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Golden Pen Award

Presentation of the Legal Writing Institute's
First Golden Pen Award January 8, 2000,
at the National Press Club, Washington, D.C.

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Presentation of the Legal Writing Institute's First Golden Pen Award January 8, 2000, at the National Press Club, Washington, D.C.

Text of the Award:

The Legal Writing Institute Presents
Its first Golden Pen Award to
Arthur Levitt, Chairman
United States Securities and Exchange Commission

For his leadership in requiring plain language in financial disclosure documents. Chairman Levitt and the Commission have proved that good legal writing can make even the most complex legal documents easier to understand.

The Commission's successful initiative has significantly advanced the cause of better legal writing.

Remarks of Professor Joseph Kimble
Thomas Cooley Law School
Chair, Outreach Committee, Legal Writing Institute

Welcome. We are here to present the first Golden Pen Award from the Legal Writing Institute.

I want to thank Steve Johansen of Lewis and Clark Law School and Mark Wojcik of John Marshall Law School for their help in putting together this event.

I also want to recognize some special guests here today. We welcome three Commissioners from the Securities and Exchange Commission: Commissioner Isaac Hunt, who's been a great, great supporter of this initiative throughout the country and around the world. Commissioner Norman Johnson is also here, as is Commissioner Laura Unger.

And I also want to welcome Morley Winograd, who is Senior Policy Advisor to the Vice-President. He is director of the Vice-President's National Partnership for Reinventing Government, which we know has been very involved with plain language initiatives. We are also pleased to thank Annetta Cheek for being here. She directs the plain language activities to comply with the presidential memorandum on plain language. Thank you
very much for attending. We’re very honored to have you all here today.

Now to the business at hand.

We are here to recognize a big step forward in the good fight for better legal writing. Sometimes we take smaller steps. All the writing teachers in this room take smaller steps every day when they meet individually, one-on-one with students to work on their writing.

But the Securities and Exchange Commission, under the leadership of Chairman Levitt, has given our cause a huge boost by requiring that investment prospectuses be written in plain language — or at least in much plainer language than they have traditionally been written. Several years ago the Securities and Exchange Commission studied the problem, issued proposed rules, and took on the formidable, not to say monumental, task of trying to persuade the investment and legal communities to use plain language. And they had to train their own staff at the same time. They worked with a number of companies on pilot projects to show that investment documents could indeed be made more understandable for readers. The Commission even produced its own Plain English Handbook, an excellent resource. I have two — one for the home and one for the office.

Then just about two years ago, the Securities and Exchange Commission produced the final version of the plain English rules, which you see on the posters in this room. And they have enforced those rules, by sending back prospectuses that don’t make the grade.

So it’s just possible to imagine the day when to be a truly good lawyer, it won’t be enough just to know the law. Good lawyers will need to be able to express it well, and to write it clearly, plainly, and succinctly for their readers. And if that glorious day ever comes, we may trace its beginnings to the work of the Securities and Exchange Commission in the final years of this last century.

And now I’d like to introduce Peggy Foran, of Pfizer, Inc., who was involved in the pilot project.
Remarks of Peggy Foran  
Vice President for Corporate Governance  
Pfizer, Inc.

Joe invited me because he said he wanted a reformed securities lawyer, and I guess that's what I am. I want to congratulate Chairman Levitt and the Securities and Exchange Commission for all their efforts in Plain English and congratulate you on the Golden Pen Award.

I think that the rules have had a tremendous effect, and my company, Pfizer, thinks the rules have had a tremendous effect. (Pfizer was one of the first companies in the pilot project.) I think that investors believe that the rules have had a tremendous effect. But most importantly, my mother is happy. I get fewer phone calls when the brokers send her these prospectuses. She no longer asks me, "Is this the garbage that you write?"

Joe asked me to share for just a minute or two some of the experiences that we had in the pilot program, including why we decided to be in the pilot program and why we think Plain English makes sense.

Right now Pfizer and a lot of other companies are writing all their documents in Plain English. A lot of companies are getting a lot of positive feedback, and we've even documented that we are saving a lot of money and that it makes good business sense.

But I can boil it all down to three reasons why the switch to Plain English has been beneficial.

First, your clients want it. When I presented the idea of giving my clients documents that they could read and understand and that would be inviting, they looked at me and said they wanted to do that ten years ago, but it was lawyers who told them that they couldn't do it.

And we showed the lawyers that it could be done.

Not only did our clients want it, our investors loved it. When we sent the first document out in Plain English, we got tremendously positive feedback.

In my job as a securities lawyer, I not only write SEC documents, but I deal with senior executives, and I deal with our board of directors. Not in my wildest dreams would I dream of sending these people a memo that they couldn't understand or that wasn't inviting, that wasn't concise and in Plain English.

Investors also love plain language. We found that out when we sent Plain English documents; they love Plain English. We
got fewer phone calls; there were fewer questions. Even at our annual meeting, there were actually fewer questions on procedure as a result of Plain English.

The second thing most companies have found out is that switching to Plain English has been a really good intellectual experience for both the lawyers and the business people. We've always believed that the best lawyers are those that can take very complex thoughts or transactions and put them in a way that everyone can understand.

So there's a group of lawyers now who realize that it's not just about writing Plain English SEC documents. This switch has really helped them because they're writing everything else in a more clear and concise way.

And the third reason that the switch to Plain English is great is that using Plain English creates a better perception of lawyers and of your company. There's now a whole group of lawyers out there who realize that other people were telling jokes about us. We've been in boardrooms and we heard what they say about lawyers and their writing. Writing in a way that people can understand is something that will improve the perception of lawyers.

Using Plain English makes good business sense as well. We have fewer phone calls, we have more positive responses from our customers because of Plain English. Pfizer recently did a stock split, and we did a book entry, which is a very complicated process. We had an outside vendor tell us that over 50% of our shareholders — and we have 1.6 million shareholders — were going to request stock certificates because that was the average. We looked at that as a challenge. When you're doing stock splits, you generally have a lot of very legalese-y documents. But we wrote our documents in Plain English, in question-and-answer format. And we've calculated that we saved hundreds of thousands of dollars. First, from people not calling and asking questions, and second, from people deciding to do a book entry system because our Plain English documents helped them understand how to do it.

So we've shared our experience with other companies. And there are groups of lawyers that swear by Plain English.

At Pfizer, we have our own little internal competition now on how many documents you can do in Plain English. And that's where you come in. This enthusiasm and excitement is in your hands because you have the students. I did an informal poll of the lawyers that were involved in the pilot program. And
the majority of them said that they really were influenced by legal writing faculty or by a law professor who emphasized that it's not only knowing the law. You have to write well. You have to communicate well.

So I congratulate you, I congratulate the SEC, but I also say that it's in your hands. So good luck to the next generation.
Welcome to all of you here. Especially welcome to SEC Commissioners Johnson, Hunt, and Unger. And welcome also to Mr. Winograd and Ms. Cheek.

I'm very excited to be here today to present the Legal Writing Institute's first Golden Pen Award. I can't think of a better recipient than Chairman Levitt. The writing regulations that the Securities and Exchange Commission have promulgated are so important because writing rules do more than just fix sentence structure. When you improve your writing, you improve your thinking. When you improve your thinking, you improve your writing. And when you work on both, you're going to improve communication to your audience. These rules have done so much to help that communication.

Legal writing, like any kind of writing, is not an uncontrollable event. I've heard people talk about writing as an art, but it's not a watercolor. Nor should it be a paint by the numbers set. I'd like to think of Legal Writing more as an architect's rendering. First, because it's meant to communicate specific information to a specific audience; and second, because if you don't get it right the first time, you can erase it and do it over.

When you write, you are making a series of decisions. Unfortunately, those decisions have often been unconscious decisions. What we as legal writing teachers have been trying to do is to make our students aware of the decisions that they make when they write, so that they can make them consciously and do a better job. What we have lacked, alas, is congressionally grated rule-making authority. This is why we're so pleased with what the SEC has done and with the way that they have done it.

When Congress approved President Clinton's appointment of Chairman Levitt in 1993, the Chairman made investor protection one of his top priorities. As part of that priority he created the Office of Investor Education, and he held town meetings at which investors were allowed to express their concerns. The Chairman listened to those concerns, and that is where these regulations came from.

I'm so impressed, both with what the SEC did and with how they did it. The SEC didn't just tell lawyers who write prospectuses to do a better job. The SEC taught them how. They
did the pilot project, they did studies, and they figured out what worked and what didn’t work.

And they wrote the *Plain English Handbook*, which you can download from the SEC website [http://www.sec.gov/pdf/handbook.pdf]. I recommend it to you, and you should recommend it to your students. It’s a wonderful, wonderful document. The Handbook explains how to write an effective prospectus document. It identifies the decisions that you make when you create a prospectus document and explains how to do a better job making those decisions so that the audience will understand the document better.

In creating this handbook, the Chairman and the SEC thought not just of the audience of investors, but also of the audience of the people who write these prospectuses. The handbook is a wonderful recognition of the needs of these two audiences.

As Joe noted earlier, just as important as the initiative has been the enforcement. As the writing teachers in this room know, when writing isn’t done right, you have to send it back and make the writers do it again. That’s what the SEC has been doing. And without that enforcement, all the regulations would be for naught.

In looking at the Chairman’s background, in some ways he’s a real Wall Street insider. He’s a Phi Beta Kappa graduate of Williams College, and he worked on Wall Street for 16 years. As most of you here know, from 1978 to 1989, he was chairman of the American Stock Exchange. From 1989-93, he was chairman of the New York Economic Development Corporation.

But in reading about the Chairman, I read that he has often noted that his pro-investor stance was shaped by his parents. His father, Arthur Levitt Sr., was New York State Comptroller for 24 years, and Chairman Levitt has often noted that his father was “obsessive” about safely managing retirement savings.

I’d like to think, though, that the regulations and the handbook were also shaped by the influence of his mother, who was a career schoolteacher. Because the SEC’s *Plain English Handbook* is in essence a teaching document.
Remarks of Arthur Levitt, Jr.,
Chairman of the Securities and Exchange Commission
Accepting the Golden Pen Award

Thank you very, very much. I am deeply honored by the warm welcome and by this singular award. I am especially grateful for the praise from Peggy Foran on behalf of Pfizer, Inc., a company whose every action symbolizes excellence, quality, professionalism, and willingness to take individual and sometimes controversial stands.

I wish that Nancy Smith, the real recipient of this award, were at least standing by my side. Without Nancy Smith, we could not have built the unique Office of Investor Education. Her determination and insight made possible what was the beginning of a vast corporate cultural change. Somebody once noted that “to hold a pen is to be at war.” If you had read most of the disclosure documents that confronted our investors before the movement to Plain English, you’d have thought that the prospectus was a weapon in the war against clarity and understanding.

The battle for Plain English is not a one-time event. What we’re talking about has been tried many times before. It has been tried, but isn’t succeeded, because it is essential to recognize that this is part of a continuing effort. That effort starts at the Securities and Exchange Commission, and I must add that I’m not at all persuaded that what we have done with our own documents at the Commission has gone far enough. I face some of the same problems that people in corporate America face. Individual division directors say to me, “This is so complex we can’t say it in any other way.” Of course they can.

The effort to promote Plain English is a matter of balance. We cannot become grammatical despots. We cannot permanently hold up the process of capital formation because somebody’s view of the way something is stated is different from an examiner’s view. We must exercise balance and restraint and wisdom and understanding while constantly pushing forward to promote the use of Plain English.

This is something that is the responsibility not just of the Chairman but of every SEC Commissioner. And I’m really proud that my fellow Commissioners have taken the time to join with us today. I’m particularly pleased that Dean Hunt, who is passionate about this issue, is here. And I know that if I slip, he’ll be on my back to have us do a better job.
In talking about my background and the influence on my writing and my concern for Plain English, you were right to focus on my mother, but there were other parts of my background that are also relevant. If I asked most of you what my major in college was, you'd undoubtedly say economics, possibly mathematics or philosophy. Well, I did honors work with the great American playwright Lillian Hellman. And the first job that I had out of college was as a drama critic for the Berkshire Eagle in Pittsfield, Massachusetts. And then I went to work for Life magazine in New York and in Cincinnati, and I came back to New York to work for Time magazine. After I finished my stint in the securities industry, what I went back to was publishing magazines and newspapers. So I obviously have some concerns about the use of language.

You noted that when I came to the Commission, one of my principal concerns was the investor. I share that concern with every one of my fellow Commissioners. We have an absolute obsession for the primacy of the individual investor above all other considerations. Full disclosure has been the mantra of the Commission ever since its formation. Full disclosure is really the foundation of everything we do and everything that we say. The Commission holds the conviction that it must be part of the public perception that our markets are fair and that what is read by the typical investor is reliable and accurate. This conviction motivates us in the first place to say it right and in the second place to have it right, which is why we are so concerned with accounting standards and the kind of disclosure documents that must be part of our process.

So I challenge our law schools and also legal writing faculty not only to strive for Plain English in the classroom, but also to emphasize its importance in the profession for the public good. Our success in this project depends to a large extent on your cooperation and vigilance in ensuring that the next generation of lawyers is trained to prepare legal documents using Plain English prose.

I expected the opposition of many of those in the legal profession to this initiative, and I certainly wasn't disappointed in that regard. Many of those people regard themselves as the unique guardians of a system that they believe only they can understand and interpret. And I can understand that feeling.

But if the succeeding generations of lawyers don't give up that kind of blind adherence to what they regard to be their own, that will be your fault in part. It will be my fault in part
for not emphasizing sufficiently that what we do begins right in our own headquarters. We've got to be even more vigilant in terms of how we deal with the public, with the media, with our every constituent, and I pledge to you to do that.

The investing public is greeting our combined efforts, I believe, with open arms. I can't tell you how many times in recent weeks and months I've heard from investors and companies that we're on the right track and that they welcome this initiative.

I want to commend you for your ongoing work in this endeavor. A corporate cultural shift of this magnitude simply would not be possible without commitment of organizations such as the Legal Writing Institute. I am honored to accept this award, I encourage you in your efforts in the future, and I pledge to work with you, with Pfizer, and with other great companies that have embraced this cause to continue these efforts in the future. I pledge to do everything I can to see to it that America's investors get a clearer picture of what their alternatives are and what their basic protections are. Thank you very much.
Beyond Communication: Writing as a Means of Learning

Laurel Currie Oates

It is a belief that many of us who teach legal writing share. Writing is not only a means of communication but also a means of learning. When our students write memos and briefs, they are doing more than just telling us what they know. They are also learning how to think like lawyers.

In this article, I examine the belief that writing facilitates learning from several perspectives. Part I describes the writing-to-learn movement, beginning with James N. Britton’s and Janet Emig’s assertions that writing is a unique method of learning and ending with John M. Ackerman’s claim that writing is no better and, is sometimes worse, than other modes of learning. Building on the evidence described in Part I, Part II discusses writing to learn in light of four theories: behaviorism, Linda S. Flower and John Hayes’s models of the composing process, Carl Bereiter and Marlene Scardamalia’s models of knowledge telling and knowledge transforming, and cognitive psychology. The final part, Part III, suggests which types of writing are likely to foster law school learning and how they can be

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2 Arthur N. Applebee, Writing and Reasoning, 54 REV. OF EDUC. RES. 577, 581 (1984). As Applebee notes, many authors have observed that writing has had an effect on their own understanding of the topic. For example, E.M. Forrester once queried, “How can I know what I think until I see what I say?” (E.M. FORER, ASPECTS OF THE NOVEL ch. 5 (1927).


4 Janet Emig, Writing as a Mode of Learning, 6 C. COMPOSITION & COMM. 340 (1977).

5 John M. Ackerman, The Promise of Writing to Learn, 10 WRITTEN COMM. 334 (1993).


used to facilitate the construction of new knowledge and the development of legal expertise.

PART I: THE WRITING-TO-LEARN MOVEMENT

The writing-to-learn movement can trace its roots, at least most recently, to the British model advanced by Britton and others in the 1960s. In the now famous "Bullock Report," Britton advocated a unified approach to language, with students being allowed to move from more personal forms of writing (expressive writing) to those that are more public writing (transactional writing).8 In addition, in his book, Language and Learning,9 Britton argued that language is central to learning because it is through language that we organize our representation of the world.

Building on Britton's work, in 1977 Janet Emig published her seminal essay, Writing as a Mode of Learning.10 In this essay, Emig tied writing to learning, arguing that writing is a unique mode of learning because some of its underlying strategies promote learning in ways that other forms of communication do not. For example, unlike talking, listening, or reading, writing is, almost simultaneously, enactive (we learn by doing), iconic (we learn by depiction in an image), and representational or symbolic (we learn by restatement in words). As Emig notes, "If the most efficacious learning occurs when learning is reinforced, then writing through its inherent re-inforcing cycle involving hand, eye, and brain marks a uniquely powerful multi-representational mode for learning."11

In addition, Emig argued that writing is a unique mode of learning because it is integrative, requiring the active participation of both the right and left hemispheres of the brain and, to use Lev S. Vygotsky's phrase, "the deliberate restructuring of the web of meaning."12 The writing process is not the linear process that we sometimes present it as; it is influenced by the emotions and is fed by intuition, both of which are right hemisphere functions.13 Moreover, writing is self-paced; it "allows for—indeed, encourages—the shuttling among past, present, and

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8 Britton, supra note 3.
10 Emig, supra note 4.
11 Id. at 124-25.
12 Id. at 125 (quoting Lev. S. Vygotsky, Thought and Language 100 (1962)).
13 Id.
future," a process which, through analysis and synthesis, results in the production of meaning. 

As Britton’s and Emig’s theories, and the writing across the curriculum movement that they spawned, spread through the schools, a number of books were published that described individual teachers’ successes fostering learning through writing. For example, in *The Journal Book*, teacher after teacher describes his or her successes using journals. According to these teachers, the expressive writing that journals encourage helped them assess what their students knew and were learning. In addition, it helped their students by encouraging them (1) to make connections between their own experience and the ideas and concepts being introduced in class, (2) to create content through observations, lists, and responses, and (3) to take ownership of their own learning.

Similarly, in *Roots in the Sawdust*, more than a dozen teachers describe their successes not only with journals but with a variety of other writing activities such as admit slips (brief written responses that are collected as admission tickets to class), focused writing assignments that require students to write about a specified topic for a specific amount of time, metaphorical questions, and unsent letters. Like the teachers in *The Journal Book*, these teachers concluded that writing exercises aid learning by generating more student involvement and by helping students create content, make connections, and identify and reconcile conflicting points view.

As John M. Ackerman notes, however, these authors do not provide empirical support for the assertions that they make. None of the teachers divided their classes into control and experimental groups, and none of them administered pre-tests or post-tests. In addition, none of the teachers tried to separate the effects of writing from the effects of other teaching methods or to determine what types of writing activities produce what type of learning.

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14 Id. at 127.
15 Id.
17 Id. at 19.
19 Id. at 6.
20 Ackerman, supra note 5, at 343-45.
21 Id. at 345.
This is not to say, though, that the missing evidence was not being collected. At about the same time that teachers began touting writing to learn, a handful of researchers began to systematically explore the effects of writing on learning. In one of the most frequently cited studies, George E. Newell examined how three types of writing—the mechanical use of writing (answering study questions), writing that requires limited composing (notetaking), and writing that requires the production of coherent text (analytical essay)—affected learning about a particular topic. In the study, eight high school students, four boys and four girls who were judged by their teachers to be good readers and writers, were pre-tested to determine their knowledge level on six topics. Then, over the next three months, the students completed six writing assignments, for each assignment reading a prose passage and completing an assigned writing task. Newell then administered tests that measured the students' immediate recall, the strength and organization of their knowledge as it related to key concepts and vocabulary, and their ability to apply concepts from the passage to a new situation.

What Newell found is that writing promoted only certain types of learning. Although none of the writing assignments had a significant effect on the students' immediate recall of the text or their ability to apply the concepts presented in the text, some of the tasks had an effect on the strength and organization of their knowledge. After writing an essay, students in both the high knowledge and low knowledge groups were able to produce consistently more abstract sets of associations for key concepts than they were after merely answering the study questions or taking notes. A follow-up study produced similar results. Those students who wrote an essay were able to recall the gist of a passage significantly better than those students who only answered study questions.

Three years later, James D. Marshall conducted a similar but larger study measuring the effects of restricted writing, per-
sonal analytical writing, and formal analytical writing on students' written products, their writing processes, and their later understanding of short stories. Like Newell, Marshall found that different writing assignments produced different effects. On post-tests administered three days after each writing task, students scored higher after completing an assignment that involved personal analytical or formal analytic writing than they did after completing an assignment that involved only restricted writing. Somewhat surprisingly, however, was Marshall's finding that when the students did no writing at all they scored as well as when they completed short answer questions. According to Marshall, this result may have resulted from the fact that such questions, by asking the students to shift their attention from one part of a story to another and from one level to another, actually interfered with their developing impression of the stories' plots, characters, and central meanings.

In a more recent study, Ann M. Penrose compared the effect of studying and writing on learning. Forty college freshmen who had been screened for prior knowledge of two source topics completed two experimental assignments. In the writing task, students read a 1200-word essay and were instructed to "write a report" on the text material; in the study task, students read the second source text and were instructed to "study for a test" using whatever study strategies they thought appropriate. Students were given up to one hour for each task and were asked to think aloud as they worked. After each task, students answered questions designed to measure simple recall, complex recall, understanding of the source's text structure, and application. What Penrose found was that students who studied for a test recalled more facts than students who wrote a report, regardless of which source text they read and regardless of the study or writing strategy they chose. As Penrose noted, "Writing did not lead to higher scores on any of the comprehension measures, despite the fact that students spent much more time writing than studying. . . . When the goal is to gather basic information from reading, writing an essay seems a particularly

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29 Id. at 57.
31 Id. at 470.
32 Id. at 476.
inefficient way to go about it." 33

The data are not, however, as conclusive as they might appear. Although Penrose constructed two assignments—studying and writing—the students' interpretations of the assignment varied significantly. For example, some of the students in the study condition took extensive notes, and some of the students in the writing group wrote simple paraphrases. Thus, to study the effect of task interpretation on student learning, Penrose divided the students into subgroups on the basis of the products that they produced. Students in the study group who were not selective, either taking no notes or copying down almost everything, were placed in the "nongenerative notes" subgroup while those who were selective, writing idea-based notes that extracted key points and unifying ideas, were placed in the "generative notes" subgroup. Similarly, within the writing group, those who wrote paraphrases of the text were placed in the "paraphrase" subgroup while those who rearranged, reframed, or added to the source text were placed in the "constructive summary" subgroup. 34

When the data were analyzed by subgroup, Penrose found significant within-task differences. Within the study group, those students in the generative notes subgroup performed better than those students in the nongenerative subgroup. Similarly, within the writing group, on one of the tasks, students who constructed summaries performed better than those who wrote only paraphrases. On the other writing task, however, the students who wrote paraphrases did better than those who constructed summaries. Penrose also found some significant differences in the cognitive operations that were used. The students in the generative notes subgroups monitored their own comprehension more carefully than did the students in the other subgroups, and the students in the constructive summary group paid significantly more attention to the structure of the source text than did the students in the other subgroups. 35

The results of these studies have been mirrored in other studies. In a 1987 study, David A. Hayes divided high school students into four groups: one group wrote paraphrases, one group wrote questions, one group wrote compare and contrast

33 Id. at 488-89.
34 Id. at 475.
35 Id. at 483.
statements, and one group completed a matching exercise. Although he found no differences among groups on recall measures, there were differences on other tasks. For example, the writing questions group performed significantly better than the other groups on a task that asked them to write about the topic, and the question writing and compare and contrast groups did significantly better than the other groups on a measure that tested their ability to make inferences.

Similarly, in a series of studies, Judith A. Langer and Arthur N. Applebee found that while some writing assignment appeared to promote learning others did not. In their first study, which compared essay writing with taking notes and studying, essay writing appeared to promote more integrative thinking than did the other assignment. However, in a second study, which took into consideration the topic knowledge of the writers, there were no significant differences for analytic writing as compared with studying, note taking, and answering questions. In fact, the essay writing appeared to interfere with long-term recall. In a third study, Langer and Applebee looked at writing and passage recall as measured by idea units, level of interaction, manipulated ideas, and gist. Although writing appeared to improve recall, there were no significant differences between writing assignments.

Taken together, the data paint a confusing picture. On the one hand, we have theorists and teachers who assert that writing facilitates learning. On the other hand, we have studies that are far from conclusive. Ackerman has responded to this data by arguing that writing as a mode of learning "is at best an argument yet to be made." Questioning not only the theorists and teachers but also the researchers, Ackerman challenges the assumptions, methods, and conclusions of writing-to-learn research.

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37 Id. at 341-48.
39 Ackerman, *supra* note 5, at 335.
40 Ackerman was not, of course, the first researcher to challenge the research on writing to learn. In his 1984 article, Applebee, *supra* note 2, concluded that the research had not yet established the connection between writing and reasoning, let alone the nature of that connection.
Ackerman asserts that in most of the research, the researchers were “spiritually in league with practitioners and theorists who believe that writing will inevitably promote learning.” As a consequence, their research has often been guided by what Ackerman labels as a faulty assumption: “[T]hat writing has inherent qualities, different from other modes of discourse, that produce or tap the conversational nature of intellectual work.” Because they were trying to prove the inevitability of writing as a mode of learning, Ackerman believes that the researchers failed to consider factors that might have confounded their results. In particular, Ackerman criticizes the researchers for failing to consider the “cultural and institutional context” in which the writing occurred and for failing to compare writing with activities that produce similar student attention and engagement. For example, in only one study did the researcher compare writing with speech activities.

In addition, Ackerman criticizes the studies on the grounds that most of them measured the effect of writing on recall and comprehension, a fact that suggests that the researchers equated learning with remembering. Only one-third of the studies included some type of transfer or application measures; of this one-third, some of the measures were really measures of delayed recall. Finally, Ackerman asserts that the researchers overstated their results: despite inconclusive findings, a number of researchers conclude their reports by asserting that writing is, in fact, a unique method of learning. For example, Ackerman notes that while the writing assignment in studies by Newell and Hayes produced no statistically significant gains in learning outcomes, these researchers finished their reports with qualified assurances that writing facilitates conceptual learning.

PART II: IN SEARCH OF A THEORY

Given the mixed evidence on writing-to-learn, we could, like Ackerman, conclude that writing does not facilitate learning. Or, like teachers in other fields, we could ignore the evidence and, based on our own beliefs and experiences, continue to tell our
students to prepare written briefs and outlines. There is, however, a third approach. We can, as Gary M. Schumacher and Jane Gradwohl Nash have suggested, shift our approach from the anecdotal and empirical to the theoretical. Given current theories of learning and writing, does it seem more or less likely that writing promotes learning?

A. Writing-to-Learn and the Behaviorist Model of Learning

A central claim of behaviorism is that learning occurs through practice. Thus, if writing is a way of practicing, then students who write should learn more than those who do not write, and the more writing students do, the more they should learn, or at least remember. For example, a student who takes notes on a particular text should remember more than a student who merely reads, and a student who writes an essay should remember more than a student who only takes notes.

Some of the evidence supports these hypotheses. For example, Kulhavy, Dyer, and Silver found that students who underlined did better than students who only read the text and that students who took notes on an 845-word passage did better on a recall measure than students who underlined. Other studies, though, contradict these hypotheses. In his studies, Marshall found that students who answered short-answer questions did less well on recall measures than did students who did no writing, and Penrose found that students who wrote essays did no better on recall measures than those who only took notes.

Several conclusions can be drawn from this evidence. First, we can conclude that not all writing facilitates recall. While the simple copying of information seems to improve the recall of that information, more complex writing assignment may actually interfere with recall. Second, we can conclude that behaviorism, as a theory, is inadequate to explain writing-to-learn.

48 For another approach, see the recent article by Perry D. Klein, Reopening the Inquiry into Cognitive Processes in Writing-to-Learn, 11 EDUC. PSYCHOLOGY REV. 203 (1999).
51 Marshall, supra note 28, at 57.
52 Penrose, supra note 30, at 476-77.
Behaviorism recognizes only one type of learning, the acquisition of knowledge, presumably as measured by the ability to recall portions of the text. It does not discuss changes in knowledge structures, the strength and flexibility of knowledge structures, or the ability to apply knowledge to new situations, all of which are types of learning that writing may promote.

B. Writing-to-Learn and Flower and Hayes's Models of the Writing Process

Since 1980, Flower and Hayes have proposed a number of models of the writing process. Under their first model, the 1980 model, writing does not result in any new learning. Although the writer’s content knowledge, that is, his or her understanding of the subject matter, and discourse knowledge, that is, his or her understanding of the genre, inform the writing, they are not affected by it.

Flower and Hayes's 1980 Model of the Writing Process

![Diagram of Flower and Hayes's 1980 Model of the Writing Process]

Chart reprinted with the permission of Lawrence Erlbaum Associates.

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53 Bereiter & Scardamalia, supra note 7, at 25 (chart reprinted from Hayes & Flower, supra note 6).
54 Id.
In contrast, in their second model, the 1981 model, the arrows run in both directions. The writer’s content and discourse knowledge inform the writing, and the writing process changes the writer’s content and discourse knowledge.

Flower and Hayes’s 1981 Model of the Writing Process

More recently, Flower, Stein, Ackerman, Kantz, McCormick, and Peck have proposed a more complicated model illustrating the relationship between writing and reading. Although in this model the arrows run in only one direction, implicit in the model is the idea that reading and writing involve the “construction of meaning.”

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57 FLOWER, supra note 6, at 56.
In addition, Flower has proposed several theories that might explain how writing facilitates learning. For example, in 1984, Flower and Hayes proposed their Multiple Representation Thesis. In this thesis, Flower and Hayes assert that, while composing, writers employ at least four different modes of representation. In the first mode, the representations are nonverbal: the writer has only a visual image of the object about which he or she is writing. In contrast, in the second mode, the representations are more abstract. The writer places the topic within

59 Id. at 129-30.
60 Id. at 130-36.
Beyond Communication

a network of knowledge or schema, which allows him or her to cluster and organize his or her ideas and to see interrelationships among various aspects of the represented ideas with other knowledge that the writer may have. The third mode of representation is the writer's plan for the piece of writing, which may include not only the writer's knowledge of the genre, but also his or her goals for the particular piece. The final mode is the text itself.

If this thesis is correct, we would expect that more learning would occur when, for example, students write a report to a specific audience for a specific purpose than when they simply take notes on a case. In the first instance, the writing assignment would require students to represent the information at all four levels; in the second instance, students might be able to complete the assignment without representing the information at anything other than the text level. Because the studies done to date have not involved writing to a particular individual for a particular purpose, we do not have a basis for evaluating Flower and Hayes's thesis. All we know is that more extended writing, for example, Newell's essays and Marshall's analytical writing, seem to produce more learning than less extended writing, for example, notetaking.

More recently, Flowers has described three metaphors for writing: writing as reproduction, writing as conversation, and writing as negotiation. Under the first metaphor, writing is a one-way process in which writers create meaning by reproducing existing knowledge. "Writers produce meaning by reproducing existing or available meanings." Under the second metaphor, writing has variously been viewed as a conversation between the writer and the larger society, as a conversation between the writer and his or her reader, or a conversation between the prosecution, defense, and judge.

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61 Id. at 136-42.
62 Id. at 143-52.
63 Id.
64 Newell, supra note 23; Newell & Winograd, supra note 27.
66 FLOWER, supra note 6.
67 Id. at 56-58.
68 Id. at 59.
69 Id. at 60.
70 Id. at 60-61.
Under the third metaphor, writing as negotiation, writing facilitates learning when two conditions are met: (1) when the process of meaning making is subject to pressure, to converging constraints and options, or to conflict among goals, and (2) when the writer turns his or her attention to managing or negotiating this problematic cognitive and rhetorical situation.\footnote{Id. at 59-61.}

In the process we are tracking, outer forces (of social and cultural expectations, of discourse conventions, of language, of teachers, of collaborators and more) appear as inner voices, speaking in conjunction with the writer’s own goals and available knowledge. As these forces open doors, promote options, and suggest action, they may come into conflict. Writers who choose, if only momentarily, to entertain and attend to this conflict (at some level of awareness) enter into the construction of negotiated meaning. In the negotiation of these forces, which we can sometime glimpse at points of conflict and decisions, the writer constructs not only a web of meaning, but the hidden logic, or more often, the hidden logics that shape the writer’s text.\footnote{Id. at 67. See also text and chart accompanying supra note 56 (1990 model of the reading and writing process).}

If the first metaphor accurately describes the writing process, writing would not facilitate an individual writer’s learning. In writing, the writer is simply reproducing societal and his or her own understanding of societal knowledge. If, however, the second and third metaphors are more accurate descriptions of the writing process, then, at least in some circumstances, writing may facilitate learning. Although there are no studies that have specifically tested these hypotheses, Flower has presented evidence that suggests that when students engage in certain types of conversations or recognize and attend to certain types of conflicts, writing does result in new learning. For example, in a study that looked at the effect of collaborative planning, Flower found that at least some students engaged in conversations that resulted in new learning.\footnote{See generally id. at 148-91.} Similarly, during a “think aloud,” an at-risk teenager engaged in new learning when she recognized a conflict between what the teenager she interviewed was saying and what she wanted to say in her own writing and looked for a rhetorical strategy that would allow her to reconcile
that conflict. 74 In addition, Penrose's study suggests that the way in which students interpret a writing task determines, at least in part, what the student learns from that task.75 Unfortunately, though, neither Penrose's study nor any of the other students have looked at conditions that Flower identified as leading to the construction of negotiated meaning. We do not know whether the assignments presented the students with converging constraints or conflicts among goals and, if they did, whether the students attended to these constraints and conflicts.

C. Writing-to-Learn and Bereiter and Scardamalia's Model of the Writing Process.

Bereiter and Scardamalia have suggested two models of the writing process: the knowledge-telling model and the knowledge-transforming model. As the name suggests, under the first model, the writer simply tells what he or she already knows. The writer's content knowledge, that is, his or her knowledge of the subject matter, informs the writing process without being affected by it. In contrast, under the knowledge transforming model, there is a two-way interaction between the writer's content knowledge and the rhetorical problem space resulting, presumably, in the production of new knowledge.76

74 Id. at 7-8.
75 Penrose, supra note 30.
76 Bereiter & Scardamalia, supra note 7, at 6-12.
Bereiter and Scardamalia’s Knowledge Telling Model

Chart reprinted with the permission of Lawrence Erlbaum Associates.

77 Id. at 8.
Bereiter and Scardamalia’s Knowledge Transforming Model\textsuperscript{78}

Under these models, writing assignments that require only knowledge telling should result in less learning than those that require knowledge transforming. For example, in Newell’s 1987 study,\textsuperscript{79} most of the students probably viewed notetaking and answering study questions as knowledge telling assignments. Although students would use their content knowledge to complete the task, there would be no interaction between their content knowledge and rhetorical problem space. In contrast, at least some of the students probably viewed essay writing as knowledge transforming: for these students, in writing the essay there was an interaction between their content knowledge and the problem space. Similarly, in Marshall’s study\textsuperscript{80} most of the students probably saw the restricted writing exercises as knowledge telling assignments while at least some of the students saw the extended personal and formal analytical writing assignments as knowledge transforming assignments. In both instances, the results support the hypothesis. Those activities that

\textsuperscript{78} Id. at 12.
\textsuperscript{79} Newell, supra note 23.
\textsuperscript{80} Marshall, supra note 28.
required interaction between content knowledge and content problem space tended to produce more learning, as determined by both Newell's passage specific knowledge measure and Marshall's measure of recall, than those that did not.

What is more difficult to explain is Marshall's finding that short answer questions produced less learning than no writing and Penrose's finding that writing a report produced less learning than studying for a test. To explain Marshall's results, we would have to show that in knowledge-telling assignments, the writing task not only does not result in learning but interferes with the writer's development or retention of content knowledge. To explain Penrose's findings, we would have to distinguish report writing from essay and extended analytical writing. Specifically, we would need to show that while report writing is a knowledge-telling task, essay and extended analytical writing are knowledge-transforming assignments. In addition, we would need to show that in knowledge-telling assignments, essay writing interferes with the writer's development and retention of content knowledge.

D. Writing-to-Learn and Cognitive Psychology

Cognitive psychologists place types of learning on a continuum. At one end of the continuum is learning that involves the incorporation of new information into existing knowledge structures with little or no changes to the structures themselves. At the other end is learning that involves the creation of entirely new knowledge structures or the restructuring of old ones.

According to Schumacher and Nash, certain types of writing are likely to foster, or hinder, certain types of learning. For example, while notetaking and writing exercises that ask students to answer specific questions may help students incorporate new knowledge into existing knowledge structures, it is unlikely that these activities will result in a restructuring or restructuring of the students' knowledge base. For this latter type of learning, the writing activities have to trigger a recognition of anomalies that cannot be explained by existing knowledge structures and provide students with mechanisms for creating new, intelligible ones.

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81 Id.
82 Penrose, supra note 30.
83 Schumacher & Nash, supra note 47, at 73-74.
84 Id. at 74.
Schumacher and Nash suggest that some types of writing foster both of these cognitive activities. For example, journal writing can be used to force students to recognize and confront discrepancies between their own beliefs and a new idea or concept. In addition to being a place where students can record their responses and ideas, journals can be a place where, through exploring questions that expose their misconceptions, students are forced to examine their existing knowledge structures and to begin developing new ones. Similarly, writing assignments that require students to reconcile the holding in two cases or to evaluate two conflicting arguments can be used to help students see and resolve anomalies between conflicting positions.

To date, only a handful of studies have tested the effect of writing on knowledge restructuring. Newell and Langer and Applebee used passage-specific knowledge to determine whether the abstractness of the writer's knowledge was affected by the writing task, and Hayes used a text integration and the generation of constructions to measure the introduction of new information not found in the source text into the writer's knowledge base.

There is, however, evidence both in the protocols collected by researchers like Penrose and in the writing of students recorded in books like Roots in the Sawdust that suggests that some types of writing either produce or facilitate knowledge restructuring. As Schumacher and Nash note, though, to determine whether writing does facilitate learning, we will have to conduct studies specifically designed to measure knowledge restructuring and not merely knowledge accretion.

PART III: WHEN WRITING PROMOTES LEARNING

At the most basic level, what the data and existing theories suggest are that not all writing assignments facilitate learning and, that among those assignment that do facilitate learning, different assignments facilitate different types of learning.

85 Id. at 76-77.
86 Newell, supra note 23.
87 LANGER & APPLEBEE, supra note 38.
88 Hayes, supra note 36.
89 Penrose, supra note 30.
90 ROOTS IN THE SAWDUST, supra note 18.
91 Schumacher & Nash, supra note 47.
A. Writing Assignments That Do Not Facilitate Learning

There appear to be two situations in which writing does not facilitate learning: (1) when the writer is simply presenting information that he or she knows well, and (2) when the writing task interferes with the type of learning being sought.

The first situation is that posited under both Flower and Hayes's 1980 model of the composing process and Bereiter and Scardamalia's model of knowledge telling. As the arrows in both models indicate, neither the writer's content nor discourse knowledge is affected by the writing process. The task elicits content and discourse knowledge without altering that knowledge. For example, an exam question that simply requires students to write down information that they have already mastered would not result in any new learning.

The second situation is that which occurred in Marshall's and Penrose's studies. If the writing assignment draws the student's attention away from the material that is to be learned, then the assignment may result in less, or at least different, learning than was intended. For instance, if the student's goal is to memorize a rule, an exercise that requires more than simply copying the rule may result in worse, rather than better, recall of that rule. Instead of spending time rehearsing the information to be memorized, the student may spend time thinking about the composing process itself, for example, the construction of a particular sentence, the proper way to punctuate a particular clause, or the correct spelling of a word.

B. Writing Assignments That Do Facilitate Learning

Most writing assignments, however, appear to facilitate at least some type of learning. At one end of the continuum are those writing assignments that facilitate the recall of information, for example, the facts of a case, a common law rule, or the elements of a crime. In these instances, the assignment facilitates learning by forcing rehearsal and by engaging the student in several simultaneous learning strategies: doing, seeing, and representing.

92 BERETTER & SCARDAMALIA, supra note 7, at 25.
93 Id. at 8.
94 Marshall, supra note 28.
95 Penrose, supra note 30.
In the middle are writing assignments that help students either to integrate new information into their existing knowledge structures or to create new knowledge structures. Although such assignments can take a variety of forms, for an assignment to do more than just facilitate the recall of information, it must require more than just knowledge telling. The students' existing knowledge must be transformed. For example, an assignment that requires students to paraphrase the rule set out in one of their cases is unlikely to do more than help them recall that rule. In contrast, an assignment that requires students to compare the rule set out by the court with the rule that they would have applied is likely to result in the integration of the new rule into their existing knowledge structures by forcing students to see and attend to a conflict. Students must place that new rule within their existing knowledge structures or modify their existing knowledge structures to accommodate the rule.

The problem with most writing assignments in the middle of the continuum is that students can interpret them as either knowledge-telling or knowledge-transforming tasks. For example, for some students, the preparation of a case brief is a knowledge-telling task. In preparing their briefs, they simply copy or paraphrase what the court said without connecting their reading of the case to their existing knowledge. In contrast, for other students, case briefing involves knowledge transformation. These students either integrate the case into their existing knowledge structures or create a new knowledge structure to accommodate the case. Similarly, for some students outlining is a knowledge-telling task while for others it involves knowledge transformation. The student who simply copies a fellow student's outline or uses a commercially prepared outline is engaged in only knowledge telling while the student who struggles to create his or her own structure and connections is engaged in knowledge transformation.

At the far end of the continuum are those assignments that facilitate the development of expertise by requiring the student to write, and thus think, in the way that a lawyer writes and thinks. In law school, the most common of such assignments are objective memos and trial and appellate briefs. The structure of memos and briefs forces students to think in a particular way. Students learn to set out the rules first, examples of how those rules have been applied in other cases second, the arguments third, and their conclusion last. In addition, in writing the memo, students are forced to assume a number of different
roles. In setting out the rules and cases, they act as a reporter; in determining what each side is likely to argue, they act as an analyst; in predicting how the court is likely to rule, they engage in evaluation; and in advising the attorney about the next step, they become a strategist. In each instance, instead of simply telling what they know, the students are being required to monitor their comprehension, assess the importance of various pieces of information, recognize structures, and make connections between pieces of new information and between new information and previously acquired knowledge, all of which are acts that can result in knowledge transformation.

While such knowledge transformation may also occur as the result of listening, talking, or reading, writing may have several advantages. First, at least for proficient writers, the writing process may focus the writer's attention on the "subject" better than does listening, talking or, at least in some instances, reading. The text that has already been composed provides constant reminders of the task, of what has already been thought and written, and what still needs to be done. Second, because working memory has limits, when we listen, talk, and read, some information is likely to be "unavailable," inhibiting our ability to connect pieces of new information and new information with existing knowledge. In contrast, when we write, the existing text can supplement working memory, making more information available.

The following chart sets out some of the types of writing assignments that can be used in law school and the types of learning that they may facilitate.
<table>
<thead>
<tr>
<th>Writing Assignment</th>
<th>Types of learning that Assignment may facilitate</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Case Briefs:</strong></td>
<td></td>
</tr>
<tr>
<td>Case brief in which student copies material from the case without changing the order</td>
<td>Memorization of information that is copied.</td>
</tr>
<tr>
<td>Case brief in which student paraphrases information from the case without changing order</td>
<td>Memorization of information that is paraphrased. Student may have better recall of information when he or she paraphrases rather than copies information.</td>
</tr>
<tr>
<td>Case brief in which the student actively tries to integrate the information contained in the case into his or her existing knowledge structures or tries to create a new knowledge structure for the information contained in the brief</td>
<td>Integration of new information into existing knowledge structures or the creation of new knowledge structures.</td>
</tr>
<tr>
<td><strong>Short Writing Assignments Done Either Inside or Outside of Class:</strong></td>
<td></td>
</tr>
<tr>
<td>Questions that require locating specific information in a statute or case</td>
<td>Memorization of information needed to answer questions. Professor can better control what information the student does and does not memorize.</td>
</tr>
<tr>
<td>Questions that ask require students to write information that they already know</td>
<td>Because student already knows the information, the student is only engaged in knowledge telling. At best, such a task only reinforces the student's understanding of the information.</td>
</tr>
<tr>
<td>Questions that require students to connect new information to prior experiences</td>
<td>Integration of new information into existing knowledge structures.</td>
</tr>
<tr>
<td>Questions that require student to connect two or more pieces of new information, for example, questions that require students to compare and contrast the rules, holdings, or</td>
<td>Creation of new knowledge structures.</td>
</tr>
<tr>
<td>Rationales Set Out in Two or More Cases</td>
<td>Questions That Require Students to Evaluate One or More Rules or Policies</td>
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<td>----------------------------------------</td>
<td>------------------------------------------------------------------------</td>
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<tr>
<td><strong>Outlining</strong></td>
<td></td>
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<tr>
<td>Outline That Is Copied from Another Outline</td>
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</tr>
<tr>
<td>Outline That Is a Paraphrase of Another Outline</td>
<td></td>
</tr>
<tr>
<td>Outline in Which the Student Determines the Structure, Order of Information Within That Structure, and the Connections Between the Various Pieces of Information</td>
<td></td>
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<tr>
<td><strong>Lawyering Tasks:</strong></td>
<td></td>
</tr>
<tr>
<td>Drafting an Objective Memo, Trial Brief, or Appellate Brief</td>
<td></td>
</tr>
<tr>
<td>Drafting a Complaint, Contract, Will or Other Document</td>
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</tbody>
</table>
In each assignment described above, there is a presumption that learning occurs whether or not anyone reads what the student produces. Additional learning is likely to occur, however, when a teacher responds to what a student writes. Because writing makes permanent at least some of a student’s thought processes, a professor can, in reading a student’s paper, analyze those processes more carefully than he or she can analyze a student’s answers to oral questions. As a result, a good diagnostician can determine whether a student lacks a particular type of knowledge, whether that knowledge is organized in a conventional or flexible way, whether a student misunderstands a concept, and whether the student is skipping steps in the analysis or going through those steps in an inappropriate manner. In addition, a skilled professor can ask questions that engage the student in a dialectic that leads to knowledge transformation or the development of expertise.

**CONCLUSION**

Thus, those who believe that writing promotes learning are partially right. Both the research and theories of writing support the conclusion that some types of writing facilitate some types of learning. The research and theories also suggest, however, that not all types of writing facilitate all types of learning and that, in fact, some types of writing may actually interfere with some types of learning. As a consequence, as teachers we need to use writing as we would use any other teaching tool. We need to determine what it is that we want our students to learn and then carefully pick the tools that are most likely to facilitate that learning.

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Doing Justice to the Potential Contribution of Lyric Poems

James P. Madigan¹ and Laura Y. Tartakoff²

No less important for a lawyer is the cultivation of the imaginative faculties by reading poetry . . . .

Felix Frankfurter³

A good advocate makes all the right points, but a great one inspires an audience to listen and reflect upon them. Law school teaches the proto-lawyer⁴ how to think; the student learns to make the right points, but not necessarily how to make others think.⁵ This faculty is difficult to define or explain; some advocates seem to have a natural ability to connect with readers and listeners, while others rarely extend beyond conveying concrete principles. The following essay offers lawyers a way to tap into the art, not simply the mechanics, of persuasion. We contend that lawyers can become more compelling advocates by reading lyric poetry.

Let us acknowledge from the outset that we anticipate a bit of skepticism. Poetry may sound too “artsy” to have an impact on the practice of law, but the belief that style is important to legal discourse, and that poetry can contribute to style, is not novel. Quintilian, one of the earliest known instructors of legal

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² Adjunct Associate Professor of Political Science at Case Western Reserve University. J.D., Case Western Reserve University; M.A.L.D., Tufts University; B.S.F.S., Georgetown University. Laura Ymaya Tartakoff has taught “Law & Literature” at Case Western Reserve University School of Law and has authored two books of poetry: MUJER MARTES (1977) and ENTERO LUGAR (1994).
⁴ We thank Kenneth Ledford for coining this term.
⁵ “The difficult task, after one learns how to think like a lawyer, is relearning how to write like a human being.” Floyd Abrams quoted by Tom Goldstein & Jethro K. Lieberman, THE LAWYER’S GUIDE TO WRITING WELL 4 (1989).
rhetoric, made the point nineteen centuries ago: "Discourse ought always to be obvious, even to the most careless and negligent hearer; so that the sense shall strike his mind, as the light of the sun does our eyes . . . . We must study, not only that every hearer may understand us, but that it shall be impossible for him not to understand us." 6

Everyone must admit, however, that some advocates have a more persuasive style than others. In fact, many commentators lament the poor advocacy skills that are too commonly found in the legal profession. 7 Lawyers sometimes seem unable or unwilling to think seriously about their own persuasive acumen. Part of the problem may be arrogance, 8 time pressure, 9 intellectual laziness, or simply the result of being uninformed. 10 Some law schools give short shrift to written and oral advocacy: professors seldom teach it directly. Perhaps style, unlike the pure mechanics of the law, cannot be taught in a classroom at all.

Quintilian would have agreed with an observation made by Terri LeClercq: “The real progress will occur through daily, deliberate, repeated experiments with technique.” 11 He himself maintained that “it is habit and exercise that chiefly beget facility.” 12 Our aim is to present poetry as a lawyer’s source material, for reading poems can give advocates the opportunity to evaluate their own persuasive skills. To reflect on poetry allows an attorney to consider not only the ideas a poem conveys, but also the linguistic form in which they are expressed.

Our argument takes shape around two types of source material. First, we have chosen lyric poems that we find compelling. Our discussion of these selections exemplifies the sort of reflection upon poetry we prescribe for lawyers. We realize, of course, that poems mean different things to different people. Ours is but one set of lessons to be drawn from these works. Second, we have excerpted some poets’ views about what poems are, what they can do, and how we ought to approach them. We

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6 Quoted in Hugh Blair, Lectures on Rhetoric and Belles Lettres 185 (Harold F. Harding ed., 1965). Quintilian (40?-95? C.E.) taught and practiced law and is best known for his 12-volume Instituto Oratoria or The Education of the Orator. In Ancient Rome, orators were pleaders, in other words, lawyers.


8 Henry Weihofen, Legal Writing Style ix (2d ed. 1980).


10 Id. at 16-17.

11 Id. at 7.

12 Quintilian On the Teaching of Speaking and Writing 155 (James J. Murphy ed., 1987) (emphasis in the original).
offer these as guidance for the attorney who is unclear as to what benefits can be drawn from reading lyric poetry.

Before presenting our argument, one scholar bears mentioning as an inspiration for this project. In her book *Poetic Justice*, Martha Nussbaum considers how reading literature affects one's ability to incorporate empathy into reasoning.\(^{13}\) She explicitly leaves open the question of poetry's contribution in that regard.\(^{14}\) Nussbaum argues that realist novels help their readers, and judges in particular, to grow in empathy and therefore make more enlightened and humane decisions.\(^{15}\) She is convinced that realist novels have the potential to make a contribution to the law.\(^{16}\)

What Nussbaum says about the possible benefits of reading novels can be said about poetry — dramatic and epic, especially lyric.\(^{17}\) However, we will focus not on lyric poems' potential effect on fair adjudication but on their potential contribution to persuasive advocacy, whether written or oral, before judges or juries. In so doing, we will follow Joseph Brodsky's cue that writers of prose have much to learn from poetry.\(^{18}\) This essay will thus describe the salutary effects of lyric poetry's language,


\(^{14}\) *Id.* at 5.

\(^{15}\) *Id.* at 31. Much as we would like this assertion to be true, reality questions its validity. After all, for literary narrative to promote justice might require a certain moral predisposition. George Steiner contends that there is little evidence that the reading of literature in and of itself sharpens moral perception. For example, he reminds us that "when barbarism came to twentieth century Europe . . . knowledge of Goethe [and] a delight in the poetry of Rilke, seemed no bar to personal and institutionalized sadism." *Language and Silence* 83 (1979). Steiner even goes so far as to suggest that reading literary texts may diminish "our actual moral response." He maintains that by giving "psychological and moral credence to the imaginary, to the character in a play or novel, to the condition of spirit we gather in a poem, we may find it more difficult to identify with the real world." *Id.* Be that as it may, for the purpose of this essay, we will give Nussbaum, to some extent, the benefit of the doubt and argue that lyric poetry can be beneficial to those in the legal profession.

\(^{16}\) *Nussbaum, supra* note 13, at 4. First, she maintains that they "embody and generate . . . [the] ability to imagine nonexistent possibilities, to see one thing as another and one thing in another," and in so doing foster empathy, and second, that the emotions they portray, when "properly limited and filtered," can guide reasoning.

\(^{17}\) Nussbaum has acknowledged the potential of lyric poetry when discussing the contribution of literature to ethics in *Love's Knowledge: Essays on Philosophy and Literature* 46 (1990). Lyric poems express a poet's personal view or emotions, rather than recount external events.

\(^{18}\) *Joseph Brodsky, Less Than One: Selected Essays* 177 (1986). Russian poet in exile Brodsky (1940-1996), who won the Nobel Prize for literature in 1987 and was named American poet laureate in 1991, lists focused thinking, omission of the self-evident, harmony, and laconism as lessons poetry teaches.
intensity, and form, features that make poems sharp tools for better lawyering. We will examine how the concrete language of lyric poems expands the imagination, then how its emotional intensity serves critical reflection, and last how its form encourages effective legal advocacy.

I. LANGUAGE: THE WONDER OF IMAGES

What we lack is not a will to believe but a will to wonder.
Abraham Joshua Heschel

There are no images — parent and progeny of wonder — without imagination, and no imagination without intellect. Plato and Aristotle saw clearly that philosophy and knowledge begin in wonder. The former acknowledged that one cannot stop marveling at the significance of things, while the latter pointed out that we all start "by wondering that things are as they are."

A. Concreteness

Poets, like lawyers, are impelled by the precise and specific, by the tangible and concrete. But poets and philosophers wonder, and lawyers do not always do so, for "wonder is content to view things in their wholeness and full context" and pause. In that contemplative pause, poets use imaginative language to "[transcend] the everyday world." Being concrete is often considered the first "powerful technique" in legal discourse. Thus, the study of law shares at least this fundamental ground with poetry.

19 We will not discuss the alleged similarities between judicial opinions and poetry, what one form can learn from the other (see Walker Gibson, Literary Minds and Judicial Style, 36 N.Y.U. L. REV. 915 (1961) and James Boyd White, The Legal Imagination (1985)). Neither will we address how poetry serves to illuminate legal thought (see George Gopen, Rhyme and Reason: Why the Study of Poetry Is the Best Preparation for the Study of Law, 46 College English 333 (1984)) or tackle literary and legal theories (see Lawrence Joseph, Theories of Poetry, Theories of Law, 46 Vand. L. Rev. 1227 (1993)).
William Carlos Williams, a full-time physician, once described his other calling as follows:

*Outside*

outside myself

there is a world,

. . . subject to my incursions

—a world

(to me) at rest

which I approach

concretely—

Williams’s words accurately reflect what attorneys do each time they take on a new case. Every cause of action is itself an incursion into a world at rest. Legal advocacy urges one of two options: either leave the world at rest or use the law to change it. As these positions do battle time and again, lawyers must be dexterous in their statement of facts and explain their client’s situation concretely. It is of no use to seek legal recourse solely by invoking fairness or justice or principle. The lawyer must rely upon specific facts to justify the solution he seeks. That much is readily apparent, but is often not enough.

The challenge for advocates is to assemble the facts of a case into an engaging narrative. The skillful lawyer provides enough detail so that no crucial portion of the story remains untold, and does so with a sense of wonder. To be effective, the attorney must emerge from within the voice of the client and present that voice within the context of the law.

To read lyric poetry is to exercise one’s capacity to treat a third party’s thought process (the poet’s) as one’s own. After all, lyric poets speak more directly than novelists or playwrights. Theirs is the most personal voice, one not often hidden behind the masks and complexities of fictional characters and situations. Helen Vendler has observed that “a lyric . . . wants us to be its speaker. We are not to ‘listen’ to the speaker, but to ‘make ourselves into’ the speaker. We speak the words of the poem as though we were their first utterers. The speaker’s past is our past; his motivations are ours, his emotion ours, his excuses

Thus, lyric poems enable readers to draw upon their own sense of empathic wonder. Even more important, as far as the attorney is concerned, is mastering the power to kindle an audience's sense of wonder. Lyric poems embody that very skill.

Czeslaw Milosz once defined poetry as "a passionate pursuit of the Real."28 He has more recently elucidated that writing poems is "an attempt to break through the density of reality into a zone where the simplest things are again as fresh as if they were being seen by a child."29 In other words, poets write with precision and amazement, defeating dullness as they marvel at reality. Octavio Paz maintains that "[a] poem is a verbal object in which two contradictory properties are fused: the liveliness of the sensation and the objectivity of things."30 Wallace Stevens puts it squarely: "poetry is an interdependence of the imagination and reality as equals."31 Attorneys can profit from this fusion and interdependence.

Although legal quandaries can be engaging, even fascinating, many are rather dry and complex. It is often a daunting task to keep judges and jurors interested and even more so to persuade them. Milosz, Paz, and Stevens capture this challenge perfectly: to rekindle, with liveliness and imagination, the curiosity usually found solely in children's eyes. Almost always, language is the advocate's sole medium. Lawyers must infuse their argument with frequent factual references in order to keep questions of law from becoming too abstract and remind readers and listeners of what is truly at stake. Weaving in some level of concrete imagery while maintaining a personal connection is essential to the task.

To convey the law concretely while maintaining a personal connection is to drive home the fact that cases are not abstractions but concrete readings of real objects and real people.32 The
same is true of poems. W.B. Yeats said that poetry “bids us touch and taste and hear and see the world, and shrinks from . . . every abstract thing, from all that is of the brain only.”

When arguing before judges, lawyers have an important opportunity to coax the imagination. The common law evolves because someone is able to draw out subtle similarities and distinctions among different cases. Lawyers rarely fail to rely upon precedent; however, they tend to lack the ability to draw the appropriate fact-driven analogies. Yeats points out that poetry calls for something more concrete than abstract metaphor. So, too, does the law.

Nowhere is this talent more important than in persuading a jury. Rather than making connections to precedent in an attempt to import another court’s reasoning, the aim for an attorney addressing a jury is to provide links to a juror’s own life experience. An advocate must show jurors how they can think about a legal issue in the same way they deal with everyday problems. This requires the skill, much like that of the poet, of conveying the concrete in a way that is ascertainable and enables jurors to place themselves in the shoes of the litigant.

Both lawyers and poets are responsible for the presentation and interpretation of facts and emotions. Without doubt, legal advocacy and lyric poetry are ultimately nonfiction. Lyric poems do not merely evoke reality; they transform it, making it palpably immediate and memorable. Their clear and instructive language may lead lawyers to pause and empathically wonder. Their concreteness provides a key to making the facts of a case come to life, and it allows others to better grasp a stranger’s situation.

B. Metaphor

If the goal of persuasive advocacy is to convince a judge or a jury, then the use of images, in the form of similes and meta-

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33 Quoted in May Swenson, Made with Words 91 (Gardner McFall ed., 1998) (emphasis added). W.B. Yeats (1865-1939) was awarded the Nobel Prize for literature in 1923.

