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# TEACHING WRITTEN ADVOCACY IN A LAW CLINIC SETTING

TAMAR EZER\*

*Written advocacy is a critical lawyering skill and vital component of student work in many clinics. This is certainly true in appellate advocacy and policy-based clinics, such as my own focused on human rights advocacy. Teaching written advocacy requires a deliberate and thoughtful pedagogy, just as with other aspects of clinical teaching. There is a rich literature on teaching legal writing, but only sparse discussion of its applicability in the fast-paced law clinic setting, where written products have real world consequences and need to be of high quality. This article delves into this literature and argues that written advocacy consists of three core components: writing strategically, writing logically, and writing with heart. Teaching written advocacy thus entails supporting students in shifting into a mindset of persuasive writing, strengthening argument coherence, and developing narratives that resonate with an audience. This article then proposes supervision and feedback methods to strengthen each core component, identifying lessons from the literature for the law clinic context, as well as engaging in self-reflection and assessment of techniques with which our Human Rights Clinic is currently experimenting.*

## INTRODUCTION

Written advocacy is a critical lawyering skill and vital component of student work in many clinics. As John D. Feerick, Fordham University School of Law's former Dean stated, "Good legal writing is a virtual necessity of good lawyering. Without good legal writing, good lawyering is wasted, if not impossible."<sup>1</sup> This is certainly true in appellate advocacy and policy-based clinics, such as my own focused on human rights advocacy. Human rights advocacy requires facility with multiple legal frameworks at the domestic, regional, and international

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\* Acting Director and Lecturer in Law with the Human Rights Clinic of the University of Miami School of Law. This piece benefited from valuable feedback at the Association of American Law Schools (AALS) 2019 Conference on Clinical Legal Education and 2020 *Clinical Law Review* Writers' Workshop. I would also like to thank Franco Piccinini for his helpful research support.

<sup>1</sup> John D. Feerick, *Writing Like a Lawyer*, 21 *FORDHAM URB. L.J.* 381, 381 (1994). See also Tonya Kowalski, *Toward a Pedagogy for Teaching Legal Writing in Law School Clinics*, 17 *CLIN. L. REV.* 285, 286 (2010) ("It is sometimes said that most lawyers spend more time engaged in legal writing than in almost any other lawyering skill.").

levels and the ability to connect abstract principles to specific experiences, integrate structural patterns with individual stories, clearly present complex material, and identify compelling themes. I have found writing to be one of my students' biggest challenges, requiring a deliberate and thoughtful pedagogy, just as with other aspects of clinical teaching.

Teaching written advocacy in a law clinic setting brings both opportunities and challenges. A law clinic, where written advocacy has real-world consequences, can motivate students to care about their writing and work to improve it.<sup>2</sup> It further provides a diversity of rich learning opportunities.<sup>3</sup> Teaching written advocacy in law clinics is also in line with the "writing-across-the-curriculum movement," recognizing the importance of honing legal writing skills throughout law school.<sup>4</sup> The American Bar Association itself identifies competency in "written . . . communication in the legal context" as a key learning outcome,<sup>5</sup> requiring "at least one additional writing experience after the first year."<sup>6</sup> While many students satisfy this through engagement in legal scholarship, the law clinic setting provides the opportunity for practical analysis, an advocacy lens,<sup>7</sup> and collaborative writing typical of legal practice.

At the same time, written advocacy in the law clinic setting highlights a central tension faced by clinical faculty: balancing responsibility to students with that to clients or partners. As Angela J. Campbell explains, "If the clinician does not intervene, the client's interest may be jeopardized. But if the clinician intervenes, intervention may deprive the student of the learning associated with doing the work himself and may send the message that students do not need to be responsible and work hard."<sup>8</sup> Written advocacy, in particular, brings

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<sup>2</sup> Cheri Wyron Leven, *The Doctor Is In: Prescriptions for Teaching Writing in a Live-Client In-House Clinic*, 15 CLIN. L. REV. 157, 163-164 (2008).

<sup>3</sup> *Id.* at 185.

<sup>4</sup> *Id.* at 160.

<sup>5</sup> ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2020-2021 Standard 302(b) (2020).

<sup>6</sup> *Id.* Standard 303(a)(2). Interpretation 303-2 further notes, "Factors to be considered in evaluating the rigor of a writing experience include the number and nature of writing projects assigned to students, the form and extent of individualized assessment of a student's written products, and the number of drafts that a student must produce for any writing experience."

<sup>7</sup> See Angela J. Campbell, *Teaching Advanced Legal Writing in a Law School Clinic*, 24 SETON HALL L. REV. 653, 661 (1993) ("It is difficult to teach persuasive writing in the absence of an actual audience to be persuaded.").

<sup>8</sup> *Id.* at 655. See also Leven, *supra* note 2, at 180 ("Often the ethical obligations of clinicians in their roles as attorneys conflict with the pedagogy of clinicians in their role as educators."); Andrea McArdle, *Teaching Writing in Clinical Lawyering, and Legal Writing*

this tension to the forefront. Written products are “memorialized,” subject to revision, and presented under the clinic’s and clinician’s name. Consequently, clinicians tend to be more “interventionist” and directive than for other aspects of the clinic work.<sup>9</sup> However, it is important to do this in a way that retains student ownership and accountability. This entails a focus on student development to ensure a quality product.

It thus makes sense for law clinics to integrate lessons and good practices in developing student writing. However, as Tonya Kowalski lamented in 2010, “Clinicians spend many hours every week triaging student writing and coaching their students to produce practice-worthy documents. Yet advanced legal writing is not routinely addressed in clinic seminars and there is no clear methodology for teaching advanced legal writing through clinical supervision.”<sup>10</sup> A decade later, while there has been some development, not much has changed. There is a rich literature on teaching legal writing, but only sparse discussion of its applicability in the fast-paced law clinic setting, where written products have real world consequences and need to be of high quality.<sup>11</sup> This article seeks to provide practical guidance to clinicians on teaching written advocacy. Working on this article has enabled both exploration and self-reflection. Through this article, I delve into the literature on teaching legal writing to identify lessons to be applied in the clinical setting, including both pedagogical techniques and good feedback principles. Moreover, this article has provided an opportunity to reflect on and refine techniques and exercises with which our Human Rights Clinic is currently experimenting.

Exploring the literature on advocacy writing, I came upon Aristotle’s classic *Art of Rhetoric*. In this treatise, Aristotle identifies

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*Courses: Negotiating Professional and Personal Voice*, 12 CLIN. L. REV. 501, 504 (2006) (“Clinical teachers facing practice-based deadlines continually must balance the need to ensure a student’s work product meets the standard of competent representation against the educational imperative for preserving the student’s individual voice and sense of personal efficacy.”).

<sup>9</sup> Campbell, *supra* note 7, at 680. See also *id.* at 682 (“In a clinic that focuses on writing, with the multiple drafts it entails, the line between planning and performance stages is blurred, and thus, greater intervention by the clinician may be expected.”).

<sup>10</sup> Kowalski, *supra* note 1, at 285 (2010). See also Sara O’Rourke Schrup, *The Clinical Divide: Overcoming Barriers to Collaboration between Clinics and Legal Writing Programs*, 14 CLIN. L. REV. 301, 327 (2007) (“[Even in writing clinics, teaching of writing was given minimal attention.”).

<sup>11</sup> A search revealed only eight articles that discuss an aspect of legal writing in a law clinic setting. According to Tonya Kowalski, “scant resources address in any detail how the explosion of educational methods and scholarship in legal writing can be not just borrowed, but actually transformed and adapted for use in” in law clinic settings. Kowalski, *supra* note 1, at 287. She notes with surprise “how few course materials and teaching methods have been developed to teach advanced legal writing in law school clinics.” *Id.* at 286.

three elements of persuasion (1) *ethos*—character and credibility, (2) *logos*—use of reasoning, (3) and *pathos*—use of emotion.<sup>12</sup> In this article, I propose a version of this triad, focused on teaching students to write strategically, write logically, and write with heart. In turn, the sections below explore each of these core components of written advocacy by supporting students in shifting into a persuasive mindset, strengthening argument coherence, and developing narratives that resonate with an audience.

