

MOVING BEYOND PRODUCT TO PROCESS: BUILDING A BETTER LRW PROGRAM

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I. INTRODUCTION

These are exciting times to be teachers and scholars of legal writing. Over the last twenty years, most law schools have developed formal legal research and writing programs (“LRW”),¹ and there has been a gradual shift towards the use of professional writing teachers in these programs.² We are finally gaining respect and professional status within the academic community.³ There has been a proliferation of legal

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1. See David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 U. KAN. L. REV. 105, 134-35 & n.183 (2003) (discussing the importance of legal writing courses and the LRW field’s reluctant acceptance into the law school curriculum).

2. See Kristin B. Gerdy, *Continuing Development: A Snapshot of Legal Research and Writing Programs Through the Lens of the 2002 LWI and ALWD Survey*, 9 LEGAL WRITING: J. LEGAL WRITING INST. 227, 235-36 (2003) (reporting that the majority of legal writing programs use full-time professors and that the percentage of programs which cap the number of years an professor can remain in the position has steadily dropped from its high in 1999); Kristin B. Gerdy & Toni Berres-Paul, *Association of Legal Writing Directors, Legal Writing Institute 2004 Survey Results*, at iv (2004), available at <http://www.alwd.org> (follow “ALWD/LWI Survey” hyperlink; then follow “2004 ALWD/LWI Survey Report” hyperlink) (showing 91% of responding schools have no cap); 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, 119-29 (2003-2004).

3. See Liemer & Levine, *supra* note 2, at 127. Despite this growth in

writing scholarship in the last fifteen years, and much of that scholarship has centered on the pedagogy of legal writing.⁴ Although problems of status and disrespect remain, we are established enough to be able to think more deliberately about the context and theory that support the teaching that has been our primary focus. This article offers solutions to some of the challenges that have constrained the growth of legal writing, problems that perennially arise in LRW pedagogy that our improved status allows us to address. We will address the common challenges that surface in structuring a LRW program and discuss how to maximize student learning. Part II of this article reviews the recent history and progress of LRW as a discipline. In Part III, we will review the Temple University School of Law LRW program in detail to demonstrate how we have resolved many of these issues. In Part IV, we will highlight those aspects of our program that are different from many other LRW programs and suggest why our methods resolve certain pedagogical dilemmas and are consistent with current theories on teaching writing and helping students enter the discourse community of lawyers.

II. BACKGROUND

In spite of the positive developments, legal writing is still in its infancy as a discipline. Although some law schools recognized the need for legal writing instruction as early as the 1950s,⁵ few law schools offered a separate legal writing

stature, LRW professionals continue to face obstacles to full membership in the academic community. For a detailed analysis of the discrimination, status, and respect issues that continue to plague the predominantly female field of LRW, see generally Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools' Dirty Little Secrets*, 16 BERKELEY WOMEN'S L.J. 1 (2001) [hereinafter Stanchi & Levine, *Secrets*]; Kathryn M. Stanchi & Jan M. Levine, *Women, Writing & Wages: Breaking the Last Taboo*, 7 WM. & MARY J. WOMEN & L. 551 (2001) [hereinafter Stanchi & Levine, *Taboo*].

4. See Terrill Pollman, *Building a Tower of Babel or Building a Discipline? Talking about Legal Writing*, 85 MARQ. L. REV. 887, 887 (2002) (asserting that "legal writing has emerged as an area of serious study . . . in the last fifteen years"). See also Stanchi & Levine, *Secrets*, *supra* note 3, at 23 n.98 (reviewing bibliographies of legal writing scholarship).

5. See Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117, 133-34 (1997) (canvassing the history of legal writing courses).

course before the 1980s.⁶ Initially, these programs were staffed by recent law school graduates or upper-division students.⁷ The duration of many positions was capped to limit the time a legal writing professor could remain in the job.⁸ The shift to full-time, professional teachers of legal writing has been gradual.⁹ Because we, as full-time, long-term professionals, have not been at this very long, we are still figuring out the best way to teach our subject.

There is little dispute about the goal of law school legal research and writing programs. Legal writing is supposed to ensure a basic level of analytic competence while bringing all law students, if possible, into the discourse community of law.¹⁰ In other words, the primary goal of a LRW course is “to teach students to think, write, and speak like a lawyer.”¹¹ Specifically, most first-year LRW programs try to teach legal research, problem solving through the use of legal analysis and reasoning, clear expression in drafting the types of documents students will draft as lawyers, and self-sufficiency in employing all of these skills.¹² The way these skills are taught varies tremendously among law schools.¹³

The structure and content of many legal writing

6. Pollman, *supra* note 4, at 894.

7. Arrigo, *supra* note 5, at 132-35; see Romantz, *supra* note 1, at 133-36.

8. Arrigo, *supra* note 5, at 131-35; Pollman, *supra* note 4, at 912-13; Stanchi & Levine, *Taboo*, *supra* note 3, at 554-56; Jan M. Levine, *Legal Research and Writing: What Schools Are Doing and Who Is Doing the Teaching*, 7 SCRIBES J. LEGAL WRITING 51, 55-58 (2000) [hereinafter Levine, *Legal Research*].

9. See Gerdy, *supra* note 2, at 235 (“In 2002, most American legal writing programs used full-time, nontenure-track teachers (76 or 50%), a hybrid staffing model (41 or 27%), or adjuncts (21 or 16%).”); Jill J. Ramsfield, *Legal Writing in the Twenty-First Century: A Sharper Image*, 2 LEGAL WRITING: J. LEGAL WRITING INST. 1, 12-16 (1996) (stating that, in 1994, 63% of law schools had five or more full-time legal writing instructors); Levine, *Legal Research*, *supra* note 8, at 55 (describing how, in 1999-2000, 66% of all law schools used full-time legal writing instructors).