34 Those aware of the hollowness, flippancy, and total subjectivism that today characterizes a certain amount of writing that goes under the name of lyric poetry, may find Williams’s, Milosz’s, Paz’s, Stevens’s, and Yeats’s observations surprising. But, as our selections will demonstrate, poems can be readable and intelligible. For an illuminating distinction between subjectivism and subjectivity, see Taylor, supra note 23, at 72-73. Briefly put, subjectivism is indifferent to reality, but subjectivity, the realm of one’s inner life, is a person’s engagement with reality.
phors, of symbols and allegories, is indispensable. In Paz’s words, “The American language is a buried seed which can only come to fruition if irrigated and shone upon by poetic imagination.”

Poetry is source material from which lawyers can borrow techniques to wheedle the imagination. The “speech of fancy” that Nussbaum attributes to realist novels is the language of poetry itself. Indeed, no less a figure than Robert Frost defines poems — “momentary stay[s] against confusion” — as metaphors, as “simply made of metaphor,” and metaphor as “saying one thing and meaning another, saying one thing in terms of another, the pleasure of ulteriority.”

Lawyers use metaphor differently. Meanings must be explicit; clarity and proximity, rather than ulteriority, contribute the best approach. Still, reading lyric poetry may help develop important mental skills. Cultivating the ability to comprehend multiple interpretations, lawyers exercise the critical thought process needed when comparing and distinguishing precedent, and when casting legal problems in terms that the lay person can handle.

Consider “A Sort of a Song,” where William Carlos Williams pronounces his purpose to reconcile people and stones through metaphor:

Let the snake wait under
his weed
and the writing
be of words, slow and quick, sharp
to strike, quiet to wait,
sleepless
—through metaphor to reconcile
the people and the stones.
Compose. (No ideas
but in things) Invent!

35 PAZ, supra note 30, at 19.
36 NUSBAUM, supra note 13, at 40. Nussbaum writes that “the speech of fancy has a flexible and acrobatic circus body, a surprising exuberant variety. It loves the physical texture of language and plays with it, teasing and caressing the reader.” Id.
37 Robert Frost, The Constant Symbol and The Figure a Poem Makes, in WHITE, supra note 19, at 216-23. Frost (1874-1963) won the Pulitzer Prize for poetry in 1924, 1931, 1937, and 1943. In 1960, Congress voted him a gold medal “in recognition of his poetry, which has enriched the culture of the United States and the philosophy of the world.”
Saxifrage is my flower that splits the rocks.\textsuperscript{38}

Persuasive writing is sleepless in that each and every word is deliberately selected. Williams reminds poets and lawyers that language must be active if it is to strike readers or listeners. Whether language is written or spoken, timing is crucial. Advocates must anticipate when their words will impress most memorably. When a judge or jury is skeptical, the lawyer must speak and write with the delicate determination of that stubborn flower in Williams’s poem, saxifrage. The creeping language of incremental logic may crack through an uninterested or unsympathetic audience.

To Williams’s intention of reconciling people and stones, Stevens might simply add: “to make [my] imagination theirs.”\textsuperscript{39} Indeed, Stevens, himself a lawyer who spent most of his professional life heading the surety claims department of a fire insurance company,\textsuperscript{40} believed that a poet “fulfills himself only as he sees his imagination become the light in the minds of others.”\textsuperscript{41} For him the “acute intelligence of the imagination” has “the power to possess the moment it perceives.”\textsuperscript{42} Osip Mandelstam illustrates the point in his poem “Notre Dame,” where a cathedral, through his poetic vision, teaches him (and others) what to do with haunting or oppressive sorrow:

\begin{quote}
But the more attentively I studied, 
Notre Dame, your monstrous ribs, 
your stronghold, 
The more I thought: I too one day shall create 
Beauty from cruel weight.\textsuperscript{43}
\end{quote}

Lawyers strive to make a listener or reader see things their client’s way. Stevens is right to characterize that process as one having as much to do with imagination as it does with pure

\textsuperscript{38} Williams, supra note 26, at 46-47.
\textsuperscript{39} STEVENS, supra note 31, at 29.
\textsuperscript{41} STEVENS, supra note 31, at 29.
\textsuperscript{42} Id. at 61.
\textsuperscript{43} OSIP MANDELSTAM, SELECTED POEMS 17 (James Greene ed. and trans., 1991). We quote only its final stanza. Mandelstam (1891-1938) published three volumes of poetry, KAMEN (1913), TRISTIA (1922), and POEMS (1928). He was persecuted by the Soviet authorities for lack of ideological conformism and died on the way to a Siberian labor camp. See NADEZHDA MADELSTAM, HOPE ABANDONED (Max Hayward trans., 1974).
unencumbered reason. A fertile legal mind will transpose that to which Mandelstam aspires: to build a compelling argument from the weight of responsibility and legal complexity. The beauty of advocacy, then, may lie chiefly in eloquent communication.

Images, the essence of poetry, make an argument clearer, fuller, more intelligible. In her poem “Poetry,” Marianne Moore declares:

I, too, dislike it: there are things that are important
   beyond all this fiddle.

Reading it, however, with a perfect contempt for it, one
discovers in it after all, a place for the genuine:
   hands that can grasp, eyes that can dilate,
   . . . hair that can rise if it must.

These things are important not because
   a high-sounding interpretation can be put upon them
but because they are useful.

When they become so derivative as to become unintelligible,
   the same thing may be said for all of us, that we
do not admire what we cannot understand: the bat
   holding on upside down or in quest of something to eat,
elephants pushing,
a wild horse taking a roll,
a tireless wolf under a tree,
the immovable critic twitching his skin like
   a horse that feels a flea,
the baseball fan, the statistician —
( . . . )

One must make a distinction however:
   when dragged into prominence by half poets,
the result is not poetry.

Not till the poets among us can be
   'literalists of the imagination' —
above insolence and triviality and can present
for inspection, 'imaginary gardens with real toads
   in them,' shall we have it.
In the meantime, if you demand on the one hand,
the raw material of poetry in
   all its rawness and
that which is on the other hand
genuine, then you are interested in poetry.\textsuperscript{44}

The raw material of poetry, life in all its intricacies, is the raw material of law. And it is through language that both the poet and the lawyer attempt to encapsulate life — the poet in utter disinterest; the lawyer on behalf of a client or a cause; the poet names, discovers, or reorders inner and outer worlds, the lawyer expounds and explains hoping to persuade. In “Poetry,” Moore does both. She reflects on why she and others both like and dislike poetry and then accounts for its absence, ending nonetheless on a hopeful note. Poets (and lawyers) are realists, in her words, “literalists of the imagination” presenting for inspection “imaginary gardens with real toads in them.” Lawyers may be more fortunate than poets, though: they always have a real garden — the law.\textsuperscript{45} Yet both through metaphor can present real convincing toads, in other word, reality.

The way Moore reads poems is reminiscent of the way judges and their clerks consider legal briefs: they are aware of the unabashed one-sidedness of the genre, but search for the genuine within them. Legal persuasion, like poetry, is not valuable for any “high-sounding interpretation” it might provoke but simply for its usefulness. Legal advocacy clarifies facts, issues, and arguments; lyric poems illuminate life. Just as the unintelligibility, insolence, and triviality of “half-poets” fail to produce poetry, the lack of clarity and commitment of half-hearted lawyers will fail to persuade.

Metaphor also makes one sensitive to the many ways in which something can be said. Helen Vendler reminds us that the first seventeen of Shakespeare’s sonnets convey a similar message in multiple different ways, and often “the same thing” is said twice — the first time “neutrally,” the second with emotion.\textsuperscript{46} Vendler’s observation is relevant to legal persuasion: main points must be reiterated.\textsuperscript{47} Judges and clerks skim briefs, and listeners daydream during arguments; some ideas inevita-

\textsuperscript{44} MARIANNE MOORE, COLLECTED POEMS 40-41 (1951). Moore (1887-1972) received the 1952 Pulitzer Prize for poetry.

\textsuperscript{45} Is this necessarily more fortunate?

\textsuperscript{46} See HELEN VENDLER, THE ART OF SHAKESPEARE’S SONNETS 67 (1997). The first seventeen of Shakespeare’s 154 sonnets speak of his friend’s beauty and insist that he should marry and have children in order to perpetuate that beauty beyond death. In Sonnet 5, “time leads summer on to hideous winter” is said first neutrally, then with emotion.

\textsuperscript{47} See WEIHOHEN, supra note 8, at 123, 318-19.
bly slip by unnoticed. To make a point, one often has to reemphasize it. Lyric poetry may provide guidance in fashioning a middle ground between repetition and redundancy.

In addition, through metaphor the past may be remembered or refashioned. For example, Edgar Lee Masters, another poet who like Stevens practiced law, here recreates the dead Anne Rutledge's voice, and the reader discovers a republic blooming from the dust of a dead woman's bosom:

\[
\text{Out of me unworthy and unknown}
\text{The vibrations of deathless music;}
\text{"With malice toward none, with charity for all."}
\text{Out of me the forgiveness of millions toward millions,}
\text{And the beneficent face of a nation}
\text{Shining with justice and truth.}
\text{I am Anne Rutledge who sleeps beneath these weeds,}
\text{Beloved in life of Abraham Lincoln,}
\text{Wedded to him, not through union,}
\text{But through separation.}
\text{Bloom forever, O Republic!}
\text{From the dust of my bosom.}^{49}
\]

Like Masters, lawyers frequently engage in the reconstruction of another person's thoughts and feelings. Because a juror cannot truly know why a party acted in a particular way, lawyers are responsible for offering suppositions. From lyric poetry advocates may learn how to capture human emotion and motivation with sharp images. In essence, lyric poems are windows into the feelings and thoughts of another human being: readers of poetry look into another person's soul and make that image their own. When lawyers read poems, they should evaluate the poet's technique for distilling and then communicating human experience.

C. **Epiphany**

Czeslaw Milosz says that poems are often epiphanies, moments in which people, things, or situations reveal something

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48 Ann Rutledge (1813-1835) was the daughter of the innkeeper in New Salem, Illinois, where Abraham Lincoln lived for a time. She accepted his marriage proposal, but shortly thereafter became ill and died.

49 EDGAR LEE MASTERS, SPOON RIVER ANTHOLOGY 225 (1962). *Spoon River* is the name of Master's (1868-1950) imaginary Midwestern village. Each poem is spoken by a former resident now dead and buried in the Spoon River cemetery.
essential not noticed before; they unveil reality through the wonder of images. Poetry “awakens and enlarges the mind itself by rendering it the receptacle of a thousand unapprehended combinations of thought.” John Keats emphasizes the surprise element: “Poetry should surprise by a fine excess . . .” We saw how Moore’s “Poetry” accomplished that—her first line is pure surprise: a poet bluntly confessing dislike for poetry. Epiphanies themselves are characterized by surprise, no matter how subtle, as in Jean Follain’s “Music of the Spheres:”

He was walking a frozen road
in his pocket iron keys were jingling
and with his pointed shoe absent-mindedly
he kicked the cylinder
of an old can
which for a few seconds rolled its cold emptiness
wobbled for a while and stopped
under a sky studded with stars.

Although Follain’s poem is striking, and he himself was a practicing lawyer and, later, a judge, its lesson for the attorney can be problematic. The imagery is superb, and the sky is a refreshing surprise; however, legal persuasion can ill afford buried revelations. The epiphanies sparked by legal advocacy come from prefatory conclusions supported by clear language and followed by incremental reasoning. Paragraphs begin with an assertion and end with its restatement. The real insight comes between the two: the facts, the law, and the policy that buttress one’s assertion. Even in oral argument, judges want to hear short, direct answers to their question, and then lawyers ought to explain their reasoning. Building up to one’s meaning is of no use when the next question may be hurled at any moment. “Context first, details later.”

50 MILOŚZ, supra note 29, at 5.
53 Jean Follain in MILOŚZ, supra note 29, at 7 (Czeslaw Milosz and Robert Haas trans.). La MAIN CHAUDE (1933), EXISTER (1949), and APPAREIL DE LA TERRE (1964) are books of poems by Follain (1903-1971). In addition, he published studies reflecting such diverse interests as ecclesiastical slang and Napoleonic history. Follain was accidentally killed by an automobile in Paris while crossing Place de la Concorde.
54 WEIHOFEN, supra note 8, at 262.
Keats writes that a poem "should strike the Reader as a wording of his own highest thoughts, and appear almost a Remembrance."律师们应当遵循此建议。最具有说服力的论点是那些邀请法官或陪审团跟随他们自己的直觉反应的论点。语气不能过于强硬或陈词滥调。有效的律师频繁地要求并表示听众的推理。

Emily Dickinson is startlingly original but nonetheless leads us to believe that her poem is our own intimate remembrance, an epiphany of disappointment, disillusion, perhaps even betrayal:

*It dropped so low — in my Regard —
I heard it hit the Ground —
And go to pieces on the Stones
At bottom of my Mind —

Yet blamed the Fate that flung it — less
than I denounced Myself;
For entertaining Plated Wares
Upon my Silver Shelf—

For the most part, advocacy consists of maximizing one's advantage. Dickinson may bring to mind what every lawyer must confront: the weaknesses of a client's position. Rarely is a litigant absolutely blameless; rarely is a legal argument irrebuttable. Law students are taught early on that, since judges and jurors will try to approach an argument critically and impartially, searching for "holes," admitting vulnerabilities up front enables advocates to gain credibility. By acknowledging counterarguments, lawyers can do two things. First, they will echo more closely the thought process of a critical audience. As Keats suggested for poetry, legal reasoning should strike readers or listeners as a wording of their own thoughts. Second, by providing a host of possible rejoinders, the lawyer may minimize the audience's impulse to come up with other weaknesses. One's vulnerabilities must be addressed immediately.

Crucial to effective legal advocacy, then, is the establishment of a client's desert. Regardless of law, judges and jurors

55 Keats, *supra* note 52, at 69-70.
56 THE COMPLETE POEMS OF EMILY DICKINSON 747 (Thomas H. Johnson ed., 1960). Dickinson (1830-1886) wrote over 1,700 poems, but only seven were published during her lifetime.
will think one party deserves to win. Henry Weihofen makes the point sharply: "Judges, like ordinary mortals, can be made to feel the righteousness of a cause. They are not impersonal hacks grinding out a slot machine justice."\(^{57}\) Advocates should weave some level of imagery through epiphany into their arguments. There must be something worth watching out for; otherwise, a river of words will ineffectually flow past a judge or a jury.

As literalists of the imagination, lawyers must constantly remind judges and jurors of the ways in which a particular decision will affect their client. Effective persuasion can make use of concreteness, metaphor, and epiphany — language accurately conveying reality through the wonder of images — to enable others to imagine the consequences of their judgment. These are the devices that are employed in lyric poetry. Images must remain realistic, however. Judges or juries must not get the impression that they are being asked to imagine solutions and conclusions based on exaggeration rather than evidence. Reality and imagination, objectivity and wonder, must work in unison: neither is persuasive when it comes at the expense of the other.

II. INTENSITY: CRITICAL REFLECTION AND CREATIVE INTUITION

*Our most disastrous lacks — delicacy, awe, order, natural magnificence and piety . . . everything that is neither bought, sold, nor imagined on Sunset Boulevard or in Times Square . . . .*

Randall Jarrell\(^{58}\)

*I credit poetry . . . both for being itself and for being a help, for making possible a fluid and restorative relationship between the mind’s centre and its circumference . . . I credit it because credit is due to it, in our time and in all time, for its truth to life, in every sense of that phrase.*

Seamus Heany\(^{59}\)

\(^{57}\) WEIHOFEN, supra note 8, at 268.


Metaphorical language is the vessel of poetic intensity: images communicate heightened emotion — be it joy, love, or gratitude, sorrow, fear, or anger. Thus it is hardly possible to draw a bright line between a poem's language and its emotional intensity. As is widely recognized, lyric poems are not mere accounts of external events but expressions of a poet's thoughtful emotion or intuitive knowledge. The terms "thoughtful emotion" and "intuitive knowledge" are not necessarily contradictory, for emotions can comprise good reasoning, and knowledge can be rooted in intuition. Greek philosophers distinguished four kinds of knowledge: rhetorical (when we are persuaded by evidence without conclusive proof, as when we vote for a political candidate), the dialectical (when we favor one of two opposing arguments beyond a reasonable doubt, as when a drug is deemed safe for human use), the scientific (as when we know that motion presupposes agency), and the poetic.60 As Part I showed that reality and imagery are not at odds, Part II presents the interaction between intellect and emotion, thinking and feeling.

A. Thinking Like a Poet

For Jacques Maritain, poetic knowledge proceeds from interaction between intellect and feeling. It is reality finding an interpretive home in the poet's sensibility or subjectivity.61 Maritain insists that poetic knowledge "is in no way a merely emotional or a sentimentalist theory," that the emotion of which he is speaking is in no way "brute or merely subjective emotion" but inspiration, creative intuition, "an intellective flash" which brings forth the poem as idea.62

Such creative intuition can help lawyers embrace competing theories and interpretations without assuming that they are mutually exclusive. As thoughtful listeners and detectives, advocates must approach cases with an open mind, accepting without jumping to conclusions all evidence and points of view. They must possess what Keats called "negative capability,"63 that is, be willing to tolerate uncertainties, mysteries, contradictions, and doubts. After all, there may be not one but three persuasive

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62 JACQUES MARITAIN, CREATIVE INTUITION IN ART AND POETRY 119-20, 123 (1953).
63 Letter to George and Tom Keats (December 21, 27(?), 1817), supra note 52, at 43.
lines of reasoning and much to learn from an opponent's possible arguments. Each side of a dispute will articulate and defend a legal theory knowing full well that the resolution it seeks is not necessarily the only just one. This lawyering may be "the miraculous kind of reason that the imagination sometimes promotes." Thus the initial phase when tackling legal conundrums must entertain incompatible or conflicting elements. Poems often do this, sometimes explicitly:

And yet whiteness
can be best described by greyness
a bird by a stone
sunflowers
in December

...the most palpable
description of bread
is that of hunger

...a transparent
source-like description
of water is that of thirst

In addition to enabling lawyers to exercise negative capability, such as that evidenced in this poem, creative intuition allows lawyers to consider the relationship between the subjective and the objective. Maritain refers to Arthur Rimbaud's "Je est un autre" ("I is another"), explaining that in creative intuition "objective reality and subjectivity, the world and the whole of the soul, coexist inseparably," the poet grasps the "reality of things" under the spell of a definite emotion.

Lawyers take a subjective perspective (i.e. their clients') and present it in a form that is suitable to their audience. Both emotion and intellect figure into this task. "The most potent stimulus for true eloquence . . . is a burning conviction of the righteousness of one's cause." While attorneys cannot become too

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64 STEVENS, supra note 31, at 165.
65 Tadeusz Rozewicz, A Sketch for a Modern Love Poem, in MILOSZ, supra note 29, at 233 (Czeslaw Milosz trans). Rozewicz (1921- ) received the Jurzykowski Foundation Prize in 1966, and the Union of Polish Writers Abroad awarded him a poetry prize the following year.
66 MARITAIN, supra note 62, at 124-25.
67 WEIHOFEN, supra note 8, at 2.
emotionally involved in a case, some level of feeling serves as an internal motivator. Maritain suggests that emotional involvement may lead to a creative "intellective flash." To the extent that poetry reminds lawyers that the soul can be a boon to the mind, so much the better.

Furthermore, jurors or judges may unconsciously allow their own subjective emotional responses to shape what they will accept as reasonable. Lawyers must decide how to frame arguments that will resonate with those intuitive reactions, especially with juries. Poetry teaches how to infuse emotion into one's reflection upon reality. Finally, a lawyer might agree with the ancient Greeks, Maritain, and Nussbaum that reason or knowledge has an emotional component. If that is the case, an advocate may use emotional appeals to push an audience toward a state of critical reflection, as well as to influence the way in which judges and juries evaluate claims as they reflect upon them.

B. Writing and Speaking Like a Poet

Exploring poetry also sharpens a lawyer's eye and ear for the type of language that encourages critical reflection. Poetry teaches lawyers not to dilute their language. Intense arguments, especially when they stoke the emotions, are most persuasive because they focus both the mind and the heart. Intensity can be expressed with wit, wisdom, or humor. In any form, appeals to reason are fused with reliance upon emotion and imagination.

A poem's intensity or naked truth — its wit, wisdom, or humor — should help lawyers insightfully question what they hear, see, or read. In turn, they can incorporate such potency into their own written and oral arguments. For example, Laura (Riding) Jackson's "In Nineteen Twenty-Seven" teaches gentle wit:

_Fierce is unhappiness, a living god_
_of impeccable cleanliness and costume_
_In his intense name I wear_
_A brighter color for the year_
_And with sharp step I praise him_
_That unteaches ecstasy and fear._

68 Laura Riding, Selected Poems: In Five Sets 37 (1973). (Riding) Jackson (1901-1991) believed there was "an ultimate of perfect truth to reach, and poetry was the way." _Id._ at 14.
Wit might best be reserved for oral argument where it can defuse an aggressive judge or keep the discussion interesting; there, tone and facial expression assist in making the point. As for writing, there is a fine line between cleverness and acerbity. Sarcasm is seldom appropriate, not only because it shows a lack of seriousness but also because it invites misinterpretation if taken literally. On the other hand, subtle wit demonstrates confidence and recaptures a judge’s or juror’s attention. It is difficult to teach lawyers how to use wit without undermining their credibility. Poems like “In Nineteen Twenty-Seventy” may be the best guide since they expose a reader to deep truths in a delicate balance between concrete images (unhappiness presented as a clean and well-groomed god) and repartee (the poet “with sharp step” praising the “unteacher” of ecstasy and fear).

There is unassuming wisdom in “The Forgiven Past,” where Jackson outlines “the transformation of old grief / Into a present grace of mind,” and “difficult decorum,” self-respect and questioning resignation, in “After So Much Loss,” where she concludes:

After so much loss —
Seeming of gain,
Seeming of loss —
Subsides the swell of indignation
To the usual rhythm of the year.

Here, the poem hones in on the emotional evolution by which human beings recover from tragedy and grief. Translating a legally cognizable injury into one that a judge or juror feels is a crucial persuasive step. Particularly in opening and closing statements at trial, an advocate can focus the audience’s attention by reference to common human experience. Poetry is perfect teaching material for the lawyer because its wisdom comes in concentrated kernels — just the sort that can be woven into legal arguments.

As for humor, the mischievous question posed by Paz’s “In Defense of Pyrrho” comes to mind:

For Julian, ex-prefect of Egypt
(Palatine Anthology 7.576)

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69 Id. at 91-93.
70 Id. at 86-87.
Julian, you’ve cured my fears, but not my doubts.
Against Pyrrho you said: The skeptic
didn’t know if he was alive or dead. Death knew.
And you — how do you know?71

Paz pokes fun at Julian’s disdainful critique of Pyrrho of Elis (361?-270? BCE), one of a group of Ancient Greek philosophers known as Skeptics, and in doing so unmaskst Julian’s arrogance. Generally, humor has no place in legal arguments. But for the great advocate, such rules can be selectively broken. A smile or a chuckle will rejuvenate an audience’s desire to read and to listen. The best place for a bit of humor is in a wry rejoinder to an opponent. Of course, if the response is substantively hollow, the use of humor will only illuminate one’s weakness. But tressed with sound reasoning, however, lawyers should occasionally trade barbs with their opponents; humor is better than bitterness. A retort like Paz’s teaches that lawyers can use short, intense language to amuse, leading the audience toward critical reflection.

C. Inspiring Critical Reflection

Joseph Brodsky has said it well: the intensity of poetry lights up one’s consciousness.72 Dickinson does so in

Tell all the Truth but tell it slant —
Success in Circuit lies
Too bright for our infirm Delight
The Truth’s superb surprise

As Lightning to the Children eased
With explanation kind
The Truth must dazzle gradually
Or every man be blind—73

This poem captures the proper mix of ethical obligation, strategic argument, and audience comprehension. Dickinson’s opening words can be read to command lawyers to uphold their professional duty to the court: to tell the truth. After all, if words are capable of explaining the crackle of lightening to a child, surely

72 BRODSKY, supra note 18, at 193.
73 DICKINSON, supra note 56, at 506-07.
lawyers can use them to confront a thorny precedent or the unfavorable details of their client's position. Dickinson may be encouraging advocates to shed the best light on the facts of their case: truth should be conveyed from a slant, "as Lighting to the Children eased / With explanation kind." "Truth must dazzle gradually," for sometimes incremental revelation can prove the most illuminating. Facts and arguments must be explained simply, urging a judge or juror toward a vantage point from which lawyers' premises and conclusions appear reasonable. Lawyers may forget to be subtle, to dazzle listeners and readers gradually. The most compelling truths are the ones that lawyers present, but judges and juries feel they have realized on their own. The best advocate, then, appears to be but a guide.

In the struggle to persuade, lawyers sometimes face the challenge of defending a client with whom a judge or jury will be unsympathetic. In such cases, they must overcome their audience's retributive impulse. In "The Shield of Achilles," W.H. Auden shows how one might empathize with those whose experience has rendered them indifferent and cold-hearted:

A ragged urchin, aimless and alone,
Loitered about that vacancy, a bird
Flew up to safety from his well-aimed stone:
That girls are raped, that two boys knife a third,
Were axioms to him, who'd never heard
Of any world where promises were kept.
Or one could weep because another wept.74

From words as penetrating as these, telling of worlds where promises are broken, and no one is moved by the misery of others, an advocate can learn how to expand the frontiers of critical reflection. After all, lawyers must often enable judges and juries to make the most difficult of mental leaps: cloaking themselves in the perspective of an accused.

In their intensity, poems also foster critical reflection by appealing to the past. They find correspondences, cite precedents, and trace resemblances. Carl Sandburg and Jorge Luis Borges prove that in poetry, as in law, precedent illuminates and is difficult to reverse. Jonah's example guides Sandburg in "Losers."

If I should pass the tomb of Jonah
I would stop there and sit for awhile;
Because I was swallowed one time deep in the dark
And came out alive after all.  

Sandburg reminds advocates that human beings are often moved by parables, but mere recitation of the past does not suffice to capture its lessons. Understanding its significance is key. Citing precedents serves this purpose. Borges's "Possession of Yesterday" contains a valuable lesson for lawyers as they work within the constraints set by binding case law:

I know that I've lost the yellow and the black and I think
of those unreachable colors
as those who are not blind cannot.

Only those who have died are ours, only what we have lost is ours.
Ilium vanished, yet Ilium lives in Homer's verses.
Israel was Israel when it became an ancient nostalgia.
Every poem, in time, becomes an elegy.
The women who have left us are ours,
free as we are now of misgivings,
from anguish, from the disquiet and dread of hope.
There are no paradises other than lost paradises.

Advocates constantly have the opportunity to alter the substance upon which judges and juries reflect. As Borges suggests, they have power over the past because they can recharacterize it. The ability to apply old propositions of law to new facts allows lawyers to take past cases and make them their own. An advocate invites a judge to revisit the past not for nostalgia but for the opportunity to rethink and to reapply another judge's reasoning.

Poetry is a powerful teacher because, through intensity, it penetrates both mind and conscience, awakening critical reflection and creative intuition. Obviously, lawyers seldom recite lyrics, but they can read poems as an exercise in the nuances of

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76 Jorge Luis Borges, Possession of Yesterday, in Roberto Alifano, Twenty-Four Conversations with Borges 157 (Nicomedes Suarez Arauz trans., 1984). This poem is also a fine example of negative capability. In 1961, Borges (1899-1986) shared with Samuel Beckett the first International Publishers Prize.
emotion and the lessons of wit, wisdom, and humor. The poet’s ability to communicate with intensity thought-provoking correlations\textsuperscript{77} can teach lawyers to be better writers and speakers.

III. Form: Musical Brevity

The form of the poem, in other words, is crucial to poetry’s power to do the thing which always is and always will be to poetry’s credit: the power to persuade the vulnerable part of our consciousness of its rightness in spite of the evidence of wrongness all around it.

Seamus Heaney\textsuperscript{78}

The progression seems clear to me: from Reverence for Life to Attention to Life, from Attention to Life to a highly developed Seeing and Hearing, from Seeing and Hearing (faculties almost indistinguishable for the poet) to the Discovery and Revelation of Form, from Form to Song.

Denise Levertov\textsuperscript{79}

A. Succinct Advocacy

Some books point to brevity as the first absolute rule in legal writing; they plead for compact sentences and short paragraphs as well as for the avoidance of legal “mumbo-

\textsuperscript{77} In Mimi, the Near-Suicide, Derek Walcott (1930- ) evokes Virginia Woolf’s suicide as well as that of Shakespeare’s Ophelia:

Somebody told her she had sad interesting eyes.
After that, that was it. She stopped by the bridge.
She studied the river’s coiled interesting dyes.
Must drop in for a visit. Good career move:
Ophelia, Mrs. Woolf, and that feministe garbage.
A much better ending than plain, provincial love:
as a soaked sidewalk, a soaked brown paper bag.

\textsuperscript{78} Heany, supra note 59, at 34.

\textsuperscript{79} Denise Levertov, Origins of a Poem, in CLAIMS FOR POETRY 263-64 (Donald Hall ed., 1998). Levertov (1923-1997) is the author of more than twenty collections of poems. She received a Lifetime Achievement Award in 1994 from the Conference on Christianity and Literature.
jumbo."80 "Good legal writing is short, as short as possible consistent with clarity and completeness."81 The same almost always could be said of a lyric poem. In fact, Edgar Allan Poe maintained that a long poem is a contradiction in terms, for if a work is "too long to be read at one sitting," it risks losing "unity of impression."82 In other words, the poem's brevity and the intensity of its content are inseparable.83 It is not always possible to write briefs that can be read at one sitting, but a "long brief" remains somewhat of a contradiction in terms.

In their brilliant brevity, the following poems, each quoted in its entirety, achieve "unity of impression" or what we prefer to call "memorable effect." In addition, our selections offer insight into particular persuasive essentials. In both substance and technique these poems illustrate succinct advocacy. For example, prosecutors or plaintiff's attorneys might wish to echo at some point the words of Juana Rosa Pita:

\[
\begin{align*}
\text{Let a paint brush tell} \\
\text{you the color of our joy} \\
\text{before we were uprooted.}
\end{align*}
\]

Rather than focus exclusively on a defendant's culpability, the effective advocate presents a sense of the world as it existed before the defendant's alleged conduct caused "uprootedness." It is as though Pita was prescribing vivid language so that judges and juries may see what they read or hear. To borrow the terminology of novelists, a prosecutor or plaintiff's attorney should not underestimate the persuasive value of the setting by dwelling exclusively on the particulars of the plot. The more a judge or jury identifies with the world as it existed before a defendant acted upon it, the easier it will be to convince them to restore it.

80 See LUCY V. KATZ, WINNING WORDS: A GUIDE TO PERSUASIVE WRITING FOR LAWYERS 4 (1985).

81 Id. at 3.

82 Edgar Allan Poe, The Philosophy of Composition and The Poetic Principle in LITERARY CRITICISM OF EDGAR ALLAN POE, 22, 33 (Robert L. Hough ed., 1965). The posthumous reputation and influence of Poe (1809-1849) have been remarkable.

83 "Even in poetry, where many of us are disposed to assume that the effect is to be attained by luxuriant verbiage, poignant emotion can be invoked with extreme simplicity." WIEHOFEN, supra note 8, at 61.

84 JUANA ROSA PITA, SORBOS DE LUZ/SIPS OF LIGHT 13 (Mario de Salvatierra trans., 1990). Pita (1939- ), a Cuban poet in exile, won the 1987 Alghero Prize in Italy for ARIE ETRUSCHE/AIRES ETRUSCOS and the 1993 Letras de Oro Award in the United States for UNA ESTACION EN TREN.
With that prior "joy" portrayed, the advocate must next convey the gravity of the legal injury. W.S. Merwin uses sharp language to make his point in "Separation."

Your absence has gone through me  
Like thread through a needle.  
Everything I do is stitched with its color.85

Merwin's words remind lawyers that an injury often seems worthier of compensation, particularly because its effects are pervasive. Advocates would do well to tease out how a particular legal harm disrupts various aspects of their clients' lives.

Fine points can be influential in that regard. Consider Langston Hughes's "The Dream Keeper."

Bring me all your dreams,  
You dreamers,  
Brin me all of your  
Heart melodies  
That I may wrap them  
In a blue cloth.  
Away from the too-rough fingers  
Of the world.86

Ordinary, generic experiences are seen (a blue cloth) or felt (too-rough fingers) when language includes momentary sensory appeal. Hughes shows how brevity and pointed concreteness are not at odds.

Succinct poetry contains lessons for defense lawyers as well. With linguistic precision, an advocate can point out the good (or at least the not so bad) effects of his client's conduct. Levertov captures the proper approach girding this style of defensive advocacy in "Venerable Optimist."

He saw the dark as a ragged garment  
spread out to air.

85 THE NORTON ANTHOLOGY OF POETRY 1296 (Alexander W. Allison et al. eds., 1983). W.S. Merwin (1927- ) received the 1971 Pulitzer Prize in poetry for his collection THE CARRIER OF LADDERS. He is also the renowned translator of works in French, Spanish, Latin, and Portuguese.

86 THE COLLECTED POEMS OF LANGSTON HUGHES 45 (Arnold Rampersad ed., 1995). Hughes (1902-1967), who received the NAACP's Spingarn Medal in 1960, had won the 1953 Anisfeld-Wolf Award for the best book of the year on race relations. There is ample commentary on Hughes's "inclination . . . to respond to . . . subtle cadences of language" and on his poetry's link to blues and jazz. See ONWUCHEKWA JEMIE, LANGSTON HUGHES: AN INTRODUCTION TO THE POETRY x (1976).
Through its rents and moth-holes
the silver light came pouring.\textsuperscript{87}

By reflecting on these lyrics, advocates may consider how to weave mitigating factors into their argument. Poets regularly use short lines to plant the seeds of deep thought; likewise, defensive advocacy is best when it plants subtle seeds of doubt as to a defendant’s culpability or a plaintiff’s desert. Poetry teaches lawyers how to balance brevity with persuasive detail. Pita, Merwin, Hughes, and Levertov instinctively discard the superfluous.

B. Rhythmic Advocacy

Brevity in lyric poetry and legal prose is not enough. Cadence, rhythm in the flow of sounds, is also a must. That the word lyric comes from the Latin \textit{lyre} for lute, a musical instrument, and means “songlike” is no accident. Levertov asserts that the deployment of the poem on the page is the equivalent of a score, giving visual instructions for auditory effects, that the most obvious function of line-breaks and indentations is rhythmic.\textsuperscript{88}

Appreciating the musical essence of poetry is important when it comes to the order of words in a list, of clauses in a sentence, of parallel construction in a paragraph, in short, when it comes to writing clear arguments. Pay close attention to May Swenson’s “Question” — quoted also in its entirety and reminiscent of St. Francis of Assisi, a poet who himself nicknamed his body “[my] Brother the Ass.”\textsuperscript{89} Try to answer Swenson’s melodic query:

\begin{quote}
Body my house
my horse my hound
what will I do
when you are fallen
Where will I sleep
How will I ride
What will I hunt
\end{quote}

\textsuperscript{87} \textsc{Denise Levertov}, \textit{Evening Train} 52 (1992).

\textsuperscript{88} Denise Levertov, \textit{On the Function of the Line}, \textit{supra} note 79, at 266.

\textsuperscript{89} \textsc{G.K. Chesterton}, \textit{St. Francis of Assisi} 12-13 (Image Books 1990) (1924).
Where can I go
without my mount
all eager and quick
How will I know
in thicket ahead
is danger or treasure
when Body my good
bright dog is dead

How will it be

to lie in the sky

without roof or door

and wind for an eye

with cloud for shift

how will I hide?90
Together rhythm and brevity guarantee a central focus and guard against wordiness and redundancy.

Brodsky further brings up the dynamics of poetic language as “essentially the dynamics of song” when discussing “obsession with intonation” in Marina Tsvetaeva’s prose.91 To achieve verisimilitude in prose, whether written or oral, Brodsky calls attention to the use of “dramatic arrhythmia” — “interspersing nominative sentences among . . . complex ones.”92

Excellent legal prose should “rise and fall like wind in tall
pines . . . swell and recede like waves on a shingle.”93 There are no formulas for rhythmic prose, but reading poems, whether in meter or free verse,94 trains the ear. Some will say that nothing can substitute for a gifted ear on the part of the reader or listener, but one should immerse oneself in Edward Lear’s “The Owl and the Pussy-Cat” or Poe’s “The Bells,” or Walt Whitman’s “O Captain! My Captain!” and see. When listening to the “majestic music” of Matthew Arnold’s “Dover Beach,”95 one recalls

90 MIŁOSZ, supra note 29, at 229. May Swenson (1919-1989) was awarded a MacArthur Foundation Fellowship in 1987.
91 BRODSKY, supra note 18, at 180.
92 Id. at 181.
93 Id. at 30.
94 “[O]nly a bad poet,” T.S. Eliot (1888-1965) has written, “could welcome free verse as a liberation from form. It was a revolt against dead form, and a preparation for new form or the renewal of the old; it was an insistence upon the inner unity which is unique to every poem, against the outer unity which is typical.”\] THE MUSIC OF POETRY 26 (1942).
that poetry was originally intended to be a spoken art.

Thus, reading poetry may do most for oral argument skills. How else can advocates sensitize their own capacity for rhythmic speech patterns? Pita offers the ideal:

\[
\text{With its melodic cargo} \\
\text{voice traverses drizzle} \\
\text{without wetting the song.}^{96}
\]

Lawyers must eliminate any aspect of their delivery that distracts a listener from the substance of the argument. With a host of potential interruptions (e.g. objections, questions from the bench), they must be able to return smoothly to their train of thought. After a question, good advocates return to the right part of their argument. Great oral advocates do the same, yet the cadence of their speech patterns continues without a jarring verbal pause. Reading poetry aloud coordinates one's thinking and speaking skills with a critical ear evaluating one's own delivery. In addition to stylistic improvement, an advocate learns to avoid an all-too-common pitfall of oral argument: redundancy, as opposed to effective repetition.\(^97\)

In sum, legal advocacy should be brief; its language rhythmic.

\[
\text{Poetry's great mystery is} \\
\text{this: it defeats silence} \\
\text{without breaking it.}^{98}
\]

Advocates will produce clear, engaging arguments when they strive for the lean cadence of poetry. Lawyers' words must never clutter or drown out the audience's thought process. Economy of language is the essence of eloquent persuasion.

CONCLUSION

Brodsky was right to assert that art "is not an attempt to escape reality but the opposite, an attempt to animate it."\(^99\)

Though, of course, poetry was not designed to help attorneys with their writing, reading poems is relevant to legal reasoning and writing. It opens doors to psychological depth and to con-

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\(^{96}\) PITA, supra note 84, at 21.

\(^{97}\) Judge Lee Rosenthal of the Fifth Circuit pointed this out to the authors during her visit to the University of Chicago Law School in May 1999.

\(^{98}\) PITA, supra note 84, at 39.

\(^{99}\) BRODSKY, supra note 18, at 123.
crete and rhetorical possibilities. Poems express facts, ideas, and emotions in a style more imaginative, intense, and compact than that of ordinary legal prose. The imagery, intensity, and brevity evident in lyric poems can revive legal prose and refresh tired lawyers (as well as the judges, clerks, and juries who read their briefs or listen to their arguments). After all, lawyers should bring to their task more than an account of facts, issues, and case law. Their calling is not to be neutral but engaged and committed. To persuade they should, like poets, present something true, surprising, and memorable. The poems we have included in this essay probe the mind, touch the heart, and tickle the ear.

Nussbaum has written that “[t]here is something about the act of reading that is exemplary for conduct.”100 Marina Tsvetaeva’s definition of reading as “complicity in the creative process” is certainly one important aspect.101 And there is something else: Nussbaum points out that many novels address “human needs that transcend boundaries of time, place, class, religion, and ethnicity.”102 It happens that like most lyric poems, the ones presented here transcend the boundaries in Nussbaum’s list, as well as those of race and gender. In so doing, they are a constant reminder of all that humans hold in common. Reading poems should certainly mark the lawyer humanly turned accomplice — the longing for beauty and understanding that characterizes lyric poems should ultimately affect more than the structure, syntax, and style of a lawyer’s argument.

But reading poems for the sheer pleasure of their intrinsic worth may turn out to be wiser than doing so for utilitarian purposes — especially for any lawyer on the road to burn-out. It might suffice to read a poem a day just as one takes a daily walk or dose of vitamins.103 Needless to say, less time is needed to read a lyric poem than a realist novel. Ultimately, this article is an introduction, an invitation. We urge lawyers to let poetry be a vehicle for their own creative persuasive potential.

100 Nussbaum, supra note 13, at 48.
101 Brodsky, supra note 18, at 179. In exile in Berlin, Prague, and Paris, Marina Tsvetaeva (1892-1941) read and wrote prolifically. Her literary activities stopped when she returned to her native Russia at the height of the Stalin purges. See Ronald Hingley, Nightingale Fever: Russian Poets in Revolution (1981).
102 Nussbaum, supra note 13, at 45.
A Reflective Rhetorical Model: The Legal Writing Teacher as Reader and Writer

Linda L. Berger

Like most writing teachers, the legal writing teacher believes that his reading and response to student work is the most important thing he does, an importance that is underscored by the amount of time it takes. Yet, despite its importance and the hours it consumes, the rhetoric of teacher reading and writing remains relatively unexplored. This article proposes that we begin to apply what we have learned about student reading and writing to our own reading and writing. Our process of reading

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1 Linda L. Berger is an associate professor at Thomas Jefferson School of Law. She has been teaching legal writing for eleven years and formerly served as director of legal writing and director of academic support at Thomas Jefferson. The author owes special thanks to Pearl Goldman and James B. Levy for their thoughtful responses to earlier versions of this article.

2 ELAINE P. MAIMON ET AL., THINKING, READING, AND WRITING xvi (1989) (teacher reading and writing is the only way teachers can teach others to write).

3 See, e.g., Jill J. Ramsfield, Legal Writing in the Twenty-First Century: A Sharper Image, 2 J. LEGAL WRITING 1, 7-8 & n.64 (1996) (estimating that legal writing teachers spend 20 hours a week doing face-to-face teaching, including class time and time spent making written and oral comments).

4 Anne Enquist of the Seattle University School of Law has done the only published study of legal writing teachers' comments on student papers. Anne Enquist, Critiquing Law Students' Writing: What the Students Say Is Effective, 2 J. LEGAL WRITING 145 (1996). See also Terri LeClercq, The Premature Deaths of Writing Instructors, 3 INTEGRATED LEGAL RES. 4, 8-14 (1991) (recommending critiquing rather than editing and a focused list of criteria for each assignment); Elizabeth Fajans & Mary R. Falk, Comments Worth Making: Supervising Scholarly Writing in Law School, 46 J. LEG. EDUC. 342, 349, 352, 362, 366 (1996) (suggesting different roles for teacher feedback at different stages in the student's writing process); Mary Kate Kearney & Mary Beth Beazley, Teaching Students How to "Think Like Lawyers": Integrating Socratic Method with the Writing Process, 64 TEMP. L. REV. 885, 898-99 (1991) (recommending focused responses coinciding with the student's movement through the writing process); J. Christopher Rideout & Jill J. Ramsfield, Legal Writing: A Revised View, 69 WASH. L. REV. 35, 74 (1994) ("because of the power and authority that lie with the professor, comments can easily discourage students and estrange them from any sense that writing is a generative social activity").

On the need for continuing exploration of teacher reading and response, see, e.g., Janet Gebhart Auten, A Rhetoric of Teacher Commentary: The Complexity of Response to Student Writing, 4 Focuses 3, 11-12 (1991) (little theory has emerged to describe the rhetoric of teacher commenting); Lad Tobin, How the Writing Process Was Born—And Other Conversion Narratives, in TAKING STOCK: THE WRITING PROCESS MOVEMENT IN THE '90s, 1, 11 (Lad Tobin & Thomas Newkirk eds., 1994) (left unexplored, we may continue to "read student essays in very traditional ways—focusing on error, acting as if we are dealing with 'finished' products, isolating ourselves from other readers.").

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and responding to student work should be as reflective and rhetorical as the reading and writing process that we suggest for our students. As we read, write, and comment, we should be conscious of the movement of our students and ourselves from meaning to text to reader to writer and back; we should focus as much on planning, monitoring, and revising our own reading and writing as we do on communicating our interpretations of student work; and we should use our own reading and writing experiences to reflect on and respond to what our students are doing.

The article is based on the New Rhetoric school of composition theory and research. It begins with the New Rhetoric theory that reading and writing are processes for the construction of meaning, that "writing" is the weaving of thought and knowledge through language, not merely the clothing of thought and knowledge in language. From New Rhetoric theory comes the view that reading and writing comprise a series of transactions between reader and writer, reality and language, prior texts and this text, the individual and the context. These transactions generate response, response generates reflection, and reflection generates further response and revision. New Rhetoric theory thus suggests that teachers can tap into these transactions, particularly the transactions between students and teachers, to improve student reading and writing.

The article next draws on New Rhetoric research into the composing process. This research created an image of writing as always in progress, a process of discovery that is messy, slow, tentative, and full of starts and stops. Despite recent criticism, this New Rhetoric image retains its power to describe what writers do and to provide a framework for teaching and learn-

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6 See, e.g., Marlene Scardamalia & Carl Bereiter, Development of Dialectical Processes in Composition, in Literacy, Language, and Learning 307, 327 (David R. Olson et al. eds., 1985) (dialectical processing is not only a cause of but also the result of reflective thought).

7 The transactions between students and teachers are the subject of a rhetorical model discussed in Section II of this article. See Auten, supra note 4, at 4.

Largely because of this image, the writing teacher tries to engage students in the kind of exploratory, recursive, reflective, and responsive process that expert writers describe rather than to steer students from step to step through the production of a finished document.

Finally, the article encompasses a developmental model of writing teacher response. This model places teacher responses on a continuum, beginning with dualistic responses that judge writing as correct or incorrect because of its presentation; moving to relativistic responses that view writing as unable to be judged because of its ideas; and developing into reflective responses that open up the potential for revision of both ideas and their presentation. Reflective response provides an appealing image of the writing teacher as a reader and a writer who "rhetorically sits next to" the student reader and writer as the student navigates the loops of an in-progress writing. Largely because of this image, the writing teacher reads and responds to student work while students are in the process of composing a text rather than after the text has been completed.

Based on these themes, the article proposes a reflective rhetorical model of teacher response that recognizes the complexity of the transactions among the subject, the student reader, the student writer, and the student text, the teacher reader, the teacher writer, and the teacher text-on-text. Acting as readers and writers, teachers can stimulate, support, and guide a reflective conversation between the student-as-reader and the student-as-writer to realize the student text. By responding to his student's work as another writer and another reader, a professor can "enhance students' awareness of the rhetorical nature of

9 See, e.g., Robert P. Yagelski, Who's Afraid of Subjectivity?, in Taking Stock, supra note 4, at 203, 208 (claiming that the idea of writing as process remains "essentially intact" because it "remains the most compelling and useful way to describe what writers actually seem to do").


11 Anson, supra note 10, at 343-54.

12 Id. at 353.

13 See Nancy Sommers, Responding to Student Writing, 33 C. Comp. & Comm. 148, 149 (1982) (hereinafter Sommers, Responding to Student Writing).

14 See Auten, supra note 4, at 8-10 (suggesting that more effective communication occurs when both the student and the teacher are operating in the same context, that is, when the student writer has requested the teacher's comments and can treat them as supportive and suggestive).
writing, as a transaction between writers and readers.15 The professor’s comments can act as a model for the kind of reading we ask the student writer-as-reader to do, asking questions, monitoring progress, and provoking second thoughts.16 The professor’s comments can act as a model for the kind of writing we ask the student reader-as-writer to do, writing that is responsive to context, purpose, subject, role, and audience and sensitive to style and tone.

As writing teachers, we are unavoidably engaged in a rhetorical transaction with our students when we read and respond to student work. That transaction happens with or without reflection, but composition theory teaches us that using responses to generate reflection and using reflection to generate responses can help our students and ourselves become better readers and writers.17

I. NEW RHETORIC THEORY AND THE PRACTICE OF TEACHER COMMENTARY

New Rhetoric began in theory about the nature of writing and the relationship between thought and language. In New Rhetoric, writing is a process for creating knowledge, not merely a means for communicating it.18 Reading is a process for con-

15 Rideout & Ramsfield, supra note 4, at 73-74.
16 See Sommers, Responding to Student Writing, supra note 13, at 148 (commenting on student writing dramatizes the presence of a reader and helps students become better readers of their own writing); Sue V. Lape & Cheryl Glenn, Responding to Student Writing, in THE ST. MARTIN’S GUIDE TO TEACHING WRITING 437, 442 (Robert Connors & Cheryl Glenn eds., 2d ed. 1992). “When the teacher reads and responds as critic, writing suffers and sometimes dies. When the teacher becomes a respectful reader, and models that same concerned response for student readers, writing thrives.” Id. at 444.
17 Reflective behavior is used here in the sense of monitoring current meaning and adjusting goals, ideas, plans, or strategies when it appears the reader or writer was mistaken; it is the ability to think about a process in process. See Katharine Ronald, The Self and the Other in the Process of Composing: Implications for Integrating the Acts of Reading and Writing, in CONVERGENCES: TRANSACTIONS IN READING AND WRITING 231, 234 (Bruce T. Petersen ed., 1986).

Such reflection is a mark of better readers and writers, better learners, and experts. See, e.g., June Cannell Birnbaum, Reflective Thought: The Connection between Reading and Writing, in CONVERGENCES, supra, at 30, 31 (noting the reflective parallel in reading and writing); Paul T. Wangerin, Learning Strategies for Law Students, 52 ALB. L. REV. 471, 477 (1988) (self-monitoring and reflective change are signs of a “good learner”); Gary L. Blasi, What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory, 45 J. LEG. EDUC. 313, 342-43 (1995) (experts are more reflective than novices and more able to make appropriate changes in response to problems detected in their monitoring).
18 Berthoff, supra note 5, at 68-69.
Structuring meaning, not just an Easter egg hunt to find it.\textsuperscript{19} These knowledge-shaping processes are complicated and active, a “putting together” of meaning between reader, writer, and text, all of which are embedded in context and language.\textsuperscript{20} In contrast, the traditional models of reading and writing were straightforward and passive: the writer began with a main idea, the reader found and followed it, and both could agree on the point of the piece.\textsuperscript{21}

New Rhetoric theory thus extends beyond the “process” approach, suggesting not only that writing should be taught as a process but also that the process should be used to make meaning. Beginning in the 1970s, the rhetorical theory was supported by the results of research describing the writing processes of experts. Backed by theory and research, New Rhetoric teachers began to focus their teaching on what writers “do” rather than on what writers “know,” believing that what writers do is how they come to know.\textsuperscript{22}

Because of New Rhetoric theory, teachers of legal reading and writing are able to view their subject as the construction of thought rather than the construction of a document.\textsuperscript{23} Because

\begin{itemize}
  \item \textsuperscript{19} See, e.g., Christina Haas & Linda Flower, \textit{Rhetorical Reading Strategies and the Construction of Meaning}, 39 C. COMP. & COMM. 167 (1988). The construction of meaning depends not only on the reader's knowledge and experience. “When readers construct meaning, they do so in the context of a discourse situation, which includes the writer of the original text, other readers, the rhetorical context for reading, and the history of the discourse.” \textit{Id.} at 167.
  \item \textsuperscript{20} See Anthony R. Petrosky, \textit{From Story to Essay: Reading and Writing}, 33 C. COMP. & COMM. 19, 22 (1982) (reading, response to literature, and composition are similar processes sharing “the essential ‘putting together’ as the act of constructing meaning from words, text, prior knowledge, and feelings”); David Bartholomae & Anthony Petrosky, \textit{Facts, Artifacts and Counterfacts: Theory and Method for a Reading and Writing Course} 12, 15 (1986) (student readers should be viewed as “composers, rather than decoders,” and reading should be viewed as a transaction between reader and text “rather than an attempt to guess at a meaning that belongs to someone else”).
  \item \textsuperscript{21} Many students prefer this more straightforward view: they “expect knowledge or information to be given to them rather than taking an active role in obtaining or shaping that knowledge.” Ronald, \textit{supra} note 17, at 235-36.
  \item \textsuperscript{22} The field that became known as composition studies “was transformed when theorists, researchers, and teachers of writing began trying to find out what actually happens when people write. . . . The goal has been to replace a prescriptive pedagogy (select a subject, formulate a thesis, outline, write, proofread) with a descriptive discipline whose members study and teach ‘process not product.’ ” James A. Reither, \textit{Writing and Knowing: Toward Redefining the Writing Process}, 47 C. ENG. 620 (1985), reprinted in \textit{The Writing Teacher's Sourcebook} 162 (Gary Tate et al. eds., 3d ed., 1994) [hereinafter \textit{The Writing Teacher's Sourcebook 3D ED.}].
  \item \textsuperscript{23} See Berthoff, \textit{supra} note 5, at 69 (writing should be seen as a process for constructing knowledge); James F. Stratman, \textit{The Emergence of Legal Composition as a Field of Inquiry: Evaluating the Prospects}, 60 REV. OF EDUC. RES. 153, 215 (1990) (some
of New Rhetoric research, teachers of legal reading and writing bring to the classroom a more complete and complex view of the processes of student reading and writing. Because of New Rhetoric teaching practices, teachers of legal reading and writing emphasize the generation of first thoughts and their revision into second thoughts as much as the polished presentation of thought. Finally, because of New Rhetoric, teachers of legal reading and writing believe their comments should help students realize "the potential for development implicit in their own writing" by inducing in them a sense of the possibilities of revision. Thus, for example, rather than telling a student that she has organized a discussion incorrectly, the teacher poses questions designed to help the student recognize that a different organization would allow her to communicate her ideas more effectively.

Until the introduction of New Rhetoric theory and research in the 1970s, the current-traditional model of writing instruction, with its emphasis on the final product, was reflected in a rule-based, right-or-wrong style of response. Many teachers responded to student writing by emphasizing technical rules that allowed them to judge whether a particular sentence structure, pronoun reference, or word use was correct or incorrect. This response style not only suited the mode of instruction but also was

research suggests that legal thinking, reasoning, and argument skills can be improved through writing).


25 See, e.g., Fajans & Falk, supra note 4, at 346 (describing the writer-centered phases, prewriting and writing as learning, as the most complex and creative part of a writing project); ERIKA LINDEMANN, A RHETORIC FOR WRITING TEACHERS 105-40, 184-206 (3d ed. 1995) (describing a range of prewriting and rewriting activities) [hereinafter LINDEMANN, A RHETORIC]; PETER ELBOW, WRITING WITH POWER: TECHNIQUES FOR MASTERING THE WRITING PROCESS (2d ed. 1998) (describing a two-step writing process of creating and criticizing, placing most of the emphasis on prewriting and revising) [hereinafter ELBOW, WRITING WITH POWER].

26 Sommers, Responding to Student Writing, supra note 13, at 156.

27 "Throughout most of its history as a college subject, English composition has meant one thing to most people: the single-minded enforcement of standards of mechanical and grammatical correctness in writing." Robert J. Connors, The Rhetoric of Mechanical Correctness, in ONLY CONNECT: UNITING WRITING AND READING 27 (Thomas Newkirk ed., 1986) [hereinafter Connors, Mechanical Correctness]. See also Anson, supra note 10, at 333-38 (describing the dualistic approach in which the student and the teacher see the work in polar terms, right or wrong, good or bad).
the result of practical constraints on the rhetoric of commenting. English composition had “a history of poorly trained instructors pressed by overwork and circumstance to enforce the most easily perceived standards of writing—mechanical standards—while ignoring or shortchanging more difficult and rhetorical elements.”

When New Rhetoric theory and research shifted the focus from the composed product to the writers’ composing processes, it was supposed to shift the teaching of “composition” away from the pointing out of error toward the teaching of a rhetorical process. If writing was a rhetorical process, the “error” approach paid attention to the wrong thing, focusing on the end product rather than on the ongoing process. If writing was supposed to be exploratory, recursive, and reflective, the error approach did nothing to encourage those activities. If writing was a means for constructing thought, the error approach concentrated on the arbitrary and the trivial, such as grammatical errors or punctuation mistakes, while bypassing the more difficult, more important, and more interesting problems of thinking and learning through writing.

Equipped with their new theory and knowledge of the student composition process, New Rhetoric writing teachers would focus less on mechanical “accidents” and more on rhetorical “essences.” Their comments would be designed to help students improve the next paper rather than to justify the grade given to this one.

28 Connors, Mechanical Correctness, supra note 27, at 28.
29 The idea that teachers could be “rhetorical audiences” for their students apparently dates back to the early 1950s. Robert J. Connors & Andrea A. Lunsford, Teachers’ Rhetorical Comments on Student Papers, 44 C. COMP. & COMM. 200, 201 (1993), reprinted in The St. Martin’s Guide to Teaching Writing, supra note 16, at 445 (hereinafter Connors & Lunsford, Teachers’ Rhetorical Comments).
30 A study of the marking practices of English teachers showed, for example, that despite a collective agreement on some grave errors, other errors were located primarily in the eyes of the beholder. Elaine O. Lees, The Exceptable Way of the Society: Stanley Fish’s Theory of Reading and the Task of the Teacher of Editing, in Reclaiming Pedagogy: The Rhetoric of the Classroom at 144, 150, 156-57 (Patricia Donahue & Ellen Quandahl eds., 1989).
31 See EMIG, supra note 5, at 94.
32 In a 1984 article summarizing current views of written response, the author differentiated between summative and formative evaluation and noted that his concern was only with formative evaluation. Formative evaluation “is intent on helping students improve their writing abilities,” while summative evaluation “treats a text as a finished product and the student’s writing ability as at least momentarily fixed.” Brooke K. Horvath, The Components of Written Response: A Practical Synthesis of Current Views, 2 Rhetoric Rev. 136 (1984), reprinted in The Writing Teacher’s Sourcebook 3D Ed.
more rhetorically appropriate roles, such as writing coach or representative reader, rather than only the role of the gatekeeper “charged with admitting or not admitting, approving or not approving.”