Each section then focuses on pedagogical and supervision techniques to strengthen that core component, drawing on the literature and applying it to the law clinic context, as well as my experiences. For writing strategically, I posit that writing strategically requires mental shifts by students to an advocacy mind frame and to embrace rewriting as a critical part of the writing process. Clinicians can support students in making these shifts by connecting with legal writing instructors, adopting a feedback funnel with comments moving from broad to narrow and from facilitative to directive, and guiding students in time management and a writing process with multiple stages. For writing logically, clinicians can support students by having students critically engage with a range of formulas and samples, breaking complex projects into manageable pieces, and facilitating peer review and oral advocacy opportunities. Writing with heart is the core component least discussed in the legal writing literature, but I argue of vital importance for social justice advocacy. Clinicians can help students develop in this area through a focus on storytelling, connection with clients and affected communities, engagement with diverse media, and reflective writing.

## CORE COMPONENTS

### A. *Writing Strategically*

In the *Art of Rhetoric*, Aristotle recognizes that good persuasive writing not only engages the intellect through logic and our emotions, but it also has a psychological component. He refers to this component as *ethos* and underscores the writer's character and credibility.<sup>13</sup> I propose broadening this element to encompass writing strategically more generally and shifting the focus from the writer to the audience.

To produce good legal advocacy requires not just mastery of cer-

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<sup>12</sup> ARISTOTLE, ON RHETORIC 14 (George A. Kennedy trans., Oxford Univ. Press 1991) (“Artistic means of persuasion are three in number: Those derived from the character (*ethos*) of the speaker, when in a speech he shows himself fair-minded and trustworthy; those derived from emotion (*pathos*) awakened by a speaker in an audience; and those derived from true or probable argument (*logos*).”).

<sup>13</sup> *Id.* at 163-172 (discussing considerations related to *ethos* in persuasion).

tain skills, but also a psychological element. Legal advocacy necessitates a mental shift for students from more descriptive and objective writing to persuasive writing, geared at convincing an audience. Students also need to realize that developing a strong written product is generally less about writing than it is about rewriting. In rewriting, the text can shift from being more writer to reader-centered. The supervisor's guidance and feedback play a critical role in supporting students in making these shifts. Supervisors can identify the stages of writing for students, while stressing their recursive nature, and calibrate feedback to the particular stage, shifting from comments that are broad and more facilitative to narrow and more directive. Supervisors must also plan for sufficient time for students to move through this process and take ownership of work products, as well as support them in good time management.

### 1. *Shifting to an Advocacy Mind Frame*

I have found my students to be generally strong in drafting memos, but to struggle when it comes to advocacy writing. Law students have difficulty “transitioning to a persuasive tone.”<sup>14</sup> Students are learning that law is susceptible to multiple interpretations<sup>15</sup> and to think strategically about their audience, including leading with a strength, anticipating counterarguments, and adjusting to different settings. They are also learning to pay attention to tone, taking a distinct point of view, while generally assuming a collaborative stance towards the audience. Persuasive writing can benefit from the insights of psychology, such as the human preference for consistency and how exposure to an initial stimulus can shape reactions to subsequent information.<sup>16</sup>

Of course, students study persuasive writing in their 1L writing classes, but it was not until I delved into the legal writing literature that I learned that skills generally atrophy in shifting to the law clinic setting.<sup>17</sup> Moreover, this challenge is not unique to law clinics. Tonya Kowalski, a clinician who became a legal writing instructor, recounts that as a clinician, she wondered what students were being taught in

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<sup>14</sup> Kathy Stanchi, *Teaching Students to Present Law Persuasively Using Techniques from Psychology*, 19 PERSPECTIVES: TEACHING LEGAL RSCH. WRITING 142, 142 (2011).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 143-144.

<sup>17</sup> Schrup, *supra* note 10, at 302 (indicating that “students’ newly-acquired skills atrophy without practice and consistent reinforcement in different contexts throughout the remainder of law school.”); Kowalski, *supra* note 1, at 288 (“Even those with top grades in their previous courses seem to lack even novice-level proficiency in research, writing, and analysis.”), and 289 (“Not only do students overlook applications for knowledge obtained in previous situations, they also sometimes appear to regress when asked to change contexts.”).

their legal writing classes, and then, as a legal writing instructor, she wondered what students were being taught in college and prior schooling.<sup>18</sup>

This involves a problem of knowledge “transfer,” with knowledge encoded according to context,<sup>19</sup> and students having difficulty moving from the controlled environment of the legal writing classroom with precise terminology and neat formulas to an often messy and chaotic reality.<sup>20</sup> As Tonya Kowalski explains, “Some cue is needed to trigger the brain to recognize that the new conditions are sufficiently similar that the previous skills should apply.”<sup>21</sup> Students thus need to learn knowledge and skills, as well as how to transfer them across variations in context and “surface level details.”<sup>22</sup>

Silos between clinical and legal writing faculty exacerbate transfer problems.<sup>23</sup> Little interaction makes it more difficult for students to make connections and transfer what they have learned.<sup>24</sup> Moreover, legal writing and law clinics may take fundamentally different perspectives. Legal writing classes tend to be lawyer-centered, focusing on a legal audience, and the instructor generally takes the role of a senior partner in reviewing the student’s work. Law clinics are often client-centered, and the student serves as the lead attorney with the supervisor in a supportive role.<sup>25</sup>

This calls for greater connection between the law clinic and legal writing programs. There are opportunities for both legal writing and clinical instructors to teach for transfer and help students make connections to past and future experiences.<sup>26</sup> Legal writing instructors can help students create broader frameworks for storing new knowledge through generalizing rules and concepts, analogizing to different scenarios, and incorporating reflections and checklists.<sup>27</sup> Additionally, writing instructors can help students anticipate future applications,<sup>28</sup> and they can also help clinicians better break down legal research and writing tasks in working with students.<sup>29</sup>

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<sup>18</sup> Kowalski, *supra* note 1, at 289.

<sup>19</sup> *Id.* at 290-292, 311; Mary Nicol Bowman & Lisa Brodoff, *Cracking Student Silos: Linking Legal Writing and Clinical Learning through Transference*, 25 CLIN. L. REV. 269, 278 (2019).

<sup>20</sup> Schrup, *supra* note 10, at 323.

<sup>21</sup> Kowalski, *supra* note 1, at 292.

<sup>22</sup> Bowman & Brodoff, *supra* note 19, at 271,279.

<sup>23</sup> *Id.* at 269.

<sup>24</sup> *Id.* at 272.

<sup>25</sup> *Id.* at 285-287.

<sup>26</sup> Kowalski, *supra* note 1, at 285-299.

<sup>27</sup> *Id.* at 292-344; Bowman & Brodoff, *supra* note 19, at 280-295.

<sup>28</sup> Kowalski, *supra* note 1, at 323.

<sup>29</sup> Bowman & Brodoff, *supra* note 19, at 288.

Clinicians, in turn, can facilitate knowledge transfer by making an explicit connection with legal writing classes and collaborating with legal writing instructors. Connection to legal writing classes can take place through use of similar terminology and exercises and opportunities for recall and reflection.<sup>30</sup> Moreover, clinicians can invite a legal writing instructor to teach a session on writing in the clinic seminar.<sup>31</sup> Or more ambitiously, instructors can collaborate on a writing assignment.<sup>32</sup>

I must confess that prior to reviewing the literature, it never occurred to me that knowledge transfer was an issue, although now it seems obvious. Last year, I took the initial step of inviting a legal writing colleague to teach a writing session in the Human Rights Clinic, and we exchanged materials on teaching writing, to which my students favorably responded. This session helped lay the groundwork for a writing workshop, where students share and peer review drafts. This year, I have done this again with another writing instructor, who also suggested having his legal writing class take on developing a product to further the work of Human Rights Clinic. I look forward to deepening this collaboration and exploring its potential.

## 2. *Embracing Rewriting*

The second mental shift critical to writing strategically is for students is to embrace rewriting and revision as fundamental stages. Depending on the complexity of a written product, it is not unusual for a Human Rights Clinic document to go through eight drafts.<sup>33</sup> It is often in the rewriting that an initial analysis can be tailored to the audience and purpose, which is critical to persuasive writing.<sup>34</sup> The argument further develops and refines during the writing process.<sup>35</sup> Angela J. Campbell identifies the following steps involved in written advocacy: pre-writing, writing, re-writing, revision, and polishing,<sup>36</sup> and Mary Nicol Bowman & Lisa Brodoff differentiate between “revision” and “editing.”<sup>37</sup> They emphasize that revision involves “re-vi-

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<sup>30</sup> *Id.* at 309; Kowalski, *supra* note 1, at 333.

<sup>31</sup> Kowalski, *supra* note 1, at 326; Schrup, *supra* note 10, at 324.

<sup>32</sup> Kowalski, *supra* note 1, at 325.

