

# HOW DO LAW STUDENTS DEVELOP WRITING EXPERTISE DURING SUMMER INTERNSHIPS? : AN INTERVIEW-BASED STUDY

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## I. Introduction

In this study,<sup>1</sup> I focus on how law students' writing skills—as learned in the classroom and practiced during an internship—answer the Carnegie Report's renewed call for practical skills training.<sup>2</sup> While there are various definitions and types of the term, I use “internships” here as an umbrella term<sup>3</sup> for students performing legal work during the summers between their first and second years of school.<sup>4</sup> I raised

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<sup>1</sup> This study was originally submitted in August 2016 as the thesis for my M.A. in rhetoric and composition. I submitted the study to *The Journal of the Legal Writing Institute* in October 2017, and a contract was secured in November 2017 for publication in the spring 2019 issue.

<sup>2</sup> See WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 14, 120-22 (2007) (better known as the “Carnegie Report”).

<sup>3</sup> “Clerkships,” “internships,” “externships,” “field placements,” among others. The student-participants have been called “law clerks,” “summer clerks,” “summer associates,” “legal interns,” “externs,” and “judicial externs.” Law students who have graduated and are hired as year-long appointees to state and federal courts are called “judicial clerks,” and “clerkships” are perhaps most properly associated with this term. In this study, the eight student participants included six 1Ls and two 2Ls, who may be more properly referred to as “externs” and “summer clerks,” respectively. To simplify the findings from this study, I categorized them more generally as “interns.”

<sup>4</sup> See generally Harriet N. Katz, *The Past and Future of Externship Scholarship*, 23 *CLINICAL L. REV.* 397, 409, 424-25 (2016) (noting that the

three questions to better understand how summer internships develop students' writing expertise:

- 1) How are summer interns trained and mentored to complete writing tasks throughout their internships?
- 2) How do interns perceive those writing tasks as either similar to or different from the writing tasks they performed in the Legal Writing ("LW") classroom?
- 3) How do the genres of the legal memorandum and legal brief learned in the LW classroom prepare students for the writing tasks they complete during their internships?

I offer pieces of the answers by reporting on the findings from a convenience sample of eight interns whom I interviewed about their fifteen internships completed during the 2014 and 2015 summer breaks.

Because of this study's small sample size, its findings cannot be widely generalized. Even so, the interns reported that most employers<sup>5</sup> in the sample that hired them expected to hire already-skilled writers. As a result, most interns reported receiving little to no sustained training or mentorship on legal writing. Interns who were asked to write legal documents thus often relied heavily upon example texts to learn requirements for their tasks. Sometimes examples proved useful, sometimes not. Interns who were asked to write litigation-based documents, which most resembled LW writing exercises, tended to have more successful internship experiences than their peers who wrote documents not as closely related to litigation.

Similar research about the development of writing expertise has also provided corroborating evidence for how vital example texts are to the development of writing expertise, both in the classroom<sup>6</sup> and workplace.<sup>7</sup> In this vein, the findings from this study suggest that a

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prohibition, Interpretation 305-2, for granting both academic credit and compensation was lifted in 2016). Since the data collection phase of this study occurred in the fall of 2015 before the revised rule change, it is unclear how the revised rule will affect internships moving forward.

<sup>5</sup> I use this term to refer to the institutions which employed interns during the summer. *See infra* Table 1.

<sup>6</sup> AMY J. DEVITT, WRITING GENRES 200-01 (2004) (stating that for one of the author's graduate seminars, collecting specific examples of a text, or genre, is an important part of analyzing its function and context).

<sup>7</sup> Ann Sinsheimer & David Herring, *Lawyers at Work: A Study of the Reading, Writing, and Communication Practices of Legal Professionals*, 21

useful way to better prepare students to use examples during their internships may be to teach in LW “a genre analysis approach,”<sup>8</sup> an approach to negotiating writing challenges in new contexts.

Part II reviews the literature on the development of writing expertise generally and in legal writing specifically. Part III outlines the study’s methodology and sample. Parts IV through VI detail the results from the study’s three research questions. Part VII discusses the implications of the results, and Part VIII concludes.

## II. Background

Researchers in multiple fields continue to grapple with the complex, elusive nature of how writing expertise is developed, but we know some key elements about it. Ericsson *et al.* theorize broadly that developing expertise in specialized domains requires at least “10,000 hours” of “deliberate practice” under the guidance of constructive yet demanding mentors.<sup>9</sup> The development of expertise means building complex “cognitive architecture, specifically working memory and long-term memory,”<sup>10</sup> a process that takes time to move from “knowledge-telling” to “knowledge-transforming” to “knowledge-crafting.”<sup>11</sup> Another scholar argues specifically that writing expertise constitutes development of subject matter knowledge, rhetorical knowledge, writing process knowledge, genre knowledge, information literacy and critical reading.<sup>12</sup> And other scholars add

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LEGAL WRITING, 63, 99 (2016) (discussing how “junior associates relied heavily on templates and sample documents to understand the format their documents should take”).

<sup>8</sup> Devitt, *supra* note 6, at 191-213; *see generally* Katie Rose Guest Pryal, *The Genre Discovery Approach: Preparing Law Students to Write Any Legal Document*, 59 WAYNE L. REV. 351 (2013).

<sup>9</sup> K. Anders Ericsson, Michael J. Prietula & Edward T. Cokely, *The Making of an Expert*, HARV. BUS. REV., July-Aug. 2007, at 114, 119, 120-21.

<sup>10</sup> Deborah McCutchen, Paul Teske & Catherine Bankston, *Writing and Cognition: Implications of the Cognitive Architecture for Learning to Write and Writing to Learn*, in HANDBOOK OF RESEARCH ON WRITING: HISTORY, SOCIETY, SCHOOL, INDIVIDUAL, TEXT 451, 453 (Charles Bazerman ed., 2008).

<sup>11</sup> Ronald T. Kellogg, *Training Writing Skills: A Cognitive Developmental Perspective*, 1 J. WRITING RES. 1, 6 (2008) (“Knowledge-telling” entails “creating or retrieving what the author wants to say and then generating a text to say it.”); *id.* (“[K]nowledge-transforming involves changing what the author wants to say as a result of generating the text.”); *id.* at 7 (Knowledge-crafting entails “progression to professional expertise in writing.”).

<sup>12</sup> ANNE BEAUFORT, COLLEGE WRITING AND BEYOND: A NEW FRAMEWORK FOR UNIVERSITY WRITING INSTRUCTION 18-21 (2007) (positing that these domains

that both trial and error<sup>13</sup> and mentorship<sup>14</sup> are critical. Experiences with varying levels of enculturation also fold into expertise, a process that varies depending on the needs and goals of the specialized social groups,<sup>15</sup> or discourse communities,<sup>16</sup> a writer may join or wish to join. Writing development hence entails a continuum of multiple interdependent factors.

The general principles about writing expertise development set forth by these studies nevertheless require additional research when applied to legal writing. In tandem with the renewed call for practical skills training, recent studies by legal educators have assessed how the LW curriculum develops students' writing abilities. Felsenburg and Graham reported survey data on more than 250 students at two law

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represent a more comprehensive theory from which to evaluate the development of writing expertise than rhetoric alone offers).

<sup>13</sup> See Christine M. Tardy, *A Genre System View of the Funding of Academic Research*, 20 WRITTEN COMM. 7, 31 (2003) (discussing how one writer developed expertise in writing grant proposals by failing at least twice); see also LINDA H. EDWARDS, *LEGAL WRITING AND ANALYSIS* 68 (3d ed. 2011) (arguing the writing process is recursive: "Your willingness to construct, dismantle, and reconstruct your document will be crucial to achieving a good written product.").

<sup>14</sup> Kellogg, *supra* note 11 at 17; *id.* at 19-20 ("Apprenticeship underscores the centrality of social learning by observation of the mentor."); Tardy, *supra* note 13, at 29; Deborah Brandt, *Sponsors of Literacy* 49 C. COMPOSITION & COMM. 165, 167-69 (1998) (detailing how "sponsors of literacy" serve in some ways as mentors or motivators for developing reading and writing skills); Dorothy Winsor, *Joining the Engineering Community: How Do Novices Learn to Write Like Engineers?*, in WRITING ABOUT WRITING: A COLLEGE READER 640, 643 (Elizabeth Wardle & Doug Downs eds., 2d ed. 2014) (stating that engineering students valued the feedback from experienced co-workers and supervisors as they developed report-writing skills).

<sup>15</sup> BRIAN JACKSON, *MINDFUL WRITING* 76 (4th ed. 2019) (stating that discourse communities are "[v]arious social groups [that] have different ways to make knowledge and to get stuff done").

<sup>16</sup> See, e.g., JOHN SWALES, *The Concept of Discourse Community*, in WRITING ABOUT WRITING: A COLLEGE READER, *supra* note 14, at 215, 220-22 (arguing that discourse communities have shared goals, mechanisms of intercommunication, specialized writing genres, a specific lexis, and a threshold level of members with relevant expertise in the subject matter); ELIZABETH WARDLE, *Identity, Authority, and Learning to Write in New Workplaces*, in WRITING ABOUT WRITING: A COLLEGE READER, *supra* note 14, at 284, 286, 297 (reviewing a case study in which a discourse community views a worker in the community more as a tool than as a legitimate member).

schools at three times within the students' first year.<sup>17</sup> Their surveys approximated stages of LW where students may struggle with developing legal writing expertise and why. Weresh theorized about how threshold concepts, or transformative ideas that serve as a gateway toward mastery of a discipline, might be useful explanations and interventions for some of these stages where Felsenburg and Graham argue that students struggle.<sup>18</sup> Cauthen conducted an ethnography to observe how six first-year students navigated their way through a year-long LW course.<sup>19</sup> He detailed how the pressures of law school transform students, attending to their changed linguistic patterns in writing assignments as evidence. Outside of the classroom, Sinsheimer and Herring conducted a three-year ethnography with seven associates—ranging from a second-year associate to senior attorney with more than 20 years of experience—to determine the associates' workplace reading and writing practices.<sup>20</sup> The findings from these studies provide insight for the efficacy of LW pedagogies. These studies also demonstrate a clear trend encouraging scholars to employ empirical methods<sup>21</sup> to research the field's pressing questions about LW instruction.

But these studies have only partially considered the way summer internships develop writing expertise. The scope of Felsenburg and Graham's and Cauthen's work, for example, ends precisely when internship begin: summer. And Sinsheimer and Herring's work bypasses summer, focusing instead on graduates undertaking full-time employment. These studies thus do not include summer internships as an immediate extension of the LW context. That thousands of students each summer complete some form of internship<sup>22</sup> underscores this gap. By contrast, research that accounts

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<sup>17</sup> Miriam E. Felsenburg & Laura P. Graham, *Beginning Legal Writers in Their Own Words: Why the First Weeks of Legal Writing Are So Tough and What We Can Do About It*, 16 LEGAL WRITING 223, 227-29 (2010).

<sup>18</sup> Melissa H. Weresh, *Stargate: Malleability as a Threshold Concept in Legal Education*, 63 J. LEGAL EDUC. 689, 711 n.136, 711-13 (2014).