Despite these views, leading research studies indicated that the New Rhetoric prescriptions were not descriptions of teacher commenting, that what New Rhetoric theory and research suggested was not being practiced in the classroom. Although teachers had become more interested in rhetorical issues such as planning and ordering, invention and arrangement, they commented in large numbers on only two general areas among the more common rhetorical elements, supporting details and general organization, and very few papers contained comments about purpose, audience, or content. Even when rhetorical comments were made, they seemed to follow “rhetorical formulae that are almost as restricting as mechanical formulae.” Most global comments served to justify and explain grades; only a little more than ten percent of the comments seemed to advise the student about the paper as a work in progress. Even though three-fourths of the papers contained some kind of rhetorical comments, “[t]he job that teachers felt they were supposed to do” was to look at papers rather than students and to correct and edit rather than to respond as readers or to respond to content.

supra note 20, at 207, 207-08.
33 Auten, supra note 4, at 11-12.
34 The leading studies involved some 20,000 undergraduate college papers collected in the mid-1980s, from which two separate groups of 3,000 papers were selected for two different studies. The researchers first looked at error-marking patterns in the papers and then at the “global comments,” that is, comments that responded to the content or rhetorical aspects of the papers. See Robert J. Connors & Andrea A. Lunsford, Frequency of Formal Errors in Current College Writing, or Ma and Pa Kettle Do Research, in THE ST. MARTIN'S GUIDE TO TEACHING WRITING, supra note 16, at 390; Connors & Lunsford, Teachers' Rhetorical Comments, supra note 29. Additional research on teacher commentary is summarized in Anne Ruggles Gere & Ralph S. Stevens, The Language of Writing Groups: How Oral Response Shapes Revision, in ACQUISITION OF WRITTEN LANGUAGE: RESPONSE AND REVISION 85, 98-104 (Sarah Warshauer Freedman ed., 1985). In the latter article, the authors report on their comparison of teacher and student comments.
35 Connors & Lunsford, Teachers' Rhetorical Comments, supra note 29, at 218.
36 Id. at 208.
37 Id. at 218.
38 Id. at 207.
39 Id. at 217. One explanation for this discrepancy between theory and practice is that the people doing the grading had other things on their minds. “[I]f the rhetoricians often get the best of the abstract arguments, the traditionalists can still point to savage overwork as an occupational reality for many writing teachers . . . . A teacher with 100
Moreover, studies indicated that even when writing teachers did comment more broadly on the writing process and on organization and style, their responses tended to be general and abstract and to give only vague directions for improvement. Because teachers often address "content only in terms of how it contributes to the elaboration of structure or style," many teacher comments are so general that they could be rubber-stamped from text to text. In fact, "teachers seem conditioned not to engage with student writing in personal or polemical ways" and to read "in ways antithetical to the reading strategies currently being explored by many critical theorists." When teacher comments fail to engage with what a student actually wrote, they divert the student's attention away from the student's purposes in writing and focus attention instead on the teacher's purposes in commenting. This refusal to engage personally with an actual text is unlikely to lead to the kind of reader-writer responses that will encourage more reflective thinking by the students who are producing that text.
II. MODELS FOR READING AND RESPONSE

Unlike New Rhetoric models of the composing process, New Rhetoric models of teacher reading and response are based not on what the experts do but instead on what the experts say. In turn, what the experts say is based less on studies of the effectiveness of teacher reading and response\(^47\) and more on composition theory and research, rhetorical models, and teaching philosophies and practices.\(^48\) As noted in the introduction, this article has a similar basis in New Rhetoric theory and research and, in particular, on a rhetorical model of the student-teacher transaction and a developmental model of teacher response.

First, the article relies on a rhetorical model to apply the New Rhetoric theory that reading and writing are meaning-making processes and that these processes can benefit from transactions that generate response and reflection.\(^49\) This model, suggested by Janet Auten to illuminate the transactions between student and teacher, places the familiar rhetorical triangle for student writing next to a similar rhetorical triangle for teacher response.\(^50\) The resulting image, shown in Figure 1, graphically illustrates that student writing and teacher response are located within different rhetorical contexts that have different rhetorical components.

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\(^47\) As Erika Lindemann notes, "much research argues against commenting on students' papers—ever." \textit{Lindemann, A RHETORIC, supra} note 25, at 228 (citing \textit{George Hilllocks Jr., Research on Written Composition: New Directions for Teaching} 165 (1986) for the conclusion that "[t]he results of all these studies strongly suggest that teacher comment has little impact on student writing"). Lindemann nonetheless concludes that teacher commenting is useful if the comments are focused and if the students have opportunities to actively apply criteria for good writing to their own work in future revisions. \textit{Id.} at 229. \textit{See also} Auten, \textit{supra} note 4, at 10 (suggesting that "teachers who have good communication with their students and insert comments into an ongoing dialogue about writing can make commentary an effective teaching tool").

\(^48\) \textit{See} Louise Wetherbee Phelps, \textit{Images of Student Writing: The Deep Structure of Teacher Response, in Writing and Response, supra} note 10, at 37 [hereinafter Phelps, \textit{Images of Student Writing}] for a description of the typical arc from practice to theory to practice as teachers define and attempt to address problems in composition practice.


\(^50\) Auten, \textit{supra} note 4, at 4
Figure 1: The triangle on the left illustrates the rhetorical context for student writing; the triangle on the right shows that the rhetorical context for teacher response is different.

By demonstrating that the student text is written in one rhetorical context and read in another and that the teacher's comments are written in one context and read in another, the model shows that each component of the rhetorical triangle—the subject, the text, the reader, and the writer—changes as the student and teacher move from one context to the other. In moving from the student's to the teacher's rhetorical context, the subject shifts from the content of the student text to the student text itself, the student writer becomes the student reader, the teacher reader becomes the teacher writer, and the "text" changes from the student text to "a text about the audience's
own writing. In the teacher's rhetorical context, teacher commentary "inevitably and automatically undermines the author-ity of the student." Having lost authority as a writer, the student has lost control over the subject and the text.

In addition to showing that student writing and teacher response take place in different contexts, the model indicates that teacher reading and teacher writing themselves occur in different contexts. That is, as a reader, the teacher is reading not only the student text, but reading through the student text to the student's subject. As a writer, however, the teacher no longer has any subject other than the student text itself. Finally, the model helps to categorize the kinds of comments that teachers can make about their reading of student texts. That is, teacher comments can relate primarily to the student's subject, to the student text, to the student writer, or to the teacher reader.

Second, the article draws on a developmental model of teacher response, a model that grew out of an empirical study comparing teacher response styles to William Perry's charting of the development of undergraduate students' ways of looking at the world. Perry described nine distinct stages beginning with the dualistic stage in which the world is seen in polar terms of right and wrong, progressing to the relativistic stage in which the student recognizes that not all areas of knowledge are subject to absolute answers, and moving to the final stage of commitment where the student recognizes that there are no right answers but begins to find at least tentative order within this relativism. The study found that teacher responses fell into a similar continuum, apparently reflecting their "different visions of classroom writing and of learning to write."

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51 Id. at 4-5.
52 Id. at 4-5.
53 Id. at 4-5.
54 Anson, supra note 10.
55 See id. at 334-39. Anson uses the term "reflective" to describe this final stage. Id. at 360 n.2.
56 The study was intended to find out whether the teachers shifted their response styles to match the development of the students whose papers they read. Instead, the
the teachers were "dualistic" and "focused almost entirely on the surface features of the students' texts, and did so consistently, in spite of the differences in the essays' contents."\textsuperscript{57} They suggested few alternatives for revision, said little about the student's rhetorical decisions or composing processes, and often ignored the student's intentions or meaning.\textsuperscript{58} Instead, these teachers viewed their job as acting as judges who applied uniform standards for correctness. For example, one teacher wrote the following end comment on a very short student paper:

There are some serious problems with this paper. For one thing, it is far too short, and the ideas in it, if any, are at the moment barely articulated. All you have done is merely tell us what happened, in the starkest outline. Why? If this event was an important and educative one for you, surely you should have written on it some more? One obvious reason why you did not write more is that you have very serious deficiencies in your knowledge of the mechanics of writing. I am referring here to tense, spelling, punctuation, and sentence structure. I strongly recommend that you see me immediately about your problems.\textsuperscript{59}

On a more developed paper, the same teacher still focused primarily on technical matters:

Overall, the paper shows sensitivity and understanding. What the paper does not have is a coherent paragraph organization and composition. . . . Try to organize your thoughts in terms of paragraphs that explore and describe one thought at a time. . . . The paper also has an awkward, contradictory and repetitive sentence. You make a free use of contractions that are much too casual and not used in formal writing, you have clauses in the same sentences that contradict each other, and you make the same statement several times without adding anything substantial to what you have already said . . . . So, overall I would say, in future exercise more caution in planning your paper and more control in writing clearer, more precise and effective

\textsuperscript{57} Id. at 343-44.
\textsuperscript{58} Id.
\textsuperscript{59} Id. at 344.
At the next stage on the continuum, a much smaller group of "relativistic" teachers wrote little or nothing in the margins of the student text and appended casual, apparently unplanned, responses to the end of the essays. For example, a relativistic teacher's comment on the same, very short, essay was as follows:

Bobby, you certainly had a hard teacher. Did you get a ticket? What happened when Mom came home? Did your brother snitch on you? What happened to you? This kind of thing eventually happens to all of us, but what did you do? How angry was your mother? I'll bet she was hot when she got home, or was she calm and very understanding because she knows how important it is to be with someone you care for. If you had to do it all over again, would you? Tell the truth. 61

These responders "seemed entirely unconcerned with giving the students anything more than a casual reaction, as if this is the only kind of response that can have any validity in a world where judgment is always in the eye of the beholder." 62 The relativistic teachers emphasized the meaning or the intent of the student over the text itself and provided no options for revision. 63

The final small group of teachers were classified as "reflective" responders; they acted as representative readers, viewed the student text as in-process, and suggested and preferred options for revision. Unlike the dualistic and the relativistic responses, their responses concerned not only the ideas in the paper but also the way they might be presented in the text. For example, a reflective response to the same short essay follows:

The first thing that strikes me before I even read your story is that it's very short. I don't really like to compare one student's work with other students' work, but it's the shortest one I've seen so far. So right away, I'm wondering if it's short for a good reason, or is it short because you just couldn't think of things to say. It's possible for a piece of

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60 Id. at 347.
61 Id. at 349.
62 Id.
63 Id. at 350-51.
writing that’s very short to be very good. Poetry is that way, certainly. On the other hand, the more you put in, the more chances are that your reader is going to be able to get into the story. Stories generally—and this essay is a story—are fairly well detailed, and one of the reasons is that the reader wants to experience the event in some way. If you just keep it short and don’t put in many details then we never really get into your story at all.

It has the potential to be a good story. . . . Maybe you could think more about the events that happened and break them down into more, smaller and smaller events, and describe more, explain more. Maybe just some more details so we understand more about what kind of person your mother is . . . . Now, you could also develop that whole [middle] part there, maybe with some dialogue . . . .

The reflective responses placed more responsibility on the writer “not just in the style or form of [the] response but in its focus on content.” The comments were “simultaneously tentative and goal-driven”; these teachers tossed the responsibility for making decisions back to the writer, and they offered possibilities for a potentially better text. In tone, the reflective teachers tended to “rhetorically sit next to the writer, collaborating, suggesting, guiding, modeling.” In terms of the Auten model, the dualistic teachers appeared most concerned with their own rhetorical context, the relativistic teachers placed primary emphasis on the student’s rhetorical context, and the reflective teachers seemed to use the transaction between the two contexts to open up the potential for revision.

Through a reflective rhetorical model of teacher response, the legal writing teacher may more thoughtfully conduct her reading and writing transactions with her students. In this view, the teacher’s reading and response are interruptions by another reader-writer in the reflective conversation between the student-as-reader and the student-as-writer that help produce a better student text. The teacher’s reading and response break

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64 This response was tape-recorded, not written. Id. at 351-52.
65 Id.
66 Id. at 353-54.
67 See id. at 333 (“a student’s writing and a teacher’s response to it represent a transaction through which two separate epistemologies come together, interact, and grow or change in the process”).
68 Because the conversation is the student’s, the teacher’s interruptions should not be the first or the last word. See Nancy Sommers, Between the Drafts, 43 C. COMP. &
into the conversation and further unsettle the idea of a “finished” piece, by their very presence showing that reading and writing are “always approximate, a changeable, flexible, and above all interpretable medium of communication.”

III. APPLYING THE REFLECTIVE RHETORICAL MODEL TO TEACHER READING AND WRITING

Every disruption we make in student reading and writing is rhetorical: our text-on-text carries considerable rhetorical weight, bearing our intentions to affect student reading and writing and our audience’s fear of judgments on their competence or worth. As an expert reader and writer, the legal writing teacher will be judged by his rhetorical effectiveness. That being the case, he had better understand his context, his purpose, his subject, his role, and his audience. The following analysis is suggested as a way to improve teacher reading and response as well as to relieve some of the frustration and exhaustion from writing teachers’ lives.

A. Situating yourself in context: who are these people and what am I doing in this classroom?

Our teaching inevitably reflects our view of our students and of “the job we are supposed to do” in the legal writing classroom. This view informs the decisions we make throughout the writing course: from the structure of our syllabus, to the textbook we choose, to the assignments we create, to the responses we make, to the physical arrangement of the classroom, to the behaviors and performances we reward and censure. Everything we say to our students “about writing is saturated with the teacher’s values, beliefs, and models of learning.”


69 Auten, supra note 4, at 13.

70 Auten, supra note 4, at 8-10.

71 See LeClercq, supra note 4, at 4 (“Instructors are . . . spending too much energy editing papers in the belief that more feedback produces better writers; in the process, we’re killing ourselves and destroying both the teaching field and our students.”); Connors & Lunsford, Teachers’ Rhetorical Comments, supra note 29, at 214 (“[T]hese papers and comments revealed . . . a world of teaching writing . . . whose most obvious nature was seen in the exhaustion on the parts of the teachers marking these papers.”).

72 Anson, supra note 10, at 354.
Thus, even the teacher who does not adopt a theory will be
governed by a theory for teaching and learning legal reading
and writing. Most often, by default, the teacher will teach as he
was taught and for most of us, that means the current-
traditional, result-oriented “product” view of writing. Novice
teachers of writing unconsciously adopt the current-traditional
view and its corresponding dualistic, right or wrong, response
style. They focus primarily on grammar, usage, and punctua-
tion, where correctness can be objectively judged. For the first
few years, this theory and response style will appear to work:
each year the teacher will be able to identify more and more er-
rors. Soon though, the teacher will begin to recognize that
marking all the errors and explaining all the rules and formulas
is not improving the students’ writing; in fact, many errors will
begin to seem trivial, problems in the students’ writing will be
seen beneath the surface, rules and formulas will improve the
presentation but not the thinking or the learning. At this stage,
the teacher must look to the theory and research of other disci-
plines, and to his students, for a new approach to which he can
make a tentative commitment.

College composition, the discipline to which most legal writ-
ing teachers turn, offers a range of theory, research, and prac-
tice perspectives. In theory, the current-traditional view has
been largely displaced by the New Rhetoric theory that reading
and writing are processes for the construction of meaning. The
resulting “process approach” has subdivided into at least two
schools, an inner-directed school (“cognitive process”) and an
outer-directed school (“social construction”). The inner-directed
school is interested primarily in the composition and cognition

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73 The “current-traditional paradigm” is marked by an “emphasis on the composed
product rather than the composing process; the analysis of discourse into words,
sentences, and paragraphs; the classification of discourse into description, narration, ex-
position, and argument; the strong concern with usage (syntax, spelling, punctuation)
and with style (economy, clarity, emphasis).” Richard Young, Paradigms and Problems:
Needed Research in Rhetorical Invention, in Research in Composing 31 (1978).

74 Most of us learned to comment the same way that we learned to teach: “by first
surviving and then imitating the responses of teachers to our own work.” Lindemann, A
Rhetoric, supra note 25, at 225.

75 See Anson, supra note 10, at 356-57; Elbow, Writing With Power, supra note
25, at 224.

76 See Anson, supra note 10, at 357-59.

77 See, e.g., Hairston, supra note 8, at 85 (predicting a paradigm shift from current-
traditional theory to the process approach).

78 See Patricia Bizzell, Cognition, Convention, and Certainty: What We Need to Know
processes of individual writers; the outer-directed school analyzes the conventions of particular discourse communities. 79

In addition to current-traditional theory, cognitive process theory, and social construction theory, college composition teachers have been categorized according to which elements in the composition process they view as most important. Thus, for example, expressivists emphasize the writer's personal expression through language; rhetoricians are most interested in the transaction between reader and writer through language; the epistemic or knowledge-shaping perspective emphasizes the transactions between the writer, language, and reality. 80 These theories and perspectives are reflected in teaching practices that range from the teacherless writing workshop, in which students read and respond to each other's work, 81 to the teacher-managed "substation in the cultural network," small shops that produce particular kinds of readers and writers such as literary critics or scientists. 82

Based on recent scholarship, most legal writing commentators have adopted the cognitive process or the social construction theory. 83 As a result, the remainder of this article will as-

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79 See id. at 218. Linda Flower, a leading cognitive process researcher, has suggested a "pedagogy of literate action" that would bring together the social, cognitive, and rhetorical strands and focus on the writer "as an agent within a social and rhetorical context." Linda Flower, Literate Action, in COMPOSITION IN THE TWENTY-FIRST CENTURY: CRISIS AND CHANGE 249 (Lynn Z. Bloom et al. eds., 1996).


81 See, e.g., PETER ELBOW, WRITING WITHOUT TEACHERS (1973); PETER ELBOW & PAT BELANOFF, A COMMUNITY OF WRITERS: A WORKSHOP COURSE IN WRITING (1989).


83 See, e.g., Philip C. Kissam, Thinking (by Writing) About Legal Writing, 40 VAND. L. REV. 135, 151-70 (1987) (describing a critical writing process and proposing that critical reading and writing be extended to all parts of the law school curriculum); Phelps, The New Legal Rhetoric, supra note 24, at 1094 (describing the process approach as emphasizing that writing is recursive, rhetorically based, and judged by how well it communicates the writer's message and meets the reader's needs); Joseph M. Williams, On the Maturing of Legal Writers: Two Models of Growth and Development, 1 J. LEGAL WRITING 1, 9 (1991) (good thinking and good writing are a "set of skills that can be deliberately taught and deliberately learned in a context that we can describe as a 'community of knowledge' or a 'community of discourse' "); Bari R. Burke, Legal Writing (Groups) at the University of Montana: Professional Voice Lessons in a Communal Context, 52 MONT. L. REV. 373, 397 (1991) (describing approaches designed to teach writing as a cognitive process as well as a professional skill); Kearney & Beazley, supra note 4, at 888 (describing the process approach as one that allows the writer to focus on different tasks at different stages of a writing process and one that allows the teacher to in-
sume that most legal writing teachers apply one or both of those theories to their teaching practices.

B. Defining your overall purposes: why are you reading and writing?

The writing teacher's view of "the job he is supposed to do" will determine which purpose is predominant in his reading and response to student work. Corresponding to the four focuses of the student's rhetorical triangle, a writing teacher may read to analyze the subject (or the meaning of the text); he may read to respond as a reader; he may read to improve the writer; and he may read to judge the features of the student text. The Auten model indicates that the teacher who reads solely to judge the text has pushed aside the student's rhetorical context: the student text has simply moved into the teacher's rhetorical triangle to become the teacher's "subject." In contrast, the teacher who reads to analyze the subject, to respond as a reader, or to improve the writer remains within the student's rhetorical context as he reads.

Just as they have more than one purpose for reading, writing teachers have more than one purpose for responding to student papers, whether orally or in writing. Their overall purpose may be summative, to sum up and let the writer know where his writing stands at this moment, or formative, to help intervene throughout the process; Rideout & Ramsfield, supra note 4, at 51-61 (defining the traditional view as "formalist," the more progressive view as the "process perspective," and the emerging view as the "social perspective"); Jo Anne Durako et al., From Product to Process: Evolution of a Legal Writing Program, 58 U. PIT. L. REV. 719 (1997) (describing the process approach as designed to teach lifelong skills adaptable to new writing situations).

Alan Purves identified these four reasons for reading student work and eight corresponding roles: to read and respond (as a common reader); to read and judge the text (as a proofreader, editor, reviewer, or gatekeeper); to read and analyze the text (as a critic or from an anthropological, linguistic, or psychological perspective); and to read and improve the writer (as a diagnostician or therapist). Alan C. Purves, The Teacher as Reader: An Anatomy, 46 C. ENG. 259, 260-62 (1984). Purves also suggested that "a good teacher would consciously adopt each of these roles or a combination depending on the stage at which the composition is read," the context in which the writing is produced, and the attitude of the students. Id. at 263-64.

All comments on student work are to some extent evaluative. The reasons for evaluating student writing range from predicting students' future grades or placing them in certain classes to making diagnoses and guiding students to improvement to measuring student growth and determining the effectiveness of a writing program. EVALUATING WRITING: DESCRIBING, MEASURING, JUDGING ix (Charles R. Cooper & Lee Odell eds., 1977).
the writer form and improve his writing in the future. The New Rhetoric image of a writing project as always in progress carries with it the assumption that the formative purpose is always more important, at least until the grading of a final paper. With a summative purpose, the teacher moves completely into his own rhetorical context because only the student's text can be the focus of his comments. With a formative purpose, the teacher's response can focus not only on the student text, but also on the student's subject, on the student as writer (and reader), and on the teacher as a reader (and writer).

The Auten model thus helps teachers identify different bases for their responses to student papers, bases that are located in both the student's and the teacher's contexts. A teacher may want to let the student know what strong points and shortcomings she sees in his arguments or explanations (feedback based on analysis of the student's subject, content, or meaning); she may want to let the writer know what she has determined are his major strengths and weaknesses (feedback based on diagnosis of the student writer and communicated to the student reader); she may want to let the student know how his paper affected her (feedback based on the reactions of the teacher reader and communicated by the teacher writer); or she may want to let the student know how his paper measured up to a set of textual criteria (feedback based on the features of the student text). Teacher reading and writing purposes are related: the reader who reads to analyze will be more likely to give content-based feedback; the teacher who reads to improve will be more likely to provide diagnostic feedback; the reader who reads to respond will be more likely to give reader-based feedback; the reader who reads to judge will be more likely to give text-based feedback. But a teacher can choose to respond on a basis that is different from the purpose for which she read. That is, for example, the teacher who reads to respond can choose to base her response on textual criteria, writer diagnosis, or content analysis as well as reader response.

86 See Horvath, supra note 32, at 207-08. Some comments seem to be written for other reasons: "to damn the paper with faint praise or snide remarks, to prove that the teacher is a superior error hunter, to vent frustration with students, to condemn or disagree with the writer's ideas, to confuse the writer with cryptic correction symbols." LINDEMANN, A RHETORIC, supra note 25, at 225.

87 See Auten, supra note 4, at 11-12.
C. Narrowing your subject: what paper are you reading?

Like the teacher without a composition theory, the teacher who does not have a clear view of her subject—the paper that she is reading—will choose a subject by default. By default, she will view the paper as a final product or as a paper that does not match up to the ideal final product. As a result, her comments may fail to recognize that “what one has to say about the process is different from what one has to say about the product.”88

The writing teacher who has examined her context and her purposes in reading and responding will choose another view of her subject. That is, rather than reading the text as complete in itself, the teacher will choose to view the paper as part of a work in progress, as a sample excerpted from a portfolio of writing, or as part of a rhetorical situation or field of discourse.89 No matter which view she takes, the teacher should read and respond not to the average text nor to an ideal text but to an actual text, a particular draft produced at a particular time by a particular student.90

A strong focus on subject and on actual text will reduce the danger that teachers will make, and that students will misunderstand, an avalanche of unfocused comments.91 Instead of an avalanche, teacher comments should “be suited to the draft we are reading,”92 not only in the sense of where most of our students are in the writing process but also in the sense of where a particular student is in his own writing process. The Auten

88 Sommers, Responding to Student Writing, supra note 13, at 154.
89 Louise Phelps writes that these views represent a continuum of development in teacher perspectives on the student text. That is, in the evaluative or summative attitude, the text is read as complete in itself; in the formative or process attitude, the text is read as one of a set produced during a composing process; in the developmental attitude, the text is read as a sample excerpted from a portfolio of writing stimulated by the writing class; and in the contextual attitude, the text is read as part of a rhetorical situation or field of discourse. Phelps, Images of Student Writing, supra note 48, at 49-59.
90 Student-teacher ratios can make particularized reading and response seem impossible or unbearable: “I must read every piece to the end. I must say to every student those magic words that every writer wants to hear: ‘I couldn’t put your writing down,’ only I say it through clenched teeth.” Elbow, Writing With Power, supra note 25, at 224. Commenting on only some things, rather than on everything, can save some of the time needed to respond more particularly, but the only real solution is manageable student-teacher ratios.
91 Because students “see no hierarchy in our comments, . . . they spend energy ‘fixing’ the little, easily repaired problems in their text, unsure of what to do with the larger questions concerning content.” Lape & Glenn, supra note 16, at 440.
92 Sommers, Responding to Student Writing, supra note 13, at 155.
model suggests, for example, that early drafts can be read for development of meaning (analysis of the student’s subject or content), with comments that raise questions or point to “breaks in logic, disruptions in meaning, or missing information” as well as comments that mark strong insights, well developed arguments, and thorough explanations. In other drafts, the focus of reading can shift to the student writer, to the teacher reader, and to the features of the student text. Thus, a particular draft can be read to diagnose the writer’s problems and improve the writer’s skills by providing options for revision or to respond as a reader by providing insight into areas of confusion or distraction or to point to features of the text such as syntax, word choices, and usage errors.

The New Rhetoric image of writing as always in progress and its classroom corollaries support the teacher’s focus on subject and actual text. By requiring a series of ungraded drafts before a final paper is due, the writing teacher can assure that most early drafts will be so individual that she will be forced to confront both the content and the structure of any particular paper. By asking students to set the agenda for teacher comments, both in “writer’s memos” and in individual or small group writing conferences, the writing teacher can assure that she confronts both the particular paper and the particular writer’s concerns.

D. Defining your role in reading and writing: who do you think you are?

In addition to an overall view of context and purpose and a specific view of her subject, the writing teacher takes on a particular role every time she reads and responds to a paper. New

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93 Id.
95 See Connors & Lunsford, Teachers’ Rhetorical Comments, supra note 29, at 224 (“[T]eachers invent not only a student writer but a responder every time they comment.”). Composition theorists and teachers have suggested a number of roles for writing teacher response. Brooke Horvath describes the roles of “editor, average reader, and more experienced writer” in addition to those of summative evaluator and motivator/friend. Horvath, supra note 32, at 212-13. Elbow and Belanoff suggest that “[a] ‘coach’ or ‘editor’ is a nice image for the writing teacher. For a coach or editor is an ally rather than an adversary. A coach may be tough on you, but she is not trying to be the enemy; she’s trying to help you beat the real ‘enemy’ . . . .” Elbow & Belanoff, supra note 81, at 271. Erika Lindemann links the roles that writing teachers take for themselves to their theory of writing instruction. That is, “writing as a product” teachers may view themselves as “experts” or “critics.” “Writing as a process” teachers may view themselves
Reflective Rhetorical Model

Rhetoric research suggests at a minimum that the writing teacher should consciously change her role as the student moves through the process. Thus, the writing teacher should read and write differently depending on whether the student is engaged in (1) generating thought (prewriting, invention, planning, drafting); (2) having second thoughts (monitoring, responding, reflecting, revising); or (3) moving toward rhetorical effectiveness (audience analysis, editing, proofreading). Complicating these changing roles is a necessary multiplicity: the teacher must be reader and writer and different kinds of readers and writers at the same time.

Thus, for example, writing teachers often read as diagnosticians no matter where a particular student is located within his writing process; in this role, the writing teacher reads to improve the writer but first reads for herself, discusses the paper with herself, explains its problems and strengths, and plans a course of instruction. When the student is generating thought, the teacher's most appropriate reading role may be as a coach, a reader who is an expert in the field and who can provide motivation to keep going as well as ideas and techniques to keep thinking. When the student is having second thoughts, the teacher's most appropriate reading role may be as a more experienced fellow writer, a reader who can tap into her own writing experiences to provide guidance about what she as a writer would do next. When the student is moving toward effective as "more experienced, confident" writers. "Writing as a system" teachers may view themselves as "facilitators" whose role is to "empower writers to membership" in a discourse community. Erika Lindemann, Three Views of English 101, 57 C. Eng. 287, 291, 293, 297 (1995) [hereinafter Lindemann, Three Views]. Janet Auten ties the kinds of comments that writing teachers make to three different roles they adopt: in their role as readers, their comments use "I"; in their role as coaches, their comments use "you"; and in their role as editors, their comments use "it" to identify writing problems in the text. See Auten, supra note 4, at 11-12.

For example, Donald Murray describes a progression in his writing conference roles as his students move through a project. In prewriting conferences, he helps students generate thoughts. As their drafts develop, he becomes a "bit removed, a fellow writer who shares his own writing problems, his own search for meaning and form." Finally, he becomes "more the reader, more interested in the language, in clarity. I have begun to detach myself from the writer and from the piece of writing ...." Donald M. Murray, The Listening Eye: Reflections on the Writing Conference, 41 C. Eng. 13 (1979), reprinted in The Writing Teacher's Sourcebook 3d ed., supra note 20, at 96, 100.

See LINDEMANN, A RHETORIC, supra note 25, at 224.

In the role of "more experienced writer, the instructor offers techniques, tricks of the trade, that the student can add to her repertoire and elaborates upon why certain features of a text—figures used, words chosen, examples employed—worked as well as they did." Horvath, supra note 32, at 212-13.
communication to a reader, the teacher's most appropriate reading role may be that of the average reader in the field, the kind of reader who looks to the writer for necessary information but overlooks technical errors that do not affect meaning,\(^{99}\) or perhaps that of critical expert in a particular discourse community, the kind of reader who can help the writer test his final analysis and turn out a professional final piece.\(^{100}\)

Moving from the student's context to the teacher's, the teacher-reader then decides what writing role to play. After choosing to play a particular writing role, the writing teacher must establish her authority to speak in that role.\(^{101}\) Establishing authority to speak in a particular role is not the same thing as establishing the teacher as the expert in the classroom. Rather, it means establishing the teacher as a credible and persuasive coach, more experienced fellow writer, average legal reader, or critical expert. Establishing credibility requires the writing teacher to acquire (or to borrow) and then to share her experiences in those roles.\(^{102}\) Acquiring persuasiveness requires the writing teacher to show that she shares important values with her students, thus allowing her to "be better able to per-

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\(^{99}\) The role of average reader serves to guard against "excessive response and an unreasonable preoccupation with relative minutia." Id. at 213. As an average reader, "the evaluator, though a captured audience, tries to respond as might a real-world reader, consequently not making overmuch of defensible fragments, slightly inexact word choices, contractions, split infinitives, and other slips of mind or pen that would not bother him if they were noticed elsewhere." Id.

\(^{100}\) This critical editor is the kind you would like to have just before publication of a final piece, the editor who "addresses all clear-cut errors and deficiencies." Id.

\(^{101}\) Peter Elbow suggests that writing teachers acknowledge that their roles conflict and tell students when their roles have changed from "Now I'm being a tough-minded gatekeeper, standing up for high critical standards in my loyalty to what I teach," to "Now my attention is wholeheartedly on trying to be your ally and to help you learn, and I am not worrying about the purity of standards or grades or the need of society or institutions." Peter Elbow, Embracing Contraries in the Teaching Process, 45 C. ENG. 327 (1983), reprinted in The Writing Teacher's Sourcebook 3d Ed., supra note 20, at 65, 75.

\(^{102}\) Under social construction theory, for example, the evaluator should be a professional in the particular discourse community. See Lindemann, Three Views, supra note 95, at 298-99. According to one study, the average range of practice experience for legal writing professors is four to seven years. See Ramsfield, supra note 3, at 18 & n. 130. For those whose experience is less extensive or no longer current, research into how legal experts read and write can fill some of the gaps. See, e.g., James F. Stratman, Teaching Lawyers to Revise for the Real World: A Role for Reader Protocols, 1 J. LEGAL WRITING 35 (1991). In addition, the class itself can become a legal writing community, one that develops its own guide to how an average legal reader would read a memo or brief. This method may help "students internalize and apply criteria for effective writing much more quickly than teacher-controlled assessments do, and it reinforces the principle that students really are writing for . . . the discourse community which will eventually judge their work." Lindemann, Three Views, supra note 95, at 298-99.
suade the audience to consider . . . her point of view on more controversial matters as well."103 As in a conversation, where the participants often take time at the beginning to establish common ground, the teacher can establish common ground for her oral and written comments before she makes them. She can, for example, gather information from her students about their reading and writing knowledge and experience as well as about the values they place on reading and writing.104 She can, for example, let students know more about her own reading and writing knowledge, experience, and values.105

E. Reaching your audience: For whom are you writing?

Writer-based prose describes what the writer has done, what the writer has learned, what the writer knows, or how the writer feels.106 Although helpful to the writer, such prose rarely presents information that the reader needs or wants. Yet, "writer-based response" is said to be pervasive among teachers: "[t]he judgments expressed in writing by teachers often seemed to come out of some privately held set of ideals about what good writing should look like, norms that students may not have been taught but were certainly expected to know."107

Situated now in the teacher's rhetorical context, the teacher-writer who wants to meet the needs of the student reader should analyze her audience. Just as she expects her students to analyze their potential audiences, she needs to know more about her actual audience's knowledge, needs, beliefs, and values.108 Because the writing teacher's audience is actual and

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103 Bizzell, The 4th of July, supra note 41, at 45 (advocating the use of broader cultural knowledge not only to increase the rhetorician's credibility but also to influence the rhetorician).
104 Writing histories can be obtained through journal assignments, writing conferences, and classroom discussions. In addition to information about writing backgrounds, it may be helpful to gain some knowledge of the cultural backgrounds of students.
105 Believing that "effective commentary depends on a mutually understood context," Auten advocates that teachers share reader guidelines with their students, explaining the commenting roles they play and the kinds and the purpose of the comments they make. See Auten, supra note 4, at 11-12.
107 Connors & Lunsford, Teachers' Rhetorical Comments, supra note 29, at 218. Moreover, teacher commentary "mixes modes and purposes in a haphazard way which resembles the prose of basic writers rather than that of well-trained rhetoricians." Auten, supra note 4, at 3.
108 Analysis of a legal writing student audience should start with the results of the Enquist study of student reaction to legal writing teachers' feedback. The study reached
present, instead of potential and absent, the task should be easier than the task we assign students. The writing teacher converses with his audience, not only in the classroom and in writing conferences, but also in written exchanges. Both orally and in writing, the writing teacher can ask questions of his audience and can respond to questions from the audience. Thus, for example, by requiring students to keep journals or to hand in writer’s memos with assignments, the writing teacher can obtain a history of a current draft, a list of specific questions or problems with a current draft, a description of the writer’s intended audience and purpose.\textsuperscript{109}

As with any writing, the teacher-writer’s purpose will govern not only the substance of his message but also its expression. The tone of teacher commentary often reflects only the limited purpose of judging a final product: many teachers appear to construct “a general and objective judge . . . speak[ing] to the student from empyrean heights, delivering judgments in an apparently disinterested way.”\textsuperscript{110} Here again, role should affect tone. When the teacher’s role is to act as coach, her tone should motivate by being encouraging and empathetic. When the teacher’s role is to act as more experienced fellow writer, his tone should be helpful, friendly, and informed. When the teacher’s role is to act as average legal reader or critical expert, her tone may become more removed, professional, and practical.\textsuperscript{111}

these conclusions: (1) students want a summarizing end comment; (2) students want in-depth explanations or examples; (3) students want positive feedback; (4) students do not want to be overwhelmed by too many comments; (5) students want comments to continue throughout the paper; (6) students want comments that identify a problem and suggest a solution or offer a rationale for a solution rather than label or coded comments; (7) students want comments phrased as questions to be the right kinds of questions. See Enquist, \textit{supra} note 4, at 155.

\textsuperscript{109} See, e.g., Sommers, \textit{The Writer’s Memo, supra} note 69, at 177-79. Sommers notes that specific questions from student to teacher “virtually require a collaborative response from the teacher.” \textit{Id.} at 179.

\textsuperscript{110} Connors & Lunsford, \textit{Teachers’ Rhetorical Comments, supra} note 29, at 224.

\textsuperscript{111} The students in the Enquist study used the following adjectives to describe the tone of the teacher critiques: encouraging, empathetic, friendly, professional, neutral, objective, very distant, discouraging, frustrating, condescending, sarcastic, harsh. See Enquist, \textit{supra} note 4, at 170-73. The study noted that the instructor whose comments were ranked least useful by the students also was consistently assessed as having a professional or negatively professional (neutral, objective, very distant or discouraging) tone. \textit{Id.}
Having settled on a subject and a role for reading within the student's rhetorical context, the writing teacher must decide more specifically on his purpose and role for responding within his own rhetorical context. Those decisions will govern his overall approach and the basis for his feedback as well as its form, its medium, its mode, and its tone. First, the teacher must decide whether the feedback will be primarily summative, a summary that evaluates the current paper, or primarily formative, a response that helps form the next paper. Second, the teacher must decide whether his feedback will be based primarily on content analysis, writer diagnosis, reader response, or textual criteria.112

Third, the teacher must decide whether the feedback should be provided in writing or in person or both; if in writing, he must decide whether to comment primarily in the margins or primarily in a summary or global comment at the end. As for the choice between written and oral comments, the relative permanence of written comments (and of tape recordings), conveying more importance than an offhand remark, can argue for and against their use in a particular response. Thus, for example, feedback based on reader response or content analysis may be better provided in person: the responses are immediate and can be explained, misinterpretations can be corrected, and differences can be negotiated.113

As for the choice between marginal comments and summary end comments, the Auten rhetorical model, the Anson reflective teacher, and the Connors and Lunsford study support the use of appropriate marginal comments, in particular when the feedback is based on content analysis or reader response. Marginal comments can effectively point to places where the reader was

112 Peter Elbow and others have divided feedback on writing into two more general categories: criterion-based and reader-based. See ELBOW, WRITING WITH POWER, supra note 25, at 240-51. If a long list of very specific questions is used, criterion-based feedback is especially good for revising, Elbow says. Reader-based feedback, on the other hand, provides "the main thing you need to improve your writing [over the long run]: the experience of what it felt like for readers as they were reading your words." Id. Elbow provides examples of criterion-based and reader-based questions. Id. at 252-63.

113 A study comparing teacher comments with peer responses found that peer reader-writers have "the advantage of immediacy in time and space"; they can explain face to face and immediately; they can explain faster and more completely by speaking than they can in writing. See Gere & Stevens, supra note 34, at 85.
distracted or confused, where more support was needed, or where good ideas or arguments were raised.\textsuperscript{114} As the Auten model indicates, such marginal comments may "pry open" the student text by challenging its completeness and asking for clarification, amplification, and investigation.\textsuperscript{115} Similarly, although the Anson reflective teachers did not write many marginal comments, they did use such comments to raise questions that "seemed geared toward rethinking certain decisions" or to praise the writer for an especially effective choice.\textsuperscript{116} As the Connors and Lunsford study noted, marginal comments can be effective in calling attention to many different levels of rhetorical concern.\textsuperscript{117}

Finally, the teacher must decide what commenting mode and what tone best fits his specific purpose.\textsuperscript{118} Among the com-

\\textsuperscript{114} The most consistent finding from the Enquist study was that students want summary end comments. See Enquist, supra note 4, at 155-56. This finding is not surprising given my assumption that most students believe that the primary purpose for teacher commentary is to provide a summative evaluation, to let the student know where his paper stands and why he received the grade he earned. But when I use summary end comments on works in progress, I find that they are frequently too general or too abstract to help students form the next draft. By endorsing margin comments for reader response and content analysis, I do not mean to endorse interlinear editing or writing "awk" or "subject-verb agreement?" in the margins. Instead, I mean to endorse the writing of margin responses such as, "How does this point relate to the point you made on the last page about duty?"; "This argument develops the contrasts between your case and Smith. Have you considered the similarities too?"; "Can you take this argument farther? For example, did Bonnie say she wanted to hurt Clyde?"; "How would it change your analysis if you decided that the court really did mean foreseeable in the sense you have just described?" I also endorse pulling the margin comments together into a few overarching themes, especially when the student has gotten to the point of putting together a revised draft. Cf. Fajans & Falk, Comments Worth Making, supra note 4, at 366-67.

\\textsuperscript{115} Auten, supra note 4, at 8-9.

\\textsuperscript{116} Anson, supra note 10, at 353-54.

\\textsuperscript{117} Teachers who make particularized comments on papers can call "all sorts of rhetorical elements—not just very large-scale ones—to students' attention." Connors & Lunsford, Teachers' Rhetorical Comments, supra note 29, at 460.

\\textsuperscript{118} Writing teachers use an array of commenting modes that may include the following: (1) correcting, (2) emoting, (3) describing, (4) suggesting, (5) questioning, (6) reminding, and (7) assigning. Elaine O. Lees, Evaluating Student Writing, 30 C. COMP. & COMM. 370 (1979), reprinted in The Writing Teacher's Sourcebook 263 (Gary Tate et al. eds., 2d ed. 1988). Many other classifications of comments have been suggested. See, e.g., Fajans & Falk, Comments Worth Making, supra note 4, at 347-48 (distinguishing four basic kinds of feedback: exploratory, descriptive, prescriptive, and judgmental) (citing Kristen R. Woolever & Brook K. Baker, Diagnosing Legal Writing Problems: Theoretical and Practical Perspectives for Giving Feedback, presented at the Legal Writing Institute Conference (Ann Arbor, July 1990)). The authors suggest that exploratory feedback, helping the writer think through her ideas, should be used in the early stages of the writing process; descriptive feedback, describing the reader's reaction to the writing, and prescriptive feedback, diagnosing problems and suggesting solutions, in the middle
menting modes, "correcting" the student's text and "emoting" about the teacher-reader's judgment of it best suit the summative purpose of evaluating the current draft rather than the formative purpose of improving the next draft. These kinds of text-based comments place the burden of revision on the teacher, who often has completed the student's task while judging and correcting the paper. Thus, these commenting modes are appropriate, if at all, when the teacher is commenting on a finished or almost-finished product.

The commenting mode of "describing" falls in the middle, where the descriptions may be summative and based on writer diagnosis (what went wrong, why the teacher thinks so) or formative and based on reader response (here's where I got confused, maybe the reason was). Most appropriate to a formative purpose, when the teacher is commenting on an early or middle draft, are the commenting modes of "suggesting," "questioning," "reminding," and "assigning." The first three shift the burden of revision to the student while the last mode "provides a way to discover how much of that burden the student has taken." 119

IV. TRANSLATING THEORY INTO PRACTICE

The following examples sketch a sequence of teacher commentary, arranged as though every student progresses steadily, in defined stages, through the writing of a paper. Even though New Rhetoric research casts doubt on the certainty or the universality of such a progression, it is a convenient way to talk about student writing as long as we are constantly reminded by our own writing that writing does not often happen that way. Even though I am more interested in ideas at the beginning of a stages; and judgmental feedback, evaluating the quality of the work, near the end of the writing project.

119 Legal writing teachers have suggested that "questioning" deserves special attention in commenting on the texts of legal writing students. See, e.g., Kearney & Beazley, supra note 4, at 901 (questions treat the paper as a draft to be revised and place the responsibility for learning on the student). The difficulty is distinguishing between questions which "challenge students to think harder and deeper and write better, and which ones intimidate, frustrate, and antagonize?... [W]hich kinds of comments promote lasting learning and which ones simply help the student fix a problem in a given assignment?" Enquist, supra note 4, at 190-91.

120 Id. at 265-66. "Much emoting, correcting, and describing now seems to me to fall into the same category as Levi's pressing; not exactly wrong but useless. ... Our covering students' papers with suggestions and corrections is not the same thing as leading students to revise for themselves, and ... the difference between them is crucial." Id.
writing project, more interested in how to fit those ideas into a structure a little later, more interested in putting the structured ideas into the right words a little later, and more interested in reaching my audience at the end, I am interested as a writer in all these things all the time, and so I am going to read my students' papers with all these things in mind. The rough progression does, however, remind me to shift my focus for reading and response from the subject to the writer to the reader to the text and not to emphasize all four all the time.

A. Reading the “generating thought” draft as a writing coach

The first example is the teacher who reads an early “generating thought” draft and decides to respond as a writing coach. The focus in reading is on the writer's initial thoughts about the subject. Because the early draft stage is much too early to sum up, the teacher's feedback must be formative, and because few text-based or content-based criteria are appropriate for judging the generation of thought, the feedback should be based on reader response or on writer diagnosis. Most often, after reading such a draft, the teacher will decide that the writer did not go far enough in invention or creation of arguments or support for arguments. Combined with description of what she “read” in the draft, the teacher should use the commenting modes of suggesting additional invention techniques, questioning whether related ideas might be worthwhile, reminding about invention activities discussed in class, and assigning a specific technique or further exploration of a particular idea. To fit her writing coach role, the tone of these comments should be encouraging and empathetic.

Reader response: Reader-based feedback should come primarily in the margins or in person so that the reader can point specifically to sections of the draft where ideas are missing or where good ideas need more development. Reader-based feedback begins with description of the reader’s response and moves on to suggest, question, remind, and assign:

121 See Lynn Quitman Troyka, Closeness to Text: A Delineation of Reading Processes as They Affect Composing, in ONLY CONNECT, supra note 27, at 187, 194-95. Noting that the writer must be able to read her own text from a great distance to determine her “meaning”; at a middle range for form, organization, and style; and at a close range for words and letters, Troyka points out that operating simultaneously at different ranges is not the same as doing first one thing and then another. Id.
When I read this paragraph, I felt like you had identified the major argument about John’s negligence, but that there must be more to it. Perhaps it seemed obvious to you, but additional arguments may flow from your main idea or may be necessary to support it. For example, did you think about his prior conduct? What about his purpose in driving too fast? What about the road conditions?

The last section showed close reading of the cases, careful attention to the facts, and good insight in creating arguments. At this point, however, I got the impression that you just ran out of time and energy. That’s very natural when you’ve done a good job with part of a writing project. The passage of time will help, but another thing you might do to get back on track is to go back to your research. See whether re-reading the secondary authorities, for example, helps you come up with some ideas on how to develop this section as well as you did the last section.

I’ve gotten this far in your draft, and I really believe that the cases are very similar. But so far, I have read only about the similarities between the two cases. Remember our class discussion about considering both the similarities and the differences? What are the differences? What arguments can the government make based on the differences? Generate a list and add the better ones to your draft.

**Writer diagnosis:** If the teacher decides on writer-based diagnosis, she probably will provide it in more global written comments so that she can discuss more generally what invention techniques seemed to work, what constraints may have disrupted the generation of thought, and what additional techniques might open up further generation of thought. Like reader response, writer diagnosis can describe, suggest, question, remind, and assign:

In section B of the paper, your argument showed good understanding of some fairly complicated case law. But it seemed that you were satisfied with the correctness of your understanding and did not generate any alternatives. Remember our class discussion about the danger of obvious solutions? Try listing all the possible plain language arguments and then see whether you can develop any additional support for them. Maybe one of the arguments will surprise
you, upsetting your understanding of the case law interpretations as well.

Section B of your paper shows that you know how to analogize between the Lee case and your case. But there are some obvious differences between the cases, and you apparently have not evaluated whether they should make a difference to the outcome. Have you thought about whether it makes a difference that Johnson moved voluntarily and Lee moved because he was forced to? What about the age difference (Johnson was 17, Lee was an adult)? What about the different reasons given for bringing the case in federal court? What does the court say about these factors? Think about these questions and bring a list of the new arguments that you generate to your writing conference.

B. Reading the “second thoughts” draft as a more experienced fellow writer

The second example is a “second thoughts” draft and a teacher who chooses to respond as a more experienced fellow writer. The primary focus in reading the draft shifts from the subject to the student writer. Because the paper contains only second thoughts, the teacher still provides primarily formative feedback to help the student monitor her current understanding and decide what to do next. This time, the teacher may decide that the feedback will be based on content analysis, writer diagnosis, or reader response. The tone of these comments is more assured, reflecting the writer's expertise, but remains helpful and friendly. In this example, the teacher decides that the draft has two primary shortcomings: the writer is having trouble pulling related ideas together and judging the worth of arguments.

Content analysis: Modeling the kind of feedback that might be provided by an expert writer in the field, these comments describe and suggest conventional logical and organizational

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122 If a new attorney shared an early draft with a more senior attorney, the reading lawyer would not write: “Good organization. Analysis is on the right track. Keep developing the arguments. Make sure you edit and proofread critically.” And if the reading lawyer did make those comments, they would not help the writer. Instead, the reading lawyer would pose questions in the margins, mark sections that seemed illogical or inaccurate or poorly thought out, respond positively or negatively to particular statements, perhaps suggest a different organization or a shift in perspective.
frameworks as well as discourse-specific standards for judging the validity of arguments. For example, the teacher might write:

Some of the ideas in this section of the paper need to be better integrated. For example, the argument in paragraph 6 seems closely related to the argument I read earlier, in paragraph 2. Legal readers are used to seeing issues discussed issue by issue and subissue by subissue. Work through your paper and list the main idea of each paragraph in the margin; then see which ideas are big ideas and which ones are just smaller parts of a big idea. Try to rearrange the paragraphs so that the big ideas are in a logical order and the smaller parts of each big idea fit together within that idea, again in a logical order.

As for the writer's problem in judging the worth of arguments, the teacher might write:

Your evaluation of the argument in this paragraph will seem too superficial to a legal reader. The legal reader wants to see support for the rule that you say comes out of the cases. How do you provide that support? See the samples we revised in class last week. In addition, the legal reader wants a fairly thorough comparison of not only the facts but also the reasoning of the cases you say are relevant. Again, see the samples we revised in class last week for an example of how and why you should make such a comparison.

Reader response: Modeling the kind of feedback that might be provided by an average legal reader, the teacher can focus on the points of her confusion while reading and let the writer know whether the confusion seemed to be caused by separation of ideas, lack of information, or gaps in logic and explanation.

When I reached this paragraph in your draft, I was confused because the idea seemed to be the same as the one you developed earlier, on page 3. As I continued to read, I saw the same idea again, this time on page 6. Pressed for time and accustomed to step-by-step development of arguments, most legal readers will appreciate seeing all of the discussion of one idea in one place.

At this point in the draft, I am distracted because information seems to be missing. As a legal reader, I want to know what the rule is and where it came from before you start
telling me how it should apply here. So I go looking for the rule, and then I lose track of your point.

When I read this section, I agreed with you up to this point in this paragraph. From this point on, I could not make the leap that you wanted me to make without some more explanation of why the result should be what you say. It's not enough for a legal reader to be told that the facts fit the language; does the reason for the rule fit the facts too?

**Writer diagnosis:** Diagnostic feedback from a writing teacher who is responding as a more experienced fellow writer focuses on strong points in the organization and evaluation of arguments, draws parallels to or contrasts from the weak points, and suggests options for revision. While reader response is provided primarily in margin comments, diagnostic feedback is best provided in summary comments because the diagnoses and options for revision need more support and explanation. For example:

Section C is very well organized, and the arguments are developed and thoughtful. That may be because you wrote it last, after you had figured out what you wanted to say in the first two sections. Now, you should take another look at the structure of Sections A and B, and see whether you can reorganize them in the same way that you did Section C. In addition, look in particular at what you did with the subissue on page 6. See whether you can develop the other arguments as thoroughly.

Writer-based feedback can describe the writer's own experiences working through similar writing problems and assign similar techniques:

When I reach the point in my own writing where it is too long and jumbled to see the big picture, I try to generate a one-page outline (by copying the whole paper and then deleting everything but the topic sentences). Then I can see where to move things and where to delete things and where to add things. Try to generate such an outline; come talk to me if you still have trouble sorting things out.

Regardless of the basis for her feedback, the teacher responding to a “second thoughts” draft as a more experienced fellow writer should supplement her written comments with writing conferences where she and the student can discuss the
student's plans for revision more specifically and more concretely.\textsuperscript{123}

C. \textit{Reading the nearly final draft that is “moving toward rhetorical effectiveness” as an average legal reader}

The third example is the teacher who views his subject as a nearly final draft and responds as an average legal reader. The primary focus in reading shifts again, this time to the reader. Because the draft is not yet final, formative feedback continues to be most appropriate; because the draft is almost final, feedback may be based on reader response, content analysis, writer diagnosis, or textual criteria. Reflecting a new distance from the subject and the writer, the tone of these comments becomes slightly removed, professional, and practical. In this example, the teacher determines by reading the draft that the student is still having problems with his analysis as well as with legal writing conventions and textual correctness.

\textit{Reader response}: Because the teacher is acting as an average legal reader, the most natural feedback may be based on reader response. To address the student's problems with discourse conventions, the feedback should take the form of suggestions, reminders, and assignments to observe particular conventions. For example,

At this point in your draft, I am wondering why you did not follow the typical pattern of starting your discussion with the more definite and precise language of the statute. Although it may make sense to you to develop your case law argument before your statutory argument, readers like me are thrown off when they have their expectations disrupted. If you have a good reason, go ahead, but tell the reader what it is.

Right here, at the very beginning of your brief, I am lost. I want to know right away what you think the issue is. Remember that when they read the question presented in an appellate brief, most judges want to know both the governing rule and the important facts.

\textsuperscript{123} See Gere \& Stevens, \textit{supra} note 34, at 103 (noting that oral responses by peer groups were more focused on specific suggestions directed at the actual text, a good thing, and more directive, possibly a bad thing).
My reaction to this Statement of Facts is that any analysis based on it is questionable because the facts tell only one side of the story. This section is supposed to include both the bad and the good so that your supervisor, me in this case, will know the full picture and will trust your analysis of what’s most likely to happen.

Content analysis: At this nearly final draft stage, the teacher may instead view his role as critical expert and choose to provide feedback based on expert criteria for analyzing content. In this role and with this basis for feedback, the teacher’s written comments must provide support for the criteria being imposed:

Most judges will not simply apply a case law rule even if the facts are similar until they examine whether the result will make sense in a particular case. Look at what the court does in the Rodriguez opinion when it discusses whether the case should be an exception from the reasonable suspicion standard although the facts seem to fit the rule. Try to do something similar in your own argument.

An appellate brief is incomplete without a statement of the standard of review and some explanation of why that standard is appropriate here. See the appellate rules for the requirement, and see the textbook discussion of when particular standards are used. The standard of review often determines the outcome of an appellate case as you can see from reading the Lewis opinion. So your very first argument should try to persuade the court to use the standard of review that you think is appropriate for this case.

Writer diagnosis: Because the student is still having problems with his analysis, the teacher may decide instead to base his feedback on writer diagnosis.

The draft indicates that you have not yet concentrated on the counterarguments concerning the issue of assumption of the risk. To see both sides, try to put yourself in the other attorney’s place. What would you argue about the standard? Can you distinguish the Brown case? If you have thought about the counterarguments, but decided they were insubstantial, try to further develop at least the best one.
Text correction: As for the student's problems with correctness, because the feedback is still formative, the most appropriate comments are those that describe patterns of errors and then suggest, remind, or assign, rather than those that mark or correct each error.

This draft consistently omits semicolons when they are needed to separate two sentences. I marked a few examples. The rule is that if the sentences could be separated by a period, they need at least a semicolon, not a comma. Do one reading of your draft looking only for this problem.

D. Reading a final draft as a teacher and evaluator

Finally, every teacher will eventually read, and probably grade, a final draft. The focus during reading makes a final shift, this time concentrating almost exclusively on the student text, and the teacher responds primarily as an evaluator. Teacher comments can still be based on reader response or writer diagnosis, but are more likely to be based on content analysis and textual correctness. At this point, teacher comments should summarize the writer's strengths and weaknesses, be based on objective criteria for judging content and text, and be provided in global or summary written comments. If this primarily summative feedback is to serve any formative purpose, it should be neither too specific: "You missed the point of the Jones case," nor too abstract: "You need to work on large-scale organization." Instead, teacher comments should point to a specific problem with content or text and suggest a solution that can be applied to a similar problem in the future:

The memo fails to recognize that in Jones, the plaintiff had only a fourth grade education. Next time, make sure you look carefully at the facts of the cases you are relying on to see whether there are differences that might be significant, such as here where your client had a master's degree and might be held to a higher standard.

I marked a number of the sentences in the memo that were too complex or too wordy to follow easily. Remember how we restructured similar sentences in class by finding the actor and the action? Before you revise your next memo, try reading it aloud to yourself. Apply the same principle to the
sentences that “sound” too long or too complicated when they are read.

V. CONCLUSION: THE NEED FOR CONTINUING RESPONSE AND REFLECTION

The primary purpose of teacher commentary is to provide students with responses that prompt students to reflect on and revise their own writing. If teachers are to learn to respond in ways that are disrupting and thought-provoking enough to prompt revision, they will also need to gather responses that encourage them to reflect on and revise their own reading and writing of student work.

The first opportunity for reflection is to pick a view of the writing classroom and the job the teacher is supposed to do. The first opportunity for response is to design and test writing assignments that fit that view. While creating an assignment, the writing teacher should decide when to read and respond and what role to play at each point. Before responding to an assignment, the writing teacher should gather information about her audience. While responding to an assignment, the writing teacher should monitor her reading and response, checking to see whether her role and her feedback fit her subject and her student's actual text. While meeting with students, the writing teacher should monitor her audience's interpretation of her responses. After a writing project is over, the writing teacher should monitor the effectiveness of her reading and response in achieving her specified purpose with her intended audience. Finally, she should share her responses with and seek responses from her fellow teachers. By gathering such responses, we continue to learn to respond.

124 Unless teachers monitor what their students read and hear, they may assume that their audience can easily interpret what they say or write. The students' context for reading our responses is also shaped by their assumptions: they assume our comments will be authoritative and grade justifying. For example, students in one survey viewed some "reader reactions" as insults; other students felt that "coaching" questions were belittling rather than encouraging; and others reported that questions about their writing choices made them want to respond, "If I knew the right way, I wouldn't have gotten it wrong in the first place." Auten, supra note 4, at 7.

125 Without such a monitoring device, "[t]eachers often create idealized images of their own instruction (including their response styles) which suggest to them that they no longer need to participate in ongoing instructional development." Anson, supra note 10, at 358-59 (citing an informal study which found a gap between what experienced teachers believed their response styles to be and what those styles actually were).
A Snapshot of Legal Writing Programs at the Millennium

by Jo Anne Durako

I. OVERVIEW

Periodically the legal research and writing (LRW) field takes a look at itself through the lens of a national survey. This article is the fourth comprehensive, national review of legal research and writing programs to be published since the first survey was conducted in 1970. The panoramic picture developed through the national surveys achieves added depth through other narrow, targeted surveys focusing on specific details. The

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1 © 1999 Jo Anne Durako. All rights reserved. Director of Legal Research & Writing, Rutgers School of Law at Camden. B.A., J.D. University of Florida; Ed M. Harvard University. I would like to thank Louis Sirico, who administered the two prior surveys and helped me prepare the 1999 version and who provided thoughtful comments on this article; Kathryn Stanchi, who gave generous encouragement and insightful critiques; Jan Levine and Pam Norrix, who reviewed the draft survey; and the 117 overworked and undervalued legal writing directors and administrators who completed the surveys included here. Final thanks go to my administrative assistant, Joanna Mickelson, who spent a good deal of the summer of 1999 working on the survey report and more time on this article.


The 1999 Survey builds substantially on the structure of the recent surveys conducted by Louis Sirico of Villanova Law School. Its scope is focused on the same areas of salary, workload, and status as the last two national surveys. While the 1997 and 1998 surveys focused primarily on questions relating to LRW directors, the 1999 Survey expanded that scope by including more questions about non-director teachers. The author consulted with the boards of directors of the two sponsoring organizations, the Legal Writing Institute and the Association of Legal Writing Directors, to determine the desired direction and scope of the 1999 Survey. We plan a broader survey for 2000.

1999 Survey described in this article was jointly sponsored by the Association of Legal Writing Directors and the Legal Writing Institute as part of an on-going, annual effort to take a snapshot of writing programs. This survey adds to the expanding album of year-end school pictures and captures the look of writing programs around the country at the millennium.4

This snapshot captures some surprising images. What is perhaps most striking from this survey is the great diversity in program designs and features among the 117 participating law schools. Just as law schools differ greatly from one another, legal writing programs display a wide variety of staffing models, curricular designs, and administrative choices. A second striking feature of these diverse programs is the wide range of salaries paid LRW professionals — with a difference of over $100,000 in annual salary from the highest to lowest salary — and truly shocking low salaries for experienced lawyers doing demanding jobs. Further disturbing details in this picture are the staggering workload on writing teachers, the second-class citizenship of writing professionals in the academy, and the third-class citizenship of female writing directors. To be sure, there are bright spots and evidence of progress, but the rate is disappointingly slow to develop.

