

Perspectives

Teaching Legal Research and Writing

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Why Write for Perspectives?

Perspectives is for anyone who teaches legal research or legal writing—in law schools, libraries, courts, and law offices. Perspectives articles are short, readable, and explore a broad array of teaching theories, techniques, and tools. The idea can be large or small but if it provides a fresh and creative way to teach or learn about legal research or legal writing skills, Perspectives editors would like to publish it. Writing for Perspectives allows you to add to your resume and get published quickly while reaching the people who share your passion for this area of the law.

Perspectives appears twice yearly. Articles are typically between 1,500 to 7,000 words, lightly footnoted, and highly readable. They may focus on curricular design, goals, teaching methods, assessments, etc.

[Author Guidelines](#)

New in this Volume, and Another Micro Essay Challenge for v. 26!

In 100 words or less, we want to hear what you (and your students, law clerks, or attorneys) have to say about our next micro essay prompt:

- “**Best Database?:** What is your deserted island database, legal or nonlegal?”

Be honest; be creative; let these words provoke or inspire you! Don't hold back - we will publish essays anonymously if you ask! The best selections will appear in our Fall issue, and submissions are welcome through October 1.

Cite as: Emily Carter, *Clear the Way to Better Writing: Use a Conference to Cure a Problematic Draft*, 25 Perspectives: Teaching Legal Res. & Writing 94 (2017).

Clear the Way to Better Writing: Use a Conference to Cure a Problematic Draft

By Emily Carter

Emily Carter is an Assistant Professor and Director of Academic Success at Concordia University School of Law in Boise, Idaho.

It is a common scenario. A student walks into my office with a draft of a memorandum, hoping for some insight on how to improve it. When I read the draft, I see that there are large conceptual problems that require a significant redraft. The student, however, labors under the false impression that only a few minor changes are needed. So she focuses her questions on superficial changes, such as punctuation or changed wording.

I have handled this situation poorly numerous times. All too often, I took the student's bait and answered the questions regarding superficial changes. Our conference reached only those superficial concerns, and as a result, I missed the opportunity to fix the student's larger conceptual misunderstandings.

It was only last year that I better understood how to handle conferences about problematic drafts. My school asked me to serve as a writing tutor to students in the bottom quarter of the legal research and writing sections. In this role, I held conferences with many students whose drafts suffered from large conceptual problems. Through this repeated experience, I learned a few tricks. I figured out how to move the student's focus beyond superficial tweaks so that the conferences empowered students to make meaningful improvements to their drafts. Here are a few suggestions on how to conference a problematic draft.

I. Speak plainly when diagnosing the draft's problems.

In my experience the most problematic drafts come from students who misunderstand both

the substantive law and the requirements of good writing. Point out both types of issues in the draft, and share your diagnosis in plain terms: This rule statement does not explain the law correctly—you misunderstand the law. This case illustration focuses on facts that did not determine the precedent's analysis (another understanding the law problem) and does not follow the correct structure (a writing problem).

Providing such a direct diagnosis may sound harsh, but it permits the student to move her attention from superficial issues to larger ones. After my diagnosis, I move into a supportive role, trying to quell the student's anxiety.¹ I tell the student that I can help both with understanding the law and with mastering writing concepts, and I assure the student that it is very common for novice legal writers to encounter these sorts of problems. Often a student is comforted by the fact that she is not the only one who faces an adjustment to legal writing.

Beyond quelling anxiety, the conference must also motivate the student. Resolving the draft's larger issues will require a greater measure of time and energy than the student was planning to commit. After all, the student came to discuss minor tweaks, believing that very little work remained in completing the assignment. So, I make sure to explain why the student should make additional efforts to resolve the draft's larger issues.

I tie resolution of the draft's larger problems to both short- and long-term goals. In the short term, tap into the power of points for the grade. Remind the student that tackling these issues head on will

“I figured out how to move the student's focus beyond superficial tweaks so that the conferences empowered students to make meaningful improvements to their drafts.”

¹ Anxiety inhibits meaningful learning. See, e.g., James B. Levy, *Legal Research and Writing Pedagogy—What Every New Teacher Needs to Know*, 8 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 103, 107 (2000).

“I encourage my students to begin fixing the big problems as we sit there together ...”

produce the greatest point gain on the assignment. Plus, in the longer term, resolving these macro issues will better prepare her for practice—it is not possible to be an effective practitioner if you misunderstand the law or lack effective writing skills. And practitioners need the grit to draft and redraft as a case or transaction develops.

II. Shore up legal misconceptions.

Next, work through both understanding the law and the writing problems with the student. To shore up legal misconceptions, I follow several steps. First, I work through the draft explaining how the reader will learn the incorrect law from the student's text. We read the student's text together, and I state explicitly what the reader would understand is the law. Then, if possible, I provide an authority for the student to compare, giving the student time to read the pertinent part of the authority and discuss how the authority frames the law. This is usually a “light bulb” moment. By seeing the difference between her draft and the authority, she gains insight into how to make her work better.

III. Resolve the writing problems.

Next we work on the draft's writing problems, for example, a difficult-to-parse rule statement or an analysis that is unclear. I work first to demonstrate that the text as written creates difficulty for the reader. When the student understands the reader's difficulty, she is in a better position to resolve the problem.²

To demonstrate why the reader will have difficulty understanding the text, I play act the role of the reader—I read aloud portions of the draft to illustrate that they fall short of the reader's needs. My play acting is specifically aimed to develop the student's awareness of a writing convention. Rule statements are a common problem area. When an assignment involves a rule that requires discussion of several legal concepts, students often draft one mega-sentence covering all of the concepts at

once. So when I come across this overly complex sentence, I stop, turn around, go back, and read again—aloud. After seeing me trip over the rule as drafted, the student recognizes that it makes sense to use multiple sentences to describe a complex rule.

My play acting of the reader also includes verbalizing questions the reader would have. I ask questions that remain in my mind as the reader. When reading a rule statement, I might ask aloud: “How does [principle A of the rule] relate to [principle B of the rule]?” Suddenly, the idea of using a transition word between legal principles makes sense to the student.

Another common problem area is analysis. Students often use analogical reasoning that requires far too much of the reader. In perfunctory fashion they compare one of the client's facts to a case name (i.e., the client's case is like *Smith v. Jones*), assuming the reader will draw the necessary comparison or distinction. So, in my play acting, I read the conclusory analysis and then ask myself—what were the key facts of *Smith v. Jones*? Then I trace my finger back up to the case illustration for *Smith v. Jones* and begin to read it aloud again. This allows the student to understand why the analysis must restate the specific fact from the precedent case upon which the comparison relies. After working through the students' misconceptions of the law and after seeing me play act the reader, the student's attention is squarely focused on the draft's big problems. Now comes the hard work of fixing the draft.

IV. Encourage the student to verbalize.

I encourage my students to begin fixing the big problems as we sit there together—I challenge the student to create an oral rough draft. Using this approach, I have the student talk me through the new analysis. This approach offers several benefits. First, the student's focus moves past the problematic draft and into creating new analysis. With me guiding the discussion, the student cannot work endlessly on fixing the draft's little problems; rather, the student must tackle head on the big problems we have identified. And talking through the new analysis gives the student the necessary confidence to rework the draft once she has left my office.

² Understanding the text from the reader's perspective helps students improve their drafting. Patricia Grande Montana, *Better Revision: Encouraging Student Writers to See Through the Eyes of the Reader*, 14 *Legal Writing* 291, 310-20 (2008).

Second, this approach forces the student to take into account the reader's needs. Struggling writers often use so much mental power to understand the authorities that they miss the need to write for a particular audience. When a student talks through the new analysis, she cannot avoid the reader's needs. You are sitting right there.

Lastly, the oral rough draft helps cement the student's increased understanding in a very time-effective way. Few students would be equipped to redraft a section in a few minutes in our offices. In fact, few of us instructors would be able to do that. However, it takes just a few minutes for a student to orally run through a new rule, a new case illustration, or a new segment of analysis takes just a few minutes. Once the student has provided an effective oral rough draft, I congratulate her and give her a moment to make some notes on drafting the new version.

V. Free the student of the bad draft.

In the last few minutes of the conference, I address explicitly how to move forward from the problematic draft. I explain that the current draft is holding the student back; it reflects a level of thinking that she has now moved beyond. I encourage the student to take advantage of her clarified thinking and produce an even better version of the assignment.

I also provide the student with coping mechanisms to ease the emotional consequences of deleting her work. Students often struggle to cut large swaths of text from their drafts, having labored so hard to compose them. I tell students that with my own writing, I often cut and paste problematic portions of a draft into a new document. Those problematic portions are still there as a security blanket. However, since I am back to a blank page in that section of my draft, I am freed of my previous cloudy thinking.

Before the student walks out the door, we work on an overall game plan. I hand over a sticky note and have the student draft a "to do" list covering the changes to the draft that we discussed during the conference. This serves as a final conceptual check enabling me to assess whether the student has grasped the takeaways from our conversation. And, as an added benefit, the student walks away with concrete guidance written in her own words.

Armed with these tactics, the student walks away from the conference ready to push past the problematic draft into better writing.

“[A]s an added benefit, the student walks away with concrete guidance written in her own words.”

Micro Essay

Who Will Teach Them to Wear Shoes?

I spent time last summer interviewing attorneys around my State to find out how our students were doing in professional legal settings. Most were pleased with the quality of the work our students produced, but many wanted to talk with me about a lack of professionalism that they've seen creeping into their law firms, courthouses, and other legal offices. One attorney asked if I could teach our students to wear "real shoes" instead of flip-flops to the office. Who will teach them to wear shoes? Those of us who wear shoes, I suppose. After all, won't our students be filling ours someday?

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A Quick Word About Technology Competence: The University at Buffalo School of Law's Microsoft Word Training Program

By Brian Detweiler

Brian Detweiler is the Student Services Librarian at the University at Buffalo School of Law

"Why hire a lawyer who doesn't even have the technological competence to complete simple, everyday tasks like converting a Microsoft Word document into a PDF?"

—U.S. Magistrate Judge John Facciola¹

The goal of providing law students with the skills they need to practice upon graduation is certainly not a new one,² but it has taken on an increased urgency in what continues to be a highly competitive job market.³ Today's rapidly evolving practice environment means that the skills graduates will need are also changing. No longer will the lawyer's cornerstone abilities of being able to analyze complex legal issues and communicate effectively be sufficient; today's graduates must

also possess the technological competencies to work ethically⁴ and efficiently in their new positions.⁵

As part of the effort to produce practice-ready graduates, librarians at the University at Buffalo School of Law (UB) have developed an informal yet robust program to help our students learn the document formatting skills they will need, both for law school and in their legal careers.⁶

Background

The Legal Writing, Analysis, and Research (LAWR) faculty at UB observed that many first-year law students lacked the word processing skills needed to complete the writing assignments they receive in their LAWR classes. The curriculum demands that students acquire these skills almost immediately because LAWR begins during

¹ Joe Dysart, *Learn or Lose: Catch up with Tech, Judges tell Lawyers*, A.B.A. J. (Apr. 1, 2014, 8:00 a.m.), http://www.abajournal.com/magazine/article/catch_up_with_tech_or_lose_your_career_judges_warn_lawyers [<https://perma.cc/BAM3-KHP7>].

² ALFRED Z. REED, REVIEW OF LEGAL EDUCATION IN THE UNITED STATES AND CANADA FOR THE YEAR 1929 3 (1930) ("[Y]ounger practitioners, recently graduated from our leading law schools ... are mortified by the gap which they find exists between acquisition of a law degree and practical competency to serve authentic clients.")

³ Kyle McEntee, *Law Grads Still Face a Tough Job Market*, BIG L. BUS. (May 4, 2016) <https://bol.bna.com/law-grads-still-face-a-tough-job-market/> [<https://perma.cc/S2LJ-5RVU>].

⁴ MODEL RULES OF PROF'L CONDUCT r. 1.1 cmt. 8 (AM. BAR ASS'N 2016) ("To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject."); see also Robert Ambrogi, *Another State Adopts Duty of Technology Competence; Makes it 26*, LAW SITES, <http://www.lawsitesblog.com/2016/12/another-state-adopts-duty-technology-competence-makes-26.html> (Dec. 28, 2016) [<https://perma.cc/DGC9-5524>].

⁵ See Simon Canick, *Infusing Technology Skills into the Law School Curriculum*, 42 Cap. U. L. Rev. 663, 666 (2014) (Noting that graduates entering solo and small firm settings may need additional technology training, and even large firms "are increasingly unwilling to provide training to incoming associates and demand attorneys who can hit the ground running.")

⁶ AM. BAR ASS'N, 2014 LEGAL TECHNOLOGY SURVEY REPORT, II-50 [hereinafter ABA TECHNOLOGY SURVEY] (94 percent of lawyers surveyed use word processing software for law-related tasks). We also cannot assume that our graduates will be able to learn these skills on the job, as more than half of solo practitioners and 41 percent of lawyers working in firms employing fewer than ten attorneys indicated they have no technology training available in their office. *Id.* at I-29.

“[M]any first-year law students lacked the word processing skills needed to complete the writing assignments ...”

orientation week, and the instructors want to focus on writing and analytical skills rather than spend limited class time discussing the intricacies of formatting documents in Microsoft Word.

The LAWR faculty conveyed this need to the law library director, and a Microsoft Word training session was incorporated into the law school's 1L orientation program. Upon request, the LAWR faculty furnished a list of basic Word skills they wanted the students to master (see below) at the outset of their law school journey. The rest was left in the hands of the librarians.

1L Word Skills:

- Changing font type and size
- Using small caps
- Adjusting line spacing
- Adding or removing spaces before or after a paragraph
- Inserting nonbreaking or “hard” spaces
- Inserting symbols
- Indenting paragraphs and headings
- Justifying indented paragraphs for block quotes
- Setting margins
- Creating and customizing outlines
- Finding and replacing words
- Using spelling and grammar check
- Managing AutoCorrect and other proofing options
- Turning off superscript for ordinals (1st, 2nd, 3rd)
- Enabling passive voice notification
- Using shortcut keys
- Inserting page numbers
- Changing page number font
- Inserting page breaks
- Changing pagination within the same document
- Creating or designating headings
- Creating a table of contents
- Updating a table of contents
- Marking citations
- Creating a table of authorities
- Enabling text-to-speech
- Tracking changes

Our Experiences

In my role as Student Services Librarian, I have been closely involved with our Associate Director, Terry McCormack, in planning, preparing, delivering and refining our presentations. Together we decided that it would be easier in terms of duplication and dissemination to create PowerPoint slides ahead of the lecture rather than simply opening a Word document and demonstrating each skill live. This was necessitated initially by our need to teach the skills on both PC and Mac,⁷ but using the slides also ensures we can cover the material within the thirty minutes allotted by law school administration. Last, and perhaps most important given the amount of information the students are expected to retain during orientation, the slides provide the students with a resource they can access later via the law library's Student Services page.⁸ After teaching these sessions for three years, Terry and I still meet at least once before orientation to reflect on how we can improve upon

⁷ We always ask at the start of our presentation, by a show of hands, how many students use PC versus Mac, and for the first time this year, more than half of our incoming first-year J.D. students indicated that they use Mac. See also Tom Lambotte, *Highlights: 2015 Apple at Law User Survey, ATTORNEY AT WORK*, <https://www.attorneyatwork.com/highlights-2015-apple-at-law-user-survey/> [<https://perma.cc/T2CE-5HAH>] (Dec. 17, 2015) (29 percent of survey respondents work in Mac only offices, while 22 percent work in mixed Mac and PC offices).

⁸ We erred on the side of including more visual information on our slides than we might have otherwise, as we wanted the visuals to suffice on their own when they were accessed by our students later in the semester. See *Services for Students*, CHARLES B. SEARS LAW LIBRARY, <http://law.lib.buffalo.edu/aud/students.asp> [<https://perma.cc/V3YC-4WL6>] (last visited Sept. 24, 2016), to access our materials.

“[T]he LAWR faculty furnished a list of basic Word skills they wanted the students to master ...”

the previous year's presentation and ensure that our slides are as clear as possible for the students.

While presenting, we take affirmative steps to keep the students engaged from the start by showing them how easily preventable formatting errors will needlessly cost them points on their assignments. Nevertheless, we are often met with glassy stares as we teach the most basic aspects of the software to ensure that all of the students possess at least a baseline level of competency. However, once the presentation shifts to the more complex or less commonly used features of Word, there is a noticeable change among the group as even the more adept students begin to sit up in their chairs and take notes.⁹ After covering all of the skills requested by the LAWR faculty, we set aside a few minutes for questions and close our presentation by strongly advising the students to contact us directly with any formatting questions that arise as they work on their assignments.

Expansion

After receiving positive feedback from the LAWR faculty, we have expanded the program by producing a series of short instructional videos using Camtasia to reinforce what the students learn during Orientation. For each video, we write a script and then record ourselves demonstrating the skill in Microsoft Word. Once we are pleased with the final product, we upload the videos to YouTube and embed them in an online guide linked from our Student Services page.¹⁰ These videos range from thirty seconds long for basic skills like inserting hard spaces, to over seven minutes for more complicated concepts like

⁹ Most incoming students are already familiar with word processing software and other technology from their personal lives and previous educational experiences, but their actual competency is "shallow" and insufficient for the practice of law. Simon Canick, *Technology in Law School Curriculum*, 42 CAP. U. L. REV. 663, 665 (2014).

¹⁰ *Microsoft Word 2016*, UNIVERSITY AT BUFFALO LIBRARIES, <http://research.lib.buffalo.edu/word> <http://lawlib.buffalo.libguides.com/word> (last visited Jan. 27, 2017). See *Microsoft Word Skills*, CHARLES B. SEARS LAW LIBRARY, <http://lawlib.buffalo.libguides.com/word> [<https://perma.cc/N2K4-9VJD>] (last visited Sept. 24, 2016), for videos demonstrating skills in Word 2013 for PC and Word 2011 for Mac.

creating a table of authorities. We attempted to make the videos as concise as possible while still demonstrating each skill clearly. Like our slides, the goal of the videos is to provide information for our students where and when they need it, such as when they are formatting an appellate brief for class at 1:00 a.m. on the morning it is due.

In addition to the instruction we provide to our first-year students, I teach practice-related Word skills to our upper-level students in the law school's Clinical Legal Education and Pro Bono Scholars programs. These sessions reinforce the students' initial training by providing a refresher on some of the formatting skills they learned for LAWR. More importantly, however, we branch into new areas such as using Word's collaboration tools,¹¹ managing styles,¹² protecting¹³ and comparing documents,¹⁴ removing metadata and personal information,¹⁵ and converting documents to PDF.¹⁶ I also include some non-Word practice pointers, such as disabling Microsoft Outlook's default send message shortcut,¹⁷ and remind them to check online for

¹¹ See Edward Mendelson, *Collaboration is Easier Than Ever With Office 2016*, PC MAG., Nov. 2015, at 76, https://ia800202.us.archive.org/34/items/PC_Magazine_November_2015_USA/PC_Magazine_November_2015_USA.pdf.

¹² See *Customize Styles in Word*, MICROSOFT, <https://support.office.com/en-US/article/Customize-styles-in-Word-d38d6e47-f6fc-48eb-a607-1eb120dec563> [<https://perma.cc/33ZF-EP4S>] (last visited Oct. 24, 2016).

¹³ See *Password Protect a Document*, MICROSOFT, <https://support.office.com/en-us/article/Password-protect-a-document-0e75c77e-dfab-419d-97d1-62c8ea10f874> [<https://perma.cc/S4FB-MJY2>] (last visited Sept. 28, 2016).

¹⁴ See Melanie Pinola, *How to Compare Documents Side-by-Side in Word 2016 and Prior*, LAPTOP MAG., Mar. 18, 2016, <http://www.laptopmag.com/articles/compare-docs-microsoft-word> [<https://perma.cc/9RA8-Z8P4>].

¹⁵ See *Remove Hidden Data and Personal Information by Inspecting Documents*, MICROSOFT, <https://support.office.com/en-us/article/Remove-hidden-data-and-personal-information-by-inspecting-documents-356b7b5d-77af-44fe-a07f-9aa4d085966f> [<https://perma.cc/Q5SF-2KAP>] (last visited Sept. 27, 2016).

¹⁶ See Ben M. Schorr, *Getting the Most Out of Microsoft Word*, 38 LAW PRACTICE MAG., Mar. 2012, at 60, http://www.americanbar.org/publications/law_practice_magazine/2012/march_april/get-the-most-out-of-microsoft-word.html [<https://perma.cc/2T7K-FDA5>].

¹⁷ Hitting Ctrl + Enter when there is a recipient in the address field will cause outlook to send a message automatically unless this feature is disabled by selecting File>Options>Mail, then deselecting the box under the Send Messages heading. See Bruce E. Jameson, *Technology*

“[T]here is a noticeable change among the group as even the more adept students begin to sit up in their chairs and take notes.”

guidance on formatting, page limits, and other information from courts and individual judges.¹⁸

Many of these skills become critically important once the students begin communicating with clients and opposing counsel.¹⁹ For instance, the ethical ramifications of failing to remove comments or tracked changes containing privileged information could be catastrophic for our clients, our students, and the Clinic.²⁰

Evolution

I have presented the Clinic and Pro Bono Scholar training sessions in person for the past two years. To improve the training, I am developing a flipped classroom model for our upper-level students this semester. I will create a short voice-over PowerPoint presentation for the students to watch before class emphasizing the skills they did not learn as first-year students. After which they will be directed to look over the list of Word tutorial videos to review any skills they may have forgotten.

During class, the instructor will provide the students with one or two unformatted Word documents with comments and tracked changes that they will need to format and sanitize according to our directions. The instructor and I will both be available to answer questions, but the students will need to demonstrate their mastery of the skills to complete the assignment.

This more self-directed format should help ensure that the students truly grasp the material.²¹

Conclusion

We strive to create material that will be engaging and helpful for our students, while also meeting the curricular needs stipulated by our faculty. Not only do the students learn skills they will likely use on a daily basis in their careers, we have created informational resources that they, and the general public, can access anytime they need assistance from our website. Given its near ubiquitous use in the legal profession,²² Microsoft Word training has provided us with an excellent entry point into more in-depth technology competence training. Our next tasks will build on these offerings by expanding into other areas, such as Adobe Acrobat and other aspects of the Microsoft Office Suite, and to continuously reevaluate and adapt our existing instruction and support to ensure we are doing everything we can to meet the evolving needs of our students, both academically and professionally.²³

“[T]he ethical ramifications of failing to remove comments or tracked changes containing privileged information could be catastrophic for our clients, our students, and the Clinic.”

Competence for Lawyers: Not an Oxymoron, 32 DELAWARE LAW, Fall 2014, at 18.

¹⁸ E.g., *Hon. Charles J. Siragusa*, U.S. DISTRICT CT. FOR THE WESTERN DISTRICT OF N.Y., <http://www.nywd.uscourts.gov/hon-charles-j-siragusa-0> [<https://perma.cc/5QLR-9LKJ>] (last visited Oct. 24, 2016) (“Judge Siragusa ... does not find string citations to cases useful.”); *Rules of the Appellate Division Fourth Department*, N.Y. STATE UNIFIED CT. SYS. 16 (2012), <http://www.nycourts.gov/courts/ad4/Clerk/AD4-RuleBook-web.pdf> [<https://perma.cc/EK9Z-72K7>] (“Printing shall be of no less than 11-point size, and shall be double-spaced. A brief shall contain no footnotes ... [and] shall not exceed 70 pages.”).

¹⁹ ABA TECHNOLOGY SURVEY, *supra* note 6, at II-50.

²⁰ MODEL RULES OF PROF'L CONDUCT R. 1.6(c) (AM. BAR ASS'N 2016) (“A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”); see generally Herbert B. Dixon, Jr., *I Never Meta Data I Didn't Like*, 48 JUDGES' J., Spring 2009, at 37, 38-39 (citing multiple examples of “metadata embarrassments”).

²¹ Michele Pistone, *Law Schools and Technology: Where We Are and Where We Are Heading*, 64 J. OF LEGAL EDUC. 586, 597 (2015) citing BARBARA MEANS ET AL., U.S. DEP'T OF EDUC., EVALUATION OF EVIDENCE-BASED PRACTICES IN ONLINE LEARNING: A META-ANALYSIS AND REVIEW OF ONLINE LEARNING STUDIES (Sept. 2010), <http://files.eric.ed.gov/fulltext/ED505824.pdf>.

²² Jeff Bennion, *The Rage-Inducing Word Versus WordPerfect Debate*, ABOVE THE LAW (June 10, 2014, 4:02 p.m.) <http://abovethelaw.com/2014/06/the-rage-inducing-word-versus-wordperfect-debate/> [<https://perma.cc/PYT5-K3C2>] (“[WordPerfect] is the Betamax of word processing software. It has lost the race.”); ABA TECHNOLOGY SURVEY, *supra* note 6, at II-50.

²³ See, e.g., D. Casey Flaherty, *Could You Pass This In-House Counsel's Tech Test? If the Answer Is No, You May Be Losing Business*, A.B.A. J. (July 17, 2013, 1:30 p.m.) http://www.abajournal.com/legalrebels/article/could_you_pass_this_in-house_counsels_tech_test [<https://perma.cc/36Y6-NDUD>].

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The Care and Feeding of Law Student Research Assistants¹

By Alyssa Dragnich and Rachel H. Smith

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Hiring, training, managing, and mentoring research assistants can be highly gratifying. When it works well, the relationship between a professor and a research assistant (RA) can be a distillation of all the best parts of teaching legal writing. It benefits professor and student. It results in a bond of friendship and collegiality. It produces useful and thoughtful work.

But it can also go horribly wrong. The relationship can be a waste of student and professor time and energy. The professor can feel burdened, rather than assisted. The student can feel confused and underappreciated. As any professor knows who has had an RA flame out, taking months of time and energy with her,² the relationship has to be handled with care.

The professor-RA relationship requires the professor to act not just as a teacher, but as an employer or supervisor. The mutual dependence that arises in a successful RA relationship—the professor relies on the RA and trusts her, while the RA learns skills that will be useful in law school and the workplace—means working as an RA is invaluable preparation for a career as a lawyer. By using principles of smart management, a professor can simultaneously provide an educational opportunity for a law student and

make greater progress in her scholarship and teaching materials than she otherwise might. This article discusses best practices for hiring, training, managing, and mentoring RAs.

Hiring: Choose the right student for the job, not just the student with the highest grade.

In many cases, hiring a former student as an RA is a wise decision. As Rachel Stabler, Professor of Legal Writing at the University of Miami School of Law, notes, “A resume tells an incomplete story. When I hire an RA, I want to hire someone who has a good work ethic. It’s hard to get a sense of work ethic by looking at a resume alone because grades alone don’t indicate work ethic; some of the hardest working students I’ve taught have had mid- to low-range grades. But by hiring a student you’ve already taught, you already know what quality of work you can expect.”

She also explains that a personality fit between professor and RA is essential: “The other thing I’m looking for is an RA who I know I get along with and is comfortable with me. That way, the student will feel free to follow up if I’ve done a poor job explaining my request or if the student encounters troubles along the way. Because I find these to be important qualities for an RA, I prefer to hire students I already know.”

One approach some professors take to hiring an RA is to simply offer the position to the student who received the highest grade in legal writing. This student is certainly capable of doing excellent work as an RA.³ But the student with the highest grade will often be a student who also does well in other

¹ No research assistants were harmed in the writing of this article.

² One author had an RA leave a summer’s worth of research in the trunk of his car as it sat in long-term parking at the airport for a month.

³ We have noticed that these high-achieving students are sometimes more likely to have accepted old-fashioned ideas about the status of legal writing and legal writing professors. A student who on some level assimilates that legal writing and its professors are less important than other law school topics and faculty may devote less time or and mental energy when working as a legal writing RA.

“By using principles of smart management, a professor can simultaneously provide an educational opportunity for a law student and make greater progress in her scholarship ...”

classes. This student typically has many opportunities in law school to expand her skills and fill out her resume. She will be on law review, she will participate in moot court, she will have an internship and work for a clinic, possibly even simultaneously. Hiring this student will give another accolade to a student likely to have many. And it may result in an RA who has so many tugs on her time and attention that she cannot devote much energy or focus to her work as your RA.

A more holistic hiring approach that seeks to hire the student with the most potential for the position will result in RAs with more to offer and more to gain.⁴ So instead of hiring based on grades alone, we recommend considering a combination of the following:

1. which student will have the most time, energy, and enthusiasm to devote to the position;
2. which student will be easiest to work with on a personal level;
3. which student brings life experience or nonlegal skills to the position that will be of value; and
4. which student might benefit the most from the position.

Legal writing professors are perhaps unique among law professors⁵ in that we often hire RAs for two very different purposes: 1) in the more traditional vein to assist with our scholarship and 2) to assist us in developing new legal writing problems and “beta testing” new materials.⁶

Because legal writing professors often ask RAs to do more than academic research, we need students with more diverse skill sets and aptitudes than traditional law school RAs. Thus, a student with mixed, middling, or even poor law school grades

may have much to offer as a legal writing RA. And because these students may not have as many opportunities as students at the top of the class, they are often especially grateful to be selected and willing to devote extraordinary amounts of time and effort to the professor’s requests.

For example, a legal writing professor who hires an RA to beta test a new problem may be better served by a student who performed near the middle or bottom of the class because such a student will be able to provide the professor more accurate feedback about how the majority of students will understand the problem.⁷ And a legal writing professor who is developing a new problem may find an RA with a strong creative streak more helpful in fleshing out fictional characters, events, and documents, even if that student didn’t receive a high grade in legal writing. A professor who needs an RA to create elaborate exhibits for an appellate record might consider applicants’ knowledge of Adobe and other graphic design programs. If the professor is seeking assistance with a more traditional law review article, she may value a high grade in the legal writing course or experience on a law journal. That professor may also look for an RA with a background in the field, or at least one who is strongly interested in the topic.⁸

Finally, professors should be aware of the gender and race of the RAs they hire. Perhaps without realizing it, a professor may default to hiring students who remind the professor of themselves. If this is not questioned,

“Because legal writing professors often ask RAs to do more than academic research, we need students with more diverse skill sets and aptitudes than traditional law school RAs.”

⁴ Kelly Studer, *The 70% Principle for the Perfect Hiring Fit* (Aug. 18, 2014), LinkedIn, <https://www.linkedin.com/pulse/20140818172532-4666885-the-70-principle-for-the-perfect-hiring-fit>.

⁵ Suzanne E. Rowe, *Effective Research Assistance and Scholarly Production in Legal Writing*, 3 LEGAL COMM. & RHETORIC: JALWD 192, 192 (2006).

⁶ Some legal writing professors may also use teaching assistants, who are responsible for interacting with first-year legal writing students.

⁷ Similarly, Carrie Sperling and Susan Shapcott recommend hiring as teaching assistants the students who make the most dramatic improvement, rather than those who are naturally the strongest writers. “When hiring teaching assistants, professors might focus on students who have overcome early difficulties in their writing. Hiring teaching assistants based on how much their writing improved over the course of a year demonstrates that we value the learning process rather than some innate ability that certain students possess. Teaching assistants who overcame perceived failures will also have good stories to tell the incoming students about their own struggles and how they refocused their efforts to eventually succeed.” Carrie Sperling & Susan Shapcott, *Fixing Students’ Fixed Mindsets: Paving the Way for Meaningful Assessment*, 18 LEGAL WRITING: J. LEGAL WRITING INST. 39, 82-83 (2012).

⁸ Harriet Richman and Steve Windsor, *Faculty Services: Librarian-Supervised Students as Research Assistants in the Law Library*, 91 LAW LIBR. J. 279, 284 (1999).

“Because being an RA may be a student’s first legal job (or even her first professional job of any kind), the professor should spell out her professionalism expectations as part of training a new RA.”

the professor may hire a disproportionate number of students of one race or gender.

Training: Be explicit about your expectations.

A professor may need to invest significant time in training an RA. Working as an RA may be the first time a human being is actually relying on the student to complete any kind of legal work. Some RAs may not realize that the professor will need to use their work product and will depend on it to be accurate. We have had RAs who at first viewed their RA assignments like ungraded class assignments, thinking of them more for their own benefit than as something that needed to be useful to the professor.

The professor should work to be explicit about her expectations. After hiring an RA, the professor should schedule a face-to-face meeting to discuss the goals and timeline for the project. The professor should put the project in context for the RA and explain her goal: Is she preparing a law review article, a conference presentation, or a legal writing problem? The professor should also let the RA know the broad schedule for the project: Is the goal to use this new problem in the fall semester, or to submit a final version of an article in February?

Taking the time to explain the project’s background will not only help your RA be more effective, but it will also make the RA feel a sense of connection with the work.⁹ Brian Goldenberg, who worked as an RA for three different professors while in law school, says, “I really appreciated when the professor took the time to give me an overview of their project and how my assignments fit into the big picture. It helped guide my research, and it made me feel like I was making a tangible contribution to the project.”

