

# UNLOCKING THE SECRETS OF HIGHLY SUCCESSFUL LEGAL WRITING STUDENTS

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INTRODUCTION .....	610
I. DESIGN OF THE STUDY .....	611
II. PROFILES OF THE SIX STUDENTS IN THE STUDY .....	614
A. “Marie” and “Andy”: <i>The Two Students Predicted to Be Marginally Successful</i> .....	615
B. “Teresa” and “Eric”: <i>The Two Students Predicted to Be Moderately Successful</i> .....	617
C. “Art” and “Sonya”: <i>The Two Students Predicted to Be Highly Successful</i> .....	619
III. POSSIBLE PREDICTORS OF SUCCESS AND ACTUAL RESULTS.....	620
A. <i>Possible Predictors of Success</i> .....	620
B. <i>Actual Results for the Six Students</i> .....	623
IV. SECRETS TO SUCCESS AND POTENTIAL PITFALLS TO AVOID.....	623
A. <i>Hours Spent on the LWII Course</i> .....	624
B. <i>How the Students Spent Their Time</i> .....	627
1. Note-Taking and Reviewing Notes .....	629
2. Devoting Time to Writing—Revising, Editing, and Proofreading.....	633
3. Researching and Reading Cases .....	635
4. Reading Textbook, Handouts, Assignment Packets.....	637
5. Working on Oral Argument.....	638
C. <i>Procrastination vs. Efficient Time Management</i> .....	638
1. Marie: The Classic Procrastinator .....	639

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2. Eric: Over-Researching as a Form of Procrastination.....	644
3. Andy and Teresa: Disappointment, Motivation, and Procrastination .....	645
4. Art and Sonya: Models of Efficiency .....	646
D. <i>Organization</i> .....	650
1. Keeping Their Research Organized .....	651
2. Keeping Their Briefs Organized .....	651
E. <i>The Professor (and Others) as Resources</i> .....	653
1. The Professor as a Primary Resource .....	653
2. Other Resources: Classmates, Friends, Family Members, Co-Workers, Librarians, and the Writing Advisor.....	657
F. <i>Dealing with "Distractions"</i> .....	662
G. <i>Scapegoating</i> .....	665
H. <i>The Possible Effect of the Students' Participation in the Study</i> .....	667
CONCLUSION.....	668

## INTRODUCTION

Most students who are admitted to law schools in the United States "succeed" in the sense that they pass their classes and go on to take and pass the bar.<sup>1</sup> But success in law school is a relative thing. While no one would disagree that a student who passes a class with a "C" had at least limited success in that class, virtually all would also agree that a student who passes with a "B" was more successful and that the "A" student was still more successful.

The interesting question, of course, is what did the A student do to be highly successful that the B and C students did not do? Did the A student just work harder, or did the A student somehow also know how to work smarter? Did the A student come into the course with more of a natural aptitude for law? Was his or her brain somehow pre-wired for legal analysis, or did

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<sup>1</sup> The percentage of students who pass the bar on their first try ranges from sixty percent to ninety-one percent, depending on the state. See ABA-LSAC GUIDE TO ABA-APPROVED LAW SCHOOLS 40-45 (Wendy Margolis et al. eds., 2008); see also *America's Best Graduate Schools: Top Law Schools*, U.S. NEWS & WORLD RPT. (SPECIAL ISSUE), 2008, available at [http://grad-schools.usnews.rankingsandreviews.com/usnews/edu/grad/rankings/law/brief/lawrank\\_brief.php](http://grad-schools.usnews.rankingsandreviews.com/usnews/edu/grad/rankings/law/brief/lawrank_brief.php) (subscription required). Of the top one-hundred law schools as ranked by U.S. News & World Report, the overall bar passage rate ranged from ninety-one percent to sixty-one percent. See *id.*

the A student have some other kind of advantage, such as being from a family of lawyers who passed along the secrets to success in law school? *Are there secrets to success in law school, and if so, what are they?*<sup>2</sup>

I set out to answer that question in a study of six law students, two of whom were predicted to be marginally successful C students, two of whom were predicted to be moderately successful B students, and two of whom were predicted to be highly successful A students. The Article that follows describes what the study showed were similarities and differences in the way these six students approached one of their legal writing courses and what accounted for the different levels of success they ultimately had in that course.

The Article has five parts. Part I describes the research project and how the information was gathered about how the six students worked. Part II introduces the six students. Part III charts their performance in the course. Part IV outlines the strategies that, for these six students, turned out to be either secrets to success or pitfalls to avoid. Part V summarizes the results of the study and outlines areas in which additional research is needed.

## I. DESIGN OF THE STUDY

The goal of the study was to analyze the working methods and composing processes of six law students as they each wrote two briefs, one at the pre-trial level and one at the appellate level, for a required second-year legal writing course. The students were selected for the study based on the recommendation of their first-year Legal Writing I (“LWI”) professors. Each of the LWI professors was asked to nominate six students for the study: two students who were highly successful in their LWI class, two who were moderately successful, and two who were marginally successful.<sup>3</sup> Of all those

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<sup>2</sup> Many scholars obviously believe there are secrets to law school success, as evidenced by numerous books written about succeeding in law school. *E.g.*, ROBERT H. MILLER, *LAW SCHOOL CONFIDENTIAL: A COMPLETE GUIDE TO THE LAW SCHOOL EXPERIENCE: BY STUDENTS, FOR STUDENTS* (rev. ed. 2004); GARY A. MUNNEKE, *HOW TO SUCCEED IN LAW SCHOOL* (3d ed. 2001); HELENE SHAPO & MARSHALL SHAPO, *LAW SCHOOL WITHOUT FEAR: STRATEGIES FOR SUCCESS* (2d ed. 2002).

<sup>3</sup> I asked the recommending professors to omit names of students who had learning disabilities or for whom English was not their first language. I also asked the recommending professors to suggest students for the study who would be

nominated and who were willing to participate, only six were ultimately selected for the study. The idea was that by observing the selected six students approach and complete the same two brief assignments for the required second-year Legal Writing course ("LWII"), I, as the study investigator, could determine what was similar or different about the working methods and writing processes of highly successful, moderately successful, and marginally successfully legal writing students.

The semester before the study began, I selected a specific Legal Writing II section.<sup>4</sup> To control as many variables as possible, I wanted the six students to be in the same class and to have the same LWII professor, "Professor Lee."<sup>5</sup> I selected Professor Lee's section of the course because she is considered an excellent teacher, both in the classroom and in individual office conferences. She is also well known for writing effective critiques of student papers and grading fairly. In short, she is highly regarded by both students and faculty.

Professor Lee agreed that her LWII section could be used for the study and she further agreed that all of the classes for that course could be videotaped so that I could watch the tapes and determine what effect the class activities had on the students' writing.<sup>6</sup> Professor Lee also agreed that I could review the critiques of the students' papers and their grades. We agreed that during the time the students were in the course, Professor Lee would not know which students were participating in the study. In addition, we agreed that her identity would be kept confidential in all presentations and publications regarding the results of the study.

After I received the nominations of students for the study from the LWI faculty, I notified 22 of them<sup>7</sup> that they had been

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cooperative and likely to complete the study's required tasks.

<sup>4</sup> Before selecting the students for the study, I submitted an abstract of the research project and the required forms to Seattle University's Institutional Review Board, which determined that the study was exempt under section 2 of Appendix A. Copies of the forms are in the Dean's office, with the Human Subjects Committee, and with the author.

<sup>5</sup> Professor Lee is not this faculty member's real name.

<sup>6</sup> Because the videotaping required a camera and operator in every class, Professor Lee and I agreed that she would briefly explain the study that I was conducting to the class. The students participating in the study were not identified to the rest of the class, and neither the students participating nor the rest of the class were told the criteria that were used to select the six students for the study.

<sup>7</sup> I did not include any student with whom I had worked in my capacity as the

nominated for the study, explained what the study entailed, and asked if they would be interested in participating. I also explained that I could select only six students. I answered all their questions about the study except that I did not tell them the criteria for which they were nominated. In other words, the students did not know that their LWI professor had nominated them as someone who would be highly successful, moderately successful, or marginally successful in the LWII course. What I did tell them was that my goal as a researcher was to follow their progress as they researched and drafted the two required briefs for the fall course. As part of the selection process, I asked the students to send to me via email a copy of their final memo from the first-year LWI course.<sup>8</sup> All but one of the twenty-two students expressed an interest in being involved in the study.

The six students who were ultimately selected for the study—one male and one female at each of the predicted levels—agreed to participate in the following activities as part of the study: (1) meet with me, the study investigator, once a week during the semester for approximately one half hour for interviews related to the writing tasks for the course; (2) send to me by email all drafts of the two writing projects for the course, as the drafts were done; and (3) keep a daily record of all their activities related to the writing projects, including legal research, reading assignments, class attendance, and writing conferences, and submit copies of those records to me each week.

As incentives for being in the study, I was able to offer the participating students priority in registration<sup>9</sup> (so that they could enroll in Professor Lee's LWII class) and work-study hourly wages for the extra time they spent in order to be in the study. Most weeks involved only the half hour spent on the interview and approximately another half hour spent emailing me drafts of their work and keeping the time log. They were not paid for the

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Writing Advisor.

<sup>8</sup> An independent evaluator, a highly experienced legal writing professor, reviewed the final memos that the students submitted and rated them "high," "medium," or "low." The independent rating was used to confirm whether the student's work indicated that they were likely to be highly successful, moderately successful, or marginally successful in the next writing course.

<sup>9</sup> As part of their support for this study, the administration at Seattle University School of Law and the Registrar's office agreed to give these six students priority in registration.

time they spent researching or drafting the briefs or for any other time they would normally spend on the LWII course.

The students who participated in the study were all enrolled in Professor Lee's LWII class which, like all LWII classes at Seattle University, focused on written and oral advocacy. In the course students wrote a pre-trial brief<sup>10</sup> in support of or in opposition to the State's motions in limine and an appellate brief.<sup>11</sup>

I promised that the identity of the six students selected for the study would be kept confidential in any presentation or publication based on the research. I also encouraged them not to identify themselves to other classmates as participants in the study. The section that follows gives general profiles of the six students.

## II. PROFILES OF THE SIX STUDENTS IN THE STUDY

The week before the semester, I met independently with each of the six students. During these initial meetings, I interviewed the students about their academic, work, and writing backgrounds and got to know them as people. I also gave them copies of the time sheets and confirmed what my expectations were about how we would work together on the research project.

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<sup>10</sup> In some jurisdictions this is called a motion brief or a memorandum of points and authorities.

<sup>11</sup> The case involved a defendant charged with residential burglary. The students first wrote pre-trial briefs in support of or in opposition to the State's motions in limine to exclude "other suspect" testimony and to admit the defendant's prior convictions for two residential burglaries and one burglary with the underlying crime of rape of a child. The two issues on appeal were what the students called the "Officer Graves" issue and the voir dire issue. The Officer Graves issue concerned testimony a police officer gave about whether the lack of fingerprints at the burglary scene could have been the result of the defendant wearing gloves. Officer Graves testified that she knew that the fingerprints she took were probably not of "comparison value." The defendant argued that because she was not a qualified as an expert in fingerprint analysis, this testimony should have been excluded. The voir dire issue arose when the trial judge inadvertently read the defendant's prior convictions aloud during voir dire. She then apologized to the jury, said she had read from the wrong file, and instructed the jury not to consider the reading of the information as proof of the charge.

A. “Marie” and “Andy”<sup>12</sup>: The Two Students Predicted to Be Marginally Successful

“Marie” began her undergraduate career in a community college and finished her degree in a large public university. As a psychology major, she recalled writing numerous research papers. She described herself as an avid reader and Shakespeare fan. In her initial interview, she remembered that she needed “to fluff” her English literature papers in college. She thought her undergraduate grade point average (“GPA”) was about a 3.3.

Between college and law school, Marie worked as a paralegal in a county prosecutor’s office, and between her first and second year of law school, she had an externship with a county prosecutor. In her initial interview with the study investigator, Marie credited the externship and her LWI class with developing what she viewed as her biggest writing strength—her ability to do legal research. She described herself as a “middle of the road” student in LWI and admitted that she “didn’t apply [herself] as much” in that class. When asked about her writing weaknesses, she said that she worried about being concise and that she was “not a big editor.” When asked about her overall assessment of her writing ability, she returned to language she had used earlier in the interview and said that she was a “middle of the road” writer who needed to “apply [herself] more.”

Marie’s score on the Law School Admission Test (“LSAT”) was 152,<sup>13</sup> and at the beginning of her second year of law school,

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<sup>12</sup> The names of all the students have been changed to preserve their anonymity.

<sup>13</sup> According to the Law School Admission Council, (“LSAC”), the organization that writes and administers the LSAT, “[t]he LSAT is designed to measure skills considered essential for success in law school: the reading and comprehension of complex texts with accuracy and insight; the organization and management of information and the ability to draw reasonable inferences from it; the ability to think critically; and the analysis and evaluation of the reasoning and arguments of others.” LAW SCH. ADMISSION COUNCIL, LSAT AND LSDAS INFORMATION BOOK 1 (2007), available at <http://www.lsac.org/pdfs/2007-2008/Infobooktext2007web.pdf> [hereinafter LSAT AND LSDAS INFORMATION BOOK]. The LSAC uses a correlation coefficient for measuring the “predictive validity” of the LSAT on law school performance. *Id.* at 27. The correlation is stated as a coefficient for which 1.00 indicates an exact correlation, while zero means nothing more than coincidence. *Id.* Thus, the closer the correlation coefficient is to 1.00, the more accurate the test is as a predictor of law school performance. *Id.* The correlation coefficients for different law schools range from .04 to .56, with a median of .34. *Id.* This means that more than half of all test takers’ law school performance is not accurately predicted by their LSAT score. *See id.* (stating that “[t]he predictive power of an admission test is

when this study began, her overall GPA was 2.3.<sup>14</sup> Although her LWI grade was a B,<sup>15</sup> her LWI professor had identified her as someone who was only “marginally successful” in legal writing.

“Andy,” the second student selected for the study who was predicted to be only marginally successful, majored in psychology at a small private university and earned a 3.11 GPA. As an undergraduate, he had taken the traditional freshman writing course and had also written research papers. In addition, he had written for the school newspaper. Between his undergraduate years and law school he had held jobs in construction and sales, neither of which required him to do much writing.

Andy had had an extremely frustrating experience in the first-year legal writing course because he and his LWI professor had had a difficult time working together. His view was that the professor's inexperience was a key part of the problem, but even more significant to Andy were several comments and criticisms the professor had made.<sup>16</sup> Andy spoke openly and heatedly about the previous year's experience and clearly nursed a grudge about how the LWI professor had interacted with him.<sup>17</sup> As a result,

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limited by many factors” including those “unmeasurable factors that can affect students' performances” such as “motivation, physical and mental health, or work and family responsibilities”).

<sup>14</sup> The LSAC claims that the LSAT tends to be a better predictor of law school success than undergraduate GPA, with success being measured by first year average law school GPA. See LISA C. ANTHONY ET AL., LAW SCH. ADMISSION COUNCIL, PREDICTIVE VALIDITY OF THE LSAT: A NATIONAL SUMMARY OF THE 1995–1996 CORRELATION STUDIES 1 (1997), available at <http://www.lsacnet.org/research/Predictive-Validity-of-LSAT-Summary-Correlation-Studies.pdf>. The LSAC claims, however, that a combination of LSAT and undergraduate GPA are a better predictor of law school success than either the LSAT or undergraduate GPA alone. *Id.* According to LSAC, the correlation coefficient for LSAT score and undergraduate GPA together and law school success varies at each law school from .24 to .65 with a median of .46. LSAT AND LSDAS INFORMATION BOOK, *supra* note 13, at 27. In one study conducted at the University of Pennsylvania Law School, researchers found the LSAT to be an especially weak predictor of law school success for females. See Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 38–41 (1994) [hereinafter Guinier et al., *Becoming Gentlemen*].

<sup>15</sup> In addition to the grades on the writing projects, the Legal Writing I course includes grades on a citation exam and a multiple choice legal research exam. The grades on these two multiple-choice exams represent ten percent of the student's course grade, and together they may raise a student's overall grade.

<sup>16</sup> Andy quoted his LWI professor as saying that if he (Andy) could not follow instructions, then he should not be a lawyer.

