

THE STRUGGLE WITH BASIC WRITING SKILLS

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From my perspective as the director of a law school writing center, the biggest problem is that entering law students have become weaker and weaker in basic writing skills – grammar, punctuation, and syntax – over the past decade. Although this decline is not breaking news, an ancillary problem might be. That is, many members of the younger generation of legal writing professors are at a disadvantage in trying to teach these skills because they were not properly taught the skills when they were in primary school, secondary school, and college. Does this matter? Yes. What can we do about it? There is a solution, but it requires understanding some context, as I will explain in this essay.

1. The Problem

The issue surfaced for me in August 2019 when Touro Law Center, for the first time, required 1Ls to take Core Grammar for Lawyers and achieve a score of at least 80 percent on the post-test. We thought 80 percent was a low bar, based on anecdotal reports from other law schools, but we were worried that if we set the passing score higher, the majority of our new students would not be able to pass without a struggle and would feel frustrated at the beginning of their first year of law school. Thus, we decided to go with 80 percent and reassess the situation at the end of the academic year.

A week before school started, I received an email from an incoming 1L who objected to our requirement. Her subject line read “grammer” (sic), and her email complained that being forced to achieve a minimum of 80 percent on the Core Grammar post-test was unduly burdensome. Her lengthy email contained no capital letters and only one period, even though the email contained numerous sentences. She had to take the post-test twelve times to pass. At least she finally learned the lessons, I thought. But her email telling me that she passed contained no capital letters or punctuation.

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When I told this story to legal writing professors from a younger generation than mine, they shook their heads in dismay and laughed. They did not conclude, however, that legal writing professors should add remedial writing instruction to their curriculum. When I suggested this, they all said there was too much else to teach and that they didn't have room in the syllabus.

I understand this, but there is also another aspect to why they might not want to teach these basic writing skills. I asked them if they had received detailed grammar instruction in primary school, secondary school, or college. They all said no. This did not surprise me because I already knew that in 1985, the National Council of Teachers of English (NCTE) issued a position statement against the traditional teaching of grammar in schools.¹ As a result, primary and secondary schools across the country abandoned traditional grammar instruction. It was replaced by English Language Arts, which did not emphasize grammar in the same way. Given that traditional grammar had been commonly taught as a stand-alone subject between grades five and eight, this would mean that any legal writing professor under the age of forty-five probably does not have the same strong foundation in grammar skills as older colleagues.

This is not to say that the younger ones don't write well. Knowing how to express oneself in writing is not the same as knowing how to teach the basic rules of sentence construction. It is possible to know intuitively how to write clearly and concisely without knowing how to articulate the rules of grammar.

2. Inadequate Solutions

So, what is the solution? Is it punting the problem to the law school's writing center? Let's talk about writing centers for a minute. They, too, are partially to blame for the problem of why today's law students don't have an adequate mastery of basic writing skills.

Writing centers began to proliferate at colleges across the country during the 1980s.² This is no surprise, given that grammar courses had been discontinued, leaving students to arrive at college without the necessary skills to flourish as writers of coherent prose. They had learned how to develop and organize thoughts but not how to construct them into orderly and understandable sentences.

¹ <https://ncte.org/statement/grammarexercises>.

² Susan C. Waller, *A Brief History of University Writing Centers: Variety and Diversity* (2002), <https://newfoundations.com/History/WritingCtr.html>.

The problem however, is that college writing centers began to categorize the elements of writing into “higher order concerns” and “lower order concerns.”³ They dubbed grammar and punctuation “lower order concerns,” which, unfortunately, sends an unintended message to students that those things aren’t important.

What, then, are “higher order concerns”? They are thoughts. That is, “higher order concerns” include figuring out what you want to say, developing and organizing it, and finding the appropriate tone.⁴

I do not dispute the idea that thoughts are more important than the punctuation that adorns them. After all, if there were no thoughts, there would be no need for punctuation. But, in the professional world of lawyering, punctuation and grammar are extremely important. Improperly placed or omitted punctuation, as well as bad grammar and syntax, can cause ambiguity, which can easily lead to misunderstanding, which can lead to lawsuits, not to mention rebukes by judges.⁵

Unfortunately, when college writing centers tell students that these mechanics of sentence construction are “lower order concerns,” this makes the mechanics of sentence construction sound trivial and minimally important. Students, naturally, leave minimally important matters until after they have addressed the important ones. And, because students typically leave the writing of papers until the last minute, they often have little or no time to address these “lower order” concerns.