<sup>19</sup> RANDY CAUTHEN, BLACK LETTERS: AN ETHNOGRAPHY OF A BEGINNING LEGAL WRITING COURSE 18-19 (2010).

<sup>20</sup> Sinsheimer & Herring, *supra* note 7, at 63.

<sup>21</sup> See Shaun B. Spencer, *Using Empirical Methods to Study Legal Writing*, 20 LEGAL WRITING 141, 141 (2015).

<sup>22</sup> See, e.g., *Summer Programs - A Retrospective*, NALP BULLETIN (June 2016) National Association of Law Placement. <https://www.nalp.org/O616research> (reporting data on 894 1Ls and 5,912 2Ls for the summer of 2013 and also reporting data on 926 1Ls and 5,772 2Ls for the summer of 2014).

for and examines these transition points—such as from classroom to internship—can help us better see what is valued both within the classroom and workplace and how these transition points shape<sup>23</sup> and are shaped<sup>24</sup> by writing. Transition points, such as internships, are moments when transactions of power can occur, at times requiring students to apply multiple writing concepts in quickly evolving settings, which in turn can empower them with new capacities.<sup>25</sup> If the development of writing ability is a continuum,<sup>26</sup> then developmental experiences such as internships matter and should be holistically studied. This study therefore partially links the research of both Cauthen and of Felsenburg and Graham in the LW classroom and Sinsheimer and Herring’s research in the workplace.

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<sup>23</sup> See Amy J. Devitt, *Genre Pedagogies*, in *A GUIDE TO COMPOSITION PEDAGOGIES* 146, 146 (Gary Tate et al. eds., 2014) (asserting that particular writing tasks, or genres, are shaped by recurrent patterns and social forces).

<sup>24</sup> See Deborah Brandt, *Writing for a Living: Literacy and the Knowledge Economy*, 22 *WRITTEN COMM.* 166, 179 (2005) (claiming that writers in the knowledge economy, “[t]hrough intense mediation, founded on processes of reading and writing, [bring] coherence and shape (in the form of texts) to the disparate processes, interests, histories, goals, and needs of an organization”).

<sup>25</sup> See Stephen Bremner, *Genres and Processes in the PR Industry: Behind the Scenes with an Intern Writer*, 51 *INT’L J. BU. COMM.* 259, 275 (2014) (“[T]o become a successful PR practitioner, it is not just a question of learning one particular genre, but of learning how to manage an interconnected process that is constantly evolving, and of learning how to rework and repackage information on a regular basis, an activity that requires an understanding of the relationships between mode and audience and text.”).

<sup>26</sup> See, e.g., Lucille P. McCarthy, *A Stranger in Strange Lands: A College Student Writing Across the Curriculum*, 21 *RESEARCH IN THE TEACHING OF ENGLISH* 233, 235 (1987) (“As students go from one class to another, they must define and master the rules of use for written discourse in one classroom speech community after another.”); Kevin Roozen, *Tracing Trajectories of Practice: Repurposing in One Student’s Developing Disciplinary Writing Processes* 27 *WRITTEN COMM.* 318, 345-46 (2010) (arguing that the development of disciplinary expertise partially means that students draw upon previous writing experiences, processes, and rhetorical moves to address new writing tasks); Tardy, *supra* note 13, at 7-36 (2003); SHIRLEY ROSE, *All Writers Have More to Learn*, in *NAMING WHAT WE KNOW: THRESHOLD CONCEPTS OF WRITING STUDIES* 59, 59-61 (Linda Adler-Kassner & Elizabeth Wardle eds., 2016) (claiming that “although writing is learned, all writers always have more to learn about writing”).

### III. Methods and Sample

Traditionally, the legal profession has tracked quantitative data measuring some intern summer work activity and future job placement.<sup>27</sup> However, I was unable to locate qualitative studies examining the specific experiences of students in both LW and internships. I was a rhetoric and composition master's student at the time of this study, so interviews proved to be the most feasible and informative data-collection instruments within my strict time constraints. Scholars in both legal writing and rhetoric and composition have employed interviews as instruments; the size of these researchers' relatively small samples—ranging from two to 20 interviewees—later served as precedents for this study.<sup>28</sup>

To better understand some of the logistical and cultural dynamics of internships, I returned during the 2015 summer to work at a small law firm<sup>29</sup> where I had previously worked. I informally interacted<sup>30</sup> during my three-month stay with the firm's interns. My previous 18 months of paralegal experience, in addition to this 2015 summer work,<sup>31</sup> informed the hypotheses and interview questions for my

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<sup>27</sup> See generally *Summer Programs*, supra note 22.

<sup>28</sup> See BEAUFORT, supra note 12, at 215-18 (interviewed an undergraduate at multiple times throughout his college career and triangulated the data by also interviewing his instructor); LEE ANN CARROLL, REHEARSING NEW ROLES: HOW COLLEGE STUDENTS DEVELOP AS WRITERS, 29, 31-32 (2002) (interviewed 20 students as part of a longitudinal study exploring the development of writing expertise); Brandt, supra note 24, at 168-74 (interviewed 12 professionals in diverse fields, including one attorney, to discover their reading and writing habits as well); Sinsheimer & Herring, supra note 7, at 69 (conducted interviews as part of their seven-person ethnography investigating associates' reading and writing habits).

<sup>29</sup> The firm was a general-services law firm in an urban area with about 12 attorneys.

<sup>30</sup> Todd Ruecker, *Here They Do This, There They Do That: Latinas/Latinos Writing Across Institutions*, 66 C. COMPOSITION & COMM. 91, 96 (2014) (Ruecker volunteered for a year at an unfamiliar research site before initiating his longitudinal interview study to better understand the dynamics of potential research participants. I likewise wanted to better understand the dynamics of the summer internship experience, though I was only a participant-observer and had not formally begun the study yet. One potential drawback of this approach was that I may have unwittingly given more weight to the experiences of those interns whom I actually interacted with during the summer because their presence carried more immediacy.).

<sup>31</sup> I had not been a law student at any time before or during the time that I conducted the study.

proposed formal study, which was approved at the end of this summer by my institution's Institutional Review Board.

I began recruiting during the fall of 2015,<sup>32</sup> targeting to interview from eight to 10 former interns. I first contacted three interns from my summer experience, as well as three personal contacts whom I learned were eligible for the study. This sampling method is called a "convenience sample[]." <sup>33</sup> After concluding the interviews with these six interns, I asked for and received four referrals, a method known as "snowball sampling."<sup>34</sup> Constrained by time, I only contacted nine of the total pool of 11 potential interviewees, and only one did not respond. Before each interview, the interns filled out a demographic questionnaire.<sup>35</sup> Guided by the three research questions and their sub-questions,<sup>36</sup> I then interviewed each intern for about an hour. The data set of demographics, audio files, and notes were transcribed and coded for patterns and themes using a form of Neff's three-step grounded theory model.<sup>37</sup>

Among the interns were four men—Karl Meyer, Joel Perry, Matt Cook, and Scott Marshall—and four women—Amber Wood, Dawn

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<sup>32</sup> The recruitment and interviewing stage lasted seven weeks, from September 25 to November 13, 2015. To be eligible, students had to be enrolled as full-time in the fall of 2015; they had to have completed an internship during the summer of 2015; they must have completed one to two full years of law study at an ABA-accredited law school; and they must have also completed the first-year LW curriculum. Interviewees were compensated with a \$40 Visa gift card.

<sup>33</sup> Spencer, *supra* note 21, at 160 (citing JOHN W. CRESWELL, RESEARCH DESIGN: QUALITATIVE, QUANTITATIVE, AND MIXED METHODS APPROACHES 168 (4th ed. 2014)).

<sup>34</sup> Chaim Noy, *Sampling Knowledge: The Hermeneutics of Snowball Sampling in Qualitative Research*, 11 INT'L J. SOC. RES. METHODOLOGY 327, 330 (2008).

<sup>35</sup> See *infra* Appendix A.

<sup>36</sup> See *infra* Appendix B.

<sup>37</sup> See Joyce Magnotto Neff, *Grounded Theory: A Critical Research Methodology*, in UNDER CONSTRUCTION: WORKING AT THE INTERSECTIONS OF COMPOSITION THEORY, RESEARCH, AND PRACTICE 124, 128-30 (Christine Farris & Chris M. Anson eds., 1998) (citing Candace Spigelman, *The Dialects of Ownership in Peer Writing Groups* 132-33 (1996) (unpublished Ph.D. dissertation, Temple University)) (outlining that the first step is open coding—that is, ordering the data or concept naming; the second is axial coding, where interrelationships and consequences are assessed; and the third is selective coding, where "a storyline emerges" and the researcher looks for disconfirming evidence); Spencer, *supra* note 21, at 167-69.

Lockhart, Emily Call, and Lisa Meek. (All names are pseudonyms.)  
Table 1 details the interns' demographics.

**Table 1. The Eight Interns.**

Name	Class*	Internship Employer	Location	Wks	Attys
Karl Meyer	2L	General-services law firm	Stateside	16	12
	1L	General counsel, manufacturing corporation	Stateside	5	Unk
		General counsel, nutritional corporation	Stateside	11	Unk
Joel Perry	2L	General-services law firm	Stateside	15	12
Matt Cook	1L	Academic research assistantship	Germany	4	1
		Intellectual property law firm	Stateside	8	25
Scott Marshall	1L	General counsel, religious corporation	South Africa	5 <sup>‡</sup>	4
		Academic research assistantship	Stateside	5 <sup>‡</sup>	3
		Solo practitioner**	Stateside	4	1
		General-services law firm <sup>†</sup>	Stateside	8	4-6
Amber Wood	1L	State supreme court	Stateside	8	3
		Government prosecutor's office, appellate division	Stateside	8 <sup>‡</sup>	5-7
Dawn Lockhart	1L	General-services law firm	Stateside	5	12
		Academic research assistantship	Stateside	5	1
Emily Call	1L	General counsel, energy corporation	Stateside	10	4
Lisa Meek	1L	Corporate law firm	Switzerland	4	6
		General counsel, healthcare corporation	Stateside	6	50

\*2L=indicating interns who had already completed two years of law school; 1L=indicating interns who had already completed one year of law school.

\*\* Scott fulfilled this internship as an undergraduate; it is not included in the 15 internship total.

† Scott fulfilled this internship at his father's firm before law school; it is not included in the 15 internship total.

‡These are approximate durations.

The eight interns worked in three states and in four countries. Collectively and over the span of the 2014 and 2015 summers, they completed 15 internships for law firms, various types of in-house corporate counsel, a government prosecutor's office, and a state supreme court; some of the interns also worked as research assistants to professors at their law school or to professors abroad. All interns were enrolled at the time of the interviews in the same law school in the western United States, a school that has been ranked by *U.S. News & World Report* near the top 50 during the last five years. The school teaches LW (5.0 credits total) traditionally, teaching students about the memorandum the first semester (3.0 credits) and the brief in the second semester (2.0 credits), with research being taught in both semesters. Almost all the interns took LW from either professor Sandra Prowman (tenured) or professor Jennifer Thurgood (adjunct). (Both names are pseudonyms.)