<sup>17</sup> Students who are dissatisfied with their law school experience are more likely to feel that law school is unfair, among other things. See Paul D. Carrington &



Andy said in his initial interview that he came to LWII “not feeling one hundred percent confident.” He added that his lack of confidence also derived from not being well prepared for law school. Prior to coming to law school, he had never seen a legal brief or known any lawyers. In the summer between his first and second year of law school, however, Andy got a taste of the practice of law by working in a legal action center. There he mostly wrote demand and opinion letters and requests for documents. He also wrote one appellate brief as part of this summer job.<sup>18</sup>

When asked about his writing strengths, Andy said he could “write abstract comments in the understanding of a layman.” He also thought his research and analysis were strong. When asked about his writing weaknesses, he said he “tends to simplify instead of . . . [use the] terms of professional writing.” He said there was occasionally a “breakdown between his brain and fingers.” He noted that sometimes he did not explain things fully and that he tended to leave out key sentences. His overall assessment of his writing ability was that he was “a B minus student, right in the middle of the class.”

Andy’s LSAT score was 149, which was unusually low, and at the beginning of his second year of law school, his overall GPA was 2.335. His LWI grade was a B minus.

### *B. “Teresa” and “Eric”: The Two Students Predicted to Be Moderately Successful*

“Teresa” was a political science major at a medium-sized public university. Her undergraduate GPA was 3.2. She had done “a good bit of writing,” primarily essays and eight- to ten-page research papers in her junior and senior years. Between her undergraduate years and law school, she had worked as a paralegal in a large law firm. There she had written letters, deposition summaries, and answers to interrogatories. Teresa’s

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James J. Conley, *The Alienation of Law Students*, 75 MICH. L. REV. 887, 894 (1977); cf. James R.P. Ogloff et al., *More Than “Learning to Think like a Lawyer”: The Empirical Research on Legal Education*, 34 CREIGHTON L. REV. 73, 108 (2000) (mentioning the Carrington and Conley study but noting the lack of follow-up research).

<sup>18</sup> Over the summer Andy read the section of the LWII textbook on appellate brief writing.

LSAT score was 153, and after one year of law school, her GPA was a 2.4.

In the first-year legal writing course, she had earned a B. In her initial interview with the study investigator, Teresa said that she enjoyed the projects in the first-year legal writing course, found that she "knew what was important," and was good at research. She noted, however, that she got frustrated and lost when she started writing. To clear up her confusion, she brought lists of questions to one-on-one conferences with her legal writing professor. Her self-assessment of her writing ability was that she "needed improvement." She had improved her writing when she worked as a paralegal, but now she felt she needed to improve on clarity, conciseness, and organization.

"Eric" was the second student in the study who was predicted to be moderately successful. As an undergraduate at a medium-size public university, he had majored in humanities and graduated with a 3.5 GPA. He remembered writing essays for several classes and had taken two courses devoted to writing. Before coming to law school, he had worked as a general office clerk at a law firm.

During the first-year LWI course, Eric had gradually improved, earning a B by the end of the course. In his initial interview, Eric said that he was "pretty comfortable with research." Although he felt he had improved his analysis, he thought he still needed some work in that area. He identified his main writing strengths as conciseness, organization, readability, and grammar. Asked about his writing weaknesses, he again emphasized the need to improve his analysis, as well as clarity and word choice. He noted that he had "problems with articulation," adding that sometimes what he wrote was clear to him but not to an objective reader. He was already looking ahead to his third year when he hoped to take an advanced writing course as an elective.

In the summer between his first and second year, Eric was a paralegal at a law firm. In this capacity he wrote deposition summaries, reviewed and summarized documents, wrote letters to clients, and wrote answers to a complaint. He also participated in the law review write-on competition and earned a place on that publication. Eric entered law school with a 152 LSAT, and after his first year, his GPA was 3.0.

C. *“Art” and “Sonya”: The Two Students Predicted to Be Highly Successful*

As an undergraduate at a large public university, “Art” had majored in political science and graduated with a 3.4 GPA. In college he had taken only one English class, but he remembered writing many papers and essays for other courses and taking several essay exams. Before law school, he had worked as a case assistant at a law firm. His position involved preparing for depositions, organizing files, and handling documents. It did not require much writing—only a few status memos to partners.

Art entered law school with a 154 LSAT. After his first year, he had a 3.6 GPA and an A in the first-year legal writing course. When asked in his initial interview about the first-year course, Art said that he had developed good computer research abilities. He thought his legal analysis was “fair” and that he needed to learn more about synthesis. Although he categorized his writing ability as “good,” he remarked that he hoped to become faster at completing assignments. As writing strengths, he identified his ability to do “issue spotting and organize in [his] head.” He commented that as a rule he does not have to revise his organization and that his first organizational scheme is “the best it can be.” By contrast, he identified slow and endless revising of drafts as his greatest writing weakness. He said that the process felt “never-ending” and that he “may revise a draft twenty or thirty times.”

In the summer between his first and second year, Art worked in a county prosecutor’s office. There he wrote objective memoranda and found his superiors were “impressed with [his writing] style.” He also drafted motions and improved his ability to do book research. His self-assessment of his writing ability was that he could “write objectively but had difficulty writing persuasively,” which of course would be the focus of the second-year LWII course.

“Sonya,” the second student who was predicted to be highly successful in the LWII course, had been a religion and Russian studies major at a prestigious private university. There she had been required to do a considerable amount of writing, including a major thirty-page paper her junior year and a 120-page senior thesis. She had graduated with a 2.9 GPA and gone on to work for an advertising agency, where she did strategy work and wrote a small amount of advertisement copy. Later she worked as a

marketing director for another company, where she did press releases and more advertising copy. She then moved on to a State Department job that entailed reading and writing memos and "news snippets," as well as writing pamphlets and articles for American businesses.

Arriving at law school with a 154 LSAT score, Sonya immediately proved herself to be one of the strongest students in the LWI class. She earned an A in that course, attributing her success to a combination of factors: a good grasp of the research tools, an ability to identify the issues, good organizational structure, and strength in writing. Her success in legal writing was matched by success in her other first-year courses; she ended her first year with an amazing 3.967 GPA.<sup>19</sup>

In the summer between her first and second year of law school, Sonya worked in a county prosecutor's office. There she "felt like she knew what she was doing." She wrote office memoranda, trial memoranda, and response memoranda, and learned she was capable of achieving a "short turnaround" on her writing assignments. Coming into LWII, she assessed herself as a good writer who could still improve on her ability to make a clear presentation. She felt her top two strengths were her organization and the ability to identify issues. Although she had moved around as a child and consequently worried that she had some gaps in her writing background, she felt that she had learned English grammar well through the study of foreign language and through the influence of her mother, who was an English teacher.

### III. POSSIBLE PREDICTORS OF SUCCESS AND ACTUAL RESULTS

#### A. *Possible Predictors of Success*

Based on the initial interviews with the six students, several possible predictors of success in the LWII course emerged: LSAT scores; undergraduate GPAs; grades in LWI; first-year law school

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<sup>19</sup> Although Sonya's undergraduate grades appear quite low, it is not necessarily surprising that her law school grades were so impressive. Studies have shown that undergraduate GPA alone is usually a poor predictor of law school success. Thus, a high undergraduate GPA does not necessarily mean one will achieve success in law school and vice versa. See ANTHONY ET AL., *supra* note 14, at 4.

GPA; the students' writing experience;<sup>20</sup> and "intangibles," such as Marie's level of effort and Andy's negative experience with his LWI professor and lack of confidence.<sup>21</sup>

POSSIBLE PREDICTORS FOR THE SIX STUDENTS' DEGREE OF SUCCESS IN LWII

	LSAT	Undergrad GPA	LWI Grade	1st Year GPA	Writing Experience
Marie*	152	3.3	B	2.3	Typical
Andy**	149	3.1	B-	2.3	Considerable as undergrad, none since
Teresa	153	3.2	B	2.4	Considerable
Eric	152	3.5	B	3.0	Considerable
Art	154	3.4	A	3.6	Typical
Sonya	154	2.9	A	3.97	Considerable

\* Marie commented in her initial interview that she "didn't apply [herself] as much" in LWI.

\*\* Andy had an extremely frustrating experience in LWI; he and his LWI professor had had a difficult time working together. Andy was "not feeling one hundred percent confident" because of this experience. In addition, Andy

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<sup>20</sup> In the study of expert performance in a number of fields—playing chess, composing music, and painting—researchers have shown that there is a significant relationship between one's ability to perform at a high ("expert") level and the amount of practice in the field an individual performer needed in order to acquire knowledge necessary for expert performance. See John R. Hayes, *A New Framework for Understanding Cognition and Affect in Writing*, in PERSPECTIVES ON WRITING: RESEARCH, THEORY, AND PRACTICE 6, 39 (Roselmina Indrisano & James R. Squire eds., 2000). Hayes speculates that writing may also require a substantial amount of practice before a given writer can produce an "expert performance." *Id.* at 40. Given this insight, one can speculate that the more writing practice these students had before law school, the more likely they would be able to produce high level of writing in law school.

<sup>21</sup> Although many, if not most, law schools focus primarily on LSAT scores and undergraduate GPAs in making admissions decisions, some psychologists believe that "high levels of hope, optimism, perseverance, and motivation may be stronger predictors of academic achievement" than test scores or GPAs. Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524, 526 (1998). Similarly, negative attitudes and "[e]xpectations of failure" were likely to "become self-fulfilling prophecies. Because emotional state and academic performance are so closely related, and because law school contributes to emotional dysfunction, students may get caught in a downward spiral of emotional and academic problems." *Id.* at 527; see also Guinier et al., *Becoming Gentlemen*, *supra* note 14, at 61–62 (suspecting, based on study of hundreds of law students at an Ivy League university, upon interviewing students and observing performance data, that there exists a connection between feelings of self-competence and academic performance).

said his lack of confidence also derived from not being well prepared for law school.

Notice that five of the six students had comparable LSAT scores, all falling in the range of 152 to 154; these scores tended to be "typical and right in the middle for this particular class." By contrast, Andy's LSAT score, 149, was "unusually low" for this class.<sup>22</sup> Note too that Sonya's undergraduate GPA, 2.9, was also low, but her first-year GPA in law school, 3.967, put her at the very top of the class.<sup>23</sup>

Given these possible predictors, and knowing how their LWI professors predicted they would do in the second-year legal writing course, it is interesting to see how they actually performed on the two major writing projects in LWII and what they earned as final grades in that course.

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<sup>22</sup> Without revealing the students' names, I showed the six LSAT scores to the Director of Admissions at Seattle University School of Law and asked where they would fit into the total class picture. She used language to the effect that the 152 to 154 scores were "typical and right in the middle for this particular class." She remarked that the 149 score was "unusually low" and that an admitted student with that score must have had something else in his or her file, such as a tenacious or determined character, that impressed the admissions staff. Because LSAT scores and GPAs are weak predictors of law school success in general, law schools can emphasize and seek other predictors of future success. For example, law schools may look at previous leadership positions, writing background, or debate skills in addition to LSAT scores and GPAs when making admissions decisions. There is little or no evidence, however, that these other factors are any more accurate at predicting law school success than LSAT scores and GPA. One possible reason for this lack of data is the difficulty in quantifying, and thus measuring, things like leadership skills. See Michael A. Olivas, *Higher Education Admissions and the Search for One Important Thing*, 21 U. ARK. LITTLE ROCK L. REV. 993, 999 (1999).

<sup>23</sup> Some studies have found that female students are less successful in law school than their undergraduate grades would predict. See, e.g., Guinier et al., *Becoming Gentlemen*, *supra* note 14, at 21-22 (finding that although female law students observed in the late 1980s and early 1990s at an Ivy League law school entered law school with, on average, slightly higher undergraduate GPAs than those of their male peers, the female students experienced significantly less academic success in law school than did the men); see also LINDA F. WIGHTMAN, *WOMEN IN LEGAL EDUCATION: A COMPARISON OF THE LAW SCHOOL PERFORMANCE AND LAW SCHOOL EXPERIENCES OF WOMEN AND MEN* 17, 23-26 (1996); Lani Guinier, *Lessons and Challenges of Becoming Gentlemen*, 24 N.Y.U. REV. L. & SOC. CHANGE 1, 11 (1998). The opposite, however, is true for Sonya. Although her undergraduate GPA was the lowest among the six students in this study, she ended with the highest first year GPA of the six students.

### B. Actual Results for the Six Students

The chart below outlines the grades that the six students earned on the two legal writing assignments they wrote in LWII and their final grades in that course.

GRADES IN LEGAL WRITING II (LWII)<sup>24</sup>

	Pre-trial Brief	Appellate Brief	Final
<i>Marie</i> *	C+	C-	C+
<i>Andy</i> *	C. <sup>25</sup>	B-	B-
<i>Teresa</i> **	B-	A-	B+
<i>Eric</i> **	B+	A-	A-
<i>Art</i> ***	A	A-	A-
<i>Sonya</i> ***	A-	A	A

\* predicted to be marginally successful

\*\* predicted to be moderately successful

\*\*\* predicted to be highly successful

## IV. SECRETS TO SUCCESS AND POTENTIAL PITFALLS TO AVOID

The grades for the six students on the two assignments for the second-year legal writing course suggest at least two things: (1) the initial predictions about the relative success that these six

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<sup>24</sup> The pre-trial brief was worth twenty-five percent of the total grade; the pre-trial motion oral argument, ten percent; the appellate brief, forty-five percent; and the appellate oral argument, twenty percent. The grades for the entire class on the pre-trial brief were two As, two A minuses, three B pluses, four Bs, two B minuses, three C pluses, zero Cs, one C minus, and one D (which would have been a C without the imposition of a late penalty). The grades for the entire class on the appellate brief were three As, four A minuses, two B pluses, four Bs, two B minuses, one C plus, one C, and one C minus. The final grades for the course for the entire class were two As, four A minuses, four B pluses, three Bs, four B minuses, and one C plus.

<sup>25</sup> Andy's low grade on the pre-trial brief was primarily due to a major analytical error. In his draft, he argued that the defendant's prior convictions should be admitted into evidence because they showed that he had a propensity to commit that same crime again. He missed or misunderstood the point that his argument should have been that the prior convictions should be admitted because they have an impact on the defendant's credibility: They make it more likely that he would lie on the stand. Professor Lee made very direct comments about this mistake both in her margin comments and in her end comment on Andy's draft of the pre-trial brief. In her end comment on the draft, she wrote that "[t]his use of evidence is strictly prohibited." On Andy's final draft, he still missed the point. He focused his arguments on whether certain statements the defendant had made to an eyewitness were credible when he should have argued that admission of the prior convictions address his credibility as a whole and would help the jury judge his credibility if he testified on his own behalf.

students would enjoy in the LWII course turned out to be fairly accurate, at least for the pre-trial brief, and (2) something dramatically changed for Andy and Teresa, the two students who improved a full letter grade from the pre-trial brief to the appellate brief. In addition, there was a significant drop—from a C plus to a C minus—in Marie's grades on the briefs. Although that drop represents only two-thirds of a letter grade, the C minus turned out to be the lowest grade on the appellate brief and a red flag that her work was only barely acceptable. These results raise the following questions: (1) what accounts for the different degrees of success that these students experienced, and (2) what adjustments did some of these students make that precipitated the significant grade changes from the pre-trial brief to the appellate brief?

This section will examine what the students did and did not do as they wrote their pre-trial motion and appellate briefs. It will attempt to synthesize the secrets to success and, on the opposite side of the coin, the pitfalls to avoid.

#### A. *Hours Spent on the LWII Course*

A first and important consideration is simply how hard the six students worked. As part of the study, all six students agreed to keep time sheets on which they logged all the hours they spent on the legal writing course. As a general rule, the six students appeared to be diligent about keeping these logs, which were turned in each week at the meetings with me, the study investigator.<sup>26</sup> Several of them had experience keeping time logs in a law firm setting.

Interestingly, through the first part of the course when the pre-trial brief was turned in, five of the six students remarked that they were working at peak capacity—giving it their all.<sup>27</sup>

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<sup>26</sup> The two areas in which the students seemed to be under-reporting the time they spent on the course were in-class time and time spent reading their professor's critiques of their papers. During the weekly meetings, I briefly reviewed the time sheets with the students; if times were not recorded for attending class—or any other activity that came up later in the weekly meeting as part of the discussion about their work for the course—I asked whether or not there was an omission. More often than not, the student realized that he or she had simply forgotten to record the time spent in class on the log. The low numbers for the category for time spent reading their professor's critiques can possibly be attributed to the fact that the students may have folded that time into times they recorded for revising.

<sup>27</sup> The one exception was Eric, who admitted that he had been distracted by



But as the chart below indicates, different students have very different ideas about what “working at peak capacity” entails.