<sup>33</sup> *See* Leven, *supra* note 2, at 176 (“[W]riting is a process and . . . one draft is usually not enough, even for the simplest letter, and that as the complexity of the writing increases, so should the number of drafts.”).

<sup>34</sup> Campbell, *supra* note 7, at 685.

<sup>35</sup> *Id.* at 683 (“The process of developing arguments involves a certain amount of trial and error”); Kowalski, *supra* note 1, at 316 (“[T]he student re-writes the project and deepens his analysis. It is during the re-writing process that most students develop the ability to move from formalism to nuance, at least on that specific project.”).

<sup>36</sup> Campbell, *supra* note 7, at 664.

<sup>37</sup> Bowman & Brodoff, *supra* note 19, at 322.

sioning” and focuses on the substance of the document, including content, organization, and clarity, rather than on writing mechanics and sentence level details.<sup>38</sup> In this way, the focus shifts from larger organizational units to smaller units, moving from sections of the paper to paragraphs and then to sentences and word choice.<sup>39</sup> Betty Flowers, in separating out the writing process into the roles of the “madman,” “architect,” “carpenter,” and “judge,” likewise traces a writing trajectory from large organizational structures to smaller units to finally the details of a polished piece.<sup>40</sup> This emphasis on rewriting and revision is an important lesson for students, who tend to focus on editing at the microlevel<sup>41</sup> and must be disabused of “pre-existing beliefs that macro-revisions are a form of punishment or involve moving ‘backwards’ in the writing process.”<sup>42</sup>

Writing is further not just a multi-step process, but also recursive. Writers do not move through the various steps in a linear fashion, but rather must move back and forth between them in a reiterative process.<sup>43</sup> While starting with the larger organizational units and then moving on to smaller ones, it is helpful throughout the writing process to alternate between looking at the whole of the advocacy piece and zooming in on individual parts. Students need to work through the facts, the arguments, and then both together.<sup>44</sup> Each time they go

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<sup>38</sup> *Id.* at 322.

<sup>39</sup> Campbell, *supra* note 7, at 685.

<sup>40</sup> According to Betty Flowers, for writing to flow requires separating energies: first the “madman with his playful, creative energies” needs to generate “the ideas which form the basis for the writing.” Betty S. Flowers, Madman, *Architect, Carpenter, Judge: Roles and Writing Process*, INTELLECTUAL ENTREPRENEURSHIP, [http://www.ut-ie.com/b/b\\_flowers.html](http://www.ut-ie.com/b/b_flowers.html) (last visited Jan. 7, 2021). Then, the “architect” comes in “picking out a tenth of the jottings as relevant or interesting” and arranging “them in a pattern that might form the argument.” *Id.* “The thinking here is large, organizational, paragraph level thinking.” *Id.* Then, comes the “carpenter,” who “nails these ideas together in a logical sequence, making sure each sentence is clearly written, contributes to the argument of the paragraph, and leads logically and gracefully to the next sentence.” *Id.* Only then comes the “judge” to inspect and ensure “spelling, grammar, tone—all the details” are in place for a polished piece. *Id.* “These details are not the concern of the madman who’s come up with them, or the architect who’s organized them, or the carpenter who’s nailed the ideas together, sentence by sentence. Save details for the judge.” *Id.*

<sup>41</sup> Cara Cunningham & Michelle Streicher, *The Methodology of Persuasion: A Process-Based Approach to Persuasive Writing*, 13 LEGAL WRITING: J. WRITING INST. 159, 196 (2007).

<sup>42</sup> *Id.* at 197.

<sup>43</sup> Christopher M. Anzidei, *The Revision Process in Legal Writing: Seeing Better to Write Better*, 8 LEGAL WRITING: J. WRITING INST. 23, 26 (2002); Schrup, *supra* note 10, at 328; Cunningham & Streicher, *supra* note 41, at 163.

<sup>44</sup> See Cunningham & Streicher, *supra* note 41, at 169, 189 (“D]rafting the fact section is a recursive process, and facts must be drafted in tandem with the argument section.”); Schrup, *supra* note 10, at 331 (“[Legal writing was a recursive process during which the student would consider, reject and then reconsider legal arguments and would re-examine the facts of the case many times.”).

through the material, there is an opportunity for creativity and generating new ideas. As Linda R. Jeffrey points out, “Each time we review something we re-vise it, seeing new aspects of the same thing.”<sup>45</sup> Before students can develop human rights arguments that draw on international, regional, domestic, and sometimes comparative law, it is helpful for them to draft memos that separately identify the relevant law and organize the facts thematically and then work on combining them, revisiting their analysis and research throughout the process.

This is in line with the “New Rhetoric” process approach to writing, which developed in the late 1970s and early 1980s, and emphasizes “the process of writing rather than the product.”<sup>46</sup> According to this approach, writing does not just capture, but help construct meaning itself,<sup>47</sup> and it is “only through writing that gaps in the analysis come to light.”<sup>48</sup> Thus, writing is fundamentally recursive, rather than linear, with stages that “overlap and intertwine.”<sup>49</sup> And, “good writing always demands the challenging—and even painful—process of recursive research and revision.”<sup>50</sup> I have found that it is often at the end of the paragraph that a student gets to what should be the topic sentence. Writing the initial paragraph has served the student in developing the main point. In rewriting, the student can then construct a compelling argument.

New Rhetoric further places the emphasis on the audience and purpose of a piece of writing,<sup>51</sup> the first step in writing strategically. In fact, adjusting writing to persuade a particular audience trumps all other guidance. The purpose and audience should thus be identified at the start of a writing project.<sup>52</sup> It is further helpful for students to take the role of the audience in assessing a piece of writing.<sup>53</sup> We have students do this in peer reviews of each other’s work, as well as in oral arguments, where they role play the intended audience for advocacy, listening to their classmates’ presentations and questioning them. There is then an opportunity to provide constructive feed-

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<sup>45</sup> Linda R. Jeffrey, *Writing and Rewriting Poetry: William Wordsworth*, in CREATIVE PEOPLE AT WORK: TWELVE COGNITIVE CASE STUDIES 69, 69 (Doris B. Wallace & Howard E. Gruber eds., 1989).

<sup>46</sup> Campbell, *supra* note 7, at 663-664.

<sup>47</sup> *Id.* at 664; Kowalski, *supra* note 1, at 311; Schrup, *supra* note 10, at 313; Cunningham & Streicher, *supra* note 41, at 185.

<sup>48</sup> Campbell, *supra* note 7, at 664; *see also* Kowalski, *supra* note 1, at 312 (“It is the very process of writing that exposes weaknesses in reasoning and authority and forces the lawyer to delve ever deeper into the problem to the find the root causes and their solutions.”).

<sup>49</sup> Schrup, *supra* note 10, at 312.

<sup>50</sup> Kowalski, *supra* note 1, at 312.

<sup>51</sup> Leven, *supra* note 2, at 179; Schrup, *supra* note 10, at 312.

<sup>52</sup> Campbell, *supra* note 7, at 671-672.

<sup>53</sup> Leven, *supra* note 2, at 175.

back.<sup>54</sup> This exercise seeks to strengthen students' writing and arguments, exposing and shoring up weaknesses, just as much as sharpening their oral advocacy skills, and we are explicit about this objective with the students.

Clinicians can help manage student expectations by identifying the stages of writing and emphasizing writing as a reiterative process. They can further forewarn students to expect substantive feedback on multiple drafts and that they need to provide a draft at least a day in advance of meeting, if not more depending on the length and complexity of the product. I have put together a writing tips sheets to take students through the writing stages. This starts with strategic considerations necessary to appeal to an audience and moves to a focus on the argument's logic and organizational structure and finally to clarity of writing. We ask students to use this sheet as a guide in developing their own writing, as well as in commenting on the writing of their peers. As Cheri Wyron Leven recommends, providing guidance to address various writing issues upfront can serve as "preventive medicine" for common ailments.<sup>55</sup>

### 3. *Adopting a Feedback Funnel*

Moreover, it is important to tailor feedback, perhaps the most powerful tool in strengthening written advocacy,<sup>56</sup> to the appropriate phase. Just like the writing process itself, the supervisor's feedback can move like an upside-down funnel from the broad to the narrow and from a focus on key concepts and the overall structure to the various analytical components and then to the writing style and mechanics.<sup>57</sup> In this way, comments on writing clarity come at a later stage. This sends a message to students about the importance of rewriting, disabusing them "of the notion that their first drafts can simply be polished up in order to be finished."<sup>58</sup> Otherwise, students may avoid engaging deeply with the issues raised and making more difficult, structural changes. Similarly, students may benefit from guidance on

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<sup>54</sup> For another example of oral advocacy to strengthen writing, please see Cunningham & Streicher, *supra* note 41, at 169. The authors explain, "Our coupling of oral and written assignments and the recursive nature of our process encourage students to make better use of revision opportunities. . . . Students reconsider and rework their ultimate argument only after drafting, orally presenting, responding to judges' questions and defending their positions, and receiving feedback. This helps them discover substantive errors, consider different approaches and strategies, and re-visit their original decisions about how to approach the problem." *Id.* at 197.

