

# Developing and Implementing Effective Legal Writing Programs in Korean Law Schools

Jo Ellen D. Lewis\*

## Abstract

*This article is based on a three-day workshop the author presented in July 2009 at the invitation of Seoul National University and the Korean Association of Law Schools. The workshop was designed to assist Korean law professors to develop and teach a legal writing course in the new graduate law schools. The goal of this article is to provide practical suggestions as a starting point for teaching legal writing in Korean Law schools. The following topics are discussed in the article: the basics of teaching legal writing, including designing assignments and a course syllabus; teaching techniques; critiquing assignments; and conferencing with students. The article ends with some final thoughts and recommendations for Korean law schools.*

## I. Introduction

In March, 2009, the first group of graduate law students matriculated to the new law schools recently approved by the Korean Ministry of Education. Similar to the legal writing requirement in all American Bar Association (“ABA”) accredited law schools in the United States, all South Korean graduate law schools require their students to take a legal writing course. To prepare faculty to teach legal writing, I was invited to conduct a workshop on the basics of teaching legal writing based on the Legal Practice course (“LP Course”) I teach at Washington University in St. Louis, School of Law.<sup>1)</sup> The

---

\* Professor of Practice and Director of Legal Practice, Washington University Law, Washington University in St. Louis.

1) This article is based on a workshop I conducted at Seoul National University on July 6<sup>th</sup>-8<sup>th</sup>, 2009. A video of the workshop, excluding DVD clips I prepared, is available for review through Seoul National University library at <http://event.snu.ac.kr/DetailView.jsp?uid=300&cid=3287914>. I would like to thank Seoul National University School of Law and the Korean Association of Law Schools for sponsoring the workshop. I would also like to gratefully

LP Course is a two-semester course that our students take during the first year of law school. In this article, the majority of the information presented during the workshop is included.<sup>2)</sup> The following topics are discussed below: the basics of teaching legal writing, including designing assignments and a course syllabus; teaching techniques; critiquing assignments; and conferencing with students. I end the article with some final thoughts and recommendations for Korean law schools.<sup>3)</sup>

## **II. The Basics of Teaching Legal Writing: Designing Assignments and a Course Syllabus; Teaching Techniques**

Constructing effective legal writing assignments in a way that is manageable for both faculty and students, and designing a syllabus based on teaching the skills needed to complete those assignments, are the keys to a successful legal writing program.

### *1. Designing Legal Writing Assignments*

Designing effective legal writing assignments is fundamental to meeting the goals of any legal writing course. Such assignments are the basic building blocks of the course structure. When creating effective legal writing assignments, we consider the following: 1) Who will be completing the

---

acknowledge Mary Beth Beazley, Associate Professor of Law and Director of Legal Writing, The Ohio State University, for sharing her ideas and materials used for teaching legal writing with me. In addition, I would like to thank my colleague, Denise Field, Professor of Practice at Washington University School of Law, for her helpful comments on an earlier draft of this article. I would also like to thank Alyssa Razook, J.D. candidate 2010, one of my teaching assistants for her assistance with this article.

2) For brevity, information from the following sessions are excluded from this article: 1) teaching students the skill of oral presentation of research results; 2) various structures of, and resources for, legal writing programs; and 3) clinical education programs at Washington University. For information on clinical education programs at Washington University School of Law, see <http://law.wustl.edu/clinicaled/>.

3) The ideas for teaching legal writing discussed in this article are applicable to law schools in other countries which, similar to Korean law schools, are modeled after an American legal education system. Law professors may choose to modify the teaching methods suggested in this article to better suit the goals of their respective law schools.

assignment?; 2) What kind of assignment should I put together?; 3) Where can I get ideas from for assignments?; and 4) How should I convey the assignment to the students?

Attorneys serve several roles relevant to legal writing, including the roles of a planner and problem-solver.<sup>4)</sup> A legal writing course should teach students technical lawyering skills, including legal analysis and communication of that analysis in writing and professional skills, including collaboration. Students in our LP Course have several opportunities to collaborate with other students as colleagues.

When determining what kind of assignment to use, certain concepts have proven important. One concept is to start simple and get more complicated throughout the semester. Often, our legal writing assignments follow a “building-block” approach where each lesson “builds” on the prior one. For example, the first assignment might involve analysis of a statute and client facts. The second assignment could involve the same statute, additional client facts and a case. The third assignment would then include the same statute, more client facts and perhaps, several cases. A second concept to keep in mind when determining what kind of assignment to use is to choose a topic that will interest and appeal to students. A topic that students are passionate about, or at least interested in, and even maybe somewhat familiar with, will engage students in the learning process. Third, the topic should not be too “emotionally charged” or controversial to the point of making students uncomfortable. Even the names of parties deserve careful consideration. Using names that are realistic and that do not embody stereotypes is important in the LP Course, as students often use completed legal writing assignments as writing samples and, therefore, those samples should contain realistic names. Fourth, the topic should not be too complex or dependent on a sophisticated understanding of a legal concept that students will not have covered yet in law school. It is especially helpful if the chosen topic relates to law studied in another course students are currently taking. This shows students the relationship between legal writing and other courses. It also shows students that the skills they are learning in legal writing are important for any area of law. For example, at Washington University in St. Louis, legal

