

# Accomplishing Your Scholarly Agenda While Maximizing Students' Learning (a.k.a., How to Teach Legal Methods and Have Time to Write Too)

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## I. INTRODUCTION

In response to external pressures, law schools are changing Legal Methods professors' primary responsibilities in the legal academy from a single focus of teaching to a two-pronged focus of teaching and scholarship.<sup>1</sup> Law schools are reconsidering their priorities as they scramble to keep up with (1) the demands of potential law students, (2) pressure from outside organizations such as the American Bar Association, and (3) forces from within the legal academy.<sup>2</sup> Incoming law school students are asking sophisticated questions about bar passage rates, course offerings, and employment figures.<sup>3</sup> Students want to know how law schools plan to train them for law practice and how successful the schools will be at placing them in desirable legal positions when they graduate.<sup>4</sup> The American Bar Association has been considering compelling schools to create outcome measures, with an emphasis being placed on schools documenting what lawyering skills students should be gaining<sup>5</sup> and how the schools will measure whether those skills have been learned.<sup>6</sup> In addition, Legal Methods professors routinely lobby the legal academy for increased standing, status, and salary for Legal Methods professors.<sup>7</sup> With all of this

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1. Service is also an important component of all law professors' responsibilities but is outside the scope of this article.

2. See Nancy B. Rapoport, *Eating Our Cake and Having It, Too: Why Real Change Is So Difficult in Law Schools*, 81 IND. L.J. 359, 366-68 (2006).

3. See generally Jeffery Evans Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead*, 81 IND. L.J. 229, 245-50 (2006).

4. *Id.*

5. Janet W. Fisher, *Putting Students at the Center of Legal Education: How an Emphasis on Outcome Measures in the ABA Standards for Approval of Law Schools Might Transform the Educational Experience of Law Students*, 35 S. ILL. U. L.J. 225, 230-31 (2011). The ABA Standards emphasize that "[t]he outcomes should outline what the school's graduates should know (cognitive), the skills they should have (behavioral) and the values/principles with which they should act (affective/attitudinal)." *Id.* at 230 (citing ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 43 (2007)). See also Karen Sloan, *Holding Schools Accountable; ABA is Pushing Educators to Prove Their Law Graduates Can Cut It*, NAT'L L.J., Feb. 22, 2010, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202443899383&slreturn=1>.

6. Fisher, *supra* note 5, at 225-27.

7. The Association of Legal Writing Directors' mission includes "[a]dvocating on behalf of the discipline within the academy and the legal profession." *About*, ASS'N OF LEGAL WRITING DIRECTORS, <http://www.alwd.org/about.html> (last visited Aug. 18, 2011).

pushing, law schools have finally begun to understand the importance of skills training and have started to provide more opportunities for the advancement of the faculty members who traditionally supply skills training in law schools:<sup>8</sup> the Legal Methods professors.<sup>9</sup>

Legal Methods professors are at the forefront of teaching students skills. They teach students how to research, analyze, cite, and communicate the law in writing and orally.<sup>10</sup> Amazingly, until recently, many law schools have failed to grasp the importance of teaching these skills and have not offered Methods professors the job security that casebook professors enjoy.<sup>11</sup> Now that the importance of skills training, and of Legal Methods skills in particular, is becoming better understood by the legal academy, Methods professors are being offered increased job security, including longer contracts and tenure-track positions. The 2011 Association of Legal Writing Directors survey, an annual survey of Methods programs throughout the United States,<sup>12</sup> reports that the number of programs offering 405(c) status<sup>13</sup> or tenure has increased from 107 in 2010 to 117 in 2011.<sup>14</sup>

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8. See generally David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLINICAL L. REV. 191, 191-93 (2003) (arguing that because the 'case-centered' approach to legal education has several deficiencies, alternative teaching methods should be adopted). See also David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 U. KAN. L. REV. 105, 127-36 (2003) (describing the history of legal writing courses in the law school curriculum).

9. The phrase 'Legal Methods professors' is used throughout this article to refer to Legal Research and Writing professors.

10. See Susan P. Liemer & Jan M. Levine, *Legal Research and Writing: What Schools are Doing, and Who is Doing the Teaching (Three Years Later)*, 9 SCRIBES J. LEGAL WRITING 113, 126-27 (2003).

11. James M. Boland, *Legal Writing Programs and Professionalism: Legal Writing Professors Can Join the Academic Club*, 18 ST. THOMAS L. REV. 711, 711-15 (2006). See also Bryan A. Garner, *Three Years, Better Spent*, N.Y. TIMES, July 25, 2011, <http://www.nytimes.com/roomfordebate/2011/07/21/the-case-against-law-school/three-years-in-law-school-spent-better>.

12. ASS'N OF LEGAL WRITING DIRS., LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY (2011), available at <http://www.lwionline.org/uploads/FileUpload/2011Survey.pdf> [hereinafter *Survey Results*]. Surveys from 2005 forward are available on the Legal Writing Institute's website at <http://www.lwionline.org/surveys.html>.

13. *Survey Results*, *supra* note 12, at ix.

More specifically, 61 programs reported having 1-year contracts in 2011, 17 programs reported having 2-year contracts, and 60 programs reported having contracts of three years or more. Forty-four programs reported having full-time faculty that was tenured or on the tenure track, 54 programs reported faculty with 405(c) status, and 19 reported faculty on the ABA Standard 405(c) track. The vast majority of those on contract are not limited in the number of years that they may teach at the law school; in other words, they have no "cap" (144 out of 153 respondents to this question, or 94%).

In most instances, the increased job security brings with it the expectation or requirement that Legal Methods professors will produce scholarship. Thus, the pressure on Legal Methods professors to publish has increased. The survey reports that almost one-quarter of Methods professors are now obligated to produce scholarship, and thirty-one percent of the law schools responding expect their Legal Methods faculty to produce scholarship.<sup>15</sup> Out of the 168 programs that responded to the question on scholarship, 111 encouraged their Methods faculty to write.<sup>16</sup>

Although the opportunity for additional job security is a much-welcomed change, Methods professors need to markedly adjust their work to fulfill their new scholarship obligations. Successfully engaging in scholarship is especially complicated for Legal Methods professors for two reasons: lack of funding<sup>17</sup> and lack of time.<sup>18</sup>

Legal Methods professors have traditionally lacked the necessary financial resources to produce scholarship. Many are not eligible for research grants from their institutions, or if they are, for only a reduced amount.<sup>19</sup> In addition, many Methods professors do

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*Id.* Standard 405(c) language provides:

A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time members. However, this Standard does not preclude a limited number of fixed, short-term appointments in a clinical program predominately staffed by full-time faculty members, or in an experimental program of limited duration.

ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 34 (2011), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2011\\_2012\\_aba\\_standards\\_chapter4.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2011_2012_aba_standards_chapter4.authcheckdam.pdf).

14. *Survey Results*, *supra* note 12, at ix.

15. *Id.* at xi. For Legal Methods directors, the survey reports that out of 163 responding programs, the directors of fifty-eight programs are obligated to produce written scholarship, the directors of sixty programs are expected to produce scholarship, and the directors of eighty-eight programs are encouraged to produce scholarship. *Id.*

16. *Id.*

17. See Ann C. McGinley, *Discrimination in Our Midst: Law Schools' Potential Liability for Employment Practices*, 14 UCLA WOMEN'S L.J. 1, 8 (2005) (citing Jan M. Levine & Kathryn M. Stanchi, *Women, Writing & Wages: Breaking the Last Taboo*, 7 WM. & MARY J. WOMEN & L. 551, 577 (2001)).

18. THE POLITICS OF LEGAL WRITING, PROCEEDINGS OF A CONFERENCE FOR LEGAL RESEARCH AND WRITING PROGRAM DIRECTORS 14 (Jan Levine et al. eds., 1995), available at [http://www.alwd.org/publications/pdf/LRW\\_PoliticsofLegalWriting.pdf](http://www.alwd.org/publications/pdf/LRW_PoliticsofLegalWriting.pdf).

19. Sixty-one percent of the schools responding to the 2011 ALWD survey reported that Legal Methods faculty members are eligible for summer grants. *Survey Results*, *supra* note 12, at xi. This is a slight drop from sixty-three percent in 2009-2010. *Id.* An average grant

not command the same salary as casebook professors,<sup>20</sup> and consequently, instead of writing, they take on teaching obligations during the summer to compensate for their lower salaries. This additional workload is detrimental to producing scholarship because of its timing—the summer months are the most productive time of the year for most legal scholars.<sup>21</sup> During the summer, casebook professors have uninterrupted time to focus on a particular topic without needing to devote attention to teaching or service.<sup>22</sup> Taking on additional teaching obligations for compensation in the summer leaves Legal Methods professors with insufficient time to focus on writing.

The “lack of time and financial resources in the summer” paradox is further compounded by the weighty teaching responsibilities Legal Methods professors carry in the fall and spring. Because they teach skills and are focused on assessment, Legal Methods professors traditionally do a significant amount of hands-on work with individual students. The 2011 Association of Legal Writing Directors Survey reports that Legal Methods professors teach an average of just over forty-one entry-level students in the fall semester.<sup>23</sup> This requires an average of 3.83 hours of teaching per week, 50.35 total hours of conferences, 106.77 total hours of preparing presentations and assignments, and 1556 pages of stu-

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is \$8568. An average grant for casebook professors is \$12,000. See Richard A. Matasar, *The Viability of the Law Degree: Cost, Value, and Intrinsic Worth*, 96 IOWA L. REV. 1579, 1611 (2011).

20. McGinley, *supra* note 17, at 8. As an example, Professor McGinley highlights research completed by Professors Jan Levine, Kathryn Stanchi, and their colleagues at the School of Law of Temple University, which includes an empirical study comparing the salaries of legal writing faculty with those of tenured and tenure-track faculty. *Id.* (citing Levine & Stanchi, *supra* note 17, at 577). The study demonstrated “that in adjusted dollars in 1998 legal writing professors earned, on average, 57% of the median salaries of assistant, tenure-track professors of doctrinal subjects, 51% of the median salaries of associate professors, and 40% of the median salaries of full professors.” *Id.* As another measure, consider that full casebook professors’ salaries in the Midatlantic region were reported in 2009-2010 by the Society of American Law Teachers as ranging from \$116,000 to \$183,413. 2009-10 SALT Salary Survey, SALT EQUALIZER, June 2010, at 1, 2. Salaries for Legal Methods directors in the Midatlantic region for the same time period were reported by the Association of Legal Writing Directors as ranging from \$68,000 to \$150,000. ASS’N OF LEGAL WRITING DIRS., LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY 40 (2010), available at <http://www.lwionline.org/uploads/FileUpload/2010Survey.pdf>. Salaries for Legal Methods professors in the Midatlantic region for the same time period were reported by the Association of Legal Writing Directors as ranging from \$52,500 to \$120,000. *Id.* at 70.

21. Research grants are also referred to as “summer grants.”

22. See Susan P. Liemer, *The Quest for Scholarship: The Legal Writing Professor’s Paradox*, 80 OR. L. REV. 1007, 1007-08 (2001).

23. *Survey Results*, *supra* note 12, at x.

dent work to read throughout the semester.<sup>24</sup> This type of teaching requires a substantial time commitment and can leave Methods professors with insufficient time to write during the school year.

This article presents ways to overcome the obstacles of limited funding and insufficient time to enable Methods professors to produce meaningful scholarship and still teach Legal Methods in a way that maximizes students' learning. Part II of the Article provides teaching techniques that can be used to help professors more efficiently provide solid course coverage, comment on assignments, and conference with students. The section recommends the use of collaborative and cooperative assignments to better prepare law students for legal practice. Part III of this article discusses different types of Legal Methods scholarship, obtaining funding for scholarship, and how to produce scholarship. The section provides suggestions for professors who have scholarship duties attached to their jobs, and it reviews writing opportunities for professors who want to write but do not have scholarship responsibilities.

## II. TEACHING LEGAL METHODS TO MAXIMIZE STUDENTS' LEARNING AND PROFESSORS' EFFECTIVENESS

### A. Course Coverage

Legal Methods professors set ambitious goals for their students. In three and a half short months, a typical Legal Methods I course introduces students to critical reading, analogical reasoning, deductive reasoning, policy-based reasoning, synthesis, legal research, citation, and of course, legal writing.<sup>25</sup> Methods professors are always challenged to find creative ways to cover all of these concepts and provide meaningful feedback to their students. The following sections provide ideas on how to (1) grade, (2) teach research, (3) use collaborative writing assignments, (4) provide cooperative learning opportunities, and (5) employ teaching assis-

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24. *Id.* For the spring semester, the numbers are only slightly lower. Legal Methods professors teach an average of 40.17 students and spend 3.54 hours teaching per week, 101.54 hours preparing classes and assignments, and 46.4 hours conferencing. *Id.* The amount of student-written pages Legal Methods professors read in the spring increases to 1565. *Id.*

25. See Marie A. Monahan, *Towards a Theory of Assimilating Law Students into the Culture of the Legal Profession*, 51 CATH. U. L. REV. 215, 218-22, 240-44 (2001) (discussing how legal writing and clinics work together to develop these skills in law students).

tants, while concurrently saving time for Methods professors and increasing students' learning.

### 1. Grading

Grading is the bane of most professors,<sup>26</sup> because it entails spending day after day hunched over a desk<sup>27</sup> reviewing strong, mediocre, and weak written responses to the same questions again and again. The answers must be critically read and evaluated and put into somewhat subjective letter categories. Given this task, it is no wonder the faculty hallways are a depressing place in May and December, because those are the months when grading occurs in earnest for most casebook professors.<sup>28</sup> For Legal Methods professors, however, grading-induced glumness can prevail throughout the school year, because it is not something that occurs only at the end of each semester. Rather, Methods professors typically give and grade assignments throughout the entire school year.<sup>29</sup>

Providing grades throughout the year in Legal Methods, however, is not necessary or desirable.<sup>30</sup> Several years ago, I made a

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26. Paul T. Wangerin, "Alternative" Grading in Large Section Law School Classes, 6 U. FLA. J.L. & PUB. POL'Y 53, 54 (1993) ("[G]rading is far and away the most distasteful aspect of law school teachers' jobs.").

27. Ruthann Robson, *The Zen of Grading*, 36 AKRON L. REV. 303, 303 (2003). Professor Robson "estimate[s] that [she has] spent over four thousand hours (almost six months of days and nights, or a year of long summer days) hunched over student work during [her] teaching career." *Id.*

28. Almost all casebook professors administer an essay exam at the end of the semester that is worth a large portion of the course grade. See Philip C. Kissam, *The Ideology of the Case Method/Final Examination Law School*, 70 U. CIN. L. REV. 137, 137 (2001) ("The case method/final examination system of law schools remains the predominant method of legal education."). "Law students typically are evaluated by end-of-the-semester, time-limited, problem-solving final examinations that are graded in ways that help establish a class ranking system upon comparative average grades." *Id.* (citing Robert C. Downs & Nancy Levit, *If It Can't Be Lake Woebegone . . . A Nationwide Survey of Law School Grading and Grade Normalization Practices*, 65 UMKC L. REV. 819, 822-23 (1997); Steve H. Nickles, *Examining and Grading in American Law Schools*, 30 ARK. L. REV. 411, 413-15 (1977); Steve Sheppard, *An Informal History of How Law Schools Evaluate Students, with a Predictable Emphasis on Law School Final Exams*, 65 UMKC L. REV. 657, 657-58 (1997)).

29. In the 2011 ALWD/LWI Survey, 188 Legal Methods programs reported that the most common assignments in Legal Methods I and II are the office memo (188), appellate briefs (150), pretrial briefs (111), and client letters (103). *Survey Results*, *supra* note 12, at iv-v. One hundred and seventeen programs reported using other writing assignments and 138 programs reported using oral exercises. *Id.*

30. See Ellie Margolis & Susan L. DeJarnatt, *Moving Beyond Product to Process: Building a Better LRW Program*, 46 SANTA CLARA L. REV. 93, 105 (2005) (explaining that the "fall semester grade is based entirely on the final draft of the final memorandum. . . . Progress, improvement over the course of the semester, and the quality of the earlier submissions are not taken into account" (citations omitted)).

switch from grading the Closed Research Memo Assignment<sup>31</sup> to breaking it down into several smaller assignments,<sup>32</sup> including a Rule Assignment, a Rule Explanation Assignment, a CREAC<sup>33</sup> Assignment, and a Full Discussion Assignment, and not grading any of them. When I made this change, I was initially concerned that my students would not work as hard on these assignments, because they would lack the needed motivation of a grade to inspire them. As it turned out, however, my students worked diligently on these assignments, even when there was no grade.

The key in motivating students to take the assignments seriously is to provide helpful feedback without assigning points or a percentage to that feedback.<sup>34</sup> Students want to do well in school, and when the professor explains that the work they do on their ungraded assignments will prepare them for their graded work, students are motivated to work and to learn.<sup>35</sup>

Eliminating grades on initial assignments provides several advantages. First, students are allowed the opportunity to try out new skills without the risk of penalty for failure.<sup>36</sup> I never felt comfortable grading students without giving them a chance to receive feedback on their initial attempts, because many students do not perform newly-acquired skills well.<sup>37</sup> Eliminating grades is a fairer way to assess initial efforts, because students are not unnecessarily handicapped by grades that judge early attempts at learning.

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31. For Closed Research Memo Assignments, students write a legal memorandum without conducting research. The sources of law are provided to them.