II. GOALS

One goal of conducting national surveys has been to collect comparative data on writing programs, which is essential evidence to consider when designing and improving legal writing

4 In early April 1999, we sent the survey to 182 law schools listed in the American Association of Law School (AALS) Directory. Copies were sent by regular mail and by electronic mail using a listserv for legal writing directors. Members of the Survey Committee made follow-up telephone calls and sent e-mail reminders in an effort to increase the response rate. Ultimately, 117 schools responded by the time the data input had to be ended in mid-June to allow the survey results to be distributed at the directors’ conference in July.

The survey questionnaire was comprised of 9 parts - Geography, Staffing Models, Director Status, Director’s Compensation, Director’s Workload, LRW Faculty Members, LRW Adjunct Faculty, Teaching Assistants, and Advanced Writing Skills - with 63 questions covered in a 13-page questionnaire. The survey took approximately 30 minutes to complete. Many questions included several parts, each requiring a separate response. Virtually all responses required choosing from among a selection of answers rather than writing a narrative response. Some responses called for providing information, generally numbers, dollar figures, or percentages. To aid the data analysis, respondents were urged to do their best to choose the response that most closely represented their program. Admittedly, what this technique afforded in generalizability was sacrificed in precision in some areas with the most diverse characteristics.
programs. The data must be widely distributed and be in a useful form to meet this goal. This article is intended to find a broader audience for the data from this survey by publishing it soon after its collection. In addition to the obvious audience of legal writing professionals, deans, administrators, non-writing faculty, and others interested in legal education may more likely and easily have access to the 1999 data in this published form. As Legal Writing: The Journal of the Legal Writing Institute comes on-line, the survey data will be even more widely available and more useful, because it will then be more easily searchable.

The national surveys, along with other sources such as the American Bar Association Sourcebook on Legal Writing Programs, provide other helpful guides to developing writing programs by describing “best practices” and national norms. The surveys also help measure the progress being made in moving toward those best practice — and the gaps that remain. Another goal of this survey is to provide the necessary impetus to discussions on those matters requiring further investigation and analysis.

Beyond the broad goal of gathering general data on writing programs to provide baseline data, a further, specific goal of the 1999 Survey was to investigate some trends in the field of legal writing. As LRW has come of age, program administrators have

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5 The term “non-writing” faculty is used to refer to, and distinguish, law school faculty whose primary responsibility is teaching non-writing courses from LRW or writing faculty.

6 Copies of the 1999 Survey Results were distributed to approximately 100 participants at the 1999 Conference of Legal Writing Directors in Boston, MA on July 29, 1999. Additional copies were sent to 182 law schools listed in the American Association of Law School Directory. Some of these copies made their way to deans. See, e.g., letter from Harvard Law School Dean’s secretary to the author, dated August 10, 1999. (On file with author on her bulletin board.)

7 The Legal Writing Institute, publisher of this journal, is discussing with LEXIS-NEXIS the possibility of offering this journal as part of its electronic data base. Having the survey results on a searchable data base is extremely useful for those who are searching for answers to specific questions, allowing them quick and accurate access to data without the need to read lengthy survey documents. Plans are also in the works to publish the survey results on a website.

8 RALPH BRILL, ET AL., ABA SOURCEBOOK ON LEGAL WRITING PROGRAMS (1997).

9 Sometimes follow-up investigation and analysis must be performed on a smaller scale than the national survey allows, for example, looking at regional statistics. This year many programs asked for individualized comparisons to be developed to allow for more pointed regional salary comparisons for public law schools or salaries for adjunct teachers in specific regions. Others were interested in the titles used for LRW faculty or LRW faculty voting rights.
new issues to explore. Chief among these issues for the 1999 Survey was to investigate possible differences in the treatment of female and male writing program directors. A second set of questions was added to gather information about advanced legal writing skills training, an area recognized to be growing in the field. Other questions were added to expand the information gathered in prior years about legal writing teachers who were adjuncts or student teaching assistants. Finally, the survey continued to provide salary, workload, and status data that legal writing professionals need to help them gain improvements in programs that lag behind national norms.

III. A LITTLE HISTORY: WHAT WRITING SURVEY QUESTIONS TELL YOU

One quick measure of the progress that has been made in the LRW field is the difference in emphasis in the first writing survey in 1970 and the 1999 Survey. In the almost thirty years since the first survey and the over fifty years since the category of “legal writing” was first included in the American Association of Law Schools’ Directory of Teachers in Member Schools, the field has made notable progress. What teachers think about legal writing is no longer a primary concern, nor is there an implicit assumption that the teachers may dislike their subject.

The 1970 survey sought to investigate several hypotheses quite different from the investigative thrust of recent surveys. The primary focus of the first survey was on faculty attitudes toward the significance and staffing of legal research and writing programs and whether those courses had evolved beyond

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10 See Questions 60-63 and Appendix B of the 1999 Survey, supra note 2.
11 Several other areas were also explored, such as titles given legal writing professionals and grading policies. One other noteworthy change from the prior surveys is the change in the geographic regions. A new region was created to extract New York City and Long Island salary data from data reported for the Northeast region. See 1999 Survey supra note 2, at Question 1 creating a new Region VIII. There are significant differences in the averages for these two newly constituted regions. See the bar graph in the 1999 Survey supra note 2, at 6.
A review of the survey results easily shows new areas of inquiry where there is no comparable 1998 data listed, see, e.g., Question 14 of the 1999 Survey asking what title is used for the legal writing director in official law school publications.
their earlier objectives of teaching grammar and legal bibliography. More specifically, that early survey investigated four questions that showed a decidedly changed emphasis. Here are four broad questions as they were worded in the 1970 survey.

- Did teaching responsibilities for LRW fall disproportionately on older professors, the young in rank and years of service, and librarians?  
- Was there a pattern of assignment to the unwilling?  
- Was there a desire to escape from the teaching assignment?  
- If one accepts that "few men really like to teach" LRW, why is that so?  

A further marker of the maturing of the legal writing field is that unlike the 1970 survey, current surveys no longer include questions designed to investigate whether LRW teachers are virtual hostages consigned to the academic backwater:

- I found the teaching experience to be:  
  An intellectually stimulating and challenging experience  
  Sometimes stimulating and challenging, sometimes drudgery  

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13 See Rombauer, supra note 2, at 542.  
14 See id. at 544. The answer to this question was no, although librarians did carry a substantial part of the teaching load, primarily for research or legal bibliography as it was called. As Rambauer also put it, LRW teaching was not assigned to "some old professor." Id.  
15 Id. at 545. A reported 30% taught solely because of assignment, moral suasion, or a combination, but 56% taught solely by choice, and another 14% taught because of some element of choice.  
16 There was no groundswell to escape. The desire to leave LRW teaching was strongest among those "who did not want to teach the course in the first place - not at all surprising." Id.  
17 In the 1970 survey, the LRW teachers who taught other law school courses said teaching LRW was "less stimulating [56%] . . . and required more work than teaching other courses [60%]." Rombauer, supra note 2, at 546-47. In addition, 50% of faculty members teaching writing found insufficient time to do "all that seemed necessary and desirable in teaching the course." Id. at 547. Another 42% cited the administrative details as the worst aspect of the teaching assignment. Id. at 548. The best aspect of the teaching experience was the work and discussion with individual students, 63% and 61% respectively; except for library faculty who preferred classroom teaching to working with students, 61% and 43%, respectively. Id. at 549. Also, 41% found teaching LRW more challenging than teaching other classes. Id. at 547. Progress was found in terms of the teaching objectives for LRW. A large percentage of the teachers, 70%, no long regarded improvement of basic writing - teaching grammar or basic composition - as primary objectives of their courses. Id. at 551.
Sheer drudgery 6%

- If I had the opportunity to continue similar teaching:
  - I would not be interested under any circumstances 41%
  - I would be interested in repeating the experience once or twice 43%
  - I would be interested in making a career of this type of teaching 16%

As the last response to these early questions demonstrates, some heartening conclusions can be drawn as legal writing grows as an area of law school teaching: there are those who would be interested in making a career of teaching legal research and writing. Indeed, the thousand-person membership in the Legal Writing Institute is strong evidence that the 16% who would be interested in a career in LRW have found their niche. As Professor Rombauer concluded:

Responses to the survey do establish, however, that some people — some [non-writing] faculty members included — do choose to teach a first year research and writing course and that many do find the experience at least as tolerable as teaching other law schools courses and sometimes an even more stimulating and challenging experience. As the 1999 survey shows, it is now safe to say that the writing field is populated by professionals drawn to teaching writing. There are no survey questions asking if those currently teaching are unwilling or uninterested. Instead, the bulk of the questions center around concerns such as salary, workload, and status — important concerns of a young and maturing discipline.

IV. 1999 Survey Highlights

As in past years, the 1999 Survey continued to show that the legal writing field pays astonishing low salaries to lawyers,
for a staggering workload, while relegating a substantial majority of writing professionals to second or even third-class status. LRW professors earn significantly less than other law professors, with salaries as low as $20,800 for full-time work. Even experienced directors of LRW programs, who shoulder a heavy teaching workload as well as substantial administrative duties, earn less than entry-level, non-writing faculty and have salaries that range down to $30,000 a year. Unfortunately, the conditions tend to be even worse for female writing directors.

There are signs of progress, however. More LRW faculty are tenured, and fewer are in programs with mandatory term limits or "caps." LRW faculty are also more active in producing scholarship and participating in faculty governance. They have more prestigious job titles and are teaching more upper-level courses. These positive steps mark movement in the right direction. The remaining issue is the distance left to close the gap between writing faculty and our non-writing faculty colleagues.

To understand the information from the survey in proper context, it is helpful to begin with a quick sketch of the wide variety of program types included in the population of LRW programs. Just as law schools vary greatly from one another, legal writing programs vary in their curriculum, staffing models, credit hours, grading policies, and integration with other courses to name but a few of the easier variable to identify. Perhaps the best picture is presented by looking first at the survey's nine primary descriptions of the staffing models for programs:

21 There are two final limitations to keep in mind when reviewing the data from the 1999 Survey. First, many LRW programs are in a state of flux that cannot be captured in the composite sketch of programs depicted in this summary. The objective of the 1999 Survey was to provide a "snapshot" of the programs during the 1998-99 academic year - frozen in time at that instant. Although many respondents wrote of the great improvements taking place in their programs during the coming year, the survey results show conditions for the same base academic year for the sake of more valid comparisons. Second, it is important to note that some differences between data from the 1998 and 1999 Surveys show progress and positive or negative developments in the field of legal writing, while other differences result merely from having a different group of respondents to the 1999 Survey. In other words, not all changes are trends, nor all differences evidence of underlying causes. Some differences result merely from having different respondents.

22 Like its predecessor, the 1999 Survey followed the staffing models developed by the Communication Skills Committee of the Section of Legal Education and Admissions to the Bar of the American Bar Association and adopted nine basic staffing model categories for first-year writing programs. See Brill, ABA Sourcebook, supra note 8, at 59. This list of programs adds one additional type, the final "complex hybrid" category needed to account for the programs that do not fit within the other types.
1. Tenured or tenure-track teachers hired specifically to teach legal writing;
2. Tenured or tenure-track teachers hired to teach legal writing and other courses;
3. Tenured or tenure-track teachers who teach legal writing as part of their first-year doctrinal courses;
4. Many tenured or tenure-track teachers teaching legal writing to small groups of students where the teacher has no other responsibility for legal writing and where the teacher's primary responsibilities lie with teaching other courses;
5. Full-time nontenure-track teachers with long-term or short-term contracts;
6. Adjuncts;
7. Graduate students;
8. Students;
9. A complex hybrid of the above models or some other model.

The vast majority of the respondents were clustered in three categories: 5. full-time nontenure-track teachers on contracts; 9. a complex hybrid of the models; and 6. adjunct-taught programs. About 10% of the programs fell into the remaining 6 categories. This variety among program structures creates some difficulties developing exact comparisons of different features of writing programs across the country.

The major areas of interest in the survey data by those in the writing field have been salary, workload, and status, with salary being of greatest interest. Writing teachers, like many others, are interested in how their salaries compare with those in the same field and with others in law schools, regardless of the structure of the staffing model. Many survey readers admit to looking first at the salary data. Given the concerns about adequate pay in legal writing, this interest is not surprising.

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23 All subsequent references to Question numbers in footnotes refer to Questions in the 1999 Survey, supra note 2, a copy of which is included in the Appendix to this article. Question 4: 64 programs had full-time nontenure-track teachers on contract, 23 had a complex hybrid, and 15 had adjunct teachers. The remaining 15 programs were spread among the other 6 categories.

24 Id.
A. Salary Highlights

Salaries for legal writing directors continue to lag significantly behind salaries for other law school faculty. Starting salaries for writing teachers who are not directors, who generally have several years of legal practice experience, are lower than starting salaries for many new law school graduates. For the 1998-99 academic year, the average current salary reported by directors of all levels of experience was $71,016, up 3% from the 1998 Survey average of $68,783. Since some directors are paid on a twelve-month contract and others on a less than twelve-month contract, both averages were also calculated. The average twelve-month salary was $76,947, and the average for those paid for less than twelve months was $65,472.

The scope of this survey was too limited to collect current salary for the several hundred full-time LRW faculty who are not directors. Instead, this survey collected only entry-level salary figures for full-time LRW faculty, excluding directors, as a means of providing some base-line salary information for this group. The average entry-level teacher’s salary for 1999 was $39,731, also up just 3% from the 1998 average of $38,590. These teacher salaries paid for a twelve-month period averaged $42,130, while those with contracts of less than twelve month averaged $38,738.

1. Variables related to Salary

a. Geography: The salaries for both directors and other teachers vary greatly by geographic region, with the New York metropolitan area and mid-Atlantic region generally reporting high salaries and the Great Lakes and Southeast regions reporting low salaries. Directors also reported substantially higher sal-

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25 The average national starting salary for new law school graduates in 1998 was $45,000. This is the most recent salary data available through the National Association for Law Placement (NALP). Employment and Salaries of New Law Graduates: Class of 1998, National Association for Law Placement.

26 Question 15.

27 See Jan M. Levine & Kathryn Stanchi, Women, Writing and Wages: Breaking the Last Taboo (analyzing salary data for LRW teachers) (copy on file with the author). The 1999 Survey collected information on adjunct and student compensation. See infra notes 52 and 59 and accompanying text.

28 Question 38.

29 The 8 geographic regions are defined in Question 1 of the 1999 Survey. See 1999 Survey, supra note 2, at 2, Question 1.
aries than the writing teachers they supervise, in some cases, double the salary.

Regional Salary Differences for Directors
Average directors' salaries reported, by region, ranging from highest to lowest:

- New York City & Long Island: $113,000
- Mid-Atlantic: $77,375
- Far West: $74,000
- Southwest & South Central: $69,608
- Northeast: $68,996
- Southeast: $64,208
- Great Lakes & Up. Midwest: $62,621
- Northwest & Great Plains: $51,400

Regional Salary Differences for Entry-Level LRW Faculty
(excluding directors): Average entry-level LRW faculty salaries reported, by region, ranging from highest to lowest:

- Northwest & Great Plains: $52,500
- New York City & Long Island: $45,833
- Mid-Atlantic: $45,125
- Northeast: $42,700

30 1999 Survey, supra note 2, at 6.
31 Id. at 14.
32 A very small sample size of respondents caused this surprising data.
b. **Location and School Type:** While geographic region was the strongest indicator of salary level, other variables also contributed to differences in salary for directors and entry-level teachers. Following the pattern established in the 1998 Survey results, salaries continued to be higher for directors and LRW faculty in the suburbs than in urban or rural areas.\(^{33}\) Salaries also continued to be higher for directors and LRW faculty teaching in private rather than in public law schools.\(^{34}\)

c. **Program Model:** Other significant correlations exist between salary and staffing model and director type. As might be expected, salaries for directors are highest in adjunct-taught and complex hybrid programs, where directors must manage a

\(^{33}\) Question 2: The average salaries reported for suburban, urban, and rural settings were $75,875, $71,977, and $54,163, respectively, for directors and were $41,359, $39,816, and $34,922, respectively, for entry-level teachers.

\(^{34}\) Question 3: The average salaries reported for private and public law schools were $75,739 and $63,855, respectively, for directors and were $41,273 and $37,553, respectively, for entry-level teachers.
large staff of teachers. Salaries were lowest in student-taught programs, where law schools have generally adopted the least expensive model for teaching legal writing.\footnote{Question 4: Average salaries for directors in adjunct-taught programs were $75,607, in complex hybrid programs were $71,593, and were lowest in student-taught programs, at $64,250. There were too few respondents in the other categories to make calculations meaningful.} For LRW faculty, entry-level salaries were highest for full-time, entry-level teachers in complex hybrid programs and in tenure and tenure-track LRW programs.\footnote{Question 38: Average entry-level salaries for LRW faculty were highest in complex hybrid programs at $44,771, and next highest in tenure and tenure-track LRW programs at $43,000.}

Directors’ and LRW faculty salaries were also analyzed in relation to the directors’ status. This analysis uncovered a range of over $40,000 per year from highest to lowest salary averages based on the directors’ status. Directors’ salaries are highest when the directors’ primary responsibility is not directing legal writing programs, while tenured directors had the next highest salaries. In some cases, the highest paid directors are associate or assistant deans or tenured professors who teach doctrinal subjects and have only administrative responsibilities for the writing program. These directors’ salaries are in reality not LRW salaries, but are salaries equivalent to non-writing faculty salaries. Not surprisingly, non-tenure track directors earn the lowest salaries.\footnote{Question 11: Average salaries for directors whose primary responsibility is not LRW were $100,700, salaries for tenured directors were $87,747, and for nontenure-track directors were $59,919.}

LRW faculty salary averages also ranged over $11,000 per year depending on the director’s status. Salaries for entry-level LRW faculty are highest if their director is tenured. This seems to demonstrate a law school’s commitment to legal writing by providing job security of tenure for directors along with higher salary for LRW teachers. The lowest entry-level salaries for LRW faculty are found in programs where the director’s primary responsibility is not LRW, which ironically is the model under which the directors’ salaries are highest. Perhaps this is a reflection of the divided loyalty and interest of these directors or the law schools’ limited commitment of resources to legal writing.
2. **Comparison with Non-writing Faculty**

A significant percentage of LRW directors earn less than entry-level, non-writing faculty, regardless of the director's level of experience.\. This comparison in the survey pits new hires for non-writing faculty positions against directors, a substantial number of whom had graduated from law school sixteen or more years before\. or had taught four years or more in law school.\. Directors' salaries fared a bit better when compared with entry-level salaries for clinicians; however, about half of the writing directors, many with substantial experience, earn the same or less than entry-level clinicians.\. Clearly, the vast majority of LRW professionals — directors and even more clearly LRW teachers — are the lowest paid teachers at their law schools.

**B. Workload**

1. **Teaching**

Given the low salary among legal writing professionals, it is more striking to learn of the crushing workload they regularly endure. The survey collected several measures of the average workload of directors and other writing teachers and found a pattern of staggeringly heavy workloads in terms of students taught, papers critiqued, and conferences held. The survey re-

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\. Question 16: Thirty-four (34) directors earn an average of $16,682 less per year than entry-level doctrinal faculty, while 17 earn roughly the same, and 23 earn an average of $21,145 more than entry-level doctrinal faculty. Because average salary figures for LRW faculty were not collected in this survey, no similar comparisons were done.

\. See 1998 Survey, supra note 2, at Question 34: As of now, how many years had passed since the director received the J.D. degree? Average of 16 years, high of 38 years, and a low of 3 years. The 1999 Survey did not collect this data, assuming that the pool of directors was relatively stable and that significant changes would not be found. The 1998 Survey responses show that most directors are substantially more experienced - with an average of 16 years experience - than entry-level doctrinal faculty, who generally have no prior teaching experience.

\. See id. at Question 35: When the director assumed the position of director, how many years had the director been teaching in law school? Average number of years was 4, with a high of 26 and a low of 0. The 1999 Survey did not collect this data. This number reflected the prior teaching experience of the director at the time of assuming the directorship. In most cases, the 1998 Survey number is less than the amount of teaching experience the director had when responding to the 1999 Survey and reporting a lower salary than a new hire for an entry-level doctrinal teaching position.

\. Question 17: We found 10 directors earn an average of $15,250 less per year than entry-level clinicians, 14 earn roughly the same, and 26 earn an average of $23,609 more. Because average salary figures for LRW faculty were not collected in this survey, no similar comparisons were done.
sults showed the workload was increasing for LRW teachers, without a commensurate increase in salary. The “average” writing teacher’s workload is markedly more demanding than that of non-writing faculty. This calls to mind why Professor Rombauer included the question in her 1970 survey about the level of drudgery involved in the work and the reason she received the response that 60% of those writing teachers found the writing course required more work than teaching other courses.

In the 1998-99 academic year, in each semester, the “average” director taught 58 entry-level students, 3 hours per week, using 3 major and 5 minor assignments, while reading, reviewing, evaluating, and critiquing 1,226 pages of student work, and holding 42 hours of conferences. Other LRW faculty fared even worse. In the 1998-99 academic year, the “average” LRW faculty member taught 53 entry-level students, using 3 major and 4 minor assignments, while reviewing 1,870 pages of student work, and holding 69 hours of conferences.

Here again, the task of “reading” 1,870 pages of student work should not be underestimated. The time and effort to critique and provide written feedback, while also preparing for class and developing writing and research problems, requires a extraordinary level of sustained commitment and stamina. Meeting for 69 hours each term amounts to approximately 5 hours per work-week not available for other tasks, such as critiquing the 1,870 pages of student work. This quantitative summary of selected aspects of workload factors does not include the

42 See supra text accompanying notes 17 and 18.
43 Question 19. The 1998 Survey found that the “average” director taught 53 entry-level students, 4 hours per week, using 4 major and 5 minor assignments, while reading 1,583 pages of student work, and holding 50 hours of conferences. These numbers show that directors taught more students in 1999 but read fewer pages and held fewer conferences.

"Major" assignments are 5 or more typed pages long and “minor” assignments are shorter than 5 pages. The 69 hours of conferencing includes only “formal conferences” either required or strongly encouraged. These figures do not include the many hours that writing faculty routinely spend in informal and optional conferences - for many, a time commitment greater than the scheduled conferences.

44 This average is significantly above the 45 student-to-professor ratio recommended as the maximum level in the SOURCEBOOK ON LEGAL WRITING PROGRAMS. See BRILL, ABA SOURCEBOOK, supra note 8, at 74. Since the 53 student load from the survey is an average, many programs have even higher student ratios.

45 Question 43. In the 1998 Survey the “average” LRW faculty member taught 51 entry-level students, 4 hours per week, using 4 major and 5 minor assignments, while reading 1,642 pages of student work, and holding 67 hours of conferences. LRW faculty are teaching more students, more hours per week, reading more pages, and spending more time in conferences in 1999.
accompanying administrative work entailed in creating and shuffling 7 writing assignments, meeting informally with students, plus scheduling (and no doubt rescheduling) several conferences for each student each term.

To put these statistics in some perspective, consider if a non-writing faculty member in a first-year doctrinal class had the equivalent workload. The faculty member would meet 5 hours each week and devote almost 2 solid weeks of time (69 hours) to conferences with individual students. This faculty member would read, review, comment on, and evaluate 1,870 pages of exam papers. But rather than merely assigning a grade to each exam, the professor would critique the analysis and writing for each exam answer. This critique would involve offering interlinear comments, some corrections and advice throughout, and a substantial end-comment on each exam summarizing the positive and negative aspects of each student's performance. Add to this detailed, specific, and individualized guidance about improving future exam performance and overall legal skills. In addition, the equivalent workload would also involve creating 3 major and 4 minor assignments. This workload would require substantially more effort and creativity than designing a single end-of-the-term exam.

2. Directors' Other Duties

In addition to creating, reviewing, and critiquing individual work and conferencing, a director shoulders significant administrative duties. A major part of the administrative duties is supervising LRW faculty. For example, the "average" director is responsible for a professional staff of 9 faculty and 12 student teaching assistants, with even larger staffs in programs using adjunct and teaching-assistant teachers. In recognition of this significant administrative burden, about one quarter of the LRW programs currently have assistant directors. A workload analysis showed directors spend most of their time teaching in the entry-level LRW program (29%), followed by directorship duties (25%), then teaching outside the program (20%), engaging in a variety of other duties (18%), and finally, performing service.

46 Question 22: The average number of professional LRW faculty supervised by the directors remained unchanged from the 1998 Survey at 9, with an average of about 6 females and 4 males, per program, reported in 1999.

47 Question 12: Currently 23 programs have assistant directors, while 76 responded that they do not. This question was not asked in prior surveys.
Thus, preparing for and teaching class, plus the 42 hours of individual conferencing and review of 1,226 pages of student work, is less than one-third of the “average” director’s workload. In addition, many LRW directors are called upon to perform a wide array of administrative duties beyond merely directing the LRW program. These duties include such things as running academic support programs and helping with admissions, career placement, and moot court programs, thus making their service obligations far broader than most other first-year faculty.

3. Adjuncts

The workloads of writing teachers who are adjuncts or teaching assistants are also daunting. Of the 43 programs using adjunct faculty at least partially, each adjunct taught an average of 21 students per term, a heavy load for part-time teachers many of whom have demanding full-time legal jobs. For this teaching load, an adjunct was paid an average of $1,879 per credit hour or an average of $4,107 per term. Adjunct teachers are generally required to have a minimum of 3 years of legal experience before they are hired.

Those who are currently teaching have an average of 7 years of legal practice experience and 4 years of teaching experience, a relatively long history of teaching in such a demanding position.
4. Teaching Assistants

Sixty-seven programs use student teaching assistants in some capacity.\(^5\) Each teaching assistant is assigned an average of 22 students, about the same student load as adjunct teachers.\(^6\) This load is significant for law students who have their own demanding course schedules to juggle, leading one to question how much energy and expertise is devoted to teaching novice writers in first-year classes. Teaching assistants spend an average of 91 hours each term on assigned duties, or about 6 hours per week.\(^5\) They are trained an average of 14 hours for these duties.\(^5\) For this work, teaching assistants in 29 programs are given course credit, those in 7 programs receive offsets against tuition, averaging $3,053 per term, those in 29 programs are paid an average of $1,388 per term, while those in 21 programs are paid an average of $9 per hour.\(^5\)

5. Summary

This survey shows that the workload for all LRW teachers — directors, full-time writing faculty, adjuncts, and student teaching assistants — places an enormous strain on these individuals. The figures reported here are averages; thus, many programs have even more alarming stresses. With workloads like these, quality writing instruction is more difficult to deliver to law students who are demanding effective skills instruction to prepare them for an increasingly competitive professional environment.

C. Status

Low salaries and brutal workloads make it difficult for law schools to attract and retain quality legal writing teachers.\(^6\) These conditions combine with other markers of low status to

\(^{5}\) Question 54: Only 2 programs use teaching assistants exclusively, 7 use them for over 50% of teaching, 58 use them for less than 50% of teaching, and 43 do not use teaching assistants at all.

\(^{6}\) Question 56: This average is drawn from data showing a low of 1 student per teaching assistant to a high of 75 students per teaching assistant.

\(^{5}\) Question 57.

\(^{5}\) Question 59.

\(^{5}\) Question 58.

\(^{6}\) ABA Standard 405(d) requires that law schools have conditions sufficient to attract quality legal writing teachers. There is no commensurate requirement that conditions be sufficient to retain LRW teachers.
impede development of instruction in this essential lawyering skill. So long as most writing programs bear the badge of second-class citizenship of being off tenure-track, the field will not flourish. The progress this survey discovered is coming, but in small, slow steps toward parity with other law faculty. Evidence of progress appears in greater numbers of tenured and tenure-track positions, better program design, more activity in scholarship, greater participation in law school governance, more prestigious titles, parity in grading policy, more teaching in upper-level courses, and the growth of upper-level writing skills in law schools.

1. Tenure and Program Type

The 1999 Survey found a significantly larger number of directors with tenure and on tenure track than in 1998. About 40% of those describing their status as legal writing directors in 1999 were tenured or tenure-track. However, this still leaves 60% of the directors whose primary responsibility is LRW off tenure track and having contract terms of employment.

There is a dramatic shift in the staffing models for teachers in legal writing programs. From the early models where “some old professor” might be stuck teaching legal writing, current models acknowledge that a significant number of lawyers devote a substantial period of their professional life to the field. A few of the more forward-looking programs have tenured or tenure-track LRW faculty.

While the majority of programs that have full-time teachers continue to use short-term or long-term contracts, the majority of those on contract no longer have a “cap” or maximum period for the renewable contracts. This is despite the fact that LRW faculty in most programs are on short-term contracts. The trend to remove caps on contracts is an important step toward

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61 Question 11: Looking at those 85 directors who identified their status, 21 directors had tenure and 13 were on tenure track. This compares with numbers in the 1998 Survey showing 11 directors were tenured, and 12 were tenure-track.

62 Id. Fifty-one (51) of 85 directors were off tenure track. The remaining 14 directors were those for whom LRW is not their primary responsibility or who did not identify their status.

63 See Rombauer supra note 2, at 544.

64 Question 31: Eight programs have tenured or tenure-track teachers.

65 Id. Sixty-three (63) of 81 programs, or 78%, have no cap on the contract length for LRW teachers.

66 Id. Fifty-seven (57), or 63%, are on short-term contracts.
ending one cause of high and constant turnover in writing programs. 67 With LRW faculty becoming longer term employees, law schools are beginning to adopt written evaluation standards. 68

2. Scholarship

As more directors join the ranks of tenured and tenure-track faculty, they are finding that scholarship requirements are part of their jobs. For 39% of directors, there is an obligation to produce scholarship, and for another 16% there is no obligation, but there is an expectation they will do so. 69 Since a smaller percentage of LRW faculty are tenured or tenure-track, fewer have an obligation to produce scholarship. 70 Even without a scholarship requirement for LRW faculty, more law schools are providing support for their scholarly activities. Over half the programs provide LRW faculty with summer grants averaging $6,411. 71 The vast majority of programs provide developmental funding, averaging $1,517 last year. 72 In addition, over half the programs provide funding for research assistants, with 49 programs providing funding for all reasonable requests, and 10 programs reporting an average of $1,965 paid for research assistants. 73 To the extent that LRW professionals produce scholarship, both the status of the field and the pedagogy will improve.

3. Law School Governance

Writing directors are also more involved in law school self-governance with the vast majority of directors serving on faculty committees as voting members. 74 For LRW faculty, those in 62 programs serve on faculty committees, up from 31 in the 1998 Survey, with 56 programs currently affording voting rights. 75

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67 Other causes of high turnover - low salary and heavy workload - remain, however.
68 Question 37: Twenty-one (21) directors reported using written standards to evaluate LRW faculty and 15 programs have standards under development.
69 Question 30.
70 Question 46: In 14 programs, LRW faculty have an obligation to produce scholarship, while 74 programs impose no obligation.
71 Question 40: Forty-seven (47) programs provide summer support.
72 Question 41: Seventy-three (73) programs provide developmental funding.
73 Question 42: Fifty-nine (59) programs provide funding for research assistants.
74 Question 28: Eighty-one (81) directors serve as voting members on committees while 9 serve as non-voting members.
75 Question 44.
Similarly, the vast majority of directors also attend and vote at faculty meetings, with 48 voting on all matters and 42 others voting on all but hiring and promotion issues. In the 1998 Survey, only 50 directors reported voting rights on any matters.\textsuperscript{76} For LRW faculty in 37 programs, voting is permitted at faculty meetings, with 18 of those programs affording voting on all matters. At 40 more programs, LRW faculty attend, but do not vote at faculty meetings.\textsuperscript{77}

4. Title

Another indication of status is the title a position carries. Over 60\% of program directors have a form of “professor” in their official title.\textsuperscript{78} “Director” is the next most common title. For LRW faculty, the largest number have some form of “professor” in their official title, many are “instructors,” and “lecturer” is the next most common title. LRW faculty are generally called “professor” by students, regardless of the official title.\textsuperscript{79} Progress is coming in improvements in both formal and informal titles.

5. Grading Policy

While not a direct measure of the status of LRW professionals, grading policies for LRW courses reflect the status and value placed on the field. Ninety-eight programs reported that the entry-level course is graded and the grade is averaged into the students’ grade point averages.\textsuperscript{80} Only 2 schools that awarded writing grades exclude LRW grades from the students’ average.\textsuperscript{81} If the course is valued, as evidenced by parity in grading policies, perhaps that parity will someday extend to the teachers.

\textsuperscript{76} Question 29.
\textsuperscript{77} Question 45.
\textsuperscript{78} Question 14: Sixty-two (62) of 99 use some form of “professor.” “Director” is the title for 12 respondents. For LRW faculty, 40\% have some form of “professor” in their official title, 28\% are “instructor,” and 19\% are “lecturer.” See Question 34 of the 1999 Survey.
\textsuperscript{79} Question 35: Seventy-four (74) of 97 LRW faculty are called “professor” by students.
\textsuperscript{80} Question 8.
\textsuperscript{81} Id. See Ramsfield 1996, \textit{supra} note 2, at 5, reporting that of the 76\% that graded LRW courses, 74\% averaged the grade into the grade point average.
6. Teaching Upper-Level Courses

Increasingly, writing directors are teaching courses beyond the first-year writing program. This trend appears to acknowledge that directors have expertise beyond what is needed to teach in and administer the first-year program. In 1999, 64 directors (65%) taught outside the first-year program, compared with 44 directors in the 1998 survey. Directors are teaching more upper-level courses: an average of 1.45 writing courses in 1999, compared with 0.7 courses in 1999, and they are teaching more non-writing upper-level courses. The survey found 33 different courses that directors taught in the 1998-99 academic year, ranging from doctrinal topics such as cyberspace law, computer law, environmental law, professional responsibility, employment discrimination, torts, contracts, property, constitutional law, insurance, gay rights, and law and literature, to skills courses such as interviewing, counseling and negotiation, externships, pretrial practice, and clinic.

7. Growth of Upper-Level Writing Skills

A final encouraging trend discovered in the 1999 Survey is the wealth of upper-level writing skills taught in law schools. Ninety-eight law schools offer advanced legal writing courses taught by legal writing faculty and non-writing faculty. Only 14 of the 117 schools responding do not offer any upper-level writing courses. Many law schools offer a wide variety of upper-level courses teaching advanced writing skills such as advanced advocacy and drafting. Some schools offer one course, while others offer several courses covering all ten categories of skills listed on the survey. With the exception of the 14 schools that

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82 Question 20: No comparable data were collected for non-director writing faculty, although anecdotal evidence suggests that LRW faculty also teach non-writing courses.

83 Id. Directors taught an average of 1.4 non-writing upper-level courses in 1999, compared with 0.7 courses in 1998.

84 Question 60. This compares with only 17 of the schools surveyed in 1990 having upper-level LRW requirements and 60% of the schools offering elective upper-level courses. See Ramsfield 1991, supra note 2, at 129. However, 24 schools responding to the 1994 survey required LRW courses beyond the first year and nearly half of the LRW programs offered upper-level writing electives. Ramsfield 1996, supra note 2, at 11.

85 See Appendix B. of the 1999 Survey, supra note 2, for a list of advanced writing skills taught at each school. The most frequently taught advanced skills are, in order of frequency:

Advanced Advocacy 63
Advanced Legal Writing, General 53
Drafting, Litigation 52
do not require students to satisfy a writing requirement beyond the entry-level program before graduation, the remainder of schools require seminar or scholarly papers, practical writing assignments, or other requirements. For those schools at which students prepare scholarly papers, most have no separate course to prepare students to write this kind of paper, instead relying on faculty to train students in the course for which the paper is written. While the trend is encouraging, there is still substantial room for development in this area.

D. Gender Data Highlights

This year's survey was the first to look at whether legal writing directors experience different treatment depending on their gender. By focusing on directors, this survey could uncover whether a more in-depth review was merited for directors and writing teachers. Quite simply, it is. The 1999 Survey found repeated and substantial differences in the salaries and status of female and male legal writing directors. The pattern was consistent throughout virtually every comparison that was made of the data. This pattern of disparate treatment has an impact beyond the female directors — it extends to poorer treatment for LRW faculty who work with female directors.

While the patterns are consistent, a disclaimer is in order. The survey asked each respondent to disclose that person's gender. Only one question was asked relating to gender. Using the capability of a spreadsheet program, however, we could calculate many comparisons of female and male directors' status and

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Drafting, Transactional  48
Drafting, General        46
Scholarly Writing       38
Drafting, Legislation   35
Advanced Legal Writing, Survey  17
Judicial Opinion Writing 14
Other                   17
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86 Question 62: Fifty-nine (59) schools require at least one seminar or scholarly paper for graduation.
87 Question 63: Seventy-eight (78) schools rely on faculty to teach scholarly writing within the course itself, but 20 schools offer no training whatsoever. Only 8 schools offer separate scholarly writing courses.
88 This survey's structure did not permit a similar investigation of possible gender differences among non-director LRW faculty. That is a rich topic for many others to explore. Some have begun that task. See Pamela Edwards, Teaching Legal Writing As Women's Work: Life on the Fringes of the Academy, 4 Cardozo Women's L.J. 75 (1997).
treatment from the 63 survey questions. In all, 10 questions were identified as relevant and analyzed for gender differences.

We did not collect other variables in this survey that could account for some of the differences found in the statistics for female and male directors. For example, the 1999 Survey did not ask for number of years since graduation from law school or number of years as a director or a legal writing teacher. These questions were asked in the two prior surveys and found consistent data from year to year. Indeed, it is possible that age or seniority could explain some of the differences found in female and male salaries and other conditions of employment. In fact, if age and seniority are correlated with gender, more questions arise. For example, why do male directors seem to stay in the writing field longer than female directors? We investigated these hypotheses in the 2000 survey. Nevertheless, the patterns are too compelling and consistent to ignore.

1. Lower Salaries

Female directors earn less than male directors when measured by several statistics. Female directors earn lower twelve-month salaries: $73,375 for females as opposed to $85,192 for males. Female directors also earn lower salaries for less than twelve-month periods, the traditional nine- or ten-month academic year, at $63,762 for females as opposed to $72,494 for males. Not surprisingly, an average of the salaries reported, not accounting for the payment period, again show female directors earning less than their male colleagues, with $67,331 for females as opposed to $80,000 for males. These averages show that female directors’ salaries are 84% of male directors’ salaries. An obvious comparison emerges that the average female director’s salary for a twelve-month calendar year is about the same as a male’s salary for a nine or ten-month academic year contract.

Another indication of a different payment pattern by gender is the number of females and males who make high salaries of $100,000 or more: 4 of 67 females and 6 of 22 males are in this

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90 See Jo Anne Durako, Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing, 50 LEGAL EDUC. (forthcoming) (finding that other factors affected salary, but only tenure status had a greater impact than gender on directors’ salaries).
91 Question 15: see Appendix A of the 1999 Survey, supra note 2, at 1-2.
92 Females average $73,375 in salary for 12 months and males average $72,494 for less than 12 months.
salary range. This translates to 6% of females and 27% of male directors who earn top salaries. One must wonder about this imbalance in a field that is predominantly female, with about three times as many female as male directors.92 Furthermore, in the range of salaries paid, a female earns the lowest salary, at $30,000, while a male earns the highest salary at $135,000—an astounding difference for the same field. Females did report earning more additional compensation for teaching beyond the entry-level program, however, reporting $8,417 in contrast to $6,700 for males for the extra teaching load.93 This $1,700 difference for extra work hardly levels the playing field.

The data permitted a final startling salary comparison. In programs headed by female directors, the salary range for LRW faculty,94 regardless of their gender, is lower than in programs headed by male directors.95 In addition, in programs with female directors, the averages in the faculty salary range are lower ($38,345 low to $45,753 high, with a female director; $42,947 low to $51,048, with a male director). And a final measure shows that the floors of the faculty salary range are lower in programs headed by female directors than in programs headed by male directors ($20,800 as the lowest salary with a female director; $29,000 as the lowest salary with a male director).96

92 Respondents were 86 females and 31 males for a 74% to 26% gender split. This is the same gender split reflected in the membership of the Association of Legal Writing Directors.
93 Question 21(g).
94 Individual salaries of LRW faculty were not collected. Only the salary range was collected. See Question 39.
95 See Question 39 and page 4 of Appendix A of the 1999 Survey.
96 The highs for the ranges are higher for programs headed by male directors. Although I thought the salaries reported for LRW faculty may mistakenly include some directors' salaries reported as LRW faculty salaries, I have verified that is not the case.
2. Fewer Tenured

Salary is not the only area where female directors lack parity with their male colleagues. Female directors are less often tenured than are male directors. Only 17% of female directors responding to the survey were tenured, although 32% of males responding were. The picture improves somewhat when the number of tenured and tenure-track directors were combined. Then female directors were only slightly behind males at 33% of females tenured or on tenure track as opposed to 36% of males. Significantly more female directors found themselves on contract than males, 53% and 44%, respectively.

3. Less Prestigious Title

Another indication of lower status beyond salary and tenure is job title. Here again, fewer female directors had “professor” in their official title than their male counterparts did, with 57% for females as opposed to 80% for males with higher status titles. More females had lower status titles of “director” or “lecturer” than males, finding 14% of females called director and 12% lecturer, while 8% of males are called director and only 4% are

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97 Question 11.
4. Other Indicia of Lower Status

Other variables analyzed included teaching beyond the entry-level, participation in faculty governance, and number of faculty supervised and students taught. Since one can safely assume that there is greater status in teaching beyond the first-year classes, females again lag behind their male colleagues because only 59% of female directors taught upper-level courses while 84% of males did. Female directors also played a lesser role in faculty governance. Fewer female directors served on faculty committees and fewer voted than males. In addition, female directors voted less often on all matters at faculty meeting, were more often prohibited from voting on hiring and promotion decisions, and were more often denied the right to vote at all than their male writing faculties colleagues.

An area where male directors had a greater teaching load than females was in the number of first-year students taught. Males taught an average of 37 students, while females taught 33 students. So small a difference in student load per semester does not merit the $12,000 annual salary differences found in average salaries for females and males.

This slightly higher teaching load is in contrast to the higher supervision load carried by female directors. Female directors supervised an average of about 10 LRW faculty as opposed to about 4 faculty supervised by male directors. When adjunct teachers are removed from the data, the number of LRW faculty supervised by females becomes much closer to the level for male directors at 4.7 and 4.2, respectively.

It is interesting to note that male directors tended to have a higher percentage of females on their staffs than female directors did. For example, for the analysis of non-adjunct teachers,

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98 Question 14: The same percentage are assistant or associate deans, 4%.
99 Question 20.
100 Question 28: While 89% of female directors serve on committees and 81% vote, 100% of male directors serve and 88% vote.
101 Question 29: For voting, 48% of female directors vote on all matters vs. 52% of males; 44% of female directors are prohibited from voting on hiring and promotion vs. 40% of males; and 7% of female directors are prohibited from voting at all vs. 4% of male directors.
102 Question 19(a): These figures are based on data adjusted to exclude reported student load above 100 students (for 6 female and 6 male directors). If the data are not adjusted, female directors teach an average of 48 students and male directors teach 88.
male directors had staffs comprised of 72% females, while female directors had staffs with 67% females. This over-representation of females among legal writing faculty is contrary to a finding reported in 1991 that "LRW courses have almost as many males teaching as females," but consistent with the disappointing and more recent trend emerging in the later surveys.

V. CONCLUSION

Legal research and writing skills are essential to success in law school and in legal practice. These are the skills that legal employers expect all law graduates to have mastered. Yet, to the extent that the responsibility for teaching these vital skills is left to overworked, under-paid, and low status teachers — no matter how dedicated — we do legal education and the legal profession a grave disservice.

The shocking conditions in the legal writing field reported here for the 1999 Survey are not news. There have been repeated surveys yielding the same, if not worse, statistics. The data in this survey speak loudly and eloquently for themselves. Another survey will not change the situation. Only action by concerned deans, administrators, non-writing faculty, and others interested in legal education will speed reform. This is a call to action. And one that is overdue.

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103 Question 22: It is interesting to recall that LRW faculty working for male directors have higher salaries than those working for female directors. See note 94 supra.

104 Ramsfield 1991, supra note 2, at 129. The numbers are closer when adjunct faculty are included in the analysis. Then, female directors have 58% female LRW faculty and male directors have 60% females on their staffs. See 1999 Survey, supra note 2, at Appendix A at 3. While closer to parity, these numbers are dramatically different from the gender split among doctrinal faculty at law schools.

105 In 1994, 75% of schools had more than one-half female LRW faculty, up from 65% found in the 1992 survey, and 60% in the 1990 survey. See Ramsfield 1996, supra note 2, at 19 n.135.
# 1999 Survey Results

Association of Legal Writing Directors

Legal Writing Institute

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1999 ALWD/LWI SURVEY HIGHLIGHTS

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Some changes in the 1999 survey:

• More respondents in 1999: 117 schools participating, for a 66% response rate, thanks to the cooperation of program directors and follow-up by the Survey Committee members.
• New information gathered on the gender of directors (see Gender Data in Appendix A) and on Advanced Legal Research and Writing Skills (see Questions 60 - 63 and the Advanced Writing Skills Listing in Appendix B).
• Comparisons with 1998 data, where possible. NOTE: Some differences show progress and positive or negative developments in the field of legal writing, while other differences result from having a different group of respondents this year.
• New Region VIII was created to extract New York City and Long Island salary data from data reported for Region VII, the Northeast.

Salary Highlights:

• **Directors’ Salaries** (averages; Question 15):

  **1999:**
  
  $71,016, up 3% from ‘98
  $76,947 for 12 months;
  $65,472 for <12 months.

  **1998:**
  
  $68,783

• **LRW Faculty Full-time Entry-level Salaries** (averages, excluding directors; Question 38):

  **1999:**
  
  $39,731, up 3% from ‘98
  $42,130 for 12 months;
  $38,738 for <12 months.

  **1998:**
  
  $38,590

• **Regional Differences for Directors:**

  Average directors’ salaries reported, by region, ranging from highest to lowest:
New York City & Long Island: $113,000
Mid-Atlantic: $77,375
Far West: $74,000
Southwest & South Central: $69,608
Northeast: $68,996
Southeast: $64,208
Great Lakes & Up. Midwest: $62,621
Northwest & Great Plains: $51,400

Regional Differences for Entry-Level LRW Faculty (excluding directors):
Average entry-level LRW faculty salaries reported, by region, from highest to lowest:
Northwest & Great Plains: $52,500
New York City & Long Island: $45,833
Mid-Atlantic: $45,125
Northeast: $42,700
Southwest & South Central: $40,073
Far West: $39,833
Southeast: $37,700
Great Lakes & Up. Midwest: $34,976
• **Other Variables Related to Salaries:**

- **Setting** (Question 2): Salaries continue to be higher for directors and LRW faculty in the suburbs than in urban or rural areas.

- **Institution Type** (Question 3): Salaries also continue to be higher for directors and LRW faculty in private than in public schools.

- **Staffing Models** (Question 4): Salaries are highest for directors in adjunct-taught programs ($75,607) and complex hybrid programs ($71,593) and lowest in student-taught programs ($64,250). For LRW faculty, salaries are highest in complex hybrid programs ($44,771) and in tenure and tenure-track LRW programs ($43,000).

- **Director Type** (Question 11): Directors’ salaries are highest if their primary responsibility is not LRW ($100,700), with tenured directors having the next highest salaries ($87,747). Non-tenure track directors earn the lowest salaries ($59,919). LRW faculty salaries are highest if their director is tenured ($44,160) and lowest in programs where the director’s primary responsibility is not LRW ($33,200).
• **Salary Differences from Other Faculty** (Questions 16 and 17): 23 Directors earn an average of $21,145 more; 34 Directors earn an average of $16,682 less; and 17 Directors earn about the same as entry level tenure-track non-writing faculty. Directors fare a bit better when compared with entry level salaries for clinicians.

**Other Highlights:**

• **Tenure** (Question 11): There were significantly more directors with tenure (21 or 25%) and on tenure-track (13 or 16%) than in 1998 (11 tenured, 12 tenure-track). About 30% of those responding were tenured or tenure-track. However, 60% of the directors whose primary responsibility is LRW are not on tenure-track (51 of 85).

• **Assistant Directors** (Question 12): 23 programs have assistant directors; 76 do not.

• **Title** (Question 14): Over 60% of program directors have a form of “Professor” in their official title (62 of 99). “Director” is the next most common title (12). For LRW faculty (Question 34), many have some form of “Professor” in their official title (37 or 40%), many are “Instructors” (26 or 28%), with “Lecturer” the next most common title (18 or 19%). LRW faculty are generally called “Professor” by students (74 of 97) (Question 35).

• **Directors’ Time** (Question 18): As a group, directors spend most of their time teaching in the entry-level LRW program (29%), followed by directorship duties (25%), then teaching outside the program (20%), a variety of other duties (18%), and finally, on service (8%).

• **Directors’ Workload** (Question 19): In the 1998-99 academic year, the “average” director taught 58 entry-level students, 3 hours per week, using 3 major and 5 minor assignments, while reading 1,226 pages of student work, and holding 42 hours of conferences. This compares with the prior year in which the “average” director taught 53 entry-level students, 4 hours per week, using 4 major and 5 minor assignments, while reading 1,583 pages of student work, and holding 50 hours of conferences.

• **LRW Faculty Members’ Workload** (Question 43): In the 1998-99 academic year, the “average” LRW faculty member taught 53 entry-level students, 5 hours per week, us-
ing 3 major and 4 minor assignments, while reading 1,870 pages of student work, and holding 69 hours of conferences. This compares with the prior year in which the “average” LRW faculty member taught 51 entry-level students, 4 hours per week, using 4 major and 5 minor assignments, while reading 1,642 pages of student work, and holding 67 hours of conferences.

- **Upper Level Teaching** (Question 20): More directors are teaching courses beyond the first-year program (64 or 65% in 1999; 44 in 1998 survey). They are teaching more upper level courses: an average of 1.45 writing courses in 1999 (0.7 courses in 1998) and an average of 1.40 non-writing upper level courses (0.7 courses in 1998).

- **Other Significant Activities** (Question 26): Directors engaged in a wide range of significant activities: 46 in law school and university committee work; 19 in other law school writing programs; 9 in academic support programs; and others in scholarship, fundraising, admissions, etc. Generally, these activities (and other activities such as moot court, advising students, orientation) do not pay a stipend (73 said no stipend; Question 27).

- **Faculty Committees** (Question 28): The vast majority of directors serve on faculty committees as voting (81) or non-voting (9) members. For LRW faculty (Question 44), those in 62 programs serve on faculty committees (up from 31 in 1998 survey), with 56 programs affording voting.

- **Faculty Meetings** (Question 29): The vast majority of directors also attend and vote at faculty meetings, with 48 voting on all matters and 42 voting on all but hiring and promotion. In the 1998 survey, 50 directors reported any voting. LRW faculty in 37 programs vote at faculty meetings, with 18 of those programs affording voting on all matters. At 40 more programs, LRW faculty attend, but do not vote (Question 45).

- **Scholarship** (Question 30): For 38 or 39% of directors, there is an obligation to produce scholarship. For 15 there is no obligation, but there is an expectation they will. LRW faculty in 14 programs have an obligation to produce scholarship, while 74 programs impose no obligation (Question 46).
• **LRW Professionals Supervised** (Question 22): The average number of professional LRW faculty supervised by the directors remained unchanged from the 1998 survey at 9, with an average of about 6 females and 4 males, per program reported in 1999.

• **LRW Faculty Type** (Question 31): LRW faculty in most programs are on short-term contracts (57 or 63%), many programs use long-term contracts (26), a few programs have tenured or tenure-track faculty (8). The majority of those on contract have no cap (63 of 81 or 78%).

• **Evaluation Standards** (Question 37): Directors in 21 programs reported using written standards to evaluate LRW faculty. In 15 programs, there are standards under development.

• **Additional Support for LRW Faculty:**
  - **Summer grants** (Question 40): Over half, or 47 programs, provide LRW faculty with summer grants averaging $6,411.
  - **Developmental Funding** (Question 41): The vast majority, or 73 programs, provide developmental funding averaging $1,517.
  - **Research Assistants** (Question 42): Over half, or 59 programs, provide funding for research assistants, with 49 providing funding for all reasonable request, and 10 providing an average of $1,965.

• **Adjunct Faculty:** See Questions 47-53.

• **Teaching Assistants:** See Questions 54-57.

**Gender Data Highlights** in **Appendix A:**

• **Director Salary** (Question 15): Female directors earn less than male directors, when measured by
  - 12-month salaries ($73,375 female; $85,192 male);
  - less than 12-month salaries ($63,762 female; $72,494 male); or
  - salaries reported (combined 12-month, <12-month: $67,331 female; $80,000 male).

In the range of salaries paid, females earn the lowest ($30,000), while males earn the highest salary ($135,000). Fewer females than males earn more than $100,000 (4 of 67 females, or 6% of females earn more than
$100,000; 6 of 22 males, or 27% of males earn more than $100,000).
Females earn more additional compensation for teaching beyond the entry-level program ($8,417 female; $6,700 male).

- **Salary Range for LRW Professionals** (Question 39): In programs headed by female directors, the salary range for LRW faculty is lower: the averages in the range are lower ($38,345 low to $45,753 high, with female director; $42,947 low to $51,048, with male director), and the absolute lows of the salary range are lower than in programs headed by male directors ($20,800 is the lowest salary with female director; $29,000 with male director).

- **Tenure** (Question 11): Female directors are less often tenured than are male directors (17% of females responding; 32% of males responding). When the number of tenured and tenure-track directors are combined, female directors are only slightly behind males (33% of females; 36% of males). More female directors are on contract than males (53% of females; 44% males).

- **Title** (Question 14): Fewer female directors have “Professor” in their official title than males (57% female; 80% male). More females have titles of “Director” or “Lecturer” than males (14% Director and 12% Lecturer for females; 8% Director and 4% Lecturer for males).

- **Entry-level Students Taught** (Question 19(a)): Female directors teach fewer students on average than male directors. Female directors teach an average of 33 students, while male directors teach 37 students (based on adjusted data deleting responses > 100 students for 6 female and 6 male directors. If the data are not adjusted, female directors teach an average of 48 students and male directors teach 88).

- **Teach Upper Level Courses** (Question 20): Fewer female directors teach courses beyond the entry-level writing course than males (59% female; 84% male).

- **Faculty Committees** (Question 28): Fewer female directors serve on faculty committees and fewer vote than males (89% serve and 81% vote for females: 100% serve and 88% vote for males).
Advanced Legal Writing Skills Highlights in Appendix B:

The survey found that 98 law schools teach advanced legal writing skills. Only 14 schools responding do not. Some schools teach one skill, while others offer several or all 10 of the skills listed on the survey. The most frequently taught advanced skills are, in order of frequency:

- Advanced Advocacy 63
- Advanced Legal Writing, General 53
- Drafting, Litigation 52
- Drafting, Transactional 48
- Drafting, General 46
- Scholarly Writing 38
- Drafting, Legislation 35
- Advanced Legal Writing, Survey 17
- Judicial Opinion Writing 14
- Other 17
1999 SURVEY RESULTS
ASSOCIATION OF LEGAL WRITING DIRECTORS/LEGAL WRITING INSTITUTE

This 1999 ALWD/LWI Survey Results Report includes responses from 117 law schools in the United States. The respondents answered questions about the operation of their legal research and writing programs during the 1998-99 academic year. This report is a snapshot of these 117 programs. It is an admittedly inexact composite picture of many unique programs of great variety and complexity.

The respondents did their best to choose responses that most closely matched their current programs. The data analysts exercised their best judgement in interpreting the responses. There are several notes in this report explaining where data have been excluded for various reasons and indicating where data may not be reliable.

This survey report includes data from the 1998 survey prepared by Louis Sirico. You will see the left-hand column by each question includes the number of responses in each category from the 1998 survey, where available, and the 1999 survey. Averages and other relevant data from the 1998 survey are also included throughout this report, where available, to allow rough comparisons. Please realize, of course, that some variations measure real changes in LRW programs from last year, while others reflect changes in the respondent group.

Thanks go to all who participated in this survey. Your time and effort are valuable to all of us. Thank you.

Jo Anne Durako
Survey Committee Chair

Submitter Profile

Are you:

<table>
<thead>
<tr>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>70</td>
<td>98</td>
</tr>
<tr>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>4</td>
<td>11</td>
</tr>
</tbody>
</table>

a. Director of the entry-level program?
b. Associate or assistant director of the entry-level program?
c. Director of the upper level appellate advocacy program, drafting program, or other upper level program?
d. A teacher in a program without a director?
Please indicate your gender: 86 female or 31 male

I. GEOGRAPHY AND TYPE OF LAW SCHOOL
1. Following (and slightly modifying) the model developed by the Society of American Law Teachers, we have divided the country into seven regions. Please identify the region where your law school is located.

<table>
<thead>
<tr>
<th>Region I: Far West - AZ, CA, HI, NV, OR, UT, WA.</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Region I: Far West - AZ, CA, HI, NV, OR, UT, WA.</td>
<td>8</td>
<td>20</td>
</tr>
<tr>
<td>b. Region II: Northwest &amp; Great Plains - ID, MT, NE, ND, SD, WY.</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>c. Region III: Southwest &amp; South Central - AR, CO, KS, LA, MO, NM, OK, TX.</td>
<td>12</td>
<td>16</td>
</tr>
<tr>
<td>d. Region IV: Great Lakes/Upper Midwest - IL, IN, IA, MI, MN, OH, WI.</td>
<td>15</td>
<td>25</td>
</tr>
<tr>
<td>e. Region V: Southeast - AL, FL, GA, KY, MS, TN, WV.</td>
<td>11</td>
<td>14</td>
</tr>
<tr>
<td>f. Region VI: Mid Atlantic - DE, MD, NJ, NC, PA, SC, VA.</td>
<td>14</td>
<td>17</td>
</tr>
<tr>
<td>g. Region VII: Northeastern - CT, MA, ME, NH, NY (excluding NYC &amp; LI), RI, VT.</td>
<td>12</td>
<td>15</td>
</tr>
<tr>
<td>h. Region VIII: New York City and Long Island.</td>
<td>8</td>
<td></td>
</tr>
</tbody>
</table>

2. What is the setting of your law school?

<table>
<thead>
<tr>
<th>Setting</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Urban.</td>
<td>54</td>
<td>75</td>
</tr>
<tr>
<td>b. Suburban.</td>
<td>16</td>
<td>30</td>
</tr>
<tr>
<td>c. Rural.</td>
<td>6</td>
<td>10</td>
</tr>
</tbody>
</table>

3. What type of institution is your law school?

<table>
<thead>
<tr>
<th>Type</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Public.</td>
<td>28</td>
<td>46</td>
</tr>
<tr>
<td>b. Private.</td>
<td>48</td>
<td>71</td>
</tr>
</tbody>
</table>

II. STAFFING MODELS
4. Following the model developed by the Communications Skills Committee of the Section of Legal Education and
Admissions to the Bar of the A.B.A., we have identified nine basic staffing models for first-year writing programs. Please identify the model that most closely resembles the format that your school uses.