As a result, students often arrive at law school with a woefully inadequate mastery of the elements of punctuation, grammar, and syntax. This leaves legal writing professors with a difficult decision: (a) figure out a way to remediate these writing issues while also teaching the elements of legal writing, (b) refer the students to the school’s writing specialist or writing center if there is one, or (c) direct the students to use online programs like Grammarly and Core Grammar for Lawyers.

Let’s analyze these options.

Not all law schools have writing specialists or writing centers, as I know from my involvement with the Association of Legal Writing

³ *E.g.*, https://owl.purdue.edu/owl/general_writing/mechanics/hocs_and_locs.html; <https://www.smith.edu/academics/jacobson-center/writing-process>; <https://twp.duke.edu/sites/twp.duke.edu/files/file-attachments/shortened-hoc-v-loc-handout-1.original.pdf>.

⁴ *Id.*

⁵ Judith D. Fischer, *Bareheaded and Barefaced Counsel: Courts React to Unprofessionalism in Lawyers’ Papers*, 31 *Suffolk U. L. Rev.* 1, 27-30 (1997).

Specialists and its listserv. But I know from personal experience and from speaking with colleagues at legal writing conferences that a large percentage of students referred to law school writing centers do not bother to go.

I also know from firsthand experience about the perils of relying on programs like Grammarly. I recently decided to test Grammarly using this sentence with built-in errors: “I told the woman that them and me were buddies but he didnt believe me.” Grammarly made the following corrections:

- (1) Grammarly underlined “them” and suggested “they.”
- (2) Grammarly underlined “me” and suggested “I.”
- (3) Grammarly underlined “didnt” and suggested “didn’t.”
- (4) Grammarly underlined “believe” and suggested “believes.”

That is, Grammarly wanted the sentence to read, “I told the woman that they and I were buddies but he didn’t believes me.”

Note that Grammarly failed to suggest a comma before “but,” even though one is necessary because “but” is a conjunction that connects two independent clauses. Additionally, Grammarly did not notice that the word “he” made no sense because the sentence did not contain a person to which “he” could refer. The only person that a singular pronoun could refer to was “the woman,” and that would require the pronoun “she.” Therefore, “he” was a mistake, but Grammarly did not flag it. As a result, I would not recommend Grammarly to my students in place of person-to-person grammar, punctuation, and syntax instruction.

3. Elevating “Lower Order” Concerns

The Core Grammar for Lawyers program has been helpful, but it is only a beginning. Our law students need more help, a lot more help, with basic writing skills. If they are not learning them before law school, we must find some way to teach these skills in law school – or, at least, find a way to make it clear to our students that they need to take the acquisition of basic writing skills seriously, that they need to value these skills, and that they need to seek help with them.

How do we get students to value these skills? It requires faculty buy-in. Faculty members across the doctrines at law schools have long complained that their students’ writing basic writing skills need

substantial improvement.⁶ Thus, my proposed solution is to make writing skills worth 20 percent of every writing assignment and every written exam question in every law school course – not just legal writing courses. Professors would not have to know the rules of grammar and punctuation. They would just have to recognize whether the writing looks professional – whether it is clear, concise, and unambiguous. Even 10 percent would send a much-needed message. That is, if a student would have received a grade of 90, poor writing skills could pull that grade down to an 85. That would bring an “A” range grade down to a “B” range one. And that will grab the attention of most students and get them to take basic writing skills seriously.

Conclusion

Students need to learn that the acquisition of basic writing skills is not a “lower order concern” at law schools. But we need buy-in from the full faculty – not just the legal writing faculty – before we can hope to achieve buy-in from our students. The full faculty needs to work together to solve this problem. Finger-pointing at what the younger generation of legal writing professors did or did not learn in grade school is interesting, but it is not a solution.

⁶ Aïda M. Alaka, *The Grammar Wars Come to Law School*, 59 J. LEGAL EDUC. 343, 343 (2010).