32. In Legal Methods I, my students receive grades on a research quiz, a citation quiz, a research project, and an office memorandum. In Legal Methods II, my students receive grades on a research project, an appellate brief, and an oral argument.

33. CREAC stands for Conclusion, Rule, Rule Explanation, Analysis, Conclusion. CREAC is a common organizational scheme used in legal writing. See, e.g., DAVID S. ROMANTZ & KATHLEEN ELLIOT VINSON, LEGAL ANALYSIS: THE FUNDAMENTAL SKILL (2d ed. 2009).

34. See Margolis & DeJarnatt, *supra* note 30, at 105.

35. *Id.* at 129.

36. *Id.* at 128.

37. Andrea A. Curcio et al., *Does Practice Make Perfect? An Empirical Examination of the Impact of Practice Essays on Essay Exam Performance*, 35 FLA. ST. U. L. REV. 271, 282 (2008) (“Studies have shown that metacognitive skills can be taught, although newly-acquired strategies donot readily transfer to new tasks or unfamiliar domains.”). The professors further explain that “[m]erely prompting students to think about their performance [on practice tests] is likely to be too passive of an attempt to alter monitoring accuracy’ and improve metacognitive skills. Improving metacognitive skills, and thus improving academic performance, requires practice, feedback and employing strategies on a consistent, intensive, and explicit basis.” *Id.* (citations omitted). At Widener, I’ve observed many students who initially struggle and later excel on writing assignments.



Second, students are allowed to complete their work without the angst of worrying about grades. Law school causes students a great deal of stress.<sup>38</sup> Eliminating grades in early attempts is one way to mitigate some of the stress because the competition aspect of completing assignments is lifted.<sup>39</sup>

Third, students are given the chance to learn how much work really needs to be completed to learn a new skill in law school without penalizing them for their unintentional, initial, lack of effort.<sup>40</sup> Students are often surprised to learn how much time needs to be spent on legal writing.<sup>41</sup> To perform it well, time is needed to think, write, and rewrite. Some law students, accustomed to writing a paper the night before and still getting high grades in their undergraduate studies, do not realize that this cannot be replicated in law school until they try it.<sup>42</sup> Not grading their initial attempts allows them to learn this lesson without facing the consequences of a bad grade.

Fourth, not assigning grades helps to keep students focused on learning instead of their GPAs. They are much more interested in learning how to write a proper rule statement, instead of why they earned a B- and not a B. Occasionally, a student will ask me what the grade would have been if I were to have graded the assignment. I always explain that at most law schools, students' grades are calculated in relation to how they did in comparison to other students. Without grading everyone's assignment, I cannot provide a grade to any one student's assignment. The question also gives me the opportunity to remind the student that the focus is

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38. Clinton W. Shinn, *Lessening Stress of the 1L Year: Implementing an Alternative to Traditional Grading*, 41 U. TOL. L. REV. 355, 356 (2010) (quoting Gerald F. Hess's research that concludes that law school is "stressful, intensely competitive, . . . [and] alienating"). *Id.*

39. *Id.* at 367-68; see also Margolis & DeJarnatt, *supra* note 30, at 123-31.

40. See Margolis & DeJarnatt, *supra* note 30, at 128 ("[M]ost students come to law school having been quite successful in their undergraduate education and expecting to do well."). Further, when a student receives a poor grade early in the legal writing class, that student may be discouraged "from trying to master the subject, rather than [being] motivate[d]" to perform better. *Id.*

41. See generally Miriam E. Felsenburg & Laura P. Graham, *Beginning Legal Writers in Their Own Words: Why the First Weeks of Legal Writing Are So Tough and What We Can Do About It*, 16 J. LEGAL WRITING INST. 223, 223-26 (2010) (noting that many "typically bright and hard-working" students often struggle in legal writing classes). Based on the results of their survey, the Professors reported that "[m]any of the students . . . experienced a counterproductive plummet in their confidence levels when they realized that learning legal writing would be much more difficult than they had expected." *Id.* at 226.

42. See Margolis & DeJarnatt, *supra* note 30; see also *supra* text accompanying note 40.

on gaining skills and progressing as a writer; the focus is not on a letter on a transcript.

Fifth, not assigning grades allows professors to reuse the assignment without being overly concerned about cheating.<sup>43</sup> Most students are not tempted to acquire upper-class students' papers because they know the work is not graded, and plagiarizing to simply avoid doing some work is not worth the risk of sanctions. Rather, students take their writing seriously and focus on learning the skills needed to succeed on future assignments, because they realize that their failure to work now will harm them later.

This reusing of assignments, in turn, frees up time for professors to engage in scholarship. Legal Methods professors spend a sizeable amount of time creating new assignments every summer to avoid having to manage the problem of students recycling one another's papers. Creating new assignments is extremely time intensive. In 2011, Legal Methods professors spent an average of 35.33 hours preparing major research and writing assignments.<sup>44</sup> This time is spent on developing and researching a new fact pattern and ensuring that it will work well for first-year students.<sup>45</sup> If a new area of law is used, the professor also needs to devote additional time to learning the law to be able to competently guide students through the assignments. Reusing assignments frees up time during the summer, because professors are updating, instead of creating, new exercises.<sup>46</sup>

Reusing assignments not only opens up professors' time; it also allows professors to gain a deeper understanding in the area of law they assign. This promotes more effective teaching and can lead to producing scholarship in that area.<sup>47</sup> Law professors typically write on topics in which they are interested and knowledgeable.<sup>48</sup> By becoming experts in the law they use to teach Legal Me-

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43. See Margolis & DeJarnatt, *supra* note 30, at 132-133 (discussing the reasons why cheating should not be dispositive on the issue of reusing assignments).

44. *Survey Results*, *supra* note 12, at x.

45. See Margolis & DeJarnatt, *supra* note 30, at 131 ("The problem must be challenging, involve issues that are both realistic and arguable, be culturally sensitive, and stretch the students' analytical and research skills without overwhelming them.")

46. See *id.* at 132.

47. *Id.*

48. See David R. Cleveland, *Clarion Call Or Sturm und Drang: A Response to Pierre Schlag's Lecture on the State of Legal Scholarship*, 35 NOVA L. REV. 503, 506-07 (2011) ("There exists now an unprecedented freedom in legal scholarship. . . . [T]here is great freedom not only in why [law professors] write but in what we write.")

thods, professors' teaching abilities and, as a matter of course their scholarship, also improve.<sup>49</sup>

Finally, and most importantly, student learning is improved, because students receive more pointed guidance and have more opportunities to write. By not assigning grades, professors can divide the larger task of writing closed-research office memos up into smaller tasks which, by themselves, would be trickier and more labor-intensive to assign subjective grades. Students receive guidance on how to write each part of a Discussion section of an office memo, and also, have the opportunity to keep rewriting sections as the assignments progress. For example, my students have the opportunity to write a rule statement, and then rewrite that rule statement when the rule explanation is added, and again when the CREAC assignment is given, and yet once again, for the Full Discussion assignment. Rewriting gives students repeated chances to learn these new skills and provides professors with more opportunities to provide focused feedback.

## 2. *Research Training*

Teaching students how to research the law is especially time-consuming and challenging, because the field is so heavily impacted by developments in technology. In the last thirty-five to forty years,<sup>50</sup> legal research has moved from being a thoughtfully-conceived all-print endeavor, to a query-based electronic venture, to a Google for lawyers enterprise.<sup>51</sup> The enduring link ever-evolving technology has to research makes it a demanding part of the law to master and to remain current in as a Legal Methods professor. Because staying abreast of the latest research advances is so difficult, pairing with law librarians to help teach legal research can result in a stronger research skills set for students and can also help professors remain competent in the field in a more expedient manner.

Law librarians and Legal Methods professors can team together to teach research skills by sharing responsibilities in many differ-

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49. See Margolis & DeJarnatt, *supra* note 30, at 132. Margolis and DeJarnatt observe that "students will write better papers each time we reuse an assignment because our deepening expertise allows us to teach it better." *Id.*

50. Paul Hellyer, *Assessing the Influence of Computer-Assisted Legal Research: A Study of California Supreme Court Opinions*, 97 L. LIBR. J. 285, 285-90 (2005) (providing a general discussion of the development of computer assisted legal research).

51. Ronald E. Wheeler, *Does Westlaw Next Really Change Everything? The Implications of Westlaw Next on Legal Research*, 103 L.LIBR. J. 359, 360 (2011).

ent ways. For example, some teams may have professors do most of the teaching, but have librarians design the research exercises.<sup>52</sup> Other teams may have librarians teach the nuts and bolts of conducting research, but have professors teach how to conduct searches in the context of problem-solving. There are multiple ways the work can be divided; the roles the professor and the librarian take are dependent on what works best for each of them. Of course, receiving help from law librarians in teaching legal research to first-year students does not authorize professors to heave all of the responsibility away from themselves and onto the librarians.<sup>53</sup> Instead, the work should be divided in a way that is agreeable and most advantageous to both.<sup>54</sup>

Exposing students to law librarians in more than just a superficial manner during the first year helps students (1) understand the integrated nature of legal research and writing and (2) how valuable a resource librarians can be to lawyers. Simply allowing students to see professors and librarians collaborating in the teaching process provides students with a first-hand example of how vital research is to the writing process. When I teach research, I often take my students to the library and seek out the help of the law librarians. These actions demonstrate to my students that lawyers go to libraries and that librarians are go-to experts in the research process. They directly witness what wonderful resources law librarians can be in the legal profession and learn how much, including the limits, librarians can offer to lawyers conducting research.<sup>55</sup>

Working with librarians also helps professors stay current on the latest developments without having to independently explore and study the latest technology and trends in legal research. As part of their jobs, law librarians must keep abreast of legal research advancements. They spend a tremendous amount of time reading, studying, and investigating innovations of the field. Because the field is so vast,<sup>56</sup> and because they are educated on how

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52. Susan King & Ruth Anne Robbins, *Creating New Learning Experiences Through Collaborations Between Law Librarians and Legal Writing Faculty*, 11 PERSP.110 (2003).

53. *Id.*

54. There is a debate over whether librarians or Methods professors are best suited to teach legal research. *See id.* at 110. There is no right answer to this debate. Rather, the best choice for each school should be made after the school has carefully considered its unique attributes, resources, goals, and mission.

55. *Id.*

56. *See* John Palfrey, *Cornerstones of Law Libraries for an Era of Digital-Plus*, 102 L.LIBR. J. 171, 171-72 (2010).

to do so, they are truly learned in legal research and are best-suited to complete the work efficiently. By working with librarians, professors can gain knowledge more efficiently than by independently completing the work. Learning about the most recent improvements to legal research without reviewing all of the advancements themselves, saves professors a significant amount of time and ensures they are familiar with advances in legal research. Not only can this time be applied to scholarship, but the knowledge gained can aid the professor in conducting research for scholarship in a more efficient manner.

### 3. Collaborative Learning

Collaborative learning occurs when students work “together to achieve an intellectual pursuit.”<sup>57</sup> Professors assign students to groups and students work together to achieve a common goal.<sup>58</sup> Collaborative learning is premised on the ideas that “learning is an active, constructive process;” that “learners are inherently social;” and that learning has “subjective dimensions.”<sup>59</sup> The chief goal of collaborative learning is to allow the group process to work so that students “produce a better final product through the students’ discourse.”<sup>60</sup>

Unfortunately, collaborative learning is routinely discouraged in law school. Because of law school’s competitive atmosphere, students quickly learn that if they know more than their classmates and are able to communicate that knowledge on exams better than their classmates, they will be rewarded with higher grades.<sup>61</sup>

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57. Lynn C. Herndon, Comment, *Help You, Help Me: Why Law Students Need Peer Teaching*, 78 UMKC L. REV. 809, 825 (2010) (citing Barbara G. Tanenbaum & Elwin R. Tilson, *Collaborative Learning Works!*, RADIOLOGIC TECH. (Nov. 1, 1998), [http://findarticles.com/p/articles/mi\\_hb3387/is\\_1998\\_Nov/ai\\_n28716453/pg\\_2/?tag=content;col1](http://findarticles.com/p/articles/mi_hb3387/is_1998_Nov/ai_n28716453/pg_2/?tag=content;col1)).

58. Clifford S. Zimmerman, *Thinking Beyond My Own Interpretation: Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957, 987 (1999) (“[C]ollaborative learning aims to remove most of the competition and places group success ahead of individual achievement.”).

59. *Id.* at 995-96.

60. Elizabeth L. Inglehart et al., *From Cooperative Learning to Collaborative Writing in the Legal Writing Classroom*, 9 J. LEGAL WRITING INST. 185, 188-89 (2003); see also Elizabeth A. Reilly, *Deposing the “Tyranny of Extroverts”: Collaborative Learning in the Traditional Classroom Format*, 50 J. LEGAL EDUC. 593, 602 (2000) (“That working together to achieve a common goal produces higher achievement and greater productivity than does working alone is so well confirmed by so much research that it stands as one of the strongest principles of social and organizational psychology.”).

61. See Jennifer Jolly-Ryan, *Promoting Mental Health in Law School: What Law Schools Can Do for Law Students to Help Them Become Happy, Mentally Healthy Lawyers*,

Once students fully realize the impact grades can have on their future, their desire for higher grades will often stunt their prior collaborative habits.

The legal writing process, however, is analytical, and collaborating with others in legal discourse is one of the best ways to improve legal reasoning, and thus, legal writing.<sup>62</sup> Collaborative learning allows students to share knowledge and to learn from one another. Through conversation, students learn others' beliefs and challenge their own ideas. They hone their thinking skills as their reasoning results from "internalized public or social conversation."<sup>63</sup> When students' reasoning skills are better developed, their writing consequently improves, because their writing is communicating their more sophisticated analysis.

Collaborative work also allows students to refine many interpersonal skills that lawyers use, but are not usually taught in law schools. For law professors, especially casebook professors, so much work is accomplished solitarily,<sup>64</sup> that it is easy to forget that the practice of law involves working closely with other people. While most professors develop class materials, research issues, and write articles individually, practitioners often work together and develop their legal strategies by informally consulting with their colleagues.<sup>65</sup> For example, practitioners use today's enhanced document-sharing technology to produce court documents,<sup>66</sup> and they also work together to prepare and present their cases in court. Today's law practice routinely has practitioners work with their supervisors and subordinates as part of larger teams.

In addition to developing interpersonal skills, successfully collaborating with others on a common project matures individual

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48 U. LOUISVILLE L. REV. 95, 108 (2009) (quoting Roger E. Schechter, *Changing Law Schools to Make Less Nasty Lawyers*, 10 GEO. J. LEGAL ETHICS 367, 391 (1997) ("First-year law students soon learn that 'pure, unadulterated self-interest[] and hardball competition are the rule' in law school, where success is measured by getting better grades than classmates.")).

62. Zimmerman, *supra* note 58, at 995-96.

63. *Id.* at 997. Zimmerman explains cognitive psychologist's Lev Vygotsky's view that there is a "functional relatedness between thought, conversation, community, and learning." *Id.* at 996.

64. *Almost Everything You Need to Know About Law Teaching*, COLUMBIA LAW SCH., [http://www.law.columbia.edu/careers/law\\_teaching/Everything](http://www.law.columbia.edu/careers/law_teaching/Everything) (last visited Aug. 14, 2011).

65. Alan M. Lerner, *Law & Lawyering in the Workplace: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solver*, 32 AKRON L. REV. 107, 119 (1999) ("[C]ollaboration is so important in lawyers' work.").

66. Sheila Blackford, *Can We Collaborate?: What Today's Collaboration Tools Can Do for You and Your Clients*, 71 OR. ST. B. BULL. 34, 34 (2010).

skills.<sup>67</sup> Strong problem-solving, organization, communication, leadership, and team-building skills are needed for collaboration.<sup>68</sup> Because collaborators share a common goal, the additional skill of decision-making is perhaps the crucial skill needed to work well with others.<sup>69</sup> Participant decision-making can often become a complex process, involving many layers of analysis, including the consideration of individual knowledge, perceived knowledge of others, and respect for others. Despite this complexity, making decisions with others is worth the effort, because it leads to improved and faster judgment making.<sup>70</sup>

Because strong collaboration skills are beneficial to lawyers, assigning collaborative work in law school helps to better prepare students for their future careers. By providing opportunities for students to work together, they are given a chance to gain competence and confidence in their ability to proficiently collaborate on projects.

Prior to understanding the value of collaborative learning, I did not allow my students to work together or to discuss assignments outside of class. Students were not permitted to work with one another on writing assignments if they were not in class with me. Although students discussed assignments in class, the conversation always ended when they walked out the classroom door.

This changed a few years ago when the other Legal Methods faculty members and I decided to assign the trial brief as a collaborative assignment.<sup>71</sup> We came to this decision, because we recognized the value of adding collaborative work to the Legal Methods curriculum, and we were also trying to find a way to respond to the legitimate students' complaint that writing a trial brief, an appellate brief, and presenting an oral argument was too much work for a two-credit class.

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67. See Linda Morton et al., *Teaching Interdisciplinary Collaboration: Theory, Practice, and Assessment*, 13 QUINNIPIAC HEALTH L.J. 175, 189-93 (2010) (discussing the various skills taught at collaboration training sessions).

68. *Id.* at 193 (noting that “communication skills, . . . teamwork skills, awareness of self and others, and leadership skills” are essential collaboration skills).