10. See RALPH L. BRILL ET AL., AM. BAR ASSOC., SOURCEBOOK ON LEGAL WRITING PROGRAMS 5-8 (1997). See Susan L. DeJarnatt, *Law Talk: Speaking, Writing, and Entering the Discourse of the Law*, 40 DUQ. L. REV. 489, 506-14 (2000) (discussing law school as a discourse community and the importance of legal writing courses).

11. BRILL ET AL., *supra* note 10, at 5.

12. *Id.* at 5-8.

13. See Gerdy, *supra* note 2, at 242 (“The techniques, philosophies, and objectives of legal writing programs are as varied as the professionals who teach them”); Gerdy & Berres-Paul, *supra* note 2, at 6-14 (reporting the multitude of teaching methods and curricula).

programs were developed when programs were staffed primarily by teachers with low status, low pay, greater teaching responsibilities, and little or no support for scholarship.¹⁴ It is no surprise that under these circumstances many teachers focused almost exclusively on their teaching, on just keeping up with the immediate needs of their students.¹⁵ LRW professors' status has left little time for reflection or exploration.¹⁶ Many professors today still build their pedagogy on history—what has been done traditionally at their institution—and what advice comes their way from colleagues. In writing about teachers of composition¹⁷ at the undergraduate level, Stephen M. North

14. See Romantz, *supra* note 1, at 131-36 (commenting that the contemporary view of legal writing courses is that of the “neglected orphan” and that legal writing professors are seen as “second-class members” of the profession (quoting Jack Achtenberg, *Legal Writing and Research: The Neglected Orphan of the First Year*, 29 U. MIAMI L. REV. 218 (1975))); Jan M. Levine, *Voices in the Wilderness: Tenured and Tenure-Track Directors and Teachers in Legal Research and Writing Programs*, 45 J. LEGAL EDUC. 530 (1995); Arrigo, *supra* note 5, at 144-48 (describing the low status, pay, and security of legal writing instructors); Stanchi & Levine, *Secrets*, *supra* note 3, at 4-5 (arguing that, despite certain advances, “[t]he legal writing course, which requires intensive labor . . . is taught by faculty accorded the lowest status in the institution. Almost all of them are severely underpaid, and many of them are discouraged from (or forbidden from) teaching at the school for very long.”). The 2004 ALWD Survey shows that approximately half of the LRW non-director faculty have titles that distinguished them from the doctrinal faculty, have less attractive offices, are not expected or encouraged to produce scholarship, and have an average student load of 45, requiring the instructor to read and critique 1,554 pages of student work, and hold 48 hours of conferences. Gerdy & Berres-Paul, *supra* note 2, at v, vi, 29-30, 49-50.

15. High class enrollment meant that reading and critiquing papers alone more than exhausted the teachers' time. See Arrigo, *supra* note 5, at 133-34.

16. Sue Liemer, *The Quest for Scholarship: The Legal Writing Professor's Paradox*, 80 OR. L. REV. 1007, 1021 (2001). Professor Liemer points out that lack of financial support for scholarship and high teaching loads make it particularly difficult for LRW professors to engage in scholarship. *Id.* at 1013-21. See also Arrigo, *supra* note 5, at 167 (describing many legal writing professors' efforts to write as “prohibitively costly, both financially and personally”).

17. Composition and LRW share strikingly similar histories as disciplines and in their relationships with their larger academic communities—the university and the law school. Compare Mike Rose, *The Language of Exclusion: Writing Instruction at the University*, 47.4 C. ENG. 341-59 (1985), reprinted in CROSS-TALK IN COMP THEORY 547 (Victor Villanueva, ed., 2d ed. 2003) [hereinafter CROSS-TALK] (asserting that universities lower the status of undergraduate composition and writing classes by labeling them remedial instead of viewing them more appropriately as a means of initiating students into academic discourse), and Susan Miller, *The Feminization of Composition*, in THE POLITICS OF WRITING INSTRUCTION 39 (Richard Bullock & John Trimbur

describes the composition practitioner's pedagogy as built on lore.¹⁸ North also notes that, although some lore is written down, the practitioner community "is primarily an oral culture Whatever the value of ritual or writing, lore is manifested most often, and most fully, in the more ephemeral medium of the spoken word."¹⁹ Like composition teachers, LRW teachers too have relied mostly on talk—we talk to our teaching colleagues, we talk to our LRW colleagues at conferences and through listserves.²⁰ In this way, programs have been built and changed incrementally, with national

eds., 1991) (discussing the interplay between the lower status of composition professors and the high percentage of women teachers), with J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 44-45 (1994) (discussing how traditional views of teaching legal writing have contributed to the field's struggle), and Jan M. Levine, *Leveling the Hill of Sisypheus: Becoming a Professor of Legal Writing*, 26 FLA. ST. U. L. REV. 1067, 1067-71 (1999) (describing legal writing's segregation from the mainstream curriculum of law). Maureen Arrigo has also examined these similarities. See Arrigo, *supra* note 5, at 152-55 (examining why the teaching of writing, particularly legal writing, is dominated by women).

18. STEPHEN M. NORTH, *THE MAKING OF KNOWLEDGE IN COMPOSITION: PORTRAIT OF AN EMERGING FIELD* 27 (1987). North's affectionate description of practitioner lore rings true for many of us:

I like to think of it in architectural terms, The House of Lore, as it were: a rambling, to my mind delightful old manse, wing branching off from wing, addition tacked to addition, in all sorts of materials—brick, wood, canvas, sheet metal, cardboard—with turrets and gables, minarets and spires, spiral staircases, rope ladders, pitons, dungeons, secret passageways—all seemingly random, yet all connected. Each generation of Practitioners inherits this pile from the one before, is ushered around some of what there is, and then, in its turn, adds on its own touches. Naturally, the structure is huge, sprawling. There are, after all, no provisions for tearing any of it down.

Id.

19. *Id.* at 32.

