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# BEGINNING LEGAL WRITERS IN THEIR OWN WORDS: WHY THE FIRST WEEKS OF LEGAL WRITING ARE SO TOUGH AND WHAT WE CAN DO ABOUT IT

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## I. INTRODUCTION

As long-time legal writing professors, we have observed anecdotally that many of the first-year students in our legal writing classes, although typically bright and hard-working, struggle to effectively grasp the fundamental skills of legal analysis and legal writing. This struggle manifests itself especially clearly during the first few weeks of legal writing instruction<sup>1</sup> and often leads to

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\* © 2010, Miriam E. Felsenburg and Laura P. Graham. All rights reserved. Associate Professors of Legal Writing, Wake Forest University School of Law. The Authors wish to express their deepest gratitude to the following persons, without whose assistance this project would not have been possible: Blake Morant, Dean and Professor; Ann P. Gibbs, Associate Dean, Administrative & Student Services; Professor Miles Foy, former Executive Associate Dean for Academic Affairs; Professor Ron Wright, Executive Associate Dean for Academic Affairs; and Professor Sid Shapiro, Associate Dean for Research and Development, all from the Wake Forest University School of Law, for supporting our scholarship by awarding us a research grant to fund our study and by providing valuable insights into our study procedures and results; the Legal Writing Institute, and especially the facilitators of the 2009 LWI Writers Workshop, Professors Steve Johansen, J. Christopher Rideout, Ruth Anne Robbins, and Lou Sirico, whose suggestions for improving our Article and advice about publishing it have been instrumental; Professor Christine N. Coughlin, Director of Legal Research & Writing, Wake Forest University School of Law, and our colleagues on the Wake Forest legal writing faculty, for being wonderful “sounding boards” for us throughout this process; Professor Ananda Mitra, Ph.D., Chair of the Communications Department, Wake Forest University, whose expertise in designing surveys and interpreting data was invaluable; KC Barner and Kris Wampler, our very able research assistants; Ed Raliski, Arlene McClannon, and Trevor Hughes from the Information Services Department at Wake Forest University School of Law, who helped us distribute our surveys and compile data; Professor Brenda Gibson, a gracious legal writing colleague and supporter of our study; the many students at Schools X and Y who were first-year students in the fall of 2007 and took time out of their busy schedules to complete our surveys; and last but certainly not least, our families, who have patiently and enthusiastically supported us over the two years it has taken to bring this project to fruition.

1. See Brook K. Baker, *Transcending Legacies of Literacy and Transforming the Traditional Repertoire: Critical Discourse Strategies for Practice*, 23 Wm. Mitchell L. Rev. 491, 497 (1997) (“Students entering law school are prototypical examples of novices enter-

a high frustration level that tends to persist throughout the first year of legal writing (and indeed may never be overcome). With these students in mind, we undertook a research project designed to help us better understand the nature of, and the reasons for, their struggles in these first few weeks of legal writing.

We chose to focus our attention on students' experiences during the first eight weeks of legal writing instruction because this period is a critical one in students' legal education. Early legal writing classes often give students their first exposure to the key skills they must develop to succeed as law students and as lawyers. For example, legal writing classes often give students their first glimpse into how the United States legal system works, the hierarchy of United States courts, and the differences between mandatory and persuasive authority. These aspects of early instruction are crucial in preparing students to understand how the cases they will be reading came about.<sup>2</sup> Many students read their first cases in early legal writing classes, and their legal writing professors first instruct them on how to begin analyzing those cases—for example, how to extract a rule from a case and how to differentiate between a rule and a holding.<sup>3</sup> Their legal writing professors also first outline for them the basic templates for writing about legal analysis.<sup>4</sup>

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ing a new field.”)

2. Though not without its detractors, the case study method remains the primary tool for teaching law in American law schools. See Roy Stuckey et al., *Best Practices for Legal Education: A Vision and a Road Map* 133–141 (Clin. Leg. Educ. Assn. 2007); David A. Garvin, *Making the Case: Professional Education for the World of Practice*, 106 Harv. Mag. 56 (Sept.–Oct. 2003); Stephanie B. Goldberg, *Beyond the Socratic Method*, 36 Student Law. 19, 19, 22 (Oct. 2007).

3. As we will discuss more fully, our study included a series of surveys administered to School X and School Y students during their first year of law school. In the second survey, administered after approximately eight weeks of law school, we asked students to rate how helpful legal writing had been to their learning in other law school classes. Almost 75 percent of the surveyed students at School X rated legal writing as “moderately,” “very,” or “extremely” helpful in their other courses. One student wrote, “LRW helped [me] to learn how to read cases and understand what they are trying to convey.” Another student wrote, “Legal writing has helped me to analyze cases more efficiently. Particularly, the process of writing memos has enabled me to hone [sic] in on what issues/facts are most important.” One particularly direct student wrote, “Absent legal writing, it would be impossible to brief a case, extract a rule, or analyze multiple cases on one subject.”

4. At both School X and School Y, whose students we surveyed, students have a full week of legal research and writing classes (approximately twelve hours of instruction) before they begin their doctrinal classes. Topics typically covered in this week include an introduction to the United States legal system, an overview of the sources of the law (statutory and common law), how to read cases, how to brief cases, and the IRAC paradigm (or a similar paradigm) for legal analysis and legal writing. The IRAC paradigm is explained

We hoped that by gathering information about beginning legal writing students' experiences during these critical early weeks, we could develop some "interventions" to help us, and our colleagues in the legal writing academy, ease our students' transition into the difficult but crucial realm of legal writing.<sup>5</sup> We therefore sought to gather data that would help explain why so many students encounter a "world of trouble" when they begin to learn legal writing. We administered three surveys to students entering law school in August 2007 at two diverse law schools, identified in this Article as School X and School Y.<sup>6</sup> Included in these two groups of students were students who were diverse racially and ethnically,<sup>7</sup> who covered a wide range of ages,<sup>8</sup> and who

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further *infra* at n. 61.

5. In two landmark empirical studies in 2004 and 2007, Kennon M. Sheldon and Lawrence S. Krieger documented the widely-held belief that "law school has a corrosive effect on the well-being, values, and motivation of students." Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 *Pers. & Soc. Psych. Bull.* 883, 883 (2007) [hereinafter Sheldon & Krieger, *Understanding the Negative Effects*]; see also Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 *Behav. Sci. L.* 261, 262-263 (2004) [hereinafter Sheldon & Krieger, *Does Legal Education Have Undermining Effects?*]. These studies are widely cited by proponents of the Humanizing Legal Education movement, who advocate that "law schools need to identify negative stressors in the law school environment, reduce or eliminate those as much as possible, and help the students to manage those that cannot be eliminated." Barbara Glesner-Fines, *Fundamental Principles and Challenges of Humanizing Legal Education*, 47 *Washburn L.J.* 313, 314 (2008); see also Michael Hunter Schwartz, *Humanizing Legal Education: An Introduction to a Symposium Whose Time Came*, 47 *Washburn L.J.* 235, 235-236 (2008) (noting that the AALS recently established a Balance in Legal Education section to address humanizing issues and that leading publications, including William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass 2007), and Stuckey et al., *supra* n. 2, make "numerous references to humanizing concerns and principles"). While further elaboration on the humanizing movement is beyond the scope of this Article, we think that our data, and the conclusions and recommendations drawn from it, are fully consistent with the need to make law school a less stressful, more satisfying experience for our students, and we believe that the proposals we make here will help accomplish that goal, at least in the legal writing classroom.

6. We have designated the schools as "School X" and "School Y" rather than naming them in order to further protect the anonymity of both the programs and the students who responded. School X is located in a medium-sized city, is private, and accepts only full-time students. School Y is in a larger, more urban area, is publicly supported, and accepts both full-time and part-time students.

7. Survey 1 contained no questions pertaining to the respondents' race or ethnicity. The characterization of the participants as racially and ethnically diverse is based on the authors' knowledge of the institutions' specific location and profiles. In the interest of maintaining the institutions' anonymity, the authors have chosen not to provide further specific information in this regard.

8. For the ages of School X and School Y students, see *infra* fig. 2.

came from varying backgrounds. For example, some entered law school straight out of college while others had been working for many years; some were full-time law students while others were attending law school part-time.<sup>9</sup>

The first survey, taken before the students began law school, measured their readiness for learning legal writing based on their experiences, writing habits, and present attitudes toward writing. The second survey gathered data from many of these same students about their experiences in legal writing during the first eight weeks of law school. The third survey, done near the end of the students' first year of law school, revisited key questions about the students' legal writing experiences over the course of their first year.<sup>10</sup> Because this Article focuses on students' experiences in the first few weeks of legal writing instruction, it covers only the Survey 1 and Survey 2 results.

Based on the data we collected from these two surveys, we arrived at four major findings that are consistent with our experience and anecdotal observations:

- (1) Many of the students we surveyed were not familiar with the professional requirements of being a lawyer. Therefore, these students had no context in which to place the skills that their legal writing professors were teaching.
- (2) Many of the students we surveyed believed that they would be taught a step-by-step approach to legal writing and tended to resist the difficult "inside-out," critical thinking that is integral to effective legal analysis and writing.
- (3) Many of the students we surveyed experienced a counterproductive plummet in their confidence levels when they realized that learning legal writing would be much more difficult than they had expected.

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9. More than ninety of the School X students and more than 100 of the School Y students listed some work experience after graduating from college. The student body at School X is primarily composed of upper-middle class students, most of whom are recent college graduates, while the student body at School Y is more diverse.

10. We surveyed these same students in March 2010, as they prepared to graduate, to assess how their experiences since the 2007–2008 survey altered their understanding of the value and effectiveness of their first-year legal writing instruction. The results of this survey will be reported in a future article.

(4) Many of the students we surveyed incorrectly believed that their prior strengths and weaknesses as writers would transfer directly to legal writing. In some cases, this mistaken belief interfered with their ability to adjust smoothly to the new demands of legal writing.

We believe that the challenge posed by these findings is to help our students “recast” their understandings and expectations regarding what legal writing is and how it is learned, from the very outset of the course. Based on our data, we have concluded that this “recasting” may be accomplished by making modest adjustments in two key areas. First, we need to orient our students sooner to the crucial role that legal writing plays in “the real world” and to the needs and expectations of the legal reader for whom they are learning to write: we need to give them a *new context* in which to work. Second, we need to help our students better manage their own expectations about learning legal writing and to better adapt their prior strengths and weaknesses to the task of legal writing without counterproductively eroding their confidence. If we can develop strategies for implementing these changes from the very beginning of our students’ legal writing instruction, we will likely see less frustration, less trauma, and more success among our students.

In this Article, we first describe the methodology of our study, including general data about the study participants and report the results. We then explore each of our major conclusions in more detail. Finally, we suggest some modest steps to help our students take charge of their own legal writing success—that is, to recognize and embrace their role as novices in the legal writing discourse community and to actively move themselves forward in their learning.

## II. THE STUDY DESIGN

### A. Instrumentation

The questions on the first survey were developed using input from two focus group meetings, one consisting of School X law faculty who teach a wide range of courses, and the other consisting of second- and third-year School X law students. The first

survey<sup>11</sup> was sent via e-mail to the admitted students at Schools X and Y, approximately one week before they began their law school classes. Our purpose in studying the students before they attended their first law school classes was to obtain “pure” information about (1) their education and experiences prior to entering law school, with an emphasis on those aspects of their education and experiences that bore directly on their preparation for learning legal writing, and (2) their understanding of what learning law and legal writing would include.

One group of questions on this survey covered demographic information such as undergraduate major, undergraduate GPA, graduate degrees earned, LSAT score, age, and jobs held.<sup>12</sup> A second group of questions dealt with the students’ prior writing experiences and their writing habits.<sup>13</sup> A third group of questions pertained to what the students thought the study of law involved, what they thought the study of legal writing involved, what they thought were important aspects of good legal writing, and what they considered to be their strengths and weaknesses as writers.<sup>14</sup>

On the second survey,<sup>15</sup> administered in mid-October to students who responded to Survey 1, we omitted the demographic questions<sup>16</sup> and the specific questions about the students’ prior writing experiences. We retained some questions from Survey 1, including those that addressed what the students thought the study of law involved, what they thought the study of legal writing involved, what they thought were important aspects of good legal writing, and what they considered to be their strengths and weaknesses as writers. We added several questions designed to assess how the students felt about their progress in legal writing

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11. Survey 1 is reprinted in Appendix A to this Article. The appearance of Survey 1 in Appendix A differs slightly from the appearance of the online version; the content is identical. This survey and all other components of our study were approved by the Institutional Review Board of Wake Forest University, Reynolda Campus.

12. See app. A, questions 12–19.

13. See *id.* at questions 1–3, 7.

14. See *id.* at questions 4–6, 8–11.

15. Survey 2 is reprinted in Appendix B to this Article. The appearance of Survey 2 in Appendix B differs slightly from the appearance of the online version; the content is identical.

16. We were able to track the responses of the survey participants through their unique identifiers and to confirm that although the number of respondents dropped off for Survey 2, those students who did respond were demographically similar percentage-wise to the larger Survey 1 population in terms of their age range, their undergraduate GPAs, and their LSAT scores.

up to that point: Were they feeling more confident or less confident in their legal writing ability? In what particular areas were they struggling? What particular instructional methods had been most effective?

## B. Data Collection

Approximately one week before they began their law school classes, all incoming first-year law students at the two participating schools received an e-mail invitation with a live link to complete Survey 1 by accessing a website address. Each student was assigned a unique identifier, which enabled our survey consultant to track individual responses while preserving the anonymity of the students. The students were required to complete the survey in one session.<sup>17</sup> During the week-long period when the survey was open, we sent two e-mail reminders to students who had not yet responded. On Survey 1, we obtained 144 responses out of 164 first-year students at School X and 121 re-sponses out of 261 first-year students at School Y, representing an 87.8 percent and a 46.3 percent response rate, respectively.

This same process was repeated for Survey 2, with e-mail invitations being sent to only those students who responded to the Survey 1. Survey 2 was open for a week-long period in mid-October, after the students had completed their first two months of legal writing instruction. Out of the 265 students who received invitations to complete Survey 2, 125 responded (83 from School X and 42 from School Y).<sup>18</sup>

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17. This requirement was designed to prevent students from “researching” their answers through online or other sources.

18. We anticipated this drop in participation due to the increasingly busy schedules of first-year law students. Because Survey 2 was administered before students had received a final grade for the semester, it is impossible to determine whether the students who chose to respond to Survey 2 were performing better or worse than those students who did not respond. We recognize that students’ overall feelings about their legal writing experiences might have played some part in their decision about whether to participate, and that, theoretically, it is possible that the students who responded to Survey 2 were those who were happier overall with their early legal writing experience. However, the Survey 2 responses as a whole did not reflect such a skew; in fact, many respondents openly articulated the struggles and frustrations they were experiencing, as will be discussed more fully *infra* at Part V.

### III. DESCRIPTION OF SURVEY PARTICIPANTS

As noted previously, we considered it important to learn some basic demographic information about the students we surveyed. We wanted to insure that we were reaching a diverse and representative sample of the first-year law students at Schools X and Y. We also wanted to understand what the students' educational backgrounds were and how those backgrounds might affect the students' attitudes toward legal writing.

Not surprisingly, the students who responded to Survey 1 reported a wide array of undergraduate majors.<sup>19</sup> As the graph below shows, among the listed choices, political science was the most common undergraduate major of entering law students at both Schools X and Y.<sup>20</sup> Several students also reported that they had obtained graduate degrees, including PhDs, various masters degrees (including MBA, MA, MS, MEd, and MPA), and divinity degrees.<sup>21</sup>

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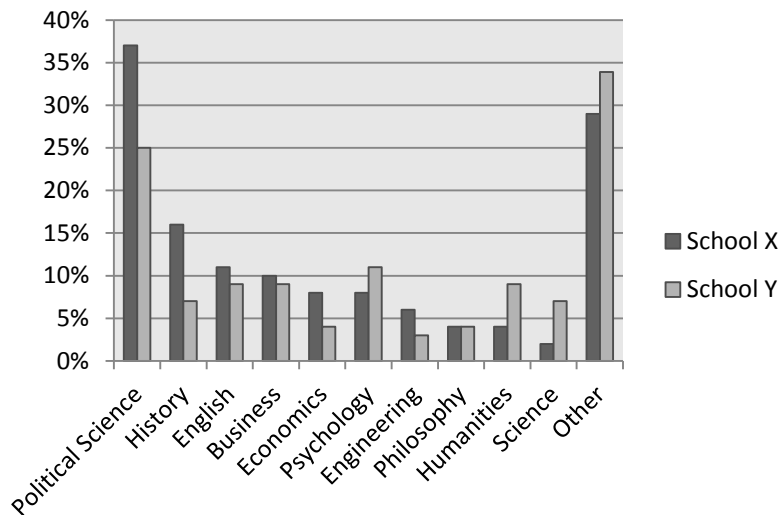
19. *See* app. A, at question 12. If a student's major was in a subject other than those listed, he or she could choose "Other" and write in his or her major.

20. Among the majors students reported under "Other" were sociology, religion, education, criminal justice, communications, mathematics, fine arts, Spanish, and computer science.

21. *See id.* at question 13.



FIGURE 1  
 UNDERGRADUATE MAJORS  
 Survey 1, August 2007



We also asked students to list the titles of, and to describe, any jobs they had held since graduating from college.<sup>22</sup> The results reflected quite a variety of work experience among the students who responded. Among the more commonly listed categories of jobs were teaching, health care, engineering, computer programming, and military service. Among the more unusual jobs listed were clergy, plumbing, and chiropraxy.

A number of students did not respond to this question at all, and some who did respond wrote, “None,” indicating that some of the students we surveyed had had no significant post-collegiate employment.<sup>23</sup> This may be due in part to the young age of many of the students. The chart below represents the age ranges of the students at Schools X and Y.<sup>24</sup> Most of the respondents were be-

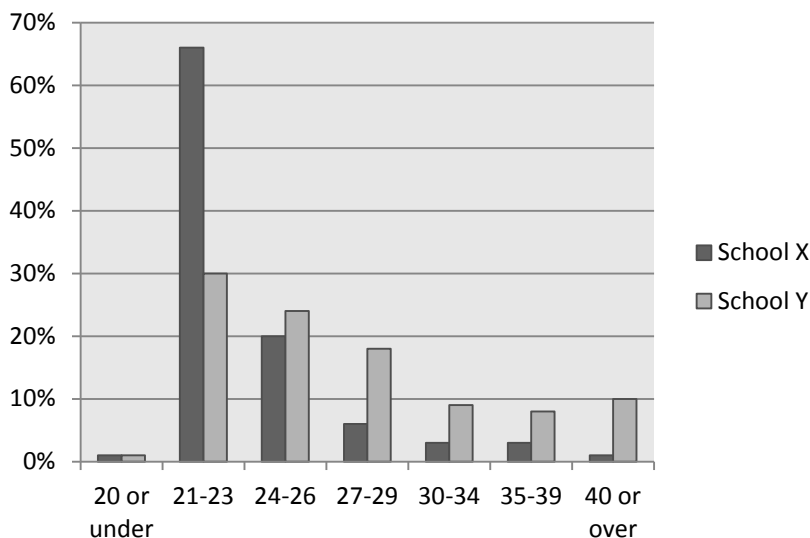
22. *Id.* at question 16.

23. Of the 144 School X students who completed the survey, 32 percent either did not answer this question or wrote “None” or “N/A.” Of the 121 School Y students who completed the survey, 11.5 percent either did not answer this question or wrote “None” or “N/A.” Some students did list such temporary jobs as “lifeguard,” “waiter/waitress,” “retail sales clerk,” and other similar jobs.

24. *See id.* at question 17.

tween twenty-one and twenty-six years old, which reflects the expected ages of incoming law students in most United States law schools.<sup>25</sup> In comparison to School X, a significant percentage of School Y respondents were twenty-seven or older, most likely because School Y has both a part-time and an evening program.