I offer the results from this study not as a linear presentation of eight case studies; instead, the answers to the three research questions ("RQ1-RQ3"), grounded in the experiences and quotes from the interns, function as interconnected narratives. Based on so few (and thus potentially unrepresentative) interns' self-reports, the sample size and the non-random selection criteria prohibit widely generalizing about how other interns may develop writing expertise. I nevertheless inferred general patterns from the interns' reports. These patterns in turn allowed me to map how internships can both serve as extensions of LW and as bridges to legal practice.

#### **IV. Results for RQ1: On-the-Job Internship Training and Mentorship**

RQ1 asks: How are summer interns trained and mentored to complete writing tasks throughout their internships? The short answer is that other than first-day orientations, interns reported receiving little to no sustained training or mentorship on how to complete their writing tasks. Perhaps part of this lack can be explained by the assumption that employers believed they were hiring already-skilled writers. As a result, interns relied upon example texts to navigate challenges of new writing tasks. They tended to follow four self-indicators to gauge how well they were performing.

RQ1 is based on a simple hypothesis: The type of training and mentorship interns receive may reveal some of the assumptions both legal educators and employers hold about interns' writing skills. To contextualize the main finding for RQ1, let me define what I mean by "training" in two parts. When I asked this question, I first had in mind employers offering an institution-wide, standardized program to spell out expectations, perhaps spanning a few days. Second, I realized this training may go beyond merely the first week, so I also had in mind mentored training provided from a supervising attorney who would, at key times, outline for interns the what, how, and why of writing assignments. In some ways, I see training as presupposing a customary, replicable way of performing tasks, helping trainees understand the standard way of doing things. Training also suggests a hierarchy: Employers may well know what work can be assigned to interns, based on difficulty level and expediency, and what work must be completed by staff, associates, or partners. I also see training as implying a sense of permanency and enculturation with an eye towards return on investment; it is a costly service to provide, so it should yield benefits. Lastly, I believe training might create an expectation for productivity and perhaps an evaluative measure for gauging performance.

The main finding for RQ1 shows interns reporting that in 13 of their 15 internships, they received little institution-wide training or mentorship on how to write their specific assignments, either at the beginning or throughout their internships. Karl, who worked at a law firm, said, "I didn't receive any training on any of my writing tasks." Emily, working for a corporate general counsel, reported, "No training. I just started going." And Amber, interning at a state supreme court, said, "You are not trained at all. They don't feel like they need to train you. They see your grade in LW and say, 'You already know. Here you go; write this bench memo.'" Collectively, it was as if the interns were quick to repeat, "We received little training or formal feedback; we were expected to know how to write."

Part of the explanation for this lack of sustained training and mentorship may be the varying internship purposes. Only two of the sample's six 1Ls reported being trained and mentored well in two of their internships. All six 1Ls knew, however, that their internships were more for gaining experience and skills, not securing permanent positions. Karl and Joel, the sample's 2Ls, fulfilled 16-week internships at the same firm where they would be "test-driven" to see if they should be offered jobs once they graduated. They anticipated upgrading their internships into employment. Although it appears counterintuitive, the process of seeking and being chosen for an internship actually served as a *substitute* for the training described

above. To understand this finding, we turn to the incentives that fuel the internship acquisition process.

### **A. Aligning Intern and Internship Employer Incentives**

Partly because of some of the interns' perceptions about the competitiveness of the legal market, they were eager to secure resume-building internships. They also wanted to explore potential areas of legal practice. Most of the interns either applied for or interviewed with the potential employers due to some type of connection they made through their law school's career service office. As part of their applications, interns provided a combination of resumes, cover letters, writing samples, and copies of transcripts, including LW grades for one or both semesters. Polished writing skills, as showcased in this portfolio, were an important step toward securing an internship. This finding confirms some anecdotal accounts of the process.<sup>38</sup> Though seven of the 15 internships were paid, the law school incentivized interns with academic credit for unpaid internships.<sup>39</sup>

During the recruitment phase, some potential employers emphasized the importance of writing portfolios. Perhaps these portfolios provided a shortcut for knowing who could be trusted to perform well without added training or mentorship. Joel reflected on this phenomenon. When discussing his lack of training or mentorship on the job, he said,

As far as someone sitting down with you and saying, "This is how I want it," no, that did not happen. They're paying me good money. They're not there to babysit me or hold my hand. Figure it out. . . . They had you turn in a writing sample. That's part of the reason why I got the job. They don't want to train you.

While some employers had more predictable workloads than others, some of them had dynamic caseloads and unpredictable sources of work requiring varying degrees of expertise. Interns filled in gaps. But even then, sometimes full-time staff were unavailable, or interns' capabilities were unclear. This lack of clarity in matching qualified

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<sup>38</sup> See EUGENE VOLOKH, *ACADEMIC LEGAL WRITING: LAW REVIEW ARTICLES, STUDENT NOTES, SEMINAR PAPERS, AND GETTING ON LAW REVIEW* 1-3; 13 n.\*; 14 n.†; 15 nn.\* -†; 343 (4th ed. 2010).

<sup>39</sup> Katz, *supra* note 4, at 409, 424-25 (discussing how law students can receive payment and class credit for the same internship).

staff and interns to the right tasks was compounded because some employers' workloads could be eerily slowed to a stand-still one moment, and then they became avalanches of work the next. Sometimes communication about writing tasks suffered. Some employers thus wanted productive interns who did not need training or mentorship but who could adapt quickly to new demands. Shortcuts to acquire skilled writers, such as a written portfolio submitted as part of an application, were valuable.

Add to this practical penchant that internships lasted from four to 16 weeks, and it is easy to see why firms neglected training and mentoring their interns on an extended basis. Interns are temporary; training is expensive. For instance, Matt had hoped his father-referred, supervising attorney would be a mentor. Instead, after Matt submitted a document that did not meet expectations, the supervisor told him, "I don't have time to mentor your [writing] over and over again; I have a lawsuit [to attend to]." Matt concluded this cold-shoulder was partly because he was only a 1L, a "lesser" intern than a 2L. In any case, under the billable-hour model of compensation, attorneys bill clients anywhere from \$125.00 to \$300.00 an hour (or more). Employers' opportunity costs may be too high to spell out at pivotal points for interns writing process methods, office expectations, and genre features. Matt's supervising attorney, like some others, apparently placed a low priority on mentoring interns.

The takeaway, then, is that many employers in this sample did not intend to train or mentor interns on their writing tasks because they may have expected students who took LW to be skillful writers. Because interns in this sample's LW performance were ranked by a mandated curve, some employers in this data set, especially the ones that paid their interns, may have cherry-picked interns with the most promising writing skills. These employers assumed, perhaps, that students with lower LW grades still "needed" added training, something they did not want to provide.

### **B. Independent Contractors, Examples, and Trial-and-Error Learning**

Because interns were afforded neither extensive front-end training nor sustained mentorship,<sup>40</sup> I came to see them as

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<sup>40</sup> This appears to be common among this profession. *See, e.g.*, KRISTEN KONRAD ROBBINS-TISCIONE, RHETORIC FOR LEGAL WRITERS: THE THEORY AND PRACTICE OF ANALYSIS AND PERSUASION 3 (2009) (remembering that as a new lawyer, the author "learned to write 'on the job'; [she] got indirect feedback

independent contractors who happened to be housed within their employers' offices. For example, the working relationship between employer and intern was temporary, much like the as-needed service that an outside contractor could provide. None of the interns reported assuming full case management responsibilities. Instead, interns reported completing a mix of non-urgent tasks or intermittent projects that moved cases along. Some tasks required procedural, simpler documents, and some tasks required substantive, more complex ones. Finally, supervising attorneys gave interns access to firm resources—often large, sophisticated databases with key case file documents—and let them ask brief, clarifying questions. Employers offered these resources either in informal first-day orientations or in conversations later that first week. Dawn perhaps speaks best for the sample: “I didn’t get training, but access.” Even with “access,” this contractor-like independence daunted many of the interns; expectations were often unclear for writing tasks.

In this uncertainty, interns learned frequently from what they called “examples,” “old copies,” “similar types of documents,” “samples,” and “templates.” I will call these “examples,” but I do not mean they are all exemplary writing. Accounts of other professionals, such as engineers, suggest that newcomers, in learning to write for the workplace, rely on example texts.<sup>41</sup> Yet relying on examples almost exclusively unnerved many interns who wanted detailed instructions and feedback. Many of the interns described receiving terse, ambiguous instructions, often with the directive to seek out examples. Here is where database access mattered. Joel stated, “No one is hiding anything from you. If you don’t know how to do something, then look it up, and see lots of examples, which is nice.” Yet while these databases were often online, they were not always organized. Dawn recalled, “Sometimes I found similar types of documents but then realized they were not what I was looking for.” Even so, Dawn was successful when she worked from a pertinent example. She compiled a checklist of federal workplace requirements for employees’ rights: “The document I generated was based off the only relevant example, but I repurposed it. [The example] was old and unrelated. . . . It looked incomprehensible. I made it an actual structure.” Dawn’s supervisor suggested a few revisions, but she eventually approved the product.

By contrast, Matt once floundered when working from an example text. He was tasked to write a summary judgment letter brief for an

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on [her] writing in the form of senior attorneys’ revisions and took [her] cues from them as to what made for good legal writing”).

<sup>41</sup> See Winsor, *supra* note 14, at 642.

escalating intellectual property case. Modeling the document from an “example,” Matt submitted the draft to his supervising attorney who, once he reviewed it, said, “[It’s] all right, but not what we’re looking for. We’re going to have to edit this a lot to get it up to spec. Some of the arguments aren’t crafted well. Look for empirical evidence to support arguments better.” Disheartened, Matt recalled, “Well, no one really helped me with this. . . . How was I supposed to know? I’ll try to take your edits and ‘fix it.’” Most discouraging, however, was that Matt reported, “I worked with another attorney to revise it for three to four weeks,” only to find out that the letter brief never left the office. Interestingly, Matt did not feel trained or mentored when he first wrote this document. Afterward, however, he stated that he “worked with another attorney to revise it,” and even called this attorney his “mentor,” but Matt did not seem to value that letter brief experience as useful in developing his writing skills. He focused instead of the fact that the letter brief was abandoned. Matt surmises the reason for the abandonment was that either the case evolved from the time that he wrote the brief to when the supervising attorney reread it, or the case strategy changed. The example helped Matt start the task but not to finish it, let alone master it. Even with this negative experience, Matt stated, “If I were assigned to write a memo tomorrow, I would ask for an example. I don’t think I could just set off on my own, or I would use my LW memo as a template.”

