

Teach a Law Student to Fish: A Tutor's Perspective on Legal Writing

By KATHLEEN TARR*

[I]n a writing center, the object is to make sure that writers, and not necessarily their texts, are what get changed by instruction. In axiom form it goes like this: Our job is to produce better writers, not better writing.

Stephen M. North¹

THERE ARE COMMON STANDARDS FOR TUTORING PRACTICE in a writing center: share the space; let the student set the agenda; understand the assignment; give the student control; prioritize problems; get the student involved in solving the problem; get the student to write; respect and use the time; and, bring the session to a close. There is also an unwritten rule: never contradict the professor or the assignment. This latter standard is actually harder to meet than it might seem.

I have tutored writing for many years prior to my position at Stanford, and I imagine I will continue to tutor for years beyond when I have retired, when I am answering emails from former students in my Paris flat (fingers crossed). I have spent the majority of my adult life—and a good portion of childhood years—writing with persuasive intent. Obviously, when I practiced law, crafting written argument was an everyday task, but it is not only legal writing that requires such talents. As the Media Advocate for WenHoLee.org,² it was imperative that I persuade press, citizens, and leaders to join forces to free Wen Ho Lee from custody. Persuasive strategies

* Kathleen Tarr, J.D., is a lecturer in the Program in Writing and Rhetoric and tutor at the Hume Center for Speaking and Writing at Stanford University. She is a Harvard Law School graduate, former Skadden Fellow, and veterans law/disability rights practitioner. Kathleen can be contacted at ktarr@stanford.edu.

1. Stephen M. North, *The Idea of a Writing Center*, 46 C. ENG. 433, 438 (Sept. 1984).

2. “WenHoLee.org is an online organization created and maintained by his supporters for the sole purpose of advocating justice for Dr. Wen Ho Lee.” *About*, WENHOLEE.ORG (Nov. 28, 2008), <http://www.WenHoLee.org/about>. Dr. Lee was a nuclear physicist formerly employed at the Los Alamos National Laboratory in New Mexico. In 1999, he was charged with fifty-nine counts of mishandling classified information, thirty-nine of which carried a life sentence. Imprisoned for 278 days in solitary confinement, Dr. Lee was eventually released—time served—after pleading guilty to one count. *What Happened?*, WENHOLEE.ORG (Dec. 12, 2008), <http://www.WenHoLee.org/what>.

required incorporation of standard rhetorical appeals employed by the media in garnering public interest and attention. These include anniversaries, recent news stories, and other elements with first blush relevance that persuade an editor to report on a story. However, it is because of this professional experience (and the training that preceded it) that I sometimes struggle to find strategies to improve student writing if they are assigned to draft, for example, an Opinion Editorial (Op-Ed) with unrealistic expectations. Instructors may not have done the research required to understand industry practices in order for their assignments to reflect nuances, such as the slim likelihood of being published in the ‘real world.’³ They might prompt a student to “write an Op-Ed and try to get it published in at least ten newspapers.” Although I really want to, I resist telling my tutee that multiple drafts are needed to truly appeal to multiple publications.

While it is true—as noted so eloquently at the recent Western Regional Legal Writing Conference⁴—that “real world” assignments enhance student confidence and greater engagement with material,⁵ it is not enough that the task resemble the structure of work in a law office. The content must also be “real world.” I once asked a tutee why he had separated the law from the facts in the argument section of his mock brief, and he plainly stated, “My professor told me to.” This challenging moment was made even more challenging by the student immediately asking me, “How can I make my argument more persuasive?” I wanted to answer, “By integrating law and facts,” but knowing that I could not violate that unwritten rule, I suggested first considering the impact on the target audience.