TIME LOGGED FOR THE PRE-TRIAL BRIEF

	Total Time Through Turning in Pre-trial Brief	Grade on Pre-Trial Brief
<i>Marie</i>	53 hours and 45 minutes	C+
<i>Andy</i>	87 hours and 19 minutes	C-
<i>Teresa</i>	95 hours and 49 minutes	B-
<i>Eric</i>	66 hours and 5 minutes	B+
<i>Art</i>	80 hours and 44 minutes	A
<i>Sonya</i>	86 hours and 53 minutes	A-

Marie logged the least amount of time (fifty-three hours, forty-five minutes), and Teresa logged the most (ninety-five hours, forty-five minutes), and yet Teresa’s grade was only one-third of a grade higher than Marie’s (B minus and C plus). While the two most successful students in terms of grades logged between eighty and almost eighty-seven hours for the course up to this point to earn the A and A minus on that first writing assignment, Andy logged slightly more time (eighty-seven hours, nineteen minutes) than either of them and earned the lowest grade of the six (C minus) and, but for the one student whose grade was lowered for a late penalty, the lowest grade in the class. Obviously all the students were spending considerable, but varying, amounts of time on the course with varying degrees of success.<sup>28</sup>

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some personal issues, such as moving and out-of-town guests.

<sup>28</sup> A very small amount of empirical work has investigated the factors that predict law school success. “Overall, the studies which have investigated factors that predict success or failure in law school show that—all other things being equal—those students who work harder generally perform better in law school when compared to students who do not work as hard.” Ogloff et al., *supra* note 17, at 105. This generalization, however, is not true in the present study, as Andy and Teresa spent more hours working on their briefs than did Eric, Art, or Sonya, yet both received lower grades than Eric, Art, and Sonya. It is not clear whether the results in the present study are inconsistent with the prior studies. For example, if, in the prior studies, “hard work” was measured solely by the number of hours a student spent studying, then the current study would seem to contradict the finding that more hours worked necessarily equals better academic performance. If, however, the prior studies included in “hard work” some qualitative measure as well, such as efficiency, then the results in the current study are not as divergent as they may first seem.

On receiving this first set of grades, four of the six students had emotional reactions to the amount of time and effort they had spent vis-à-vis the grades they had earned. Andy and Teresa were openly upset, with Andy being more irate<sup>29</sup> and Teresa being more tearful. Marie was also unhappy about her grade, but she expressed it more in terms of what she felt were the professor's shortcomings than her own. In contrast, Eric was relieved that he had done as well as he had, given the amount of time he had put into the course thus far.

The first set of grades and the students' perception about how their efforts were or were not paying off impacted how much time and effort they subsequently devoted to the course.<sup>30</sup> Some of them felt they were on the right track and spent the second half of the semester "staying the course" or "stepping it up a notch" because the appellate brief was the more demanding and heavily weighted writing project. Others determined that they would have to find an entirely new level of effort if they were to succeed on the appellate brief. At least one, Marie, allowed the grade on the pre-trial brief to undermine her efforts on the appellate brief.

The chart below shows the amount of time spent by each student on the appellate brief and their resulting grades. Note that because the research, analysis, and writing of the appellate brief depended a great deal on the earlier work done on the pre-trial motion brief and oral arguments, the numbers for the time

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<sup>29</sup> "When unrealistically high pre-task expectancies are followed by failure, negative, mal-adaptive attitudes and beliefs may be strengthened." KAREN R. HARRIS & STEVEN GRAHAM, MAKING THE WRITING PROCESS WORK: STRATEGIES FOR COMPOSITION AND SELF-REGULATION 187 (1996). Because Andy believed he would receive a higher grade on his pre-trial motion brief, it is not surprising that he reverted to many of the same feelings he harbored about LWI.

<sup>30</sup> After receiving a first set of grades, students will often analyze their performance in view of time spent studying:

Students who incorrectly define their problem as one involving "insufficient time" spent studying will only consider problem solutions involving time management. Then, regardless of the number of time management solution ideas that brainstorming may then produce, these students will not actually be able to solve their studying problem. Conversely, students who spend more time at the problem-definition stage, and who engage in divergent thinking at that stage, may soon realize that they spent plenty of time studying . . . .

Paul T. Wangerin, *Learning Strategies for Law Students*, 52 ALB. L. REV. 471, 514 (1988). The real problem is that they were not using their time in the most effective way.

spent on the appellate brief are actually for the total time spent on the course.

	Total Time Spent on the Course	Grade on Appellate Brief
<i>Marie</i>	87 hours and 10 minutes	C-
<i>Andy</i>	146 hours and 14 minutes	B-
<i>Teresa</i>	210 hours and 17 minutes	A-
<i>Eric</i>	156 hours and 5 minutes	A-
<i>Art</i>	190 hours and 14 minutes	A-
<i>Sonya</i>	192 hours and 58 minutes	A

Once again, there was a significant disparity in the amount of time the six students spent—from 87 hours and 10 minutes to a surprisingly high 210 hours and 17 minutes. Even disregarding the outlying low number from Marie and the high number from Teresa, there is still the range of roughly 146 hours to almost 193 hours; put another way, some students are spending approximately twenty-five percent more time, or the equivalent of one more work week, on the same class than their classmates. Working more hours did have an impact on the end product—Marie and Andy spent the least amount of time and earned the two lowest grades—but the amount of time spent was quite obviously not the only factor affecting the success of the writing projects.<sup>31</sup> The next question is *how* did these students spend their working time?

### *B. How the Students Spent Their Time*

Although working more hours was certainly one key to success, an equally important factor was how the most successful (and least successful) students spent that time. Where did they focus their energy?

The time sheets the students used had four columns: date, time started, time ended, and activity. The term “activity” was deliberately vague. Having the students describe how they spent the logged time ensured that the data collection techniques did not somehow suggest to the students how they should be spending their time. As it turned out, the activities that the

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<sup>31</sup> See *id.* at 492. Other studies have also found that more time studying does not necessarily result in better grades. See, e.g., FRANCIS P. ROBINSON, *EFFECTIVE STUDY* (4th ed. 1970).

students put into the "activity" column broke down into roughly twelve categories:

- Attending class
- Researching/reading cases
- Outlining
- Reading textbook/class handouts
- Drafting
- Reading the packets<sup>32</sup>
- Note-taking/reviewing notes
- Working on oral argument
- Working on class exercises
- Revising, editing, and proofreading
- Reviewing professor's comments
- Discussing with others outside of class

The following chart shows how each of the six students divided his or her time.<sup>33</sup> The numbers are in hours and minutes.

HOW THE STUDENTS SPENT THEIR TIME

	Attend class	Research/ Reading cases	Outlining	Read textbook/ class handouts	Drafting	Reading packet	Note-taking/ reviewing notes	Work on oral argument	Class exercises	Revising/ Proofreading	Review Prof's comments	Outside discussion	Total
<b>Sonya</b>	19:00	25:26	0:25	3:44	42:52	2:30	3:20	28:50	0:50	65:09	0:00	0:50	<b>192:58</b>
<b>Arthur</b>	25:00	34:00	2:29	1:50	42:00	1:55	4:30	12:30	0:00	65:00	0:30	0:30	<b>190:14</b>
<b>Teresa</b>	22:00	53:36	7:55	5:27	46:00	4:19	1:50	12:10	0:30	48:35	1:00	6:55	<b>210:17</b>
<b>Eric</b>	20:00	63:15	4:40	4:00	22:35	1:45	2:00	7:00	0:00	29:55	0:30	0:25	<b>156:05</b>
<b>Marie</b>	21:00	14:25	0:30	0:20	11:30	5:40	0:00	15:45	0:00	15:30	2:30	0:00	<b>87:10</b>
<b>Andy</b>	16:00	21:40	2:30	3:05	39:44	1:55	1:45	19:10	0:00	37:50	0:00	2:35	<b>146:14</b>

<sup>32</sup> Students in the course purchased the case file and other assignment materials as two large handouts: "Packet One" and "Packet Two." Packet One included the documents needed to complete the pre-trial brief; Packet Two included the trial transcript and other documents needed to complete the appellate brief.

<sup>33</sup> There were two activities that the students seemed to under-report on their time sheets: "attending class" and "reviewing professor's comments." See *supra* note 26. After the study was completed and Professor Lee had posted her final grades, I asked her if any of these six students had attendance problems. She did not take class attendance, but her memory was that all six were present almost every class. To verify whether her recollection was correct, I contacted Sonya and asked if she could recall missing any classes. She thought she had missed only one, although her time log indicated she missed as many as six, which suggests again that the students often forgot to record time spent in class on their time sheets.

How the six students spent their time and how that translated into “working smarter” was somewhat complicated to discern. Ultimately, though, the secret to success seems to have been a combination of several factors:

- Note-taking and reviewing notes
- Spending a significant percentage of one’s time actually writing
- Of that writing time, spending a significant percentage of it revising, editing, and proofreading
- Researching efficiently and having effective reading strategies
- Managing time efficiently
- Keeping one’s research and briefs organized, often by outlining
- Using the professor as a primary resource
- Discussing the issues in the brief outside of class with other law students

Not surprisingly, the pitfalls to avoid were often the flip side of the secrets to success:

- An absence of note-taking or case annotations and briefs
- Inefficient research strategies
- A passive approach to reading
- Procrastination
- Not using the professor as a key resource

In addition, the least successful students tended to fall into two traps: They let distractions interfere with their work and they looked for a scapegoat on which to blame their problems instead of tackling and solving them.

### 1. Note-Taking and Reviewing Notes<sup>34</sup>

A few numbers jump off the page as possible secrets to success or pitfalls to avoid. The two most successful students, Art and Sonya, spent significantly more of their time taking notes outside of class and reviewing both class and out-of-class

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<sup>34</sup> “Note-taking” refers to notes written outside of class. “Reviewing notes” refers both to notes taken in class or ones the students wrote for themselves based on rules, cases, insights about the analysis, etc. All six students took some notes during class, but that time was recorded on their logs as “attend class.”

notes than did the other four students. Both students mentioned several times in their individual weekly interviews that they took extensive notes not only in class<sup>35</sup> but also when reading rules and cases and thinking through the analysis. Both had the habit of putting things in their own words so that they “owned” them.<sup>36</sup> Art created extensive case summaries;<sup>37</sup> Sonya annotated her case printouts with running lists of questions she had and things she wanted to remember to add. Her notes on the cases included predictions of how her opponent would use the cases and how she would rebut his or her position; the notes also showed how she would synthesize and rely on some of the cases and distinguish other cases. Art and Sonya also reported that they reviewed the notes they took in class before beginning to write each portion of one of the briefs or that they reviewed their notes as a way to check whether they were on track.

Eric and Teresa, both of whom started the course with moderate success and eventually had significant success—A minuses on their appellate briefs and an A minus and B plus respectively for course grades—also used note-taking fairly extensively. Eric made notes in margins of the textbook as he read. His system for reading cases was to print out hard copies, underline key points on the first reading, and then highlight and annotate on the second reading while deciding whether the case worked better for the State or the defense. Eric commented, however, that he synthesized the cases “in his head.” In working through the analysis for the six-factor test used for the issue in the brief, Eric made a separate page for each factor where he included handwritten notes about the specific rules for that

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<sup>35</sup> All six students gave me copies of the notes they took, both in and out of class. Of the six students, Sonya took the most comprehensive class notes. Her notes, however, were not verbatim accounts of what was said in class. She enhanced her notes by using boldface, all caps, or a triple asterisk to indicate particularly important points.

<sup>36</sup> Taking notes while reading, especially in the legal context, is critical. Taking notes helps the student to organize his or her thoughts and observations and frees up short-term memory so the student can think about what he or she is reading, rather than passively absorb the information. See RUTH ANN MCKINNEY, *READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT* 23 (2005).

<sup>37</sup> Writing case briefs is important because it forces the student to put the case in his or her own words and identify the areas that he or she does not yet understand. Case briefing, however, is counterproductive if it “becomes an end in itself, serving as a substitute for reading actively or for thinking independently.” *Id.* at 177, 179.

factor, the relevant cases, and both sides' arguments. Like Sonya and Art, Eric used a combination of quoting key language and putting the various points in his own words. These notes were later combined into a typed outline that he used as a template when writing his brief. Teresa's note-taking was similar to Eric's. She printed out, highlighted, and annotated key cases. Like Eric, she then wrote out briefs for the key cases, although her briefs were far more extensive than Eric's.

Unlike Sonya, Art, Eric, and Teresa, Andy made little mention of taking notes outside of class. He commented that when he read cases he used "active reading," by which he meant that he asked himself questions as he read through the material, but when pressed further on this point, he added that he "d[id] it all mentally." When framing issues, he again said he did it "in [his] head." When asked what he had with him when he was writing his brief, he said his notebook of the cases, with green tabs for the cases on point, but he said he did not annotate or use any self-created notes about the cases. When asked in the interview right before receiving the critiqued and graded pre-trial motion brief what the potential weaknesses were in the brief, Andy said he always worried about a "potential hole," something he knew but forgot to include.<sup>38</sup>

Andy's class notes included some of the very points he later forgot or misconstrued. For example, when he first recorded the class discussion about the six-factor test, he noted that the courts weigh and balance the factors; nevertheless, when he wrote his appellate brief, he discussed each factor separately and never mentioned how the court should weigh and balance them. Similarly, both his class notes and his professor's critique of his draft of the appellate brief highlighted the importance of anticipating and addressing the opponent's arguments. Nevertheless, one of the major shortcomings of Andy's appellate brief was his failure to do just that on the voir dire issue. One can only surmise that forgetting to check his work product against such notes and over-relying on his memory may be some of the key reasons for his limited success.

Like Andy, Marie had poor note-taking and note-reviewing habits. In fact, she recorded no time spent taking notes outside

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<sup>38</sup> Andy's—and to some extent Eric's—tendency to do things in their heads and not write information down as they worked may contribute to their lesser degrees of success.

of class or reviewing her notes. In her weekly interviews, Marie commented that she takes good notes in class, but she seldom refers back to them. She said she read the initial assigned reading in the textbook, but she did not highlight, underline, or take notes. As a result, she did not seem to absorb many of the key concepts. She also read Packet One and the first four cases straight through without any particular approach to that reading,<sup>39</sup> and she did not take any notes on the cases.

Later, when Marie started her independent research and found a case she thought would be useful, she typically downloaded it to her computer. She would often print out hard copies of the cases, but she did not seem to highlight or annotate those copies in any way. In fact, in the weekly interviews, she mentioned several times that she could not recall what she had read and remarked that she "would have to go back over it."<sup>40</sup> In short, Marie reads holistically and superficially.

The stark contrast between the note-taking and note-reviewing habits of the most successful and least successful students suggests that this skill or practice may be one of the

<sup>39</sup> See generally MCKINNEY, *supra* note 36, at 97–101; Laurel Currie Oates, *Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs*, 83 IOWA L. REV. 139, 150–51 (1997) [hereinafter Oates, *Beating the Odds*] (noting that expert readers read with a purpose in mind); Laurel Currie Oates, *Leveling the Playing Field: Helping Students Succeed by Helping Them Learn to Read as Expert Lawyers*, 80 ST. JOHN'S L. REV. 227, 235, 246 (2006) (stating that a law school professor and successful law students read legal material for a particular purpose).

<sup>40</sup> Marie, of course, is making the classic mistake of dutifully reading without actually absorbing the material. She reads over key concepts about issue statements, argumentative headings, using analogous cases, and addressing opposing arguments, but she has not developed a strategy such as annotating the reading or note-taking that will make these concepts stick in her mind:

Merely adequate reading—reading for flat information—just won't do.

. . . .  
Less effective readers . . . mistake reading as a passive activity. They read methodically, moving from front to back of the assigned reading. They assume that the writer has information to transmit to them and they sit back, waiting to be taught.

MCKINNEY, *supra* note 36, at 53, 62. Another possibility for Marie's lack of success in applying what she has read to her own writing is that she lacks transfer skills. See NAT'L RESEARCH COUNCIL, *HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL* 51–71 (John D. Bransford et al. eds., expanded ed. 2000) (illustrating that transfer of learning from one context to a new context is important to learning experiences). In addition to having difficulty taking what is said in class and transferring it to her own writing, Marie seems to have difficulty taking what is discussed in the textbook and transferring it to her own writing.



most reliable indicators of success in law school, or at least in legal writing classes.