FIGURE 2  
AGES  
Survey 1, August 2007

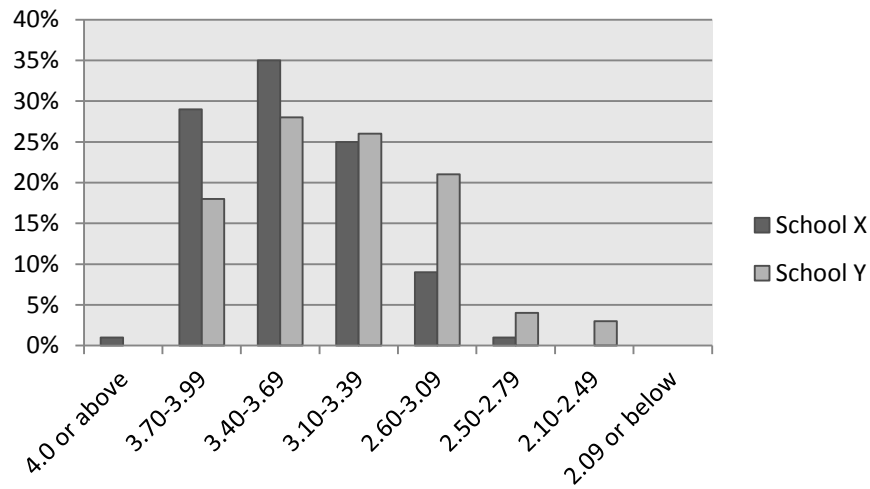


We also asked students to report their undergraduate GPAs and their LSAT scores within given ranges. The charts below represent the responses to these questions. As was expected given the diversity of Schools X and Y, the students reported a wide range of GPAs and LSAT scores.<sup>26</sup>

25. While the ABA does not post ages of students on its website, various online “chats” and blogs note that twenty-three to twenty-five is the “average” age of incoming law students. See e.g. College Confidential, Law School, *Does Anyone Know What Is the Average Age of Graduating JDs (i.e. When They Start Work)?* <http://talk.collegeconfidential.com/law-school/356439-average-age.html> (June 12, 2007, 10:05 a.m. GMT).

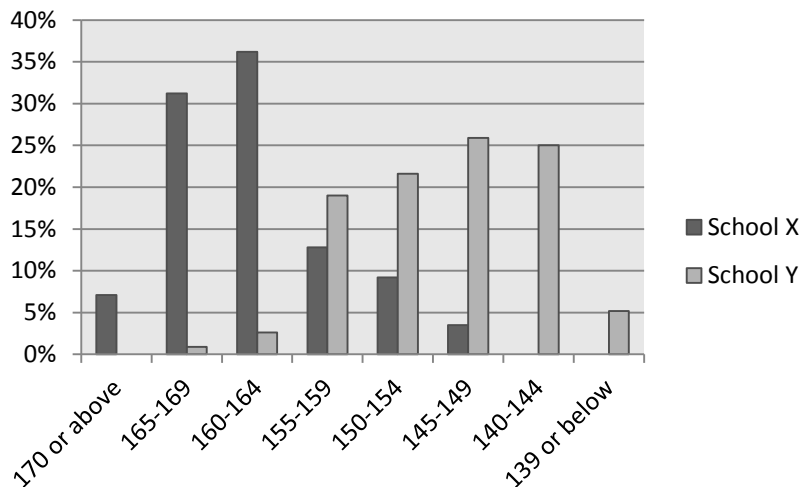
26. See app. A, at questions 18, 19. The Internet Legal Research Group’s (ILRG) published statistics on GPAs for 2007 at all ABA accredited law schools were measured from a high range of 3.96–3.19 to a low range of 3.8–2.52. See Internet Leg. Research Group, *2009 Raw Data Law School Rankings*, <http://www.ilrg.com/rankings/law/index.php/4/desc/GPAHigh> (accessed Apr. 15, 2010); Internet Leg. Research Group, *2009 Raw Data Law School Rankings: Lowest GPA (Descending)*,

FIGURE 3  
 UNDERGRADUATE GRADE POINT AVERAGES  
 Survey 1, August 2007



<http://www.ilrg.com/rankings/law/index.php/4/desc/GPALow> (accessed Apr. 15, 2010). The data for Schools X and Y covered these ranges from top to bottom, though School X's GPAs skewed higher than School Y's. Similarly, the ILRG's statistics on LSAT scores for 2007 were measured from a high range of 176 to 149 to a low range of 170 to 143. *See id.* Internet Leg. Research Group, *2009 Raw Data Law School Rankings: Highest LSAT Score (Descending)*, <http://www.ilrg.com/rankings/law/index.php/4/desc/LSATHigh>; Internet Leg. Research Group, *2009 Raw Data Law School Rankings: Highest LSAT Score (Descending)*, <http://www.ilrg.com/rankings/law/index.php/4/desc/LSATLow> (accessed Apr. 15, 2010). The students at Schools X and Y also covered a range of LSAT scores, from the high of 170 to the low of 139, though the LSAT scores of School X skewed higher than those of School Y.

FIGURE 4  
LSAT SCORES  
Survey 1, August 2007



However, in spite of the fact that the students we surveyed came from such varied backgrounds and entered law school with such a broad range of GPAs and LSAT scores, their experiences in and their reactions to the first few weeks of legal writing were remarkably similar.<sup>27</sup> The remainder of this Article presents the results of Surveys 1 and 2 and our conclusions about why so many of these bright, successful students felt frustrated and dissatisfied in the first few weeks of legal writing.

#### IV. DESCRIPTION OF SUBSTANTIVE DATA FROM SURVEYS 1 AND 2

One of the chief goals of our study was to learn about beginning law students' attitudes and expectations regarding the task that would occupy the next three years of their lives: studying to be a lawyer. We particularly wanted to learn about their atti-

27. Our data is consistent with the findings of Sheldon and Krieger regarding the effect of law school on law students generally. See Sheldon & Krieger, *Does Legal Education Have Undermining Effects?* *supra* n. 5, at 272. In their 2004 study, Sheldon and Krieger documented that the large reductions in overall subjective well-being of first-year law students were "not moderated by students' gender, ethnicity, age, career experience, or first-semester GPA—that is, they were the same for students of all demographic types." *Id.*

tudes and expectations regarding the legal writing component of the study of law. We theorized that a large part of the frustration that many new law students encounter in the first few weeks of law school stems from a lack of understanding about the nature of the study of law and the demands of the legal profession, including the highly specialized and demanding skills required of the legal writer.

#### A. Survey 1

On Survey 1, we asked the students two key, open-ended questions: “Describe what you think the study of law involves,” and “Describe what you think the study of legal writing involves.”<sup>28</sup> We reviewed all of the prose responses and identified a number of common themes among them. We then categorized the responses accordingly, with some responses falling into more than one category.<sup>29</sup> Figures 5 and 6 below numerate the students’ responses to these questions.

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28. See app. A, at questions 8, 9.

29. This explains why, on both Figures 5 and 6, the percentages of all responses total more than 100 percent.

FIGURE 5  
DESCRIBE WHAT YOU THINK THE STUDY OF LAW  
INVOLVES  
Survey 1, August 2007

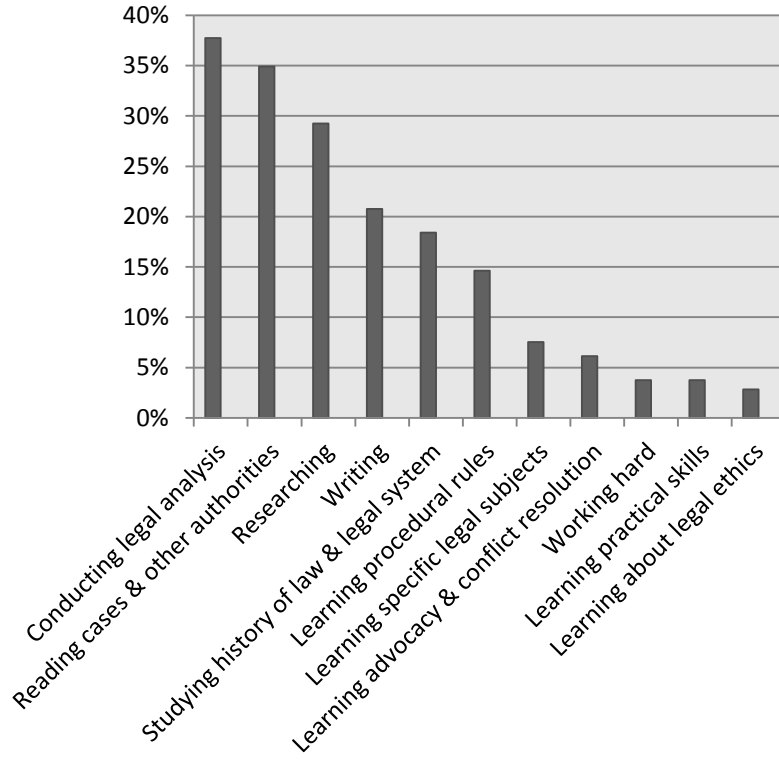
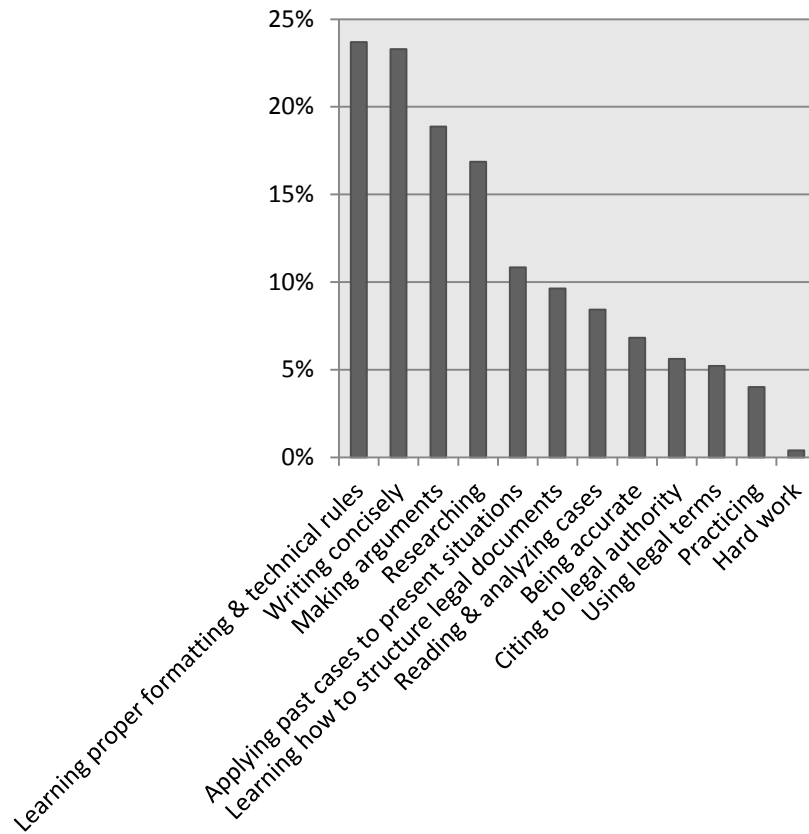


FIGURE 6  
 DESCRIBE WHAT YOU THINK THE STUDY OF LEGAL  
 WRITING INVOLVES  
 Survey 1, August 2007

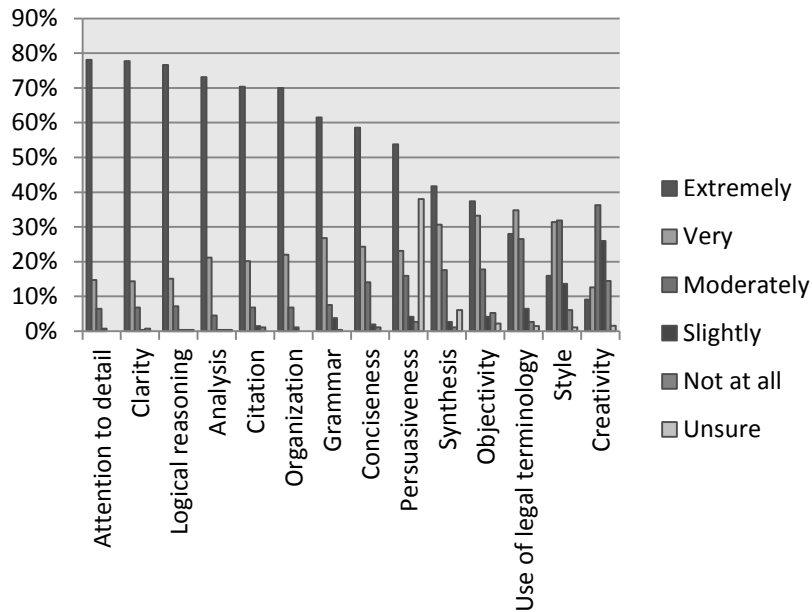


In addition to the purely open-ended questions about their general understanding of the fields of law and legal writing, we also asked students the following more pointed question: “Based on what you know today, how important do you think the following are in good legal writing?”<sup>30</sup> The chart below shows the responses to this question.<sup>31</sup>

30. *See id.* at question 11.

31. We also included the item “Other.” Three students inserted comments under “Other”: One wrote “Spelling,” one wrote “Formatting,” and one wrote “Accuracy.”

FIGURE 7  
 HOW IMPORTANT ARE THESE CHARACTERISTICS IN  
 GOOD LEGAL WRITING?  
 Survey 1, August 2007



We were interested to learn whether the responses to this question differed between students who reported having some prior legal writing experience and those who did not. The figure below represents the responses of students who reported prior legal writing experience.

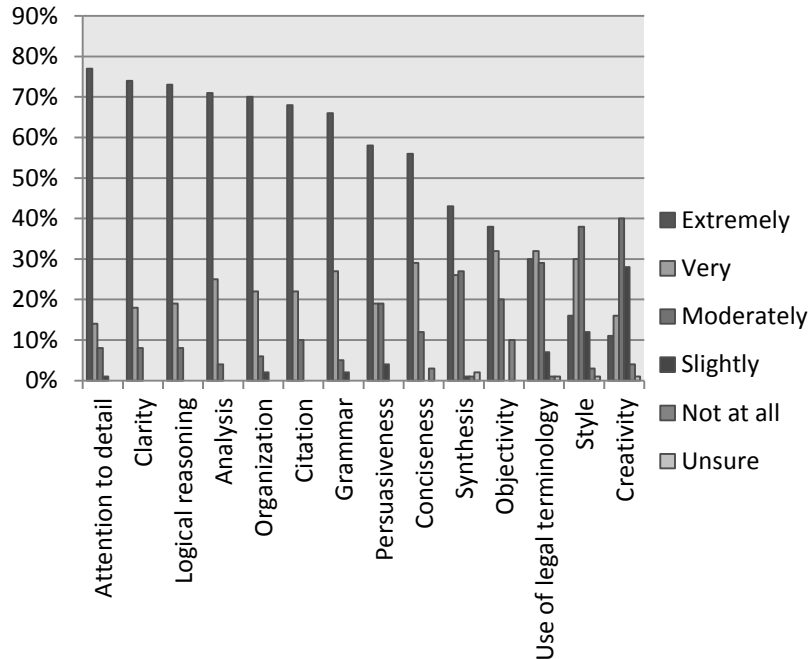


FIGURE 8

## HOW IMPORTANT ARE THESE CHARACTERISTICS IN GOOD LEGAL WRITING?

Responses of students reporting prior legal writing experience

Survey 1, August 2007



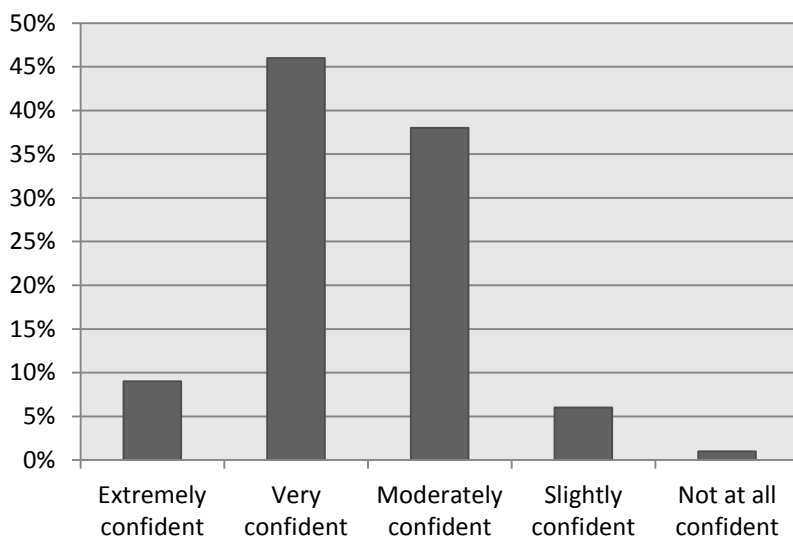
The striking similarity between Figures 7 and 8 suggests that self-reported prior legal writing experience had no effect on the students' perceptions of what is important in good legal writing.

A second chief goal of our study was to measure how students' confidence levels changed over the course of their early law school experience, especially their early legal writing instruction. Thus, we asked students two questions designed to elicit this data. First, we asked, "Taking into account the writing you have done prior to entering law school, please indicate how confident you are in your writing ability." Second, we asked, "Select the

response below that best indicates how confident you are about learning legal writing.”<sup>32</sup>

The data confirmed that the vast majority of the surveyed students entered law school bursting with confidence about their writing ability in general. The dramatic positive skew of the chart below illustrates this finding. Of the 254 students who answered this question, 141 of them (55 percent) were either “extremely” or “very” confident about their general writing ability. An additional 96 students (41 percent) were “moderately” confident. Only 17 students (7 percent) said they were “slightly” or “not at all” confident.

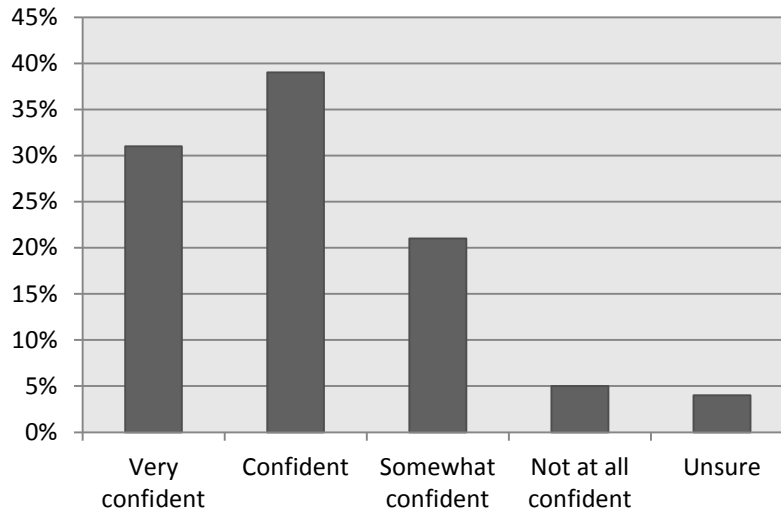
FIGURE 9  
CONFIDENCE IN GENERAL WRITING ABILITY  
Survey 1, August 2007



The students were even more confident about their ability to learn legal writing. A full 70 percent—183 students—reported that they were “confident” or “very confident” in this regard; only 21 percent—55 students—stated they were “somewhat confident.” Less than 5 percent—12 students—indicated that they were “not at all confident.”

32. *See id.* at questions 4, 10.

