No feedback at all.”

Although most law schools have a two-semester writing course in the first year, upper level writing requirements vary from one institution to another. Our school, however, is typical. Students are required to write one paper each semester during their second and third years. Three of the papers are short (ten pages or less), and one is a substantial piece of scholarship. The other writing students do for their courses is in the context of their exams. For most courses, the grade is based solely on the final exam, and to ensure anonymity in the grading process, students identify themselves by number on their examination booklets. Once the grades are posted, of course, students may ask to review the exams with their professors, but the exams themselves are not routinely returned, and most students do not take advantage of the opportunity for feedback.

Outside of the classroom law students have many chances to write in various professional contexts: internships, clinics, law journals, and law-related extracurricular activities. Many students write for summer jobs or work at law firms during the day and attend school at night. But in busy law offices there is little time to worry about quality of instruction when work

is being done under the pressure of a deadline. Supervisors often rewrite student work completely, and often the response to a piece of student writing is silence. As a result, many novice legal writers work in isolation and never develop a clear sense of the needs of their audience.

Portfolios at University of Texas

At University of Texas School of Law, Terri LeClercq has addressed a number of these concerns in a course that combines practical employment issues with sound pedagogical theory. During the semester, students write client letters and other “real world” documents and then revise their writing based on comments from their peers. Students select their best work for a portfolio to submit during employment interviews. The portfolios appeal to prospective employers because they contain written work in a variety of legal genres. The students are confident of the writing they submit because it has undergone extensive revision for multiple audiences (LeClercq 1993, 3).

LeClercq found that this practical application of portfolio use motivates students to sign up for the course, which is always oversubscribed, and work hard while they are in it. The portfolios also encourage students to focus on the writing process and learn how to revise. “Students rewrite (not merely edit) each paper,” LeClercq reports. “That forces them to assimilate all comments and create what they consider a perfected document. Students also more frequently attend office conferences to discuss the editing comments because they are in the process of responding on the next version” (LeClercq 1993, 3).

Portfolios and the Advanced Legal Writing Seminar

In designing my own advanced legal writing course, a Law and Humanities seminar, I wanted to help students develop a fuller understanding of contexts for their writing and challenge them to discover the power and vitality of language. Achieving these goals would require that students expand both their reading and writing strategies. As Fajans and Falk have noted, law students “too often scan judicial opinions for issue, holding, and reasoning and call that ‘reading,’ or produce a paraphrase of the text and call that ‘writing’” (Fajans and Falk 1993, 163). Literary texts, I hoped, would encourage students to read more carefully and pay closer attention to language and rhetorical structures. As they explored the multiple meanings of the literary texts, they would be engaged in an activity shared by

lawyers and literary critics alike (James Boyd White 1985, 415). I hoped the result would be “strong, original, self-aware writers” who would one day be “skillful counselors and more effective advocates” (Fajans and Falk 1993,168).

Portfolios were central to my vision of the course for a number of reasons. They would complement the process-oriented design of the course because students would have ample opportunity to revise written work before selecting pieces for portfolio evaluation at the end of the semester. This was especially important because students would be writing a substantial piece of legal scholarship for the first time, and consequently would need support as they selected topics and moved through the unfamiliar territory of an interdisciplinary field. I wanted them to explore freely, understand the recursive nature of the composing process, and take some risks with their writing. To accomplish all this, the students would need to become less focused on the grading of individual assignments and from the beginning, view the course as an exploration of the process of scholarly reading and writing.

Portfolio assessment would also contribute to the type of dynamic classroom environment I wanted to encourage. I theorized that many writing problems were rooted in the students’ failure to develop a strong sense of audience. Peer review of written work is rarely a part of law school curriculum, and when it is, such as in our first year writing program, instructors are often disappointed with the results. For example, in an assignment that asked students to respond to a classmate’s paper in the role of a senior partner or fellow associate at a law firm, students’ comments were frequently superficial or surprisingly mean-spirited. Comments were typically directed to the instructor rather than the writer. “Nice use of parallelism,” one student editor wrote next to a sentence that bore no visible signs of a parallel structure.