---

4) See BARBARA CHILD, *DRAFTING LEGAL DOCUMENTS: PRINCIPLES AND PRACTICES* 1-5 (2d ed. 1992).

writing assignments are typically based on topics covered in other first year courses, such as contracts, property or torts. Another concept that is important when determining what kind of assignment to use is to try to find a “gray” area of the law. An assignment should contain arguments on both sides. It is sometimes possible to split the class into two groups so that both sides in a controversy are represented. Class discussion can be enhanced when both sides are represented. Finally, an assignment that contains nuances and fine points of the law will allow outstanding students to be challenged and stand out from other students. The overwhelming majority of legal writing courses in American law schools are graded on a bell curve and legal writing teachers need to create assignments that separate students for grading purposes.

*1) Who will be completing the assignment?*

In order to design effective legal writing assignments for my students, I find it helpful to know who they are as people. The more a legal writing professor knows about the students, the easier it will be to design an assignment that will be interesting and engaging for them and will ultimately make teaching more rewarding. At the beginning of each semester, I ask my new students to complete a survey that identifies the students’ educational backgrounds, including undergraduate and graduate degrees and institutions. Questions regarding students’ prior research and writing experience are included in the survey. I ask students to share information with me regarding their work experience, whether or not legally related. I also ask my students to identify their goals and career plans, if known, and finally, I ask several “just for fun” questions, including questions about hobbies and favorite books. All of these questions allow me to get to know students on a personal level quickly. Getting to know the students is helpful for both the students and the legal writing professor. It helps the legal writing professor identify which students can be a resource for certain issues and which students have common interests or backgrounds. For students, it indicates that the legal writing professor sees each student as an individual which helps many students receive the criticism they will get on their writing in the spirit in which it was intended – constructive. In addition, information from the survey can be used to introduce students to other students with similar backgrounds and interests. This encourages students to see each other as colleagues now and in the future as lawyers who may seek counsel from each

other.

Knowing who the students are allows me to engage students in class discussion based on a student's expertise. For example, business major students can be asked questions when an assignment involves a business issue. Those students have the undergraduate, and in some cases, graduate, background to understand business-related issues. Another bonus of knowing students is in terms of the legal writing professor's ability to mentor students. I often get inquiries about students from other faculty or prospective employers and I can be much more helpful to students when I know the students on a personal, as well as professional, level. Detailed reference letters are easier to write when the legal writing professor knows students well.

## *2) What kind of assignment should I use?*

To determine what kind of assignment to use, first I identify the general goals for the course and the specific skills I want my students to learn in the course. Such goals and skills can include: learning to read a statute; analyzing client facts with respect to a statute; learning how to synthesize several cases or other legal authorities to discern a legal rule; learning the predictable, conventional format of a particular legal document; and learning to craft an argument and communicate it in writing. Once the overall goals and skills for the legal writing course are determined, the second step is to identify the goal for a particular assignment. Effective assignments serve a limited number of goals, especially early in the course. The goals for each assignment should build on knowledge gained from the previous assignment.

Because a legal writing course implies that most assignments will culminate in a written project, the third step in designing an effective assignment requires a consideration of the kind of document students will draft for a particular assignment. Documents that fall within three general categories of legal writing can be considered for first year legal writing assignments: pre-litigation; litigation; and simple transactional documents. The first category, pre-litigation, involves objective analysis and communication of such analysis in writing. Typical documents include office memoranda, client advisory letters and opinion letters. The second category, litigation, can involve pleadings, such as complaints and answers, motions, briefs and court orders. The third category, simple transactional documents, can include drafting contracts. A thorough legal writing course will include

assignments from each of these categories of documents. When students draft a variety of legal documents it may assist them in determining areas of future personal interest. If a legal writing assignment approximates what students will do when they graduate law school, they will want to do the assignment and they will want to do it well. Students go to law school to become lawyers and anything they do that makes them feel like a lawyer is motivating to them. Students must be given assignments they believe are similar to what they will do when they are practicing lawyers.

The fourth step in designing an effective assignment is to complete the due diligence to make sure the assignment will work. This involves preliminary research on the substantive law to anticipate concepts that may be difficult for students. Due diligence can also include having upper-class students complete assignments to see how a first-year student will approach the assignment.