69. See Zimmerman, *supra* note 58, at 987.

70. See Zimmerman, *supra* note 58, at 987 n.153 (citing KENNETH BRUFFEE, A SHORT COURSE IN WRITING: COMPOSITION, COLLABORATIVE LEARNING, AND CONSTRUCTIVE READING 105-20 (2d ed. 1980); Zhining Qin et al., *Cooperative Versus Competitive Efforts and Problem Solving*, 65 REV. EDUC. RES. 129 (1995)).

71. Thanks to my colleagues, Professors Dionne Anthon, Jennifer Lear, David Raeker-Jordan, Amanda Smith, and Starla Williams, for working with me on the collaborative assignments and for permitting me to share this work in this article.

The collaborative assignment proved to be time saving for both students and professors. Instead of writing one individual trial brief, students were put in groups of two or three and given a series of ungraded assignments to complete collaboratively: a research assignment, a rule statement and statement of facts, and a trial brief.

Although students had three assignments instead of one to complete, they realized a time-savings by working collectively on the assignments. By dividing up responsibilities and by working together to understand the persuasive writing principles introduced, the students were able to work more efficiently than if they were working alone. Because the assignments were not graded, students were willing to share knowledge and to work together to produce solid writing.

Students' knowledge of the subject matter also seemed to increase. Although admittedly, increase in knowledge is difficult to assess without conducting a formal study, my students' abilities to engage in persuasive writing seemed to improve, especially in the area of rule statements. I believe the improvement stemmed from the deeper understanding of the rules that the students gained when they worked together, and from having the chance to rewrite the rule portion of the trial brief. The chance to discuss the material while rewriting the assignments with others seems to have resulted in stronger persuasive writing skills.

Finally, students' attitudes about the workload and nature of the work in Legal Methods, as well as their self-esteem, seemed to improve. I no longer get the complaints that the course is too much work for two credits. Although students still complain that the course is a lot of work, they seem to enjoy the process of learning more. Even groups that encountered difficulties with the process reported back that they learned a great deal from working collaboratively with one another.<sup>72</sup> This result is consistent with studies conducted on collaborative learning that suggest that mastering a subject matter "validate[s] the student[s'] experience, and lead[s] to greater self-esteem."<sup>73</sup>

Assigning students to work together enabled the Methods professors to require more work, but at a time-savings. I realized a

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72. I routinely ask students individually and in groups about the learning experience. The overwhelming response is that students enjoy working with one another and perceive themselves as learning a lot from the experience.

73. Zimmerman, *supra* note 58, at 1001.



time-savings by having fewer papers to critique and by not providing written feedback on each assignment. Instead, I only provided extensive written comments on the rule and statement of facts assignment. Because the answers to the research assignment were self-explanatory, I distributed them to the students to review themselves. To help further foster the collaborative learning environment, I conferenced with each collaborative group on their trial briefs. During the conferences, I, along with most professors, provided both verbal and written feedback.

Collaborative assignments yield a significant time-savings while simultaneously developing happier students and better teachers. Working together revitalizes students' efforts<sup>74</sup> and invigorates professors' teaching as "designers of intellectual experiences for students."<sup>75</sup>

#### 4. Cooperative Learning

Working towards different outcomes distinguishes cooperative learning from collaborative learning. Cooperative learning results in students creating individual work products, while collaborative learning results in students creating one final product. In a cooperative learning environment, students work together to reach common goals.<sup>76</sup> A positive interdependence is created among students<sup>77</sup> while they work towards creating individual work products.

An advantage of cooperative learning over collaborative learning is that students no longer feel angst about having their grades dependent on others' work because they receive individual grades on individual work products.<sup>78</sup> When working together on a graded, collaborative project, many students argue that it is unfair to have their grade dependent upon others' work.<sup>79</sup> They further argue that it is unfair to have a weak student's grade bolstered

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74. See ANNE GOODSSELL ET AL., COLLABORATIVE LEARNING: A SOURCEBOOK FOR HIGHER EDUCATION 11 (1992) (discussing collaborative learning in undergraduate institutions).

75. *Id.*

76. Zimmerman, *supra* note 58, at 993 (citing Morton Deutsch, *A Theory of Cooperation and Competition*, 2 HUM. REL. 129, 132 (1949)).

77. Vernellia R. Randall, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 T.M. COOLEY L. REV. 201, 217 (1999).

78. See Zimmerman, *supra* note 58, at 961.

79. See *id.* at 983-84 (discussing the fairness arguments associated with grading collaborative assignments).

from being paired with a strong student or a strong student's grade penalized from being paired with a weak student.<sup>80</sup> With cooperative learning, the group work does not continue until the end.<sup>81</sup> Rather, students work together to learn, but at the end, are responsible for and are graded on, their own work product. Working together helps to encourage learning; however, at the end of the cooperative learning experience, there is individual achievement and accountability.<sup>82</sup>

Research shows that cooperative learning has several benefits over the individually-focused, competitive learning environment often found in law schools.<sup>83</sup> Benefits of cooperative learning include improved attitudes toward the subject matter being studied, increased critical thinking skills, and overall higher achievement.<sup>84</sup> Students working in a cooperative environment have a more positive attitude towards learning and are more motivated to learn.<sup>85</sup> Students also produce more ideas and answers<sup>86</sup> than they would working alone, and therefore, they develop higher-level reasoning and skills. In a competitive learning environment, "students work alone and strive to be better than their classmates."<sup>87</sup> Students working solely in a competitive environment miss out on the benefits cooperative learning provides, because they are exclusively focused on their own learning.

A great place for cooperative learning in the Legal Methods curriculum is oral arguments. Oral arguments are considered to be the highlight of the first year of Methods by many Legal Methods professors and students.<sup>88</sup> If oral arguments are implemented correctly, students have their first opportunity to act and feel like true lawyers, and professors get to watch with pride as their students successfully perform as attorneys actually do.<sup>89</sup>

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80. *See id.* at 983.

81. *Id.* at 961.

82. *Id.* at 1000.

83. Zimmerman, *supra* note 58, at 960.

84. Randall, *supra* note 77, at 218-21.

85. *Id.* at 221.

86. *Id.* at 219.

87. *Id.* at 216.

88. "[A]t least one scholar has noted, even students who are initially nervous and concerned about oral advocacy exercises tend to see the experience as a 'high point of their first year.'" Lisa T. McElroy, *From Grimm to Glory: Simulated Oral Argument as a Component of Legal Education's Signature Pedagogy*, 84 IND. L.J. 589, 598 (2009) (quoting Louis J. Sirico, Jr., *Teaching Oral Argument*, PERSPS.: TEACHING LEGAL RES. & WRITING, Fall 1998, at 17, 17).

89. *See* McElroy, *supra* note 88, at 596.

When I first taught oral argument, I would arrange for outside practitioners to come in and act as mock judges as students presented a two issue, fifteen-minute argument based on the appellate briefs they wrote. Teaching an average of forty students in the spring meant arranging for twenty arguments, with each lasting approximately an hour when critiques were factored into the time. The administration of oral arguments was always a considerable amount of work, because I needed to coordinate my schedule with my students' schedules and with the mock judges' schedules. I also would often frantically search for former students to act as bailiffs.

I no longer conduct oral arguments in this fashion. Instead, I arrange for each student to work with a classmate as co-counsel. Working from their appellate briefs, each student is allotted seven to eight minutes to argue one issue from their two-issue case. They are encouraged to work together to decide who will make the introductions to the court, who will present the facts, who will argue which issue, and, in the case of the petitioner's attorneys, who will handle rebuttal.

I also no longer bring in outside attorneys to judge or seek former students to act as bailiffs. Instead, my Academic Support Fellow, who is my teaching assistant, and I act as judges.<sup>90</sup> For bailiffs, the Legal Methods program coordinates with the Moot Court Honor Society. Members of the Society share some of the organizational burden by scheduling and acting as bailiffs for all first-year arguments.

These changes greatly simplified and improved the oral argument experience for my students and me. As a professor, I do not spend time contacting outside practitioners, writing bench briefs, and copying the fact pattern and students' appellate briefs for the outside attorneys to read and understand before oral arguments. I also do not coordinate the attorneys' schedules with mine and the students. Instead, I simply set up a schedule which can accommodate my students and my Academic Support Fellow. A

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In using simulated oral argument exercises in addition to traditional Socratic teaching, professors can accomplish several goals: (1) they can train students to speak more effectively and analytically about the law; (2) they can increase student satisfaction and self-efficacy; and (3) they can erase lines between curricular departments, as well as blend the distinction between theory and practice.

*Id.*

90. I always choose my Academic Support Fellow for Legal Methods based on their performance in the class. I invite them to judge with me after they have been admitted to the Moot Court Honor Society.

bench brief is not needed because the Academic Support Fellow has been participating in the tutoring of the class throughout the semester and is well acquainted with the problem.

The students' oral argument experience is greatly improved. I no longer need to be overly concerned about the quality of the oral argument experience because my Academic Support Fellow and I control all of the questions asked and monitor the argument and the critique at the end to ensure the best result for the students. With control of the questions, we can help students who are floundering by posing some easier questions. We can also push students who are a bit more sophisticated with harder questions. We have the luxury of doing so, because after teaching the students for two semesters, we have a solid sense of the skill level of each student that the outside attorneys could not possess.

With control of the critique of the argument, I can also ensure that students receive consistent messages. Outside attorneys bring different opinions, and students sometimes receive contradictory information from them. For example, one year I had a bench tell students to never waive rebuttal time. They explained that the students should always take advantage of every second given to them. The very next bench took the exact opposite position. The outside practitioners on that bench told the students that if they have nothing more to say, they should sit down and be quiet, because the court is busy and does not want to have its time wasted. Both are legitimate positions to take, and as the host for both benches, I was stuck not wanting to correct either view. Luckily, I had the chance to meet with all of the students after arguments, and I explained to them that the decision of whether or not to use rebuttal time was dependent on the court and the argument. By eliminating the use of outside attorneys as judges, however, I no longer have to face these uncomfortable situations. Rather, I can provide my students with consistent messages and explain to them various points of view without correcting, and taking the chance of insulting, any outside practitioners who volunteered their time to help.

My goal is to help all my students have a positive experience in oral arguments. Arguments are the culmination of the students' hard work and learning in Legal Methods. I want each one to leave with the confidence necessary to appear in court again.<sup>91</sup> I

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91. See McElroy, *supra* note 88, at 597 ("Simulated oral argument exercises can also foster students' confidence in their public speaking abilities."). "Polls and research show

do not want them to feel as if the experience was negative or as if they failed. Having control over the final critiques frees me from having to worry about outside practitioners providing overly complimentary or critical evaluations. Now, each student gets a critique at the end complimenting them on the strengths of the argument and providing suggestions on how to improve for the next time. Providing suggestions lets them know that the argument went well enough that I think they will do this again—they survived their first oral argument.<sup>92</sup>

Of course, by not inviting judges from the outside, students are not getting the same diversity of feedback as before. I partially mitigate this shortcoming by recording each argument and giving the students a DVD of their work, which they can have practicing attorneys critique if they wish. Although this does not totally compensate for not having a diverse bench, the benefits realized by reducing students' stress and gaining consistency in questions and critique at the time of the argument, outweigh the loss.

Cutting the arguments in half by having students work with partners is one of the biggest time-savers I have employed. Instead of arranging and hearing an average of twenty arguments with forty students, I now hear only ten arguments. Because the extra time comes at the end of the spring semester, the increase in productivity is immense. This extra time can be used to get a jump start on grading the appellate briefs and then finalizing grades. The sooner the grades are finalized during the summer break, the sooner writing can begin in earnest. For professors

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that public speaking ranks near the top of a list of fears." *Id.* (citing Geoffrey Brewer, *Snakes Top List of Americans' Fears*, GALLUP NEWS SERVICE (Mar. 19, 2001), <http://www.gallup.com/poll/1891/Snakes-Top-List-Americans-Fears.aspx>). "Law students tend to be afraid to speak in class, just as lawyers are apt to fear getting up on their feet and speaking to the court." *Id.* "However, the ability to speak effectively about the law—often in front of groups—is perhaps the most essential lawyering skill." *Id.* at 597-98 (citing Mary Kate Kearney & Mary Beth Beazley, *Teaching Students How to "Think Like Lawyers": Integrating Socratic Method with the Writing Process*, 64 TEMP. L. REV. 885, 887 (1991)). For this reason, the Carnegie and Best Practices Reports "stress that the law school curriculum should offer regular, minimally-intimidating opportunities for students to speak about, argue about, debate, and explain the law." *Id.* at 598. "[O]ral argument exercises would encourage students to speak, decreasing over time their fear of doing so, helping them to see themselves in the roles of practicing lawyers, and improving their speaking effectiveness." *Id.* (citing Ruth Ann McKinney, *Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?*, 8 LEGAL WRITING: J. LEGAL WRITING INST. 229, 236 (2002)).

92. This year, in the class immediately preceding oral arguments, to help motivate students, I gave each one a pencil engraved with "Oral Argument—Bring it On!!!" I have not done so, but I have also considered purchasing "I survived oral argument" pins from the Legal Writing Store.

aiming for an August placement date, extra writing time during the summer is invaluable.<sup>93</sup>

Of course, the most rewarding result is watching how much more my students now gain from oral arguments. Under the old system, my students were nervous, and in some cases, even intimidated, by having to conduct their first oral arguments in front of attorneys and judges they had never met. To students who have not yet completed their first year of legal education, the thought of making a sophisticated legal argument in front of two or three strangers who have legal experience, and who are going to be asking a lot of questions, can be especially daunting and anxiety-producing. Having students present arguments in front of me and my Academic Support Fellow greatly lessens their anxiety, because they have been with us for almost an entire academic year and are familiar with us and our expectations.

As an introduction to oral advocacy, allowing students to work together makes sense, because it helps to lessen the anxiety of trying something new and it enhances learning.<sup>94</sup> For most students, this is the first time they are being assessed on their oral advocacy skills. Cooperative learning of this new skill helps to alleviate stress, because it “focuses on individual mastery of the subject via a group process.”<sup>95</sup> At this point in the semester, the students have just completed writing their appellate briefs by themselves. Instead of continuing to work alone in preparing for oral arguments, they get to talk to one another about the positions they took in their briefs. If they learn that their classmates took similar positions, which is most often the case, stress is lessened, because they have had their positions affirmed by a classmate. If their position is not affirmed by their classmates and they learn they have made a mistake, they have the chance to correct that mistake instead of perpetuating it in oral arguments. If they disagree on issues, they have the opportunity to work together to

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93. The extra time comes in April and May and can be especially helpful for professors with school-age children. A lot of work can be accomplished before the children are out for the summer and productive time decreases. See also Susan P. Liemer, *The Quest for Scholarship: The Legal Writing Professor's Paradox*, 80 OR. L. REV. 1007, 1009-13 (2001) (discussing the difficulties legal writing professionals face in finding time to work on scholarship).

94. See Leah M. Christensen, *Enhancing Law School Success: A Study of Goal Orientations, Academic Achievement and the Declining Self-Efficacy of Our Law Students*, 33 LAW & PSYCHOL. REV. 57, 86 (2009) (citing Denise Riebe, *A Bar Review for Law Schools: Getting Students on Board to Pass Their Bar Exams*, 45 BRANDEIS L.J. 269, 331 (2007)).

95. Zimmerman, *supra* note 58, at 961.

overcome those disagreements, providing both skills training and a substantive learning benefit.<sup>96</sup>

The quality of arguments increased when the students began working together for several reasons. First, students improve because they practice together and support one another.<sup>97</sup> During practice arguments, the students receive personal attention and feedback from each other. Regardless of the strength of the students, almost all students benefit from the practice, feedback, discussion, and active learning that occur when students work together. Second, cognitive skills improve as students learn how their classmates' reason,<sup>98</sup> and they observe how others work to learn new skills. These cognitive skills are advanced because students gain an awareness of different ways of thinking and doing.<sup>99</sup>

Third, substantive knowledge improves as students share information with one another and work together to solve problems.<sup>100</sup> Students preparing for oral arguments share briefs with each other and also serve their opposing counsel with their appellate briefs. As they read each others' work, they get to see how other law students write, and they also gain an appreciation for other arguments that can be made.<sup>101</sup> In addition, while preparing for

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96. See Inglehart et al., *supra* note 60, at 193 (citing Stephen Dohoney-Farina, *A Case Study Approach Using Conflict Among Collaborators*, 15 TECHNICAL WRITING INSTRUCTOR 73, 73 (1988)).

97. For example, the Moot Court Honor Society members serve as judges for practice arguments.

98. Inglehart et al., *supra* note 60, at 193.

99. McElroy, *supra* note 88, at 598.

[S]imulated oral argument exercises require students to learn about a legal problem by actively engaging with it . . . . Indeed, to prepare a case for a classroom oral argument requires students to practice all of the analytical skills we want students to master. It requires them to formulate a position, defend it, and ascertain the position's weak points. It requires them to understand authorities well enough to synthesize them and apply them to any set of facts. Finally, it requires them to interact with the law—not just to memorize it, not just to read about it, but apply it to new situations not yet examined by any court.

*Id.*

100. *Id.* at 633-34; see also *id.* at 634 n.142 (citing Jennifer L. Rosato, *The Socratic Method and Women Law Students: Humanize, Don't Feminize*, 7 S. CAL. REV. L. & WOMEN'S STUD. 37, 44 (1997), for the proposition that "students learn from preparing questions, from answering them aloud, and from listening as others answer them").