Because being an RA may be a student’s first legal job (or even her first professional job of any kind), the professor should spell out her professionalism expectations as part of training a new RA. For example, the professor may want to specify that the student should notify the professor in advance if she anticipates missing a deadline. We like to provide

⁹ Rodd Wagner and James K. Harter, 12: THE ELEMENTS OF GREAT MANAGING 109 (The Gallup Organization 2006).

students with two reference books before they start working. Both are quick and fun reads that provide practical advice for junior attorneys and are largely applicable to RAs: *The Curmudgeon’s Guide to Practicing Law* by Mark Herrmann and *The Legal Writing Survival Guide* by Rachel H. Smith.¹⁰ This provides RAs with a more thorough review of professionalism expectations without the professor having to mention each individually.

Managing: Make assignments meaningful and hold RAs accountable.

The best advice for working with an RA is to provide instruction and be clear about what you want from the RA. As we know from our classes, “[s]tudents produce better results when they know exactly what is expected.”¹¹ Kathleen Elliot Vinson, Professor of Legal Writing and Director of Legal Writing, Research, and Written Advocacy at Suffolk University Law School, advises professors to be “be specific regarding what you are asking the RA to do, when the deadline is, what format you want it in, etc.”¹²

The professor should know what type of work product she wants and be precise in describing it to the student.¹³ Some assignments might call for an emailed summary of a student’s research results, while for others a quick verbal update will suffice, and for some projects, the professor may want a formal memo.

As part of training, the professor should consider giving the student an example of past RA work product. If the RA is asked to summarize a number of opinions, the professor could provide her with a summary that another RA wrote on a different topic. If the professor doesn’t have any past work to

¹⁰ Rachel doesn’t assign her own book (too modest!) but Alyssa does.

¹¹ Rowe, *supra* note 5, at 194.

¹² We are often surprised by the exquisite detail that RAs require when presenting them with new assignments. For example, one author spent twenty minutes describing the substance of the research she wanted her RA to do. The student was nodding and taking notes. And at the end of this description, the RA asked, “so I would be using Westlaw for this?”

¹³ Rowe, *supra* note 5, at 195.

offer, she could draft a summary herself of a sample case. At each step, the clearer the professor is about her expectations, the more likely it is that the RA's work product will match those expectations.

The professor must remember that an RA's legal research skills will likely still be fairly basic. Most law students have never written a law review article—many haven't even read one. And they certainly have not created a legal writing problem before. But this inexperience doesn't mean that RAs should be given only simplistic tasks. Professors should strive to make students' tasks meaningful and substantive where possible. This does not mean that no administrative or less interesting tasks should be assigned—after all, part of an RA's role is to take some of that load off the professor's shoulders—but the best RA relationships consist of more than menial tasks.¹⁴ Brian Goldenberg says, "I learned a lot about writing when professors included me in their writing processes. It was helpful to see how different professors approach writing, and how they would work an idea up from a sketchy outline to a finished product. I also enjoyed editing for my professors. I learned a lot about style just from seeing which of my suggested edits my professors incorporated into the final product and which ones they rejected."

Depending on personality and working style, professors may choose how closely they wish to manage their RAs. Some may be eager to work closely and frequently with students, while others may want to give students more freedom. Both approaches can work well, as long as the professor is clear about her expectations and deadlines.¹⁵ All humans work better with specific deadlines. And professors should make sure students understand when a deadline is somewhat flexible and when it is firm.

¹⁴ Some professors believe that "busy work" such as photocopying and compiling notebooks is not appropriate for a RA; others feel that if the professor would herself otherwise be doing these tasks, then freeing up that time is valuable. Rowe, *supra* n.5, at 194. In fact, the RA may even enjoy some "easier mental lifting as a break" between more challenging tasks. *Id.* Of course, an RA should not be turned into solely an administrative assistant.

¹⁵ Rowe, *supra* note 5, at 196.

When one of the authors first hired an RA, she knew he was also interning with a federal judge. She tried not to set deadlines for him, reasoning that he knew his schedule best and because he was very responsible, she thought he should be allowed the greatest freedom. However, she was surprised when the RA told her he *wanted* her to set deadlines for him: it helped him to prioritize his work. In her attempt to be nice, she was actually doing him a disservice.

Christina Frohock, Professor of Legal Writing at the University of Miami School of Law, allows her RAs to work quite independently: "I look for students who are smart, self-sufficient, and self-motivated. I tell my RAs on the first day: I don't care where you work or when you work; I only care that you finish your work. So I don't insist that they work during certain hours of the day or that they stay on campus or that they appear at a finger's snap. I trust that they are doing good work, wherever they are. Our working relationship is based on mutual respect: I give them space, and they give me their completed assignments. Then we meet periodically (usually over lunch—my treat)."

A professor may want to schedule a standing meeting with her RA, or at least a regular email check-in. Suzanne Rowe writes that a "surprising benefit" of scheduling regular meetings with RAs is a reduction in the number of drop-by visits to the professor's office, thus reducing the number of interruptions and allowing the professor to be more productive.¹⁶ Setting regular check-ins will also make sure that both the professor and the RA stay on pace, and that if the RA is veering off on the wrong track, the professor can redirect her before too much time is wasted.

Mentoring: Provide and solicit feedback.

Serving as an RA should prove beneficial to the student as well as the professor, beyond whatever small salary or academic credit the school offers. Being an RA provides an opportunity for a student to work closely with a professor, in contrast to

¹⁶ Rowe, *supra* note 5, at 193.

“All humans work better with specific deadlines.”

“We know that students learn best when they receive frequent, formative assessment, and this is also true in the workplace. Professors should be candid about problems and generous with praise.”

large law school classes. The professor can write a stronger letter of recommendation for the student, and in many cases, the position evolves into a mentoring relationship. In most cases, working as an RA strengthens and refines a student’s research skills,¹⁷ both serving as a resume enhancer and as a benefit to their future professional careers.

For the student to get the full benefit of being an RA, the professor should provide substantive feedback, in a timely fashion, throughout the RA’s term. We know that students learn best when they receive frequent, formative assessment, and this is also true in the workplace. Professors should be candid about problems and generous with praise.¹⁸ A professor should tell her RA what she is doing well and what she would like her to change. If the RA’s work product is written, provide feedback on the writing style as well as the substance. In order to provide a meaningful educational experience for the RA, useful feedback is essential.

The professor should take care to respond to an RA’s communications quickly. Particularly over the summer months, a professor may be juggling several projects, and she may not be ready to review an RA’s work product at the precise moment it is submitted. However, not reviewing work product in a timely manner can send a wrong message that the work is not important or valued. Responding promptly tells the RA that she and her work are important to you,¹⁹ even if the professor does not have time to do a thorough review of the material at that time.

The professor should also provide feedback to the RA on professional behavior, if needed.²⁰ If an RA’s work or behavior is not what the professor expects, the professor should resist the temptation to just redo the work herself or shift tasks to another assistant. She should instead embrace the teaching opportunity and prepare students for their post-law-school careers, if necessary. “Whether you are comfortable with the

label or not, you are the ‘boss’ and you must act like one.”²¹ A failure to correct problems as they arise is “not only bad for your projects, classes, and career,” but also fails to teach the RA what acceptable workplace behavior and work product is, which could comprise her future career.²²

Anne Mullins, Assistant Professor of Law at the University of North Dakota School of Law, says that “[w]orking with an RA provides a rich opportunity to intentionally teach some of the things that are critical to success in the workplace but frequently not taught in traditional law school classes—things like project management, teamwork, and handling workplace challenges. I start the relationship by putting the experience in a growth mindset context: I do not expect perfection; I expect professionalism, diligence, integrity, and accountability. I’d much rather the student navigate his first missed deadline with me than at the law firm over the summer. When the RA faces a challenge, like a missed deadline, it gives me an opportunity to encourage the RA to think about the situation and how he handled it, and to guide the RA on how to more effectively handle the situation in the future. Small interventions like this create more reflective lawyers, and more reflective lawyers are happier and more effective lawyers.” And among all these “teachable moments,” don’t forget to offer plentiful praise as well. Praise costs nothing but is highly significant to the RA, meaning that she is likely to work even harder for you in the future.²³

The professor should make clear to the RAs that she also seeks their feedback.²⁴ If they are testing a new legal writing problem, the professor needs to know which aspects they found confusing or unclear, if they ran into difficulty with the research, or if the word limit seemed unreasonable. If they are conducting research for scholarship, the professor wants to know quickly if they are finding no results,

¹⁷ Richman, *supra* note 8, at 288.

¹⁸ Victor Lipman, *THE TYPE B MANAGER: LEADING SUCCESSFULLY IN A TYPE A WORLD* 56 (Prentice Hall Press 2015).

¹⁹ *Id.* at 68-69.

²⁰ Rowe, *supra* note 5, at 196-97.

²¹ David D. Perlmutter, *Supervising Your Graduate Assistants*, *The Chronicle of Higher Education* (June 19, 2008), <http://chronicle.com/article/Supervising-Your-Graduate/45859>.

²² *Id.*

²³ Lipman, *supra* note 18, at 84.

²⁴ Rowe, *supra* note 5, at 196.

if they find a new case that might radically affect the theory of the article, and so on. Professors should be clear that they want to have a two-way dialogue.²⁵

Finally, we encourage professors to take an interest in their RAs as people.²⁶ When the professor and RA work well together and a mentoring relationship develops, it benefits both professor and RA. And a professor and RA who share details about their lives beyond work can develop a meaningful professional friendship.

Conclusion

The relationship between a professor and an RA offers both the professor and the student an incredible opportunity for personal and

professional growth. “[A] good assistant, one who really helps advance your teaching and research, is valuable to almost an immeasurable degree.”²⁷ But RAs require careful training and attention. Very few law students instinctively know how to be an excellent RA. It is part of our role as teachers and mentors to show them.

²⁵ Employees appreciate when their opinions are valued, and they will produce better work product as a result. Wagner & Harter, *supra* note 9, at 91-107.

²⁶ Michael Hunter Schwartz, Gerald F. Hess & Sophie M. Sparrow, *WHAT THE BEST LAW TEACHERS DO* 93-95 (2013).

²⁷ Perlmutter, *supra* note 21.

“The relationship between a professor and an RA offers both the professor and the student an incredible opportunity for personal and professional growth.”

Micro Essay

What topic isn't taught in law school but should be? **TYPOGRAPHY**. It's 2017, yet many legal documents look like the paragraph you're reading -- like a high-school essay prepared on a typewriter in 1967. Outdated formatting conventions use more paper than necessary, make on-screen reading tedious, and inhibit clear communication. That's too bad. Legal documents could apply modern typographic principles, and legal-writing professors could teach them. It might be as simple as a short module in the 1L course or as ambitious as an advanced writing class that thoroughly covers typography. Either way, we can do this.

Wayne Schiess, Senior Lecturer, University of Texas School of Law, Austin, Tex.

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Core Values in the Classroom: Preparing Students for the Emotional Challenges of Lawyering

By Tracy Turner

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After mission statements and outcomes assessment, core values could become the next frontier in innovation for law schools. Core value statements are already prevalent on the websites of private primary and secondary schools.¹ They are increasingly prevalent in colleges and universities.² And they are edging into professional schools, including several law schools.³ Core value

statements declare an interest in more than just academic achievement and intellectualism. They declare an interest in educating the “whole” lawyer by instilling the character traits that will lead to career success, emotional well-being, and service to the community.⁴ They fill a hole in legal education that has left many graduating law school students with insufficient resilience to face the emotional challenges of lawyering.⁵ This article will discuss the benefits of core values and suggest methods individual professors can use to create and implement core values at the classroom level in legal writing classes.

What are core values?

Core value statements are typically articulated as part of an institution’s mission statement and

¹ See, e.g., Coalition of Essential Schools, *Culture of Fairness and Trust*, <http://essentialschools.org/benchmarks/culture-of-fairness-and-trust/> (last visited Sept. 2, 2016) (listing development of core values as the first benchmark of a coalition school); New England Association of Schools and Colleges, Consortium on Public Secondary Schools, *Guidebook: Developing Core Values, Beliefs, and Learning Expectations* (Aug. 2009) available at https://cps.neasc.org/downloads/Getting_started/Guide_to_Core_Values.pdf (instructing member schools to develop core values); Becky Sipos, *What is Going On in Character Education? Choosing Your Core Values* (Dec. 2015) available at <http://info.character.org/blog/choosing-your-core-values>.

² The following is just a sampling of colleges and universities that have core value statements: Antioch (<http://www.antioch.edu/explore-antioch/core-values/>); Cornell College (<http://www.cornellcollege.edu/student-affairs/compass/mission-statement/>); Loyola Marymount (<http://academics.lmu.edu/strategicplan/strategicplan2012-2020/strategicplatableofcontents/corevalues/>); Northeastern University (<http://www.cps.neu.edu/discover/mission-vision-core-values.php>); Texas A & M University (<http://www.tamu.edu/about/coreValues.html>); University of Maryland (<http://www.umaryland.edu/president/core-values/>); University of San Diego (<https://www.sandiego.edu/about/mission-vision-values.php>); University of Tennessee, Knoxville (<http://haslam.utk.edu/About/core-values.asp>); University of Texas at Austin (<https://www.utexas.edu/about/mission-and-values>); University of Washington (<http://www.washington.edu/about/visionvalues/>).

³ Several law schools have core value statements on their websites including Emory Law (<http://law.emory.edu/about/strategic-plan.html>); Lewis & Clark Law School (https://law.lclark.edu/academics/mission_statement/); Northeastern University School of Law (<http://www.northeastern.edu/law/about/history.html>); Stetson University College of Law (<http://www.stetson.edu/law/about/home/mission.php>); and Thurgood Marshall School of Law (http://www.tsulaw.edu/welcome/about_tmsl.html#mission).

⁴ EDUCATING TOMORROW’S LAWYERS, FOUNDATIONS FOR PRACTICE, THE WHOLE LAWYER AND THE CHARACTER QUOTIENT 8-9 (July 2016) available at http://iaals.du.edu/sites/default/files/reports/foundations_for_practice_whole_lawyer_character_quotient.pdf

(emphasizing character traits such as integrity, work ethic, and resilience as essential to a law student’s education).

⁵ See Debra Austin, *Killing Them Softly: Neuroscience Reveals How Brain Cells Die from Law School Stress and How Neural Self-Hacking Can Optimize Cognitive Performance*, 59 LOY. L. REV. 791, 796 (2013) (suggesting that learning the values of the profession is a key missing component in legal education); Kath Hall et al., *Developing a Professional Identity in Law School: a View from Australia*, 4 PHOENIX L. REV. 19, 35-48 (2010) (arguing that law schools should teach aspects of professional identity including empathy and resilience); Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524, 535 (1998) (advocating for attention to students’ personal values); Robin Wellford Slocum, *An Inconvenient Truth: The Need to Education Emotionally Competent Lawyers*, 45 CREIGHTON L. REV. 827, 827-834 (2012) (advocating that law schools teach self-awareness, self-management, social awareness, and relationship management).

“They fill a hole in legal education that has left many graduating law school students with insufficient resilience to face the emotional challenges of lawyering.”

general goals.⁶ They are intended to guide an institution's internal conduct and external interactions.⁷ At the classroom level, we can think of a core value statement as a code of conduct for the professor and the students. Although core values can be moral, they can also be amoral character traits. Thurgood Marshall School of Law, for example, lists both moral values (integrity and fairness) and amoral character traits (excellence, learning, and cooperation).⁸

How can core values help students' self-efficacy and resilience?

In *How Children Succeed*, Paul Tough chronicles the experiences of the Knowledge Is Power Program (KIPP). KIPP is a network of college preparatory charter schools that target the needs of low income and minority students.⁹ It is devoted to helping its students achieve academic excellence through long days of high intensity instruction, attitude adjustment, and behavior modification.¹⁰ Tough explains that one KIPP school in the South Bronx achieved certain marks of success for its first graduating class in 1999, including recognition as the fifth-highest-performing school in New York City, a high graduation rate, and a high college

acceptance rate.¹¹ However, only 21 percent of the school's alumni successfully graduated from college.¹² As one alumnus explained, the transition from the high level of attention students received at their KIPP school to the self-efficacy required in college proved overwhelming.¹³ As similar results followed in subsequent graduating classes, KIPP founder David Levin noticed that the small group that succeeded seemed to share certain character traits like optimism, resilience, and social agility.¹⁴ He then worked with researchers in the developmental psychology field to develop a list of core values that included grit, self-control, zest, social intelligence, gratitude, optimism, and curiosity.¹⁵ KIPP started incorporating these values into "everything in the school, from the language people use to lesson plans to how people are rewarded and recognized to signs on the wall."¹⁶ The results were impressive. KIPP's 2005 graduating class saw a 46 percent college graduation rate, more than double the rate of the class of 1999.¹⁷

Although the benefits of core values to KIPP students is anecdotal, a comprehensive literature review by researchers at the Netherlands Organisation for Applied Scientific Research revealed a consensus that certain institutional values support better health and welfare at work including interconnectedness, participation, trust, justice, responsibility, personal growth, and resilience.¹⁸ A comprehensive study of 18 top American companies also revealed the essential role of core values in their long-term success.¹⁹

“[C]ertain institutional values support better health and welfare at work including interconnectedness, participation, trust, justice, responsibility, personal growth, and resilience.”

⁶ Antioch (<http://www.antioch.edu/explore-antioch/core-values/>); Cornell College (<http://www.cornellcollege.edu/student-affairs/compass/mission-statement/>); Loyola Marymount (<http://academics.lmu.edu/strategicplan/strategicplan2012-2020/strategicplantableofcontents/corevalues/>); Northeastern University (<http://www.cps.neu.edu/discover/mission-vision-core-values.php>); Texas A&M University (<http://www.tamu.edu/about/coreValues.html>); University of Maryland (<http://www.umaryland.edu/president/core-values/>); University of San Diego (<https://www.sandiego.edu/about/mission-vision-values.php>); University of Tennessee, Knoxville (<http://haslam.utk.edu/About/core-values.asp>); University of Texas at Austin (<https://www.utexas.edu/about/mission-and-values>); University of Washington (<http://www.washington.edu/about/visionvalues/>).

⁷ Gerard I.J.M. Zwetsloot et al., *The Core Values That Support Health, Safety, and Wellbeing at Work*, 4 SAFETY & HEALTH WORK 187, 188 (Dec. 2013).

⁸ Texas Southern University, Thurgood Marshall School of Law, About Us (http://www.tsulaw.edu/welcome/about_tmsl.html#mission).

⁹ KIPP Public Charter Schools/Knowledge is Power Program, <http://www.kipp.org/> (last visited Sept. 2, 2106); PAUL TOUGH, *HOW CHILDREN SUCCEED* 49 (2013).

¹⁰ TOUGH, *supra* note 9, at 49.

¹¹ *Id.* at 50.

¹² *Id.*

¹³ *Id.* at 51.

¹⁴ *Id.* at 52.

¹⁵ *Id.* at 76.

¹⁶ *Id.* at 95.

¹⁷ *Id.* at 102.

¹⁸ Zwetsloot, *supra* note 7, at 194.

¹⁹ JIM COLLINS & JERRY I. PORRAS, *BUILT TO LAST: SUCCESSFUL HABITS OF VISIONARY COMPANIES* 48-79 (3d ed. 1994); *see also* ERIC MOSLEY & DERICK IRVINE, *THE POWER OF THANKS: HOW SOCIAL RECOGNITION EMPOWERS EMPLOYEES AND CREATES A BEST PLACE TO WORK* 4-5 (2015) (emphasizing the importance of core values to a business's success).

“The unintended effect of excessive praise and overparenting has been the stigmatization of failure. They are not prepared for the resilience that law school and lawyering will require.”

Legal education needs core values. Many of our students have grown up in the era of excessive praise in which every feat, whether impressive or not, is celebrated loudly.²⁰ They may also have parents who constantly pushed them and oversaw their every move.²¹ The unintended effect of excessive praise and overparenting has been the stigmatization of failure.²² They are not prepared for the resilience that law school and lawyering will require.

We also know that legal education has not done enough to help students with the emotional struggles they will face. A 1986 study by G. Andrew H. Benjamin found that whereas incoming students reported experiencing depression at the same rate as the general population (3-9 percent), levels of depression rose with each year of law school.²³ By their third year, 17-40 percent of students reported experiencing depression; the range depended on the cohort and the depressive symptom.²⁴ More recently, in a 2014 survey of Yale Law students, 70 percent of respondents reported experiencing some mental health issues during law school.²⁵ The rate of depression gets even worse in the profession. A 1990 John Hopkins study found lawyers are 3.6 times more likely to be depressed than nonlawyers.²⁶ It was the worst of the 100 professions that the researchers surveyed.²⁷ More recently, a study by the ABA and the Hazelden Betty Ford Foundation found that 28 percent of

lawyers are depressed.²⁸ By contrast, 6.7 percent of the general population over eighteen years of age reported experiencing depression in 2005.²⁹

Core values will not eradicate cheating, stress, and depression among law school students. However, they might improve self-efficacy and resilience as they did for KIPP students. They might help redirect students away from their fear of failure. And they might spur motivation and risk-taking as they have in the corporate world.³⁰

How can an individual professor use core values at the classroom level?

Even in the absence of institutional core values, individual professors can incorporate core values into their teaching. I have incorporated core values into my first year legal writing and skills course for the past two years and have seen an improvement in my students' motivation and self-efficacy.

Selecting values.

My first step was to select which values I wanted to emphasize. The choice was difficult. I wanted to encourage students to develop empathy, honesty, and self-awareness and spent some time contemplating what those core values would lead me to do in the classroom. Ultimately, however, I decided that my style of teaching writing and skills most closely connected with growth mindset, grit, and responsibility. I immediately saw connections between my lesson plans and these character traits. I also knew that these traits would aid their success as future attorneys.

²⁰ RON ALSOP, *THE TROPHY KIDS GROW UP: HOW THE MILLENNIAL GENERATION IS SHAKING UP THE WORKPLACE* 3 (2008).

²¹ *Id.* at 49-65; CARL HONORE, *UNDER PRESSURE: RESCUING OUR CHILDREN FROM THE CULTURE OF HYPER-PARENTING* 258-259 (2009).

²² ALSOP, *supra* note 20, at 123-124; CAROL DWECK, *MINDSET: THE NEW PSYCHOLOGY OF SUCCESS* 71-74 (2007).

²³ G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 11 AM. B. FOUND. RES. J. 225, 247 (Spring 1986).

²⁴ *Id.*

²⁵ Yale Law School Mental Health Alliance, *Falling Through the Cracks: A Report on Mental Health at Yale Law School* 20 (Dec. 2014) available at https://www.law.yale.edu/system/files/falling_through_the_cracks_120614.pdf.

²⁶ William W. Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MED. 1079, 1079 (Nov. 1990).

²⁷ *Id.*

²⁸ Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns among American Attorneys*, 10 J. ADDICTION MED. 46, 51 (Feb. 2016) available at http://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx.

²⁹ Ronald C. Kesler et al., *Prevalence, Severity, and Comorbidity of 12-Month DSM-IV in the National Comorbidity Survey Replication*, 62 ARCHIVES GEN. PSYCH. 617, 619 (Jun. 2005).

³⁰ See COLLINS & PORRAS, *supra* note 19.

Communicating values in the syllabus.

Next, I worked on articulating the core values in my course syllabus. I explained the values a little and tried to increase student buy-in by briefly describing the research that had proven that my chosen values were linked to career success.

Syllabus Language

In addition to teaching you the specific lessons of this course, I want to help you become lifelong learners so that you can continue to grow in the years to come. Accordingly, I have adopted three core values that you will hear me emphasize repeatedly throughout the course: mindset, grit, and responsibility. Research by the authors mentioned below has connected these values to professional success.

Growth Mindset. Based on the work of Carol Dweck, a growth mindset is a willingness to accept challenge as central to the learning process rather than looking for the “easy” solutions. It also means welcoming feedback rather than fearing it. I hope to convince you that taking risks and accepting challenges that you might not yet be equipped to conquer are critical steps in your development as a lawyer.

Grit. The concept of “grit” comes from the work of Angela Duckworth and refers to a passionate commitment to a goal that perseveres through difficulty. I hope that if a time comes when you want to give up, you will dig deep and prove to yourself that you can persevere.

Responsibility. Responsibility, including diligence, integrity, self-development, and time management is also key to your future success as attorneys as proven by a 2008 Berkeley survey of over 4,000 practitioners completed by Marjorie Shultz and Sheldon Zedeck. This course will require a high level of responsibility.

Connecting core values to learning objectives and assessment competencies.

To the extent possible, I also tweaked my course learning objectives to emphasize the core values. For example, rather than just stating that students will write concisely and clearly, my syllabus emphasizes the growth mindset by stating that students “will develop and apply effective methods for improving their writing style.” The specific competencies for this objective similarly emphasize personal growth: “Students will identify their own grammar errors and develop an effective method for finding and correcting them” and “will develop an effective method for self-editing to maximize concision by, for example, avoiding wordy and complex constructions like nominalizations, expletives, and excessive use of that/which/where clauses.”

Similarly, to implement the core value of responsibility, one of my stated learning objectives is that students “will be able to meet the expectations others will have of them as a professional attorneys.” Competencies for this objective include that students will “demonstrate respect for others including on-time arrival to class, attentiveness, and avoidance of distracting behavior including chatting and surfing during class” and “will follow filing requirements (deadlines, formatting, page limits).”

And, to give myself space to emphasize the core values directly in my assessment of students, I state an objective that students “will demonstrate interpersonal and self-development skills as part of their professional identity.” Competencies for this objective include that “students will demonstrate a positive approach to challenge and feedback” and “will effectively collaborate in small groups to solve problems and share learning (in the classroom).”

Integration of core values into day-to-day teaching.

Ultimately, I knew that merely stating core values would have little impact. I needed to integrate the values in the day-to-day experience of students as they progressed through my course. I followed David Levin’s advice, quoted in the TOUGH book, that core values should be integrated into language, lesson plans, and recognition.³¹

Language. I decided to spend about twenty minutes on the first day of class introducing students to the core values I had chosen (growth mindset, grit, and responsibility). I talked a little bit about the research that has linked these values to academic and professional success. I explained that I see these as guiding principles for my interactions with students and encouraged them to view the values as guiding principles as well. As I progressed through the year with my students, I tried to use language that fosters the core values. For example, in my feedback, I tried to focus on methods of self-improvement rather than on pronouncements about their performance.

“I knew that merely stating core values would have little impact. I needed to integrate the values in the day-to-day experience of students as they progressed through my course.”

³¹ TOUGH, *supra* note 9, at 95.

I wrote, “A grammar check in Word can help you tag many of your typos and grammar errors,” instead of, “The amount of typos and grammar errors in your paper reveal a lack of attention to detail.” Similarly, I portrayed paradigms as tools to help them stay organized rather than as rigid prescriptions.³² And I portrayed attendance as an aspect of responsibility because every voice matters to the learning that we can do in the classroom.

Lesson plans. I worked the core values into my lesson plans as much as possible. For example, I introduced some anecdotes from Dweck’s book when students received their first extensive written feedback.³³ I also offered some personal stories of failure to emphasize grit when students received their first grade in the class. I organized a “grit hike” off campus early in the first semester. I invited them to meet me for a challenging uphill hike, explaining that the hike is symbolic of the challenges they would face in the course. Although the hike was primarily a social event, it also helped remind them that they are used to challenges in their lives and they have the strength they need to persevere.

Back in the classroom, I used formatting requirements and citation conventions as opportunities to discuss responsibility. I required them to keep a self-editing checklist, and when I introduced this assignment, I emphasized that checklists can help them grow as writers. I explained that a commitment to tools for improvement like checklists are part of developing a growth mindset and are an aspect of responsibility to their client.

Recognition. I found that I could integrate core values into graded and ungraded assessments. For example, when grading writing style, I assessed self-development of grammar skills rather than deducting points for each grammar error. I graded based on whether they applied their self-editing checklist and completed a thorough grammar check through Word rather than on the specific

instances of nominalization that I found in their paper. Here is the relevant part of my rubric with some sample comments included:

Excerpt from Rubric.

Overall Score	(out of 15)
	8 points
Your writing demonstrates use of an effective process to avoid grammar and style errors, typos, and misspellings	Your paper contained errors that would have been caught with a thorough grammar check in Word. Performing a grammar check before you show others your work is an important aspect of responsibility. Also, the comma errors I marked on the paper should have been covered in your self-editing checklist so that you could catch them in the paper.
Your writing demonstrates an understanding of the need for concise writing and an effective self-editing technique to find and correct wordiness and complex sentence structure	You had many sentences that violated the max=intro+core+one standard discussed in the book. If you review your longer sentences with this standard in mind, you can recognize when you need to simplify and you will probably also cut down on your grammar errors.
You have thought carefully about your word choices and have avoided vague language	Word choice was not a frequent problem in the paper, but you did use a couple of fancy words that did not quite fit. Try not to worry about sounding smart and instead choose words that you are very comfortable with. You can make your writing easier to read and avoid word choice errors with this approach.

As another example, my rubric put adherence to formatting requirements and deadlines as grading criteria under a heading for “responsibility”:

In addition to adjusting my rubrics, I looked for opportunities to celebrate students’ application of the core values. At the start of the spring semester, I sent my top students a survey that is geared toward the core values. Then I shared their responses with the class anonymously. They typically discussed how they organized themselves before writing, how many drafts they went through, self-editing techniques that worked for them, and other lessons that connected with grit, mindset, and responsibility.

³² For more examples of incorporating the growth mindset into the legal writing classroom, see Tracy Turner, *Teaching Ourselves and Our Students to Embrace Challenge: A Review of Mindset: The New Psychology of Success*, 20 PERSPS. 122-125 (Winter/Spring 2012).

³³ DWECK, *supra* note 22.

“I found that I could integrate core values into graded and ungraded assessments.”

Excerpt From Student Responses to Survey.

Advice From Your Fellow Students (2016-2017)

I asked students who received an A or A- last semester to answer some questions about their process for tackling LAWS. In the past, I have found that a change in process can help students significantly improve in the spring. Maybe you will find some advice in these answers that will help you.

Student #1

1. If you had to attribute your success to 1-3 key factors, which do you think mattered the most?

- (1) I love to play the game. I really enjoyed the process. Researching, Reading, Writing, and Editing was fun. Also, I became invested in Sheila Hart and her story of moral turpitude.
- (2) I did not fight the feedback. I really made an effort to incorporate the changes, and more importantly, to understand the reasons for the changes.
- (3) I finished really early. It gave me lots of time to read and reread and edit, so I could focus on the details.

2. Did you refer to the textbook at all as you wrote your paper? If so, please describe how you used it and perhaps which parts you found the most useful.

I constantly referred to the textbook while writing the paper. I always referred to the chapter discussing the portion of the paper I was writing. For example, while writing the rule explanation paragraphs, I would refer back to that specific chapter. I would also look at the sample memos to see what transitions could be used and the general order of the paragraphs.

2. Did you refer to the textbook at all as you wrote your paper? If so, please describe how you used it and perhaps which parts you found the most useful.

I constantly referred to the textbook while writing the paper. I always referred to the chapter discussing the portion of the paper I was writing. For example, while writing the rule explanation paragraphs, I would refer back to that specific chapter. I would also look at the sample memos to see what transitions could be used and the general order of the paragraphs.

3. How did you tackle comments on the draft?

Understanding the reason for each comment was a process that took a long time. Like all things professors in law school do, there was a specific reason for each comment. Before I implemented the suggested change, I wrestled with the reasoning and compared the comment to my original. It deepened my understanding of the process.

4. Did you use your checklist? If so, describe the process you used to implement the checklist.

For my checklist, I focused on writing down the comments on my returned assignments that seemed significant to keep in mind. During the last few days before I submitted P2, I made sure to have it next to me as I was revising in order to avoid making the mistakes I had made in the past.

5. How did you get organized before or as you were writing the paper?

I made sure to write down all of my ideas/arguments and the cases that I wanted to use. I also used the save feature on Westlaw and Lexis Nexis to keep track of everything I had read. This helped me make sure that I wouldn't forget important ideas and concepts that I had come across.

6. How did you balance LAWS and your other classes?

I planned a work schedule so that I could stay on top of things I needed to get done. I wouldn't work very hard on LAWS every day, but I would constantly try to chip away at something to lessen the load.

7. Do you have any other advice for students?

Talk to other people about the arguments that you want to make and how you want to express them. It doesn't even have to be with people in our class or in Law School, especially since we were prohibited from talking about certain concepts with other students. I found it helpful to call my Dad to get his opinion on ideas that I wanted to run by.

I also mentioned some great examples of the values in action. For example, with permission, I shared quotes from students' reflection journals that illustrated the values.

Sample Shared Journal Entry.

My friend gave me good advice. I had told her that I'm so focused on the grade that I'm having trouble writing it because I don't know how an "A" paper should be, versus a "B" paper. She told me that I should look at the writing as a form of art. This is a lawyer's art and learning how to make good art is not easy and takes a lot of practice. She also mentioned to look at it always from the bright side and I did. I went through my reflection journal and it was funny reading how I didn't even understand what I should put on a Rule Statement. I made a lot of progress already. Even if I had a lot of comments from Professor Turner, it definitely helped improve my writing and it's only to make my "art" better.