<table>
<thead>
<tr>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>41</td>
<td>64</td>
</tr>
<tr>
<td>7</td>
<td>15</td>
</tr>
<tr>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>24</td>
<td>23</td>
</tr>
</tbody>
</table>

a. Tenured or tenure-track teachers hired specifically to teach legal writing.
b. Tenured or tenure-track teachers hired to teach legal writing and other courses.
c. Tenured or tenure-track teachers who teach legal writing as part of their first-year doctrinal courses.
d. Many tenured or tenure-track teachers teaching legal writing to small groups of students where the teacher has no other responsibilities for legal writing and where the teacher's primary responsibilities lie with teaching other courses.
e. Full-time nontenure-track teachers with long-term or short-term contracts.
f. Adjuncts.
g. Graduate students.
h. Students.
i. A complex hybrid of the above models or some other model.

5. If you checked answer i (hybrid model) in the preceding question, which of the following elements are part of your program?

<table>
<thead>
<tr>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>9</td>
<td>8</td>
</tr>
<tr>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>3</td>
<td>0</td>
</tr>
</tbody>
</table>

a. Tenure-track teachers hired specifically to teach legal writing.
b. Tenure-track teachers hired to teach legal writing and other courses.
c. Tenure-track teachers who teach legal writing as part of their first-year doctrinal courses.
d. Many tenured or tenure-track teachers teaching legal writing to small groups of students where the teacher has no other responsibilities for legal writing and where the teacher's primary responsibilities lie with teaching other courses.
2000] 1999 Survey Results 135

16 18  e. Full-time nontenure-track teachers with long-term or short-term contracts.

12 15  f. Adjuncts.

1 3  g. Graduate students.

8 13  h. Students.

6. How many credit hours are awarded for the entry-level program?

1998 1999

11  a. One credit each semester of the first year.

41  b. Two credits each semester of the first year.

14  c. Three credits each semester of the first year.

51  d. Some other combination in the first year.

6  e. Additional credits in a required program beyond the first year.

7. Does the number of credit hours equal the number of classroom hours for the entry-level program? (Note: This question is ambiguous. It was intended to ask the difference in the teaching hours each week. Some respondents may have answered with numbers for the entire term.)

1998 1999

89  a. Yes.

19  b. No, we teach (average) 2.816 (min .05; max 15) more classroom hour.

8  c. No, we teach (average) 3.5 (min 1; max 10) fewer classroom hour.

8. How is your entry-level course graded?

1998 1999

98  a. Grades that are included in the students’ GPA.

2  b. Grades that are not included in the students’ GPA.

7  c. Honors, pass, fail (or some equivalent).

9  d. Purely pass/fail.

1  e. Other method.

9. Is the entry-level program graded in the same manner as other required first-year courses?

1998 1999

89  a. Yes.

28  b. No.
III. DIRECTOR'S STATUS

10. Does your program have a director, that is, a person with direct responsibility for the design, implementation, and supervision of a law school's writing program?

<table>
<thead>
<tr>
<th>Year</th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>69</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>1999</td>
<td>95</td>
<td>20</td>
<td>2</td>
</tr>
</tbody>
</table>

NOTE ON DEFINITIONS for the following questions: "Tenure track" means that the director is on a scheduled time table for being considered for tenure—not that the director has been promised conversion to tenure track at some unidentified time in the future. "Faculty member" means a teacher at the law school.

11. If your program has a director, which of these choices best describes the director?

<table>
<thead>
<tr>
<th>Year</th>
<th>a</th>
<th>b</th>
<th>c</th>
<th>d</th>
<th>e</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>11</td>
<td>12</td>
<td>33</td>
<td>5</td>
<td>12</td>
</tr>
<tr>
<td>1999</td>
<td>21</td>
<td>13</td>
<td>51</td>
<td>7</td>
<td>7</td>
</tr>
</tbody>
</table>

a. A tenured faculty member whose primary responsibility is directing the legal writing program.
b. An untenured faculty member on a tenure track whose primary responsibility is directing the legal writing program.
c. A faculty member not on a tenure track whose primary responsibility is directing the legal writing program.
d. A faculty member or administrator whose primary responsibility is not the first year legal writing program.
e. Other.

12. Does your program have an associate or assistant director?

<table>
<thead>
<tr>
<th>Year</th>
<th>a</th>
<th>b</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>76</td>
<td>23</td>
</tr>
<tr>
<td>1999</td>
<td>23</td>
<td>76</td>
</tr>
</tbody>
</table>

a. No.
b. Yes.

13. If the director is not tenure-track, how long is the term of the contract for the 1998-99 academic year?

<table>
<thead>
<tr>
<th>Year</th>
<th>a</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>34</td>
</tr>
<tr>
<td>1999</td>
<td>51</td>
</tr>
</tbody>
</table>

a. Number of years: (average) 3 (min 1; max 5) years.
1998 Survey: (average) 2 years (min 1; max 5)

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>1 year</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>2 years</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>3 years</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>&gt;3 years</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>b. The contractual terms have never been specifically set out.</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>c. N/A.</td>
<td></td>
</tr>
</tbody>
</table>

14. What title does the director have in official law school materials (publications, catalogues, signs, etc.)?

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>53</td>
<td>a. Professor, associate professor, or assistant professor.</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>b. Professor, associate professor, or assistant professor of legal writing.</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>c. Visiting professor or visiting professor of legal writing.</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>d. Lecturer.</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>e. Instructor.</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>f. Assistant or Associate Dean.</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>g. Director.</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>h. Other.</td>
<td></td>
</tr>
</tbody>
</table>

IV. DIRECTOR'S COMPENSATION

15. What is the annual base salary of the director (if any)? (Base salary is a salary including any additional stipend for the administrative workload but excluding payments for other work.) (NOTE: This is a revised definition of base salary. The 1998 Survey did not include administrative stipend.)

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>31</td>
<td>a. If the salary is based on a 12-month period: (average) $76,947 (min $50,000; max $135,000).</td>
<td></td>
</tr>
<tr>
<td>37</td>
<td>b. If the salary is based on a 9- or 10-month period: (average) $65,472 (min $30,000; max $123,000).</td>
<td></td>
</tr>
</tbody>
</table>
5  c. N/A.

1999 Salary Reported (Combined 12-month & <12-month):
(average) $71,016 (min $30,000; max $135,000).

1998 Survey: (average) $68,783* (min $36,000; max $120,000).

*This average does not distinguish between 12-month or <12-month salary.

Question #15

1999 Director Salary Range

<table>
<thead>
<tr>
<th>Salary Ranges</th>
<th>Number of Directors</th>
</tr>
</thead>
<tbody>
<tr>
<td>30,000-34,999</td>
<td>0</td>
</tr>
<tr>
<td>35,000-39,999</td>
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</tr>
<tr>
<td>40,000-44,999</td>
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</tr>
<tr>
<td>45,000-49,999</td>
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<tr>
<td>50,000-54,999</td>
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<tr>
<td>55,000-59,999</td>
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</tr>
<tr>
<td>60,000-64,999</td>
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</tr>
<tr>
<td>65,000-69,999</td>
<td>1</td>
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<tr>
<td>70,000-74,999</td>
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<tr>
<td>75,000-79,999</td>
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<td>80,000-84,999</td>
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<td>110,000-114,999</td>
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<tr>
<td>&gt;115,000</td>
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</table>
1999 Survey Results

Question #1 by #15

**Director Salary by Region**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Far West</td>
<td>74,000</td>
<td>58,000</td>
<td>104,000</td>
<td>60,300</td>
</tr>
<tr>
<td>NW &amp; Great Plains</td>
<td>51,400</td>
<td>50,300</td>
<td>52,500</td>
<td>60,779</td>
</tr>
<tr>
<td>SW &amp; South Central</td>
<td>69,608</td>
<td>46,000</td>
<td>95,000</td>
<td>70,467</td>
</tr>
<tr>
<td>Great Lakes &amp; Upper Midwest</td>
<td>62,621</td>
<td>34,850</td>
<td>115,000</td>
<td>64,230</td>
</tr>
<tr>
<td>Southeast</td>
<td>64,208</td>
<td>41,000</td>
<td>102,000</td>
<td>61,364</td>
</tr>
<tr>
<td>Mid-Atlantic</td>
<td>77,375</td>
<td>54,000</td>
<td>127,500</td>
<td>75,677</td>
</tr>
<tr>
<td>Northeast (excluding NYC &amp; LI)</td>
<td>68,996</td>
<td>30,000</td>
<td>104,950</td>
<td>87,650</td>
</tr>
<tr>
<td>New York City &amp; Long Island</td>
<td>113,000</td>
<td>92,000</td>
<td>135,000</td>
<td></td>
</tr>
</tbody>
</table>

Question #2 by #15

**Director Salary by Geographical Setting**

<table>
<thead>
<tr>
<th>Geography</th>
<th>1999 Average</th>
<th>1999 Minimum</th>
<th>1999 Maximum</th>
<th>1998 Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban</td>
<td>71,977</td>
<td>34,850</td>
<td>135,000</td>
<td>70,549</td>
</tr>
<tr>
<td>Suburban</td>
<td>75,875</td>
<td>50,000</td>
<td>127,000</td>
<td>74,894</td>
</tr>
<tr>
<td>Rural</td>
<td>54,163</td>
<td>30,000</td>
<td>72,000</td>
<td>52,772</td>
</tr>
</tbody>
</table>
Question #3 by #15

Director Salary by Institution Type

<table>
<thead>
<tr>
<th>Geography</th>
<th>1999 Average</th>
<th>1999 Minimum</th>
<th>1999 Maximum</th>
<th>1998 Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public</td>
<td>63,855</td>
<td>34,850</td>
<td>115,000</td>
<td>60,827</td>
</tr>
<tr>
<td>Private</td>
<td>75,739</td>
<td>30,000</td>
<td>135,000</td>
<td>75,579</td>
</tr>
</tbody>
</table>

Question #4 by #15

Director Salary by Staffing Model

<table>
<thead>
<tr>
<th>Model</th>
<th>1999 Average</th>
<th>1999 Minimum</th>
<th>1999 Maximum</th>
<th>1998 Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nontenure track on contracts</td>
<td>67,872</td>
<td>34,850</td>
<td>127,500</td>
<td>67,707</td>
</tr>
<tr>
<td>Adjuncts</td>
<td>75,607</td>
<td>30,000</td>
<td>135,000</td>
<td>86,983</td>
</tr>
<tr>
<td>Students</td>
<td>64,250</td>
<td>41,000</td>
<td>88,000</td>
<td>59,650</td>
</tr>
<tr>
<td>Complex Hybrid</td>
<td>71,593</td>
<td>45,000</td>
<td>115,000</td>
<td>69,825</td>
</tr>
</tbody>
</table>
16. What is your best estimate of the difference between the annual base salary of the director and the annual base salary of an entry-level tenure-track faculty member at your law school?

<table>
<thead>
<tr>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>23</td>
<td>a. The director earns (average) $21,145 (min $1,200; max $72,000) more than the new tenure-track faculty member.</td>
</tr>
<tr>
<td>17</td>
<td>b. The director earns roughly the same as the new tenure-track faculty member.</td>
</tr>
<tr>
<td>34</td>
<td>c. The director earns (average) $16,682 (min $3,000; max $35,000) less than the new tenure-track faculty member.</td>
</tr>
</tbody>
</table>
17. What is your best estimate of the difference between the annual base salary of the director and the annual base salary of an entry-level clinician at your law school?

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>a. The director earns ( \text{average} ) $23,609 (\text{min} $5,000; \text{max} $72,000) more than the new clinician.</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>b. The director earns roughly the same as the new clinician.</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>c. The director earns ( \text{average} ) $15,250 (\text{min} $3,000; \text{max} $25,000) less than the new clinician.</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>d. N/A.</td>
<td></td>
</tr>
</tbody>
</table>

V. DIRECTOR'S WORKLOAD

18. For the 1998-99 academic year, what percentage of time was devoted to (Note: Averages do not include responses of zero. Thus, the total equals more than 100% (136%). The pie chart has converted these percentages to a base of 100.):

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 95 | a. Directorship duties, such as administering, training LRW faculty members, (but excluding teaching in the entry-level program)?  
   \( \text{average} \) 34% (\text{min} 5; \text{max} 100).  
   *1998 Survey:* (AVERAGE) 63% (min 0; max 100).  
   Note: Includes teaching %. |
| 78 | b. Teaching students in the entry-level program?  
   \( \text{average} \) 40% (\text{min} 1; \text{max} 100).  
   *1998 Survey:* (AVERAGE) 38% (min 0; max 100). |
| 57 | c. Teaching outside the entry-level program?  
   \( \text{average} \) 27% (\text{min} 10; \text{max} 70). |
| 81 | d. Service to the law school? (average) 11% (\text{min} 1; \text{max} 50). |
| 40 | e. Other activities? (average) 24% (\text{min} 2; \text{max} 100). |
19. During the 1998-99 academic year, what was the director's workload in the entry-level program in terms of the number of — (Note: Averages do not include responses of 0. 1998 averages for c-f do not include responses of zero):

<table>
<thead>
<tr>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>79 a.</strong> Entry-level students (total) per average term? (average) 58 (min 12; max 310). 1998 Survey: (average) 53 (min 11; max 300).</td>
<td></td>
</tr>
<tr>
<td><strong>76 b.</strong> In-class teaching hours taught per week per term? (average) 3 (min 1; max 30). 1998 Survey: (average) 4 (min 1; max 50).</td>
<td></td>
</tr>
<tr>
<td><strong>79 c.</strong> Major assignments (total) made per average entry-level student per average term? (A major assignment as one that expects students to turn in a final product of five or more typed pages). (average) 3 (min 1; max 7). 1998 Survey: (average) 4 (min 0; max 10).</td>
<td></td>
</tr>
</tbody>
</table>
76   d. Significant minor assignments (total) made per average entry-level student per average term? (A significant minor assignment as one that expects the student to turn in a final product of four or fewer pages.)
     (average) 5 (min 1; max 32).
     1998 Survey: (average) 5 (min 0; max 20).

65   e. Pages of entry-level student work (total) read per average term?
     (average) 1,226 (min 30; max 5,000).
     1998 Survey: (average) 1,583 (min 0; max 5,000).

58   f. Hours (total) spent in formal conferences, which are required or strongly encouraged, with entry-level students per average term?
     (average) 42 (min 5; max 200).
     1998 Survey: (average) 50 (min 0; max 200).

20. Did the director teach courses other than entry-level writing courses in 1998-99?

<table>
<thead>
<tr>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>44</td>
<td>64</td>
</tr>
<tr>
<td>26</td>
<td>32</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>

21. If the director taught courses in 1998-99 other than entry-level courses:

<table>
<thead>
<tr>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
</table>
| 65   | 40   | a. How many courses did the director teach?
     (average) 2 (min 1; max 5).
|      | 45   | b. How many of those courses were courses on legal writing, drafting, and oral advocacy?
     (average) 1.45 (min 1; max 7).
     1998 Survey: (average) 0.7 (min 0; max 7).
|      |      | c. How many of those courses were courses on subjects other than legal writing, drafting, and oral advocacy?
     (average) 1.40 (min 1; max 4).
     1998 Survey: (average) 0.7 (min 0; max 3).
d. What were the subject areas of the non-writing courses? Very broad range of 33 different doctrinal and skills courses (e.g., cyberspace law, to clinic, to academic support). Most frequent responses were professional responsibility; employment discrimination; torts; property; interviewing, counseling, negotiation; academic success.

e. How many total credit hours for other than entry-level courses?
   (average) 5 (min 1; max 16).
   1999 Survey: (average) 6 (min 1; max 15).

f. Did the director receive additional compensation?
   Yes: 14; No: 45.
   1998 Survey: (Yes: 7; No 66).

g. How much additional compensation did the director receive?
   (average) $7,702 (min $2,000; max $12,000).
   1998 Survey: (average) $6,833 (min $5,000; max $10,000).

How many people does the director supervise?

22.

1998  1999

a. Number of professionals (full-time and part-time LRW faculty members, writing specialists, academic support personnel, etc. Please do not include student teaching or research assistants.) (average) 9 (min 0; max 55).
   1998 Survey: (average) 9 (min 0; max 60).

b. What are the genders of the professionals?
   Females: (average) 6 (min 0; max 30).
   Males: (average) 4 (min 0; max 25).

c. Number of students (e.g., student teaching assistants).
   (average) 12 (min 0; max 56).
   1998 Survey: (average) 11 (min 0; max 60).

For questions 23 through 27, relating to directors who advise upper level moot court teams or other teams and participate in other service activities, core job responsibilities are distin-
guished from normal faculty service (e.g., chairing a faculty
moot court oversight committee or being appointed by the dean
as a moot court advisor).

23. Does the director advise upper level teams in competition (circle as many as apply)

<table>
<thead>
<tr>
<th>Year</th>
<th>Count</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>7</td>
<td>a. Yes, in-house moot court teams as part of core job responsibilities.</td>
</tr>
<tr>
<td>1998</td>
<td>12</td>
<td>b. Yes, in-house moot court teams as part of normal faculty service.</td>
</tr>
<tr>
<td>1998</td>
<td>5</td>
<td>c. Yes, outside moot court teams as part of core job responsibilities.</td>
</tr>
<tr>
<td>1998</td>
<td>20</td>
<td>d. Yes, outside moot court teams as part of normal faculty service.</td>
</tr>
<tr>
<td>1998</td>
<td>2</td>
<td>e. Yes, outside teams in negotiations and counseling as part of core job responsibilities.</td>
</tr>
<tr>
<td>1998</td>
<td>4</td>
<td>f. Yes, outside teams in negotiations and counseling as part of normal faculty service.</td>
</tr>
<tr>
<td>1998</td>
<td>64</td>
<td>g. No.</td>
</tr>
<tr>
<td>1998</td>
<td>4</td>
<td>h. N/A.</td>
</tr>
</tbody>
</table>

24. Does the director serve as faculty advisor to students?

<table>
<thead>
<tr>
<th>Year</th>
<th>Count</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>6</td>
<td>a. Yes, as a core job responsibility.</td>
</tr>
<tr>
<td>1998</td>
<td>47</td>
<td>b. Yes, as part of normal faculty service.</td>
</tr>
<tr>
<td>1998</td>
<td>4</td>
<td>d. N/A.</td>
</tr>
</tbody>
</table>

25. Does the director participate in first-year orientation programs?

<table>
<thead>
<tr>
<th>Year</th>
<th>Count</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>39</td>
<td>a. Yes, in a general orientation program as a core job responsibility.</td>
</tr>
<tr>
<td>1998</td>
<td>27</td>
<td>b. Yes, in a general orientation program as part of normal faculty service.</td>
</tr>
<tr>
<td>1998</td>
<td>10</td>
<td>c. Yes, in an academic support/success orientation program as a core job responsibility.</td>
</tr>
<tr>
<td>1998</td>
<td>12</td>
<td>d. Yes, in an academic support/success orientation program as part of normal faculty service.</td>
</tr>
</tbody>
</table>
26. What other significant activities does the director undertake as part of the core job responsibilities or as normal faculty service?

<table>
<thead>
<tr>
<th>Year</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>1999</td>
<td></td>
</tr>
<tr>
<td>69</td>
<td>46</td>
<td>a. Law school or university committees.</td>
</tr>
<tr>
<td>9</td>
<td>19</td>
<td>b. Academic support program.</td>
</tr>
<tr>
<td>19</td>
<td>22</td>
<td>c. Other law school writing programs (e.g., writing center, moot court, law review).</td>
</tr>
<tr>
<td>2</td>
<td>3</td>
<td>d. Externship program.</td>
</tr>
<tr>
<td>3</td>
<td>13</td>
<td>e. Other activities outside law school.</td>
</tr>
<tr>
<td>13</td>
<td>7</td>
<td>f. Miscellaneous (e.g., scholarship, fund-raising, admissions).</td>
</tr>
<tr>
<td>6</td>
<td>7</td>
<td>g. N/A.</td>
</tr>
</tbody>
</table>

27. If the director has taken on any of the activities described in questions 23 through 26, has the director received a stipend for them?

<table>
<thead>
<tr>
<th>Year</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>1999</td>
<td></td>
</tr>
<tr>
<td>56</td>
<td>73</td>
<td>a. No.</td>
</tr>
<tr>
<td>5</td>
<td>13</td>
<td>b. Yes.</td>
</tr>
</tbody>
</table>

28. Does the director serve on faculty committees?

<table>
<thead>
<tr>
<th>Year</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>1999</td>
<td></td>
</tr>
<tr>
<td>60</td>
<td>81</td>
<td>a. Yes, as a voting member.</td>
</tr>
<tr>
<td>3</td>
<td>9</td>
<td>b. Yes, as a non-voting member.</td>
</tr>
<tr>
<td>6</td>
<td>8</td>
<td>c. No.</td>
</tr>
<tr>
<td>0</td>
<td>0</td>
<td>d. N/A.</td>
</tr>
</tbody>
</table>

29. May the director attend faculty meetings?

<table>
<thead>
<tr>
<th>Year</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>1999</td>
<td></td>
</tr>
<tr>
<td>48</td>
<td>42</td>
<td>a. Yes, as a voting member on all matters.</td>
</tr>
<tr>
<td>42</td>
<td></td>
<td>b. Yes, as a voting member on all matters except hiring and promotion.</td>
</tr>
<tr>
<td>28</td>
<td>6</td>
<td>c. Yes, as a non-voting member.</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
<td>d. No.</td>
</tr>
<tr>
<td>0</td>
<td>0</td>
<td>e. N/A.</td>
</tr>
</tbody>
</table>
30. Does the director have the obligation to produce written scholarship?

<table>
<thead>
<tr>
<th>Year</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>a. Yes, of the same quality and quantity as tenure-track faculty.</td>
</tr>
<tr>
<td>25</td>
<td>b. Yes, of different quality and quantity as tenure-track faculty.</td>
</tr>
<tr>
<td>6</td>
<td>1998 Survey: 33 directors had an obligation to produce scholarship.</td>
</tr>
<tr>
<td>15</td>
<td>c. No, but there is an expectation that the director will do so.</td>
</tr>
<tr>
<td>44</td>
<td>d. No, and there is no expectation that the director will do so.</td>
</tr>
<tr>
<td>1</td>
<td>1998 Survey: 39 directors had no obligation to produce scholarship.</td>
</tr>
<tr>
<td></td>
<td>e. N/A.</td>
</tr>
</tbody>
</table>

VI. FULL-TIME LEGAL WRITING FACULTY MEMBERS (excluding directors)

31. What is the employment status of the full-time LRW faculty members in your program?

<table>
<thead>
<tr>
<th>Year</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>a. Tenured or tenure-track.</td>
</tr>
<tr>
<td>8</td>
<td>b. Long-term contracts.</td>
</tr>
<tr>
<td>26</td>
<td>c. Short-term contracts.</td>
</tr>
</tbody>
</table>

32. If the LRW faculty members are on contracts, is there a limit to the number of years the contract may be renewed (is the position “capped”)?

<table>
<thead>
<tr>
<th>Year</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>a. No, there is no limit.</td>
</tr>
<tr>
<td>63</td>
<td>b. Yes, the limit is (average) 4 years.</td>
</tr>
<tr>
<td>18</td>
<td>c. Other.</td>
</tr>
<tr>
<td>3</td>
<td>• 2 years</td>
</tr>
<tr>
<td>7</td>
<td>• 3 years</td>
</tr>
<tr>
<td>2</td>
<td>• 4 years</td>
</tr>
<tr>
<td>3</td>
<td>• 5 years</td>
</tr>
<tr>
<td>3</td>
<td>• &gt;5 years</td>
</tr>
</tbody>
</table>
33. If your program is "uncapped," what is the sequence and length of the renewable contracts? (e.g., 1-year, then 2-year, then 3-year contracts thereafter.)

1998 1999
Varies too greatly to report.

34. What title do the LRW faculty members have in official materials (publications, catalogues, signs, etc.) at your law school?

1998 1999
   19 a. Professor, associate professor, or assistant professor.
   13 b. Professor, associate professor, or assistant professor of legal writing.
   5  c. Visiting professor or visiting professor of legal writing.
   18 d. Lecturer.
   26 e. Instructor.
   12 f. Other.

35. How do students refer to the LRW faculty members at your law school?

1998 1999
   74 a. Professor.
   14 b. Mr. or Ms.
   9  c. Other.

36. Do students use a different title to refer to the LRW faculty members than to other faculty at your law school?

1998 1999
   70 a. No.
   15 b. Yes.

37. Are there written standards or criteria for evaluating LRW faculty?

1998 1999
   21 a. Yes.
   15 b. In development.
   49 c. No.
38. What is the annual, base salary of a full-time, entry-level LRW faculty member? (Exclusive of stipends for additional work and summer grants or optional teaching. If you have no entry-level faculty member, please estimate.)

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>17</td>
<td>24</td>
</tr>
<tr>
<td>a. Annual salary for a 12-month base or contract term: (average) $42,130 (min $29,000; max $78,500).</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>26</td>
<td>58</td>
</tr>
<tr>
<td>b. Annual salary for a less than 12-month base or contract term: (average) $38,738 (min $20,000; max $68,000).</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. N/A.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1999 Salaries Reported (Combined 12-Month & <12-Month):
(average) $39,731 (min $20,000; max $78,500).

1998 Survey: (average) $38,590 (min $14,000; max not reported).

Question #1 by #38
### 1999 LRW Faculty Salary by Region

<table>
<thead>
<tr>
<th>Region</th>
<th>1999 Average</th>
<th>Minimum</th>
<th>Maximum</th>
<th>1998 Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Far West</td>
<td>39,833</td>
<td>26,000</td>
<td>78,800</td>
<td>46,250</td>
</tr>
<tr>
<td>NW &amp; Great Plains</td>
<td>62,500</td>
<td>52,500</td>
<td>72,500</td>
<td>37,333</td>
</tr>
<tr>
<td>SW &amp; South Central</td>
<td>40,073</td>
<td>30,000</td>
<td>60,000</td>
<td>34,400</td>
</tr>
<tr>
<td>Great Lakes &amp; Upper Midwest</td>
<td>34,976</td>
<td>32,000</td>
<td>55,000</td>
<td>37,357</td>
</tr>
<tr>
<td>Southeast</td>
<td>37,790</td>
<td>34,000</td>
<td>45,000</td>
<td>35,438</td>
</tr>
<tr>
<td>Mid-Atlantic</td>
<td>45,125</td>
<td>30,000</td>
<td>88,000</td>
<td>36,938</td>
</tr>
<tr>
<td>Northeast (excluding NYC &amp; LI)</td>
<td>42,700</td>
<td>27,000</td>
<td>68,000</td>
<td>44,471</td>
</tr>
<tr>
<td>New York City &amp; Long Island</td>
<td>45,833</td>
<td>31,500</td>
<td>63,000</td>
<td></td>
</tr>
</tbody>
</table>

### 1999 LRW Faculty Salary Range

![Salary Range Chart](chart.png)

### LRW Faculty Salary by Setting

<table>
<thead>
<tr>
<th>Geography</th>
<th>1999 Average</th>
<th>Minimum</th>
<th>Maximum</th>
<th>1998 Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban</td>
<td>39,816</td>
<td>20,000</td>
<td>68,000</td>
<td>40,859</td>
</tr>
<tr>
<td>Suburban</td>
<td>41,359</td>
<td>27,000</td>
<td>78,500</td>
<td>34,954</td>
</tr>
<tr>
<td>Rural</td>
<td>34,922</td>
<td>30,000</td>
<td>38,000</td>
<td>34,625</td>
</tr>
</tbody>
</table>

### LRW Faculty Salary by Institution Type

<table>
<thead>
<tr>
<th>Geography</th>
<th>1999 Average</th>
<th>Minimum</th>
<th>Maximum</th>
<th>1998 Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public</td>
<td>37,553</td>
<td>26,000</td>
<td>88,000</td>
<td>35,536</td>
</tr>
<tr>
<td>Private</td>
<td>41,273</td>
<td>20,000</td>
<td>78,500</td>
<td>40,118</td>
</tr>
</tbody>
</table>
Question #4 by #38

**LRW Faculty Salary by Staffing Model**

<table>
<thead>
<tr>
<th>Model</th>
<th>Average</th>
<th>Minimum</th>
<th>Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tenure or tenure-track for LRW</td>
<td>43,000</td>
<td>43,000</td>
<td>43,000</td>
</tr>
<tr>
<td>Tenure or tenure-track for LRW and other</td>
<td>42,500</td>
<td>30,000</td>
<td>55,000</td>
</tr>
<tr>
<td>Tenure or tenure-track in doctrinal course</td>
<td>30,000</td>
<td>30,000</td>
<td>30,000</td>
</tr>
<tr>
<td>Tenure or tenure-track, primary resp. other courses</td>
<td>40,000</td>
<td>40,000</td>
<td>40,000</td>
</tr>
<tr>
<td>Full-time nontenure-track</td>
<td>38,892</td>
<td>27,000</td>
<td>78,500</td>
</tr>
<tr>
<td>Graduate students</td>
<td>32,250</td>
<td>31,500</td>
<td>33,000</td>
</tr>
<tr>
<td>Complex hybrid</td>
<td>44,771</td>
<td>20,000</td>
<td>68,000</td>
</tr>
</tbody>
</table>

Question #11 by #38

**LRW Faculty Salary by Director Type**

<table>
<thead>
<tr>
<th></th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Average</td>
</tr>
<tr>
<td>Tenured director</td>
<td>44,160</td>
</tr>
<tr>
<td>Tenure-track director</td>
<td>41,727</td>
</tr>
<tr>
<td>Nontenure-track director</td>
<td>37,000</td>
</tr>
<tr>
<td>Primary resp. not LRW</td>
<td>33,200</td>
</tr>
<tr>
<td>Other</td>
<td>40,250</td>
</tr>
</tbody>
</table>

39. What is the base salary range for full-time LRW faculty members in your program?

(Note: These salary figures are supposed to exclude directors' salaries; however, some directors' salaries may have been reported and are included in the high range.)

1998 1999

|       | 65 | From (lowest) (average) $39,698 (min $20,800; max $78,500) to (highest) (average) $47,452 (min $24,500; max $115,000) |
40. Is the LRW faculty member eligible for summer research grants?

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>24</td>
<td>47</td>
</tr>
</tbody>
</table>

- a. Yes. If so, how much is the typical grant? (average) $6,411 (min $750; max $12,000).  
  1998 Survey: (average) $6,278 (min $2,500; max $12,000).
- b. No.
- c. Our school does not provide summer research grants to faculty.
- d. Do not know, I have never asked.
- e. N/A.

41. Is the LRW faculty member eligible to receive developmental funding (to attend conferences, buy books, etc.)?

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>37</td>
<td>73</td>
</tr>
</tbody>
</table>

- a. Yes. In the 1998-99 year, it was (average) $1,517 (min $50; max $4,000).  
  1998 Survey: (average) $1,920 (min $500; max $8,000).
- b. No.
- c. N/A.

42. Does the LRW faculty member receive funding to hire student research assistants (exclusive of teaching student assistants)?

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>23</td>
<td>49</td>
</tr>
</tbody>
</table>

- a. Yes, sufficient funding for all reasonable requests.
- b. Yes, annually about (average) $1,965 (min $450; max $36,000).  
  1998 Survey: (average) $2,130 (min $450; max $5,000).
- c. No.
- d. N/A.

43. During the 1998-99 academic year, what was the LRW faculty member's workload in the entry-level program in
terms of the number of (NOTE: Averages do not include responses of zero):  

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Entry-level students (total)?</td>
<td>85</td>
<td></td>
</tr>
<tr>
<td>(average)</td>
<td>53 (min 20; max 200).</td>
<td></td>
</tr>
<tr>
<td>1998 Survey: (average)</td>
<td>51 (min 8; max 125).</td>
<td></td>
</tr>
<tr>
<td>b. In-class teaching hours per week per term?</td>
<td>82</td>
<td></td>
</tr>
<tr>
<td>(average)</td>
<td>5 (min 1; max 40).</td>
<td></td>
</tr>
<tr>
<td>1998 Survey: (average)</td>
<td>4 (min 1; max 11).</td>
<td></td>
</tr>
<tr>
<td>c. Major assignments (total) made per average entry-level student per average term? (A major assignment is one that expects students to turn in a final product of five or more typed pages).</td>
<td>83</td>
<td></td>
</tr>
<tr>
<td>(average)</td>
<td>3 (min 1; max 7).</td>
<td></td>
</tr>
<tr>
<td>1998 Survey: (average)</td>
<td>4 (min 0; max 9).</td>
<td></td>
</tr>
<tr>
<td>d. Significant minor assignments (total) made per average entry-level student per average term? (A significant minor assignment as one that expects the student to turn in a final product of four or fewer pages).</td>
<td>75</td>
<td></td>
</tr>
<tr>
<td>(average)</td>
<td>4 (min 0; max 17).</td>
<td></td>
</tr>
<tr>
<td>1998 Survey: (average)</td>
<td>5 (min 0; max 20).</td>
<td></td>
</tr>
<tr>
<td>e. Pages of entry-level student work (total) read per average term?</td>
<td>66</td>
<td></td>
</tr>
<tr>
<td>(average)</td>
<td>1,870 (min 40; max 5,000).</td>
<td></td>
</tr>
<tr>
<td>1998 Survey: (average)</td>
<td>1,642 (min 0; max 5,000).</td>
<td></td>
</tr>
<tr>
<td>f. Hours (total) spent in formal conferences, which are required or strongly encouraged, with entry-level students per average term?</td>
<td>72</td>
<td></td>
</tr>
<tr>
<td>(average)</td>
<td>69 (min 0; max 300).</td>
<td></td>
</tr>
<tr>
<td>1998 Survey: (average)</td>
<td>67 (min 0; max 200).</td>
<td></td>
</tr>
</tbody>
</table>

44. Does the LRW faculty member serve on faculty committees?  

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Yes, as a voting member.</td>
<td>27</td>
<td>56</td>
</tr>
<tr>
<td>b. Yes, as a non-voting member.</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>c. No.</td>
<td>14</td>
<td>27</td>
</tr>
<tr>
<td>d. N/A.</td>
<td>0</td>
<td></td>
</tr>
</tbody>
</table>
45. May the LRW faculty member attend faculty meetings?

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Yes, as a voting member on all matters.</td>
<td>18</td>
<td>19</td>
</tr>
<tr>
<td>b. Yes, as a voting member on all matters but hiring and promotions.</td>
<td>40</td>
<td>40</td>
</tr>
<tr>
<td>c. Yes, as a non-voting member.</td>
<td>21</td>
<td>40</td>
</tr>
<tr>
<td>d. No.</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>e. N/A.</td>
<td>3</td>
<td>1</td>
</tr>
</tbody>
</table>

1998 Survey: 17 LRW faculty members voted at faculty meetings.

46. Does the LRW faculty member have the obligation to produce written scholarship?

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Yes.</td>
<td>6</td>
<td>14</td>
</tr>
<tr>
<td>b. No.</td>
<td>34</td>
<td>74</td>
</tr>
<tr>
<td>c. N/A.</td>
<td>4</td>
<td>0</td>
</tr>
</tbody>
</table>

47. Do you use adjunct faculty in your entry-level program?

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Exclusively.</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>b. Primarily (for over 50% of the teaching).</td>
<td>13</td>
<td>13</td>
</tr>
<tr>
<td>c. Partially (for less than 50% of the teaching)</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>d. No.</td>
<td>66</td>
<td>66</td>
</tr>
</tbody>
</table>

48. How many adjunct faculty did you use in your 1998-99 entry-level program for teaching:

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Objective legal writing? (average) 11 (min 0; max 43).</td>
<td>40</td>
<td>40</td>
</tr>
<tr>
<td>b. Advocacy or moot court? (average) 11 (min 1; max 43).</td>
<td>35</td>
<td>35</td>
</tr>
<tr>
<td>c. Other.</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>

49. What is the salary for your adjunct faculty in your entry-level program?

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>per credit hour (average) $1,879 (min $600; max $5,000).</td>
<td>28</td>
<td>28</td>
</tr>
</tbody>
</table>
29. per term (average) $4,107 (min $700; max $12,500).

50. How many students on average does each adjunct teach?

<table>
<thead>
<tr>
<th>Year</th>
<th>Adjuncts (average)</th>
<th>Adjuncts (min; max)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>38 (average) 21 (min 10; max 50)</td>
<td>students per section.</td>
</tr>
<tr>
<td>1999</td>
<td>32 (average) 21 (min 10; max 42)</td>
<td>students total.</td>
</tr>
</tbody>
</table>

51. Must an applicant for an adjunct position have a minimum number of years of legal practice experience?

<table>
<thead>
<tr>
<th>Year</th>
<th>Years (average)</th>
<th>Years (min; max)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>25 (average) 3 (min 2; max 5)</td>
<td>years minimum.</td>
</tr>
<tr>
<td>1999</td>
<td>18 (average) 3 (min 2; max 5)</td>
<td>years minimum.</td>
</tr>
</tbody>
</table>

52. On average, how many years of practice and teaching experience do the adjunct professors have?

<table>
<thead>
<tr>
<th>Year</th>
<th>Practice (average)</th>
<th>Practice (min; max)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>37 (average) 7 (min 2; max 17).</td>
<td>years.</td>
</tr>
<tr>
<td>1999</td>
<td>33 (average) 4 (min 0; max 4).</td>
<td>years.</td>
</tr>
</tbody>
</table>

53. Who creates the writing assignments in your program?

| Year | Creation | |
|------|----------||
| 1998 | The director exclusively. |
| 1999 | The director primarily. |
| 1998 | The adjunct primarily. |
| 1999 | The adjunct exclusively. |
| 1998 | Other. |

VIII. TEACHING ASSISTANTS

54. Do you use teaching assistants in your entry-level program?

| Year | Use | |
|------|-----||
| 1998 | Exclusively. |
| 1999 | Primarily (for over 50% of the teaching). |
| 1998 | Partially (for less than 50% of the teaching). |
55. How many teaching assistants participate in your program each term?

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>67</td>
<td>(average) 14 (min 3; max 40).</td>
</tr>
</tbody>
</table>

56. Approximately how many students are assigned to each teaching assistant?

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>66</td>
<td>(average) 22 (min 1; max 75) students per TA.</td>
</tr>
</tbody>
</table>

57. Approximately how many hours does each teaching assistant spend on TA duties each term? Note: 3 responses ≥350 deleted from average.

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>62</td>
<td>(average) 91 (min 2; max 260) hours.</td>
</tr>
</tbody>
</table>

58. How are the teaching assistants compensated?

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>9</td>
<td>a. Course credit and grades.</td>
</tr>
<tr>
<td></td>
<td>20</td>
<td>b. Course credit. How many credits per term? (average) 2.5 (min 1; max 7).</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>c. Offset against tuition of (average) $3,053 (min $295; max $10,500) per term.</td>
</tr>
<tr>
<td></td>
<td>29</td>
<td>d. Payment of (average) $1,388 (min $100; max $3,400) per term.</td>
</tr>
<tr>
<td></td>
<td>21</td>
<td>e. Payment of (average) $9.00 (min $6; max $15) per hour worked.</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>f. Other.</td>
</tr>
</tbody>
</table>

59. Approximately how many hours of training are provided for each teaching assistant each term?

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>60</td>
<td>(average) 14 (min 0; max 75) hours.</td>
</tr>
</tbody>
</table>

IX. ADVANCED WRITING SKILLS

60. Does your law school offer non-entry-level legal writing courses? (NOTE: Non-entry-level means courses that are not part of the required sequence for all entering law students, such as legal research, legal writing, ap-
pellate advocacy/moot court (during the 2d or 3d semesters).)

1998 1999
14 a. No, no non-entry-level courses are offered.
37 b. Yes, non-entry-level courses taught by non-writing faculty.
22 c. Yes, non-entry-level courses taught by legal writing faculty (including the director).
39 d. Yes, non-entry-level courses taught by both non-writing and by legal writing faculty.
  e. Other.

61. What skills are taught in the non-entry-level writing courses (circle all that apply)?

1998 1999
53 a. Advanced legal writing - general writing skills.
17 b. Advanced legal writing - survey course.
46 c. Drafting, general.
52 d. Drafting, litigation.
35 e. Drafting, legislation.
48 f. Drafting, transactional.
63 g. Advanced advocacy.
38 h. Scholarly writing.
14 i. Judicial opinion writing.
17 j. Other.

62. Must students satisfy a writing requirement, beyond the entry-level program, for graduation?

1998 1999
15 a. No.
13 b. Yes, they must earn (average) 3 (min 1; max 6) hours of writing credit.
59 c. Yes, they must produce at least one seminar or scholarly paper.
3 d. Yes, they must produce at least one "practical" writing assignment, such as drafting litigation documents, contracts, or legislation.
5 e. A wide range of courses and documents satisfy the requirement.
28 f. Other.
63. Does your law school train students who are required to produce scholarly writing/seminar papers?

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>a. No, not at all.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b. The faculty do so within the courses for which the paper is written.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c. Yes, in non-course writing workshops.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>d. Yes, in a separate course taught by non-writing faculty.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>e. Yes, in a separate course taught by LRW faculty of director.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>f. Other.</td>
</tr>
</tbody>
</table>
1999 ALWD/LWI SURVEY RESULTS - APPENDIX A
Comparisons of Responses from Female and Male Directors

Prepared by Jo Anne Durako,
Director of Legal Research & Writing
Rutgers-Camden Law School

Responses to the survey: Female - 86 (74%); Male - 31 (26%)

Note: As used in this Appendix, "Director" means the person overseeing the Legal Writing program who responded to the ALWD/LWI survey.

Question 11: What choice best describes the director's status?

<table>
<thead>
<tr>
<th></th>
<th>Female Directors</th>
<th>Male Directors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tenured</td>
<td>13</td>
<td>8</td>
</tr>
<tr>
<td>Tenure track</td>
<td>12</td>
<td>1</td>
</tr>
<tr>
<td>Contract</td>
<td>40</td>
<td>11</td>
</tr>
<tr>
<td>Primary resp. not LRW</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Other</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>TOTAL</td>
<td>76</td>
<td>25</td>
</tr>
</tbody>
</table>

Question 15: What is the annual base salary of the director?

<table>
<thead>
<tr>
<th></th>
<th>Female Directors</th>
<th>Male Directors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Avg. 12-month salary</td>
<td>$73,375</td>
<td>$85,192</td>
</tr>
<tr>
<td>Lowest</td>
<td>50,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Highest</td>
<td>104,000</td>
<td>135,000</td>
</tr>
<tr>
<td>TOTAL responding</td>
<td>30</td>
<td>13</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Female Directors</th>
<th>Male Directors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Avg. 9-month salary</td>
<td>$63,762</td>
<td>$72,494</td>
</tr>
<tr>
<td>Lowest</td>
<td>30,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Highest</td>
<td>123,000</td>
<td>115,000</td>
</tr>
<tr>
<td>TOTAL responding</td>
<td>37</td>
<td>9</td>
</tr>
</tbody>
</table>

Highest salaries:

<table>
<thead>
<tr>
<th></th>
<th>Female Directors</th>
<th>Male Directors</th>
</tr>
</thead>
<tbody>
<tr>
<td>% earning ≥ $100,000 of TOTAL responding</td>
<td>4 of 67 = 6% of females</td>
<td>6 of 22 = 27% of males</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Avg. Base Salary paid* | Female Directors | Male Directors |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>$67,331*</td>
<td>$80,000*</td>
<td></td>
</tr>
</tbody>
</table>

*Base salaries reported, not accounting for 12 or < 12-month contract differences or other comp.
### Directors' salaries by salary range

<table>
<thead>
<tr>
<th>Salary Range</th>
<th>Female 12-month</th>
<th>Male 12-month</th>
<th>Female 9-month</th>
<th>Male 9-month</th>
<th>Female Totals</th>
<th>Male Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>$30 up to $40,000</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$40 up to $50,000</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$50 up to $60,000</td>
<td>7</td>
<td>4</td>
<td>6</td>
<td>4</td>
<td>13</td>
<td>8</td>
</tr>
<tr>
<td>$60 up to $70,000</td>
<td>6</td>
<td>0</td>
<td>12</td>
<td>2</td>
<td>18</td>
<td>2</td>
</tr>
<tr>
<td>$70 up to $80,000</td>
<td>6</td>
<td>1</td>
<td>8</td>
<td>0</td>
<td>14</td>
<td>1</td>
</tr>
<tr>
<td>$80 up to $90,000</td>
<td>4</td>
<td>4</td>
<td>3</td>
<td>0</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>$90 up to $100,000</td>
<td>4</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>$100,000 or more</td>
<td>3</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td>30</td>
<td>13</td>
<td>37</td>
<td>9</td>
<td>67</td>
<td>22</td>
</tr>
</tbody>
</table>

### Question 14: What title does the director have in official law school materials?

<table>
<thead>
<tr>
<th>Title</th>
<th>Female Directors</th>
<th>Male Directors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professor</td>
<td>37 (51%)</td>
<td>16 (64%)</td>
</tr>
<tr>
<td>Prof of Legal Wtg</td>
<td>4 (5%)</td>
<td>3 (12%)</td>
</tr>
<tr>
<td>Visiting Prof</td>
<td>1 (1%)</td>
<td>1 (4%)</td>
</tr>
<tr>
<td>Lecturer</td>
<td>9 (12%)</td>
<td>1 (4%)</td>
</tr>
<tr>
<td>Instructor</td>
<td>4 (5%)</td>
<td>0 (0%)</td>
</tr>
<tr>
<td>Asst/Assoc Dean</td>
<td>3 (4%)</td>
<td>1 (4%)</td>
</tr>
<tr>
<td>Director</td>
<td>10 (14%)</td>
<td>2 (8%)</td>
</tr>
<tr>
<td>Other</td>
<td>5 (7%)</td>
<td>1 (4%)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>73</td>
<td>25</td>
</tr>
</tbody>
</table>

### Question 20: Does the director teach courses beyond the first-year writing course?

<table>
<thead>
<tr>
<th>Teaching Status</th>
<th>Female Directors</th>
<th>Male Directors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>43 (59%)</td>
<td>21 (84%)</td>
</tr>
<tr>
<td>No</td>
<td>29 (40%)</td>
<td>3 (12%)</td>
</tr>
<tr>
<td>N/A</td>
<td>1 (1%)</td>
<td>1 (4%)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>73</td>
<td>25</td>
</tr>
</tbody>
</table>

### Question 28: Does the director serve on faculty committees?

<table>
<thead>
<tr>
<th>Committee Status</th>
<th>Female Directors</th>
<th>Male Directors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, voting member</td>
<td>59 (81%)</td>
<td>22 (88%)</td>
</tr>
<tr>
<td>Yes, non-voting member</td>
<td>6 (8%)</td>
<td>3 (12%)</td>
</tr>
<tr>
<td>No</td>
<td>8 (11%)</td>
<td>0 (0%)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>73</td>
<td>25</td>
</tr>
</tbody>
</table>
Question 29: Does the director attend and vote at faculty meetings?

<table>
<thead>
<tr>
<th></th>
<th>Female Directors</th>
<th>Male Directors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Votes on all matters</td>
<td>35 (48%)</td>
<td>13 (52%)</td>
</tr>
<tr>
<td>No vote on hire/promo</td>
<td>32 (44%)</td>
<td>10 (40%)</td>
</tr>
<tr>
<td>No voting</td>
<td>5 (7%)</td>
<td>1 (4%)</td>
</tr>
<tr>
<td>Does not attend</td>
<td>1 (1%)</td>
<td>1 (4%)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>73</td>
<td>25</td>
</tr>
</tbody>
</table>

Question 22: How many LRW professionals does the director supervise?

<table>
<thead>
<tr>
<th></th>
<th>Female Directors</th>
<th>Male Directors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female prof. staff</td>
<td>397 58% of staff</td>
<td>122 60% of staff</td>
</tr>
<tr>
<td>Male prof. staff</td>
<td>283 42% of staff</td>
<td>63 40% of staff</td>
</tr>
<tr>
<td>TOTAL STAFF</td>
<td>680</td>
<td>205</td>
</tr>
<tr>
<td>TOTAL responding</td>
<td>66</td>
<td>25</td>
</tr>
</tbody>
</table>

Removing from the analysis above, data for programs using adjuncts (Question 47)

<table>
<thead>
<tr>
<th></th>
<th>Female Directors</th>
<th>Male Directors (12)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female prof. staff</td>
<td>107 67% of staff</td>
<td>36 72% of staff</td>
</tr>
<tr>
<td>Male prof. staff</td>
<td>53 33% of staff</td>
<td>14 28% of staff</td>
</tr>
<tr>
<td>TOTAL STAFF</td>
<td>160</td>
<td>50</td>
</tr>
<tr>
<td>TOTAL respond</td>
<td>34</td>
<td>12</td>
</tr>
</tbody>
</table>

Question 19(a): How many entry-level students does the director teach?

<table>
<thead>
<tr>
<th></th>
<th>Female Directors</th>
<th>Male Directors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Avg # of 1L students</td>
<td>33 (48*)</td>
<td>37 (88*)</td>
</tr>
<tr>
<td>Lowest</td>
<td>14</td>
<td>12</td>
</tr>
<tr>
<td>Highest</td>
<td>90 (250*)</td>
<td>72 (310*)</td>
</tr>
</tbody>
</table>

(Data exclude students loads above 100 students for 6 female directors and for 6 male directors.
* Highest number of 1Ls taught if data did not exclude the 12 entries for student loads above 100 students)

Question 21(g): How much additional compensation does the director receive for teaching other than entry-level classes?

<table>
<thead>
<tr>
<th></th>
<th>Female Directors</th>
<th>Male Directors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average</td>
<td>$ 8,417</td>
<td>$ 8,700</td>
</tr>
<tr>
<td>Lowest</td>
<td>$ 4,500</td>
<td>$ 2,000</td>
</tr>
<tr>
<td>Highest</td>
<td>$12,000</td>
<td>$10,000</td>
</tr>
</tbody>
</table>
Question 39: What is the base salary range for LRW faculty members (excluding the director's salary) from lowest salary to highest salary paid at your school (range from $\text{(low range)}$ paid to $\text{(high range)}$ paid)?

<table>
<thead>
<tr>
<th></th>
<th>Female Directors</th>
<th>Male Directors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Avg. low range</td>
<td>$38,345 89% \text{ of male}$</td>
<td>$42,947 89% \text{ of male}$</td>
</tr>
<tr>
<td>Lowest in low range</td>
<td>20,800 72% of male</td>
<td>29,000 72% of male</td>
</tr>
<tr>
<td>Highest in low range</td>
<td>70,000 89% of male</td>
<td>78,500 89% of male</td>
</tr>
<tr>
<td>Avg. high range</td>
<td>$45,753 90% \text{ of male}$</td>
<td>$51,048 90% \text{ of male}$</td>
</tr>
<tr>
<td>Lowest in high range</td>
<td>24,500 84% of male</td>
<td>29,000 84% of male</td>
</tr>
<tr>
<td>Highest in high range</td>
<td>90,000* 78% of male</td>
<td>115,000* 78% of male</td>
</tr>
<tr>
<td>Overall lowest paid</td>
<td>$20,800 $90,000*</td>
<td>$29,000 $115,000*</td>
</tr>
<tr>
<td>Overall highest paid</td>
<td>$90,000 $29,000</td>
<td>$115,000 $115,000</td>
</tr>
<tr>
<td>Institution</td>
<td>Advanced Writing Skills</td>
<td></td>
</tr>
<tr>
<td>------------------------------</td>
<td>--------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Akron</td>
<td>Did not respond.</td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Advanced Advocacy\nScholarly Writing</td>
<td></td>
</tr>
<tr>
<td>Albany</td>
<td>Drafting, general\nDrafting, litigation\nDrafting, legislative\nDrafting, transactional</td>
<td></td>
</tr>
<tr>
<td>Arizona State</td>
<td>Advanced Legal Writing, general\nGeneral Writing Skills\nDrafting, general\nDrafting, legislation\nDrafting, transactional</td>
<td></td>
</tr>
<tr>
<td>Arkansas, Little Rock</td>
<td>Advanced Legal Writing, general\nAdvanced Legal Writing, survey\nDrafting, general\nDrafting, transactional\nAdvanced Advocacy</td>
<td></td>
</tr>
<tr>
<td>Arkansas, Fayetteville</td>
<td>Advanced Legal Writing, general\nAdvanced Legal Writing, survey\nDrafting, litigation\nDrafting, legislative\nDrafting, transactional\nAdvanced Advocacy\nScholarly Writing</td>
<td></td>
</tr>
<tr>
<td>Baltimore</td>
<td>Advanced Legal Writing - general\nDrafting, litigation\nDrafting, legislation\nDrafting, transactional\nAdvanced Advocacy\nScholarly Writing</td>
<td></td>
</tr>
<tr>
<td>Baylor</td>
<td>Did not respond.</td>
<td></td>
</tr>
<tr>
<td>Boston College</td>
<td>Advanced Advocacy\nAdvanced Research</td>
<td></td>
</tr>
<tr>
<td>Boston U</td>
<td>Advanced Legal Writing, general\nAdvanced Legal Writing, survey\nDrafting, litigation\nAdvanced Advocacy\nJudicial Opinion Writing</td>
<td></td>
</tr>
<tr>
<td>Brigham Young</td>
<td>Advanced Legal Writing, general</td>
<td></td>
</tr>
<tr>
<td>Brooklyn</td>
<td>Advanced Legal Writing, general\nAdvanced Legal Writing, survey\nDrafting, litigation\nDrafting, legislation\nDrafting, transactional\nAdvanced Advocacy\nJudicial Opinion Writing</td>
<td></td>
</tr>
<tr>
<td>Institution</td>
<td>Programs Offered</td>
<td></td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>California Western</td>
<td>Did not respond.</td>
<td></td>
</tr>
<tr>
<td>Capital</td>
<td>Advanced Advocacy</td>
<td></td>
</tr>
<tr>
<td>Cardozo</td>
<td>Advanced Legal Writing - general Drafting, general Drafting, litigation Drafting, transactional</td>
<td></td>
</tr>
<tr>
<td>Case Western</td>
<td>Advanced Advocacy</td>
<td></td>
</tr>
<tr>
<td>Chapman</td>
<td>Advanced Legal Writing, general Drafting, litigation Drafting, general Drafting, transactional Advanced Advocacy</td>
<td></td>
</tr>
<tr>
<td>Catholic U of America</td>
<td>Did not respond.</td>
<td></td>
</tr>
<tr>
<td>Catholic U of PR</td>
<td>Did not respond.</td>
<td></td>
</tr>
<tr>
<td>Chicago</td>
<td>Did not respond.</td>
<td></td>
</tr>
<tr>
<td>Chicago-Kent</td>
<td>Advanced Legal Writing, general Drafting, litigation Drafting, general Drafting, transactional Advanced Advocacy</td>
<td></td>
</tr>
<tr>
<td>Cincinnati</td>
<td>Drafting, transactional Advanced Advocacy Empirical work</td>
<td></td>
</tr>
<tr>
<td>City University at Queens</td>
<td>Did not respond.</td>
<td></td>
</tr>
<tr>
<td>Cleveland-Michigan</td>
<td>Drafting, legislation Scholarly Writing Advanced Advocacy</td>
<td></td>
</tr>
<tr>
<td>Colorado</td>
<td>Did not respond.</td>
<td></td>
</tr>
<tr>
<td>Columbia</td>
<td>Drafting, litigation Drafting, legislation Drafting, general Drafting, transactional Research</td>
<td></td>
</tr>
<tr>
<td>Connecticut</td>
<td>None.</td>
<td></td>
</tr>
<tr>
<td>Cornell</td>
<td>Advanced Legal Writing - general</td>
<td></td>
</tr>
<tr>
<td>Creighton</td>
<td>Did not respond.</td>
<td></td>
</tr>
<tr>
<td>Cumberland (Samford)</td>
<td>Advanced Legal Writing - general Drafting, general Drafting, litigation Drafting, transactional Advanced Advocacy Scholarly Writing</td>
<td></td>
</tr>
<tr>
<td>Dayton</td>
<td>Seminar Paper</td>
<td></td>
</tr>
<tr>
<td>District of Columbia</td>
<td>Did not respond.</td>
<td></td>
</tr>
<tr>
<td>Institution</td>
<td>Courses Offered</td>
<td></td>
</tr>
<tr>
<td>---------------------------</td>
<td>------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Denver</td>
<td>Did not respond.</td>
<td></td>
</tr>
<tr>
<td>DePaul</td>
<td>Advanced Legal Writing - survey</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Advanced Legal Writing - general</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drafting, general</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drafting, litigation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drafting, legislation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drafting, transactional</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Advanced Advocacy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Scholarly Writing</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Judicial Opinion Writing</td>
<td></td>
</tr>
<tr>
<td>Detroit at Michigan State</td>
<td>None.</td>
<td></td>
</tr>
<tr>
<td>Detroit Mercy</td>
<td>Advanced Legal Writing - general</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drafting, general</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drafting, litigation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drafting, transactional</td>
<td></td>
</tr>
<tr>
<td>Drake</td>
<td>Drafting, litigation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Advanced Advocacy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Scholarly Writing</td>
<td></td>
</tr>
<tr>
<td>Duke</td>
<td>None.</td>
<td></td>
</tr>
<tr>
<td>Duquesne</td>
<td>Did not respond.</td>
<td></td>
</tr>
<tr>
<td>Emory, Atlanta</td>
<td>Drafting, litigation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drafting, transactional</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Advanced Advocacy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Scholarly Writing</td>
<td></td>
</tr>
<tr>
<td>Florida State</td>
<td>Advanced Advocacy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Writing to a Non-legal Audience</td>
<td></td>
</tr>
<tr>
<td>Fordham</td>
<td>Advanced Legal Writing - general</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drafting, general</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drafting, litigation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drafting, legislation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drafting, transactional</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Advanced Advocacy</td>
<td></td>
</tr>
<tr>
<td>Franklin Pierce</td>
<td>Judicial Opinion Writing</td>
<td></td>
</tr>
<tr>
<td>George Mason</td>
<td>Did not respond.</td>
<td></td>
</tr>
<tr>
<td>George Washington</td>
<td>None.</td>
<td></td>
</tr>
<tr>
<td>Georgetown</td>
<td>Advanced Legal Writing - general</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Advanced Legal Writing - survey</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drafting, general</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drafting, litigation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drafting, legislation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drafting, transactional</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Advanced Advocacy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Scholarly Writing</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Judicial Opinion Writing</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Empirical work and papers on composition &amp; theory</td>
<td></td>
</tr>
<tr>
<td>Georgia State</td>
<td>Advanced Legal Writing - general</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drafting, litigation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drafting, legislation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Real Estate Drafting</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Wills &amp; Trusts Drafting</td>
<td></td>
</tr>
<tr>
<td>Institution</td>
<td>Legal Writing Courses</td>
<td></td>
</tr>
<tr>
<td>--------------------------</td>
<td>-----------------------</td>
<td></td>
</tr>
<tr>
<td>Golden Gate</td>
<td>Advanced Legal Writing - general Drafting, general Drafting, legislation Advanced Advocacy</td>
<td></td>
</tr>
<tr>
<td>Gonzaga</td>
<td>Advanced Legal Writing - general Drafting, litigation Advanced Advocacy</td>
<td></td>
</tr>
<tr>
<td>Hamline</td>
<td>Advanced Legal Writing - general Advanced Legal Writing - survey Advanced Advocacy</td>
<td></td>
</tr>
<tr>
<td>Harvard</td>
<td>Scholarly Writing Upper-level Research</td>
<td></td>
</tr>
<tr>
<td>Hofstra</td>
<td>None.</td>
<td></td>
</tr>
<tr>
<td>Houston</td>
<td>Did not respond.</td>
<td></td>
</tr>
<tr>
<td>Howard</td>
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Student Evaluations—A Tool for Advancing Law Teacher Professionalism and Respect for Students

David D. Walter

I. INTRODUCTION

Advancing law teacher professionalism depends in part upon two fundamental tasks: evaluating our teaching and then using those evaluation results to improve our teaching. We can use a number of methods to evaluate our teaching, including self-evaluations, peer evaluations, supervisor evaluations, and student evaluations. This article examines one of these methods, student evaluations, and their use as a tool not only for advancing our professionalism, but also for enhancing our respect for students.

