

*Mind, Brain & Education Science in the Legal Writing Classroom:
Making Grammar Instruction Collaborative and Relevant*
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I set out to integrate learning theory into the teaching of fundamental writing skills in the legal writing classroom. The topic of basic writing skills—including punctuation, grammar, and syntax—has received increased attention in legal education in recent years, as law students' skills have declined and law professors have had to devote more time and attention to teaching and grading basic skills. However, many professors are unsure how best to teach these fundamental writing skills in a way that it is effective and perhaps even fun.

To answer that question, I turned to the emerging discipline of mind, brain, and education (“MBE”) science, which offers valuable insights into how the human brain works, how humans learn, and how teachers can teach to optimize learning. To address teaching fundamental writing skills, this project focused on two key concepts grounded in MBE science: (1) Learning should be collaborative because students learn best from shared experiences, and (2) learning should be connected to real-world environments because students learn best when they are engaged in learning that is contextual.

The goal of this project was to offer methods for teaching basic writing skills that are effective and help students understand the importance of punctuation, grammar, and syntax to the practice of law and to professional legal writing.

1. Collaborative learning

Because humans are social animals, we depend on interactions with other people to make sense of the world. At the most fundamental level, “[w]e owe our success to our uniquely developed ability to learn from others.”¹ By learning from other generations, humans are able to “develop well-adapted tools, beliefs, and practices that are too complex for any single individual to invent during their lifetime.”² In the educational context, “[s]ocial interaction plays an important role in learning” because social interaction “has proven to be quite effective in assisting the learner to organize their thoughts, reflect on their understanding, and find gaps in their reasoning.”³

Social, or collaborative, learning “is an umbrella term for a variety of educational approaches involving joint intellectual effort by students, or students and teachers together.”⁴ It might involve students “working in groups of two or more, mutually searching for understanding, solutions, or meanings, or creating a product.”⁵ It also can include “peer learning, reciprocal teaching, learning by teaching, learning by observation, learning by doing, and self–other monitoring.”⁶

As one researcher has pointed out, “Collaborative learning has as its main feature a structure that allows for student talk: students are *supposed* to talk with each other...and it is in

¹ Robert Boyd et al., *The Cultural Niche: Why Social Learning Is Essential for Human Adaptation*, 108 PROC. NATL. ACAD. SCI. U.S.A. 10918, 10918 (June 2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3131818/>

² *Id.*

³ Sandra Okita, *Social Interactions and Learning*, in ENCYCLOPEDIA OF THE SCIENCES OF LEARNING 3104 (Norbert M. Seel ed., 2012), https://www.tc.columbia.edu/faculty/so2269/faculty-profile/files/Okita_Social_Interactions_and_Learning.pdf

⁴ Barbara Leigh Smith & Jean T. MacGregor, WHAT IS COLLABORATIVE LEARNING? 1 (1992), <https://www.evergreen.edu/sites/default/files/facultydevelopment/docs/WhatIsCollaborativeLearning.pdf>

⁵ *Id.*

⁶ Okita, *supra* note 3, at 3104.

this talking that much of the learning occurs.”⁷ Although “[c]ollaborative learning activities vary widely . . . most center on students’ exploration or application of the course material, not simply the teacher’s presentation or explication of it.”⁸

Additionally, development of social skills—working in a group, problem-solving, conflict resolution—is an added benefit of collaborative learning. In law practice and in legal education, there has been increasing attention paid to “soft skills” like listening and communicating. The use of more collaboration in the classroom allows students to learn and practice these skills.

In the legal writing classroom, we may occasionally use group exercises and projects to supplement what is often a curriculum built around lectures and independent writing projects. In a collaborative model, however, students work primarily—or at least frequently—with one another to enhance learning.⁹ To shift my classroom to a more collaborative space, I intentionally set out to develop and implement exercises that are primarily collaborative, not teacher-led or competitive.

Exercise one – “See one, do one, teach one”¹⁰

I split the classroom into two groups; one group left and stood in the hall (or was placed into a breakout room, when teaching online). I informed the remaining group that they were about to become the “teachers”; after completing a lesson with me, they would have to teach

⁷ Jeff Golub, *Introduction*, in *FOCUS ON COLLABORATIVE LEARNING: CLASSROOM PRACTICES IN TEACHING ENGLISH 1* (Jeff Golub ed., 1988).

⁸ Smith & MacGregor, *supra* note 4, at 1.

⁹ Teaching virtually lends itself to this small-group methodology, as many of us have experienced while teaching in 2020 and 2021. Continuing to use in-person “breakout rooms” as we transition back to teaching on campus is worth careful consideration.

¹⁰ For more on this method, *see generally* Christine N. Coughlin, *See One, Do One, Teach One: Dissecting the Use of Medical Education’s Signature Pedagogy in the Law School Curriculum*, 26 GA. ST. U. L. REV. 361 (2012).

the same lesson to their colleagues out in the hallway. I then taught them about three specific comma rules¹¹ and had them work on a few exercises where they applied those rules. During this time, the students were highly engaged and focused. Because they knew they would have to teach their colleagues these rules, the “teacher” students were intent on learning the rules so they would be able to explain them effectively.

