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**The Care and Feeding of the Twenty-First-Century
Developing Legal Writer: A Primer
for the Supervising Practitioner**

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The Care and Feeding of the Twenty-First-Century Developing Legal Writer

A Primer for the Supervising Practitioner

Mary B. Trevor*

“Lawyers who supervise lawyers are teachers, whether they think of themselves as teachers or not.”¹

It is axiomatic that the development of a professional legal writer (or writer of any type) is a lifelong and challenging process.² Fortunately, once required Legal Research and Writing (LRW) courses³ are completed, numerous academic and practice professionals will review a developing legal writer’s work.⁴ Unfortunately, only rarely will these professionals

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1 Henry Rose, *Lawyers as Teachers: The Art of Supervision*, 21 LAW PRAC. MGMT. 28, 28 (1995). See generally Clinical Legal Educ. Ass’n, HANDBOOK FOR NEW CLINICAL TEACHERS 18–22, CLEA (Apr. 2013), <http://www.cleaweb.org/Resources/Documents/2015CLEANewCliniciansHdbk.pdf> (bibliography covering supervision of law-clinic workers, externs, and law-firm associates).

2 See, e.g., Lisa Eichhorn, *The Legal Writing Relay: Preparing Supervising Attorneys to Pick Up the Pedagogical Baton*, 5 LEGAL WRITING 143, 143 n.3 (1999); Kathleen Elliott Vinson, *Improving Legal Writing: A Life-Long Learning Process and Continuing Professional Challenge*, 21 TOURO L. REV. 507 (2005); Bryan Garner, *A Message to Law Students: Effective Writing Takes a Lifelong Commitment*, SEPT. 2006 MICH. B.J. 52.

3 The names of the required programs at law schools that teach legal writing (and, usually, many other analytical and practical skills as well) vary widely. This article uses the abbreviation LRW to refer to these courses, in accordance with the *Sourcebook on Legal Writing Programs*. ABA SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR, SOURCEBOOK ON LEGAL WRITING PROGRAMS 5, n.5 (Eric B. Easton, et al. eds., 2d ed. 2006) [hereinafter *Sourcebook*].

4 In addition to practicing lawyers, such professionals include doctrinal faculty at law schools who do not teach legal writing but who oversee students’ writing projects, such as seminar papers and law-review articles. Depending on the school, these professionals may also include clinical faculty or faculty who oversee experiential work. See generally Tonya Kowalski, *Toward a Pedagogy for Teaching Legal Writing in Law School Clinics*, 17 CLINICAL L. REV. 285 (2010) (advising clinical-law professors who supervise student writing). Further, in the current climate emphasizing practical skills and experiential education, law school faculty in all disciplines may be called upon to incorporate more writing skills into their classes. Judges, of course, also oversee the work of their clerks, who often (although not always) have recently graduated from law school.

have had any training or exposure to scholarship about how to guide a legal writer's development.⁵ These professionals include, in significant part, practicing attorneys who supervise clerks or new associates.

While often excellent writers themselves, practicing attorneys may feel at a loss in this particular teaching role due to their lack of training.⁶ Moreover, their primary professional obligations pull them in other directions, and the time investment required for working with developing writers may leave supervisors feeling significant pressure about meeting their ongoing client-representation obligations.⁷ At the same time, however, their charges are embarking on a professional writing career and engaging in a particularly intensive phase of writing development.⁸ The practice world raises writing challenges new associates have often not previously encountered, in a new context involving new types of readers, in areas where expertise in writing takes many years to develop. These writers are plainly in need of supervision.

What is not so plain is how to find the time to provide the supervision, and how to justify the time taken. In response to the first of these challenges, this article focuses on how to provide supervision in time and cost-efficient ways. In particular, it will provide helpful background information and step-by-step suggestions for practicing attorneys who supervise developing legal writers. Further, in recognition of the fact that attorney supervisors do not generally provide basic writing training,⁹ the article will narrow the supervision focus to the key area in which supervisors play a significant role in a legal writer's development: providing feedback.¹⁰

5 E. Joan Blum & Kathleen Elliott Vinson, *Teaching in Practice: Legal Writing Faculty as Expert Writing Consultants to Law Firms*, 60 MERCER L. REV. 761, 773 (2009).

6 See, e.g., Blum & Vinson, *supra* note 5, at 773 (“[M]ost lawyers do not have the expertise necessary to give the kind of feedback that most effectively promotes the development of a junior lawyer as an independent, confident, and successful legal writer.”); Eichhorn, *supra* note 2, at 144 (noting that supervising attorneys, in particular, “may be unfamiliar with legal writing pedagogy, thinking of themselves as lawyers rather than teachers”).

7 See, e.g., Jane Kent Gionfriddo, Daniel L. Barnett, & E. Joan Blum, *A Methodology for Mentoring Writing in Law Practice: Using Textual Clues to Provide Effective and Efficient Feedback*, 27 QUINNIPIAC L. REV. 171, 173 (2009) (“[A] supervising attorney in law practice may play two different roles—representing the client and training less experienced lawyers in the office—and the tension between these two roles may affect the supervisor’s interaction with a junior person’s writing.”).

8 *Id.* at 171 (Learning how to write well is a process that “continues intensively during the beginning years of a lawyer’s career.”).

9 There are, of course, exceptions where a supervisor may be the first to teach about a certain type of writing not covered during law school. This situation may be particularly likely to arise in transactional practices, since law schools have historically focused more on litigation-related writing than transaction-related writing. Curricula, however, are changing, and LRW programs are increasingly integrating transactional aspects. See Ass’n. Legal Writing Dirs. (ALWD) & Legal Writing Inst. (LWI), *Report of the Annual Legal Writing Survey 13* (2014), <http://lwionline.org/uploads/FileUpload/2014SurveyReportFinal.pdf> [hereinafter *Survey*]. Even in situations requiring new types of writing, however, the writing skills to be used are likely to have important similarities to types taught during law school. Therefore, the primary focus of the supervisor will still likely be on providing feedback rather than teaching true basics.

As for justifying the time taken to provide quality supervision through quality feedback, the long- and short-term benefits of doing so have been widely recognized in both the academy¹¹ and practice-management areas.¹² At least one management source has suggested that poor feedback is worse than no feedback at all.¹³ And the ramifications go beyond quality of work product to significant, personal impacts on new employees. One commentator, discussing the issue in terms of law students, has identified concerns that are equally applicable to the law-practice setting:

Although most of the discussion about inadequacy of feedback has been centered on the dearth of feedback, infrequency is not the only problem. Even when feedback is delivered, it is often composed of controlling and non-informational statements—which, in addition to being of little instructional value, can lower student motivation, discourage persistence, and contribute to the decline in well-being experienced by many law students.¹⁴

The goal of this article is to help supervising attorneys achieve a manageable balance between their competing and compelling duties of client representation and supervision. Section I of the article summarizes recent scholarship that addresses some underlying reasons why developing writers often struggle as they shift from law school to practice. Section II provides an overview of supervising lawyers' big-picture options for delivering feedback more effectively. Section III gets down to the nitty-gritty, explaining tools and techniques for planning and providing feedback. That section should be read in conjunction with sample feedback tools (rubrics) in the Appendix. Section IV addresses specific challenges that can arise concerning feedback to individual writers and looks ahead to future challenges. Finally, the conclusion summarizes the foregoing and includes some personal observations.

¹⁰ See generally Eichhorn, *supra* note 2; Gionfriddo, et al. *supra* note 7. See also Blum & Vinson, *supra* note 5, at 773-74 (“[A] program that trains supervisors to give effective feedback on associates’ writing may be both the most substantively effective as well as the most cost-effective way to use legal writing faculty as writing consultants.”).

¹¹ See generally Paula J. Manning, *Understanding the Impact of Inadequate Feedback: A Means to Reduce Law Student Psychological Distress, Increase Motivation, and Improve Learning Outcomes*, 43 CUMB. L. REV. 225 (2012–2013).

