# How to Use a Tube Top and a Dress Code to Demystify the Predictive Writing Process and Build a Framework of Hope During the First Weeks of Class

*Camille Lamar Campbell**

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## I. INTRODUCTION

In the 1989 film *Field of Dreams*, the protagonist labors against personal odds to fulfill his dream of creating something beautiful in the most unlikely of places—the barrenness of an Iowa corn-field. Like the protagonist of this iconic baseball movie, legal writing professors are on a mission to infuse their students with an appreciation of the beauty and mystery of language[1] in the most unlikely of places—a competitive law school environment populated by overwhelmed, demoralized, and depressed first-year students.[2]

Many of the students whom legal writing professors meet on the first day of class appear well-adjusted and eager to learn. However, by the end of the first semester, too many are cynical about their abilities to master the subtleties of the predictive process and frustrated by the highly structured format of the objective legal memorandum.[3] These observations are far from anecdotal. The growing movement to humanize legal education clearly documents what for many of us seems intuitive—law school can be a traumatic and dehumanizing place.[4] Given the potentially demoralizing effects of a legal education, how can legal writing professors encourage students to embrace the struggle of extracting

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    1.  *See generally* Howard A. Denemark, *How to Alert New Law Students to the Ambiguity of Language and the Need for Policy Analysis Using a Few Minutes and the Directions on a Bottle of Salad Dressing*, 36 GONZ. L. REV. 423, 423 (2000-2001) ("All lawyers know that language, the inevitable medium of law, is ambiguous by its very nature."); Karen L. Koch, *A Multidisciplinary Comparison of Rules-Driven Writing: Similarities in Legal Writing, Biology Research Articles, and Computer Programming*, 55 J. LEGAL EDUC. 234, 234 (2005) ("A good attorney is a consummate professional writer.")

    2.  *See* discussion *infra* Part III.B.

    3.  *See* Lucia Ann Silecchia, *Legal Skills Training in the First Year of Law School: Research? Writing? Analysis? Or More?* 100 DICK. L. REV. 245, 284 (1996) (noting that the objective memorandum is the most typical writing assignment for first-year legal writing students).

    4.  *See infra* pp. 292-98 discussing the movement to humanize legal education.

meaning from cases when they encounter foreign terms like stare decisis, mandatory and persuasive authority, CREAC, and IRAC?[5] How can we harness the energy, hope, and enthusiasm of the first few weeks of the semester to create a bulwark against pessimism, isolation, and other self-defeating behaviors? And, perhaps the most challenging question of all, how can we accomplish all of this in an engaging and interactive way that is simple enough to build upon our new students' previously acquired skills, but sophisticated enough to accommodate increasing levels of complexity?

Like that baseball field in the heart of an Iowa cornfield, an approach for simultaneously addressing these questions came to me in oddest of all places—the dreaded new employee orientation. As I sat there, I began thinking that the familiarity of the workplace would allow me to introduce fundamental legal concepts like stare decisis, the distinction between primary and secondary authorities, and the process of predictive legal analysis in a familiar, non-legal context.

This article takes its substance from a presentation I made at "The First 'Colonial Frontier' Legal Writing Conference" in December 2009.[6] Consistent with the conference theme of "Engendering Hope in the Legal Writing Classroom," the article's premise is that the systematic use of a comprehensive non-legal example during the crucial first weeks of a legal writing course not only facilitates the transition from undergraduate writing to legal writing but is also a relatively simple way to bolster positive emotions like hopefulness and confidence. By creating a psychologically safe environment within the confines of the legal writing classroom, while simultaneously demystifying the predictive writing process, legal writing professors can seamlessly incorporate adult learning theory and positive psychology into their classrooms. None of the existing scholarship on the use of non-legal examples provides an in-depth exploration of how they appeal to the learning preferences of adult learners while simultaneously engendering hope.[7] This article fills a gap in the existing scholarship.

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5. *See* THE SECOND DRAFT (Legal Writing Inst., Macon, Ga.), Nov. 1995 (devoting an entire issue to IRAC, CREAC, and other structures for organizing legal writing).

6. The First Colonial Frontier Legal Writing Conference Presenter List, http://www.duq.edu/law/lrwp/_pdf/conference-2009/presenter-list.pdf (last visited Mar. 15, 2010).

7. *See* Stephanie Roberts Hartung & Shailini Jandial George, *Promoting In-Depth Analysis: A Three-Part Approach to Teaching Analogical Reasoning to Novice Legal Writers*, 39 CUMB. L. REV. 685, 692 (2008-2009) (briefly mentioning the use of non-legal examples to teach analogical reasoning and suggesting that an additional benefit of non-legal

The article has four additional parts. Part II provides a brief history of non-legal examples as pedagogical tools in the legal writing classroom. Part III briefly synthesizes the existing scholarship on adult learning theory and positive psychology. Part IV outlines a comprehensive in-class exercise, entitled *Decoding the Dress Code,* that I developed to introduce fundamental legal concepts such as stare decisis, the common law process, and the process of predictive legal analysis, in an easily accessible, non-legal context. And Part V of this article briefly summarizes my analysis. Additionally, I have appended all of the instructional materials accompanying the exercise.

## II. NON-LEGAL EXAMPLES AS PEDAGOGICAL TOOLS

Legal writing professors commonly use non-legal examples to introduce fundamental legal writing principles.[8] A cursory examination of the existing scholarship reveals that the analytical skills most commonly introduced with non-legal examples fall into three broad categories: curing linguistic ambiguity, demonstrating the structural intricacies of predictive writing, and explaining rule synthesis. For example, to illustrate the importance of context in curing ambiguity, legal writing professors have used hypothetical rules for displaying produce in a grocery store[9] and the instructions on a bottle of salad dressing.[10] Professors Stephanie Hartung and Shailini George introduce students to analogical reasoning, a common feature of predictive writing, by moderating a debate about the utility of banning laptops from class[11] and demonstrate the importance of a court's rationale to analogical reasoning with a comparison to commonly recognized traffic rules.[12]

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examples is their ability to build student confidence); Charles R. Calleros, *Using Classroom Demonstrations in Familiar Nonlegal Contexts to Introduce New Students to Unfamiliar Concepts of Legal Method and Analysis,* 7 J. LEGAL WRITING INST. 37, 62 (2001) [hereinafter Calleros 2001] (advocating the use of non-legal examples to help students "survive and even thrive in the stormier seas of their legal studies"); Denmark, *supra* note 1, at 426 (endorsing the use non-legal examples for facilitating the transition to law school).

    8.  *See generally* Calleros 2001, *supra* note 7; Charles R. Calleros, *Introducing Students to Legislative Process and Statutory Analysis Through Experiential Learning in a Familiar Context,* 38 GONZ. L. REV. 33 (2002-2003) [hereinafter Calleros 2002]; Bruce Ching, *Nonlegal* Analogies *in the LRW Classroom,* 8 PERSP. 26 (1999); Hartung & George, *supra* note 1; Hartung & George, *supra* note 7; Koch, *supra* note 1; Sarah Ricks, *A Case is Just an Example: Using Common Experience to Introduce Case Synthesis,* THE SECOND DRAFT (Legal Writing Inst., Macon, Ga.), Dec. 2003, at 22.

    9.  *See* Calleros 2001, *supra* note 7, at 41-48.

   10.  *See* Denmark, *supra* note 1, at 427-31.

   11.  Hartung & George, *supra* note 7, at 692.

   12.  *Id.* at 695.

First-year legal writing students are often confused by the relationship between the various components of the predictive legal memorandum.[13] To clarify the relationship between small-scale and large-scale organizational components in a legal memorandum, Professor Karen Koch highlights the similarities between biology research articles and computer programming.[14] Other legal writing professors introduce techniques of rule synthesis within the familiar context of parental decision making,[15] the distinct patterns that stars make in forming constellations,[16] and the strategies used by television executives to create successful television sitcoms.[17]

This brief survey demonstrates the popularity of non-legal examples but does not explain their frequent use. Perhaps the most well-known proponent of non-legal examples as pedagogical tools is Professor Charles Calleros.[18] According to Professor Calleros, non-legal examples perform the vital function of making abstract concepts more concrete.[19] For example, terms commonly used to explain the process of legal reasoning such as the predictive process, stare decisis, and rule synthesis are commonly understood by the discourse community of lawyers.[20] Precisely because these terms are so familiar, legal writing professors can easily forget that their meanings are not intuitive for beginning legal writers.[21] When professors fail to make abstract legal principles concrete, students leave law school unprepared to competently represent clients.[22]

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13. *See* Koch, supra note 1, at 234.

14. *See* Koch, *supra* note 1.

15. Calleros 2001, *supra* note 7, at 50.

16. Ching, *supra* note 8, at 26-27.

17. Professor Olympia Duhart of Nova Southeastern University, Shepard Broad Law Center, Fort Lauderdale, Florida designed the exercise, which she calls "Sitcom Synthesis." The exercise is on file with the author.

18. *See* Calleros 2001, *supra* note 7; Calleros 2002, *supra* note 8.

19. Calleros 2001, *supra* note 7, at 39.

20. RUTH ANN MCKINNEY, READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT 7-8, 14 (2005). "A discourse community is a group of individuals who share a common language, common-knowledge base, common thinking habits, and common intellectual assumptions." *Id.* at 14.

21. *See id* at 7-8. *See also* Roberta K. Thyfault & Kathryn Fehrman, *Interactive Group Learning in the Legal Writing Classroom: An International Primer on Student Collaboration and Cooperation in Large Classrooms*, 3 J. MARSHALL L.J. 135, 141 (2009) (observing that the first-year of law school is "much like learning a new language").

22. Calleros 2001, *supra* note 7, at 38. *See also* John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 400 (2007) (stressing the importance of life-long learning because of the impossibility of teaching students everything they must learn about the practice of law in three years).

The importance of providing students with a more concrete understanding of legal terminology is heightened by the differences between the type of writing required in undergraduate school and the type of writing required in law school.[23] Professor Anne Enquist attributes the differences to the unique relationship between the writer and the audience in legal writing.[24] The typical audiences for legal writers are judges and lawyers—people who are extremely busy and who value prose that succinctly synthesizes the most important aspects of the writer's research.[25] The objective memorandum, a common assignment for many first semester legal writing students,[26] takes its structure from the relevant legal rules.[27] However, the memorandum's emphasis on structure and brevity is radically different from expository prose written by the typical undergraduate.[28]

In many ways, legal writing is the antithesis of expository writing.[29] For example, expository writing has a fluid structure that is dictated by the relevant subject matter.[30] Furthermore, while a first-year student writing a legal memorandum always begins the analysis with her conclusion, the typical term paper written by an undergraduate is more suspense driven because "the reader is slowly led up to the point the writer is trying to make. . . . Many former English and creative writing majors protest that they are giving away too much too soon when they put the rule synthesis at the beginning of the rule explanation."[31]

Legal writing professors also use non-legal examples to demystify the legal reasoning process for first-year students.[32] In attesting to the demystifying power of the non-legal example, Professor Calleros explains: "We gain nothing by shrouding our legal pedagogy in mystery. . . . Unless students can relate our words to some concrete experience within their present knowledge, our explanations will remain abstractions to most students . . . ."[33] According

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23. Anne Enquist, *Talking to Students About the Differences Between Undergraduate Writing and Legal Writing*, 13 PERSP. 104, 104-05 (2005).
24. *Id.*
25. *Id.*
26. *See* Silecchia, *supra* note 3, at 284.
27. Koch, *supra* note 1, at 238.
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*
32. Calleros 2001, *supra* note 7, at 39. *See also* Hartung & George, *supra* note 7, at 691.
33. Calleros 2001, *supra* note 7, at 38.

to another legal scholar, non-legal examples make abstract legal principles more accessible because "a nonlegal example might be easier to grasp and make a stronger impression" by "starting at the students' level of common experience, rather than assuming familiarity with the law and legal analysis . . . [and] may make the transition to law school more successful for students from many backgrounds."[34]

As the preceding discussion indicates, non-legal examples are common pedagogical tools whose effectiveness can be presumed by their frequent use. However, the existing body of scholarship on adult learning theory and the emerging field of positive psychology provide a solid empirical basis for their efficacy.

## III. THE SCIENCE OF HOW STUDENTS LEARN

In recent years, scholars have endorsed adult learning theory, a concept traditionally associated with undergraduate education, as a tool for improving the effectiveness of legal education.[35] Proponents of adult learning theory recognize that understanding how students learn improves law student academic performance.[36]

The integration of adult learning theory into the legal curriculum has generally fallen into two broad categories. The first category generally explores characteristics of adult learners[37] while the second more narrow category evaluates how generational differences affect adult learners.[38] However, more recent calls for curricular reform transcend adult learning theory to explore the

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34. Denemark, *supra* note 1, at 426.

35. Sonsteng et al., *supra* note 22, at 394-95 ("The goal of a revitalized legal education system is not to replace traditional teaching practices, but to augment the existing system with a combination of teaching techniques, which meets the needs of a broader segment of students.").