The fifth step in designing an assignment is to prepare an assignment sheet and packet of materials to convey the assignment to students. The most important consideration in preparing an assignment sheet is to identify questions for students that are focused, specific and clear. For example, rather than ask students to answer the broad question, "Is this contract enforceable?", it will be more beneficial to ask students a more specific question, such as, "Assuming that the contract is valid and has not been breached, is Section 7 of the contract enforceable as written under New York law?" Asking a more specific question also makes grading the assignment easier in that the question students were asked is not open to individual interpretation. More specific questions also are more realistic. Most clients do not necessarily know what question to ask and one of the lawyer's jobs is to discern the relevant issue or question to address and often, that results in a specific question. It is also important in an assignment sheet to specify the physical parameters of an assignment, including a page or word limit, font, and margin requirements. In the United States, all jurisdictions have format requirements for court documents. Thus it is important that students learn early in their legal careers how to follow procedural rules. I provide my students with a set of "Local Rules of Procedure" that specify the physical requirements of each type of assignment they will complete during the LP Course. Finally, all materials I create for student assignments are posted on a course web site accessible by the students. Sometimes, depending on the

nature of a particular assignment, a hard copy of the assignment materials may be given to a student. However, students actually prefer having assignment materials posted on a course web site as they can access such materials at any time.

After students complete an assignment, the sixth and final step is to analyze whether or not the assignment “worked,” that is, whether or not the assignment achieved the desired goal. If the assignment accomplished the desired goals and it may be used at another time or in another way, I usually keep copies of three strong student papers. Those student papers can be used as samples in class<sup>5)</sup> or kept on reserve for student review. If student samples are used either in class or put on reserve, I redact all identifying information and make sure that other students are allowed simply to review the model student papers and not copy them. This can be accomplished by putting model student papers on a limited time reserve in the law school library or with a faculty assistant.

If an assignment is used more than one time, I update the research and am mindful of the teaching cycle. For example, in the United States, because law school is three years, it is important not to use the same assignment more than once every four years. All law schools in the United States have strict honor codes forbidding students from sharing information regarding assignments but to minimize any conflict, it is best for us to use assignments on a four-year cycle at a minimum.

Sometimes, despite the best planning, an assignment will not meet its goals or work for reasons that cannot be anticipated. If this is the case, then unless the necessary changes can be made to the assignment to accomplish its goals, that assignment should not be used in the future.

### *3) Where can I get ideas from for assignments?*

There are several areas from which assignments can be generated. First, you can use cases with which you are personally familiar. You may have worked on a case in private practice or during your legal studies that could be the basis for an assignment for your students. Current cases, gleaned from the

---

5) See *infra* Part II. 3 (discussing use of student samples as an effective classroom teaching technique).

headlines of legal newspapers or local news can also be a source for assignments. Colleagues are often a great source of ideas for assignments as they may be doing research in an area that could be the basis for a legal writing assignment. Another source of ideas for legal writing assignments is internet search engines. Legal newspapers can be searched on-line to find topical areas of the law to use as a basis for assignments, including circuit splits.<sup>6)</sup> In addition, some legal writing and other law school related associations maintain idea banks for members. Those idea banks hold a multitude of ideas for assignments as well as well-developed assignments that have been used successfully by various law schools.<sup>7)</sup> There are also commercially available materials that contain ideas for actual legal writing assignments.<sup>8)</sup> Some law schools publish moot court case books that contain materials for appellate writing assignments.<sup>9)</sup> In addition to using colleagues as a source of ideas for legal writing assignments, legal writing professors may want to consider collaborating with other legal writing professors in developing assignments. Using the same legal writing assignments for several groups of students makes the course more consistent for all students and will make the legal writing professor's work load more manageable, especially when first developing legal writing assignments.

#### *4) How should I convey an assignment to the students?*

We communicate assignments to students in writing, using a taped client interview or using a "live" client interview. Each of these methods has merits. Conveying an assignment to students in writing often takes the form of a written memo from the Senior Partner (legal writing professor) to the Junior Partner (student). In that memo, I include relevant and irrelevant facts and

---

6) See, e.g., UNITED STATES LAW WEEK, at <http://www.bna.com/products/lit/uslw.htm>.

7) The Legal Writing Institute is an association of legal writing educators that maintains an idea bank for its members. See [www.lwionline.org](http://www.lwionline.org) for membership guidelines.

8) Some of the legal publishers who publish a number of legal writing texts that include legal writing assignments are: Aspen Publishers, at [www.aspenpublishers.com](http://www.aspenpublishers.com); Thomson West, at <http://west.thomson.com>; and Lexis Nexis, at <http://www.lexisnexis.com>.