20. Professors of legal writing convene at the bi-annual Legal Writing Institute Conference, as well as at the annual meeting of the American Association of Law Schools and occasional regional conferences. For information on these conferences, visit Legal Writing Inst., Activities, <http://www.lwionline.org/activities/conferences.asp> (last visited Nov. 10, 2005); Ass'n of Am. Law Sch., AALS Annual Meetings, <http://www.aals.org/am/index.html> (last visited Nov. 10, 2005) (representative e-mails on file with the Santa Clara Law Review). In addition, two listserves, LEGWRI-L for all legal writing professionals and DIRCON for directors of legal writing programs, facilitate communication among instructors of LRW. These listserves and others are available at Jurist Legal News & Research, Univ. of Pittsburgh Law Sch., Legal Research and Writing, http://jurist.law.pitt.edu/sg_resch.htm (last visited Nov. 10, 2005); Legal Writing Inst., Resources, <http://lwionline.org/resources/listserves.asp> (last visited Nov. 10, 2005) (representative e-mails on file with the Santa Clara Law Review).

trends, but without consensus on the “best” way to teach our subject.²¹

In the past two decades or so, LRW has undergone a pedagogical revolution that has shifted our emphasis from the product of writing to the process of writing.²² In the former, product view, LRW teaching tended to focus solely on the product produced—what scholars have called the “current-traditional” or “formalist” approach.²³ Under this approach, the professor would typically show the students a model of a particular legal document, present a new assignment, and review the final product for error-free prose and clarity.²⁴ The professor did not engage with the students in the process of analysis, assuming that the thinking process was completed before the writing process began.²⁵ This method of teaching often failed to produce good legal writing.²⁶

Influenced by composition and rhetoric theory, LRW scholars began to advocate for a focus on the process of analysis and writing, instead of limiting their role to merely correcting errors.²⁷ This approach recognizes that it is through the process of analyzing and writing that a student

21. See Gerdy, *supra* note 2, at 252 (concluding that legal writing professionals using and learning from survey results account for the significant strides made in the industry); Gerdy & Berres-Paul, *supra* note 2, at 6-14 (detailing different curricula and teaching methods).

22. Jo Anne Durako et al., *From Product to Process: Evolution of a Legal Writing Program*, 58 U. PITT. L. REV. 719-20 (1997).

23. See, e.g., Elizabeth Fajans & Mary R. Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts*, 78 CORNELL L. REV. 163, 173-74 (1993) (discussing the current-traditional method); Rideout & Ramsfield, *supra* note 17, at 49-51 (describing the formalist perspective).

24. See Pollman, *supra* note 4, at 896-98 (discussing how the traditional methods focused on learning conventional forms and attention to detail).

25. See *id.* (describing how early approaches did not teach students *how* to express and engage in legal analysis).

26. Fajans & Falk, *supra* note 23, at 174; Durako et al., *supra* note 22, at 719.

27. See, e.g., Linda L. Berger, *Applying New Rhetoric to Legal Discourse: The Ebb and Flow of Reader and Writer, Text and Context*, 49 J. LEGAL EDUC. 155 (1999) (advocating the use of New Rhetoric composition theory in LRW pedagogy); Fajans & Falk, *supra* note 23, at 174-79 (comparing the process method with the formalist approach); Jessie C. Grearson, *Teaching the Transitions*, 4 LEGAL WRITING: J. LEGAL WRITING INST. 57, 62-64 (1998) (analyzing the writing professor's role in the process method); Teresa Godwin Phelps, *The New Legal Rhetoric*, 40 SW. L.J. 1089, 1094-98 (1986) (discussing the needed trend toward the teaching of the process of legal writing); Rideout & Ramsfield, *supra* note 17, at 51-56 (describing the evolution of the process method).

constructs meaning.²⁸ LRW became a course about legal analysis—how to critically analyze legal problems and, most importantly, how to convey the analysis to others in writing, as lawyers are called upon to do in their work.²⁹ Rather than merely correcting papers after they were written, LRW professors began to intervene in the writing process, giving substantial attention to individual students' drafts through critiques and conferences on work in progress.³⁰ We now recognize that we are teaching students to write, not merely correcting the writing mistakes they have already made.

Many LRW programs have incorporated at least some elements of process-based teaching,³¹ though formalism remains central in some LRW classrooms.³² Many common pedagogical choices still grow out of the older view—not just the product emphasis, but also the era when LRW instructors were replaced every few years and were constantly faced with reinventing the wheel.

28. See DeJarnatt, *supra* note 10, at 502-03 (noting “the importance of writing as a process of making meaning”); Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 NEB. L. REV. 561, 566 (1997) (describing how the process approach recognizes that writing is a way to generate, as well as, convey knowledge).

29. Not surprisingly, this shift from product to process was instrumental in moving LRW from the periphery to the center of legal education. Starting in the mid-1980s, law schools began offering more substantial LRW programs. See Pollman, *supra* note 4, at 896 (noting how the legal profession's emerging time constraints required students to graduate with practical training). This also likely began the gradual transition to full-time, professional teachers of LRW. See Grearson, *supra* note 27, at 63-64 (discussing how the process method's intensive teaching demands and the ensuing discourse among professors about the process resulted in a new cohesiveness among members of the profession).

30. See Mary Beth Beazley, *The Self-Graded Draft: Teaching Students to Revise Using Guided Self-Critique*, 3 LEGAL WRITING: J. LEGAL INST. 175, 176-77 (1997) (explaining a method of student self-grading critiques developed through feedback from student-teacher writing conferences); Durako et al., *supra* note 22, at 722-23 (discussing the steps and goals of the process); Kristin B. Gerdy, *Teacher, Coach, Cheerleader, and Judge: Promoting Learning Through Learner-Centered Assessment*, 94 LAW LIBR. J. 59, 78-83 (2002) (describing effective feedback strategies in teaching legal research); Gerald F. Hess, *Principle 3: Good Practice Encourages Active Learning*, 49 J. LEGAL EDUC. 401, 410 (1999) (detailing methods and benefits of group feedback in writing process); Robin S. Wellford-Slocum, *The Law School Student-Faculty Conference: Towards a Transformative Learning Experience*, 45 S. TEX. L. REV. 255, 256-57 (2004) (emphasizing the importance of the “one-on-one exchange[]” between writing professor and student when learning effective legal writing).