I also shared emails, like when a student who had never been absent contacted me to explain why he could not attend a class and when a student wrote to thank me for my feedback. With regard to the first email, I explained to the class that this student knew he would still be counted as absent but was showing respect by letting me know why he was missing class. With regard to the second email, I explained that the student was showing a growth mindset because rather than treating the feedback as a negative, she was seeing it as an opportunity to improve. As another example, I shared the following email from a student:

Sample Shared Email.

Dear Professor Turner,

Upon review of my submission for the Final Memorandum re Problem #1, I regretfully admit that I submitted the wrong version of the essay. It did not include either my issue statement or my conclusion. I apologize for my mistake. Since it is still before the deadline, I humbly request that I can still submit the correct version, attached hereto, which includes both sections. I appreciate your consideration in advance.

Respectfully, X

I explained to the class that this email shows responsibility in three ways. First, this student clearly did not wait until the last minute to submit his paper. Second, he checked his work one last time to find the error. Third, he promptly corrected his mistake and communicated with me in a respectful manner.

Sharing these little moments with the class helps further the core values I want to emphasize. Students can see what the core values look like in action, they can see that the values are attainable, and they can appreciate the importance of the values.

Do core values improve teaching?

Incorporating core values into my classroom has made teaching more rewarding. It not only keeps students focused on the big picture, but also helps me stay focused on the most important aspects of my teaching. I now assess my students' performance in a manner that will promote their long-term self-development because I am cognizant of the connection between my assessments and the core values. Students respond well to the core values. Many are familiar with the concept of core values from their undergraduate experience. And most appreciate my focus on core values as an indication of my commitment to them. At least, I know that I am doing my part to prepare them for the emotional struggles ahead and to minimize their fear of failure.

Micro Essay

Business skills! I am teaching a brand new course titled "Practice-Ready Entrepreneurship" that teaches them what they need to know about the business side of practicing law. It has accounting/bookkeeping, business organizations, finance, marketing, research & development, customer acquisition components and much more. Under the current legal market, graduates have to walk in as "rainmakers" not "projects" for a firm. I try to focus on entrepreneurship as the core of what will provide them avenues for success. Our students seem to love learning this side of being a lawyer and so will their employers and clients.

Ulysses N. Jaen, Director of the Law Library & Assistant Professor of Law, Ave Maria School of Law, Naples, Fla.

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Thinking on Your Feet: Reflections of a First-Time Online Instructor

By Ashley Ahlbrand

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Online education continues to rise in popularity for both undergraduate and graduate education.² Among the reasons commonly stated for this preference is flexibility, both of time and location.³ It came as little surprise, therefore, when our Law Library's long-term proposal to develop an online advanced legal research course found itself on the fast track. This article will discuss the process we went through to develop this course, the end result, and the lessons learned along the way.

Let's start at the beginning: Fall 2015. As the Indiana University Maurer School of Law worked on its three-year strategic plan, all departments within the law school were encouraged to do so as well. The Law Library set many initiatives, some long-term and others more immediate. As noted above, one long-term goal we set for ourselves was to develop an online version of our existing 3-credit Advanced Legal Research course. The face-to-face version is currently offered every Fall and Spring, and usually fills quickly, with a waitlist; given its popularity, we thought there might be interest in a Summer online version. The law school has very few online or summer offerings, but we thought, with the students simultaneously working at their

summer jobs, this skills course might fill a point-of-need interest for them. With enthusiasm from the law school administration, we were green-lit toward the end of the Fall, with a requested implementation date of Summer 2016. At that point, my colleague, Michelle Trumbo, and I began meeting to plan this cotaught course.

Designing the Course

It is easy for online course design to go wrong, and erroneous to think that a face-to-face course can be perfectly mirrored in an online form. An instructor might think she can record her lectures from a face-to-face class, throw them online, impose the same assessments, and be done, but this would be a mistake.⁴ At the other extreme, an instructor might think she should infuse the course content with flashy technologies because the course is online, but instructional design scholars discourage unnecessary clutter: "When educators adopt curriculum to fit the technology, rather than choose the technology that fits the curriculum, the instructional pedagogy suffers. Although the judicious use of technology can certainly enhance the learning process, abuse of multimedia elements can distract and detract from actual content and learning."⁵ In designing any course, face-to-face or online, it is most important to keep in mind what you want the students to learn, and build the rest—instructional materials, readings, and assessments—around that.

¹ The author would like to thank Michelle Trumbo, her coinstructor for online Advanced Legal Research, and Zach Carnagey, their excellent (and patient!) instructional designer.

² I. ELAINE ALLEN ET AL., ONLINE REPORT CARD: TRACKING ONLINE EDUCATION IN THE UNITED STATES (2016), <http://onlinelearningsurvey.com/reports/online-report-card.pdf>.

³ See, e.g., Davison M. Mupinga et al., *The Learning Styles, Expectations, and Needs of Online Students*, 54 COLL. TEACHING 185 (2006).

⁴ Adam Driscoll et al., *Can Online Courses Deliver In-Class Results? A Comparison of Student Performance and Satisfaction in an Online Versus a Face-to-Face Introductory Sociology Course*, 40 TEACHING SOC. 312, 315 (2012) ("Although the fundamental principles of quality pedagogy are constant across both online and F2F mediums (good teaching is always good teaching), translating those elements into the online environment presents a unique challenge").

⁵ *Id.* at 316.

“It is easy for online course design to go wrong, and erroneous to think that a face-to-face course can be perfectly mirrored in an online form.”

“[O]ur instructional designer stressed how essential skills practice is in an online environment, as well as formal assessment, both low-stakes and high-stakes.”

Since Michelle and I were both a part of the teaching team for the face-to-face version of the course, we decided to start from that curriculum and retool it to fit an online environment and a shorter (8-week) time frame. While sitting in on planning meetings earlier in the semester for a redesign of two existing law school classrooms to optimize them for online or blended learning, we previously met some key players at the university level who specialize in online instructional design. Michelle reached out to this office, and they paired us with an instructional designer who set a timeline with us for designing our course. During Spring 2016, we met with our instructional designer nearly every week, and after each one-hour session, we were assigned “homework” to do for the coming week.

Although we had the framework of an existing, in-class course to work from, these sessions encouraged us to break the course down to its most basic elements and build up from there, a common method of instructional design. We began by determining our learning outcomes—what did we want our students to get out of the class? Next, we brainstormed what kind of assessments to use to measure these outcomes. It was during this exercise that we began to see how much more work goes into an online course; while there are certainly many assessments in our face-to-face version, our instructional designer stressed how essential skills practice is in an online environment, as well as formal assessment, both low-stakes and high-stakes. This is particularly important because the students in an online course do not generally have the opportunity to work on in-class exercises or ask questions during a lecture, as they would in a face-to-face course. Low-stakes assessments allow the students to practice skills without fear or stress of the consequences of making mistakes.

It was only after the learning outcomes and assessments had been determined that we could start conceptualizing the instructional materials, both readings and lectures. Rather than select one of the many excellent legal research texts in publication as our required text for the course, we decided to assign readings instead, picking our

favorite chapters from among several texts. This not only saved our students money—the cost of the course will be covered later on—but also allowed us to better shape the direction of the course, selecting readings that emphasized the points we were trying to make. We also selected appropriate CALI lessons for each module of the course to further bolster our instructional materials. In this way, rather than recording full lectures on our research topics, we could focus our own recordings on demonstrating search techniques in various electronic resources, without as much introductory lecture required.

Ideally, we would have had all of our course materials ready to go prior to the launch date, but as so often happens, this proved impossible. Between instruction in the face-to-face Spring semester Advanced Legal Research course and other significant projects going on in the library, we did not have the luxury of setting aside all other work to prep the online course, so preparations continued throughout, with materials typically ready just in time.

Our law school does not have summer course offerings, apart from a Summer Starter program for 1Ls; nor do we have a significant body of online course offerings at any time, so we were not sure what to expect in terms of enrollment. We decided to cap the class at 20 students, to ensure we would have sufficient time to grade the assessments while providing meaningful feedback in a timely manner. To our great pleasure and relief, our initial enrollment was 18; but just before the course began, we lost six students in a day! This is how we learned that financial aid is only available if a student is taking at least four credit hours; with our class being only three, and no other course offerings available that summer, our class had suddenly become very expensive to take. We lost another student the first week of class and proceeded with 11, which turned out to be a great number for getting to know the students and for offering individualized attention.

Course Execution

One of the biggest criticisms of online education is the lack of meaningful interaction between course participants, both student-student and

student-instructor.⁶ Online courses can be offered synchronously, in real time, through various videoconference software, which can alleviate some of that concern; however, many successful asynchronous courses exist as well. Although these courses are more self-paced and less reliant on set class time, studies show that learners still expect and require high levels of interaction, through discussion boards, prompt and meaningful feedback, and even email.⁷ Because our students were spread across the country and had unpredictable schedules with their summer employment, we opted for the asynchronous approach.

Our course was eight weeks long, broken into eight modules of content; most modules ran for a week, with a couple either shorter or longer, depending on the estimated amount of time each would take to complete. For simplicity's sake, knowing that our students were also juggling full-time summer employment during this course, we made all assessments due at the same time each week. Most modules generally launched at the same time as well, so students got into a rhythm of when to expect content to become available. As each module launched, students would have a certain number of videos to watch, chapters to read, and CALI lessons to complete. There was then a quiz with questions gleaned from the readings, lessons, and videos; and an ongoing writing assignment with weekly deliverables based on one client scenario. With each module, the students researched a different legal content type (cases, statutes, etc.) to help deepen their understanding of the client's case. The course syllabus is included at the end of this article.

There was one final wrinkle: ABA requirements. Standard 306 covers distance education in law schools.⁸ Our course followed all requirements

under this standard, but we were unsure how to interpret 306(d)(1), which states, "A law school may award credit for distance education and may count that credit toward the 64 credit hours of regularly scheduled classroom sessions or direct faculty instruction required by Standard 311(b) if: (1) there is opportunity for **regular** and **substantive** interaction between faculty member and student and among students" (emphasis added).⁹ As a skills course, our main objective was to determine, through ongoing and frequent assessment, whether the students had mastered various research skills; thus there was frequent communication and feedback between instructor and student. To facilitate the student-student communication, we added a weekly, hour-long chat session through our learning management system, Canvas, in which the students could reflect on the week's module, ask questions about the upcoming assignment, and engage with each other. Apart from that, student engagement was reflected in timely submission of assignments, feedback, and exchange of emails regarding the course.

Reflection

So, the big question: How did it turn out? In a word, great! We received excellent feedback from the students on the course, and students performed as well on assessments in the online course as students who have taken the face-to-face version. As is always the case with new courses, however, things were by no means perfect. There were many changes to be made—some happened during the course, others would be changed for version two.

Chat session: Canvas has a built-in chat function. It is extremely rudimentary, but that also makes it incredibly uncomplicated to use. For most of the course, this is the tool we used for those weekly sessions. Our biggest challenge here was finding a time for all of us to meet. Our students were at jobs all across the country, so finding a day and time that worked for everyone proved nearly impossible. We kept these chat sessions relatively unstructured, with the ball in the students' court to ask questions and

“To facilitate the student-student communication, we added a weekly, hour-long chat session through our learning management system, Canvas, in which the students could reflect on the week's module, ask questions about the upcoming assignment, and engage with each other.”

⁶ Meng-Jung Tsai, *The Model of Strategic e-Learning: Understanding and Evaluating Student e-Learning from Metacognitive Perspectives*, 12 J. OF EDUC. TECH. & SOC'Y 34, 37 (2009).

⁷ See, e.g., Aileen Schulte, *The Development of an Asynchronous Computer-Mediated Course: Observations on How to Promote Interactivity*, 52 COLL. TEACHING 6 (2004).

⁸ 2016-2017 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, STANDARD 306, http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/

[Standards/2016_2017_standards_chapter3.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_standards_chapter3.authcheckdam.pdf).

⁹ *Id.*

spark conversation. This typically meant that the session began slowly, but once we got rolling, we typically took up the whole hour. Interestingly, we found that the students often showed up for the chat early to talk to each other about their summer jobs!

The simplicity of the chat tool added to some of the awkwardness because it does not show when someone is typing; thus if someone asked us a question and we were composing a lengthy answer, the students could not tell if we were answering them or ignoring the question. With two of us teaching the course, we usually stayed after work and sat in the same room with laptops to conduct the chat. That way one person could be answering a question while the other kept the conversation going and monitored the chat for more questions so none would be missed. On the few occasions that we could not chat in the same room, we ended up having to text each other to figure out who was going to answer each question to avoid multiple answers. Awkward.

For the last week of class, just for something new, and to show the students a growing communication tool in the business industry, we set up a Slack channel for the weekly chat.¹⁰ More sophisticated in a number of ways, including the ability to add documents to the channel and create different channels for different topics, Slack also solved the rudimentary problem of not being able to tell who was typing. At the end of the session, we asked students what they thought, assuming they would all prefer the much sleeker Slack. While most did acknowledge the usefulness of Slack, many surprisingly preferred the convenience of the Canvas chat tool. Despite its design flaws, they liked that it was all contained within one interface. Course evaluations also revealed that most students would have preferred more structure to the chats or no chat at all.

The literature on online education commonly stresses the importance of interactivity in the course, with scholars typically encouraging the use of discussion boards or forums to engage

students.¹¹ Between the findings in the literature and our student feedback suggesting a more structured chat session, going forward I intend to incorporate more interactivity into the course, perhaps through group research projects or discussion of legal news stories and how they apply to the research topic we are covering that week. I think there are many ways to design an interactive online legal research course, even asynchronously, and that will certainly be something I will explore for version two.

Video lectures: Rather than set up a camera and tripod in a classroom and film ourselves, we used Camtasia to record PowerPoint lectures and screencasts of live web demos. We had used Camtasia previously for legal research tutorials for first-year students and liked the tool for its sophisticated editing capabilities.¹² The technology was a nice fit for our purposes, but we quickly learned that the traditional lecture-style video was not.

The course was structured the way we typically recommend that students conduct their legal research—starting with secondary sources, then moving to statutes, cases, and regulations; and ending with tools like form books, practice aids, and discovery-phase research. The problem with the videos arose in module 1: secondary sources. Although our regular, semester-long course delves much deeper into different types of secondary sources, we did not have the luxury of such time for the summer course, so we focused on a few key secondary sources: treatises, *American Law Reports*, encyclopedias, periodicals, and restatements. We created a series of short videos about each, including their key features, what set them apart from other secondary sources, and demos of how to use each source in the major legal research platforms. These initial videos, therefore, pretty closely mimicked a typical in-class lecture, with time devoted to an introduction of the material

¹¹ See, e.g., Driscoll, et al., *supra* note 4, at 324 (“[S]tudents equally desire interaction in both online and F2F settings... [A] well-designed online course is capable of providing a sufficiently interactive learning environment”).

¹² CAMTASIA, <https://www.techsmith.com/camtasia.html> (last visited January 14, 2017).

¹⁰ SLACK, <https://slack.com/> (last visited January 14, 2017).

(recorded PowerPoint) and a live demo of how to use the material electronically. The problem we found was that it was too much—there were too many videos for the secondary source module, and the students were not getting out of those videos what they usually do from the in-class correlation. We needed to rethink the purpose of the video.

The following module was statutes, one of Michelle's modules. She decided to try something different with the videos in this module, to make them more task-focused. Instead of so much introductory information or show-and-tell of the features of statutes in each database, she created the first of what we called "Research in Action" videos, in which we provided a research scenario and then walked the students through the process we would take to answer that question using a particular type of legal content. We let the readings and CALI lessons replace the standard lecture that would ordinarily have accompanied the unit. We did not make any big announcement about the change in format, but asked the students about it at the next weekly chat session—had they found the new "Research in Action" videos more useful? They had. The "Research in Action" videos met with high acclaim. Students found these much more relatable and relevant and felt that they learned more from watching these and then replicating the work in their weekly quizzes than they did with the previous module's videos.

This was the biggest change we made mid-course: every other module from then on had "Research in Action" as its video component. Some had multiple, short "Research in Action" videos if there were multiple types of resources covered in that module; and some had an additional, optional, introductory video that did take more of a lecture format. For instance, the administrative law module began with a lecture-based video on rulemaking. This was optional because we had some students in the class who had taken an administrative law course, but some who had not.

If there is a silver lining in not having all of your course materials prepared, this might be it: if we had had all of our videos already recorded as lectures, it would have been devastating to

rerecord them for the "Research in Action" series. As it was, we were still generating the content for the course, so it did not create any additional work.

CALI lessons and readings: In lieu of a textbook, we selected readings from several texts and utilized CALI lessons for each module. Our instructional designer had cautioned us that everything we require for the course should fulfill a purpose and should lead toward the achievement of the learning outcomes; so to that end, we always drew some quiz questions from the readings and CALI lessons to encourage students to use these materials. Toward the end of the course, during one of our chats, a couple of students asked whether they could get PDFs of the CALI lessons. They said they had been making them themselves by doing frame-by-frame screen captures, but it would be so much easier if they were already available. This confused us until we realized, first, that they were having to go back through the CALI lessons to answer quiz questions, so a PDF would be easier, and second, that a PDF would make it much faster to skim the CALI lesson for the answers, rather than actually completing the CALI lesson as intended! Lesson learned—make CALI lessons required, and require students to turn in completion certificates, but perhaps do not incorporate additional quiz questions with information pulled solely from the CALI lessons.

For the readings, we were generally pleased with our decision to assign chapters from a variety of legal research texts, rather than choose one for the course. This allowed us to pick and choose aspects from different legal research texts that we felt emphasized important concepts. However, there were some modules that had far more readings than others; granted, some of these readings were quite short, but a student opening one module and finding two files that were each 20 pages and opening a second to find eight files that were each five pages will automatically feel overwhelmed by the eight, even though in reality they each have the same amount of reading. Just prior to the onset of the online course, we spoke with a colleague at another law school who essentially wrote her own legal research text in her course website. We would not have had the time to accomplish this in our first go-round. But, having now taken a couple

“If there is a silver lining in not having all of your course materials prepared, this might be it: if we had had all of our videos already recorded as lectures, it would have been devastating to rerecord them for the 'Research in Action' series. As it was, we were still generating the content for the course, so it did not create any additional work.”

of online courses myself in which instructors have essentially done the same thing, I think that might be the best route to take. This allows you as the instructor to emphasize the aspects of legal research that you wish the students to learn and allows you more control and consistency in the amount of reading from week to week.

Assessments: We had two types of assessments in this course—weekly quizzes and an ongoing written research assignment. The weekly quizzes were set up in Canvas, with a variety of question types. Some were simply true/false, multiple choice, or fill in the blank, drawing on the readings or CALI lessons. Others were “treasure hunt” type research questions, requiring them to use an electronic legal research platform to answer a question and then return to the quiz to enter their answer and search process. Thus, some questions were self-grading and others required more attention from us. For the most part, the quizzes worked quite well. It would have been nice to make the questions all self-grading, but with open-answer questions, that becomes more of a challenge, because, if the student’s answer does not match the model answer perfectly, Canvas marks it wrong, the student panics, and you have to go in and correct it anyway. Going forward, it would be helpful to make more of these questions self-grading, but that aside, the quizzes were an effective assessment tool for ensuring the students mastered the module’s topic.

The written exercise, however, proved more confusing than expected. Since the course was structured to follow an ideal research path, from secondary sources into primary, we thought we would break up our usual memo assignment from the face-to-face course into smaller research components throughout the course, culminating in writing a final memo. Because we anticipated that their research techniques would not be as strong at the beginning of the course, rather than be punitive at these early stages, we decided that there would only be one, cumulative grade on the memo at the end, instead of separate grades on each segment. We also thought this reflected our instructional designer’s advice that students in online courses

need both high-stakes and low-stakes assessments. These weekly research segments would be low-stakes.

What happened instead, however, is that some students initially blew off these “ungraded” research segments, as they referred to them in the chats. They did not see them as we did—as parts of one large, graded whole. They saw a bunch of ungraded pieces and one graded assignment at the end, and thus their performance on them was sloppy and half-hearted. To correct this notion, we started giving them ballpark grades on each research exercise, estimations of what that piece, if graded alone, would receive. At the end, we looked at each research piece on its own, watching for progress in research skills, and gave one final grade as originally anticipated. That, and we determined that a final memo itself was too much on top of all the other work they had been doing, so we graded the pieces of the research log they had been turning in instead. For the most part, students did well on this assignment, but it could definitely do with some reconceptualizing for next summer.

Choose your own adventure: In our regular class, we have a few units on specialized legal research. We have a week devoted to foreign and international legal research, a class on intellectual property, another on business and corporate research, and another on tax. We wanted to somehow incorporate these into the summer class as well, but once again, time was an issue. In our summer course planning, we decided to do a “choose your own adventure” module at the end of the course in which we would give the class a few topics like these and turn the tables, making them choose one of these topics, seek out and evaluate research resources on point, and report back to us their findings. We thought about making it group work, but the class was already so small and spread out that we decided to offer that as an option, but not require it.

The module went fine, but I think more could be done here. The exercise could have been more rewarding if we had structured it (and had time left) so that the students were presenting their findings in some way to the class. We could then have ventured into the world of peer feedback, which might have been refreshing at the end of a course that was mostly restricted to student-instructor interaction.

“[W]e started giving them ballpark grades on each research exercise, estimations of what that piece, if graded alone, would receive. At the end, we looked at each research piece on its own, watching for progress in research skills, and gave one final grade ...”

Conclusion

In their study of several online and face-to-face courses across disciplines, Di Xu and Shanna S. Jaggars found a larger performance gap—meaning students performing more poorly in online than face-to-face courses—in the areas of the social sciences and applied professions, the latter including law courses.¹³ Further, they surmised, “it may be more difficult to create effective online materials, activities, or assignments in fields that require a high degree of hands-on demonstration and practice, intensive instructor-student interaction, or immediate personalized feedback.”¹⁴ What does that say about legal research? Does that nullify any attempts to create a successful online legal research course? No. Evaluations and post-course interactions with our students have demonstrated that they found the course quite beneficial. In fact, as they had immediate, real-world use of their learned skills during their summer employment, feedback on the course was overwhelmingly positive. I have had several inquiries this academic year as to whether we would be offering the online version again this summer. But there is always room for improvement, and future iterations of the course will benefit from lessons learned in our first summer, many enumerated above.

B639 – Advanced Legal Research (Online)

COURSE INFORMATION: SUMMER 2016

Instructors:

Michelle Trumbo

Email: mbotek@indiana.edu

Phone: 812.856.0464

Office Hours (online): 2:00 p.m. until 5:00 p.m. each Wednesday; 11:00 a.m. until 1:00 p.m. every Friday; or anytime via email.

Ashley Ahlbrand

Email: aaahlbra@indiana.edu

Phone: 812.855.6613

Online instruction is by no means the lazy man’s game. Done properly, it requires constant attention, interaction, and reflection. “Instructors should not decide to teach online because they think it will be easier than teaching face-to-face. One research study found that online classes are 40 percent more work for the instructor than face-to-face classes.”¹⁵ That was certainly true for us. As I look to version two of the course, to be offered Summer 2017, while many things will stay the same, as many will change. As intensive as our instructional development process was, I think it is a process that bears repeating. Our instructional designer told us as much last Spring, always referring to last summer’s course as “version one,” and advising us to jot down some of our more labor-intensive ideas for implementation in “version two.” Will this process of reevaluation and retooling ever end? Unlikely. But then again, teaching should never be a passive sport.

Office Hours (online): 2:00 p.m. until 5:00 p.m. each Wednesday; 11:00 a.m. until 1:00 p.m. every Friday; or anytime via email.

Please use **Canvas Inbox email** to contact us about course issues. We will be in the course site at least once a day Monday-Friday and will normally check in at least once over the weekend.

Course Description:

This course will offer students an opportunity to gain in-depth working knowledge of legal research methods and resources. The course will emphasize use and comparison of a broad range

“Evaluations and post-course interactions with our students have demonstrated that they found the course quite beneficial. In fact, as they had immediate, real-world use of their learned skills during their summer employment, feedback on the course was overwhelmingly positive.”

¹³ Di Xu & Shanna S. Jaggars, *Performance Gaps Between Online and Face-to-Face Courses: Differences Across Types of Students and Academic Subject Areas*, 85 J. HIGHER EDUC. 633, 652 (2014).

¹⁴ *Id.* at 636.

¹⁵ Marisol Clark-Ibanez & Linda Scott, *Learning to Teach Online*, 36 TEACHING SOCIOLOGY 34 (2008) (citing TISHA BENDER, DISCUSSION-BASED ONLINE TEACHING TO ENHANCE STUDENT LEARNING: THEORY, PRACTICE, AND ASSESSMENT (2003)).

of legal research tools. The course will review the complete range of federal and state primary sources, legislative history, administrative materials, all major secondary resources and practice aids, as well as specialized topical resources. Upon completion of this course students should be able to evaluate research options and make choices that best suit the widest possible variety of legal research situations.

Each module focuses on a specific type of resource or research process and will include readings, interactive lessons, lectures, demonstration of relevant electronic resources, and assessments. Class topics will be followed by a brief research exercise to both measure and enhance the student's expertise with the materials presented in the classroom.

Required Course Materials:

There is no textbook for this course; however, required readings, lectures, videos, and CALI lessons for each of the topics covered are contained in the modules.

Required Synchronous Meetings:

To comply with recent [ABA Standards](#) regarding online and simulation-based education, there is a synchronous component to this course. Seven meetings -- each of which will last no longer than 1 hour -- will be held. For these meetings, we will be using the live group [chat function in Canvas](#). Given that summer schedules and availability vary dramatically, students must be present at a **minimum of four (4) of the seven (7) sessions**. A failure to meet this minimum will result in a reduction of your participation grade.

Our first meeting, which will include introductions, will be **Wednesday, May 25th at 5:00 p.m.** At that meeting we will get a sense of what dates and times work best for the group and we will set a schedule that accommodates as many people as possible.

ASSESSMENT AND GRADING

There are several different types of assessments in this course.

20% - Quizzes

In each module, you will have a quiz that pertains to the readings, lectures, and videos assigned. Questions will vary in format and will occasionally require you to conduct research in another database to find the answer.

10% - Administrative Law Research Assignments

In Module 5, you will have two short research assignments on administrative law; one will be an 8-question research exercise, and the other a short written assignment. Together, these two assignments will make up another 10% of your grade.

10% - Specialized Topic Research Project

In Module 7, you will be responsible for a short research project in either Business and Corporate research, Intellectual Property research, or Foreign and International research.

40% - Research Memo

The largest part of your grade comes from the research memo; you will be researching an ongoing client problem, with pieces of the research due throughout the course. This culminates in the production of a research memorandum.

20% - Class Participation & Attendance

This will include participation in the weekly chat sessions and regular communication with the instructors.

All assignments are to be turned in by their due date.

If an assignment is turned in late, there will be a 10% grade deduction per day. We will only grant extensions due to extenuating circumstances. While we understand that many of you are juggling summer jobs on top of this course, we cannot return assignments until we have received and graded all of them, and given the short duration of this course, there is very little wiggle room. We appreciate your timeliness.

COURSE OUTLINE

This course is divided into seven modules, each devoted to different topics in legal research. These modules will become available on the “launch” dates indicated. See the individual modules for instructions, including that segment’s readings, exercises, lectures, and other materials.

Module 1: [Introduction to Legal Research](#)

Module 2: [Secondary Sources](#)

Module 3: [Constitutions, Statutes & Legislation](#)

Module 4: [Cases](#)

Module 5: [Administrative & Executive Branch](#)

Module 6: [Practitioner Materials & Tools](#)

Module 7: [Specialized Topics in Legal Research](#)

OTHER INFORMATION

If you have any questions or problems, please bring these to our attention. Questions are always welcome. Meetings outside of class can be arranged either during office hours or by appointment at a mutually convenient time. If you have questions or want to schedule an appointment, call or email us.

As you are working on assignments, problems can arise that can leave you stumped. **Please ask questions!** Sometimes a quick answer to a question or a small piece of advice can get you moving again and save a great deal of frustration.

This syllabus represents the plan for conducting the course during the semester. The expectation is that the syllabus and the course schedule will be adhered to reasonably closely. However, any provisions in the syllabus are subject to change by the instructor after consultation with the class.

This is our first foray into teaching this material online, so suggestions for additions or improvements to the course are always welcome.

COURSE POLICIES

Copying or recording synchronous classes and asynchronous course materials without the express prior approval of instructors *is prohibited*. All copies and recordings remain the property of

Indiana University and the instructors. Indiana University and the instructors reserve the right to retrieve, inspect, or destroy the copies and recordings after their intended use. These policies are not intended to affect the rights of students with disabilities under applicable law or the university’s policies.

TECHNOLOGY SUPPORT

For Canvas questions and help please contact the instructors, Ashley Ahlbrand and Michelle Trumbo. For additional assistance, refer to the «Help» link at the top right of the page and check the UITS Knowledge Base at <http://kb.iu.edu/> for more information (type “Canvas» in the search box for a full list of Canvas-related topics).

If you have any other questions about or issues with any of the technology used in this course please contact the University Information Technology Services (UIT) support team.

ACADEMIC MISCONDUCT

Academic misconduct is defined as any activity that tends to undermine the academic integrity of the institution. The university may discipline a student for academic misconduct. Academic misconduct may involve human, hard-copy, or electronic resources.

Policies of academic misconduct apply to all course-, department-, school-, and university related activities, including field trips, conferences, performances, and sports activities off-campus, exams outside of a specific course structure (such as take-home exams, entrance exams, or auditions, theses and master’s exams, and doctoral qualifying exams and dissertations), and research work outside of a specific course structure (such as lab experiments, data collection, service learning, and collaborative research projects). The faculty member may take into account the seriousness of the violation in assessing a penalty for acts of academic misconduct. The faculty member must report all cases of academic misconduct to the dean of students,

or appropriate official. Academic misconduct includes, but is not limited to, the following:

Section 1. Cheating

Cheating is considered to be an attempt to use or provide unauthorized assistance, materials, information, or study aids in any form and in any academic exercise or environment.

A student must not use materials from a commercial term paper company; files of papers prepared by other persons, or submit documents found on the Internet. A student must not collaborate with other persons on a particular project and submit a copy of a written report that is represented explicitly or implicitly as the student's individual work.

A student must not submit substantial portions of the same academic work for credit or honors more than once without permission of the instructor or program to whom the work is being submitted.

Section 3. Plagiarism

Plagiarism is defined as presenting someone else's work, including the work of other students, as one's own. Any ideas or materials taken from another source for either written or oral use must

be fully acknowledged, unless the information is common knowledge. What is considered "common knowledge" may differ from course to course.

A student must give credit to the originality of others and acknowledge indebtedness whenever:

A student must not adopt or reproduce ideas, opinions, theories, formulas, graphics, or pictures of another person without acknowledgment.

Directly quoting another person's actual words, whether oral or written;

Using another person's ideas, opinions, or theories;

Paraphrasing the words, ideas, opinions, or theories of others, whether oral or written;

Borrowing facts, statistics, or illustrative material; or

Offering materials assembled or collected by others in the form of projects or collections without acknowledgment.

There are serious consequences for academic misconduct. We may choose to not accept an assignment, lower the grade or give the grade of F for the assignment.

Micro Essay

A carpenter does not learn his trade by studying Hammers I and II, concurrently with Nails I and II, and Saws I and II. He hones his skills by learning which tools to utilize for which purpose, in compliance with a set of plans. Mastering each tool's function, he forms pathways between them, understanding how they work in concert. Analogously, lawyers must be taught the skills with which to analyze the client's problem, and identify and connect the pathways between legal doctrines. Teach law as if it was carpentry. Stop clinging to a "silo-centric" pedagogy. Challenge students to open their minds to an integrative thought process before they crack their first casebook, during 1L orientation.

Michael W. Pinsof, Adjunct Instructor of Paralegal Studies, Roosevelt University, Chicago, Ill.

Cite as: Almas Khan, *Wresting Pedagogical Victory from the Jaws of Student Defeat: Walker v. Harvard College as an Object Lesson*, 25 Perspectives: Teaching Legal Res. & Writing 124 (2017).

Wresting Pedagogical Victory from the Jaws of Student Defeat: *Walker v. Harvard College* as an Object Lesson

By Almas Khan

Almas Khan is an ESL Fellow at the Georgetown University Law Center in Washington, D.C.