¹² See, e.g., Rose, *supra* note 1, at 30 (“A commitment to supervision is consistent with all modern notions of business management—employees are a firm’s key resource and their talents must be properly developed to improve firm productivity. Good supervision is a good investment in a law firm’s future.”); see also Maureen Minehan, *Weak Performance Management Systems Do More Harm than Good*, 26 EMP. ALERT 2 (2009); Anna Farber Conrad, *From Lawyer to Manager: Essential Skills for Managing Attorneys*, 37 COLO. LAW. 109, 109 (2008) (The first “essential management skill[] needed for attorneys who supervise others” is “giving feedback.”).

¹³ Minehan, *supra* note 12, at 2.

¹⁴ Manning, *supra* note 11, at 227–28.

I. Challenges Faced by the Developing Lawyer—Why Feedback is Still Needed

Scholars have recognized several areas as possible underlying sources of writing problems after law school graduation: some writers' limited ability to transfer knowledge to new contexts, some writers' inability to adapt to writing for real-world audiences rather than academic graders, and some writers' need for more time than can be provided during law school to overcome intransigent writing problems. The suggestions below are designed to help counteract those problem areas.

A. Difficulties Transferring Skills to a New Context

Scholars have identified a transfer of learning problem that can be a significant factor in the move from the academic setting to the practice setting.¹⁵ Skills acquired in one context do not always readily transfer to a new context.¹⁶ This problem has been recognized even within the law school context: one scholar has focused in particular on the difficulty students have transferring skills learned in writing classes to the writing needed for clinical experiences, even though students frequently have completed assignments in their writing classes that require the same writing skills as those used in the clinical setting.¹⁷ Anecdotally, law-school faculty report being told by upper-class law students that those students did not work on assignments or acquire skills that were in fact taught in foundational first-year courses such as LRW.¹⁸

As a matter of cognitive psychology,

[w]hen the context changes, the brain often is not able to immediately recognize that the skill sets it stored for a different context apply to the new situation, as well. Some cue is needed to trigger the brain to recognize that the new conditions are sufficiently similar that the previous skills should apply.¹⁹

¹⁵ See generally Kowalski, *supra* note 4, at 288–94.

¹⁶ Sheila Rodriguez, *Using Feedback Theory to Help Novice Legal Writers Develop Expertise*, 86 U. DET. MERCY L. REV. 207, 236 (2009) (“Student writing regresses when students transition from high school to college, from freshman composition to an academic concentration, from college to graduate or professional school, and from professional school to a profession.”); see also Kowalski, *supra* note 4, at 289 n.14; Vinson, *supra* note 2, at 531–32 (“Novice learning theory reveals that as students and lawyers enter ‘points of transition’ into a new discourse community (law school and the legal profession), they seemingly lose skills previously learned (like writing skills) while they struggle to develop new skills.”).

¹⁷ Kowalski, *supra* note 4, at 288–89 (referring to the phenomenon as “collective amnesia”).

¹⁸ In my experience, such reports have come up in the faculty meeting setting and in hallway conversations, from faculty teaching upper-level classes.

¹⁹ Kowalski, *supra* note 4, at 291–92 (citing SARAH LEBERMAN, LEX MACDONALD, & STEPHANIE DOYLE, *THE TRANSFER OF LEARNING: PARTICIPANTS’ PERSPECTIVES OF ADULT EDUCATION AND TRAINING* 14–15 (2006)).

This transfer problem is different from simply being unsure how to apply skills in a new context; it is also the more fundamental problem of writers failing to recognize that they have skills that can be used in the new context.²⁰ The combination of the two aspects of transfer makes the move to a new context especially complicated.

The transfer problem is only exacerbated when students are completely removed from the law school context. Hence, even when new lawyers are asked to engage in writing that has likely been well covered in law school, such as a research memorandum or a motion memorandum, in the new context, the writer will struggle to recall the analytical and writing techniques learned before and transfer them to the new assignment.

However, the skills and the knowledge are generally still there; they just need to be accessed. Subsequent supervisors of developing writers therefore do not generally need to re-teach the skills.²¹ Instead, they need to cue students to recognize that old skills can still apply to new contexts.²² Students may, in part, be running into problems with inconsistent terminology—documents, approaches, and concepts may simply be called something different in the practice context than in the students' particular LRW program.²³ Part of the solution is simply to remind students to use skills taught earlier; provision of samples or forms that demonstrate the firm's version of familiar types of written work can help.²⁴

Significantly, for the type of feedback addressed in this article, an inquiry into, or discussion of, how those skills were characterized in law-school courses could be a helpful way of diagnosing transfer confusion and key differences.²⁵ Ultimately, the use of feedback tools and techniques like those used in law school may help new attorneys encountering transfer problems in their writing.²⁶

B. Audience-Awareness Problems

New attorneys may also run into audience-awareness problems as they start their practice careers. In other words, they may have difficulty

²⁰ *Id.* at 288 (noting the “collective amnesia” that occurs when clinical students, including those “with top grades in their previous courses[,] seem to lack even novice-level proficiency in research, writing, and analysis”).

²¹ *Id.* at 290.

²² *Id.* at 291–92.

²³ *See id.* at 330–31.

²⁴ *See id.* at 292, 327–29.

²⁵ *See id.* at 325 (“[A] shift in context is disorienting unless the brain can recognize enough similar features between the old context and the new context to signal a match.”).

²⁶ *See* III.B. *infra*.

understanding the perspective and needs of the people who will be reading their work, whether attorney, client, opposing party, judge, or another person.²⁷ Recognizing this difficulty, LRW programs in recent years have generally worked to promote audience awareness through offering a range of different hypothetical writing experiences—office and motion memos, client letters, demand letters, and contracts, to name a few²⁸—in an effort to bring different audiences to life.

The critical word in the preceding sentence, however, is “hypothetical.” Despite LRW faculties’ best intentions and achievements in the area of audience awareness, recent law graduates’ mindsets frequently remain focused on the audience they have had for their entire educational career: their professors.²⁹ Thus, new lawyers may stubbornly (albeit unconsciously) persist in writing as if their professors are their audience, assuming that their audience already knows the context and background of the writing assignment, aiming to write for the academic reader, and focusing on the primary goal of getting a good grade.³⁰ At worst, students may write for themselves as the reader, never even reaching the awareness of their professors as the audience.³¹

The shift in practice to real lawyers, real clients, real opponents, and real judges is often disconcerting for new attorneys. As recently noted by Professor Barbara P. Blumenfeld,

This approach of writing as if the audience knows the answer may continue beyond law school and affect the writing of the practitioner. As practitioners gain more experience, they begin to acquire a data base about specific audiences. Yet, even the experienced practitioner can be reminded to consciously take this knowledge into account when creating a document.³²

Thus, recent scholarship has shown that audience awareness is likely a significant area of difficulty for the new lawyer.

²⁷ See Barbara P. Blumenfeld, *Rhetoric, Referential Communication, and the Novice Writer*, 9 LEGAL COMM. & RHETORIC 207, 211 (2012) (“[P]ractitioners, especially new lawyers, must go beyond the book learning of law school to find ways of learning how the particular audience for whom they are writing might react to their written work.”).

²⁸ See *Survey*, *supra* note 9, at 13 (noting that in response to Question 20, there has been an “increase in the average number of different types of assignments and skills taught in schools’ LRW programs” in the years from 2010–2014).

²⁹ Blumenfeld, *supra* note 27, at 212–13.

³⁰ *Id.* at 222, 223 n.79.

³¹ *Id.* at 212.

³² *Id.*

C. Persistent Writing Problems

Finally, developing as a writer simply takes time. And if students enter law school with writing deficiencies that have persisted beyond undergraduate education to the professional level, a few semesters of writing education, however well designed, are unlikely to eliminate them.³³ Those in this category may need significant work on compositional skills even after law school.