9) New York University Law School and Wake Forest University Law School publish moot court case books on an annual basis. See <http://www3.law.nyu.edu/journals/mootcourt/casebook.html> (New York); See also <http://web.law.wfu.edu/mootcourt/problem/> (Wake Forest).

identify the question students are asked to answer. The memo is printed on firm letterhead to look realistic. Conveying the assignment to students through a written memo format allows me to control the flow of information more than the other methods described below. The downside of this method is that it is rarely used in legal practice anymore and therefore it is less realistic. The second method, using a taped client interview, allows for some control of the flow of information as only specific portions of the taped interview can be used. For this method, we sometimes ask an upper-class student to act as the client and provide him or her with a script. With both of these first two methods, it is important to include some irrelevant facts as students need to learn how to sift through client facts and focus on only legally relevant facts. The third method, a live client interview, is the most realistic and the most difficult to do. It involves some risk because it is not possible to control everything the client says in the interview. This is especially true if the students ask the client questions. It is difficult to prepare a client for every possible question.

In addition to conveying the facts of a case, we usually include supporting documents with an assignment. For example, if the assignment involves an employment issue, an employment agreement can be part of the assignment package or file. If it involves a real property issue, often a lease is included. Client files are set up the way a client file would be in private or public practice, including a client matter number. Regardless of which method is used to convey facts, the assignment needs to be “real” to students. Including supporting documents, as mentioned above, will help teach students how to review documents and extract information they need to address the client’s problem.

## *2. Designing a Syllabus Using Legal Writing Assignments*

Legal writing classes can be taught using a semester-long syllabus, a monthly syllabus, a weekly syllabus, or a syllabus for each problem. Although there are many advantages to using a semester-long syllabus, the first time anyone teaches legal writing, it is difficult to create a semester-long syllabus as all of the assignments are new and it is difficult to predict with certainty how long each assignment will take. Therefore, it is recommended that first-time legal writing professors consider using the assignment based syllabus, that is,

a syllabus for each assignment.

The first assignment will require more incremental teaching than subsequent assignments as every concept and task required is new to law students. It is often easier for law students if the first assignment is broken down into several smaller assignments. For example, the first assignment can be broken down into: specific reading assignments; an outline before drafting; a first draft of an assignment; and a second and even third draft of the assignment. Breaking down the first assignment into several smaller assignments, as suggested, means that one assignment may encompass several classes and several weeks of work for students.<sup>10)</sup> Subsequent assignments will require less incremental teaching and students will be able to complete more of the assignments on their own.

In addition to learning legal writing, students need to learn the skill of time management. Students can be taught time management by learning how to “back into” a deadline. For example, students can be encouraged to complete the final draft of a document two days prior to a deadline so that they can proof the document during those two days. A week before the “proofing date,” a first draft should be completed and a week prior to the first draft deadline, the most important portions of the document should be drafted. Given this time frame, as noted below, a larger assignment requiring some research will take about five weeks to complete.

Based on a 14-week semester and two hour-long legal writing classes per week, each semester in the LP Course is generally broken down as follows:

- First legal writing assignment (no research) – 3 weeks (6 classes)
- Subsequent legal writing assignments (requiring independent legal research) – 5 or 6 weeks depending on the complexity of the issue(s)
  - 2 weeks – read client file and complete research (4 classes)
  - 2 weeks – draft document conveying legal analysis (4 classes)

---

10) Even though we sometimes require students to complete portions of an assignment incrementally, not all interim assignments are graded. Interim assignments can help students learn to estimate the time it takes to write. Often, newer law students underestimate the amount of time it takes to understand a client issue and convey that understanding in writing. One other bonus of requiring students to complete interim assignments is that it provides a basis for students and the legal writing professor to know where students are having difficulty. Students have an easier time articulating questions when they have actually started drafting.

- 1 week — polish draft and meet for conference on draft with legal writing professor<sup>11)</sup>

We build time into the semester for students to complete the work and for us to grade the previous assignment. While the legal writing professor is grading a previous assignment, students can be completing legal research or a draft of the document for the current assignment. Classes may be suspended during this time to provide the time needed to grade the previous assignments. As explained in detail below, without adequate feedback, students' legal writing skills will not improve.<sup>12)</sup>

### 3. *Teaching Techniques*

Legal writing is a different kind of class that requires teaching techniques in addition to the traditional teaching techniques used in other law school courses.<sup>13)</sup> I demonstrated four kinds of teaching techniques used to teach legal writing in the workshop. One teaching technique, traditional Socratic lecture, can be used when teaching legal writing. The Socratic lectures contain information and ask students questions about concepts they will need to know to complete an assignment and solve a client problem. For example, if students are working on a non-competition problem in an employment context, a lecture might include information on the different considerations involved with non-competition covenants in an employment vs. a sale of business context. The lecture might also include a description of the provisions of an employment agreement and which provisions might be relevant to the client's issue. A second teaching technique I demonstrated is using class time as a workshop. Students are grouped together and asked to analyze certain cases and then report the results of the group's analysis back to the entire class. Small group work is important as it helps students work in teams, similar to how lawyers work in practice. A third teaching technique I demonstrated is using class time to show and discuss samples of documents.