I. Introduction

A new academic year often brings with it the search for an exemplary case through which to introduce incoming law students to strategies for legal analysis, effective lawyering, and academic success. *Stambovsky v. Ackley* (1991), the “Ghostbusters” case,¹ is a popular choice among professors and academic support specialists, but a recent decision from the First Circuit has a much higher likelihood of haunting students and merits serious consideration as well. *Walker v. Harvard College* (2016)² involved breach of contract and defamation claims arising from a plagiarism³ incident at a Harvard Law journal. The First Circuit affirmed the district court’s summary judgment grant for Harvard, holding that Harvard Law’s expansive plagiarism policy referring to “[a]ll work submitted” “on its face applies to any student work for any academic or nonacademic exercise, whether in draft or final form, turned in to an instructor or student editor of an extracurricular law journal.”⁴ Most law schools have comparable rules proscribing plagiarism,⁵ and while the First Circuit’s decision may reassure many of these

institutions, it may equally terrify their students. Assuming the court’s dicta reference to coursework attains precedential value, judges may deem even early drafts submitted to instructors as coming within a plagiarism code’s purview. But while *Walker* may have frightening consequences for students, it may also result in salubrious outcomes for them. The case can be a fascinating pedagogical tool for professors to teach pragmatic and ethical considerations in law school and legal practice, case briefing techniques, legal argument paradigms, procedural issues, and persuasive strategies.

II. A Distillation of *Walker v. Harvard College*

Plaintiff Megon Walker attended Harvard Law School from 2006 to 2009, during which time she was a member of the *Journal of Law and Technology* (*JOLT*).⁶ She worked as a “subciter” during her 1L year, confirming the veracity of quotations and citations in draft articles, and as a 3L, she successfully applied to compose a comment on a cutting-edge patent case.⁷ *JOLT* apprised her of intermediary and final draft due dates, and from her cite-checking experiences, she was aware that authors were only allowed to make relatively minor edits after their so-called final drafts had undergone editing and cite-checking.⁸ Walker’s laptop, on which she was writing the comment, became infected with a virus six days before the final draft was due.⁹ Walker and Harvard disputed about whether she informed *JOLT* editors that

“[W]hile the First Circuit’s decision may reassure many of these institutions, it may equally terrify their students.”

¹ 169 A.D.2d 254 (N.Y. App. Div. 1991).

² 840 F.3d 57 (1st Cir. 2016).

³ The *Oxford English Dictionary* defines the term as: “The action or practice of taking someone else’s work, idea, etc., and passing it off as one’s own; literary theft.” *Plagiarism, n.*, OXFORD ENGLISH DICTIONARY, <http://www.oed.com/view/Entry/1144939?redirectedFrom=plagiarism#eid> (last visited Nov. 27, 2016).

⁴ *Walker*, 840 F.3d at 63.

⁵ See Terri LeClercq, *Failure to Teach: Due Process and Law School Plagiarism*, 49 J. LEGAL EDUC. 236, 237 (1999) (citing over 100 law schools as having a “schoolwide honor code or a list of unacceptable behaviors”).

⁶ *Walker v. Harvard Coll.*, 82 F. Supp. 3d 524, 527 (D. Mass. 2014), aff’d, 840 F.3d 57 (1st Cir. 2016).

⁷ *Id.*

⁸ *Walker*, 840 F.3d at 59.

⁹ *Id.* at 59–60.

“This caused a plagiarism designation to appear on her transcript and she lost a lucrative full-time employment offer from a prestigious law firm.”

the virus had corrupted her article and resulted in her sending a “fragmented” or “incomplete” final draft to *JOLT*; Walker alleged that she notified *JOLT* editors orally while Harvard pointed to the paucity of written evidence confirming the editors were aware of her computer issues as well as proof that her earlier drafts contained similar attribution problems.¹⁰ Harvard also cited an email Walker sent *JOLT* preceding her late final draft, which read, in part: “All the sources are included, but I’m still moving words around.”¹¹ After emailing *JOLT* the technically final draft, Walker delivered a flash drive containing sources she had downloaded from Westlaw to *JOLT* and emailed *JOLT* about her intent to continue working on the comment.¹² As *JOLT* staff reviewed the comment, though, they found at least twenty-three instances in which Walker had failed to properly cite sources, at which juncture they contacted the Dean of Students, who referred the matter to Harvard Law’s Administrative Board (“Board”).¹³ The Board voted to schedule a hearing on the plagiarism charge, refusing Walker’s request for a more informal resolution, and formally reprimanded her.¹⁴ This caused a plagiarism designation to appear on her transcript and she lost a lucrative full-time employment offer from a prestigious law firm.¹⁵

Walker accordingly sued Harvard in the United States District Court for the District of Massachusetts, alleging claims including breach of contract and defamation, and she sought both monetary damages and removal of the plagiarism indication from her transcript.¹⁶ As noted above,

the district court granted Harvard summary judgment,¹⁷ a decision affirmed by the First Circuit for essentially the same reasons provided by the trial court, and I will here thus focus on the appellate opinion. Walker’s case in both courts turned on the interpretation of Harvard Law’s rigorous plagiarism policy, which at the time read in part:

All work submitted by a student for any academic or non-academic exercise is expected to be the student’s own work. In the preparation of their work, students should always take great care to distinguish their own ideas and knowledge from information derived from sources. ... Students who submit work that is not their own without clear attribution of all sources, even if inadvertently, will be subject to disciplinary action.¹⁸

A plain reading of the policy suggests its capacious reach, extending to “[a]ll work” a student submits for “any” academic exercise or “any” nonacademic exercise; moreover, the policy articulates a strict liability rule, as inadvertency is not a defense. In addition, the policy establishes that students “will,” in the definitive, “be subject to disciplinary action” for not clearly attributing “all sources” in their submitted work. Under Massachusetts law, the First Circuit determined that Harvard’s policy would be construed in light of an objective “reasonable expectation” standard, based on “what meaning the party making the manifestation, the university, should reasonably expect the other party [, the student,] to give it.”¹⁹ The key term for both parties and the appellate court was “submitted”; Walker claimed that she reasonably expected the word to refer to her giving *JOLT* a “completed” product,²⁰ but Harvard successfully rebutted this assertion. Harvard argued, and the First Circuit agreed, that the word “submitted” in this context contained no denotation or connotation of completion or finality

¹⁰ Complaint at ¶ 32, *Walker v. Harvard Coll.*, 82 F. Supp. 3d 524 (D. Mass. May 4, 2012) (No. 1:12-cv-10811-RWZ); Memorandum in Support of Defendants’ Motion for Summary Judgment at 2–4, *Walker v. Harvard Coll.*, 82 F. Supp. 3d 524 (D. Mass. Jan. 31, 2014) (No. 1:12-cv-10811-RWZ).

¹¹ Memorandum in Support of Defendants’ Motion for Summary Judgment, *supra* note 11, at 3. Her subsequent cover email to this draft stated in part: “Here’s the latest draft ... Let me know if you have difficulty finding any sources.” *Id.*

¹² *Walker*, 840 F.3d at 60.

¹³ *Id.*

¹⁴ *Id.* at 60–61.

¹⁵ *Id.* at 61.

¹⁶ *Walker v. Harvard Coll.*, 82 F. Supp. 3d 524, 527 (D. Mass.

2014), *aff’d*, 840 F.3d 57 (1st Cir. 2016).

¹⁷ *Id.* at 533.

¹⁸ Quoted in *Walker*, 840 F.3d at 60–61.

¹⁹ *Id.* at 61 (quoting *Schaer v. Brandeis Univ.*, 735 N.E. 2d 373, 378 (Mass. 2000) (quoting *Cloud v. Trs. of Bos. Univ.*, 730 F.2d 721, 724 (1st Cir. 1983))).

²⁰ *Id.* at 62.

but instead referred to a student like Walker turning in an article “for the exercise of student publication” regardless of form; Walker’s subjective intent to insert additional citations was found to be irrelevant for the reasonable expectation analysis based on the ordinary meaning of “submitted.”²¹

III. Walker as a First-Year Primer on Ethics, Legal Analysis, and Procedure

Regardless of one’s view on the rectitude of the First Circuit’s construction of the word “submitted” or its eventual decision, the case underscores several important points for students. First, by saving her work consistently, Walker could have potentially avoided disciplinary proceedings and a court case that together spanned seven years; nor are courts likely inclined to consider a computer virus as a legitimate excuse for flouting deadlines in practice.²² A lack of clear communication between Walker and *JOLT* staff also exacerbated her situation. Faculty and journal editors should openly convey their expectations about attribution.²³ Students, in turn, would be well-advised to inform professors and editors of uncertainty

about citation practices²⁴ and of mishaps like a computer virus immediately and in unambiguous writing, in addition to meeting in-person for clarification. Serious long-term consequences may otherwise ensue; as Walker’s counsel contended in colorful language, the plagiarism designation on her Harvard Law transcript adhered “to her like the professional equivalent to Hawthorne’s Scarlet Letter.”²⁵ Conversely, knowledge of this ethical stigma may deter potential plagiarizing students who have committed at least a year or more time and likely tens or hundreds of thousands of dollars²⁶ to advance their professional ambitions.

Aside from spotlighting these practical concerns for students, the case can be instructive for an introductory discussion of the American Bar Association’s Model Rules of Professional Conduct, particularly Rule 8.4 on “Maintaining the Integrity of the Profession: Misconduct.”²⁷ Rule 8.4(c) bars

“[T]he plagiarism designation on her Harvard Law transcript adhered ‘to her like the professional equivalent to Hawthorne’s Scarlet Letter.’”

²¹ See *id.* at 62–63.

²² See *Martinelli v. Farm-Rite*, 785 A.2d 33, 36 (N.J. Super. Ct. App. Div. 2001) (“Computer failures, not unlike human failures, must be anticipated.”).

²³ Given the institutional diversity in the text of plagiarism policies, the consistency of their application, and the sanctions available for violations, Audrey Wolfson Latourette, *Plagiarism: Legal and Ethical Implications for the University*, 37 J.C. & U.L. 1, 71–72 (2010), first-year law students should be required to attend an academic integrity session. This session should transpire after orientation (during the tumult of which many may skip or forget the session) but before students submit their first major legal writing assignments. Instructors should not merely alert students to the existence of a law school’s plagiarism policy, but illustrate borderline instances. For example, a law journal editor-in-chief withdrew from law school after faculty questioned his “moral character” for self-plagiarizing from a term paper for his journal article. LeClercq, *supra* note 6, at 243. The interactive session should also guide students through exercises and answer their questions. See Latourette, *supra*, at 77 (“A mere statement in a syllabus, adorned with examples of plagiarism, certainly functions as a warning, but provides little in the way of applied instruction in the proper norms of annotation or in assurances that students, in fact, are fully apprised of the rules for citation.”). For teaching advice, see generally Decarlous Y. Spearman, *Citing Sources or Mitigating Plagiarism: Teaching Law Students the Proper Use of Authority Attribution in the Digital Age*, 42 INT’L J. LEGAL. INFO. 177 (2014); Jane Scott, *Intro to Plagiarism*, 18 PERSP.: TEACHING LEGAL RES. & WRITING 11 (2009).

²⁴ As Harvard Law’s current Student Handbook provides: “Students who are in any doubt about the preparation of their work should consult the appropriate instructor, supervisor, or administrator before it is prepared or submitted.” HARVARD LAW STUDENT HANDBOOK OF POLICIES 2016-17, V. *Academic Dishonesty: (B.) Preparation of Papers and Other Work—Plagiarism in Collaboration*, HARVARD LAW SCHOOL, <http://hls.harvard.edu/dept/academics/handbook/rules-relating-to-law-school-studies/academic-honesty/preparation-of-papers-and-other-work-plagiarism-and-collaboration/> (last visited Nov. 27, 2016); see also LeClercq, *supra* note 6, at 239 (challenging the assumption that incoming law students are fully informed about what plagiarism entails). Students should be in particular be counseled that a mosaic “copy, paste, edit” process approach to writing papers has been the culprit in prior plagiarism cases and should be avoided. See, e.g., *Beauchene v. Miss. Coll.*, 986 F. Supp. 2d 755, 760 (S.D. Miss. 2013). Other students may of course deliberately engage in flagrant acts of plagiarism, see *In re Lamberis*, 443 N.E.2d 549, 550 (Ill. 1982) (involving an LL.M. student who copied two sources without citations for nearly half of a ninety-three page thesis), but decreasing the number of unintentional plagiarism cases in law schools remains a realistic and worthy goal.

²⁵ Plaintiff Megon Walker’s Opposition to Defendants’ Motion for Summary Judgment at 17, *Walker v. Harvard Coll.*, 82 F. Supp. 3d 524 (D. Mass. Feb. 14, 2014) (No. 1:12-cv-10811-RWZ). After three years of sporadic employment, during which time she would likely have earned at least half a million dollars absent the plagiarism charge, Walker became an attorney at Scotts Miracle-Gro. Complaint, *supra* note 11, at ¶¶ 37, 38; Megon Walker, LINKEDIN, <https://www.linkedin.com/in/megon-walker-a321605> (last visited Nov. 27, 2016).

²⁶ Noam Scheiber, *An Expensive Law Degree and No Place to Use It*, N.Y. TIMES, June 17, 2016, http://www.nytimes.com/2016/06/19/business/dealbook/an-expensive-law-degree-and-no-place-to-use-it.html?_r=0 (noting average law student debtload of \$112,000 in 2014).

²⁷ Model Rules of Prof’l Conduct R. 8.4 (Amer. Bar Ass’n 2016), http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4

attorneys from “engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentation.”²⁸ Scholars have recently questioned whether plagiarism should be flagged as a per se ethics offense under the rule,²⁹ as some courts have found in sanctioning attorneys adjudged liable for plagiarism,³⁰ and students are likely to express a range of provocative views on the subject. This colloquy could feed into one about whether Walker’s case should or could have been resolved informally without litigation, an option pressured students may find appealing because of the dubious nature of her submission,³¹ and whether the First Circuit’s decision was correct from legal and equitable perspectives.³²

The case’s subject will immediately pique students’ interest, and the appellate opinion will also be valuable in teaching students what can sometimes be perceived as desiccated albeit essential lessons: case-briefing and legal argument paradigms (e.g., IRAC³³). The opinion is short, spanning about six pages in the Federal Reporter, and it is clearly written and on a non-abstruse topic. It is moreover

[misconduct.html](#).

²⁸ *Id.* at R. 8.4(c).

²⁹ Peter A. Joy & Kevin C. McMunigal, *The Problems of Plagiarism as an Ethics Offense*, 26 CRIM. JUSTICE 56, 56 (2011).

³⁰ E.g., Iowa Sup. Ct. Att’y Discip. Bd. v. Cannon, 789 N.W.2d 756 (Iowa 2010); Columbus Bar Assoc. v. Farmer, 855 N.E.2d 462 (Ohio 2006).

³¹ However, in a case comparable to Walker’s, one law school found a student liable for plagiarism even when turning in a first draft of a paper and despite his citing computer problems as part of the reason why he failed to properly attribute sources. *In re Zbiegien*, 433 N.W.2d 871, 872–73 (Minn. 1988). This, though, did not preclude him from bar admission upon fulfilling other bar requirements. *Id.* at 877.

³² On the distinction between these, see *Napolitano v. Trustees of Princeton University*, 453 A.2d 279, 282 (N.J. Super. Ct. 1982) (“Princeton might have viewed the matter of the penalty with a greater measure of humanity and magnanimity, with a greater recognition of the human frailties of students under stress, as the university apparently has done in many cases in the past. This court cannot mandate compassion, however, and will not, nor should not, engraft its own views on Princeton’s disciplinary processes, so long as the standard of good faith and fair dealing has been met and the contract between the student and the university has not otherwise been breached.”), *aff’d*, 453 A.2d 263 (N.J. Super. Ct. App. Div. 1982).

³³ Standing for Issue, Rule, Application, and Conclusion, though a panoply of other paradigms have been catalogued in scholarly literature. Gerald Lebovits, *Cracking the Code to Writing Legal Arguments: From IRAC to CRARC to Combinations in Between*, 28 N.Y. BAR ASSOC. J. 64 (2010).

organized traditionally, with an introduction, background section setting forth the facts, standard of review section, discussion section, and conclusion. Identifying the case’s procedure posture, facts, issues, holding, and rationale—the typical sections of a case brief³⁴—should not be an overly onerous exercise for new students given the opinion’s length, subject, and organization. Within the discussion section, the court’s analysis is structured in IRAC form, describing the issue of the standard of reasonable expectations before citing precedents articulating the standard and applying rules in those cases to the instant case.³⁵ The court evaluates both arguments and counterarguments in reaching its conclusion ruling against Walker.³⁶

Considering the case’s progression from institutional disciplinary proceedings up to the First Circuit, *Walker* also provides a prime opportunity to unpack procedural issues. Many case documents are accessible via Westlaw, and tracing the case’s development from the complaint through the appellate opinion illuminates the complicated fact-finding and legal processes culminating in a relatively terse and seemingly straightforward appellate decision on only two of the original six counts.³⁷ As cases are increasingly resolved

³⁴ Peter Dewitz, *Reading Law: Three Suggestions for Legal Education*, 27 U. TOLE. L. REV. 657, 669–70 (1996).

³⁵ *Walker v. Harvard Coll.*, 840 F.3d 57, 61–63 (1st Cir. 2016).

³⁶ *Id.*

³⁷ *Id.* at 59. Over 60 years ago, Jerome Frank critiqued law schools’ inordinate focus on appellate court opinions, a legacy of Christopher Columbus Langdell’s 19th-century innovations in legal education:

[S]tudents are supposed to study cases. They do not. They study, almost entirely, upper court opinions. Any such opinion, however, is not a case, but a small fraction of a case, its tail end ... [T]he study of cases which will lead to some small measure of real understanding of how suits are won, lost and decided should be based to a very marked extent on reading analysis of complete records of cases—beginning with the filing of the first papers, through the trial in the trial court and to and through the upper courts. A few months properly spent on one or two elaborate court records ... will teach a student more than two years spent going through twenty of the casebooks now in use.

JEROME FRANK, COURTS ON TRIAL: MYTH & REALITY IN AMERICAN JUSTICE 225, 227, 233 (Princeton 1949); see also Thomas C. Grey, *Langdell’s Orthodoxy*, 45 U. PITT. L. REV. 1, 1–2 (1983).

“The case’s subject will immediately pique students’ interest, and the appellate opinion will also be valuable in teaching students what can sometimes be perceived as desiccated albeit essential lessons: case-briefing and legal argument paradigms ...”

pretrial,³⁸ Walker's resolution on a summary judgment motion can invite a dialogue about summary judgment rules as well as standards of review on appeal. Finally, subject matter jurisdiction via diversity of citizenship³⁹ can be explained through the concrete example of this case, as Walker claimed to be domiciled in Ohio, a different state than any of the defendants, and argued that the amount in controversy exceeded \$75,000.⁴⁰

IV. Walker as an Exemplary Case to Teach Persuasive Legal Writing

Aside from its utility early in law students' academic careers, *Walker* is a superb case through which to teach storytelling techniques in persuasive legal writing courses at more advanced levels. Clarence Darrow characterized a trial attorney's challenge as follows: "The problem is to bring about a situation where court and jury want a lawyer's client to win," and storytelling⁴¹—for which Darrow was legendary⁴²—can be a powerful means of persuasion. Recently, several academic conferences and numerous articles have promoted "Applied Legal Storytelling," whose underlying principle is that "stories convey meaning in the day-to-day practice of law."⁴³ Reading documents filed by Walker's and Harvard's attorneys, as well as the opinions of judges tasked with being neutral arbiters in the rancorous conflict between the parties,⁴⁴

reveals starkly different narratives about Walker's conduct. Once the parties' overall narratives and use of macro- and micro-level narrative techniques are recognized, students can be prompted to assess the efficacy of such techniques in persuading the intended judicial audience. Optimally, students will employ the more compelling persuasive methods in their own assignments and in practice while avoiding the less convincing approaches.

One salient distinction between Walker's and Harvard's filings is their apparent intended audience, a key preliminary consideration in composing any document. Walker's complaint, for example, at times seems to be penned more for the court of public opinion than for a trial judge. It employs hyperbolic language perhaps better suited to the jury context (such as the scarlet letter comment referenced above⁴⁵) and at one point needlessly defines what a legal brief is.⁴⁶ Harvard's documents tend to take a more technical approach pitched to appeal to a trial judge who had graduated with an LL.B. from Harvard Law School.⁴⁷ The submissions focus on legal as opposed to emotionally resonant facts⁴⁸ and often argue in the alternative without conceding an issue.⁴⁹

factual controversies where none exist." Reply in Support of Defendants' Motion for Summary Judgment at 2 n.1, *Walker v. Harvard Coll.*, 82 F. Supp. 3d 524 (Feb. 21, 2014) (No. 1:12-cv-10811-RWZ).

⁴⁵ Plaintiff Megon Walker's Opposition to Defendants' Motion for Summary Judgment, *supra* note 26, at 17.

⁴⁶ Complaint, *supra* note 11, at ¶ 9.

⁴⁷ Rya W. Zobel, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, <http://www.mad.uscourts.gov/boston/zobel.htm> (last visited Nov. 27, 2016). One of the appellate judges in *Walker*, William J. Kayatta, Jr., also graduated from Harvard Law School, though with a J.D. William J. Kayatta, Jr., UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT, <http://www.ca1.uscourts.gov/william-j-kayatta-jr> (last visited Nov. 27, 2016).

⁴⁸ For example, the facts section of Harvard's summary judgment memorandum begins with the fact of Walker's attending Harvard Law and the text of Harvard Law's plagiarism policy while the complaint commences by emphasizing Walker's longstanding academic prowess. Memorandum in Support of Defendants' Motion for Summary Judgment, *supra* note 11, at 1; Complaint, *supra* note 11, at ¶ 1.

⁴⁹ E.g., Memorandum in Support of Defendants' Motion for Summary Judgment, *supra* note 11, at 8 ("Second, even assuming Walker had submitted evidence to the Board to substantiate her claims about the computer virus and her conversation with Ungberg [Andrew Ungberg, a *JOLT* editor]—which she did not—her February 24 draft violated the plagiarism rule in any event").

³⁸ Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459, 459 (2004) ("The portion of federal civil cases resolved by trial fell from 11.5 percent in 1962 to 1.8 percent in 2002, continuing a long historic decline. More startling was the 60 percent decline in the absolute number of trials since the mid-1980s.").

³⁹ 28 U.S.C. § 1332(a)(2) (2012).

⁴⁰ Complaint, *supra* note 11, at ¶ 8.

⁴¹ Quoted in KEVIN BOYLE, *ARC OF JUSTICE: A SAGA OF RACE, CIVIL RIGHTS, AND MURDER IN THE JAZZ AGE* 274 (2004).

⁴² *Id.* at 234.

⁴³ Ruth Anne Robbins, *An Introduction to Applied Storytelling and to This Symposium*, 14 LEG. WRITING 3, 3 (2008).

⁴⁴ Walker's filings in the case depict Harvard as a malefactor; her future is claimed to have been "destroyed by the wrongful actions of defendants." Complaint, *supra* note 11, at ¶ 2. Harvard's filings are at times equally acrimonious; its reply to Walker's opposition to summary judgment contains this footnoted sentence: "Walker purports to 'qualify' any number of admitted facts with references to her self-serving deposition testimony, all in an attempt to create

“Reading documents filed by Walker's and Harvard's attorneys, as well as the opinions of judges tasked with being neutral arbiters in the rancorous conflict between the parties, reveals starkly different narratives about Walker's conduct.”

The bountiful case law supporting courts deferring to institutions of higher education on academic integrity-related matters⁵⁰ likely shaped Harvard's approach, while the central theme emerging from Walker's filings is a more poignant, classic narrative of the American Dream on the cusp of attainment, but thwarted by a sinister institution. In the depth of the Great Depression, James Truslow Adams famously formulated the Dream as "a vision of a better, deeper, richer life for every individual, regardless of the position in society which he or she may occupy by the accident of birth. It has been a dream of a chance to rise in the economic scale, but quite as much, or more than that, of a chance to develop our capacities to the full, unhampered by unjust restrictions of caste or custom."⁵¹ Adams's exuberant vision of self-actualization is infused throughout Walker's case filings, which portray her as a prodigy who earned a Bachelor's degree in Biotechnology with Highest Honors at the age of 19, finished a Ph.D. in Bioinformatics while enrolled at Harvard Law, and received two employment offers after summering at renowned law firms.⁵² The complaint then depicts Harvard as a villain who tarred Walker with a "ruinous" plagiarism charge that eviscerated the future she had been striving toward for over two decades, all for what is indicated to be at most a correctable mistake on her part.⁵³ The court is injected into this elemental David-and-Goliath drama as Walker's professional and personal savior:

[D]efendants have destroyed everything plaintiff has worked and sacrificed to achieve, and plaintiff is left daily with that shame, no job,

⁵⁰ Latourette, *supra* note 24, at 56–57 ("When the college or university serves as the forum for determinations of student plagiarism, the institution is rendered largely judgment-proof in that students will rarely emerge victorious in litigation arising from the plagiarism charge. ... [T]he long-held traditions of deference to academic expertise, judgment, and autonomy continue to dominate judicial thinking on the student-university relationship."). See generally George L. Blum, *Claims of Student Plagiarism and Student Claims Arising from Such Allegations*, 83 A.L.R.6th 195 (2013) (summarizing cases).

⁵¹ James Truslow Adams, *America Faces 1933's realities*, N.Y. Times SM1, Jan. 1, 1933, <http://www.nytimes.com/learning/teachers/archival/19330101AmericanDream.pdf>.

⁵² Complaint, *supra* note 11, at ¶¶ 1, 16.

⁵³ See *id.* at ¶¶ 6, 36 (contending that junior lawyers are expected to make mistakes but are able to remedy these with training, suggesting Walker could have done the same with her comment if provided sufficient guidance).

alone with only the knowledge that unless she has relief from this Court, she will never obtain what she has worked so hard to achieve and what she deserves.⁵⁴

Walker's assiduousness is emphasized not only before the plagiarism incident, but during it: she is claimed to have voluntarily chosen to draft the article, spent countless hours on it, and labored to recover it after her computer malfunctioned.⁵⁵ A perceived extreme discrepancy between Walker's conduct and Harvard's in response is reiterated throughout Walker's case documents, evoking the secondary theme of fundamental fairness. Walker is alleged to have fully disclosed the citation problems in her article to *JOLT* editors and to have provided them with the full-text of her sources.⁵⁶ Yet she is claimed to have been perversely subject to inferior treatment relative to other student authors publishing in the journal and to have been denied due process by Harvard during the ensuing disciplinary proceedings that resulted in her formal reprimand.⁵⁷

The predominant theme emerging from Harvard's filings is contrastingly judicial deference to the Law School's judgment in upholding academic integrity standards absent "arbitrary and capricious" decision-making; Harvard's summary judgment memorandum cites several precedents to this effect⁵⁸ and seeks to refute Walker's fairness-based claims. Harvard notes that Walker's latest draft was not accompanied by an email explaining the virus situation or otherwise alerting *JOLT* editors about citation problems,⁵⁹ which can be seen to manifest either her negligence or deliberate omission of material facts. Moreover, the sources Walker gave the editors are alleged to have been in a useless format for editorial purposes and

⁵⁴ *Id.* at ¶ 71.

⁵⁵ *Id.* at ¶¶ 20, 29, 32.

⁵⁶ *Id.* at ¶ 32.

⁵⁷ *Id.* at ¶¶ 32(vii), 48–54.

⁵⁸ Memorandum in Support of Defendants' Motion for Summary Judgment, *supra* note 11, at 8–9.

⁵⁹ *Id.* at 3.

“A perceived extreme discrepancy between Walker's conduct and Harvard's in response is reiterated throughout Walker's case documents, evoking the secondary theme of fundamental fairness.”

irrelevant in any event because of her authorial responsibility to properly attribute sources instead of relying on *JOLT*.⁶⁰ Harvard did not directly address the disparate treatment issue, which disappeared from the litigation, but did forcefully deny that Walker was denied due process in her hearing before the Board. Not only did Walker receive due process, Harvard asserted, but she incurred “only a formal reprimand, allowing her to graduate on time with her class,” as opposed to the typical sanction of suspension for plagiarism; she was also permitted to appeal the Board’s unanimous determination, despite having no right to do so.⁶¹ Harvard concluded about the Board’s decision: “The matter was thus resolved as favorably to Walker as possible, consistent with the maintenance of HLS’s [Harvard Law School’s] high academic and ethical standards.”⁶²

Each party then linked its readily apprehensible themes to a legal theory of the case centered on what constituted Walker’s “reasonable expectation” in context. On this crucial issue, the First Circuit sided with Harvard’s objective reasonableness standard, determining that “[e]ven if, as Walker argues, the facts establish that she, indeed, believed her Note was badly incomplete, they do not establish that a student could reasonably expect that the words ‘[a]ll work submitted’ [from Harvard Law’s plagiarism policy] exempted such an incomplete draft.”⁶³ While it may be that Walker lost on purely legal grounds, some questionable narrative choices may have contributed to judicial repudiation of her claims. Her complaint, for example, characterizes *JOLT* student editors as being motivated by malice and maligns Dean of Students Ellen Cosgrove⁶⁴ as “Hostile Cosgrove.”⁶⁵ More judicious language tethered to facts could have enforced the reasonability of Walker’s

arguments. Other passages suggest doubtful logic; to rebut Harvard’s deference argument, Walker’s opposition to summary judgment compared Harvard Law’s plagiarism policy to a “commercial boilerplate contract” that should be construed against the drafter in case of ambiguities but claimed that “[u]nlike with the purchase of a bad car, the consequences of being found on the wrong side of a major school rule are irreversible.”⁶⁶ Considering recent episodes of automotive defects having fatal, i.e. irreversible, consequences,⁶⁷ the reader (such as a judge, or me for the purposes of this article) immediately questions this line of analysis in the document. Also, while no evidence suggests this happened in the case, Walker’s attorney’s focus on his client’s educational credentials could have backfired if the courts had found intent to be a relevant factor in evaluating whether the plagiarism charge was substantiated.⁶⁸ In *In re Lamberis*, for example, the Supreme Court of Illinois agreed with a law school’s finding that “[s]ubjectively, it is inconceivable to us that a person who has completed undergraduate school and law school would not know that representing extensively copied material as one’s own work constitutes plagiarism.”⁶⁹ Finally, Walker’s complaint’s emphasis on the gravity of a plagiarism charge⁷⁰ was intended

“While it may be that Walker lost on purely legal grounds, some questionable narrative choices may have contributed to judicial repudiation of her claims.”

⁶⁶ Plaintiff Megon Walker’s Opposition to Defendants’ Motion for Summary Judgment, *supra* note 26, at 16. The argument here about construing adhesion contract terms against the drafter in the university-student context also relied on a dissenting opinion that in turn cited a non-binding Eighth Circuit decision. Schaefer v. Brandeis Univ., 735 N.E. 2d 373, 382 (Mass. 2000) (Ireland, J., and Cowin, J., dissenting) (citing Corso v. Creighton Univ., 731 F.2d 529, 532-33 (8th Cir. 1984)). However, the majority opinion in Schaefer, from Massachusetts’ high court, did not endorse that contractual interpretation principle in the case. See *id.* at 378. This example can limit for students the distinction between mandatory and persuasive authority and instigate a discussion about how to address adverse authority in persuasive legal writing.

⁶⁷ See, e.g., Kristen Loiacono, Firestone/Ford Fallout, 36 TRIAL 11, 11 (2000) (“In the past decade, more than 100 people died and hundreds were injured in Ford Explorer rollovers caused by Firestone tire failures.”)

⁶⁸ Intent to deceive was technically irrelevant, as Harvard Law’s plagiarism policy precluded inadvertency as a defense. Walker v. Harvard Coll., 82 F. Supp. 3d 524, 529 (D. Mass. 2014), *aff’d*, 840 F.3d 57 (1st Cir. 2016).

⁶⁹ 443 N.E.2d 549, 551 (Ill. 1982).

⁷⁰ “Plagiarism, which is a form of academic dishonesty, is a very serious matter. It brands the student involved as dishonest and untrustworthy, two of the greatest risks any prospective employer can run when contemplating the hiring of a young lawyer or law school graduate. The practice of law depends on its essence for

⁶⁰ *Id.* at 3, 15-16.

⁶¹ *Id.* at 6, 11.

⁶² *Id.* at 15.

⁶³ Walker v. Harvard Coll., 840 F.3d 57, 62 (1st Cir. 2016).

⁶⁴ Who, for full disclosure purposes, was the Dean of Students at the University of Chicago Law School during my attendance there.

⁶⁵ Complaint, *supra* note 11, at ¶¶ 59, 70.

“Litigants are barred from misrepresenting the law or facts to courts, but they may still exercise creativity within constraints by carefully selecting and framing rules and facts.”

to advance the unfairness theme in the case but may have also accentuated the enormity of her (mis)conduct, in light of which a formal reprimand could have seemed a justifiable penalty to judges.