31. See Durako et al., *supra* note 22, at 720.

32. Pollman, *supra* note 4, at 897.

III. THE TEMPLE PROGRAM³³

On the surface, the structure of Temple's program seems familiar, but a closer look will reveal that it differs greatly from the traditional writing program in several ways. The crucial factors in students' learning how to do real-world quality research and writing in the law school setting are the total integration of research and writing, coupled with a high degree of teacher feedback.³⁴ All instruction is done through the vehicle of the assignments. In Temple's program, students fully research and write each assignment in a real-world practice context. Through working on problems presented by clients and communicating their analysis in writing, students learn the skills of legal research, legal analysis, written communication, and citation. Each successive assignment requires the students to reuse the skills learned (or attempted) in the prior assignments, and reinforces the understanding of the techniques in a recursive loop.³⁵ All of the assignments require analysis of statutes and cases and research in primary and secondary sources.

A. *Fall Semester*

The fall semester introduces students to basic legal

33. All credit for the Temple LRW program structure must go to Jan Levine, who began developing this program at the University of Arkansas and brought it with him to Temple in 1996. See *Introduction to this Diskette and Suggestions for Using the Assignments*, in JAN M. LEVINE WITH KATHRYN SAMPSON, ANALYTICAL ASSIGNMENTS FOR INTEGRATING LEGAL RESEARCH AND WRITING 1 (Adams & Ambrose Publishing 1996). When Professor Levine and four other full-time professors (the two authors of this article, Kathryn Stanchi, also of Temple, and Michael Smith, now at Mercer Law School) began the Temple program in 1996, all had used facets of the structure or had wanted to employ these techniques in the programs where they had taught previously. The Temple Program's General Course Materials, used by all of the Legal Writing Program faculty, reflect this structure and pedagogy. See JAN M. LEVINE, LEGAL RESEARCH & WRITING I: COURSE MATERIALS (Temple Univ. Beasley Sch. of Law, Fall 2004) [hereinafter LEVINE, COURSE MATERIALS] (on file with authors).

34. We recognize at the outset that we are able to have such a rigorous program because of the nature of the LRW positions at Temple and because we have the strong support of our faculty and administration. The LRW program is staffed by a combination of full-time teachers on long-term contracts, graduate fellows receiving an LL.M. in teaching, and adjuncts teaching in the evening division. Class size is limited to no more than 30-35 students per full-time teacher. The LRW course is graded and given an adequate number of credit hours. See *infra* text accompanying notes 172-73, 180-83.

35. LEVINE, COURSE MATERIALS, *supra* note 33, at 2.

research and analysis in the context of predictive writing. Temple students start the first-year LRW course even before they arrive at law school. Over the summer, they are sent excerpts from their research and writing texts.³⁶ When they arrive at school, they begin LRW during orientation week.³⁷ Students have six hours of LRW class that week, the equivalent of three weeks of regular classes. The first assignment is distributed the first week.³⁸ The assignment requires the students to research and write a memorandum of law addressing the client's problem.

The first assignment is a simple problem with a clear solution.³⁹ The students must find one or two crucial cases on point (they may also use other related cases, as their research is not artificially limited), and one or more statutes (which may be relevant but not dispositive). They must also consult several secondary sources. The primary goal of the assignment is to introduce students to library research, but we also intend the assignment to teach analytical skills, such as the simple application of rules to facts or drawing an analogy between precedent and new facts. Classroom instruction during orientation week focuses on understanding the factual scenario and developing a research plan. To promote the development of a critical view of supplied information and to reduce the students' tendency to parrot a well-crafted fact statement, the assignments are presented as

36. Although all Temple LRW faculty are free to choose their own texts, currently all professors use the same books. The research text is AMY E. SLOAN, *BASIC LEGAL RESEARCH: TOOLS AND STRATEGIES* (2d ed. 2003). The writing text is RICHARD K. NEUMANN, JR., *LEGAL REASONING AND LEGAL WRITING: STRUCTURE, STRATEGY, AND STYLE* (4th ed. 2001). In the spring semester, several professors add MARY BETH BEAZLEY, *A PRACTICAL GUIDE TO APPELLATE ADVOCACY* (2002), which focuses on persuasive writing.

37. See LEVINE, *COURSE MATERIALS*, *supra* note 33, at 1. Along with LRW, students also begin their Legal Decisionmaking ("LDM") course during orientation. LDM is a legal process course in which students learn the basics of judicial, legislative, and administrative law-making, as well as the interaction between these branches. Both LRW and LDM run for the length of the fall semester. *Id.*

38. *Id.*

39. The full-time faculty members design their own assignments with the broad programmatic goals in mind. Each assignment differs slightly in the skills emphasized, but all are designed to teach basic skills to novice legal writers. Because the assignments are complex and carefully designed, we re-use them from year to year. See *infra* notes 174-79 for a discussion of re-using assignments.

excerpts from client interviews instead of as memoranda from a senior partner to a junior partner, which is a typical format for LRW assignments.⁴⁰ The students and professor discuss the fact pattern and collectively come up with descriptive words to guide their research efforts in the library. The professors guide the students in guessing at the governing legal principles, speculating about the “answer,” and identifying the kinds of authorities, primary and secondary, they will look for. Because the fact pattern is something topical and familiar,⁴¹ the students often have a very good idea of the results and reasoning involved in the assignment, even without any legal training.

Through the process of analyzing the client’s situation and developing a research plan,⁴² the professor instructs the students in the techniques of legal research. During class, the students and professor review the ways they can research the assignments and the relationships among the different research tools. Students are also taught about techniques for updating and cross-checking their research. For this first assignment, students are required to use print sources for their research.⁴³ By the end of the second or third class of orientation week, students are equipped to venture into the library and begin researching their client’s problem.