---

11) See *infra* Part IV (discussing student conferences).

12) See *infra* Part III (discussing critiquing students' writing).

13) For a list of selected resources on teaching legal writing, including regularly published journals of the two major international legal writing associations, please see Appendix A.

Using student drafted documents as samples is particularly good as students see what other similarly situated students have done in past years. It is more realistic for students to see writing done at their same stage of legal education rather than review writing that was done by someone with several years of legal experience. Entire documents or just portions of documents, including paragraphs, can be used as samples, depending on the concept discussed. The fourth teaching technique I demonstrated is using class time for in-class writing assignments. This helps students get used to writing under time pressure and provides much needed writing practice.

### III. Critiquing Students' Writing

One of the most time-consuming and challenging aspects of teaching legal writing involves critiquing students' writing and providing effective feedback on assignments. Without focused feedback, students do not know what to do to improve their writing. Becoming an effective lawyer, including an effective legal writer, is a process and to become more effective, students need to know how they can improve. Even though initially the legal writing professor is the critic, students must learn to critique and edit their own work.<sup>14)</sup> In contrast to grading an exam in another law school course, where only a numeric score is provided to students, with legal writing assignments, the legal writing professor's detailed comments are essential in terms of assisting students in improving their writing and even more important than the numeric score earned on the legal writing assignment.

When I critique students' written work, I include comments that address: 1) substantive or analytical issues; and 2) communication issues, whether or not the student effectively communicated such legal analysis. I like to show students what they have done well and even more importantly, to explain

---

14) Critiquing is so important to teaching legal writing that many law schools, including Washington University School of Law, require that all applicants for a legal writing teaching position critique a sample student paper as part of the application process. Applicants are "graded" by the legal writing faculty on whether or not the applicant's comments focused on the most critical aspects of the student's paper needing improvement and whether the comments were stated in a way that provided enough information to assist the student in improving the student's writing and encouraged and motivated the student to improve.

why what the student did well was effective. Without specific information regarding what was effective and why, the student will not necessarily recreate that effective communication. Finally, I draft my comments in a way that I hope motivates every student to continue to improve and eventually become his or her own editor. I point out areas of a student's paper that are not clear and ask questions in my comments to help the student determine what needs to be clarified and how to make a concept clear. Students will be more likely to become self-editors when they are encouraged to evaluate their own writing rather than when the legal writing professor is making the revisions.

Comments on students' papers can be handwritten on the paper, typed in a separate document, computer generated on the paper itself, or a combination of methods. I generally provide students with comments that address specific issues with that student's paper ("Individual Comments") and comments that address general issues that several students in the class may have had and that can be used as a general guideline for future assignments ("General Comments").

### *1. Individual Comments*

Individual Comments include comments on the paper itself and comments at the end of the paper, which summarize and prioritize the two or three revisions that would most enhance the paper. I strive to keep the number of comments on any one page to a minimum. Generally, no more than three major comments per page are effective. Students cannot absorb too many comments. If there are too many comments on any one page, the student may get overwhelmed or frustrated and lose motivation. In addition, the student may focus on a less important comment than a comment that would enhance the paper to a greater extent. Writing comments from the perspective of the reader, i.e., what the judge or client needs to know to follow the student's analysis, helps students evaluate their own writing to a greater extent than comments from a legal writing professor's perspective. Comments that focus on the reader are perceived as more objective by students.

Comments should be phrased with the same terminology used in class for consistency. I use abbreviations in my comments and make sure that the student knows the meaning of the abbreviations. To the extent the student

uses a word that is not conveying what the student intended as effectively as could be conveyed, it is more helpful to the student to include two or three suggested substitute words rather than crossing out the student's word and substituting another word for it. Individual Comments are geared primarily to issues related to legal writing and not grammar. I assume that at this stage of their education, the overwhelming majority of students have a minimum writing competency.<sup>15)</sup>

In addition to Individual Comments on the paper itself, comments at the end of the paper ("End Comments") are a useful way to summarize and prioritize the major areas the student should focus on in the future. End Comments should not include something that was not mentioned within the Individual Comments; rather, End Comments should highlight the two or three changes that would make the most difference in the effectiveness of the student's paper. I always start the End Comments with a positive comment by noting something the student did well. Starting with a positive comment can be very motivating to students. I organize End Comments by the type of paragraph or section of the paper to assist students in following End Comments and provide a structure for such comments. End Comments that focus on big picture items, such as macro organization, can be helpful. End Comments can be stored on computer by student name or number (if assignments are graded anonymously) as a way to track if students are improving in a particular area. If I have major concerns that the student may have a fundamental misunderstanding of the nature of the assignment, I usually include my concern in an End Comment and encourage the student to come see me. Finally, I sign the End Comments. Including my signature personalizes the comments and lets the student know that I carefully considered each comment. Writing is very personal and under the best of circumstances, it is difficult to accept criticism on one's written work. Letting students know that you, the legal writing professor, believe that the student has the ability to improve, will go a long way to motivate the student.