I hoped to eliminate this type of feedback by encouraging students to respond in the role they knew best: law students who were engaged in a common struggle to write a good paper, think through complex legal issues, and meet impossible writing deadlines. I knew that these students had much to offer each other if they had the opportunity. The portfolios would provide an authentic context for the peer reviews because students would be encouraged to help each other achieve their best work to submit at the end of the semester.

The basic structure of the course reflected a concern for the writing process. Students would write short papers at the beginning of the semester

as they explored possible topics for the seminar paper. Later, they would focus on the task of revision and spend class time discussing their papers and offering each other suggestions for revision. At this point in the semester, students would be writing peer reviews and multiple drafts of their seminar papers. I provided them with an extensive bibliography under five general subject headings related to issues in law and humanities: "Justice and Revenge," "Law and Equity," "Narratives of the Disenfranchised," "Women, Law, and Society," and "The Ethics of Persuasion" (Terre E. Foster 1993; James Boyd White 1985; Fajans and Falk 1993; and Gemmette 1989). Students were to explore the bibliography and develop their own topics, but I expected that by limiting them to five subject areas there would be enough of an overlap in topics that they would be able to provide each other with informed feedback. At the end of the semester, students would select the revised work to submit in their portfolios for grading. Each portfolio would contain two short papers on literary texts, one peer review, and the final draft of a seminar paper.

Such was the theory behind my course design. It seemed sound, but I was uncertain. In my six years as a law school writing specialist I had seen a number of clashes between pedagogical theory and the practical realities of legal education. Students who work full time, take classes at night, and do most of their studying on weekends tend to keep a watchful eye on the bottom line. They want to write well, but they are typically impatient with the learning process. Early drafts are often written too hastily and the students have a healthy skepticism about any assignment for which there is no perceptible purpose. Would they take the time to respond helpfully to each other? Would they understand the mutual benefit to be derived from reviewing a classmate's paper? I was uncertain if portfolios would work in a law school class that was not, like Terri LeClercq's, specifically structured for creating an attractive work product for a future employer.

Applications

For the first five weeks of the semester, the students wrote short pieces of expressive writing in which they analyzed some feature of literary texts we had not yet discussed in class. These assignments gave students an opportunity to explore possible topics for their seminar papers while developing confidence in their own voices. Students reported they were happy to be writing papers that did not require them to "obsess." Before

they selected two of these assignments to be rewritten for their portfolios they would receive verbal feedback from their peers and a written response from me.

The assignments also challenged them to read the texts carefully and analyze rhetorical features. I had chosen complex literary texts, including *Hamlet*, Sophocles' *Philoctetes*, and Toni Morrison's *Beloved*, so that students would be forced to grapple with the language. Or so I thought. Unfortunately, students seemed to be skimming literary texts the same way they skimmed their reading for other classes. I was learning that "[h]elping law students to get beyond purely denotative, case-briefing notions of reading is . . . no easy thing. In an age of reading comprehension tests, students are trained to read only for facts, for information" (Fajans and Falk 1993, 164). Their writing showed that they had some good ideas but needed to understand the nuances of language better if they were to write good papers.

After an uncertain beginning, however, many of the goals of the class were slowly being realized. Using the bibliography, students had come up with topics that seemed to run the gamut of Western Civilization, from an exploration of the revenge society of Aeschylus' *Oresteia* to a discussion of the role of women in the legal system in *To Kill a Mockingbird*. Although the topics were interesting and creative, many of the first drafts were less impressive. The interdisciplinary topics required that students do a certain amount of original thinking, but the way these ideas developed varied greatly. Nevertheless, although some of the students had done a good job of exploring an issue in a creative way, others simply used the draft as an opportunity to summarize some of the articles in the bibliography. Another rather significant problem was that a few of the papers showed that the writers had significant problems with editing and proofreading their work.

By midsemester, when I began reading the peer reviews, my concerns about the course began to disappear. While one or two students continued to see me as the primary audience for the peer critique, in most cases there was an authentic dialogue between the two writers. They commiserated about common problems, expressed enthusiasm for each other's projects, and invariably provided feedback on topics and issues I had missed.

The students' developing sense of autonomy was particularly evident in their use of my carefully constructed bibliography. One student found Corbett's *Classical Rhetoric For the Modern Student* "boring as hell," but

recommended it to a classmate who was struggling to find a way to describe a writer's use of rhetorical techniques. Other students in class discussion and written critiques recommended appropriate readings that were not on the bibliography. They suggested readings from other classes or mentioned their own research.