We assign the students to research in teams of three for the first assignment because the trip to the library is made less frightening this way, and the students can often help

40. See Lorraine Bannai et al., *Sailing Through Designing Memo Assignments*, 5 LEGAL WRITING: J. LEGAL WRITING INST. 193, 211 (1999) (noting that interview fact presentation should be reserved for later memos when students are better at identifying key facts); Jan M. Levine, *Designing Assignments for Teaching Legal Analysis, Research and Writing*, 3 PERSP.: TEACHING LEGAL RES. & WRITING 58, 61 (1995) [hereinafter Levine, *Designing Assignments*] (stating that though the interview fact presentation better develops students’ skills, the narrative method still prevails); Rideout & Ramsfield, *supra* note 17, at 86 (discussing the benefits of treating memo assignments as if from a supervising attorney or partner to a new associate).

41. For example, one problem requires the students to evaluate whether a trade school student loan will be dischargeable in a consumer bankruptcy. Another requires the students to predict whether the courts will recognize a tort claim where a woman has learned that a former lover knowingly failed to disclose that he had a sexually transmittable disease.

42. The research text is heavily emphasized during orientation week classes. Professor Sloan’s flowcharts and guidance on developing a research plan are invaluable in this process. See SLOAN, *supra* note 36, ch. 11.

43. LEVINE, COURSE MATERIALS, *supra* note 33, at 16-17.

each other as they each pick up on different aspects of the research process.⁴⁴ Each professor tries to spend several hours in the library when the students are conducting their research, providing individual instruction to the groups as they run into snags. By the beginning of the first regular week of classes, the students have completed their research on the first assignment and, most likely, have found the relevant sources needed to write the memorandum.

To aid in the research process, each professor prepares a set of questions designed to direct the student teams to the materials relevant for the assignment. Each student team must submit a research report that includes their research plan and recounts their efforts, answers the questions, and contains the citations to the authorities the team members believe are relevant.⁴⁵ In class, we debrief the students about their research efforts, provide the citations for the authorities essential for drafting the memorandum,⁴⁶ ask them what strategies worked and what did not, and answer their general research questions.

The students then have one or two weeks to draft their memoranda, which are typically five to six pages long. In class, the professor and students collectively identify the key

44. Both composition and LRW scholars have noted the value for students to practice the discourse of the knowledge community they are entering and that student conversation and working together will help them model the discourse and deepen their understanding of it and its audience. See Andrea A. Lunsford, *Cognitive Development and the Basic Writer*, 41.1 C. ENG. 449-59 (1979), reprinted in *CROSS-TALK*, *supra* note 17, at 303 (“The best way to move students into conceptualization and analytic and synthetic modes of thought is to create assignments and activities which allow students to practice or exercise themselves in these modes continuously.”); DeJarnatt, *supra* note 10, at 513-17 (discussing the application of social constructivist theory, which emphasizes the lawyer’s function within the community, to legal writing instruction through peer group discussion).

45. There is great variability in the techniques that Temple LRW faculty members employ to teach citation. Some provide separate citation exercises and spend time in class going over citation rules. Others assign relevant portions of the ALWD CITATION MANUAL, ASS’N OF LEGAL WRITING DIRS. & DARBY DICKERSON, ALWD CITATION MANUAL: A PROFESSIONAL SYSTEM OF CITATION (2d ed. 2003), and address citation through individual feedback on student drafts.

46. Although it is not a closed universe assignment (one in which students are limited in the authority they may use), the first assignment is intentionally designed so that a limited range of authorities address the problem, and therefore the students will end up using virtually the same sources, or at least a common core of authority. It is our experience that the vast majority of students have already found these sources by the time we provide the citations.

facts, draft the Question Presented, and work on an outline for the memorandum's Discussion of Authority. After the students turn in the memoranda, the professor provides detailed written feedback on each individual memorandum and meets with each student to discuss the comments.⁴⁷

For the second assignment, the students revise the first memorandum and expand it to cover an additional issue requiring further research.⁴⁸ For example, the assignment might add a state law question to a federal problem or provide additional facts that change the nature of the problem.⁴⁹ For this assignment, students do their research individually. We introduce computer-assisted legal research during this period, but limit student access on WESTLAW and LEXIS to updating cases and retrieval of cases and statutes.⁵⁰

Class during this time focuses on the research and analysis of the new issue. New concepts such as synthesis of a legal standard or in-depth counter-analysis are introduced in the context of the problem. Together, students and professor work on integrating various writing skills into the drafting of the memorandum. Once this assignment is submitted, the professor provides detailed written feedback on both the revised initial assignment and the additional analysis. Students are not required to rewrite this assignment.

The most complex problem is presented both as the fall semester's final memorandum assignment and as the spring semester's appellate brief assignment.⁵¹ Half of the students in each section are assigned to represent opposing parties, and two or more sections use the same problem, so that both sides are represented in each section during each semester.⁵²

47. LEVINE, COURSE MATERIALS, *supra* note 33, at 3.

48. *Id.*

49. Over the course of the semester, we strive to make sure that students are exposed to both state and federal research. Each professor accomplishes this in a different way. For example, some of us use a federal problem for the first two assignments and a state problem for the third assignment. Others use a mix in the first two, and then either a state or federal for the third.

50. LEVINE, COURSE MATERIALS, *supra* note 33, at 16-17. We permit use of CD-ROM retrieval systems for secondary sources or statutory materials, but do not permit Boolean searches on full-text case or statutory databases until the spring. *Id.*

51. *Id.* at 3.