<sup>55</sup> Leven, *supra* note 2, at 177, 181.

<sup>56</sup> Campbell, *supra* note 7, at 660.

<sup>57</sup> Kowalski, *supra* note 1, at 317; AMY VORENBERG, STRATEGIES AND TECHNIQUES FOR TEACHING LEGAL ANALYSIS AND WRITING 30 (2012).

<sup>58</sup> Campbell, *supra* note 7, at 687.

undertaking peer-editing versus proofreading.<sup>59</sup>

Additionally, feedback should be calibrated to focus on a particular writing stage by moving from more facilitative to directive. On early drafts, comments should be more facilitative, often in question form, and refrain from imposing an ideal text.<sup>60</sup> I have found that as a novice, the student brings a fresh perspective that can sometimes lead to new insights and highlight current gaps and assumptions. Legal analysis will benefit from the students' creativity. Here, the clinician can help in identifying promising strands of thought for further research and development. Facilitative feedback is further useful in engaging with students on their thought process and the impact of the text on an audience.<sup>61</sup>

Next, feedback on logic and structure can be a combination of facilitative and directive, and finally when it comes to clarity of writing, feedback can be mostly directive.<sup>62</sup> Facilitative comments have the advantage of forcing students to engage with their supervisors' feedback, rather than just "dutifully" making changes to please them.<sup>63</sup> At the same time, as Cheri Wyron Leven explains, "directive comments, and even re-writing parts of a student's draft, can be an effective teaching tool, when coupled with a line-by-line discussion with the student of the reasons for the changes."<sup>64</sup> She further notes that while embracing the New Rhetoric approach, we can still benefit from aspects of the former Formalist approach, which is product-oriented and focuses on the "formal components of legal writing, 'formats, organization, and language and style.'"<sup>65</sup> She finds them complementary, teaching her students to be better writers by focusing on process, as well as working with them to improve the quality of their product.<sup>66</sup> While the Formalist approach is less useful for understanding the writing process and developing as a writer, it contains solid rules for revision and ensuring brevity, accuracy, and clarity.<sup>67</sup>

However, even while being directive, the clinician need not take

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<sup>59</sup> Cunningham & Streicher, *supra* note 41, at 166.

<sup>60</sup> Campbell, *supra* note 7, at 688-694; McArdle, *supra* note 8, at 530.

<sup>61</sup> Campbell, *supra* note 7, at 686, 691.

<sup>62</sup> *Id.* at 692 (calling for a "mix of facilitative and directive comments" at the "revision stage," while recognizing that at the "polishing stage, directive feedback . . . is both efficient and appropriate"); Kowalski, *supra* note 1, at 345 (recommending "starting with more open-ended questions and progressing toward more directive feedback" and "employing more Socratic-style, non-directive supervision on larger questions of legal analysis, but using more directive redlining for mechanical skills like grammar").

<sup>63</sup> Campbell, *supra* note 7, at 692.

<sup>64</sup> Leven, *supra* note 2, at 183.

<sup>65</sup> *Id.* at 178.

<sup>66</sup> *Id.* at 179.

<sup>67</sup> Campbell, *supra* note 7, at 663.

over the writing, but can rather identify patterns for the student to correct. A common approach is to edit a representative section or “illustrative examples” of a writing problem and ask the student to apply these comments to the entire draft.<sup>68</sup> This approach not only saves faculty time, but maintains a focus on systemic issues, as well as helps preserve the student’s voice, recognizing that good advocacy writing can take a variety of forms. It is also better for student learning, requiring the internalization and transfer of lessons.<sup>69</sup>

Tailoring feedback to particular stages and editing a representative section can also avoid overwhelming the student. Supervisors need not point out every problem at once. There is a limit to how much students can absorb, and too many comments can have a negative effect.<sup>70</sup> Narrowing the focus of feedback on initial drafts can also provide the students with the chance to develop certain skills.<sup>71</sup> Moreover, despite the tendency to focus on what needs to be improved, positive comments play a vital role not only in maintaining the students’ enthusiasm,<sup>72</sup> but in helping them identify what is working well. While apparent to the clinician, since students are still learning and experimenting, I have found that effective elements in their writing may not always be obvious to them.

#### 4. *Managing Time*

Time is a critical ingredient to enable to students to produce quality written advocacy. A reiterative process takes time, which must further be slowed down to allow for learning, multiple drafts, and feedback.<sup>73</sup> This necessitates taking fewer cases or projects over a longer time frame<sup>74</sup> and setting deadlines that allow for multiple drafts.<sup>75</sup> While depending on complexity and the students’ capacity, as mentioned above, it is not uncommon to take eight drafts to produce a version of a document ready to be publicly shared. I also had the following experience with two teams. One team was up against a

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<sup>68</sup> *Id.* at 694; Kowalski, *supra* note 1, at 346; Bowman & Brodoff, *supra* note 19, at 318.

<sup>69</sup> Bowman & Brodoff, *supra* note 19, at 318-319; McArdle, *supra* note 8, at 531.

<sup>70</sup> VORENBERG, *supra* note 57, at 27; Campbell, *supra* note 7, at 693.

<sup>71</sup> VORENBERG, *supra* note 57, at 29.

<sup>72</sup> Campbell, *supra* note 7, at 693.

<sup>73</sup> *Id.* at 668 (“The student will need time to respond to feedback, conduct additional research, re-outline and rewrite. The clinician will need time to review the work carefully and to provide thoughtful feedback.”).

<sup>74</sup> Schrup, *supra* note 10, at 332.

<sup>75</sup> Campbell, *supra* note 7, at 666. Sara O’Rourke Schrup described the need to provide students with the “opportunity to go through multiple drafts with me (as many as six or eight) and to ultimately do most of the work themselves. They had to vet their briefs with their classmates, to solicit edits and comments from them.” Schrup, *supra* note 10, at 332.

tight deadline for an intervention with the European Court of Human Rights. While they were able to produce a quality product, it was a painful and stressful process for all of us, requiring late nights and more intervention in the students' work than I would have liked. The other team took the full term to produce a solid, well-argued draft submission to a United Nations human rights body that could then be revised and polished up the following semester. They had time to work through comments and the end product reflected their thinking and creativity. This led us the following year to experiment with a year-long clinic. In the year-long clinic, students had more time to work through writing products, as well as the opportunity in their second semester to build on their new expertise and mastery of legal concepts in shaping subsequent advocacy. Pleased with this result, we are now continuing as a year-long clinic.

Along with time, students need support to establish good time management. Many students have difficulties with time management.<sup>76</sup> This is to be expected, since, as Tonya Kowalski explains, students need to develop "a realistic understanding of how long it takes a novice attorney to produce even the most rudimentary work product," and "they simply do not yet have the experience to fully comprehend what is expected or entailed."<sup>77</sup> Supervisors can also provide important support to students by helping them break large projects into smaller components with deadlines for each.<sup>78</sup> In this way, supervising written advocacy in the law clinic setting also requires project management skills. I find that it works well to have the students propose an initial timeline to guide the work, taking the first stab at identifying project components and providing sufficient time for review of drafts. I then review the timeline, adding missing steps.<sup>79</sup> We then revisit the timeline periodically throughout the course of the project, making adjustments as needed.

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<sup>76</sup> Kowalski, *supra* note 1, at 340; Campbell, *supra* note 7, at 669.

<sup>77</sup> Kowalski, *supra* note 1, at 341.

<sup>78</sup> *Id.* ("The modular approach lends itself well to a series of smaller, calendared assignments that build toward a whole document, and teaches students to schedule ample time for the planning, outlining, and recursive research and writing phases of the draft process.").

<sup>79</sup> According to Angela J. Campbell, "The clinician and student should consult and try to establish mutually agreeable deadlines. The clinician may ask the student to propose a schedule, and then review it for reasonableness and feasibility." Campbell, *supra* note 7, at 671. See also Kowalski, *supra* note 1, at 341 ("[A]sk the student to take responsibility for proposing a drafting schedule that works back from the filing deadline, leaving at least three to five business days for proofreading, filing and service, depending upon the court rules.").