Working from examples meant interns learned through trial and error. Amid this uncertainty and independence, some interns thrived. When Karl worked for the general counsel of a nutritional corporation, he was frustrated with the lack of constant training and mentoring on writing tasks. To make matters worse, he reported throughout the summer to various attorneys who each had different writing standards. When asked if he finally reached those standards, Karl replied:

Yes . . . I had never written a motion *in limine* or anything like that, so the first one got a lot of feedback, and the next few that I did just got better each time. So when I got to the last one there was just not a lot of feedback at all. And part of that is just understanding the subjective nature [of writing] as well as I got through a couple and was like, ‘OK, this is what he’s looking for,’ and so then I could implement that, and so it’s kind of trial and error. I would feel like by the end of the summer, I had met their standards.

Tellingly, Karl received “a lot of feedback” on his first motion draft, but he repeatedly stated that he did not receive training or mentorship during his internships. This discrepancy suggests that “feedback” is a crucial ingredient in the development of writing skills, but it is perceived as distinct from training and mentorship. Despite the discrepancy, Karl reported improving his writing skills through repeated practice within the same genre.

By contrast, Lisa did not thrive because she faced several barriers. She was originally excited about her Swiss corporate firm internship. Yet when asked about her training, she said, “They didn’t know what to do with me.” Lisa’s supervisor apparently did not articulate his expectations well. “He gave me an assignment, but I knew nothing about the system to look up or research. I had no idea,” she recalled. “I was trying to write it in French. After that, he didn’t give me any assignments. . . . The language was a barrier, and my lack of familiarity with the Swiss code was a barrier.” Lisa thus faced at least four levels of uncertainty—she spoke French with only school-learned proficiency, she fumbled through a legal code with which she had no background, she received no training in how to complete the writing task, and she apparently did not have any examples. Even worse, unlike Matt, Dawn, and Karl, Lisa’s supervisor never said nor wrote what he thought of her first writing attempt, depriving her of an opportunity to “fix” it. He simply did not speak to her anymore. Lisa performed a few other “minor” tasks during the rest of her internship, but “not a lot of writing.” A self-described extrovert, Lisa was lonely in Switzerland and was overjoyed to return home.

Thus, learning to write from examples can be both an effective and an imprecise strategy. Interns like Dawn may accomplish their tasks by studying and improving upon examples. Conversely, interns like Matt may confound their writing processes if they rely too heavily upon examples alone and then do not practice within that same genre. On one hand, it appears Matt short-circuited his understanding of how to write summary-judgment letter briefs because he was not asked to write more of them. Karl, on the other hand, succeeded because he wrote the same types of motions again and again, getting valuable practice through trial and error. In a way, his previous writings, initially brim with “feedback,” became his “examples.” Lastly, interns like Lisa who neither have examples nor any type of training or mentorship will almost surely flounder. Therefore, understanding the model genre’s features, context, and specialized

area of law,<sup>42</sup> coupled with “deliberate practice” in that same genre,<sup>43</sup> is key.

### C. Gauging Writing Success: Four Indicators

That interns learned from examples and from trial and error suggests another reason why the independent contractor metaphor is useful. The metaphor answers how interns gauged whether they were successful in producing written work. I will focus on four indicators that are the most representative: first, how often interns are solicited for more work; second, how quickly they complete assignments; third, how often their work product is quickly approved (or requires only minor additions or deletions), and fourth, how effectively they navigate intra-office expectations.

A steady stream of more work served as the first and best indicator of tacit approval. (Employment offers, usually extended near the end of internships, were also indisputable evidence.) This finding is simple but important. If employers offer little sustained training or mentorship, then they are delighted when interns perform well on initial writing tasks. Employers and clients benefit, so interns are valued as assets, not deadweight. Employers then entrusted interns with either more of the same types of tasks, or with newer, more complex work. Joel said, “If you turn [a memorandum] in, and they ask you to do another, that’s a good sign.” He was asked to write about 12 memoranda in 15 weeks; Karl, Joel’s office mate, estimated he wrote somewhere between 15 to 20 memoranda in that same time period. In contrast, Matt’s firm may not have needed more summary-judgment letter briefs, but because he speculated, “They weren’t over anxious to assign me things. Maybe they didn’t think I was available or didn’t trust me to do good work,” it is likely that his anxieties proved correct. And Lisa’s pipeline of work all but dried up after her first assignment. A dry pipeline thus often meant interns had failed to earn their employers’ trust. For employers, simply phasing out intern workloads was easier than giving actual training or feedback as to why

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<sup>42</sup> See DEVITT, *supra* note 6, at 191 (“[W]e must teach contextualized genres, situated within their contexts of culture, situation, and other genres.”); David R. Russell & David Fisher, *Online, Multimedia Case Studies for Professional Education: Revisioning Concepts of Genre Recognition*, in *GENRES IN THE INTERNET: ISSUES IN THE THEORY OF GENRE* 163, 164-65 (Janet Giltrow & Dieter Stein eds., 2009) (arguing that to teach genres outside of their context presents problems of transfer of knowledge).

<sup>43</sup> Kellogg, *supra* note 11, at 17.

the writing was wanting. The interns' seats would be empty in a few weeks anyway.

Quickly completing assignments served as the second indicator. Joel agonized over the clock:

I was always nervous I'd get in trouble for spending too much time, so . . . that's why sometimes I would work on something for four hours [but for] two of those hours I was spinning my wheels, and so I'd turn off the ticker, without billing. It was unethical to bill [my employer and its clients] for the hours I was spinning my wheels.

Thus, Joel sometimes recorded fewer billable hours, but he put more time on the clock just to keep up. That Joel later earned a position did not retroactively erase the reality that he felt pressured to produce solid work quickly. By contrast, in regard to legal research, Emily happily announced that she was successful when she quickly found what she felt were quality answers to research questions. Her employer permitted Google searches, so she ran them, quipping, "If I had tried to go through LexisNexis or Westlaw, it would have taken me *forever*." Rapid turnaround is valuable. It offers employers the perception that interns are skilled because they do not rack up billable hours "learning" how to perform tasks.

Quickly approved work served as the third indicator. Karl reported that a few times his supervising attorneys made no revisions to his written products before they were sent directly to clients or courts. Karl understatedly admitted, "That's kind of a big deal." As a subset of this indicator, the only substantive "revision" Emily felt her supervising attorney made to any of her work was when she wrote a demand letter. He approved the letter after she omitted the citations, which he saw as unnecessary. One of Dawn's supervising attorneys did not omit anything from her work but rather added clarifying material, signaling she had drafted well. For one memorandum, the supervising attorney said, "This is good, but it almost feels like you're driving towards a conclusion that you don't make. Why don't we make the conclusion?" Instantly seeing his point, Dawn gladly revised. Thus both relatively simple omissions and additions—instead of significant content-based, structural changes—also signaled successful drafting. These comments became the only "training" or "feedback" interns received. Interns therefore read volumes about their performance based on these seemingly "minor" comments.

Navigating intra-office dynamics served as the fourth indicator. Much to their consternation, many of the interns repeated that they

not only faced unclear expectations from the beginning of their internships, but they also had to adjust to different expectations within the employers' offices. For example, interns commonly reported to more than one supervising attorney throughout the summer. Of his 2014 internship, Karl observed, "We got assignments from almost every attorney. . . . That's one of the things that bothers me about the whole thing. Each attorney is different. It's a guessing game of what this attorney wants. What passed muster in one setting didn't in another." So not only were interns struggling with unclear genre expectations from task to task, they were also juggling attorney preferences. Even if they were writing in familiar genres, interns would need to adjust to new expectations. Joel said:

If a memo, to some partners, is less than 10 pages, they think that you haven't done your work: "This is not thorough enough, I want to know the details, I want to know everything." And then there were others who if it was more than a page and a half: "I don't have time to read this. Make it more concise."

This juggling of expectations reinforces the contractor metaphor—interns often learned multiple intra-office preferences and styles, perhaps decreasing the likelihood that they could successfully cater to all. For Karl and Joel, who wanted to prove they were promising associate candidates, this centrifugal process underscored the futility of learning universal legal writing skills that spelled success for any assignment. Instead, they had to learn to be versatile writers.

To review these findings, let me return to RQ1: how are summer interns trained and mentored to complete writing tasks throughout their internships? While some legal educators may promote internships as ideal apprenticeships that develop, among other skills, writing abilities, many employers in this sample assumed interns were already strong writers. As a result, the interns reporting working like independent contractors on islands of uncertainty. They were encircled by seasoned attorneys with too few free moments to train them and with too many ambiguous expectations. The most successful interns navigated unclear rhetorical situations, negotiated undefined expectations, traversed unfamiliar legal landscapes, and deciphered fragmentary feedback. They relied heavily on examples, and if they wrote in the same genre often, they improved their writing skills. Interns who floundered did not understand the context of their examples, or wrote in an unfamiliar genre only once, or did not have examples at all. The size of this sample limits my ability to generalize. However, the assumption that interns are strong writers simply

because they may have done well in LW did not translate into successful writing experiences for the interns across the board. Instead, the successful interns reported learning how to write via trial and error,<sup>44</sup> not through sustained training and mentorship. To gauge how well they are doing with their writing tasks, interns tap into four indicators. Lastly, interns also gauge how successful they are at their writing tasks based on how easily the knowledge and skills learned in LW paid immediate dividends.

## **V. Results for RQ2: Perceptions of Classroom-to-Workplace Transfer**

RQ2 asks: how do interns perceive those writing tasks as either similar to or different from the writing tasks they performed in the LW classroom? The main finding for RQ2 is that interns who succeeded practiced and therefore transferred the skills they gained in LW to their internship tasks. At its core, transfer means students apply knowledge and skills learned in one setting to new settings. While some rhetoric and composition scholars have pointed out the complexity of “transfer,”<sup>45</sup> I use the term here to discuss students’ perceptions, not to document precise instances of transfer. For example, speaking about the connection between LW and his professional writing, Joel said, “LW is the most useful class I ever took in law school. Bar none.” Dawn echoed this feeling: “I wrote memos for [my employer] the same way [my LW professor] taught me, and it seemed to pass muster.” She later added, “Having some real experience was so valuable. It gave me lots of confidence.” Based on the findings of RQ1, it is easy to see why interns valued a high transfer rate. The perception of transferability meant that even if interns were not trained or mentored extensively, they at least had an idea how to begin writing tasks. They had preliminary writing process knowledge and genre knowledge.<sup>46</sup> They had working rhetorical knowledge and could rely on their information literacy and critical reading skills,

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<sup>44</sup> *Supra* note 13.

<sup>45</sup> *See, e.g.*, Russell & Fisher, *supra* note 42, at 166 (explaining that “documenting instances of transfer of knowledge or skills ([is] a very difficult research problem, theoretically and methodologically”).

<sup>46</sup> *See* McCutchen, Teske & Bankston *supra* note 10, at 460-61 (arguing that “working-memory limitations may affect revision processes in a number of ways” and that “[f]amiliarity with a genre can theoretically influence writing by providing access to an organized schema in long-term memory, which writers can use to structure content and assist in ongoing processing”).

too.<sup>47</sup> Even if they lacked subject matter knowledge for a task, they could minimize their learning curve<sup>48</sup> by drawing upon what they already knew regarding the writing process and how to operate within a given genre.