Once the importance of crafting a cogent theme and theory of the case tailored to the audience has been illustrated to students drafting persuasive briefs, a more granular comparative analysis of the parties’ rhetorical strategies in *Walker* may be edifying. Litigants are barred from misrepresenting the law or facts to courts,⁷¹ but they may still exercise creativity within constraints by carefully selecting and framing rules and facts. In their filings, parties may choose to underscore more favorable interpretations of governing rules and more beneficial facts while de-emphasizing less favorable legal interpretations and facts, or potentially omitting them entirely if ethical rules permit; parties may also draw divergent legal conclusions from the same rules and facts, all of which demonstrates that rules and facts are not self-defining. Students can see these persuasive principles in action through the parties’ manipulation of rules and facts in *Walker*, in addition to evidencing the parties’ inventiveness in reaching propitious legal conclusions when applying governing precedents to undisputed facts. Harvard’s summary judgment memorandum and Walker’s opposition to Harvard’s summary judgment motion delineate the interplay between included and excluded rules. The memorandum cites the basic Rule 56 standard⁷² but then adds a benignant gloss from case law: “The nonmoving party ‘may not rest on mere allegations or denials,’ but instead ‘must set forth specific facts showing there is a genuine issue for trial.’”⁷³ Walker’s opposition does not dispute Harvard’s characterization of the included rules but points out that Harvard’s memorandum “omits that the evidence relevant to the motion

trustworthiness.” Complaint, supra note 11, at ¶ 35.

⁷¹ See Fed. R. Civ. P. 11(b) (requiring attorneys to make veracious factual and legal representations in federal court).

⁷² “Summary judgment is appropriate if the moving party shows there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law.” Memorandum in Support of Defendants’ Motion for Summary Judgment, supra note 11, at 7 (citing Fed. R. Civ. P. 56).

⁷³ Id. (citations omitted).

must be ‘viewed in the light most flattering to the party opposing the motion.’”⁷⁴ Even where the parties cite the same rule, particularly the “reasonable expectation” test,⁷⁵ in assessing whether Harvard breached its contract with Walker, their perspectives vary based on their different litigation objectives. Walker’s filings focus on her reasonable expectation of Harvard while Harvard’s filings concentrate on its reasonable expectation of her.⁷⁶

Walker and Harvard are similarly strategic in their use of facts, which, to use a sonic metaphor, are amplified, diminished, or muted entirely to advance each party’s theme and theory of the case. Walker is portrayed as having an unblemished academic record before the plagiarism incident, and proof of her disclosing the tentative state of her draft to *JOLT* editors is elucidated at length.⁷⁷ *JOLT* editors’ communications to her indicating they understood the incomplete status of her article are also highlighted.⁷⁸ While Harvard Law’s plagiarism rule disregarded intent as a mitigating factor, Walker’s filings amassed these facts as potential evidence of her good faith compliance efforts and reasonable expectations.

⁷⁴ Plaintiff Megon Walker’s Opposition to Defendants’ Motion for Summary Judgment, supra note 26, at 12.

⁷⁵ “[W]hat meaning the party making the manifestation, the university, should reasonably expect the other party to give it.” *Schaer v. Brandeis Univ.*, 735 N.E.2d 373, 378 (Mass. 2000) (quotations and citations omitted).

⁷⁶ Memorandum in Support of Defendants’ Motion for Summary Judgment, supra note 11, at 7 (“Walker must establish that Harvard could not reasonably expect her to understand that the Handbook’s plagiarism rule applied to the February 24 draft that she turned in to *JOLT*.”); Plaintiff Megon Walker’s Opposition to Defendants’ Motion for Summary Judgment, supra note 26, at 13 (“There is a double question here which Harvard’s memo does not address. ... It is not simply ... whether Harvard would ‘reasonably expect her [Walker] to understand that the Handbook’s plagiarism rule applied to the February draft . . .’ It is also whether the school’s interpretation given to a particular handbook provision is in line with the student’s reasonable expectation.”) (citation omitted).

⁷⁷ Complaint, supra note 11, at ¶¶ 16, 17, 32.

⁷⁸ Plaintiff Megon Walker’s Opposition to Defendants’ Motion for Summary Judgment, supra note 26, at 5-10. The First Circuit, however, rejected the argument that, based on these communications, *JOLT* senior staff could exempt Walker from Harvard Law’s general plagiarism policy. The court cited its own precedent holding that a university could reasonably expect students not to rely on faculty or administrators’ “oral statements as binding promises by the university when such statements” contravened the university’s catalog. *Walker v. Harvard Coll.*, 840 F.3d 57, 63 (1st Cir. 2016) (citing *Mangla v. Brown Univ.*, 135 F.3d 80, 83 (1st Cir. 1998)).

Harvard disclaims the relevance of intent in its filings but in the alternative emphasizes how Walker did not unknowingly commit a slight infraction. Her experience editing for *JOLT* is mentioned within the first paragraph of Harvard's memorandum supporting summary judgment—and later recapitulated—as indicative of the fact that Walker knew intimately about *JOLT*'s editing processes.⁷⁹ Specifically, Harvard argues she was aware that her last draft was expected to be fully sourced for *JOLT*'s editorial review preceding publication.⁸⁰ As a later filing asserts, “Walker has admitted the material facts: she not only should have expected but actually knew that her February 24 draft needed to include citations to all her sources and that, as with any work a student turns in, the Handbook's plagiarism rule applied.”⁸¹ Walker's complaint does not mention her journal work but a subsequent filing conceded the fact while trying to use it to draw a more favorable legal conclusion than Harvard did about her reasonable expectations, namely that she would have another opportunity to revise the article.⁸²

In another of Harvard's strategic factual moves, Walker's disclosures to *JOLT* editors are downplayed or claimed to be inadequate⁸³ while the breadth of her plagiarism is magnified: at least “*twenty-three*” instances, proving “the Board's decision was supported by overwhelming evidence of blatant, pervasive plagiarism”⁸⁴ that would render her expectations of avoiding the plagiarism policy's application manifestly unreasonable. Walker's complaint does not mention the number of

plagiarized passages *JOLT* identified and omits one of the plagiarism policy's most pertinent, and damning, provisions: “Students who submit work that is not their own without clear attribution of all sources, even if inadvertently, will be subject to disciplinary action.”⁸⁵ Harvard's memorandum supporting summary judgment relies substantially on the plagiarism policy's lack of exceptions in this regard⁸⁶ to parry many of Walker's challenges. As discussed previously, the First Circuit ultimately endorsed Harvard's expansive interpretation of the policy in affirming the trial court's summary judgment grant for the university.

V. CONCLUSION

The preceding discussion hardly exhausts the possibilities for incorporating *Walker v. Harvard College* into the curriculum⁸⁷ in a range of law school settings, including academic integrity sessions, legal writing classrooms, professional responsibility courses, and academic success programs. This article, though, does suggest several generative pedagogical uses for the case, including vividly introducing students to plagiarism's practical consequences and ethical implications in law school and in their future careers. Other more mundane purposes for teaching *Walker* may be to explicate legal analysis methods, procedural topics, and strategies for persuasion through a memorable, contemporary, and germane case. An additional benefit for law schools from publicizing a case like *Walker* is potentially reducing plagiarism incidents that tax institutional resources and may tarnish the institution's reputation even if it prevails in internal proceedings and in litigation. Fully banishing the specter of plagiarism is likely not feasible, but keeping the phantasm at bay while honing students' legal skills remains a laudable endeavor for law schools tasked with educating prospective lawyers to honestly and effectively serve society.

“An additional benefit for law schools from publicizing a case like Walker is potentially reducing plagiarism incidents that tax institutional resources and may tarnish the institution's reputation ...”

⁷⁹ Memorandum in Support of Defendants' Motion for Summary Judgment, supra note 11, at 1, 2.

⁸⁰ Id. at 2.

⁸¹ Reply in Support of Defendants' Motion for Summary Judgment, supra note 45, at 4.

⁸² Plaintiff Megon Walker's Opposition to Defendants' Motion for Summary Judgment, supra note 26, at 4 (“Her past involvement had taught her when the various stages of the article-editing process were triggered and the state of completeness required before each, alone making it unlikely that she would have understood that her ‘latest draft’ ... would be understood to be a submission subjecting it to scrutiny for plagiarism.”).

⁸³ Memorandum in Support of Defendants' Motion for Summary Judgment, supra note 11, at 2, 3.

⁸⁴ Id. at 4, 17.

⁸⁵ Quoted in *Walker v. Harvard Coll.*, 840 F.3d 57, 61 (1st Cir. 2016) (emphasis added).

⁸⁶ Memorandum in Support of Defendants' Motion for Summary Judgment, supra note 11, at 9.

⁸⁷ For example, appellate brief formatting and issue framing could be taught by analyzing the parties' briefs on appeal, and Harvard Law's plagiarism policy could be parsed in a legal interpretation or contract drafting class.

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Surviving Your 1L Year (Again): A Primer for First-Year Legal-Writing Adjuncts

By Hon. Gerald Lebovits

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I. Introduction

Legal writing is the hardest and most important legal art and skill to master.¹ First-year legal writing is the toughest and most critical law-school course to teach² or take.³

^a Justice Lebovits thanks his law clerk, Alexandra Standish, and his judicial fellow, Danielle Ravich, for their research help and Prof. James B. Levy for encouraging him to write this article. He also thanks his writing-program supervisors, present and past: Susan Chung, Philip M. Genty, I. Cathy Glaser, Mary Holland, Toni Jaeger-Fine, Jethro K. Lieberman, Robert A. Ruescher, Ellen Ryerson, Andrew J. Simons, Ilene Strauss, and Rachel Vorspan.

¹ See, e.g., George D. Gopen, *The State of Legal Writing: Res Ipsa Loquitur*, 86 MICH. L. REV. 333 (1987); Ilhyung Lee, *The Rookie Season*, 39 SANTA CLARA L. REV. 473, 478-79 (1999) (“For a beginning law student, few things could be more important than mastering the tasks of identifying the precise legal issue, ascertaining the governing law and the applicable primary and secondary authorities, completing and updating research, and most importantly, presenting one’s analysis in writing, in a clear, concise, and coherent form. Good writing is a crucially important task for the lawyer.”) (footnotes omitted); Wayne Schiess, *Legal Writing Is Not What It Should Be*, 37 S.U. L. REV. 1 (2009); Steven Stark, Comment, *Why Lawyers Can’t Write*, 97 HARV. L. REV. 1389 (1984).

² As to the grueling nature of teaching first-year legal writing, see Jan Levine, *Leveling the Hill of Sisyphus: Becoming a Professor of Legal Writing*, 26 FLA. ST. U. L. REV. 1067, 1072 (1999) (Levine I) (“Teaching legal writing may be the most demanding teaching job in the law school.”); James B. Levy, *Legal Research and Writing Pedagogy—What Every New Teacher Needs to Know*, 8 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 103, 107 (2000) (“[P]edagogically speaking, teaching legal research and writing may be the most difficult job at law school because of the breadth of techniques needed to successfully impart the requisite skills to students.”).

³ As to the grueling nature of taking first-year legal writing, see Miriam E. Felsenburg & Laura P. Graham, *Beginning Legal Writers in Their Own Words: Why the First Weeks of Legal Writing Are So Tough and What We Can Do About It*, 16 LEGAL WRITING: J. LEGAL WRITING INST. 223, 223-24 (2010) (“[M]any of the first-year students

And first-year legal-writing students are the roughest and most rewarding crowd in law school. Especially for adjunct professors.⁴

To rephrase the old saying, those who teach can’t do, and those who teach teachers can’t teach. Nonetheless, this article—from someone who violates his own recommendations too often—is designed to teach teachers: prospective, new, and experienced first-year legal-writing adjuncts⁵—lawyers who both do⁶ and teach.⁷

in our legal writing classes, although typically bright and hard-working, struggle to effectively grasp the fundamental skills of legal analysis and legal writing. This struggle manifests itself especially clearly during the first few weeks of legal writing instruction and often leads to a high frustration level that tends to persist throughout the first year of legal writing (and indeed may never be overcome).”).

⁴ Many law schools have one honorific for all adjuncts: adjunct professor of law. Other schools have different ones: adjunct instructor, adjunct lecturer, adjunct assistant professor, adjunct associate professor, adjunct professor, distinguished adjunct professor, and adjunct professor emeritus.

⁵ According to 2015 statistics (the most current available) from the Association of Legal Writing Directors (ALWD) and the Legal Writing Institute (LWI) Survey Committee, which compiled responses from 193 American Bar Association-accredited or provisionally accredited law schools, legal-writing adjuncts are used exclusively in the required first-year research and writing programs at 11 schools, substantially (75 percent) at 14 schools, significantly (50 percent) at 15 schools, somewhat (25 percent) at 26 schools, rarely (less than 25 percent) at 42 schools, and not at all at 85 schools. Only 84 of the responding 108 schools that use adjuncts for their first-year research and writing course answered how many first-year research and writing adjuncts in 2015 were women: 611. Even fewer—64 of 108 schools—answered how many first-year research and writing adjuncts in 2015 were men: 475. See <http://www.lwionline.org/surveys.html>. I thank Professor Alyssa Dragnich of the Sandra Day O’Connor College of Law of Arizona State University for giving me a preview of the data (telephone interview of Jan. 24, 2017). This article is primarily addressed, therefore, to the 1,000+ U.S. adjunct writing professors and to those who want to join them. But I hope that some full-time writing faculty, including writing-program directors who supervise adjuncts, will also find some information useful.

⁶ Or recently did, if they’re retired, raising children, or teaching a writing class part time while serving a law school full time in an administrative capacity.

⁷ Writing adjuncts are in good company. They’re part of a law school’s contingent faculty: the full- or part-time but not non-

Whether to use adjuncts to teach legal writing is one of legal education's many debates. Some argue that "the detriments to utilizing [writing] adjuncts outweigh the benefits."⁸ Others contend that adjuncts "play a significant and valuable role in most law schools in this country," particularly in skills courses, which include legal-writing courses.⁹ Still others maintain that adjuncts are effective, but only when the law school devotes the resources to support them.¹⁰

Serving as a writing adjunct is an exceptionally rewarding part-time job for those who can handle a classroom with intelligent, impressionable first-year law students; who enjoy teaching and have the time to do it; who have the patience, compassion, and commitment to help law students find their way; who have a passion for writing in the law; and who're dedicated to their current and former students, their writing-program faculty colleagues, and the law school at which they teach. It's the best way for someone with a day job to enjoy law-school teaching without giving it up. And it's a significant service to the profession, the administration of justice, and the public.

tenured or tenure-track teachers who today make up 76 percent of instructional staff appointments at American institutions of higher learning. Lee Hall, *I am an Adjunct Professor Who Teaches Five Classes. I Earn Less Than a Pet-Sitter*, THE GUARDIAN (June 22, 2015), <https://www.theguardian.com/commentisfree/2015/jun/22/adjunct-professor-earn-less-than-pet-sitter> (articulating U.S. lawyer's thoughts about adjuncting).

⁸ Bonny L. Tavares & Rebecca L. Scalio, *Teaching After Dark: Part-Time Evening Students and The First-Year Legal Research & Writing Classroom*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 65, 90 (2011) ("[I]t is our recommendation law schools utilize full-time faculty to teach the LRW course to all students."); Lee, *supra* note 1, at 495-96 ("[I]f legal writing programs continue to be staffed by temporary, part-time teachers who are perceived as less than professors, the legal academy will continue to produce graduates who do not write competently. The subject should not be taught by other students or adjuncts. The only benefit of such staffing is financial cost, while a heavy price is paid on other fronts.").

⁹ Karen L. Tokarz, *A Manual for Law Schools on Adjunct Faculty*, 76 WASH. U. L.Q. 293, 296 (1998).

¹⁰ David Lander, *Are Adjuncts a Benefit or a Detriment?*, 33 U. DAYTON L. REV. 285, 297 (2008) ("[M]ak[ing] the use of adjuncts truly beneficial requires resources, including money, energy, and creativity, to construct and monitor an effective and integrated adjunct program.").

The first-year writing course—usually called Legal Research and Writing (LRW), Lawyering, Legal Practice, or something similar—is essential for law students. Good writing is fundamental to good lawyering and to getting and keeping good law jobs.¹¹ Those who can endure the trials of serving as a writing adjunct will find new and fulfilling opportunities, chief among them are the joy of working with law students and a chance to improve their legal writing by teaching it. We know lots about full-time writing professors;¹² we know far less about writing adjuncts. This article offers thoughts and suggestions for you—the current or prospective adjunct writing professor—for developing and teaching a first-year legal-writing course.

II. Drawbacks and Benefits of Teaching Legal Writing to First-Year Students as an Adjunct

Like advancing one's competency at legal writing, being a good writing adjunct is evolutionary. Even as editing papers becomes tedious over time,¹³ classes get better and easier the more the adjunct teaches. Writing adjuncts have their challenges, though. I'll go through them to show how to overcome them. Then I'll conclude this section by showing how the positives to teaching legal writing part time profoundly outweigh the negatives.

Learning and teaching legal writing is arduous. It takes time, effort, and intelligence to be good at legal writing—for students and teachers alike. Legal writing is both art and skill, for which there's

¹¹ Susan Hanley Kosse & David T. Butleritchie, *How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study*, 53 J. LEGAL EDUC. 80, 80 (2003) ("[G]ood legal research and writing skills are vital to the practice of law."). Good doctrinal grades will get your students a job; good writing will give them a career.

¹² Susan P. Liemer & Hollee S. Temple, *Did Your Legal Writing Professor Go to Harvard?: The Credentials of Legal Writing Faculty at Hiring Time*, 46 U. LOUISVILLE L. REV. 383, 413-14 (2008) ("[T]he typical legal writing professor is a white female hired off the tenure-track with a multi-year contract, earning significantly less than the typical tenure-line law faculty hire. We also know a lot about the workload of these professors, the type of work they do, and the amount of institutional support they receive.") (footnotes omitted).

¹³ Lee, *supra* note 1, at 486 (lamenting that "grading [first-year legal-writing papers] was a physically exhausting and mentally draining exercise").

“Those who can endure the trials of serving as a writing adjunct will find new and fulfilling opportunities, chief among them are the joy of working with law students and a chance to improve their legal writing by teaching it.”

always room for improvement.¹⁴ It's like training for a marathon.¹⁵ Legal writing requires practice and persistence, with concepts learned one at a time. Legal writers must engage in high-level thinking that first-year students aren't used to.

For first-year law students, legal writing is unlike anything they've learned before. It requires using fact and law to construct and support arguments. Grammar, punctuation, and citation are important aspects of legal writing that some students never bothered with or excelled at in college. Precision is a must; legal writing is meant for readers who must make a decision and can't do so based on ambiguities in organization, style, substance, and word choice, or on imprecise issue statements, rule explanations, or synthesizing of authority. Ambiguity might be acceptable in college, but it has no place in legal writing. Critical in legal writing, too, are concision and succinctness—making every syllable count for a busy and skeptical legal reader. College students are used to writing assignments that have minimum page requirements instead of law school's page or word maximums. Good legal writing is clear, concise, and engaging¹⁶ in ways unheard of in college.

College students rarely take a writing-skills course. But they come to law school overly confident about their writing, and they have skewed views of what a writing course seeks to teach and what constitutes good legal writing. These misconceptions lead to student “frustration, even resentment [and] a detour, if not a roadblock, to progress in learning legal writing. ... that peaks in the midpoint of the first semester, when ... their legal writing assignments ... become more demanding.”¹⁷ And to most students, legal writing is dreary and dull, more so than the college papers they wrote.

¹⁴ Adam Lamparello & Charles E. MacLean, *A Proposal to the ABA: Integrating Legal Writing and Experiential Learning into A Required Six-Semester Curriculum That Trains Students in Core Competencies, “Soft Skills,” and Real-World Judgment*, 43 *CAP. U. L. REV.* 59, 91 (2015).

¹⁵ *Id.* at 92.

¹⁶ Mark K. Osbeck, *What is Good Legal Writing and Why Does it Matter?*, 4 *DREXEL L. REV.* 417, 456 (2008).

¹⁷ Felsenburg & Graham, *supra* note 3, at 280.

Despite the challenges, some lawyers are natural writing adjuncts. The rest of us might find a bit of advice helpful. Much depends on winning writing students over by inspiring, empathizing with, and showing concern for them; by nonjudgmentally encouraging animated but respectful class discussion and opinion; by being organized and prepared for class; by giving fair assignments and then grading them fairly and quickly; by showing enthusiasm for the course; and by illuminating why legal writing is relevant and important. The teacher's goal is to cultivate, promote, and nurture personal fulfillment and intellectual, academic accomplishment in a safe, stress-free, and professional environment.

Much also depends on teaching students to master the subject. The substance of a legal-writing class comes down to teaching students a new way to communicate.¹⁸ That's a challenge for adjuncts whose students might:

- avoid complex analytical thinking;
- report everything they know, regardless what the reader needs;
- focus on what they perceive is their professor's preferred writing style;
- want to make simple things complex instead of the other way around;
- doubt the value of writing in simple, plain English¹⁹ when some of the cases and articles they read in their doctrinal classes are plastered with legalisms and archaic expressions;
- enter law school believing from the media that adjectives, adverbs, cowardly qualifiers, overblown advocacy, exclamation points, and unsupported conclusions are the best way to persuade;

¹⁸ Teresa Godwin Phelps, *The New Legal Rhetoric*, 40 *SW. L.J.* 1089, 1102 (1986) (“Law students too frequently acquire their new ‘tribal speech’ by imitating the style of the appellate opinions they read, by quoting judges’ words at length, and by incorporating alienating and stuffy legalese.”).

¹⁹ See, e.g., Joseph Kimble, *Writing for Dollars, Writing to Please*, 6 *SCRIBES J. LEGAL WRITING* 1, 37 (1997) (“[P]lain language saves money and pleases readers: it is much more likely to be read and understood and heeded—in much less time.”).

- think that outlining means more work, not less;
- confidently profess that the only place to conclude is at the end of a document rather than at the beginning, with a road map;
- feel that IRAC stifles their creativity and unique voice;
- see fact and opinion as one and the same; or
- insist that they know more about writing than their writing teachers because they were English majors.

And even if some lawyers are good writers and communicators—or good teachers, for that matter—it doesn't mean they also know how to teach others how to be good writers and communicators in the law.

A first-year legal-writing class is often a law student's first contact with the legal system. Writing professors are usually the first ones to explain to students the hierarchy of the courts, the differences between mandatory and persuasive authority, how to decipher statutes, and how to extract a rule from a case.²⁰ Writing professors must teach students a wide range of skills that include not only clear written expression but also logical organization, proper citation form,²¹ and persuasive expression through Moot Court. But their students have no context to understand these skills. First-year students get frustrated by this lack of context. They might not get it until their second year, after the adjunct's writing course is long over.²²

Student challenges are further exacerbated because they quickly “experience[] a counterproductive plummet in their confidence levels when they realize[] that learning legal writing would be much more difficult than they had expected”²³ and because they “incorrectly believe[] that their prior strengths and weaknesses as writers would transfer directly to legal writing.”²⁴ Still other challenges

arise because some students might resist writing like lawyers because they resist becoming lawyers.²⁵

The difficulty teaching law students new things pales to dealing with their grades—unless you, the writing adjunct, teach in a first-year writing program in which you grade students once, only at the end of the year, after the students submit their evaluations, and on a scale of high pass, pass, low pass, or fail.²⁶ Writing professors bear the brunt of first-year law students' stress about grades, especially because legal-writing grades predict how well students will do in other courses.²⁷ First-year grades and class rank factor heavily in determining which students get onto law review, receive honors, scholarships, summer jobs, internships, externships, and coveted positions post-graduation.²⁸ And poor grades are as harmful to law students as good grades are helpful.

Writing students have trouble managing grade expectations and self-esteem. Students who did well in college now compete in law school with equally good or better writers. Students' egos are wrapped up in writing. Criticism can upset and deflate them. They expect to learn everything at once rather than

“Writing professors bear the brunt of first-year law students' stress about grades, especially because legal-writing grades predict how well students will do in other courses.”

²⁵ Christopher Rideout & Jill J. Ramsfield, *Legal Writing: The View from Within*, 61 MERCER L. REV. 705, 744 (2010) (“[L]egal writing professors need to be aware of what they ask of their students when they ask them to write like a lawyer—the construction of a new identity—and they should understand that some of the struggle or resistance they see in their students is part of the process of becoming a lawyer.”).

²⁶ Some argue that a pass/fail legal-writing course will cause students to work less hard than they would in a graded doctrinal course. They also argue that the legal community will take legal writing less seriously if it's ungraded in law school. See, e.g., Helene S. Shapo & Christina Kunz, *Brutal Choices, Should the First-Year Legal Writing Course Be Graded in the Same Way as Other First-Year Courses?* 2 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 6, 6 (1993). But “Legal Writing should be ungraded not because it is inferior to doctrinal courses, but because it is different from doctrinal courses.” Steve J. Johansen, *Brutal Choices in Curricular Design, Life Without Grades: Creating a Successful Pass/Fail Legal Writing Program*, 6 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 119, 120 (1998).

²⁷ See Leah M. Christensen, *The Power of Skills Training: A Study of Lawyering Skills Grades as the Strongest Predictor of Law School Success (Or in Other Words, It's Time for Legal Education to Get Serious About Skills Training If We Care About How Our Students Learn)*, 83 ST. JOHN'S L. REV. 785, 797 (2009) (finding that grades in Lawyering, a legal-writing course, are “the strongest predictor of law school success”); Jessica L. Clark, *Grades Matter; Legal Writing Grades Matter Most*, 32 MISS. C. L. REV. 375, 375 (2014) (providing “data support[ing] the anecdotal relationships between good grades in LRW and good grades in other first-year courses”).

²⁸ Ron M. Aizen, *Four Ways to Better 1L Assessments*, 54 DUKE L.J. 765, 773-75 (2004).

²⁰ Felsenburg & Graham, *supra* note 3, at 224.

²¹ Levy, *supra* note 2, at 107.

²² Felsenburg & Graham, *supra* note 3, at 272-73.

²³ *Id.* at 226.

²⁴ *Id.* at 227.

incrementally.²⁹ They'll definitely become deflated unless they accept that their writing might worsen under good tutelage until it becomes better.

Unfortunately for you, the legal-writing adjunct, you're the first to grade 1Ls. They'll receive several grades in their writing course before they're graded—after one final exam—in any other course. Some law students feel that their writing grades are subjective, even arbitrary, and that leads to resentment. Writing is subjective on some level, but all teachers know the difference between good and bad legal writing. Given the emphasis the legal profession places on first-year grades, finding a way to assess first-year students accurately is a hurdle all professors must overcome.³⁰

First-years would be happier with their writing course if they had the option not to take it. But they don't. Legal writing is a mandatory course, not an elective, for all first-year students. If they had the choice to opt out, few would enroll. First-year writing students aren't a self-selecting group; they're assigned to their professors and can't even pick the day or the time of day to attend the class.

Whom better to vent against than an adjunct? Students know that a writing adjunct isn't a full-time doctrinal, or podium, faculty member. In the academy, adjunct professors can't and don't have the same status as full-time professors. Law school is a caste system, with adjuncts placed at or near the bottom. It's significantly easier to get a job as an adjunct than a tenure-track job. Most full-time, tenured American law-school professors went to top law schools, earned law-journal honors, completed distinguished fellowships, and served as federal law clerks. They have teaching experience and publishing credits that few adjuncts possess, even though adjuncts on the whole have more practice experience than their doctrinal counterparts.³¹

²⁹ Sherri Lee Keene, *Are We There Yet? Aligning the Expectations and Realities of Gaining Competency in Legal Writing*, 53 DUQ. L. REV. 99, 103 (2015) (“[L]egal writing professors understand that effective legal writing is not a skill that is easily acquired and that no law student can truly master legal writing in their first year.”).

³⁰ Aizen, *supra* note 28, at 776-78.

³¹ See generally Liemer & Temple, *supra* note 12, at 425 (discussing backgrounds of full-time writing professors, finding their credentials at or near the doctrinal faculty, and noting that “many legal writing professors without tenure-line appointments have credentials equal to

And among adjuncts, legal-writing adjuncts may be respected the least, certainly at some schools. One reason is that legal-writing professors teach a subject that some incorrectly view as plebeian and remedial, even though all agree that legal writing is among the most important talents a lawyer must have.³² Another is that, as leading scholars contend, many American law schools have established a “pink ghetto” in which women primarily teach writing courses. According to these scholars, American law schools perpetuate a version of gender discrimination that “no law firm or corporation would dare institutionalize”³³—which students pick up on as well: “Students are more likely to complain about female teachers than male teachers.”³⁴ Still another is that adjunct

many professors with doctrinal, tenure-line appointments”). To the extent that some writing teachers have lower objective qualifications than some tenured or tenure-track faculty, law schools should fix that by making full-time writing positions tenure track. See Mary Beth Beazley, “Riddikulus!?: Tenure-Track Legal-Writing Faculty and the Boggart in the Wardrobe,” 7 SCRIBES J. LEGAL WRITING 79, 84 (2000).

³² See Philip C. Kissam, *Thinking (By Writing) About Legal Writing*, 40 VAND. L. REV. 135, 142 (1987) (“The [argument] that English teachers should teach writing and law professors should teach law ... is wrong because it ignores the fundamental contribution to learning that can result from a commitment to critical legal writing. Nevertheless, it is instructive to ask why law professors have ignored or simply missed seeing this aspect of writing as thinking.”). According to Terri LeClercq, “Although the legal faculties are much more accepting of legal writing professionals in 2017, in 1994 many full-time faculty assumed we were momma-track escapees from law firms and had little to offer students... That’s a significant barrier to assimilation, and it can create a legal-writing ghetto where those professors talk only to each other rather than risk rebuff from substantive faculty. And that diminished their effectiveness because assimilating writing projects into substantive classroom discussion helps legal writing assignments, too.” Email from Terri LeClercq to author (Jan. 20, 2017, 11:41 AM EST) (on file with author).

³³ John A. Lynch, Jr., *Teaching Legal Writing After a Thirty-Year Respite: No Country for Old Men?*, 38 CAP. U. L. REV. 1, 12-13 (2009); accord Jo Anne Durako, *Second Class Citizens in the Pink Ghetto*, 50 J. LEGAL EDUC. 562 (2000); Jo Anne Durako, *Stop the Presses: Gender-Based Differences Discovered in the Legal Writing Profession*, 7 SCRIBES J. LEGAL WRITING 87 (2000); Pamela Edwards, *Teaching Legal Writing as Women’s Work: Life on the Fringes of the Academy*, 4 CARDOZO WOMEN’S L.J. 75 (1997); Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313 (2000); Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools’ Dirty Little Secrets*, 16 BERKELEY WOMEN’S L.J. 1 (2001); Kathryn M. Stanchi, *Who Next, the Janitors? A Socio-Feminist Critique of the Status Hierarchy of Law Professors*, 73 UMKC L. REV. 467 (2004).

³⁴ Jan M. Levine, *You Can’t Please Everyone, So You’d Better Please Yourself: Directing (or Teaching in) a First-Year Legal Writing Program*, 29 VAL. U. L. REV. 611, 615 (1995) (Levine II).

writing teachers rarely stay at a law school for very long. Although some adjuncts serve longer than the full-timers with short-term contracts, most writing adjuncts come and go after a few years. Some move on; others burn out. That makes it hard to form bonds. Part-time legal-writing professors are at bottom of the law school's caste system and, some may contend, full-time legal-writing professors are, sadly and unjustifiably, only a few rungs above them.³⁵

Compounding all that, legal writing isn't a priority for some students, and other students get upset because the first-year writing course requires far more work per credit than other courses. These and other factors can occasionally lead to poor student evaluations, or ratings, of their first-year writing teachers, especially the adjuncts.³⁶

Sometimes, first-year writing students will complain about a writing adjunct to the dean, an associate dean, or a legal-writing-program director. These students would likely never go to a dean

³⁵ See, e.g., John D. Feerick, *Writing Like a Lawyer*, 21 *FORDHAM URB. L.J.* 381, 385 (1994) (“[M]ost full-time faculty are reluctant to teach legal writing. Professional reputations are usually decided not by teaching writing skills to others, but by producing scholarly articles. The result is that legal writing programs often are not given the same emphasis as other areas of the law school curriculum.”); Toni M. Fine, *Legal Writers Writing: Scholarship and the Demarginalization of Legal Writing Instructors*, 5 *LEGAL WRITING: J. LEGAL WRITING INST.* 225, 226-27 (1999) (“[T]he legal writing community nevertheless remains somewhat on the periphery of the legal academe. Legal writing teachers generally have limited, often short-term contracts, or are merely part-time adjuncts or graduate fellows.”) (footnotes omitted); Mary Ellen Gale, *Legal Writing: The Impossible Takes a Little Longer*, 44 *ALB. L. REV.* 298, 317-18 (1980) (“Nearly everyone who writes about legal writing courses duly records faculty disdain for the subject matter and administrative dislike of the expense.”) (quoted in Lee, *supra* note 1, at 489).