### B. Writing Logically: Developing Argument Coherence

In addition to shifting to persuasive writing produced through a reiterative process, students need to strengthen the logic and coherence of their argument. Aristotle's *Art of Rhetoric* highlights *logos*, or the use of reasoning, both deductive and inductive, to construct an argument.<sup>80</sup> Key issues to address in student writing include developing a sound structure with a thesis paragraph, good roadmaps, headings, and topic sentences; substantiating assertions with proper support; integrating facts into the analysis; and addressing gaps and counterarguments. Supervisors can strengthen student analysis by introducing various formulas and samples, focusing on particular components of legal writing, having students outline their arguments, and facilitating opportunities for peer review and oral advocacy. Moreover, students generally engage in collaborative writing in law clinics, which has the advantage of multiple perspectives and built-in peer editors, but also requires good time management and coordination.

#### 1. Critically Engaging with Formulas and Samples

As students are grappling with the logic of legal reasoning and persuasive writing, it is helpful to expose them to various formulas and samples. This way, they are able to gain a sense of different approaches and the steps involved. Legal writing materials commonly rely on formulas and structures to help guide students through the process of legal analysis and writing.<sup>81</sup> The most well-known of these is the classic IRAC (Issue, Rule, Application, Conclusion).<sup>82</sup> I have developed a version of this for my human rights students where they identify the right at stake and how it applies to the situation in a concise statement, describe the right and its interpretations, and then analyze its application to our facts. There is some value to a formula when students are new to the material<sup>83</sup> and the target audience is "an institutionalized legal audience" with certain expectations.<sup>84</sup> However, as students advance in their grasp of legal concepts, it is important that they not rigidly stick to any formulas, exploring variations and allowing the material to shape the arguments.<sup>85</sup> This is particu-

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<sup>80</sup> ARISTOTLE, *supra* note 12, at 172-215 (discussing considerations related to *logos* in persuasion).

<sup>81</sup> Schrup, *supra* note 10, at 316.

<sup>82</sup> Judith B. Tracy, "I See and I Remember; I Do and Understand": Teaching Fundamental Structure in Legal Writing through the Use of Samples, 21 *TOURO L. REV.* 297, 309-10 (2005); VORENBERG, *supra* note 57, at 21.

<sup>83</sup> Tracy, *supra* note 82, at 309-10.

<sup>84</sup> Schrup, *supra* note 10, at 313, 317. See also Tracy, *supra* note 82, at 299.

<sup>85</sup> Schrup, *supra* note 10, at 324 (recommending that "once students have adopted the basic paradigms that form the foundation of most legal writing, recognizing and rewarding

larly true when it comes to human rights advocacy, which can draw on a variety of international, comparative, as well as non-legal materials, and often does not fit neatly into a mold.

Similarly, students can benefit from reviewing samples of well-drafted legal advocacy. According to Tonya Kowalski, “because students must be able to work independently, a good bank of sample memos, motions, briefs, and other pleadings or contracts are key to avoiding wasting a great deal of client, student, and professor time on needless beginner’s confusion.”<sup>86</sup> Legal reasoning and brief writing are new to students, and they can build on what others have done. Samples can serve to “demystify” writing and “underscore the logic of an effective structure.”<sup>87</sup> They provide an opportunity to become familiar with various types of legal writing and for close analysis of elements making them effective.<sup>88</sup> Samples are particularly useful for certain learning styles.<sup>89</sup>

However, there is also the risk that students will just copy these samples, rather than creatively engage in their own analysis. Samples teach students to recognize persuasive writing, but not the process for writing effectively themselves.<sup>90</sup> To avoid copying, it is thus critical to supplement samples with guidance on the writing process.<sup>91</sup> This risk can further be mitigated by sharing a variety of writing samples with students as “the opportunity to examine a range of writing gives writers ideas, and choices, that increase fluency.”<sup>92</sup> Moreover, I have found it useful to ask students to critically analyze the samples, assessing what elements are effective and why, what could be strengthened, and what they hope to adopt in their own writing. For this, timing is important with students more able to meaningfully engage with samples as they are starting their own writing and have completed most of

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the variations in students’ writing that can ultimately persuade a legal reader”); VORENBERG, *supra* note 57, at 21 (noting that “[a]s scaffolding for students, the IRAC paradigm works well,” but instructors should “encourage students to think less rigidly and develop a structure that is driven by the specific problem rather than fitting the problem into a rigid structure”). *See also id.* at 22.

<sup>86</sup> Kowalski, *supra* note 1, at 328-329.

<sup>87</sup> Tracy, *supra* note 82, at 331.

<sup>88</sup> McArdle, *supra* note 8, at 516; *see also* Mark DeForrest, *Introducing Persuasive Legal Argument via the Letter from Birmingham City Hall*, 15 LEGAL WRITING: J. LEGAL WRITING INST. 109, 110 (2009).

<sup>89</sup> McArdle, *supra* note 8, at 514.

<sup>90</sup> Cunningham & Streicher, *supra* note 41, at 160-161.

<sup>91</sup> *Id.* at 162; Kowalski, *supra* note 1, at 328.

<sup>92</sup> McArdle, *supra* note 8, at 520; *see also id.* at 519 (“the more specimens legal writers see, the less risk there is they will perceive legal writing to be entirely formalistic, or that they will become wedded to one way of writing”); Tracy, *supra* note 82, at 322 (“Generally, distribution of more than one sample is useful. As a result, students can see varieties in presentation.”).

their research.

## 2. *Focusing on Discrete Pieces of a Complex Project*

The literature on teaching legal writing recommends breaking complex projects into smaller, discrete pieces that students can work on mastering and requesting interim work products. As Tonya Kowalski describes, “legal writing programs break down the formal components of analysis into formulas and systems, just like music composition breaks down music theory into notes and scales.”<sup>93</sup> Students benefit from tackling one component at a time with opportunities to receive feedback, rewrite, and revise.<sup>94</sup> Breaking a project into manageable steps also helps students tackle work of greater complexity and ensure they are staying on track.<sup>95</sup>

A focus on discrete components can also help students with mastering certain elements of legal writing. I have found it useful to develop exercises linked to particular aspects of argument coherence. For instance, I have asked students to develop just the headings for their arguments, helping to crystallize their thinking and link facts to the legal standard. Additionally, students may struggle to integrate case law in their argument. This requires them to “learn how to read a case and understand the holding and the explicit reasoning, as well as what was implicit in the case.”<sup>96</sup> While a teaching fellow at Georgetown’s International Human Rights Clinic, we developed an exercise for students to go through relevant cases and set out the holdings, reasoning, and key quotes, which they could then draw on in their analysis. Similarly, we asked students to update their drafts paying particular attention to the integration of quotes in their writing. Thus, in line with the New Rhetoric’s process-oriented approach, supervisors can focus on particular components to help sharpen writing skills during the planning and drafting stages.<sup>97</sup>

An outline is the traditional tool to focus attention on the logic of an argument, highlighting any logical gaps and ensuring sufficient support. As Angela J. Campbell explains, “Making an outline forces the

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<sup>93</sup> Kowalski, *supra* note 1, at 319. See also *id.* at 312 (“In this methodology, formal written analysis is best taught to novices by exposing it and breaking it down into its components, replete with subparts and sub-subparts.”) and at 314 (“Many legal writing professors use a variety of paradigms and checklists to help students break down and then reassemble the whole in meaningful form.”).

<sup>94</sup> *Id.* at 340.

<sup>95</sup> Campbell, *supra* note 7, at 669; Schrup, *supra* note 10, at 330, 333. See also Cunningham & Streicher, *supra* note 41, at 191 (describing breaking “the task of writing an appellate brief into small portions that are spread over the course of one semester” with students focusing on “discrete portions”).

<sup>96</sup> Tracy, *supra* note 82, at 305.