36. *Id.* at 335-36 (indicating that law schools are not focused on reforming legal education to reach the adult learner and criticizing a "one-size-fits-all" approach to legal education.)

37. *See generally* Sharan B. Merriam, *Andragogy and Self Directed Learning: Pillars of Adult Learning Theory*, NEW DIRECTIONS FOR ADULT AND CONTINUING EDUC., SPRING 2001, at 3.

38. *See generally* Linda S. Anderson, *Incorporating Adult Learning Theory Into Law School Classrooms: Small Steps Leading to Large Results*, 5 APPALACHIAN J. L. 127 (2006); Joan Catherine Bohl, *Generations X and Y in Law School: Practical Strategies for Teaching the "MTV/Google" Generation*, 54 LOY. L. REV. 775 (2008); Tracy L. McGaugh, *Generation X in Law School: The Dying of the Light or the Dawn of a New Day?*, 9 J. LEGAL WRITING INST. 119 (2003).

connection between positive psychology and student perform-
ance.[39]

## A.　Theories about Adult Learners

Adult learning theory, or andragogy, is an amalgamation of con-
cepts that explain "the theories, models, sets of principles, and
explanations that, combined, compose the knowledge base of adult
learning."[40]　Malcolm Knowles, the father of adult learning theory,
rejected the prevailing theory that adults learned best in teacher-
controlled settings with limited autonomy.[41]　Knowles's work was
revolutionary because it made significant distinctions between
how adult learners with higher degrees of cognitive development
learn and how younger students with less cognitive development
learn.[42]　The field of cognitive science has become a mainstay of
scholars and researchers since Knowles authored his ground-
breaking work on learning theory in 1968.[43]

A synthesis of the most commonly accepted research on adult
learning theory indicates that adults learn best in an autonomous,
active,[44] learner-centered environment[45] that facilitates student
engagement and interaction.[46]　The existing scholarship also indi-
cates that adult learners flourish when teachers make explicit

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39. See discussion *infra* Part III.B. discussing the relationship between adult learning
theory and positive psychology. *See also* James B. Levy, *As a Last Resort, Ask the Students:
What They Say Makes Someone an Effective Law Teacher*, 58 ME. L. REV. 49, 58 (2006)
("Emotion also plays an essential role in the psychology of learning.").

40. Merriam, *supra* note 37, at 3.

41. Sonsteng et al., *supra* note 22, at 391.

42. *Id. See also* Anderson, *supra* note 38, at 133-34, n.33 and accompanying text (dif-
ferentiating adult learners from adolescent learners based on adult learners' experiences,
readiness, orientation, and motivation to learn).

43. Knowles's pioneering work was entitled the *Modern Practice of Adult Education*
and is now available as MALCOLM S. KNOWLES ET AL., THE ADULT LEARNER: THE
DEFINITIVE CLASSIC IN ADULT EDUCATION AND HUMAN RESOURCE DEVELOPMENT (6th ed.
2005).

44. Thyfault & Fehrman, *supra* note 21, at 139. Students learn actively when they are
encouraged "to reflect on ideas and how they are using them. . . . Students learn by doing
rather than simply listening or reading [while] the teacher guides them to explore their
own perspective and values as they incorporate knowledge." *Id.* at 139.

45. Sonsteng et al., *supra* note 22, at 392. *See also* Thyfault & Fehrman, *supra* note 21,
at 140 (defining student-centered learning as learning that takes place when the instructor
relinquishes some degree of control to the students over course content and design).

46. *See* Bohl, *supra* note 38, at 783 (noting that one characteristic of an adult learner is
voluntary engagement in the learning process); Sonsteng et al., *supra* note 22, at 396 n.483
(discussing Gerald Hess as the founder of Gonzaga's Institute for Law School Teaching);
Thyfault & Fehrman, *supra* note 21, at 136 (suggesting that one of the most effective ways
to engage law school students is to create an active learning environment where students
are encouraged to "solve problems, complete projects, and discover knowledge and conclu-
sions for themselves").

connections between students' past experiences and prior learning[47] and create a respectful learning environment where students feel valued.[48]    More recently, scholars have supplemented Knowles's theories about how adults learn by articulating additional characteristics of adult learners based on generational differences.[49]

### 1.   A Preference for Explicit Connections

Teachers engage adult learners by making explicit connections between the subject matter and students' past experiences.[50] Nonlegal examples such as the ones discussed in the previous section reflect the research of cognitive scientists about how adults learn.[51] Using previously acquired knowledge as a scaffold for creating new knowledge is commonly referred to as schemata theory.[52] The concept undergirding schemata theory is that adult learners most effectively process new information by synthesizing it with existing knowledge and then repackaging previously acquired information into a new context.[53]

The incorporation of schemata theory in the law school classroom is revolutionary given the conventional pedagogical wisdom

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47.  *See* Bohl, *supra* note 38, at 784 ("[A]dult learners learn best when they can fit new concepts into the context of their past experiences."); Calleros 2001, *supra* note 7, at 38 n.2 and accompanying text.

48.  Anderson, *supra* note 38, at 138-39; Sonsteng et al., *supra* note 22, at 396-97.

49.  *See* sources cited *supra* note 46.

50.  *See* Bohl, *supra* note 38, at 784; Calleros 2001, *supra* note 7, at 38 n.2 and accompanying text.

51.  Bohl, *supra* note 38, at 784 ("Studies of adult learners show that they learn best when they can fit new concepts into the context of their past experiences."); Koch, *supra* note 1, at 235 ("It is a fundamental tenet of learning theory that learning generally occurs by linking new ideas and skills with the 'results of prior learning' or experience, particularly in the case of adult learners. Thus, any similarities in logical, structure and other parameters that may lie in a student's previous career or education are golden opportunities to smooth that student's transition to reading, thinking, and writing like an attorney."); Sonsteng et al., *supra* note 22, at 393-395 (applying the findings of the 2000 National Research Council relevant to elementary and secondary education to the law school classroom, and generally noting the "failure to recognize students' pre-existing knowledge" and the way that experience and the environment affect learning.).

52.  Calleros 2001, *supra* note 7, at 38-39 ("We can try to build on their schemata, their existing foundations of knowledge by relating a new concept to a student's existing intellectual foundation, we can help the student to assimilate new concepts more quickly."). *See also* Anderson, *supra* note 38, at 138 (noting that students have valuable experiences that are not necessarily related to the law); Sonsteng et al., *supra* note 22, at 395 (critiquing legal education for its failure to incorporate students' preexisting knowledge into course content).

53.  Bohl, *supra* note 38, at 784. *See also* Sonsteng et al., *supra* note 22, at 405 (describing educational theorist David Kolb's four phase learning cycle).

dismissing the relevancy of students' prior knowledge.[54] As one scholar notes, dismissing the importance of students' prior experiences is detrimental for at least two reasons.[55] First, the wholesale dismissal of prior learning from other academic disciplines can lead to the alienation of otherwise bright and motivated law students who, but for such an explicit connection, might not fulfill their academic potential.[56] Second, failure to recognize the saliency of prior learning experiences also ignores the reality that many students use legal training to either enhance an existing career or to gain a competitive advantage in the legal market place.[57] Consequently, any pedagogical technique that harmonizes unique educational and life experiences with new information will increase comprehension and retention in the adult learner.[58]

## 2.    A Preference for Respectful Learning Environments

Teachers can also engage the adult learner by creating a respectful learning environment.[59] Respect has been defined in various ways.[60] However, most scholars agree that

a respectful learning environment fosters students' feelings of self-worth.[61] Some common techniques for creating a respectful learning environment are relatively simple ones that fit seamlessly into the traditional law school curriculum such as taking

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54.   Koch, *supra* note 1, at 235.

55.   *Id.* at 235-36.

56.   *Id.* at 235-36. *See also* Sonsteng et al., *supra* note 22, at 390 (noting the importance of capturing multiple learning styles to avoid the risk of "allowing only a small percentage of students who happen to excel best under the predominant learning method to enter the job market successfully").

57.   Koch, *supra* note 1, at 235-36.

58.   *See* sources cited *supra* notes 52-60; sources cited *infra* notes 62-67.

59.   *See, e.g.*, Anderson, *supra* note 38, at 137; Bohl, *supra* note 38, at 783 (noting that the second characteristic of the adult learner is a learning environment that fosters mutual respect); Sonsteng et al., *supra* note 22, at 396-97(discussing Gerald Hess, the founder of Gonzaga's Institute for Law School Teaching, and his theory furthering the creation of an atmosphere of respect as crucial to an effective legal environment).

60.   *See* Anderson, *supra* note 38, at 139-140 ("[D]esigning a learning environment that takes into consideration the learning needs and generational characteristics of our students demonstrates our respect for the students as learners, and is well-supported by adult learning theory practices."); Gerald F. Hess, *Collaborative Course Design: Not My Course, Not Their Course, But Our Course,* 47 WASHBURN L.J. 367, 370 (2008) (emphasizing the important role that a teacher's attitude plays in fostering a respectful learning environment); Sonsteng et al., *supra* note 22, at 397 (defining respect as an environment where "teachers and students participate in a dialogue, explore ideas, and solve problems creatively" (internal quotations and citations omitted)).

61.   *See* Anderson, *supra* note 38, at 138-39; Sonsteng et al., *supra* note 22, at 396-97.

the time to learn students' names and actively seeking informa-
tion about their interests and activities.[62]

Other techniques for fostering respect require more instruc-
tional time and utilize teaching methods that are more interactive
than the traditional emphasis on Socratic dialogue or on lectur-
ing.[63] For example, many law professors incorporate collaborative
learning into their classrooms.[64] Collaborative learning,[65] or
group learning, has been defined as "learning that takes place
when peers share experiences and insights"[66] and has been de-
scribed by many educational theorists as the most effective tech-
nique for engaging adult learners.[67] Furthermore, collaborative
teaching techniques are particularly powerful instructional tools
for facilitating the transfer of previously acquired knowledge to
new situations and for preparing students to work in culturally
and ethnically diverse workplace.[68] Collaborative teaching is a

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62. *See* Anderson, *supra* note 38, at 138-39, app. at 148 (suggesting techniques for
professors with large law school classes to easily and seamlessly create an environment of
respect); Thyfault & Fehrman, *supra* note 21, at 138 (generally describing the effectiveness
of collaboration and making a distinction between material that is most effectively pre-
sented in a lecture format and material that is most effectively presented in a collaborative
style and suggesting a collaborative method for introducing students to new concepts).

63. *See* Sonsteng et al., *supra* note 22, at 398 (noting that a collaborative teaching
method "requires more sustained effort than the traditional [legal] classroom because it
offers to safe haven for students hoping to dodge participation").

64. Bohl, *supra* note 38, at 783-84. *See also* Elizabeth L. Inglehart et al., *From Coop-
erative Learning to Collaborative Writing in the Legal Writing Classroom*, 9 J. LEGAL
WRITING INST. 185, 190 (2003) (noting the traditional dominance of the lecture format in
legal education); Sonsteng et al., *supra* note 22, at 396-97 (noting that an aspect of an effec-
tive legal environment is collaboration (citing George F. Hess, *Heads and Hearts: The
Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 76 (2002)).

65. This term is often used interchangeably with the terms "active learning" and "coop-
erative learning." Thyfault & Fehrman, *supra* note 21, at 139. In a collaborative learning
environment, students provide their own directions and negotiate their various roles and
responsibilities while in cooperative learning groups, the student groups take their direc-
tion about the specific roles, tasks, and responsibilities from the teacher. *Id.* at 139-40. *See
also* Inglehart et al., *supra* note 64, at 188. However, for ease of reference, I use the term
"collaborative learning" to encompass both collaborative and cooperative learning teaching
techniques.

66. Sonsteng et al., *supra* note 22, at 397 (internal citations and quotations omitted);
Thyfault & Fehrman, *supra* note 21, at 137, 139.

67. *See* Sonsteng et al., *supra* note 22, at 397; Thyfault & Fehrman, *supra* note 21, at
137. Other attributes of collaborative learning are an increase in student participation,
increased ability to think critically, and an increased appreciation of diversity. Inglehart et
al., *supra* note 64, at 188. For an anecdotal example of the effectiveness of collaborative
learning techniques, see Anderson, *supra* note 38, at 128 (discussing a technique used by
her property professor that required students to work in groups as they created, practiced,
and then presented a song about the Rule Against Perpetuities).