---

15) If a particular student has issues with grammar, the legal writing professor can recommend resources that such student can use to improve in that area. Such resources can include a review text on grammar or referral to a university writing center if the university associated with the law school has such a center. Many major universities have writing centers staffed by graduate English students who can assist law students with grammatical issues.

## *2. General Comments*

General Comments provided to the entire class are a great vehicle to convey common concerns and to summarize suggestions for future assignments. I write formal General Comments and provide them to all students in the class in addition to the student's Individual Comments. These General Comments summarize items most likely covered in class when discussing the assignment. Such comments can include information directly related to the specific writing assignment and to legal writing in general. For example, some of the General Comments may relate to the substantive area of law and some may relate to the components of a particular writing assignment. I encourage students to use the General Comments as a guideline for future assignments. General Comments are time consuming to draft initially but can be revised for future use with different problems.

## *3. Other Thoughts on Critiquing and Grading Legal Writing Assignments*

It is important for students to have time to absorb the Individual Comments and General Comments. I prefer to hand back papers at the end of the week as that gives students the weekend to review and absorb the comments. After students review all of the comments, if a student has questions about the comments or the assignment in general, he or she can schedule an individual conference with me to discuss such questions. As discussed above, the legal writing professor may want to keep three of the best student papers for future reference to remind him or her about what can be achieved by students on this kind of assignment. The best student papers can also be put on reserve for review by other students. Reviewing another student's paper on the same topic can be very revealing to students who have difficulty understanding or accepting constructive criticism.

Commenting on and grading papers, like legal writing, are a process. As the year progresses, a legal writing professor's expectations of students can and should rise. As the year progresses, a focus on large scale organization (overall format of the document, including context before detail) and general legal analysis will shift to a focus on smaller scale organization (paragraphs

and sentences) and more subtle points of legal analysis. A rise in expectations is consistent with what students will encounter as practicing lawyers. As the year progresses, I also give more weight to writing assignments for grading purposes. The first assignment can even be graded on a pass/fail or good faith effort basis rather than a score or letter grade. I approach critiquing of student papers with the assumption that the paper I am reading is the student's best effort. Most law students do not have experience in legal analysis or communicating that analysis in writing and most legal writing professors have significant experience and often expectations commensurate with that experience. While it is important to have high expectations for students, such expectations need to be realistic. In most American law schools, legal writing assignments are usually graded on a curved basis and not an absolute scale. Grading on a curve actually benefits all students if you assume that most students have not had significant experience in legal analysis or legal writing prior to law school. Before commenting on, or grading, any student's paper, I read at least ten student papers to get an idea of the range of papers. Understanding that there will be a range of papers helps me focus my comments and tempers my expectations.

#### **IV. Conferencing with Students**

Conferences are one of the most powerful tools to help students become their own critics and editors. In no other venue will the student have the opportunity to ask questions and even more importantly, verbalize his or her thinking and get immediate feedback. Notwithstanding the time it takes to meet with each student, conferences are an essential component of an effective legal writing program.

##### *1. Benefits of Conferences*

Both students and legal writing professors benefit from conferences. Students learn differently in a one-on-one situation because the focus of the conversation is completely on the individual student. In the classroom, a legal writing professor often teaches to the "middle" of the class because teaching is in a large group. If the legal writing professor teaches too "high" or too "low,"

some students will be lost. Stronger students may need more challenge and may have questions about nuances of the law that will not be appropriate for class discussion as many students may not be able to follow the discussion. A conference is the perfect time to focus on these strong students and encourage them to think more deeply about the issues. For students who are not as strong, a conference is useful in that the legal writing professor can make sure that the student understands the basic information covered in class. Often going over information one more time on an individual basis can assist these students. In addition, it is possible in a conference to review previously covered concepts in a way that would not be appropriate in a large group. For all students, an individual conference provides the opportunity to get feedback from the person who will be doing the commenting and grading. As the year progresses, students will take more responsibility in leading the conferences and asking questions. Such responsibility is a professional skill to be encouraged in students. Initially, students may not know what questions to ask, so I ask more leading questions during the conference to understand the student's confusion. Throughout the course of the year, the conferences become student-directed rather than teacher-directed. It is critical for students to be able to talk to supervising attorneys and communicate questions regarding a project in a concise and productive manner. Conferences can assist students in developing this essential professional skill.