<sup>97</sup> Kowalski, *supra* note 1, at 312, 316; Campbell, *supra* note 7, at 670.

student to focus on what is important. It also makes the thought process visible. That makes it possible for us to discuss whether the organization is logical, whether a different organization might be better, whether steps in the argument are missing, and whether there is adequate support for each step.”<sup>98</sup> An outline enables the student to focus on the analysis, which then dictates the structure of the argument,<sup>99</sup> and to break down a piece of writing into manageable components.<sup>100</sup> While the traditional outline is linear, depending on learning style, students can also diagram analysis through “spokes-and-wheels, flowcharts, [and] index cards.”<sup>101</sup>

However, students are generally continuing to develop their analysis through their writing. I have thus found it useful to ask students to produce only a cursory initial outline that sets out the main sections of the piece and the key elements under each section. Then, after they had the opportunity to prepare a first rough draft of the piece, they are better placed to go back and develop a more detailed outline.<sup>102</sup> This enables the analysis to dictate the logic and structure of the piece consistent with the New Rhetoric approach, which recognizes that writing itself is thinking and helps construct meaning.<sup>103</sup> I have also asked students to engage in reverse outlining, pulling out their current structure and then reworking it so that it is more logical.

### 3. *Facilitating Peer Review and Oral Advocacy*

Peer feedback can play a powerful role in strengthening student writing. It enables students to benefit from the insights and comments of their peers, as well as their supervisor, and has the advantage of being self-empowering.<sup>104</sup> Moreover, helping to strengthen the writing of others serves to strengthen the students’ own writing. Students are better able to see gaps in writing when it is not their own.<sup>105</sup> Students may also be more able to critically assess the writing of other students than they are samples from practitioners. However, as discussed above, it is important to provide students with guidance to peer review effectively. Otherwise, they may just be proofreading and fo-

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<sup>98</sup> Campbell, *supra* note 7, at 670.

<sup>99</sup> Tracy, *supra* note 82, at 322.

<sup>100</sup> Campbell, *supra* note 7, at 671.

<sup>101</sup> Kowalski, *supra* note 1, at 338.

<sup>102</sup> See Campbell, *supra* note 7, at 671 (“If the student falls toward the ‘freewriting’ end of the continuum, it may be better to have the student do the outline after completing a rough draft.”).

<sup>103</sup> Kowalski, *supra* note 1, at 316.

<sup>104</sup> *Id.* at 343-344 (pointing to “the benefit of greater diversity of critique”).

<sup>105</sup> Robert K. Thyfault & Kathryn Fehrman, *Interactive Group Learning in the Legal Writing Classroom: An International Primer on Student Collaboration and Cooperation in Large Classrooms*, 3 J. MARSHALL L.J. 135, 156 (2009); Campbell, *supra* note 7, at 686.

cusing on small details at the sentence structure level.<sup>106</sup> Cara Cunningham and Michelle Streicher recommend asking students “to evaluate whether the author has used an effective structure and helpful topic sentences, appropriate authority, and necessary facts in the analysis paragraphs.”<sup>107</sup> My writing tips sheet tries to capture this progression, starting with strategic considerations necessary to appeal to an audience and moves to a focus on the argument’s logic and organizational structure and finally to clarity of writing.

In our clinic, we conduct a writing workshop led by the student authors, guiding their classmates through the questions with which they are struggling. We also prompt the students to focus on argument, structure, support, and tone and to ask their classmates to identify both areas that worked well and areas for improvement.<sup>108</sup> This is similar to project rounds with a focus on writing. Students enjoy the opportunity to share their analysis and writing with peers and get input. Leading the workshop, they remain in control of the work product and can focus on areas they find most troubling. They further sharpen their arguments by explaining the logic behind writing choices and how this relates to the project’s goals. It has also worked well to have students present at different stages in their writing process. Students in the early stages of writing receive feedback on key gaps to address. Students further along in the process benefit from suggestions to strengthen their work. Plus, this has had the added benefit of serving as a model for other students. In reviewing the work of his peers, one student, for instance, marveled on the fluidity of the argument and identified elements he aspired to in his own writing.

Additionally, as discussed above, the process of articulating arguments orally can help students identify logical gaps and effective framing. I have found that many of my students are stronger orally than they are in writing. Oral advocacy can take place informally in team meetings or more formally during class with students presenting and their peers role-playing judges and asking questions, helping to sharpen their classmates’ arguments so that they are most compelling. While an oral exercise heightens pressure on students, it also provides

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<sup>106</sup> Cunningham & Streicher, *supra* note 41, at 166.

<sup>107</sup> *Id.* at 166. See also Thyfault & Fehrman, *supra* note 105, at 155 (“A successful peer editing exercise requires that students be given a structured worksheet or checklist to follow while doing the peer edit. . . .”; “For example, we ask the peer editor to note whether the writer began paragraphs with topic sentences and to circle passive voice so the writer can determine whether active voice would be better.”).

<sup>108</sup> In a peer-review exercise, Cheri Wyron Leven asks students to discuss 2-3 things they liked best about the document and 2-3 things that could be improved. She then asks the writers to note the 2-3 most helpful comments they received, which provides “a springboard for addressing a range of writing issues” in the class. Leven, *supra* note 2, at 169.

them with a sense of accomplishment and strengthens their ownership over the arguments. Oral presentations also need not be simulated. They can be an opportunity for the students to share their work with others at the university or with stakeholders relevant to the project. This integration of an oral component in strengthening writing is particularly beneficial for students with certain learning styles.<sup>109</sup>

#### 4. *Writing Collaboratively*

Achieving argument coherence in the context of collaborative writing further merits particular attention in the law clinic setting, where much of the work is done in teams. As writing is subject to revision, it is conducive to collaboration.<sup>110</sup> Collaboration is also common in the professional world and nurtures crucial lawyering skills.<sup>111</sup> Law clinics can thus provide students with vital preparation for future work.

While collaborative writing can be challenging to implement, it has important benefits. Collaborative writing has the potential to produce a work product that is greater than the sum of its parts. Students come with different learning styles and strengths and can learn from each other. A group of instructors from Northwestern University School of Law describe how collaborative writing allowed their students to “draw on their complementary strengths and minimize their weaknesses,”<sup>112</sup> as well as “fill in holes” in each other’s abilities.<sup>113</sup> In particular, they marveled at “the disappearance of the lowest grades in the class. Through the group writing process, the weaknesses that typically pervade the weakest papers were addressed and corrected.”<sup>114</sup>

Collaboration enriches writing by bringing multiple perspectives and diverse viewpoints. After engaging in group writing, students identified as top benefits engagement in debate and brainstorming and exposure to new ideas.<sup>115</sup> They reported that “the presence of an additional viewpoint helped them to see perspectives that they would

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<sup>109</sup> Cunningham & Streicher, *supra* note 41, at 191.

<sup>110</sup> Campbell, *supra* note 7, at 681.

<sup>111</sup> Angela Mae Kupenda, *Collaborative Learning in the Constitutional Law Classroom: Adapting the Concept of Inevitable Disagreements in Seven Steps*, 68 J. LEGAL EDUC. 284, 286 (2019); Lani Guinier, *Lessons and Challenges of Becoming Gentlemen*, 24 N.Y.U. REV. L. & SOC. CHANGE 1, 10 (1998).

<sup>112</sup> Elizabeth L. Inglehart, Kathleen Dillon Narko, Clifford S. Zimmerman, *From Cooperative Learning to Collaborative Writing in the Legal Writing Classroom*, 9 LEGAL WRITING: J. LEGAL WRITING INST. 185, 185 (2003).

<sup>113</sup> *Id.* at 210.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 216. *See also* Kupenda, *supra* note 111, at 289 (discussing “the value of inevitable disagreement” in collaborative writing).

not have come up with on their own and helped them to understand the legal analysis better than they would have working on their own.”<sup>116</sup> This is good preparation for the workplace, where lawyers with varying perspectives likewise argue and write together with “one person’s ideas further polish[ing] those of the others.”<sup>117</sup>

Moreover, working in teams provides students built-in peer editors to help improve their work. Team members are ideal editors as insider-outsiders, supremely familiar with a topic, while still at a distance from their classmate’s writing. In our clinic, we have team members regularly peer review each other’s work before this is shared with their supervisor with all the benefits of peer editing discussed above. As the Northwestern instructors explained, in responding to each other’s comments, students “put more thought into justifying their analysis, and their analysis tended to become more thoughtful and sophisticated as a result of discussing it at length with each other.”<sup>118</sup>

Collaboration is particularly helpful for certain aspects of writing. In a survey, students perceived group collaboration at the brainstorming stage to be most effective (82%), followed by proofreading (72%), strategizing (68%), rewriting (65%), editing (63%), researching (60%), outlining (52%), and writing (43%). In my work with project teams, as well as in my own collaborative writing,<sup>119</sup> I have found that certain steps work best as a group, while others work best individually. Brainstorming and conceptualizing a project work well together. Research tasks work best when divided by topic or sources. However, the students should be attentive to each other’s topics and point out relevant materials they come across. We also maintain joint research files to encourage sharing. Collaborative outlining to identify key themes and organize the material works well—I may ask the students to prepare an initial outline, or depending on the complexity of the project, we may do this together on a white board. At this stage, it is helpful again to divide up the writing with each student responsible for developing particular sections of the argument, as well as respond-

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<sup>116</sup> Inglehart, Narko, & Zimmerman, *supra* note 112, at 210.