³⁶ One venerated writing teacher, the late Dean Marjorie Dick Rombauer, suggested an approach different from the traditional end-of-semester evaluation. See Mary S. Lawrence, *An Interview with Marjorie Rombauer*, 9 *LEGAL WRITING: J. LEGAL WRITING INST.* 19, 30-31 (2003) (“[Y]ou do not always get honest responses. You get responses from those who have a grudge against the teacher; you get those who have not done well, so they blame it on the program, ... the teacher, and there is no way of segregating out whether the bad ratings come from the good students or from the disgruntled. Some teachers regularly play to the students for approval. ... [O]nly some attention should be paid to student evaluations. If they are all bad, or predominantly good, then that could be significant. But otherwise they are just a factor. ... One way to get more reliable evaluations of programs is for faculty members to actually talk to groups of students about their experience in legal writing. Pick out ... conscientious students. ... [S]tudents are sometimes more critical when they are in the course than after they've finished the course and after they have graduated ...”).

about a contracts or torts professor. Nor would they complain about an adjunct who teaches an upper-class writing elective.³⁷ Often the first-year students' complaints relate to their grades (writing adjuncts get fewer complaints when they grade pass-fail). A handful of these students will write defensive rebuttals to a writing instructor's edits and comments on their assignments. If college students merely whine about grades, law students, or occasionally their helicopter parents, argue about them. Sometimes the students who complain the most during the semester or in their end-of-semester ratings are the ones whose writing is the weakest³⁸ or who detest legal writing in general.³⁹ They don't recognize their own inadequacies, or they blame their teachers for them: A strong correlation exists between those who do poorly in their writing course and the blame they assign to their writing teachers.⁴⁰ A dean unfamiliar with or unaccepting of this phenomenon might think that all writing professors are dreadful since students may complain so much about their writing class.⁴¹ No wonder some “[l]aw schools re-examine and change [their writing] programs far more often than they do the rest of their curriculum.”⁴²

³⁷ Melissa J. Marlow, *Blessed Are They Who Teach an Upper-Level Course, For They Shall Earn Higher Student Ratings*, 7 *FLA. COASTAL L. REV.* 553 (2006).

³⁸ Catherine J. Wasson & Barbara J. Tyler, *How Metacognitive Deficiencies of Law Students Lead to Biased Ratings of Legal Writing Professors*, 28 *TOURO L. REV.* 1395 (2012) (noting that some writing students abuse the teacher-evaluation process because their own failings block them from spotting their limited skills).

³⁹ Melissa Marlow-Shafer, *Student Evaluation of Teacher Performance and the “Legal Writing Pathology:” Diagnosis Confirmed*, 5 *N.Y. CITY L. REV.* 115, 116 (2002) (“Legal writing professionals truly suffer from some type of disease within the legal academy. Lower student evaluations, due at least in part to course content, are yet another symptom of this ‘pathology.’”).

⁴⁰ See Anne M. Enquist, *Unlocking the Secrets of Highly Successful Legal Writing Students*, 82 *ST. JOHN'S L. REV.* 609, 672-73 (2008) (noting that successful writing students like their professors and avoid blaming others).

⁴¹ See Maureen Arrigo-Ward, *How to Please Most of the People Most of the Time: Directing (or Teaching in) a First-Year Legal Writing Program*, 29 *VAL. U. L. REV.* 557, 559 (1995) (observing that “law school administrators are likely to receive time-and-energy consuming complaints about the writing course”).

⁴² Allen Boyer, *Legal Writing Programs Reviewed: Merits, Flaws, Costs, and Essentials*, 62 *CHI-KENT L. REV.* 23, 23 (1985).

“A strong correlation exists between those who do poorly in their writing course and the blame they assign to their writing teachers.”

You must be patient. You must deal with the complainers—and those who intentionally challenge your authority—generously, respectfully, and never confrontationally, vengefully, or in-kind. You must never call students out in class or gossip about them to other students outside class. You must never let them ruin your class or your mood. You must await the day when they'll see the light. That day will come during the end-of-year Moot Court simulation. On that day you'll be profoundly satisfied that students who knew little when they began law school will cogently argue the issues in their assigned fact pattern and display lucid legal-method skills. These students might never like their writing class or you, their writing teacher. But their Moot Court performance will prove that they learned their key lessons after all. That'll make you proud of your students and content with yourself.

Beyond difficult students are miserly benefits. Adjunct professors have few prospects to advance within a law school. They're rarely invited to make decisions or provide input in managing the institution,⁴³ although that's not terrible for most adjuncts, who don't have the resources, time, or energy to help advance a law school's institutional development and educational mission. Most full-time writing instructors have long-term contracts and vote at faculty meetings; many even get tenure. And although some writing adjuncts may morph into full-time writing professors once they catch the bug, it's unusual for an adjunct to become a full-time doctrinal professor of law.

Along with their limited opportunities, adjuncts are ineligible to receive benefits even proportionately comparable to what full-time professors receive.⁴⁴ Adjuncts almost never get health or pension benefits. They're prohibited from teaching too many classes, or too many hours, lest they get benefits under the Affordable Care Act or a union contract, and few law adjuncts unionize. Some schools offer few tangible prospects for adjuncts to excel at teaching (though others offer teaching assistants (TAs), access to

administrative assistants, educational seminars for adjuncts, and the like). Even adjuncts who win the students' favor at one law school will never become so competitive that they'll secure a higher salary, more prestige, or competing adjuncting offers from more renowned schools.⁴⁵ Law schools poach doctrinals from their sibling rivals. They draw the line at poaching their rivals' writing adjuncts.

Nor do adjuncts have job security. They almost never get long-term teaching contracts; most get a contract one semester at a time. Adjuncts can be terminated for any number of reasons—some understandable, some less so—consistent with their one-semester contracts, if they even have one. Law schools can lay off adjuncts for low enrollment, because of budget constraints, shifts in educational priorities, or scheduling adjustments. Adjuncts are the first to go; it's easier to bid them farewell than to lay off a full-time professor. Schools can also switch to full-time writing teachers or to other adjuncts they prefer.

And then there's adjunct pay, a factor that affects first-year writing adjuncts (and full-time writing teachers) more than others.⁴⁶ Their modest stipend—combined with a reduced teaching load for the full-time faculty;⁴⁷ the adjunct's

⁴⁵ David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES (Nov. 19, 2011), <http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html>.

⁴⁶ See Emily Grant, *Toward a Deeper Understanding of Legal Research and Writing as a Developing Profession*, 27 VT. L. REV. 371, 386 (2003) ("The allocation of financial resources is a reflection of those things that law schools deem important. 'We cannot afford to pay LRW instructors more' is administration-speak for 'we value them less and have chosen to force upon them a disproportionate share of the financial burden.'") (quoted in Liemer & Temple, *supra* note 12, at 388 n.18). Moreover, "[o]ften, the real reason legal writing professors are not treated like full citizens of the academy or paid the same as other law professors is that law schools have been able to get away with putting women in lower status jobs and paying them less." Liemer & Temple, *supra* note 12, at 428-29. And although law-school administrators properly devote attention to reducing the costs of teaching legal writing, they devote less attention to finding cheaper ways to teach civil procedure or property.

⁴⁷ Andrew F. Popper, *The Uneasy Integration of Adjunct Teachers into American Legal Education*, 47 J. LEGAL EDUC. 83, 84 n.4 (1997) ("As for displacement of full-time faculty, I would only point out that adjuncts are hired because full-time faculty want to have a diversified curriculum and also want to have lower teaching loads. Any time a member of the full-time faculty expresses concern that a particular course is being taught by an adjunct, I recommend

⁴³ Catherine A. Lemmer & Michael J. Robak, *So You Want to Be an Adjunct Law Professor? The Process, Perils and Potential*, 86 N.Y. ST. B.J. 11, 12 (July/Aug. 2014).

⁴⁴ *Id.*

reputational value; the connections an adjunct can make between the school and the judiciary, law firms, government, and legal-services organizations; the practical skills and real-world experience adjuncts bring to their students; their diversity when the full-time faculty lacks it; and a chance to expand the curriculum—is why schools hire them. Besides, full-time professors combine teaching with service to the law school and scholarship through publishing, things adjuncts aren't expected to do and usually don't.

But writing adjuncts have it worse than other adjuncts in terms of pay. At many law schools, they spend considerably more time per credit hour grading papers and meeting with students than any full-time podium professor—and are compensated far less than even other adjuncts based on the hours they teach. The answer is to not teach for money or to impress clients but for the ineffable virtue of teaching so important a course as first-year legal writing to students who'll recall your class for life.

That said, according to one author, “[v]irtually everyone who seeks a position as an adjunct will tell you, ‘Of course, I’m not doing this for the money.’ We know different. ... Perhaps because adjuncts profess little concern about their pay, law schools too often overlook questions of equity in establishing adjunct compensation rates.”⁴⁸

Today, most schools use full-time writing or lawyering professors rather than adjuncts. For students and law schools, full-time writing professors are better than adjuncts; they have more time to conference with students, edit, grade, prepare for class, and develop an expertise in the subject. Full-time professors aren't caught up with outside office work or court dates, and they're professional educators. Writing adjuncts start and end at a disadvantage because their schedules make them less accessible to students.

Scheduling aside, adjuncts who have good, practical experience might not be good teachers.⁴⁹ And, unfortunately for the writing adjunct,

their experience may be less relevant in legal writing than in other areas. Practical experience as a world-class litigator won't help you teach grammar and punctuation. And legal writing encompasses topics that transform less often than, say, federal criminal law and procedure.

Despite their reduced status, salary, and job security, writing adjuncts devote massive amounts of time and energy to teaching. Adjuncts must balance their teaching responsibilities with their practice and other obligations. The time commitment to both can overwhelm. Unlike full-time law professors, legal-writing professors, including adjuncts, must spend time working individually with students through student conferences and editing and grading papers. Lawyers looking for a pay day are vastly better off focusing on their own practice than on adjunct teaching.

An adjunct should spend a minimum of three hours preparing for every hour of class time,⁵⁰ at least when a teaching a new subject. Writing adjuncts typically teach 12–25 students in each class. (Once class size exceeds 12, the adjunct's editing, grading, and conferencing responsibilities become backbreaking, and the opportunities to teach to individual student styles greatly diminishes). The class spans two semesters, with a lesson once or twice a week for about an hour or two each time. Depending on the school, writing or lawyering courses are one-, two-, or three-credit courses a semester. In one typical 14-week semester, teaching a two-hour, two-credit course requires at least 84 hours of preparation time, in addition to scheduled class time. Add an extra 45 minutes per student for one-on-one conferences in the middle of each semester. For a class of 14, that's another 10.5 hours a semester. That totals 122.5 hours each semester before other variables, including editing and grading papers.

The time it takes to edit and grade papers will vary. Each writing student will likely submit two to four papers a semester. Grading time depends on whether a TA is available to help the adjunct by doing a first round of edits. The time also depends on whether

“Despite their reduced status, salary, and job security, writing adjuncts devote massive amounts of time and energy to teaching.”

this reply: ‘I will be happy to assign the course to you instead.’”)

⁴⁸ *Id.* at 87.

⁴⁹ Lander, *supra* note 10, at 295–96.

⁵⁰ Edward D. Cavanagh, *So (You Think) You Want to be a Law Professor: FAQs for Prospective Adjunct Professors in Antitrust*, THE ANTITRUST SOURCE, Oct. 2015, at 10.

the instructor checks citations by reading the cases and secondary authority the students cite, perhaps by requiring students to create a source file. Doing so is good practice, but it'll result in spending significantly more than an hour per paper and thus can rarely be done by adjuncts. Mostly, grading time depends on the students. Excellent and horrible papers are easy to comment on and assess; even when the adjunct comments globally on the positive and the negative, there's less to say about those papers. It's the ones in the middle that take the most time.

If the adjunct factors in other variables, such as preparing a syllabus, drafting original fact patterns, staying current with legal trends, answering emails from students and program administrators, travel time, recording grades, writing references, and meeting with students, the time spent teaching adds up—and can spiral out of control into a full-time job if you let it.

Nor does scheduling always work out. New adjuncts often don't get their preferred teaching time slot, usually early in the morning or early in the evening. It's chosen for them by the writing-program director or administrator, who'll try to accommodate schedules but might not succeed.

Now that we've discussed the drawbacks to part-time legal-writing teaching—as America's leading legal-writing authority put it, “of all law-school courses, legal writing is both the single most time-intensive subject and the least respected”⁵¹—here are the benefits. There are many. For those with the stomach to become a legal-writing adjunct professor—and for those willing to put in the time and effort to be the best adjunct they can be—the advantages far exceed any shortcomings.

One valuable, indirect benefit is that by teaching legal writing, your own writing skills will greatly improve. Writing is a critical skill to master, not only for lawyering but in all everyone does; lawyers are America's best-paid writers, after all. Teaching legal writing is the best way to develop an expertise

at writing, which is thinking at its hardest. You study the subject matter by preparing for class and for all the questions the students might ask. You'll identify your strengths and weaknesses by correcting students' papers. Teaching legal writing sharpens the teacher's writing.

And teaching anything, especially at a law school, where students are smart and engaging, enhances your speaking and presentation skills. No matter how good you are at public speaking, you'll get better. You'll become more confident and graceful.

In terms of direct benefits, adjuncting will open doors for other career opportunities and speed up a promotion or another job. A law-school affiliation makes it easier to get published. The time it takes to prepare for classes and edit papers will become less time-consuming with experience and make the endeavor worthwhile. If that's the case, adjuncting is a great way to supplement income. Plus, an adjunct will be eligible for educator discounts.⁵²

Far more important than the money (or lack thereof) is that teaching legal writing is fulfilling and meaningful. It's a privilege to work with students and other faculty colleagues who teach legal writing. You can mentor other writing adjuncts and be mentored by them. The relationships a writing adjunct develops with writing colleagues can last a lifetime. Lasting relationships that develop with students in the classroom are deeply rewarding, especially when former students become mentees, colleagues, and friends. You might one day even see your students in court. Most fulfilling of all, your legal-writing students might, in time, teach legal writing. Then you'll be a grandparent, of sorts—and your investment will pay dividends.

Some refer to adjuncting as a “coveted token of success” because of the opportunity to share knowledge with those entering the legal profession⁵³

⁵¹ Bryan A. Garner, *Three Years in Law School, Spent Better*, N.Y. TIMES (July 25, 2011, 11:42 AM), <http://www.nytimes.com/roomfordebate/2011/07/21/the-case-against-law-school/three-years-in-law-school-spent-better>.

⁵² Deborah L. Cohen, *To Teach or Not to Teach: Adjunct Work Can Come with a Hefty Price*, A.B.A. J. (Aug. 1, 2012, 7:00 AM), http://www.abajournal.com/magazine/article/to_teach_or_not_to_teach_adjunct_work_can_come_with_a_hefty_price/#177841.

⁵³ Ashby Jones, *Want to Adjunct at a Fancy Law School? Get in Line*, WALL ST. J. LAW BLOG (Sept. 30 2010, 9:31AM), <http://blogs.wsj.com/law/2010/09/30/want-to-adjunct-at-a-fancy-law-school-get-in-line/>.

and because being affiliated with an academic institution like a law school—especially your alma mater—is prestigious and network expanding. That’s why some say that being an adjunct professor is the “ultimate power hobby.”⁵⁴ Writing professors—both full-time and adjuncts—play a vital role in shaping a student’s law-school experience and career. It’s an honor to self and the profession in being able to pass along knowledge to law students. It’s ideal for those who teach for the love of teaching without expecting a corner office.⁵⁵

With or without these benefits and opportunities, a writing adjunct must teach well. They must advance their craft to ensure their students are gaining the skills they need for the remainder of their law-school experience and beyond.

III. Start at the Finish Line

When preparing to teach a first-year legal-writing class, the first question you, the adjunct, should consider is: “What’s the goal of the class?” To drill down further, ask questions like: “What skills do I most want the 1Ls to acquire?” “What overall approach to legal writing and analysis do I want them to take from the course?” “To which other subjects do I want the 1Ls to have exposure?”⁵⁶ These questions are difficult to answer, and they might change from year to year, based on your past successes and failures and changes within the law school’s writing program or administration. Having a goal in mind for the course and for each class provides focus and direction.

⁵⁴ Katherine Rosman, *The Ultimate Power Hobby: Bankers, Lawyers, Executives Jockey to Teach a University Class, Play Professor*, WALL ST. J. (Sept. 30, 2010), <http://www.wsj.com/articles/SB10001424052748704116004575521800478591046>.

⁵⁵ Kelly A. Cherwin, *The Challenges and Opportunities of the “Adjunct World”*, HIGHER ED. JOBS (July 29, 2010), <https://www.higheredjobs.com/Articles/articleDisplay.cfm?ID=208> (highlighting experiences of adjunct professors and their overall impressions of intangible benefits: “If you are teaching part-time to boost your self-image, make a million dollars, or have a grand corner office, this may not be the best route.”).

⁵⁶ Ted Becker & Rachel Croskery-Roberts, *Avoiding Common Problems in Using Teaching Assistants: Hard Lessons Learned from Peer Teaching Theory and Experience*, 13 LEGAL WRITING: J. LEGAL WRITING INST. 269, 292 (2007) (discussing how to set big-picture goals for a legal-writing course).

What should students be learning? First-year legal-writing students should walk away from their class understanding not only how to transform a mediocre paragraph into a great one⁵⁷ but also legal method. Students should first learn about the elements of good legal writing, and then how to identify and use those rules to exhibit good writing practices. The substantive basics of grammar and frameworks for laying out rules and analysis are important. Legal writing is about effective communication. Rules and language constructs are tools to help people communicate with and understand each other.⁵⁸ Writing professors should know how to explain the purpose of using grammar, constructs, and frameworks.

Writing adjuncts must understand all aspects of legal writing before the semester begins so that they can address student concerns. Legal writing is a unique course because the subject matter is integrated into the doctrinal classes. One paragraph or even one sentence can raise all sorts of writing issues worthy of an entire class. Thus, writing professors need to know about all aspects of their subject so that they can encourage questions and give correct answers as they arise.

Legal-writing courses are best taught in small groups to allow for interaction with students. Small groups are good for writing adjuncts too: there’ll be fewer papers to edit and grade. But small-group interaction allows some students to challenge the adjunct on principles of legal writing or try to find inconsistencies in the adjunct’s feedback. It’s common for students to say things along the lines of, “But we’ve always learned this differently,” because some unknown teacher taught it differently once upon a time or because that student’s approach “looks better” to him or herself. Sometimes a student will point things out to challenge the professor’s opinion, as if to suggest that the student knows more than the teacher—an issue one sees in writing classes but less so in doctrinal classes. You need to know the substance so that you can respond

⁵⁷ Stephen V. Armstrong & Timothy P. Terrell, *The Art and Architecture of Paragraphs: Focus, Flow, and Emphasis*, 23 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 20, 20-21 (2014).

⁵⁸ Osbeck, *supra* note 16, at 428.

“Writing professors—both full-time and adjuncts—play a vital role in shaping a student’s law-school experience and career. It’s an honor to self and the profession in being able to pass along knowledge to law students.”

accurately. At the same time, you must answer these questions with true and sincere respect for the student, regardless of any perceived challenge to your authority. This same student might come around in time and become your most valued pupil.

You must learn—before your first class— every aspect of good legal writing and bad. You'll need to know how to handle the nuanced controversies that so many believe, incorrectly, are what count in legal writing, such as whether: to use a serial comma in a series before a coordinating conjunction; to begin a sentence with “and,” “but,” or a conjunctive adverb; to end a clause or a sentence with a preposition; to split an infinitive; to end a possessive sibilant with an apostrophe or an apostrophe “s”; or to use footnotes. You must know how to label and identify topics from the passive voice to nominalizations; from metadiscourse to parallel structure; from sentence fragments to run-on sentences; from hyphens and en dashes to em dashes. You must learn:

- why topic sentences and roadmap paragraphs provide structure;
- why good writing requires rewriting;
- why readers better understand simple declarative sentences written in the positive rather than complex negative conditionals;
- why correct formatting is expected;
- why legibility in terms of the number of spaces between sentences, not to mention font and point size, increases readability;
- why the only person who counts is the reader;
- why block over-quoting is poor form;
- why gender-neutral writing is good form;
- why content eclipses style;
- why modifiers must be placed accurately;
- why good citing is to legal writing what good bread is to a French restaurant;
- why rhetoric properly used isn't mere rhetoric;

- why American legal writers put their commas and periods inside their
- quotation marks; and
- why legal writing is, at bottom, planned, formal speech.

You, the writing adjunct, should understand the various frameworks of successful, organized legal writing (in the discussion section of objective memorandums and the argument section of briefs), such as Issue, Rule, Analysis, Conclusion (IRAC), Conclusion, Rule, Explanation, Analysis, Conclusion (CREAC), and similar options.⁵⁹

Many resources discuss these issues. Become familiar with them. Unless the law school has training for new writing adjuncts, you should attend conferences, for example those organized by the Legal Writing Institute,⁶⁰ and read books and articles on legal writing until you know the subject cold. This deep-dive into understanding writing as a substantive subject will in turn help you explain things to students. It's not enough to read only the course's assigned articles or course book. No adjunct writing teacher can wing it by reading only what the students are assigned to read.

Try to close the gap between legal writing in law school and legal writing in practice. One of the biggest criticisms alumni of legal-writing courses have is the difference between law-school writing and writing in practice. Traditional first-year writing courses focus on legal writing in a litigation context that doesn't expose students to transactional work like contract drafting.⁶¹ Transactional-skills education is behind litigation-skills training, though it's gaining ground.⁶² Lawyers are often hired to

⁵⁹ Tracy Turner, *Finding Consensus in Legal Writing Discourse Regarding Organizational Structure: A Review and Analysis of the Use of IRAC and Its Progenies*, 9 LEGAL COMM. & RHETORIC: JALWD 351, 357-58 (2012) (Turner I); Tracy Turner, *Flexible IRAC: A Best Practices Guide*, 20 LEGAL WRITING: J. LEGAL WRITING INST. 233, 236-37 (2015) (Turner II).

⁶⁰ See, e.g., *Regional Legal Writing Conferences*, LEGAL WRITING INST. (Feb. 10, 2017), http://www.lwionline.org/regional_legal_writing_conferences.html.

⁶¹ Lamparello & MacLean, *supra* note 14, at 62.

⁶² Tina Stark, *Transactional Education: What's Next?*, 12 TENN. J. BUS. L. 3, 4 (2011).

negotiate contracts, and contract drafting is a useful skill in knowing how to prioritize their negotiation strategy.⁶³ Lawyers draft a wide array of legal documents other than the inter- and intra-office objective memos and persuasive appellate briefs on which traditional first-year writing students at most law schools focus almost exclusively.⁶⁴

One study conducted to ascertain what lawyers really read and write in practice noted that first-year associates infrequently read judicial opinions in their day-to-day activities.⁶⁵ Junior associates primarily write emails to their supervising attorneys; the emails include summaries of research findings and projects. Junior associates also rely heavily on templates and sample documents to understand the format their documents should take.⁶⁶ Many better law firms prepare recent graduates for practice by providing additional training on lawyering skills to reduce the daylight between what's taught in law school and what's done in practice. One recent alumnus who participated in such training put it this way: "What they taught us at this law firm is how to be a lawyer. What they taught us at law school is how to graduate from law school."⁶⁷

Whether a law school can or should make its graduates practice-ready, you, as a first-year writing adjunct, can't and shouldn't try. New law students must walk before they can run, so you must focus instead on fundamental skills: how to think, question, analyze, research, and write like a lawyer. Still, if your writing program allows you to do so, spend a lesson or two on drafting settlement agreements, contracts, stock-purchase agreements, client letters, demand letters, e-filing (with visuals and hyperlinking), or emailing—and then encourage your students

to take writing electives in their second and third years. Most students get little to no exposure to transactional work, even though half or more will find their careers in transactional work.

When in doubt about what to cover, reach out to recent graduates and alumni who may have insights about what they learned in law school and what skills or information they need in practice.⁶⁸

IV. The Syllabus

You'll want a good syllabus: one that covers a separate topic for each class, from which you'll deviate as little as possible (for example, by giving your students work not in the syllabus), and which tells your students what they must do to prepare for each class and their assignments.

Consult the writing program's requirements, standards, and guidelines. Then follow the school's model syllabus punctiliously if it has one. Having one syllabus for all the writing teachers brings uniformity and consistency to the law school's legal-writing sections. It also discourages students from complaining that one professor requires more work or is a harder grader than other professors are. If you're lucky, your writing program might give you an annotated syllabus explaining the lesson plan.

If your program gives you the discretion to create your own syllabus or to deviate from the model one, find inspiration from browsing through sample syllabuses, either from colleagues or online. Be critical of the syllabuses you find. Consider what they're missing. Perhaps they spend too much time on one skill, or not enough, or don't present the material in an organized, appealing way.

Find out whether an administrator will want to review your syllabus or other material before the semester begins. Regardless, you should complete the syllabus for the first-semester portion of legal writing well before the first day of class. You should prepare a second-semester draft syllabus at the same time. This'll ensure that you're prepared to answer any question from students the moment

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⁶³ Lisa Penland, *What A Transactional Lawyer Needs to Know: Identifying and Implementing Competencies for Transactional Lawyers*, 5 J. ASS'N LEGAL WRITING DIRECTORS 118, 125-26 (2008).

⁶⁴ Lamparello & MacLean, *supra*, note 14, at 96.

⁶⁵ Ann Sinsheimer & David J. Herring, *Lawyers at Work: A Study of the Reading, Writing, and Communication Practices of Legal Professionals*, 21 LEGAL WRITING: J. LEGAL WRITING INST. 63, 80 (2016).

⁶⁶ *Id.* at 99-100.

⁶⁷ Segal, *supra* note 45.

⁶⁸ Debra M. Curtis, *Beg, Borrow, or Steal: Ten Lessons Law Schools Can Learn from Other Educational Programs in Evaluating Their Curriculums*, 48 U.S.F. L. REV. 349, 354 (2014).

they're asked instead of telling the student to re-ask their questions the next class or the next semester.

Syllabuses should be proofread to make sure that everything the school requires is included. Make sure assignment due dates fit within the school's vacation or legislative days and your personal schedule. Make-up classes or guest-lecturers (if planned) should also be noted.

While planning the syllabus, recognize that you don't need or want to cover everything. Focus instead on the essentials. Among them are ethics and professionalism in writing. The essentials in your syllabus will depend on the students' skills and what your writing program expects. The weaker the students are, the more basic or remedial the instruction may be. But don't dumb it down; quickly move from the basic and remedial to more advanced concepts. Many students who at first need hand holding, and want coddling, will understand and appreciate the larger objectives of legal writing in time.

A good syllabus is detailed. It'll state learning outcomes (the skill sets you're imparting to enable your students to think and write like lawyers) and allow everyone, professor and student, to be on the same page. It'll protect students and professors from surprise. It'll also help you navigate each class. Short syllabuses are unhelpful in legal-writing courses because they leave too much room for student guesswork.

Summarize in a sentence or two each lesson's goal and include information about assigned readings and grading criteria. State the extent to which you'll assess class participation and attendance and whether and how many points you'll subtract for incorrect formatting and late papers. Codify a rule prohibiting outside help, but consider allowing your students to exchange research for one or more open-universe assignments. Doing so will encourage an interchange of ideas among the students.

Include your name on the syllabus in the form you want to be called (*e.g.*, Professor John Smith), the classroom number, class meeting days and times, and your office hours, email address, and phone number. The section's TA's name and contact information should also be included.

Information about how students must submit their papers (by email, TWEN, some other online platform, in class, or at the writing-program office) should appear somewhere on the syllabus. The format requirements of each paper should also be articulated. This may include that papers be submitted in Word (that's better than PDF, which doesn't allow for track changes or show the document's properties), required font and point size, margin width, and word count—which is better than page limits because a word count can't be manipulated through formatting.

V. The Class: How to Present the Material

You, the writing adjunct, should give students context. Legal writing is a law student's first exposure to legal issues. Most 1Ls don't come to class with a context for understanding the purpose of writing memorandums and briefs and their role in the legal system. Providing a framework to students about the rules of civil procedure (though they haven't learned them yet) will help them understand their assignments and the purpose of their writing in a broader context, not merely as an isolated set of tasks. An overview of substantive and procedural issues will also help students understand the real-world context of how important their writing skills are. That'll engage students; they'll understand the overall purpose of the assignments and appreciate it when they're already familiar with a topic before a doctrinal teacher begins to cover it.

Consider courtroom simulations to introduce the legal system. Students might be shown a demonstration of an e-filing platform or what a complaint, a motion for summary judgment, or a motion to dismiss looks like.

You should also introduce the legal-writing framework. Show students proper grammar constructs by giving examples of mediocre paragraphs and allowing them to compare those paragraphs to first-rate examples.⁶⁹ Discuss the strengths and weaknesses of each. Spend time introducing various legal-writing frameworks

⁶⁹ Armstrong & Terrell, *supra* note 57, at 20.

like IRAC, CREAC, or similar variants.⁷⁰ Students can become familiar with the framework through color-coding exercises that identify the issue, rule, analysis, and conclusion. Introducing frameworks with examples from outside the law will appeal to the students' creative side. One writing professor suggests using excerpts from Shakespeare to help students identify the parts of IRAC.⁷¹

The Socratic method, effective when it fosters active discussion and real Socratic dialogue, keeps students engaged, but only to a point. Consider other ways to make the class interactive and engaging. Teaching topics about which you're passionate will make the entire class more interested in learning.⁷² As the saying goes, "To get them interested, be interesting." And just as one can't learn to play football only by reading a book or listening to a lecture, law students can't learn writing only by reading about it or from lectures.⁷³

Keep students interested by teaching the material in a variety of ways. Some people learn best visualizing charts; others, through role-playing. Flow-charts and PowerPoint slides are fun and helpful tools to explain ideas and rules. Assignments can be made more realistic by turning the classroom into a law firm and by having students come up with a solution to a client problem.⁷⁴ You can moderate the Bluebook blues by making it a game like "Bluebook Bingo" or "Jeopardy"⁷⁵ and award modest prizes to individuals and teams.⁷⁶ One technique to use with better students is a "flipped" classroom, or flip teaching, which rearranges the class format. A flipped classroom has students learn the material in advance of class—perhaps by listening to a webinar you'll create with help from the

school's IT department—and then do interactive in-class exercises,⁷⁷ perhaps group exercises.

Students often ask writing professors for models of good writing. It's difficult to give them a complete model (except for formatting). Judicial opinions aren't the best models for students; judges have agendas that lawyers don't. As to content, the closer the model is to the exercise, the more likely the students will copy what they see. But the biggest problem with "students' desire for examples of good writing they could emulate result[s] in part from their desire to be able to fit legal writing into a formula that would correspond to their formerly successful 'outside-in' approach and produce successful results each and every time."⁷⁸

Instead of using models, peer- and group-editing activities can help students identify good writing from bad. These, along with team-based exercises, will also engage students. A team-based activity can include having students work together in groups to edit a paragraph. For example, you can select a few examples from an earlier semester to review with the class. Then you can give feedback on a model paragraph and ask students to critique the other paragraphs individually or in teams.⁷⁹

If you feel comfortable with the class, select a few of the student's own paragraphs to use in a peer-editing session.⁸⁰ But if you do, keep the student's identity anonymous. Never hand out a paper to the class with the student's name on it. Delete the student's name and school ID number. Otherwise, the student will be embarrassed, it will reflect poorly on you, the lesson will be ineffective, and it can raise privacy concerns.

Writing is a social process.⁸¹ Hearing feedback and editing suggestions from other students in the class is an effective learning tool. It also may

“Instead of using models, peer- and group-editing activities can help students identify good writing from bad.”

⁷⁰ Turner I, *supra* note 59, at 357-58.

⁷¹ Keith A. McCrickard, *Shakespeare on CR(E)AC: Turning Reluctant First-Year Law Students into Addicts*, 23 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 41, 41-44 (2014).

⁷² Levy, *supra* note 2, at 107.

⁷³ *Id.* at 104.

⁷⁴ *Id.* at 107.

⁷⁵ *Id.*

⁷⁶ Marci L. Smith & Naomi Harlin Goodno, *Bluebook Madness: How to Have Fun Teaching Citation*, 16 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 40, 41-43 (2007).

⁷⁷ Laurel E. Davis, Mary Ann Neary & Susan E. Vaughn, *Teaching Advanced Legal Research in a Flipped Classroom*, 22 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 13, 15 (2013).

⁷⁸ Felsenburg & Graham, *supra* note 3, at 270-71.

⁷⁹ Sheila Rodriguez, *Letting Students Teach Each Other: Using Peer Conferences in Upper-Level Legal Writing*, 13 FLA. COASTAL L. REV. 181, 213 (2012).

⁸⁰ *Id.*

⁸¹ *Id.* at 190-93.

“Respecting students should be every writing adjunct’s priority. Together with their loved ones, your students made great sacrifices to be in law school. And they’re rightly proud of, and nervous about, being there.”

put students at ease; it creates a better sense that your assessments aren’t wholly subjective.

That said, you must still lecture sometimes, at least a bit. Students must learn the “top 10 dos and don’ts” in, for example, writing point headings and questions presented.