68. Thyfault & Fehrman, *supra* note 21, at 138.

mainstay in the legal writing classroom.[69] In discussing their success in integrating collaborative teaching techniques into the legal writing curriculum, Professors Elizabeth Inglehart, Kathleen Narko, and Clifford Zimmerman report that students who collaborate produce "work of a quality that neither [student] had been able to achieve alone . . . . By working together, [students] each learned about writing in a way that improved their later individual work."[70]

Another popular collaborative learning technique utilizes what some professors refer to as "pair and share" learning activities.[71] Pair and share learning occurs when students read assigned material and build a consensus about its meaning.[72] Legal writing professors frequently use pair and share collaborative techniques as students work to draft outlines, to synthesize rules, and to brainstorm about the organization of a memo, an appellate brief, or a CREAC assignment.[73] For example, in teaching persuasive writing, Professors Cunningham and Streicher encourage their students to break into small groups to identify and prioritize potential arguments in an appellate brief.[74] After completing the small group component of the exercise, the entire class benefits as the professors lead the class in a discussion of the relative merits of the arguments formulated by the various groups.[75] Pedagogical techniques such as the ones referenced in this section appeal to the adult students' need for a respectful learning environment.

### 3. Generational Learning Preferences

Theories about how adult students learn apply in a more nuanced way based on generational differences.[76] The importance of

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69. *See generally* Inglehart et al., *supra* note 64, at 191 (generally discussing the efficacy of collaboration in the legal writing classroom); Thyfault & Fehrman, *supra* note 21, at 155 (discussing specific types of collaborative writing exercises that can be effectively adapted for the legal writing classroom).

70. Inglehart et al., *supra* note 64, at 186.

71. *See* Michael Hunter Schwartz, *Humanizing Legal Education: An Introduction to a Symposium Whose Time Came*, 47 WASHBURN L.J. 235, 243 n.59 (2008); Thyfault, *supra* note 21, at 154.

72. *See* Schwartz, *supra* note 71, at 243 n.59.

73. Inglehart et al., *supra* note 64, at 196.

74. Cara Cunningham & Michelle Streicher, *The Methodology of Persuasion: A Process-Based Approach To Persuasive Writing*, 13 J. LEGAL WRITING INST. 159, 180-82 (2007).

75. *Id.*

76. *See* Bohl, *supra* note 38, at 782-83. Bohl noted the differences between adult learners and generational ones and observed that "adult learning theory may be particularly important in the Gen X Y classroom" and that Gen X Y students share some of the same general characteristics of other adult learners. *Id.*

understanding generational preferences among adult learners was aptly summarized by one scholar who opined that "the distance between the Baby Boomers[77] and Generation X seems less like a generation gap and more like a generational chasm."[78] As of 2007, one-third of law students were classified as members of Generation X.[79] Although not capable of precise definition,[80] the group of students typically referred to as Generation X[81] has been defined broadly as those students born between 1961 and 1981[82] and more narrowly as those students born between 1965 and 1982.[83] Professor Tracy McGaugh, a noted scholar on the generational differences of adult learners, described Gen Xers in the following way:

> If the Boomers had a front row seat to America's greatness, Xers had a front row seat to  its decline.  Some of the seminal events for Xers were Watergate, the energy crisis, the  introduction of the personal computer . . . the Rodney King beating, the L.A. riots, and the  O.J. Simpson criminal and civil trials.[84]

Another distinct group of adult learners is the group of students born between 1977 and 2003, commonly referred to as Generation Y or the Millennials.[85]  In 2007, two-thirds of all law students were identified as belonging to this group.[86] As the statistics indicate, the vast majority of law school students belong to a generational group with acutely distinctive mores from their teachers who often have a world-view shaped by their own experiences.

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77. The baby boomers are typically described as those who were born from 1943-1960. McGaugh, *supra* note 38, at 120. The defining characteristic of this generation is the politically tumultuous period after World War II that was characterized by the civil rights movement, the Cold War, and redefined sexual mores. *Id.* According to Professor Tracy McGaugh, "These events shaped a generation that is optimistic and believes in growth and expansion." *Id.* at 121.

78. McGaugh, *supra* note 38, at 122.

79. Bohl, *supra* note 38, at 777.

80. The definitional fluidity has been attributed to the absence of a single historical event that aptly defines students of this generation. Bohl, *supra* note 38, at 778-79.

81. Throughout this article, the phrases "Generation X," "Gen X," and "Gen Xers" will be used interchangeably.

82. McGaugh, *supra* note 38, at 120.

83. Bohl, *supra* note 38, at 778.

84. McGaugh, *supra* note 38, at 122.

85. *Id.* at 120; Bohl, *supra* note 38, at 778.  This group of students has also been referred to as the "MTV" or the "Google" generation.  Throughout this article, the terms Generation Y and Millennials will be used interchangeably.

86. Bohl, *supra* note 38, at 778.

Given these numbers, legal educators cannot ignore the distinctive learning preferences of Gen X Y students[87].

Although there is some overlap between the characteristics of an adult learner generally discussed above and that of "newly minted" adults of the Gen X Y generations,[88] certain learning preferences exclusively apply to the Gen X Y generations.[89] The first distinctive learning characteristic of Gen X Y students is their need to immediately understand the relevancy of the subject matter and to immediately receive feedback.[90] Unlike law students from previous generations who spent hours in the library in a painstaking attempt to acquire information, Gen X Y law students, who have grown up with instantaneous access to vast amounts of information through the internet, are consummate multi-taskers.[91] To successfully navigate a plethora of information, they have developed the skill of prioritizing information based on their immediate level of need.[92] McGaugh has characterized this ability to multi-task and to adroitly prioritize information as causing a phenomenon called "just in time" learning.[93] "Just in time learning focuses on learning information-acquisition skills so that the student can find any information she might need in the future when the need arises."[94]

As opposed to earlier generations' preference for "just in case" learning,"[95] teachers seeking to engage Gen X Y students must motivate them by immediately demonstrating the relevancy of assignments.[96] To the uninitiated, this generational preference might demonstrate a general disinterest in the educational process.[97] However, McGaugh rejects this pejorative description, de-

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87. The article uses the phrase "Gen X Y" to streamline the discussion about characteristics that are germane to both generational groups.

88. Anderson, *supra* note 38, at 132-34.

89. Bohl, *supra* note 38, at 779-80. *See also* McGaugh, *supra* note 38, at 122.

90. *See* Anderson, *supra* note 38, at 130 (describing Generation X students as wanting "to master the skills and tools that will allow them to succeed in the future, but [who] will wait until the actual information is relevant before attempting to engage with that information"). *See also* Bohl, *supra* note 38, at 781-82.

91. Bohl, *supra* note 38, at 781-82.

92. *Id.* at 780-81; McGaugh, *supra* note 38, at 127.

93. McGaugh, *supra* note 38, at 127.

94. *Id.* at 127-28.

95. "Just in case" learning "focuses on acquiring information that the student may need sometime in the future; this is the traditional educational model." McGaugh, *supra* note 38, at 127-28. According to Professor Joan Bohl, "The immediacy of information for the Gen X Y students is a drastic contrast to members of previous generations, who experienced information as difficult to acquire." Bohl, *supra* note 38, at 782.

96. McGaugh, *supra* note 38, at 128.

97. *Id.*

scribing these students as "enthusiastic consumers of skills train-
ing . . . [who] will willingly make up for gaps in their education if
the missing information's immediate relevance is made clear to
them."[98] In describing various approaches for tapping into Gen X
Y students' need for immediate relevancy, Professor Joan Bohl
opines that "the academic performance of Gen X Y students can be
enhanced by the timing and presentation of assignments, by the
content of class activities and material, and by the professor's
feedback, both positive and negative."[99]

The second distinctive characteristic of Gen X Y students that
influences how they learn is the unique way that they relate to
their teachers.[100] The relative ease with which these students are
able to access information has dramatically altered the traditional
teacher-student relationship.[101] One scholar commenting on the
change to the traditional hierarchical relationship between teach-
ers and students observed that Gen X Y students are:

> likely to expect that adults, including law school professors,
> treat them as equally capable adults, simply lacking the spe-
> cific knowledge of the faculty, but possibly bringing knowl-
> edge that the faculty member does not have. Rather than a
> hierarchical structure, involving learned instructors and ea-
> ger students, their vision of the law school world (or their
> ideal law school world) involves 'differently-abled,' responsible
> adults sharing knowledge with each other in a mutually sym-
> biotic manner.[102]

This paradigmatic shift in the law teacher's role has been de-
scribed by Professor Bohl as Gen X Y students' preference for a
guru.[103] In analogizing the role of the modern teacher to that of a
"guru for the Google Generation," Bohl recognizes that the teacher
is not a purveyor of information but a personality whose value
comes from the ability to synthesize information into a useful
whole.[104] Professor Bohl recommends several strategies for con-
necting with Gen X Y students:

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98. *Id.*
99. Bohl, *supra* note 38, at 796.
100. *See* Anderson, *supra* note 38, at 131. *See also* McGaugh, *supra* note 38, at 130-31.
101. Anderson, *supra* note 38, at 131. *See also* McGaugh, *supra* note 38, at 131.
102. Anderson, *supra* note38, at 130-31. *See also* Bohl, *supra* note 38, at 782.
103. Bohl, *supra* note 38, at 793.
104. *Id.* at 791, 794-95.

> As professors . . . we become more effective when we inject our individual experience and energy into the classroom experience . . . . [by] ask[ing] about the students' past experiences working or writing . . . . All of these strategies create mutual respect and a more effective learning environment by engaging students.[105]

Infusing personal energy and enthusiasm into the classroom by discussing professional experiences with Gen X Y students creates a learning environment where students do not regard their professors as authority figures but as "differently-abled" adults with valuable information to impart.[106] Consequently, techniques that humanize the teacher create an optimal learning environment that enhances the Gen X Y student's adult ability to process, synthesize, and actively engage with the learning material.[107]

As the preceeding section indicates, adult learners prefer active learning environments where professors make explicit connections between students' past experiences and prior learning, create respectful learning environments, and acknowledge the distinct generational preferences of adult learners.

B.   *Beyond Adult Learning Theory:  Positive Psychology and Student Performance*

Law students are adults in the sense that they have reached the age of majority. However, they differ from the more traditional adult learner because of their unique vulnerability to anxiety and depression.[108] According to one commentator, "[L]aw school is a breeding ground for depression, anxiety, and other stress-related illnesses."[109] Consequently, discussions of adult learning theory in the law school context frequently focus on the unique psychological factors that can negatively affect law students.

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105.   *Id.* at 794.
106.   *See* Anderson, *supra* note 38, at 131.
107.   Bohl, *supra* note 38, at 795.
108.   Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn From the Science of Positive Psychology,* 9 YALE J. HEALTH POL'Y L. & ETHICS 357, 359 (2009) (" Before they enter law school, students show[ed] no signs of elevated psychological distress compared to the general population, but just six months into school, their negative symptom levels increase dramatically. The research seems to suggest that law school is to blame for alarmingly elevated levels of student distress." (citations omitted))
109.   Ruth Ann McKinney, *Depression and Anxiety in Law Students:  Are We Part of the Problem and Can We Be Part of the Solution?* 8 J. LEGAL WRITING 229, 229 (2002).

For example, although collaborative learning techniques are generally regarded as a particularly effective for adult learners, scholars studying the issue acknowledge that an instructor's collaborative efforts may be thwarted by students' reluctance to expose their vulnerabilities to classmates.[110] Real or perceived academic vulnerability certainly occurs any time students work together to solve problems and construct knowledge.[111] However, this otherwise normal trepidation is exacerbated by the intense competition for grades and the mandatory grading curves at many law schools.[112] The next two sections briefly describe the psychological effects of distress on first-year students and chronicle the use of positive psychology to bolster students' psychological fortitude.

### 1.  Psychological Distress Among First-Year Students

Law students' anxiety, fear, and depression can be particularly acute in the first semester of the first-year.[113] These observations about the psychological stresses of law school are also supported by alarming statistical data.[114] The findings of a 1986 study conducted by Andrew Benjamin at the University of Arizona's law school indicated that first-year law students began their legal education with relatively normal stress levels.[115] However, within a

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110.  *See* Abigail Salisbury, *Skills Without Stigma: Using the Jurist Method to Teach Legal Research and Writing,* 59 J. LEGAL EDUC. 173, 185-87 (2009) (describing the benefits of collaborative learning as "providing a welcome respite from the competitive atmosphere of legal education" but acknowledging that this competitive environment might adversely affect the efficacy of collaborative learning techniques).

111.  See *id.* at 185 (noting the tendency of the competitive nature of the law school curriculum to inhibit collegiality and the uninhibited exchange of ideas).

112.  Thyfault & Fehrman, *supra* note 21, at 141-42. In discussing possible ways of overcoming the barriers caused by these unique features of the law school, Professors Roberta Thyfault and Kathryn Fehrman suggest that instructors explicitly discuss the benefits of collaborative learning and how students that work together collaboratively often perform much better than they would individually. *Id.* at 150. Thyfault and Fehrman also suggest reminding students that attorneys are often required to collaborate in document drafting and making tactical decisions about client representation. *Id.*

113.  Peterson & Peterson, *supra* note 108, at 380-81 ("'The demands of the first year cause many [first-year students] physical and psychological exhaustion.'" (quoting Hess, *supra* note 64, at 78); *id* at at 381 ("Physical and psychological exhaustion are . . . programmed into the first-year." (quoting Stephanie Halpern, *On the Politics and Pathology of Legal Education,* 32 J. LEGAL EDUC. 383, 388-89 (1982)). *But see* Peterson & Peterson, *supra* note 108, at 359, 366 (suggesting that overall levels of law student stress actually increases two years after graduation and that third-year law students reported even higher rates of depression than first-year law students).