101. See Zimmerman, *supra* note 58, at 1000. See also Cassandra L. Hill, *Peer Editing: A Comprehensive Pedagogical Approach to Maximize Assessment Opportunities, Integrate Collaborative Learning, and Achieve Desired Outcomes*, 11 NEV. L.J. 667, 673 (2011). Similarly, in the context of peer-editing, Professor Hill notes that students "open their minds to other possibilities when they see how different writers approach and analyze the same problem or task." *Id.* (citing Abigail Salisbury, *Skills Without Stigma: Using the JURIST Method to Teach Legal Research and Writing*, 59 J. LEGAL EDUC. 173, 189 (2009)). "A student may take notice of a novel argument in a peer's memorandum, or a classmate's im-

arguments together, they work to anticipate questions from the bench as they review opposing counsels' brief, and they support one another by generating possible responses to questions.<sup>102</sup>

Finally, the quality of arguments increased because the cooperative learning experience produced a higher motivation to do well and produced a higher level of accountability in the students to each other.<sup>103</sup> Cooperative learning has a social nature to it.<sup>104</sup> Students do not want to be embarrassed in front of one another. If they fail in their oral arguments because they did not put in the work, unlike their final exams, their peers will know about their failure and will know that the failure was caused by lack of preparation. To avoid this embarrassment, students tend to prepare more and passiveness all but disappears.<sup>105</sup> They also work harder because they feel peer pressure to do so.<sup>106</sup> Students know that even if they are not graded together, there is an obligation to one another to participate and perform. This motivation to not disappoint their classmates and not to be thought of as a slacker increases student preparation for oral arguments.

Creating positive, less intimidating experiences for students through the use of cooperative oral argument assignments results in higher self-esteem for students,<sup>107</sup> less work for professors, and stronger oral arguments. Where collaborative learning eliminates competitiveness, cooperative learning retains the competitiveness by maintaining individualism in the end product.<sup>108</sup> Although students work together to help each other, in the end, they present their own oral arguments, but they take less time to do so because they shared in the responsibility. Having students prepare for oral arguments with help from peers, along with advocating before

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pressive use of persuasive writing techniques. A student may see how a different precedent case can provide further support for a rule of law." Hill, *supra*.

102. Preparation for oral argument is important and simply reading the cases thoroughly is not enough to prepare students for oral argument. McElroy, *supra* note 88, at 633. Preparation through simulation and considering what questions the judges might ask will aid students in analyzing the case from the "point of view of a neutral or even hostile party." *Id.* at 633-34.

103. Inglehart et al., *supra* note 60, at 193-95.

104. Zimmerman, *supra* note 58, at 986.

105. Inglehart et al., *supra* note 60, at 194.

106. See *supra* note 61 and accompanying text. "Some scholars have noted that law students often over-prepare for their classes out of fear of being called upon by their professors and possibly humiliated in front of their peers." *Id.* at 105 (citations omitted). "The last thing a law student wants is to appear 'dumb' before his or her law professors and peers." *Id.*

107. See Inglehart et al., *supra* note 60, at 194.

108. Zimmerman, *supra* note 58, at 987.



a less threatening bench, results in a more positive experience for both students and Legal Methods professors.

### 5. *Teaching Assistants*<sup>109</sup>

For many students, learning in law school is a surprisingly social activity.<sup>110</sup> In addition to forming study groups and working together to create outlines and prepare for exams,<sup>111</sup> students also look to their upper-class peers for advice on how to do well with specific professors.<sup>112</sup> Students report seeking advice from successful upper-level students in hopes of replicating their study habits and their success.<sup>113</sup> Professors also embrace this thought process

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109. I am using the term “teaching assistant” to refer to law students who help professors by tutoring students and holding study groups. At most law schools, the students do not teach class in the way teaching assistants do in undergraduate and graduate programs. At Widener, teaching assistants are referred to as Academic Support Fellows.

110. MICHAEL HUNTER SCHWARTZ ET AL., *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* 30 (2009). “Students learn a lot from each other. They learn from verbally analyzing problems together and reading and commenting upon each other’s work. They value being part of a community rather than trying to learn difficult material in isolation.” *Id.*

111. See Dorothy H. Evensen, *To Group or Not to Group: Students’ Perceptions of Collaborative Learning Activities in Law School*, 28 S. ILL. U. L.J. 343, 412-13 (2004) (explaining that while study groups are not always successful beyond the first semester of law school, a majority of students involved in one study initially sought to engage in study group activity during the first year). See also Herndon, *supra* note 57, at 819. “[The law school] setting may be particularly helpful for those who learn best orally or aurally.” *Id.* (citing Danielle C. Istl, *The Law School Experience: Staying Grounded and Enjoying the Journey*, 80 U. DET. MERCY L. REV. 485, 489 (2003). “Besides the practical benefits of learning from one another, the groups provide a forum for sharing fears, developing coping techniques, and gaining confidence in speaking to others.” *Id.* (citing Morrison Torrey, Jennifer Ries & Elaine Spiliopoulos, *What Every First-Year Female Law Student Should Know*, 7 COLUM. J. GENDER & L. 267, 301 (1998)).

112. See Louis N. Schulze, Jr., *Alternative Justifications for Law School Academic Support Programs: Self-Determination Theory, Autonomy Support, and Humanizing the Law School*, 5 CHARLESTON L. REV. 269, 306 (2011) (noting that the law school “rumor mill” is often a student’s only source to gain “access to a professor’s mindset regarding the ‘perfect’ construction of an essay answer”).

113. Students have told me that they prefer to seek advice from my teaching assistant, because they recognize that the teaching assistant possesses the necessary skills and study habits required to succeed in my class. By incorporating the teaching assistant’s techniques into their own studying and writing styles, the students report increased confidence in their own work. In addition, one professor notes, “[s]tudents suffer substantial amounts of stress from having to play the ‘information access’ game in law school.” Schulze, *supra* note 112, at 306.

Because many law schools fail to provide information on study skills, but faculty occasionally comment on the importance of such skills, students compete for access to the ‘best’ resources. The purchase and possession of the ‘perfect’ study aid, creation and possession of the ‘perfect’ outline, and access to a professor’s mindset regarding the ‘perfect’ construction of an essay answer often occupy a great deal of students’ time.

*Id.* (citing Christensen, *supra* note 94, at 78-79).

and encourage this reasoning by hiring teaching assistants for their classes.<sup>114</sup>

Good teaching assistants are an invaluable resource for both students and professors.<sup>115</sup> Having access to a teaching assistant, someone the professor chose and trusts, decreases students' stress, because they know they have access to someone who survived the course and can provide seasoned advice on how to study and how to write. Ultimately, this advice increases students' confidence more than the typical "rumor mill" advice available from other upper-level students.

To ensure that teaching assistants work well with students, professors must invest some time in hiring and training, but over the course of the school year, that time is repaid many times over.<sup>116</sup>

My students report that their ability to access my teaching assistant, who they know is a successful student, decreases their stress levels and the need to participate in the "information access game." Students note that they use my teaching assistant not only for advice and guidance in Legal Methods, but also for advice about other resources, such as study aids and outlining. In this way, teaching assistants are valuable time-savers for first year law students, because they can help new law students avoid the time consuming trial-and-error method of learning, which resources are most helpful for certain courses.

114. See Ted Becker & Rachel Croskery-Roberts, *Avoiding Common Problems in Using Teaching Assistants: Hard Lessons Learned from Peer Teaching Theory and Experience*, 13 J. LEGAL WRITING INST. 269, 274 (2007) ("[T]he choice to use TAs is made consciously, under the assumption that using them will enable first-year students to more effectively acquire writing and analytical skills.").

115. See Becker & Croskery-Roberts, *supra* note 114, at 273 (explaining that using a teaching assistant provides benefits to current students, the teaching assistant, and professor); Julie M. Cheslik, *Teaching Assistants: A Study of Their Use in Law School Research and Writing Programs*, 44 J. LEGAL EDUC. 394, 411 (1994) (noting that teaching assistants not only lighten the professors load but also improve the teaching assistants' own research and writing abilities).

"One-on-one interaction and the peer teacher's imperfect mastery create an opportunity for both teacher and learner to trek through material together." Herndon, *supra* note 57, at 818. "This situation is distinguished from normal professor-student interaction, where the professor's knowledge is so advanced that his or her modeling of the thought process may skip a few important steps." *Id.* (citing Becker & Croskery-Roberts, *supra* note 114, at 277). "In peer teaching, opportunities exist to respond, make errors, make corrections to those errors, and better apply the rules learned to new situations. *Id.* (citing K.J. Topping, *The Effectiveness of Peer Tutoring in Further and Higher Education: A Typology and Review of the Literature*, 32 HIGHER EDUC. 321, 325 (1996)).

116. Ollivette E. Mencer, *New Directions in Academic Support and Legal Training: Looking Back, Forging Ahead*, 31 S.U. L. Rev. 47, 63-64 (2003).

[S]everal professors feel reluctant to make full use of the TAs due to their lack of any significant training in learning theory or teaching. This should be directly attacked with sufficient training provided to TAs and every effort made to take full advantage of this largely untapped, and extremely valuable, resource.

*Id.* (citation omitted).

"[T]he teaching assistant can also serve in an 'intermediary' role that benefits both the students and the professor." Becker & Croskery-Roberts, *supra* note 114, at 280 (citing Cheslik, *supra* note 115, at 400). "In that role, the teaching assistant can help the professor maintain a finger on the pulse of the class," because "[w]hen the professor knows what is

Teaching assistants for Legal Methods can answer many questions and work with students on many different levels.<sup>117</sup> For example, some students have a difficult time learning legal citation or struggle with basic grammar concepts. Teaching assistants who are strong in these areas can be trusted to work with students to review these skills if they are given the tools, such as detailed directions and the proper sources, to do so. I often send students who do not understand how to navigate the citation manual to get one-on-one tutoring with my teaching assistant.<sup>118</sup> The reinforcement of skills students receive in these one-on-one sessions increases their retention and understanding of the material.<sup>119</sup>

At a different level, teaching assistants can also provide emotional support for students who are frustrated by the Legal Methods professor's grades or bewildered by the professor's comments.<sup>120</sup> Having access to "additional emotional support during the uncertain first year of law school" is a tremendous benefit to new law students, because it decreases stress.<sup>121</sup> My current teaching assistant has done a tremendous job for me in deflecting frustrated students by helping them understand that my comments are meant to help them, because I want them to produce better work. Each time my teaching assistant calms students

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truly troubling the students, the professor can better tailor the course to meet student difficulties head-on." *Id.*

117. See Becker & Croskery-Roberts, *supra* note 114, at 274 (explaining the variety of tasks teaching assistants can perform).

118. *Id.* If your school has a writing center, students could be referred there as well. Because teaching assistants benefit students, Becker & Croskery-Roberts state that professors rely on them in numerous ways:

[I]ncluding (1) reviewing citation format; (2) conducting library tours; (3) holding office hours; (4) helping draft and proof assignments; (5) simulating client interviews or meetings with a senior attorney; (6) presiding over practice oral arguments; and (7) meeting individually with struggling students to provide additional guidance on legal writing and organization.

*Id.*

119. See *id.* at 282.

120. See Cheslik, *supra* note 115, at 411. In a survey by Julie M. Cheslik, examining the use of teaching assistants in legal research and writing courses, 94% of the respondents to the survey noted that emotional support was one of the benefits of using teaching assistants. *Id.* Further, "[b]ecause of their role as guides to those students desiring peer instruction, peer teachers build confidence and learn how to empathize with others." Herndon, *supra* note 57, at 819 (citing Becker & Croskery-Roberts, *supra* note 114, at 278; Topping, *supra* note 115, at 325).

121. Becker & Croskery-Roberts, *supra* note 114, at 282.

down, I am benefited because I do not need to spend time getting that student to a point where learning can occur.<sup>122</sup>

There are many ways to find good teaching assistants, including advertising the position and interviewing, asking other professors for recommendations, or approaching individual students a professor knows well and believes will work well with other students and with the professor.<sup>123</sup> I have tried all three ways of hiring and have learned that what works best for me is approaching students who I believe will make good teaching assistants and asking them if they would like to work with me. If I advertise and interview students for the job, I end up spending a lot of time talking to each student who is interested in the job and then following up with the rejection letters that all but one receive. Although I am confident that many professors can, and do, use this process effectively and efficiently, I have failed to do so because I particularly dislike disappointing students, and I take a great deal of time ensuring that everyone has received an equal opportunity.

Getting other professors' recommendations has also proven disappointing for me, because the personal relationship I like to have with my teaching assistant is lacking if I do not already know the student. Although it is not necessary to have a former student of mine as my teaching assistant, having worked with the student in the past in some capacity and having a genuine liking for the student, and the student for me, has proven invaluable. Teaching assistants that know, respect, and admire the professor are much more likely to speak up on the professor's behalf if the students are complaining. In addition, if the teaching assistants have recently completed Legal Methods, they have an "enhanced understanding of where students are struggling."<sup>124</sup> This perspective,

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122. *Id.* at 280. In addition, "some students may be afraid to speak directly to the professor (particularly when the student has a complaint), and a teaching assistant may provide the less formal mentoring function that allows a timid student to get the help he or she needs." *Id.* (citation omitted).

123. Cheslik, *supra* note 115, at 400. Professor Cheslik's survey also revealed that in most schools that use TAs, "the availability of TA positions is openly advertised to the student body." *Id.* 115 Certain students are typically encouraged to apply based on their success in the legal writing course. *Id.* Following the application process, students may be selected by either the director of the program or by professors independently selecting their own TAs. *Id.* at 401. Professor Cheslik discovered that "the process for final selection almost always includes a written application, often followed by an interview and solicitation of recommendations." *Id.*

124. Becker & Croskery-Roberts, *supra* note 114, at 282.

along with individualized tutoring, can increase current students' chances of success.<sup>125</sup>

When selecting a student for a position as my teaching assistant, I consider three variables: grades, personality and availability.<sup>126</sup> First, I always look for students who are at the top of the class, and if they are my former students, did especially well for me. I hire academically strong students because their grades establish credibility with the students they will be teaching. They also need to have done well in Legal Methods, because they need to be able to correctly answer students' questions. Because I like to hire the top of the class, I always hire my teaching assistants early, before other professors have snatched the strongest students as teaching assistants for their classes.

When considering personality, I look for students whose personalities will work well with me and with students of both genders and of varying ages. In determining the personality traits I thought teaching assistants would need in order to work well with me, I reflected on my own working style and decided that my teaching assistants, ideally, would be independent, flexible, enthusiastic, responsible, and calm. I like my teaching assistants to be independent so they can complete their work without me providing a constant direction each time students seek their help. I like them to be flexible, because I often have a lot of things going on in my classroom at one time, so the teaching assistants need to be able to adapt to a variety of students' needs. They must be enthusiastic about Legal Methods, because I want them to enjoy their work and feel driven to do it. Most importantly, I prefer my teaching assistants to be responsible and calm, because I need to know they will be there for my students and for me, and also will be able to remain composed when working with the occasional ruffled student.<sup>127</sup>

I prefer to hire students whom have not gone straight from college to law school, because they are usually better able to work with students who also have some work or life experience.<sup>128</sup> Stu-

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125. *Id.*

126. Cheslik, *supra* note 115, at 402. Professor Cheslik's survey revealed that, while there were few required characteristics for TAs sought in the application process, there was a general agreement as to desirable characteristics which include: (1) "strong interpersonal" skills; (2) "dedication or willingness to work;" (3) "good writing skills;" (4) "patience and kindness;" and (5) "desire to help others." *Id.*

127. *See supra* note 126 and accompanying text.

128. *But see* Cheslik, *supra* note 115, at 401 (noting that most schools used both second and third year students but that no age preference was apparent in the selection of TAs).

dents who have life experience sometimes have trouble receiving directions from less experienced students. Teaching assistants, even those with just a little work experience, tend to garner more respect from students who come into law school with experience of their own. I also try to find teaching assistants who will be able to work well with both male and female students. One year, I made the mistake of hiring a male student partially because I thought he would appeal to a group of male students who traditionally do not seek help from teaching assistants. This student loved sports and was well liked by his male peers. Although more of my male students did seek help from the teaching assistant that year, my female students were reluctant to do so, because many had a difficult time relating to his personality. Now, when I hire teaching assistants, I always observe who my teaching assistants are friends with and make sure that they will be considered approachable and credible by both genders.

Finally, before hiring, I consider the availability of the teaching assistants I want to take on. I like to have my teaching assistants come to class at least once a week, so I check that their schedules permit them to do so. I like them in class, because it makes them more familiar with the materials I am covering and it makes them more familiar to the students in class. I also occasionally call on my teaching assistants in class, because at times, students believe what they are saying more than they believe me. For example, students tend to believe the teaching assistants when they tell them to not wait until the last minute to complete an assignment, because the students know the teaching assistants have completed the same types of assignments.<sup>129</sup> Lastly, having them in class also provides a nice review for the teaching assistants and helps them hone their own skills even more.<sup>130</sup>

Using teaching assistants is a win-win proposition for professors, students who are hired as teaching assistants, and students

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129. Julia Glencer et al., *The Fruits of Hope: Student Evaluations*, 48 DUQ. L. REV. 233, 256 (2010) (noting that teaching assistants can serve as mentors and “can share their own past mistakes with new 1Ls, categorizing the errors as common and easily overcome”).