If you’d like to address an issue in class but don’t have experience in that area, consider finding an expert guest lecturer. Guest lecturers should be used for specific, limited purposes, like teaching Bluebooking. Choose one with a likable personality. If a guest lecturer agrees to speak to the class, stay in the classroom to facilitate the discussion to make sure it’s on point with course goals and to communicate to your students that the speaker has interesting things to say. You should never miss class, replaced by a guest lecturer.

Become proficient with the school’s technology resources before the first class. You’re expected to know about SMARTboards, PowerPoint, and webinars. You’ll need to know about Westlaw’s TWEN or the school’s e-boards or listservs to post materials, assignments, and send emails to students. Computer programs like Microsoft Word have track-changes functions to enable adjuncts to comment directly on the student’s paper. If you’re editing by hand, know the different editing acronyms and symbols to show where to put, delete, and transpose spaces, commas, periods, sentences, paragraphs, quotation marks, parenthesis, and the like.⁸²

Always think about how to inspire your students. How do you get them to love (or at least tolerate) their writing course? Not everyone considers legal writing the most interesting subject. At the same time, emphasize the importance and relevance of legal writing without stressing the students out. Remember what it was like to be a first-year law student. Make the class engaging and interactive. If a lecture format is the only way you’ll teach the class, or if all you’ll do is talk about how legal writing is important without showing the students the way, your students will tune out.

VI. Respecting Students: Teaching with Integrity

It’s a privilege to teach legal writing. Respecting students should be every writing adjunct’s priority. Together with their loved ones, your students made great sacrifices to be in law school. And they’re rightly proud of, and nervous about, being there. Set an example of respect and professionalism from day one. Always be unfailingly respectful with other faculty and students. To receive respect from students, the adjunct must give respect. Understand your students. Point out how you went through the same experiences they did in law school and in learning the materials you’re teaching them now. Say nice things to your students, inside and outside class—and mean them.

The principles of respect come from three propositions about teaching law students, from Kent D. Syverud, now-Chancellor and President of Syracuse University:

First: Your students will know whether you like and respect them, and if they know that you do not, you will fail as a teacher.

••••

Second: If your students know that you like and respect them, they will forgive a great deal in the classroom.

••••

Third: If your students know that you like and respect them, they will come to you for as much advice and support as you have the time and energy to provide.⁸³

Respecting students means respecting their time. Budget your time. Get to class early, give students all school-mandated breaks, end the class at the scheduled time (to give the students a break before their next class and to make your classroom available to the next group), and stay a few minutes after class to answer questions in the hallway.

Respect also means remembering their names. You may call students Mr./Ms.—old-school stuff—

⁸² See, e.g., *A Guide to Copyediting Marks*, NY BOOK EDITORS, <http://nybookeditors.com/2013/06/copyediting-marks/>.

⁸³ Kent D. Syverud, *Taking Students Seriously: A Guide for New Law Teachers*, J. LEGAL EDUC. 247, 247-48 (1993).

or by their first names. Use or create a seating chart to help remember names. Mnemonics or other memorization techniques will also help.

Most adjuncts prefer that students not call them by their first names. An adjunct's role is to teach and assess students, not to be a student's friend. To encourage students to call you "professor," list yourself on the syllabus and in assignment fact patterns as "professor." Enforce how you want to be addressed by asking your TA to call you "Professor Smith" in class.

Respecting students includes following your syllabus closely. The syllabus details how you and your students will accomplish class goals. Students will plan their schedules—doing their readings and submitting their papers—according to the syllabus. Keep class discussions on topic and don't fall behind. Control class discussions and content to address lesson goals during class time.

Students will occasionally ask off-topic questions. Lead students back to the topic. One technique is to rephrase the student's question to address the lesson's goals.

Don't go off topic yourself by telling too many war stories and yarns. Although some tales might be relevant, and sharing a practical perspective can be effective, a long retelling will distract, bore, and possibly self-aggrandize.⁸⁴ Also, humorous anecdotes make content interesting,⁸⁵ but not everyone has the same sense of humor. Be wary of telling jokes, especially elongated ones. Mild humor directly related to the subject can be memorable and compelling, though good legal-writing humor is hard to find and harder to deliver. Respecting students includes never making a joke at their expense or discussing politics or religion unless those sensitive topics relate directly to the subject matter.

When asking questions, most students are well-intentioned, and some will be insecure. Some

⁸⁴ See also David Hricik, *Life in Dark Waters: A Survey of Ethical and Malpractice Issues Confronting Adjunct Law Professors*, 42 S. TEX. L. REV. 379, 391-92 (2001) (noting ethical issues when law adjuncts tell war stories).

⁸⁵ Levy, *supra* note 2, at 107.

well-intentioned but insecure students will find it difficult to know what to ask and how to ask it. Gently encourage the insecure student to participate in class, even though they won't want to be singled out. Get the student to participate by asking easy questions at first. That'll build confidence.

Holding meetings at school, where it's convenient for students to meet and where adjuncts can hold one-on-one conferences. Scheduling meetings at your office—away from school—should be avoided. It's difficult for students to commute to an adjunct's office.

Accommodate disabilities—whether the students have low vision, are hearing impaired, suffer from narcolepsy, need wheelchair-accessible environments, or are learning disabled⁸⁶—and different learning styles, voices, and abilities.⁸⁷

Control your class. Don't let students disrespect each other, fight with one another, or drag class discussion off topic.

Make it a priority to return students' emails promptly. Email isn't always the best way to answer a student's question, especially when the question requires a detailed or sensitive response. A face-to-face meeting might be more effective. Arrange to meet at a mutually convenient time. Students have different abilities, and some need more attention than others. Make yourself available to students who need extra attention. But the student must want to meet. Except for attendance at mandatory conferences,

⁸⁶ Susan Johanne Adams, *Dealing with Disabilities, Because They're Otherwise Qualified: Accommodating Learning Disabled Law Student Writers*, 46 J. LEGAL EDUC. 189, 215 (1996) (noting that "the needs of the learning disabled are not so easily ascertained and addressed. As a practical matter, this obligation will fall largely on legal writing faculty. . .").

⁸⁷ Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 ALB. L. REV. 213, 221 (1998) ("The legal writing course readily lends itself to working with students' individual strengths because often there is an emphasis on teacher-to-student conferences."); M.H. Sam Jacobson, *A Primer on Learning Styles: Reaching Every Student*, 25 SEATTLE U. L. REV. 139, 173 (2001) ("Professors can acknowledge the different modes of absorbing information by supplementing text with visual, oral, and aural cues."); Paula Lustbader, *Teach in Context: Responding to Diverse Student Voices Helps All Students Learn*, 48 J. LEGAL EDUC. 402, 403 (1998) (explaining how to lower students' learning barriers created by "the institutional environment, the competitiveness, the narrow view of success, the psychological stress, the outside pressures from family and financial problems, and most resoundingly—their feelings of alienation").

“Integrity means applying the same rules to every student. Deduct points for late papers, ones that go over the page or word limit, or whenever the student doesn’t follow instructions for assignments outlined in class and the syllabus.”

you can’t force them to meet. But students who want to improve will want to meet with you.

Adjuncts must act with integrity. That means doing what you say you’ll do. Unless you’re answering a student’s questions, don’t cover a topic not foreseen in the syllabus. Similarly, don’t tell students that you’ll cover a topic you know you won’t. Don’t change grading methods midstream. Set expectations from the start. Adjuncts who stray from those expectations break promises.

Set clear rules about how you’ll conduct the class. The syllabuses should require students be prepared for class by letting them know you’re grading on participation. If you have a reason to do so, you might note in class that there’s no place for a habit of unpreparedness. Also require attendance and that students submit papers on time. Excuse absences or late papers only if an extension is sought and approved in advance, but be generous with students who have plausible excuses. They’re graduate students; unless you have just cause, don’t demand to see doctors’ notes.

Don’t tolerate plagiarism or violations of your rules prohibiting outside help. Students—especially law students—must be held to high academic standards of integrity and ethics. If you suspect that a student is plagiarizing someone else’s work, you must do something if the plagiarism is substantial, not something minor like a missing quotation mark or citation here and there, whether or not you think the plagiarism is intentional. Err on the side of caution before accusing a student of plagiarism. Unless a student confesses or you have a few paragraphs demonstrating a dramatic departure from the way the student ordinarily writes, you’ll need to know where the student’s unsourced material came from. It requires effort and good research skills to find the original material; keep in mind that the law school’s librarians can be a great resource in this regard. Adjuncts who accuse a student of plagiarism but don’t have the original unsourced material might find themselves accused of falsely accusing a student. And a good relationship with the student and the law school will end. Always go to the program director for advice about what to do when confronted with plagiarism or unauthorized outside help.

Integrity means applying the same rules to every student. Deduct points for late papers, ones that go over the page or word limit, or whenever the student doesn’t follow instructions for assignments outlined in class and the syllabus. Students who don’t think the rules apply to them will be dissuaded from disregarding rules that show professional competency. If you don’t hold steadfast to your rules, students will treat your class as a low priority. Follow through with the rules and hold students accountable. Applying rules inconsistently or not at all is unfair to those students who follow the rules, and complying with rules shows professionalism. But don’t be mean about it; your students are grown-ups attending graduate school. They shouldn’t be patronized, scolded, or lectured at. If too many students keep breaking the rules, you’ll need to remind them every so often. In that case, the number of students who aren’t following your rules might suggest that you’re at fault for not making your rules clear. Some students believe that the content of their writing compensates for any rule violation and that the adjunct should ignore the violation and reward the good content. Those students are wrong. Rule violations show weak writing skills.

Acting with integrity includes answering a student’s question to the best of your ability. The adjunct must be a legal-writing expert, or as close to it as you can get, before the first day of class. If you don’t know an answer to a question (maybe because it’s off topic), it’s better to be honest than to give a wrong answer or ignore the question. Adjuncts who don’t know the answer should tell students that they’ll look into it and then follow-up in the next class.

Some students will ask lots of questions. That usually means they’re engaged, and you’ll want to encourage a lively, open, and respectful debate. But some students might be so inquisitive they end up dominating the class. A respectful way to allow the class to continue on topic would be to say “let’s talk about it some more after class.” The student will get the hint. An adjunct looking for other students to participate will ask relevant, pointed questions to get a response. Moving from one student to another while keeping on topic is

respectful because you're covering the material while giving others a chance to participate.

Writing adjuncts must skillfully engage students. You can't hide, given the small class size, the extent of interaction, and the number of assignments throughout the semester. Also, unlike the doctrinals, you can't wait for an end-of-semester exam to discern whether your students understood you.⁸⁸

Some students will ask ill-motivated questions to challenge their professor. Often this happens because the student is responding to a grade, feels smarter than the professor, or is a class clown. Respecting students involves responding firmly but with good grace, not defensively or accusatorily. Standing up gently and kindly to a hostile or know-it-all student will help win over the class. Alternatively, you might speak with the student in private, after class.

Respecting students includes returning edited papers on time, as specified in the syllabus. Spacing out assignment due dates in the syllabus will help you grade papers on time and return them well before the next assignment is due. Students will then have the benefit of incorporating your feedback into their next paper. And then, of course, you must submit all final grades on time. This is a law-school must.

Acting with integrity includes always maintaining a professional relationship with students. Don't socialize or drink with students except at recognized school events, and even then be moderate. At all informal student interactions, you're a professor who represents the law school. Don't complain to students about anything. Don't do business with students. Don't flirt, or appear to flirt, with students; that behavior has been an academic death-penalty offense for years now. Don't discuss your personal issues with students. Students might want to talk to you about family issues, life, or getting a job. It's your obligation to listen to them actively and hear them out and then to help them if you can as it relates to the class and their careers. But don't become chummy with

students: friends don't grade friends. (Wait until they graduate.) And don't show insecurity by repeatedly asking students for feedback on your teaching style. A novice might glide on an emotional roller coaster, feeling both unwarranted highs and lows after each class. With experience, you'll stay on an even keel and worry less about what the students think of you.

Acting with integrity also means staying in touch with your writing-program director. If there's good news to report, pass it along. Similarly, tell your program director about significant problems with the course or a student. Keeping your program director informed will help resolve issues you're facing in class, and supervisors have a right to be informed. Telling the director about problems with a student will also dampen any problem the student may cause when the student complains about you. Just don't bug your program director too often or ask too many questions; you'll become wearisome if you do. Anyway, many questions you'll have are addressed in the law school's adjunct handbook. Read it.

Because writing classes are relatively small, you'll have a unique opportunity to be a resource for students. Writing professors are more attuned to students' emotional and physical well-being than doctrinal professors teaching large sections. You'll get to know your students better than the full-time faculty will. Other first-year professors might not pick up on emotional cues; there may not be any papers to submit in those classes. Writing professors are able to tell when a student's emotions or physical condition are getting the best, or worst, of them. Sometimes a student will let you know whether something's wrong. Sometimes they won't tell you, but you'll notice that a student isn't focusing in class or submits papers late. Every law school has administrators and a policy to help students with emotional or physical challenges. You're a lawyer. Don't be a guidance counselor, a psychologist, or a psychiatrist. Refer the student to the law school's professional counselor, or alert the counselor to contact the student. Above all else, students must be safe and healthy.

VII. Reading and Writing Assignments: Two Essential Teaching Tools

Many laws schools give adjuncts pre-determined syllabuses with reading and writing assignments.

⁸⁸ Levine I, *supra* note 2, at 1071.

“Develop, before the first class, your assignments for the entire year in the form of hypothetical fact patterns.”

That provides uniformity for all students and teachers in what'll be taught, in the types of assignments the students will receive, and how the course will be graded. You, the writing adjunct, will be lucky if your program director gives you set reading and writing assignments for your class. They'll be well-thought out and well-written, and you won't have to prepare readings and fact patterns yourself.

First-year writing assignments at American law schools almost always include objective closed- and open-universe memorandums of law in the first semester and a second-semester advocacy brief (with a rewrite) that links to a Moot Court component.

In the first semester, students learn how to identify issues, articulate the law (and any exceptions), write facts neutrally, and construct a neutral and organized legal argument applying law to fact with proper citing, all with correct and plain English. In the second semester, students shift to advocacy.

If you're asked to prepare your own reading and writing assignments, here's how to do it to enable students to complete their assignments using those skills.⁸⁹

A. Readings

For assigned readings, try to use articles when possible rather than books. Avoid unnecessary or extra student expense. Tuition is high enough; don't make things worse. Most articles are available for free online, and copies of portions of the book can always be distributed in class if you get the author's permission or if it's fair use. If you still want to assign a book, check the price before requiring students to buy it.

America's legal-writing professors have published excellent books on writing in the past 25 years.⁹⁰

⁸⁹ For more information on designing problems, see Lorraine Bannai, Anne Enquist, Judith Maier & Susan McClellan, *Sailing Through Designing Memo Assignments*, 5 LEGAL WRITING: J. LEGAL WRITING INST. 193 (1999) (detailing top ten mistakes in creating fact patterns); Grace Tonner & Diana Pratt, *Selecting and Designing Effective Legal Writing Problems*, 3 LEGAL WRITING: J. LEGAL WRITING INST. 163 (1997).

⁹⁰ For some leading authorities, see Almas Khan, *A Compendium of Legal Writing Sources*, 50 WASHBURN L.J. 395 (2011). Four former colleagues wrote an excellent book. See CATHY GLASER, JETHRO K. LIEBERMAN, ROBERT A. RUESCHER & LYNN BOEPPLE SU, *THE LAWYER'S CRAFT: AN INTRODUCTION TO LEGAL ANALYSIS, WRITING, RESEARCH,*

Many of them have gone into multiple editions. If you use a book, your choices will be so large it would be wrong in this primer to recommend any in particular. But your students must buy a current edition of either the Bluebook or ALWD citation guides. (I'm not getting involved in that controversy in this article, except to note my view that both are excellent at federal and secondary-source citing but less so at New York State citation form.) There are many stellar, short articles, too, in academic and bar journals.

A few pointers about readings: Make sure they correspond to what you'll go over in class. Discuss your readings in class; if you don't, your students will stop reading them. And don't assign too many readings. You can make some readings optional to avoid work overload.

B. Fact Patterns

Develop, before the first class, your assignments for the entire year in the form of hypothetical fact patterns. The first assignment should be relatively straightforward. The first step is to encourage students to start writing, and you'll quickly want to get an overall impression of their writing. Often the first assignment is closed: you give students the cases they may use and tell them that they may not cite any other cases. The second assignment should be more complex—perhaps an open-universe memorandum in which the students find the research themselves. The assignment's legal issues can be narrowed by explicitly stating on the assignment that “XX isn't an issue. Don't address it.” Ask your TA, if you have one, to help put the fact patterns together.

Include assignments that connect with each other. For example, ask students to submit a preliminary draft and then a final version later in the semester. It's a good idea to allow students to submit an ungraded rough draft of an assignment, at least for the first assignment. Alternatively, a suitable assignment might be a rewrite of the discussion section of a memorandum in the first semester or a rewrite of the fact

section of a first-semester memorandum as the second semester's first assignment. To connect assignments, you might also use one of the issues from a first-semester assignment as an issue for a second-semester appellate brief.

A useful legal-writing course will consider the types of tasks new lawyers will need to tackle and develop assignments that'll help students gain those skills. Help students understand how a single legal issue might have a different outcome under a new set of facts or under a different legal standard. Valuable writing classes help students supplement their understanding of other first-year coursework like civil procedure, torts, or constitutional law when writing professors choose fact patterns that address these areas of law. Similarly, first-year students can learn about the practice of law when you tell them to prepare a memorandum that includes a range of legal documents like settlement agreements and email correspondence.⁹¹

Develop assignments by choosing an area of law for students to write about. If assigning a problem related to constitutional law, consider which article or amendment of the Constitution students will address. Choose exciting and timely issues⁹² that the United States Supreme Court hasn't yet decided and which the Court won't decide during your class.

It's always best if you create new hypotheticals. If you can't, research hypotheticals and assignments the law school used in the past which are typically located in the writing program's problem bank. Sometimes hypotheticals used in earlier semesters or publicly accessible hypotheticals offer good inspiration. You may recycle a hypothetical if a legal aspect of it has changed over time or if you change enough facts—or at least dates, places, and names. If there's no change, students can get ahold of a previous student's paper. Simply reusing a hypothetical or one that's publicly available incentivizes

students to find an earlier student work product and copy it. Similarly, reusing identical, unchanged hypotheticals sends a poor message to students and a poor signal to the school's administration.⁹³

You can also look at Moot Court fact patterns like those from the National Moot Court Competition⁹⁴ or from the NYU Moot Court Board's problem bank.⁹⁵ You can't copy Moot Court competition sources without permission, but they're good for inspiration because they'll have a tried-and-true problem with a bench or model brief.

The best hypotheticals get students to argue which legal test should apply to the hypothetical. Uncover cases in which there's a circuit split or in which certiorari was denied, and especially where there's a dissent to that denial, to help both sides argue an issue. Set the fact pattern in the fictitious Thirteenth Circuit, where no jurisprudence is binding. Provide enough facts for both sides to argue them. Make the fact pattern procedurally accurate. Do your own research to make sure that there're enough cases on both sides of the issue, but not so many cases that a first-year student will be overwhelmed.

For the second-semester brief-writing assignment, consider choosing two procedurally related but discrete issues: Each student on a two-student team can write and argue a separate issue. For example, the first issue in a criminal-procedure assignment might be the validity of a search; the second issue might be the validity of a confession based on the results of that search.

Federal problems are typically better than state problems. They're national in scope. Give the class an imaginary circuit opinion containing a dissent for students to understand both sides of an issue. Don't prepare a record. It requires too much effort to create a realistic record, and not having a realistic record will help first-year students focus on the legal argument without getting lost in the nuances of the facts and the procedural posture of the case.

⁹¹ Alyssa Dragnich & Rachel H. Smith, *An Offer They Can't Refuse: Teaching Persuasive Writing Through a Settlement Offer Email Assignment*, 23 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 85 (2014).

⁹² Karin Mika, *Sight and Sound in the Legal Writing Classroom: Engaging Students Through Use of Contemporary Issues*, 21 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 132, 133 (2013).

⁹³ Cavanagh, *supra* note 50, at 4.

⁹⁴ N.Y.C. BAR ASS'N NAT'L MOOT CT. COMPETITION (Feb. 10, 2017), <http://www.nycbar.org/member-and-career-services/law-students/national-moot-court>.

⁹⁵ N.Y.U. MOOT CT. CASEBOOK (Feb. 10, 2017), <http://www.nyumootcourt.org/casebook/>.

“Acknowledge that first-year legal writing is difficult and why some students might be apprehensive learning this new mode of communication, but also tell the students why legal research, legal writing, and Moot Court are important.”

For the brief-writing assignment, assign students to teams of two: one for each issue, with both students writing the common parts of the brief (and being graded accordingly). If you have an uneven number, you'll be forced to have a team of one or a team of three, and a team of one doing one issue is better than a team of three. They'll be happier, and less likely to complain, if they pick their own teammate. That benefit offsets the negative of forcing students to undergo an awkward social exercise of picking a partner from among their classmates.

VIII. Starting at the Beginning: The First Class

Before the first day of class, send the students a welcome email with your syllabus attached. Confirm the class date, time, and room number in the body of the email, along with a confirmation of any reading assignment for the first class. Most writing programs require that the syllabus be uploaded to the course website (e.g., TWEN, Blackboard, and the like), but most students don't check the course site as closely as their email. Email is the most effective and direct way to reach students.

Law schools provide resources for adjuncts. Familiarize yourself with those resources before the first class. Among them might be an adjunct office, where you can work, print papers, use a computer, and go online.

On the first day, welcome everyone to the class, introduce yourself and the TA (if there's one), and have the students introduce themselves. A student introduction sets a positive tone, gets the students to start talking, and assures that all students on the roster (which you will upload beforehand) are in class and in the right place. Explain the syllabus (including the rules and all reading and writing assignments) and the course goals. Discuss grading, including how class participation will be accounted for. Acknowledge that first-year legal writing is difficult and why some students might be apprehensive learning this new mode of communication,⁹⁶ but also tell the students why legal research, legal writing, and Moot Court are important. Tell students

that because legal-writing classes are small, they're in a safe forum in which to participate.

Then recast the role of your writing class, your role, and the students' role. As to the class, tell your students that “they should not be seeking to master the law; they should be seeking to *achieve competence in finding, understanding, and using the law*.”⁹⁷ That will save your students from believing that they must know all the law and regurgitate it. As to your role, tell them “that their audience is not [you,] their legal writing professor; rather, their audience is the practitioner who will ultimately use their writing to make important decisions.”⁹⁸ That approach will prevent your students from devoting themselves to learning your supposed idiosyncratic and subjective preferences and trying elusively to please you. As to your students, tell them that they must take charge of their own learning,⁹⁹ that they must leave their egos at the door and welcome constructive critique,¹⁰⁰ that the course is designed to turn them only into advanced beginner legal writers,¹⁰¹ and that “subject matter mastery and reporting of it that served them well in undergraduate courses will not do ... in law school, because there are no formulas, no shortcuts, and no templates for the hard work of the legal writer, who must perform for himself the entire process... ”¹⁰²

It's also wise in the first class to begin inoculating your students to prepare them for topics they won't like: “One suggestion for defusing problems peculiar to the legal writing course is for the professor to lay some groundwork before

⁹⁷ Felsenburg & Graham, *supra* note 3, at 291.

⁹⁸ *Id.* On this point, Felsenburg and Graham believe that “recasting the role of the legal writing professor is the *sine qua non* of a smoother, less traumatic adjustment for beginning legal writing students.” *Id.* at 292-93.

⁹⁹ *Id.* at 293.

¹⁰⁰ Susan E. Provenzano & Lesley S. Kagan, *Teaching in Reverse: A Positive Approach to Analytical Errors in 11 Writing*, 9 *LOY. U. CHI. L.J.* 123, 133 (2007) (“The ultimate challenge is to help students understand that errors are a necessary and even desirable part of the drafting and learning process.”).

¹⁰¹ Felsenburg & Graham, *supra* note 3, at 291.

¹⁰² *Id.* at 294.

⁹⁶ Heidi K. Brown, *The “Silent but Gifted” Law Student: Transforming Anxious Public Speakers into Well-Rounded Advocates*, 18 *LEGAL WRITING: J. LEGAL WRITING INST.* 291, 326-28 (2012).

introducing unpopular topics.”¹⁰³ One example: “Everyone says that the rules about citing are absurd. But here’s why lawyers cite... .”

IX. Providing Feedback to Students and Initial Assessments

Because writing expresses an internal thought process, students can’t see on their own how their work comes across to a reader. Writers often think they wrote something they didn’t or that they didn’t write something they did. You must tell them.

Constructive feedback is essential to help students assess their strengths and weaknesses. Use constructive feedback to explain to students how they can improve their writing and analysis. Diagnose problems early on,¹⁰⁴ and provide immediate feedback to the maximum extent you can. Make your feedback specific. Pointing out, in your written feedback and in your one-on-one conferences, specific examples of what went well and what didn’t go well helps students understand what they need to work on. Connect your written feedback to your conferences by writing “TTMA” in the margin of an assignment—“talk to me about.”

A. Written Feedback

As a preliminary step to providing feedback in writing,¹⁰⁵ tell the students before the assignment is due what key areas they should focus on. Then critique the papers on those areas. Written feedback is meant “to reinforce points made in class.”¹⁰⁶

Another early step is to decide whether to give feedback on a student’s assignment by hand (perhaps in green; preferably not in red ink; red is aggressive) or using Microsoft Word track changes with balloons. Sometimes providing feedback by

hand helps students and professors notice errors. The drawback is that some adjuncts’ handwriting is illegible. The Microsoft Word track-changes function makes edits easy for students to read, and it’s a paperless system: You can return edited assignments by email without scanning them first. But be careful with track edits. Some students will push “accept all changes,” assume they’re done, and “climb on the ‘I fixed everything you pointed out’ grandstand.”¹⁰⁷

Constructive feedback is helpful feedback that most students appreciate and learn from. When students do something well, write “good point,” “good find,” or “good Bluebooking.” Similarly, point out where the student’s organizational structure, large scale and small, doesn’t work and how it can be better. Locate areas of the student’s writing that’s conclusory. Point out choppy sentences and verbosity. Generic and vague critiques like “awkward,” “incorrect style,” or “say what?” are unconstructive. They don’t direct or guide students.

Instead, label the error in the margin (*e.g.*, “add topic sentence here,” “citation needed here,” “prefer verb to noun,” “missing closing quotation mark,” “vague referent—what does ‘it’ refer to?,” “add pinpoint citation,” “past facts go in past tense,” “subject-verb agreement,” “don’t separate subject from predicate,” “use short-form citation,” “incorrect ellipses,” “dangling participle,” “avoid ‘with’ in the final position,” “‘more’ than what?—complete your comparison,” “widow/orphan error,” “delete preposition,” “use articles for count nouns,” “try ‘that,’ not ‘which,’” “shorten your paragraph,” “add parenthetical after your citation to explain why this case is relevant,” “don’t string-cite for basic propositions,” and so on and on). If the error is clear (a typo, a missing or double word, an absent period, or a required comma), you can merely circle it or correct it by track change. After you label the error, you may explain briefly why it’s an error and also how to fix it.

You might be tempted to rewrite a student’s sentence or even paragraph. Doing so is overly time-consuming—for your own mental health, use shortcuts; you don’t want to devote all your free

¹⁰³ Judith D. Fischer, *How to Improve Student Ratings in Legal Writing Courses: Views from the Trenches*, 34 *BALT. L. REV.* 199, 208 (2004).

¹⁰⁴ Levy, *supra* note 2, at 103.

¹⁰⁵ For three excellent articles on written feedback, see Anne Enquist, *Critiquing and Evaluating Law Students’ Writing: Advice from Thirty-Five Experts*, 22 *SEATTLE U. L. REV.* 1120 (1999); Richard K. Neumann, Jr., *A Preliminary Inquiry into the Art of Critique*, 40 *HASTINGS L.J.* 725 (1989); Susan M. Taylor, *Legal Writing Symposium, Students As (Re)Visionaries: Or, Revision, Revision, Revision*, 21 *TOURO L. REV.* 265, 288 (2005).

¹⁰⁶ Taylor, *supra* note 105, at 294.

¹⁰⁷ Email from Terri LeClercq to author (Jan. 19, 2017, 5:07 PM EST) (on file with author).

time to editing papers—and counter-productive anyway: Students won't teach themselves the material if you do the heavy lifting for them too often, and they won't appreciate your efforts. Instead, they might resent you for it, or they might lose the forest for the trees if they conclude that only what you rewrote is important. That's why you needn't, and shouldn't, diagnose every possible error. Diagnosing every error will overwhelm your students: Be careful not to over-comment with suggestions.

Don't dwell on a writing controversy that's become your personal fetish or make your critiques personal. Don't point out errors by adding your own exclamation points or angry, mean, or sarcastic remarks or by listing the number of times you've fixed that mistake in earlier papers. If you do, the students might not take your suggestion to heart—and might even think you're out to get them. If you find that you're becoming overly critical in your comments, take a break, realize that you can't expect perfection, think positive things about your students, and recall your skills as a 1L.

Avoid appearing inconsistent. Tell your students that they made the same mistake elsewhere, but point out that your comments are located only in one place in the document. Your comment would be something like "correct this elsewhere in your paper." That way the student won't come back to say, "You didn't correct that on page six; you can't grade me down for that alleged mistake."

Focus on the writer's audience. The most productive feedback is to explain what a typical legal reader will take away from the student's writing.¹⁰⁸ For example, tell the student whether it was engaging to read the entire paper, or perhaps that poor organization will prevent the reader from understanding the argument.

If the memo had good organizational structure but the grammar was problematic, write something like this to the student: "Grammar and punctuation aren't simply matters of personal choice, they follow rules that good writers must know. ... Make sure to give yourself at least a day to edit. Good lawyers write with flawless grammar and

punctuation. You will too once you've taken the time to master that aspect of legal writing."¹⁰⁹

This example highlights why the edit is important and tells the writer how to improve.

Especially important to constructive legal-writing editing is to comment on the students' legal analysis. For that you must explain the issue; saying "faulty analysis" isn't nearly good enough.

If a student misinterpreted a case, you may write something like:

You've identified the issue and the relevant cases, but you should spend more time reading the cases carefully. Does *Jones* really hold this or is it simply dicta? You will often need to read cases several times to really understand how they fit into your analysis. But once you understand the cases on a deeper level, your writing will also improve.¹¹⁰

This example shows that applying the correct holding will help the student improve legal analysis.

Include comments at the end of the assignment explaining your overall impression of the work. Indeed, some commentators think that the end comment is the most important of all. Comment on positive and negative aspects. Comment on errors concerning things not yet taught in class. If you do that, you can quickly explain to the student that you didn't take points off for not knowing something not yet taught. And sandwich your comments. First paragraph: the positives. Second paragraph: what needs improvement. Third paragraph: more positives.

¹⁰⁹ Carrie Sperling & Susan Shapcott, *Fixing Students' Fixed Mindsets: Paving the Way for Meaningful Assessment*, 18 LEGAL WRITING: J. LEGAL WRITING INST. 39, 78-80 (2012). The authors of this article also make an important point about how writing students react to feedback:

[Writing professors] see a vast distinction in students' reactions to the feedback they provide. They see students thankful for critical feedback, who use the feedback to learn and improve. But they also see students who don't seem to benefit from the feedback. They either resist their professors' guidance, often arguing defensively against it, or they become despondent, avoiding the professor rather than seeking help to improve.

Id. at 40.

¹¹⁰ *Id.* at 79-80.

¹⁰⁸ Rodriguez, *supra* note 79, at 214.

“Focus on the writer's audience. The most productive feedback is to explain what a typical legal reader will take away from the student's writing.”

B. Oral Feedback

Feedback isn't always reserved for editorial comments on a paper. Give feedback during one-on-one student conferences, which you should hold in the middle of each semester for anywhere from 30 to 60 minutes depending on the number of students, their schedule, and your schedule. Giving feedback in person requires an approach different from giving feedback on paper. When it comes to legal writing, students' egos get ruffled. The rule of thumb is generally to make three positive comments for every one negative comment. The conference might include asking the student a series of open-ended questions.¹¹¹ Ask the student "what's your strongest argument"? Or go paragraph by paragraph to help the student understand sentence structure. The more examples you give, the better.

At the meeting, emphasize a student's strengths and weaknesses. Doing so will avoid getting into discussions about grades. Tell the students in advance that the conference will cover their papers but not their grades. At the conference, make the student feel comfortable and relaxed, and give your students your undivided attention.¹¹² Talk about anything related to the class, law school, and their future careers, but avoid what one legal-writing director confessed to encountering at his conferences: "With some students, the conferences were deeply psychological, like therapy sessions with the lost, the desperate, and the confused..."¹¹³

Provide comments that balance the students' desire to have a positive self-image with constructive criticism. Doing so will make students feel that they can improve and not feel so discouraged they might give up trying.¹¹⁴ Too much negative feedback might make the student give up. Too much positive feedback, on the other hand, will lead students, perhaps inaccurately, to believe they'll be getting a higher grade than

they will or that they know already how to write and have no room or reason to improve.