114.  McKinney, *supra* note 109, at 229.

115.  G. Andrew Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers,* 11 AM. B. FOUND. RES. J. 225, 228 (1986).

relatively short period during the first semester of law school, these same students experienced significantly elevated levels of anxiety, depression, and other types of psychological stress.[116] Approximately sixteen years later in 2002, a study conducted by Professor Lawrence Krieger and psychologist Kennon Sheldon confirmed the findings of the Benjamin study.[117] According to the 2002 Krieger and Sheldon study, participants reported markedly higher instances of depression, stress, and other psychological disturbances than they experienced prior to entering law school.[118] Furthermore, the study's findings indicated that "consistent with earlier research . . . any later distress among law students is not an effect of pre-existing distress or problematic personality traits."[119]

A more recent study conducted at The George Washington University School of Law confirmed the findings of the Benjamin, and Krieger and Sheldon surveys.[120] The findings of this survey indicated that the majority of the study participants "met the threshold for a clinically significant level of depression"[121] and that "avoiding the consequences of stress [in law schools] is impossible."[122]

Although there is a general consensus about the heighted level of law student stress in the first-year, the causes of that psychological distress are far from settled. Some blame what they describe as an unhealthy emphasis on first-semester grades as the primary source for the psychological distress.[123] For example, first-year grades are regarded by many as the gate-keeper for admission to law review and other scholarly journals, the most prized associate positions at the prestigious law firms, and judicial

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116. *Id.* at 246. *See also* Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425, 433 (2005).

117. Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance For Constructively Breaking the Silence*, 52 J. LEGAL. EDUC. 112, 114 (2002); Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 271 (2004) [hereinafter *Undermining Effects*]. A subsequent study conducted in 2007 confirmed the findings of the 2002 study. Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883, 889 (2007) [hereinafter *Understanding*]. *See also*, Peterson & Peterson, *supra* note 108, at 370.

118. *Undermining Effects, supra* note 117, at 271.

119. *Id.*

120. Peterson & Peterson, *supra* note 108, at 412.

121. *Id.*

122. *Id.* at 413.

123. Anderson, *supra* note 38, at 137. *See also* Sonsteng et al., *supra* note 22, at 344-45.

clerkships.[124]  Given these stakes, many first-year students under-
standably experience psychological distress when their expecta-
tions of continued academic success are thwarted by the reality
that they may not obtain grades that place them in the top half of
the class.[125]  For students experiencing decreased curricular and
job opportunities based solely on grades, their psychological dis-
tress typically manifests itself in isolation, detachment from the
academic process, and a corresponding loss of self-confidence and
motivation.[126]

Others blame various instructional techniques for increased
levels of psychological distress in law students. According to this
group of scholars, the majority of student psychological distress is
caused by the Socratic Method,[127] sporadic or limited opportunities
for feedback and assessment,[128] and the lack of feedback that is
created when students are assigned grades based on one exam.[129]
The debate about the causes of psychological distress in first-year
students rages on.  However, scholars on both sides of the debate
acknowledge the adverse effects of anxiety, fear, and stress on law
students' ability to learn.[130]  For example, increased levels of
stress have been associated with a decreased ability to process
information and with decreased academic performance.[131]

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124.  *See* McKinney, *supra* note 109, at 231 ("[C]lass rank continues to be distributed to
employers who continue to limit interviews by placement in class . . . .").

125.  *Cf.* Grant H. Morris, *Preparing Law Students for Disappointing Exam Results:
Lessons from Casey at the Bat*, 45 SAN DIEGO L. REV. 441, 450-51 (2008) (discussing the
profound sense of post-exam disappointment experienced among formerly high achieving
students caused by mandatory grading curves where the vast majority of law students are
"condemned with a grade of C, suggesting that they are marginal at best").

126.  *See* Nancy J. Soonpaa, *Stress in Law Students: A Comparative Study of First-Year,
Second-Year, and Third-Year Students*, 36 CONN. L. REV. 353, 367-68 (2004) (describing the
emphasis placed on first-semester grades as contributing to fears of failure and to the de-
velopment of various psychological defenses); Cathaleen A. Roach, *A River Runs Through
It: Tapping Into the Information Stream to Move Students from Isolation to Autonomy*, 36
ARIZ. L. REV. 667, 671 (1994) (attributing psychological distress among law students as
leading to "maladaptive strategies to protect self-esteem including anxiety, withdrawal,
and depression").

127.  *Id.* at 337.

128.  Anderson, *supra* note 38, at 135.  *See also* Sonsteng et al., *supra* note 22, at 338-
339.

129.  McKinney, *supra* note 109, at 231-32.

130.  *See id.* at 231-32 (commenting on coping strategies like emotional withdrawal and
obsessive control that typically impede learning); Levy, *supra* note 39, at 61 ("The typical
first year class lacks many of the socio-emotional characteristics that have been shown to
have a positive impact on learning."); Morris, *supra* note 125, at 452-53 (noting that disap-
pointing exam results creates an impending sense of doom in first-year students that fos-
ters a sense of futility and withdrawal from the educational process).

131.  Peterson & Peterson, *supra* note 108, at 413.  *See also* Sonsteng et al., *supra* note
22, at 338, 396-97.

2.  *Humanizing Legal Education Through Positive Psychology*

Given the well-documented psychological stressors of law school and their corresponding cognitive effects, some legal educators have started a movement to humanize legal education.[132] Formulating a precise definition of such an abstract concept is inherently difficult.   However, various commentators have described the movement to humanize legal education as "an initiative . . . to maximize the overall health, well-being, and career satisfaction of law students,"[133] or as an ideology that is "concerned that students develop themselves as confident, caring, reflective professionals, discerning their own values and purposes, and knowing how to work with others collaboratively and to understand diverse perspectives."[134]  Professor Krieger of Florida State University is the leading scholar in the humanizing education movement.[135]  Perhaps in response to Professor Krieger's call for action, the emerging trends among law schools in addressing psychological distress fall into the following categories:  (1) sporadic hosting of mental health wellness events at the beginning of the year and during particularly stressful times in the academic year; (2) peer mentoring and counseling services; and (3) the distribution of pamphlets and other literature making students aware of the availability of mental health counseling.[136]

This burgeoning movement to humanize legal education implicitly recognizes law schools' responsibility for equipping students with the psychological tools to effectively combat anxiety and depression.   However, while applauding these efforts, many in legal

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132.  *See* Justine A. Dunlap, *"I'd Just As Soon Flunk You As Look at You?" The Evolution to Humanizing in a Large Classroom,* 47 WASHBURN L.J. 389, 390-91 (2008).  This movement has not been limited to legal educators.  *See* Peterson & Peterson, *supra* note 108, at 359.  In 2008, the Law Student Division of the American Bar Association began the Law Student Mental Health Initiative, designating March 27 as "National Mental Health Day."   American  Bar  Association,  Law  Student  Mental  Health  Initiative, http://www.abanet.org/lsd/mentalhealth/ (last visited on Mar. 15, 2010).

133.  *See*  Florida  State  University  College  of  Law,  Humanizing  Law  School, http://www.law.fsu.edu/academic_programs/humanizing_lawschool/humanizing_lawschool. html (last visited Mar. 15, 2010).

134.  Barbara Glesner Fines, *Fundamental Principles and Challenges of Humanizing Legal Education,* 47 WASHBURN L.J. 313, 320 (2008).

135.  *See* Schwartz, *supra* note 71, at 235 (referring to Krieger as one of the first scholars to begin substantiating assertions about the harmful effects of legal education); Peterson & Peterson, *supra* note 108, at 368 (identifying Krieger as the most prolific scholar in on the issue of law student distress).  As of 2008, more than 400 hundred persons subscribed to the humanizing legal education listserv.  Schwartz, *supra* note 71, at 235.

136.  Peterson & Peterson, *supra* note 108, at 375.

education criticize law schools for being too reactive because they only provide limited assistance to students suffering from signifi-cant levels of stress and depression and do not address issues of emotional health in more proactive ways.[137] For example, a recent survey of the websites of the top seventy-five law schools, as ranked by *U.S. News & World Report*, revealed that the majority of the schools had no in-house counseling services for law students and instead referred students to university-sponsored counseling or health centers.[138] Furthermore, none of the schools identified any mechanisms for identifying students who might be particu-larly vulnerable to stress, depression, and anxiety.[139] Conse-quently, although psychological and mental health counseling were available to students who affirmatively sought it, many stu-dents experiencing psychological distress may not have benefited from these services because of the stigma of mental illness.[140] With some notable exceptions,[141] the survey findings were less than reassuring:

> [O]ur review of law school websites supplemented by calls to the offices of the deans of student affairs, provides a fair indi-cation that the main focus of law schools is to help students by providing counseling services for those who are seriously distressed rather than through the provision of proactive pro-grams designed to ward off law student distress. *Law schools have not yet responded to the need for major action to prevent the development of stress and depression among their stu-dents.*[142]

Proponents of law school curricular reform have increasingly endorsed research from the emerging field of positive psychology to ameliorate psychological distress.[143] While traditional psy-

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137. *Id.* at 361-62, 375.
138. *Id.* at 371.
139. *Id.* at 372.
140. *Id.*
141. Georgetown, Washington University in St. Louis, the University of Washington Law School, and Loyola Law School in Los Angeles provided their students with some de-gree of in-house counseling services. Peterson & Peterson, *supra* note 108, at 371. In what appears to be among the first in the nation, Vanderbilt University School of Law has inte-grated an optional non-credit course called "Supportive Practices" into its first-year curricu-lum. *Id.* at 374. In this course, students are taught strategies to deal with issues like stress and anxiety, and are encouraged to set realistic performance expectations. *Id.* at 374-75.
142. Peterson & Peterson, *supra* note 108, at 375 (emphasis added).
143. *Id.* at 386.

chologists are primarily concerned with the diagnosis and treatment of conditions that cause human suffering, positive psychologists focus on the creation and cultivation of human happiness.[144] Dubbed by some as the "science of happiness,"[145] positive psychology is the "scientific study of human strengths and their influence on performance and well-being"[146] or, alternatively, the "study of the traits and conditions that lead to human thriving."[147] Empirical evidence clearly suggests that positive emotions broaden a person's possibilities for constructive thought while promoting emotional resilience.[148] The broadening effect of positive emotions is referred to as the "broaden-and-build" theory of positive emotions. Unlike negative emotions, such as fear and anxiety, that impair a person's problem-solving abilities, positive emotions significantly increase a person's cognitive flexibility.[149] This ability to remain intellectually flexible, even in the midst of psychological distress, is known as "anchoring."[150] Consequently, students who are more adept at thinking in a way that facilitates anchoring may have a significant cognitive advantage.[151]

Hope is a member of the positive psychology family[152] and is defined as "[e]xpecting the best and working to achieve it."[153] Furthermore, while optimism relates to positive expectations for outcomes outside of a person's control, hope relates to positive expectations for outcomes within a person's control.[154] Hope is multifaceted, consisting of the components of goal-setting, agentic thinking, and pathways thinking.[155] Goals "represent mental targets that guide human behaviors."[156] A closely related concept is pathways thinking. Like the concept of anchoring discussed in connection to the broaden-and-build theory, pathways thinking refers to a person's ability to formulate various strategies for

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144. Allison D. Martin & Kevin L. Rand, *The Future's So Bright, I Gotta Wear Shades: Law School Through the Lens of Hope* 48 DUQ. L. REV. 203, 207-09 (2010) .
145. Nancy Levit & Douglas O. Linder, *Happy Law Students, Happy Lawyers*, 58 SYRACUSE L. REV 351, 355 (2008).
146. Martin & Rand, *supra* note 144, at 207.
147. Peterson & Peterson, *supra* note 108, at 385.
148. *Id.* at 402-05. *See generally* Barbara L. Fredrickson, *What Good Are Positive Emotions?* 2 REV. GEN. PSYCHOL. 300, 307 (1998).
149. Peterson & Peterson, *supra* note 108, at 403.
150. *Id.*
151. *Id.* at 403-04. *See generally* Fredrickson, *supra* note 148, at 307.
152. Martin & Rand, *supra* note 144, at 207.
153. Peterson & Peterson, *supra* note 108, at 389.
154. Martin & Rand, *supra* note 144, at 209.
155. *Id.* at 207-08.
156. *Id.* at 208.

reaching a particular goal.[157]  Lastly, agentic thinking refers to the will-power and internal motivation that compels students to persevere despite the existence of obstacles.[158]  Hope theory, first postulated by Dr. C.R. Synder, a pioneer in the field of positive psychology, is a "'cognitive model of human motivation that explains goal-related thinking.'"[159]

A more provocative finding on the benefits of positive emotions, one that might make the field of positive psychology more palatable to those in legal education who may doubt its legitimacy, is the causal connection between positive emotions and academic achievement in law school.[160]  In other words, positive psychologists have established an empirical basis for correlating subjective well-being and academic achievement.[161]  A synthesis of the most recent empirical studies on the issue indicates that hope is the personality trait most highly correlated with increased academic performance in law school.[162]

In 2009, Professor Todd Peterson and psychologist Elizabeth Peterson reported the results of a survey of 140 students at The George Washington University Law School.[163]  The Petersons' study evaluated whether the cognitive benefits of cultivating positive emotions could be replicated in the law school context.[164]  According to the study, one of the personality traits most significantly correlated to law student emotional well-being was hope.[165] In 2007, Professor Allison Martin and psychologist Kevin Rand studied the specific relationship between hope and academic achievement in the first year of law school.[166]  The study was designed to explore the benefits of cultivating hope in law students and the existence of an empirical link between hope and academic performance.[167]  According to their findings, high levels of hope

157.  *Id.*

158.  *Id.*

159.  Martin & Rand, *supra* note 144 at 207 (quoting C. R. Snyder et al., *Hope Therapy: Helping Clients Build a House of Hope, in* HANDBOOK OF HOPE:  THEORY, MEASURES, & APPLICATIONS 125 (C.R. Snyder ed., 2000)).