<sup>117</sup> Kupenda, *supra* note 111, at 292.

<sup>118</sup> Inglehart, Narko, & Zimmerman, *supra* note 112, at 210.

<sup>119</sup> While collaborative writing is the norm in the workplace and in many disciplines, this is not the case in legal academia, where solo writing is most valued. With my background in health and human rights, I also write for public health journals, where a variety of expertise and the perspectives of multiple authors is expected and appreciated. I have thus benefited from opportunities to write with co-authors. Generally, we will jointly conceptualize a piece and either divide up sections of the initial draft, or one co-author will prepare an initial draft with gaps for the others to fill in. We will each work on connecting the various sections and take turns revising the document for good flow and coherence and addressing any missing links.

ing to feedback on these sections by both their peers and supervisor.<sup>120</sup> I have found it crucial to provide for student ownership of portions of the argument. Otherwise, at the rewriting and revision stages, no one meaningfully grapples with comments—with the group addressing feedback in only a superficial manner—or considers the overall narrative flow of a section. Moreover, students experience satisfaction in developing expertise in a particular area and take pride in drafting discrete parts of the document. At the same time, students need to be engaged with each other's sections, reviewing and commenting on them and contributing ideas. Students should also feel free to turn to team members for assistance in addressing gaps. Additionally, I have found it useful to define writing conventions for the group in advance and to select an overall student editor to review the document for consistency of style and voice.

However, all of this takes time and good project management. While collaborative writing is richer, it also requires more time than writing alone<sup>121</sup> and coordination on interim steps.<sup>122</sup> Thus, time management, as discussed above, is critical. At the same time, collaborative writing improves accountability. Interestingly, students engaged in collaborative writing identified keeping to a schedule and decreased ability to procrastinate as important benefits.<sup>123</sup> Students also develop relationships through working together that continue past the clinic and remark on the importance of these connections and the community built through clinic work.<sup>124</sup>

### C. *Writing with Heart: Shaping a Compelling Narrative*

As Aristotle recognized, just as important as logical coherence (*logos*) is the human dimension of writing that pulls in the reader and elicits an emotional response (*pathos*).<sup>125</sup> New Rhetoric similarly appreciates that writing involves both the rational faculties, as well as

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<sup>120</sup> This division often does not exactly correspond with the research topics, requiring students to work off their classmates' research materials. Students are able to manage this, but have a much harder time building off an initial draft by a classmate. However, they are able to integrate small pieces of their classmate's work in their sections.

<sup>121</sup> Inglehart, Narko, & Zimmerman, *supra* note 112, at 209.

<sup>122</sup> In an assessment of collaborative writing by legal writing instructors, the students requested that the professors institute "pacing mechanisms, such as assigning interim deadlines." *Id.* at 224.

<sup>123</sup> *Id.* at 214.

<sup>124</sup> *E.g.*, Miami Law, *Alexis Bay's Experience with the Human Rights Clinic*, YOUTUBE (Jan. 10, 2020), <https://www.youtube.com/watch?v=bkr00lLICIo> ("I've made connections through the Clinic that I am very happy to say I think will go way beyond graduation.").

<sup>125</sup> ARISTOTLE, *supra* note 12, at 124-162 (discussing considerations related to *pathos* in persuasion).

the more intuitive ones.<sup>126</sup> There is a storytelling aspect to legal writing that engages both thought and feelings.<sup>127</sup> Critical to human rights advocacy is the development of empathy through interaction with affected communities. Narrative skills can further be strengthened through exposure to different media, including novels and film, as well as engaging in reflective and introspective writing.

### 1. *Storytelling*

Good legal writing uses a narrative to make an emotional connection with the audience. As Bret Rappaport explains, “In contrast to a logical argument, a narrative triggers emotion that allows the reader to understand the issue from another’s perspective.”<sup>128</sup> Thus, “[g]reat lawyers use stories because emotion persuades.”<sup>129</sup> The social science literature indeed shows that emotions are critical in decision-making.<sup>130</sup> Advocacy relates not just to questions of law and fact, but, as Brett Davidson describes, also to questions of values and worldviews through which “people organize and make sense of reality and engage in reasoned argument.”<sup>131</sup> To be persuasive, legal writing must connect with an audience’s values and take account of these “frames, worldviews and narratives in people’s heads of how the world works.”<sup>132</sup>

Moreover, good narratives are an efficient and compelling means of conveying information. They capture complexity and quickly disseminate.<sup>133</sup> A story stays with an audience through “vivid, descriptive language” and “simple words and concepts” that are “both easy to understand and powerfully evocative.”<sup>134</sup> According to the litera-

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<sup>126</sup> Cunningham & Streicher, *supra* note 41, at 185.

<sup>127</sup> Bret Rappaport, *Tapping the Human Adaptive Origins of Storytelling by Requiring Legal Writing Students to Read a Novel in Order to Appreciate How Character, Setting, Plot, Theme, and Tone (CSPTT) Are as Important as IRAC*, 25 T.M. COOLEY L. REV. 267, 273 (2008).

<sup>128</sup> *Id.* at 272.

<sup>129</sup> *Id.* at 276.

<sup>130</sup> Brett Davidson, *The Role of Narrative Change in Influencing Policy*, ASK JUSTICE, <http://askjustice.org/2016/06/04/the-role-of-narrative-change-in-influencing-policy/#:~:text=the%20role%20of%20narrative%20change%20in%20influencing%20policy,number%20of%20donors%20have%20funded%20narrative%20change%20projects> (last visited Jan. 7, 2021) [hereinafter Davidson, *Role of Narrative Change*]; Brett Davidson, *Storytelling and Evidence-Based Policy: Lessons from the Grey Literature*, PALGRAVE COMMUNIS, Sept. 12, 2017, at 1, 3, <https://www.nature.com/articles/palcomms201793> [hereinafter Davidson, *Storytelling*].

<sup>131</sup> Davidson, *Storytelling*, *supra* note 130 at 2.

<sup>132</sup> *Id.* at 3; see also Davidson, *Role of Narrative Change*, *supra* note 130 (“Narratives are central to mental models and social beliefs and practices that guide individuals’ decision-making and behavior.”).

<sup>133</sup> Rappaport, *supra* note 127, at 297.

<sup>134</sup> DeForrest, *supra* note 88, at 157.

ture, powerful stories are distinguished by their emotion, simplicity, concreteness, credibility, and unexpectedness.<sup>135</sup> There is also a potentially subversive element to storytelling useful in advocacy. Storytelling can serve “as a way of opening up political space, destabilizing entrenched power relationships and giving voice to voices that are usually drowned out, suppressed, or simply ignored.”<sup>136</sup>

Storytelling elicits emotion, generating empathy, critical for human rights advocacy. In a symposium our clinic hosted on the criminalization of poverty and marginalization, a leading advocate in India, emphasized, “A society without empathy cannot properly find the justice we’re seeking.”<sup>137</sup> In this way, empathy is a critical ingredient for justice. He further explained that empathy can come from our innate human curiosity to understand others’ perspectives, seeing them as a full people with dignity and not just problems to address.<sup>138</sup> Storytelling enables us “to imagine the life of another, feel empathy, and then act on this feeling.”<sup>139</sup>

## 2. *Connecting with Clients and Affected Communities*

Meaningful interaction with clients, partners, and affected communities is thus an important component of compelling written advocacy. As Sara O’Rourke Schrup remarked, to write effectively, “students needed to make a connection with their clients and to learn their client’s story.”<sup>140</sup> In meeting with the client, she had her students not just collect information, but “focus on creating a theme and story for their client that could be interwoven with the briefing of the legal issues.”<sup>141</sup> In human rights clinics, we oftentimes do not have individual clients, but rather partner closely with advocates and communities, supporting their work on an issue at the local, national, regional, or international level. While these relationships are, of course, meaningful and essential to the work, I have found it important for students to also have some direct connection to affected individuals, broadening their perspective and making the issues come alive. For instance, through interviews and interactions with people who use

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<sup>135</sup> Davidson, *Storytelling*, *supra* note 130, at 6.