52. *See id.* For this assignment, a full-time LRW professor usually

The final memorandum assignment is intentionally vague and requires more complex analysis and a more complex organizational structure. Students must conduct the research for this assignment on their own. They are also expected to write more independently, but class instruction focuses on the issues on which the students are working. For example, a class might focus on statutory interpretation, using the statutes in the assignment to identify ambiguities and possible interpretations that would affect the outcome of the problem. In a class on Questions Presented, students might review their work in progress, in workshop format, to see whether their questions adequately present the issues raised in the assignment. The students complete and submit interim assignments such as a list of authorities based on their research, a draft of the Questions Presented, and a partial draft of the Discussion of Authority. The professor provides written feedback on the drafts and meets with each student individually before the final memorandum is submitted.

The fall semester grade is based entirely on the final draft of the final memorandum,⁵³ much as grades for other classes are based on the final examination. Progress, improvement over the course of the semester, and the quality of the earlier submissions are not taken into account. Students must, however, complete all assignments to the professor's satisfaction in order to pass the course.⁵⁴ The extensive written feedback students receive on the assignments leading up to the final memorandum, as well as conferences with the professor, allow the students to have a sense of how they are doing and to focus on the learning process, rather than the grade.

B. Spring Semester

The spring semester focuses on advocacy, building on the objective analysis and writing skills the students developed in the fall. The final problem from the fall is developed into an

collaborates with one of the graduate teaching fellows so that a novice teacher does not have to develop such a complex and difficult problem. The professor and fellow teach the same problem to their respective sections with the fellow observing and learning from the full-time professor.

53. *Id.* at 3.

54. *Id.* at 13-14.

appellate record, and students represent the other side, writing an appellate brief and making an oral argument before a panel of judges. In the spring semester, students switch client allegiances and represent the “other party.” This requires them to argue against their own conclusion from the fall memorandum.⁵⁵ The switch in client allegiance results in the first-year students gaining insight into how a client’s identity influences an attorney’s supposedly objective view of the law, reinforces the students’ understanding of the differences between objective and persuasive writing (and their choice of voice in writing), and allows the students to think more deeply about the issues and to conduct follow-up research. As in the fall, the assignment is the vehicle through which the professor teaches persuasive writing techniques and analysis. The students submit drafts of the Question Presented and point headings, a draft of the argument, and of the facts. Each student has an individual conference with her professor.⁵⁶ As in the fall, the grade is based on the final draft of the appellate brief.⁵⁷

While it is difficult to measure success in concrete terms, we believe the Temple LRW program is highly successful. Course evaluations consistently show students enjoy the course and recognize that the rigorous approach pays off.⁵⁸ Students frequently report back to us that they felt competent and equipped to handle the assignments given to them in their summer jobs. Likewise, we frequently hear from the Philadelphia practice community, our students’ primary employers, that Temple students come to them ready to “hit the ground running” and that their research and writing skills are impressive.⁵⁹ We believe this is due, in

55. Because the memorandum is predictive and the issue so close, not all students predict their client will prevail. Those students that reach a negative prediction will find themselves arguing for their fall conclusion. Some professors actually assign students based on their predictions, forcing them all to argue against the conclusion they reached in the fall.

56. See *infra* notes 103-04 and accompanying text for a discussion of the role of conferences.

57. For a small number of students, their final grade is adjusted up one level (i.e., from B to B+) for an outstanding oral argument.

58. Copies of the course evaluations are on file with the authors.

59. Temple’s LRW program was ranked fifth in the country in the 2005 specialty rankings by U.S. News and World Report, the first year that legal writing was included as a specialty category. Temple Univ. James E. Beasley Sch. of Law, *Temple Has the Write Stuff* (May 10, 2005),

large part, to the unique features of our program that have moved beyond the traditional LRW approach.

IV. DISTINCTIVE FEATURES OF THE TEMPLE PROGRAM

While the broad strokes of the Temple LRW program are similar to traditional legal writing programs, there are some important ways in which we have moved away from some of the typical pedagogical choices developed under less than ideal circumstances.⁶⁰ The most significant of these is the full integration of all aspects of research and writing. Historically, research was taught as a separate course or as an isolated unit at the beginning of an LRW course.⁶¹ It is still quite common for research to be taught through independent exercises unrelated to a writing assignment.⁶² Likewise, many programs assign small, discrete writing assignments at the beginning of the semester, rather than complete memoranda.⁶³ One of the most unique aspects of the Temple program is that all assignments include open-ended research leading to a full memorandum or appellate brief.⁶⁴

The early, intensive orientation week classes are another

http://www.law.temple.edu/servlet/com.rnci.products.PublishNow.RetrieveSingleArticle?serv=templelawdb&db=templelaw&site=TempleLaw§ion=news_maincontent&article=39&part=2. Temple students have won numerous local and national writing awards, including top awards in the Justice Ruth Bader Ginsburg Writing Competition in 2003 and 2004, the ABA Business Writing competition in 2004, *id.*, the ABA Section of Real Property, Probate and Trust Law's 2005 student writing contest, Temple Univ. James E. Beasley Sch. of Law, *Craig Kaufman Wins ABA Writing Contest*, http://www.law.temple.edu/servlet/com.rnci.products.PublishNow.RetrieveSingleArticle?serv=templelawdb&db=templelaw&site=TempleLaw§ion=news_maincontent&article=45&part=2 (last visited Oct. 3, 2005), and the ABA Section of Family Law's 2005 essay contest, Temple Univ. James E. Beasley Sch. of Law, *Karly Grossman Wins ABA Essay Contest*, http://www.law.temple.edu/servlet/com.rnci.products.PublishNow.RetrieveSingleArticle?serv=templelawdb&db=templelaw&site=TempleLaw§ion=news_maincontent&article=40&part=2 (last visited Oct. 3, 2005).

60. See *supra* notes 18-32 and accompanying text (reviewing the development of LRW curricula).

61. See BRILL ET AL., *supra* note 10 at 20.

62. See *id.* at 25. See also Gerdy, *supra* note 2, at 239 (stating that the majority of schools, but not all, combine research and writing instruction). According to the 2004 LWI Survey, approximately 139 out of 176 schools use research exercises unrelated to any writing assignment. Gerdy & Berres-Paul, *supra*, note 2, at 9.