It is difficult to say whether there has been an increase in the number of entering law students with persistent writing problems, and a thorough analysis of the question would go well beyond the scope of this article. Some sources, both in the academic community and beyond, have raised concerns about a perceived decline in the reading and writing skills of adults in the United States.³⁴ Some attribute the perceived decline to the increased use of electronic communications such as text messaging, tweeting, and even email, which require, or at least tend to promote, informal and abbreviated communications inappropriate for the professional-writing context.³⁵ Others note that certain students who believe their existing writing abilities to be strong may resist instruction regarding how to improve their writing.³⁶

Yet others might argue that the “sky is falling” approach to evaluating students’ writing skills (and other academic skills) is simply a recurring theme in academic history and, hence, that any given cycle of articles deploring that era’s writing skill deficits should not get too much attention.

³³ See Eichhorn, *supra* note 2, at 146 (“Unfortunately, many law students come to law school still needing to learn to do more-basic things: use punctuation and proper grammar, organize a paper by topic, and construct clear, coherent sentences. These students cannot begin to learn the advanced skills of the legal writing course until they make up for lost time by mastering these more basic skills.”).

³⁴ See, e.g., Cathaleen A. Roach, *Is the Sky Falling? Ruminations on Incoming Law Student Preparedness (and Implications for the Profession) in the Wake of Recent National and Other Reports*, 11 LEGAL WRITING 295 (2005); Vinson, *supra* note 2, at 523 (“Some people speculate that unfortunately, for various reasons, writing skills have deteriorated.”). Pre-law school changes in curricula at the high school and college level have resulted in students having fewer demanding writing experiences. Vinson, *supra* note 2, at 524–26; see also NPR Staff, *A Lack of Rigor Leaves Students “Adrift” in College*, NPR BOOKS (Feb. 9, 2011), <http://www.npr.org/2011/02/09/133310978/in-college-a-lack-of-rigor-leaves-students-adrift> (describing a study noting a decline in critical thinking skills and, “consequentially, a decline in writing and reasoning skills.”); Diana Middleton, *Students Struggle for Words*, WALL ST. J. (Mar. 3, 2011), available at <http://online.wsj.com/article/SB10001424052748703409904576174651780110970.html> (noting that the writing skills of MBA students “may be slipping”).

³⁵ See, e.g., Susanna Kelley, *Texting, Twitter Contributing to Students’ Poor Grammar Skills, Profs Say*, GLOBE & MAIL (Feb. 1, 2010), <http://www.theglobeandmail.com/technology/texting-twitter-contributing-to-students-poor-grammar-skills-profs-say/article4304193/> (the view from our neighbors to the north); Menachem Wecker, *B-Schools Seem to Downplay Writing Skills*, U.S. NEWS & WORLD REP. (July 11, 2012), available at <http://www.usnews.com/education/best-graduate-schools/top-business-schools/articles/2012/07/11/b-schools-seem-to-downplay-writing-skills> (noting that poor writing may be leading some MBA admissions programs to focus less on writing skills as a standard of admission and noting possible involvement of electronic communications in decline).

³⁶ See, e.g., Bryan Garner, *Do Law Students Become Worse Writers?*, 41 STUDENT LAW. 14 (2013), available at http://www.americanbar.org/publications/student_lawyer/2012-13/may/do_law_students_become_worse_writers.html (stating to student readers of a *Student Lawyer* article, that “many students, perhaps including you, have been coddled and overpraised about their writing. These students have gained a false confidence about their ability.”).

But the fact of the matter is that professional writing in any era or any field is a demanding skill that no given generation of students, no matter how well educated, is likely to master in the academic setting. The need for continuing writing training in the work setting, and therefore the need for effective writing feedback, will always exist, no matter what the particular writing weaknesses of a particular generation may be.

II. Big Picture Options for Providing Effective Feedback

Lawyers confronted by the challenges of providing feedback as part of the busy practice of law have multiple options. The options can involve relying on LRW professionals for help, developing their own tools to provide feedback, or using both approaches.

A. Collaboration with LRW Professionals

A possible solution to the difficulties confronted by non-LRW legal professionals is, in fact, to consult and collaborate directly with the experts: LRW faculty. Such collaborations have been proposed for both the law school setting³⁷ and the practice setting.³⁸ In particular, in the practice setting, LRW professors may offer workshops to summer clerks or new associates, work one-on-one as writing coaches with individual clerks or associates, work directly with supervising attorneys to teach them how to supervise more effectively, or otherwise provide pedagogical services in the law firm setting.³⁹

Such collaborations can be significant time savers for practicing lawyers who take advantage of the substantial expertise developed by LRW faculty.⁴⁰ LRW faculty, too, can benefit from the collaborations because it enables them to keep tabs on legal practice and see how their recommendations play out in the practice world, as well as to promote their program in the eyes of their students and the attorneys they work with.⁴¹ Such collaborations are also flexible: any given practice can determine what it wants the professors to do.

³⁷ Kowalski, *supra* note 4 (discussing collaboration between LRW faculty and law school clinical faculty).

³⁸ See, e.g., Blum & Vinson, *supra* note 5, at 761 (describing “the practice of legal writing consulting in law firms by full-time legal writing faculty”); see also Eichhorn, *supra* note 2 (discussing the benefits of LRW faculty training supervising attorneys to act as coaches for new attorney writers).

³⁹ See *id.*

⁴⁰ See *id.*

⁴¹ Eichhorn, *supra* note 2, at 165–66.

B. When Collaboration is Not Feasible

Though active collaboration may be the ideal, such collaboration may not be feasible in all types of practice or for all LRW faculty. Legal professionals face many demands on their time, and active collaboration is time-consuming and may be difficult to maintain on a consistent basis.⁴² Further, depending on the size and structure of a practice, financial or administrative problems may arise, particularly in an era of continuing economic challenge for a variety of law practices.⁴³ For small firms, legal-services practices, government offices, and other relatively small or specialized operations, such collaboration may not be possible at all.⁴⁴ In such cases, self-education, along the lines suggested in this article, may be the best alternative.

Finally, even if collaboration happens, it cannot be effective if left to stand alone, without supplementation and reinforcement from the supervising attorneys in the practice. Therefore, the suggestions that follow can be used as either a substitute for, or a supplement to, active collaboration with LRW professionals.

III. Tools for Providing Feedback to Developing Writers

Successful feedback does not result from an on-the-fly approach. Constructive review of a developing writer's work necessitates planning ahead, including developing tools that will facilitate the feedback process and careful deliberation about the best means for delivery of the feedback. Without a doubt, it can be a "time-consuming, labor-intensive" undertaking.⁴⁵ But in recent decades, LRW faculty around the country have developed substantial expertise in organizing and delivering feedback about writing. In addition, in more-recent years, educators have developed efficient assessment tools and techniques—learning-outcome identification and rubrics—that are being used nationally at all levels of the educational system, including law school, and can be readily adapted for the law-practice setting. Use of these tools and techniques can help in

42 Cf. Kowalski, *supra* note 4, at 318 (noting that many barriers to collaboration between law school clinical and LRW may arise, but the collaboration is worth the effort).

43 Whether bringing in LRW faculty to conduct training is feasible most likely will depend on the given circumstances and the type of collaboration. See, e.g., Blum & Vinson, *supra* note 5, at 773 (noting that large group seminars can be economical and have public relations value).

44 Certainly the question arises as to whether offering collaborative services on a *pro bono* basis in appropriate circumstances could be beneficial for all involved.

45 Heather Zuber, *A Fresh Look at Assessing Students' Work Product: What Is Assessment, Why We Assess, and How to Do So Effectively and Efficiently*, 19 PERSPS. 20, 20 (2010).

particular with the learning-transfer problem because using techniques for delivering feedback similar to those used during the developing writer's formative years can trigger helpful memories and help resurrect skills. These tools can also be adapted to address audience awareness, writing-skills problems, and other problems as needed.

A. Feedback in the Law Practice Setting

The word "feedback" is sometimes used as a catchall term that includes revising, editing, and proofreading, as well as suggestions about the need for the writer to conduct those activities and how to go about doing so.⁴⁶ Revising (making changes to the substance, focus, or organization), editing (making changes at the wording and sentence structure level), and proofreading (correcting typographical errors) all involve the reviewer's making direct changes to the material,⁴⁷ rather than suggesting how the author might make changes.