<sup>136</sup> Davidson, *Role of Narrative Change*, *supra* note 130.

<sup>137</sup> HUMAN RIGHTS CLINIC, UNIVERSITY OF MIAMI SCHOOL OF LAW, PETTY OFFENSES SYMPOSIUM REPORT: CHALLENGING CRIMINALIZATION OF POVERTY, MARGINALIZATION, AND GENDER NON-CONFORMITY 21 (2019), <https://miami.app.box.com/s/q891w54b661c6bismf190x23835kamsq> (quoting Harsh Mander, Director, Center for Equity Studies; Advisory Board Member, Human Rights Initiative, Open Society Foundations).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 25. See also Stephen Ellman, *Empathy and Approval*, 43 HASTINGS L.J. 991, 1003 (1992) (discussing “empathetic lawyering”).

<sup>140</sup> Schrup, *supra* note 10, at 329.

<sup>141</sup> *Id.* at 329-30.

drugs, one of my students described, “One of the amazing things about working on this project was that it completely changed my perspective. . . I began to understand the complexities of drug use and that drug use does not preclude human rights, nor does it alone warrant the deprivation of parental rights.”<sup>142</sup>

### 3. *Engaging with Different Media and Reflective Writing*

Moreover, narrative skills can be strengthened through exposure to different media, including novels and film. Bret Rappaport urges incorporating literature, “a high form of storytelling,” “into legal writing classes to awaken the law students to storytelling’s persuasive power.”<sup>143</sup> As one of his students reflected, “literature can powerfully broaden our horizons and interject some creativity and, better yet, *passion*, into what is often very drab writing and reading.”<sup>144</sup> From my work teaching health and human rights, I learned the power of bringing excluded voices into the classroom through film. In one project, faculty collaborators from Eastern Europe and Central Asia clamored for video clips that they could integrate in their lessons. Partnering with local advocates, we helped develop videos about the plight of a Roma family denied emergency care, a transgender man subjected to psychiatric confinement, and a man experiencing homelessness attempting to access HIV care.<sup>145</sup> I am now experimenting with including more video clips in our Human Rights Clinic seminar, which bridges theory and practice and provides the opportunity to probe the various substantive issues we focus on in our projects. Going forward, I would love to design a course on human rights through film.

The use of literature and other media in the classroom can also serve as an antidote to legal writing that is often alienating and impersonal. Despite current emphasis in legal writing programs on clear writing and communication, legal jargon has traditionally served to cloak the legal profession in privilege. As Shaheda Mahomed and Philippa Kruger describe, “The language that lawyers use, both inside and outside the court room, often serves to obscure issues even

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<sup>142</sup> Miami Law Staff Report, *Via U.N. Advocacy, Clinic Addresses Discriminatory Drug Laws against Women*, UNIVERSITY OF MIAMI SCHOOL OF LAW (Mar. 6, 2019), <https://www.law.miami.edu/news/2019/march/un-advocacy-clinic-addresses-discriminatory-drug-laws-against-women>.

<sup>143</sup> Rappaport, *supra* note 127, at 274.

<sup>144</sup> *Id.* at 298-299.

<sup>145</sup> Tamar Ezer & Judy Overall, *Advancing Human Rights in Patient Care through Higher Education in Eastern Europe and Central Asia*, 15 HEALTH & HUM. RTS. J. 54, 60 (2013); Tamar Ezer, *Four Key Lessons from Teaching Human Rights in Health*, OPEN SOCIETY FOUND. (Nov. 3, 2014), <https://www.opensocietyfoundations.org/voices/four-key-lessons-teaching-human-rights-health-0>.

more.”<sup>146</sup> Lawyers reinforce “obfuscation by using language that shades the meaning to the person on the street, in language that only they and their colleagues might understand.”<sup>147</sup> Students are outsiders to the legal profession, yearning to fit in,<sup>148</sup> and thus may be drawn to law’s often “formalistic, pompous and archaic language.”<sup>149</sup> This is the opposite of client-centered communication law clinics seek to instill. As Andrea McArdle urges, the language of law should not just “be clear, precise, and accessible” to those it serves, but also “evocative, resonant, and humane.”<sup>150</sup> It is part of the social justice lawyer’s job to engage in translation, struggling with legal texts that can be “neither graceful, supple, nor humane” and “with the structures of privilege and exclusion that such language can reinforce.”<sup>151</sup> The challenge for students in legal writing is to preserve their individual voice, as well as humanity, while becoming versed in the legal profession’s discourse and negotiating “its formal structures and idioms.”<sup>152</sup> One way to inject this human dimension in legal analysis is through the introduction of literary materials and various media.

Student experiences, including exposure to various media, are heightened when engaging in reflective and introspective writing, a classic clinical legal education tool. This provides students with the freedom to explore legal ideas, including interrogating our legal system and its connection to access to justice, without the constraints of legal writing.<sup>153</sup> Moreover, as Andrea McArdle explains, “writing concurrently in non-professional forms can help [students] bridge the distance between lawyerly language, personal voice, and interpersonal communication.”<sup>154</sup> In our clinic, we use response papers, asking students to engage with materials on both an analytical, as well as personal level. Through the response papers, the students digest new

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<sup>146</sup> Shaheda Mahomed & Philippa Kruger, *Teaching Legal Writing at the University of Witwatersrand Law Clinic*, 3 J. MARSHALL L.J. 105, 125 (2009).

<sup>147</sup> *Id.* at 126.

<sup>148</sup> McArdle, *supra* note 8, at 503-4.

<sup>149</sup> Mahomed & Kruger, *supra* note 146, at 126. *See also* McArdle, *supra* note 8, at 521 (noting that “law students seem to gravitate toward ‘jargon and abstractions’” due to the “fear of exposing themselves as outsiders to this professional discourse community, untutored as they feel in its modes and conventions”).

<sup>150</sup> McArdle, *supra* note 8, at 523.

<sup>151</sup> *Id.* at 534.

<sup>152</sup> *Id.* at 501. This dilemma is not unique to law and also plagues other professions. To address this issue in medicine, Dr. Rita Charon, who directs the Program in Narrative Medicine at the College of Physicians and Surgeons at Columbia University, requires her third year students to write narratives about their interactions with patients; she has found that this has improved her students’ interviewing skills and therapeutic relationships. *Id.* at 525-526.

<sup>153</sup> *Id.* at 522-523.

<sup>154</sup> *Id.* at 526.

material, as well as weave in their personal experiences. This then provides rich material to draw on for class discussion.

Additionally, for two clinic cohorts now, we have asked students to tap into their imagination for the final seminar class and create a product that captures their reflections on social justice and human rights and lessons from their clinic experience. The students' creativity in producing collages, writing poems, painting, drawing, and engaging in various art forms is inspiring. Unleashing the students' creativity taps into powerful emotions and sometimes surprising insights. This can then enrich their writing and legal advocacy as they complete their projects.

### CONCLUSION

Law clinics can play a critical role in strengthening written advocacy by working with students on writing strategically, logically, and with heart. Law clinics can collaborate with legal writing instructors to reinforce the shift to persuasive writing, geared at convincing an audience, and the central importance of rewriting and revision as steps in the writing process. Moreover, they can guide students in writing strategically by calibrating feedback to particular stages of writing and ensuring ample time for review of multiple drafts through which the students can develop their writing. Additionally, law clinics can help strengthen the logic and coherence of student arguments by exposing students to various formulas and samples, as well as problematizing them, honing in on particular components of writing, engaging with students on their analysis in the planning stages of writing, and creating opportunities for peer review and oral advocacy. Equally important is the final element of the triad and supporting students in writing with heart, resonating with an audience at an emotional level. This requires attention to the narrative or storytelling aspect of legal writing and connection with clients or affected communities. It can further benefit from exposure to diverse media and reflective writing, integrating these experiences.

At the end of the semester, faculty can facilitate students' reflection on their development as legal advocates by asking them to look back and assemble a portfolio of their various writing products. We ask students to accompany their portfolio with a memo, providing a narrative of their writing experience in the law clinic. As Tonya Kowalski describes, "the act of assembling one's written work into a portfolio and reviewing one's growth during the process can help to form a profound sense of professional growth and accomplishment during a formative educational experience like law clinic—or at least

to identify areas for continued improvement.”<sup>155</sup> In this way, written advocacy is an important area for growth for law clinic students, requiring clinicians to adopt a deliberate and thoughtful pedagogy.

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<sup>155</sup> Kowalski, *supra* note 1, at 335.