1 The Legal Writing Institute aptly selected “Advancing Professionalism” as the theme for its Eighth Biennial Conference held at the University of Michigan Law School. This theme acknowledges that legal writing teachers are “professionals as teachers, writers, researchers and scholars.” Opening Plenary Presentation to the Legal Writing Institute, June 18, 1998, Ann Arbor, Michigan, 5 J. LEGAL WRITING INST. 1, 1 (1999). I base this article on my June 20, 1998, conference presentation, “Professionalism and Respect for Students: Two Paths to Excellent Teaching Evaluations.” I primarily intended the original presentation, as well as this article, to serve the needs of new legal writing teachers. Although some points may seem obvious to experienced teachers, I believe that new teachers will appreciate each point.

2 Assistant Professor of Legal Writing and Analysis, Mercer University School of Law. J.D., With Distinction, University of Iowa College of Law; M.A., University of Iowa Graduate School (Political Science/Public Affairs); B.A., With Highest Distinction, Eastern Kentucky University (Psychology). At Mercer Law School I teach Legal Analysis, Legal Writing, and Introduction to Dispute Resolution. I also coach Mercer Moot Court teams and have directed Mercer's Moot Court Program. I taught legal writing at the University of Puget Sound School of Law (now Seattle University School of Law) from 1990-93. I thank Dean Larry Dessem, Mercer University School of Law, for his suggestions, assistance, and generous financial support. I thank Ms. Deneen Dodson and Ms. Amanda K. Emmons for their invaluable research assistance. Finally, I thank Rebecca White Berch, Arizona Court of Appeals, and Professors Susan McClellan and Lorraine K. Bannai, Seattle University School of Law, for their superb editorial comments.

ations, they find instead that many students grade their teaching as simply "average" or even "below average" or "poor." Many teachers shrug off lackluster evaluations and simply attribute them to angry students displeased with law school in general or to disgruntled students seeking retribution for poor grades handed out earlier in the semester. However, we can learn so much more by carefully examining our students' evaluations and responding to the concerns in future semesters.

On the following pages, I first discuss the use of student evaluations and their value in improving our teaching. Second, I offer suggestions about analyzing student evaluations and establishing a viewpoint for understanding student evaluations, and I also discuss three additional factors law teachers should consider when reviewing student evaluations. Finally, using the student evaluations of several legal writing teachers, I identify several key student concerns and briefly outline several responses to those concerns.

II. STUDENT EVALUATIONS—A VALUABLE SOURCE OF INFORMATION

Student evaluations are a valuable source of information for law teachers seeking to improve their teaching abilities. If properly used, student evaluations can yield numerous suggestions to help law teachers improve their teaching.7 Even so, many law teachers demonstrate reluctance or even outright resistance to using student evaluations. Those teachers typically cite one of four reasons for their reluctance or resistance. First, some teachers fear that their evaluations will be compared to other faculty members and that administrators, other teachers, or students will view them as less competent.8 Second, some teachers be-

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7 In its 1997 SOURCEBOOK, the ABA Communication Skills Committee noted that "occasionally a student [evaluation] will provide an excellent idea or raise a problem that only a student's perspective could reveal." AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, COMMUNICATION SKILLS COMMITTEE, SOURCEBOOK ON LEGAL WRITING PROGRAMS 108 (1997) (emphasis added) (hereinafter SOURCEBOOK). I am much more optimistic about student evaluations; I believe that our students frequently provide suggestions that can improve our teaching—I have received many excellent suggestions from my students. But see Daniel Gordon, Does Law Teaching Have Meaning? Teaching Effectiveness, Gauging Alumni Competence, and the MacCrate Report, 25 FORDHAM URB. L.J. 43, 50 (stating that student evaluations "represent meaningless student consumerism. Student evaluations also reflect meaningless teaching technology"); cf. Gerald F. Hess, Student Involvement in Improving Law Teaching and Learning, 67 UMKC L. REV. 343, 343 (Winter 1998) (advocating the use of "student advising teams" to gain "suggestions to improve the course and their learning").

8 See Wangerin, supra note 3, at 87.
We could theoretically label every concern discussed on the following pages as "professionalism" concerns, but some relate more directly to "respect for students." Even though many law teachers consider respecting students as part of being a professional law teacher,\(^4\) in many aspects respecting students goes well beyond professionalism. Professionalism carries with it notions that we are knowledgeable, prepared, and punctual. Respecting students, on the other hand, carries with it notions that we are civil, empathetic, kind, and that we even "like" our students.\(^5\) For these reasons, I separate "professionalism" and "respect for students" and consider them two separate but mandatory approaches to better teaching and better student evaluations.

The relationship between student evaluations and professionalism and respect is interdependent and circular. We can use evaluations as a tool to improve professionalism and respect; improved professionalism and respect should then earn us improved evaluations. Thus, professional excellence should produce excellent teaching evaluations.\(^6\)

When we began our teaching careers, most of us hoped for excellent teaching evaluations and praise from our students. Many law teachers have realized these aspirations, consistently receiving "excellent," "above average," or similar evaluations from their students. However, many teachers have not realized these initial aspirations; when they review their students' evalu-

\(^4\) In fact, the AALS Statement of Good Practices provides: "Law professors have an obligation to treat students with civility and respect ...." AMERICAN ASSOCIATION OF LAW SCHOOLS, STATEMENT OF GOOD PRACTICES BY LAW PROFESSORS IN THE DISCHARGE OF THEIR ETHICAL AND PROFESSIONAL RESPONSIBILITIES, 1998 AALS HANDBOOK 90 (1998). The AALS Statement of Good Practices was "not promulgated as a disciplinary code" and should be considered "aspirational." Id. at 89.


\(^6\) I use the terms "teacher," "legal writing teacher," and "law teacher" (as opposed to "professor" or "instructor") throughout this article to emphasize our goal: to teach or impart our knowledge to our students, rather than merely to profess or declare our knowledge. I recognize that, in reality, there may be little practical difference. "Legal writing teacher" is also appropriate because the official titles of legal writing teachers vary considerably, from "Instructor," to "Lecturer," to "Professor," to "Writing Specialist," and so on; our goal, however, remains the same: to teach our students about legal writing and all that topic entails. Finally, the use of "law teacher" is often apt because much of what is stated in this article also applies to those teaching doctrinal courses, not just legal writing or skills courses. Notably, prior articles regarding student evaluations in law teaching focus on doctrinal courses, not legal writing or skills courses. See, e.g., Wangerin, supra note 3.
lieve that reviewing student evaluations will not improve their teaching. Third, some teachers believe that teaching is "too complex" to evaluate. And finally, some teachers argue that students lack the qualifications to assess their teaching.

All of these points are legitimate, to a certain degree, but there are responses to each. First, while it is quite true that we might conclude that a teacher receiving consistently "Poor" student evaluations is incompetent, most would be hesitant to label any teacher incompetent based solely on one evaluative tool such as student evaluations. In addition, most law teachers do not receive consistently "Poor" evaluations. We typically receive a mixed bag of evaluations, which makes it much more difficult to draw conclusions about our overall teaching ability. Rather than shrug these evaluations off, however, we can and should use them to improve our teaching and increase our competence—to our benefit, to our institution's benefit, and to our students' benefit.

Second, simply reviewing evaluations will not improve teaching. Teachers must have the desire and the opportunity to improve their teaching. Most "instructors want to improve their teaching—like all performers, they seek to be appreciated by their audiences." Even with the requisite desire, however, improved teaching will not follow from a simple review of the evaluations. Teachers must analyze their evaluations, identify the key problems, and then implement remedies.

Third, there is no doubt that teaching, as well as learning, is a complex activity that we do not entirely understand; individual teachers and learners are wildly different. But that, in and of itself, does not mean that students, including the "wildly different" students, cannot offer valuable suggestions to help improve their teachers, including even the "wildly different" teachers.

Finally, students may not be qualified to evaluate teachers

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9 Id. at 88.
10 Id. at 87-88.
11 See id. at 88.
12 Most would also consider it unfair to base such a conclusion on only one evaluative tool. See infra note 23; see also Wangerin, supra note 3, at 100-17 (noting that teachers can be evaluated by several measures, including student performance, teacher self-evaluation, faculty evaluation, administrative evaluation, or outsider evaluation).
14 See Wangerin, supra note 3, at 99.
15 Id. at 95.
in all regards. However, students certainly can offer quality suggestions about many aspects of our teaching. A number of studies have analyzed the use of student evaluations, not only in undergraduate education but also in professional schools such as law schools, and educational theorists uniformly agree that student evaluations serve a “worthwhile purpose” in evaluating teachers and teaching methods.

In any discussion of evaluations, student or otherwise, theorists and faculty alike raise questions about the “reliability” and “validity” of student evaluations. While an in-depth discussion of reliability and validity is beyond the scope of this article, a basic understanding of the two terms should help us understand and accept student evaluations as a valuable source of information.

Reliability generally refers to “repeatability” or “replication”—Can “repeated measurements with the same measurement instrument under unchanged conditions . . . yield the same result?” In comparison, validity generally refers to whether the evaluation evaluates what it is designed to evaluate—“Is one measuring what one thinks one is measuring?”

Professor Wangerin has observed that “[s]tudent ratings are reliable in terms of both agreement (similarity among students rating a course and the instructor) and stability (the extent to which the same student rates the course and the instructor sim-

[16] For example, students may not be able to accurately assess a teacher’s substantive knowledge of the topic. See infra text accompanying notes 90-93.
[17] See Wangerin, supra note 3, at 89 (citing twelve articles relating to teacher evaluations); see also Abel, supra note 13, at 417.
[18] Wangerin, supra note 3, at 112.
[20] DAVID NACHMIAS & CHAVA NACHMIAS, RESEARCH METHODS IN THE SOCIAL SCIENCES 88 (2d ed.1981); see also Abel, supra note 13, at 426.
[21] NACHMIAS & NACHMIAS, supra note 20, at 140; see also Abel, supra note 13, at 435. “Validity” actually refers to several different concepts, and one could frame references to validity, for example, in terms of content validity, empirical validity, or construct validity. NACHMIAS & NACHMIAS, supra note 20, at 140-46; see also E. JERRY PHARES, CLINICAL PSYCHOLOGY: CONCEPTS, METHODS, AND PROFESSION 182, 240-43 (4th ed. 1991). Content validity refers to two concepts: “facial validity” (subjectively viewed, whether the measuring instrument measures that which it appears to measure) and “sampling validity” (whether the measuring instrument’s content adequately samples the qualities of the behavior being evaluated). See NACHMIAS & NACHMIAS, supra note 20, at 141-42. Empirical validity usually refers to “predictive validity” (whether a measurement instrument can predict other outcomes). See id. at 142-44. Finally, construct validity relates to whether the measurements provided realistically measure the desired variable (or whether it measures something else). See id. at 144-46; see also DANIEL L. STUFFLEBEAM AND ANTHONY J. SHINKFIELD, SYSTEMIC EVALUATION 101-02 (1985).
ilarly at two different times)."22 Thus, we should consider student evaluations reliable to the extent that the same students would evaluate the same teacher the same way on subsequent occasions. Student ratings "gathered by means of any but the most poorly constructed rating scales will be sufficiently reliable to be used for course improvement purposes."23

And, we should view student evaluations as valid so long as we limit their use to simply providing information about key student concerns.24 It is less clear, of course, whether we should see student evaluations as valid indicators of overall teaching abilities or student learning—student evaluations may not necessarily correlate with teaching abilities or learning.25

Thus, as Professor Wangerin has pointed out, we should put aside our doubts about reliability and validity:

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22 Wangerin, supra note 3, at 112.

23 William Roth, Student Evaluation of Law Teaching, 17 Akron L. Rev. 609, 612 (1984) (quoting K. Doyle, Student Evaluation of Instruction 44 (1975)) (footnotes omitted). Students evaluations can be used not only to improve teaching ("formative evaluations"), but also to make personnel (hiring and firing) decisions ("summative evaluations"). The use of only a single source of information, such as student evaluations, to make personnel decisions is often considered "fundamentally unfair" because a single source may not be reliable or valid in portraying "an accurate picture of a person's teaching skills." Wangerin, supra note 3, at 100. Professor Roth also observes that even though "poorly constructed" evaluations can be used to improve teaching, the "same is not true for personnel decisions." Roth, supra note 23, at 612. While a comprehensive teaching evaluation system should use a number of evaluative measures, student evaluations still provide important information that should be used to improve teaching. See Wangerin, supra note 3, at 111. This article, of course, focuses not on the use of evaluations for personnel decisions, but on the use of evaluations to improve teaching.

24 Cf. Abel, supra note 13, at 426-27. Students "may be responding to teaching quality—but they also may be reacting against subject matter or the instructor's identity or political perspective." Id. at 427. Many writers have noted a low level of inter-rater agreement among students who took the same teacher and same course at the same time: "In virtually every course I have taught, there are equally strong positive and negative judgments about each facet of teaching." Id. at 437. While that certainly suggests "that students do not share common evaluative criteria," id. at 427, it does not indicate that evaluations are not reliable or that evaluations are not valid, particularly if we limit their use to providing information about key student concerns. Cf. Gordon, supra note 7, at 50 (observing that "law professors can attain a sense of their abilities to communicate and be open-minded" but questioning the use, reliability, and validity of evaluations as indicators of teaching effectiveness).

25 But see Wangerin, supra note 3, at 112 ("Student ratings are valid, as measured against a number of criteria, particularly students' learning."); cf. Abel, supra note 13, at 435 ("Student evaluations are valid to the extent that student ratings correlate with the quantity and quality of student learning."). Neither writer explains how or why law students' evaluation of their courses and teachers should correlate with the quantity or quality of their learning.
Several commentators have noted that future research on the student evaluation of teaching should not for the most part involve the reliability or validity of the evaluations themselves . . . . "[N]ew directions in evaluation are [centered] on better understanding of teaching itself, of the variables at work when teaching or evaluation take place, and of the ways in which evaluation results are presented and used. We no longer look only for variables that may bias evaluation; we also look for ways in which research and practice may inform each other, help us answer questions about teaching and learning, and lead to better informed decisions about people, programs and performance."26

Rather than debating whether student evaluations are reliable or valid for all reasons and in all contexts, we must instead expend effort to better analyze our evaluations and focus on the information we can glean from those evaluations.

III. ANALYZING EVALUATIONS—ESTABLISHING A VIEWPOINT FOR UNDERSTANDING THE INFORMATION

Before we jump in to analyze our evaluations, we should initially establish a viewpoint for understanding student evaluations. We should not simply react to the evaluations. Rather, we should thoroughly analyze the evaluation results after giving careful thought to: (1) the quantitative data and the qualitative comments; (2) our personal benchmark; and (3) the course characteristics, the student characteristics, and our personal characteristics. Good law teachers will also discuss and compare their evaluation results and analysis with their colleagues to gain a better understanding. Finally, we should keep in mind that analyzing student evaluations should be undertaken only with a sense of perspective and humor.

First, even though the information requested by student evaluation forms varies among law schools,27 most evaluation

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27. Compare, for example, the information solicited in the 1998 Mercer University Walter F. George School of Law evaluation form (Appendix A); the 1990-93 University of Puget Sound Law School Legal Writing Program evaluation form (Appendix B); and the 1991 University of Puget Sound Law School Student Bar Association evaluation form (Appendix C). See also Roth, supra note 23, at 616-17 (New York University School of Law evaluation form); id. at 622-23 (sample evaluation form); John Kiggundu, Student
forms seek both quantitative data (asking specific questions and offering four or more answers that typically range from "Excellent" to "Poor") and qualitative comments (asking for additional observations or comments in the spaces provided). Because the information provided by "the numbers" is probably the most straightforward and easiest to understand, we can use them as a useful starting point. 28

Administrators usually translate raw numbers into percentages or other statistics before passing them on to us, but we should nonetheless train ourselves to also interpret the results in terms of raw numbers, not just percentages. For example, on recent evaluations in one section of Legal Writing II, 5.2% or 5.5% of the students ranked me as "Poor" or "Below Average" in several categories. 29 At first blush this percentage seems significant. However, in a section in which nineteen students completed evaluations, this percentage is less significant because it represents only a single student. While the opinion of every student is important, the fact that it is only a single person's opinion increases the likelihood that it may reflect personal bias rather than an accurate observation. 30

Although different teachers have different standards relating to the quantitative data, I feel comfortable with the responses to a particular question, and therefore with a particular aspect of my teaching, if 75% or more students marked "Above Average" or "Excellent" and an additional 15% or more have marked "Average." 31 Thus, for an average section of 25 Legal

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28 Whether analyzing quantitative or qualitative data, we must use care and reason. For example, evaluations are only "statistically" reliable if there are "at least 13 students" in the class and at least "75% of the enrolled students respond." Wangerin, supra note 3, at 113; see also Abel, supra note 13, at 427 (observing that at least 20 students are required to obtain acceptable reliability).

29 See Appendix D.

30 Although it may be only one student's voice, consider the exact nature and gravity of the concern. When a comment reflects a serious concern, we should give it immediate attention even though the concern may simply involve a perception problem rather than an actual problem. For example, if just one student stated that I made sexist remarks in class, I would consider it a serious perception problem that calls for immediate consideration and corrective action on my part (I hasten to add that no student has ever made such a remark on my evaluations or otherwise).

31 When I use these percentages, I keep in mind my personal benchmark (see infra text accompanying note 37). For example, if I have several low marks on my personal benchmark measure (class preparation), then I would expect my raw numbers and per-
Writing students, on any particular question I am comfortable with 18 or more “Excellent” or “Above Average” marks, an additional 5 “Average” marks, and no more than 2 “Below Average” or “Poor” marks. While I would rather see all marks in the “Excellent” range, I do not think any teacher can obtain perfect marks on a consistent basis; a more reasonable goal is to see most marks in the “Above Average” or “Excellent” range.

While we might be tempted to rely on quantitative measures alone, we should carefully consider the qualitative results to better understand key student concerns. This is particularly true when the quantitative portion indicates substantial disagreement among student views:

[D]ramatic disagreements among students who shared the same classroom demonstrate the danger of summarizing teacher performance in a single numerical index. Students clearly bring different expectations, needs, and abilities to the classroom, and these color evaluations . . . .

The qualitative portion of the evaluation offers the students an opportunity to reflect or elaborate about aspects of the course or teaching not specifically addressed in the quantitative portion of the evaluation. Students may reveal opinions that would be masked if they completed only the quantitative portion. Thus, qualitative comments should be “scrutinized for recurrent themes, the distribution of opinions, and the persuasiveness of the supporting reasons. Certainly this is more time consuming,

centages for “Excellent” and “Above Average” to be lower across all measures.

32 If the evaluation form does not provide for qualitative comments, a teacher should consider (after consulting with the powers that be at the school) developing questions that can be administered with the regular evaluations or at some other time. I know one legal writing teacher who asks the students to provide, in their qualitative comments, information about teacher feedback, the memo problems, and the course texts. Ideally, the law school or legal writing program uses a form specifically designed to solicit information about legal writing courses. As the ABA Communication Skills Committee has observed, the form used in legal writing courses should be “quite different from those used in doctrinal courses, due to the uniqueness of the methods of teaching and the goals of the legal writing course.” SOURCEBOOK, supra note 7, at 107.

33 Abel, supra note 13, at 438.

34 At least one person, Professor Abel, has argued that we should eliminate the quantitative measures entirely and instead rely on the qualitative measures, which would avoid “masking” problems inherent in quantitative measures and the “misuse” of quantitative data by law schools. Abel, supra note 13, at 452.

35 Professor Abel has written that “the students’ comments vividly reveal the lack of consensus about the appropriate criteria . . . as well as the explicitly political judgments students make.” Abel, supra note 13, at 408. Qualitative comments tend to expose “hidden biases toward women, racial minorities, and political dissidents . . . .” Id. at 453.
but good evidence always costs more."\textsuperscript{36}

We should also compare the qualitative comments with the quantitative data, for the group and for individual evaluations (if possible), to measure the internal consistency of the group evaluation and the individual evaluations. For example, in my April 1992 evaluations at Puget Sound, one student wrote in reference to my teaching: "His grading is arbitrary." His written feedback is "unclear, more confusing than helpful. His comments in conference and on drafts & then his grades seem hypocritical." The student's qualitative comments were certainly consistent with the quantitative marks: of eleven categories, the student marked "Poor" nine times. The student's overall advice to me: "DON'T TEACH."

I could have found this evaluation quite devastating, but I kept in mind that I should look at the evaluations as a group and examine them for overall consistency and themes. On the very next evaluation form, the student commented: The feedback was "more detailed than I would've expected." "Good, insightful comments." "Made LW II about as painless yet valuable as possible." This student's quantitative marks were also consistent with the qualitative comments: the student marked seven of eleven categories as "Excellent." This student's overall advice to me was quite different from the prior student: "Ask for a raise; lower six figures would be a good starting point."

We should also analyze our evaluations for patterns and themes that the students consistently raise over the course of several semesters. For example, if we have one or two students during a single semester comment that we seem to "play favorites" in the classroom, that may or may not indicate a problem in need of correction. However, if similar comments appear over the course of several semesters, that indicates a problem, actual or perceived, that we must correct.

Second, when analyzing quantitative and qualitative evaluations, we must establish a personal benchmark. To judge the students' overall attitude about the course, my teaching, and the evaluation itself, I compare the results on those measures with my personal benchmark—my class preparation.\textsuperscript{37} As detailed be-

\textsuperscript{36} Abel, \textit{supra} note 13, at 453. Although qualitative data has its benefits, it also has its drawbacks: "Because students who feel strongly about a teacher (pro or con) are more likely to respond than those who are indifferent, nonresponse can bias the results." \textit{Id.}

\textsuperscript{37} While no law teacher is a "star" on all possible measures of teaching ability, I optimistically believe that all teachers possess certain gifts and attributes that they bring
low for an average sixty-minute class, I normally spend three to five hours extensively preparing for class. Based on my discussions with other legal writing teachers and students, this level of preparation is "on the high side."

Thus, assuming typical "high side" preparation, when I review my evaluations at the end of the semester, I expect 80-90% of the students to mark "Excellent" or "Above Average" in response to the question, "Instructor's preparation for class." I expect to receive no "Poor" or "Below Average" marks for preparation. Any dramatic variation from this benchmark indicates that the students' perceptions have been biased by some other factor and that the evaluations, overall, do not accurately represent key concerns. In this instance, I must adjust my expectations; for example, if 5 of 25 students (20%) have marked "Poor" for preparation, I must then review the remaining evaluation categories with the understanding that 5 students (20%) have some strong bias that will likely carry over into other evaluation categories. And, of course, I must also determine what other factor has affected the students' perceptions and evaluations.

Third, we should also give serious thought to a number of other factors that may affect the evaluation results, although the impact of these factors is not entirely clear. In particular, certain course characteristics, student characteristics, and teacher characteristics may affect evaluation results.

The course and subject matter, for example, may affect evaluation results. Legal writing evaluations frequently contain comments indicating that students aptly distinguish between the course and the teacher: (1) "Prof does a great job—the course on the other hand needs some work."

(2) "As good as could be expected considering subject matter.

(3) "Boring material—made it ok."

Certainly, some students do not distinguish between the course and the teacher, either in their teaching. For instance, they may be dynamic speakers who have the ability to capture their students' attention and imagination during every class session. Or, they may be adept at sharing their expansive knowledge and scholarly work with the students in the classroom. Or, on yet another measure, they may be known for their compassion, caring, and understanding.

38 See infra text following note 97.

39 One writer has observed that student evaluations are not "unduly affected by such external factors as student characteristics, course characteristics, and teacher characteristics," Wangerin, supra note 3, at 112, but several studies offer persuasive evidence that other factors may affect overall evaluation results. See infra text accompanying notes 41-56.

40 See infra note 66 (noting sources of sample student evaluation comments).
thoughts or in the actual marking of their evaluations, which may thus result in biased marks and comments (both favorable and unfavorable) in the quantitative and qualitative portions of the evaluation.

The course characteristics may also affect student motivation level, and studies show that student motivation levels in the course affect evaluation results. Student views may vary depending on the uncertainty and ambiguity of the course content and the "intellectual rigor" of the course. Some writers even note that evaluation results may vary depending on the time of day the class meets.

Over an eight-year period at Mercer and Puget Sound law schools, my evaluations, as well as the evaluations of my fellow teachers, have been consistently ten to twenty percentage points higher in Legal Writing II (a second-year course) than in Legal Writing I (a first-year course). However, it is not clear whether I should attribute this to a course characteristic (persuasive versus objective writing) or to a student characteristic (the students' year in law school or more reasonable expectations about the Legal Writing II course and their grades), or some other factor.

Student characteristics may also affect evaluation results. Some writers have noted a relationship between students' expectations about grades and their evaluations. Although "no significant correlation between student rating and grade point average" exists, studies have found "significant positive

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41 See Wangerin, supra note 3, at 114 (the subject involved and whether it is an elective or requirement may affect the overall evaluations); see also Roth, supra note 23, at 612 ("Student ratings are lower for required courses, and higher for very small classes (10-15 students)") (footnotes omitted).

42 See Abel, supra note 13, at 420 ("Evaluations also may favor courses whose content is 'hard' and easily quantified (number of rules mastered) over those that are 'soft' or convey a more nuanced view of the world (uncertainty, contradiction").

43 See Abel, supra note 13, at 421 n.48 (law students generally have "a low regard for courses in 'professional responsibility' partly because they view them as lacking in intellectual rigor").

44 Roth, supra note 23, at 611 (midday classes "receive higher ratings than early morning ones"); Abel, supra note 13, at 419 (poorer evaluations given to "courses scheduled at inconvenient hours").

45 For example, in my Fall 1997 Legal Writing II classes at Mercer, my cumulative average for all questions ranked at "Above Average" or "Excellent" was 78.25%. In comparison, the average in my Spring 1998 Legal Writing I classes was 69.2%. For my Fall 1998 Legal Writing II classes the average was 89.6% while in my Spring 1999 Legal Writing I classes the average was 63.6%.

46 See Abel, supra note 13, at 418-19; Roth, supra note 23, at 611-12.
correlations with the student's expected grade and the degree of congruence between the expected and actual grades. Students who did as well as or better than they expected rated the instructor higher than those who did worse.\textsuperscript{47} Thus, students who "have received fairly low grades on earlier assignments, grades below what they were used to getting in undergraduate school, and often, in their minds, disproportionately low compared to the amount of work they perceive that they did in preparing the documents" may "tend to resent the course or the teacher or both."\textsuperscript{48}

The teachers of courses that offer grades during the semester—before students complete their evaluation forms—are at risk of lower evaluations from students disappointed with their grades.\textsuperscript{49} In addition, if teachers "target" their teaching at a particular segment of the class (the better students, for example), the research indicates that the teachers will receive "higher ratings from students at the level they intend to reach."\textsuperscript{50}

The teacher's personal characteristics, as opposed to the teacher's ability, may also affect evaluation results. Generally, characteristics such as "academic rank, sex, teaching load, and research productivity are not significantly and consistently related to rankings."\textsuperscript{51} However, it is likely that students react to

\textsuperscript{47} Abel, supra note 13, at 418-19. See also Roth, supra note 23, at 611-12 ("Students of lesser ability do not rate instructors much differently than better students, though lower ratings will result when the grade given is less than expected and deserved.") (footnotes omitted). But see Wangerin, supra note 3, at 112 ("Student ratings are not unduly influenced by the grades students receive or expect to receive.").

\textsuperscript{48} Wangerin, supra note 3, at 108. Professor Abel also notes that some studies have found an inverse correlation between student workloads and positive evaluations. See Abel, supra note 13, at 420 n.47.

\textsuperscript{49} See Abel, supra note 13, at 419.

\textsuperscript{50} Id. at 432.

\textsuperscript{51} Roth, supra note 23, at 612 (citing J. CENTRA, DETERMINING FACULTY EFFECTIVENESS 33 (1979)). When I quoted Professor Roth's statement during my presentation at the University of Michigan, several audience members greeted the statement with great skepticism—many apparently believed that studies have conclusively and consistently demonstrated that the teacher's sex plays a significant role in evaluation results.

However, the studies do not conclusively and consistently support this belief. See Abel, supra note 13, at 422 n.54 (citing six studies finding "no difference between ratings of male and female instructors" and eight studies finding a "significant difference"); Wangerin, supra note 3, at 112 (stating that student ratings are "not unduly affected by such external factors as ... teacher characteristics"); but see Joan M. Krauskopf, Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools, 44 J. LEGAL EDUC. 311, 313-14, 330-31 (1994) (observing that faculty and students alike believe that students respond to male and female teachers differently, that students treat male and female teachers differently, and that students perceive the competence level of male and female teachers differently); Taunya Lovell Banks, Gender Bias in the Classroom, 38 J.
the teacher's "identity or political perspective." Individual student opinions formed before taking the course (based on the teacher's reputation) and group opinions formed during the course may also affect evaluations. However, that does not necessarily imply that students do not "discriminate among dimensions of teaching and ... judge solely on the popularity of instructors." Also, students do not necessarily give "easy" teachers better evaluations; some studies have shown that "hard" teachers may receive better evaluations.

In addition to examining course, student, and teacher personal characteristics, we should also compare and discuss our evaluations and teaching with our colleagues so that we can gain a better understanding. If "teachers look only at the evaluations of their own teaching and mostly see ratings of 'good' and 'excellent' they probably will feel pretty good about themselves. What these teachers do not realize, however, is that students rate the vast majority of teachers as good or excellent." In fact, "[s]tudents are generally lenient in their judgments and only 12% of teachers receive less than average ratings."

LEGAL EDUC. 137, 145 & n.29 (1988) (stating that women receive "lower student evaluations than men") (citing Elyce H. Zenoff & Kathryn V. Lorio, What We Know, What We Think We Know, and What We Don't Know About Women Law Professors, 25 ARIZ. L. REV. 869, 879 (1983)); Elyce H. Zenoff & Kathryn V. Lorio, What We Know, What We Think We Know, and What We Don't Know About Women Law Professors, 25 ARIZ. L. REV. 869, 879 & n.43-44 (1983) (citing two anecdotal sources and two studies—one study noting "a preference for male teachers, especially in large classes," and one observing that "students who were dogmatic or close-minded tend to hold unfavorable attitudes toward women professors"). Professor Abel has also written that teachers tend to receive lower ratings in their earlier years of teaching, even though students "seem to prefer younger professors to older." Abel, supra note 13, at 421.

Professor Abel attributes much of the student hostility in his courses to his political views: he "helped to found and remain[ed] an active participant in critical legal studies, which students and others see as Marxist and nihilist." Abel, supra note 13, at 407. Professor Abel, a self-described "middle-aged white male," notes that if "students express anger at [him,] it seems likely that they feel much freer to do so against teachers who are more vulnerable because they are women, minorities, young, or homosexual." Id.; see also id. at 427, 449 ("students' judgments about pedagogy are strongly colored by their political beliefs and substantive expectations").

See id. at 422.

See id. at 451. "The impact of opinion leaders and the pressure to conform to emerging group norms homogenize and perhaps intensify viewpoints. Hence, even a high degree of consensus within a given year is not trustworthy; it is necessary to survey several years to see if the issue recurs." Id.

Wangerin, supra note 3, at 112.

See Abel, supra note 13, at 420.

Wangerin, supra note 3, at 115.

Roth, supra note 23, at 611.
Finally, in reviewing our evaluations, we must maintain a sense of humor and perspective—excellent evaluations will not guarantee sainthood and poor evaluations certainly will not merit eternal damnation. Review student evaluations with a sense of humor and the presumption that the students intended their comments, whether expressed as quantitative marks or qualitative comments, as constructive criticism; it also helps to be as patient, detached, and analytical as possible. For many teachers, reviewing and analyzing student evaluations is a painful process. "Introspection, of course, often leads to improvement."

IV. IDENTIFYING AND RESPONDING TO KEY STUDENT CONCERNS—AN EXERCISE IN HUMILITY AND ANALYSIS

Once we have established a viewpoint, it is time to actually identify the key concerns and determine how to respond to them. In analyzing evaluations, we typically find both discrete and overlapping areas of student concerns. Qualitative comments are usually multifaceted and frequently ambiguous, and because supposedly discrete quantitative questions are often compound questions, even the responses to those questions will contain some ambiguity.

Despite the multifaceted and ambiguous nature of the responses, I have attempted to categorize student concerns based on my review of several years' evaluations for several legal writing teachers. As the examples on the following pages illustrate, students identify several concerns associated with the teacher's (1) clarity, (2) pedagogical knowledge, (3) substantive knowledge, (4) preparation and organization, (5) punctuality, (6) fairness, (7) availability outside class, and (8) delivery and attire. Students also identify concerns relating to respect for students, such as (1) the overall class atmosphere, including both the teacher's demeanor and classroom control, and (2) the teacher's empathy and caring. Although the student comments tend to overlap somewhat, the categories are still useful for discussion and guidance.

59 I give the same advice to my legal writing students about their review of my comments on their papers.

60 Professor Abel notes that he has "suffered personally from student criticism." Abel, supra note 13, at 407. Many of our students probably feel the same when they review our comments on their legal writing papers.

61 Wangerin, supra note 3, at 106.
Moreover, I formulated these categories to focus on the student concerns, not the context. For example, concerns about clarity arise in a number of contexts (giving reading assignments; providing instructions for a memo; listing due dates, times, and submittal locations; giving feedback on a memo; and explaining the value of particular cases and authorities). Because the concern relates to the teacher's clarity, not necessarily the context, the teacher should appropriately focus on the concern itself.

For each category identified on the following pages, I have briefly outlined several possible remedies. Regarding those remedies, I echo Dean Syverud's comments about teaching: "You have to be yourself as a teacher, so if what I describe just does not fit your personality at all, do what does." And, of course, remember that "Excellence in Teaching" is a difficult goal—one that we all reach for—and that it takes much practice, as well as trial and error, before one can approach "Excellence in Teaching" on even a hit-and-miss basis.

A. Professionalism

1. Clarity

The frequent comments from legal writing students about clarity serve to pinpoint this topic as a pervasive problem area. Students raise concerns in response to questions on the quantitative portion of the evaluation form, but they often offer addi-

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62 A complete discussion of each remedy, or of all possible remedies, is beyond the scope of this article. For example, although I offer several suggestions about critiquing student memos, that topic alone has been extensively discussed and developed as the subject of a sixty-four page article. See Anne Enquist, Critiquing Law Students' Writing: What the Students Say is Effective, 2 J. LEGAL WRITING INST. 145-209 (1996). Many sources offer valuable information and advice specifically relating to teaching legal analysis, legal research, legal writing, and oral advocacy. See George G. Gopen & Kary D. Smout, Legal Writing: A Bibliography, 1 J. LEGAL WRITING INST. 93, 93-122 (1991) (offering over 500 sources on these topics); SOURCEBOOK, supra note 7, at 149-74 (offering twenty-five pages of sources on these topics). In addition, THE SECOND DRAFT, published by the Legal Writing Institute, and PERSPECTIVES: TEACHING LEGAL RESEARCH AND WRITING, published by West Group, offer frequent advice on these topics.

63 Syverud, supra note 5, at 247.

64 See id. Law teachers should continually educate and re-educate themselves about the art of teaching. Professor Joseph Lowman's text about teaching is a superb source of information about all aspects of teaching. See JOSEPH LOWMAN, MASTERING THE TECHNIQUES OF TEACHING (2d ed. 1995) (containing chapters about understanding classroom dynamics, developing interpersonal skills, analyzing classroom performance, organizing classroom presentations, and enhancing classroom discussions).

65 See, e.g., Appendix A. Mercer asks its students about the "Clarity and length of
tional qualitative comments about clarity that specifically focus on class sessions, assignments, memo problems, feedback, and grading:\textsuperscript{66}

- The teacher was "quite clear about expectations."
- "Class is very directed. You are told what you will need to do and have to do it, as opposed to being left on your own."
- "Wonderfully detailed—took us step-by-step thru first memo and gave us every opportunity to discuss questions with him."
- Feedback was "excellent, relevant, detailed, and clear."
- Feedback "was specific on exactly how I could improve."
- "Feedback: helpful, always detailed breakdown of criticism and compliments."
- "The explanation . . . for the assignments was very poor."
- "Problems—slightly vague."
- "Instructor's guidance on the memos was not always as clear as possible."
- The "comments were hard to decipher as to how to make improvements."
- "Give us more feedback on what is good or bad in our writing & arguments."
- We need "more examples of proper citations" and a "flowchart on legal research."
- "The papers that were used as models/samples on the overhead did not exhibit expertise and it seemed unclear what was an 'A' paper."
- "He does not give adequate explanations of how he grades."
- "Professor hides the ball—now is the time to answer our questions—this will help us learn how to handle situations in the real world when we won't be able to ask."
- Questions were "answered too evasively."

\textsuperscript{66} I drew sample comments from my student evaluations at the University of Puget Sound School of Law, where I taught from 1990-93, and from my evaluations and my fellow teachers' evaluations at Mercer, where I presently teach. Capitalization, punctuation, usage, grammar, and spelling errors in the original comments have been corrected to improve readability.
The students also offer comments relating to consistency, which relate to the teacher's actual or perceived lack of clarity in stating the same point on multiple occasions:

- "Instructor tended to contradict himself sometimes when clarifying a rule . . . ."
- The teacher gave "conflicting feedback[, saying] one thing one time and then a different thing during the next."
- "When professors contradict themselves between drafts and final drafts . . . it leads to a loss of credibility."
- "Inconsistent. Corrections made concerning comments on the draft led to a poorer final product."
- "Many questions were answered one way for one class & another for the 2nd class. The obvious result is mass confusion over what is required."

As the AALS Statement of Good Practices states: "The objectives and requirements of . . . courses, including applicable attendance and grading rules, should be clearly stated."67 Because first impressions are so critical, we must be clear about expectations from the very first class.68 Thus, the syllabus and course policies or procedures handout provided at the beginning of the semester should clearly set out course requirements and important rules.69 We should also orally address critical requirements from these handouts in class (and, as appropriate, address them again in later classes). The students should understand what topics will be addressed and what skills they are expected to learn during the semester. In addition, spell out expectations about classroom operation (for example, class attendance and participation) and then reiterate them as needed in subsequent classes.70

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67 AALS, supra note 4, at 90.
68 See Abel, supra note 13, at 423. As Professor Abel points out, even though most evaluations are conducted near the end of the course, studies indicate that results differ little from those conducted in the first few classes. Id.
69 This is particularly important in a skills course such as Legal Writing, which rely on grading tools other than the standard single end-of-the-semester exam. A good legal writing course policies handout contains detailed information about course assignments, grading, attendance, conferences, turn-in procedures, late papers, memo and brief mechanics, and ethical issues.
70 See Syverud, supra note 5, at 248-49 (students "want to know the limits" in the classroom and for the course).
Memo problems should set out acceptable authorities and other parameters (for example, page or character limits). It often helps if we establish the factual and procedural context of the memo problem by explaining, for example, why the Defendant’s attorney in a criminal case would file a motion to suppress evidence or what time limitations would apply to the filing of the memo and responsive memos. Students also appreciate sample memos, although we must use care in selecting and using excellent samples. If possible, distribute a sample memo grading sheet and clearly explain to the students the most important aspects of the memo. As Dean Syverud has emphatically stated:

Just about the greatest nightmare for a law professor is a large group of students furious about an exam they consider to be unfair. Hell hath no fury like a first-year law class surprised by the type of exam they have been given. Announce the rules for your exam in advance: will it be open book? essay? short answer? Prepare and distribute, at some point early in the course, an example of the style of question you will use. Explain to your class what it is you value in an examination answer, and why.

Carefully proofread all handouts and assignments, of course, for errors, omissions, and overinclusions. It is always advisable to have others proofread the drafts and offer suggestions. And, teachers who teach two or more sections of the same course, which thus requires the consistent coverage of identical material during two or more class sessions, may avoid contradictions or misstatements in the second or later class sessions by either reading the instructions or statements directly or by simply directing all students to consult a handout. We should also

72 Errors contained in the samples should be clearly marked, otherwise you will certainly hear from the students who “followed the samples” provided, only to have their memos marked as “incorrect.” As a further safeguard, we should also inform the students that “samples” are not “models”—they are not perfect (although the sample memo may have scored 290 points on a 300-point scale).
73 See, e.g., Appendix F. We should explain, for example, how heavily we weigh grammar, organization, or the explanation/application of the law in the memo; however, if we are also grading the students’ abilities to analyze the authorities, then we should not specifically identify the weight given for the inclusion of specific authorities in the memo before they write the memo.
74 Syverud, supra note 5, at 256; see also id. (“base your exam on what you have actually taught in class. . . . Why? Because it is fair.”)
proofread the feedback and comments we have written on the memos or score sheets to make certain they make sense and are legible.

The following two points, "inventing options" and the "power of apology" (both borrowed from the field of negotiations), are perhaps the most critical.75 The first point involves "inventing options," which requires us to understand the students' interests and our teaching interests and then to "invent options for mutual gain."76 For example, legal writing students do not wish to be overwhelmed by too much information or feedback on their memos ("the students' interests"). A legal writing teacher, on the other hand, would like to give the students a large amount of information or feedback so that the students will perform well in the future ("the teacher's interests"). With a good understanding of these mutual interests, we should be able to "invent an option for mutual gain": we can give a large amount of information and feedback, but then make certain that the students are not overwhelmed by clearly explaining and organizing the information and illustrating how to use the information.77

"Inventing options" also applies to other matters as well. For example, I explain to my Legal Writing I students why I have chosen the legal research text that I use: it is comprehensive, it gives sample pages from the research materials, and it is very practical (they can keep the text for years to come to refresh their memories if they ever need to research an unfamiliar topical area). Explanations such as this alleviate student concerns and give them greater appreciation for "why you do what you do."78

75 See generally ROGER FISHER ET AL., GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN (2d ed. 1991). I highly recommend GETTING TO YES for legal writing teachers because it offers a number of ideas and practical, concrete suggestions for improving relationships with students and others.

76 Id. at 56, 56-80. As Fisher simply but effectively illustrates: Two children quarreling over an orange finally agree to split it in half. If they had fully understood each other's interests, they would have discovered that one child wanted only the fruit (to eat) and the other child wanted only the peel (to bake a cake). Rather than both children ending up with a whole (either fruit or peel), they both end up with only a half. Id. at 56-57.

77 More specifically, a large amount of specific feedback on memos can be useful to students if (1) we include "global" comments explaining the key problem areas, identifying which are most critical, and directing students to address certain problems first, and (2) we explain in class, before returning the memos, our approach to critiquing and how the students should process the information. See generally Enquist, supra note 62 (providing excellent suggestions about critiquing memos).

78 Abel, supra note 13, at 451. Professor Abel explained that to counter criticism of
The second negotiation point is the “power of apology.”79 All law teachers, even excellent ones, will occasionally contradict themselves or make statements that are just not clear. When this occurs, the good teacher simply recognizes the problem, clarifies the statement, and apologizes as needed.80 For example, during one semester it became evident to me that many students did not understand my memo instructions (I did not want a fact statement or brief answer in their final memos, but I did want a question presented, discussion, and conclusion). I apologized for the lack of clarity and then wrote the information on the board one last time (even though I had clearly stated the requirements in writing and orally). I received no negative comments about assignment clarity on my evaluations.81 Students, for the most part, are very understanding.

2. Pedagogical knowledge

A second category that produces many student comments relates to pedagogical knowledge—the choices we make about the course content, materials, and procedures. The quantitative portion of the evaluation form often raises questions about these topics.82 The AALS Statement of Good Practices provides that law teachers should “employ teaching methods appropriate for the subject matters and objectives of their courses” and that

the text, he prepared an outline explaining the connections among the text and course topics; “the criticism of the casebook disappeared.” Id. As Professor Lowman explains, a teacher should “give a rational justification for assignments. If students see the work asked of them as consistent with their own goals, they are less likely to respond to it simply as a frustrating task[]. . . sharing objectives with students makes them more likely to see an assignment as something they want to do . . . .” LOWMAN, supra note 64, at 75.

79 See Syverud, supra note 5, at 250 (pointing out the appropriateness of an apology in the context of an excessive reading assignment: “Look, I say, I realize I assigned too much, and the responsible students among you therefore were up too late last night. I’m sorry. I’ll do my best in the future to make sure my assignments bear closer resemblance to what I do in class.”).

80 However, our errors, and thus our apologies, should not be frequent. If we are apologizing for errors on a daily or weekly basis, this suggests a need for more thought and care in planning and organizing.

81 Only one of fifty students scored me below average on the clarity question in the quantitative portion, which asked about the “clarity and length of assignments.” On that question, the remainder scored me as: Excellent: 30.5%, Above Average: 27.8%, and Average: 38.9%. While these numbers are not exceptional, they seem acceptable.

82 See, e.g., Appendix A. Mercer asks its students about the “Instructor’s ability to make discussions relevant,” the “Opportunity afforded for students to ask questions in class,” and the “Instructor’s ability to impart information which induced you to attend class regularly.”
"[e]xaminations and assignments should be conscientiously designed . . . ."\textsuperscript{83}

The students comment about the difficulty of the course materials and content, as well as their level of interest:

- "Problems—appropriately challenging."
- The problems "were not too difficult or easy."
- It "would have been a better learning experience if the topic had been less complicated."
- Memos "were harder than expected . . . too overwhelming."
- "Very boring reading."
- "Subject matter not particularly interesting."
- "Problems were interesting and not too complex."
- Problems were "reasonable," "interesting," and dealt "with real law."

The students also comment about what should be taught, or what should not be taught:

- "I think there should be more classes on the appellate brief."
- More "focus on oral arguments would be helpful."
- "I regret not having a trial level assignment. . . ."
- "Spend less time on standard of review and more time on brief writing."
- "Testing on the Bluebook is DUMB!!!"
- "When would an attorney ever submit any document without double-checking the bluebook? NEVER!"
- "I think this class would be better if we had more writing assignments than those library research sheets, and if we focused on our style and how we could improve. I also think more one-on-one help would be better."
- "We have to teach ourselves from the book in order to complete the assignments."
- I think this class should be taught with "material relevant to our other classes."

The students are also very concerned about time management and the teacher's efficiency in teaching the materials:

\textsuperscript{83} AALS, \textit{supra} note 4, at 90.
"The timing of the course was perfect."
Topic could have been "taught more efficiently."
"Sometimes I felt that LWI was monopolizing my time, but that is a general complaint about the class, not specific" to this teacher.
Info "could have been disseminated in a week (or two at the most)."
Covering text in class took "up too much time. . . . Advocacy material could have been covered more quickly."
"Too much reading. . . . Case packet was excessive."
The problems were of "sufficient length."
"The second problem was a little too broad & a little too long."
"Not enough time between first and second briefs."
"Please don't put memo so close to exam."

And, like all students, law students are very concerned about grading:
"There should be blind grading the entire semester."
If this class is blind graded, "the professor can't tell a student's improvement & a student can't sit down with a draft of a memo and go over it with a professor."

Because students will be looking for jobs in two or three years, they are ever mindful of the need for practical information:
"He teaches what you need to know in the real world."
"Lectures were a regurgitation of book info—waste of time."
"Need more practical info—use overheads & give more real life info."
"Would like a sense of how the materials will have a practical application in practice."
"I actually feel like I learned something useful in law school. THANKS."
The class was "practical and useful."
The "class was not useful."
"Like the handouts—they bring about the practical aspect."
"Good application of real-life/personal experience in writing in legal field."
As these comments demonstrate, we must take great care in making decisions about the course materials and content. In legal writing, this task is made even more difficult by the creation or use of new memo problems each semester—we do not have the benefit of using nearly identical course materials each semester. In designing a syllabus, give careful thought to how many pages are being assigned and how long it will take the average first- or second-year law student—not the average law teacher—to read and understand those materials. We should do the same for the cases and other authorities the students will read as part of any memo assignment. If the materials are too difficult, either delete them or add information (orally in class or as outside readings) to help explain the materials. If new information is added, it will also need to be evaluated for difficulty and time consumption. In selecting materials, we should also keep in mind that the “fascinating” consumer protection and billing error issue under the Truth-In-Lending Act may not be quite as interesting to first-year law students as it is to a law teacher.84

Students appreciate short, practical stories and narratives that help place a particular idea in context.85 For example, in explaining legal research plans to students, I give several examples, including one example of a fifteen-minute research task undertaken by two attorneys in response to an administrative search warrant served by the EPA on a commercial client. The story helps students understand that, regardless whether the research plan is long or short, written or oral, attorneys perform research tasks with a plan in mind.

Good law teaching, and good problem design, also means considering “what and where” your students will practice and then capitalizing upon that knowledge:

Good teachers will be informed about careers that the students in their schools in fact can or do pursue. [A] good teacher should even sometimes modify the content of the course to reflect this—for example, . . . a teacher at a state university law school should care about and teach at least

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84 This was one of my topics for the Spring 1998 semester. Many students found it interesting, although many certainly did not. Because the material was rather complex, I often supplemented my legal writing notes with information about the relevant federal Truth-in-Lending Act provisions (15 U.S.C. §§ 1666, 1666i (1994)).

85 See Syverud, supra note 5, at 250.
some of that state's law, particularly if many students end up practicing there.\textsuperscript{86}

Finally, we should use the two negotiation points discussed above, "inventing options" and the "power of apology."\textsuperscript{87} As for the power of apology, I reiterate that when we make pedagogical errors, we should simply apologize and correct the problem if possible.\textsuperscript{88} We should "invent options" to meet both the students' interests and our interests by explaining, when appropriate, why we use particular course materials or cover particular content. Giving them additional information to understand context does not pander to student demands; it makes them more successful as students.

To offer a simple example taken from the comments above, several students negatively commented about closed-book citation exams; one even commented, "When would an attorney ever submit any document without double-checking the bluebook? NEVER!" To help my students put correct citations "in context," I explain to my students that many of their readers will quickly judge the quality of their writing, and perhaps even their arguments, by the quality of their citations; thus, correct citation format is important. However, I also explain that attorneys do not spend valuable ("billable") time looking up basic citations; they rely instead on the knowledge they gained in law school. Hence, I press the students to learn as much as possible about basic citations in law school and to memorize that information. To encourage them to do so, I give them a closed-book exam that includes many basic citation questions. After explaining my rationale for closed-book citation exams, the only evaluation comments I received about teaching citations urged me to give more examples.

On a final note, I agree with Professor Abel that "faculty cannot surrender to students the responsibility for deciding what is to be taught, and student evaluations should not exert pressure on instructors to do so."\textsuperscript{89} But we do not abdicate our responsibility to determine what to teach when we analyze student evaluations to judge student reactions to our pedagogical decisions. Rather, this is the approach of a responsible teacher.

\textsuperscript{86} Id. at 257-58.
\textsuperscript{87} See supra text accompanying notes 75-81.
\textsuperscript{88} See supra text accompanying notes 79-81, as well as the caveat, supra note 80.
\textsuperscript{89} Abel, supra note 13, at 448.
3. Substantive Knowledge

For a legal writing teacher, substantive knowledge includes knowledge about legal writing as well as knowledge about legal analysis, legal research, oral advocacy, and the doctrinal area of law raised by a particular memo assignment. Given the broad array of topics, one might think students would frequently offer qualitative comments about the substantive knowledge of legal writing teachers; however, I see relatively few comments about this topic.

The quantitative portions of many evaluation forms ask questions relating to substantive knowledge. The AALS's Statement of Good Practices also comments about substantive knowledge: “Law professors should aspire to excellence in teaching and to mastery of the doctrines and theories of their subjects.”

Student comments about the knowledge of legal writing teachers are usually quite positive:

- “Excellent knowledge of subject matter.”
- “Professor is very knowledgeable.”
- The teacher “really knows subject.”
- The teacher “was very helpful and knowledgeable about the Legal Writing assignments.”
- The teacher is “very professional, knowledgeable, and has an obvious interest in teaching the subject matter.”

Substantive knowledge relates, of course, to preparation. Students will find us quite knowledgeable, on both legal writing and doctrinal substance, if we have prepared by reading and understanding the material, and if we then explain the material in a complete, logical manner in class, anticipating questions that students will ask and by answering even the unexpected questions they ask. If we take these steps, students likely will believe that we are knowledgeable about the subject matter. Keep

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90 See, e.g., Appendix A. Mercer asks its students about the “Instructor's ability to explain the reasoning behind the 'law.'”
91 AALS, supra note 4, at 90.
92 Teachers will have occasional questions they cannot answer. We can handle this situation by simply stating that we do not know the answer but that we will consider the question and have an answer in the next class. We can also give our thoughts as to the likely answer (but we should make sure we clearly advise the students that we are providing a “best guess”). For either alternative, we must then consider the question and address it during the next class session. See Syverud, supra note 5, at 252.
in mind, too, that if we take these steps, and one or two students still believe we do not possess the requisite knowledge, that it is also possible that the students are not able to accurately judge our substantive knowledge. 93

4. Preparation & Organization

Law teachers should “prepare conscientiously for class,” 94 and “good teachers [should] carefully organize classroom work . . . .” 95 The quantitative portion of most evaluation forms addresses preparation issues. 96 As with substantive knowledge, students’ evaluations of their legal writing teachers’ preparation and organization are usually quite good:

- “Always prepared.”
- The teacher “was very prepared for every class.”
- “Very well organized.”
- “All of his lectures were very organized and helpful.”

As I observed above, students consider us prepared and organized in class if we have read, understand, and then explain the material in a complete and organized manner. 97 Class preparation for a typical sixty-minute legal writing class takes me three to five hours, although that figure varies both ways. To be “well prepared,” I review all reading assignments; prepare five to ten pages of typed or handwritten notes to guide my class discussion; locate and copy additional handouts for class; prepare overhead transparency sheets when appropriate; prepare questions that I will ask in class; think through responses to questions that I anticipate will come up in class; and organize

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93 If we take the steps described above, then the incongruity between our view and the student’s view likely reflects a perception problem; even so, we should correct the mis-impression if it occurs frequently. Cf. Abel, supra note 13, at 423 (“it is not clear why faculty should credit student judgments about instructor knowledge . . . . [M]y own evaluations display little consistency between student ratings of my knowledge and their global ratings of me as a teacher”); Wangerin, supra note 3, at 113 (“[S]tudents cannot actually answer questions, for example, regarding the degree to which a teacher is up-to-date, or questions regarding a teacher’s subject-matter knowledge”).

94 AALS, supra note 4, at 90. See also AMERICAN BAR ASSOCIATION, AMERICAN BAR ASSOCIATION STANDARDS, FACULTY RESPONSIBILITIES, Standard 404(1) (1997) (“the law school shall establish policies” about “preparing for classes”).

95 Wangerin, supra note 3, at 96.

96 See, e.g., Appendices A-C. Mercer asks its students about the “Instructor’s preparation for class.” Appendix A.

97 See supra text accompanying notes 92-93.
the materials. I also evaluate the class content to develop a time management plan so that each topic receives adequate coverage.

With memo assignments, "well prepared" and organized means performing the research myself (or with the assistance of a research assistant) to make sure the students will find the authorities in the materials in the library.\footnote{For example, if we believe the students will find a particular case by Shepardizing or by using a treatise, we should Shepardize and check the treatise to make \textit{certain} they can find the case this way. I once had a Legal Writing II problem that involved a key federal district court decision that had been appealed to the court of appeals; to my surprise, the court of appeals opinion did not cite the district court, which meant that the students could not locate the court of appeals decision using Shepards. And, because the court of appeals decision was very recent, the students could not locate the case in a treatise. The students could only locate the court of appeals decision on Westlaw and Lexis. If this had been a Legal Writing I first memo problem, where I do not allow the students to use electronic sources, the students' research and analysis would have quickly gone astray.} With oral advocacy sessions, being prepared means thinking about how the students will use the authorities in oral argument and which questions I will ask the students in oral argument.

Regardless of the context, being prepared and organized certainly does not mean "winging it." Rather, being prepared and organized for class and other assignments bears much resemblance to a good attorney's preparation for an appellate oral argument.

5. \textit{Punctuality}

We should be punctual about class times as well as grading, which "should be done in a timely fashion . . . ."\footnote{AALS, supra note 4, at 90.} Although the quantitative portions of most evaluation forms do not mention punctuality,\footnote{See Appendices A-C.} students often offer comments about punctuality:

- "Feedback was fast and excellent and appreciated."
- When the first memo was "returned two days before the closed brief was due, I crashed and burned. It would have been helpful to work with the professor" after the first memo was returned.
- If "we have to be prepared for class," then the teacher "should have our assignments ready to return to us for class so we have them in front of us when we discuss them."
- "It would be nice to get papers back quicker."

98 For example, if we believe the students will find a particular case by Shepardizing or by using a treatise, we should Shepardize and check the treatise to make \textit{certain} they can find the case this way. I once had a Legal Writing II problem that involved a key federal district court decision that had been appealed to the court of appeals; to my surprise, the court of appeals opinion did not cite the district court, which meant that the students could not locate the court of appeals decision using Shepards. And, because the court of appeals decision was very recent, the students could not locate the case in a treatise. The students could only locate the court of appeals decision on Westlaw and Lexis. If this had been a Legal Writing I first memo problem, where I do not allow the students to use electronic sources, the students' research and analysis would have quickly gone astray.

99 AALS, supra note 4, at 90.

100 See Appendices A-C.
Return memos and other assignments as quickly as possible, preferably within one to two weeks. Considering that we have "all those memos to grade," the wise legal writing teacher keeps memo assignments short (eight to ten pages, for example) so that the memos can be critiqued in a reasonable amount of time, about forty-five minutes per memo. Hence, we should fine tune assignments so that the students can actually address the topic within the assigned pages.\(^{101}\) In addition, limiting office hours and other activities during the grading period also facilitates grading.

Whether it is the timing in our classes or the returning of papers or grades, we act as role models for our students, who will be future attorneys: "If you are casual about starting and ending times [for your classes], you should expect your students to be casual about times too—like deadlines for turning in papers."\(^{102}\) Thus, teachers must set a good example and be punctual, too.

6. Fairness

It should go without saying that we should be fair to students, not only by being clear and avoiding surprises and inconsistencies, but by being as impartial as possible. "[A]ll student work should be evaluated with impartiality. Grading . . . should be consistent with standards recognized as legitimate within the university and profession."\(^{103}\) For legal writing students, fairness involves not only the grading itself, it also involves giving unfair advantage, or imposing a disadvantage, during the teaching process.

Although quantitative measures usually do not address fairness issues,\(^{104}\) student comments certainly do:

- His "grading is totally arbitrary."
- "I suspect him of playing favorites."

\(^{101}\) Occasionally, memo assignments will be off the mark. Student memos for my Spring 1998 Legal Writing I class (the Truth-in-Lending problem, \textit{supra} note 84) averaged about twelve pages. I paid the price in grading time, which averaged a little over an hour per memo, but I still returned the memos in about two weeks. The students’ memos for the final problem that semester averaged under eight pages.