To contextualize this finding, let me explain why it is important that students reported learning only two major genres during LW: the memorandum and the brief. Understanding why these well-known litigation genres form the core LW curriculum show why they are perceived as transferable. Recently, LW professors have begun re-conceptualizing legal analysis,<sup>49</sup> but teaching the memorandum and brief has long been standard practice.<sup>50</sup> The justification for this approach is that the genres teach the foundational skills of objective and persuasive legal analysis.<sup>51</sup> Teaching these two genres may also imply that they are all-purpose genres. This implication sets up the memorandum and brief as “antecedent genres” for other legal genres, or foundational texts that help students learn how to write new texts, which I will discuss in section VII.<sup>52</sup>

Joel, Karl, Amber, and Dawn could testify to this idea of transferability more than their peers: they all worked in litigation-based offices. These four interns thus naturally divided themselves, based on their employers, into what I will call the “litigation interns.” They reported a high correlation between LW genres and their writing tasks. In their approximately 73 collective weeks of service, these interns wrote about 31 memoranda and many brief-like pleadings. Joel and Karl wrote the lion’s share. Dawn wrote three memoranda during her five-week internship. Amber wrote only one

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<sup>47</sup> See BEAUFORT, *supra* note 12.

<sup>48</sup> See Kellogg, *supra* note 11, at 15 (stating that the demands placed on the central executive by short-term memory are somewhat alleviated when there is already long-term memory knowledge for a specific task).

<sup>49</sup> See, e.g., Felsenburg & Graham, *supra* note 17, at 294 (“[W]e 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.”).

<sup>50</sup> ROBBINS-TISCIONE, *supra* note 40, at 215 (“The traditional legal memorandum has been taught to law students at least since the 1970s, when legal writing courses were first introduced.”); see also VOLOKH, *supra* note 38, at 310 (“Most first-year writing assignments are objective memoranda . . . and persuasive briefs.”).

<sup>51</sup> See EDWARDS, *supra* note 13, at 4.

<sup>52</sup> See DEVITT, *supra* note 6, at 203 (“When people write, they draw on the genres they know, their own context of genres, to help construct their rhetorical action. If they encounter a situation new to them, it is the genres they have acquired in the past that they can use to shape their new action.”).

memorandum, but she wrote four additional litigation genres. Amber's experience helps situate the litigation interns' experiences.

As one of only two well-mentored interns out of the eight total, Amber found in her second internship that her employer's inviting culture and heavy workload meant that she wrote motions to dismiss, motions to vacate, and an appellate brief. Amber, only a 1L, explained that her supervisors were

very nice people, they liked the work I did. I got tons of feedback . . . That's when I knew where I stood with my legal writing. I wrote a criminal appellate brief that actually got submitted to the Tenth Circuit [Court of Appeals], and . . . they sided with our case, so it was good for me . . . . [I was working] on things that were being submitted to the courts.

Authoring winning briefs in the Tenth Circuit is no small feat. Amber thrived under mentorship, in part, because she saw a strong resemblance between LW's litigation genres and the litigation genres she wrote for many cases. Even though Dawn, Joel, and Karl reported receiving little to no sustained training or mentorship on their tasks, they also capitalized on the high perceived transfer rate from their classrooms to their litigation workplaces. Genres from both settings reinforced each other, and it is not hard to see why these interns reaped the rewards. Appropriate practice accelerates transfer.<sup>53</sup> But did these interns write only memoranda and briefs? And what were the non-litigation interns writing instead? Table 2 outlines the eight interns' writing assignments.

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<sup>53</sup> Kellogg, *supra* note 11, at 17-18 ("Although high levels of training performance can be obtained with mass practice, the learning does not transfer as effectively to a different task in the future in comparison with spaced practice.").

**Table 2. Thirty-one Types of Written Genres for Four Internship Practice Areas.**

<i>Practice Area</i>	<i>Genres*</i>		
<i>Judicial</i>	bench memorandum	opinion	
<i>Litigation (Trial)</i>	motion for summary judgment discovery document summaries summary-judgment brief letter motions (unspecified)	motion <i>in limine</i> motion to dismiss motion to vacate memoranda	complaint email notes answer
<i>Litigation (Appellate)</i>	motion to dismiss	motion to vacate	brief
<i>Transactional</i>	planning commission appeal contract review report informal research report internal-office documents analyses	visa application demand letter policy proposal patent review report	easements PowerPoint
<i>Academic</i>	writing content for book or article creating and updating spreadsheets	editing book or article source checking citations	email

\*This list is likely incomplete for at least two reasons: 1) interns spoke only of the genres they remembered, and 2) interns may have perceived some “minor” genres—such as billing time entry logs that may be read by supervising attorneys and clients—as too insignificant to mention.

As Table 2 shows, the bulk of the written genres (17 of the 31) produced by the interns in this sample cater towards a litigation-heavy type of practice, not surprising since six internships (almost

half) were completed for general service law firms, a state supreme court, and a government prosecutor's office. The litigation interns—Karl, Joel, Amber, and Dawn—generally faced a high demand to write a wide range of documents, sometimes on high-profile cases. Karl and Joel wrote transactional documents, too, such as planning commission appeals and easements, respectively. Nonetheless, the various types of written genres in Table 2—such as a memorandum, complaint, answer, motion for summary judgment, and trial brief—showcase the entire lifespan of a case, from filing to judgment. Collectively, the litigation interns thus wrote the types of documents that would take a client from conflict to resolution, even if the interns saw only one stage of that case's lifespan. That these interns were trusted to write such vital documents bespeaks a confidence in their writing, an observation underscored by RQ1 findings linking intern ability to employer trust. That these interns perceived a high transfer rate between LW's genres and their workplace tasks also emphasizes their success. Because these interns wrote in at least 15 litigation genres named in Table 2 that went beyond the memorandum and brief, this finding also suggests that LW assignments were perhaps perceived as the “antecedents” of other litigation genres,<sup>54</sup> as has been long assumed and taught, but seldom empirically verified.

By contrast, the other half of the sample—Scott, Emily, Lisa, and Matt—did not serve in litigation firms. I thus refer to them as the “non-litigation interns.” They were not asked to write memoranda or pleadings even remotely as often their peers. Compared to their litigation peers, these interns in their approximately 42 collective weeks of service wrote two total memoranda. These interns had less combined experience and time on task than their peers, but the discrepancy between 31 and two memoranda is staggering. Instead of memoranda, the non-litigation interns wrote patent review reports, demand letters, spreadsheets, visa applications, policy proposals, content for an academic book or article, emails, etc.—in total, about 12 genres. The discrepancy between the LW genres and the unfamiliar—and sometimes unheard of—genres these interns wrote on the job meant that these interns may not have been assigned tasks that seemed to reinforce their classroom learning.

When asked to write in unfamiliar genres, the non-litigation interns described valuing the research skills they learned in LW, not

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<sup>54</sup> See DEVITT, *supra* note 6, at 204 (stating that the genres students acquire in a first-year collegiate composition course can “serve as antecedent genres when students move into other contexts—into discipline-specific courses, into workplaces, and into civic lives”).

its two genres, as most relevant for the task. Asked if LW helped him feel prepared for his internships, Matt replied, “Yeah, kinda prepared . . . The research was the most helpful for my summer internship . . . I’d rate [LW] as about 50% useful.” Emily tersely replied to the same question: “No. Sometimes you don’t remember how to live in the real world when you are in the LW class. If I had done a judicial clerkship, I may have done more LW type of writing.” Tellingly, Emily viewed her work as non-litigation work; she thus ascribed to it a low rate of classroom-to-workplace transfer. Lisa concurred, “I was able to draft some visa applications. But that wasn’t really legal writing.” As follow-up I asked whether LW prepared her for that genre: “No. Not really. Maybe researching?” If students faced unfamiliar genres, they relied on their LW researching skills to bridge the gap. But because they wrote so few memoranda and brief-like documents, the non-litigation interns did not perceive that their LW knowledge transferred as directly to their internship writing tasks as did their peers.

Matt offers an example of this lack of application of LW genres to an unfamiliar workplace genre. He explained, “I had never even heard of [a summary judgment letter brief]. The sample wasn’t in the form of anything I’d learned in LW.” Ironically, there may be similarities between a summary judgment letter brief and the brief taught in LW, but Matt said, “LW wasn’t similar to [the summary judgment letter brief]; it was a semblance of it, but structure, not so much.” Whatever features the genres shared, Matt was unable to bridge the gap. This partly explains why it was so difficult for Matt to learn the genre while also struggling with the subject matter. Frustrating for both parties, Matt’s learning curve did not align with his employer’s expected timetable. Matt painfully learned that LW did not train him to write the types of genres required for his intellectual property internship. He therefore evaluated his LW preparation as only partially useful.

In a surprising way, Emily reported feeling that LW benefitted her little during her sole non-litigation internship, even though she said, “I feel really good about what I did this summer.” She did not attribute this success to LW, as she did not write one memorandum or brief. Rather, she credited the writing skills she gained at a lobbyist-firm internship she had completed *before* law school. In Emily’s eyes, that her non-litigation internship after the first year of law school was nothing like LW was one reason for its success: “I didn’t have a great LW experience, and I thought for a while of trying law jobs where I would never have to do legal writing—which is asinine.” Emily perceived the writing taught in LW as tending toward litigation paths. As a result, she concluded, perhaps hastily, that because she had a poor LW experience—which bent her confidence and is detailed more fully below—that she was not qualified for litigation-related work.

To conclude these findings, let me return to RQ2: How do interns perceive internship writing tasks as either similar to or different from their perception of writing tasks in the LW classroom? Although the complete answer to this question requires empirical validation beyond the scope of this article,<sup>55</sup> the answer stemming from intern reports is mixed. Because all eight interns were asked to write in many more genres than just memoranda and briefs, the two genres either enhanced transfer or shrouded it. It appears that these two antecedent genres enhanced transfer the most for the four litigation interns. The litigation interns perceived a strong correlation between the memorandum and brief and the 15 litigation genres they were tasked to write. In some ways, then, the litigation internships served as extensions of the LW classroom. By contrast, the four non-litigation internships only faintly resembled the LW classroom. The non-litigation interns simply were not asked to write genres like memoranda or briefs, and thus did not clock valuable practice time with them as did their peers. So the non-litigation interns perceived that the LW genres only marginally, if at all, helped them to produce the 12 non-litigation genres that they were asked to write. Some of these non-litigation interns felt wholly unfamiliar with some of their assigned genres, diminishing the rate of perceived classroom-to-workplace transfer. Despite their investment in LW, students who took non-litigation internships struggled seeing the application of LW skills and knowledge to their writing tasks.

#### **VI. Results for RQ3: The Process and Results of Learning the Memorandum and Brief**

RQ3 asks: how do the genres of the legal memorandum and legal brief learned in the LW classroom prepare students for the writing tasks they complete during their internships? Two main findings emerged, largely along the litigation and non-litigation and intern lines. The first shows that students who struggled, for a variety of reasons, in LW ultimately completed non-litigation internships. Combine this fact with the results of RQ2: these interns' perceived that LW only partially prepared them to write during their non-litigation internships. The second finding is that the strategic efforts in LW correlated with not only high grades but also attractive career options for the students who became litigation interns. As we saw in

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<sup>55</sup> *See id.* at 207-08 (“We know too little yet about how writers move from one genre to another, and the rhetorical strategies of each genre are too complex and tacit for analysts to identify all possible relevancies.”).