A legal writing professor benefits from conferences with students as conferences give the professor a window into students' thinking. Usually common concerns surface in conferences and those concerns can then be discussed in class. Individual conferences also give legal writing professors credibility with students. When a legal writing professor hones in on problems students may be having with an assignment, students feel that the professor understands the difficulties they are having with an assignment.

Students use e-mail to a great extent and may prefer to ask questions of a legal writing professor via e-mail rather than meet in person. However, for several reasons it is recommended that legal writing professors limit the use of e-mail to respond to student questions. First, when students send questions via e-mail, such questions are not necessarily the actual question the student meant to ask. In a face-to-face situation, it is possible to ask follow-up questions to make sure the student gets the answer to the question he or she meant to ask. Second, responding to an e-mail question can often take a

tremendous amount of a legal writing professor's time and the danger is that the answer may be taken out of context. Students, other than the student who asked the question, may believe they have the same question and therefore, assume that the legal writing professor's answer applies to both questions, but often this is not true. A response to an e-mail question can end up doing more harm than good if taken out of context. If a student asks a question in an e-mail that requires more than a very simple response, it is useful to encourage the student to schedule a conference to discuss that question.

## *2. Timing of Conferences*

Conferences can occur before a student has drafted a paper ("Pre-Draft"), after a student has drafted of a paper but before it is finalized ("Post-Draft") or after a paper is finalized, critiqued and graded ("Post-Comments"). Pre-Draft conferences are usually informal, such as when a student asks a quick question on a non-appointment basis. These conferences are not typically very productive unless a student is meeting to discuss basic questions or research results before drafting. If a student has not begun drafting, it is difficult for the student to know what issues that student will encounter in drafting and therefore, I encourage students to begin drafting before meeting with me. If a student still wants to have a Pre-Draft conference, it is best to keep it relatively short. The exception, as noted above, is if a student is doing research and wants to confirm that the student's research and analysis of the legal issue is on the right track. For this limited purpose, a Pre-Draft conference can be helpful to the student.

Post-Draft conferences are the most common type of conferences and should be encouraged. Once students begin drafting, they are in a better position to have questions regarding difficulties communicating their legal analysis. These conferences can be scheduled on a more formal basis and often last fifteen to thirty minutes, depending on the complexity of the project. It is also possible to have a conference in a small group of three or four students rather than on an individual basis, but such small group conferences work best if students are working through the same issues, which can be difficult to discern until you meet with the students.

During law school, conferences can be optional or mandatory. I require one mandatory conference per semester or year as it provides me the

opportunity to get to know the students on an individual basis and it gives each student some experience in meeting with a supervisor. As noted above, knowing students on a personal basis enhances the classroom experience and ultimately makes teaching more rewarding.<sup>16)</sup> Making all conferences mandatory is not necessary and will not benefit all students. I believe that law students must begin to make decisions about how to allocate their time and to make judgments about when to seek assistance.

Post-Comments conferences provide an opportunity to answer a student's questions on Individual Comments or General Comments or clarify issues on a prior assignment.<sup>17)</sup> Sometimes students simply do not understand a comment and need clarification before beginning the next assignment. The focus during this type of conference can be in areas of improvement for the future rather than on a particular grade for a particular assignment.

### *3. Considerations Before, During and After the Conference*

Depending on whether the student is coming in for a Pre-Draft, a Post-Draft or a Post-Comments conference, the student's level of preparation will vary. For Pre-Draft conferences, students should have specific questions in mind but without drafting, this can be difficult. If students are having difficulty drafting, they can be encouraged to, at a minimum, draft an outline of the paper and discuss the macro-format of the paper during the Pre-Draft conference.

For Post-Draft conferences, students should be encouraged to think about the areas that were difficult during the drafting process and to ask questions about those areas. I ask students to make notes in the margins of their drafts so that they can remember their specific concerns. In addition, if students are considering more than one way of conveying an idea in a paper, they should be encouraged to discuss the merits of those different ideas with me during the conference. During Post-Draft conferences, students can ask general questions regarding format or specific questions regarding drafting decisions. In Post-Comments conferences, grades are not discussed; rather suggestions

---

16) *See supra* Part II. 1. 1).

17) *See supra* Part III.

for improvement are the focus of this type of conference.

The legal writing professor's preparation for the conference is limited. Before a "get-to-know-you" conference, I review the student's survey.<sup>18)</sup> If the conference is required and focuses on a particular project, the legal writing professor will want to review the student's draft and have a few points in mind to discuss with the student. I often use a checklist to make sure that I cover the same points with all students in a mandatory conference. If common problems arise during student conferences, I note those problems in conferences with other students.