In many respects the first drafts of the seminar papers tested any budding sense of community that was developing. In addition to the usual problems involved in treading the fine line between rigorous but tactful editing, the papers often revealed different political viewpoints. Class discussion occasionally grew heated, but in their written comments, students found ways to express their views fairly and open-mindedly. The students who had submitted poorly edited first drafts got a very clear message about the impression this created on their readers, but the editors were also diplomatic.

The value of allowing students to select their own topics became apparent in class discussion. A number of students had chosen subjects that tied into a special interest or area of expertise outside of the classroom. A doctor, for example, chose a topic that allowed her to explore medical issues in law and literature. Several of the women in the class chose topics in feminist jurisprudence, and a student who worked for the state government chose a topic that allowed him to analyze the persuasive power of speeches. Their sense of ownership over their topics seemed to give them confidence in responding to editorial suggestions for revision.

This sense of confidence was particularly evident in their conferences with me. Students were very attentive when we discussed editing issues or matters of writing style. On the substance of their papers, however, they were more likely to trust their own instincts. The students were also taking responsibility for their own learning in other ways. In their conferences students revealed that they were reading papers they had not been assigned to review. They looked for how others had handled common problems and frequently mentioned a paper they particularly admired. In short, they were doing the "extra" work they didn't believe they would ever do.

At the end of the semester I judged the success of the course in part by the work submitted in the portfolios. The papers were thoughtful and well-written. Students had struggled with fine-tuning their work, creating interesting introductions and conclusions, tying the disparate parts of their papers together more effectively, and carefully editing and proofreading. More importantly, however, students had shown that they could benefit from the experience of working on their writing together.

Reflections

Toward the end of the semester I would often look at the businesslike faces of the adults in my class and wonder what they really thought of this course that was different in so many respects from their other classes. I was pleased with the classroom dynamic and the written work but wanted some confirmation of what they had learned about the writing process. Without a metacognitive component to the course, all I could know for sure was that the students had been able to write well in one advanced writing class. Because I did not want the students to think of these reflections as part of their assessment, I asked that they submit them anonymously.

In their reflections, students evaluated their own work and mentioned their writing goals, their reactions to peer reviews, and their opinions about reading and writing assignments. Although I had never discussed the theory behind the design of the course, students were able to see the reasons for most of the work they did. They used the opportunity, in fact, to comment on almost every aspect of the course, from the relaxed atmosphere of the classroom to the “structured approach” of writing the seminar paper.

Some of the more interesting comments concerned the peer reviews. Although many students mentioned that the peer reviews were one of the key factors contributing to the improvement in their writing, one student said the “objectivity” of the peer reviews was one of their greatest assets. This comment reflects a view I had often heard in my capacity of writing specialist as I helped students revise their papers for other professors. Students often suspect that professors’ comments are guided entirely by subjective standards and individual style. Accustomed to the rigorous objectivity of anonymous grading in their exams, law students may be more likely to view writing assessment as stemming from the individual idiosyncrasies of the reader. Such rationalization is less likely to occur when three or four readers make similar comments.

Conclusion

Reflecting on ways to help law students develop confidence in their writing, Rideout and Ramsfield state that such confidence “must be based on good training throughout their law school careers, and that training must look beyond legal writing problems to solutions” (Rideout and Ramsfield 1994, 39). Portfolios can play a number of roles in promoting pedagogical solutions to the distinctive problems legal writers face.

Writing portfolios changed the dynamic of the Law and Humanities writing class by creating an authentic context in which students could read and critique early drafts of each other's work. Adult students are particularly sensitive to exercises that seem to have no purpose. The portfolios shaped the course, created a purpose for the peer critiques, and forced the students to reflect on their writing process. Portfolios gave students the confidence to take some risks and see the class as an opportunity for ongoing improvement.

Writing teachers in law schools confront a number of rather specialized problems. We have a short period of time to acquaint students with the reasoning and language conventions of a new discourse community. Nevertheless, law students, like all writers, need guidance, confidence, and a clear sense of the needs of their audience. They also need to feel a sense of ownership over their work, and know the steps, recursive or otherwise, of producing a good piece of writing. Portfolios can be an important part of that learning process.