RQ2, these interns then saw clear transferability between the classroom and their internship work. As evidence of both findings, Joel and Karl secured full-time employment because of their LW and internship success. Amber's LW and internship success earned her a part-time position with the promise to upgrade after law school into full-time work. None of the other 1Ls had similar offers. By contrast, the students who struggled in LW—both with grades and with seeing LW's value while enrolled in it—also became the non-litigation interns; they experienced the opposite trajectory.

### **A. The LW Challenges of Students Who Later Became Non-Litigation Interns**

The difficulty of learning the LW genres and securing litigation internships seemed to fuel this opposite trajectory. For instance, Emily reported that her LW experience not only damaged her GPA and confidence, but it also appeared to foreclose certain career options. Emily deliberately chose to take a break from the LW genres in her 2015 non-litigation internship. Yet during the 2016 internship recruitment process, Emily surprisingly applied for 20 litigation-related internships. Six firms interviewed her. She reported, "No call backs, and no jobs. Which is super exciting." Emily explained that she applied only to internship employers "who weren't accepting patent students, and those who would accept my GPA." See Table 3 below for a summary of the interns' grades.<sup>56</sup> Despite appearances, Emily's GPA ranked fourth highest in this study's sample, and she ranked in the top thirty-third percentile of her class. Yet her 3.1 grades in LW were the lowest of all her courses both semesters. Qualifying her statements with remarks like, "I can't believe I'm saying this," or "I wouldn't admit this to anyone," she confessed how, "I'm almost positive that I don't want to work in a firm . . . I don't want to do a judicial clerkship because I would have to write memos. It's also one of the reasons I didn't do law review." Emily had a sense that these opportunities were potentially career-building. Yet her LW experience haunted her: while Emily first renounced litigation internships, she felt she could no longer compete for them later when she applied.

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<sup>56</sup> I am unfamiliar with the mechanics of how this law school distributed its mandated curve, especially as it pertains to LW. But the interns reported over and over that they were very aware of the curve and its consequences.

**Table 3. The Eight Interns' Self-reported LW Grades, Overall GPAs, and Class Rankings.**

Name	First Semester	Second Semester	GPA	Class Rank
Karl Meyer	3.9*		3.79	Top 10%
Joel Perry	4.0	4.0	3.65	Top 20%
Matt Cook	3.7	3.2	3.27	45 <sup>th</sup> %
Scott Marshall	2.7	2.8	3.34	Top half
Amber Wood	3.7*		3.62	Top 20%
Dawn Lockhart	"Something below 3.0"*		2.93	Bottom 50%
Emily Call	3.1	3.1	3.47	Top 33%
Lisa Meek	3.0	3.6	3.34	Top 50%

\* It's unclear for which LW semester this grade was earned, or if it was earned for both.

One reason Emily could not compete for certain litigation internships may have been due to her struggle in LW. Yet her struggle is hard to explain because she holds a double major BA in political science and history and she wrote a thesis for her political science MA. Felsenburg and Graham found that some students' previous writing experience actually exacerbated their struggles to learn legal writing.<sup>57</sup> As Emily explained her wrestle with the CREAC formula for memoranda, it became clear that her previous writing interfered with her ability to conform to the genre. As she had done for her MA thesis, Emily had hoped to simply craft what she called "a cogent claim" for her LW memorandum. Instead, when Emily sought Professor Prowman's and her TA's help before the quickly approaching deadline, they said that Emily's memorandum was not in CREAC form. They said she should not "rewrite it, just rework it." Emily described thinking

I should have scrapped it and rewritten. I tried to tweak it, but I don't like the CREAC structure: conclusion, conclusion, conclusion, conclusion. My [evaluative] comments afterwards were not uberly

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<sup>57</sup> See Felsenburg & Graham, *supra* note 17, at 282-85.

helpful—they didn't say how I could do better.... I wanted to write in a more academic style, a more thoughtful way of the law, similar to the analysis we do in class.... You're reading a court case and court case and court case; now write a memo. You've never read one. That's hard. Had I not been so busy... I may have Googled 'memos' and read some myself. But where the curve is so tight... and you can't read each other's. You're not really learning.

Conceptually, Emily could not understand the genre's features. Classroom discussions also appeared to favor an organic, "thoughtful way of the law" instead of CREAC's formulaic way. It is unclear whether the LW curriculum provided examples, but the school's ethical code apparently prohibited students both from looking at each other's drafts and getting attorney advice. Looking up examples online was apparently permissible, but Emily simply did not have time. Most distressingly, she could not see how to learn from her evaluative feedback.

While we only hear Emily's side of the story here, her experience is not entirely unique. Matt and Lisa provide a snapshot of movement between the top and bottom of the class, a view that explains both why the LW genres were hard to learn and why LW performance mattered in the long run. Matt described conferencing with professor Thurgood many times during the first semester. He earned a 3.7 in LW, an enviable grade. Yet his zeal tapered off in the second semester when he saw "no major difference" between the memorandum and brief (a distinction that haunted him when he could not repurpose both genres for his summary judgment letter brief). Matt was surprised when his grade in the second semester of LW dropped "two standard deviations away from the median" to a 3.2. His postmortem of the drop was based on a hunch that he did not "show" he had spent enough time on the brief. When surveyed before the end of the course about how much time he had spent drafting, Matt reported about 50 hours. Apparently, he knew another student who reported closer to 140. "I wrote an equal, if not better, paper the second semester," Matt recounted. This is a hard account to verify, but Matt's perception of the experience speaks to the challenge students have with not only learning legal writing but also of explaining their shortcomings with it. Without a clear grasp as to why his grade dropped, Matt concluded his professor was "shape-shifting," based on what he perceived as her

changed expectations throughout LW.<sup>58</sup> Matt's feelings of disappointment as a result of his performance may have compounded the challenges he had with transferring LW skills and knowledge into his two non-litigation internships.

Lisa, on the other hand, was quick to point out that "I *hate* writing. I *hate* writing. It's a moving target, you can never get it right." Perhaps unsurprisingly, she earned a 3.0 the first semester because she did not "care enough" about the memorandum. She bounced back the second semester, however, earning a 3.6. As the only JD/MBA in the sample, Lisa, also a nurse who worked weekends, was partially immune from the pressures of law school grades. She ultimately sought jobs in health care, not law. She thus explained that after performing poorly the first semester of LW, she shifted her focus in the second to learning the material independently from focusing on the grade. She recalled increasing her face-to-face time with her professor: "I went in and said, what do you want here, what do you want here? [Professor Thurgood] was open. I basically feel like she told me what to write." Lisa reported investing more time on the brief than the memorandum, but less than 100 hours on either.<sup>59</sup> Either way, students perceived that more conferencing and time-on-task in LW equaled higher grades.

Tellingly, Matt, Emily, Scott, and Lisa emerged from LW with checkered grades and ultimately completed less financially rewarding internships. This observation may be explained by the fact that 1Ls do not traditionally complete financially compensated internships. But as we discussed earlier when defining how Karl and Joel received their 2L internship offers, some employers may cherry-pick students with the best grades, including LW grades, and with the best written portfolios, including writing samples. Students who underperformed in LW and completed non-litigation internships (and thus had less experience with some of the genres financially-rewarding internships value) may be at a disadvantage. But this observation does not mean that these students cannot have successful careers, nor that they cannot become strong legal writers. Students who underperform must simply define themselves *against* the experiences and skill sets

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<sup>58</sup> While Matt's ad hominem complaint needs to be taken with a grain of salt, he later joined five of his classmates to lodge a formal complaint with the Dean of Students about professor Thurgood. Apparently, this group of students were so troubled by what they perceived as their professor's unpredictable standards that they lodged the complaint. The outcome of the complaint was unclear.

<sup>59</sup> It is possibly just a coincidence, but both Matt and Lisa had Professor Thurgood the same year (it is unclear if they were in the same section).

of their high-performing peers to compete for jobs. Matt sharply felt this reality, for example. In the weeks before our interview, when fall recruitment for the next summer internships was underway, he sent a flurry of networking emails, hoping for a promising lead. When I asked how his internships had prepared him both to return to school and to pursue his career, Matt said with measured dismay, “I started studying for the patent bar. That was helpful. I don’t think anything I did was useful. I feel brand new.” Like Emily, Matt felt that there was some incidental practical value gained from both his LW and internship experiences, but both he and Emily faced the foreclosure of certain opportunities. Little wonder Matt shared Emily’s frustration for the future.<sup>60</sup>

In contrast, Lisa defined herself against successful LW students by simply taking herself out of the competition. She had already secured a health care internship for next summer through the MBA office. Speaking of the high-pressured fall recruitment process, Lisa said, “I’m in a different field. It doesn’t apply to me. I already have a job.” Lisa will likely write documents like health care policy proposals, not briefs or memoranda. As a result, Lisa saw LW more as an academic obstacle course, “a moving target,” not a course equipping her with transferrable skills. Lisa’s non-traditional case thus highlights how LW fits into a larger hierarchy that may favor litigation career paths. Her case clarifies why her peers, a limited but what may nonetheless be an insightful microcosm of LW, faced such pressure to master its genres. The best writers claimed the most prestigious and financially rewarding career options.

### **B. Perceived Effort and LW Success for Students Who Became the Litigation Interns**

The second major finding for RQ3 is that strategic effort in LW translated into success. The students who earned the highest LW grades—Joel (4.0/4.0), Karl (3.9), and Amber (3.7/3.7)—all attributed their success to cultivated relationships with TAs and professors. Joel said, “I pretty much stalked my TA because the dude was smart. He basically taught me how to write.” Karl reported, “My TA was tremendous, very helpful. He went out of his way.” And Amber

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<sup>60</sup> Additional research needs to examine whether students who perform non-litigation-based internships—that is, students who do not write memoranda or briefs during the 1L summer—are nevertheless competitive in fall-recruiting experiences. This study could also be extended with a more nuanced texture by examining 1Ls and 2Ls separately, alongside with compensated and non-compensated internships.

said, “I worked so well with the TA and my professor. I was in [my TA’s] office hours every time he had it. Maybe 2-3 hours a week. That’s probably a lot.” I was surprised to learn that Karl was Amber’s TA; later I learned Karl was “giving back” because of what he had received. Amber, now herself a TA, is “giving back,” too. These students sought out their TAs and professors for extra help, doing the same as the students who Felsenburg and Graham described in their study as “open” and “committed to the learning process,” not “shut down” or “disengage[d]” from it.<sup>61</sup> Had Matt’s and Lisa’s performance been consistent throughout the year, they would also fall into this category; nonetheless, their strategic effort to work with their professors, albeit in alternating semesters, also supports this finding.