When the students in the hallway or breakout room returned, the “teacher” students worked one-on-one to explain the rules, guide them through the exercises, and answer any questions. Afterward, the student groups switched and I taught three more comma rules to the new group of “teachers.”

Overall, this exercise was very successful. Students were engaged and excited and, once they got over the fear of being the “teacher,” they enjoyed the experience.

¹¹ I used the rules set out in ANNE ENQUIST, LAUREL OATES & JEREMY FRANCIS, *JUST WRITING: GRAMMAR, PUNCTUATION, AND STYLE FOR THE LEGAL WRITER* (5th ed. 2017).

Exercise two – Teaching writing skills, *Jeopardy*-style

I often use a *Jeopardy*-style presentation to teach and review various components of my classes. For basic writing skills, categories on punctuation rules, grammar, clarity, and related topics offer an accessible and fun way to address topics often seen as dry. A similar method is described in a wonderful article on an interactive competition called the “Grammar Bee.”¹²

In my *Jeopardy* game, I divide the class into two or more teams. Each team can collaborate on its answers, and each team member must participate. Although the game is competitive, the collaboration within each team is strong and promotes thoughtful responses to the questions posed on the *Jeopardy* board.

Throughout the exercise, students were engaged and participation was high. On the downside, the “speed” component of the game did not necessarily result in the most thoughtful, thorough analysis of each question.

Sample questions:

1. Identify the obstacles to clarity in this sentence: The lease’s provision that the tenant would be responsible for cleaning fees, regardless of any actual need for cleaning, plus the provision that required the tenant to pay the remaining rent no matter when she broke the lease, was deemed to be unenforceable by the court.

¹² See Edward H. Telfeyan, *The “Grammar Bee”—One Way to Take the Pain Out of Teaching the Mechanics of Writing*, PERSPS.: TEACHING LEGAL RSCH. & WRITING, Fall 2018, at 25.

2. Fix the punctuation in this sentence: Many companies make gluten-free products, which are often made with rice and potato flour the foods usually are not healthier than products containing gluten.
3. Connect these sentences with an appropriate transition: Ms. Davis has satisfied all necessary zoning and licensing requirements. She has legally opened the Amish Market in the community.

Exercise three – Critiquing workshop

In a large group, the students critiqued a sample memorandum. The conversation flowed freely as students echoed, built upon, questioned, or disagreed with other students' comments. Their critiques included high-level substantive issues, such as organization and research, as well as clarity, punctuation, and grammar. When students disagreed about a particular question, I let them discuss and debate the problem and the solution, encouraging them to work together to propose edits to the sample memo. I interjected with my own thoughts as necessary to correct mistakes or point out something that was missed, but generally allowed the students to lead the discussion.

This collaboration exercise presented students with a “safe space” to try out their critiquing and editing skills, since the writer of the sample memo was not in the room with us. Thus, students could be candid without worrying about insulting another student and were empowered to ask questions within the workshop as they saw their peers do so.

This was an effective exercise that reinforced a lot of what students were learning in class and emphasized the critical importance of clarity in legal writing.

2. Environmental instruction

“The difference between what’s happening in class and what’s important in real life is sometimes a formula for ‘boredom.’”¹³ Thus, engaging students by teaching fundamental writing skills through real-life context and problem-solving is crucial. Indeed, the law schools that have tried to teach grammar through non-environmental methods—such as standalone grammar classes, instruction by English teachers, and other more traditional methodologies—have found that “isolated grammar instruction does not help students and can even hurt.”¹⁴

Indeed, as I have written previously about teaching grammar within the context of English composition classes,

“[t]he study of traditional school grammar (i.e., the definition of parts of speech, the parsing of sentences, etc.) has no effect on raising the quality of student writing” and, in fact, can have “a deleterious effect on student writing,” particularly when students are exposed to “the systematic study of traditional school grammar . . . over lengthy periods of time in the name of teaching writing.” Instead, “[t]eachers concerned with teaching standard usage and typographical conventions should teach them in the context of real writing problems.”¹⁵

To tackle these issues and make teaching fundamental writing skills more effective, legal writing professors can provide a real-life context by using court opinions, ethics opinions, and personal stories from law practice to emphasize the importance of writing mechanics to practice. Visits from local attorneys who are willing to talk about the value of high-quality writing can help

¹³ TRACEY TOKUHAMA-ESPINOSA, MAKING CLASSROOMS BETTER 243 (2014).

¹⁴ N.E. Millar, *The Science of Successful Teaching: Incorporating Mind, Brain, and Education Research into the Legal Writing Course*, 63 ST. LOUIS L. REV. 373, 398 (2019) (citing Angela Diane Crocker, *Facing the Challenge of Improving the Legal Writing Skills of Educationally Disadvantaged Law Students in a South African Law School*, PER / PELJ, 2018, at 4-8, <https://journals.assaf.org.za/per/article/download/1368/6452/> [perma.cc/K4ZS-V2HM]).