130. Cheslik, *supra* note 115, at 412; *see also* Herndon, *supra* note 57, at 818.

Peer teachers better learn the material, because they are required to prepare, organize, and present information to someone other than themselves. This review process creates new insights and a deeper understanding of the material. With these learning advantages also come increased mental engagement – a passive learner becomes an active learner. As such, that peer teaching benefits the student cognitively is also evident.

*Id.* (citing Becker & Croskery-Roberts, *supra* note 114, at 277-78).

who seek their help. For professors, teaching assistants free up time by answering students' questions and helping students learn some of the simpler Legal Methods skills. Teaching assistants do earn some money, but of greater significance are the skills they gain through working with other students on their researching and writing skills. The value teaching assistants provide to students is the greatest benefit. Teaching assistants provide yet one more resource for students to consult as they are learning the skills they need to succeed in Legal Methods.

### B. Commenting

Commenting on Legal Methods assignments is a deceptively intricate process because it requires professors to wear many hats, including those of a teacher, reader, and coach.<sup>131</sup> Commenting demands a great deal of patience, time, and thought to be accomplished skillfully. To successfully comment on an assignment, professors must focus not only on what is written and what students are trying to communicate, but they must also, in a professional and encouraging manner, provide guidance on how to improve the writing without serving as a copy editor for the students.<sup>132</sup>

To be done efficiently, commenting requires a large initial investment. Before commencing commenting on Legal Methods assignments, professors first need to determine the goals for commenting. Some obvious goals include providing feedback and instruction to students.<sup>133</sup> By writing comments, professors can point out problem areas and provide suggestions on ways to improve. Other goals may include building students' confidence in

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131. See Linda L. Berger, *A Reflective Rhetorical Model: The Legal Writing Teacher as Reader and Writer*, 6 J. LEGAL WRITING INST. 57, 63-64 (2000). Berger explains the New Rhetoric Theory and that writing teachers should "play more rhetorically appropriate roles, such as writing coach or representative reader, rather than only the role of gate-keeper." *Id.* at 64 (citing Janet Gebhart Auten, *A Rhetoric of Teacher Commentary: The Complexity of Response to Student Writing*, 4 FOCUSES 3, 11-12 (1991)).

132. Berger, *supra* note 131, at 63. Legal Methods professors' comments should be "designed to help students improve the next paper rather than to justify the grade given to this one." *Id.* (citation omitted).

133. See Daniel L. Barnett, *Triage in the Trenches of the Legal Writing Course: The Theory and Methodology of Analytical Critique*, 38 U. TOL.L. REV. 651, 654 (2007) [hereinafter Barnett 1] (describing the skills a teacher needs to provide effective feedback to students).

their writing by pointing out strengths,<sup>134</sup> or if peer editing is being used, providing editing opportunities to other students.<sup>135</sup>

1. *Commenting by Professors: How Much is Too Much?*

When I first started teaching Legal Methods, I felt the need to comment extensively on every single page my students wrote. If there was an error, nine times out of ten, I would point it out. In doing so, I was cognizant that my corrections may be overly discouraging to my students, so I would also make notations on the strengths I found in their work. Unfortunately, the extensive commenting often overwhelmed my students.<sup>136</sup> Realizing this problem, I pondered over whether I genuinely needed to comment on every strength and weakness and decided that I did not.<sup>137</sup> In an agonizing moment of self-discovery, I realized that I was commenting so fervently, in part to prove I was doing my job.<sup>138</sup> In a pathetic sort of way, the comments served to justify my existence in my students' lives and the grades they were earning.

Today, when I comment, I focus much more on truly helping my students become better writers, and I do so by providing less commentary on their work.<sup>139</sup> Instead of overwhelming my students, I try to spotlight three areas for improvement. These three

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134. See *id.* at 667 (discussing the importance of explaining the strengths of students' work).

135. Hill, *supra* note 101, at 669-70. "Through peer editing, professors provide students not only with immediate feedback, but also with an opportunity to improve their learning and develop working relationships with their peers." *Id.* at 669 (citing Susan M. Taylor, *Students as (Re)visionaries: Or, Revision, Revision, Revision*, 21 *TOURO L. REV.* 265, 282 (2005)). "By devoting time to structure a comprehensive and effective peer-editing exercise, professors will be rewarded as students improve their writing skills, increase their confidence levels, develop strong peer relationships, and perceive the writing process as a positive and useful experience." *Id.* at 669-70 (citing Ronald Barron, *What I Wish I Had Known About Peer-Response Groups but Didn't*, 80 *ENG. J.* 24, 34 (1991)).

136. See Barnett 1, *supra* note 133, at 654. "If the teacher is unable to prioritize the problems when critiquing the paper, the student will be unable to prioritize the issues that need to be addressed when rewriting the paper. The student will become overwhelmed." *Id.*

137. See *id.* "No teacher can, and no teacher should, attempt to deal with every problem when providing feedback on a student's paper." *Id.* (citation omitted).

138. *Id.* Professor Barnett points out that, "[l]imiting feedback is difficult for most novice writing teachers because new teachers feel like they are doing an inadequate job unless they comment on every problem they identify." *Id.* (citation omitted).

139. Professor Barnett suggests legal writing professors should "[t]riage." *Id.* Because the most important issues are analytical problems, "[m]ajor flaws in the student's understanding of the substantive legal ideas and how those misunderstandings affect organizational choices in the student's paper must be corrected before writing and stylistic problems can be effectively addressed." *Id.* at 654-55 (citing Jane Kent Gionfriddo, *The "Reasonable Zone of Right Answers": Analytical Feedback on Student Writing*, 40 *GONZ. L. REV.* 427, 428-30 (2005)).



areas give them concrete goals to work towards without making them feel as if they cannot succeed because there is too much work to be done. For example, if a student wrote a particularly strong counter-argument, but failed to originally develop a strong argument for the student's favored position, provide a rebuttal, or effectively draw a conclusion on the issue, I would highlight only these three areas for improvement, while still commenting on the strength of the counter-argument. If the student also struggled with citations and transitions, I would wait for a later assignment to begin working on these areas with the student. In essence, I now feature the larger issues first, and focus on the details only after the student shows improvement or becomes skilled at the fundamentals.

I also no longer comment every time I see an error repeated, and I change the nature of my comments as the academic year progresses. For example, instead of underlining the period after "id." every time it is missing, I underline it once, reference the citation rule, and instruct the student to fix the mistake throughout. In addition, as the year progresses and as students' writing improves, I spend less time commenting on citation and grammar. For instance, as I review the students' appellate briefs at the end of the spring semester, I comment on citation and grammar on only part of the brief. By this point in the year, students have already received extensive feedback from me on these areas. They should be aware of their weaknesses. Although I grade both areas throughout, I only comment on citation and grammar on the first five to six pages of the Argument section. How lightly or heavily these pages are marked provides students with ample feedback on these topics at the end of their first year of law school.

Commenting in this type of focused manner helps professors work more efficiently and also helps students understand their weaknesses without feeling deflated. Professors save time because they are writing fewer comments.<sup>140</sup> Students are not overwhelmed because they receive focused instruction on their problem areas. This less-equals-more approach to commenting helps professors and students organize their time and work.

Of course, when commenting, professors should take care to not accidentally mislead students into believing that areas that are not commented on are strong if the areas are not. Instead, professors

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140. See *id.* at 654. "[I]f the teacher attempts to address every problem in most student papers, the teacher also will be overwhelmed and quickly become exhausted." *Id.*

should provide an overall summary comment<sup>141</sup> to each student explaining that many skills are necessary to complete the writing assignment well and that the student's focus should be on the particular three skills indicated in the comments. The overall comment should also explain that as the work progresses, the focus of the work will most likely shift to other skills.<sup>142</sup> Professors can save time by including some generic statements in the overall comment that will be included in each summary as a starting point before mentioning the areas unique to each student.

## 2. *Electronic Commenting*

Along with using some generic, overall comments, using electronic commenting also can be a tremendous time saver for professors providing written feedback.<sup>143</sup> When commenting electronically, professors can create a common comments document that they can pull feedback from and place in student papers.<sup>144</sup> For exam-

141. Barnett 1, *supra* note 133, at 666.

The summary [comment] should provide an overall assessment of the paper and an approach for the student to rewrite it. The summary [comment] also should explain the teacher's general impression of the analysis in the draft, including the major strengths and weaknesses. The summary [comment] also should communicate the priority of the analytical problems.

*Id.* (citations omitted).

Further, on draft assignments, comments should focus on "analytical and organizational issues . . . and comments on basic writing should be made on the final paper." *Id.* at 657 (citations omitted). See also Daniel L. Barnett, "Form Ever Follows Function": Using Technology to Improve Feedback on Student Writing in Law School, 42 VAL. U. L. REV. 755, 760 (2008) [hereinafter Barnett 2].

In addition to the margin comments and editorial revisions, professors can handwrite longer summary comments at the end of different sections and the overall paper. The summary comments allow the professor to develop the ideas in the margin comments more fully and to provide an overall assessment of the student's writing. By providing the suggestions in a longer comment at the end of the section or the paper in addition to giving margin comments, the professor may be able to better explain the student's problem and, therefore, fully explain how the student should focus his efforts on the revision.

*Id.*

142. Thanks to Professor Sue Chesler from Sandra Day O'Connor School of Law for sharing a one-page feedback sheet with me listing ten skills that should be demonstrated by students in a small writing assignment, but teaching me to highlight only three of these areas for each student to work on for the next assignment.

143. See Barnett 2, *supra* note 141, at 757 (discussing how "adopting an electronic critique format c[an] help many professors be more proficient when providing comments on their students' writing."); Sarah E. Ricks, *Using Macros to Comment on Student Writing: A Little Technology Can Improve Consistency, Quality & Efficiency*, SECOND DRAFT, Dec. 2004, at 8, 8, reprinted in LAW TEACHER, Spring 2005, at 1, 1 (describing the use of macros to comment on student work).

144. Barnett 2, *supra* note 141, at 764-65; Ricks, *supra* note 143, at 8.

ple, students learning how to write counter-arguments often forget to include a rebuttal. A generic statement reading “Without a rebuttal, the reader may be confused or may think you are indecisive and did not really take a stand. Explain why the original position is stronger and defeats the counter-argument” can be typed once in a common comments document and then copied and pasted in every paper missing a rebuttal. To really save time, the professor could ask the school to invest in a second monitor for the professor for commenting purposes. Having a second monitor saves the professor from having to constantly switch from the common comments document to the student’s paper. Later, when the professor is working on scholarship, the second monitor is again a great time saver, because it allows the professor to keep the article open on one screen while being able to conduct research on the other screen.

### 3. *Commenting by Students: Peer Edits*

In peer editing exercises, students review each others’ written work and provide written feedback to one another.<sup>145</sup> Students can do an excellent job supplying feedback to each other, so long as they are given the proper amount of guidance, and the editing exercise is well structured.<sup>146</sup> The derived benefit of peer edits comes from not only receiving their colleagues’ comments, but also from the process of commenting. In a well-designed peer editing exercise, students gain as much from reviewing their colleagues’ work as they do from receiving their paper’s review, because they acquire a new perspective by serving as a reader-editor.<sup>147</sup> This new role helps them grasp the importance of explaining thoughts in a logical and complete manner.<sup>148</sup> Professors also benefit from peer

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145. Lissa Griffin, *Teaching Upperclass Writing: Everything You Always Wanted to Know but Were Afraid to Ask*, 34 GONZ. L. REV. 45, 72 (1999) (explaining that peer review is “the process through which students review each other’s work”).

146. Roberta K. Thyfault & Kathryn Fehrman, *Interactive Group Learning in the Legal Writing Classroom: An International Primer on Student Collaboration and Cooperation in Large Classrooms*, 3 J. MARSHALL L.J. 135, 155 (2009) (citing KATHY MAGONE, TECHNIQUES OF LAW TEACHING 245-53 (Gerald F. Hess & Steven I. Friedland eds., 1999)).

147. See Kirsten K. Davis, *Designing and Using Peer Review in a First-Year Legal Research and Writing Course*, 9 J. LEGAL WRITING INST. 1, 2 (2003). Professor Kirsten Davis explains that “the peer review experience can teach students writing, editing, and cooperation skills that they can apply in legal practice but that they may not learn through the student-teacher editing cycle.” *Id.*

148. See *id.* (noting that peer editing assists students in learning “to focus on the needs of their audience,” “reinforces students’ understanding of legal writing and analysis,” and

editing exercises, because they learn more about their students' editing skills, and they save time by not reviewing each page themselves.

To maximize the utility of the peer edit, professors should work to structure the assignment so each student receives feedback and each student has an opportunity to serve as a peer editor.<sup>149</sup> Detailed instructions assigning specific areas to review and mark should be provided by professors.<sup>150</sup> My editing instructions are typically as long, if not longer, than the actual assignment. I provide a lot of detail to keep students on track and to ensure that everything that I want commented on, is commented on. For example, instead of asking questions such as "does the paper start with a conclusion?" the instructions I use state something such as "circle the conclusion and underline the word 'because' in the conclusion. Note if the conclusion is not at the beginning of the paper. If the word 'because' is missing from the conclusion, write a comment on the side of the sentence stating 'because is missing.'"

Providing detailed instructions helps to educate students as they serve as editors, because they learn professors' expectations, and they also gain the unique perspective that only comes from serving as an audience for legal writing. Detailed instructions indicate to students that editing is not simply a proofread at the end. Rather, the instructions convey to students that editing is a major component of legal writing and needs to be given ample time to complete.<sup>151</sup> Specifying professors' expectations in an editing exercise also helps students see the reasons why Legal Methods professors demand such a high level of organization and explanation in their students' work. Without the structure and the explanation, the writing quickly falls apart, leaving the reader confused. Experiencing this confusion can be very eye-opening for students and help them become better editors of their own work.

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encourages students to think about how to "analyze and evaluate a legal problem and communicate that analysis").

149. *See id.* at 6. Professor Davis explains that she uses editing groups of three students to "give students the opportunity to read more than one memorandum and receive feedback from more than one student." *Id.*

150. *See id.* at 4 ("[E]diting guidelines needed to be clear, or the resulting feedback might be overly general ("good job") or miss important organizational and analytical problems by focusing only on smaller issues such as misspellings or punctuation errors").

151. *See generally* Berger, *supra* note 131, at 58 (describing the use of New Rhetoric theory in legal writing and emphasizing that legal writing is a "process of discovery that is messy, slow, tentative, and full of starts and stops").

I only use peer editing exercises on ungraded assignments<sup>152</sup> that students rewrite and I use to later conference with them. At the conferences, I require students to bring a copy of their student editor's review along with the latest draft.<sup>153</sup> Requiring both drafts serves two purposes. First, the drafts allow me to see how well the student's editor completed the peer edit. This information proves invaluable in letting me know how deftly students can follow written directions and can diagnose and communicate writing weaknesses to others. If the students are struggling, I know to revisit the topic for more instruction. Second, the drafts allow me to see how many revisions students made to their work after receiving the feedback but before conferencing with me. If the effort expended on revisions proves insufficient, I get a chance to further discuss the importance of the editing process.

I design the peer-editing exercise to take approximately an hour and a half of class time.<sup>154</sup> I prefer to have students complete the edit in class instead of outside of class for four reasons. First, the in-class nature ensures that all students who are present receive the benefits of editing a paper and also, of having their paper edited. If edits are done outside of class, professors run the risk that some students will not complete the exercise in a timely manner or will not put in the time the exercise deserves. Second, having peers review work in front of each other creates more thoughtful and constructive edits, because they are done in public. Having the author and the professor present while editing tends to cause students to take the responsibility of providing feedback more seriously and also tends to keep the tone of the edits constructive instead of critical.

Third, this public arena is more analogous to the legal environment. Rarely, do lawyers write for only one, private reader as law students do for a professor. Instead, lawyers' writings are typical-

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152. For graded assignments, I will sometimes use guided self-editing exercises in class. These do not have the advantage of students receiving feedback from others, but are very useful to help students appreciate my expectations for graded assignments before handing them in to me.

153. The lengthy explanation I provide is in a detailed handout which has questions for students to answer as they edit.

154. Professor Davis also sets a one and one-half hour time limit on peer editing in the classroom. Davis, *supra* note 147, at 5. Her reasons for performing the time-limited peer edit during class include: (1) "avoid[ing] concerns about onerous outside-of-class assignments or any perceived unfair competitive advantage;" (2) to "replicate the attention a memorandum might get from the audience for a memo in practice such as from a judge or a supervising attorney;" and (3) to give the students "a sense of the time pressures they will face in practice." *Id.* at 5-6.

ly read by other attorneys, clients, judges, and judicial clerks.<sup>155</sup> In-class peer edits help students appreciate the larger audience they will be writing for as lawyers.

Finally, the in-class nature of the assignment allows the professor to be available during the exercise to observe and to answer questions. Sometimes students' writings can be so confusing that the peer reviewer does not know how to proceed. Having the professor available in class helps keep the edits running smoothly when students encounter rough spots.

Peer edits are a real time saver for professors. Once the time has been invested in creating a strong, versatile peer-editing exercise, it can be reused each year. Once created, it saves the professor from preparing a lesson plan for an hour and a half of class. In addition, the professor does not have to review and comment on each of the students' drafts. Commenting is time consuming and is not needed for each writing assignment. When used on an ungraded paper which will be rewritten and resubmitted for the professor's review at a later date, the peer edit serves students better, as they learn about the editing process and improve their critical reading skills by critiquing others' work. Peer edits help professors be efficient with their time and help students gain a new perspective on editing that they would not have gleaned from passively receiving their professor's comments.