63. BRILL ET AL., *supra* note 10, at 13.

64. See LEVINE, COURSE MATERIALS, *supra* note 33, at 2-3.

unique feature of our program.⁶⁵ Few LRW programs hold classes during orientation, and those that do tend to be much more limited.⁶⁶ Also, flowing from our use of the assignments as the vehicle for all teaching are the other important aspects of the Temple LRW program—the use of the assignments as material for in-class discussions,⁶⁷ the grading structure,⁶⁸ and the repeat use of assignments from year to year.⁶⁹ All of these features work together to provide students with the tools they need to enter the discourse community of lawyers and to practice law.

All of these important aspects of the Temple LRW program are soundly supported by learning and composition theory.⁷⁰ Novice learners enter the discourse community of lawyers most successfully when they are immersed in it.⁷¹ Of

65. LEVINE, COURSE MATERIALS, *supra* note 33, at 1-2.

66. E-mails from various LRW faculty at various law schools to LRWPROF-L@LISTSERV.IUPUI.EDU listserve, *LRWPROF-L, Orientation* thread (May 13-18, 2004) (e-mails archived on listserves mentioned *supra* note 20) (discussing orientation week at various law schools) (representative e-mails on file with the Santa Clara Law Review).

67. See discussion *infra* Part IV.B.

68. See discussion *infra* Part IV.C.

69. See discussion *infra* Part IV.D.

70. The main schools of composition theory are described by Joseph Harris as voice, process, and community. See JOSEPH A. HARRIS, *A TEACHING SUBJECT: COMPOSITION SINCE 1966*, at vii (1997). Voice theorists focus on the writer's intent, process theorists focus on the elements of the process of writing, and community theorists are more concerned with the writer's relationship to the text within the social context of the writing. *Id.* See also DeJarnatt, *supra* note 10, at 500-06 (describing benefits and drawbacks of expressivist, process, and social constructivist genres of writing instruction). The Temple LRW pedagogy relies most explicitly on the process and community schools, with the emphasis on student exploration of the process of writing and on their understanding of the audience for which they write and the community within which they write. Kristin Gerdy, relying on learning theorist David Kolb, explains that learners use four primary modes: feeling, thinking, watching, and doing. Gerdy, *supra* note 30, at 62. Gerdy stresses that the "most effective learning takes place not when learners work [only] in their preferred styles but when they work in all four predominant modes and move around the learning cycle." *Id.* at 63. Temple's program design ensures students learn through all four modes.

71. Again, composition, LRW, and learning theorists have all stressed the importance of students being able to model the discourse of the community as fully as possible. See Kenneth Bruffee, *Collaborative Learning and the "Conversation of Mankind,"* 46.7 C. ENG. 635-52 (Nov. 1984), reprinted in *CROSS-TALK*, *supra* note 17, at 424 (advocating that a main goal of learning is "to provide a context in which students can practice and master the normal discourse exercised in established knowledge communities in the academic world and in business, government, and the professions"). See also Joseph M.

course, this kind of intense immersion requires a great commitment of time and energy from the professors as well as the students. We readily recognize that the support of the administration and faculty at Temple, as well as our long-term employment status, all contribute to the success of the program. Some or all of the features of our program could be integrated into many LRW programs.⁷² What follows is a more detailed explanation of the key features of our program and why they work.

A. Full Integration of Research and Writing

The most crucial element of Temple's program is the full integration of research and writing. Students begin learning the discourse of law by practicing the full discourse, not by learning it in discrete, unconnected steps. Seeing the interrelationship between analysis, research, and writing is essential to a real understanding of legal discourse. The more LRW can offer novices the opportunity to model and experience this interrelationship, the richer their understanding will be of the discourse community they are entering.⁷³ James Boyd White advises beginning law

Williams & Gregory G. Colomb, *The University of Chicago*, in PROGRAMS THAT WORK: MODELS AND METHODS FOR WRITING ACROSS THE CURRICULUM 108 (Toby Fulwiler & Art Young eds., 1990) (describing the University of Chicago's university-wide writing program's emphasis on "making clear the local conventions of the discourse community . . . [and] modeling the kind of behavior that we expect of students writing in an exotic field"); DeJarnatt, *supra* note 10, at 511 (describing how the memo assignment in LRW strives to mirror practical experience). Gary L. Blasi, in his exploration of how lawyers develop expertise as problem-solvers, notes that "a person with an engaged, active stance and the perspective of a problem-solver inside the problem situation acquires an understanding quite different from that of a person with a passive stance and the perspective of an observer. It is not only that an engaged problem-solver learns more from both instruction and experience but also that she learns something quite different." Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313, 359 (1995).

72. Indeed, many aspects of our program are similar to those of other schools. See Gerdy & Berres-Paul, *supra* note 2, at 6-14 (reviewing LRW curricula).

73. See Gerdy, *supra* note 30, at 63-68 (describing the learning process while advocating experiential learning). "The best way to move students into conceptualization and analytic and synthetic modes of thought is to create assignments and activities which allow students to practice or exercise themselves in these modes continuously." Lundsford, *supra* note 44, at 449-59, reprinted in CROSS-TALK, *supra* note 17, at 303.

students that:

it is in the main only when things seem or threaten not to work in such easy and direct ways that lawyers are called upon to act. Our primary field of concern is the problematic and complex in the law, not the simple and orderly The law is a set of social and intellectual practices that defines a universe or culture in which you will learn to function.⁷⁴

Students will learn these practices most fully if they experience them as interrelated.

Full integration of research and writing is essential for two key reasons. First, the process of legal analysis is a process of making law and constructing meaning.⁷⁵ It is not about searching for existing, static rules, applying those rules to a set of facts, and communicating that application in error-free prose.⁷⁶ Full analysis cannot be done effectively in bits and pieces. Second, the discourse of law does not segregate research and writing. In the practice world, legal research and legal writing are both essential to the construction of legal analysis.⁷⁷ One does not make sense outside of the context of the other, and students cannot learn effectively without understanding both simultaneously.