During the conference, I encourage students to take notes. I refrain from writing on the student's paper or leading the discussion. If a student has a specific question regarding a drafting decision, I will review the paragraph or sentence that the student is struggling with and ask leading questions to help the student reach a resolution. It is better for a student to make the ultimate drafting decision than for the legal writing professor to just revise the paragraph or sentence. Most likely, the drafting issue will occur more than once in a paper and to the extent the student works through the issue once with my guidance, that student will be better prepared to work through similar issues alone in the future.

During the conference, I try to point out something the student has done well in the draft to keep the student motivated. Finally, it is important to stay on schedule and this can be difficult. About five minutes before the end of the conference time, I let the student know that the conference is nearing ending time to make sure the student has the opportunity to ask a critical question the student has not asked yet.

After all of the conferences are completed, general concerns, common issues and items needing clarification are reviewed in class as a follow-up to the conferences. Even if there are no follow-up items, I typically make some general comments in class about the conferences even if the comments only summarize some of the items discussed in conferences.<sup>19)</sup>

---

18) See *supra* Part II. 1. 1) (discussing student surveys).

19) There are many articles that address conferences with students in great detail. See, e.g., Robin S. Wellford-Slocum, *The Law Student-Faculty Conference: Towards a Transformative Learning Experience*, 45 S. TEX. L. REV. 255 (2004).

## V. Final Thoughts and Recommendations

Korean law schools are poised to develop a first year required legal writing course and eventually, an exciting array of advanced legal writing courses. Enthusiastic and energetic law professors from more than a third of the new law schools in South Korea attended the workshop and shared ideas about teaching legal writing.<sup>20)</sup> Some of the attendees had just finished teaching legal writing for the first time and others were preparing to teach legal writing in the next year. Given the commitment of those in attendance, there is no doubt that Korean law students will receive an excellent legal writing education.

Attendees were encouraged to work together to develop legal writing problems even if at different law schools. Collaboration across schools is commonplace in the United States. List-serves of legal writing professors provide a way to share teaching ideas and solutions for issues that arise in the legal writing class. During the workshop, we discussed the possibility of starting a Korean association of legal writing professors or a sub-group of the Korean Association of Law Schools for faculty interested in legal writing to share ideas and resources. An e-mail list-serve of legal writing professors in Korea could be created. Legal writing professors in Korea are encouraged to join the United States based legal writing associations, including the Legal Writing Institute<sup>21)</sup> and the Association of Legal Writing Directors.<sup>22)</sup> Global collaboration would benefit all legal writing professors and law students. It will be exciting to watch as the discipline of legal writing develops in Korean law schools.

KEY WORDS: teaching legal writing, teaching techniques, critiquing student writing, student conferences

*Manuscript received: Sept. 9, 2009; review completed: Nov. 24, 2009; accepted: Dec. 10, 2009.*

---

20) Professors from several Korean law schools, including the following law schools, attended the workshop: Ajou University, Chonbuk National University, Chungnam National University, Hanyang University, Kangwon National University, Korea University, Kyung Hee University, Kyung Pook National University, Pusan National University, Seoul National University, Sungkyunkwan University, Wonkwang University, and Yeungnam University.

21) [www.lwionline.org](http://www.lwionline.org).

22) [www.alwd.org](http://www.alwd.org).

## Appendix A

### Selected Resources:

Legal Writing Institute - [www.lwionline.org](http://www.lwionline.org)

Including publications: *The Second Draft and Legal Writing: Journal of the Legal Writing Institute*

[http://www.lwionline.org/the\\_second\\_draft.html](http://www.lwionline.org/the_second_draft.html)

[http://www.lwionline.org/journal\\_of\\_the\\_lwi.html](http://www.lwionline.org/journal_of_the_lwi.html)

Association of Legal Writing Directors - [www.alwd.org](http://www.alwd.org)

Including publications, in particular: *The Journal of the Association of Legal Writing Directors*

<http://www.alwd.org/publications.html>

<http://www.alwd.org/jalwd.html>

Institute on Law Teaching and Learning – <http://lawteaching.org>

American Bar Association – Section on Legal Education and Admissions to the Bar, Sourcebook on Legal Writing Programs (Second Edition - 2006)

<http://www.abanet.org/legaled.html>

Stuckey, et al, *Best Practices in Legal Education* (2007)

Association of American Law Schools - [www.aals.org](http://www.aals.org)

Publishers of the Majority of Legal Research and Writing Texts in the United States:

Aspen Publishers - [www.aspenpublishers.com](http://www.aspenpublishers.com)

Thomson West – <http://www.thomsonwest.com>/<http://west.thomson.com>

Westlaw

Nutshell Series

Lexis Nexis – <http://www.lexis.com>/<http://www.lexisnexis.com>

Lexis

Matthew Bender Publishers