### C. Conferencing

#### 1. Conferencing *v.* Commenting

Legal Methods professors are divided over the use of conferencing in place of commenting on students' writing assignments.<sup>156</sup> Proponents of commenting over conferencing advocate that professors produce a more thorough and in-depth review when they prepare written critiques.<sup>157</sup> They argue that penned comments are superior, because students can continue to refer back to the com-

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155. Hill, *supra* note 101, at 674. "[P]eer review lets students improve their abilities to engage in critical thinking and legal analysis, and to become even more aware that legal professionals prepare documents for an actual audience, whether the audience is a colleague, opposing counsel, or a judge." *Id.* (citing Jo Anne Durako et al., *From Product to Process: Evolution of a Legal Writing Program*, 58 U. PITT. L. REV. 719, 731 (1997)).

156. See generally Barnett 2, *supra* note 141, at 755 (comparing different critique formats); see also Posting of Jan Levine, levinej@duq.edu, to LRWP-prof-L@listserv.iupui.edu (Oct. 9, 2010) (on file with author).

157. Barnett 2, *supra* note 141, at 758-62 (discussing the benefits and limitations of written comments).

ments long after any conference is complete.<sup>158</sup> For complex writing assignments, advocates of commenting ardently argue that providing students with take-away comments, albeit electronic, embedded audio electronic, or hand-written, is best because the sophistication of the writing demands that more time be spent reviewing it than could be done in a conference.<sup>159</sup>

Proponents of conferencing over commenting advocate the quick turn-around time for providing feedback and the level of sophistication the feedback can attain in a face-to-face meeting.<sup>160</sup> They argue that commenting takes too long and does not provide students with feedback quickly enough.<sup>161</sup> Conferencing, on the other hand, allows students to receive feedback much quicker and allows students to get their questions answered immediately and more thoroughly.<sup>162</sup> They argue that the substance of the feedback is greater in conferences, because students and professors can work through analytical problems, with the professors serving as a guide in a manner difficult to replicate on paper. Advocates of conferencing believe this to be a much more efficient process.

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158. *See id.* at 767 (“[S]ome students are unable to take accurate notes during the conference,” and, therefore, “students are not able to effectively use the feedback when rewriting the assignment.”). One possible solution that professors could utilize to overcome this concern is to record the conferences and then provide students with the recordings at the end of the conference.

159. Levine, *supra* note 156.

160. *See* Barnett 2, *supra* note 141, at 765-66 (discussing the benefits and limitations of live conferencing); *see also* Sheila Rodriguez, *Using Feedback Theory to Help Novice Legal Writers Develop Expertise*, 86 U. DET. MERCY L. REV. 207, 209 (2009) (noting that conferencing has “the potential to be the most effective means of helping students develop legal writing expertise”).

161. *See* Barnett 2, *supra* note 141, at 765-66. “Nor can a professor’s written feedback on student papers provide the valuable exchange of ideas between student and professor that occurs in a one-on-one dialogue.” Robin S. Wellford-Slocum, *The Law School Student-Faculty Conference: Towards a Transformative Learning Experience*, 45 S. TEX. L. REV. 255, 262-63 (2004).

162. Barnett 2, *supra* note 141, at 766. Professor Barnett explains that:

[I]n a live meeting with the student, the professor is able to ask exactly what the student was attempting to explain in the paper or ask why the student chose a certain way of articulating his ideas. The student’s response allows the professor to provide feedback to the actual problem, rather than reacting only to the words on the page.

In addition, the live conferencing approach provides the professor with an opportunity to fully explain her ideas to the student. Once the professor understands the student’s specific problems, she may more easily provide targeted and thorough guidance. This approach often results in more substantively sophisticated feedback and helps the student work his way through difficult analytical problems during the conference. Making progress on the substantive challenges during the conference helps students more successfully rewrite the assignment.

*Id.*

Both sides make strong arguments, and of course, conferences and commenting should be part of every Legal Methods course. I used to heavily rely on commenting and less so on conferencing. In recent years however, I have started to conference more and comment less on papers. I conference more because I believe that today's students, who mostly belong to the millennial generation,<sup>163</sup> prefer conferencing to commenting. The millennial generation does not like to learn through the traditional model of lofty and untouchable law professors bestowing knowledge upon humble students. The sage on the stage routine simply does not work well with them.<sup>164</sup> Rather, they prefer the guide on the side; to be part of a team, and to learn with their professors serving as partners.<sup>165</sup> This preference lends itself well to teaching through conferencing.

Conferencing is especially useful for students struggling with macro-level problems<sup>166</sup> and those who are engaging in erroneous reasoning, because professors can lead these students through a series of questions and check the students' understanding by the responses. Commenting on reasoning skills in writing is difficult to do successfully without simply giving away the answer. Although the Socratic Method can be used productively in com-

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163. The Millennials belong to the generation born between 1982 and the mid-2000s, while the previous generation, Generation X, are those born between 1962 and 1982. Susan K. McClellan, *Externships for Millennial Generation Law Students: Bridging the Generation Gap*, 15 CLINICAL L. REV. 255, 255-56 (2009) (citing NEIL HOWE & WILLIAM STRAUSS, MILLENNIALS RISING: THE NEXT GREAT GENERATION 10-12 (2000)). McClellan notes that "[u]nlike the Gen Xers, who generally prefer solo work, the Millennials like and understand the importance of teamwork." *Id.* at 261 (citing LISA ORRELL, MILLENNIALS INCORPORATED: THE BIG BUSINESS OF RECRUITING, MANAGING AND RETAINING NORTH AMERICA'S NEW GENERATION OF YOUNG PROFESSIONALS 45 (2007)). "In reaching their goals, these young people often enjoy working collaboratively as teams, an approach that requires regular and frequent communication. Even students who prefer to complete projects alone seem to thrive on technological interconnectivity." *Id.* at 265 (citing NEIL HOWE & WILLIAM STRAUSS, MILLENNIALS GO TO COLLEGE 66-69 (2003)).

164. For a more detailed explanation of sage on the stage in education, see Alison King, *From Sage on the Stage to Guide on the Side*, 41 C. TEACHING 30 (1993).

165. *Id.*

166. See Brian E. Harper & William Beasley, *Feedback Techniques that Improve Student Writing*, FACULTY FOCUS (Nov. 4, 2010), <http://www.facultyfocus.com/articles/teaching-and-learning/feedback-techniques-that-improve-student-writing/>. Dr. Harper and Dr. Beasley are professors in the Department of Curriculum and Instruction at Cleveland State University and they categorize students' writing problems as being either mechanical, micro-level, or macro-level. Mechanical errors involve spelling, grammar, and punctuation errors. Micro-level problems involve the structuring of ideas and macro-level problems involve reasoning. *Id.*



ments,<sup>167</sup> without the students' presence, a professor cannot gauge whether the student followed the path provided. The conference setting provides the professor the opportunity to engage in dialogue with the student and to verify understanding.

The conference setting also provides professors with the chance to emphasize what the real strengths and weaknesses are in the students' work. Sometimes students read comments and fixate on the mechanical problem, such as citation, when the true trouble is occurring with analytical reasoning at the macro-level, which is one of the most intricate areas to teach and to learn.<sup>168</sup> Students choose to preoccupy themselves with citation, because it has concrete answers and, for most, the material is easier to master. Reasoning skills, on the other hand, are complex and may seem to students to be out of their immediate ability to grasp. Conferences provide professors the chance to prioritize the areas more clearly and compassionately for students. Although professors can certainly provide lists and be encouraging in their written comments, professors' attitudes, even those of despair and frustration,<sup>169</sup> are often more accurately and genuinely conveyed face-to-face. Allowing students to watch the professor's reactions permits students to see how much the professor cares and is willing to help.<sup>170</sup>

Nonetheless, some students still prefer commenting, so the best practice may be to do both. On some assignments, I provide only written comments. On others, even when I conference, I will sometimes still provide students with written comments. For example, students get both comments and conference time when I conduct live critiques with my students, and I complete an evaluation sheet for them to take with them. I also write end comments<sup>171</sup> where I summarize in writing what we covered in the conference for them to use after the meeting.

Conferencing is often much less time demanding for professors than commenting. Individual conferences will not typically last

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167. Mary Kate Kearney & Mary Beth Beasley, *Teaching Students How to "Think Like Lawyers: Integrating Socratic Method with the Writing Process*, 64 TEMP. L. REV. 885 (1991).

168. Harper & Beasley, *supra* note 166.

169. At times, students' lack of effort can frustrate professors. Expression of this frustration, if done in a helpful and productive manner, can help students understand that they need to increase their effort. Observing a professor's reaction is more meaningful to most students than reading the professors' frustrated words, because the words at a conference are accompanied with posturing and facial reactions.

170. Harper & Beasley, *supra* note 166.

171. End comments are typically used at the end of a written critique. In conferences, a professor's penning of end comments can also signify the end of the conference.

more than an hour, and often are closer to forty-five minutes. Most Legal Methods writing assignments over four pages will take longer than forty-five minutes to review. On very weak papers, professors can struggle for hours attempting to understand what the student is trying to communicate and deciding what to write on the paper. Although professors still need to think carefully about what to communicate verbally during conferences, there is no need to spend all of that time trying to decipher the students' analysis. Instead, the professor can simply ask the student what was being communicated, explain that it was not done successfully, and help the student determine how to write it better next time.

## 2. *Group Conferences*

In group conferences, professors meet with the students in the class in small sets and discuss a particular project. Group conferences can be either review or feed-forward in nature. They can also be used to discuss work students are completing collaboratively or individually. For example, in a first-year Legal Methods course, I typically use the feed-forward format in group conferences to discuss the office memorandum and the appellate brief assignments with students as they individually draft each. I also use the review format to discuss motion memos the students drafted collaboratively.

In feed-forward conferences, I place students in groups of three to five and ask them a series of questions. For the office memorandum and the appellate brief conferences, the questions are designed to provide both me and the students with a check on the progress of their work. The questions are also designed to spark a conversation amongst the students in a safe environment, where their ideas can receive peer affirmation or rebuff and help further develop their analytical thinking.

In group review conferences where my students have drafted motion memorandums in teams of three,<sup>172</sup> I use the time to do a live critique and focus on improving their persuasive writing skills and their collaboration skills. At each conference, I ask them about the writing process and we discuss the success of their joint

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172. I experimented with the use of groups of two, but believe it is better to use three. If two students are paired together and one withdraws from the law school, the remaining student will not have the advantage of working with others without joining an already existing group.

work efforts, the challenges they faced working together, and how to structure future collaborative work assignments. I use the live critique format to allow them to observe my reaction to their writing, just as a judge would react to reading it in chambers. This allows them the chance to note where I had a difficult time understanding and where I was able to follow smoothly. If the different sections were drafted by different individuals, this provides an opportunity to discuss the importance of editing for a common voice and for using collaborative opportunities to learn from one another.

When implemented correctly, group conferences hold several advantages over individual conferences. First, the semi-public forum replicates a more realistic legal environment, particularly when the conferences are structured as meetings with the judge and opposing counsel. For example, for the appellate brief feed-forward conferences, I team two attorneys representing each side and have both sides convene, with me acting as a judge. In legal practice, an attorney would almost never meet with a judge without opposing counsel present, so this format is much more realistic in preparing students for practice. This format also allows students to hear opposing counsels' position, which should enable them to more readily anticipate arguments and further develop their reasoning skills.

Second, group conferences provide students with the opportunity to develop their verbal communication skills. Although law school classes generally attempt to engage students in rigorous verbal debates, because of the large size of many classes, not all students make use of the opportunity and some fail to hone their verbal communication skills.<sup>173</sup> Placing students in small groups provides them with the opportunity to express their legal reasoning verbally.<sup>174</sup> Because I use questions to call on each student several times throughout the conferences, even reluctant speakers participate.

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173. See Sarah E. Ricks, *Some Strategies to Teach Reluctant Talkers to Talk About Law*, 54 J. LEGAL EDUC. 570, 571-72 (2004) (discussing the various reasons why some students do not speak in class).

174. *Id.* at 574-75. Professor Ricks of Rutgers University School of Law-Camden, notes that using small groups within the classroom is likely to "encourage more balanced class participation." *Id.* at 573. She states that "[t]his technique institutionalizes the study group concept and encourages all students to do what some students do naturally: try out a response on a neighbor before stating it out loud to the entire class." *Id.* at 575.

Finally, the challenge of sharing ideas in groups fosters a greater sense of engagement in the process. Students do not want to be perceived by their peers as unprepared or uncommitted to their work,<sup>175</sup> and consequently, they invest more time preparing for conferences than they would when meeting with the professor alone. This stronger motivation to prepare for the conferences causes them to invest more time and thought in the process and leaves them with an enhanced understanding of the topic and their work.<sup>176</sup>

The time-savings benefit to professors is obvious. Holding group conferences can reduce the number of meetings professors need to schedule and conduct, to fewer than one half the number needed if individual conferences are held. This liberates a tremendous amount of time that can be invested in other activities, including writing.

A final word of caution: although group conferences are a valuable tool in professors' arsenals, they should not replace individual conferences. In order to most effectively teach, I use both types of conferences. Individual conferences remain relevant, because they allow professors to establish one-on-one working relationships with students. During individual meetings, professors have the opportunity to develop a rapport with students and to provide counsel at a level that is often not possible during group conferences.<sup>177</sup> In addition, students receive their professor's undivided attention and instruction and can ask questions they may not want to ask in front of their classmates.

### 3. *Sprint Conferences*

Sprint conferences are short conferences that are used to answer specific student questions.<sup>178</sup> They take less than ten mi-

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175. See Jolly-Ryan, *supra* note 61; see also *supra* note 106.

176. Some scholars report that this over-preparation for classes may cause students to "lose sight of their goals," and as a result, students "do not learn the material." *Id.* at 105 (citations omitted). Small group conferences, however, pose a less intimidating environment and students are likely to benefit from practicing their verbal skills in this situation.

177. Wellford-Slocum, *supra* note 161, at 257, 262-63. "In fact, the [individual] student conference has the potential to be the most effective forum for law professors to help students develop as legal thinkers and writers." *Id.* at 262.

178. Sprint conferences are not my idea. I first learned about them from a posting by Susan C. Wawrose to the Legal Writing Discussion listserv. Posting of Susan Wawrose, wawrose@udayton.edu, to LRWPROF-L@listserv.iupui.edu (Oct. 1, 2010)(on file with author). She credits the idea to Sarah Ricks. *Id.* In a posting to the Legal Writing Discussion listserv, Professor Ricks explained that the five-minute follow-up conferences serve several purposes, including conferencing with up to twenty students a day, helping students pri-

minutes and the agenda for the conferences is controlled by the students. They can be placed in the Methods curriculum in several places, but I believe they are most effective when they are used after a working relationship has been established with the students and after students have received some feedback on an assignment they are continuing to work on.

Sprint conferences are especially useful to students rewriting a paper they have already received feedback on. For example, if students are drafting a rule statement, followed by a revised rule statement and rule example, and then a complete analysis leading up to a full discussion section of an office memorandum, sprint conferences would work well after students have received extensive feedback on the analysis and are working on the full discussion. After working on an assignment for so long, students should have a lot fewer questions, and they should be able to articulate them readily. The questions that work best for sprint conferences are geared toward clarifying last-minute concerns or confusions.<sup>179</sup> Perhaps a student remains puzzled by a statement you made in class, during a conference, or in a written comment. These types of questions are very pointed and can be adeptly answered during a sprint conference.

The key to successfully managing sprint conferences is to adequately prepare the students and to run the conferences in a disciplined fashion. The concept of student responsibility must be conveyed clearly: this is not a conference where the professor has an agenda and leads the student through that agenda. The conference is not to be treated as an opportunity to network with the professor or to try to gain an edge over other students by asking open-ended questions. Students must arrive with specific questions to have answered<sup>180</sup> and must understand that once their time is up, the conference is over. One way to enforce these strict time limits is to pick a set amount of time that is less traditional, such as seven minutes, and to set a timer to go off when those seven minutes are up.<sup>181</sup>

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critize, building students' confidence so that they are "on the right track," and allowing her to get them on the right track if they are "going off on a tangent." Posting of Sarah Ricks, sricks@camden.rutgers.edu, to LRWPROF-L@listserv.iupui.edu (Apr. 22, 2011) (on file with author).

179. Wawrose, *supra* note 178.

180. See Laura P. Graham, grahamlp@wfu.edu, LRWPROF-L@listserv.iupui.edu (Apr. 22, 2011) (on file with author) (providing examples of specific questions).

181. Wawrose, *supra* note 178.

Sprint conferences provide a wonderful opening to discuss the importance of time management in attorneys' busy schedules. They provide an opportunity to discuss how attorneys need to keep track of hours and need to be mindful of the court's time. They also demonstrate how much can actually be accomplished in a short amount of time. I have observed that my students are frequently surprised by the amount we get done in the seven minutes we are together. I am often able to clear up their confusion in such a short time period because of all of the preparation they have done before the conference. By truly thinking about what they need to know from me, the students revisit and refine what they already know and their learning deepens.