160.  *Id.* at 206-07.

161.  *Id.*

162.  *Id.* at 212-13.

163.  *Id.* at 408-09.  Of the 140 students who participated in the study, 63% were in their first-year of law school. *Id.* at 408.

164.  Peterson & Peterson, *supra* note 108, at 408.

165.  *Id.* at 411.

166.  *See generally* Martin & Rand, *supra* note 144.  The study was conducted at the Indiana School of Law in Indianapolis. *Id.* at 210.

167.  *Id.* at 209-10.

insulate law students from the psychological distress that plagues the majority of first-year students.[168] For example, unlike the majority of their peers, high hope students "tend to use engaged coping strategies that are problem focused and deal directly with the stressor, such as studying for an exam or working on a paper."[169] Perhaps more importantly, the study confirmed that hope was the second strongest predictor of law school success after undergraduate grades.[170] Martin and Rand's findings are particularly powerful because they indicate that a student's LSAT score was not a significant predictor of first-semester law school GPA.[171]

In recent years, several scholars have endorsed teaching techniques that incorporate the potentially transformative positive psychology research into the law school classroom.[172] The general consensus among positive psychologists is that, "while 50% of our happiness is genetically predetermined and 10% is based on external circumstances, up to 40% is within our control and can be altered through intentional activities."[173] These statistics attest to the power of positive emotions like hope and provide instructors with an empirical basis for designing effective strategies for reaching law students in the crucial first weeks of their law school experience.[174] Like theoretical principles about how adult students learn, positive psychology educational principles are premised on the same fundamental goal of equipping teachers with the tools for improving academic performance.[175] However, pedagogical techniques that embrace aspects of positive psychology are analytically distinct from learning theory because their emphasis is on equipping students with the psychological tools to build internal motivation.[176]

Two suggestions for incorporating principles of positive psychology into the law school curriculum are particularly instructive: modeling and encouraging agentic thinking, and helping students make explicit connections between what they are learning and

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168. *Id.* at 215-16.
169. *Id.*
170. *Id.* at 213.
171. Martin & Rand, *supra* note 144, at 213.
172. *See* Dunlap, *supra* note 132, at 396-403; Hess, *supra* note 60, at 378-386.
173. *See* Peterson & Peterson, *supra* note 108, at 393 (citing Sonja Lyubomirsky et al., *Pursuing Happiness: The Architecture of Sustainable Change*, 9 REV. GEN. PSYCHOL. 111, 116 (2005)). For a more detailed description of two empirically tested techniques for facilitating the positive emotions, see *id.* at 393-395.
174. *Id.* at 394-95.
175. *See* Schwartz, *supra* note 71, at 245.
176. *See* Martin & Rand, *supra* note 144, at 228.

what they already know.[177] Martin and Rand encourage legal edu-
cators to create opportunities for modeling and encouraging agen-
tic thinking by creating classroom exercises that create mental
willpower, encouraging students with stories of hope, and teaching
with enthusiasm and creativity.[178] Based on their work with first-
year, first-semester law students, Martin and Rand discovered
that students with high levels of hope "have ongoing, positive, in-
ternal dialogues of self-statements such as, 'I can,' 'I'll make it,'
and 'I won't give up.'"[179] By speaking to students in a positive
voice, professors model agentic thinking by creating an atmos-
phere where students are encouraged to persist despite the pres-
ence of emotional obstacles that they will face during the first se-
mester of law school.[180] Agentic thinking is not premised on creat-
ing unrealistic expectations for students who, for a variety of rea-
sons, are ill-suited for the rigors of the law school, but is designed
to have the following effect: "The attitude of the law school class-
room changes from one of sink or swim to a working together ap-
proach where 'everyone can improve and achieve . . . [N]o one
needs to fail and the potential exists for everyone to excel.'"[181]

Lastly, Professor Michael Hunter Schwartz suggests a connec-
tion between the schemata theory and the humanizing effects of
positive psychology.[182] According to Schwartz:

> Excellent teachers facilitate student learning by getting the
> students to make connections between what they are learning
> and what they already know. Good law teachers, having intu-
> ited this principle, often devote a few minutes at the begin-
> ning of a class session either by lecturing about what the
> class previously has learned or by calling on a student to pro-
> vide such a summary. *An even better approach, with human-
> izing implications, is possible.*[183]

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177.  *Id.* at 228-30.
178.  *Id.* at 230.
179.  *Id.* at 228 (quoting Alicia Rodriguez-Hanley & C.R. Snyder, *The Demise of Hope:
On Losing Positive Thinking, in* HANDBOOK OF HOPE: THEORY, MEASURES, & APPLICATIONS
40 (C.R. Snyder ed., 2000) (internal quotations omitted).
180.  Martin & Rand, *supra* note 144, at 228-29.
181.  Sonsteng et al., *supra* note 22, at 410 (quoting Vernellia R. Randall, *Increasing
Retention and Improving Performance: Practical Advice on Using Cooperative Learning in
Law Schools*, 16 T.M. COOLEY L. REV. 201, 262 (1999)).
182.  Schwartz, *supra* note 71, at 244-45.
183.  *Id.* at 245 (citations omitted, emphasis added).

Professor Schwartz's general observations suggest a connection between schemata theory, non-legal examples, and the humanizing effects of positive psychology.[184]

## IV. *DECODING THE DRESS CODE*: THE SYNERGY OF ADULT LEARNING THEORY AND POSITIVE PSYCHOLOGY

The existing research about adult learning theory and positive psychology discussed in the preceding section indicates that adult learners flourish both cognitively and psychologically in learning environments where teachers make explicit connections between new concepts and students' existing knowledge. This research supports my premise that non-legal examples are an untapped resource for building a framework of hope while simultaneously improving students' ability to understand abstract legal principles. However, my thesis assumes that legal writing students *need* hope. Legal writing and other skills courses tend to rely less heavily on the Socratic Method of instruction[185] and other pedagogical techniques that are often blamed for increasing psychological distress among law students.[186] So, the question becomes why, aside from an altruistic impulse, should legal writing teachers care about engendering hope in students?

The answer is twofold: first, the substantial amount of time that legal writing students spend on writing assignments; and second, the nature and frequency of the feedback that students receive about their writing. The results of a 2008 study identifying the attributes of highly successful legal writing students contained salient information about the amount of time that students spend on their writing assignments.[187] For example, the student at the high end of the range spent a whopping ninety-five hours and forty-nine minutes on her writing assignment while the student at the low end of the range spent fifty-three hours and forty-five minutes on her assignment.[188] At either end of the spectrum, these results provide some insight into the intensity of students'

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184. *Id.* at 245.
185. Sonsteng et al., *supra* note 22, at 338-39.
186. *See* discussion *supra* pp. 289-91.
187. Anne M. Enquist, *Unlocking the Secrets of Highly Successful Legal Writing Students,* 82 ST. JOHN'S L. REV. 609, 624-25 (2008). These findings were based on 2008 study of six law students at the Seattle University School of Law. The researchers studied the methodologies that the students used as they wrote and researched a motion brief and an appellate brief. *Id.* at 611.
188. *Id.*

time commitment.[189]     Given this substantial time investment, teaching techniques that foster pathways and agentic thinking would provide students with valuable coping techniques as they grapple with the stress and anxiety caused by balancing labor-intensive writing assignments with the workload in other courses.

Furthermore, legal writing students are particularly vulnerable to psychological distress because of the timing, frequency, and nature of feedback they receive.  While doctrinal classes may typically have only isolated opportunities for feedback,[190] legal writing professors typically provide students with multiple opportunities for feedback during the year.[191]  Further complicating matters, legal writing professors are typically the first ones to give students *any* kind of feedback.[192]  The frequency and timing of the feedback create an emotional "perfect storm" for students "accustomed to doing well and unaccustomed to extensive written criticism from faculty."[193]  Consequently, legal writing professors are often advised to "keep tissues in their offices because it is likely that they will have students crying at least a few times a semester in their offices."[194]  At least one scholar has cast legal writing instructors in the role of:

> mini-psychologists and emotional soothers for their troubled students.  Their role, which resembles the behavior of a mother in a traditional family, is not only to teach, but also to guide with a gentle hand, to listen to complaints, to solve problems and to be available to respond to the students' emotional concerns about legal writing, law school and, at times, life in general.[195]

Given the existence of such intense emotions accompanying the writing process, teachers must strive to engender hope in their students to avoid the alienation, depression, and disillusionment that inhibit learning.[196]  Furthermore, Martin and Rand's findings

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189.  Ann C. McGinley, *Reproducing Gender on Law School Faculties*, 2009 BYU L. Rev. 99, 129 (2009) ("Students resent the continuous time demands of legal writing assignments, and many of them see low grades for the first time in years in their legal writing papers.").

190.  Sonsteng et al., *supra* note 22, at 337-39.

191.  McGinley, *supra* note 189, at 129.

192.  *Id.*

193.  *Id.* at 129.

194.  *Id.* at 130

195.  *Id.* at 129.

196.  See discussion *supra* p. 291 on the adverse effects of anxiety, fear, and stress on cognitive functioning.

substantiate a causal connection between positive emotions and academic achievement and establish an empirical basis for incorporating potentially transformative positive psychology research into legal writing pedagogy.[197] Although the considerations identified above are not comprehensive, they strongly suggest that legal writing students would benefit from pedagogical tools that reflect research from the burgeoning field of positive psychology.

The next two sections of the article briefly describe *Decoding the Dress Code*, a comprehensive non-legal example that I developed to introduce novice legal writers to the predictive writing process, and explain how the exercise integrates adult learning theory and positive psychology to build a framework of hope in the legal writing classroom.

## A. *Introductory Considerations*

The exercise's success depends on the instructor's ability to communicate the importance of writing to the practice of law. Without this context, students might perceive the exercise as a fun little game and disregard its pedagogical significance. Furthermore, the appropriate context ensures that students do not make unwarranted assumptions about the relative importance of writing in the law school curriculum[198] and that they do not mistakenly assume that legal writing is similar to undergraduate writing.[199] In commenting on first-year students' perceptions about the relative importance of legal writing, one legal writing professor observed:

> In sum, only two of ten students properly conceptualized the importance of writing when they entered law school. The others either had not thought about writing or underestimated its importance to their future careers. Regardless of what their LARW instructors told them throughout the year, or the emphasis on legal writing in the first-year curriculum, the

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197. See discussion *supra* pp. 295-96 on the results of Martin and Rand's groundbreaking research.

198. *Cf.*, Judith Welch Wegner, *Reframing Legal Education's "Wicked Problems,"* 61 RUTGERS L. REV. 867, 888 (2009) ("Many law faculty members do not fully appreciate the importance of legal writing courses in bolstering students' analytical strengths . . . . [L]egal education has not really embraced the need for students to learn to 'do and act' or appreciated the ways in which 'doing and acting' are powerful means to fuel learning of substance itself.").

199. *See generally* Enquist, *supra* note 23.

students downplayed the importance of the class during the year.[200]

These comments strongly suggest that students must understand the relevancy of legal writing to the legal profession before any non-legal example can work its "pedagogical magic" of engendering hope while making abstract legal principles more concrete.

To create a favorable context for the exercise, I require students to come to the first class having read Professor Enquist's wonderful essay on the differences between undergraduate writing and legal writing.[201]  I also require them to read a handout entitled "Strategies for Survival:  Advice from the LSV Experts."[202]  As its title suggests, the handout summarizes my former students' perspectives about what it takes to succeed in my legal writing class. The comments from my former students urging incoming students to "keep an open mind about legal writing [as] it is nothing like I have ever done in college"[203] and to value the course because "what you learn in LSV will help you prepare for every class"[204] are particularly effective in motivating students to take the class seriously.