"Feedback" as used in this article does not contemplate such direct changes made by a reviewer. Instead, and ideally, it contemplates reviewer suggestions and comments designed to help the writer make those changes. To a certain degree, of course, effective feedback can involve direct changes, as long as they are done minimally to demonstrate what a suggestion means. But direct changes by themselves, unaccompanied by explanation or suggestion, do little to enlighten, and much to frustrate, the developing writer.⁴⁸ As recognized in the law school context, "editing a paper for a student usurps the student's role in assessing and improving his or her skills. Inputting edits into a computer does not learning make."⁴⁹

Ideally, the developing writer should receive feedback well before completion of the project so that the writer can figure out how to implement the suggestions. Developing writers benefit from opportunities to rewrite.⁵⁰ In the academic context, for example, LRW programs are generally designed to create opportunities for rewriting and for building upon skills learned in earlier writing projects. Such opportunities should

⁴⁶ See ANNE ENQUIST & LAUREL CURRIE OATES, *JUST WRITING: GRAMMAR, PUNCTUATION, AND STYLE FOR THE LEGAL WRITER* 17–21 (4th ed. 2013) (explaining revising, editing, and proofreading); Emily Zimmerman, *Toto, I Don't Think We're in Practice Anymore: Making the Transition from Editing as a Practitioner to Giving Feedback as a Legal Writing Professor*, 12 *PERSPS.* 112 (2004) (discussing "the differences between the type of editing that [she] did as a practitioner and the type of feedback that [she] should be providing as a teacher").

⁴⁷ ENQUIST & OATES, *supra* note 46, at 17–21.

⁴⁸ See, e.g., Marcia Pennington Shannon, *Supervising Your Team Electronically: Email Dos and Don'ts*, 37 *LAW PRAC.*, Mar./Apr. 2011, 57, 58–59 (advising against use of a red-line-type approach to feedback without explanation).

⁴⁹ Zimmerman, *supra* note 46, at 112.

⁵⁰ Kirsten K. Davis, *Three Key Plays for the Writing "Coach,"* 40 *ARIZ. ATTY.*, Mar. 2004, at 12.

also be made available for law clerks, summer associates, and new associates in training to the extent possible.⁵¹

Frequently, however, feedback must work differently in the practice context. In the practice setting, direct changes must often be made in order to meet a deadline and to produce the best possible quality document to represent the client.⁵² But if at all possible for long-term benefit to the individual writer and the law practice in question, feedback—an explanation for the changes made and suggestions for dealing with future similar or related situations—should follow promptly.⁵³ Merely sharing the corrected document with the developing writer, with no explanation, “waste[s] opportunities for individuals to learn from feedback.”⁵⁴

B. Feedback Tools and Techniques—A Brief Summary of Assessment Theory

In the academic setting, law professors determine what assignments (assessment tools) will be used to evaluate the student work and possibly be followed by feedback. Such assessment tools may include midterm and final essay exams,⁵⁵ seminar papers, research memoranda, motion memoranda or briefs, client letters, professional email communications, and others.⁵⁶ Assessment tools may be either summative or formative; summative assessment involves the awarding of grades at the culmination of a course.⁵⁷ Frequently, law professors’ summative evaluation involves grading a pile of final exams under a deadline. In this context, it is difficult to do much more than come up with a score or overall evaluative term (excellent, good, satisfactory, or poor) and, perhaps, a few quick margin comments (Good! No! Etc.). Therefore, summative assessments rarely involve much, if any, actual feedback.

51 Gionfriddo, et al., *supra* note 7, at 173–74.

52 Zimmerman, *supra* note 46, at 112 (“After practicing law for several years, I was used to going over my colleagues’ written work with a fine-tooth comb in order to produce the most effective documents for our client.”); *see also* Gionfriddo, et al., *supra* note 7, at 173–74.

53 *See* Shannon, *supra* note 48, at 57; Zuber, *supra* note 45, at 20.

54 *Id.*

55 Mid-term and final essay (as well as short answer and multiple choice) exams are, as all law graduates know, the standard means of assessment in doctrinal courses. Such assessments are summative: designed so the professor can assign a grade. And, as commentators have recognized, the need to do summative assessments in law school to provide grades is fundamental to our system, so however problematic the grading process may be, grading is not likely to go away. *See, e.g.*, Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1, 4–5 (2004).

56 *See* Survey, *supra* note 9, at 13.

57 *See* Zuber, *supra* note 45, at 20; *see also* Sparrow, *supra* note 55, at 4–5.

The type of assessment that is needed for real, long-term growth in skills and understanding is the other type: formative assessment, in other words, an explanation of what was done well, what is showing progress, and what needs more work.⁵⁸ Students typically receive formative assessment on LRW assignments such as memoranda and client communications. Formative assessments are designed to create a “learning loop”: “a professor facilitates a student’s active learning, the student performs, the student and professor assess the performance, and the professor provides feedback on how the student’s learning and performance can be improved.”⁵⁹ Formative assessment is more time-consuming and intense than summative assessment and is thus more challenging to manage.

When making assessments, supervising lawyers face challenges comparable to those faced by law faculty. The supervisor, of course, does not always have control over the type of “assessment tool”—the particular type of writing the developing lawyer will need to do for the client. But, whatever tool is used in practice, the supervisor often must work under a court or client deadline, somewhat akin to a professor’s submission deadline for grades, but with more-significant, real-life consequences. As a result, the supervisor often must simply make the changes needed and submit the document when due. However, the supervisor, like the professor, should recognize that, despite its challenges, formative review of a developing writer’s work is more effective, both in the short and the long term. Therefore, if the formative approach is taken, the supervising attorney should provide substantive feedback to the writer, rather than just edits or red-lining, in order to encourage learning that can be carried forward to future work.

Fortunately, it is feasible for busy professionals to develop a formative assessment process similar to one used in the academic context. Using this process, assessors should first identify the “learning outcome” goals for a given course or project: the skills, level of understanding, analytical ability, and other levels of comprehension and performance the course or project should achieve or demonstrate.⁶⁰ The assessor then develops a rubric, which lists the learning outcomes and states the desired level of achievement for each outcome.⁶¹ Such a rubric often can be less than a page long, and the more common-sense the language used, the better. The

⁵⁸ Professor Sparrow defines formative assessments as “ongoing assessments designed to make students’ thinking visible to both teachers and students,” not assessments that merely provide numbers and letters that give students very little guidance.” Sparrow, *supra* note 55, at 5 (quoting HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL 24 (John D. Bransford et al. eds., 2000)).

⁵⁹ Zuber, *supra* note 45, at 21.

⁶⁰ See generally *id.*

rubric can later be supplemented or adapted as needed to reflect individual needs.

In order to provide constructive, formative feedback in the law-practice context, the supervisor must consider the goals that the writer must achieve on behalf of the client for that particular kind of writing (learning outcomes) and the way the supervisor wishes to express the level of achievement for each outcome (rubric). More specifically, the supervising attorney must consider what it is that the developing attorney in the supervisor's practice or working group must learn and how to present that information in a way that has meaning for a developing writer. Although doing this work up front can be somewhat time-consuming, in the long run it can save time, both in terms of the supervisor's time and in terms of time saved due to the new attorney's ability to self-edit.⁶² As the supervising attorney becomes more experienced in providing this feedback, these tools can become increasingly refined and practical, and can be used and reused with increasing efficiency. The following sections explain in greater depth how to determine learning outcomes and develop rubrics.

1. Determining Long- and Short-Term Goals of Feedback (Learning Outcomes)

Whether in practice or in academia, feedback should not only be about the immediate work product, but also about the long-term development of the student–attorney as a writer. Thus, learning outcomes should address both the immediate concerns and future needs of the writer. In practice, often the immediate concerns—producing work product that meets the needs and protects the interests of the client—must play a primary role. A supervising lawyer may feel constrained to focus exclusively on fixing problems and finishing the project for submission by a deadline. The long-term goals of running a successful law practice, however, require that developing lawyers in the practice must learn to recognize and fix problems themselves; they need feedback in order to be able to learn these skills most effectively.⁶³ With such long-term learning in mind, learning outcomes for identified problems could also involve requiring the writer to consult or work with a helpful resource on that problem for further assessment.