The sprint conferences also encourage students to reflect on their work as they prepare for the conferences. By requiring students to bring specific questions for professors to answer, students need to deliberate on how they want to spend their conference time. Because the time is so limited, the conferences cause students to prioritize their questions. This helps to prepare them for practice, when they will have limited time to ask questions of their supervising attorneys. Furthermore, students need to be warned against running late; scheduling conferences back to back to encourage students to stay on schedule works well. The students should be told that they cannot have their entire time if they are late, because it would take away from the next student who is on time and waiting. This, too, helps to equip them with the time-management skills they will need for law practice.

The reasoning behind the time length should be shared with students.<sup>182</sup> They need to understand that these conferences are being done for their benefit so that they can get their last-minute questions answered. Sprint conferences should not replace longer conferences or extensive written feedback. The reason sprint conferences work better after students have received a great deal of feedback is because students should have already learned a great deal from the extensive help provided. They should have fewer questions and should be much less confused by this point in the assignment. If some students come in with many or no questions, they most likely are not where they should be on their assignments. This lack of preparation is rare, because the conferences

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182. *Id.* Professor Wawrose tells students "[t]hese quick conferences may seem brusque or abrupt. Please understand that when I say time is up, I am not kicking you out. I am giving someone else a chance to get their questions answered." *Id.*

should have encouraged students to get their work done before the due date so that they can take advantage of the sprint conferences.

At first glance, adding sprint conferences may appear to actually take time away from scholarship, because the conferences, regardless of length, are still one more teaching strategy for Methods professors to incorporate into the class. I have found, however, that in the long run, they save time, because they reduce student anxiety, and they are held when the professor is available and focused on helping students. Students will often panic right before an assignment is due.<sup>183</sup> This panic causes some students to repeatedly stop by, both during and not during office hours, to ask questions. The stress will also cause some students to e-mail questions that they should, and often do, know the answers to.<sup>184</sup> Students do this in search of last-minute reassurance before a major assignment is due.<sup>185</sup> Sprint conferences cut down on their unneeded angst and in turn, on the unneeded questions the angst causes.

The last-minute questions are all but eliminated for three reasons. First, students learn a great deal as they reflect on the feedback they received in preparation for the conferences. Second, students really do get their questions answered during the conferences. Third, students have a greater appreciation for their time and for their professor's time and are more reluctant to return to ask more questions unless there is a real need. Moreover, by scheduling conferences, professors remain in better control of their time and cut down on interruptions that occur when they could be writing. Writing anything intelligible is difficult when students stop by outside of office hours to ask questions. Because many, if not all, Methods professors put their students first, scholarship gets set aside. Sprint conferences help to cut down on these inter-

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183. Compare Suzanne Wilhelm, *Accommodating Mental Disabilities in Higher Education: A Practical Guide to ADA Requirements*, 32 J.L. & EDUC. 217, 224 (2003) (citing Lauren Wylonis & Edward Schweizer, *Mood and Anxiety Disorders*, in ACCOMMODATIONS IN HIGHER EDUCATION UNDER THE AMERICANS WITH DISABILITIES ACT 154, 157 (Michael Gordon & Shelby Keiser eds., 1998) ("Anxiety is an almost universal response to the test-taking situation.")), with James D. Gordon, *How Not to Succeed in Law School*, 100 YALE L.J. 1679, 1693 (1991) (discussing law students' panic around exam time).

184. I often impose a forty-eight or seventy-two hour cut-off time for questions before major assignments are due. I do this in part to help the students set schedules and to motivate them to get their work done early.

185. See Bridget A. Maloney, *Distress Among the Legal Profession: What Law Schools Can Do About It*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 307, 329 (2001) ("Some students just want to be told that everything will be okay and that they will survive.").

ruptions and to keep both students and professors focused on their writing when the time is right.

### III. PRODUCING SCHOLARSHIP

Leo Tolstoy is credited with the quote “[i]f you want to be happy, be.”<sup>186</sup> The same quote can be rewritten to apply to scholarship: “if you want to write, write.” The question that remains unanswered, of course, is “how?” Even after implementing teaching techniques to help students learn better and to carve out time for writing, the task of producing scholarship can still feel insurmountable. With adequate time and resources, however, the task can and should be done, because it leads to professors’ increased knowledge and effectiveness and helps the development of different areas of the law.<sup>187</sup>

A key to producing scholarship is to stop waiting for the perfect writing opportunity, because it may never come.<sup>188</sup> Having a month of time available to concentrate just on writing is a rarity for most professors, even over the summer. For some, having a single week or even a day to devote solely to writing is exceptional. Because of the shortage of large blocks of time, setting realistic schedules to write can be invaluable.<sup>189</sup> When I begin a new writ-

186. THE MACMILLAN DICTIONARY OF QUOTATIONS 245 (John Daintith et al. eds., 1989). The Macmillan Dictionary has the following attribution for the quote: “[i]f you want to be happy, be. Leo Tolstoy (1828-1910) Russian writer. Kosma Prutko.” *Id.* Kosma Prutko is an invented author whose aphorisms were not necessarily meant to be profound, but rather were meant to poke fun at Russian authors inventing aphorisms.

187. See Erwin Chemerinsky, *Foreword, Why Write?*, 107 MICH. L. REV. 881, 882-83 (2009).

[A]s legal academics, we write to add significant, original ideas to the analysis and understanding of the law; as people, we write to understand ourselves and the world in which we live. Ideally, scholarly writing offers insights that are useful to others, but at the very least, it helps the author understand an area better and clarify his or her thoughts. Frequently, that greater knowledge and understanding helps in teaching as well.

*Id.*; see also Linda H. Edwards, *A Writing Life*, 61 MERCER L. REV. 867, 868 (2010).

188. *Contra* Liemer, *supra* note 93, at 1007. I know of some colleagues that leave their homes and rent hotel rooms for an extended period of time to create the perfect writing environment.

189. Nancy Levit, *Scholarship Advice for New Law Professors in the Electronic Age*, 16 WIDENER L.J. 947, 962-63 (2007).

Many writers work well with a timetable: a self-set expectation of when they will have a thesis and outline crafted, when they will have a rough first draft, and when they expect to be able to send an article out for publication. Some writers ask colleagues to help them adhere to their timetable by seeing if a colleague will have the time to review an outline, a draft, or a portion of a draft on a certain date and then using that date as a due date. Other writers set page limits for themselves.



ing project, I start by examining my schedule and setting goals for how many words I can write a day and how many days I can write each week. At times, I have had the luxury of producing over a thousand words a day. At other times, however, that ambitious goal has been reduced to an embarrassing thousand words a week. Although one thousand words a week may seem so puny an amount that I should not even bother, the work adds up, and by the end of a summer I have an article written. The solution to not having enough time is simply to start writing, no matter how little time is available. Over time, just as pennies saved turn into dollars, a thousand words a week will turn into an article.

Instead of setting a daily word goal, some professors set aside a day each week, or part of a day several times a week, to concentrate on scholarship.<sup>190</sup> For example, some professors devote their non-teaching day, or set aside an hour on two or three mornings a week, to work on scholarship. Sticking to a weekly writing schedule requires a great deal of discipline. Professors who successfully use these writing schedules treat their scholarship time as sacrosanct, in a manner similar to how health enthusiasts treat their exercise time. They never allow distractions or other obligations to usurp their writing time.<sup>191</sup>

To keep on schedule, some professors will look to, or artificially create, motivators. The simple pressure to be the first voice on a time-sensitive topic will often provide enough motivation. Other times, however, additional or different inducements are needed. To keep myself motivated to write, I ask a colleague to act as my check-up person. The obligations of a check-up person are simply to accept an e-mail from me at the end of each week with my latest draft attached and to check-up on me if I do not send a draft. The check-up person does not actually need to read or even open the attachment I send. I am not looking to receive comments on my draft; rather, I am merely seeking peer pressure. If I do not send a draft, my colleague knows to check-up on me to find out why I have not submitted a draft. This artificially-created pres-

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*Id.* (citing Robert H. Abrams, *Sing Muse: Legal Scholarship for New Law Teachers*, 37 J. LEGAL EDUC. 1, 1 (1987)).

190. Levit, *supra* note 189, at 962-63. Levit noted that:

Perhaps the best advice is to simply set aside time for writing everyday or several days each week, as the teaching schedule permits, rather than waiting for the muse to visit: 'the actual creative writing process is not characterized by large leaps of genius and bursts of frantic activity but by a far more methodical routine.'

*Id.* (citing Abrams, *supra* note 189, at 1). See also Liemer, *supra* note 93, at 1011-12.

191. See Edwards, *supra* note 187, at 869.

sure keeps me writing in the same manner that a weekly weigh-in at a diet center can keep a dieter from over-eating. Similar to dieters who do not want others to think that they have broken their diets, I do not want my colleague to think I broke my schedule and am not writing.

The difficulty of not receiving adequate support for writing is not remedied by merely employing the suggested teaching techniques and is more difficult, but not impossible, to overcome. The first place to seek funding should be at the professor's employing law school. Ideally, law schools would fund all professors who wanted to write. Unfortunately, at some schools, professors who are not required to write as part of their job expectations are ineligible for research grants.<sup>192</sup> Even if money is not generally available, however, it never hurts to ask. I have heard of schools making exceptions for professors writing on topics that interest the school.

If funding is not available through the employing school, Legal Methods professors should consider applying for a research grant from the Legal Writing Institute or the Association of Legal Writing Directors.<sup>193</sup> Both organizations, along with LexisNexis, generously fund professors who want to write and who submit proposals the organizations believe will make strong contributions to legal scholarship.<sup>194</sup>

There are also several writing contests law professors can enter. For example, one writing competition available to legal scholars is the Warren E. Burger Writing Competition, sponsored by the Inns of Court.<sup>195</sup> This competition annually awards a monetary prize for an article promoting civility and professionalism in the legal profession.<sup>196</sup> It also includes publication of the article in the South Carolina Law Review,<sup>197</sup> saving the winning author the hassle of locating a journal to publish the article. Obtaining a finan-

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192. See Liemer, *supra* note 93, at 1013-15.

193. Awards, LEGAL WRITING INST., <http://www.lwionline.org/awards.html> (last visited July 31, 2011); Awards, ASS'N OF LEGAL WRITING DIRS., <http://www.alwd.org/awards.html> (last visited July 31, 2011).

194. Topics funded in 2011 include "Do Gender Differences Exist in Persuasive Legal Writing" by Sarah Morath and Ann Schiavone, "The Legal Estuary: A Study of the State Trial Law Clerk" by Christine Cerneglia, and "Importing Fiction Writing Process and Techniques to Enhance Legal Writing" by Pam Jenoff. Posting of Sarah Ricks, [sricks@camden.rutgers.edu](mailto:sricks@camden.rutgers.edu), to address of Listserv (May 3, 2011)(on file with author).

195. Warren E. Burger Prize, AM. INNS OF COURT, <http://www.innsforcourt.org/Content/Default.aspx?Id=309> (last visited on Aug. 17, 2011).

196. *Id.*

197. *Id.*; S.C. L. REV., <http://www.law.sc.edu/sclr/>.

cial award for writing after the fact is a bit riskier, because the article may not win; however, it does come with the additional benefit of receiving special recognition for writing a winning article in a competition.

A. *Scholarship for Professors with Contractual Obligations to Write*

Writing for job security<sup>198</sup> or promotion can greatly influence and even control the writing process. For many, the obligation of writing transforms the practice from one done for pure pleasure to one done for necessity. For example, before being placed on the tenure-track, one of the main reasons some authors write is for the satisfaction of writing. Without the obligation to write, external pressure to produce is not present. Once being placed on the tenure-track, writing obligations can take on an entirely new dimension. In addition to writing for the pleasure of it, tenure-track professors may need to produce to continue being employed.

The pressure that the rules of tenure and promotion exert on writing influence topic choice, timing, and length.<sup>199</sup> Tenure-track professors need to heedfully choose topics to write on, because they want to satisfy their employer's tenure guidelines and also provide the strongest placement opportunities.<sup>200</sup> For Legal Methods professors, these topics could be on legal writing, but also could be in other areas of interest. Methods professors will often develop interests in other areas, because the teaching of Methods requires professors to use substantive law in varied areas as vehicles for the teaching process. Because so many Legal Methods professors have developed specialized areas of interest by studying substantive law for use in Legal Methods, a best practice may be to ensure that tenure guidelines permit a large and varied choice of scholarly topics and do not limit Legal Methods professors to writing exclusively on Legal Methods.

Issues surrounding placement opportunities also become more important when writing to fulfill tenure and promotion obliga-

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198. Throughout this section of the article, I am referring to writing obligations for tenure, but some law schools require scholarship for other forms of job security or for promotion.

199. See generally Levit, *supra* note 189, at 949-60 (discussing the nature of legal scholarship and the importance of knowing your law school's promotion and tenure guidelines).

200. *Id.* at 949-50 (stating that law professors must "know the rules" for publication on the tenure track at their school, which may include quantitative and qualitative requirements).

tions. Tenure-track Legal Methods professors should try to unridle whether journal rankings impact the tenure process. Some schools may have “qualitative measurements that . . . depend on a number of factors including . . . a good journal placement.”<sup>201</sup> In addition, at some schools, depending on the mindset of the faculty, specialty journals may be considered more or less prestigious than primary law reviews.<sup>202</sup> Some consider them less prestigious, because the journals are secondary to the law school’s primary law review.<sup>203</sup> To others, the journals are more prestigious only if they have been established for a while and have a known reputation as being leaders in the field.<sup>204</sup> Regardless of which view is embraced at a law school, a tenure-track faculty member should understand the school’s view before accepting any publication offers.

The timing of writing is additionally affected. In a traditional, six-year tenure track, most schools want the professor to have at least two articles published by the end of the fifth year on the tenure-track.<sup>205</sup> Professors really should pace themselves to try to get something published at least every two years.<sup>206</sup> Not doing so

201. *Id.* at 950. Ranking measurements include the U.S News and World Report Rankings, the Washington and Lee Law Schools Ranking, and Brian Leiter’s Rankings. *Id.* at 975-78 (citing U.S. NEWS & WORLD REPORT, SCHOOLS OF LAW, AMERICA’S BEST GRADUATE SCHOOLS: 2007 59 (44th ed. 2006); *Law Journals: Submissions and Rankings*, WASH. & LEE U. SCH. L., <http://lawlib.wlu.edu/LJ/index.aspx> (last visted Mar. 17, 2007); Brian Leiter, *Faculty Quality Rankings: Scholarly Reputation, 2003-04*, BRIAN LEITER’S L. SCH. RANKINGS (2003), [http://www.leiterrankings.com/faculty/2003faculty\\_reputation.shtml](http://www.leiterrankings.com/faculty/2003faculty_reputation.shtml)).

202. *See id.* at 975-78.

People come up with their own hierarchies for law review placement, often interweaving general law reviews with specialty journals in their fields. A specialty journal from a higher-ranking school may be preferable placement over a general journal from a lower-ranking school in terms of prestige. . . . Talk to the people on your faculty and in your field about how they perceive the value of various different journals. Although this is outcome-oriented, it may be important to consider whether a particular placement may affect the ways various tenure audiences (such as tenure sub-committees, promotion and tenure committees, deans, and university promotion and tenure committees) will assess the value of the work.

*Id.* at 977-78.

203. *See id.*

204. Levit, *supra* note 189, at 975-78.

205. Devon W. Carbado & MituGulati, *Tenure*, 53 J. LEGAL EDUC. 157, 160 (2003) (stating that tenure requires “between two and four articles in roughly five years at most schools”).

206. The traditional windows for placement at most law schools occur in February and August. Professors need to be sensitive to these time periods, because law reviews tend to fill their volumes quickly during these months.

A very important consideration on most faculties—but one that is rarely spelled out in the governing rules—is the importance of a steady stream of publication (rather than the same amount of work done at the last minute). Tenuring bodies are looking for indications that candidates are interested in writing and will be produc-

risks not being able to get a satisfactory offer of publication in time for the final tenure review.

Finally, at many schools, the length of the article and the number of footnotes are considered.<sup>207</sup> Although these requirements are most likely not published, most schools want “significant scholarship contributions” made by the professor.<sup>208</sup> A best practice entails finding out what those page limits and footnote requirements are before writing and choosing a topic that enables the fulfillment of those requirements. A conundrum appears in the Legal Methods field, because conciseness is highly valued by Legal Methods professors and the notion of writing longer pieces may be antithetical to their beliefs. The key to writing longer pieces without sacrificing succinctness is to find a topic with the breadth necessary to lend itself to more writing without creating redundancies or droning.

### *B. Scholarship for Professors Without Contractual Obligations to Write*

During my first year of teaching Legal Methods, I worked with two casebook professors who encouraged me to write, even though I had no contractual obligation to produce scholarship.<sup>209</sup> They explained to me that writing would make me more valuable to the school, would help me attain future career goals, and would help me refine my analytical thinking and writing skills. My experiences that followed proved them to be correct.

#### *1. Shorter-Length Articles*

Perhaps the most helpful advice given to me when I started teaching at a law school was that I should strive to write publish-

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tive scholars over an academic lifetime. A last minute rush to meet a numeric quota before a tenure deadline is often considered negatively in the tenure decision. Levit, *supra* note 189, at 952.

207. See Carbado & Gulati, *supra* note 205, at 160 (noting that “criteria for promotion are purposely ambiguous” and “depend on a number of factors including: positive reads by the senior faculty members in her field, a good journal placement for the article, lots of citations, and approval from outside readers”). See also Edwards, *supra* note 187 at 871.