## 2. Devoting Time to Writing<sup>41</sup>—Revising, Editing, and Proofreading

Yet another point that jumps off the time sheet was the proportion of their overall work time that Sonya and Art devoted to actually writing the two briefs, and in particular to revising, editing, and proofreading them. Coincidentally, both reported almost exactly sixty-five hours devoted to revising, editing, and proofreading and forty-two hours devoted to first drafts for a total of approximately 107 hours writing each. Put another way, of the 190-plus hours that Sonya and Art each spent on the course, 107 hours (well more than half of the total) were spent actually writing. In addition, three-fifths of the highly successful students' writing time was spent revising, editing, and proofreading, and only two-fifths was spent creating the initial draft.<sup>42</sup>

Eric, who pulled his grade up to an A minus by the appellate brief, also logged a three-fifths revising, editing, and proofreading to two-fifths drafting ratio (twenty-two and a half hours drafting and thirty hours revising, editing, and proofreading), but his total writing hours were closer to fifty-two and a half hours (about forty-five percent of the total time he spent on the course).

By contrast, Teresa divided her time between drafting and revising, editing, and proofreading more equally—forty-six hours drafting and forty-eight and a half hours revising, editing, and proofreading for a total ninety-four and a half hours devoted to writing. Andy, who eventually moved his grades up from a C

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<sup>41</sup> Broadly defined, "writing" can include many of these other categories, such as outlining. Here the term "writing" is used to mean drafting, revising, editing, and proofreading sentences that are part of a draft.

<sup>42</sup> One possible reason why highly skilled writers spend more time revising, editing, and proofreading than they do drafting is that they understand—consciously or subconsciously—that writing requires the management of numerous sub-component skills, which includes everything from high level organization to lower level skills such as correct spelling. By allowing themselves to get their ideas down in a draft, knowing that they will come back and thoroughly rework the draft, expert writers lessen the risk of overloading their cognitive resources. See Michel Fayol, *From On-line Management Problems to Strategies in Written Composition*, in *THE COGNITIVE DEMANDS OF WRITING: PROCESSING CAPACITY AND WORKING MEMORY IN TEXT PRODUCTION* 13, 20–21 (Mark Torrance & Gaynor C. Jeffery eds., 1999).

minus to a B minus, split his time almost equally between the two: thirty-nine and three-fourths hours drafting and almost thirty-eight hours revising, editing, and proofreading.<sup>43</sup> Note, too, that his total writing time was approximately seventy-eight hours, significantly lower than the 107 hours that Art and Sonya had each spent on writing. A distant sixth place was Marie who spent eleven and a half hours drafting and fifteen and a half hours revising, editing, and proofreading for a twenty-seven hour total devoted to writing. Of the total amount of time Marie spent on the course, only about one-third of it was spent writing.<sup>44</sup>

PERCENTAGE OF TIME SPENT ON WRITING AND RATIO OF DRAFTING TO REVISING, EDITING, AND PROOFREADING

	Approximate percent of total time for course spent on writing	Ratio of drafting time to revising, editing, and proofreading time
<i>Marie</i>	33%	2 to 3
<i>Andy</i>	50%	1 to 1
<i>Teresa</i>	Less than 50%	1 to 1
<i>Eric</i>	45%	2 to 3
<i>Art</i>	50 plus%	2 to 3
<i>Sonya</i>	50 plus%	2 to 3

<sup>43</sup> Andy's writing showed his lack of editing and proofreading. On the pre-trial brief, Professor Lee noted numerous writing problems, including many sentences that were long and out of control, and a high number of grammar, punctuation, and proofreading errors. These errors, combined with the rambling sentences, were numerous enough to be distracting to most readers.

<sup>44</sup> There are large differences between experts and novices in terms of their writing and revising skills. For example:

Experts spend considerably more time revising. They pay much more attention to global problems (for example, re-sequencing, re-studying, and re-writing large units of text) than do novices. Experts are also better than novices at both detecting problems in their own text and diagnosing the cause of those problems.

Marilyn K. Gillespie, *Using Research on Writing*, 3 FOCUS ON BASICS (1999), available at <http://www.ncsall.net/?id=339>. The differences in both the amount and quality of revision between Sonya, Art, and Marie show the differences in their writing ability. Sonya and Art are close to becoming expert writers, particularly in terms of their revising ability, while Marie is still a novice writer. Even though Marie's time sheet shows that she spends time revising, the final version of her pre-trial brief that she turned in had the same statement of facts that she used in the draft of the pre-trial brief, including the error in the opening sentence and the same issue statement that she wrote when they were assigned. Neither had been revised, edited, or proofread for the final draft.

While there are any number of reasons that may account for the differences in writing time, particularly revising, editing, and proofreading time spent by the most successful and least successful students, two that warrant more study are: (1) whether simple writing procrastination is why less successful students are cutting short their writing time; and (2) whether less successful students spend less time revising, editing, and proofreading because they either undervalue or have unsophisticated notions of these skills.

### 3. Researching and Reading Cases

Also noteworthy was the significant proportion of their time that both Teresa and Eric spent researching and reading cases. Teresa spent approximately fifty-three and a half hours and Eric spent sixty-three and one-fourth hours. Perhaps most interesting is Eric's ratio between research and writing: sixty-three and one-fourth hours devoted to research and fifty-two and a half hours to writing, or fifty-five percent on research to forty-five percent on writing. The question, of course, is whether the added research bore fruit and made his briefs stronger. Unfortunately, the cases and arguments that Eric used were essentially the same as those in the other A minus and A papers, so his extensive research looks like either a futile search for the perfect case<sup>45</sup> or a way of postponing the hard work of writing. Note too that Art and Sonya seemed to have found essentially the same material in thirty-four and twenty-five and a half hours respectively. In fact, in response to the exit interview question regarding advice she would give to fellow students about to take the LWII class, Sonya said that she would advise against "spend[ing] too much time on research. She added that students should "[t]ry to understand the crux of the argument you want to make" before starting to do extensive research.

Like Eric, Teresa seems to have researched somewhat inefficiently. Aware of this problem, Teresa remarked in her exit interview that she "needs to hone in sooner on exactly what she

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<sup>45</sup> There are several possible reasons Eric spent so much time researching: he may have been looking for the "perfect case;" he may have wanted to be as thorough and comprehensive as possible; he may have felt that his strength was his research skills, so he was "playing to his strengths;" or he may simply have not been confident that he had found what he needed for the briefs. See CHRISTOPHER G. WREN & JILL ROBINSON WREN, USING COMPUTERS IN LEGAL RESEARCH 658-62 (1994).

is looking for and work out the issues before starting to research." She commented that she has a tendency to "jump on Westlaw," as she put it, before she had thought through an issue. Andy made a similar comment about his research: He said he found himself doing research before he really understood the issue. Ironically, Teresa and Andy needed exactly the advice Sonya had given in her exit interview about doing research.

The students' comments in the interviews about how they read cases also revealed some effective and ineffective strategies.<sup>46</sup> For example, Eric commented that he does not read headnotes, which may be one reason why he has to devote so much time to research. Andy, Art, and Sonya, on the other hand, all use the headnotes as time-saving devices to direct them to relevant portions of a case.<sup>47</sup> Art concentrates on the headnotes first and reads only the portions of the cases connected to the relevant headnotes. Teresa reads the headnotes, but then goes on to read the entire case, marking out what is irrelevant. In contrast, Sonya ignores the issues that are not relevant to her issue and focuses entirely on the relevant portions of the case.

Several of the students developed their own systems for reading cases that seemed to be working well for them. For example, Art reads cases three times: on the first read, he "gets the gist of it;" on the second read, he highlights and takes notes, noting any inconsistencies and identifying any unknowns; on the third read, he thinks about how the case will either help his side or how he will distinguish it. In addition, Art downloads a digest summary for each factor in a rule that applies to his case.

Sonya's system is a bit different and, not surprisingly, emphasizes time-saving strategies. She makes it a point to start by reading seminal cases first. In addition to using headnotes to narrow her focus, initially she only skims the facts and looks instead for headings that indicate where the analysis of the issue is. Afterwards, she goes back and reads the facts, specifically comparing them to the facts of her case. She also makes it a point to re-read cases that favor her side before reading the cases that favor the opposition.

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<sup>46</sup> See Oates, *Beating the Odds*, *supra* note 39, at 140 (noting that "the more successful students seem to read . . . opinions differently than those students who are less successful").

<sup>47</sup> See MCKINNEY, *supra* note 36, at 240.

All four students who were ultimately the most successful in the course—Sonya, Art, Teresa, and Eric—underline, highlight, and annotate the cases as they read.

#### 4. Reading Textbook, Handouts, Assignment Packets

Yet another surprising category was the limited amount of time Marie spent reading the textbook or the class handouts. While her five classmates spent 1:50, 3:05, 3:44, 4:00, and 5:27 hours respectively on this activity, Marie recorded a meager twenty minutes reading the textbook and handouts. Her neglect of the assigned reading was a clear indicator of problems, particularly because Professor Lee used extensive handouts designed to assist the students in preparing their briefs. As a result, Marie was often missing basic information, such as where issue statements appear in a brief or how to write an argumentative heading, that she would have acquired had she read the textbook or handouts.

By contrast, Marie spent significantly more time than the other students reading the two packets of documents that made up the case file. Four of the other students in the study spent closer to two hours reading the packets—Marie spent five hours and forty minutes. While it is admirable that she appeared to want to know the trial record inside out, one is left to speculate as to why she returned again and again to these packets. Perhaps if she had taken more notes and annotated her copy of the packet, she would have mastered the case file more quickly and been able to use the time to better effect.<sup>48</sup>

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<sup>48</sup> Wise readers take notes as they read and write down what they are thinking to free up working memory. This also allows readers to go back and review the material by skimming their notes. If readers do not take notes or find ways to keep their minds clear, they may lose important information about previous texts while trying to learn new information. Many students highlight while they read, but highlighting a text alone is not sufficient. Readers must also record their thoughts as they read in their *own* words. Highlighting just “highlights” the author’s words, which does not help readers to internalize the information. Likewise, writing a summary of the information is not, by itself, sufficient. Good readers take notes in the margins as they read to capture their reactions to the text. This helps readers to engage with the material, making it more likely readers will be able to remember the information at a later date. See *id.* at 175–76. If Marie had written her reactions to the text as she read and had written summaries of the text after she read, she would not likely have had to spend so much time re-reading the case file.

## 5. Working on Oral Argument

Another area in which Marie devoted a significant proportion of her time was for her work on her oral argument. In fact, the fifteen hours and forty-five minutes devoted to her oral argument was the largest proportion of her total time for any category except attending class. Whether this was an appropriate percentage of her overall time is a hard question to answer. Marie did earn her highest grades on oral argument—B plus and B—which accounted for thirty-percent of her grade and pulled her overall grade for the course up to a C plus. Furthermore, the work on oral argument undoubtedly fed into the briefs.

The other students in the study to devote a substantial percentage of their time to oral argument were the other two females: Teresa and Sonya. Based on Teresa's comments in the interviews, it appeared that her decision to put so much time and energy into it was based on her fear of public speaking. Sonya, on the other hand, was more obviously using oral argument to crystallize her thoughts and arguments before beginning to write.

### C. *Procrastination vs. Efficient Time Management*

Closely related to the amount of time students worked and what they did during that time is the question of how they dealt with the temptation to procrastinate and what they did or did not do to manage their time efficiently. Quite obviously, procrastination is a key pitfall to avoid,<sup>49</sup> and efficient time

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<sup>49</sup> Psychological research, as well as anecdotal reports, on academic procrastination suggests that procrastination is a major problem for many students, particularly when it comes to writing projects. See Clarry H. Lay, *Some Basic Elements in Counseling Procrastinators*, in *COUNSELING THE PROCRASTINATOR IN ACADEMIC SETTINGS* 43-44 (Henri C. Schouwenburg et al. eds., 2004). There are at least two ways to interpret procrastination: as a behavior, which Schouwenburg calls "dilatatory behavior," or as a generalized habit or trait, which Schouwenburg calls procrastination. When the dilatatory behavior becomes habitual, procrastination becomes a trait, rather than a response to a particular situation. Henri C. Schouwenburg, *Introduction to COUNSELING THE PROCRASTINATOR IN ACADEMIC SETTINGS*, *supra*, at 4-5 [hereinafter Schouwenburg, *Introduction*]; see also Anne Enquist, *Defeating the Writer's Archenemy*, 13 *PERSP.* 145, 145 (2005). Marie exhibited dilatatory behavior in approaching assignments in law school, but without more information about how she approaches other tasks in her life, it is not possible to determine whether her dilatatory behavior has become a habit. Based on her own characterization of herself as a lifelong procrastinator, however, it is possible that

management is a well-known “secret” to law school success.

### 1. Marie: The Classic Procrastinator

In her initial interview, Marie described herself as a procrastinator. At that time, she remarked that she “works best under pressure” and as the course progressed, she often referred to her habit of procrastinating.

Marie procrastinated at both researching and writing. In several interviews she stated that she “had not really started her research yet” or that she “felt a little behind on the research” despite the fact that a research project had been assigned or a deadline for a draft was fast approaching. When assigned to bring a draft of an issue statement to class, Marie appeared to put minimal effort into her draft and waited to see what the top students in the class included in their drafts.<sup>50</sup> In short, Marie employed what is sometimes called “the free-rider” approach to law school. Rather than do the initial research or writing herself, she developed the habit of hanging back and waiting to see what her classmates had found to be the key rules, cases, and arguments.<sup>51</sup> When required to submit a draft for the professor to critique, Marie turned in a very rough and incomplete draft that appeared to be a first effort to get something down on paper. For example, for a six-factor test, her draft addressed only two of the factors and even these factors were analyzed superficially. The draft lacked other basic components, such as argumentative headings, and the writing was surprisingly rough. For example, the opening sentence in the facts had a glaring error.<sup>52</sup> In short, it was difficult to determine whether at this point in the class Marie had simply greatly underestimated what was expected of

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Marie’s procrastination is a trait that manifests itself outside the academic setting as well as within the academic setting.

<sup>50</sup> In the planning stage, students should learn to go from “knowledge telling” (simply writing whatever they know) to goal-directed writing. See HARRIS & GRAHAM, *supra* note 29, at 20. Marie does not seem to write with a goal in mind, but instead waits for others, particularly her peers, to guide her writing process.

<sup>51</sup> Marie’s failure to develop her own ideas and theories about the assignment prior to attending class shows that her academic skills have room for improvement. Successful students bring their own ideas to class rather than waiting to hear what others, especially the professor, has to say. Then, successful students modify their own ideas based on the class discussion, but never rely on the discussion for formulating their own ideas. See MCKINNEY, *supra* note 36, at 8–9.

<sup>52</sup> The opening sentence in Marie’s statement of facts read: “On Sept. 18, 2001, Matthew Cloner was left his rental home locked and secured.”

her, or whether she was still procrastinating and waiting to see what she could learn from her classmates and professor before working hard on the pre-trial brief.<sup>53</sup>

The consequences of this procrastination were predictable. Professor Lee's comments about the draft were necessarily limited to pointing out how many pieces of the analysis were missing and noting that the draft was also missing argumentative headings. Professor Lee's critique began with the sentence, "You've got quite a bit of work to do on this draft" and concluded with, "This argument is not fleshed out enough to allow me to comment on your writing."

Surprisingly, Marie did not seem overly concerned when she received the critique. She did more research (four and a half hours) but did not seem to realize that she was not really revising at this point—she was still creating a complete first draft.<sup>54</sup> During the next week, she spent two more hours reading cases, but her focus seemed to be on preparing for oral argument rather than on writing the pre-trial brief. The final version of the pre-trial brief that she turned in had the same statement of facts that she had used in the draft of the pre-trial brief, including the error in the opening sentence, and the same issue statements that she had written when they had been originally assigned. Neither had been revised.<sup>55</sup>

In the interview after she turned in the final draft of the pre-trial brief and before she received the critiqued paper, her overall assessment of the brief was that it was "very good." While she thought her research on the "other suspects" issue was "very good," she conceded that her research on the 609 issue was somewhere between "good" and "average." She rated the

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<sup>53</sup> Besides procrastination, Marie may have underestimated the amount of time needed to complete her brief on time. She likely also has a low "self-efficacy," evidenced by her description of her writing skills as "middle of the road." See Schouwenburg, *Introduction*, *supra* note 49, at 16.

<sup>54</sup> Common problems with revising may be related to reading problems. Hayes, *supra* note 20, at 23–25. For example, Marie's reading process may have failed to detect global problems in her writing. Additionally, Marie may not have sufficient working memory to coordinate the basic revision process.

<sup>55</sup> Students should learn to progress away from treating revision as simply a period to look for grammatical errors and instead should treat it as an opportunity to engage and improve. HARRIS & GRAHAM, *supra* note 29, at 20–21. Marie failed to make both elementary and advanced revisions to her statement of facts; for the rest of her brief, she appears to have engaged in basic revision but not the more advanced, content-based revision.



arguments and overall organization of the brief as “very good” and “good” and felt that the overall persuasiveness of the brief was “very good” to “excellent.”