FIGURE 10  
CONFIDENCE IN LEARNING LEGAL WRITING  
Survey 1, August 2007

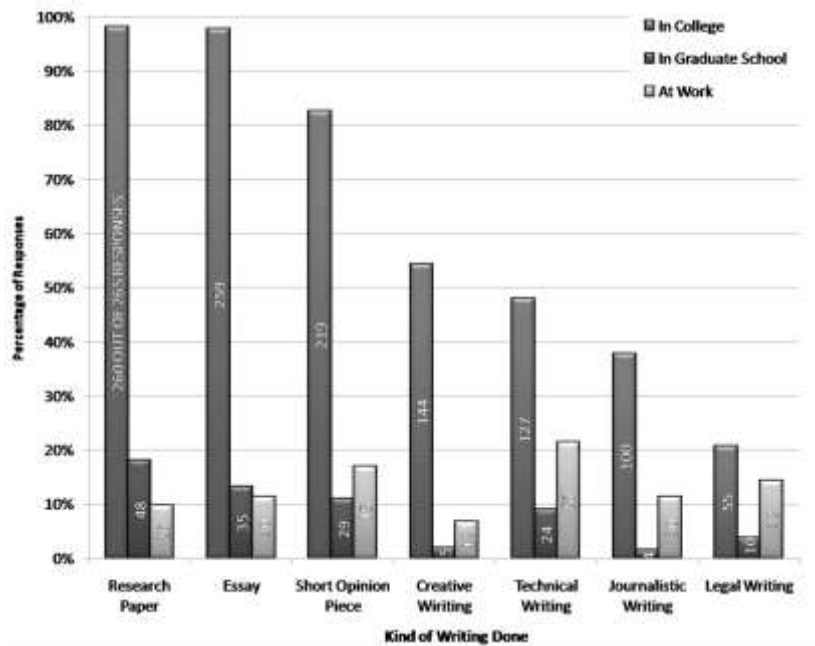


We assumed that one primary reason for these students' sky-high confidence levels was their past writing successes. To confirm this assumption, we asked several questions on Survey 1 designed to elicit data about the students' general educational experiences and their specific writing backgrounds. Specifically, we asked, "Which kinds of writing have you done?"<sup>33</sup> As the table shows, of the 265 students who responded, nearly every single one had written research papers and essays in college, and a large number had written short opinion pieces.<sup>34</sup>

33. *See id.* at question 1. Students could check more than one answer.

34. All of the numbers drop off significantly for writing done either in graduate school or at work. Referring back to Figure 2, *supra*, the data showed that a high percentage of entering law students were twenty-three years old or younger. Making a broad assumption, it is likely that those students had not gone to graduate school or done significant professional work at all in their lives to date.

FIGURE 11  
WHAT KINDS OF WRITING HAVE YOU DONE?  
Survey 1, August 2007

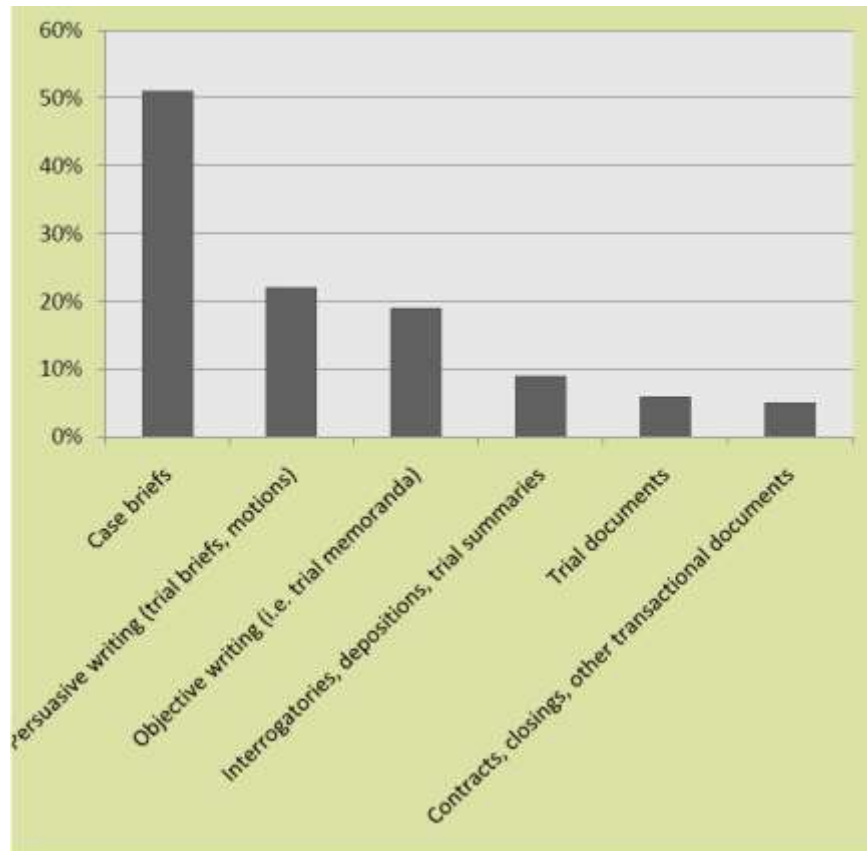


We also asked students who checked “Legal writing” to describe the kind of legal writing they had done. The question, although open-ended, included examples for the students, such as “trial briefs, trial memoranda, case briefs, etc.”<sup>35</sup> Out of the 265 students who completed the survey, 103 of them (39 percent) reported that they had prior legal writing experience; the following bar graph breaks down their responses by category.<sup>36</sup>

35. See *id.* at question 2.

36. We constructed the categories listed on this chart after reviewing all of the prose responses. Because some students reported having done more than one kind of legal writing, the responses totaled more than 100 percent.

FIGURE 12  
STUDENTS WITH LEGAL WRITING EXPERIENCE AND  
THE TYPE OF LEGAL WRITING THEY REPORTED THEY  
HAD DONE  
Survey 1, August 2007



A third goal of our study was to assess the students' perceptions of their writing strengths and weaknesses. On Survey 1, we asked entering law students two related questions: "Describe your strengths as a writer" and "Describe your weaknesses as a writer."<sup>37</sup> The following tables numerate the students' responses to these questions.

37. *See id.* at questions 5, 6. These questions were open-ended, and we grouped the

FIGURE 13  
 SELF-ASSESSMENT OF WRITING STRENGTHS  
 Survey 1, August 2007

STRENGTH	NUMBER OF RESPONSES	PERCENTAGE OF TOTAL RESPONSES
Organization	69	28.6
Conciseness	61	25.3
Clarity	57	23.6
Grammar/Punctuation	40	16.6
Analysis	32	13.2
Flow	27	11.2
Vocabulary	26	10.7
Style	25	10.3
Creativity	21	8.7
Research	17	7.0
Attention to detail	10	4.1
Technical Writing	9	3.7
Editing	8	3.3
Citation	5	2.0
Logic	5	2.0
Speed/Efficiency	3	1.2

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responses into the categories shown on the above graphs. Because some students' responses fell into more than one category, the responses added up to more than 100 percent.

FIGURE 14  
 SELF-ASSESSMENT OF WRITING WEAKNESSES  
 Survey 1, August 2007

WEAKNESS	NUMBER OF RESPONSES	PERCENTAGE OF TOTAL RESPONSES
Verbosity	45	19.1
Grammar	40	17.0
Spelling	22	9.3
Organization	19	8.0
Style	19	8.0
Punctuation	18	7.6
Creativity	16	6.8
Vocabulary	12	5.1
Editing	9	3.8
Repetition	8	3.4
Complex sentence structure	8	3.4
Clarity	7	2.9
Perfectionism	7	2.9
Flow	7	2.9
Analysis	6	2.5
None	6	2.5
Conciseness	5	2.1
Focus	5	2.1
Citation	4	1.7
Research	2	0.85

In sum, the Survey 1 data provided us with baseline information<sup>38</sup> about students' perceptions of the journey ahead, their confidence level as they embarked on this journey, and their self-assessments of their writing ability. Overall, the data revealed

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38. We acknowledge that our study as designed had certain limitations. Specifically, we acknowledge that: (1) the results from Schools X and Y may not be generalizable to all law school populations; (2) the self-selection of survey participants may have limited the extent to which the respondents' answers were representative of the 2007–2008 first-year law school population, both locally at Schools X and Y and nationwide; and (3) there may have been other factors that impacted the respondents' experiences in legal writing and may have influenced their responses.

that these students entered law school full of optimism and anticipation that they could meet the challenges of learning the law and learning legal writing with great success.

### B. Survey 2

Through Survey 2, we sought to confirm and explain our anecdotal observations that in spite of students' great expectations upon entering law school, the first eight weeks often bring about significant frustration and disappointment for many students. Thus, on Survey 2 we repeated a number of the Survey 1 questions to give us data that would shed light on the sources of these students' frustration and disappointment.

First, we asked the students whether and how their opinion about what the study of law involves had changed.<sup>39</sup> As the graph below shows, 46 percent of the students who answered this question said that their opinion had not changed,<sup>40</sup> while the remaining respondents indicated that their opinion had changed, at least to some degree.<sup>41</sup>

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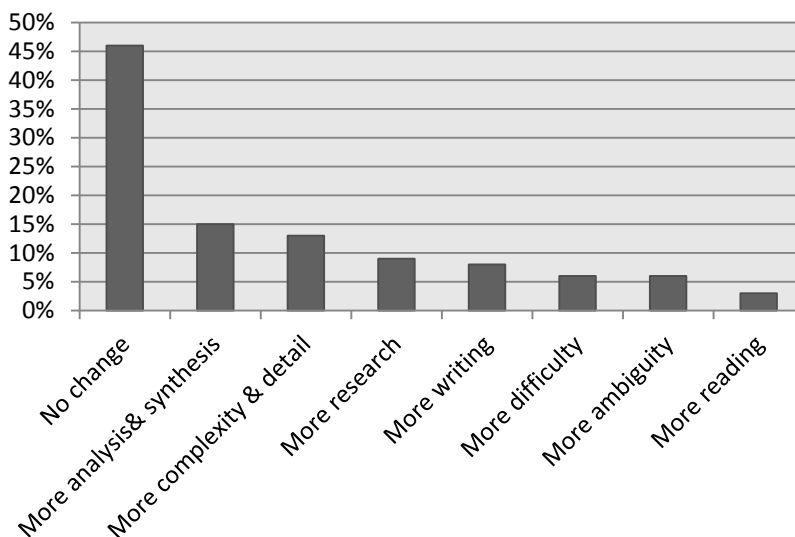
39. See app. B, at question 5.

40. All percentages on this chart are based on the 100 responses received to this question. We categorized the prose responses according to common themes, and some responses fit into more than one category. Thus, the responses added up to more than 100 percent.

41. For a full discussion of the likely reasons for these results, see *infra* Part V.



FIGURE 15  
 BASED ON YOUR EARLY EXPERIENCES IN LAW  
 SCHOOL, HAVE YOU CHANGED YOUR OPINION AS TO  
 WHAT THE STUDY OF LAW INVOLVES?  
 Survey 2, October 2007



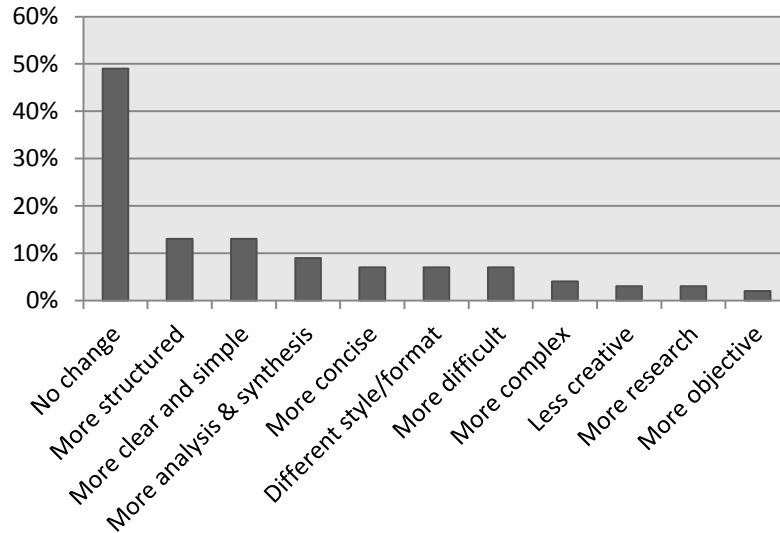
Second, we asked the students whether and how their opinion about what the study of legal writing involves had changed.<sup>42</sup> Again, as the graph below shows, a significant number of students who answered this question (49 percent) said that their opinion had not changed,<sup>43</sup> leaving 51 percent who indicated that their opinion had changed.<sup>44</sup>

42. See app. B, at question 6.

43. Again, all percentages on this chart are based on the ninety-six responses received to this question. We categorized the prose responses according to common themes, and some responses fit into more than one category. Thus, the responses added up to more than 100 percent. We note that while the categories “More difficult” and “More complex” sound similar, they are intended to represent different responses. In the “More difficult” category, we included responses suggesting that students found the work harder than they thought it would be, while in the “More complex” category, we included responses suggesting that the work was more intricate than they thought it would be—that is, there were “more pieces to the puzzle” than they expected.

44. For our interpretation of these results, see *infra* Part V.

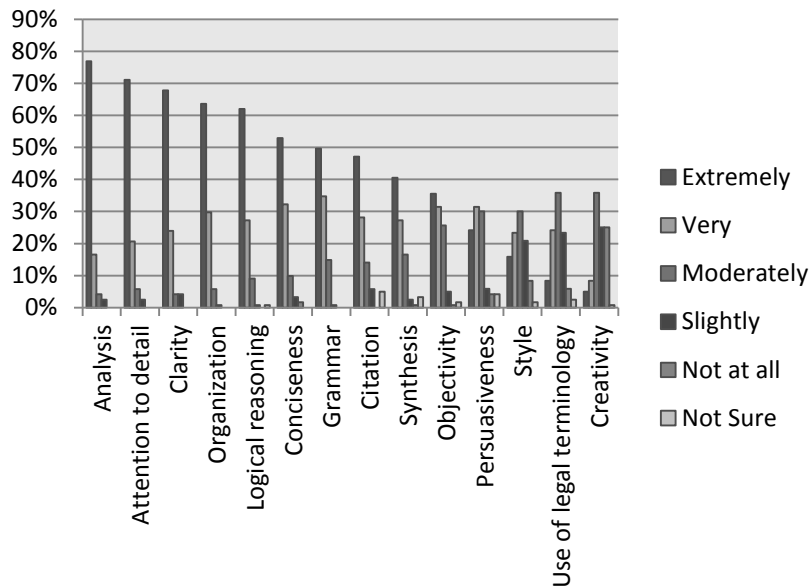
FIGURE 16  
 BASED ON YOUR EARLY EXPERIENCES IN LAW SCHOOL, HAVE YOU CHANGED YOUR OPINION AS TO WHAT THE STUDY OF LEGAL WRITING INVOLVES?  
 Survey 2, October 2007



In addition, we asked two questions designed to elicit information about the students' current perceptions of what legal readers expect from good legal writing. First, we asked, "Based on your legal writing instruction so far, how important do you think the following [characteristics] are in good legal writing?"<sup>45</sup> Figure 17 below numerates their responses.

45. See app. B, at question 9.

FIGURE 17  
 HOW IMPORTANT ARE THESE CHARACTERISTICS IN  
 GOOD LEGAL WRITING?  
 Survey 2, October 2007

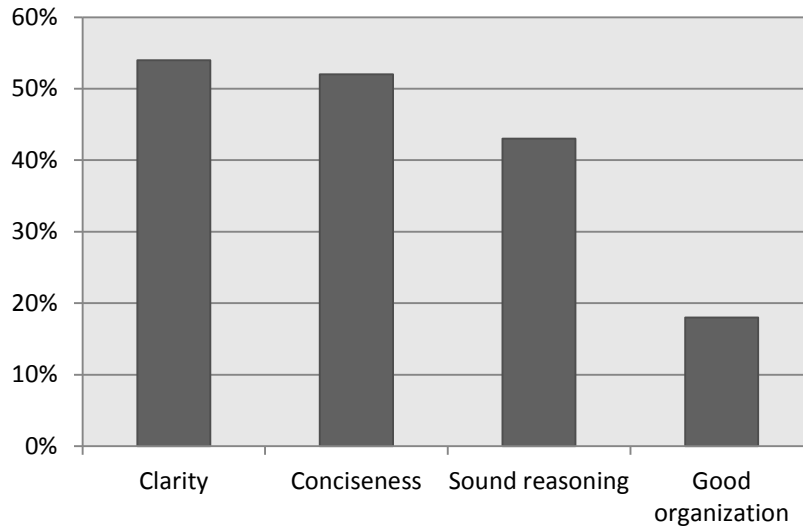


Second, we asked specifically, “Describe what you think the ordinary legal reader is looking for in legal writing.”<sup>46</sup> Figure 18 depicts the students’ responses.<sup>47</sup>

46. *See id.* at question 14.

47. This question was open-ended, and we grouped the responses into the categories shown in Figure 18. Some students’ responses fell into more than one category. Thus, the responses added up to more than 100 percent.

FIGURE 18  
WHAT DO YOU THINK THE ORDINARY LEGAL READER  
IS LOOKING FOR?  
Survey 2, October 2007

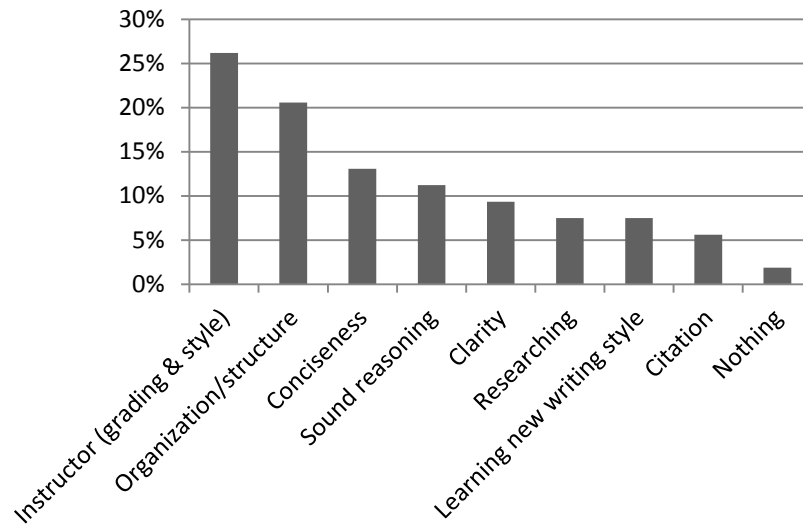


We also asked two questions about the students' reactions to their learning experience in legal writing thus far. First, we asked, "What has been the most difficult aspect of learning legal writing so far?"<sup>48</sup>

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48. *See id.* at question 16.

FIGURE 19  
WHAT HAS BEEN THE MOST DIFFICULT ASPECT OF  
LEARNING LEGAL WRITING SO FAR?  
Survey 2, October 2007

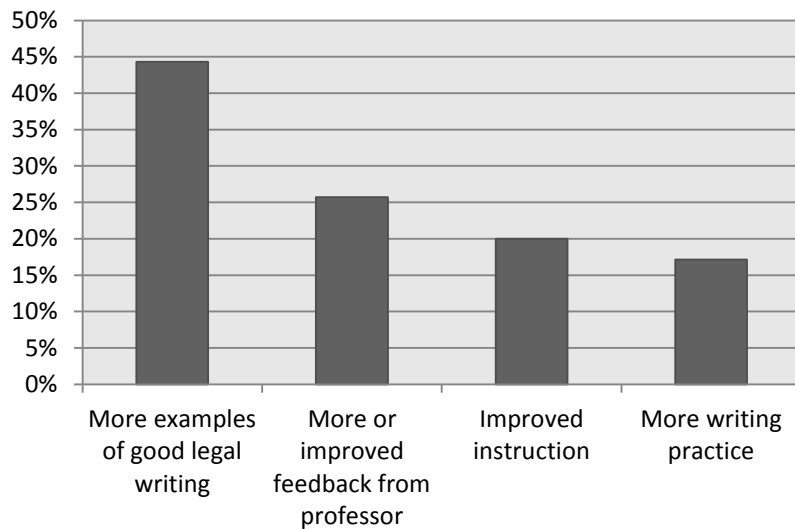


Second, we asked students to identify any teaching methods that they thought their legal writing professor should have used to enhance their early legal writing progress.<sup>49</sup>

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49. *See id.* at question 12. This question was open-ended, and we grouped the responses into the categories shown on Figure 20. Some students' responses fell into more than one category. Thus, the responses added up to more than 100 percent.