Once students understand the importance of legal writing, I begin the *Decoding the Dress Code* exercise by distributing a directed handout[205] and cuing up a PowerPoint presentation[206] that sequentially guides students through the predictive process.  Sheila, the focal character of the exercise, is a seventeen year-old foreign exchange student who has recently landed her first job in the United States as a salesperson at the Niche Boutique, a local clothing store.  She needs the students' advice about what to wear on her first day of work.  Unfortunately, she has been unable to

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200.  Aïda M. Alaka, *Phenomenology of Error in Legal Writing*, 28 QUINNIPIAC L. REV. 1, 18 (2009).

201.  Enquist, *supra* note 23.

202.  At Nova, the required first-year writing course is called Lawyering Skills and Values, or "LSV."  Nova Southeastern University, Lawyering Skills and Values, http://www.nsulaw.nova.edu/students/current/lsv/lsv.cfm (last visited Mar. 15, 2010.).  The program is described as "an innovative approach to legal education, one that integrates legal theory with practice, professionalism, and technology right from the first day of law school." *Id.*  For a copy of the handout, see *infra* app. D, at 322.

203.  This information comes from page 1 of the "Strategies for Survival: Advice from the LSV Experts" handout that will eventually be incorporated into the article. *See infra* app. D, at 322.

204.  This information comes from page 1 of the "Strategies for Survival: Advice from the LSV Experts" handout that will eventually be incorporated into the article.

205.  For a copy of the directed handout, see *infra* app. D, at 322.

206.  Special thanks to my colleague, Professor Olympia Duhart, who transformed my directed handout into a fun and visually engaging PowerPoint presentation.

contact the store manager and only has an hour to make a deci-
sion about what to wear. I typically divide the class into two dis-
tinct parts. The first part focuses on the predictive process while
the second part focuses on packaging the prediction to satisfy
Sheila's need for clarity, accuracy, and organization.[207]

The exercise provides a roadmap of the entire course for global
learners[208] while highlighting each distinct part of the predictive
process for those with more sequential learning preferences. *De-
coding the Dress Code* also demonstrates how the predictive proc-
ess fits within the larger context of client representation and en-
courages students to focus on those aspects of legal practice that
involves effective interpersonal communication.[209]

## B.  Integrating Adult Learning Theory and Positive Psychology

*Decoding the Dress Code* certainly satisfies the pedagogical
goals referenced above. However, its value lies in its ability to
synergize components of adult learning theory and positive psy-
chology into a vehicle for teaching the process of predictive writ-
ing, stare decisis, and the distinction between primary and secon-
dary sources of law. The exercise accomplishes the dual cognitive
and psychological purposes discussed in the first and second sec-
tions of this article by: (1) using the workplace to make explicit
connections to the predictive writing process, (2) creating a re-
spectful learning environment, (3) appealing to the learning pref-
erences of Gen X Y students, and (4) modeling and encouraging
agentic thinking.

### 1.  Framework Building Principle # 1:  Using the Workplace to Make Explicit Connections to the Predictive Writing Process

For the past two years, I have used with great success some it-
eration of *Decoding the Dress Code* on the first day of class. From
a pedagogical standpoint, the exercise is successful because it ap-

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207. This exercise typically takes fifty minutes to an hour to complete. However, those
with less instructional time can complete the exercise in thirty minutes by requiring stu-
dents to complete the directed handout before coming to class.
208. Global learners process information by understanding the "big picture" of the sub-
ject matter before understanding the details. Richard M. Felder & Barbara A. Soloman,
Learning                     Styles                    and                    Strategies,
http://www.clevelandcommunitycollege.edu/uploads/ssc/20090925-
InstructionalDesign_Handouts.pdf (last visited Mar. 15, 2010).
209. *See* Sonsteng et al., *supra* note 22, at 403.

peals to adult learners' need for a concrete explanation of abstract legal concepts in a way that connects prior knowledge to new material. From a psychological standpoint, the "magic" of the exercise is in its implicit message that students are uniquely equipped to meet the challenges of becoming effective legal writers because of their real-world experiences. This implicit message of hope encourages students to build bulwarks against depression and anxiety in the competitive law school environment.

The primary lesson students learn from the exercise is that predicting outcomes is as commonplace in everyday life as it is in the legal world. For example, employees predict the outcome of workplace dilemmas in much the same way that attorneys predict the outcome of legal dilemmas. Given these similarities, students are encouraged to apply knowledge gleaned from the workplace in a way that mimics[210] the predictive process that lawyers use to solve legal problems.

The exercise demonstrates the similarities between problem solving in the workplace and problem solving in law practice in three primary ways. First, problem solving in the workplace is similar to legal problem solving because, in both settings, the astute problem solver must first begin by identifying the governing rules. To illustrate the comparison, I encourage students to help Sheila decide what to wear by reflecting upon their personal work experiences. After several minutes of brainstorming, students can usually identify several useful strategies such as viewing the Niche Boutique's website, asking questions about the store's clientele, or advising Sheila to wear an outfit similar to the one she wore to the interview or similar to the one worn by the interviewer. At some point, a student usually suggests that Sheila reference the workplace rule. I highlight the rule's importance to the predictive process with the following questions: "Why is Sheila's initial reaction to call the manager?" and "Does it matter if the Niche Boutique has a dress code policy?" After several minutes of discussion, I make the connection between the importance of rules in the workplace and the importance of rules in the practice of law. By the end of this exchange, students understand that, like

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210. The directed handout guides students through the sequential process of predictive analysis, including the inherent ambiguity in the requirement that employees dress professionally; the importance of synthesizing the meaning of professionalism from the boutique's disciplinary history; and the use of rule-based and analogical reasoning to predict whether Sheila's tube top would violate the dress code's requirement of professional conduct.

problem-solving in the workplace, legal problem solving always begins with an examination of the governing rule.

The second way that problem solving in the workplace resembles legal problem solving is that both require mastery of the implicit rules that clarify more explicit ones. Consequently, the second and third questions on the directed handout focus the students' attention on the inherent ambiguity of rules and on the importance of synthesizing the meaning of a rule. The PowerPoint slides that correspond to the directed handout contain pictures of people in radically different attire. One slide contains a picture of a young woman wearing a multi-colored sweater, jeans, and purple tennis shoes, while another picture depicts a thirty-something man in khakis and a polo shirt. Another slide contains an image of a young woman in a cocktail dress alongside a montage of men wearing Bermuda shorts and formal shirts and ties. While most students agree that the woman wearing the multi-colored sweater and jeans is not professionally dressed, the class splits rather evenly on whether the others are professionally dressed.

Although the pictures inject a bit of humor into the exercise, they function as a visual reminder of the dangers in making unwarranted assumptions about the meaning of legal rules. I remind students that the difference between Sheila's smooth transition into the workplace and her premature termination depends upon their ability to clarify what professional attire means. Next, I draw a comparison between their duty as Sheila's advisor to clarify the meaning of the word "professional" and the lawyer's professional duty to clarify ambiguous legal rules.

The discussion then moves to mechanisms for clarifying ambiguous rules. To facilitate this discussion, I provide students with the disciplinary history of three employees.[211] Then, I use a simple synthesis chart[212] to help the class visualize the patterns that emerge from the boutique's disciplinary history. As we work through the synthesis chart, I point out the utility of charts for analyzing information in the real world and in the legal world.

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211. Maxine and Jessica are both salespersons who regularly interact with customers. Maxine was disciplined for wearing a halter top, but Jessica, who always wears business suits, has never been disciplined. However, David, who works in the stockroom, has never been disciplined for wearing muscle-shirts to work.

212. On one side of the board I write the phrase "violates the dress code," and on another section of the board, I write the phrase "does not violate the dress code." To stimulate dialogue, I ask students to explain why David, the stockroom employee who routinely wears muscle-shirts to work, escaped discipline but Maxine, the salesperson who wore a halter top, was disciplined for violating the dress code.

The synthesis chart helps students articulate a more nuanced definition of professionalism. At this point, I ask a series of questions underscoring the various ways of defining legal rules: "Should we define the rule narrowly as requiring all salespersons to wear business suits?" or "Should we define the rule more broadly as requiring salespersons to dress in more formal attire?" and "What are the practical consequences of either type of rule formulation?" These questions help students understand that predictions often depend on how narrowly or broadly the attorney phrases the rule.

After several minutes of working in their groups, students recognize that the meaning of professionalism depends on an employee's level of customer contact. For example, employees who work with customers are expected to dress more formally than employees with limited customer contact. I end the discussion by explaining that the process of formulating a general rule from specific instances of employee conduct is classic inductive reasoning which lawyers routinely use to solve legal problems.[213]

The third way in which problem solving in the workplace resembles legal problem solving is that, in both contexts, astute problem solvers apply information gleaned about the rule to predict whether a new situation will be governed by the existing rule. The fourth question on the directed handout focuses students' attention on two primary tools that lawyers use to make predictions: rule-based reasoning and analogical reasoning. During this segment of the exercise, students learn that Sheila is contemplating wearing a tube top on her first day of work. Most students immediately recognize that Sheila's tube top is similar to the halter top worn by Maxine, a salesperson who was disciplined for violating the dress code, and unlike the business suit worn by Jessica, an employee who has never been disciplined for dress code violations. At this point in the exercise, I encourage students to observe similarities and make distinctions, as these qualities are at the  that are the heart of sound analogical reasoning. For example, I typically probe students with questions like:  "Why is a halter top similar to a tube top?" and "Does the similarity between the two types of clothing help you make a prediction about whether Sheila

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213. According to Professor Ruth Ann McKinney, "Having the ability to move from the trees (specific, illustrative case conflicts) to the forest (over-arching principles emerging from patterns of cases) and then back again to the trees (to illustrate the validity of principles or to compare new facts to them to see if the same principles should apply) is the essence of being an exceptional lawyer." MCKINNEY, *supra* note 20, at 11.

can wear her tube top?" These questions help students understand that the strength of their prediction is directly proportional to their ability to *articulate* similarities and differences.

Once students understand the basic concept of analogical reasoning and its role in the predictive process, I introduce them to rule-based reasoning. For example, I ask the class if they could predict the outcome of Sheila's wardrobe dilemma without making a comparison between her tube top and Maxine's halter top. After a few moments, students realize that they can predict the outcome of Sheila's wardrobe dilemma by applying the definition of professionalism that they synthesized from the Niche Boutique's disciplinary history. I end the discussion with a brief explanation of the differences between analogical and rule-based reasoning and about why both forms of reasoning are important predictive tools.

In addition to providing a familiar context for the predictive process, the exercise also clarifies the relationship between inductive and deductive reasoning. To explain the relationship between these two concepts, I draw a see-saw on the board. I tell students that one end of the see-saw represents the *inductive reasoning* that process allowed us to clarify the definition of professional attire, while the other end of the see-saw represents the *deductive reasoning* process that we will use to make a prediction about whether Sheila's tube top violates the dress code. I release the students into their groups and ask them to make a prediction about whether Sheila can wear her tube top to work. Students confer informally for about fifteen minutes and then present their predictions to the class. I end class by asking the students to give themselves a round of applause. When they question the reason for the applause, I tell them that, after only one day in law school, they have already made a prediction in much the same way that they will be expected to make predictions as a lawyer. By making the connection between similarities in the workplace and in the legal world, *Decoding the Dress Code* injects a bit of humor and levity into the discussion of concepts that can be difficult to understand in the abstract.

I continue using the exercise because of its effectiveness in relieving students' anxieties on what to expect about legal writing. On the first day of law school, students are understandably anxious about how they will measure up in the competition for first-year grades. The implicit message conveyed by the exercise is that legal writing is accessible. In this sense, *Decoding the Dress Code* promotes hope by imbuing students with confidence that they can navigate the rigors of law school. During the first few

months of class, students often comment on the exercise, telling me that it eased their anxieties about legal writing. For example, one student expressed apprehension about whether being a first-generation college graduate put her at a competitive disadvantage among her peers, many of whom either had some direct experience with law through their prior work experiences or through family connections. She confided in me that the exercise calmed her fears by showing her that she had equally valuable experiences that she could use to her advantage.

*Decoding the Dress Code* certainly does not solve all of the challenges of teaching predictive writing to first-year students, and I will reiterate many of the principles that I introduced with the exercise later in the semester. However, *Decoding the Dress Code* is a wonderful vehicle for demystifying the predictive writing process in a creative and interactive way while sending the message that predictive writing is accessible and fun.

### 2. Framework Building Principle # 2: Creating a Respectful Learning Environment

*Decoding the Dress Code* fosters a respectful learning environment because students are encouraged to use their individual experiences in the workplace to increase their collective understanding of the parallels between problem solving in a non-legal setting and problem solving in the practice of law. This emphasis on collaboration from the very first day of class sends a powerful psychological message to students about respect—namely, that they can succeed in the competitive environment of law school without behaving disrespectfully toward classmates.