When asked what she thought were the strong aspects of her pre-trial brief, she said that she had “an argument for each factor.” When asked about possible weaknesses in the brief, she named organization, commenting that she had added “a chunk” related to the fifth factor the night before the brief was due. In response to the question about what she would do if she had had another day to work on the brief, she said she would have re-written the fifth factor, done some re-organization, and worked on the flow of the brief. Another possible weakness she mentioned was that because the page limit was extended, maybe she should have written more.<sup>56</sup> In Marie’s haste to get the brief done and fill the gaps noted in Professor Lee’s critique of her draft, she did not realize that she missed several of the more sophisticated analytical and persuasive points, such as not just an argument for each factor but also balancing the factors and addressing her opponent’s best arguments.<sup>57</sup>

When asked if she was able to put the necessary and appropriate amount of time into writing a good pre-trial brief, she answered yes but reiterated that most of her time was spent in writing the oral argument. She also repeated that she has to “wait for the deadline” to get down to the work of writing the brief. When asked about what was a realistic grade for her to expect on the pre-trial brief, she said a B plus to A minus. Needless to say, Marie was surprised and upset when the critiqued pre-trial brief was returned with a grade of C plus.

Marie did not directly attribute her relatively low grade to her own problems with procrastination; instead, she seemed to believe that the problem was more one of inconsistency on

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<sup>56</sup> Marie wrote ten pages even though the page limit had been extended to twelve pages.

<sup>57</sup> Sophisticated writers transform their own knowledge, developing their personal opinions and anticipating objections and rebuttals as they write. See Carel van Wijk, *Conceptual Processes in Argumentation: A Developmental Perspective*, in *KNOWING WHAT TO WRITE: CONCEPTUAL PROCESSES IN TEXT PRODUCTION* 31, 34–36 (Mark Torrance & David Galbraith eds., 1999). Because Marie writes on a superficial level and engages in little knowledge transforming, she is not able to anticipate her opponent’s objections or rebuttals and instead is confined to the simple process of knowledge telling—telling the reader what she knows. See CARL BEREITER & MARLENE SCARDAMALIA, *THE PSYCHOLOGY OF WRITTEN COMPOSITION* 10–12 (1987).

Professor Lee's part. Marie's stated plan for turning things around in the course, however, was a slight acknowledgment of her own procrastination problems: She vowed to try to work a little each day on the appellate brief.<sup>58</sup> She commented that there were peaks and valleys in terms of time she spent on each class. She would "slack in one class" to get "caught up in others."<sup>59</sup> She started working on the new research for the appellate brief, but nursed some leftover resentment about the pre-trial brief. In her view, Professor Lee's comments did not support the grade she got, and unfortunately this residual resentment fed right into Marie's habit of procrastination.

For the most part, however, Marie's confidence was not overly shaken by the pre-trial brief grade. She began researching the new issues on appeal and started drafting the statement of facts and issue statements on time. She spent considerably more time reading Packet Two, which included the case file. She found the group work in class on the voir dire issue helpful and planned to use the group draft as a basis for her own. She was less enthusiastic about the peer critique of her draft, but felt that class itself was the most helpful in figuring out the issues and arguments, particularly when the professor went through a sample brief in class and told them what to look for. When asked about her level of motivation at this point in the course, she said it was at a "middle" level. She commented that she found the professor's grading style "confusing" and that she needed more information about the comments on the pre-trial brief.

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<sup>58</sup> One possible intervention that could help Marie overcome her procrastination is to force an explicit increase in the height of the motivational curve. For example, if the brief were split into many short-term sub-goals, the overall task of completing the brief may seem more manageable. Additionally, if Marie deliberately considered the importance and urgency of avoiding distractions in the studying process, she may be less likely to procrastinate. See Schouwenburg, *Introduction*, *supra* note 49, at 10.

<sup>59</sup> This kind of inconsistent work schedule limits a student's ability to learn effectively:

Time management and effort management are the most basic forms of self-management studying activities. If students cannot manage their time effectively, no cognitive activity can occur. Likewise, if students do not get enough rest, or work too hard on one assignment and not hard enough on others, they are not maximizing their learning potential.

Wangerin, *supra* note 30, at 484.

On the week before the appellate brief was due, there is remarkably little on Marie's time sheet indicating that she was working on the brief—two hours reading cases and two hours editing a draft. On the day before the appellate brief was due, Marie gave a last big push and worked on the brief for nine and a half hours.

At our interview on the day she turned it in, Marie's overall assessment of the appellate brief was that it was "good." She seemed less confident about her work now, although she assessed her research on both issues and the persuasiveness of the brief as "very good." In discussing weaknesses in her brief, she added that she "could have written more" and that "maybe [it] was a little short."<sup>60</sup>

When asked whether she was able to put the necessary and appropriate amount of time into writing a good appellate brief, she answered "yes and no." She explained that the day before it was due was the "big cramming day" and that normally she would have spent the whole weekend on the brief, but instead she had helped someone move. She reiterated that she is a "total last minute person." If she had had another day to work on the brief, she would have "found more arguments to flesh out and filled more pages." She would have also worked on the organization and "read it through to look at groupings." If it had been a real appellate brief rather than a course assignment, Marie said she would have spent more time on it—"maybe . . . the entire week." When asked what grade she could realistically expect on the brief, she said that she was hoping for a B minus. Her final comment on the experience of writing the appellate brief was that it was "horrible" and "more pressure" than she had expected. The hoped-for B minus did not materialize; instead, Marie's final grade on the appellate brief was a C minus, the lowest grade in the class on that assignment.<sup>61</sup> After the course ended and the students returned

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<sup>60</sup> Remember that in Maria's initial interview, she commented that as an undergraduate she often needed to "fluff" her English literature papers. Her comments about the appellate brief suggest that Marie still has an unsophisticated interpretation of page limits or length recommendations for academic assignments.

<sup>61</sup> See Luann R. Albertson, *A Cognitive-Behavioral Intervention Study: Assessing the Effects of Strategy Instruction on Story Writing 3* (1998) (unpublished Ph.D. dissertation, University of Washington) (on file with University of Washington Library). In addition to her problematic procrastination, Marie may be struggling in her writing because writers can be influenced by their views of themselves as

for spring semester, I had one final interview with each student. At that meeting, when asked what advice she would give to other students taking the LWII class, Marie said that she would advise legal writing students to "[b]e prepared for the workload" and to "manage your time."

## 2. Eric: Over-Researching as a Form of Procrastination

Marie was not alone in dealing with procrastination, workload, and time management issues. Several of the other students struggled with these same issues with varying degrees of success. Unlike Marie's pervasive procrastination that affected both her research and writing, Eric had only some initial procrastination with getting started on the research for each brief; once he started researching, his research phase expanded almost out of control. In fact, if anything, Eric's tendency to over-research appeared to be a way of procrastinating from the hard work of writing.<sup>62</sup> For example, on one of the two appellate issues, Eric printed out "between forty and fifty cases." Unfortunately, however, the extra time Eric spent researching did not seem to pay off. The cases and arguments in his briefs were essentially the same as those in the briefs of his classmates who had spent far less time than Eric on research. In fact, Eric—despite his extensive research—missed a key step: He, like many others in the class, neglected to address some of his opponent's best arguments.

It is possible, of course, that Eric's over-researching was not a form of procrastination. He could have been trying to be as thorough as possible. It is also a well-known problem that new researchers often do not know when to stop researching and start writing.<sup>63</sup> Nevertheless, when asked what he would do differently if he had the opportunity to take the class over again,

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writers. Because Marie views herself as a "middle of the road" student, she may believe that she is incapable of producing excellent work (as opposed to believing she *is* capable of producing excellent work, but fails to do so because she does not put forth the required effort).

<sup>62</sup> Eric's failure to promptly begin the drafting process may be because he has writing apprehension. Writing apprehension "refers to a person's predisposition to undertake or to avoid writing tasks. From a theoretical perspective, writing apprehension exists along a continuum, ranging from complete absence to debilitating presence." See John A. Daly et al., *Writing Apprehension in the Classroom Context*, in *THE SOCIAL CONSTRUCTION OF WRITTEN COMMUNICATION* 147, 147 (Bennett A. Rafoth & Donald L. Rubin eds., 1988).

<sup>63</sup> See WREN & WREN, *supra* note 45, at 658–62.

Eric said he would create a personal schedule and set deadlines, spread out the work,<sup>64</sup> and spend more time proofreading.

### 3. Andy and Teresa: Disappointment, Motivation, and Procrastination

Like Marie, Andy was extremely disappointed with his grade on the pre-trial brief, but unlike Marie, that disappointment did not completely undermine his motivation and lead to a downward spiral of procrastination. Instead, Andy spent an angry week working through what had happened on the pre-trial brief, and then immediately developed and began executing a plan to ensure that the same problems did not arise on the appellate brief.<sup>65</sup>

Andy's approach to writing the argument for his unsuccessful pre-trial brief had been to work for two long and intense eight-hour sessions right before the brief was due. Although he mentioned in his interview after turning in the pre-trial brief that he would have liked to have met with the Writing Advisor, his drafts were not completed in enough time to schedule that appointment. Looking back on how he had approached the pre-trial brief, Andy realized that he had left too much to do at the end and he had not used some of his key resources: Professor Lee and the Writing Advisor.

Hoping to learn from his pre-trial brief mistakes, Andy developed a completely different plan for writing the appellate brief—one that involved several meetings with Professor Lee to check his drafts and analysis as he developed them.<sup>66</sup> These meetings with Professor Lee meant that he wrote the appellate brief in numerous sessions over a ten-day time period. In this way, he hoped to avoid the kind of key analytical mistake that had hurt his pre-trial brief.

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<sup>64</sup> See Wangerin, *supra* note 30, at 492 (“[R]esearch shows that students who carefully prepare written schedules of their time, and who then conscientiously stick to those schedules, study much more efficiently than students who study with a catch-as-catch-can approach.”).

<sup>65</sup> See HARRIS & GRAHAM, *supra* note 29, at 189–90. Andy's temperament, anger, ability to assess a task, and self-management strategies all influence his writing.

<sup>66</sup> Professor Lee had suggested this approach to Andy, and he took her up on the offer to meet with her several times to discuss his analysis before the appellate brief was due.

Despite having the drafts further along earlier in the process, though, Andy still did not meet with the Writing Advisor, nor did he find time to proofread the final draft before turning it in. The results were predictable: Andy's analysis, while not yet of the highest quality, was significantly improved and had no major errors. The lack of polishing and proofreading work on the writing, on the other hand, resulted in a final draft with a fair number of writing and proofreading errors.

Similarly, Teresa's disappointment with her grade on the pre-trial brief did not lead to excessive procrastination, nor did it ultimately undermine her efforts on the appellate brief. She allowed herself an even shorter period of time than Andy to be upset and, in her case, tearful, and then she went quickly to work figuring out what had gone wrong on the pre-trial brief and how to prevent that problem from recurring on the appellate brief.<sup>67</sup> Like Andy, Teresa met with Professor Lee and made sure that she stayed on track as she wrote the appellate brief. As a result, she jumped one full letter grade on the appellate brief.

#### 4. Art and Sonya: Models of Efficiency

Procrastination is not a word that one would mention in the same breath with Art and Sonya. On the contrary, what set Art and Sonya's work habits apart from those of the other four students was their unusually efficient time management. For example, unlike Teresa, Eric, and Andy, all three of whom were downloading and printing out dozens of cases, Art was far more selective. For the pre-trial brief draft, he downloaded twelve cases but "only printed the important ones." Eventually he used ten cases in his pre-trial brief.

Both Art and Sonya had developed techniques for reading cases efficiently and effectively. As was discussed earlier, Art used a system that involved reading cases three times: a first read to give him a gist of what was going on; a second read for

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<sup>67</sup> Hayes discusses the nature of motivation in writing and, relying on research by Carol S. Dweck, speculates that individuals respond to failure in writing tasks depending upon whether they see writing as an innate gift or as an acquirable skill. Hayes, *supra* note 20, at 17; see also Carol S. Dweck, *Motivational Processes Affecting Learning*, AM. PSYCHOLOGIST 1040, 1040-46 (1986). Students who believe that writing is an innate gift may respond to failure much as Marie did—by hiding the failure or avoiding situations in which they experienced failure. Students who believe that writing is an acquirable skill tend to respond as Teresa and Andy did—by working harder and asking for help.

making notes, including notes on what was unknown or how pieces related or connected; and a third read for exploring how both sides might use the case. Even more than Art, Sonya moved quickly to synthesize cases. By the second time she read a case, she was comparing and contrasting it to the other cases and trying to formulate a synthesized statement of what the cases said when read together.<sup>68</sup> As was also mentioned earlier, they both used case summaries or briefs of key cases, not only because capturing the material in their own words cemented in their ideas, but also because the summaries and briefs made their writing work more efficient. They allowed Art and Sonya to focus on the part or parts of the cases that mattered for their specific purposes.

Although Art and Sonya's note-taking was discussed earlier, Sonya's note-taking deserves further discussion in the context of her overall efficiency and ability to keep track of the many bits and pieces of large projects such as the pre-trial and appellate briefs. Sonya's class and out-of-class notes were typed initially and then further annotated with handwritten notes that included reminders to herself, lists of things to include in the brief, and numerous questions, some of which she wanted to ask Professor Lee. For example, on the draft of her Statement of Facts, Sonya had noted no fewer than seven questions, five of which she asked Professor Lee at various points during the next class. As the course progressed and Sonya had questions about other parts of her brief, she worked systematically to get the answers. When appropriate, she raised them in class; occasionally she embedded them in a draft that Professor Lee was critiquing, emailed them to Professor Lee, or asked her directly during an office conference.

Vigilantly keeping track of what she was doing was yet another feature of Sonya's approach. An inveterate list maker, Sonya kept a running inventory of everything she wanted to include or was concerned she might forget.<sup>69</sup> Individual points

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<sup>68</sup> Expert readers, like Art and Sonja, evaluate the text as they read it. They understand cases are more than simply a transmittal of objective information. See MCKINNEY, *supra* note 36, at 153.

<sup>69</sup> Students who set goals, work on tasks, *monitor their performance*, and compare their performance to their goals, as Sonya does, maximize their "self-efficacy." See Barry J. Zimmerman, *A Social Cognitive View of Self-Regulated Academic Learning*, 81 J. EDUC. PSYCHOL. 329, 329 (1989) ("Self-efficacy refers to perceptions about one's capabilities to organize and implement actions necessary to

that had been emphasized in class, such as not including legal conclusions in an issue statement, were underlined, starred, or annotated with a bold "Don't forget!" note to herself.<sup>70</sup>

Also noteworthy was Sonya's "do it now before I forget" approach. Professor Lee would have just mentioned a point, such as noting for the court the facts that are not there or are unknown, and immediately Sonya would have included this point on her running list and added a question for herself about how to write an unknown fact.

Art did not seem to be quite as obsessive a list-maker as Sonya, but he and she were more alike in how they worked than they were different. Although all the student interviews were done separately, some points came up time and time again in both Art and Sonya's interviews. Each mentioned several times that an important strategy for them was "getting everything in my head" before writing. Typically, this strategy entailed reading through all of their notes, the rules, and their case summaries or briefs right before starting to draft.<sup>71</sup> Art typically followed his giant "read through" by working out a mental outline for the brief. For the pre-trial brief, he spent a half hour thinking through the organization before beginning to write.<sup>72</sup> In his weekly interview, Art referred to these mental outlines as a key time-saving method. He said that once he had the whole thing worked out in his head, he was "able to stick with that

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attain designated performance of skill for specific tasks."); *see also* Albertson, *supra* note 61, at 14.

<sup>70</sup> Like Sonya, Teresa also wrote numerous reminders to herself, often inserting them into a draft she was writing.

<sup>71</sup> Sonya also emphasized that oral argument was crucial for her thought process about the arguments. She said that she likes speaking before writing.