It would be a mistake to say, however, that the students who earned lower LW grades worked less; the time they devoted to LW partly explains their frustration with it. Scott referred to the 3.0 credit hours of the first semester of LW as “more like 5 credits of work.” Emily speculated that, “[students] are spending the amount of time that would be required for a 5.0 or 6.0 credit class.” The students who earned the highest grades, then, did not talk about LW in terms of how many credit hours it should be worth. Instead, they described how they strategically cultivated relationships with mentoring superiors who knew the genres.

Students who reported only superficial or merely working relationships with their professors and TAs—Scott (2.7/2.8), Dawn (3.0/unavailable), and Emily (3.1/3.1)—earned the lowest grades. They also had a hard time articulating precisely *what* they did not understand, or *why* they earned the grades they did. Scott earned the lowest LW grades of the sample but earned average grades in his other courses. Even so, he spoke even-handedly of Professor Prowman, despite his LW struggle: “I liked my professor, but she was hiding the ball.” Scott is perhaps one of the biggest surprises of the study because he had one year’s worth of legal writing experience *before* law school. He had been trained and mentored in litigation genres as he worked in his father’s firm before law school, writing a motion *in limine*, for example, that effectively persuaded a judge to rule in his father’s client’s favor. The judge even complimented the force of his writing. In some ways, Scott had been playing with “the ball” long before the rest of the sample, none of whom had any legal writing experience before law school.

Yet comparing his workplace legal writing to LW, Scott said they were “very different . . . CREAC was hard for me. The memo was

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<sup>61</sup> Felsenburg & Graham, *supra* note 17, at 298.

taking place of the conversation I was having with the lawyers I was working with. Your legal memo is supposed to explore every side of the issue, explaining it to the practitioner. It replaces the oral tradition of exploring out the issues across the coffee table.” Scott, whose experience suggested he should have been most comfortable with LW’s genres and their connection to practice, described CREAC’s form in the same way Emily did, as a seemingly redundant genre feature: “You have to work to make sure that you are separating those things out into what they’re really supposed to be . . . because they all do bleed together . . . It’s hard to wrap your mind around.” Although attorneys and a judge had validated Scott’s writing before he ever took a seat in LW, the fact that he had to “relearn” legal writing challenged his view that there was a universal legal writing skill set. While Scott reported that his TA was willing to work with him, he felt Professor Prowman “revealed the ball more to others [whom] she preferred,” where revealing “the ball” was akin to being told “what to write.” It may be that Scott’s prior success—as Felsenburg and Graham have argued is common for students with significant prior writing experiences<sup>62</sup>—prevented him from strategically conferencing with his professor and TA as much as his peers did. Mystified nonetheless, Scott did not understand why even when he applied Professor Prowman’s suggested revisions he still earned low grades. Scott did not practice LW’s genres during his two non-litigation internships, a fact that distanced him further from integrating LW and legal practice.

Equally mystified, Dawn said, “While I was in the semester I was just flailing.” This comment is difficult to understand because Dawn stated how conferences with her professor helped her writing. She also reported attending only the three required meetings with her TAs, and the meetings were uneventful: her only question was, “OK, what am I *really* doing wrong?” Dawn reports intuitively knowing she was “flailing,” but did not take full advantage of the available resources, perhaps because she could not articulate the problem. The writing process throughout the semester finally did teach her how to write LW’s genres, but just a little too late to salvage her grades. Whatever hit her GPA took before she understood how to write the genres, Dawn’s workplace practice with the same genres—she completed one 5-week litigation internship—reinforced her learning in a way not reinforced for Scott, Emily, Matt, and Lisa. These four non-litigation students wrote many genres on the job, but almost no memoranda or briefs.

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<sup>62</sup> See *id.* at 282-85.

Finally, Emily expressed frustration not only with CREAC but also with her relationship with her professor: “She was not helpful when I had asked her questions before. She is very helpful to some people. Maybe our personalities didn’t mesh quite right. I won’t talk to her. I’m just going to start over. Do better, somehow. In some mysterious way.” Mysterious, indeed. For students who did not cultivate strong relationships with TAs or professors, then took on non-litigation internships where they did not practice the LW genres, the options for future litigation internships were limited. As a result, for them, legal writing may remain an uninviting mystery.

In sum, let me return to RQ3: How do the genres of the legal memorandum and legal brief learned in the LW classroom prepare students for the writing tasks they complete during their internships? Karl and his litigation peers Joel and Amber saw success during their internships because they learned the LW genres well. So Karl’s statement about the value of LW perhaps best crystallizes the answer to RQ3: “The memo does a good job of preparing you to write memos.” That the would-be litigation interns attributed their LW success mainly to the quality of their mentored professor and TA relationships explains why they chafed with the lack of extended internship training and mentorship. Yet even in the face of this deficit, the litigation interns already had an idea of how to write their tasks because the tasks often readily resembled the LW classroom genres. The students who struggled in LW could not capitalize on this same advantage in their non-litigation internships. While learning to write the LW genres was difficult, that difficulty was compounded at times when non-litigation interns were asked—but not trained or mentored on an extended basis—to write in new or unfamiliar genres.

The seeds for successful internship performance were thus likely sown in LW. While most students knew that all their first-year grades, not just LW, served a major role in their futures, the pressure to perform well in LW was palpable. This pressure surfaced during the fall on-campus recruitment process: how quickly and how well students learned legal writing skills either opened or foreclosed options. Employers valued other skills, too, but where writing forms such an integral part of an attorney’s craft, employers wanted stellar writers. Students who earned the best LW grades (Karl, Joel, and Amber) thus fulfilled litigation internships, and the students who earned average or lower grades (Scott, Lisa, Matt, Dawn, and Emily) fulfilled non-litigation internships. (Dawn fits in with the latter group here because her litigation internship lasted only five weeks; she then served as a research assistant.) LW performance mattered because it played a part in determining where students interned, and how well they performed there.

Lastly, the litigation internships, while prized, did not guarantee success for every future writing task. Joel opined, “Just because I did good on my legal writing, doesn’t necessarily mean I’ve arrived, you know.” This remark shows Joel intuited, despite his LW and internship success, that the skills and knowledge learned in LW could only take him so far. While he may not refer to it as such, Joel’s “10,000 hours” expertise clock<sup>63</sup> had only been set in motion.

## VII. Implications and Discussion

The major results from this study suggest that some LW faculty should be encouraged by the good news that LW will likely most benefit students who have clearly defined litigation career paths. The bad news, however, is that LW may not be helping some students as well who are not yet committed to litigation careers or who are decidedly pursuing non-litigation careers. This finding was underscored by the fact that interns received little formal training or mentorship in the workplace. As independent contractors, these interns grappled with applying the skills they learned in LW when they faced the more diverse and complex types of tasks they were asked to write.

Nevertheless, some LW professors and potential employers may argue that a lack of sustained internship training and mentorship is a good thing. Students who prove their mettle solve important writing problems during a crucible-like internship. This view has merit, but I question some of its underlying assumptions and consequences. Where LW at these interns’ law school is founded on only two litigation genres, the course may increase the likelihood for some students to succeed in the crucible—particularly a litigation internship—over others. Students who perform poorly with LW’s genres or who are asked to write different genres altogether during internships may have a lower likelihood of solving important writing problems. They may also face limited career options. As we have seen, students in this sample wrote 29 genres above and beyond the memorandum and brief, sometimes without a clue as to how to write the unfamiliar genres. I imagine that in a study like this with an expanded sample, the diversity and complexity would also increase, thus underscoring the gravity of this finding. The development of writing expertise is complex and takes time. It may be disingenuous to assume that the LW genres, by themselves and without added context, prepare all students for many types of writing they will craft

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<sup>63</sup> See Ericsson, et al., *supra* note 9, at 119.

in either their internships or careers. Indeed, the specialization of subfields in law require their own unique genres to fulfill the demands of their specialized discourse communities. It is true that some courses like “transactional drafting” or “drafting legislation” are offered, but they are offered later in the curriculum and as electives. In the competitive law school environment where tuition rates are high, LW professors should help students identify points in the curriculum where they are likely to struggle,<sup>64</sup> especially in the mandatory LW course, roadblocks that can exacerbate instead of ameliorate students’ LW struggles.

One way to potentially better prepare students is for LW professors to highlight how the skills learned in crafting the memorandum and brief can be repurposed for new tasks. One such genre-based approach has recently gained traction. Both legal writing scholars<sup>65</sup> and rhetoric and composition scholars<sup>66</sup> have argued for a pedagogy that privileges genre analysis, awareness, and critique. Under this approach, students examine a host of both strong and weak model texts<sup>67</sup> to learn how the context, audience, and purpose, or rhetorical situation,<sup>68</sup> shapes that genre. This approach moves genre beyond a classification system or formula-only view. Instead, genre is viewed as both “constraint and choice,” or in other words as both “convention and creativity.”<sup>69</sup> Students learn formal genre conventions (constraints), but they also learn how genre allows for

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<sup>64</sup> See Weresh, *supra* note 18 at 726 (explaining that “threshold concepts may reveal why some students do not even see the portal, why some remain on the doorstep, and why some get caught in a liminal state”).

<sup>65</sup> Pryal, *supra* note 8, at 351, 374-76 (synthesizing the research in rhetoric and composition and legal writing, Pryal argues that the genre discovery approach requires teaching fewer genres but teaching those genres with an eye on understanding how to repurpose skills to unfamiliar contexts).

<sup>66</sup> See Devitt, *supra* note 23, 159-60 (stating that as “ideological constructs,” genres provide starting points but they also “disguise the legitimacy of what is not expected”; that is, they may conceal as much as they reveal, and thus they should be critiqued instead of adopted wholesale).

<sup>67</sup> LW professors may request, with a Family and Educational Records and Privacy Act release form, to collect student examples to use in future semesters.

<sup>68</sup> See generally Lloyd F. Bitzer, *The Rhetorical Situation*, 1 PHIL. & RHETORIC 1 (1968).

<sup>69</sup> See DEVITT, *supra* note 6, at 153-56 (explaining how genres generate certain expectations which are driven by constraints, but how they also allow room for creativity, or pushing boundaries; employing meta-language and personal pronouns to push expectations of what a chapter in an academic monograph should look like to make her point).

multiple possibilities (creativity.) Thus, professors would still attend to the generic forms of the memorandum and brief, but their primary goal would be to “teach students a critical awareness of how genres operate so that they can learn the new genres they encounter with rhetorical and ideological understanding.”<sup>70</sup> Elevating genre over form could engender this critical awareness about how the memorandum and brief can serve as “antecedent” genres for new writing tasks.<sup>71</sup>

In short, learning the LW genres become case studies for learning new genres. After rhetorically analyzing the LW genres well, students, whenever they are asked to write a new genre, can first analyze that genre’s rhetorical situation, can next seek out as many examples as possible, and can then learn more confidently from trial and error because instructor feedback and mentorship can point out what rhetorical moves work and which ones do not and why. Professors can also point out the social contingency of writing in that what works in one setting, or even for one supervising attorney, may not be appropriate for another, as we saw in the results for RQ1. Practice in that genre, as always, is key to developing expertise.<sup>72</sup> Because no course can teach students all legal writing genres,<sup>73</sup> building students’ critical awareness in this way may then jumpstart the problem solving they will need during internships. And because examples are nearly the only “training” interns receive in new workplaces, this awareness matters. While evidence from this study suggests litigation interns may repurpose this critical awareness more easily, a genre approach may also better prepare non-litigation interns.