The directed handout guides students through the sequential process of predictive analysis, including the inherent ambiguity in the requirement that employees dress professionally, the importance of synthesizing a definition of professionalism from the boutique's disciplinary history, and the use of rule-based and analogical reasoning to predict the outcome of Sheila's dress code dilemma. Students appoint a group leader who presents the groups' finding to the class, a secretary who records the answers, and a timekeeper who is responsible for keeping the group on task.[214] *Decoding the Dress Code* is also an effective icebreaker that pre-

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214. *See* Thyfault & Fehrman, *supra* note 21, at 143 (suggesting that the most effective types of pair and share exercises assign a specific task to each member of the group).

pares students for the type of pair and share collaborative[215] exer-
cises that they will encounter during the semester. Perhaps more
importantly, collaborative exercises like *Decoding the Dress Code*
are the most effective method of introducing new concepts to adult
learners.[216] For example, after completing the exercise, students
often tell me that they made comparisons between the workplace
and the predictive process that they would not have made in the
absence of the unique insights and contributions from other group
members.

The collaborative nature of the exercise is further enhanced by
the ethnic and racial diversity of its characters. By including im-
ages of women and men of diverse racial backgrounds, I subtly
encourage students to be respectful of differences while exposing
them to the ethnic diversity that they will encounter in the real-
world of law practice. For example, by making Sheila a person of
color, students can appreciate the very real likelihood that they
will represent clients whose experiences may differ from their
own. Similarly, including racially and ethnically diverse charac-
ters validates the experiences of those students from groups that
are historically under-represented in law school.[217]

### 3. Framework Building Principle # 3: Appealing to the Learning Preferences of Gen X Y Students

The exercise also appeals to Gen X Y students' "just in time"
learning style by clearly communicating the relevancy of the
CREAC organizational structure,[218] giving them immediate feed-
back from which to evaluate their understanding of CREAC, and
establishing my persona as a "guru of legal writing." To appeal to

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215. Although legal educators use the terms "collaborative learning" and "cooperative
learning" interchangeably, *Decoding the Dress Code* is more precisely defined as a coopera-
tive pedagogical tool because the structure of the interaction is guided by the teacher. *See*
Thyfault & Ferhman, *supra* note 21, at 146 (cooperative learning techniques are better
suited for novice learners encountering new material (citing Elizabeth A. Reilly, *Deposing
the "Tyranny of the Extroverts": Collaborative Learning in the Traditional Classroom For-
mat*, 50 J. LEGAL EDUC. 593, 603 (2000)).

216. *See* Thyfault & Ferhman, *supra* note 21, at 138.

217. *See* Kevin R. Johnson & Angela Onwuachi-Willig, *Cry me a River: The Limits of "A
Systematic Analysis of Affirmative Action in American Law Schools,"* 7 AFR.-AM. L. & POL'Y
REP. 1, 5, 9-10 (using statistical evidence to substantiate the general observation that "ra-
cial minorities are seriously underrepresented in law schools across the country and among
the practicing bar").

218. *Cf.* Hollee S. Temple, *Using Formulas to Help Students Master the "R" and "A" of
IRAC*, 14 PERSP. 129, 131 n.8 (2006) (generally discussing the widespread use of these
types of organizational paradigms and referencing the debate about their utility among
many in the legal writing community).

the Gen X Y students' need for relevancy, I connect the CREAC organizational structure to the predictive process modeled in the directed handout. For example, I focus their attention on the letters "R," "E," and "A" that I wrote on the board as we worked through the directed handout. I explain that the letters represent the process that we used to predict the outcome of Sheila's wardrobe dilemma. Next, I connect the "R," "E," and "A" to the CREAC organizational structure. To do this, I tell the students that Sheila has asked us to memorialize our prediction in writing. I then ask a series of questions like: "Should we write our prediction in the same order that we analyzed it?" and "How would you organize your analysis in a way that satisfies Sheila's need for a clear, concise, and logically reasoned answer to her workplace dilemma?" Students immediately realize that their conclusion should appear first. When I question their rationale, they explain that Sheila will more easily comprehend the analysis if the conclusion comes first. This answer usually prompts a different student to suggest that we repeat our conclusion at the end of the document. After this brief exchange, I write a "C" in front of the "R" and write another "C" following the "A." Now, the students have a visual of the pneumonic "CREAC."

I end the demonstration by pointing to the table of contents in the textbook and in my syllabus. When I ask what my syllabus has in common with the table of contents, students quickly recognize that the entire first semester will be devoted to making predictions about the outcome of legal problems and then organizing that analysis into the CREAC organizational paradigm. By painstakingly establishing the legitimacy of CREAC, I appeal to the learning preferences of my Gen X Y students who must immediately understand why CREAC is relevant before expending the time and effort that it will take to successfully complete their assignments. Later in the semester when students begin to question CREAC's relevancy, I remind them that they "created" it on that very first day in class when we predicted the outcome of Sheila's dress code dilemma.

*Decoding the Dress Code* also gives my Gen X Y students an immediate opportunity for feedback. On the second day of class, students work in pairs drafting their very first CREAC.[219] At the end of class, I ask students to compare their CREAC to the sample

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219. To avoid undue stress so early in the semester, I do not grade the assignment. However, it is a component of the students' miscellaneous grades.

posted on my course webpage. The two-page sample identifies each section of the CREAC organizational paradigm and provides students with an objective basis for assessing their understanding. Providing Gen X Y students with immediate feedback is important because it motivates[220] many of them to spend more time completing assignments and helps them to avoid procrastination. For example, students always contrast the relative ease with which they predicted the outcome of Sheila's dilemma with the difficulty that they experienced in packaging the prediction into the CREAC paradigm. When I review the assignment with students, I quote James Michener who said, "I'm not a very good writer, but I'm an excellent rewriter." This type of positive reinforcement of the inherent difficulty of moving from the brainstorming phase to the writing, revising, and editing phases helps first-year students depersonalize what they might otherwise characterize as negative feedback on their very first writing assignment.[221]

An additional but unanticipated benefit of the exercise is that it establishes my persona as a guru of legal writing. I establish my value as a teacher to Gen X Y students by making connections between the workplace and the process of predictive analysis that they might not otherwise make. By synthesizing abstract legal reasoning principles and repackaging them, I transform myself from a mere purveyor of information into a teacher who commands the respect of Gen X Y students by demonstrating my expertise in the subject matter.

To further solidify my persona as a guru, I connect the common law process and the distinction between primary and secondary sources to the hierarchical structure of the modern workplace. For example, I created a type and weight of legal authority worksheet based on Sheila's dress code dilemma.[222] The worksheet asks students to assume that Sheila is still on her quest to determine what to wear. The first several questions test students' understanding of the distinction between mandatory and primary authorities. The first question tests the students' understanding of the relative weight of secondary sources. They must decide whether Sheila should rely on the description of the Niche Bou-

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220. Sonsteng et al., *supra* note 22, at 407 ("[A]dult students need specific feedback in order to stay motivated. . . . A better system [than the one traditionally used by law schools] utilizes instructors who use positive reinforcement on a regular basis and early in the learning process to help students retain what they have learned.").

221. Martin & Rand, *supra* note 144, at 225-28.

222. For a copy of this handout, see *infra* app. C, at 319.

tique's dress code contained in the *Boca Raton Fashionista*, local fashion magazine, or on the description of dress code contained in *GQ*, a magazine with worldwide circulation. The next series of questions test the students' ability to articulate the relative weight of various persuasive authorities. For example, question four asks whether Sheila should rely on the Banana Republic's dress code, the *Boca Raton Fashionista*, or *GQ* magazine and requires students to fully explain their rankings. These types of questions force students to weigh the relative credibility of legal authorities in a manner that might not have been immediately apparent from the text. Furthermore, I appeal to the learning preferences of my Gen X Y students by creatively introducing these abstract concepts in the now familiar context of Sheila's dress code dilemma.

Part two of the worksheet explores the similarities between the workplace and the common law process. Students learn that the Niche Boutique is a national clothing retailer with locations in Fort Lauderdale, Florida; Tallahassee, Florida; and Orlando, Florida. Furthermore, dress code violations are determined on a case-by-case basis by each store manager. However, if a store manager's interpretation of the dress code conflicts with that of a district manager, then the dispute is resolved by the CEO. The CEO's decision is final and cannot be appealed.

The students answer questions testing their understanding of stare decisis and the common law process. For example: "Is a decision from the Orlando store manager binding on the Fort Lauderdale store manager?" "Is Donald, the manager of the Fort Lauderdale store, bound by the district manager's decision that mini-skirts do not violate the dress code?" "Would it matter if Donald's rationale for disciplining the employee differs from the rationale expressed by the district manager?" In sum, the characters from *Decoding the Dress Code* help me to establish myself as a legal writing guru whose ability to make connections between students' life experiences actively engages them in a way that a textbook cannot.

### 4. *Framework Building Principle # 4: Modeling and Encouraging Agentic Thinking*

*Decoding the Dress Code* is also a proactive way of ameliorating students' psychological distress because it promotes agentic and pathways thinking. The exercise fosters agentic thinking by emphasizing the value of intuition created by prior learning experi-

ences. In my experience, students who are guided by intuition are less vulnerable to depression and procrastination and more hopeful about their ability to withstand the intellectual and psychological rigors of the course. For example, students who trust their intuition are more likely to use what Martin and Rand refer to as "internal, agentic self-talk statements,"[223] like "I will understand this case" or "I will figure out how to synthesize these cases," when they encounter obstacles later in the semester. Non-legal examples, like *Decoding the Dress Code*, encourage agentic thinking by providing instructors with an opportunity to model a dialogue of positive talk that reinforces the value of intuition.

During the exercise, I encourage the students to use their intuition by affirming its value. As we work through each component of the directed handout, I make a point of affirming the students' instincts. For example, students instinctively look for a dress code policy or similar governing rule because of their workplace experiences. However, an unsuspecting student may assume that his instincts are irrelevant because they do not occur in a legal context. Consequently, when that unsuspecting student tentatively asks, "Is there a rule about tube tops in the workplace?" I affirm the value of intuition by saying things like, "Nice job recognizing the parallels between making predictions in the workplace and making predictions in the legal world. Those are the kind of instincts that will be very valuable in this course."

In the first few weeks of class when students are struggling with identifying and synthesizing rules, I tell the class to "Remember Sheila!" and encourage them to apply the same analytical process to their memo assignments. The message I send with this positive talk is of the utility in using their past legal experiences to make abstract legal principles a little more concrete. This positive talk is the hallmark of agentic thinking and encourages students to talk to themselves in much the same way as they begin the process of becoming effective legal writers.[224]

*Decoding the Dress Code* also fosters agentic thinking by forcing students to connect the predictive process with an actual client. In my experience, students are far more likely to develop the perseverance and will-power they will need as they struggle through the intricacies of their assignments when they have an emotional connection to the client. Although students obviously know that

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223. Martin & Rand, *supra* note 144, at 217.
224. *See* Martin & Rand, *supra* note 144, at 228-29.

Sheila is fictional, showing them her picture helps them emotion-
ally connect with her "story" in a way that motivates them to work
harder to solve her dilemma. I further blur the line between fact
and fiction by speaking of Sheila and of all the characters in my
memo and persuasive writing problems as if they are real people.
When students connect with Sheila or the other "clients" that they
will encounter in their writing assignments, they immediately dis-
cern that a lawyer's written work product is an integral compo-
nent of client representation.

Furthermore, as students work through various aspects of the
exercise, I remind them of the stakes of the representation. For
example, students tend to dismiss Sheila's dilemma until I ask a
series of questions designed to emphasize the importance of their
prediction. For instance: "What will happen if Sheila wears the
tube top?" "Could she be fired?" "Could she be reprimanded?"
These questions highlight Sheila's vulnerability while illustrating
the importance of the attorney's role as counselor. When students
connect with Sheila, they often view the memo not as a generic
assignment, but as a document that represents the interests of a
client who may be adversely affected without their best efforts.

*Decoding the Dress Code* is also a marvelous vehicle for demon-
strating the dangers of over-identifying with a client. Every year I
get at least one group that gives Sheila some bad advice because of
their reluctance to candidly assess Sheila's dilemma. With this
simple non-legal example, I can teach students valuable lessons
about professionalism and ethics by probing the reasons for their
hesitancy and by discussing the problems lawyers cause when
they do not honestly advise clients.[225] By creating a sympathetic
client with a compelling story, I motivate students to continue
working through the fatigue, stress, and anxiety to produce a writ-
ten product that best serves their client's interests.

The exercise also fosters pathways thinking by stimulating stu-
dents' ability to formulate alternate strategies for making abstract
legal principles more concrete. With its emphasis on the legiti-
macy of prior knowledge as a vehicle for promoting genuine un-
derstanding of foreign legal concepts, *Decoding the Dress Code*
gives students another tool for approaching both legal writing and
doctrinal courses. For example, that very same student who
would have never applied knowledge from the workplace to under-

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225. The problem is relatively straightforward and designed so that students can easily
predict that a tube top will most likely violate the dress code.

stand predictive analysis might now be inspired to use a similar technique for understanding abstract concepts in property, torts, or criminal law.