FIGURE 20  
WHAT INSTRUCTIONAL METHODS DO YOU THINK  
YOUR LEGAL WRITING PROFESSOR SHOULD USE TO  
ENHANCE YOUR EARLY LEGAL WRITING EDUCATION?  
Survey 2, October 2007

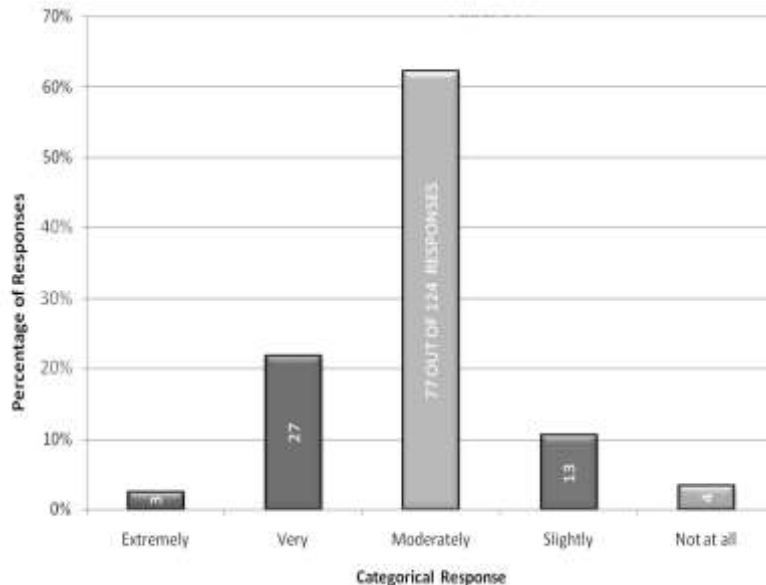


Finally, we asked the students to assess how their confidence at that moment—eight weeks into their legal writing course—differed from their confidence as they entered law school.<sup>50</sup> A comparison of the students' responses to this question, as illustrated by Figure 21 below, with their earlier responses<sup>51</sup> shows a marked difference in their confidence levels at these two stages.

50. See *id.* at question 8.

51. See *supra* fig. 10. The rather dramatic erosion of the students' confidence levels after eight weeks of legal writing classes is discussed fully *infra*, in Section V(C).

FIGURE 21  
CONFIDENCE IN LEGAL WRITING ABILITY  
Survey 2, October 2007



This dramatic erosion in confidence, though not unexpected, was perhaps the most troubling finding. Figure 21 is a startling visual representation of the importance of trying to pinpoint, as our title says, why beginning legal writing is so tough and what we can do about it.

*V. FOUR KEY COMMONALITIES AMONG BEGINNING LEGAL WRITING STUDENTS AT SCHOOLS X AND Y AND HOW THESE COMMONALITIES DRAMATICALLY IMPACTED THEIR EXPERIENCES IN EARLY LEGAL WRITING*

In studying the students' responses to our surveys, we ultimately identified four traits shared by many of the students, all of which were interrelated and all of which appeared to contribute to the fears and frustrations these students experienced in the course of their first-year legal writing classes, especially in the first several weeks. We believe it is likely that these traits may be common to many beginning legal writers, and later, we will explore how the legal writing community can acknowledge and address these commonalities. Here, we explore these four traits

individually, illustrating how the survey responses supported each one.

A. Many of These Beginning Legal Writers Did Not Have a Professional Context in Which to Place the Skills We Taught Them in the First Few Weeks of Legal Writing.

1. *Many Beginning Law Students Have a Very Limited Understanding of What the Study of Law Is.*

Reviewing the Survey 1 answers to the open-ended question about what the study of law involves,<sup>52</sup> we were encouraged to see that several foundational elements of legal education—including conducting legal analysis, reading cases and other legal authorities, and researching—each appeared in at least 30 percent of the responses. However, we were discouraged (though not surprised) to note that an alarmingly small percentage of responses mentioned other foundational elements of legal education, including writing, learning advocacy, and conflict resolution, in spite of the increasing emphasis law schools are placing on the teaching of such skills.<sup>53</sup>

A sample of the students' prose responses to this question revealed that many of these entering law students could articulate

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52. See *supra* fig. 5.

53. See John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 Wm. Mitchell L. Rev. 303, 317–318, 332–234 (2007) (recognizing that both the 1992 MacCrate Report and the 2007 Carnegie Foundation Report on the status of legal education emphasized the need to incorporate more practical skills instruction into the traditional curriculum). Just this past March, the accrediting body of the ABA issued a Statement of Principles of Accreditation that recognizes that skills education should be a fundamental goal of legal education. The Standards Review Committee said that legal education program review would include an evaluation of whether the program provides “the essential skills and abilities that graduates need to possess to be competent professionals.” See *Standards Review Committee, ABA Sec. Leg. Educ. & Admis. to B., Statement of Principles of Accreditation and Fundamental Goals of a Sound Program of Legal Education, May 6, 2009*, <http://www.abanet.org/legaled/committees/comstandards.html> (accessed June 23, 2009); see also Stuckey et al., *supra* n. 2, at 106 (stating that law schools should “follow the lead of other professional schools and transform their programs of instruction so that the entire educational experience is focused on providing opportunities to practice solving problems under supervision in an academic environment. This is the most effective and efficient way to develop professional competence.”); Katherine Mangan, *A Plea for Real-World Training in Law Schools*, *Chron. Higher Educ.* A6 (Jan. 19, 2007) (detailing the changes that some law schools have made to their curricula in response to the Carnegie Report’s recommendation that practical skills instruction be increased).



only a vague notion of what the study of law entails. Consider the following responses:

- “Studying what the law is and how to work with it.”
- “The history of law, how it has changed through the years, different outlooks on various laws, examining others [sic] opinions, and learning the basics of law as it is now.”
- “Learning the principles that support a structured society and how they evolve depending on time and place. Analysis of these rules so as to learn how to apply them or alter them, depending on conditions.”
- “A person’s ability to comprehend and understand all encompassing aspects of the issue at hand.”
- “Understanding and working with the rules that govern our society.”
- “Reading, analyzing, memorizing, repeat.”
- “Learning to identify and interpret specific statements regulating actions and behaviors and the rules or norms of their application.”
- “I think it involves [sic] expanding your mind and opening up to new ideas and theories and applying them to life and society.”
- “I have the absolute vaguest idea. I think it is studying how the legal system works and the laws that we will be required to work within. If I am wrong you should probably contact me before the first day of class!”<sup>54</sup>

Further, the first eight weeks of law school seemed to do little to orient these students to the reality of what the law is and how it is learned. A fairly large number of those who completed Sur-

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54. It may not be surprising that some students’ responses were far from the mark. Our assumption is that prior to law school, most of the surveyed students had not been exposed to education for a learned profession, in which the ultimate goal is to “practice” the profession. Thus, students who expected to learn to “identify ideas and theories” and learn “legal history” likely based their expectations on prior educational experiences, in which the ultimate goal was mastery of the subject matter. See e.g. James H. Block & Robert B. Burns, *Mastery Learning*, 4 Rev. Research in Educ. 3, 3–4 (1976) (discussing “mastery learning,” which they define as “an explicit philosophy” asserting that “under appropriate instructional conditions virtually all students can learn well, that is, can ‘master,’ most of what they are taught”). In legal education, however, while mastery of an area of the law may be expected by some professors, the chief aim is to equip students to find, understand, and use the law—that is, to “practice law.”

vey 2—46 out of 100 students who responded to the question—stated that their opinion as to what the study of law involves had not changed.<sup>55</sup> And among the students who said their opinion had changed, a common theme was that the law was not as concrete as they thought.<sup>56</sup> Here are some illustrative responses:

- “Yes, it is researching in order to make an educated guess; the law is not as definite as I thought it would be.”
- “Concepts are much more fluid than I anticipated. I am learning that there are few hard and fast ways to apply the concepts we learn.”
- “Yes. . . . The law itself as a discipline is more subjective and less empirical than I could have imagined.”
- “Yes, there is a great deal of ambiguity and lack of clarity.”

In short, Survey 2 suggested that many of these law students’ early weeks of law school were remarkably similar, and similarly frustrating, regardless of whether they entered law school with a 2.5 or a 4.0 GPA, a 165 or a 139 LSAT,<sup>57</sup> because they were trying to learn the law without an understanding of how the universe of the law operates.

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55. *See supra* fig. 15. Some students’ responses were a bit ambivalent. For example, one student reported, “I wouldn’t say my opinion of what the study of law involves has changed, but I definitely have learned the importance of developing a strong work ethic.”

56. Continued adherence to the Socratic Method may be partially responsible for these students’ inability to concretely define what the study of law entails. In response to the Socratic Method,

[s]tudents tend to memorize portions of the cases so that they can respond when called upon. They do not necessarily see the relationship between parts of the law, or how the elements or rules of a given case interrelate with the law as a whole. Moreover, they fail to see the purpose of the methodology. . . . In part, this failure . . . can be attributed to legal professors’ failure to be explicit about the goals and purpose of their methodology, and their failure to clarify the connections and interrelatedness. As a result, ‘students are often well into their [legal] education before they understand the operation of the legal method,’ and even more disturbing, their analytical skills have not been sharpened in a way that will prepare them to enter the practice of law thinking like lawyers.

Christine M. Venter, *Analyze This: Using Taxonomies to “Scaffold” Students’ Legal Thinking and Writing Skills*, 57 *Mercer L. Rev.* 621, 630–631 (2006) (quoting Kurt M. Saunders & Linda Levine, *Learning to Think Like a Lawyer*, 29 *U.S.F. L. Rev.* 121, 130 (1991)).

57. *See supra* figs. 3, 4.

2. *Many of These Beginning Law Students Had Only a Vague Notion of What the Study of Legal Writing Entails and How Difficult It Would Be.*

a. Survey 1

The students' early frustration described above was magnified when the students entered the skill-based realm of the legal writing class. As with the study of law in general, the students we surveyed began their first year with very little understanding of what the study of legal writing entails.<sup>58</sup> In other words, these new law students, for the most part, lacked any context in which to place the fundamental legal writing skills their professors were teaching them.<sup>59</sup> Most did not know where or how legal writing fit into the practice of law, or who would be using the writing they produced and for what purpose, much less what specific qualities made legal writing effective.

Our exploration of beginning students' attitudes and expectations about legal writing proceeded from the common understanding of lawyers generally, and legal writing professionals more specifically, that the central task of the legal writer is to produce a document—a memorandum, a trial brief, or an appellate brief, for example—that effectively communicates a correct, clear, concise answer to a legal problem. The typical readers of the document—those who must use it to make decisions—approach the task of reading the document with a set of well-defined, measurable needs and expectations as to content, structure, and appearance. Good legal writers must take great care to meet the user's needs and expectations.<sup>60</sup>

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58. *See supra* fig. 6.

59. *See Venter, supra* n. 56, at 627 (“Students must understand the conventions and practices of the law and how these are used by lawyers in a variety of contexts before the students can claim to be able to think like lawyers.”). In her important study of Generation X and Millennial law students, Professor Tracy McGaugh suggests that the lack of context is especially problematic to current law students. Generation X students (typically defined as those born between 1961 and 1981) and “Millennials” (typically defined as those born after 1982) tend to approach learning with a “just in time” mindset; “they are inclined to disregard pieces of information they do not currently need or do not see an impending need for.” Tracy McGaugh, *Generation X in Law School: The Dying of the Light, or the Dawn of a New Day?* 9 *Leg. Writing* 119, 128 (2003). “Without specific information on what they are trying to accomplish and why, Xers feel as though they are operating in the dark, leading to the ever-constant refrain of ‘you’re hiding the ball.’” *Id.* at 138.

60. Linda H. Edwards, *Legal Writing & Analysis* 69 (2d ed., Aspen Publishers 2007) (explaining that law-trained readers (lawyers and judges) “live in a legal community that

In terms of *content*, the user needs and expects the document to provide the following: (1) a concise, precise statement of the issue (the legal question being addressed); (2) a clear, precise, correct explanation of the rules of law that govern the resolution of the issue; (3) a thorough, well-reasoned, concise analysis of how the rules apply (or, in the case of a persuasive document, how the rules should apply) to the facts of the case; and (4) a short, helpful conclusion as to how the legal question will likely be, or should be, resolved.<sup>61</sup> In terms of *structure*, the user needs and expects each of these elements to be presented in a logical order and appreciates it when the writer takes pains to transition clearly and smoothly from one element to the next.<sup>62</sup> In terms of *appearance*, the user needs and expects (1) that the document will conform to the required format, if one is prescribed; (2) that it will contain adequate, correct legal citations; and (3) that it will be free from grammatical, spelling, and typographical errors.<sup>63</sup>

Thus, the benchmarks of good legal writing include clarity, precision, conciseness, and careful organization.<sup>64</sup> When these

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shares certain values, customs, and forms of expression”); *see id.* at 71 (“[L]aw-trained reader[s] read[] because they have a problem to solve. They are looking to your memo or brief to help them solve it.”).

61. This structural paradigm is commonly referred to as IRAC (or some variant such as CREAC or CREXAC or CRuPAC) and is frequently taught to beginning legal writers as a model for writing about legal analysis. *See e.g.* Mary Beth Beazley, *A Practical Guide to Appellate Advocacy* 61–76 (2d ed., Aspen Publishers 2006); Christine Coughlin et al., *A Lawyer Writes: A Practical Guide to Legal Analysis* 81–83 (Carolina Academic Press 2008); Richard K. Neumann, Jr., *Legal Reasoning and Legal Writing: Structure, Strategy, & Style* 92–96 (6th ed., Aspen Publishers 2009). Some legal writing professionals believe that IRAC has only limited value because of its rigidity. *See e.g.* Jane Kent Gionfriddo, *Dangerous! Our Focus Should Be Analysis, Not Formulas Like IRAC*, Second Draft (Bull. of Leg. Writing Inst.) 2 (Nov. 1995) (stating that “[c]omplex legal problems simply don’t break down easily into a statement of a ‘rule’ and a statement of ‘legal reasoning’ or ‘policy’”). However, IRAC remains one of the most widely-used tools for teaching beginning legal writers.

62. Edwards, *supra* n. 60, at 71 (“Law-trained readers are not comfortable with organizational surprises, and an uncomfortable reader is an unreceptive reader.”); Louis J. Sirico, Jr. & Nancy L. Schultz, *Persuasive Writing for Lawyers and the Legal Profession* 37 (2d ed., LexisNexis 2001) (recognizing that where a brief is badly structured, “[t]he reader must expend so much energy determining the organization of the argument that he or she has no energy with which to consider the argument itself. . . . Do not waste the reader’s energy. To be persuasive, make the argument’s organization easy to understand and encourage the reader to focus on the important points.”).

63. *See* Beazley, *supra* n. 61, at 5 (“You must avoid mechanical problems of all types.”). Beazley notes that “you hurt your credibility with the court when you make technical mistakes. . . . Although these errors may not seem legally significant, they waste time and hence annoy the reader.” *Id.*

64. *See* Bradley G. Clary & Pamela Lysaght, *Successful Legal Analysis & Writing: The*

key characteristics are not present in a document, it becomes more difficult to understand and use the analysis contained in the document. In some cases, a poor job of conveying the correct legal analysis may actually mislead the user, who is relying on the document for guidance in making important decisions about the case.<sup>65</sup>

Further, the user may be distracted by certain elements of writing that were often encouraged in law students' undergraduate experiences, including a varied vocabulary and complex sentence structure. Indeed, most legal writing professors actively discourage students from including these "colorful" elements in their legal writing.<sup>66</sup> Moreover, the user may not appreciate "creative writing," at least in the sense that many beginning students understand that term. While there is certainly a place for creativity in terms of legal thinking and analysis, many legal writing professors typically wait until students are comfortable with both the basic framework for legal analysis and the basic format for writing about it before encouraging students to creatively vary from them.<sup>67</sup>

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*Fundamentals*, at vi–vii (2d ed., Thomson/West 2006) (noting that while the process of legal writing may be messy, with many stops and starts and much writing and rewriting, "the final work product the audience sees should not be a stream of consciousness recitation of the messy analytical and drafting process. Rather, the final written work product the audience sees must be clean, simple, straightforward, logical, and flow irresistibly to a solution to the legal problem at hand.").

65. Bryan A. Garner, *Judges on Briefing: A National Survey*, 8 *Scribes J. Leg. Writing* 1, 7 (2002) (quoting the Honorable John M. Duhe Jr. from the Fifth Circuit, who says, "I am a busy judge. . . . Tell me only what I need to know to reach the result you want—and do it in a soundly reasoned manner. . . . The brief-writer is most helpful to me when she tells me not only what decision to reach but how to get there."); Laurel Currie Oates & Anne Enquist, *Just Memos* 5–6 (2d ed., Aspen Publishers 2007) ("[U]nlike undergraduate research papers, objective memos are not about impressing a professor with how much you know or how much work you did. They are about making sure the readers in one's own firm have a clear understanding of the case so that they can do whatever comes next, whether it be to advise the client about his or her options, do more discovery, file a motion, or decline to take the case.").

66. See *infra* Section V(D) for a more thorough discussion of this point. See also Anne M. Enquist & Laurel Currie Oates, *Just Writing: Grammar, Punctuation, and Style for the Legal Writer* 3 (2d ed., Aspen Publishers 2005) ("[V]ariety in writing, particularly variety in vocabulary, is not the typical virtue that it is in many other types of writing."); *id.* at 159 ("Like artists who try to force themselves to be original, legal writers who try to force themselves to be eloquent will probably end up creating something that is either absurd or monstrous.").

67. We do not mean to imply that creativity and style can never play a role in legal writing, especially if that term is broadened to include the kinds of writing that are often covered in advanced legal writing courses, such as appellate brief-writing, litigation drafting, and transactional writing. As we have stated, however, our study focused primarily

Given the students' lack of context in which to learn legal writing, it is not surprising that the number one response to the question of what learning legal writing is about was "Learning proper formatting and technical rules."<sup>68</sup> This result suggested to us that many of these beginning law students thought that good legal writing is primarily a matter of mechanics, which they were confident they could easily master.<sup>69</sup> In contrast, a much smaller percentage of students recognized that legal analysis would be foundational to the process of learning legal writing. Yet legal analysis is one of the first skills we teach in legal writing classes, and it occupies much of our instructional time in the first few weeks of the course. As with the study of law in general, Survey 1 suggested that these students entered the study of legal writing with only a limited understanding of what legal writing entails and why it would be so critical to their future success as lawyers.<sup>70</sup>

The students' responses to the open-ended question about what they thought legal writing entails before they had any law classes revealed just how amorphous their understanding of the task of the legal writer was at that point:

- "Learning about and practicing various forms of legal writing and research."
- "Learning to use legal jargon and understand it, formatting a paper to sound official, and learning how to research properly and put the discovered information into a paper."
- "Legal writing involves putting your interpretations and opinions on paper."
- "Learning how to craft the language of laws and how to analyze and write arguments."
- "This is most surely the study of how to use language as it relates to the law."
- "Being able to articulate laws and express their purpose."

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on the earliest phase of legal writing instruction, where the writer is simply conveying the results of an objective legal analysis to the reader, and in such documents, "creativity," in the sense that beginning students may define it, is often not highly valued.

68. *See supra* fig. 6.

69. *See infra* sec. V(C) for a detailed discussion of our research as to students' confidence levels.

70. Once again, this was true in spite of the broad range of the students' GPAs, LSAT scores, backgrounds, ages, and experiences. *See supra* figs. 1–4.

- “Composing a document that only makes sense to lawyers.”
- “I do not know specifically; I just know that it will involve a lot of hard work.”

These typical responses, none of which made any mention of learning how to meet the needs and expectations of the users of legal writing, suggest that some of these beginning law students viewed legal writing as simply an academic exercise, not as an integral skill that they will use daily when they practice law.

The students’ inability to accurately describe what legal writing entails was accompanied by an inability to differentiate between the key substantive elements of legal writing, which are centrally important to the legal reader, and the more mechanical elements. For example, two of the substantive choices—objectivity and synthesis—received only tepid endorsements, although legal writing professionals agree that these are key aspects of good legal writing.<sup>71</sup>

Strikingly, almost 60 percent of the students ranked the substantive skill of conciseness as “extremely important,” but a comparable number (about 62 percent) also rated the mechanical skill of grammar as “extremely important.” Similarly, 72 percent of the students rated the substantive skill of analysis as “extremely important” to good legal writing,<sup>72</sup> which would be encouraging were it not for the fact that nearly an identical percentage (71

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71. See John C. Dernbach et al., *A Practical Guide to Legal Writing & Legal Method* 205 (3d ed., Aspen Publishers 2007) (“The hallmark of a memo is objectivity.”); Oates & Enquist, *supra* n. 65, at 6 (noting that the importance of objectivity in legal memos is self-evident from the fact that they are typically referred to as “objective memos”); see also Jane Kent Gionfriddo, *Thinking Like A Lawyer: The Heuristics of Case Synthesis*, 40 Tex. Tech. L. Rev. 1, 3 (2007) (discussing the importance of case synthesis to the practicing lawyer and suggesting some methodologies for effectively teaching this skill). However, as shown by the number of “do not know” responses for the choice “synthesis,” a fair percentage of students did not understand what this term means in the legal writing context. Gionfriddo noted that even some practicing lawyers “do not intuitively understand how to synthesize cases and have never learned a methodology to do so.” *Id.* The students’ responses to this choice suggest that legal writing professors need to be sensitive to the terminology they use with their students. Throwing out a term such as “synthesis” might be confusing and even intimidating to beginning legal writers. We wondered whether, if we had used a more explanatory phrase, such as “examining the relationships between cases,” instead of the word “synthesis” on our survey, we would have seen a higher response rate for that item.