To make grading and conferences easier for you and more helpful to your students, create a rubric. A rubric is a checklist, or template, containing all the necessary components to a perfect paper. They're "detailed written grading criteria, which describe both what students should learn and how they will be evaluated."¹¹⁵ A rubric will force you to consider the different things on which a student should be working and on which to assess a student's strengths and weaknesses.¹¹⁶ A rubric tells students in advance what's expected of them, minimizes arbitrary grading, and prevents complaints that their teacher told them what's important only after they've done the assignment.

A grading rubric should include a matrix for adhering to various proficiency requirements aligned with the goals of your writing class.¹¹⁷ Assign categories for formatting, tone, use of case law, application of facts, citation, analysis, grammar, punctuation, and the like. If the assignment was supposed to be neutral, include that as well. On the other hand, if the assignment was supposed to be persuasive, include that. Creating and filling out rubrics is time-consuming. The solution is to have only three grade levels for each rubric category: exceeds expectations, meets expectations, and below expectations.¹¹⁸

Remind students that everyone improves with practice and experience. To that end, give students additional resources to help them improve:

Encourage them to go to the law school's writing

¹¹⁵ Sophie M. Sparrow, *Describing the Ball: Improve Teaching By Using Rubrics—Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1, 6.

¹¹⁶ Leslie M. Rose, *Norm-Referenced Grading in the Age of Carnegie: Why Criteria-Referenced Grading Is More Consistent with Current Trends in Legal Education and How Legal Writing Can Lead the Way*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 123, 128 (2011).

¹¹⁷ *Id.* at 147-50.

¹¹⁸ According to Terri LeClercq, "Rubrics keep the writer's mind focused on the important aspects of that particular assignment (headings, or counter analysis, etc.—whatever the professor has chosen). That helps the new legal writer focus, and it helps the professor, who then can narrow feedback to fewer comments that track the instructions." LeClercq, *supra* note 32. For more advice for new legal-writing teachers, see Terri LeClercq (ed.), *What Advice Would I Give If My Best Friend Wanted to Become a Teacher of Legal Research and Writing?*, LEGAL WRITING INST. THE SECOND DRAFT, Mar. 1994.

¹¹¹ Rodriguez, *supra* note 79, at 198.

¹¹² Taylor, *supra* note 105, at 288.

¹¹³ Philip N. Meyer, *Confessions of Legal Writing Instructor*, 46 J. LEGAL EDUC. 27, 38 (1996).

¹¹⁴ Rodriguez, *supra* note 79, at 201-03; Sperling & Shapcott, *supra* note 109, at 51-52.

“Hiring an academically gifted student doesn’t guarantee a successful professor-TA relationship. The best TAs are easy to work with; they should have a good rapport with you and the class.”

center or the writing program’s writing specialist, as applicable.¹¹⁹ Similarly, encourage students to try out for the school’s Moot Court program, to sign up for law-review and journal write-on competitions, and to take upper-class writing electives.

X. Teaching Assistants

Not all writing adjuncts have the luxury of using a TA. TAs are beneficial because they’ll help with administrative tasks and may serve as a buffer between student and professor—and they’re inexpensive.¹²⁰ The TA can report student achievement and difficulties as well as student complaints.¹²¹ By gathering information from the TA about how students are doing, professors can get a better grasp of their interests and concerns and be able to tailor the course accordingly.¹²²

A TA’s responsibilities might include helping prepare fact-patterns and doing either a first edit of student assignments or a review of your first edits. To edit the students’ papers, you need to teach your TA what’s important—what you’re looking for in terms of editing and even the law applicable to the assignment. Show your TA your edits before you return the assignments to your students so that your TA sees how you edited them; your TA will learn how to edit by seeing your edits. TAs can email students about scheduling and other issues and have office hours. TAs should attend each class, set up a PowerPoint demonstration, speak in class to clarify a point (taking pains not to contradict the professor aggressively in front of the students), make announcements, or

give short class presentations on citation and the like, and encourage class participation.

Clarify with the TA his or her role before the first day of class and discuss overall expectations during the recruiting process.¹²³ The TA’s role should be limited to mentoring students, not grading. A TA might suggest grades, but only you may assign them.

Hiring an academically gifted student doesn’t guarantee a successful professor-TA relationship. The best TAs are easy to work with; they should have a good rapport with you and the class. The TA’s role should be explained to students during the first class. The TA coteaches the class and comentors the students. Treat your TAs like coteachers and comentors, and your students will respect them, too.

XI. Assigning Grades

Grading is probably the worst part about teaching. Experienced adjuncts jest that they’d teach for free, but they get paid to grade. Grading is daunting, especially in a writing course. Grades are especially difficult to administer in a writing course. Students will feel attached to their papers, and egos get in the way. Check your ego, too. Resist any temptation to edit or grade harshly when large blocks of students didn’t understand your in-class suggestions. If lots of students misunderstood your guidance, perhaps it’s your fault: You weren’t clear enough.

And then there’s the school’s grading curve. It’s hard to think of many schools that don’t have one, one way or another. Even pass/fail writing programs offer high passes only to a select percentage of the class. And when a school doesn’t have a curve for small classes, cofaculty peer pressure will prevent you from assigning inflated grades. Some schools allow departures from the curve if the writing teacher can justify it.

Some teachers and many students hate the curve. Teachers must make difficult, conscience-affecting choices between students, and some students believe that no matter how well they do, the curve will always put them down. Teachers must want

¹¹⁹ Kathleen Elliott Vinson, *New LR&W Teachers Alert!: 14 Ways to Avoid Pitfalls in Your First Year of Teaching*, 6 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 6, 6 (1997) (“If your school is fortunate to have some type of academic support program, refer students who are having difficulty with any aspect of your course to a skills specialist as early as possible. ... Be sensitive so that the students do not feel stigmatized by this referral. Recommend the referral as an opportunity to receive more instruction about the subject matter.”).

¹²⁰ See generally Julie M. Cheslik, *Teaching Assistants: A Study of their Use in Law School Research and Writing Programs*, 44 J. LEGAL EDUC. 394 (1994).

¹²¹ Becker & Croskery-Roberts, *supra* note 56, at 280.

¹²² *Id.*

¹²³ *Id.* at 287-89.

their students to improve, but a curve might encourage some teachers not to want a student to improve; lack of improvement means that the teacher has found the student who'll get a poor grade that'll justify raising other grades under a curve. That won't happen in a doctrinal class with one final, anonymously graded or blind exam in which professors haven't worked with students over a semester on a series of assignments.

But graduate schools and employers like the curve. It's an easy, neutral way for them to distinguish between students and to have relatively consistent grading across teachers, sections, and years. A curve isn't necessarily bad for students. It pushes student grades up if the class is weak. A simple way to apply a curve is to give everyone the highest grades possible consistent with the curve.¹²⁴

Consult the law school's policies about how to grade. Though others may disagree, the best writing course to teach is one that grades on a scale of "fail," "low pass," "pass," and "high pass" in which you don't grade each assignment individually, but rather submit one grade at the end of a semester, and in which what counts most toward the grade is the final paper. Students won't be grade obsessed, and professors won't drive themselves crazy setting grades. But that scale is always a school determination, not yours. Consult the law school's policies on how to factor in missing classes, class participation, and where the curve is required.

Schools will no doubt have a policy about whether each first-year writing assignment must be graded and calculated for the final grade at the end of the semester or whether the writing professor may give only one grade at the end of the semester and thus not return each paper with a grade. Some schools may give you the

discretion—a local rule—to allow you to give only one grade: a final one when the semester ends.

If a school gives you a choice, one final grade, determined holistically, at the end of the semester is your best option: It relieves you of the burden of assigning grades for each assignment, it reduces student grade obsession, and it allows you to judge a student with a more gestalt (and less purely mathematical) approach.¹²⁵ But because students still have the right to know how they're progressing, you must still give them indicators for each assignment using a three-point scale of "good," "very good," and "excellent" or "below expectations," "meets expectations," or "exceeds expectations." But be wary about giving an "excellent" on an assignment at the beginning of a semester. Doing so may cause the student to expect a high final grade in the course.

Factor into the final grade a student's class participation, but don't consider a student's effort or lack of effort. Effort is important, of course. It shows that a student is motivated and cares about the course. To become an effective writer, one needs to exert effort practicing the craft. But it's difficult for an adjunct to know whether a student put in effort. The only way you'll know whether a student tried hard is if the student tells you. And students aren't always honest with teachers or themselves about effort. On the flip side, hard workers won't always tell you how hard they really worked. Grading on effort is like grading by factoring in student complaints or personal discussions. Do that and you'll foster a system that encourages students to moan and groan. One way to discourage griping is to tell students that you won't listen to any complaints by brief-writing/Moot Court teammates against one another and that each teammate must pick up the slack of a weak teammate. But that's not enough, because "effort" is too subjective a concept on which to reward or punish.

Consider this baseball analogy for factoring player effort: Which of the following two baseball players would be the best on a baseball team? One option

¹²⁴ One full-time professor suggests, unempirically, that adjuncts give higher grades than full-timers and that they do so to keep their jobs. See W. David East, *All About Adjuncts*, 12 *TRANSACTIONS: TENN. J. BUS. L.* 325, 332 (2011) ("[T]he grades in adjunct courses tend to be higher than grades from courses taught by full-time faculty, in part because the adjuncts want to be invited back."). He doesn't explain how upsetting the full-time faculty will lead to renewed contracts.

¹²⁵ Levine II, *supra* note 34, at 636 ("Holistic grading is easier for an experienced teacher.").

“Invite students to keep in touch with you and with each other. Be open to mentoring your students in the future. Give students some tips for the immediate and long-term future.”

is the person who practices all day, every day, but during the game strikes out every time at bat. The other option is the person who never practices but is a natural; when it's game time, the player always hits a home run. Anyone interested in winning a game will hire the player who hits home runs. Giving the one open spot to a hardworking player who strikes out all the time despite effort will punish the home run hitter and perhaps cause the team to lose.

Another grading controversy in legal writing is whether student improvement may play a role in a teacher's grading criteria. Some believe that students deserve a grade boost if they improve over the course of the semester. But improvement might be more a testament to the professor's ability than the student's. Every student's goal is to improve. And given that your students are likely graded on a curve, or at least on a comparative basis, any improvement the student makes may cancel itself out because students in the same class given the same instruction by the same instructor will improve at the same rate—yet students who improve will think they deserve a high grade regardless. Promising to give students a grade higher than their peers based on whether they improve faster and better than the next student gives students false hope and substitutes merit for amorphous improvement.

Some writing teachers who must grade throughout the semester suggest that they should grade low to allow the students to make progress. But that technique will deflate an adjunct's student ratings: The students will worry that they're failing and take revenge.

When calculating grades, consider, instead, whether students continue to make repeated mistakes after being told repeatedly about them. Factor into the grade a student's ability to integrate feedback; you may properly deduct, or just not award points, from a student who isn't getting something basic.

Still another controversy is whether to have anonymous grading. Most first-year law-school classes use anonymous grading for exams. It's effective insofar as it protects students against unintentional professor bias. But anonymous grading can be particularly disadvantageous in a first-year writing class. It can make it more difficult to hone in

on a particular student's problems and thereby offer less personalized, effective feedback. And by the end of the semester (because the class size is small), it may be easy to figure out whose paper belongs to whom. Every student will leave a footprint. That can make anonymous grading pointless.

Ideally, you'll find ways to follow a mandatory grading curve without letting your students obsess over their grades. It's counter-productive to the learning process if students become grade obsessed. They'll lose focus on the substance. Avoid creating a grade-obsessed culture in the classroom. Don't bring up grades or discuss grading too often during class or during one-on-one conferences. Focus on the students' writing, not on their grades.

XII. The Last Class, and Student and School Evaluations

The last day of a legal-writing class marks the end of a semester, but it's barely the beginning for your student.¹²⁶ Leave the class on a positive note. Invite students to keep in touch with you and with each other. Be open to mentoring your students in the future. Give students some tips for the immediate and long-term future. For example, explain how to work with supervisors once they get into practice, find a balance between being self-sufficient and dependent, volunteer for assignments, and do pro bono work.¹²⁷

The last class (or, depending on the school, the penultimate class) typically must include time for students to fill out professor evaluations, or ratings. Strongly encourage students to participate in that process during class time. Ratings are conducted online, on paper, or both. Leave the room while students are filling out evaluations to ensure they have the freedom to be honest.

When the ratings are ready for you to see (typically online these days, and always after you submit your grades), understand that most writing

¹²⁶ Joel Atlas, Estelle McKee & Andrea J. Mooney, *The Final Legal-Writing Class: Parting Wisdom for Students*, 24 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 48 (2016).

¹²⁷ *Id.* 48-49.

directors consider them but one factor, though an important one, in assessing your teaching.

Directors know that students often rate effective, achievement-oriented first-year-writing teachers poorly.¹²⁸ They also know that some writing teachers get inflated reviews because they give inflated grades; flatter students in class, during conferences, and in written critiques; make the course less rigorous; and never “challenge students for being absent or unprepared or missing a deadline or playing solitaire on their laptops in class.”¹²⁹

Ratings are subjective. Take them with a grain of salt. Students who rate at the ends of the spectrum probably went a little too far. But if a third of your students don't like you or your course, rethink your teaching strategies or you'll get into trouble. Pay special attention to things within your control, like whether the students believe you've demonstrated a mastery of the subject and whether you accomplished class goals and were effective, respectful, punctual, enthusiastic, organized, and clear in presentation.¹³⁰ And be mindful of what I wrote above:¹³¹ that first-year legal-writing students rate their writing teachers far more harshly and unfairly than in any other law-school course. Some students at schools in which all students and faculty see every teacher's ratings even use their negative ratings as exercises in public humiliation. But there are things you can do, and things you shouldn't do, to earn good, or at least not awful, evaluations. Program directors can help, too. They can ask the students to submit short midterm evaluations before it's too late and give their adjuncts only ratings summaries, excising obnoxious comments to help adjuncts work better with current students.

¹²⁸ Fischer, *supra* note 103, at 208 n.36 (“[P]rofessors who focused on achievement rather than projecting enthusiasm received lower student ratings but produced students who learned more and did better in advanced courses.”) (citing Arthur M. Sullivan & Graham R. Skanes, *Validity of Student Evaluation of Teaching and the Characteristics of Successful Instructors*, 66 J. EDUC. PSYCHOL. 584, 588 (1974)).

¹²⁹ *Id.* at 209.

¹³⁰ Cavanagh, *supra* note 50, at 4-5.

¹³¹ See *supra* notes 31-42 and accompanying text.

One way to close on a good, end-of-semester experience is to organize a pizza lunch or dinner for the students for their last class. Students enjoy this opportunity to come together in an informal, relaxed setting. It also demonstrates the professor's interest in getting to know the students and to congratulate them on a semester concluded. This gesture can tip the scale on student ratings in your favor, although others might believe this is cynical and manipulative and wouldn't recommend it.

Adjunct professors are also evaluated—audited—by the writing program's director or other faculty member who serves on the law school's adjunct committee. The reviewing professor attends a class, skims your edits on assignments, evaluates the syllabus and assigned fact patterns, and writes a report that the school will consider when it decides to retain you.¹³² The report can contain helpful advice for improving your class. You might not see the report in advance of its going to the committee (and from there to a dean) or have an opportunity to comment on it in advance. In the exceedingly rare event that you decide to comment, don't be defensive. Respect your reviewer's suggestions about improving your teaching. Incorporate feedback into your lessons to the extent possible, even if some of the advice doesn't seem right. It's not a matter of who's right or wrong. The reviewing professors are more experienced and senior than you. Their reports will contain good advice. Take them to heart.

XIII. Applying to Teach

If the challenges involved in becoming a legal-writing adjunct sound interesting, apply. Research which schools hire adjunct writing professors. Every American law school teaches legal writing or lawyering, but almost half use only full-time professors and another quarter use adjuncts only rarely. Adjunct positions aren't easy to come by. One publicized (non-legal-writing) example:

¹³² Susan Reich & Eric Easton, *Legal Writing Taught by Supervised Adjuncts*, in *THE POLITICS OF LEGAL WRITING: PROCEEDINGS OF A CONFERENCE FOR LEGAL RESEARCH AND WRITING PROGRAM DIRECTORS JULY 28-29, 1995* 113, 115-19 (Jan Levine, Rebecca A. Cochran & Steve Johansen, eds., 1995), <http://ssrn.com/abstract=993266> (explaining how writing-program directors should supervise and evaluate their adjuncts).

“An important criterion—seemingly more important in adjunct teaching than in many other occupations—is who your references are. Try to get a full-time professor or another writing adjunct at your school to support your candidacy.”

“[S]everal hundred’ attorneys typically apply for the handful of adjunct slots available each year” at New York University School of Law.¹³³

Prospective adjuncts should begin to network by asking colleagues about adjunct openings and attending bar-association functions to let people know they’re interested in adjuncting.¹³⁴ Often adjuncts must pitch a new elective course to an academic dean, but that doesn’t apply to first-year legal writing, an established course everywhere. To learn about and gain teaching experience, prospective adjuncts should volunteer to teach continuing-legal-education programs and guest lecture for classes, preferably law-school classes. Prospective adjuncts should also participate in programs sponsored by law schools, such as judging Moot Court and trial-advocacy competitions. Sometimes law schools recruit adjuncts directly; adjunct positions at those schools may not be advertised. Otherwise-qualified donors have a decided advantage.¹³⁵

Some think that prospective adjuncts should contact the associate dean for academic affairs to schedule a meeting to discuss what the law school looks for in its adjunct professors, how adjunct hiring is managed, and what an adjunct’s overall experience teaching at the law school is.¹³⁶ Even if that works for non-writing positions (and that’s doubtful because deans have little interest in wasting time with the stream of lawyers who want to have coffee with them to talk about adjuncting), it doesn’t work for writing positions. Some schools advertise for writing adjuncts; follow the school’s directions. If you’re applying blindly, email the writing-program director and attach a cover letter, résumé, and writing sample designed specifically for a position teaching legal writing part time (be clear that it’s not for a full-time slot) at the law school to which you’re applying.

Law schools look for adjuncts who have the time to teach. Before submitting an application, proofread

your written materials. They must be well-written and typo-free. Writing adjuncts are expected to have the skills and time to teach students; that means they should also have the skills and time to write good cover letters and résumés.

Applicants with teaching experience and publication credits have a decided edge.¹³⁷ Interviewers will want to know about the applicant’s connections to the law school. Most schools like to fill writing adjunct positions with their alumni—even those schools that rarely hire their own alumni for tenure-track positions. There’s a preference for former law-review, journal, and Moot Court students and for those who served as TAs, especially legal-writing TAs, in law school. Law schools like to hire well-connected adjuncts who’ll bring distinction to the faculty and expanded course offerings to the curriculum. An important criterion—seemingly more important in adjunct teaching than in many other occupations—is who your references are. Try to get a full-time professor or another writing adjunct at your school to support your candidacy.

Be gentle at the hiring-committee interview: “[L]egal writing professors are expected to have credentials not required of other law professors. ... [W]riting professors. ... are expected to have strong interpersonal communication skills and to exhibit ‘niceness, caring ... [and] patience. ...’ They also are not likely to be hired if they exhibit ‘arrogance or an inflated ego’ or ‘rigidity or inflexibility.’”¹³⁸ Professor Kingsfield needn’t apply.

¹³⁷ At some law schools, full-time writing professors are not required or encouraged to produce scholarship on legal writing. At other schools, some scholarship is expected and supported. Levine I, *supra* note 2, at 1087.

¹³⁸ Liemer & Temple, *supra* note 12, at 425 (footnotes omitted) (quoting Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 *TEMPLE L. REV.* 117, 158 (1997)). As noted,

[a]n excellent teacher of writing has to have superlative writing skills, must be an innovative classroom teacher, and must have potential as a scholar. Most of all, an excellent teacher of writing has a caring attitude towards students, an indefatigable sense of humor, lots of common sense, and a willingness to spend endless and often unrecognized hours conferencing with students and critiquing student work. This may or may not be

¹³³ Jones, *supra* note 53.

¹³⁴ Cavanagh, *supra* note 50, at 3.

¹³⁵ Rosman, *supra* note 54.

¹³⁶ See, e.g., Lemmer & Robak, *supra* note 43, at 13.

XIV. Additional Resources

Writing adjuncts should continuously study their material and update their course. Writing about something is the second best way (after teaching it) to learn about it and is closely related to teaching. Learn about legal writing by publishing in legal-writing journals, bar journals, and magazines as well as in nontraditional publications like online blogs for professors and practitioners. It's a myth that writing about legal writing isn't scholarship.¹³⁹ And it's a myth "that non-legal writing faculty members do not know how to evaluate legal writing topics."¹⁴⁰ The better legal-writing articles for teachers are empirical and scholarly,¹⁴¹ but the best articles for law students, lawyers, and judges aren't scientific: They explain basic principles of good legal writing—about which adjuncts know a great deal.

The Legal Writing Institute (LWI), an important resource, is a nonprofit organization that hosts forums to discuss the study, teaching, and practice of legal writing; it also publishes scholarly resources¹⁴² and has a listserv for LWI members.¹⁴³ The Association of Legal Writing Directors (ALWD), another resource for writing teachers, includes professionals from the United States, Canada, and Australia. ALWD also publishes

the same person who comes to you with superlative academic credentials.

Maureen Arrigo-Ward & Molly Warner Lien, *Supervising and Training Legal Writing Teachers*, in *THE POLITICS OF LEGAL WRITING: PROCEEDINGS OF A CONFERENCE FOR LEGAL RESEARCH AND WRITING PROGRAM DIRECTORS JULY 28–29, 1995* 37, 38 (Jan Levine, Rebecca A. Cochran & Steve Johansen, eds., 1995), <http://ssrn.com/abstract=993266> (statement of the late Professor Lien).

¹³⁹ Terrill Pollman & Linda H. Edwards, *Scholarship by Legal Writing Professors: New Voices in the Legal Academy*, 11 *LEGAL WRITING: J. LEGAL WRITING INST.* 3, 36 (2005).

¹⁴⁰ *Id.* at 42.

¹⁴¹ See generally Mitchell Nathanson, *Taking the Road Less Traveled: Why Practical Scholarship Makes Sense for the Legal Writing Professor*, 11 *LEGAL WRITING: J. LEGAL WRITING INST.* 329 (2005).

¹⁴² *LEGAL WRITING INST.*, <http://lwionline.org/> (last visited Feb. 10, 2017).

¹⁴³ For instructions on accessing the listserv, see http://www.lwionline.org/listserv_instructions.html.

Legal Communication & Rhetoric: JALWD.¹⁴⁴ The Association of American Law Schools (AALS) has a Section on Legal Writing, Reasoning, and Research, which publishes a newsletter.¹⁴⁵

Subscribe to writing journals to continue learning about legal writing and challenges of other writing professors: *Perspectives: Teaching Legal Research and Writing*,¹⁴⁶ *Legal Writing: The Journal of the Legal Writing Institute*,¹⁴⁷ the Legal Writing Institute's *Second Draft*,¹⁴⁸ and *Scribes (The American Society of Legal Writers) Journal of Legal Writing*.¹⁴⁹ The Social Science Research Network (ssrn.com) also provides a service, the *Legal Writing eJournal*, in which articles related to legal writing are emailed to subscribers every other week. More resources are found on the Legal Skills Prof Blog¹⁵⁰ and Legal Writing Prof Blog,¹⁵¹ both of which are part of the Law Prof Blog Network. The American Bar Association has an Adjunct Faculty Handbook geared toward law-school administrators. It offers valuable insights about how adjuncts should teach and how school administrators should use them.¹⁵² Yale Law School also has a good publication for those

¹⁴⁴ THE ASS'N OF LEGAL WRITING DIRECTORS, <http://www.alwd.org/> (last visited Feb. 10, 2017).

¹⁴⁵ See AALS SECTION OF LEGAL WRITING, REASONING, AND RESEARCH NEWSLETTER, <http://www.suffolk.edu/documents/Law%20Documents/AALSNewsletter2015Fall.pdf> (last visited Feb. 10, 2017).

¹⁴⁶ PERSPECTIVES: TEACHING LEGAL RESEARCH AND WRITING, <http://info.legalsolutions.thomsonreuters.com/signup/newsletters/perspectives/> (last visited Feb. 10, 2017).

¹⁴⁷ LEGAL WRITING: THE J. OF THE LEGAL WRITING INST., http://www.lwionline.org/journal_of_the_lwi.html (last visited Feb. 10, 2017).

¹⁴⁸ THE SECOND DRAFT, http://lwionline.org/the_second_draft.html (last visited Feb. 10, 2017).

¹⁴⁹ SCRIBES: THE AM. SOC'Y OF LEGAL WRITERS, <http://www.scribes.org/> (last visited Feb. 10, 2017).

¹⁵⁰ LEGAL SKILLS PROF BLOG: A MEMBER OF THE LAW PROFESSOR BLOGS NETWORK, http://lawprofessors.typepad.com/legal_skills/ (last visited Feb. 10, 2017).

¹⁵¹ LEGAL WRITING PROF BLOG: A MEMBER OF THE LAW PROFESSOR BLOGS NETWORK, <http://lawprofessors.typepad.com/legalwriting/resources.html> (last visited Feb. 10, 2017).

¹⁵² AM. BAR ASS'N, *ADJUNCT FACULTY HANDBOOK* (2005), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2005_adjunct_faculty_handbook_authcheckdam.pdf.

interested in entering academia as a career path, although it's not geared specifically to adjuncts.¹⁵³

XV. Conclusion

What do law schools look for in a legal-writing adjunct? They want lawyers who (beyond being effective writing teachers who follow school rules and aren't the subject of student complaints) will be popular with the students, give their students internships and externships, hire students for paying jobs, mentor students, bring cachet and credibility to the school, expand the school's curriculum, publish in academic journals, note their school affiliation in their publications and in the media, post their publications on Web sites like SSRN.com to enhance the school's reputation, attend faculty events, judge Moot Court and trial-advocacy competitions, avoid personal controversy that might tarnish the law school's reputation, waive their teaching honorariums, and donate money to the school. But the school will be happy with an effective writing teacher who follows school rules and isn't the subject of student complaints.

What do legal-writing students want and deserve? A teacher who knows the subject, teaches it in an interesting way, respects students, and is a generous (or at least fair) grader. Everything else is lagniappe.

¹⁵³ YALE LAW SCHOOL CAREER DEV. OFFICE, ENTERING THE LAW TEACHING MARKET (2016-2017), https://www.law.yale.edu/system/files/area/departments/cdo/document/cdo_law_teaching_public.pdf.

What do you want? The work of a legal-writing adjunct professor is challenging but immensely rewarding. It's a privilege to teach law students. They'll learn from you how to read, research, write, and analyze like a lawyer. The habits they'll master from their writing adjuncts will last a lifetime and affect the administration of justice and people's lives. You're rewarded when students tell you how much you've prepared them for the legal profession. If you've taught a few students to write, then you've done good work. But don't pat yourself on the back. Just keep teaching for the joy of working with smart, dedicated students who are career-oriented and goal-directed. That's what you want, because one of the greatest contributions you'll give in your lifetime will be what you'll give your students.

And here's my closing memo for law schools that value their students: "[O]ne easy way for law schools to improve their students' legal writing skills is to place more value on the legal writing professors who teach them."¹⁵⁴ Including adjuncts.

¹⁵⁴ Lisa McElroy, *Guest Post on Teaching Legal Writing by Professor Lisa McElroy*, DORF ON LAW (July 28, 2011, 12:01AM), <http://www.dorfonlaw.org/2011/07/guest-post-on-teaching-legal-writing-by.html>. Thus, according to the LWI Policy Statement on Law Faculty (adopted Mar. 2015), as printed in LWI's Second Draft newsletter, "The Legal Writing Institute is committed to a policy of full citizenship for all law faculty. No justification exists for subordinating one group of law faculty to another based on the nature of the course, the subject matter, or the teaching method."

Micro Essay

Technological intuition is key. Not all 1Ls are tech savvy, and a lack of knowledge can make using tech intimidating. What we teach shouldn't be focused on particular software or hardware, which change regularly. We need to ingrain the desire to question, and research the answer, any new tech they face. We need to get students comfortable with learning and exploring new tech to become better more competent users. Only then can they identify whether emerging tech is actually innovative and useful.

Cassandra M. Laskowski, Reference Librarian, Duke University School of Law, Durham, N.C.

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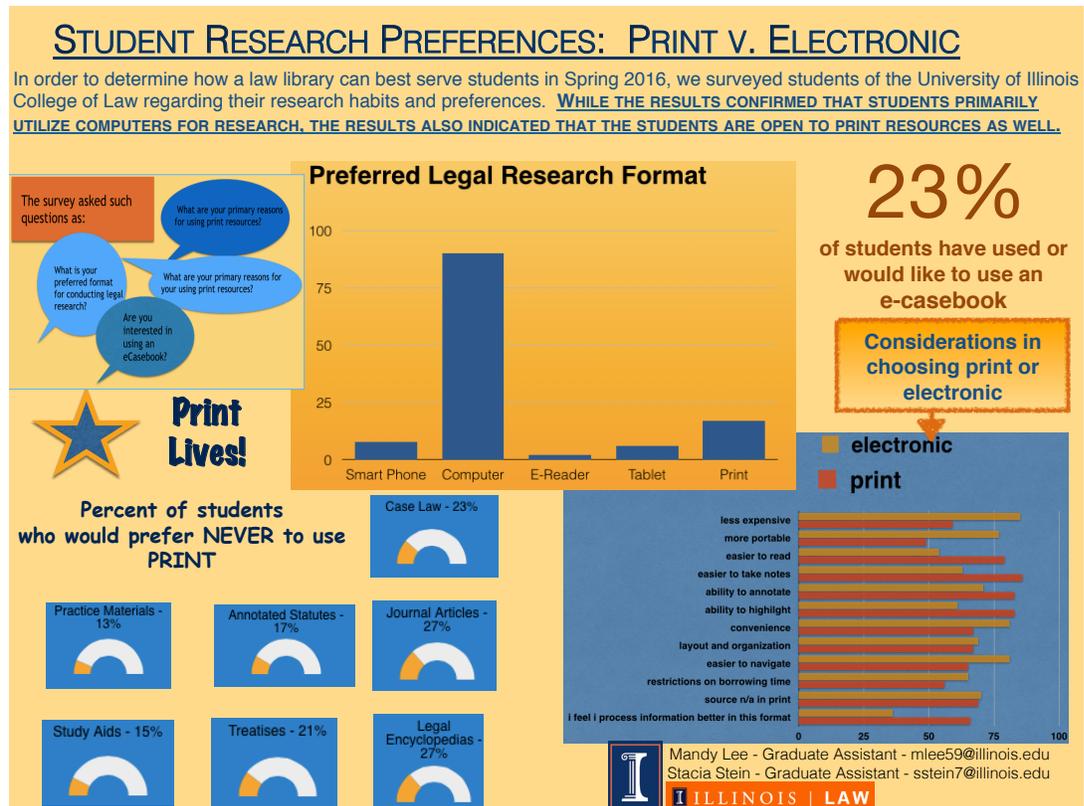
Research Preferences of Law Students: Print vs. e-Book

By Mandy Lee and Stacia Stein

Mandy Lee is Assistant Professor of Law Library and Reference Librarian at University of Nebraska College of Law in Lincoln, Neb., and Stacia Stein is Instructional Services Librarian at Yale Law School in New Haven, Conn.

Law students are the largest user group of the University of Illinois College of Law’s Albert E. Jenner, Jr. Library. In order to better service the student population, it is important not just to be cognizant of their research needs, but also their research preferences. Therefore, we are surveying UIUC Law students to determine their format

preferences when conducting legal research. The survey attempts to discern under what circumstances students prefer print legal resources and under what circumstances they prefer electronic legal sources. We used 14 survey questions, ranging from demographics to considerations when selecting a format in which to conduct legal research. We hope the results of this study will serve as a guide for the law library’s allocation of resources and collection development. In a broader sense, the results could contribute to the body of scholarship regarding U.S. law students’ research habits in order to improve law libraries’ services and facilities.





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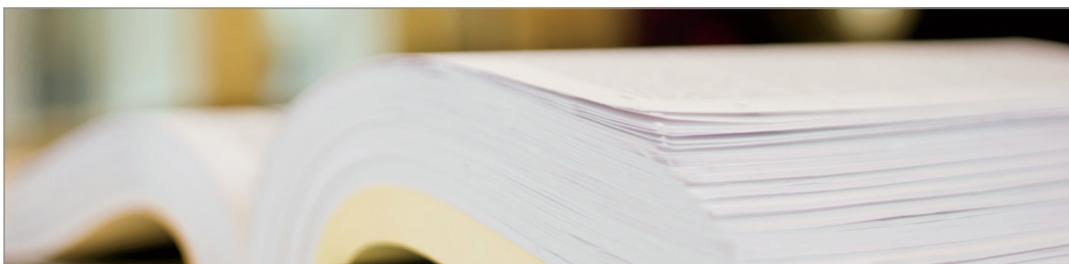
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