For example, a grasp of basic compositional skills is critical for every lawyer, regardless of the type of legal document being drafted. Should the

61 See generally Sparrow, *supra* note 55.

62 See, e.g., Rose, *supra* note 1, at 28 (“Good supervision should improve a law firm’s work product for clients. It should increase billable hours, in the long run. It should improve job morale for associates and make the firm a more attractive place to work. It should allow associates to take on more responsibility.”).

63 See generally *id.*

supervisor note over time that the writers being reviewed consistently demonstrate compositional weaknesses in certain areas, improvement of those weaknesses can be added to the list of desired learning outcomes for a variety of documents.

Beyond compositional skills, however, supervising attorneys should determine key practice-related skills that they want developing writers to learn or exhibit in writing different types of documents. Compositional problems tend to be relatively easy to identify, and, thus, can take over the rubric if the supervisor is not careful to focus on more-fundamental analytical, organizational, and other problems.⁶⁴ For example, when drafting documents such as contracts, are there certain techniques that are expected? What drafting problems tend to suggest an undesirable over-reliance on forms or samples? In memoranda addressed to a court, is the writer showing appropriate deference to the court? In memoranda generally, is the attorney showing an ability to synthesize the authorities?⁶⁵ Is the associate adhering uniformly to law school paradigms such as IRAC or CREAC when they do not work for the particular analysis or argument?⁶⁶

A particularly challenging part of establishing learning outcomes is determining not only the common errors that arise, but also how the outcomes relate to the long-term skill development goals. Skills or tools needed for the long term should therefore also be added to the learning outcomes list for a particular document. Context matters as well: for example, are there specific preferences for the type of writing done by that practice that are based on local court preferences, client preferences, or the type(s) of practice?

A particular benefit of determining learning outcomes is that the supervisor can also use this process as an opportunity to assess how effectively tasks or assignments are described to the developing writer.⁶⁷ If certain problems frequently recur, could it be due to problems with the assignment, as opposed to deficiencies on the part of the writer? Developing attorneys need to receive assignments that are clearly laid out, with clearly articulated goals. In this regard, focusing on using assessment

64 Gionfriddo, et al., *supra* note 7, at 177–78.

65 See generally *id.* (discussing the provision of feedback specifically for an office research memorandum and highlighting textual clues to writing problems that can be helpful in determining what learning outcomes should be included in a rubric for such a memorandum).

66 Students often do not recognize by the end of their law-school writing courses the extent to which paradigms such as IRAC and CREAC, often taught in LRW courses and

used as approaches for law-school exams, still leave much room for flexibility, adaptation, and specialized approach. See, e.g., Christine M. Venter, *Analyze This: Using Taxonomies to “Scaffold” Students’ Legal Thinking and Writing Skills*, 57 MERCER L. REV. 621, 624–25 (2006). In particular, despite the best efforts of LRW faculty, it can take time for developing lawyers to recognize that such paradigms are tools rather than goals in and of themselves. See generally *id.*

67 Zuber, *supra* note 45, at 20.

tools to provide strong feedback helps strengthen the supervisor's performance of other writing-related tasks as well.

2. Preparing Feedback Forms (Rubrics)

Once a list of learning outcomes has been developed, the supervisor needs to determine how to effectively communicate whether the outcomes have been achieved. Recent developments in education, at elementary, secondary, undergraduate, and graduate and professional levels, have focused on the rubric approach to delivering feedback. Many students now progressing through the education system and beginning to practice law will have experienced this approach for much of their educational career. Therefore, using the rubric approach in the practice environment may be particularly effective as a familiar means of providing feedback to new attorneys.⁶⁸

The seminal work about rubrics in the legal writing context was written in 2004 by Sophie Sparrow.⁶⁹ A rubric essentially breaks a document or project down into skills expected to be shown in the assignment—the anticipated learning outcomes already discussed—and assesses the level at which those skills were achieved or developed in the assignment. It is touted as an approach that enhances learning and saves time in the evaluation process.⁷⁰ In Professor Sparrow's words, "Rubrics are sets of detailed written criteria used to assess student performance. These criteria are based on the learning goals of the course. These goals are what the professor has identified students should learn by the end of the course."⁷¹ If you take the previous quotation and change "student" to "developing attorney," and "course" to "work project" or "practice area," you can see how the idea of rubrics can apply in the legal practice context.

Overall, the development of learning outcomes and associated rubrics is part of a discursive process: work on the rubric may alert the supervisor

⁶⁸ It is not feasible to list all the instances of these practices in current educational systems in the United States, so a few examples are included here for reference. For example, the National Institute for Learning Outcomes Assessment tracks assessment practices at the undergraduate level and includes rubrics on its site. See *NILOA Learning Outcomes Assessment Resource Library*, NAT'L INSTITUTE FOR LEARNING OUTCOMES ASSESSMENT, <http://www.learningoutcomeassessment.org/publications.html> (follow "Rubrics" hyperlink) (last visited Feb. 16, 2015); see also *The Criteria for Accreditation and Core Components*, HIGHER LEARNING COMMISSION, <https://www.ncahlc.org/Criteria-Eligibility-and-Candidacy/criteria-and-core-components.html> (setting forth the accreditation criteria of the Higher Learning Commission, which accredits a number of colleges in the country) (last visited Feb. 16, 2015). Significantly, as of August 12, 2014, the ABA adopted new standards for law schools (301(b), 302, 303, and 314) that will require law schools to establish the learning outcomes they expect their students to achieve. See *Transition to and Implementation of the New Standards and Rules of Procedure for Approval of Law Schools*, A.B.A. (Aug. 13, 2014), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2014_august_transition_and_implementation_of_new_aba_standards_and_rules.authcheckdam.pdf.

⁶⁹ Sparrow, *supra* note 55.

⁷⁰ *Id.* at 15–25, 27–30.

⁷¹ *Id.* at 7.

to learning outcomes not previously identified, and continued work on identifying learning outcomes may suggest additions that need to be made to rubrics. Also, since rubrics are designed to be used for multiple learners, they will most likely develop over time in light of observations by the supervising attorney. The initial work on the rubric may depend mostly on the supervisor's own sense of the traits that a given type of work product should have, but over time, as the supervisor works with more developing attorneys and notes common errors, work on these errors may become part of the learning outcomes, and hence, part of the rubric.⁷²

Ultimately, the concept of a rubric is an extremely flexible one. Blank rubrics can be provided when an assignment is initially distributed to help writers with the drafting process.⁷³ Rubrics may also be provided after the project is completed to provide feedback to the writer. The feedback for each learning outcome can be as simple as indicating whether the outcome was achieved, or indicating the level at which the outcome was achieved, through descriptive words or numerical scores.⁷⁴

The appendix to this article provides some sample rubrics for different types of practice-based writing. These rubrics are intentionally generic; the learning outcomes identified are based on common problem areas for novice writers.⁷⁵ In addition, a number of outlets, both within and outside the legal writing context, have created lists of desired learning outcomes for different types of writing projects. For any supervising attorney having trouble determining learning outcomes and setting up a rubric, perusing some of these lists may be a good starting point.⁷⁶ Certainly, the choices in the sample rubric can be the subject of vigorous debate; they are included here to model the learning-tool descriptions above and to serve as starting points for supervising attorneys.

72 See generally *id.* (including an example description of the rubric-development process).

73 *Id.* at 9.

74 Reviewing the samples referenced in this article reveals a variety of approaches to describing whether and how an outcome has been achieved.