\(^{102}\) Syverud, \textit{supra} note 5, at 249.

\(^{103}\) AALS, \textit{supra} note 4, at 90.

\(^{104}\) See Appendices A-C.
• It is "unfair that an issue of law that was used in LW I class last year was used again this year for LW2."
• "My biggest complaint is that our section only had 2 weeks to work on the 2d brief. In comparison, other sections had as much as a month or more to prepare the exact same brief. This put us at a disadvantage . . . ."
• "At the start of the semester we did a lot of research exercises when the other sections were beginning memo writing. I complained at first but I really think that learning how to research helped me not only in this class but in others."
• I "didn't understand why some sections were given all their research. I don’t think that was appropriate. . . ."

Grading methods vary from completely holistic (giving letter or numerical grades based on an overall impression) to completely and exhaustively detailed (deducting two points for each missing authority or analytical error). The more sane and fair approach falls somewhere in between. Without a detailed, analytical, and organized approach to grading, it will be difficult to uniformly grade a large number of memos. And, a teacher will also encounter great difficulty later explaining to a student why they gave the student’s memo an 82/B- rather than an 85/B, particularly when the memo reads “just like Anne’s,” who received a 95/A. Thus, we should use some sort of point scheme to achieve greater uniformity. I have used a number of grading schemes, including somewhat holistic approaches, and have settled on one with a number of analytical categories, but with only five grading choices within each category.105 This grading scheme provides much greater uniformity while permitting some flexibility, and it also speeds the grading process significantly.

We should use great care to avoid perceptions of "unfair advantage" by inadvertently giving key information to some students, perhaps during office conferences, that we did not share with the class as a whole. Of course, if we inadvertently commit this error, we can rectify the situation by giving the information to the entire class. We should also avoid the “unfair disadvan-

105 See, e.g., Appendix F; I created five grading choices (ranging from "Excellent" to "Not Acceptable") and several analytical categories (such as "Analogous Cases/Policy" and "Thesis Sentences"), weighted each category, and then assigned points for each grading choice within the category. In Spring 2000, I reduced my grading choices from five to four to simplify the decision-making process and achieve greater grading uniformity.
tage” perception by maintaining some uniformity among sections taught by different legal writing teachers, although such disadvantages can be erased with an explanation of the course or program approach (that is, by “inventing options”). While many fairness concerns are based on perception rather than reality, we must nonetheless address these concerns.

7. Availability Outside Class

Law teachers should be available outside the classroom for student conferences. Legal writing students find analysis, research, writing, and oral advocacy skills more difficult to learn because the tasks involve both the skill itself as well as a doctrinal component; for this reason, a legal writing teacher should be more available than the average law teacher. According to the AALS Statement of Good Practices, “[l]aw professors’ responsibilities extend beyond the classroom to include associations with students”; they “should be reasonably available to counsel students about academic matters, career choices, and professional interests.” As Dean Syverud observed in his article: “Office hours are extremely important to establishing individual rapport with your students. If your students are not coming to your office hours, something is wrong and you should ask them and yourself why.”

The quantitative portion of the evaluation typically poses questions about the teacher’s availability outside of class. In addition, the students frequently offer qualitative comments as well:

- The teacher was “always accessible outside of classes.”
- The teacher’s “availability to students for questions was well above what was expected.”
- “He was never in his office.”
- “Wish instructor could have been available final 2 days before our last memo was due.”
- “Conference times were extremely limited and sporadic.”

106 AALS, supra note 4, at 89.
107 Id. at 90. See also ABA, supra note 94, at Standard 404(1) (“the law school shall establish policies” about “being available for student consultation”).
108 See Syverud, supra note 5, at 253.
109 See, e.g., Appendix A. Mercer asks its students about the “Instructor’s attitude toward answering questions outside class.”
As with fairness, availability is often a matter of perception rather than reality. If we are available ten to twenty office hours during the week (far less when grading), and the students understand when we will be in our offices, then there should be no availability concerns.\footnote{While some legal writing teachers have suggested that eight to twelve hours, rather than ten to twenty hours, is more reasonable, I have found that the latter number suits student needs (as well my own needs) much better. I typically spread my office hours over three or four days per week, which still allows time for scholarship, advising, and committee work. During heavy grading, my office hours usually fall to zero; during heavy conferencing, the office hours rise to thirty to forty hours per week.} Student concerns will arise, however, if we fail to post our office hours or a conference appointment schedule, or if we are not available when the students realistically need conference times (immediately before an assignment is due). If we make certain that we have one to two weeks, ten to twenty hours per week, available for conference times \textit{immediately} before an assignment is due, most students will have no problems with availability.

8. \textit{Delivery} \& \textit{Attire}

Although the last of the "Professionalism" concerns, delivery and attire are nonetheless of great importance. As Professor Abel has pointed out:

Observers, whether students or peers, are judging an entire person, not just an idea: physique, clothes, posture, verbal facility, timing, accent, facial impression, body language, emotional response, humor, interpersonal rapport, mood, self-confidence, authority. And they are doing it face-to-face. Several of my untenured colleagues, on the advice of a mentor, began dressing more formally in order to enhance student respect; the strategy seemed to have the desired result.

\ldots. Students asked to name the criteria they use in evaluating faculty offer 'personality' as one of their first choices. \ldots\footnote{Abel, \textit{supra} note 13, at 411, 423-24. Professor Abel has urged that "we should acknowledge openly that students are strongly influenced by style and [that we should be]...} Other studies have found that students place great weight on instructor expressiveness, enthusiasm, interest, humor, and movement. If style by itself is insufficient to earn high ratings, it certainly is necessary—content alone will not do.\footnote{While some legal writing teachers have suggested that eight to twelve hours, rather than ten to twenty hours, is more reasonable, I have found that the latter number suits student needs (as well my own needs) much better. I typically spread my office hours over three or four days per week, which still allows time for scholarship, advising, and committee work. During heavy grading, my office hours usually fall to zero; during heavy conferencing, the office hours rise to thirty to forty hours per week.}
The quantitative portions of many evaluation forms ask questions relating to delivery or style. What the quantitative portions do not ask, the students are more than happy to explain in the qualitative portion:

- "On the first day of class be bold, thought provoking, confident, and interesting. Capture our interest."
- The teacher is a "dynamic teaching superstar."
- The teacher should "change the level of his voice at least once during a lecture, instead of being so monotone."
- "Show enthusiasm—the most I have seen was on the last day of class—have a sense of humor—show a little more personality. Nonetheless, thanks for being a nice guy."
- "Use more visual aids and try to make the material more interesting."
- "The room class was held in was atrocious. It was hard to hear the professor in every class."
- The teacher "should act more enthusiastic in meeting his students during their appellate brief conferences."
- "Button your double-breasted jackets."
- "Don't dress so well; it is intimidating."

Thus, in addition to mastering the substance of legal analysis, research, writing, and oral advocacy and the relevant doctrinal law, as well as all the pedagogical nuances, our students would like us to be enthusiastic and well-dressed. This, of course, takes a very conscious effort for many law teachers, who prefer to think of themselves as scholars and teachers, not actors who should be thoughtful about their delivery and clothing styles. While teachers should do what seems comfortable, it really does not take much effort, for example, to develop our delivery by "turning up the volume" and "using the voice" to emphasize various points. Further, as students point out, humor and
visual devices (handouts and transparencies, for example) also go a long way toward spicing up a class.

If we show more enthusiasm, it may not only lead to better evaluations, it may also lead to more enthusiastic students who model the behavior—we can use our enthusiasm as an important teaching technique. Although many studies agree that good teachers have “a lot of enthusiasm in class,” we must also guard against a classroom demeanor that distracts rather engages the students or, worse yet, disrupts rather than focuses the students’ attention.

B. Respect for Students

Finally, student evaluations also reflect a concern best labeled “Respect for Students.” Certainly, as law teachers we have an obligation to treat our students with respect. Most significantly, we should respect and like our students because they are unique individuals who are “very much worth knowing.” If that alone is not enough, then we should recall that the students’ evaluations reflect their thoughts about our teaching and perhaps how we will ultimately fare as teachers:

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

\[
\text{teaching.}
\]

\textit{115} See Wangerin, \textit{supra} note 3, at 107 (“Or consider energy level. Since teachers can raise (or lower) the collective energy level of students in their classes by raising (or lowering) their own personal energy level, the ability to monitor and control personal energy level can be a critically important teaching technique.”).

\textit{116} Wangerin, \textit{supra} note 3, at 96.

\textit{117} See Wangerin, \textit{supra} note 3, at 107 (“Mannerisms sometimes endear teachers to students. Usually, however, mannerisms simply distract students.”); Abel, \textit{supra} note 13, at 452 (behavior praised as “original, bold, or provocative” in other contexts “frequently leads to negative evaluations of teaching”). See also infra text accompanying notes 128-31 (regarding disruptive students and classroom control).

\textit{118} See Syverud, \textit{supra} note 5, at 247-48, 250-51. See also AALS, \textit{supra} note 4, at 90 (“Law professors have an obligation to treat students with civility and respect and to foster a stimulating and productive learning environment”); ABA, \textit{supra} note 93, at Standard 404(1) (“the law school shall establish policies” about “creating an atmosphere in which students and faculty may voice opinions and exchange ideas”).

\textit{119} Syverud, \textit{supra} note 5, at 258; see also Lowman, \textit{supra} note 64, at 2-3 (observing that we should relate to students “as people in ways they find positive and motivating”; teaching is “an enterprise involving students’ human emotions and personalities as well as their cognitive reasoning”).
Very few of us are good enough actors to hide what we feel about our students during forty-five hours of give-and-take over a four-month period. If you don't like them, they will figure it out. And many of them will stop listening to you once they figure out that you don't like or respect them. . . Oh, they'll learn what is necessary to survive the exam, but they will lose all sincere interest beyond the exam in the ideas you are trying to convey to them. They will surely stop caring about becoming the sort of lawyer or scholar or thoughtful human being that you and your institution should be trying to produce. And thus you will fail as a teacher. (Incidentally, they will also kill you in your teaching evaluations.)120

Like the prior professionalism comments, student comments about respect fall into a few categories. Student comments, for example, address (1) the overall class atmosphere, including both the teacher's demeanor and classroom control, and (2) the teacher's empathy and caring.

1. The Overall Class Atmosphere

Law teachers should give careful attention to the atmosphere both in and out of their classrooms and its effect on the students and their learning. Students are quite cognizant of the overall class atmosphere and frequently offer thoughtful comments:

- "Good, friendly teaching style/class atmosphere."
- "Outstanding teacher—student attempts to dictate class speed and direction hindered class" but the teacher did a "great job maintaining control of class and his composure in the face of students' attempts to be obstacles to learning."
- "I think you have a lot of patience—At times some of the questions you were asked to address had already been asked, were tedious, or lack of a better word—'stupid'—I appreciate your having taken them seriously. Speak up, know when to cut people off. . . ."
- "The Professor was very easy to talk to in and outside of class."

120 Id. at 247-48.
• He was "approachable and understanding outside of class."
• The teacher is "very personable and a pleasure to meet with during office hours."
• "Understanding and easy to talk with about problems."
• On a one-on-one basis the teacher "offered only sarcasm and discouraging comments." "He made snide comments and made it very difficult to feel comfortable in asking him for help."

These comments focus on two aspects of class atmosphere, the teacher's demeanor (both in and out of the classroom) and classroom control. Demeanor in the classroom is of key importance because it also sets the tenor of our relationships with our students outside of the classroom in such settings as office conferences. While a harsh, unforgiving Paper Chase style was perhaps more acceptable in the classroom many years ago, most students seem to favor teachers who are more friendly, patient, and relaxed. I try to teach my class with a smile and a sense of humor, and I try to maintain patience, even when a particular class is not proceeding the way I planned. In turn, during my first class with my students, I expressly encourage them to relax, to be themselves, and to re-engage the sense of humor they had before coming to law school.

It also helps to learn the students' names and faces as soon as possible and to use their names. We should make a conscious choice about how we will address our students, by first name or by last name, and we should also choose how we want the students to address us. Many, if not most, law teachers address their students by their last names and presume that their students will address them as "Professor." However, I address my students by first names unless they say otherwise. I also tell my students that I prefer to go by my first name, David, but that they may refer to me as Mr. Walter, Professor Walter, or simply Professor, depending on their preference.

131 See Syverud, supra note 5, at 248 ("the impression you convey in your class will largely govern the relations you have with your students outside of it").
122 I do not have first-year students in class until until their second semester of law school; thus, many have already lost their sense of humor, or at least misplaced it. I am also assuming that they indeed had a sense of humor to begin with.
123 See Syverud, supra note 5, at 248.
124 See, e.g., id. at 252-53. Dean Syverud, like many professors, calls his students "Mr." and "Ms.;" his students refer to him as "Professor." Id. at 253.
I use first names for several reasons. First, using first names sets a more informal and relaxed tone for the classroom, one that I hope continually reminds me and my students that we are also people, not just a teacher and students (or adversaries or competitors). Second, I also explain to them that in skills classes such as legal writing that we will work together very closely to improve their analysis, writing, research, and other skills—much like two associates in a law office,\(^{125}\) where first names would normally be used. Finally, most students find law school and law teachers quite intimidating, and anything that we can do to minimize that intimidation should help the students.\(^{126}\)

I raise two caveats, however. No matter whether we refer to students by first or last name, consistency is important. We do not want students to draw any inferences about favoritism because we refer to one student by first name and others by last names. Second, it is also important that students understand that a first-name, friendly class atmosphere does not have any bearing on their ultimate grade in the course. I expressly remind my students that, unfortunately, I must give grades during and at the end of the semester and that the grades I give do not reflect my thoughts about them as human beings.\(^{127}\) I have used first names since I started teaching, using both blind and non-blind grading, and the students have registered no complaints on evaluation forms or otherwise.

A second aspect of class atmosphere, classroom control, is critically important—we must control the classroom, in a respectful fashion, to create the best learning environment possible.\(^{128}\) Although I set an informal tone for the classroom, I make

\(^{125}\) In my class, I play the "senior associate," not the "partner," in role plays. Also, as I noted above, I wear a suit and tie in most classes, as if I were working at a law office. For those concerned about creating a class atmosphere that is too informal, you can use "dress" as one means to make it more formal.

\(^{126}\) See id. at 253-54 (students will often "be intimidated by you (yes, even young considerate you will intimidate them—you have a degree and a job and the power to grade, and they do not")

\(^{127}\) Dean Syverud states that he uses "Professor" and last names "because it reminds me constantly that my students are not casual friends, but rather human beings to whom I owe fiduciary duties, and around whom my behavior must in certain respects be constrained. Remember, friends do not grade their friends at the end of the semester; you do grade your students." Id. at 253. I agree that we owe certain duties to students, including fairness in grading. Even so, I do not think using first names impairs fairness in grading or our ability to maintain good working relationships with students we know on a first-name basis.

\(^{128}\) See id. at 248, 251-52.
it clear that I view the classroom as an important place for teaching and learning. For example, I explain to the students that I select exam questions from our classroom discussions and that many key ideas about their memos come primarily and sometimes solely from our classroom discussions. I expressly inform the students that what happens in the classroom is important and that they should therefore pay close attention.  

When I happen across students who are unprepared, I pass over them for that class, but I make sure they know (in a friendly tone) that I will return to them the next class. The disrespectful student—the one who talks or engages in other activities during class—can be more problematic. Personal experience indicates that we should not verbally “attack” the student, although we might be tempted, because we will create animosity not only with the specific student but with many of the student’s classmates as well. We can respectfully acknowledge the problem without directly confronting the particular student. For instance, when a trio of students in the back of my classroom persistently carried on sidebar conversations (which I later learned were about our class topics), I curbed the conversations by (1) acknowledging that our topic might not be the most exciting, but that it was nonetheless important (adding a quick explanation of its importance), (2) noting the room’s high quality acoustics, and then (3) asking all students to refrain from sidebar conversations, which were distracting not only to me, but also to the other students as well. These statements remedied the sidebar conversation problem.

2. The Teacher’s Empathy and Caring

The second set of concerns focus on the teacher’s empathy and caring. While a teacher may improve the overall class atmosphere with a friendly and relaxed demeanor, a law teacher should also expressly demonstrate empathy and caring about the students’ situation. The teacher’s empathy and caring, or a lack of empathy and caring, generate frequent comments:

129 See id. at 256.

130 See id. at 251-52 (“It would be a mistake because, by shaming the student in front of [the student’s] peers, I would lose the student for the rest of the semester. And I would lose not just that student, but also many others who probably were also bored . . .”).

131 See id.
The teacher was “very considerate of our time constraints—extended deadline on Discussion was very helpful.”

“Very stable & reasonable in his expectations of the class.”

The teacher has a “willingness to listen. Sense of humor & reasonableness in expectations.”

“GOOD effort to ensure we understood intent. I was thankful for individual discussions outside of class & willingness to meet with us.”

“Also, a little human compassion for extreme circumstances would be appropriate.”

“Professor seemed not to care whether students grasped the material or not. . . . Professor seemed to give better instruction after we informed him that such instruction was lacking for the first time.”

“After receiving a disappointing grade on Fri., I had great difficulty focusing on the second brief. In fact, I spent a lot of time thinking what’s the point of even turning in the second brief, take the final and move on.”

“Feedback was depressing, knowing that no matter how good you did, it was going to get butchered. It did show my mistakes though.”

“Very good ability to make constructive comments and still make the writer feel good about what has been written.”

“Very human and sense of humor.”—My “other classes left me scared to death to write and confused about how to do legal analysis. Finally, I feel confident and knowledgeable on legal writing. Thank you. I’m actually excited about legal writing.”

Good law teachers directly acknowledge the problems they know their students are facing, either with the substance or workload or even the timing of the work required. For example, I gave a memo assignment during Spring 1998 about a rather difficult topic, the Truth-in-Lending Act. On more than one occasion I tried to “invent options” by explaining why I chose this particular assignment, why I thought the problem

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132 See id. at 250 (“you should show, sometimes quite subtly, that you understand and are sympathetic to the problems they are having even if you yourself are now an expert who no longer has these problems”).
would help them be better law students and better attorneys, and how this assignment compared with others that they would encounter in practice. I also adjusted due dates and page limitations when it became apparent that the original dates and limits were not workable. Although some negative qualitative comments would have been justified that semester, I received only one negative comment about the assignment: it “was dull.” The positive comments included: “He teaches what you need to know for the real world,” and “Greatly appreciated assignment extensions.”

We can also demonstrate empathy by taking great care not to destroy the students’ self esteem, either through direct comments or through cynicism in general. Legal writing teachers give considerable negative, but constructive, criticism. We must include positive comments, too:

Please believe me: your experience in law school is not typical. Most law students go for months or years without hearing a single word of encouragement or praise from a professor. Most law students are desperate for praise and feedback. And just a little bit of praise or encouragement from you goes a long way with the student who receives it. So look for ways to give some reassurance to students who are struggling as well as to the students who are doing well.

Realistic, practical stories from our law practices are also helpful for students, but we should use care to avoid conveying unintended cynicism about the practice of law. For example, to support my point that brief writers and oralists should consider reader and listener expectations, I used an example from practice. A Seattle attorney I know, who is a true “cowboy” at heart, frequently wears western boots and attire when he is away from the office. However, on one occasion he tried a personal injury case before a rural jury, so he decided to don his western suit, sans hat, for the trial so that he would be more acceptable to the jury. I told this story on the second day of class; over three

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133 See id. at 249 ("Your students have busy lives too. They have other classes, they have child care responsibilities . . . , and many have jobs. You show respect for them by not disrupting their lives by your poor planning.").
134 Id. at 254; see also Enquist, supra note 62.
135 See Syverud, supra note 5, at 254. But see Abel, supra note 13, at 448-49 (even if students find your views about the legal system “profoundly disturbing,” “[t]hat is not a reason to withhold criticism”).
months later, at the end of the semester, one student commented that, rather than a positive story about listener expectations, it was a cynical story about law practice. I concluded that I needed to use more care in choosing my words, and my stories from practice, to avoid unintended and cynical interpretations.

If we respect and like our students, they will usually respond with similar sentiments and “will forgive a great deal in the classroom.” In addition, they will respond with better evaluations. Professor Abel has written: “Students give higher ratings to instructors they like. Congruence between student and teacher personalities, not surprisingly, enhances student ratings.” Accordingly, student comments about our “overall teaching ability” reflect not only the students’ thoughts about our teaching ability, but also reflect (perhaps even predominately reflect) the students’ thoughts and feelings about our personality and whether they believe we like and respect them.

Student evaluations for legal writing classes often contain qualitative “overall teaching ability” comments such as these:

- “LW is a necessary evil. Good professor.”
- “As good as could be expected considering subject matter.”
- “This was the worst course I have ever taken. He doesn’t teach anything. There was no need to attend class.”
- “A great addition to the faculty!”
- “Did a great job—he blew those other legal writing teachers away.”
- “Super prof . . . fun class.”

Positive qualitative comments, like high marks on the quantitative question about “Overall Teaching Ability,” can be great morale boosters. Even so, these comments also reflect the students’ reaction to our personality and our respect for the students. Accordingly, to truly improve our teaching, professionalism, and respect for students, we should focus on the more
specific comments for guidance.¹⁴¹

V. CONCLUSION

An important aspect in advancing the professionalism of law teachers is the evaluation and improvement of our teaching. Student evaluations, which are a reliable, valid, and valuable source of information about student concerns, are a key tool in advancing our professionalism and respect for students. Before analyzing our evaluations, we should first establish a viewpoint for understanding student evaluations by considering some of the factors that may affect the evaluations. For example, we should not rely solely on quantitative evaluation data; to achieve the best possible understanding of key student concerns, we should also analyze the students' qualitative comments for themes and supporting reasons. Before taking any actions, we should carefully analyze the evaluations and compare the results to our personal benchmarks. We should consider what effect course characteristics, student characteristics, and our own personal characteristics have on our students' opinions and evaluations.

Several key student concerns frequently appear in the evaluations of legal writing teachers, including professionalism concerns such as clarity, pedagogical knowledge, substantive knowledge, preparation and organization, punctuality, fairness, availability outside class, and delivery and attire. In addition, students' evaluations also identify several key concerns relating to respect for students, including the overall class atmosphere and the teacher's empathy and caring. I have identified several possible responses to these professionalism and respect concerns, including the concepts of "inventing options" and the "power of apology." Of key importance is the notion that, if we like and respect the students, the students will usually respond with similar sentiments and will forgive a great deal in the classroom.

I truly believe that law teachers who take the time to properly analyze the valuable information recorded in their student evaluations will improve their teaching, their professionalism, and their respect for their students. By improving their teaching, professionalism, and respect for their students, those law

¹⁴¹ See id. at 431, 453.
teachers will discover that they have in turn improved their student evaluations.
**APPENDIX A**

MERCER UNIVERSITY SCHOOL OF LAW

Walter F. George School of Law

Instructor Evaluation

The purpose of this evaluation is to learn how you rate course content and delivery. Please enter the 5-digit Course Number provided by your instructor in the grid to the left.

Please COMPLETELY DARKEN "O" the appropriate Boxes with pen (black or dark blue) or No. 2 pencil. DO NOT use "V" or "X" as a mark reader cannot sense light characters.

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<th>Excellent</th>
<th>Above Average</th>
<th>Average</th>
<th>Below Average</th>
<th>Poor</th>
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<td>1. Clarity and length of assignments.</td>
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<td>2. Instructor’s preparation for class.</td>
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<td>3. Instructor’s general enthusiasm for subject matter.</td>
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<td>4. Instructor’s speaking style and poise.</td>
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<td>5. Instructor’s ability to make discussions relevant.</td>
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<td>6. Effectiveness of instructor’s answers to questions.</td>
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<td>7. Opportunity afforded for students to ask questions in class.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>8. Instructor’s ability to impart information which induced you to attend class regularly.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>9. Instructors’ ability to explain the reasoning behind the &quot;law.&quot;</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>10. Instructor’s attitude toward answering question outside class.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>11. Instructor’s overall teaching ability</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>12. Your regularity in attending this class</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>13. The speed at which the material was covered</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

("1" too slow, "3" comfortable, "5" too fast).  

1 2 3 4 5

Please add additional observations or comments on the back of this form.
Legal Writing I & II  
FALL 1991  
INSTRUCTOR EVALUATION

I. Classroom Instruction

<table>
<thead>
<tr>
<th></th>
<th>EX = Excellent</th>
<th>GD = Good</th>
<th>FR = Fair</th>
<th>PR = Poor</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Is your instructor well-prepared and organized?</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>2.</td>
<td>Does your instructor appear to have a good grasp of the material presented?</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>3.</td>
<td>Does your instructor cover the course materials in adequate depth?</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>4.</td>
<td>Does your instructor present the course material clearly?</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>5.</td>
<td>Do you find the way your instructor presents the course material interesting?</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>6.</td>
<td>Is your instructor an effective lecturer?</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>7.</td>
<td>Does your instructor effectively lead classroom discussion?</td>
<td>—</td>
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<td>—</td>
</tr>
<tr>
<td>8.</td>
<td>Does your instructor answer student questions effectively?</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>9.</td>
<td>Does your instructor use group exercises effectively?</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>10.</td>
<td>Does your instructor present course material in a manner that stimulates thought?</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>11.</td>
<td>How would you rate the overall effectiveness of your instructor.</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>
APPENDIX B – PAGE TWO

II. Evaluation of Written Work

In general, how would you describe the comments made by your instructor on your written assignments.

____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________

III. Consultations and Conferences Outside the Classroom

1. Did your instructor make himself sufficiently available for individual consultations?
   yes_____ no _____

2. How many times did you individually consult with your instructor?
   0 times _____ 1 time _____ 2 times _____ 3 or more times _____

3. Do you feel that the consultation helped you improve your writing or oral skills?

4. Did you consult with one of the writing advisors about any of your assignments for Legal Writing I?
   yes_____ no _____

If yes, how many times did you see an advisor?

Comments: Please list your instructor’s strengths and weaknesses as a teacher.

____________________________________________________________________________________
____________________________________________________________________________________

What suggestions would you like to make to your instructor?

____________________________________________________________________________________
APPENDIX C – PAGE ONE

UPS LAW SCHOOL STUDENT BAR ASSOCIATION
FACULTY EVALUATION FOR STUDENT VIEWING

<table>
<thead>
<tr>
<th>COURSE NAME:</th>
<th>PROFESSOR:</th>
<th>YOUR YEAR:</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SEMESTER:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The information derived from this evaluation will be made available to the students in either its original form, as completed by each individual student, or through a numerical compilation. The SBA thanks you in advance for your cooperation.

<table>
<thead>
<tr>
<th>STRONGLY AGREE</th>
<th>AGREE</th>
<th>UNDECIDED</th>
<th>DISAGREE</th>
<th>STRONGLY DISAGREE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

1) My personal effort in this course (attendance, preparation, participation) was high.

2) My experience in this course will enhance my ability to practice law.

3) The instructor helped to develop my analytical skills.

4) I would enjoy taking this professor again.

5) The instructor was knowledgeable about the course subject.

6) The instructor was knowledgeable about current developments and issues related to the course subject.

7) The instructor was able to explain the course subject clearly.

8) The instructor’s examples/experience/hypotheticals were helpful.

9) The instructor’s teaching method was effective.

10) The instructor incorporated Washington law into the course materials.

11) The instructor provided me with thorough exposure to black letter law.

12) The instructor emphasized public policy.

13) The instructor was prepared for class.

14) The instructor was available outside of the classroom.

–OVER FOR ADDITIONAL QUESTIONS
### APPENDIX C – PAGE TWO

<table>
<thead>
<tr>
<th></th>
<th>STRONGLY AGREE</th>
<th>AGREE</th>
<th>UNDECIDED</th>
<th>DISAGREE</th>
<th>STRONGLY DISAGREE</th>
</tr>
</thead>
<tbody>
<tr>
<td>15) The instructor treated students with respect.</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>16) The course involved issues regarding women and minorities.</td>
<td>YES</td>
<td></td>
<td></td>
<td>NO</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>17) The instructor was enthusiastic about teaching.</td>
<td>YES</td>
<td></td>
<td></td>
<td>NO</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>18) The materials (required texts, handouts, reserve items) in this course were understandable and useful.</td>
<td>YES</td>
<td></td>
<td></td>
<td>NO</td>
<td></td>
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<tr>
<td></td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>19) Study aids are a &quot;must&quot; for this course.</td>
<td>YES</td>
<td></td>
<td></td>
<td>NO</td>
<td></td>
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<tr>
<td></td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>20) A good balance of student involvement and instructor contribution was achieved.</td>
<td>YES</td>
<td></td>
<td></td>
<td>NO</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>21) Class participation is included in the course grade.</td>
<td>YES</td>
<td></td>
<td></td>
<td>NO</td>
<td></td>
</tr>
<tr>
<td>22) Class attendance is taken.</td>
<td>YES</td>
<td></td>
<td></td>
<td>NO</td>
<td></td>
</tr>
<tr>
<td>23) The attendance requirement influenced my decision to attend class.</td>
<td>YES</td>
<td></td>
<td></td>
<td>NO</td>
<td></td>
</tr>
<tr>
<td>24) Class preparation required a/an amount of time for a class with this number of credits.</td>
<td>YES</td>
<td></td>
<td></td>
<td>NO</td>
<td></td>
</tr>
<tr>
<td></td>
<td>BELOW AVERAGE</td>
<td>AVERAGE</td>
<td>ABOVE AVERAGE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>25) I would recommend this instructor to a fellow student.</td>
<td>YES</td>
<td></td>
<td></td>
<td>NO</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

**WRITTEN COMMENT SECTION**

Please state any other strengths/weaknesses of this professor and course.
### APPENDIX D

**MERCER UNIVERSITY SCHOOL OF LAW**

Term: 98S

Walter F. George School of Law Instructor/Course Evaluation

Course Name: LEGAL RES & WRITING

Prof. WALTER D

Crs: LAW 152.04

<table>
<thead>
<tr>
<th>Distribution of Responses</th>
<th>Mean Response</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>This Course</td>
</tr>
<tr>
<td><strong>Clarity and length of assignments.</strong></td>
<td>18</td>
</tr>
<tr>
<td><strong>Instructor’s preparation for class.</strong></td>
<td>19</td>
</tr>
<tr>
<td><strong>Instructor’s general enthusiasm for subject matter.</strong></td>
<td>19</td>
</tr>
<tr>
<td><strong>Instructor’s speaking style and poise.</strong></td>
<td>19</td>
</tr>
<tr>
<td><strong>Instructor’s ability to make discussions relevant.</strong></td>
<td>19</td>
</tr>
<tr>
<td><strong>Effectiveness of instructor’s answers to questions.</strong></td>
<td>19</td>
</tr>
<tr>
<td><strong>Opportunity afforded for students to ask questions in class.</strong></td>
<td>19</td>
</tr>
<tr>
<td><strong>Instructor’s ability to impart information which induced you to attend class regularly.</strong></td>
<td>19</td>
</tr>
<tr>
<td><strong>Instructor’s ability to explain the reasoning behind the “law.”</strong></td>
<td>19</td>
</tr>
<tr>
<td><strong>Instructor’s attitude toward answering questions outside class.</strong></td>
<td>19</td>
</tr>
<tr>
<td><strong>Instructor’s overall teaching ability.</strong></td>
<td>19</td>
</tr>
<tr>
<td><strong>Your regularity in attending this class.</strong></td>
<td>19</td>
</tr>
<tr>
<td><strong>The speed at which the material was covered (“1” slow “3” comfible “5” fast)</strong>*</td>
<td>19</td>
</tr>
</tbody>
</table>

**AVERAGE** (Questions 1-11) 3.8% 1.4% 17.7% 27.4% 49.5% 4.173 4.290
APPENDIX E

TO: Sections I & 4
From: David D. Walter
Date: March 16, 1998
Re: Second Memo Assignment

On the reverse of this page is a memo from Judge Foxworth, a Georgia Superior Court judge for the Mercer District, regarding a criminal case, *State v. Stevens*. In writing your objective memo to your new employer, Judge Foxworth, you may use authorities such as reporters, Shepard's, treatises, law books, digests, ALRs, law reviews, Westlaw, or Lexis—or any authority located by using these listed authorities. YOU CANNOT USE ANY OTHER AUTHORITIES (INCLUDING ATTORNEYS OR PROFESSORS) WITHOUT EXPRESS PERMISSION FROM ME.

However, you may DISCUSS this assignment and your research findings WITH OTHER STUDENTS IN MY LW I SECTIONS. You may use examples and information provided in class, and you may consult with me and the Writing Lab professor and use any information provided in those consultations. Unless otherwise instructed by me as part of a classroom exercise, YOU CANNOT HAVE ANYONE PERFORM YOUR RESEARCH OR WRITING FOR YOU, (2) PERFORM RESEARCH OR WRITING FOR ANYONE ELSE, (3) EXAMINE, REVIEW, OR PROOFREAD ANYONE'S WRITTEN WORK, OR (4) PROVIDE YOUR WRITTEN WORK TO ANYONE ELSE SO THAT PERSON MAY EXAMINE, REVIEW, OR PROOFREAD YOUR WRITTEN WORK. YOUR WRITTEN WORK MUST BE COMPLETELY YOUR OWN. IF YOU HAVE ANY QUESTIONS ABOUT ACCEPTABLE CONDUCT, I RECOMMEND THAT YOU CONSULT A SOURCE OF THE ABOVE ETHICAL REQUIREMENTS WITH RESULT IN ANY OTHER COURSE, PLENARY HINT AND MAY ALSO RESULT IN THE FillinG OF HONOR COURT PROCEEDINGS.

You should follow the mechanics requirements stated in your Course Description and Policies Handout, with the following exceptions:

1. NAME: Do not place your name on the Draft Discussion Section or the Final Second Memo. For the Draft Discussion Section, you should use a 5-10 digit number of your own choosing. For the Final Second Memo, you should use the Legal Writing Blind Grading Number provided by the Registrar.
2. DUE DATE/TIME: The Draft Discussion Section is due Wednesday, April 8, by 8:30 a.m. The Final Second Memo is due Monday, April 27, by 9:30 a.m.
3. CONTENTS: The draft should contain only the discussion section. AND IT SHOULD BE COMPLETE. Your final memo should include a heading (to/from/date/re:), a question presented, a discussion section, and a conclusion. YOU SHOULD NOT INCLUDE A BRIEF ANSWER OR STATEMENT OF FACTS. You should include a table of contents and a certificate page (as described in your Course Description) with the final memo.
4. LENGTH: The Draft Discussion Section should be about 6-8 standard pages (a standard page has 27 lines and 65 characters per line). Your Final Second Memo should not be longer than 10,000 characters/spaces (a little more than 10 standard pages). If your draft or final memo do not use the standard format, you should adjust the number of pages submitted accordingly.
5. ISSUE: Your draft discussion section and final memo should ONLY address the issue identified in Judge Foxworth’s memo.

--- PAGE ONE ---

To: New Judicial Law Clerk
From: Judge Foxworth
Date: March 16, 1998
Re: *State v. Stevens*

Congratulations on your new clerkship with our court; I think you will make an excellent judicial clerk. Your prior employer, Jack Gordon of Gordon, Harris, and Nikora, was very impressed with your abilities.

The key facts of *State v. Stevens* are contained in the attached transcript excerpt -- this should give you the needed factual context to discuss the issue described below. In *Stevens*, the officer based his decision to stop the defendants on the defendants' race. I would like you to research and prepare a memo evaluating the following issue: Is this Terry stop valid when the officer used the person's race as the basis for the stop? Please feel free to revise this issue statement as needed (keeping in mind what you learned in your legal writing class), but stick to the key issue identified.

"Terry" refers to *Terry v. Ohio*, an old U.S. Supreme Court case. In *Terry* the Court permitted an officer to "stop" a person suspected of a crime and ask the person questions. One of the key points in *Terry* is that the officer does not need to have probable cause to make the stop -- the officer only needs to have a reasonable suspicion that "crimical activity is afoot." Your research for this memo should focus on Georgia decisions (this case, after all, is in a Georgia Superior Court), even though it is a federal fourth amendment search and seizure issue. However, you should feel free to raise cases from other jurisdictions, whether federal or state, as needed to support your analysis.

--- PAGE TWO ---
APPENDIX F

LEGAL WRITING I - SECOND MEMO GRADE SHEET
TO: BLIND GRADING NUMBER
FROM: DAVID D. WALTER
(300 POSSIBLE)
(POINTS PER SECTION AND CRITERIA ARE SHOWN BELOW)

<table>
<thead>
<tr>
<th></th>
<th>EXCELLENT</th>
<th>VERY GOOD</th>
<th>ACCEPTABLE</th>
<th>MARGINALLY ACCEPTABLE</th>
<th>NOT ACCEPTABLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. HEADING:</td>
<td>5</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>0</td>
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<tr>
<td>B. QUESTION(S)</td>
<td>15</td>
<td>12</td>
<td>10</td>
<td>8</td>
<td>4</td>
</tr>
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<td>C. BRIEF ANSWER(S):</td>
<td>Not Applicable</td>
<td></td>
<td></td>
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<td>D. FACT STATEMENT:</td>
<td>Not Applicable</td>
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<td>E. DISCUSSION:</td>
<td>5</td>
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<td>16</td>
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<tr>
<td>2. Law –</td>
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<td>– Analogous Cases/</td>
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<td>3. Application –</td>
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<td>4. Mini-Conclusion</td>
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<td>(Landing):</td>
<td>10</td>
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<td>6</td>
<td>4</td>
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<td>F. CONCLUSION:</td>
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<td>(CLARITY/PRECISION/</td>
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<td>CONCISENESS):</td>
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<td>1. Punctuation/Usage/</td>
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<td>Grammar/Spelling:</td>
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<td>Time Sheet/Certificate Page:</td>
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</table>

ABBREVIATIONS USED IN CRITIQUING YOUR MEMO:
Clarity: Punctuation: Precision: Usage: Concision: Grammar: Organization: Spelling: Bluebook:
In Search of the Read Footnote: Techniques for Writing Legal Scholarship and Having it Published

Christian C. Day

The tips found in this article will help scholarly writers to become more productive and fulfilled. The article also offers ideas that will enable deans and promotion and tenure committees to establish reasonable and achievable writing schedules for all faculty. The benchmarks, mentoring support, and other worthwhile suggestions will aid faculty in quest of achievement, scholarship, promotion, and professional satisfaction.

Last but not least, student law journal writers and law students engaged in scholarly writing for seminars should find this article useful. Many of these techniques will make writing more pleasant, productive, and efficient.

"Begin with the end in mind." Stephen R. Covey

1 1 Christian C. Day, Professor of Law, Director, The Center for Law and Business Enterprise, Syracuse University College of Law. J.D., New York University School of Law, 1970, A.B., Cornell University, 1967. Again, I gratefully extend thanks to my steadfast editor and wife, Ann M. Day, M.S., Syracuse University, 1999, Syracuse University, M.B.A., Syracuse University, 1982, B.S., Syracuse University, 1978. I appreciate the support of Syracuse University College of Law for a grant that enabled me to complete this project and others (that may lead to future articles).

This essay on the writing, production, and editing of legal scholarship is dedicated with great affection to all of my editors and mentors, but most especially to Professor Emeritus Frederick G. Kempin, Jr. of The Wharton School. Fred was my first significant legal writing mentor and editor. He saw an awful problem and did something about it.

The title for this piece was derived from Tom Clancy's The Hunt for Red October. TOM CLANCY, THE HUNT FOR RED OCTOBER (1985). It follows one of my rules, "Borrow Only From Impeccable Sources." See infra notes 22 & 23 & accompanying text. In the past, I had sadly noted the painful efforts of junior faculty attempting their first scholarly research. Once I had the zany title to prod me, I began to scribble notes to myself. It has taken me a few years to put fingers to the keyboard — I was interrupted by usual quasi-administrative duties, other articles, new course development, etc.). The time-honored methods I used and describe in the article made writing it fun and easy.

2 This article's ideas for writing go hand-in-hand with James Lindgren, Fifty Ways to Promote Scholarship, 49 J. LEGAL EDUC. 126 (1999). Deans and Directors of Research should employ Professor Lindgren's strategies to support faculty engaged in writing. Professor Lindgren's piece is essential for all schools seriously interested in promoting scholarship.

"God is in the details." Mies van der Rohe. Also attributed to Anonymous. ⁴

"A journey of a thousand miles must begin with a single step." Lao-Tzu (c. 604—c. 531 B.C.) ⁵

"You know what you know." Anonymous ⁶

"Just do it." Nike commercial

"Throw deep!" Ken “The Snake” Stabler ⁷

I. INTRODUCTION: THE GATHERING OF (LEGAL) EAGLES, TORTOISES, AND HARES

_Tales of (Legal) Eagles, Tortoises and Hares._ To be an eagle and soar far above the madding crowd may be our common aspiration, but many of us begin with lesser gifts. Some of us are hares as we race through fields of ideas. But hares still must pace themselves to finish the race. Others are more like tortoises, slower and steady. Some are ferrets, unearthing ideas everywhere and being quite industrious. With luck, we are each more ant than grasshopper. Discover what your talents are and understand your work habits. Then build a realistic research, writing, and publication schedule that capitalizes upon your talents and offsets your weaknesses.

This is not an article on writing good prose, legal or otherwise. There are many fine works on writing already available.

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⁴ ADA LOUISE HUXTABLE, KICKED A BUILDING LATELY? 185 (1976). _But see_, BARTLETT’S FAMILIAR QUOTATIONS 783:2 (Justin Kaplan, ed., Little, Brown, 16th ed. 1992). This wonderful aphorism has been frequently attributed to the great actor, Humphrey Bogart, who resolutely denied saying it in any play or movie. Regardless of the creator, it’s a marvelous piece of modern wisdom and deserves respect.

⁵ BARTLETT’S, id. at 57:20.

⁶ These aphorisms apply to the novice as well as the accomplished legal scholar. Every author should strive to say something significant. Attention to detail is important, and design and elegance are often revealed in the smallest points. You know best what your strengths and weaknesses are; you can use this knowledge to create. And every significant undertaking has to start somewhere, including legal scholarship. Start writing, and you overcome writer’s block!

⁷ Ken Stabler was a great Oakland Raider quarterback and a poet without knowing it. “Throw deep” was his incisive and direct way of demystifying the babble of coaches and announcers. “Throw deep” was his style of play — the dramatic big play. When you throw deep, you score often and with panache!


For writing law review articles in particular, _see_ ELIZABETH FAJANS & RICHARD A.
No, the piece at hand is much more prosaic. Its goal is to assist fine writers in the efficient production and publication of scholarly articles. It is a “nuts and bolts” compilation of techniques and suggestions that the author and his colleagues have used over the years in bringing their ideas to print. As simple, naive, and inelegant as these ideas seem, they really do work! If you have the will, they can provide you with the way.

This is an odyssey that I (and many colleagues) have traveled. I have made just about every mistake in the book—and I have learned which practices work and which don’t. Since I have been at Syracuse I have worked with junior colleagues who were starting out, and I have also tested my ideas with established faculty members stymied by writer’s block. The more efficient...
you are, the more fun writing will be, and the more you will advance your career.¹¹

II. GETTING AN IDEA (GETTING IT WRITE: PART I)

Find a Mentor or Ask Your College for a Mentoring System.¹² If you and your college are serious about legal scholarship and about junior faculty gaining tenure (as well as senior faculty continuing to be productive), mentors and a mentoring system are in order. Law teachers are several giant steps behind other university scholars when we embark on our first scholarly endeavors. Lawyers are independent generalists. In law school we rarely do collaborative writing.¹³ Many of us come from practice where much of the writing is solitary (wills, opinion letters, leases, briefs, etc.). Little of this writing is transferable directly to scholarship and publication. The traditional law college “research program”¹⁴ lacks the structure found everywhere in the hard sciences, engineering, and the liberal arts.

Scholars in the hard sciences have been part of collaborative efforts from their undergraduate days. They learn how to conduct research as part of a team, and, if they were precocious, have published as junior co-authors or been acknowledged as researchers in the credit footnotes. Once these scholars are accepted into a graduate program, they have mentors, review committees composed of related experts, periodic review of progress reports, and grants to support their research. Ph.D. recipients

¹¹ I can’t promise that you will become the next Oliver Wendell Holmes, Jr. or the next Duncan Kennedy. But I can almost promise you that if you have something to say, you will publish and not perish.

¹² This may be the wave of the future. Several years ago, Syracuse established a formal mentorship program, where tenured faculty serve as mentors for junior faculty. To date, the guidance and efforts have worked well.

¹³ This is changing at Syracuse and other schools. For example, in Law Firm (our first-year legal writing, research and lawyering skills course), our students are encouraged to brainstorm, share research strategies, and exchange drafts. Some of our planning seminars and Applied Learning Courses encourage group efforts in such tasks as creating documents for a limited partnership syndication. Some traditional law reviews and journals have research programs where collaborative editing is employed.

¹⁴ Usually there is no formal research program structure. Faculty are expected to know how to research and write articles. Some colleges and law centers have “centers” and “policy programs” that focus on directed research. For those novices fortunate enough to select such a school or program or those who serendipitously fall upon them, more power to you lucky few. These centers and programs can provide the direction, focus, and support needed by junior and senior faculty. For the vast majority, until a mentoring system is created, they are on their own. God bless’ em.
and holders of masters’ degrees are often in the position to publish their edited theses.

Legal scholarship lacks this disciplined research structure and our junior faculty suffer for it. At a minimum, a committee of senior faculty or a senior professor should be assigned to the junior teacher. She should require the new colleague to create a list of topics of interest and then aid in the selection of one or two.

**The Mentor Should Establish Timetables and Monitor Progress.** This is a “Make or Break” area for both mentors and new writers. Many novice legal writers have been fortunate indeed to have law review and/or clinical experiences while in law school. Those experiences may have imposed editorial deadlines and structure. But sometimes even relatively bright novices don’t get the message of establishing research, writing, and editing schedules. I certainly did not for years. And I think my experience was typical.

I began practice as a litigator in a large law firm. Morgan, Lewis & Bockius had the “luxury” of being able to assign a number of associates (and often partners) to research tasks. Many times the tasks were broken down into small nuggets (“Find me all the law in New Utopia on ‘slip and falls’ in front of ice cream parlors. I need a five page memo for my trial brief for Judge O’Conner by nine tomorrow.” The associate labors for hours and finds two cases or ten and then spends some time writing and perfecting the memo. The memo is punched into a trial brief and the associate is off on many more urgent tasks.). Even long-term projects are often divvied up and edited by senior associates or partners who “indirectly” impose the schedule.

Inexperienced associates, law clerks, in-house counsel, and clinicians normally do not immediately grasp that work schedules delineating research and writing must be set, and are critical to completing the task. The mentor must, as part of her duties, establish appropriate schedules and help the novice legal scholar realize that he has covered enough ground and that he must start writing.15 Partners and senior faculty know this

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15 After Fred Kempin (now Professor Emeritus at The Wharton School) had brutally slashed and burned two thirds of my first unpublished magnum opus, inductive reasoning forced me to conclude that “enough is enough.” I recognized that if you have researched for months, you can start writing (and probably should have started long before). I “gave myself permission” to write because I believed that I did know enough to do a good job. Most new writers just don’t realize that, and it should be brought home to them at an early stage in the process. Mentoring can underscore the messages “You can
trick. Unfortunately, they are not the ones trying to become published or make partner. They do know the answer and they should impart this confidence and discipline when they serve as mentor. “You can do it” and “Do it now” are powerful charms that really empower new writers.\textsuperscript{16} It is empowering to produce an outline and say, “This is forty pages of manuscript (twenty pages of printed article). I will complete this and it will be published.” The mentor can make this happen when she knows the trick!

\textbf{The Mentor Should Assist in the Reading, Editing, and Placement of Articles.} The mentor should help the novice to find grants or obtain load relief (if necessary). She should arrange for brown-bag working paper presentations, and when the article nears competition, urge the colleague to go campus-wide with a presentation or present at law conferences or at other law schools. And last, but not least, she should be a gentle but firm nudge and friend. If the mentor takes her charge seriously and the junior faculty follows the agreed-upon research program, worthy articles will emerge in a timely fashion.

\textbf{Start with Something You Know Something About.} It seems like obvious advice to write about something you already know.\textsuperscript{17} Yet modesty sometimes blocks junior faculty from seeing

\textsuperscript{16} An example of the dramatic power of knowing when to put pen to paper and doing it follows. Years ago, a colleague was having difficulty writing, and began to think that academia might not be for him. I told him to make an outline and write paragraphs and pages of text from his outline (not his rough notes that had been hard to organize). He produced a two-page, double-spaced outline. I estimated that he had produced a document that would yield thirty to forty pages of text and notes. He protested that this was impossible because he just couldn't get into the article and it was getting away from him. He did not immediately see that he had already "written" his article.

Several days later and about ten new pages into the article, he conceded that the outline (and his effort) were churning out usable text. Several pages more and he realized the power of his confidence in his outline. He could see the end of the tunnel, and the funk was lifted. There was a happy ending, and he is now a respected scholar in his area of expertise and actually enjoys writing.

\textsuperscript{17} My first article was on tax reform and landmark preservation. Architecture and cities had always fascinated me. I almost became an architect. (I am certain that the architecture school at Cornell is delighted I declined its acceptance in 1963.) I had practiced corporate real estate law in Philadelphia. At the outset I had a sympathy for and interest in my subject. Further, I enjoyed number-crunching, which is most helpful in tax matters. My second article moved into the realm of energy policy, land use controls, tax and urban planning. Again, I had a personal library at my disposal and a strong interest in the subject.

Later, at Syracuse, two former research assistants and I wrote an extensive article defending leveraged transactions. As a real estate associate, I cut my teeth on the leveraged restructuring which ultimately became the grand-daddy of all LBO litigation,
that they are "experts."

My experiences should suggest how your interests might provide direction. You might use an appellate brief you wrote for your starting point in an article on tort reform. Or, as an appellate lawyer, you may have observed that the Supreme Court of Utopia was nearly always "wrong" on certain issues. As a budding legal scholar, use your knowledge and interests to unearth why the court was "wrong," show the error of its ways, and assist the profession in law reform. Or while representing clients, you may have observed certain lawyers' practices that you deemed too sharp or unethical. That observation might lead to a strong article on legal ethics. Consider your interests and experiences—a first source for researchable and publishable ideas.

**Start With Something You Don't Know But That Interests You.** Learn as You Go. This is the corollary of the advice above, but it is riskier. If the subject matter interests you, the effort may prove to be worthwhile because your interest will overwhelm the challenges. Some of the major drawbacks of selecting an unfamiliar topic are: 1) it will take you time to become fluent in the area; 2) if you write on what you don't know, you will not know where the bodies are buried; 3) you will not know if you have been pre-empted after a little research. These are very important objections. My advice to the unseasoned is to stick to what you know.

**Write About Ideas That Excite You.** Writing law review articles may be fun, but it is also hard work. If the idea doesn't excite you, it will be hard to sustain interest over the many weeks and months it may take to research and write. If the idea doesn't excite you, what makes you think it will interest readers and law review editors?

**Write Out Ten Ideas Worth Investigating.** You must have ten ideas with which you'd like to spend time. (Isn't the hunger to write about things in depth one of the reasons you joined the faculty?) Write them down and then spend an afternoon doing a preliminary check to see if you've been pre-empted. If you haven't been pre-empted, choose one or two and work with your thoughts to produce a manageable abstract or out-

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*United States v. Tabor Court Realty Corp.*, 803 F.2d 1288 (3d Cir. 1986), cert. denied, 483 U.S. 1005 (1987) (disastrous leveraged buyout involving *inter alia* the fabled Blue Coal Company (of "The Shadow" fame)). One of my former research assistants, and co-author, had worked on leveraged transactions as a summer law clerk. Our other co-author was interested in corporate finance—we were a terrific trio.
line.\textsuperscript{18} Start with the most interesting idea (again, it will be with you a long while, so you had better like it) and save the others for later investigation, research, and writing. Save file clippings on all the ideas.

\textbf{Exploit Serendipity.} All of us have brainstorms and chance encounters with ideas. Many are fertile. But we must give them a chance. Our quirky thoughts on law may be on point if we are smart enough to give them a chance and let the ideas run. We should not dismiss these happy hunches and encounters. If a sensible and unique connection is made, it may prove worth exploiting.\textsuperscript{19}

\textbf{Write About Important Ideas.}\textsuperscript{20} Things that you think about and care about and legal issues that you teach about are undoubtedly important and worth discussing. You probably know about the legal issues or else you won’t be teaching them. So trust your judgment and that of the dean. You are an expert. Start writing.

But don’t be afraid of writing on big issues. Let’s say you have been following the campaign fundraising scandals of the 1990s with great relish and you just happen to teach Constitutional Law. Why not write an essay or short article on the Hatch Act or issues of free speech? This need not be the election law primer nor the great First Amendment treatise. But it will get published if it is well written and timely.

You say you’re not a constitutional lawyer. You are a business-type. You followed the Asian stock market debacle and the international banking community bailout of the Republic of Korea. Fine. Draft a nice piece on the brave new world of a global economy and the implications for American banks and the securities markets.

\textsuperscript{18} For outline writing ideas see Moskovitz, supra note 8, at 5-11, 13,14; The Winning Brief supra note 8; and Richard H. Weisberg, When Lawyers Write 151, 152, 176-83 (1987).

\textsuperscript{19} Leo Szilard, the brilliant Hungarian nuclear physicist, had such a brainstorm on a London Street when he unlocked secrets of the atom. When Szilard stepped off the curb in Bloomsbury, he “saw a way to the future, death into the world and all our woe, the shape of things to come.” See Richard Rhodes, The Making of the Atom Bomb 13-28 (1986). Our serendipitous thoughts probably won’t be earth-shattering. But they may lead to interesting articles nevertheless.

\textsuperscript{20} This is contrary to the advice offered in the subsequent section, “Become an Expert in a Relatively Finite Area.” Some colleagues have suggested that this section may be unhelpful. Novices can have big ideas about small (i.e., manageable) topics. It may be tough for many novice writers to get up to speed on multi-faceted, big issues.
The benefits of this type of research and writing are immense. First, you are current on important issues. Second, you maintain your edge. Third, your teaching and research are even better. Finally, you have published an important article.

**Become an Expert in a Relatively Finite Area.** Your Promotion and Tenure Committee, your dean, and your mentor may advise you to avoid the global issues and concentrate on becoming an expert in a well-defined area. If that is their advice, do it and ignore the aforesaid advice until you have gained tenure. For many novice writers, this is very good advice because your mentor and your law school don’t want you to take on more than you can manage. They are also concerned that the law review editors will reject your article on repaying the national debt because you are not an expert. So listen to your mentors and take their advice to heart.

**Create a Course.** Even though you are new to teaching, the dean may ask you to create a course. (After all, you may have been hired to fill a gap in the curriculum.) Let’s say you have been hired from practice where you specialized in health care law. Your charge is to create a course in medical-legal ethics or health care administration law. As you assemble your course materials, jot down interesting and unresolved issues that are certain to prove the subject of excellent short pieces. Generally, when you teach a new course or create a new offering, you will find the adrenaline flowing and so many ideas flowing that you can’t harness them all. Snag one or two interesting ones and turn them into articles.

**“Borrow Everything, But Only From Impeccable Sources.”** Everything and everyone you come into contact with might prove to be the source of an idea. Keep former students and associates as “clients.” Many will call to tell you what they are doing and will seek “free” legal advice from you. Two of my articles on corporate tax planning were inspired by a former student at Wharton who worked for a Fortune 500 company that was doing creative investing to cut tax liability. The student would call from time to time to check out some legal issues. We brainstormed and he gave me permission to use the ideas.

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21 Keep detailed files in your computer, vertical files, and even raw notes on scraps of paper. You are developing a hopper of ideas.

22 Seriously, ideas will come from many sources. Always give appropriate credit. Sometimes, the source will request anonymity. But most times, attribution is honorable and proper.
we discussed without attribution.  

**Amass “Seed Corn” Even if It Is Not Used Until Later.** Your initial writing may be very rough indeed. It has been my experience that the final editing of my work goes slowly through the introduction and maybe the first section. Indeed, these may need to be substantially revised. You may ultimately find that you can’t even use your original opening, as I did an article on Hong Kong and its relationship to the People’s Republic of China when the lease expired. In an article on leveraged buyouts, the seed corn proved to be the section my co-author and I worked on when she was my research assistant. The writing was strong and the research was thorough. Ultimately, her section on bankruptcy and fraudulent conveyance law found itself placed in the middle of the article. Your seed corn will get your projects under way. Don’t underestimate its value.

**Keep Drafts from Earlier Articles. Unused Ideas Found in Excised Sections and Footnotes May Be the Grist of Future Work.** My first writing as a law teacher was an organizational disaster. It was rejected by every law review to which it was submitted (and probably rejected by reviews where it hadn’t even been submitted). I made every mistake possible. Later, my department chair edited it and I resubmitted it. Many of the excised sections and footnotes in my first article were recycled into a later article on land use controls and tax and energy policy. I had done much of the research, but it still needed to be edited, focused, organized, and shaped. The earlier notes and sections proved very valuable, even though they appeared to be wasted the first time around.

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23 He did not want me to identify his company’s business plans, and I respected his wishes. Had he desired otherwise, the source(s) would have been disclosed.

24 When I began *The Recovery of Hong Kong by the People’s Republic of China — A Fifty Year Experiment in Capitalism and Freedom*, 11 SYR. J. INT. LAW & COM. 625 (1984), I had several strong paragraphs that built on Thucydides’ observations of great power conduct in the Peloponnesian War. They were good paragraphs with solid thoughts. After about ten pages, they no longer fit in. I continued on. The focus of the article shifted, I wrote a new introduction, and I still haven’t used those original cogent thoughts. But they served their purpose because they got me rolling.

25 Before submission I had shown it to no one. I had no editorial comment or feedback. After critique and severe editing by my department chair, Professor Emeritus Frederick G. Kempin, Jr., a slender and strong article emerged and was quickly accepted. Good editors are terribly important.
III. GETTING STARTED WRITING (GETTING IT WRITE: PART II)

Get a Catchy Title. This works for some of us. The title resonates in the mind, causes word associations, jogs memory. It may spur some of us to write the article to substantiate the “outrageous” idea encompassed in the title.

Get a Theme – Explain It. After you have found a theme you like, draft a positive, succinct explanation of it. Make the theme accessible to the casual, as well as the informed, reader. There is no reason why a sensible, well-read generalist should not be able to parse your ideas. Target that reader. Have your mentor, a colleague, spouse, or significant other read your abstract or introductory remarks. If the reader grasps and likes what you are doing, you are on your way. If she does not, ask her to explain what the problems are. Once you have found your theme and appropriate tone for the explanation to make the topic accessible, stick with it throughout your article.

Write by Outline. For some writers, an outline is key. Establish a good working outline. It need not be perfect. It’s a road map. Add and subtract topics as you develop your theme. The outline strategy may not work for all. Some seasoned writers compose an outline after generating a rough “free” draft. An ill-constructed outline can be a trap for an unfortunate thesis.

The Outline Provides a Check for Your Progress. If the text fails to match the outline, question both. You may have progressed, or you may have lost your way. An outline keeps the article in check and may prevent it from becoming a formless mass. Your outline will provide topic sentences and the germs for ideas. These sub-themes spur relatively speedy sections. Use your outline.