<sup>72</sup> *See* William J. Hunter & John Begoray, *A Framework for the Activities Involved in the Writing Process*, WRITING NOTEBOOK, 1990, <http://www.ucalgary.ca/~hunter/frame.html> ("Time spent organizing may be seen as contributing to the overall quality of the final document.").



organization.”<sup>73</sup> Art said that this approach made drafting quicker and more efficient.<sup>74</sup>

When required to bring a draft to class or submit a draft that the professor would critique, both Art and Sonya wrote drafts that were as complete and developed as they could make them. They correctly assumed that it was to their advantage to get their classmates’ or professor’s critique on their best efforts thus far.<sup>75</sup>

After receiving Professor Lee’s critique of his pre-trial brief draft, Art spent thirty minutes reviewing her comments and working through them line by line. Sonya followed a similar process. Later, as each revised their drafts, they referred back to Professor Lee’s comments to be sure they had not missed anything. They also frequently checked their drafts against class handouts and their own notes to ensure that they were not forgetting something. This practice paid off in that both Art and Sonya were part of the few in class to remember to balance the factors and to address the opponent’s key arguments. As Art and Sonya worked on their final drafts of both briefs, both referred back to the professor’s checklist, double checking that nothing had been missed.

In short, both Art and Sonya were models of efficiency. Neither of them wasted any time getting started on a project, nor did they leave the projects for any significant amounts of time. Their modus operandi was remarkably similar: “hit the ground running,” work steadily, and switch into an even higher gear as the deadline neared so that they could “finish strong.”<sup>76</sup> Their

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<sup>73</sup> In contrast to his efficient organizational strategy, Art complained about what he described as his “never-ending” revising and editing phase. He noted that it was not unusual for him to go through as many as twenty to thirty drafts before he was satisfied with how something was written. He was also a meticulous proofreader. Expert writers appear to agonize more over their text, engaging in more explicit planning and problem solving than do novices. See Mark Torrance & Gaynor C. Jeffery, *Introduction to THE COGNITIVE DEMANDS OF WRITING*, *supra* note 42, at 1, 1. Art’s constant revision and dissatisfaction with his own writing, despite his success, show that Art is, or is close to becoming, an “expert” writer.

<sup>74</sup> Eric was the one student who discussed using a modified version of the “get everything in my head” strategy. Before drafting any one section, he would look through all the cases on that one point to gather his thoughts before starting to write.

<sup>75</sup> In contrast, Marie turned in truly “rough” drafts that were incomplete.

<sup>76</sup> Self-control requires will-power and regulation of other study-related psychological processes, including the ability to concentrate, to protect study intentions from other temptations, and to persist at the task. See Schouwenburg,

approaches were so similar, in fact, that at times they seemed like templates for success.<sup>77</sup>

Their attitudes toward at least one other aspect of the course were also quite similar. Both spoke of in-class small group exercises as a "waste of time." Sonya was critical of the quality of work that came out of these exercises "when they were not led by the professor." In her final interview, she identified these class exercises as the one unsuccessful part of the course because the students could "leave the class feeling confused or that they had missed the boat." Art also complained about the required "case swap," which entailed trading one's research with a partner.<sup>78</sup> According to Art, his partner shared a mere eight cases and simply took his (Art's) research. These teaching techniques, in Art's view, "rewarded procrastinators."

#### D. Organization

No discussion of the students' efficiency (or lack thereof) and how it affected their overall success would be complete without an examination of their attempts to organize their work. Given the tasks that they were attempting, there were at least two key organizational challenges: (1) organizing their research, and (2) organizing each of the two briefs they were writing.

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*Introduction*, *supra* note 49, at 9. Additionally, the student's overall satisfaction with his or her understanding of the subject matter will play a role in a student's self control. Sonya and Art exhibit a high amount of self control through their impressive work ethic; they are able to stay focused on one task for long periods of time and seem to have a clear understanding of not only the factual situation presented in the assignment, but also the amount and quality of work necessary to succeed in the course.

<sup>77</sup> While the issue of efficiency was evident everywhere in Art's and Sonya's work products, it also came up several times in their interviews. Sonya, in particular, raised it several times, without any prompting, and went so far as to describe efficiency as a major goal in her working life.

<sup>78</sup> Although Art and Sonya found the group exercises to be useless, studies have shown that peer interaction in learning to write and revise has a positive impact. See Linda Allal & Lucile Chanquoy, *Introduction to REVISION: COGNITIVE AND INSTRUCTIONAL PROCESSES* 1, 5 (Linda Allal et al. eds., 2004); Charles A. MacArthur et al., *Effects of a Reciprocal Peer Revision Strategy in Special Education Classrooms*, 6 LEARNING DISABILITIES RES. & PRAC. 201, 208 (1988); Anne DiPardo & Sarah Warshauer Freedman, *Peer Response Groups in the Writing Classroom: Theoretic Foundations and New Directions*, 58 REV. EDUC. RES. 119, 119-49 (1988); William M. Saunders, *Collaborative Writing Tasks and Peer Interaction*, 13 INT'L J. EDUC. RES. 101, 101-12 (1989); Vanda Lucia Zammuner, *Individual and Cooperative Computer-Writing and Revising: Who Gets the Best Results?*, 5 LEARNING & INSTRUCTION 101, 101-24 (1995).

## 1. Keeping Their Research Organized

For the most part, the six students seemed to keep their research fairly well organized. Of the six, Marie's system was the least organized: She kept copies of all the cases in the same blue file with materials for all her classes. When she needed to retrieve a case, she seemed to be more likely to use the downloaded version in a folder on her computer. Andy, Teresa, Eric, and Sonya had all developed notebooks with hard copies of their cases. Andy made sure he had a case illustrating each factor, and he tabbed the cases in his notebook that he thought would be on point. Eric made notes on the first page of each case, and as he worked through the brief, he took out all of the cases relevant to a particular point and looked through them before writing.

Working with piles or stacks of cases on a particular point was a favorite technique for Eric, Teresa, and Art. They found that the hard copies allowed them to see more at one time than they could if the cases were merely open in windows on their computer. They also found it helpful to be able to manipulate the pages and create organization in that way.

Art was the one student who said that if he had the project to do over, he would have made a chart summarizing the cases, their holdings, and their application to the factors.

## 2. Keeping Their Briefs Organized

The organization of their briefs was a key factor in the overall success of each of the students in the study. To keep themselves organized as they wrote, different students used different strategies with varying degrees of success. Marie, for example, seems to have used her oral argument notes as outlines for her briefs. Unfortunately, this approach, in combination with her last minute drafting, meant that she was still adding "a chunk" on the fifth factor the night before the final draft of the pre-trial brief was due. On the appellate brief, she mixed two rules of evidence together and then wrote a confusing discussion with needless repetition. In organizing her appellate brief, Marie also relied heavily on a sample brief that Professor Lee had distributed in class. Because the sample brief included a preservation of error section, Marie included a comparable section in her appellate brief, even though error preservation was

not an issue in her case. Needless to say, this was a mistake that Professor Lee noted in her critique.

Andy also used his oral argument outline for his pre-trial brief, but given his lack of success on that assignment and his subsequent meetings with Professor Lee, he switched and used a basic template (assertion, rules, application, conclusion) she gave him during their appellate brief conference with much more success. In his interview on the appellate brief, Andy commented that he had had time to think about the organization in the framework of how the issues and facts relate—a first for him.

More than any of the other six students, Teresa invested time in outlining before she wrote.<sup>79</sup> Although the earlier chart, "How the Students Spent Their Time,"<sup>80</sup> shows her recording seven hours and fifty five minutes outlining, in her interviews she said she spent eleven hours creating a six-and-a-half page outline for her pre-trial brief based on the template in the textbook. For her appellate brief, she wrote an outline that was over five pages single spaced, complete with Roman numerals, numbers, letters, and indentations.<sup>81</sup> For one of the briefs, she even wrote an outline for the Statement of Facts. The question, of course, is whether all the time and effort she expended on the outlines paid off.

Happily, in her critiques of both briefs, Professor Lee noted Teresa's good organization. But several of the other students also received positive critiques on organization<sup>82</sup> and these students spent far less time and effort on their outlines.<sup>83</sup>

Eric, for example, used a less comprehensive but very effective outlining strategy. For the pre-trial brief, he wrote an

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<sup>79</sup> Outlines are a good way to organize ideas and identify where more research is needed prior to actual writing. The outline does not need to follow the rules of formal outlining, so long as it is beneficial for the writer. Outlines also help writers save time by making irrelevant or repetitive arguments easy to identify. See Marilyn Bush LeLeiko, *Effective Legal Writing: A Hands-On Workshop Materials*, 43 P.L.I. N.Y. 247, 265 (1999).

<sup>80</sup> See *supra* Part IV.B.

<sup>81</sup> The disparity in the amount of time Teresa said she spent on outlines in the interviews and what showed up on her time sheets may be because some of the outlining time might have been labeled "drafting" or "writing" on her time sheets.

<sup>82</sup> Sonya received positive comments on the organization of both of her briefs. She did, however, complain on more than one occasion that she felt she had to use the professor's recommended format or her grade would suffer.

<sup>83</sup> Remember that Art spent half an hour creating a mental outline before he started drafting.

outline based on the factors and then inserted cases and key points from the cases. Wanting his final draft to be “argument-based” as opposed to case-based, Eric used a separate page on his outline for each factor and then wove in the cases. For his appellate brief, he created an outline for each issue. Eric relied heavily on his outlines when writing; through them, he discovered holes in his analysis and was able to do true revision by re-organizing his arguments.

### *E. The Professor (and Others) as Resources*

#### 1. The Professor as a Primary Resource

Earlier, we saw that Art and particularly Sonya saw their professor as a primary source of information. Throughout the course, they sought her insight and guidance in a variety of ways: taking notes based on what she said in class; scrutinizing the professor’s handouts, checklists, and particularly her critiques of their drafts; asking questions in class; signing up for office conferences;<sup>84</sup> and, in Sonya’s case, emailing questions and embedding questions for the professor in drafts.<sup>85</sup> Sonya did not stop there; she also checked in with students in other LWII classes,<sup>86</sup> specifically asking about the advice those professors were giving their students.

What accounted for a significant jump up or down in the other students’ rate of success in the course also seemed to be the degree to which that student took advantage of the professor as a resource.<sup>87</sup> Two of the three students who were disappointed by

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<sup>84</sup> By meeting with Professor Lee outside of class, Art and Sonya were able to get the individualized assistance they needed on their briefs, and they had the opportunity to receive mentoring from Professor Lee and to practice the type of conferencing that often occurs between less experienced and more experienced attorneys in the professional setting. See Stephanie A. Vaughan, *One Key to Success: Working with Professors . . . Outside the Classroom*, 29 STETSON L. REV. 1255, 1259–60 (2000).

<sup>85</sup> *Id.* at 1260 (“With the wave of technology, professors have made themselves accessible to their students outside of the classroom beyond the in-person meeting.”).

<sup>86</sup> Regardless of professor, all of the LWII classes worked on the same problem and had the same writing assignments. Consequently, advice that another legal writing professor gave his or her students was likely to be applicable to Sonya’s briefs.

<sup>87</sup> One study found that the following characteristics influenced a student’s writing: whether the student makes use of resources, the student’s self-management strategies, and the student’s experience and willingness to work to solve problems. See HARRIS & GRAHAM, *supra* note 29, at 186–90.

their grades on the pre-trial brief—Teresa and Andy—immediately began working closely with Professor Lee to ensure that they got back on track for the appellate brief.<sup>88</sup> Both signed up for more than one office conference with her and ultimately saw their grades on the appellate brief jump up a full letter grade. Early in the course, when she was working on the pre-trial brief, Teresa discussed many of her questions and concerns with fellow students as well as with Professor Lee. She continued to talk things over with classmates while working on the appellate brief, but she added more extensive consultation with Professor Lee. Eric also saw improvement in his grades (B plus to an A minus) between the pre-trial brief and the appellate brief, and some of that improvement may be attributed to his meetings with Professor Lee.<sup>89</sup>

The third student who was disappointed by her grade on the pre-trial brief, Marie, did exactly the opposite. Although Professor Lee had added a comment on her critique of Marie's pre-trial brief that she (Marie) should consider coming in for an office conference to discuss the pre-trial brief, Marie did not take her up on the offer. In retrospect, Marie seemed to realize that this was a serious mistake. When asked in the exit interview what she would have done differently if she had the opportunity to take the course over again, Marie emphasized that she "should have gone in" to meet with her professor. In response to another exit interview question about what advice she would give to other students taking LWII, Marie said they should "definitely go in and have a conference with the professor."<sup>90</sup>

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<sup>88</sup> This is not to say that these students simply used their meetings with Professor Lee to "get the answers." Professor Lee requires students to come prepared for one-on-one conferences. She uses a gentle Socratic approach to guide the students' learning.

<sup>89</sup> In order to help Teresa, Andy, and Eric improve their grades from the pre-trial brief to the appellate brief, Professor Lee likely gave them "direct instruction about editing and revising, using prompts, cues, and checklists, and open ended guidance questions" to help them notice errors in their texts and correct those errors. See Albertson, *supra* note 61, at 30–33 (finding that this kind of guidance and feedback improves students' ability to revise their own texts).

<sup>90</sup> For a conference to be effective, a student must not only have the motivation and opportunity to meet with the legal writing professor, but also be prepared with specific questions regarding the revision process. To that end, comments by the legal writing teacher on early drafts are extremely useful. A conference should also occur prior to the final draft. "A conference in mid-process is immediately useful." Mary Kate Kearney & Mary Beth Beazley, *Teaching Students How to "Think Like Lawyers": Integrating Socratic Method with the Writing Process*, 64 TEMP. L. REV.

In contrast, although Marie did not avail herself of the opportunities to conference with her professor, she did seem to realize as the course progressed that she needed to pay more attention to the information her professor was providing. After the pre-trial brief disappointment, she focused more on Professor Lee's critique of her draft and the appellate brief checklist. Given this turn-around, one can only speculate why she did not take up Professor Lee's offer to meet in a conference. Perhaps Marie was still resentful about the pre-trial brief grade, perhaps she was embarrassed that she was not doing better in the course, or perhaps her wait-until-the-deadline approach meant that she was never far enough along in the analytical and writing process to have a meaningful conference with Professor Lee.<sup>91</sup>

The amount of attention each of the other students paid to Professor Lee's handouts, checklists, and critiques of their drafts and final papers also had an effect on their success in the course. For example, Eric did not focus much on the pre-trial brief checklist, earning a grade of a B plus; while writing the appellate brief, however, he used the appellate brief checklist extensively, and increased his grade to an A minus. In the interviews after turning in final drafts of each brief, both Eric and Art spoke at length about how they used Professor Lee's critiques, particularly of the drafts, and worked through each of her comments one by one. They assumed—correctly—that the critiques were an important source of individualized information.<sup>92</sup> Only late in

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885, 904–05 (1991).

<sup>91</sup> Student conferences can be threatening because of a fear that a professor's questions may expose the student's lack of knowledge. Robin S. Wellford-Slocum, *The Law School Student-Faculty Conference: Towards a Transformative Learning Experience*, 45 S. TEX. L. REV. 255, 288–89 (2004). Students may also be discouraged from attending a student-teacher conference because the conference may reveal that the student must rethink and significantly revise his or her paper, leading to much more work. *Id.* Therefore, if a law professor is to work effectively with a student in conference, the student's anxiety level must be reduced. A professor may achieve this end by developing interpersonal relationships with students that are supportive, encouraging, and non-threatening within the construct of a challenging curriculum that will motivate students to succeed. *Id.* at 289.

<sup>92</sup> In addition to the individualized critiques of the drafts, Professor Lee also wrote a general comment that she sent to the entire class on ways to improve their arguments. The handout stressed (1) using more analogous cases to support arguments and included advice on where to find the cases, and (2) stepping back from the factors and looking at the big picture of whether the evidence should be admitted or excluded. Under this second point, Professor Lee included specific questions the court might have for the State or for the defendant and encouraged the students to answer those questions in their argument. Marie never seems to have

the course did Marie seem to realize the value of her professor's critiques; while she had read the critique of the draft of her pre-trial brief only once when it had been returned to her,<sup>93</sup> she said that she carefully reviewed Professor Lee's critique of her appellate brief draft several times.

The chart below summarizes the ways in which each of the six students used the professor as a resource and also characterizes the extent to which each student used each method of consulting with their professor.

THE PROFESSOR AS A RESOURCE\*

	Questions Before or in Class	Email Questions to Professor <sup>94</sup>	Questions to Professor Embedded in Drafts	Office Conferences with Professor	Review Professor's Handouts/ Checklists	Review Professor's Critiques
<i>Sonya</i>	Extensive	Frequent	Yes	Yes	Yes	Yes
<i>Art</i>	Yes	Unknown	No	Yes	Yes	Extensive
<i>Eric</i>	Yes	No	No	Yes	No/Yes	Extensive
<i>Teresa</i>	Yes	Yes	Extensive <sup>95</sup>	Yes	Yes	Yes
<i>Andy</i>	Yes	Unknown	No	No/Extensive	Yes	Yes
<i>Marie</i>	Unknown	No	No	No	Maybe <sup>96</sup> /Yes	No <sup>97</sup> /Yes <sup>98</sup>

\* An entry split with a slash ("/") means that the student's use of that approach differed from the pre-trial brief to the appellate brief. To the left of the slash applies to the pre-trial brief period; to the right of the slash applies to the appellate brief period.