75 The learning outcomes chosen for these rubrics are based on my own experiences reviewing and providing feedback on legal writing, as well as areas focused on in sample rubrics posted on the website of the Legal Writing Institute. *Grading Rubrics*, LEGAL WRITING INSTITUTE, http://www.lwionline.org/grading_rubrics.html (including rubrics with learning outcomes for such types of writing as Appellate Briefs, Client Letters, Office Memos, Trial Memos, and a few miscellaneous items) (last visited Feb. 16, 2015); see also Gionfriddo, et al., *supra* note 7 (setting out clues to writing problems that convert nicely to learning outcomes); Tonya Kowalski, *Mentoring New Legal Writers*, 81 J. KAN. B. ASS'N 12 (2012).

76 See *id.* In addition, the Institute for Law Teaching and Learning has posted a variety of rubrics, some oriented to practice documents such as client letters, complaints, and contracts, and some oriented to law-school exams. *Rubrics*, INSTITUTE FOR LAW TEACHING & LEARNING, <http://lawteaching.org/teaching/assessment/rubrics/> (last accessed Feb. 16, 2015); see also Sparrow, *supra* note 55 (including sample rubrics in the appendix).

3. Using the Sample Rubric Material and Delivering the Feedback

Once a rubric is set up, it can help the entire review and feedback process move along more efficiently. Having the rubric in hand can make it easier, initially, to recognize and diagnose problems when reviewing the document in question. Rubrics can thus help supervisors focus their own thinking. The rubric can also serve as a template for organizing the supervisor observations into categories and ratings.

For the supervisor who lacks the time to write out extensive comments or who is providing the feedback verbally to the other lawyer, the rubric provides a quick way to identify key areas that need work and the extent to which work is needed; it also allows the attorney to add comments as desired or possible within time constraints. In addition, to the extent the supervisor has marked up the work product while reviewing it or as part of finalizing the document to meet a deadline, the rubric can help identify the underlying rationale(s) for the markings. A particular value of the rubric approach is that it enables the supervisor to organize thoughts into a coherent presentation, and an organized presentation is vital to effective delivery of feedback.⁷⁷ Finally, to the extent that a supervisor does a periodic review of the lawyer's work, the record created by rubrics can be a valuable resource.

It is critical to note that use of a rubric does not mean that additional comments or communications are not needed. It would be a rare situation in which simply filling out a rubric would provide all the information a developing writer might need. Certain entries in the rubric may call for more explanation, and the writer may have questions about what entries mean or how they relate to specific parts of the writing. Therefore, a supervisor should also take into account certain other basics about providing effective feedback.⁷⁸

As noted in the sample rubrics, any given rating for an outcome can be accompanied by additional explanation of the rating. Additional explanation is particularly critical for major problem areas in the work. Comments can be added to the rubric at appropriate places or at appropriate places in the written document itself.⁷⁹ Alternatively, a separate memo could be drafted to explain the major comments. Some commen-

⁷⁷ See, e.g., Anne Enquist, *Critiquing and Evaluating Law Students' Writing: Advice from Thirty-Five Experts*, 22 SEATTLE U. L. REV. 1119, 1133 & 1142–45 (1999) (advising that, when giving feedback, one should use a critiquing checklist, determine priorities, and organize materials and forms to use).

⁷⁸ The Monograph Series of the Legal Writing Institute, Volume One, covers "The Art of Critiquing Work." For those supervisors interested in more additional information about providing feedback, the volume includes a number of articles that provide a wealth of information. See *The Monograph Series of the Legal Writing Institute: Volume One*, LEGAL WRITING INSTITUTE, http://www.lwionline.org/monograph_volume_one.html (last visited Feb. 16, 2015).

⁷⁹ See Enquist, *supra* note 77, at 1133–40 (discussing end, interlinear, and margin comments).

tators prefer dictating comments; it can take less time than other approaches, and, as with written comments, dictation creates a record that enables review after the initial delivery.⁸⁰ In any case, being succinct and limiting the number of comments should be a priority.⁸¹ For both the supervisor and the writer, the use of a rubric plus succinct comments on key points should be the most effective use of limited time.

Sources generally agree that the approach to providing feedback should convey a sense of collaboration between the supervisor and the developing attorney.⁸² This collaborative sense can also be promoted by conveying appreciation for the attorney's work and by starting with the positive.⁸³ Therefore, delivery of a rubric and any added comments should always be accompanied by a positive message, an expression of appreciation for the work done, and an invitation for questions to be asked.

Delivery of the feedback raises its own questions. The supervisor will need to judge whether an in-person meeting to review the rubric, an email communication conveying overall comments (with the rubric attached), or a memo containing overall comments and an attached rubric might be most effective in light of time availability⁸⁴ and the supervisor's sense of the likely comfort level of the writer.⁸⁵ In my own experience, in-person meetings are most effective for explanations and questions, but the practice setting and scheduling demands for both parties may make an in-person meeting unfeasible.

IV. Fine-Tuning and Individualizing Feedback for Developing Writers

As anyone who has taught or supervised a learner knows, any given learner will probably have not only needs and deficiencies that are common to other learners at a comparable level, but also individual issues or quirks that require individualized attention. Further, the law-practice setting may pose special challenges in delivering feedback in a timely or effective fashion. As a result, while work on learning outcomes and rubrics can go a considerable way to making the supervisor's task more efficient for common problems, additional individualized work may well be

80 See, e.g., Davis, *supra* note 50, at 12; Gionfriddo, et al., *supra* note 7, at 199.

81 Enquist, *supra* note 77, at 1130–31.

82 See Gionfriddo, et al., *supra* note 7, at 196–97; Rose, *supra* note 1, at 30.

83 See, e.g., Rose, *supra* note 1, at 32–33; Shannon, *supra* note 48, at 58–59.

84 See Gionfriddo, et al., *supra* note 7, at 200.

85 See, e.g., Shannon, *supra* note 48, at 57; Davis, *supra* note 50, at 12.

needed. The writing of particular learners may involve problems that are difficult to diagnose, or a particular situation may make delivery of feedback difficult.

A. Diagnosing Intransigent Individual Problems

Plainly, a critical part of providing productive feedback is properly diagnosing the problems in a young lawyer's writing. Some writing issues are readily apparent and fairly common, such as improper use of punctuation marks (such as *it's* vs. *its*), using the wrong word for commonly misused words (*than* vs. *then*), or using the passive voice indiscriminately.⁸⁶ Fixing such errors often will be a matter of specific feedback (through the use of a rubric, for example) and writer attention and effort.⁸⁷ But occasionally problems are recalcitrant despite such efforts.

Certain problems do arise fairly regularly in the writing context and a supervisor can be on the lookout for them as a basic part of the diagnostic process. For example, a poorly written product does not necessarily, or at least exclusively, indicate a lack of effort or inadequate intellect or skills on the part of the writer.⁸⁸ A frequent cause of writing deficiencies is poor time management—often a problem that first manifests itself seriously during law school and continues into practice.⁸⁹ Bringing out and dealing with these problems often will require a conversation, in addition to identification of the issue, to confirm and clarify how matters could be improved.

Other possible or contributing reasons can include problems of the supervisor's making.⁹⁰ Was the task clearly identified and material to be used for it clearly and fully (at least, as fully as possible, depending on the stage of client representation) communicated?⁹¹ Was the writer made aware of resources and samples or forms available for use in the office? Does the office have particular expectations that were not communicated

⁸⁶ Sources used in LRW programs during law school that are designed for legal writers may also work well as resources in practice. See, e.g., ENQUIST & OATES, *supra* note 46 (including an appendix that addresses writing issues for English language learners (ESL learners)); Ruth Ann McKinney & Katie Rose Guest Pryal, *Core Grammar for Lawyers*, <http://www.coregrammarforlawyers.com> (offering a subscription service that may ultimately have a greater cost than the text, but that is very popular in LRW programs as an easy-to-use and access resource for developing writers) (last visited Feb. 18, 2015).

⁸⁷ See, e.g., Eichhorn, *supra* note 2 (describing problems that arise in developing lawyers' writing and clues that help suggest the source of these problems); Gionfriddo, et al., *supra* note 7 (same, but also including a sample research memo and sample feedback in its appendix).

⁸⁸ See Enquist, *supra* note 77, at 1150–51 (noting that assumptions about a lack of effort can negatively affect the relationship between supervisor and supervised).