A genre-based approach is not a panacea, and some LW professors may understandably doubt the efficacy of studying examples. Felsenburg and Graham initially reduced the importance of examples, based on the view that examples do not aid students in learning sound legal analysis.<sup>74</sup> Over-reliance on examples may short-circuit the process of learning legal analysis. This instant study, however, echoes the findings of other writing research, suggesting novices often rely heavily upon examples whenever they enter a new discourse community, including workplaces.<sup>75</sup> Hence, the role of

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<sup>70</sup> *Id.* at 194.

<sup>71</sup> *See id.* at 205. The goal here is to show that these two documents, the memorandum and the brief, can serve as gateways or portals to acquiring new or unfamiliar genres; they are not static genres.

<sup>72</sup> *See* Ericsson et al., *supra* note 9, at 118-20.

<sup>73</sup> Pryal, *supra* note 8, at 370; *see also* DEVITT, *supra* note 6, at 205.

<sup>74</sup> *See* Felsenburg & Graham, *supra* note 17, at 270-71.

<sup>75</sup> Winsor, *supra* note 14, at 642; *see also* McCarthy, *supra* note 26, at 260.

examples should be reconsidered. While Felsenburg and Graham appear most intent on keeping students from merely “copying” successful examples, they concede in their 2010 article that students can look to their TAs’ first-year drafts as examples.<sup>76</sup> In their 2011 article, Felsenburg and Graham revise their position to suggest that examples simply need to be scaffolded into LW *later*, once students already have working-level legal analysis skills.<sup>77</sup> Even so, the concern about students “copying” successful examples may reveal both professors and student views that hold genres as classifications or formulas only. Adopting a genre-based approach, by contrast, may minimize this concern because students rhetorically study both strong and weak examples. They develop critical awareness about how genre both constrains choices and generates new opportunities.

Moreover, genre scholar Amy Devitt cites Scott Turow’s well-known memoir of his first-year at Harvard Law School to illustrate how important examples are for students. Examples offer a starting point. To introduce Turow’s frustration of learning to write a case brief without an example, Devitt explains, “To ask students to write new genres with no samples of those genres is to reduce their learning by increasing their anxiety.”<sup>78</sup> Devitt then quotes an aggravated Turow: “I have no idea of what a good brief looks like or even where to start. What in the hell are ‘the facts’ for instance? . . . I’m not sure what to pick, how abstract I’m supposed to be . . . Twenty minutes ago I threw up my hands and quit.”<sup>79</sup> In this study, interns have echoed similar frustration both in the classroom and workplace. Explaining the strengths and weaknesses of both strong and weak examples, a genre-based approach moves students away from seeing examples as classifications or formulas only, rigid templates that are devoid of a social context. Rather, students can build portable critical awareness that they can repurpose in settings where the only available “training” materials are examples. While Devitt states this genre-based approach still needs further empirical validation, it has promise.<sup>80</sup>

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<sup>76</sup> Felsenburg & Graham, *supra* note 17, at 296.

<sup>77</sup> See Miriam E. Felsenburg & Laura P. Graham, *A Better Beginning: Why and How to Help Novice Legal Writers Build a Solid Foundation by Shifting Their Focus from Product to Process*, 24 REGENT U. L. REV. 83, 103-104 (2011).

<sup>78</sup> DEVITT, *supra* note 6, at 209.

<sup>79</sup> *Id.* at 210 (quoting SCOTT TUROW, ONE L 31 (1977)).

<sup>80</sup> See *id.* at 201-02 (“Whether such explicit instruction in genre awareness does result in deeper understanding of the genres they acquire later is an issue requiring research.”).

But before we may be able to fully realize some of these benefits, we need to continue investigating the relationship between LW and internships. While this study was built upon the pioneering work of multiple LW scholars, I understand that many of this study's findings, instead of offering ground-breaking insights, confirm previous research and anecdotal accounts. Studies that confirm previous research, however, build disciplinary knowledge. These students voiced their successes and failures with both LW and their internships, reflecting on the high-stake ramifications for their careers. Their experience and insights indicate that student voices could provide valuable inputs in the design of LW pedagogies.

There are too many variables in the relationship between LW and internships, however, to draw generalizable conclusions from the small sample studied here. I appreciate that the distinction, for example, between "litigation" and "non-litigation" students may be too narrow a distinction in a wider, more diverse sample. Future studies should trace the impact of professors, administrators, career service officers, employers, and members of the judiciary, triangulating their findings by analyzing writing samples or with other potentially useful external data. These factors ought to be added to the panorama of findings by way of qualitative and quantitative methods<sup>81</sup> since they will add a depth and texture to the field's understanding of how law students learn to write. Without these added elements, our understanding of the value of internships may only be limited at best.

### VIII. Conclusion

The students' stories about their experiences in LW and in 15 internships were both encouraging and dismaying, both informative and elusive. In each case, their stories were riveting. Interns spoke with hope about developing practical skills, but they also spoke with fear about their abilities to succeed in the law. In many ways, this study has raised more questions for further investigation than it has answered. But these findings offer a part of the answer for how students develop writing expertise during summer internships, tracing the fruits of success—or lack thereof—to the lessons and

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<sup>81</sup> Spencer, *supra* note 21, at 184; see also Sinsheimer, *supra* note 7 (the ethnographic methods of observations, interviews, writing sample analysis, etc., if applied to an internship setting, could supply a more comprehensive view of how internships apply to the LW curriculum specifically and the legal academy generally.)

relationships sown in LW. Future research along these lines can map the intersection between classroom and internship in a way that better informs both legal educators and LW professors, both of whom have a vested interest in maximizing LW's effectiveness and better equipping students for their future in the law.

**Appendix A**  
**Demographic Questionnaire**

Please complete the following demographic questionnaire in preparation for your interview by answering each question. If there are any questions you would prefer not to answer, you may leave those specific questions blank.

Name: \_\_\_\_\_  
 Email: \_\_\_\_\_ Cell #: \_\_\_\_\_  
 Age: \_\_\_\_\_ Male/Female: \_\_\_\_\_ 1L or 2L? \_\_\_\_\_  
 Law school: \_\_\_\_\_  
 Undergraduate school: \_\_\_\_\_  
 Undergraduate degree: \_\_\_\_\_  
 LSAT score: \_\_\_\_\_  
 Current class ranking: \_\_\_\_\_  
 Current law school GPA: \_\_\_\_\_  
 Law Review? Yes: \_\_\_ No: \_\_\_ If yes, in what capacity? \_\_\_\_\_  
 Legal Writing grade: \_\_\_\_\_  
 Did you have Legal Writing TAs? Y: \_\_\_ N: \_\_\_

Which textbook(s) or training materials did you use in your Legal Writing class?

\_\_\_\_\_  
 \_\_\_\_\_

Besides legal writing, what other courses do you perceive have improved your legal writing skills? Why?

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

How did you find out about and apply for your 2015 legal internship?

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Where did you complete your 2015 legal internship (a.k.a. "externship") this summer?

Entity: \_\_\_\_\_  
 City/State/Country: \_\_\_\_\_  
 How many attorneys? \_\_\_\_\_

What areas or types of law does this firm or entity specialize in?

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Were you paid? If yes, weekly or monthly, and how much? \_\_\_\_\_ If no, did you earn academic credit or receive some other type of benefit/compensation? \_\_\_\_\_

What were the **specific** types of assignments you received? How many of them involved writing?

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If you wrote legal memoranda, about how many did you write? What were their average lengths?

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Had you previously completed any type of internship in law school or legal work prior to law school?

No: \_\_\_\_\_ If yes, please explain where and what type of legal work:

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What courses are you taking this semester?

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## Appendix B

### Interview Questions

- I. How are summer interns trained and mentored to complete writing tasks throughout their internships?
  - a. Can you describe the culture of your office? Did you feel comfortable working there?
  - b. Can you describe the training you received to complete your writing tasks during the internship? (Did you feel mentored or told to sink-or-swim?)
  - c. How did you receive and how did you submit assignments?
    1. In person meeting, email, text, phone call?
    2. File with court, place on attorney's desk or chair, email, upload to document management software?
  - d. Can you describe your typical writing process from receiving a task to submitting it?
    1. Did you start your research with LexisNexis or Westlaw, or some other method?
    2. How often did you interact directly with clients in order to complete tasks?
  - e. What feedback did you receive on your legal writing assignments?
  - f. Did you use forms, templates, or models, or did you start from scratch?
  - g. If your supervising attorney were to grade your written work product, what grade do you think you would receive?
  - h. What was the most challenging legal writing task you received this year? Why?
  - i. Did you conference or "peer-review" with other interns on your writing tasks?
  - j. Did you learn any practical skills during your internship?
    1. Were any of these unexpected?
    2. Did you feel that any assignments were insubstantial or should be assigned to instead to a non-attorney or non-intern office staff?
  - k. How did you gauge whether or not you were succeeding as an intern?
    1. Were you extended any offers of employment?
- II. How do interns perceive those writing tasks as either similar to or different from the writing tasks they performed in the LW classroom?
  - a. How well did your legal writing course prepare you for your internship?
  - b. Which legal writing assignments were directly useful in your internship?

1. Indirectly useful?
  - c. How much emphasis was placed in your legal writing course on learning how to write “on the job” or during summer internships?
  - d. How helpful was your legal writing professor in helping you develop your writing skills? (Instructor conferences?)
    1. How helpful were your peers?
    2. How helpful was your legal writing teaching assistant?
  - e. If your legal writing professor were to grade some of your internship work product, what grade do you think you would receive?
  - f. How would you change the legal writing curriculum based upon what you have learned in your internship(s)?
- III. How do the genres of the legal memorandum and legal brief learned in the LW classroom prepare students for the writing tasks they complete during their internships?
- a. How many memoranda did you write this summer? What was the average length?
  - b. Many first-year legal writing courses use textbooks that focus primarily on teaching students the objective memorandum assignment. Was this the way your legal writing class was structured?
  - c. Based on the following list of skills, which did you think was most important for succeeding in the summer internships?
    1. Case briefing
    2. Identifying or framing the legal questions of fact and law
    3. Distinguishing cases
    4. Rule analysis and synthesis
    5. Statute interpretation
    6. Rule explanation and rule application
    7. Proper style and formatting
  - d. Can you describe your writing process experience for the memo in school? How do these genres benefit student learning?
  - e. If you were to create an entry on your resume about this internship, and were only given three bullet points, what would you list as the skills or traits you acquired?
  - f. How has your internship benefitted or damaged your subsequent renewed studies this year at law school?
  - g. Now that you’ve completed this internship, what is a future internship or job opportunity you will seek?
  - h. What metaphor would you use to describe your experience as a newcomer learning to write in the legal field?