72. See *supra* fig. 7. Contrast this with the responses to the open-ended question about what legal writing entails, in which barely ten percent of the students included “analysis” in their description of what the study of legal writing entails. See *supra* fig. 6.

percent) rated the mechanical skill of citation as “extremely important.”<sup>73</sup>

We do not mean to suggest that the mechanical skills of legal writing, such as grammar and citation, are unimportant in producing a professional legal writing product. However, we believe strongly that at the beginning of first-year legal writing classes, learning to analyze, organize, and synthesize should take priority. The point we are stressing here is that many of the incoming students we surveyed seemed to recognize no distinction between analytical skills and mechanical skills, leading to a false confidence that mastery of the mechanics would equate to mastery of legal writing.

The fact that students were not able to properly assess the relative importance of these skills when they first began the task of learning legal writing underscores the need for legal writing teachers to spend more time orienting students to the context for legal writing and the requirements of the profession before asking them to put pen to paper.

b. Survey 2

The students’ need for this more focused orientation to the task of the legal writer was confirmed by their responses to the Survey 2, administered after approximately eight weeks of legal writing instruction. To document how the students’ understanding of the task of legal writing had changed during that critical period of early instruction, we followed up on several of the questions we had asked on Survey 1. For example, on Survey 2, we asked the students the following question: “Based on your early experiences in law school, have you changed your opinion of what the study of legal writing involves?”<sup>74</sup>

More than one-third of the students who answered the question said that their opinion had not changed.<sup>75</sup> However, the remainder of the students indicated that they had changed their opinion about legal writing in a number of significant ways.

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73. The rankings made by the students who reported having previous legal writing experience were virtually identical to the rankings made by the overall survey population. Compare fig. 7, with fig. 8.

74. See app. B, at question 6; *supra* fig. 16.

75. Of the ninety-five students who answered this question, thirty-six of them (almost 37 percent) reported no change in their opinion.



Viewed as a whole, the responses across this broad spectrum of students suggested that many were realizing for the first time that legal writing is not merely a mechanical, academic exercise. Rather, legal writing is a complex and often difficult process requiring a whole new skill set, including the key substantive skills of logical reasoning, analysis, synthesis, objectivity, and precision.<sup>76</sup> Here are some of the responses in this vein:

- “Yes, I expected more emphasis on writing mechanics.”
- “I have found that a lot of the assignments . . . are very subjective, and I prefer more of a definite set of instructions, which is what I thought legal writing would consist of.”
- “Prior to law school, I assumed that successful legal writers came up with creative and unique ideas—instead the best legal writers seem to be the ones who apply simple ideas to different fact patterns.”
- “Many of the topics I’m writing about involve very little creativity on my part, so the most important parts usually involve issue spotting, precise writing, and structured explanations.”
- “It is very concise, organized, clear writing. It does not involve particularly beautiful language.”
- “It’s very dense writing. Every sentence should not only be correct but also serve a function within that piece of writing.”
- “It has been more difficult than I thought it would be to learn the structure and language to use in legal writing.”
- “I really had no idea of what legal writing was. I thought it was about drafting complaints and answers and so forth. Now I realize that legal writing is very comprehensive and includes background research, communication among professionals, clients, staff, etc.”
- “I now believe the study of legal writing involves a lot more of [sic] synthesis of the law than I previously did.”
- “Legal writing is much harder and more structured than other writing that I have done.”

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76. *See supra* fig. 16.

We also repeated the question about how important students thought certain characteristics were to good legal writing, using the same list of items and the same response choices as in Survey 1.<sup>77</sup> The responses to this question showed that after eight weeks of learning legal writing, in spite of its newness and difficulty, the students had a better sense of the relative importance of the substantive elements of legal writing as compared to the more mechanical elements.<sup>78</sup> Though there was not a large increase in the percentage of students who recognized the importance of objectivity and synthesis, the data as a whole painted a more hopeful picture.

As Figure 7 showed, the Survey 1 responses revealed that before attending law school, the students ranked all of the items similarly. In contrast, the Survey 2 responses revealed that eight weeks into law school, students gave higher rankings to six substantive choices that many legal writing professors would endorse: analysis, attention to detail, clarity, conciseness, logical reasoning, and organization.<sup>79</sup> In further contrast to Survey 1, where students ranked analysis and citation as nearly equal in importance, the number of students who ranked analysis as “extremely important” on Survey 2 rose to 75 percent, while the number of students who ranked citation as extremely important dropped to only 43 percent. This difference demonstrates that by the eighth week of law school, the students were beginning to understand that it is the difficult substantive skill of sound legal analysis, more than mechanical skills such as citation and grammar, that enables their writing to fully meet the needs and expectations of the legal reader.

This change in the students’ view of legal writing was also reflected in their responses to a different question on Survey 2. We asked students this open-ended question: “Describe what you think the ordinary legal reader is looking for in legal writing.”<sup>80</sup> The responses were what any legal writing teacher would hope for: the top four categories of responses were clarity, conciseness, sound reasoning, and good organization.<sup>81</sup> Here is a representa-

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77. See app. B, at question 9.

78. See *supra* fig. 17.

79. Compare fig. 7, with fig. 17.

80. See app. B., at question 14; *supra* fig. 18.

81. Out of 110 prose responses, 59 responses (53.6 percent) mentioned clarity, 57 responses (51.8 percent) mentioned conciseness, 47 responses (42.7 percent) mentioned

tive response: “[The legal reader is looking for a] well-reasoned, concise argument in a set form with the information in the proper place, [and] correct use of and citation to authority.”

However, the students’ increasing awareness of the skills required for good legal writing and the expectations of the legal reader did not necessarily translate into success in accomplishing these tasks. We asked students, “What has been the most difficult aspect of learning legal writing so far?”<sup>82</sup> The students’ responses reflected that some of their greatest struggles involved those very same skills they had just identified as very important to the legal reader or to good legal writing: organization, conciseness, logical reasoning, and clarity.<sup>83</sup>

Also of concern was the percentage of students who reported having difficulty adjusting to their professor’s grading style; this statistic suggests that some students view legal writing success as dependent on figuring out and then catering to the idiosyncrasies of their professors. As we will explore more fully,<sup>84</sup> this is additional proof that legal writing teachers need to do a better job explaining that we stand in the place of the ultimate consumers of their writing and that the skills we teach are not a matter of our individual preferences, but are grounded in the everyday practice of legal professionals.

Overall, then, our study confirmed that these beginning legal writing students, regardless of their backgrounds in writing, their undergraduate majors, or their incoming GPAs or LSAT scores, experienced fear, frustration, and disappointment when legal writing professors asked them to learn specific skills without first assuring that they understood what the task of the legal writer is and why it matters that they perform the task well. They did not know what the law is; they did not know what legal writing is; they did not know how legal writing fits into the practice of law; and they had never been in the role of the “legal reader.” To expect them to sit through eight or ten hours of early legal writing

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sound reasoning, and 20 responses (18.1 percent) mentioned good organization.

82. See app. B, at question 16; *supra* fig. 19.

83. With regard to clarity, our anecdotal experiences suggest that this is one of the hardest skills for students to learn, perhaps in part because they do not fully understand what is meant by the term. The survey results backed this up: On Survey 3, more than 27 percent of School X students and more than 25 percent of School Y students indicated that learning to write clearly had been “very” or “extremely” difficult.

84. See *infra* sec. V(B).

classes, filled with discussions of IRAC, synthesis, analogical reasoning, rule extraction, and the like, and then somehow be able to deliver a clear, concise, well-reasoned document that meets the needs and expectations of the legal professional, may simply have been asking too much too soon.

B. Many of These Beginning Law Students Were Inexperienced In, and Often Resistant to, the Difficult Analytical Thinking That Is Fundamental to Good Legal Writing.

Our study also revealed that the lack of context that hindered many of these students' early legal writing progress was compounded by their realization that legal writing cannot be reduced to a step-by-step, "fill-in-the-blanks" process. In the countless hours we have spent conferencing with frustrated students, we have observed that even after several weeks of legal writing instruction, during which we have made every effort to stress the analytical nature of legal writing, many students continue to have difficulty (and in some cases to resist altogether) making the necessary adjustment from the "outside-in" approach to writing they had successfully mastered as undergraduates to the "inside-out" approach to legal writing. We assumed that in the past, these students had demonstrated the ability to master complex material and to describe it in writing with great success. Not surprisingly, our study supported this observation. However, before describing the results of our study in this regard, we will describe what we mean by the "inside-out" approach to legal writing.

Many law school students have been at or near the top of their classes throughout their educational experiences.<sup>85</sup> Their success may have often been largely attributable to their mastery of what we refer to as an "outside-in" learning process. In other words, they excelled at connecting with the professor, learning what the professor was looking for, and competently producing the required work. These students often received high marks on their written work if they (1) demonstrated a mastery of the subject matter, no matter how complex, and (2) recited that mastery,

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85. On Survey 1, 90 percent of School X students and 72 percent of School Y students reported an undergraduate GPA of 3.1 or higher; 65 percent of School X students and 46 percent of School Y students reported an undergraduate GPA of 3.4 or higher. *See supra* fig. 3.

often accompanied by editorial comments and opinions as permitted or required by the professor.

Specifically, many beginning law students have developed certain writing strategies that have worked well for them (they have become “habituated” to these strategies, as one writer has put it).<sup>86</sup> Linda Flower, a professor of rhetoric and a leading researcher in the cognitive processes of writing, has identified several commonly (and successfully) used strategies. One strategy is the “gist and list” strategy, in which

[t]he writer goes through the text looking for the main points, finds an idea or term that links them, and uses that to organize the text. This familiar strategy, the product of years of paraphrasing, summarizing, and recitation in school, is dominated by the text and fueled by the reading process . . . . It is fast, efficient, and faithful to the source.<sup>87</sup>

In the legal writing context, “[t]he . . . equivalent of this strategy is selecting only those cases, and those interpretations and applications of cases, that are favorable to one’s client. Such analysis is one-sided, unreliable, and contains many gaps and absences.”<sup>88</sup>

Another strategy, commonly referred to as TIA—“True, Important, I Agree”—relies on the student’s agreement or disagreement with the text and is “an effective method for selecting the ideas you like, already know, and could write on—and for deleting the rest.”<sup>89</sup> This TIA strategy may account in part for the confusion and shock that many novice legal writers experience when they are told that their “opinions” about the cases do not matter to the legal reader.

The result of beginning law students’ successful past use of these strategies is that their default writing plan may often be “simply to report what they now know.”<sup>90</sup> The essence of this approach has been captured by Provenzano and Kagan:

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86. Baker, *supra* n. 1, at 505.

87. Linda Flower, *Negotiating Academic Discourse*, in Linda Flower et al., *Reading-to-Write: Exploring a Cognitive and Social Process* 235–236 (Oxford U. Press 1990).

88. Baker, *supra* n. 1, at 507.

89. Flower, *supra* n. 87, at 235–236.

90. Baker, *supra* n. 1, at 508; *see also* Venter, *supra* n. 56, at 628 (pointing out that novice law students “do not know how to process the information, they only know they have to report it in some way”).

Novice legal writers . . . tend to view the writing process as linear, cannot remove themselves from their writing, and concentrate on telling what they know, irrespective of their audience's needs. The result is a "knowledge-telling" document that memorializes the writer's thought processes but is not of great use to the reader.<sup>91</sup>

For example, when asked to write about their analysis of cases students have read, "[t]heir predictable reaction is to write out in summary form what is in the decision: it is a way of getting that knowledge under control. But once the writers have filled up a few pages with that summary, it may seem to them that they have completed the assignment."<sup>92</sup> Stated another way, "[O]ne common feature of bad first-year legal writing is predictable: A text that appears to be all summary and no analysis."<sup>93</sup> This knowledge-driven approach to writing, which likely produced "A" papers in college, is "woefully inadequate for the goal-oriented writing of lawyers and judges."<sup>94</sup>

In summary, the excellent scholarship about novice legal writers details their often too simplistic view of the process of legal writing, which can be somewhat glibly described as: "I will tell you what I know; just tell me how you want it to look." This brings us back to our study, where many of the Survey 1 responses to the question "Describe what you think the study of legal

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91. Susan E. Provenzano & Lesley S. Kagan, *Teaching in Reverse: A Positive Approach to Analytical Errors in 1L Writing*, 39 *Loy. U. Chi. L.J.* 123, 162 (2007) (internal citations omitted); see also Baker, *supra* n. 1, at 504 ("[L]egal writing pedagogy's first task is to help students bridge the gap between their naive, passive, purposeless reading of legal text and the traditional interpretive purposes of lawyers who read cases and statutes wondering how they might be applied to their client's problem, favorably and unfavorably.").

92. Joseph M. Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development*, 1 *Leg. Writing* 1, 20 (1991).

93. *Id.* By way of contrast, Williams adds that the better writer "will have mastered the content of the decision." *Id.* That student's written product "will not be a running summary of the text of the decision, but rather a memo that uses that decision in the analysis of a problem." *Id.*

94. Baker, *supra* n. 1, at 511. As Baker puts it,

Legal readers expect more than a dispassionate report of existing legal authority and mechanical, conclusory application of that authority to the facts of a client's case. Experienced legal supervisors and decision-makers expect young lawyers to use a purposeful knowledge-adaptation strategy to reconstruct pre-existing legal authority in support of a rhetorical purpose, either to predict how a future decision-maker will decide the case or to make persuasive arguments to that decision-maker in order to advance the client's paramount interests.

*Id.*

writing involves” reflected this view.<sup>95</sup> Consider the following responses, with our emphasis added:

- “Being able to concisely and accurately *summarize* cases and statutes pertaining to the issue at hand.”
- “I think it involves *understanding* what you are reading, and being able to *portray* that in writing.”
- “Being able to *articulate* laws and *express their purpose*.”
- “It involves being able to *understand* the content and then *creating a synopsis* based on the case law given.”
- “Legal writing involves how to *relay the information* found in the laws to a given audience in a compact format.”

Because these beginning legal writers often viewed their task as simply reporting information, many of them appeared to believe that their professor’s primary job was to teach them the “magic formula” for conveying this information. Particularly troubling was the impression some students seemed to have that this “magic formula” was a matter of their professor’s preferences. When asked on Survey 2 what had been the most difficult part of learning legal writing in the first eight weeks, the highest percentage of responses—more than 25 percent—fell under the category “Professor (Grading/Style).”<sup>96</sup> Here are three examples:

- “Learning teacher’s more preferable writing style.”
- “Adhering to the professor’s standards of organization.”
- “The policy over practice. Instead of realizing that two sentences mean the same thing, our professor often refuses to accept sentences that do not follow the specific format that he/she believes in.”<sup>97</sup>

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95. See app. A, at question 9; *supra* fig. 6.

96. See *supra* fig. 19.

97. This comment may be reflective of a common attitude among Generation X and Millennial law students, who are less likely than their predecessors to view their professors as fundamentally different from themselves in terms of intelligence or moral authority. McGaugh, *supra* n. 59, at 130. Because these students tend to see the playing field as more level, they are “much more likely to communicate with teachers and supervisors in a way that is considered challenging or confrontational.” *Id.* McGaugh notes that this characteristic suggests that law professors need to be generous but gentle in giving students feedback, operating more as coaches or colleagues than as superiors. *Id.* at 139.

We interpret these responses as supporting our anecdotal experience that many students view successful legal writing not as a matter of producing careful, well-written analysis that will meet their reader's needs, but as a matter of satisfying their professors' perceived "idiosyncrasies" about what makes legal writing effective.

Another manifestation of the students' search for a "step-by-step" model for good legal writing was their repeated plea for more examples of good legal writing.<sup>98</sup> For instance, on Survey 2, we asked, "What other instructional methods do you think your legal writing professor should use to enhance your early legal writing education?"<sup>99</sup> Fifteen of the forty students (37.5 percent) who listed one or more specific suggestions said that they would have liked to see more examples of good legal writing. Here are a few actual responses in this vein:

- "I wish that we had some real-world examples of what our writing should look like that had been vetted by the professor to be sure that they adhered to the standards that she sets. I also think it would be helpful to see other students' work. I always feel like I'm writing, but I'm not sure how it is supposed to look in the end."
- "More examples of well-written pieces."
- "Examples of good legal writing. A better idea of what to aspire to."<sup>100</sup>

We believe that these students' desire for examples of good writing they could emulate resulted in part from their desire to be able to fit legal writing into a formula that would correspond to

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98. The wisdom of providing samples of actual legal writing (both good and bad) as a teaching tool is the subject of ongoing debate in the legal education community in general and in the legal writing community in particular. See Christine N. Coughlin et al., *See One, Do One, Teach One: Dissecting the Use of Medical Education's Signature Pedagogy in Law School Curriculum*, 26 Ga. St. L. Rev. 361 (2010) (reviewing the current debate on the use of samples in legal education and suggesting some strategies for successful use of samples in this context).

99. See app. B, at question 12; *supra* fig. 20.

100. In one unusual response, a student wrote, "Maybe give us more examples of different variation so we don't get into a habit of using the same format every time we write." This response is particularly revealing, and particularly troubling, because it suggests that there are students who, after eight weeks, have not yet understood that the legal reader needs and expects a document with predictable structure and format and is, in fact, distracted and frustrated by "variations" to the expected structure and format.



their formerly successful “outside-in” approach and produce successful results each and every time.

Interestingly, the results of Survey 2 indicated that, in fact, many of these students *were* being exposed to examples of good legal writing in the first few weeks of the class. Of the 125 students who responded to Survey 2, 87 of them (70 percent) said that their professor had “frequently” or “sometimes” given them examples of legal writing as part of his or her teaching strategy, and the majority of them (68 percent) rated this teaching method as “extremely effective” or “very effective.” However, by March of the students’ first year, when we administered Survey 3, a full 40 percent of the surveyed School X students (all of whom by definition had also responded to Survey 2) said that studying examples of legal writing had been only “moderately” effective, and almost 13 percent said that it was “slightly” or “not at all” effective.<sup>101</sup> One student wrote, “Reading others’ work seemed merely to offer a template. It didn’t aid in how one puts their [sic] own ideas together and transcribes them.” Taken as a whole, the data from Surveys 1 and 2 confirm that many beginning legal writers are shocked and dismayed when it dawns on them that the “read and regurgitate” method of writing, so useful to them in the past, is of no use whatsoever in the realm of legal writing. The realization that effective legal writing requires sound legal analysis—which simply cannot be learned from the “outside-in”—is painfully reflected in many students’ responses to the Survey 2 question asking whether they had changed their opinion of what the study of legal writing involves.<sup>102</sup> Here are some examples:

- “Yes, I had no idea how to analyze a fact set based on precedence [sic] and using the reasoning of the court [to] figure out how a jury might decide.”
- “Legal writing is highly analytical.”
- “Yes, I now have a better understanding of the importance of analysis and what it entails.”
- “More step by step analysis and less conclusion.”

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101. The numbers from School Y were considerably higher on this point, with 69.6 percent responding that studying examples of legal writing was “very” or “extremely” effective.

102. See app. B, at question 6; *supra* fig. 16.

However, with this new awareness often came added frustration when these students were not able to master the “inside-out” process quickly or easily. On Survey 2, when asked what had been most difficult about learning legal writing,<sup>103</sup> responses such as the following suggest the difficulty some students were experiencing:

- “Learning the TREAC system.”<sup>104</sup>
- “Determining what the reasoning of the court was.”
- “What analysis is to [sic] conclusory.”
- “Being able to synthesize concepts in a concise way.”
- “Synthesis.”
- “Applying the rule to the case at hand after figuring out what the rule is.”
- “The Rule paragraph, and figuring out what I am looking for in the cases.”