⁸⁹ See generally Christine P. Bartholomew, *Time: An Empirical Analysis of Law Student Time Management Deficiencies*, 81 U. CIN. L. REV. 897 (2013).

⁹⁰ See Zuber, *supra* note 45, at 21–22.

⁹¹ See Rose, *supra* note 1, at 32; Shannon, *supra* note 48, at 59.

to the writer? While developing writers should certainly have acquired research skills and the ability to locate and use resources during law school, sometimes there are more-specialized practices or customs of which they may not be aware.

More-substantive issues, such as fundamental difficulties understanding, analyzing, or applying sources, and fundamental difficulties with organization, may require work that goes beyond feedback on particular work products; these issues may require individualized tutoring by an LRW consultant or a particularly experienced supervising attorney. Other situations that may require specialized work include writers for whom English is a second language or writers with learning disabilities. While ESL writers and those with a disability have often, by the time they get to law school, overcome the challenges that their situations can create, there can occasionally be problems that persist.

B. Changing Needs and Expectations

Another area that may affect feedback is the potential for increasing diversity of the student population in law schools and hence in the practicing community. Increasing diversity is a long-standing goal in the legal community, but commentators have suggested it is far from being achieved.⁹² Yet, in recent years (2010–2013), as the economy struggles and law school admission numbers fall, LSAC statistics indicate that the percentage of minority students matriculating has not fallen as much as the percentage of Caucasian–White matriculates.⁹³ And in 2014, the *Chronicle of Legal Education* reported “a milestone that deserves cautious celebration: Law schools, as a whole, are more racially and ethnically diverse than ever.”⁹⁴

Caution is certainly warranted; it is far too soon to say that the profession has achieved its diversity goal or is even close to it. But the potential remains that this could occur in upcoming years.⁹⁵ A more-diverse population means students will come to, and leave, law school with

⁹² See, e.g., Kevin R. Johnson, *The Importance of Student and Faculty Diversity in Law Schools: One Dean's Perspective*, 96 IOWA L. REV. 1549, 1550 (2011) (“[T]he racial diversity of law-school student bodies and faculties leveled off in the early twenty-first century.”); Jodie G. Roure, *Achieving Educational Equity and Access for Underrepresented Students in the Legal Profession*, 19 TEMP. POL. & CIV. RTS. L. REV. 31, 31 (2009) (noting a lack of progress despite aspirational statements to increase diversity).

⁹³ *Matriculants by Ethnic and Gender Group*, LAW SCHOOL ADMISSION COUNCIL, <http://www.lsac.org/lsacresources/data/ethnic-gender-matriculants> (last visited Feb. 16, 2015).

⁹⁴ Aaron N. Taylor, *As Law Schools Struggle, Diversity Offers Opportunities*, CHRON. HIGHER EDUC. (Feb. 10, 2014), <http://chronicle.com/article/As-Law-Schools-Struggle/144631/>.

⁹⁵ See *U.S. Census Bureau Projections Show a Slower Growing, Older, More Diverse Nation a Half Century from Now*, United States Census Bureau (Dec. 12, 2012), <https://www.census.gov/newsroom/releases/archives/population/cb12-243.html>.

an even broader range of writing experiences, strengths, and needs than ever before.

V. Conclusion

Feedback to developing writers is critical at all stages. Even when a law student has had excellent LRW courses and writing experiences during law school, the shift from the academic context to the practice context will inevitably result in a continuing need for feedback. Unfortunately, providing feedback on written work product can be time-consuming, and few legal professionals outside the LRW field have been trained to provide it. Such professionals most likely will run into significant difficulty finding the time to provide effective feedback.

Numerous sources, however, in both the academic and practice-management fields, stress that regular, prompt, and specific feedback is critical to promoting the development of skills in any area. It is my belief, based on both personal experience and years of hearing reports from current and former students about feedback (or lack thereof) in their workplaces, that the long- and short-term benefits of providing effective feedback in the practice setting cannot be overestimated. Taking the time to provide individualized attention results in more trust in the supervisor; more effective and motivated employees; and, as the supervisor gains insight from the feedback experience, improved ability by the supervisor to work with developing lawyers and explain work assignments more effectively.

Though providing good-quality feedback will never be easy, experts in the LRW and other education fields have developed techniques that supervisors of legal writers can use to make provision of effective feedback within the constraints of law practice more feasible. In the academic context, identifying learning outcomes and developing rubrics based on them have provided an efficient and adaptable process for delivering feedback in a variety of situations. In the practice context, rubrics can be developed, reused, and built upon over time as the supervisor's own experiences suggest more-refined approaches.

A final, critical benefit of the learning-outcome–rubric process is its ready adaptability for new situations. As society, the profession, and law schools change, so, too, must the way new lawyers merge into the profession and continue their writing training. If the push for diversity is successful, the backgrounds of students entering and graduating from law school may become increasingly varied, potentially affecting their approach to writing, among other things. The learning-outcome–rubric

process positions both legal educators and lawyers supervising new attorneys to adapt as needed.

Appendix

Instructions and Suggestions for the Use of Rubrics

These rubrics are basic. They focus on common problem areas for developing writers, and they are intended to model some aspects of helpful rubrics and to serve as starting points as you adapt them for your own use. The rubrics can be individualized as needed for the demands and expectations of particular practices and supervisors through additions, deletions, adaptations, reorientation, or selective use. Inevitably, there will be overlap between and within categories. Thus, for any given situation, categories may be combined or further broken down as appropriate for the specific writing project.

Each rubric contains a list of learning outcomes that a supervisor might hope to see accomplished in a broad category of writing. The supervisor may select how to rate the level of accomplishment for each outcome. For example, the supervisor could simply indicate by a “yes” or “no” rating whether the outcome was achieved. Alternatively, the supervisor could use a rating scale (for example, 1–5) to indicate more precisely the level of achievement obtained. Because a rating scale is often more informative, in most of the rubrics the outcomes are listed as topics so that each can be accompanied by a rating scale. To convert the topical outcomes for purposes of using a yes–no rating, the statements could be changed to questions.

For certain types of learning outcomes, or for subparts of those outcomes, however, yes–no questions may work more appropriately or easily. As an example, the first (overall) rubric below uses yes–no questions. The subparts of the writing-skills outcomes also lend themselves more readily to yes–no questions, so that approach is also used, in part, for that rubric.

Four rubrics are included, as listed below. A supervisor could adapt a basic rubric here, or combine parts of different rubrics, to develop a rubric appropriate for the particular expectations in question. The rubrics, listed from A–D, include the following:

- A) Overall (Big Picture) Learning Outcomes (for Any Type of Writing)
- B) Learning Outcomes for Analytical Writing (e.g., Body of Memos, Client Letters, Briefs)
- C) Learning Outcomes for Drafting (e.g., Contracts, Wills)

D) Writing Skills and Mechanics Learning Outcomes (for Most Types of Documents)

Finally, the use of rubrics does not preclude margin comments on the document itself or the addition of more-specific comments or explanations for a particular learning outcome. In fact, combining the rubric approach with comments, at least for the areas of greatest concern, can be very effective. Therefore, these rubrics should ideally be supplemented by additional comments for particular outcomes, as needed.

A. Overall (Big Picture) Learning Outcomes (for Any Type of Writing)

Set up for yes–no rating; add specific comments as needed:

- 1) Does the document meet the needs of this situation?
- 2) Does the document show an awareness of the audience who will read it?
- 3) Does the document demonstrate an understanding of the law?
- 4) Does the document demonstrate an understanding of the underlying facts?
- 5) Does the document demonstrate depth of analysis?
- 6) Is the organization of the document logical and easy to follow?
- 7) Is the writing generally clear, succinct, and grammatically correct?
- 8) Does the document show careful attention to detail?
- 9) Does the document conform to format and style expectations?