208. See Carbado & Gulati, *supra* note 205, at 160.

209. Thanks to Professor Randy Lee, who was one of the two professors who encouraged, and even pushed me, to write. At the time, he was organizing a law review symposium and invited me to write an article for the journal, no matter how long. He provided me with some advice that has proven invaluable to me.

able material, regardless of its length.<sup>210</sup> Any time a well-written article is published by a law professor, the law school's visibility is increased, and therefore, the administration of the law school is pleased.<sup>211</sup> Each article, regardless of its length, also provides an additional line on the professor's curriculum vitae, making the professor a more notable candidate to other potential employers.<sup>212</sup> Although shorter pieces may not provide as much of an opportunity to hone analytical skills, engaging in the writing process at any level furthers skills, because scholarly writing always requires thinking at a more sophisticated level.

Articles of a shorter length are ideal first forays into the realm of legal scholarship for Legal Methods professors, because they do not require as much of a time commitment. At the beginning of any teaching career, the lion's share of the professor's time must be devoted to teaching.<sup>213</sup> The professor needs to learn the material, create assignments and lesson plans that inspire students, and teach the necessary skills. The new professor also discovers how much work it really takes to put together a two-hour lesson plan or critique a twenty-page paper.<sup>214</sup> Thus, learning to teach in the first few years occupies most of the professor's time, because it is the primary obligation.

New professors may also feel that they cannot commit to writing a thirty-five page, two-hundred footnote article, because they do not feel ready to take a strong position on a topic or to make the commitment required to produce that type of scholarship. The expectations for shorter articles are different than longer articles. No one expects a short article to go into a great deal of depth on a

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210. Again, thanks to Professor Lee for this advice. In addition, some scholars note that "[t]he legal academy is experiencing a movement toward shorter pieces generally, including shorter articles . . . , essays, blogs, think pieces posted on the web, as well as collaborative encyclopedic ventures like Wikipedia." Levit, *supra* note 189, at 952 (citing Lawrence B. Solum, *Blogging and the Transformation of Legal Scholarship*, SOC. SCI. RES. NETWORK <http://papers.ssrn.com/abstract=898168> (last visited Apr. 6, 2012)).

211. See generally Chemerinsky, *supra* note 187, at 882 (discussing the emphasis universities place on faculty scholarship).

212. See *id.* at 881-82 (noting that many faculty members "write to advance their careers").

213. See generally Susan J. Becker, *Advice for the New Law Professor: A View from the Trenches*, 42 J. LEGAL EDUC. 432 (1992) (discussing the "sink-or-swim test which all new professors endure" and providing advice on how to prepare).

214. See Barnett 1, *supra* note 133, at 654 (providing advice for critiquing student work and noting that novice legal writing professors have a more difficult time limiting feedback).

topic.<sup>215</sup> Rather, shorter articles typically present new ideas on a topic that do not need as much analysis or explanation.<sup>216</sup> So long as there are no job requirements commanding the level of work needed for longer articles, shorter articles are ideal starting places, because they allow professors to form initial thoughts on a topic that can later be developed further into longer articles. The shorter articles serve as starting places.<sup>217</sup> No one typically expects them to be the author's last word or final stand on the topic.

There are several venues for Legal Methods professors to have shorter articles published. For example, the Legal Writing Institute produces an electronic newsletter entitled "The Second Draft" which publishes articles focused on teaching Legal Methods,<sup>218</sup> West publishes "Perspectives," another newsletter dedicated to publishing smaller pieces concerning Legal Methods;<sup>219</sup> and the Institute for Law Teaching and Learning publishes "The Law Teacher," a newsletter focused on law teaching.<sup>220</sup> In addition, many of the Association of American Law School sections publish newsletters and routinely seek contributions from law professors,<sup>221</sup> and the American Bar Association and most state bar asso-

215. See generally Levit, *supra* note 189, at 947 (discussing the nature of legal scholarship); Douglas A. Berman, *Scholarship in Action: The Power, Possibilities, and Pitfalls for Law Professor Blogs*, 84 WASH. U. L. REV. 1043 (2006) (discussing the nature of legal blogs).

216. See Levit, *supra* note 189, at 953 (noting that shorter works are "a means of more rapidly disseminating . . . ideas"); see also Berman, *supra* note 215, at 1049 ("Blogs not only provide a medium to express smaller ideas, but also usefully encourage law professors to think seriously about which ideas justify seventy-five pages and which might only need 750 words.").

217. See Levit, *supra* note 189, at 953-54.

Many people will fully develop an article idea in a major piece—with a conscious choice of methodology and a vetting of drafts—and then almost contemporaneously promote the ideas in that piece in separate op-eds, book reviews, or blogs. These are actually complementary ways of disseminating ideas: the shorter spins of ideas become good promotional marketing for the more developed treatment.

*Id.* See also Berman, *supra* note 215, at 1049.

218. *The Second Draft*, LEGAL WRITING INST., [http://www.lwionline.org/the\\_second\\_draft.html](http://www.lwionline.org/the_second_draft.html) (last visited Aug. 23, 2011).

219. *Perspectives: Teaching Legal Research and Writing*, WEST, <http://west.thomson.com/journal/perspectives> (last visited Aug. 23, 2011).

220. *The Law Teacher*, INST. FOR L. TEACHING & LEARNING, <http://lawteaching.org/lawteacher/> (last visited Aug. 23, 2011).

221. See generally ASS'N AM. L.SCHS., <http://www.aals.org/> (last visited Aug. 23, 2011). Some examples of sections offering publication include: Section on Academic Support Newsletter, Section on Aging and the Law Newsletter, Section on Balance in Legal Education Newsletter, and Section on Legal Writing, Reasoning and Research Newsletter. To access the various sections, go to <http://www.aals.org/>, click on "Services" and then click on "Sections."

ciations produce magazines that welcome contributions from law professors.<sup>222</sup>

Although it can be difficult to do, Legal Methods professors can also successfully place shorter articles in traditional law reviews. With the advent of electronic submission sites such as ExpressO, submitting articles to many law reviews at one time is easier than ever.<sup>223</sup> Instead of creating separate mailings to only a handful of schools, now law professors can submit their articles to hundreds of journals in a fraction of the time.

Although electronic submission has simplified the submission process, it has also greatly increased the competition. Law review editors now receive an astonishing number of submissions each February and August.<sup>224</sup> As a result, having shorter articles chosen for publication in traditional law reviews has become a more competitive process. Many law reviews will have only one, if any, slots for a shorter article.<sup>225</sup>

Another venue to consider is electronic journals, where a shorter length may not be as much of a consideration or may even be de-

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222. See generally AM. B.ASS'N, <http://www.americanbar.org/aba.html> (last visited Aug. 23, 2011). The ABA publishes various magazines, newsletters and journals. To access publications, go to [http://www.americanbar.org/publications\\_cle/publications.html](http://www.americanbar.org/publications_cle/publications.html). Some magazine titles include: *ABA Journal*, *Human Rights*, and *Litigation News*. *Id.* Some newsletter titles include: *Communications Lawyer*, *Construct!*, and *The Young Lawyer*. *Id.* The journal titles include: *The International Lawyer*, *The Journal of Labor & Employment Law*, and *The Urban Lawyer*. *Id.*

223. ExpressO is an electronic site that can submit articles to over 750 law reviews and journals. See EXPRESSO, [www.law.bepress.com/expresso](http://www.law.bepress.com/expresso) (last visited Aug. 23, 2011).

224. February and August are the typical months that law reviews accept submissions. In one study, several editors from “the Top 50 law schools reported that they received between 1,500 and 2,000 articles per year.” Leah M. Christensen & Julie A. Oseid, *Navigating the Law Review Article Selection Process: An Empirical Study of Those with All the Power—Student Editors*, 59 S.C. L. REV. 175, 203-04 (2007). One top twenty-five law school received a total of 2219 articles for its 2006 volume. *Id.* at 205. One editor from a top fifty law journal reported:

When I first became a Lead Articles Editor, I planned to read each article thoroughly before making a decision on that article. That, however, proved unrealistic as my inbox overflowed with submissions. I gave the articles as much time as I could; however, the first few pages (especially the thesis statement), the roadmap paragraphs of each section, and the conclusion of each article became my focal points.

*Id.* (quoted response from an editor to question eleven of the survey and is on file with the authors of the study).

225. See David B. McGinty, *Writing for a Student-Edited U.S. Law Review: A Guide for Non-U.S. and ESL Legal Scholars*, 7 N.Y. CITY L. REV. 39, 43-44 (2004) (discussing the types of scholarly works law reviews publish). See also Michael L. Closten & Robert J. Dzie-lak, *The History and Influence of the Law Review Institution*, 30 AKRON L. REV. 15, 18 (1996) (noting that “the lead article still dominates the pages of American Law Reviews” but that shorter articles have “gained genuine acceptance and a permanent place in the law reviews”).



sirable.<sup>226</sup> For example, the Green Bag is an electronic publication specializing in articles containing less than five thousand words and fifty footnotes.<sup>227</sup> There are also many prestigious law reviews that now publish electronic journals, in addition to their print journals, and will consider both longer and shorter pieces.

Although placement for shorter articles may not be as much of a challenge, because of the many options now available, choosing a topic to write about can still be especially difficult for newer professors. At times, it seems that everything worth writing has already been written.<sup>228</sup> Three ways to work around this stumbling block are to answer a call for submissions, write an article that is a regular feature of a publication, or write a book review. Many publications will routinely issue calls for submissions on specific topics. New professors can find these calls for submissions on the legal writing list serve or by visiting the websites of specific publications.<sup>229</sup> Often times, these calls for submissions can serve as starting points for writing topics. For example, a call for submissions on organizational principles can lead professors to ideas on writing about (1) the evolution and growth of IRAC, (2) the explanation of how to use puzzles to teach structure, or (3) how best not to teach organization. A little time devoted to thinking about a specific topic and considering what can be said and how best to say it can lead to wonderful contributions to legal scholarship.

Some publications solicit contributions for regular columns. For example, "The Law Teacher" routinely publishes a column called "Why I Teach."<sup>230</sup> This type of writing opportunity can be especially useful to less experienced professors, because it provides a chance for reflection on teaching ideals at a time when teaching philosophies are forming. In addition, the *Journal of Legal Education*, published by the American Bar Association, regularly runs

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226. See, e.g., *Journal of Law and Technology*, U. RICHMOND SCH. L., <http://jolt.richmond.edu/> (last visited Aug. 23, 2011); *Journal of Military and Veteran Law*, WILLIAM & MARY L. SCH., <http://wmpeople.wm.edu/site/page/militarylaw/jmvl> (last visited Aug. 23, 2011); *Widener Journal of Law, Economics and Race*, WIDENER U. SCH. L., <http://blogs.law.widener.edu/wjler/> (last visited Aug. 23, 2011). For a discussion of Electronic Law Journals, see Caroline Christiansen, *Electronic Law Journals*, 30 INT'L J. LEGAL INFO. 337 (2002).

227. See GREEN BAG, <http://www.greenbag.org> (last visited Aug. 23, 2011).

228. Kevin Hopkins, *Cultivating our Emerging Voices: The Road to Scholarship*, 20 B.C. THIRD WORLD L.J. 77, 79 (2000) ("[O]ne of the biggest roadblocks in developing scholarship can be as simple as the choice of a topic.").

229. *Id.* (identifying ways to find topics).

230. *The Law Teacher*, INST. FOR TEACHING & LEARNING L., <http://lawteaching.org/lawteacher/> (last visited Aug. 23, 2011).

articles on “At the Lectern,” which focuses on teaching ideas or experiences.<sup>231</sup> Taking the time to focus on teaching at the beginning of an academic career can greatly enhance teaching, because it calls for reflection and a sophisticated thought process, as the professor chooses a topic and considers how best to communicate his or her thoughts in writing.

Finally, book reviews can make great first articles and are published by many law reviews. The University of Michigan devotes an entire volume each year just to book reviews.<sup>232</sup> Prior to devoting time to writing a book review, professors should write a letter of inquiry to potential publishers to learn if there is any interest in their topic. Professors should also read a few book reviews published in the law reviews to get a sense of what has been accepted for publication in the past. For example, many law reviews have a rule that they will only publish book reviews on books that are in their first edition and have been out for less than two years.<sup>233</sup>

## 2. *Co-authored Articles*

Writing an article with a colleague who has been published can be a worthwhile experience for new legal scholars. Professors with publishing experience can be helpful by serving as mentors and providing guidance throughout the process.<sup>234</sup> The guidance an experienced professor provides can also help relieve some of the anxiety new scholars experience by demystifying the experience and explaining what will happen throughout the process.<sup>235</sup>

When co-authoring an article, the process that will be followed needs to be established from the beginning. Decisions that should be resolved are similar to what students must decide when they collaborate on a writing project.<sup>236</sup> First, the academicians must decide how to divide up the work. There are two common ways of doing so. One way is to have each author responsible for different

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231. *At the Lectern*, AM. B.ASS'N, [http://www.abajournal.com/blawg/At\\_the\\_Lectern1/](http://www.abajournal.com/blawg/At_the_Lectern1/) (last visited Aug. 23, 2011).

232. *Michigan Law Review*, U. MICH. L. SCH., <http://www.michiganlawreview.org/information/about> (last visited Aug. 23, 2011).

233. *Id.* at <http://www.michiganlawreview.org/information/submissions/book-reviews>.

234. Christian C. Day, *In Search of the Read Footnote: Techniques for Writing Legal Scholarship and Having It Published*, 6 J. LEGAL WRITING INST. 229, 246 (2000) (“Co-authors can prod, provide excellent thoughts, share the wealth and the pain, refine the dross, and keep you on a time table.”).

235. *See id.*

236. *See Zimmerman, supra* note 58, at 1010-12 (discussing the student roles within the group).

sections and also responsible for overall editing. The other common method that works well is to have some authors primarily responsible for the writing with another author responsible for the editing. Both methods work, so long as there is one author who is ultimately responsible for ensuring a common voice is being used throughout.<sup>237</sup>

After deciding how to divvy up responsibilities, professors should decide on a schedule and set deadlines. Dates that need to be established include when first drafts will be completed, when edits will be completed, when the article will be sent to outside readers, and when it will be submitted to law reviews for consideration. Expectations regarding the firmness or flexibility of these dates should be decided and adhered to as much as possible.

What template to use in writing the article is another decision that needs to be made.<sup>238</sup> For example, the authors need to decide what word program, font, spacing, and style will be used. If this is not done, a time-consuming mess might be created when the different parts of the document are combined. Editing the final version will be much easier if a common template is created from the start.

Some minor considerations will also need to be resolved along the way. One consideration is who will serve as lead author. In most circumstances, the more experienced professor should serve as the lead author for three reasons. First, the senior professor's curriculum vitae will have some publications listed on it and will, therefore, be more attractive to law review editors. Generally, law review editors prefer to work with professors whom others have wanted to publish and who are known and tested producers.<sup>239</sup> Placing the senior person's name first on the byline will prompt law review editors to review that curriculum vitae before viewing any others. The editors are more likely to continue considering the piece if they are satisfied by what is included in the first curriculum vitae they review.<sup>240</sup> Second, the senior professor will probably be investing a great deal of time mentoring, refining, and get-

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237. See generally J. Christopher Rideout, *Voice, Self, and Persona in Legal Writing*, 15 J. LEGAL WRITING INST. 67 (2009) (discussing voice in legal writing).

238. See Dave Fagundes, *Interview with a Law Review Submissions Editor*, PRAWFSBLAWG.COM, (May 26, 2011, 9:18AM), <http://prawfsblawg.blogs.com/prawfsblawg/2011/05/engstrom-interview.html> (stating that formatting can make a small difference in determining what articles to accept for publication).

239. *Id.*

240. *Id.*

ting the article placed. Allowing the professor the prestige of being first author acknowledges the level of work put in by that professor. Finally, the position of lead author signifies a level of respect and appreciation to the professor. Most likely, the professor took a chance working with an inexperienced writer. Allowing them the spot of lead author expresses respect and gratitude.

By working with someone else, the daunting writing and placement process becomes demystified. Most times, new scholars gain an appreciation of how much work it truly is to produce and publish an article. By going through the process, they gain an understanding of how much time is needed and what steps need to be completed to publish quality scholarship. They also gain a publication line on their curriculum vitae, making them more attractive to other law reviews for their future publications.

#### IV. CONCLUSION

Requiring professors to be both teachers and scholars<sup>241</sup> is standard fare to a large percentage of the legal academy, but new to Legal Methods professors who have traditionally focused mainly on teaching. The additional scholarship obligations provide Legal Methods professors with the prospect of playing larger roles at their law schools and in further developing their own evolving discipline.<sup>242</sup> In order to make a significant contribution to legal scholarship, however, they must find ways to work efficiently as classroom teachers without sacrificing their commitment to high quality teaching. Optimally, teaching will be positively impacted as professors focus on creating ways to teach more effectively and efficiently so they have more opportunities to write. In turn, the analytical, organizational, and writing skills that are developed while engaging in scholarship will further enhance their teaching. At its best, this two-pronged focus to Legal Methods professors' responsibilities will enrich the teaching, the scholarship, and the discipline of Legal Methods.

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241. Marin Roger Scordato, *The Dualist Model of Legal Teaching and Scholarship*, 40 AM. U. L. REV. 367, 372 (1990) (challenging the dualist model as being a distraction from "the development or the improvement of law school courses").

242. See Margolis & DeJarnatt, *supra* note 30, at 94.