It comes back to efforts to create better writers. As a tutor, that is my main goal. The target audience for a mock brief is an imagined judge, who presumably does not want to flip pages back and forth in order to understand how the particular facts before the court jibe with the laws at issue. The law

3. See Todd Nesbit, *Engaging Students Through Op-Ed Writing Assignments*, POLITICAL ENTREPRENEURS (June 30, 2014), <http://politicalentrepreneurs.com/engaging-students-through-op-ed-writing-assignments/> (showing an example of an instructor giving an Op-Ed assignment with potential extra credit for getting their piece published without any mention of the likelihood of being published); see *Writing Successful Op-Eds and Letters to the Editor*, DEPAUL UNIV., <http://newsroom.depaul.edu/FacultyResources/OPEDTips/index.html> (last visited Mar. 22, 2015) (outlining how to write an Op-Ed, but including no mention of how likely it is that the writer’s piece will be chosen in the “real world”).

4. *Western Regional Legal Writing Conference: Beyond Carrots and Sticks: Motivating Students to Do Their Best Work*, STANFORD LAW SCH., <http://conferences.law.stanford.edu/legalwriting/> (last visited Feb. 28, 2015) (providing information about the conference, which took place September 19–20, 2014).

5. See Todd Haugh, “Get Real” *Giving Writing Assignments*, 19 PERSP.: TEACHING LEGAL RES. & WRITING 179, 179 (2011) (“Indeed, for our students to succeed in practice we must create ‘real-world’ scenarios that develop both their skills and confidence.”).

professor, who is the actual audience, may have different standards, but unless the reasons for those are understood (e.g., scaffolding⁶ skills), students do not walk away with the benefits that realistic assignments are meant to bestow.⁷ Certainly as a tutor, it is harder to explain how to improve an argument (i.e., to make a better writer) when prompts bear seemingly ad hoc requirements.⁸

Tutors and instructors alike have the same goals: to improve students' critical thinking and application of skills. "Real world" assignments prepare for actual practice and provide writing tutors greater opportunities to help students, as Aristotle put it, find "the best available means of persuasion in each case."⁹ Realistic expectations regarding content are a necessary component of that opportunity, especially when the situation is supposed to mimic real life.

6. Lindsay Lipscomb, Janet Swanson & Anne West, *Scaffolding*, EMERGING PERSPECTIVES ON LEARNING, TEACHING, AND TECH. (Sept. 8, 2014), <http://epltt.coe.uga.edu/index.php?title=Scaffolding&oldid=3600> ("The term 'scaffolding' was developed as a metaphor to describe the type of assistance offered by a teacher or peer to support learning. In the process of scaffolding, the teacher helps the student master a task or concept that the student is initially unable to grasp independently. . . . When the student takes responsibility for or masters the task, the teacher begins the process of 'fading,' or the gradual removal of the scaffolding, which allows the student to work independently.").

7. See Patricia A. Slagle, *Getting Real: Authenticity in Writing Prompts*, 19 THE QUARTERLY 20, 20 (1997), available at www.nwp.org/cs/public/download/nwp_file/307/Getting_Real.pdf?x-r=pcfile_d ("Their purpose is to communicate effectively with that reader whether to persuade the reader to agree with their position on an issue, share their sentiments in a memoir, present their solution to a mutual problem, or explore numerous other possibilities determined by the student/writer. Writing for audiences beyond the teacher using authentic forms, and writing for real reasons, produces more effective writing.").

8. It is also harder to encourage growth mindsets if the goal of the writing is reduced to pleasing the professor, another keen perspective articulated by keynote speaker Carol Dweck at the Western Regional Legal Writing Conference. See CAROL S. DWECK, MINDSET: THE NEW PSYCHOLOGY OF SUCCESS 17 (2006) ("We also measured [students'] mindset. We did this by asking them how much they agreed with statements like this: 'You have a certain amount of intelligence, and you can't really do much to change it.' People who agree with this kind of statement have a fixed mindset. Those who have growth mindset agree that: 'You can always substantially change how intelligent you are.'").

9. THOMAS W. BENSON & MICHAEL H. PROSSER, READINGS IN CLASSICAL RHETORIC 56 (1988) ("It appears, then, that Rhetoric is not concerned with any single or definite class of subjects but is parallel to Dialectic: it appears, too, that it is useful; and that its function is not to persuade, but to discover the available means of persuasion in each case, according to the analogy of all other arts.").