B. Learning Outcomes for Analytical Writing (e.g., Body of Memos, Client Letters, Briefs)

Set up for rating scale; add specific comments as needed:

1. Analysis and Synthesis

Issue spotting and identification	1	2	3	4	5
Consistency of focus on relevant issue(s)	1	2	3	4	5
Inclusion of needed background material	1	2	3	4	5
Exclusion of irrelevant material	1	2	3	4	5
Understanding of Law	1	2	3	4	5
Understanding of each authority	1	2	3	4	5

Understanding of authorities as a whole (synthesis)	1	2	3	4	5
Consistency of use of legal concepts	1	2	3	4	5
Explanation of Law	1	2	3	4	5
Completeness	1	2	3	4	5
Clarity	1	2	3	4	5
Awareness of applicable standards or standards of review	1	2	3	4	5
Incorporation of facts	1	2	3	4	5
Recognition of relevant facts	1	2	3	4	5
Explicit use of facts in analysis	1	2	3	4	5
Grasp and explanation of likely arguments	1	2	3	4	5
Client arguments	1	2	3	4	5
Opposition arguments	1	2	3	4	5
Completeness of argument explanations	1	2	3	4	5
2. Use and Choice of Authorities					
Use of authorities to support analysis	1	2	3	4	5
Clarity of case descriptions or illustrations	1	2	3	4	5
Accuracy of source references or descriptions	1	2	3	4	5
Choice of authorities	1	2	3	4	5
Comprehensiveness of use of relevant authorities	1	2	3	4	5
Awareness of importance (binding vs. persuasive)	1	2	3	4	5
Exclusion of irrelevant authorities	1	2	3	4	5
Exclusion of irrelevant aspects of authorities	1	2	3	4	5
3. Organization					
Introductory (thesis, roadmap) materials	1	2	3	4	5
Thoroughness	1	2	3	4	5
Organization	1	2	3	4	5
Consistency with other materials in analysis	1	2	3	4	5
Ability to keep focus on one issue at a time	1	2	3	4	5
Organization of analysis for each issue	1	2	3	4	5
Use of IRAC-type organization as appropriate	1	2	3	4	5
Use of alternative organization as appropriate	1	2	3	4	5
Coherency and unity of explanations of law	1	2	3	4	5

Logic of presentation of arguments	1	2	3	4	5
Recognition–understanding of interrelationship of issues	1	2	3	4	5
Logic of organizational approaches used overall	1	2	3	4	5
Use of headings, topic sentences, transitions	1	2	3	4	5

4. Persuasiveness, as applicable

Recognition of relative strengths of arguments and materials	1	2	3	4	5
Sufficiency of emphasis on helpful material	1	2	3	4	5
Appropriate use of contrary authorities	1	2	3	4	5
Acknowledgement of opposing positions	1	2	3	4	5
Acknowledgement of contrary facts	1	2	3	4	5
Acknowledgement of contrary authorities	1	2	3	4	5
Accuracy of references to contrary materials	1	2	3	4	5
Appropriately limited time on contrary materials	1	2	3	4	5
Assertiveness of presentation	1	2	3	4	5

5. Conclusion or desired outcome

Clarity of conclusion or desired outcome	1	2	3	4	5
Inclusion of specific rationale(s) for conclusion or desired outcome	1	2	3	4	5
Logic of explanation for conclusion or desired outcome	1	2	3	4	5

C. Learning Outcomes for Drafting (e.g., Contracts, Wills)

Set up for rating scale; add specific comments as needed:

1, Organization

Logic of organization overall	1	2	3	4	5
Appropriateness of breakdown of provisions	1	2	3	4	5
Appropriateness of breakdown into main and subparts	1	2	3	4	5
Logic of groupings of provisions	1	2	3	4	5
Organizational cues	1	2	3	4	5
Effectiveness of headings for provisions	1	2	3	4	5
Accuracy of headings for provisions	1	2	3	4	5

Effectiveness or consistency of section designations	1	2	3	4	5
2. Use of forms or samples					
Sufficiency of adaptation for client situation	1	2	3	4	5
Quality of form chosen	1	2	3	4	5
Currency of form chosen	1	2	3	4	5
Sufficiency of correction of errors in forms	1	2	3	4	5
Sufficiency of correction of form wording or structure	1	2	3	4	5
3. Comprehensiveness of coverage					
Inclusion of needed terms	1	2	3	4	5
Exclusion of unneeded or inapplicable terms	1	2	3	4	5
Recognition of areas where more client input needed	1	2	3	4	5
4) Consistency with the law	1	2	3	4	5
5) Use of terminology and quality of provisions					
Adequacy of definitions	1	2	3	4	5
Consistency of terminology use	1	2	3	4	5
Consistency of terminology with industry standards	1	2	3	4	5
Consistency of terminology with legal source usage	1	2	3	4	5
Clarity	1	2	3	4	5

D. Writing Skills and Mechanics Learning Outcomes (for Most Types of Documents)

Set up in part (main topics) for rating scales and in part (specific skills) for yes–no questions

Positive or negative aspects are highlighted (+, -) for the yes–no questions

Add specific comments as needed:

- | | | | | | |
|---|---|---|---|---|---|
| 1. Sentence structure | 1 | 2 | 3 | 4 | 5 |
| + Do subjects and verbs consistently match? | | | | | |
| + Are modifying words and phrases properly placed so it is clear what they are referring to? | | | | | |
| + Is parallel structure used for sentences (or lists) containing multiple ideas or phrases that serve the same purpose as each other? | | | | | |
| - Are there any incomplete (fragment) or run-on sentences? | | | | | |

2. Sentence length and clarity 1 2 3 4 5

- + Is active voice the preferred usage?
- + Is use of passive voice limited to where the active voice would be awkward or would highlight information that should be de-emphasized?
- + Is simple, short sentence structure the preferred usage?
- Are there multiple sentences that, while grammatically correct, use complex phrasing or require lots of punctuation?
- Are wordy phrases used where single words, or fewer words, would work?
- Are gerunds (“ing” forms) and prepositional phrases used in ways that needlessly lengthen sentences?

3. Quotation/paraphrasing 1 2 3 4 5

- + Are quotations properly marked (and formatted, as applicable) to indicate that they are quotations?
- + Are changes to quotations properly punctuated?
- + Is paraphrasing preferred to quoting?
- Are multiple quotations strung together?
- Are quotations used for basic information rather than for distinctive statements?

4. Punctuation 1 2 3 4 5

- + Are apostrophes used (and not used) properly for possessives, plurals, and pronouns?
- Are semicolons used in excess or used where a comma should be used instead?
- Are commas used insufficiently or to excess?
- Are commas improperly used to join complete sentences (resulting in a comma splice)?

5. Organizational and analytical cues and structures 1 2 3 4 5

- + Are introductions consistently used to roadmap or set the stage for analyses?
- + Are topic sentences and transitions consistently used to reflect content and shifts in content?
- + Do topic sentences accurately reflect the content that follows?
- + Do transitions accurately reflect the nature of the shift in content?
- + Are paragraphs limited to a single topic?

- | | | | | | |
|-----------------------|---|---|---|---|---|
| 6. Terminology | 1 | 2 | 3 | 4 | 5 |
|-----------------------|---|---|---|---|---|
- + Are language uses appropriate for the formality of the document?
 - + Has the writer avoided “I” and “you” statements (unless appropriate for the situation)?
 - + Is a consistent term used throughout the document to refer to the same thing?
 - + Is the writing gender neutral?
 - Is a pronoun used where it could refer to more than one thing?
 - Are inappropriately “fancy” words used?
 - Are words with the wrong meaning for the situation used?
- | | | | | | |
|---|---|---|---|---|---|
| 7. Consistency with applicable format requirements | 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|---|
- | | | | | | |
|---|---|---|---|---|---|
| 8. Consistency with applicable citation requirements | 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|---|
- | | | | | | |
|------------------------|---|---|---|---|---|
| 9. Proofreading | 1 | 2 | 3 | 4 | 5 |
|------------------------|---|---|---|---|---|
- Are there numerous typographical errors?
 - Are there instances where the wrong word, although spelled correctly, appears (indicating overreliance on spell-check programs)?