Moreover, this difficulty often continued through the first semester and well into the second. For example, on Survey 3, several of the students’ responses to this same question mentioned their realization that legal writing was much harder than they had thought it would be. Here are a few responses reflecting how the students’ opinions of what the study of legal writing involves had changed:<sup>105</sup>

- “[Legal writing] is much harder and much different than any other writing I have ever done.”
- “Much more rigorous than I expected. Cannot just rely on being a good writer in the past.”
- “Legal writing is a little more difficult than I anticipated, but I think I am *beginning* to get the hang of it” (emphasis added).

To summarize, our study confirmed that many of the beginning law students we surveyed were predictably, and understandably, resistant to the difficult process of learning to write

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103. See app. B, at question 16; *supra* fig. 19.

104. TREAC is a variant of the IRAC paradigm for legal analysis, discussed *supra* n. 61.

105. See app. B, at question 4.

about the law from the “inside-out.” Moreover, some legal writing professors may unwittingly delay the transition to “inside-out” writing by focusing heavily in the first few weeks on what has been described as “genre based” teaching: “teaching the format of the memo, how to write the facts objectively, and how to CREAC.”<sup>106</sup> Our study suggests that our students would be better served if we focused instead on the thinking skills required to transform their writing from “knowledge telling” to “knowledge transforming.”<sup>107</sup>

C. Many of These Beginning Legal Writers Faced Eroding Confidence When They Realized That Their Previous Successes in Other Disciplines Did Not Guarantee Quick Mastery of Legal Writing.

As our survey revealed, one possible detour on the road from “outside-in” thinking and writing to “inside-out” thinking and writing was the remarkable level of confidence that many of these beginning law students expressed in both their general writing ability and their ability to learn legal writing in particular. A certain level of self-confidence is a common trait of successful students (and successful lawyers); indeed, the students we surveyed were extremely optimistic about their future success in legal writing. However, a seemingly inevitable plummet in confidence occurred as they realized just how difficult legal writing is, and this plummeting confidence very likely became an obstacle to their progress.<sup>108</sup> We theorized that if we could find ways to prevent, or

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106. Venter, *supra* n. 56, at 639.

107. *Id.* Venter writes,

In legal writing, the act of writing an office memo should be viewed as a knowledge transforming task, but all too often, it is not because students are unclear about precisely what is being required of them. Because parts of the memo, such as describing the facts of the case and describing the fact patterns and holdings of similar cases, seem to be knowledge telling tasks, rather than knowledge transforming tasks, students mistakenly think that memo-writing is formulaic—merely plugging in the facts, CREAC/IRAC, and the student is finished. Students need to be taught more precise thinking strategies for each part of the memo, so they come to see the memo as knowledge transforming and begin to see themselves as legal authors who contribute to the ongoing development of the law.

*Id.*

108. See Sheila Rodriguez, *Using Feedback Theory to Help Novice Legal Writers Develop Expertise*, 86 U. Det. Mercy L. Rev. 207, 239 (2009) (recognizing that “[t]he typical first-year law student’s self-confidence and desire for success can be ‘disruptive and divisive’”) (citing Ron Fagan & Paula Squitiera, *The Relationship between Personality Characteristics*

at least ameliorate, this crisis of confidence, we could offer our students a better early legal writing experience.<sup>109</sup> Therefore, one goal of our study was to document just how confident the entering students were and what happened to that confidence as they made their way through their early legal writing instruction.

As Figure 9 illustrates, the beginning students we surveyed were, as a whole, remarkably confident in themselves as writers.<sup>110</sup> Only about 7 percent expressed any reservations about their general writing ability, and well over half were either “extremely” or “very” confident about it.

We suspected, and Survey 1 confirmed, that these results were largely due to the sheer volume of writing that the students had done earlier. Of the 265 students who responded to Survey 1, nearly every single one had written research papers and essays in college, and a large number had written short opinion pieces.<sup>111</sup> These students may have reported a high confidence level in their general writing ability simply by virtue of the fact that they had successfully completed these kinds of writing projects in their earlier academic careers.

At least half of these students reported that they had also performed “creative” writing or “journalistic” writing, and a similarly large number reported they had done “technical” writing. Assuming that evaluation of these kinds of writing is usually based on the quality of the writing itself, it seems reasonable that these students had likely received much feedback on their writing (probably positive feedback, since law students tend to have been

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*and Academic Success in Law School*, 16 *Evaluation & Res. in Educ.* 95, 102 (2002)).

109. In her article on orienting first-year students to law school, Paula Lustbader devotes an entire section to student self-confidence. See Paula Lustbader, *You Are Not in Kansas Anymore: Orientation Programs Can Help Students Fly over the Rainbow*, 47 *Washburn L.J.* 327, 361 (2008). Lustbader writes,

Confidence is a necessary component of being a successful lawyer and a successful person. . . . On the other hand, when students are overly confident, they may underestimate the degree of challenge and underprepare, which can result in failure. . . . Orientation programs should . . . help students gauge what they should be confident about, where they may be overconfident, and help them assume a more humble approach.

*Id.* at 361–362.

110. *Supra* fig. 9.

111. See *supra* fig. 11. All of the numbers drop off significantly for writing done either in graduate school or at work. As Figure 2, *supra*, showed, a high percentage of entering law students were twenty-three years old or younger. Making a broad assumption, it is likely that those students had not gone to graduate school or done significant professional work at all in their lives to date.

successful in their previous endeavors).<sup>112</sup> Thus, it is not surprising that they were highly confident in their general writing ability.

As for the other half of the survey population, the data is less clear as to whether these students had ever been evaluated specifically on their writing ability and if so, how effective the evaluation had been.<sup>113</sup> Specifically, on Survey 1, we asked students to list courses they had taken in which they were evaluated primarily on writing skills and ability rather than on their mastery of the subject matter.<sup>114</sup> A large number of students reported taking such courses, but upon examination of the titles of these courses, it appeared to us that in at least some of them, the substance of the writing may have been the primary indicator of performance, rather than the writing itself.<sup>115</sup> Here are some of the course titles that gave us pause:

- “History”
- “Topics on Adolescent Psychology”
- “Introduction to the Novel”
- “Civil Liberties”
- “The Life of the Mind”
- “Miscarriages of the Social Justice System”
- “History of Central America”
- “Stories of Communism”
- “Pride and Prejudice”

Moreover, of the courses listed in which we could assume that writing *was* central to the evaluation process, most were basic

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112. The legal writing academy has long recognized that success in other kinds of writing will not automatically translate to success in legal writing. “The conventions of thought and expression in disciplines differ, enough so that what one learns in order to write in one discipline might have to be unlearned to write in another.” Mark Richardson, *Writing Is Not Just a Basic Skill*, 55 *Chron. Higher Educ.* A47 (Nov. 27, 2008).

113. “[S]ince law is above all an art of language, it is well for the student to have had a great deal of experience with writing and with close, intelligent criticism of this written work.” Cent. Mich. U., *Pre-Law Discussion* 4, [http://www.chsbs.cmich.edu/Law\\_Center/](http://www.chsbs.cmich.edu/Law_Center/) (accessed Feb. 4, 2010).

114. See app. A, at question 3.

115. For obvious reasons, we were not able to verify the exact content of the listed courses; we based our assessment of the results only on the course titles given to us by the students. Moreover, even assuming the students’ writing skills *were* evaluated in courses such as these, we had no way to assess the thoroughness or consistency of the evaluation.

English courses such as freshman composition.<sup>116</sup> The strategies students employed successfully in such courses, however, may be of only limited usefulness in early legal writing. When students begin their legal education, they are entering a new discourse community; writing successfully in the legal discourse community requires them to adjust the writing habits that may have led them to success in other discourse communities, such as journalism, engineering, business, even political science. One leading legal writing scholar and professor has compellingly expressed the difference: “[W]hile the unspoken goal of undergrad writing may have been to make simple things complex, the goal in most legal writing is to make complex things seem simple.”<sup>117</sup>

As legal writing professor Mary Ray has observed, the overall difference in the goals of undergraduate writing and the goals of legal writing translates into some very specific differences in the writing that is expected. For example, Ray notes that in undergraduate writing, the reader prefers “sophisticated writing” (including a “wide vocabulary and more complex sentences”), while in legal writing, “the reader prefers clarity and readability” (precise words and shorter, simpler sentences).<sup>118</sup> In undergraduate writing, “the document often has a page requirement,” while in legal writing, “[t]he document often has a page limit.”<sup>119</sup> In undergraduate writing, “[t]he writer often chooses the organization and format of documents,” while in legal writing, “[t]he court or senior attorney has rules about the organization and format, which the writer must follow.”<sup>120</sup> In undergraduate writing, “[t]he reader usually values originality,” while in legal writing, “[t]he reader values accuracy.”<sup>121</sup> Thus, while many of the students we surveyed had commendable success in their undergraduate writing courses, and would likely be able to eventually reach a modicum of success in legal writing, they seemed overwhelmed and

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116. A smaller number of students had taken technical writing courses of some kind, a very few had taken actual journalism classes, and an even smaller number indicated writing evaluation in courses such as “Introduction to Rhetoric.”

117. Anne M. Enquist, *Talking to Students About the Differences between Undergraduate Writing and Legal Writing*, 13 *Persp.* 104 (Winter 2005).

118. Mary Barnard Ray, *The Basics of Legal Writing* 8 (rev. 1st ed., Thomson/West 2008).

119. *Id.*

120. *Id.*

121. *Id.*

confused by the newness and unexpected difficulty of the legal writing milieu.<sup>122</sup>

Perhaps most astonishing in light of the high confidence levels reported by the students is the fact that of the 265 students who responded, almost 50 percent (121 students) said they had never taken a single course in which they were evaluated primarily on their writing ability. The incongruity of this result startled us; it seemed unbelievable that so many of the same students who had never been told whether they could write well would express “extreme confidence” in their general writing ability.

In sum, the Survey 1 data revealed that (1) some of these beginning law students’ only significant writing to date had been in a traditional college setting (writing a theme for freshman composition or a term paper or other research assignment), where the skills that were valued may have been different than those that are valued in legal writing; (2) the writing evaluation some of these students received may have related not to their actual writing skills but to their mastery of content; and (3) some of these beginning law students had never taken any course that focused primarily on their writing skills. Nonetheless, the vast majority of the students we surveyed entered law school brimming with confidence in their general writing ability.

Not surprisingly then, Survey 1 revealed that for most of these students, their high confidence in their general writing ability was mirrored by their high confidence in their ability to learn legal writing. We asked students, “How confident are you about learning legal writing?”<sup>123</sup> The responses to this question were skewed even more positively than the responses about confidence in general writing ability.<sup>124</sup> Of the 261 students who responded, 183 of them (more than 70 percent) chose the top two response categories, reporting that they were “very confident” or “confident” in their ability to learn legal writing. An additional 55 students (21 percent) reported that they were “somewhat confident.” Only twelve students (4.6 percent) admitted they were “not at all” confident.<sup>125</sup>

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122. See Oates & Enquist, *supra* n. 65, at 13 (noting as an example that while most English majors ultimately do “exceptionally well in their legal writing classes, . . . their success tends to happen more toward the end of the course rather than the beginning”).

123. See app. A, at question 10.

124. See *supra* fig. 10.

125. Of the 265 total students who completed Survey 1, 254 responded to the “general

However, perhaps even more so than with their confidence in their general writing ability, the data from the survey suggested that their confidence in their ability to learn legal writing was premature. One reason for this premature confidence was that most of the students we surveyed did not have a clear idea of what legal writing would entail. As discussed earlier,<sup>126</sup> the students' responses to the question about what legal writing entails were quite varied, and many were strikingly vague. It seemed to us that without a clear understanding of what legal writing is, these students had no real basis for feeling as confident as they did about their ability to learn it other than a lifetime of positive feedback within other discourse communities.

Another likely reason for some students' premature confidence was that they had some writing experience that they believed could be classified as "legal writing." The largest percentage of students who reported having done some prior legal writing—53 out of 103 (or 51 percent)—said they had written case briefs.<sup>127</sup> However, even if these case briefs were similar in format to the early case briefs many law students write, it is unlikely that they contained the depth of legal analysis required in law school.<sup>128</sup>

Another 20 students (about 19 percent) reported having written litigation or transactional documents.<sup>129</sup> Only 20 students indicated that they had done any type of objective legal writing before law school, and only 23 indicated experience writing persuasive pieces such as trial briefs or motions.<sup>130</sup> Thus, assuming the memos and briefs these students wrote were somewhat similar to those written by first-year law students, this still leaves only a small percentage of students who had any relevant legal writing experience before beginning law school. The majority of

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writing confidence" question and 261 responded to the "legal writing confidence" question. Thus, there were a few students who did not complete these questions.

126. See *supra* sec. V(A) for a discussion of what beginning law students believed the study of legal writing would entail.

127. See *supra* fig. 12.

128. See Coughlin et al., *supra* n. 61, at 55 (describing in detail the many differences between expert and novice readers of judicial opinions).

129. See *supra* fig. 12. Thirty-one of the students who completed the survey listed a job title such as "paralegal," "legal assistant," or "law clerk" in their past employment history. These may have been the same students who reported having written litigation and transactional documents.

130. See *id.*



School X and Y students entering their first year of law school, however, had no legal writing experience that was likely to be very useful as they encountered their early first year legal writing assignments. Either way, with or without prior legal writing experience, the supreme confidence the students reported in their ability to learn legal writing was “setting them up for a fall,” as we learned in Survey 2.

On Survey 2, administered in mid-October, we asked, “Taking into account your law school experience so far, please indicate how confident you now are in your legal writing ability.”<sup>131</sup>

As shown in Figure 21, the students’ responses confirmed that they had experienced the steep erosion in confidence that we had predicted would occur in the first eight weeks of legal writing. The graph of their confidence levels before law school was skewed dramatically to the positive side; eight weeks later, the graph looked closer to the traditional bell curve.<sup>132</sup> Out of 124 students who answered this question, 77 of them (62 percent) were only “moderately” confident in their abilities at that moment, and 17 of them (14 percent) were “slightly” or “not at all” confident. This left only 30 students (24 percent) who still reported the highest confidence levels.

Perhaps even more than the visual depiction shown in the graphs, the students’ responses to the open-ended questions on Survey 2 bore out their plummeting confidence levels. Here are some of the statements we considered particularly revealing:

- “Law school has made me realize I’m horrible at writing like a lawyer.”
- “I feel like I don’t know anything anymore.”
- “I feel that I am not ready to write in legal terms and as a result am not equipped to be an adequate legal writer.”

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131. See app. B, at question 1; *supra* fig. 21. On Survey 1, we asked how confident the students felt about their ability to learn legal writing. On Survey 2, we phrased the question slightly differently, asking them how confident they were at that moment in their legal writing ability. We sought to differentiate between the students’ prospective assessment of their legal writing readiness and their actual confidence level after eight weeks of exposure to what legal writing really entails. We also repeated the question about how confident they were that they could learn legal writing in the remaining months of instruction; those results changed only slightly between Survey 1 and Survey 2.

132. Compare fig. 10, with fig. 21.

- “Prior to beginning this program I felt I was very strong as a writer.”
- “I no longer feel as confident about my abilities.”
- “My apprehension about writing has been strengthened; my confidence has been shakened [sic].”

Moreover, while some drop in student confidence levels is probably inevitable simply because legal writing is difficult, the current generations of law students, “Generation X” and “Millennials,” may be particularly likely to overestimate their ability to succeed, making the inevitable drop in confidence even more impactful. As the scholarship in this area shows, these students have often been rewarded simply for showing up and making an effort.<sup>133</sup> Law school forever alters that paradigm for educational success. As our study confirmed, the frustration, and sometimes even resentment, these students felt when their confidence in their ability to learn legal writing was challenged often stood as a detour, if not a roadblock, to progress in learning legal writing.<sup>134</sup>

Significantly, at both School X and School Y, the erosion in the students’ confidence seemed to peak just at the midpoint of the first semester, when law school in general, and their legal writing assignments in particular, became more demanding.<sup>135</sup>

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133. See Lustbader, *supra* n. 109, at 361–362 (“Millennials’ . . . educational experiences focused on building self-esteem, and they grew up getting an award or trophy just for showing up at the soccer field.”).

134. “Predictably, the student who encounters demanding assignments and significant criticism for the first time in the law school classroom will react with confusion and hostility.” Joan Catherine Bohl, *Generations X and Y in Law School: Practical Strategies for Teaching the MTV/Google Generation*, 54 *Loy. L. Rev.* 775, 789 (2008).

135. At this point in their doctrinal classes, students may be experiencing heavier workloads as professors gradually cease to accommodate their status as novices. More subtly, but perhaps equally distressing to students, their doctrinal professors may be exposing them increasingly to “complex forms of working knowledge about particular ways to reason, understand the law, and appreciate lawyers’ roles, while at the same time confronting them with subtle forms of uncertainty embedded in each of these major facets of a lawyer’s life.” Judith Wegner, *Law Is Gray: Thinking Like a Lawyer in the Face of Uncertainty* 25–26 (draft 2003) (quoted in Stuckey et al., *supra* n. 2, at 23) (unpublished manuscript on file with Roy Stuckey). As a corollary to this latter problem, proponents of the “Humanizing Legal Education” movement posit that the traditional law school curriculum teaches students that “tough minded analysis, hard facts, and cold logic are the tools of a good lawyer, and it has little room for emotion, imagination, and morality.” *Id.*; see also Lawrence S. Krieger, *Human Nature As a New Guiding Philosophy for Legal Education and the Profession*, 47 *Washburn L.J.* 247, 280 (2008) (noting that traditional classroom teacher-student interactions train students to believe that values and morals are unimportant in the law and that argumentation skills ought to be the highest aim). Thus, the

At School X,<sup>136</sup> prior to Survey 2, students had written one short memo (called Memo 1) emphasizing the basic IRAC format for writing about case analysis and one closed-research objective memo (called Memo 2) requiring synthesis of two to three cases. Some students had conferences with their professors during the Memo 2 writing process; others did not. In mid-September, students had a week of legal research instruction. Then, in early October, just before we administered Survey 2, students received their first open-research memo assignment (called Memo 3). This assignment required them to identify the issue(s) for analysis, to research to find relevant authority, to analyze and synthesize cases, and to produce a seven- to ten-page objective memo. This assignment was due in early November. While almost all School X professors held individual conferences with their students during the Memo 3 writing process, these conferences generally occurred in mid- to late-October. Meanwhile, Memo 2 was not returned until mid-October, after students' work on Memo 3 was well underway.<sup>137</sup>

At School Y,<sup>138</sup> the first-semester legal writing course included five small writing assignments that paved the way for a longer sixth assignment. This sixth assignment was a five-page closed research memo that counted for 50 percent of the students' first-semester grade.<sup>139</sup> At the time we administered Survey 2, School Y students had completed four of the five shorter assignments

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heavier workload, the newness and ambiguity inherent in studying the law, and the emphasis on argumentation skills over values and morality may create "the perfect storm" when students reach the midpoint of the first semester.

136. Information about the first-semester program at School X was supplied by the Director of School X's Legal Research and Writing Program, whom we do not name here in order to maintain the anonymity of School X.

137. Lack of feedback was a common frustration expressed by several Survey 2 participants. As one School X student put it, "It's hard to write [Memo 3] effectively with no feedback whatsoever on [Memo 2]. We won't get [Memo 2] back until we've already been writing [Memo 3] for 3 weeks." In fact, partly in response to the data generated by Survey 2, School X decided to revise its fall schedule for the 2008–2009 year so that any given memo assignment was not distributed until the prior memo assignment had been graded and returned with professor feedback. According to School X's Director of Legal Research and Writing, this change was received positively by the students, and the policy remains in effect.

138. Information about School Y's first-year program, including a Fall 2007 syllabus, was supplied by the director of the Legal Research and Writing Program at School Y, whom we do not name here in order to maintain the anonymity of School Y.

139. Unlike School X students, who wrote an open-research memo in the fall semester, School Y students did not write an open-research memo until the spring semester.

and had been afforded the opportunity to rewrite the first three assignments. According to the syllabus, individual conferences did not take place until early November, well after students took Survey 2. In sum, when School Y students completed Survey 2, in early October, they were receiving new memo assignments at a rapid pace while continuing to revise prior memos, and they had not yet had the benefit of scheduled individual conferences with their professors. Given the demands that were being made of the students at both School X and School Y in the first eight weeks of the fall legal writing semester, and given the inherent difficulty of learning legal writing, we were not surprised by the level of frustration and discouragement that many students expressed in Survey 2, paralleling the steep decline in their confidence.