Sonya, the 3.967 student at the top of her class, and Teresa, who made a full letter grade improvement from the pre-trial

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referred to this handout.

<sup>93</sup> Remember that Marie's draft of her pre-trial brief was so incomplete that Professor Lee's comments were essentially about what was still missing in the brief and how much more work was needed.

<sup>94</sup> Until some of the students mentioned emailing questions to Professor Lee in their interviews, I had not thought of this use of the professor as a resource. I also tried to use unobtrusive ways to find out what approaches students were and were not using without suggesting to students, merely by asking about it, that they should be using any particular approach.

<sup>95</sup> Teresa commented that this was "one of most useful tools."

<sup>96</sup> When asked if she used the professor checklist for the pre-trial brief, Marie was not sure and answered "maybe."

<sup>97</sup> Marie reviewed Professor Lee's comments on her draft of the pre-trial brief only once, right after the draft was returned to her.

<sup>98</sup> Marie did use Professor Lee's comments on her draft of the appellate brief and commented that she worked through them one by one.



motion brief to the appellate brief, were the two students who used the professor as a resource most extensively.

## 2. Other Resources: Classmates, Friends, Family Members, Co-Workers, Librarians, and the Writing Advisor

Like most legal writing classes, Professor Lee's LWII course had rules about what kind of help the students could obtain from outside sources.<sup>99</sup> Although students were required to "do their own work" in the sense that they had to do their own research and draft their own briefs, some collaboration was built into the course. Several in-class exercises involved students working in teams of two to four to compare drafts of a particular portion of a brief, such as an issue statement, and to create a composite draft for the group. Students also worked in pairs to "peer edit" each other's statements of facts and participated in a "case swap" in which they shared cases with a partner. Students were also encouraged to practice their oral arguments with each other. In addition, Professor Lee's Policies and Procedures stated that it was permissible to practice one's oral argument with another student and to work with the Writing Advisor on drafts.

All of the students, except possibly Art,<sup>100</sup> took advantage of the opportunity to practice their oral argument skills with classmates outside of class. These five considered the experience helpful, both in calming their public speaking fears and in practicing sub-skills such as responding to questions and

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<sup>99</sup> The Policies and Procedures for Professor Lee's class included the following language about outside help on assignments:

[E]xcept as otherwise instructed in class or via an assignment sheet, all of your research, analysis, and writing must be your own. . . . Violating the rules established for a particular assignment, including giving or receiving unauthorized assistance, is a violation of the Academic Integrity Code.

Moreover, it is [a] violation of the Academic Integrity Code to submit the work of another as one's own or to provide one's own work to another student knowing that the student may submit all or part of that work as his or her own. In addition, pursuant to the Code, a student who puts his or her name on any work submitted for a course certifies that the work is his or her own. That certification means that sources have been credited and that no unauthorized aid has been received in connection with the work.

Memorandum from "Professor Lee" on Policies and Procedures for Legal Writing II Class, Seattle Univ. Sch. of Law (Fall 2002) (on file with author). Under the heading "Conferences," students were encouraged to sign up for conferences both with Professor Lee and with one of the writing advisors. *Id.*

<sup>100</sup> It is unclear from the interview notes and tapes whether Art practiced his oral argument with classmates or alone.

managing the allotted time. In fact, four of them rated their work on oral argument as particularly helpful toward their ability to write their pre-trial briefs, with three of those four rating it as the most helpful activity.

In sharp contrast, however, were the students' mixed opinions of collaboration with other students. As was discussed earlier, both Art and Sonya were dismissive of the value of in-class exercises, and Art could barely suppress his irritation about the required "case swap."<sup>101</sup> The "case swap" also received mixed reviews from the other students: Teresa did not find it helpful; Eric did; Marie said she liked it because she used it to figure out what arguments her opponent would make.

Both Art and Sonya seemed to resent that they did "the heavy lifting" during the in-class small group exercises, and that weaker students were benefiting from their hard work. Sonya, in particular, was quite vocal on the point that she wanted guidance from her professor, not her peers.<sup>102</sup> It is not surprising then that she did not like the peer editing activity. As a group, however, the other students were split over the value of the peer editing exercise: Eric thought that the peer editing sessions were helpful; Andy said he did not find them particularly useful, although he did admit that without the peer edit he would have forgotten a key person in the "other suspects" issue; Teresa commented—a bit ironically—that they were helpful not to her, but to the partner whose paper Teresa edited.<sup>103</sup>

Art and Sonya's perception of the dynamic in the small groups seemed to be confirmed by Marie's comments about these same activities. She said she found them very helpful because she could learn from the top students and use the group drafts as the basis for her own drafts. She admitted that she waited to see what the best student in her group was doing (in one case that was actually Sonya) and then she built upon that person's work when she wrote.

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<sup>101</sup> Although Art and Sonya found the group exercises to be useless, studies have shown that peer interaction in learning to write and revise has a positive impact. *See, e.g., supra* note 78.

<sup>102</sup> By this point in her law school career, Sonya knew that she was ranked either first or second in the class. Perhaps this knowledge made her less likely to seek guidance from classmates who she knew were not doing as well as she was in law school.

<sup>103</sup> Teresa also expressed concern that her peer edits might hurt her partner's feelings.

It is fair to say then that from the students' point of view, mandatory in-class collaboration in the form of group exercises and research exchanges generally benefited weaker students at the expense of stronger students. One might argue that when top students explain their thought processes to weaker students, top students benefit by crystallizing and further refining those thoughts in the effort to communicate them to others. Nevertheless, one cannot deny that these activities take up precious class time that the top students feel is being wasted and that, without built-in safeguards to prevent weaker students from simply taking the work product of the stronger students, the activities appear to penalize students who are working hard and maintaining or exceeding an appropriate work schedule while rewarding and enabling procrastinators.

While it was clear that collaboration in the form of in-class exercises was permissible, what was less clear was how much help in the form of discussion, consultation, and review of another's draft was allowed outside class. Initially, some students seemed to think that the line was drawn between discussing and writing—they believed that they could discuss anything with others, but all the writing had to be their own. Other students seemed to think that they could show their drafts to others and get feedback, but that any significant writing, revising, or editing had to be their own. Nevertheless, at various times during the course, five of the six student participants commented that they used some form of outside help on their briefs.

Teresa seemed to be particularly dependent on discussions with classmates. In fact, in her interviews, she commented that talking things over with others is "a key to her learning style." Teresa's study group discussed the issues in the two briefs, and she consulted extensively with classmates about her analysis. Other than a permitted conference with the Writing Advisor, she never mentioned having anyone outside of class read her drafts. Sonya, Eric, Andy, and Marie also said they talked about the issues with classmates. Sonya ranked it as the second most helpful thing in writing both the pre-trial brief and the appellate brief. Marie admitted that she frequently picked up key points, such as the concept of "sanitizing a conviction," from outside-of-class discussions with classmates.

Both Sonya and Andy actually conferred with attorneys once during the semester. At the point when she was struggling to write the statement of facts, Sonya asked her husband, who is an attorney, about "how the facts work" in a real case. The impression she gave was that the discussion was more generic in nature and not about the specifics of the draft she was working on. Andy talked about the specific pre-trial issues with an attorney with whom he worked. The attorney's advice to Andy to figure out "what are you trying to prove" also appeared to be more generic than case specific.

Surprisingly, none of the study participants mentioned talking about their research with a law librarian. Although it is entirely possible that they did work with law librarians but never thought to mention it in the interviews, not mentioning this help would be somewhat surprising in light of several extended discussions during the interviews of long and futile research sessions. In fact, at the very beginning of the course, one law librarian offered a research review session to all second-year students taking LWII. Only one of the six students chose to attend.

Marie included a slightly surprising outside consultation: She discussed the pre-trial issues with her boyfriend, who is not a lawyer.<sup>104</sup> She said that she intended to meet with the Writing Advisor about her draft of the pre-trial brief, but her draft was not ready far enough in advance to have a fruitful meeting.

At the individual interviews after the students turned in their pre-trial briefs and again after they turned in their appellate briefs, they were asked to name the activities that were most helpful in their work on the briefs.<sup>105</sup> On the pre-trial briefs, four of the six<sup>106</sup> listed "talking with classmates," with Teresa ranking this activity as the most helpful.<sup>107</sup> On the

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<sup>104</sup> In fact, when asked to list what she found most helpful in writing her pre-trial brief, Marie listed talking with her boyfriend third; first was her work on oral argument and second was talking with classmates.

<sup>105</sup> The question that was read to them was as follows: "What helped you the most in writing the brief? (class exercises, samples in class, textbook reading, figuring it out myself, talking to classmates(s), talking to others, meeting with professor, preparing for oral argument, previous work experience, other)."

<sup>106</sup> Andy, Marie, Teresa, and Sonya.

<sup>107</sup> Four students listed "oral argument" as helpful, and three of those four proclaimed it the most helpful activity in their work on the pre-trial brief. Also high on the "helpful" list, listed by four students, was "textbook reading" at the pre-trial brief stage.

appellate briefs, four of the six<sup>108</sup> again listed “talking with classmates.” Interestingly, although meeting with the professor had not made the list at the pre-trial brief time, three students listed it as helpful during the appellate brief stage, with Teresa now indicating that it was the most helpful activity.<sup>109</sup>

While it is impossible to know how an outside objective observer would evaluate the quality of these outside consultations with classmates and others, five of the six students felt that their discussions with classmates made a significant difference in their ability to write the two briefs for this course. Only Art did not list it as helpful; he ranked “figuring it out myself” as most helpful.<sup>110</sup>

Putting aside the questions of what collaboration was permissible and whether mandatory in-class collaboration unfairly benefits weaker students, one is left to speculate as to why out-of-class collaboration was perceived as so valuable to these students, while in-class collaboration received such mixed reviews. One possibility is that the voluntary groupings outside of class are more likely to be composed of students at the same ability level, so the students perceive the sharing as “fair.” Another possibility might be the simple difference between mandatory and voluntary sharing and collaboration. Yet another possibility is that, in the class setting, students recognize that the professor’s opinion is the one they really want and need, and as long as that is available—literally present in the room—it seems inefficient to use less informed sources of information. In any case, the disparity between students’ perceptions of the value of in-class and out-of-class collaboration with other students, as well as questions concerning the value and best structuring of in-

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<sup>108</sup> This time the four were Andy, Teresa, Eric, and Sonya.

<sup>109</sup> Metacognition is defined as “the awareness by learners of the learning process itself.” Wangerin, *supra* note 30, at 472. Knowledge about cognition is “a person’s knowledge about his or her own cognitive resources and the compatibility between the person as a learner and the learning situation.” *Id.* at 476 (internal quotation marks omitted). The six students in this study had differing levels of metacognition prior to starting LWII, as many of them changed their approach to the assignments from the pre-trial brief to the appellate brief. If the students internalize what study, writing, and revision techniques worked well in this assignment and what did not work well, their metacognition will increase, thus making similar future projects easier.

<sup>110</sup> Eric also listed “figuring it out for myself” as helpful, but did not rate it as high as Art did.

class exercises, remain areas in which we need more information and research.

#### *F. Dealing with "Distractions"*

Like all human beings, the six students in the study had families, friends, and all the typical distractions of ordinary life. Some were married, one had a small child, and two had jobs in addition to going to law school. Three of the six had to fit in the demands of being on law review or a journal or moot court. Two got sick at various times during the semester. One took a weekend trip for a friend's wedding, while two had friends visiting from out of town at some point during the semester. One had to move early in the semester, while another spent a day helping a friend move. Over the course of the semester, several had interviews with law firms, and of course they all had the demands of a full complement of other law school courses.

Other distractions included the psychic dissonance some of the students experienced when they felt that they were at a disadvantage vis-à-vis other students or when they felt that they had to ignore their own best judgment about how to do something in one or the other brief in favor of their professor's preferences. In short, during the time when these six students were researching and writing their pre-trial and appellate briefs, life "happened," and how they dealt with the expected and unexpected pressures, time demands, and psychic dissonance made a difference in their degree of success.

For Sonya, who was good at time management, expected distractions such as a friend's out-of-town wedding were not a problem. She made sure she got ahead on her work before the anticipated distraction so that she was still on track when it was over. What did distract Sonya, however, was some dissonance between her own analysis and organization and what she felt were Professor Lee's "preconceived ideas" about both. She expressed frustration over having to make some arguments that her professor expected or, in Sonya's words, "suffer a lower grade as a consequence," even though Sonya believed she would not make those arguments in real life. She felt constrained to use the overall organization that Professor Lee had recommended to the class, even though this organization did not fit well with how Sonya conceptualized the issues. Seemingly eager to have the class experience mirror practice, Sonya was also frustrated by

not having the full trial record<sup>111</sup> and even more frustrated by different collaboration rules in different LWII professors' classes.<sup>112</sup> These distractions and frustrations were all relatively minor, however, and Sonya was careful not to let them derail her work on the briefs.

Unexpected distractions, such as illness, were more problematic. Fortunately, the two students who got sick at various points in the semester—Teresa and Art—were both on track or slightly ahead when illness struck, so they did not fall too far behind during the time when they were sick. Unfortunately for Art, however, he had such a full calendar with other co-curricular activities and commitments that there was simply no breathing room in his schedule for even a short illness. The one-third of a letter grade drop from an A on the pre-trial brief to an A minus on the appellate brief may have been the result.

Moving and hosting out-of-town guests also seemed to be directly responsible for Eric falling behind on his timetable for the pre-trial brief.<sup>113</sup> Remember that he was relieved that his pre-trial brief grade was a B plus; when he could work without these distractions, he moved up a notch to an A minus on the appellate brief.

The most noticeable example of not managing a distraction was Marie's decision to help a friend move the weekend before her appellate brief was due. While one may admire her loyalty to her friend and her generosity with her time (Marie spent a full day on this activity), one has to question whether this was a good decision or an example of Marie's tendency to procrastinate.<sup>114</sup>

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<sup>111</sup> Professor Lee and the other LWII faculty had condensed a lengthy trial record and case with multiple issues to what they considered to be a more manageable record and set of issues for second-year law students.

<sup>112</sup> Sonya felt it was "artificial and unrealistic" to require students not to talk to others about the issues.

<sup>113</sup> Self-regulation, which includes motivation, goal-setting, and self-monitoring, insulates metacognition from distractors. Because Eric lacks a sufficient level of self-regulation, he is easily distracted; those distractions then interfere with his metacognition. See Albertson, *supra* note 61, at 13–15.

<sup>114</sup> See Schouwenburg, *Introduction*, *supra* note 49, at 16. Self-control theory postulates that all people continuously evaluate the importance of competing personal projects. Based on that evaluation, people engage in activities they deem most important; the subjective importance assigned to an activity is a function of both the "objective" importance and delay. That objective importance is largely a function of the perceived reward associated with the behavior. *Id.* For students, this becomes particularly important, as the reward associated with finishing a brief is

One other form of distraction was any perceived unfairness that diverted a student's attention and siphoned off researching and writing time, energy, and commitment. For example, the LWII problem included evidence issues, and not all of the students in the study had taken Evidence yet. Those who had not taken it felt, probably correctly, that they were at a disadvantage. Another perceived disparity was whether the student was representing the defendant-respondent or the State-appellant. In the assigned case, the State-appellant side had the stronger arguments, while the defendant-respondent side had an uphill fight. Some students dwelled on perceived disadvantages and allowed them to undermine their motivation; others did not. Art, for example, had not taken Evidence yet and was representing the defendant-respondent. He commented that both were disadvantages, but he did not dwell on either.

Like Art, Teresa noticed that the defense had an uphill fight, and she commented once that her side had to do more research and had more difficult work than the prosecution. Although she seemed annoyed by the lack of a level playing field, she did not bring it up again and seemed to accept the different workload as realistic of law practice.