¹⁵ *Id.* at 399 (quoting George Hillocks, Jr., *What Works in Teaching Composition: A Meta-Analysis of Experimental Treatment Studies*, 93 AM. J. EDUC. 133, 160 (1984)).

to increase student buy-in. The proactive teaching of mechanics need not be—and should not be—rote memorization activities consisting of grammar exercises. Instead, students can engage with basic writing skills by situating them in legal writing and analysis and understanding their importance to ethical law practice.

Exercise one – “Invite” judges and attorneys into the classroom

I regularly show videos of judges talking about writing and editing; there are great videos of state and federal judges on YouTube discussing what makes writing effective and persuasive. Inevitably, they mention precise grammar and proofreading, thus reinforcing what students are learning in class. Another option is to invite local attorneys and judges to speak to your class about writing skills.

Exercise two – Case summary letter assignment

Professors can use real cases and legal documents to demonstrate the importance of fundamental writing skills. For example, introduce students to the “million-dollar case”¹⁶ and the impact of a seemingly insignificant comma on a legal document and a legal dispute.

In my class, I assigned students to read a judicial opinion that castigated one or more attorneys for, among other errors, typographical and grammatical mistakes.¹⁷ The students had to draft a summary of the case, explaining the court’s reasoning and the role that the attorney’s lack of writing skills played in his representation, competence, and career. By using a judicial opinion—the familiar teaching tool of 1L year—to reinforce what I was talking about in class and to explain the importance of fundamental writing skills beyond law school, students were able to grasp the seriousness of seemingly insignificant errors and find context for their study of “English” in law school.

Although this type of engagement with attorney ethics violations can be a bit scary for students, it is important to emphasize the crucial role of excellent writing skills in ethical practice and to teach them that their legal writing classes provide the tools they need. Overall, this

¹⁶ Ian Austen, *The Comma That Costs 1 Million Dollars (Canadian)*, N.Y. TIMES (Oct. 25, 2006), <https://www.nytimes.com/2006/10/25/business/worldbusiness/25comma.html>.

¹⁷ There are many cases that would work for this assignment, including the following: *Franklin v. Pinnacle Ent., Inc.*, 289 F.R.D. 278, 290 (E.D. Mo. 2012), *modified in part*, No. 4:12-CV-307 CAS, 2013 WL 11235897 (E.D. Mo. Jan. 28, 2013) (“The lack of care that Mr. Carter demonstrated in filing the First Amended Petition is part of a pattern that exists in most of the documents he has filed in this case, which are riddled with egregious typographical errors and basic grammatical errors such as a lack of subject-verb agreement.”); *In re Disciplinary Action Against Hawkins*, 502 N.W.2d 770, 771 (Minn. 1993) (“Public confidence in the legal system is shaken when lawyers disregard the rules of court and when a lawyer’s correspondence and legal documents are so filled with spelling, grammatical, and typographical errors that they are virtually incomprehensible.”); *see also* Douglas E. Abrams, *Mincing No Words: When the Court’s Opinion Criticizes an Advocate’s Writing*, J. MISSOURI BAR, March-April 2020, <https://news.mobar.org/mincing-no-words-when-the-courts-opinion-criticizes-an-advocates-writing/>.

exercise is effective and helps to encourage student “buy-in” with respect to fundamental writing skills.

Exercise three – Crafting proper and improper grammar together

This exercise is both collaborative and environmental, thus combining two pedagogical strategies to make for a more effective teaching tool. Here, I assigned groups of students to draft examples of improper grammar, such as sentences featuring passive voice and punctuation errors. I limited their sentence topics to two cases we were using for a writing assignment, thus ensuring that their sentences would be relevant to law and the work they were doing for school. I also offered a few examples to get them started. The groups worked together to draft the sentences and, in the process, reviewed the rules of proper English in order to make sure they were breaking those rules.

When they were finished, groups exchanged their sentences and attempted to “solve” each other’s erroneous sentences. After doing so, the groups met to check each other’s work and ask questions. In some cases, the “mistake” one group thought they had created was actually correct grammar and helped to teach the group the correct rule.

In the same exercise, or separately, the professor can task students with drafting correct sentences that apply lessons on, for example, semicolons or subject-verb agreement. Alternatively, if time is limited, the professor could give students one minute to write a sentence using either correct or incorrect mechanics.

By breaking down the larger subject of “grammar” or “punctuation” into smaller pieces, students can focus more easily on each component and identify their own misunderstandings.

Instead of asking students to draft an entire memo that is free of errors, starting by asking them to draft individual sentences makes the larger task more manageable.

Sample relevant, incorrect sentences provided to students:

1. The court held that, a school need not tolerate student speech that is inconsistent with it's "basic educational mission".
2. It has been stated that the education of children is primarily the responsibility of parent's, teacher's, and state and local school official's; and not of federal judges.

Conclusion

Teaching fundamental writing skills through enjoyable, social exercises and lessons that are clearly connected to law practice has the potential to engage students and lead to more meaningful learning. Overall, my students learned more about basic writing skills and had more fun doing so. I hope these ideas are helpful and inspirational to others, and I welcome questions and feedback.