As we will explore later in Part VI, our study suggested to us that while legal writing professors may not be able to head off the crisis of confidence that seems to detour so many first-semester students, we can more actively help our students navigate through the detour. We do not think this will require major curricular changes in most legal writing programs. Rather, the changes we outline later in this Article center around promoting students' early recognition of the coming roadblocks and seizing opportunities to help them understand that the roadblocks themselves can be invaluable parts of their journey to legal writing competence.

D. Many of These Beginning Law Students Became Disillusioned When They Realized That They Could Not Rely on Their Prior Strengths as Writers to Guarantee Immediate Success in Legal Writing.

In addition to the disappointment that stemmed from many of the surveyed students' overconfidence in their ability to learn legal writing, the responses to Survey 1 and Survey 2 demonstrated that many students incorrectly assessed their strengths and weaknesses as writers when viewed through the lens of what good legal writers must be able to do. The survey responses from the students before they began law school<sup>140</sup> demonstrated three misconceptions about their strengths and weaknesses as writers: (1) some students did not have the general writing strengths they

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140. See *supra* figs. 13, 14.

believed they had; (2) the qualities many students reported as writing strengths may actually be weaknesses in legal writing; and (3) the qualities many students reported as writing weaknesses are often strengths in legal writing.

The most often reported strengths included (1) organization; (2) conciseness; (3) clarity; (4) grammar and punctuation; and (5) analysis. A sampling of the students' responses shows just how firmly they believed these were their strengths:

- “I have a strong ability to convey thesis or argument of the paper.”
- “There is a good flow to my writing and organized thoughts.”
- “I have a solid ability to put thoughts clearly in writing . . . and am a good editor.”
- “My writing is simple and easy to read and understand.”
- “My writing is well organized and is easily followed by a reader.”
- “My writing is extremely clear and effective.”
- “My greatest strength is in structuring papers for clarity.”

However, legal writing professionals would likely be quick to agree that it is in these very areas—analysis, organization, clarity, and conciseness—that most beginning legal writers struggle. In fact, legal writing professors typically must start from scratch when teaching these skills,<sup>141</sup> and most legal writing textbooks devote entire units to teaching students how to perform legal analysis and how to write about it in an organized, clear, concise way.<sup>142</sup>

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141. Grammar was also among the top choices, and again some of the responses belied the students' claimed proficiency in this skill. We tend to view grammar as an ancillary skill, and in fact, some legal writing professors do not view the teaching of grammar as a primary responsibility. The trend appears to be toward addressing deficiencies in grammar skills outside of the legal writing classroom, often through the use of writing centers, writing tutors, and other remedial writing programs. According to the 2008 survey of the Association of Legal Writing Directors (ALWD), of the 181 programs represented in the survey, 10 employed a full-time writing specialist, and 33 employed a part-time writing specialist. ALWD & Leg. Writing Inst., *2008 Survey Results* 16 (2008) (available at [http://www.lwionline.org/uploads/FileUpload/2008SurveyResults\(REVISED\).pdf](http://www.lwionline.org/uploads/FileUpload/2008SurveyResults(REVISED).pdf)) [hereinafter *2008 Survey Results*].

142. This point is evident from the very titles of many of the preeminent legal writing textbooks. See e.g. Charles R. Calleros, *Legal Method and Writing* (5th ed., Aspen Publishers 2006); Veda R. Charrow et al., *Clear and Effective Legal Writing* (4th ed., Aspen

In terms of general writing skills, the students' responses themselves demonstrate that in some cases, the students were not as skilled as they thought they were when it came to clarity, conciseness, and organization. For example:

- “My main strengths are my ability to get my point across in a way in which its [sic] easy to understand and comprehend.”
- “I have an ability to explain complex subjects concisely and in such a manner that non-technical people may understand them. I have the ability to formulate and express arguments such that they are clear and may be used for further actions.”
- “I believe my writing strengths to be how I lay out my main points in paragraph form and in great detail elaborate on how those prove my thesis. Additionally, I have been told by many professors/teachers that I assume a distinct voice and tone while writing that appears to be very authoritative in nature.”
- “Proofreading, ability to form complete thoughts and ideas, ability to express thoughts and ideas, ability to use appropriate grammar, ability to write to the audience, ability to form and back up a thesis, ability to provide a clear and concise analysis.”
- “Simple and easy to understand, but feel confident that people who read my writing can understand what I am trying to say.”
- “I believe I have the ability to stick to the topic at hand without over elaborating and getting off subject.”

These students strongly believed they had the ability to write in an organized, clear, concise fashion, even though some of their own descriptions were not models of organization, clarity, or conciseness.<sup>143</sup>

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Publishers 2007); Bradley G. Clary & Pamela Lysaght, *Successful Legal Analysis and Writing: The Fundamentals* (2d ed., Thomson/West 2006); Linda H. Edwards, *Legal Writing: Process, Analysis, and Organization* (4th ed., Aspen Publishers 2006); Richard K. Neumann, Jr., *Legal Reasoning & Legal Writing: Structure, Strategy, and Style* (6th ed., Aspen Publishers 2009); Laurel Currie Oates & Anne Enquist, *The Legal Writing Handbook: Analysis, Research, and Writing* (4th ed., Aspen Publishers 2006).

143. We acknowledge that these responses were likely written quickly and were likely

Further, the survey results showed that what many students considered to be their strengths may actually be weaknesses in the legal writing context. For example, more than 70 responses to the “strengths” question (about 30 percent) mentioned the writers’ “creativity”; their unique style; and their superior vocabulary.<sup>144</sup> Here are some actual responses that highlight this clash between the students’ initial assessment of their writing strengths and the requirements of good legal writing:

- “Elaboration and organization.”
- “My writing tends to be elevated.”
- “A vivid imagination to create new ideas.”
- “As a writer, I communicate clearly, but compellingly. I enjoy varied syntax and compelling imagery.”
- “I have a descriptively large vocabulary.”
- “Large vocabulary; comfort with highly varied syntax.”
- “Creativity, uniqueness, my ‘voice.’”
- “I have a unique style of pairing words and sentences. I often manage to put an interesting spin on a dull topic by using analogies and visualizations.”
- “[I have] the ability to be verbose when necessary.”

However, again, most legal writing professors agree that unique style, creativity, a powerhouse vocabulary, and the ability to be “verbose,” as students understood these qualities, are not fundamental to good legal writing and may actually be detrimental.<sup>145</sup> A disconnect seemed likely to occur when the students were told *not* to do the very things they thought they did well. Thus, based on Survey 1, we theorized (and Survey 2 confirmed) that a great deal of frustration would occur in the first few weeks of legal writing when these students realized that their prior

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not revised.

144. See *supra* fig. 13.

145. See e.g. Gertrude Block, *Effective Legal Writing for Law Students and Lawyers* 96 (5th ed., Found. Press 1999) (“Entering law students often believe that elegant variation is an asset to writing. They use it intentionally because some English teacher once told them that using different words for the same idea kept their writing interesting. Even assuming the truth of that (debatable) concept, elegant variation hinders legal writing because in legal writing clarity is more important than variety, and the reader may well assume that different names refer to different things.”); Oates & Enquist, *supra* n. 142, at 649 (“[A] precision problem occurs when writers try to dress up a simple idea in a fancy vocabulary word and end up instead with a word choice that misses the mark.”).

strengths as writers did not necessarily translate to the legal writing arena.

Conversely, Survey 1 revealed that many of the surveyed students, who had not yet tried legal writing, identified as their writing weaknesses qualities that may often actually be strengths in legal writing. At least three of the top eight categories of the students' perceived weaknesses—style, creativity, and vocabulary<sup>146</sup>—are usually not problematic to the legal writer (at least, not to the beginning legal writer). The following responses are illustrative of those perceived “weaknesses” that, in the early legal writing context, are likely to be strengths:

- “I have trouble filling the paper.”
- “I don’t have a big vocabulary.”
- “I am not a creative writer.”
- “I don’t like writing flowery BS and like to get right to the point.”
- “Any writing that requires a great deal of complex emotional content is difficult for me.”
- “Sometimes conform to ‘generic’ writing styles instead of making them my own.”
- “I have trouble writing creatively. I am very critical of my own work.”
- “I certainly have not found a voice like Nabokov’s or Woolf’s yet.”
- “The obsessive need to be truthful and accurate.”

In sum, the Survey 1 results confirmed that one of the reasons these early legal writing students struggled so much is that meeting the demands of good legal writing required them to completely reassess their strengths and weaknesses as writers. This difficult reassessment, in many cases, caused students to feel rebuffed and perhaps even resentful.<sup>147</sup>

Moreover, as the results of Survey 2 showed, while some students recognized this reassessment as a necessary part of the

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146. *See supra* fig. 14.

147. *See* Enquist & Oates, *supra* n. 66, at 13 (“Early in the course, English majors may resist what they consider the formulaic and restrictive nature of legal writing. They complain that it ‘stifles their creativity,’ and they are frustrated because they cannot show off their vocabularies and sophisticated writing style.”).



learning process,<sup>148</sup> others found it painful. On Survey 2, we asked students whether their experiences in law school in the first eight weeks had altered their view of their strengths and weaknesses as writers.<sup>149</sup> Half of the students who took Survey 2 (52 out of 104, or 50 percent) said that their view of their strengths as writers had changed, and a similar number (56 out of 105 students, or 53 percent) said that their view of their weaknesses as writers had changed.

With regard to writing strengths, below are some Survey 2 responses that capture the themes of the students' changed perceptions after eight weeks of law school:

- “Yes. I was a good writer outside of legal writing, but that skill did not translate exactly into legal writing. I learned that I have a lot of work to do to learn legal writing.”
- “My strengths weren't as important as I had believed.”
- “It has emphasized my problems and made me realize that my strengths turn into weaknesses when attempting to write in law school.”
- “Yes, LRW challenged me to write more clearly and precisely.”
- “Honed existing skills and helped cut down on verbiage.”
- “I do not feel as though I am as strong a writer as I thought.”
- “I do not know that areas which I would have said were my strengths have been utilized so far.”
- “Yes, thus far I feel that writing for law is much different than any writing I have had to do before, it's a whole different style.”

With regard to writing weaknesses, the students' changed perceptions were even more striking. The students as a whole seemed to have a realistic grasp of how much they needed to improve, as shown by the following responses:

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148. Here are three examples: “I do not doubt my strengths as a writer, but legal writing is unique and therefore presents new challenges.” “The difficulty with legal writing is more an issue of understanding what a legal writer is expected to do rather than an issue of writing ability.” “Experiences so far have confirmed for me that I can logically organize and succinctly state my ideas. They have also shown that there is still plenty of room for improvement, perhaps more than I had hoped.”

149. See app. B, at questions 2, 3.

- “I’ve found that my greatest weakness is complex sentence structures, which I never thought would be a problem.”
- “[My understanding of my strengths and weaknesses] has switched. Repetition now is good, and my writing style is bad.”
- “I know now that I must be more concise.”
- “I have realized how crucial it is to write with precision.”
- “I need to learn to be more concise. I used to think that more words were better.”
- “I felt like a weakness of mine was lack of creativity. However, the first LRW is more structured than I would have thought. So, my weaknesses haven’t been a hurdle.”

Tracking the responses of individual students who participated in both Survey 1 and Survey 2 more concretely highlights the very different reactions students had to the inevitable realization that their strengths and weaknesses did not wholly translate to their new life as legal writers.<sup>150</sup> Student A, for example, had a fairly positive reaction to this realization; Students B and C, on the other hand, showed considerable frustration.

Student A in August, assessing his or her strengths:

“Strong ability to convey thesis or argument of paper. Good flow to paper. Organized thoughts before writing paper.”

Student A in October, reassessing his or her strengths:

“It’s a totally different style of writing. All of my papers before were about content, but with a lot of style. It’s been a big adjustment focusing on content and less on style. I think I’m becoming a better writer.”

Student B in August, assessing his or her strengths:

“I think I have a good sense of structure and flow of organization to my writing. I know how to use transitions and

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150. As noted previously, each student was assigned a unique identifier that enabled our survey consultant to track individual responses while preserving the anonymity of the students. *See supra* n. 16.

make a clear argument. In college, I learned how to write better analytically instead of descriptively.”

Student B in October, reassessing his or her strengths:

“I feel like I don’t know anything anymore.”

Student C in August, assessing his or her weaknesses:

“I have to get myself to start writing.”

Student C in October, reassessing his or her weaknesses:

“YES! I can’t write simple!”

One student who had previously expressed a high comfort level with literary writing simply said, “I have many more weaknesses than I thought.”

Another question on Survey 2 was designed to crystallize the students’ reactions to their early legal writing experiences as they related to their views of their writing abilities. We asked, “What has been the most difficult aspect of learning legal writing so far?”<sup>151</sup> Student feedback mirrored much of the data from the strengths and weaknesses responses.<sup>152</sup> One student wrote that it was difficult to “adjust from English paper style to the concise, direct format of legal writing.” Others emphasized that legal writing was a completely new style of writing and that writing in simple language had been very difficult. Several wrote about the difficulty of switching from prose style to logical writing, while still others said that being concise while achieving clarity was most difficult. While legal writing professionals have talked about these difficulties of adjustment for years,<sup>153</sup> seeing these students’ direct feedback made it clear to us that the profession has it right: legal writing is different and more difficult than many students expect, and success in legal writing requires a thorough reassessment of, and often a significant adjustment to,

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151. See app. B, at question 16; *supra* n. 15.

152. Compare fig. 19, with figs. 12, 14.

153. For general discussions of novice legal writers and the common problems they face, see J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 Wash. L. Rev. 35, 60–61 (1994); Provenzano & Kagan, *supra* n. 91, at 123; Rodriguez, *supra* n. 108, at 212–214; Williams, *supra* n. 92, at 18.

the writing techniques that have worked for the students in the past.

## VI. RECOMMENDATIONS

As we have come to better understand why the process of learning legal writing is so difficult for so many students, we have begun to identify simple strategies—some “interventions”—that legal writing professors could implement to address each of the four expected roadblocks we have identified.<sup>154</sup> Most of these strategies, which we believe will help students take charge of their own progress in both the study of law generally and the study of legal writing specifically, will likely have the greatest impact if practiced in the early weeks of legal writing instruction. Moreover, the strategies do not require major curricular changes; rather, they are centered on recasting the roles of student and professor.<sup>155</sup>

### A. Recasting the Context of the Legal Writing Class

As we explored in Part V(A) above, the first roadblock we identified to students’ adjustment to legal writing was their lack of context in which to place the key skills we were teaching them. This lack of context went beyond the legal writing classroom and, for many, encompassed their overall study of law. Thus, there is a very early need to address students’ ideas of what the study of law is and how legal writing fits into it. Central to this objective is recasting the roles of the legal writing professor and student.

Fundamentally, with regard to the study of law, students need to be told from the outset that the law is not a concrete, finite set of rules that can be mastered in a semester, or even in three years of law school. Unlike their previous academic pursuits, which they were able to master in one or two semesters, the law is ever-elusive and ever-moving, and they will never fully

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154. From this point forward, we boldly generalize in the hope that the School X and Y students we surveyed were representative enough of early legal writers in general to apply what we learned from their experiences beyond those schools.

155. The concept of students and legal writing professors reexamining their roles was explored as early as 1994 by Professors J. Christopher Rideout and Jill J. Ramsfield in their foundational 1994 article entitled, *Legal Writing: A Revised View*, *supra* n. 153, at 63–65 (students), 66–68 (professors).

master it.<sup>156</sup> Thus, we need to recast their ultimate objective: they should not be seeking to *master the law*; they should be seeking to *achieve competence in finding, understanding, and using the law*. If successfully conveyed, this new understanding could, in our opinion, be very “freeing” to beginning law students as they worry less about extrinsic indicators of achievement and focus instead on the intrinsic satisfaction that comes from being fully engaged in the high calling of the law, to which law school is the “crucial portal.”<sup>157</sup>

### B. Recasting the Role of the Legal Writing Professor

Turning to the legal writing classroom in particular, we can provide context most concretely by immediately—even on day one—recasting the role of the legal writing professor. First, we can recast our role by explaining gently and patiently, but repeatedly, that unlike their undergraduate professors (for example, their Russian literature professor or their accounting professor), legal writing professors are not the typical “subject matter experts.” While their Russian literature professor likely knew virtually everything there was to know about that subject, legal writing professors do not claim to be sources of “perfect” knowledge about the field. We do claim to know what the typical legal professional is looking for in the written communication we teach.

Next, beginning legal writers need to understand that their audience is not their legal writing professor; rather, their audience is the practitioner who will ultimately use their writing to make important decisions. Put another way, the legal writing professor is simply a stand-in for the legal reader. Thus, unlike in their previous academic pursuits, successful legal writers will not succeed by simply “figuring out what the professor wants and doing it”; they must understand that there is a definite set of needs

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156. Few law professors would claim that they are “masters” of the law; rather, most would claim only that they have a high degree of familiarity with some particular area of the law, how that area is developing, and how lawyers use it. See e.g. Phillip C. Kissam, *Thinking (by Writing) about Legal Writing*, 40 Vand. L. Rev. 135, 145 (1987) (noting that many law students share a general belief which may be problematic, namely, that “any lawyer (or any incipient lawyer) *who is any good* will be able to provide right answers to legal problems with relative quickness, with great precision, and (most importantly) without making mistakes” (emphasis in original)).

157. Sullivan et al., *supra* n. 5, at 1.

and expectations that legal professionals share, and that we, their legal writing professors, are simply teaching them what those needs and expectations are and how to meet them.

To help students see the role of the legal writing professor in this new way, one simple strategy could be to regularly invite practitioners (judges, practicing attorneys, and even law clerks) into our classrooms. These “real-life” legal readers could reinforce that what we are teaching is what lawyers need and expect to see in the documents they read and is not merely idiosyncratic to us. We could thus illustrate in a concrete way that we, the legal writing professors, are *not* really the ones whom the students should seek to please. If done successfully, this recasting of the role of the professor could relieve some of the students’ anxiety; unlike before, they will not need to “learn the teacher” to succeed.

Another strategy that legal writing professors could use to recast their role is employing reader-based language when giving both oral and written feedback. This idea certainly is not original to us; legal writing professionals have long been advocating the benefits of this reader-centric feedback.<sup>158</sup> We recognize that this strategy requires considerable discipline and consistency and is admittedly challenging when there is a big stack of papers on the desk. However, if we are truly committed to recasting the role of the legal writing professor, there should be no substitute for providing feedback that reinforces the concept of the ordinary legal reader as the consumer of the legal writing product. In sum, we think that recasting the role of the legal writing professor is

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158. See e.g. Kirsten K. Davis, *Building Credibility in the Margins: An Ethos-Based Perspective for Commenting on Student Papers*, 12 *Leg. Writing* 73, 92 (2006) (explaining that when commenting on student papers, “[a] legal writing professor can cultivate [a student’s] rhetorical persona by focusing not on her role as a legal writing professor but on ‘playing’ the roles of various readers and evaluators with whom students will interact in their legal careers and adopting these personas” (citing Linda L. Berger, *A Reflective Rhetorical Model: The Legal Writing Teacher as Reader & Writer*, 6 *Leg. Writing* 57, 80 (2002))); Jane Kent Gionfriddo, *The “Reasonable Zone of Right Answers”: Analytical Feedback on Student Writing*, 40 *Gonz. L. Rev.* 427, 439–440 (2005) (“In addition to providing comments as educators, legal writing teachers should provide comments from the points of views of lawyers and judges—readers who lack the same familiarity with the analysis as the author.”); Patricia Grande Montana, *Better Revision: Encouraging Student Writers to See through the Eyes of the Reader*, 14 *Leg. Writing* 291, 310 (2008) (stating that legal writing professors can help students “transform their Writer-Based prose into Reader-Based prose as they revise” by “simulat[ing] the legal reader’s response and fram[ing] the questions and comments accordingly.”).

the *sine qua non* of a smoother, less traumatic adjustment for beginning legal writing students.