Finally, one must add that receiving a lower-than-expected grade was a major distraction for three of the students. Earlier we saw that low grades on the pre-trial brief distracted both Andy and Teresa for almost a week. Rather than moving forward on the research for the appellate brief, both virtually stopped and had to recover emotionally from the pre-trial brief disappointment before they could start working effectively again. Arguably, Marie never fully recovered from her disappointment over her grade on the pre-trial brief. Lacking either the resilience or the determination of Andy and Teresa, Marie's earlier low grade was the start of her slide down to the bottom of the class. As with all of the other types of distractions that the students faced—the demands of family, friends, jobs, and competing activities, such as illness, moving, trips, and psychic dissonance—how a student dealt with the disappointment of an

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usually delayed a long time. Marie appears to have assigned a greater reward to helping her friend move than she did to working on her appellate brief, presumably because she received or assumed she would receive a more immediate reward from helping her friend move than she would have by completing her brief.



individual low grade made a significant difference in his or her overall success in the course.

### G. Scapegoating

One obvious way for some students to deal with a disappointing low grade is to decide that it was someone else's fault—to find a scapegoat to blame.<sup>115</sup> Both Andy and Marie fell prey to this temptation to varying degrees. After the critiqued pre-trial briefs were returned, their immediate reaction was that the problem was with the professor—not with them. Andy, in particular, could barely contain his rage, and the old resentments about his previous legal writing professor helped fuel his anger. He went to his first appointment with Professor Lee after receiving the low grade on his pre-trial brief ready to argue with her about every comment on his paper. To her credit, she was not put off by his angry, complaining approach and instead patiently showed him where and how his work missed the mark.<sup>116</sup> To his credit, he eventually listened, decided she was probably right at least on most points, vowed to re-double his efforts on the next project, and, as we know, started meeting with her to be sure he did not make similar mistakes on the appellate brief.

This is not to say that all of Andy's scapegoating was over. As the course progressed and Andy had improved—but still limited—success on his appellate brief, he blamed the fact that he had a weak oral argument partner and even returned to criticism of Professor Lee, saying that she “said one thing and did another.” Overall, however, Andy tempered this criticism with an acknowledgment that through his hard work and Professor Lee's willingness to work with him individually, he was able to meet the goal of the course, which was to think, argue, and write persuasively.

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<sup>115</sup> Feick and Rhodewalt use the term “self-handicap[]” to refer to “obstacles created (or claimed) by the individual in anticipation of a failing performance.” David L. Feick & Frederick Rhodewalt, *The Double-Edged Sword of Self-Handicapping: Discounting, Augmentation, and the Protection and Enhancement of Self-Esteem*, 21 MOTIVATION & EMOTION 147, 147 (1997). Students use these handicaps “to control the esteem implications of anticipated failure by establishing a nonability [sic] explanation for its cause.” *Id.* at 147–48.

<sup>116</sup> My comments about these meetings are obviously not based on first-hand knowledge but rather on both Andy's account of them in the subsequent interviews and on Professor Lee's account of them after the semester had ended.

Like Andy, Marie immediately ascribed her lack of success on the pre-trial brief to Professor Lee. Rather than address the shortcomings in her pre-trial brief, she complained that Professor Lee's comments on the brief and her grade "did not match." She added that "the comments did not support the grade" and that Professor Lee's "grading style was confusing."<sup>117</sup> From these vague criticisms, it is difficult to discern exactly what it was that Marie felt was inaccurate about the critique and grade. One can only guess that the handful of positive comments that Professor Lee included in the critique suggested to Marie that her brief was better than it was, and that Marie underestimated the importance of several of the negative criticisms.<sup>118</sup>

Marie's tendency to blame the professor rather than herself seems to have contributed to her continuing lack of success in the course. Rather than tackling the problem, Marie seemed to disengage from the course, gradually investing less and less in it. While her comments in her exit interview indicate that logically she knew that she should have managed her time better, worked harder, and consulted with Professor Lee, emotionally, she seemed to be stuck on the point that her grades did not reflect the quality of her work.

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<sup>117</sup> "[S]tudies have shown that students' ability to make appropriate revisions, and particularly higher-level revisions of meaning and text structure, is affected by their knowledge of appropriate evaluation criteria." Allal & Chanquoy, *supra* note 78, at 5. Recall that Marie spent only fifteen and a half hours revising both her pre-trial and appellate briefs, whereas Sonya and Art spent approximately sixty-five hours revising, or four times as much time as Marie. Neither Sonya nor Art questioned the fairness of Professor Lee's grading style, whereas Marie felt that Professor Lee's grading was "confusing." Marie's belief that Professor Lee's grading was inaccurate likely contributed to Marie's lack of revisions. If Marie believed Professor Lee's comments and grades were more consistent, she may have made more revisions, paying particular attention to Professor Lee's suggestions for revisions.

<sup>118</sup> For example, Professor Lee commented that the admissibility issue was being decided under the Washington Rules of Evidence, not the Federal Rules of Evidence. In addition, Marie cited to a secondary rather than a primary source for the rule, and she failed to explain a critical part of the rule. Marie also gave only one version of a fact when there was a conflict in the evidence on that point. Professor Lee also commented that Marie's arguments on three of the factors tended to be somewhat superficial and generally needed more development and support from the analogous cases and Marie had failed to address her opponent's primary arguments. Given these shortcomings and several others in Marie's pre-trial brief, it would not be hard for most objective observers to conclude that the C plus grade was a fair assessment of its quality.

Looking at the three students who were disappointed with their pre-trial brief grades—Marie, Andy, and Teresa—one cannot help but notice that the degree to which they blamed someone other than themselves for their lack of success correlated almost exactly with how they eventually did in the course. Marie stayed stuck on blaming Professor Lee; as a result, she did little or nothing to address her problems and ended up with the lowest grade on the appellate brief and the lowest grade in the course. Andy never fully gave up on the idea that Professor Lee was somehow at fault for his lack of success, but he did acknowledge and address some of his shortcomings; as a result, his grades improved one full letter grade, ending the course with a B minus. Teresa, by contrast, never seemed to look for a scapegoat on which to blame her lack of success on the pre-trial brief. Instead, she shifted into “problem-solving mode,” tackling each weakness and addressing each problem. As a result, she improved a full letter grade on the appellate brief, ending the course with a B plus.

#### *H. The Possible Effect of the Students' Participation in the Study*

It is a commonly held belief that people modify their behavior when they know someone is watching them. Scientists who study human behavior call this phenomenon the “Hawthorne effect.”<sup>119</sup> Each of these six students knew their work in this course and on the two briefs was being studied, so there is the obvious concern that the study itself affected how they behaved.

There was some effort to control for the Hawthorne effect in the study. For example, the time sheets used had the intentionally vague term “activity” rather than separating out specific activities, because identifying those activities might suggest to the students how they should be spending their time. In addition, at several times over the course of the study, I asked a specific set of questions that were designed to be open-ended

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<sup>119</sup> The Hawthorne effect is “[a]n experimental effect in the direction expected but not for the reason expected; i.e., a significant positive effect that turns out to have no causal basis in the theoretical motivation for the intervention, but is apparently due to the effect on the participants of knowing themselves to be studied in connection with the outcomes measured.” Stephen W. Draper, *The Hawthorne, Pygmalion, Placebo and Other Effects of Expectation: Some Notes* (2006) (unpublished manuscript on file with author), available at <http://www.psy.gla.ac.uk/~steve/hawth.html>.

and not leading. Perhaps the feature that was most likely to neutralize any Hawthorne effect was the simple fact that the study followed students over a fourteen-week semester in a course that is extraordinarily demanding. Given that length of time and the demands of the course, it is less likely that the students could have modified their behavior in any extended way when they were all working so hard just to complete what was required of them for the course.

When asked in the exit interview if they believed that their participation in the study affected their work in the course, the six students generally answered no. Marie, for example, felt her work would have been the same. She conceded that being a participant in the study "made her pay more attention to what she was doing," particularly how she was spending her time. She also thought it might have been a "nudge toward attending class."

Sonya, Eric, and Andy all commented that the one effect of their participation in the study was that they had become more reflective about their work habits and processes. Eric was the one student in the study who conceded that participation in it may have encouraged him "to work a little harder."

### CONCLUSION

Spending a semester observing six students at close range as they worked, struggled, and succeeded to varying degrees to learn to write a pre-trial and an appellate brief was an eye-opening experience. In some instances, the study confirmed and even underlined what legal writing faculty have known or suspected about the process that students go through when they write their first briefs. In other instances, the study shined a spotlight on points that previously had been only dimly understood. In a few instances, the study revealed some surprises and yielded some new insights that should be useful for both legal writing faculty and legal writing students.

While we may have suspected that LSAT scores and undergraduate GPAs would be good predictors of academic success in a second-year legal writing course, those scores and undergraduate GPAs had little, if any, predictive value for the six students in the study. In fact, the student with the lowest undergraduate GPA had the highest level of success in LWII. Far better predictors were the students' grades in the first-year

legal writing course and especially their overall first-year grades in law school.

We already knew that working harder and working smarter were the keys to success in law school. What we may not have realized before is just how hard some students work in their legal writing classes and what are the specific components of “working smarter.” When the study was concluded and the legal writing faculty at Seattle University School of Law first saw the time charts for the six students in the study, they were astounded. They knew students put a great deal of time and effort into the second-year course, but hourly totals of roughly 145 to 210 hours<sup>120</sup> for the fourteen week course meant that students were averaging between ten and a half and fifteen hours a week on the course. Given that the course is one of four or five that students take in their second year and only three credits out of a fourteen to sixteen credit semester, the time totals represent an impressive commitment on the students’ part.

The faculty was also surprised to see the degree of disparity in time spent between students who were highly successful in the course and those who were only marginally successful. Successful students were putting in well more than twice the hours of the least successful students and about twenty-five percent more time than some moderately successful students.

Perhaps most intriguing, however, were the components of “working smarter.” How were the successful students spending their time?

First, while no one would be surprised that the most successful students took extensive notes outside of class, particularly in the form of phrasing rules and arguments in their own words, annotating their cases, and writing case summaries or briefs, what was a bit surprising was how important it was that the students continue to review their notes and check their work against them. The least successful students took class notes but then failed to refer back to them when they were writing. They were also far less likely to do more than download cases and highlight them. They had not realized the benefit of putting things in their own words as a way of “owning” them.

The second secret to working smarter seems to be to spend a significant proportion of one’s time actually writing. The most

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<sup>120</sup> Only Marie had a total time of significantly less than 145 hours.

successful students spent well more than half of their total time for the course writing. And of that writing time, the most successful students spent well more than half of it revising, editing, and proofreading. The least successful students started drafting later in the process, tended to run up against the deadline, and then turned in drafts that were only partially revised and edited and, at best, hastily proofread.

Third, there were noticeable differences in the most successful students and least successful students' research and reading skills. The two top students were models of efficiency when it came to research. They made sure they understood the crux of their argument and what they were looking for before they went online to research. They had the ability to find the key cases, zero in on what was important in those cases, and then know when to stop researching and start writing. The two moderately successful students were conscientious researchers who, if anything, tended to be overly comprehensive in their research. Either they were less confident about when to stop researching and start writing or they used continuing to research as an excuse to postpone the hard work of writing. At least one of the least successful students had developed a "free-rider" approach to research. She delayed starting her research until her classmates had found the key cases and they were discussed in class.

The most successful students also had effective reading habits that included a number of strategies for making the material their own. They went far beyond underlining and highlighting what they read; their annotations included notes about how each side might use a case, questions that occurred to them as they read, and synthesis with other cases. There was an obvious connection between their critical reading and critical thinking skills. As they read a rule, they thought through why it exists; as they read arguments in the cases, they thought through the arguments that would give them the desired result in their case. One very noticeable reading strategy that the two most successful students used was reading through everything one more time ("getting it all in my head") before starting to write.

The less successful students tended to be more passive readers. They relied more on highlighting cases rather than briefing or summarizing them. In addition, in Marie's case, she

did not always do all the assigned reading, particularly the textbook, which meant that she was often missing key points about how to write a brief.

Fourth, in addition to being efficient researchers, the two most successful students were effective managers of their time in several other ways. Sonya kept extensive lists of everything she needed to do or wanted to remember to include in each of the briefs. Both she and Art started each phase of the writing projects as soon as they were assigned, and worked steadily on the briefs, not leaving them for long periods of time.

Fifth, the more successful students realized that, with tasks the size of the pre-trial and appellate brief, they had to develop ways of staying organized. Four of the six created notebooks with hard copies of their cases, and three of the four used a system of pulling out a pile of hard copies of related cases when they were working on a particular point. Having hard copies allowed them to manipulate pages and try out different organizational schemes. The least successful student of the six was the one who was most likely to rely solely on the downloaded versions of cases in a folder on her computer.

As for keeping the briefs organized as they wrote, two of the moderately successful students relied heavily on outlines. The amount of time Teresa spent on creating her extensive outline, however, was probably excessive, while Eric's simpler approach of using a separate outline page for each factor or issue and then weaving the cases into his arguments proved to be time efficient and effective. The two least successful students used their oral argument notes as the organizational plan for their pre-trial briefs. When one of them, Andy, switched to a basic brief template for the organization of his appellate brief, he was more successful.

Sixth, the more successful students saw the professor as a key resource for their learning and were creative in the many ways they sought access to her, asking questions before, during, and after class, in emails, embedded in drafts, and during office conferences. They paid close attention to *all* of the information she gave them, in handouts, checklists, and critiques of their writing. The least successful student of the six did the opposite: Even when encouraged to meet with the professor, she did not sign up for a conference. The two least successful students were far less likely to focus on the professor's handouts and checklists,

particularly once they entered the drafting stage of a project. They were also much more likely to turn in a very rough or, in Marie's case, incomplete draft so the professor's critiques of these drafts were necessarily less helpful than her critiques of student drafts that were better developed.

Seventh, while the practice of talking over the issues and arguments with others varied among the successful students, the two most successful students were far less likely than the other four students to see in-class group exercises as valuable, preferring instead the out-of-class discussions with other students. Four of the six students—ranging from the most successful to the least successful—found out-of-class discussions with other students among the “most helpful” things they did when writing their briefs.

Not the least bit surprising were the key pitfalls to avoid: procrastination, getting derailed by distractions, and scapegoating. The least successful student procrastinated when it came to doing the research, often waiting to see what her classmates or the professor suggested were the key cases. When it came to her writing schedule, she fell even further behind, believing that she worked best when the deadline was breathing down her neck.

The “distraction” of a low grade on the pre-trial brief derailed three of the students to varying degrees: Two were able to regroup and begin serious work on the appellate brief within a week of receiving the low grade, but one never fully regained any writing momentum or motivation. All six students experienced a variety of other distractions such as illness, out-of-town guests, or moving, but their ability to deal with the distractions and stay focused varied significantly. Not surprisingly, the most successful students were able to minimize the effect of unexpected distractions. Somewhat surprising was how the less successful students seemed to actually magnify the negative effect of distractions.

In some instances, magnifying negative distractions was closely related to the phenomena of scapegoating. One of the marginally successful students blamed her lack of success on the professor. Once she decided that the professor did not grade fairly, she seemed to relieve herself of responsibility for her performance in the course. Only in the post-study interview did she acknowledge that she had not managed her time well in the



course and that she should have met with the professor in one-on-one conferences. To a lesser degree, the second marginally successful student also engaged in the “blame game,” and justified his lower grades by his weak oral argument partner and his perception that the professor had inconsistent grading standards. In his post-study interview, he even referred again to his first legal writing professor with whom he had had a bad experience and suggested that his LWII experience was somewhat tainted by the earlier course. Ultimately, however, this student balanced blame with praise for Professor Lee’s one-on-one work with him in office conferences, which he credited with turning around his performance in the course.

Given this extended look into these six students’ process of writing the pre-trial and appellate briefs and assuming that their experience is at least somewhat representative of students who enjoy differing various levels of success, several new questions emerge that deserve additional research. First, with a student like Marie, would it have been pedagogically better to have required her to come in for a conference with her professor? What is the relative value of mandatory versus voluntary conferences when a student shows “free-riding” tendencies or appears to have disengaged with the class? Second, given that note-taking and note-reviewing seem to be critical to a high level of success, should this skill be actively taught in law school? Third, what is the connection between procrastination and students’ revising, editing, and proofreading? Does the typical law student have sophisticated strategies for revision, editing, or proofreading, or is it more likely that students simply run out of time and never get to these parts of the writing process? Fourth, how can legal writing faculty make in-class collaborative exercises more useful for students at the top of the class?

In their post-study interviews, all six students said that they believed the course had been a success for them. They believed that they had learned to argue persuasively and effectively, and they believed that when asked to write a pre-trial or appellate brief they could now do so with some confidence that it would be competent work. They were also intrigued by what they had learned about themselves as researchers, writers, and advocates over the course of the semester and they were hopeful that their participation in the study would benefit legal writing students

and professors that followed them. No doubt on this last point, they have all been successful.