When you are writing from the outline, you may find that you can start at any section effectively. For instance, you might work on the middle of the third section if the spirit moves that day. At the end of the day you will have part of third section done and ready to drop in. Block by block you build confidence, and confidence completes articles.

Start Someplace. The Article Won’t Get Written Until You Write It Down. “Rome wasn’t built in a day.” Start laying
Write from your outline, abstract, or introductory paragraph. You’ll create something that eventually will be an article. Everyone probably has a comfortable jumping off point. Mine vary. My most recent scholarly foray, on the interplay of the market and law in takeover battles had a rocky start. I wrote several thousand words of purple and vitriolic prose. I railed against courts and stakeholder statutes. Most of the language was coarse and ungainly. I salvaged only about five hundred words; the article grew in a modified direction. But the emotional blast got me started, and the article was completed and accepted.

Make Fear, Guilt, or Honor Be Your Guide. When I was struggling with my beastly first article, I reached the point where I was so ashamed of what I had done that I felt I was a cipher. I was not sleeping and I was angry with myself. I was a fraud for taking several years of salary from Wharton under the false pretenses that I would write and publish something. I felt wretched and dishonorable. I had reached the point where I had “to fish or cut bait.” This is a hideous junction to reach when you have a family to support and that family believes in you even though you think you are a cheat and a coward.

Eventually I reached the point that if I were ever to feel good about myself again, I would have to fall back on the fact that I had tried my damnedest. At that stage, I asked my department chair to read the manuscript that had been rejected everywhere. Professor Fred Kempin did. I took his criticism to heart, and my academic career was saved. No one should have to drive himself to such desperation, but a number of us manage to do so. The good news is that these feelings of guilt, fear, and

28 See Natalie Goldberg, Writing Down the Bones: Freeing the Writer Within (1991); Anne Lamont, Bird by Bird: Some Instructions on Writing and Life (1994).

29 Dante had his Virgil, and we legal scholars need our muse, even if it’s terror. It may seem harsh to begin a section with notes on using fear, contempt, and guilt as tools to energize one’s career. But sometimes these powerful feelings are what it takes to get one’s attention and to focus productively on the tasks at hand. They did in my case, and I know other successful lawyers and academics who were goaded to success by these friends.

30 A nudge can come in here and be your “conscience.” He can goad you into action while offering support and showing you how to use tools to speed your effort. At the time the nudge is doing this, he might not be appreciated. But the nudge or mentor must have the courage of his convictions. He must offer tools, support. But sometimes hectoring must be used to create enough discomfort that real writing and progress is the “pleasant” alternative.
dishonor can (with appropriate support from your mentor) motivate you to get back to writing and publication.

Become a hero or heroine in your own mind. Relish your effort, cheer yourself on, and congratulate yourself on your steadfast efforts. If you fail to write, use guilt and honor to get you back on the right path.

**Write Fast. Edit in Leisure. But Not Too Leisurely!**

Once you have hit stride, keep writing and work at a pace that builds confidence and keeps those pages building. Let your ideas spill out and get them on paper (into the file). Don’t worry too much about organization. Get the ideas out and edit them later.\(^{31}\)

Edit when your themes and approaches are fresh. The text need not be “hot off the press,” but it should not be so cold that you have forgotten where you were going. Use your abstract and outline to help in the editing. See if your mentor or colleague can spell you or speed up the process.

**Find the “Justinigin.”**\(^{32}\) A “Justinigin” is an imaginary word which my mentor, John R. McConnell, Esquire, of Morgan, Lewis & Bockius, in Philadelphia, coined to connote the essential matter of a case on trial or appeal. Trial and appellate lawyers must find the essence of the case and understand it completely. They must make it comprehensible to lay people (juries) and to judges (who may not have the intimate familiarity the attorneys have with the law, and certainly not with the facts in dispute). Both judge and jury are competent, capable, and intelligent auditors, and both must be persuaded. So, too, with the law review editor and your reading public.

If the writer does not know what the article is about, no one else will. For example, one might wish to write an article about law and economics and free trade. After having mastered the essence of the material, you must drive to make the message understood. If your kernel of thought does not come through, you have a terrible organization problem. Without the “Justinigin” that provides the theme and essence, you and you readers may

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\(^{31}\) I often edit in the middle of the night with Big Band music on CD and a bourbon neat at hand. I do this long after everyone else is asleep and I enjoy the quiet and progress. If you edit better in the morning when you are refreshed, do it. Use what works for you.

\(^{32}\) One of my mentors was John R. McConnell, Esquire, a senior partner and the chair of Morgan, Lewis & Bockius's Litigation Section in Philadelphia during the early 1970s. Mr. McConnell was a superb trial lawyer and writer. He coined the word that had great currency for all who worked with him.
wander. It would be nice to have the "Justinigin" at the beginning of every piece of research and every idea that eventually becomes an article. You will not always be so fortunate. But you must discover it and work with it at critical stages in your writing and production.

**Create an Abstract.** At an early stage, draft a two- or three-paragraph abstract of where you think the article is going. Have someone else read it and give you her reaction. If she can't follow it, ask her why and where she thinks it is headed. Listen, for much criticism is constructive. Follow the constructive criticism, redraft the abstract, and use it as a guide. It is not carved in granite and should be subject to change. With the abstract and/or outline, you have a benchmark to check your progress.

**Stick to Your Schedule. Avoid Paralysis by Analysis. Stop Researching and Start Writing.** Many new writers have come from practice where they were accustomed to researching, finding a definite answer to the problem, and writing it up. When confronted with research in academia, the excitement, fun, and drudgery of extended research that seems to have no end overwhelms them.

Remember that writing and editing may take at least as much time as research (and that time for writing may be hard to schedule due to teaching and service demands). In practice, economics or partners draw the line and move lawyers from one project to another. In academia those constraints simply aren't there. Thus, after you have researched for several months, you must, on your own, organize your findings according to your working outline or thesis. Review your progress with your mentor. Then, stick to your schedule and start writing.

33 But not all. Choose carefully your mentors, nudges, and editors.

34 *Cf.* Moskowitz, *supra* note 8, at 5-11. A working outline is created initially to marshal your ideas, resources, themes, and sources. While the Moskowitz suggestion pertains to appellate brief writing, the lucidity of the ideas, especially on building the work, are most useful. One thing you might consider is using loose-leaf binders with dividers (that contain pockets). Place your cases, articles, and rough outline in the binders and use the divider parts to store your scraps of notes, short clippings, etc. Later you may wish to transfer these to three-hole paper and formally include the materials between the dividers. As the article grows, you may need several binders. Having the binders with all the articles and cases in hard copy can be a godsend when you are searching for that page citation as you develop your notes. *See also* Clockwork Muse, *supra* note 8 for other successful drafting and time management strategies.

35 Don't expect your first or second article to be the seminal legal work of the new century. This is too great an expectation. Make certain you have one or two interesting things to say. Start small, be productive, get published, and build the body of your work.
Double and Triple Your Time Estimates – They’ll Still Be Low But at Least You’ll Know Where You Are Heading.

Some of us are chronic underestimaters. The good news is that some of my colleagues and my wife remind me of my foibles and force me to be more realistic. A good rule of thumb for me is that everything worthwhile appears to take at least twice as much time as I estimate. You can use your time estimates to construct a timetable. Block out the research hours needed, the writing, the editing, the polishing, and the processing of the transmittal letters, etc. Build from the genesis to the mailing or the mailing back to the beginning. If the timetable method will give you direction and structure, use it.

“Money Changes Everything.”36 Get a Grant. The grant buys time to permit you to write relatively unencumbered. It will free you from summer teaching, a semester’s teaching, or consulting. The grant puts moral pressure on you to complete the project, and usually imposes a deadline (which proved to be so helpful in practice!). The sponsor may even be in a position to help with publishing. So get a grant from your law school, university, or an outside source to enable you to write and get paid for it.

Attend Conferences. Legal writers can glean great ideas from attending conferences; law professors can also use continuing education conferences as reality checks. Your brilliant and original ideas might not hold up under the cold cruel scrutiny of practice. Experienced academics and practitioners can vet your ideas and thoughts at these meetings. Writers should consider both academic37 and practice-oriented conferences.38

At large academic programs like the AALS Annual Meeting, young and old teachers exchange interesting and important ideas sometimes from unexpected quarters. There is nothing stopping a civil rights lawyer from attending a session on corporate finance. A partnership expert might profit from exposure to feminist theory. With so many sessions, the smorgasbord available invites intellectual exploration at little risk. These special

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36 Cyndi Lauper, “Money Changes Everything,” from “She’s So Unusual” (1983). Ms. Lauper was indeed right.
37 Many faculty attend the conventions sponsored by the Association of American Law Schools (AALS) and the Society of American Law Teachers (SALT).
38 I have found American Law Institute-American Bar Association (ALI-ABA) and New York Law Journal Seminar Press conferences invaluable in gaining up-to-the-minute knowledge of business law practices. There are many other conferences that can give academic authors entrée to cutting edge ideas in practice.
interest sessions can help writers gain insight and meet potential co-authors, reviewers, and sources. Authors should also consider attending academic conferences in other disciplines such as history, management, economics, etc. An interdisciplinary perspective can often enrich a legal analysis.

These conferences and programs have helped me considerably with regard to my research and writing, providing me with exciting ideas and face-to-face contact with experts in my fields of interest. My academic and professional colleagues have subjected my ideas to informal criticism at a critical, development stage. This advantageous, early insight has steered my writing and research in the right direction.

**Present Papers at Conferences and Other Schools.** Many of my colleagues have used conferences to try out their ideas by presenting papers. Often, the papers are published in a symposium. My friends and colleagues have gained useful criticism. They have made valuable contacts (sometimes with editors). Their presentations lead to publication. At a minimum, these obligations force us to write to meet deadlines. For a number of my friends, formal presentations at another law school or another department have provided the impetus and focus to produce the papers that give birth to the articles.

**IV. TIPS FROM THE WORKSHOP AND KITCHEN**

**Simplicity.** Simplicity and elegance are related to the “Justinigin.” If your idea can’t be stated simply, you will not be able to state it with complexity. Complex writing and verbiage are often used to disguise weakness. They are an inelegant veil, and they don’t succeed.

Someone (your law review articles editor) will or should see through the maze of confusion. If she finds it dense, awkward,

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39 My recent research and writing on takeovers benefited greatly from hearing and meeting with business lawyers, professors, corporate activists, bankers and CEOs at The Federalist Society’s “Fourth Annual Conference on Corporate Governance Issues,” Sept. 16, 1999, New York City. One month later, I had some stimulating conversations at “Teaching Corporate Law,” University of Georgia School of Law, Oct. 15 & 16, 1999. Both conferences provided me with a give and take that could not be replicated in another setting. The intellectual excitement at such conferences and the ideas encountered have enhanced my research and writing immeasurably.

40 Law faculties are by nature limited in size and depth. Often we find ourselves the “expert” on closely held corporations, adoption law, or land use and zoning, for example. Attending a conference where there are one hundred practitioners and ten academics in my field provides me with intellectual support for my ideas and opens me up to new notions. It will for you, too.
and confusing, she might not accept it despite the obvious pleasures of trying to find the gold that may be buried.

_Leave Room for Scut Work (Polishing the Prose If You Prefer)._ I like researching and writing articles. Others like researching, and find the writing and polishing are chores. I do not like fine-tuning footnotes. But it must be done. For me, a 40-page article may necessitate one to two weeks of intensive citation checking, etc. after the article is "written." This estimate may be on the short side. This final editing is necessary work, and it must be done. Final editing of the fifth and penultimate draft may take days because of the need to tighten or expand. Include in your schedule generous time for polishing.

_Schedule in Reverse Order and Plan Your Time Accordingly._ Start with the expected submission date and leave generous time for research, writing, and re-writing. My rule of thumb is that the final editing always takes longer than you expect it to, and that it will take you considerably longer to write a complete and polished article until you become expert in your production estimates. Double your time estimates and add ten percent margin for error. You will still be off, but your work

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41 My editor and spouse dislike the use of this word because it does not reflect the value of completing the last editing and production details properly. I like it and use it because I hate the final editing and filling in the blanks in footnotes. I would rather pontificate than edit, and many of you do too, if you are honest.

Scut work, the final editing (this could be the name for very bad horror movie), desperately grabbing for citations, filling in the final paragraphs, etc., is essential. If your article is well written and well documented, it will be on its way to being accepted. As a former law review editor and one who has worked all of his teaching life with law reviewers, I know that all editors appreciate clean, well-documented articles, in appropriate Blue Book format. It is only when you are a famous judge, practitioner, or scholar that you can afford to send half-baked manuscripts to publishers and expect them to complete the draft and find the "cites." They will do it once if their production schedule allows. They will not willingly subject themselves or their successors to this twice if they are smart!

42 Actually, I enjoy writing more than some aspects of research. So for the "unpleasant" research (and writing) tasks, I call upon the good offices of my research assistant or co-author. For thoughts on the employment of research assistants, see infra "Hire a Good Research Assistant."

43 Until you have written a great deal, expect to be less efficient than you would like. This is natural. Plan for many drafts unless in practice you were fortunate enough to become a very efficient and precise writer.

44 Don't expect the law reviews to do the polishing and editing for you if your piece is very rough. Such expectations are rude and usually prompt rejections. So play it safe and hand the editors a polished draft of the sort you would enjoy reading and editing.

45 Cf Moskowitz, supra note 8, at 27. Also, Moskowitz instructs that time is necessary to meld good writing. Let things simmer and mull them over in your mind. _Id._ at 45. Leave sufficient time for you and others to read the piece with fresh eyes.

46 Expect the unexpected. Some emergency will always arise. Leave time for it.
will be completed in a reasonable manner.

Get a Good Co-author and (Its Corollary) Avoid Bad Co-authors. I have been blessed with excellent co-authors. Co-authors can prod, provide excellent thoughts, share the wealth and the pain, refine the dross, and keep you on a time table. Co-authors may have contacts who will help with criticism and placement. They can share in the editing. You can play to each other’s strengths and mask weaknesses. (For example, a strong researcher might be paired effectively with a strong writer and great articles emerge.) Choose carefully. Choose co-authors for writing skill, dedication, work habits, integrity, and tenacity. All are needed.

All but one of my co-authors were persons with whom I had long relationships before we broached collaboration. We knew each other well, and we entered the relationship from a position of high expectation and trust. We knew where the other lived, and it may have kept us honest. We knew that each other’s reputations and integrity were tied up with the writing. Never, never, co-author a piece with someone about whom you entertain doubts.

But see Abrams, supra note 8 at 5, 6.

Belated, and much appreciated, thanks to my co-authors: Robert S. Balter, Esquire, Philadelphia, PA; Professor Lisa A. Dolak, Syracuse University College of Law; Michael P. Walls, Esquire, Washington, D.C.; Mark I. Fogel, Esquire, Boston, MA; and Zheng Jingren, Deputy Director General, Ministry of Justice, formerly, Professor at China University of Politics and Law, Beijing, P.R.C. Each was a joy to work with, and all made writing fun and rewarding.

If “Wrenquist” is a practitioner with an LA firm, she may have corporate partners who will give deep background and professional criticism to your article on subordinated debt. “Mansfield” may have written some articles before and have great contacts at the Halcyon Law Review. “Black” may have chutzphah and be able to talk your article’s way onto the pages of the Utopian Law Review.

My adventures in co-authorship have often been very demanding. Long distance turnaround time required my co-authors in practice to put in all nighters to meet law review deadlines. If your co-author won’t be up to these tasks, don’t work with her.

Why might you do consider co-authoring with someone in the first place? Because “Langdell” is a respected former teacher with a great reputation. (You, however, know “Langdell” to be an intellectual slob.) Because “Marshall” is a superb trial lawyer who has a national reputation (and never meets deadlines). Because “Taney” is your best friend and friendship means a lot (yet “Taney” is a terrible writer or untrustworthy researcher).
is too short and you owe him nothing. Good co-authors are double blessings. They make hard work fun and writing a great pleasure. Co-authorship is an approach worth following.

**Dictate Your Notes and Text.** For those coming from practice, dictating is a snap. You are used to the efficiencies of dictating. For those who have not tried it, try it. Many of you will save untold hours that can be better employed editing, reading, researching, teaching and living.

**Get It Right the First Time.** The initial time spent tracking down page citations, correct spelling of sources, etc. will bear huge dividends when you are editing. You will save time, and your efforts will be more marketable and respected for their accuracy.

**Build a Pile of Drafts or Portfolio. It Will Grow on You.** Keep your drafts in a vertical file or loose leaf notebook. Add to the pile or portfolio at the end of the day. You will have physical evidence of your progress, and you will be encouraged to persist. The portfolio or notebook also permits you to return to an earlier draft or treatment to adjust your efforts or find a lost citation.

**Edit from any Point in the Document. Edit Often.** This will save time and time is money. Those using computers have this advantage. You have the liberty to run a spell check at any time. You can jump ahead or go back to the beginning to make changes, additions, and deletions. This type of "editing on the fly" permits polishing the article in the writing stage and makes the final edits more manageable.

**Download Everything from Everywhere – Lexis®, Nexis®, Westlaw®, Articles and Newspaper Clippings.** Create work files for your article from your current electronic research. For research and items not on line, enter the important

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52 Friends' complaints about bad co-authors have ranged from missing deadlines, to faulty scholarship that lacked integrity, to manuscripts that were so sloppy they could not be salvaged. Colleagues have reported that some co-authors dumped poor drafts on them and that only Herculean efforts salvaged the work. One friend even reported that a co-author "stole" the work and submitted the article as his work. Another reported that the obnoxious personality of the co-author turned off law reviews when the lawyer called and attempted to pre-sell the idea. These horror stories are all true. Choose your co-author with care.

53 Co-author unless your college doesn't give appropriate credit to co-authored pieces. If its tenure standards or practices discourage co-authorship, co-author at your own risk until you obtain tenure. If the college is skeptical, document your efforts and have your co-author(s) attest to which sections were written by whom. Be clear in this concern before you waste effort.
data in work files so that the materials can be imported easily into the article you are writing. (Make sure you have installed appropriate anti-virus software to keep your document clean and safe.)

**Use Vertical Files.** Using vertical files seems to contradict the advice above regarding dumping information from your electronic research. But it can be a complementary method or an exclusive method for authors who feel more comfortable and productive using traditional "hard copy." The vertical files, stored in transfer boxes, provide ready access to important materials. Further, once the article has been accepted, you can ship the key articles, etc. to the law review to assist in editing and checking your manuscript. Law review editors are just like us. They appreciate the courtesy of an assembled "library" for accuracy checking, and it makes the jobs easier for all concerned parties.

**Move Long Footnotes into Text.** Many of us write well-organized, explanatory footnotes that are more properly the province of the text. If you are one of these writers, write your notes and then evaluate and edit them into the text.

**Write the Text Proper First and Fill in the Notes Later.** Delaying documentation works for a number of seasoned authors. The method keeps you from breaking up the flow of thought with tangential observations. If it works for you, use it. Or modify the method somewhat by briefly noting the subject or source of the note. Word processing makes brief footnoting easy. If you have the object of the note already in a computer file, you could expedite matters by copying the file and importing the copy into the note to be edited at leisure.

**Better Advice for Some Writers is to Write Text and Solid, Rough Notes at the Same Time.** I am contradicting my advice because I have been reminded that writing the text and filling in the notes later may be a dangerous standard.\(^ {54}\) I had forgotten that I have spent hours hunting down references and footnotes that might have been avoided with more accurate and specific writing at the outset.\(^ {55}\) Your comfort level may be as-

\(^ {54}\) Some of the advice is contradictory. I have no intention of spreading confusion. Many of these techniques work for a number of my colleagues. Some of them were more useful at some stages in their careers than others.

\(^ {55}\) "Get cite" is virtually useless unless this refers to a page in a relatively short case that can be easily located. On the other hand, "Van Gorkom price calculations" (denoting Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985) is specific enough for my purposes. This short hand identifies the case and tells me enough about the subject matter to permit
suaged by being very specific from the “get go.”

**Hire Good Research Assistants.** Many of us have had terrific research assistants. Choose them wisely; monitor their progress. If you have found a good one and have a professional relationship with her, she should be able to find much of your raw material and provide rough drafts for footnotes and some text. Again, a good research assistant can be an excellent editor, especially if she has had editorial work experiences. At a minimum, your research assistant should be able to keep you on the straight and narrow. If she doesn’t understand where you are going or your thought, the law review editors and your desired audience will undoubtedly have the same difficulty.

**Use Nexis®, Lexis®, And Westlaw® to Locate Things Quickly.** The better you and your research assistant can use electronic research, and the better your research logs are, the more expeditiously you can incorporate raw data into your article. Good research logs or notebooks are invaluable for keeping track of where you have been and where you might venture in your research or accuracy editing and checking.

**Don’t Rely Foolishly upon Electronic Research Tools.** The temptation among novice research assistants is to dump hundreds of pages of articles, cases, statutes and regulations on the desk of the faculty author. The materials have been located, but they often have not been edited or digested. When this happens for the first time (and it will), politely call your assistant on the carpet and ask him why he believes you should read the several hundred pages he compiled. Gently but firmly explain that an assistant should read and brief the best of the materials with recommendations for action (inclusion, further research, additional avenues to be explored or rejection of the approach). You will find that this gentle persuasion brings forth excellent research with a modest effort on the part of the faculty author. If you don’t exercise these suggested controls, you will be doing your researcher’s job for him and wasting your time that would be better spent writing and editing.

**Save News Clippings and Articles on Things that Interest You.** Book reviews, editorials, and front page stories can all serve as jumping off points for your outline, abstract, and re-

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my research assistant or me to find the citation. “Holabird article on courthouses and their finance” works for me because I don’t have to break my rhythm. To some extent this may prove to be a matter of taste—olives and sardines work for some, for others they are awful!
search. An idea found in an article and clipped today may be the genesis of an excellent piece later. Save these items in your personal research library and use them to develop future work. 56

**Read. Read. And Read Some More.** The more you read, the more you will recognize good and bad writing. *The Wall Street Journal*, biographies, memoirs, novels, histories, and *The New Yorker*, for example, will inspire your efforts, expose you to new ideas, and demonstrate good writing techniques.

**Get a “Nudge.”** Have a spouse, colleague, parent, dean be a nudge—*someone* who can make your life uncomfortable. The nudge could be your mentor. (But the dynamics of mentoring might be compromised if the mentor hectors too much. This is a judgment call.) Find the right nudge for you. Have this person politely nag you from inactivity to writing. Have him ask pointed questions about the status of the project. Eventually honor, pride and guilt will motivate you into completing your task.

**Choose Your Nudge Carefully.** A bad nudge, mentor, or unsupportive “friend” can be a disaster for the novice writer. You need direction, gentle shoving, editing and support. You do not need destructive comments, humiliating critiques, and one-upsmanship.

**Tell the World Your Timetable and Stick to It.** An announced schedule will bring honor or guilt into play for those animated by such persistent motivators.

**Distinguish Between Important and Urgent.** Writing and publishing are important for obtaining tenure and building a reputation. But writing and research are often not urgent. Telephone calls, e-mail, students clamoring for attention, even faculty colleagues, can all become urgent distractions when you are under deadline. Time management is crucial. Be ruthless with your time; time is ruthless with you. Block out the time you need for writing and defend it with a vengeance. Don’t let “urgent” matters shatter the quietude you need to write. Discipline yourself. Educate the others. They’ll respect your time if you do. Complete your writing tasks.

56 Many of you already have a good start on such libraries. For instance, if you are a computer jock or technology maven, your magazine articles and books may prove to be handy when you tackle software copyright issues.

Your own research library can assist the editors with their accuracy checks. You may have to ship “rare” or hard-to-find books and photocopies of text, publication pages, etc. to reviews to enable their editors to do their job. At a minimum, this courtesy will give you a leg up with that review for your next article.
If You Have an Opinion, State It. While your research must be honest, you are permitted to have an opinion. Unless your piece is a purely objective analysis of a statute or regulation, you undoubtedly have an opinion on the subject of your research. Opinions provide zest and direction to your work. Include them.

“To Thine Own Self Be True.” Write about something you feel comfortable with, that interests you. Don’t write to please your dean, your senior colleagues, your co-authors, or the unknown law review editors. If you don’t have the courage of your convictions and writings, why should anyone be interested in reading your work? If you love what you are doing and have passion for the theme, that passion and energy will sustain your efforts. These good qualities will be revealed in your writing and excite interest in your readers.

Set Aside Blocks of Time to Write. I seem to write best on days when I am not teaching and when I have no administrative duties. Vacations, weekends, or late evenings are best for me. Some writers need large blocks of time to do substantial writing. On the other hand, notes to files, briefs, short synopses of articles, etc. can be written and edited almost anytime and anywhere. These provide seed corn and building blocks for larger efforts.

Or Write Every Day. If you find that you write best when writing two hours a day, five hundred words per day, ten pages per week, etc., stick to what works. I wish I had the psyche that many of my colleagues have that permits them to enjoy orderly work habits. This method is cleaner and clearly the preferred one for avoiding ulcers and a rapid heartbeat. So if you are an every day writer or researcher, count your blessings and capitalize on your method and personality.

Be Flexible. Take the problems and tasks head on at times. At other times, approach barriers through indirection. Attack your concerns from another angle. Outfox your writer’s block and campaign stalls. Anticipate problems and use flexi-

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57 William Shakespeare, Hamlet, act I: sc III, line 78 (1603).
58 Like U.S. Grant during the Civil War. You can sometimes beat the problems by grinding it out and by attrition.
59 Confederate General Nathan Bedford Forest was one of the world’s most innovative and successful fighters. He husbanded his small forces, used surprise, and overwhelmed superior forces. He did not fritter away his strength by banging his head against the wall. Neither should you. Choose your writing battles carefully, and use your tools and skills to best advantage.
bility to complete your articles.

V. POLISHING THE GEM

**Discuss Your Ideas with Intelligent Lay Persons or Non-expert Lawyers.** Talk about your ideas—articulate them. Then, have these friends and colleagues act as selected readers. Take their criticism to heart. If they don’t understand the concept or stumble over some paragraphs, they are probably exposing some weakness. One need not be a Supreme Court Justice or a specialist to understand your ideas and writings. Your lay readers can provide you with the missing transition sentences or conclusions that have eluded you.

**Use the Spell Checker and Grammar Checker Often But Don’t Trust These Tools.** Computer tools are not foolproof. English is a tricky language. Even the best programs miss a significant number of corrections.60

**Stop Writing. Start Publishing.** If you have polished the gem, start romancing the stone. No article is perfect. (That is why we need editors and critics.) If you have come this far, don’t overwrite. Send the article out and get on with the next one.61

**Warm Up to Your Editor’s Critique.** We all write splendidly. Editors sometimes get in the way and their criticism often stings. One of my first readers was dead on when she told me my article was awful, lacking in focus and tight organization. She was, of course, correct, but I refused to listen and learn. I sulked and lost valuable time.

Recently a dear colleague has advised me that my current article: 1) could be reorganized (that is, section two in place of three and vice versa); and 2) had solipsisms, mixed metaphors, malapropos, rant and cant, and long, distracting footnotes.62 This was not good news because I had an internal deadline for submission that was approaching. I was simmering for the first minutes of his review. But I cooled down. He is substantially correct on Point 2. I am now coolly and quietly evaluating his

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60 After you have used your electronic checkers for the umpteenth time, read the article and notes aloud. You will pick up some more typos and errors. But your article will be very polished and desirable for law reviews.

61 This really does work. While I was putting the finishing touches on this piece, I was revising an essay on the Conrail takeover battle and the foibles of the business judgment rule. Completing a work generates enthusiasm and a sense of accomplishment. Use these emotions to keep up the momentum. This is also a good way of avoiding the depression that some writers feel after they complete a piece.

62 What, were there no broken similes?
approach and will contrast it with the advice of another colleague reader who suggested beefing up the law and economics points. Then in the quiet of the moment, I will calmly take the best of their considerable advice and build a much stronger article. In my earlier years, hubris would have blunted my writing.

You don't have to wait to be older to be wiser. Just wait until your frustration and ire disappears. Work with your editors. And you will become very productive at an early stage in your career.

**Reward Yourself.** Treat yourself for having completed an article. Celebrate. Take your spouse, beloved other, colleague, or mentor out for drinks or dinner. Buy that book you have been meaning to read but put off to write the article. Savor the moment.

**Start a New Article.** Build on the excitement and momentum of your accomplishments. You have overcome writers' block. Keep it in the corner.

VI. **MARKETING, OR ROMANCING THE STONE**

**Use the Abstract as a Sales Tool.** The abstract may prove to be the make or break weapon in your arsenal when you seek publication. A good abstract is certainly advantageous from the article editor's viewpoint. Without an abstract, she may have to plow through the whole article before making a preliminary decision. If the abstract is good and interesting but the introduction is dull, flaccid, flabby, and turgid, the abstract may enable the editor to give you the benefit of the doubt. The law review or publishing house editor may be willing to have you re-draft sections because your ideas were focused in the abstract. Without an abstract, you may rise or fall on the basis of your title and first several pages. I'd go with the abstract and cover my bets.

Another use of the abstract is to focus advance telephone calls with prospective law reviews. Many authors call reviews to see if they are interested. The abstract will provide a crisp focus

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63 I will use my computer to do a quick reorganization. I estimate that the effort will cost me a day or less and I will have an excellent model to consider (in very rough form).

64 The title of a popular film, "romancing the stone" has a specific meaning to gemologists. To "romance" the stone is to place it in a provocative, irresistible context. (For example, would you rather sell a lump of carbon, or a large, mysterious rare blue diamond named "Hope"?) If you are to romance your article, your abstract is a writer's best friend.
for the important first conversation. You will give the editor the impression of a well-organized and direct writer. This won't hurt your image. You can be certain that if the abstract doesn't elicit interest, the article won't. Even negative criticism can be helpful because it may ultimately improve the final version.

VII. CONCLUSION

Use what you have found of value in this article. Experiment. Keep track of what works and what fails. Write about what interests you and what is important. Enjoy writing. Publish good work. Enjoy tenure and even better writing.
The ALWD Citation Manual: A Truly Uniform System of Citation

Melissa H. Weresh

I. INTRODUCTION

The Association of Legal Writing Directors (ALWD), an organization of more than 200 members representing approximately 150 law schools, has recently completed the daunting task of developing and publishing a new legal citation manual. The idea of developing an alternative to the Bluebook began approximately three years ago. The ALWD Citation Manual: A Professional System of Citation was prepared by legal writing faculty and, because of their status as gatekeepers to the legal writing community, stands a better chance of replacing the Bluebook than other competitors. This review will begin by tracing the history of the Bluebook and competitors to the Bluebook. It will also examine the common criticisms of the Bluebook. The

1 Assistant Director of Legal Writing, Drake University Law School.
2 Assn. of Leg. Writing Dirs. & Darby Dickerson, ALWD Citation Manual (Aspen L. & Bus. 2000) [hereinafter the ALWD Citation Manual]. [ASSOCIATION OF LEGAL WRITING DIRECTORS & DARBY DICKERSON, ALWD CITATION MANUAL (2000) [hereinafter ALWD CITATION MANUAL].] The author notes that the footnotes in this article conform to the ALWD Citation Manual. Also, to facilitate the comparison of citation styles between the Bluebook, infra note 2, and the ALWD Citation Manual, citation consistent with the Bluebook is provided in brackets. To that end, the author would like to acknowledge the assistance of Darby Dickerson and Jill Baird, who graciously reviewed the footnotes for proper citation form, and John Edwards, who was a generous source of support. Responsibility for any errors that remain is my own.
4 Steven J. Jamar, The ALWD Citation Manual – A Professional Citation System for the Law, 8 Persp. 65 (2000). [See Steven J. Jamar, The ALWD Citation Manual – A Professional Citation System for the Law, 8 PERSPECTIVE 65 (2000).] The original idea to prepare a citation manual came in 1997 from Jan Levine of Temple University School of Law who was then President of the Association of Legal Writing Directors. He and Richard K. Neumann, Jr. of Hofstra University School of Law were then the moving forces behind the creation of the ALWD Citation Manual. Telephone Interview with Darby Dickerson, Associate Dean, Stetson Univ. College of Law (Mar. 27, 2000). [Telephone Interview with Darby Dickerson, Associate Dean, Stetson University College of Law (Mar. 27, 2000).]
review will then analyze the differences between the \( \textit{ALWD Citation Manual} \) and the \( \textit{Bluebook} \) and make observations regarding the likelihood that the \( \textit{ALWD Citation Manual} \) will ultimately replace the \( \textit{Bluebook} \).

II. \textsc{The Bluebook}

The \textit{Bluebook} was originally conceived by a second-year law student at Harvard Law School, Erwin Griswold, in 1926.\(^5\) Griswold started the project during a summer break from Harvard Law School.\(^6\) Griswold went on to become dean of Harvard Law School. In its first edition the manual, designed for use by law review editors, was concise, straightforward, and surprisingly humble.\(^7\) Ultimately the \textit{Bluebook} represented a collaboration between the editors of the \textit{Columbia Law Review}, \textit{Harvard Law Review}, \textit{University of Pennsylvania Law Review}, and \textit{The Yale Law Journal}. The \textit{Bluebook} quickly became a leading citation manual and in 1949, at the first National Conference of Law Reviews, won the unanimous support of the editors for a proposed national system of citation.\(^8\) Interestingly, the \textit{Bluebook} was never officially adopted by the Conference, likely because the group of student editors responsible for studying the issue graduated prior to issuing a final report at the next conference three years later.\(^9\)

In 1976, the \textit{Bluebook} was in its twelfth edition.\(^10\) At this point the \textit{Bluebook} began to be marketed as a practice guide for


\[^6\] Paulsen, \textit{ supra} n. 5, at 1782. [Paulsen, \textit{ supra} note 5, at 1782.]

\[^7\] \textit{A Uniform System of Citation} (1st ed. 1926) [hereinafter \textit{Bluebook} 1st ed]. [\textit{A Uniform System of Citation} (1st ed. 1926) [hereinafter \textit{Bluebook} 1st ed.].] The Foreword acknowledges, "This pamphlet does not pretend to include a complete list of abbreviations or all the necessary data as to form. It aims to deal with the more common abbreviations and forms to which one has occasion to refer." \textit{Id.} at 1. [\textit{Id.} at 1.]


\[^9\] \textit{Id.} [\textit{Id.}]

attorneys, rather than simply a citation manual for law reviews. Also, the editors instituted a policy of publishing new editions at five-year intervals in an effort to enhance the stability of the publication. By 1981, with the Bluebook’s thirteenth edition, the original pamphlet designed for in-school use at Harvard had evolved into a comprehensive book designed to provide citation format for all types of legal writing. At this point the Bluebook had gained a stronghold in the legal writing community and its influence had migrated from law reviews to law school legal research and writing curricula, practitioners and the courts.

However, a storm was brewing.

III. CRITICISMS OF, AND COMPETITION FOR, THE BLUEBOOK

No discussion of the Bluebook would be complete, or gratifying, without referring to the library of criticism published each time the Bluebook is revised. A profound example appears in the preface to The Bluebook: A Sixty-Five Year Retrospective, in which author Robert C. Berring, Jr. astutely notes, “The Uniform System of Citation has inflicted more pain on more law students than any other publication in legal history.”

A particularly scathing review by Judge Richard A. Posner provides:

Like many of the judicial opinions and law review articles whose citation form it dictates, the Bluebook is elaborate but not purposive. Form is prescribed for the sake of form, not of function; a large structure is built up, all unconsciously, by accretion; the superficial dominates the substantive. The vacuity and tendentiousness of so much legal reasoning are concealed by the awesome scrupulousness with which a set of intricate rules governing the form of citations is observed.

Indeed, the titles to citation assistance manuals underscore the dissatisfaction with the Bluebook: User’s Guide to a Uniform

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11 See Bluebook 1st ed. supra n. 7. [See BLUEBOOK 1st ed., supra note 7.]
12 Paulsen, supra n. 5, at 1794 nn. 31-34. [See Paulsen, supra note 5, at 1794 nn.31-34.]
14 id. at v. [Id. at v.]
System of Citation: The Cure for the Bluebook Blues,\textsuperscript{16} The Citation Workbook: How to Beat the Citation Blues,\textsuperscript{17} and A Bluebook Survival Guide for Students, Editors, Instructors, and Practitioners.\textsuperscript{18} The primary criticisms of the Bluebook were accurately characterized by Darby Dickerson, the leading author of the \textit{ALWD Citation Manual} and a recognized expert on legal citation.\textsuperscript{19} Dickerson noted four reasons that the Bluebook fails in its objective to provide uniform citation rules.\textsuperscript{20} First, each edition of the Bluebook changes basic rules, rather than simply adding or supplementing rules for new sources.\textsuperscript{21} This criticism was particularly well supported in connection with the most recent edition of the Bluebook.\textsuperscript{22} In the sixteenth edition, the editors of the Bluebook drastically changed rules regarding signal definitions.\textsuperscript{23} The most consequential change regarded the \textit{see} signal, which the sixteenth edition required to be used in nearly every citation circumstance except where the source of a quotation need be identified. Because the \textit{see} signal had formerly indicated indirect support for a proposition, the new definition of the signal all but ensured confusion and created a distinct probability that an author's work would be misconstrued. "Since the purpose of a signal system is to facilitate an orderly presentation of authority which gives readers the opportunity to


\textsuperscript{17} Maria L. Ciampi et al., \textit{The Citation Workbook: How to Beat the Citation Blues} (Anderson Publg. Co. 1993). [\textit{MARIA L. CIAMPI ET AL., THE CITATION WORKBOOK: HOW TO BEAT THE CITATION BLUES} (1993)].


\textsuperscript{19} A. Darby Dickerson, \textit{An Un-Uniform System of Citation: Surviving with the New Bluebook (Including Compendia of State and Federal Rules Concerning Citation Form)}, 26 Stetson L. Rev. 53 (1996). [See, e.g., A. Darby Dickerson, \textit{An Un-Uniform System of Citation: Surviving with the New Bluebook (Including Compendia of State and Federal Rules Concerning Citation Form)}, 26 \textit{STETSON L. REV.} 53 (1996).]

\textsuperscript{20} Id. at 56-57. [See id. at 56-57.]

\textsuperscript{21} Id. at 56. [See id. at 56.]

\textsuperscript{22} Bluebook, supra n. 3. [\textit{BLUEBOOK, supra} note 3.]

reproduce the author’s research and the significance he assigns to his conclusions and authority, changes in the signals could bring an accurate author’s credibility into question.24

The signal change resulted in an extraordinary response from the academic community. At the 1997 Annual Meeting of the American Association of Law Schools, the House of Representatives passed a resolution asking the editors of the Bluebook to reinstate the signals definitions found in the fifteenth edition of the Bluebook.25 The resolution also encouraged law reviews to continue to use the fifteenth edition’s introductory signal rules.26 The Bluebook editors recently acknowledged this sentiment, and plan to return to the introductory signals definitions from the fifteenth edition when the seventeenth edition is published later this year.27

The second criticism noted by Dean Dickerson also involves the failure of the Bluebook to maintain and adhere to uniform standards: The law reviews that produce the Bluebook often deviate from Bluebook rules.28 The two additional criticisms of the Bluebook involve practical matters. Specifically, the Bluebook fails to incorporate or adequately reference mandatory court rules practitioners must follow.29 Also, because the Bluebook is complex and not perceived as being user-friendly, there have been numerous proposed alternatives to either supplement or supplant the Bluebook.30

Indeed, many alternative guides for legal citation exist. Miles O. Price’s A Practical Manual of Standard Legal Citations31 was prepared based on citation practices the author found in briefs.32 Many law review staffs have published either

25 Dickerson, supra n. 23, at 79. [See Dickerson, supra note 23, at 79.]
26 Id. [See id.]
28 Dickerson, supra n. 19, at 57. [See Dickerson, supra note 19, at 57.]
29 Id. [See id.]
30 Id. [See id.]
32 See Byron D. Cooper, Anglo-American Legal Citation: Historical Development and Library Implications, 75 L. Lib. J. 3, 22 (1982). [See Byron D. Cooper, Anglo-American
supplements or alternatives to the Bluebook. Finally, many jurisdictions have adopted specific citation rules for practice within that jurisdiction.

The most widely recognized challenger to the Bluebook was developed by various law journals at the University of Chicago in 1986. The University of Chicago Manual of Legal Citation, known as the Maroonbook, was intended to "provide a simple, workable system of citation for legal writing." A primary objective of the Maroonbook was to allow writers some flexibility in citation:

"[A] citation system should prize ease of reference and internal consistency within a journal over a rigid adherence to form . . . . [W]riters and editors should devote their time to writing and editing, rather than spending hours slogging through the Bluebook to unearth and answer. Since it is neither possible nor desirable to craft a rule for every citation problem that could arise, the Maroonbook grants writers and editors a fair amount of discretion. This above all: Be clear, sensible and consistent."

The Maroonbook found considerable support in Judge Richard A. Posner, who published an essay in The University of Chicago Law Review titled Goodbye to the Bluebook. Other scholars also supported the Maroonbook as a viable alternative to the Bluebook. For example, the preface to the third edition of Legal Research and Citation by Larry L. Teply notes: "The text and exercises are designed so that students may use the citation form set out in A Uniform System of Citation (14th ed. 1986) or

Legal Citation: Historical Development and Library Implications, 75 L. LIBR. J. 3, 22 (1982.)

33 See Dickerson, supra n. 19, at 91-92. [See Dickerson, supra note 19, at 91-92.]

34 Id. at apps. B-1 to B-3. [See id. at apps. B-1 to B-3.]

35 The University of Chicago Manual of Citation, commonly known as the Maroonbook, was first published as an appendix to Posner, supra n. 15. University of Chicago Manual of Legal Citation (U. Chi. L. Rev. & U. Chi. Leg. Forum eds. 1986) [hereinafter Maroonbook]. [UNIVERSITY OF CHICAGO MANUAL OF LEGAL CITATION (University of Chicago Law Review & University of Chicago Legal Forum eds., 1989) [hereinafter MAROONBOOK].]

36 Maroonbook, supra n. 35, at 7. [MAROONBOOK, supra note 35, at 7.]

37 Dickerson, supra n. 19, at 221 n. 260 (quoting Letter from Tom Dupree, Editor, Univ. of Chi. L. Rev., to ABA Spec. Comm. on Citation Issues (July 21, 1996) (copy on file with Stetson Law Review)). [Dickerson, supra note 19, at 221 n. 260 (quoting Letter from Tom Dupree, Editor, University of Chicago Law Review, to ABA Special Committee on Citation Issues (July 21, 1996) (copy on file with Stetson Law Review)).]

38 Posner, supra n. 15. [Posner, supra note 15.]
The University of Chicago Manual of Legal Citation (1989).”

Even with the solid endorsement of Judge Posner, the Maroonbook failed to effectively oust the Bluebook from its authoritative position. The most plausible reason for the Bluebook’s endurance is that most law schools adhere to the Bluebook and, consequently, most lawyers are familiar with and therefore married to Bluebook form. Because the ALWD Citation Manual has been prepared by legal writing instructors who influence the style and format of the next generation of law review editors, practitioners and judges, it stands the greatest chance of infiltrating the exclusive turf of the Bluebook.

IV. FORMAT DIFFERENCES BETWEEN THE BLUEBOOK AND THE ALWD CITATION MANUAL

Several differences in format between the two citation guides are worth noting. First, the ALWD Citation Manual is slightly longer than the Bluebook. This is likely due to the emphasis on creating a teaching tool envisioned by the creators of the ALWD Citation Manual. The ALWD Citation Manual is 470 pages long (approximately 9 x 6 inch), including appendices and indices, as compared to the 365-page (approximately 8 x 5 inch) Bluebook, complete with index and related tables. However, much of the length of the ALWD Citation Manual is attributable to straightforward information on how to use the manual and how to clearly cite the sources. Also, the ALWD Citation Manual has standard margins and 12-point font in contrast to 1/4-inch margins at the top and bottom of each Bluebook page. Consequently, while the ALWD Citation Manual may be slightly longer, it is significantly easier on the eyes.

The ALWD Citation Manual, like the Bluebook, has ring binding so that it conveniently lays flat. Also, the front and back covers of the ALWD Citation Manual are laminated to ensure durability and the pages are of heavy stock.

The ALWD Citation Manual clearly shows spacing with icons, and uses color variation to emphasize points and make

39 Larry L. Teply, Legal Research and Citation iii (3d ed. West 1989). [Larry L. Teply, Legal Research and Citation iii (3d ed. 1989).]

40 E.g., Larry L. Teply, Legal Research and Citation iii (4th ed., West 1992) (noting “The citations in this text are keyed to the fifteenth edition of The Bluebook: A Uniform System of Citation”). [See, e.g., Larry L. Teply, Legal Research and Citation iii (4th ed. 1992) (noting “The citations in this text are keyed to the fifteenth edition of The Bluebook: A Uniform System of Citation”).]
distinctions clear. Teaching tools referred to as “Sidebars” discuss key points that are extremely helpful to novice researchers. The “Fast Formats” sections that precede chapters covering a particular source are valuable tools which illustrate application of the rules. Also, cross-references in each section to applicable appendices facilitate use of the *ALWD Citation Manual*. Finally, the *ALWD Citation Manual* features a Web site that will address frequently asked questions and material the authors felt were useful but too cumbersome to include in the text.\(^{41}\) It is worth noting that the editors of the *Bluebook* now also maintain a Web site.\(^{42}\)

V. THE *ALWD CITATION MANUAL* AND THE *BLUEBOOK*: A COMPARISON OF SELECTED RULES\(^{43}\)

**Typeface Conventions:** With respect to typeface conventions, the *ALWD Citation Manual* eliminates the use of small caps in citations. The *ALWD Citation Manual* has only two type styles: italics and regular type.\(^{44}\) If the portion of the citation is not in italics, then it is to be in regular type. The *Bluebook* requires the use of different fonts depending upon the type of document and where the source is cited within the document.

**Cases and Statutes:** A prominent feature of the *ALWD Citation Manual*, and one that significantly impacts its simplicity and resultant usefulness, is that the *ALWD Citation Manual* does not distinguish between case citations appearing in legal memoranda, law review articles, and law review footnotes. The *ALWD Citation Manual* uses the same citation format regardless of where the citation appears.

Unlike the *Bluebook*, the *ALWD Citation Manual* contains diagrammed examples that emphasize each component of a citation. The *ALWD Citation Manual* explains initial case references and emphasizes the importance of pinpoint references. The Sidebar that addresses pinpoint references is clear, straightforward, and gives the novice researcher appropriate information within a practical context. It provides:

The importance of pinpoint references whenever possible cannot be overstated. If you do not refer readers to specific

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\(^{41}\) The *ALWD Citation Manual* Web address is <http://www.alwd.org> [hereinafter *ALWD*].

\(^{42}\) Har. L. Rev., supra n. 27. [See Harvard Law Review, supra note 27.]

\(^{43}\) Unless otherwise noted, comparisons are based on the *ALWD Citation Manual* and the sixteenth edition of the *Bluebook*.

\(^{44}\) Like the *Bluebook*, underlining may be substituted for italics.
pages or other subdivisions where the referenced material appears, readers will be frustrated. Moreover, if a judge or judicial law clerk cannot locate support for your position, you may lose credibility with the court, or the court may discount your position. Accordingly, always spend the extra time it takes to insert the pinpoint reference. 45

Comprehensive organization helps users determine the actual case name, including how to distinguish case names from party names in textual sentences. A particularly illustrative Sidebar explains commonly used procedural phrases. 46 The ALWD Citation Manual notes that parallel citation should be used only when required by local rule and a helpful Sidebar explains how to find a parallel citation. 47 A straightforward list of subsequent histories 48 and an excellent Sidebar pertaining to denials of certiorari 49 are particularly helpful to the novice legal researcher who can be easily sidelined by a misapprehension of subsequent treatment.

Another useful feature of the ALWD Citation Manual regards abbreviations, which are clearly addressed in Appendices 3, 4, and 5. Appendix 3 demonstrates categorically the types of words that can be abbreviated. The ALWD Citation Manual differs from the Bluebook in that there are not as many differences in abbreviations for cases and other sources. Federal court abbreviations are shown in Appendix 4, with proper spacing. 50 Appendix 5 contains a comprehensive list of abbreviations for legal periodicals. To reduce the length of the ALWD Citation Manual, Appendix 5 contains most traditional law reviews. For any periodical not listed in Appendix 5, an author can consult additional listings that appear on the Web site that complements the ALWD Citation Manual. 51 The legal periodicals appendix is particularly helpful as it provides cross-references to journals that have changed names. Also, abbreviations for law reviews are more consistent with each other. Moreover, the same abbrevia-

45 ALWD Citation Manual, supra n. 2, Sidebar 5.1. [ALWD Citation Manual, supra note 2, Sidebar 5.1.]
46 ALWD Citation Manual, supra n. 2, Sidebar 12.3. [See ALWD Citation Manual, supra note 2, Sidebar 12.3.]
47 ALWD Citation Manual, supra n. 2, Sidebar 12.5. [See ALWD Citation Manual, supra note 2, Sidebar 12.5.]
48 ALWD Citation Manual, supra n. 2, Rule 12.8. [See ALWD Citation Manual, supra note 2, Rule 12.8.]
49 ALWD Citation Manual, supra n. 2, Sidebar 12.6. [See ALWD Citation Manual, supra note 2, Sidebar 12.6.]
50 Abbreviations for state courts can be found on the Web site for the ALWD Citation Manual. ALWD, supra n. 41. [See ALWD, supra note 41.]
51 ALWD, supra n. 41. [See ALWD, supra note 41.]
tions are used regardless of where the citation appears in a document. Finally, the *ALWD Citation Manual* rule on case citation eliminates the *Bluebook*’s admonition against abbreviating the first word of a party name.52

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The *ALWD Citation Manual* provides clearer examples of proper spacing than the *Bluebook*, which has been criticized for requiring stringent regard for spacing but using 11 point font that all but ensures that no one could identify a space in the examples provided. The *ALWD Citation Manual* does not change rules regarding spacing, but shows spacing with an icon. Also, a helpful introductory section in the *ALWD Citation Manual* describes the variety of ways that word processing programs can affect citations and which includes methods for resolving those problems. True to its commitment to elevate good judgment over rigid conformity to rule, the section on justification advises writers to conform the justification settings, and the resultant impact on spacing, to the sensibilities of the audience to the particular document.

**Legislative Material:** Most forms for citation to legislative material are consistent with the *Bluebook*. The term “Senate” has been abbreviated in the *ALWD Citation Manual* as “Sen.” instead of “S.” to avoid confusion with other abbreviations.

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<th>Bluebook Citation</th>
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Helpful Fast Format sections for federal and state legislative materials give clear examples of citation formats and there are detailed instructions on how to cite the individual components of federal and state legislative materials.

**Administrative Material:** As with legislative materials, the *ALWD Citation Manual* has separate sections for federal and state materials. A notable difference between the *ALWD Citation Manual* and the *Bluebook* concerns citations to the Federal Register, for which the *ALWD Citation Manual* requires exact dates. Because the Federal Register is published every

52 *ALWD Citation Manual*, supra n. 2, Rule 12.2. [See *ALWD Citation Manual*, supra note 2, Rule 12.2.]
business day, this change is particularly helpful in leading a reader to the source.

**Treatises:** The *ALWD Citation Manual* requires that treatise titles be italicized and that citations include publisher information. Also, the writer may use the term et al. for more than two authors, but is not required to do so. Finally, the volume is treated as any other subdivision and appears after the title.

**Legal Periodicals:** In the *ALWD Citation Manual*, unlike the *Bluebook*, the form for citing consecutively paginated journals and nonconsecutively paginated journals is generally the same. The *ALWD Citation Manual* simply includes the complete date in the date parenthetical for consecutively paginated journals. Also, the single term “Student Author” replaces the terms Note, Comment, etc.

**Legal Dictionaries, Encyclopedia and A.L.R. Annotations:** For each of these sources, the *Bluebook* provides a sample citation without instructions. The *ALWD Citation Manual* pro-
vides detailed instructions and examples for new users. Also, the ALWD Citation Manual includes a Sidebar in the encyclopedia section that lists most state encyclopedia abbreviations with spaces clearly noted. With regard to the A.L.R., spacing rules and examples are shown for all A.L.R. series. Also, the “Annotation” reference has been eliminated.

ALWD Citation Manual Citation

Bluebook Citation

Internet Web Site Citations: The ALWD Citation Manual has expanded the coverage of online sources. The World Wide Web sites section of the manual gives detailed illustrations of citation to such sources and directs the reader to the ALWD Web site for information regarding Gopher, FTP and Telnet sites and electronic bulletin boards, newsgroups and synchronous communications. The ALWD Citation Manual replaces the term “visited” with “accessed” to give the citation a more professional tone and to be consistent with non-legal citation guides. Finally, the date of access has been moved to the end of the citation to be consistent with citations of other sources.

ALWD Citation Manual Citation

Bluebook Citation

Neutral Citations: The Bluebook simply indicates that a public domain citation for cases should be used when available and allows parallel citation to the regional reporter. The ALWD Citation Manual provides a brief explanation of neutral citation formats. The ALWD Citation Manual indicates that if the document is being submitted to a court that requires the use of neutral citations, that court’s neutral citation format should be

53 ALWD, supra n. 41. [See ALWD, supra note 41.]
used. The user is then directed to Appendix 2 of the *ALWD Citation Manual* to determine which courts have neutral citation formats. Where there is no court-prescribed format, the form of the citation may follow the citation used on the source, or the form suggested by the American Association of Law Libraries (AALL). The *ALWD Citation Manual* also indicates that parallel citation to a print source should be used when using neutral citation.

**Signals:** Introductory signals are probably the source of the most vocal recent criticism of the *Bluebook*, as the definitions regarding signals have changed so dramatically in the most recent two editions. Here is where the *ALWD Citation Manual* shines. The *ALWD Citation Manual* returns to long-used and relied upon signal definitions, which were adversely impacted by the sixteenth edition of the *Bluebook*. The most profound example is the return to the common understanding of direct support, for which no signal is necessary, and the *see* signal, which provides implicit, rather than explicit support. The *ALWD Citation Manual* also eliminates some signals, such as *accord* and *see also*, which the authors determined were not sufficiently distinct from others. Consequently, the critical distinctions in this section deal with the most commonly used signals. One useful tool of the *Bluebook* that has not been mirrored in the *ALWD Citation Manual* is the use of headings in the signals section that tell the reader what category of signals follow, e.g., “Signals that suggest a useful comparison,” “Signals that indicate contradiction.”

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**ALWD Citation Manual Signal**

"No signal" is not treated like a signal. Do not use a signal if the cited authority directly supports the stated proposition, identifies the source of a quotation or merely identifies the authority referred to in the text.

**Bluebook Signal**

[no signal]: Cited authority (i) identifies the source of a quotation, or (ii) identifies an authority referred to in text.

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54 Comm. on Citation Formats & Am. Assn. L. Libs., *Universal Citation Guide* (St. B. of Wis. 1999). [COMMITTEE ON CITATION FORMATS & AMERICAN ASS’N LAW LIBRARIES, UNIVERSAL CITATION GUIDE (1999).]

55 Under the *ALWD Citation Manual*, the distinctions were determined unnecessary since all signals are separated with semicolons. The *Bluebook* required the subsections to determine when to use a semicolon and when to start a new citation sentence.
E.g.: Use to reflect that the cited authority is representative of, or merely an example of, many authorities that stand for the same proposition, but are not cited. Use “E.g.” alone when the authorities directly support the stated proposition. In other situations, combine “e.g.” with the appropriate signal.

See: Use when the cited authority (a) supports the stated proposition implicitly or (b) contains dicta that support the proposition.

Compare . . . with: Use to compare authorities or groups of authorities that reach different results concerning the stated proposition.

Contra: Use when the cited authority directly contradicts the stated proposition.

But see: Use when the cited authority (a) contradicts the stated proposition implicitly or (b) contains dicta that contradict the stated proposition. But cf.: Use when the cited authority contradicts the stated proposition by analogy.

See generally: Use when the cited authority is presented as helpful background information related to the stated proposition.

E.g. can be combined with any signal, including [no signal] to indicate that other authorities also state, support or contradict the proposition but that citation to them would not be helpful or is not necessary.

See: Cited authority directly states or clearly supports the proposition.

Compare . . . with: Comparison of the authorities cited will offer support for or illustrate the proposition.

Contra: Deleted in the 16th edition.

But see: Cited authority directly states or clearly supports a proposition contrary to the main proposition. But cf.: Cited authority supports a proposition analogous to the contrary of the main proposition.

See generally: Cited authority presents helpful background material related to the proposition.
VI. OBSERVATIONS

Miles Price provided a classic definition of the primary purpose of legal citation: "A legal citation has only one purpose: to lead its reader to the work cited, and this without enforced recourse to any other source of information, for data which should have been given in the citation itself." 56 Additionally, Byron Cooper has noted that the adequacy of a citation depends on the background of the reader and the resources to which the reader has access, and whether the citation provides information useful to understanding the material for which the citation was provided. 57 These citation goals are facilitated by the ALWD Citation Manual. The ALWD format clearly leads the reader to appropriate, complete sources. Also, in contrast to the Bluebook, the ALWD Citation Manual includes teaching tools that provide the reader with context by explaining sources and the information that attribution affords the reader.

There is no doubt that the ALWD Citation Manual is an exemplary teaching tool. In this respect its purpose is twofold: Not only to provide a uniform guide to proper citation form, but also to provide the user a more comprehensive context for legal citation. The ALWD Citation Manual achieves both purposes. It is not only straightforward and user-friendly, but it provides the novice researcher with generous information regarding the content of sources, where and when to provide attribution, and specifically how and what information is communicated through legal citation. As a result it will likely be, or at least should be, embraced by the academic legal writing community. First-year law students in particular will be better served by a citation manual that attempts to provide a more comprehensive understanding of the relationship between written legal analysis and citation form.

Clearly the biggest obstacle to the success of the ALWD Citation Manual is the entrenchment of the Bluebook. Only by integrating the ALWD Citation Manual in first-year writing curricula can it achieve its objective: to simplify the form of legal citation and overcome the complexities of the Bluebook. As a legal writing instructor, I find that the Bluebook often undermines my credibility, particularly when I am forced to acknowledge that particular rules do not make sense or that the

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56 Price, supra n. 30, at iii. [PRICE, supra note 30, at iii.]
57 Id. [See id.]
Bluebook fails to provide sufficient explanation or illustration. As a result, our program intends to embrace the new manual. The efforts of Dean Dickerson and the Association of Legal Writing Directors will greatly benefit all legal researchers.
ERRATA

Correction to Volume 5:

On page 69, we misprinted a chart for the article, "A History of Writing Advisors at Law School." Here is the correct of that chart and the accompanying text:

E. Salary Ranges

It is not surprising that faculty status is usually accompanied by a higher salary. For example, all Writing Advisors earning salaries in the D-range (below) listed themselves as faculty. After that, years in position mattered most, with those staying the longest making the best wages. The salary ranges break down into two halves: those earning salaries in the A and B range held part-time positions, and those earning salaries in the C and D range held full-time positions.

It is also not surprising that the lower salary ranges tended to correlate with a restricted range of activities for the Writing Advisors. For example, only a small percentage of the A salary Writing Advisors reported conducting research or making presentations at conferences, and those few in the A salary range who are participating in these scholarly activities all had full-time faculty jobs elsewhere.

A: less than $15,000       B: between $15 and $30
C: between $30 and $45    D: more than $45,000

A 34%  B 11%  C 31%  D 23%