In this sense, *Decoding the Dress Code* promotes pathways thinking and anchoring by providing students with a new lens from which to view alternate ways of processing new information. For example, a student who is a visual learner might elect to outline a course with a synthesis chart, a flow chart, or a graph instead of creating a more traditional outline. Because *Decoding the Dress Code* exposes them to alternate way of processing information, students are less likely to perceive their departure from the more traditional approach as "wrong." Consequently, from a pedagogical standpoint, *Decoding the Dress Code* encourages students to move beyond rote memorization and to process new information in creative ways. From a psychological standpoint, the exercise reminds students that they have options about how to process new information. Armed with panoply of options, students can select study habits that cater to their strengths and unique learning preferences.

## V.  CONCLUSION

Members of the legal writing community should be on the proverbial "front lines" of the movement to humanize legal education. Non-legal examples like *Decoding the Dress Code* provide instructors with a relatively easy way to synergize the latest research on the learning preferences of adult learners with burgeoning research from the field of positive psychology to improve students' academic performance while creating an atmosphere of hope where "'no one needs to fail and the potential exists for everyone to excel.'"[226]

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226.  Sonsteng et al., *supra* note 22, at 410 (quoting Vernellia R. Randall, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 T.M. COOLEY L. REV. 201, 262 (1999)).

APPENDIX A—DECODING THE DRESS CODE

Instructions:   Take a minute to introduce yourself to the other members of the group, and then read the following scenario.  After reading the scenario, appoint a secretary who will record your answers to the questions on the following page.   As you work through the questions, spend the majority of your time formulating an answer.  Record your answers only after reaching a group consensus.  Don't forget to turn in this worksheet at the end of class.

Your neighbor, Sheila, just got a job as a salesperson at the Niche Boutique, a clothing store in downtown Fort Lauderdale.  Sheila is a seventeen-year-old foreign exchange student.  This is her first job in the United States.  Today is her first day of work.

Minutes ago you received a knock on your door.   It's Sheila.  Sheila is wondering what to wear on her first day of work and asks for your advice.  Sheila has no way to contact the store manager and only has an hour to make a decision about what to wear.

1.      Sheila asks you what she should do to resolve her dilemma.  How would you advise her?  Outline your specific recommendations below.  Be prepared to *explain* the basis of these recommendations to the class.

2.      A little while later, Sheila finds the store manager's cell phone number.  She reaches the manager who reads her the dress code policy.  The policy is as follows:  "All employees must dress professionally."  Is this rule helpful?  Why or why not?

3.      Review the following disciplinary history:

        • Maxine is a salesperson.  A job as a salesperson requires frequent customer contact.  Last month, Maxine wore a halter top to work.  She was disciplined for violating the dress code policy.

        • Jessica is also a salesperson.   Jessica always wears business suits to work.  Jessica has never been disciplined for violating the dress code policy.

- David is a stockperson at the Niche Boutique. David's job requires no customer interaction. He routinely wears muscle shirts to work. David has never been disciplined for violating the dress code policy.

3A.    Using the disciplinary history referenced above, draft an explanation of what constitutes professional attire under the Niche Boutique's dress code policy. Record your answer below and be prepared to share your thoughts with the class.

4.     Sheila wants to know if she can wear a tube top to work without violating the dress code. Make your prediction in the space below and identify the reasons supporting your prediction. Be prepared to share your prediction with the class.

APPENDIX B—SAMPLE CREAC

<u>Conclusion Heading</u>

Sheila's tube top will most likely violate the Niche Boutique's dress code because her job will require frequent customer interaction.

<u>The Rule</u>

Niche Boutique employees must dress professionally. The amount of customer contact required by an employee's job determines whether a particular outfit is professional.

<u>Rule Explanation—General</u>

Employees who work with customers are typically expected to dress in more formal business attire while employees with limited customer contact may dress more casually.

<u>Rule Explanation—Supporting Examples</u>

For example, Maxine, a salesperson, wore a halter top to work and was disciplined while Jessica, another salesperson who always wore business suits, was not. However, David, a stockroom employee who has limited customer contact, has never been disciplined for wearing muscle shirts to work.

<u>Rule Application—Applying Definition of Rule</u>

Sheila's outfit most likely violates the professionalism standard. As a salesperson, Sheila's job requires frequent customer contact. Consequently, Sheila will most likely be disciplined if she wears a casual tube top instead of more formal business attire.

<u>Rule Application—Comparison with Prior Cases</u>

The Niche Boutique's discipline history also suggests that Sheila's tube top would violate the dress code. For example, Sheila's tube top is more like the halter top worn by Maxine, who was disciplined for violating the dress code, than Jessica's business suit. Furthermore, because Sheila's job requires customer contact, she would be treated differently from David who is per-

mitted to wear muscle shirts, because his job stocking merchandise requires no customer contact.

## Conclusion

Sheila's tube top will most likely violate the Niche Boutique's standard of professionalism, and she should not wear this outfit if she wants to make a good impression on her first day of work.

APPENDIX C—TYPE AND WEIGHT OF AUTHORITY WORKSHEET

Instructions:  This worksheet is worth 10 miscellaneous points. Apply the concepts discussed in the assigned reading materials to the following non-legal examples.  You may handwrite your answers to the questions referenced below.  Please bring TWO copies of this worksheet to class—one copy to turn in and another copy to use during class.

1.     Assume that Sheila is still on a quest to determine what to wear on her first day of work at the Niche Boutique.  Sheila tells you that, according to the Boca Raton Fashionista, a magazine that purports to be the authority on the Boca Raton, Florida fashion scene,  the Niche Boutique is a *"A smart, stylish, and sophisticated store . . . with a devoted sales staff that is always attired in chic, modern, and classically understated clothing."*

       What kind of authority is the Boca Raton Fashionista?

2.     If Sheila relies on the information contained in the Boca Raton Fashionista, what problems might she encounter?

3.     Sheila tells you that the Niche Boutique was recently featured in the "What's Hot" column of *GQ* magazine.  *GQ* is a men's fashion magazine that has national and international circulation.  According to *GQ*, the Niche Boutique is a *"high-end clothing store with an eclectic mix of modern, sophisticated classics and vintage pieces. The staff is always attired in modern classics with an avant-garde and funky twist."*

       What kind of authority is the *GQ* column?  Should Sheila rely on the description in *GQ* or on the one contained in the Boca Raton Fashionista?  Fully explain your answer.

4.     Sheila remembers that her friend, Anthony, works at the Banana Republic in downtown Fort Lauderdale.  The Banana Republic store is two blocks from the Niche Boutique. Sheila calls Anthony, and he reads from Banana Republic's dress code.  It provides that:

*All employees must present a professional image to our customers. To help foster a professional image, staff members must dress appropriately for work. The following are examples of unacceptable attire: (1) torn, patched/faded clothing; (2) halter tops; (3) tube tops; (4) tank tops; and (5) skirts and shorts that are shorter than mid-thigh.*

What type of authority is the Banana Republic's dress code?

5. Should Sheila rely on Banana Republic's dress code in deciding what to wear to work? Fully explain your answer.

6. Consider all the authorities that Sheila has presented to you (i.e., The Boca Raton Fashionista, the "What's Hot Column" from *GQ*, and Banana Republic's dress code). Rank them by what you perceive as their relative significance. Fully explain your ranking.

The Niche Boutique has recently opened two new retail stores in Tallahassee and Orlando. To accommodate this unexpected growth, the CEO of the Niche Boutique has hired a district manager. In the event of a conflict over the interpretation of personnel policies, the district manager will review the store managers' personnel decisions.

If an employee or store manager is dissatisfied with the district manager's decision, then he or she can appeal to the CEO. The CEO's decisions are final and cannot be appealed.

Donald, the manager of the Fort Lauderdale store, is not sure how the new managerial structure will affect has ability to enforce the dress code. He turns to you for advice.

Assume for purposes of this exercise that none of the Niche Boutique stores have a written dress code policy. Instead, violations of the dress code are determined on a case-by-case basis.

7. Donald wants to discipline Amy for wearing a mini skirt to work. However, he is concerned because the Orlando store manager did not discipline an employee for wearing a mini skirt to work. Neither the district manager nor the CEO

has ever addressed the issue of whether a mini skirt violates the dress code policy.

Is the Orlando store manager's decision binding precedent? Explain your answer.

8. Several weeks later, Donald receives an email from the district manager. The email describes a recent case where the district manager reversed the Tallahassee store manager's decision to discipline a salesperson for wearing a mini skirt to work.

The district manager determined, *"The mini skirt worn by the salesperson does not violate the dress code because it did not disrupt the efficient operation of the workplace. For example, the skirt was only slightly above the employee's knee, and the employee wore conservative colored tights under the mini skirt."*

The next day, Vanessa, who is a salesperson, wears a mini skirt to work. The mini skirt is well above the knee, hitting Vanessa's mid thigh. Vanessa wore shocking pink tights under her mini skirt. No sales associates complained about Vanessa's outfit and several customers complimented Vanessa on her funky, eclectic style.

Is the district manager's decision binding precedent? Explain your answer.

9. Does the district manager's prior decision require Donald to discipline Vanessa for wearing a mini skirt? Explain your answer below.

10. Assume that the last line of the district manager's email referenced in question eight contained the following sentence: *"However, if the employee had been wearing brightly colored tights or if the mini skirt was well above the knee, then the employee would have violated the dress code."*

What is the legal term for the district manager's pronouncement in this sentence? Explain your answer.

APPENDIX D—STRATEGIES FOR SURVIVAL:  ADVICE FROM THE LSV
EXPERTS

At the end of each academic year, I ask my students to reflect on
their LSV experience.  To encourage candor, I require the students
to submit their comments anonymously.  This handout represents
their collective wisdom about what to expect and how to succeed in
my LSV class.

Legal Writing Really is Different

*   *The main suggestion I have is to keep an open mind about
    legal writing . . . . It is nothing like I have ever done in col-
    lege.  I was a little "cocky" coming into my first year because
    I thought legal writing would be my easiest class.  In fact, it
    was my hardest class.  Try not to get intimidated by the
    workload, ask a lot of questions, and approach the class in a
    logical, step-by-step methodical manner.  Don't panic!!!!!*

*   *Do not short change LSV.  Legal writing takes more time
    and organization than writing in undergraduate school.
    What you learn and do in LSV will help you prepare for
    every class.  LSV will help you with the CREAC (or IRAC)
    method, which you will be required to write your exams in.*

*   *Do the reading assignments.  You never know when there
    might be a quiz and those points can be the difference be-
    tween a "C" and a "B" or a "B" and an "A."*

Those Handouts Really Are Important

*   *Follow all the guidelines and handouts—these are vital to
    succeeding in this class!!!  They provide excellent examples
    of what to do and what not to do.  Without these, I wouldn't
    know how to write a proper memo.  Save the handouts!!*

*   *You will be instructed to create a notebook for handouts.
    Create the notebook and update it religiously.  As you are
    given handouts, the importance of them may not be clear
    immediately; however, when you are writing your memo,
    every single handout will be used.  Create the notebook; it
    will make your life much easier.*

- *Use Prof. Lamar's grading rubric!!! If it's on the rubric, she wants to see it on your memo!!!!*

Organization is Crucial

- *Annotated outline! Annotated outline! Annotated outline! The better your annotated outline is the better your memo will be. You will also find that a comprehensive annotated outline, which you update throughout the process, will lessen the anxiety you will have over the memos. Much like the notebook you will be instructed to create, the annotated outline may not seem useful in the beginning, but it will be when you go to your individual conferences and the night before each memo is due.*

- *Take the time to create an organized outline of your research. It really helps to stay on track and will save you a lot of time.*

- *The annotated outline should be your best friend when preparing to write any memo because it will make it easy for you to organize and write your paper. It will also help you in breaking down the relevancy of each case and the proper application of the case to your issue.*

Time Management is Essential

- *START WORKING ON ASSIGNMENTS EARLY. This is the most important piece of advice I could give. If you start early, then you will have a lot less stress. It will also make it easier for you to manage your other classes.*
- *When you receive your assignment, count how many days (minus one) you have until the memo is due. Set your deadline for at least one day before the memo is actually due. Divide the number of days by the number of pages required for the memo. Write every night at least that number of pages. It will set a more manageable pace. Turn the memo in 24 hours in advance. You will sleep like a baby the night before the deadline while everyone else is freaking out and cursing the heavens when their printer jams, runs out of paper, ink, etc.*

<u>Ask Questions</u>

- *It's easier to start writing when you've got a good grasp on the legal issues. If you are confused about the law, ask questions early.*

- *Go to office hours. In ten minutes one-on-one with Prof. Lamar you can clear up a lot of questions and improve your writing.*

- *Ask questions and participate in class. It helps with your public speaking and facilitates ideas for your assignments.*