### C. Recasting the Role of the Student

The rest of our recommendations focus on helping students recast their role—helping them recognize that they *are* novices in the discourse community of legal writing but that they *can* advance their own status by redirecting their prior skills and experiences and by preparing ahead for the detours they will encounter as they move from novice to advanced beginner.

#### 1. *Moving Students from an “Outside-in” to an “Inside-out” Approach to Legal Thinking and Writing*

As explained in Section V(B) above, many beginning law students have become habituated to certain ways of thinking and writing about the subject matter in a particular area of study. Their chief goal has often been to demonstrate their mastery of the subject matter in whatever format their professor preferred (and sometimes to provide their own opinions and criticisms of the subject as well). Thus, we need to purposefully provide new law students with a different way of approaching the task of legal writing, which cannot be effectively accomplished using their previous writing habits (the gist-and-list strategy or the TIA strategy, for example).<sup>159</sup>

One simple way to explain to students that they are transitioning into a different kind of learning is to more thoroughly explain what the legal writing class actually involves. It does not just involve researching and writing.<sup>160</sup> Legal research itself is a complex task that may require reading, evaluating, and filtering large amounts of material just to enable the student to identify

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159. See *supra* nn. 87, 89, and accompanying text.

160. One possible reason that students may be surprised by the scope of their legal writing courses is that the names of the courses sometimes fail to convey the breadth of the skills the students will be expected to learn. For example, at School X, through the 2009–2010 academic year, the first-semester legal writing course was called “Legal Research and Writing I.” Names like this unwittingly reinforce the “knowledge-telling” writing strategy that may have worked in previous settings but is inadequate for legal writing: “I will find the information you are seeking and then report it to you in summary form.” See *supra* n. 91 and accompanying text. The faculty at School X recently voted to change the course name to “Legal Analysis, Writing & Research” beginning with the 2010–2011 academic year.

the issues to analyze.<sup>161</sup> Then, reading, reasoning, understanding, analyzing, and even rereading must occur between the research process and the writing process. Moreover, the writing process itself should typically encompass outlining, multiple efforts at drafting, revising, editing, formatting, and proofreading. Students must be taught that the “outside-in” approach to thinking and writing is simply not adequate to encompass the many complex tasks of the legal writer. In other words, the subject matter mastery and reporting of it that served them well in undergraduate courses will not do so in law school, because there are no formulas, no shortcuts, and no templates for the hard work of the legal writer, who must perform for himself the entire process from the “inside-out.”

Second, we can adapt our early teaching strategies to more effectively address our students’ deficiency in, and resistance to, careful analytical thinking (or, as we have been calling it, “inside-out” thinking). We cannot simply assume that our students will follow us when we instruct them that legal analysis consists of identifying the governing rule and applying it to a set of facts;<sup>162</sup> in fact, it would probably be impossible to give our students too much practice in the deep thinking required for good legal analysis. And while it is a given that legal analysis and legal writing are recursive,<sup>163</sup> we should nevertheless consider whether we are spending enough time on the fundamentals of *performing* legal analysis before we ask our students to *write about* legal analysis for the first time.

Another key intervention that would advance this realization could be to empower students to become more conscious metacog-

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161. At School X, and many other law schools, library professors teach the research portion of the course. When this is the case, writing professors should be intentional about involving them in any efforts to improve students’ early experiences in legal writing.

162. One recent legal writing text devotes the majority of a chapter to explaining the difference between rule-based reasoning and analogical reasoning. See Coughlin et al., *supra* n. 61, at 131–149. The authors of that text rightly proceed from the assumption that today’s law students may never have learned about these analytical methods. See also Ruth Ann McKinney, *Reading Like a Lawyer: Time-Saving Strategies for Reading Law Like an Expert* 33–45 (Carolina Academic Press 2005) (describing the various types of reasoning that novice legal readers will encounter).

163. See e.g. Dernbach et al., *supra* n. 71, at 168 (“Legal writing is too complex to be approached in a linear fashion and requires instead a recursive approach.”); Rodriguez, *supra* n. 108, at 213 (recognizing that the transition from the linear writing process to the recursive writing process is a source of anxiety and insecurity in novice legal writers).



nitive learners.<sup>164</sup> Because law students have been successful students in other areas, we can assume that they are likely already metacognitive learners. They just may not know that the application of these techniques in a conscious way would be of enormous help to their law school success.

There is a wealth of scholarship on the benefits of metacognition for law students. For our purposes, this fascinating scholarship can be summarized as follows: the student himself must be empowered to take charge of his own learning.<sup>165</sup> In the legal writing classroom, empowering our students to “own” their own learning could be achieved by the use of specific techniques to help students be aware of (1) what “old” writing habits they are bringing into the legal writing classroom; (2) which of those habits may be helpful to their legal writing process and which may not be; and (3) how well they are doing at integrating the new skills we are teaching them into their legal writing process. At the core level, we need to equip them to separate the writing *process* from the writing *product* and to accurately assess the effectiveness of the writing process they are using. We need to help our students “learn to invoke conscious choice and evaluate awareness on complex problems . . .’ instead of simply relying on well-established automated writing plans.”<sup>166</sup> Our study responses therefore directly support the need to apply the metacognitive model in the legal writing classroom.

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164. Metacognition can be loosely defined as “thinking about thinking.” See e.g. Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 U. Det. Mercy L. Rev. 1, 7–9, 14 (2003) (reviewing a number of scholars’ definitions of metacognition and citing Peter Dewitz as the author of the “thinking about thinking” definition) (citations omitted). As one legal scholar has succinctly advised, “Faculty need to explicitly teach students thinking strategies and make the students conscious of their cognitive processes.” Venter, *supra* n. 56, at 625.

165. See Rideout & Ramsfield, *supra* n. 155, at 64 (“[S]tudents . . . cannot afford to remain passive spectators in the legal writing classroom.” Through their active participation in the “dialogue of the classroom” they will be “constructing themselves, rhetorically, as lawyer-writers . . .”).

166. Baker, *supra* n. 1, at 510 (quoting Linda Flower, *The Role of Task Representation in Reading-to-Write*, in *Reading to Write: Exploring a Cognitive and Social Process* 35, 50–53 (Oxford U. Press 1990)).

## 2. *Leading Students to a More Realistic Expectation about Their Success in Early Legal Writing*

As demonstrated in Section V(C) above, many students we surveyed—even those with much earlier and unrelated writing experience and those with limited or no legal writing experience—came into their legal writing classes expecting that they would be extremely successful early on.<sup>167</sup> Eight weeks later, these same students were in the midst of a crisis of confidence.<sup>168</sup> It follows that legal writing professors should be more deliberate about helping our students manage their expectations to avoid the frustration and resentment that often stem from the false belief that they will easily and quickly master legal writing.

Specifically, we can begin by telling our students in no uncertain terms that, as with mastery of the law itself, mastery of legal writing is not something they can or should aspire to. While most legal writing students might agree that they are novices at the beginning of the legal writing course, they may not realize that all of their hard work over the course of the year might at best result in achieving “advanced beginner” status. Our Teaching Assistants can provide valuable reinforcement in this regard.<sup>169</sup> Most Teaching Assistants are successful students in spite of having experienced very similar crises of confidence in their early legal writing instruction. Still, even having overcome this crisis, our Teaching Assistants should be seen as only advanced beginners and not legal writing experts. It would perhaps be encouraging to the first-year students to use some examples of their Teaching Assistants’ “less than stellar” early work to illustrate that even for them, competence in legal writing did not come quickly or easily.<sup>170</sup>

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167. *See supra* fig. 10.

168. *See supra* fig. 21.

169. Ruth Ann McKinney, *Depression & Anxiety in Law Students: Are We Part of the Problem and Can We be Part of the Solution?* 8 *Leg. Writing* 229, 249 (2002) (“[W]e should take every opportunity to help students learn that others have succeeded before them. The more our students learn about the successes of other students, the more they will believe that they, too, will be successful. The more they believe that they will be successful, the more successful they will, in fact, be.”).

170. *Id.* Many legal writing professors themselves would probably admit to having taken the same detour in early legal writing. Indeed, both of the authors freely share with their new first-year students that the lowest grades we ever received in our entire academic careers were on the first papers we wrote in our first-year legal writing classes!

Our survey responses themselves provide a vehicle for graphically illustrating to our students the “real-time” reactions of past students who plowed this road before them. In PowerPoint® or a comparable format, and timed to be read in class at the moments the professor knows the students are likely experiencing a crisis in confidence, the words of our survey participants could be used to validate the current students’ own feelings and worries about whether they can conquer the new task of legal writing.<sup>171</sup> Our survey participants, after stumbling badly in early legal writing classes, expressed fears<sup>172</sup> that likely mirror the feelings of many of our current students at similar times. Their responses could provide solace as current students recognize that others before them also needed to adjust their goals and expectations early in legal writing; perhaps they could avoid the drastic plummet in confidence that their predecessors reported and that so many of them might otherwise encounter.

3. *Leading Students toward Seeing That “the Reverse Side Also Has a Reverse Side”<sup>173</sup>: A More Realistic and Healthier Self-assessment of How Their Prior Strengths and Weaknesses as Writers Will Impact Their Legal Writing*

Finally, we can alert students from the beginning that when it comes to legal writing, they are not reliable judges of their own strengths and weaknesses. As we discussed in Part V(D) above, many of the students we surveyed listed such qualities as creativity, a large vocabulary, and “flowery” writing as writing strengths. On the other side, many students listed “weaknesses” such as lack of creativity, limited vocabulary, and lack of “style.” Our challenge is to empower students much earlier to view their assessment of their strengths and weaknesses through the lens of

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171. One noted legal writing professor, Professor of Law Louis J. Sirico, Jr. of Villanova Law School, tells his first-year students very early on, “You’re probably thinking right now that you have fooled everyone into believing that you are smarter than you really are. And guess what? Every other person sitting in this room is feeling the exact same way.” Sirico reports that simply giving voice to this feeling has been a very powerful consolation to many struggling students over the years. Conversation with Prof. Louis J. Sirico, Jr., Villanova L. Sch. (Portland, Ore. July 25, 2009).

172. See *supra* sec. V(C) (providing students’ specific prose comments about their confidence levels).

173. A comforting thought from a Japanese proverb. See Michael Moncur, *The Quotations Page*, [http://www.quotationspage.com/quotes/Japanese\\_Proverb/](http://www.quotationspage.com/quotes/Japanese_Proverb/) (accessed Feb. 1, 2010).

the professional legal writer and to “let go” of the aspects of their prior writing that might hinder their progress as legal writers. For example, a student who has stated that her greatest writing strength is creativity is likely to be understandably frustrated when she is repeatedly instructed to “stick to the IRAC format” or to “repeat the court’s own words instead of substituting your own colorful synonyms.”<sup>174</sup> At this moment of frustration, the student can respond in two different ways: she can continue to be frustrated because what she feels she does best is not valued in legal writing and can eventually disengage from the learning process; or she can recast her understanding of the role of creativity within legal writing to a more appropriate one and can remain committed to the learning process.

Our job as legal writing professors is to help students recognize these moments of frustration as opportunities for real growth as legal writers. For example, instead of seeing IRAC as a rigid formula that stifles her creativity, the student described above could be helped to recast her view of IRAC so that she comes to see it as a helpful tool that “frees” her from the need to come up with a separate organizational framework for each assignment. Put even more simply, legal writing professors have a golden opportunity in the first few weeks of first-year classes to help students see that when their initial assessments of their strengths and weaknesses are challenged, the better response is not to shut down (resent, resist, or give up), but to open up (accept, absorb, and give in).<sup>175</sup>

## VII. CONCLUSION

In sum, the words of beginning legal writing students themselves, which we have shared in this Article, make it clear that many encounter common frustrations in legal writing, especially in the early going. Simply by being more proactive in alerting our

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174. See e.g. Rideout & Ramsfield, *supra* n. 153, at 59–60 (noting that “the seeming loss of the ability to ‘be original’ is something every law student encounters. . . . [L]aw students are frustrated by what they see as the lack of ‘creativity’ in legal writing and analysis.”).

175. See Rodriguez, *supra* n. 108, at 214 (“Students who develop the most expertise when writing in a new genre . . . ‘initially accept their status as novices;’ . . . ‘students who cling to their former writing strategies and ‘who resent the uncertainty and humility of being a novice have a more difficult time adjusting to the demands of [a new type of] writing.’ Becoming a novice legal writer involves being open to instruction and feedback, and being willing to experiment and make mistakes.” (Citations omitted)).

students to these “frustration zones,” we can improve the quality of their transition into the legal writing realm. We believe that with this kind of gentle help, most students will choose to face their frustrations head-on—that is, to take charge of their own learning in these moments and to view the detours and roadblocks as opportunities to enhance their early growth as legal writers.

*APPENDIX A*<sup>176</sup>  
SURVEY 1

August 2007

1. Which kinds of writing have you done?

	In College	In Graduate School	At Work	Not Applicable
Research paper (term paper, thesis, dissertation, etc.)				
Short opinion pieces				
Creative writing (poetry, short stories, etc.)				
Journalistic writing (news articles, feature stories, etc.)				
Technical writing				
Essay				
Legal writing				
Other (please describe below)				

2. If you checked “legal writing” above, describe the kind of legal writing you have done, e.g., trial briefs, trial memoranda, case briefs, etc.
3. Please list below any courses you have taken in which you were evaluated primarily on your writing skills and ability rather than on the content of the writing. If you have not taken any such course, please write “none.”

4. Taking into account the writing that you have done prior to entering law school, please indicate how confident you are in your writing ability.

- \_\_\_ Extremely  
 \_\_\_ Very  
 \_\_\_ Moderately  
 \_\_\_ Slightly  
 \_\_\_ Not at all

5. Describe your strengths as a writer.
6. Describe your weaknesses as a writer, if any.
7. On writing projects, how often do you do the following?

	Always	Usually	Sometimes	Rarely	Never
Asking someone else to read your work					
Background reading					
Checking citation					
Composing rough draft(s)					
Conferencing with instructor or supervisor who assigned the project					
Editing revised draft(s)					
Formatting					
Organizing					
Outlining					
Proofreading					
Reading your draft(s) aloud					
Researching					
Revising rough draft(s)					

8. Describe what you think the study of law involves.
9. Describe what you think the study of legal writing involves.
10. Select the response below that best indicates how confident you are about learning legal writing.
- \_\_\_ Very confident  
 \_\_\_ Confident  
 \_\_\_ Somewhat confident  
 \_\_\_ Not at all confident  
 \_\_\_ Do not know
11. Based on what you know today, how important do you think the following are in good legal writing?

	Extremely	Very	Moderately	Slightly	Not At All	Not Sure
Analysis						
Attention to detail						
Citation						
Clarity						
Conciseness						
Creativity						
Grammar						
Logical reasoning						
Objectivity						
Organization						
Persuasiveness						
Style						
Synthesis						
Use of legal terminology						
Other (please list in area below)						

12. Indicate your undergraduate major(s).



- English
- Political science
- History
- Philosophy
- Psychology
- Economics
- Business (finance, marketing, accounting, etc.)
- Science (biology, chemistry, physics, etc.)
- Humanities
- Engineering
- Other (please specify)

If you selected other please specify:

13. Indicate any graduate study you have done, including the field(s) of study and degree(s) earned.

14. What law-related courses have you taken?

- Constitutional law
- Criminal justice
- Criminology
- Forensic science
- Business law
- American judicial system
- Paralegal
- None
- Other (please specify)

If you selected other please specify:

15. If you have taken any course(s) in which you were required to read judicial opinions, please list the title(s) of the course(s) below.

16. List the job title(s) and describe any job(s) you have held since graduating from college.

17. How old are you?

- 20 or under
- 21–23
- 24–26
- 27–29
- 30–34
- 35–39
- 40 or over

18. What was your undergraduate grade point average (on a 4.0 scale)?

- 4.0 or above
- 3.70–3.99
- 3.40–3.69
- 3.10–3.39
- 2.80–3.09
- 2.50–2.79
- 2.10–2.49
- 2.09 or below

19. What was your LSAT score?

- 170 or above
- 165–169
- 160–164
- 155–159
- 150–154
- 145–149
- 140–144
- 139 or below

*APPENDIX B*<sup>177</sup>  
SURVEY 2

October 2007

1. Taking into account your law school experience so far, please indicate how confident you now are in your legal writing ability.

\_\_\_ Extremely  
 \_\_\_ Very  
 \_\_\_ Moderately  
 \_\_\_ Slightly  
 \_\_\_ Not at all

2. Have your experiences in law school thus far altered your view of your strengths as a writer? If so, please describe below.

3. Have your experiences in law school thus far altered your view of your weaknesses as a writer? If so, please describe below.

4. On legal writing assignments you have worked on so far in law school, how often did you do the following?

	Always	Usually	Sometimes	Rarely	Never
Asking someone else to read your work					
Background reading					
Checking citation					
Composing rough draft(s)					

Conferencing with instructor or supervisor who assigned the project					
Editing revised draft(s)					
Formatting					
Organizing					
Outlining					
Proofreading					
Reading your draft(s) aloud					
Researching					
Revising rough draft(s)					

5. Based on your experiences in law school, have you changed your opinion as to what the study of law involves? If so, please describe below.
6. Based on your experiences in law school, have you changed your opinion as to what the study of legal writing involves? If so, please describe below.
7. Based on the feedback you received on early legal writing assignments, how do you think you are performing in legal writing?
  - Near the top of the class
  - Above average
  - Average
  - Below average
  - Near the bottom of the class
8. Select the response below that best indicates how confident you now are about learning legal writing.
  - Very confident
  - Confident
  - Somewhat confident
  - Not at all confident
  - Do not know

9. Based on your legal writing instruction so far, how important do you think the following are in good legal writing?

	Extremely	Very	Moderately	Slightly	Not At All	Not Sure
Analysis						
Attention to detail						
Citation						
Clarity						
Conciseness						
Creativity						
Grammar						
Logical reasoning						
Objectivity						
Organization						
Persuasiveness						
Style						
Synthesis						
Use of legal terminology						
Other (please list in area below)						

10. How often has your legal writing professor used the following teaching methods?

	Frequently	Sometimes	Rarely	Not At All
Readings from textbook				
Additional readings				
Lecture				
In-class writing				
Group writing				
Reading other students' work				
Studying examples of legal writing				
Using IRAC or a similar method of legal writing				
Rewriting assignments				
Live feedback from professor				
Conference with professor				
Written feedback from professor				
Other (please describe below)				

11. Of the teaching methods used by your legal writing professor, please rate the following according to their effectiveness.

	Extremely	Very	Moderately	Slightly	Not at all	Not applicable
Readings from textbook						
Additional readings						
Lecture						
In-class writing						
Group writing						
Reading other students' work						
Studying examples of legal writing						
Using IRAC or a similar method of legal writing						
Rewriting assignments						
Live feedback from professor						
Conference with professor						
Written feedback from professor						
Other (please describe below)						

12. What other instructional methods do you think your legal writing professor should use to enhance your early legal writing instruction?
13. How important to your learning have your Teaching Assistants and/or Writing Fellows been?
- \_\_\_ Extremely
  - \_\_\_ Very
  - \_\_\_ Moderately
  - \_\_\_ Somewhat
  - \_\_\_ Not at all
  - \_\_\_ Not applicable
14. Describe what you think the ordinary legal reader is looking for in legal writing.
15. What have you enjoyed most about legal writing?
16. What has been the most difficult aspect of learning legal writing so far?
17. Looking at all the work you have to do in law school, what percentage of your time do you spend on legal writing class assignments and learning?
- \_\_\_ 91–100
  - \_\_\_ 81–90
  - \_\_\_ 71–80
  - \_\_\_ 61–70
  - \_\_\_ 51–60
  - \_\_\_ 41–50
  - \_\_\_ 31–40
  - \_\_\_ 21–30
  - \_\_\_ 11–20
  - \_\_\_ 1–10



18. How helpful has legal writing been to your learning in other law school classes?

- Extremely
- Very
- Moderately
- Somewhat
- Not at all
- Not sure

19. Please describe why you chose the response you chose to number 18 above.

20. What advice have your 2L and 3L colleagues given you about legal writing?

21. If you have received any grades from legal writing assignments, please indicate your grade range.

- Near the top of the class
- Above average
- Average
- Below average
- Near the bottom of the class
- Not applicable