Current learning theory emphasizes the need for context, for learners to have an interpretive framework for the material they are trying to learn.⁷⁸ The more students learn legal research and writing in its natural context of integration, the more easily they can experience the interpretive framework they need to make sense of legal analysis. Learning to research or write in isolation deprives

74. JAMES BOYD WHITE, *HERACLES' BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW* 51-52 (1985).

75. See DeJarnatt, *supra* note 10, at 502-03.

76. See Suzanne Ehrenberg, *Embracing the Writing-Centered Legal Process*, 89 IOWA L. REV. 1159, 1186-93 (2004) (discussing the advantages of writing over speaking in offering superior opportunities for self-reflection and analysis necessary to develop critical thinking).

77. Joseph M. Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development*, 1 LEGAL WRITING: J. LEGAL WRITING INST. 1 (1991) (discussing socialization of legal novices).

78. See Cathaleen A. Roach, *A River Runs Through It: Tapping into the Informational Stream to Move Students From Isolation to Autonomy*, 36 ARIZ. L. REV. 667, 686 (1994). Roach critiques the lack of context provided by traditional Langdellian case method, which imposes on students the challenge of figuring out the context in isolation. *Id.* at 670-79.

students of the complete picture and makes it more difficult for them to apply their newfound skills to new situations. The natural integration of the process furthers the opportunities available to reach a variety of learning styles⁷⁹ and to increase the chances students have to work around the learning cycle described by Kristin Gerdy.⁸⁰ Students need to move from familiarity with research sources to the ability to use the sources to solve problems—the “active experimentation” mode of learning in which the students use their research to solve a realistic legal problem.⁸¹

There are two common means of disassociating research and writing in LRW programs. First, research is often taught through “treasure hunt” or “Easter egg” library assignments.⁸² In these assignments, students are charged with finding the answers to specific questions, such as:

Examine the case of *Green v. State*, 209 S.W. 2d 195.
Answer the following:

- i. In what court was the appeal heard?
- ii. What were the names of the attorneys for the appellant?
- iii. What was the name of the judge who wrote the opinion of the court?
- iv. What was the name of the judge who wrote the opinion on the appellant’s motion for rehearing?⁸³

79. See Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 U. DET. MERCY L. REV. 1 (2003) (describing implementation of active learning and metacognition strategies in law school). See also McCrehan Parker, *supra* note 28, at 575-76 (emphasizing the value of writing assignments in doctrinal courses as a means to reach learners who do not flourish in the lecture/Socratic “performance” mode).

80. Gerdy, *supra* note 30, at 63-68; see *infra* notes 109-11 and accompanying text.

81. Gerdy, *supra* note 30, at 63-68.

82. Helene S. Shapo named and critiqued these types of discrete research assignments in *The Frontiers of Legal Writing: Challenges for Teaching Research*, 78 LAW LIBR. J. 719, 725-26 (1986). See also James B. Levy, *Practice and Procedure: Better Research Instruction Through “Point of Need” Library Exercises*, 7 LEGAL WRITING: J. LEG. WRITING INST. 87 (2001) (discussing the use of individualized maps, flow charts, and research logs to guide students through their research projects).

83. ROY M. MERSKY & DONALD J. DUNN, ASSIGNMENTS TO FUNDAMENTALS OF LEGAL RESEARCH 19 (8th ed. 2002). That this approach is common is evident from a survey of the research texts. See, e.g., ROBERT C. BERRING &

The goal of these exercises is to expose students to a wide range of sources and the techniques for accessing materials within these sources.⁸⁴

On the surface, the treasure hunt mode of teaching research has some advantages. It is driven largely by ease for the professor or, often, the student assistant who ends up designing and grading such assignments.⁸⁵ Law students find superficial comfort in these types of assignments because they feed the common student illusion that there must be a “right” answer. If the student can find the right book, case, or statute, the answer will be obvious. Finding the “right answer” gives the student a sense of accomplishment.

While the treasure hunt approach certainly introduces the student to a wide variety of sources, it provides little or no context or framework for the lawyer’s use of the sources.⁸⁶ It does not differ significantly from giving students a detailed tour of the library. Because treasure hunt exercises are designed to have a right answer, they preclude any learning of the “problematic and complex”⁸⁷ that research requires when performed in the context of solving a particular client’s problem. The more astute law students recognize immediately that treasure hunts are really busy work that introduce them to the resources, but do not help them to understand how to use those sources.

In addition, “Easter egg hunt” or “treasure hunt” short-answer exercises do not encourage students to think about why they are looking for the answers, nor to read and analyze what they have found. When the students must finally research to solve problems, they still have to practice their analytical skills at formulating issues, determining research paths, recognizing the value or uselessness of the results, and employing the results in their analyses. Kristin Gerdy notes

ELIZABETH A. EDINGER, FINDING THE LAW 321-68 (11th ed. 1999); NANCY P. JOHNSON & SUSAN T. PHILLIPS, LEGAL RESEARCH EXERCISES (8th ed. 2003) (to accompany BERRING & EDINGER, *supra*); LARRY L. TEPLY, LEGAL RESEARCH AND CITATION 434-44 (5th ed. 1999); RUTH ANN MCKINNEY, LEGAL RESEARCH: A PRACTICAL GUIDE AND SELF-INSTRUCTIONAL WORKBOOK (4th ed. 2003).

84. This is often termed the “bibliographic” approach to legal research. See Levy, *supra* note 82, at 94.

85. This is a classic example of a pedagogical choice growing out of a system in which the teachers are inexperienced, underpaid, and overworked. See *supra* notes 14-21 and accompanying text.

86. See Levy, *supra* note 82, at 94-95.

87. See WHITE, *supra* note 74, at 52.

the difficulty many students have in making the transition from “well-defined” problems with correct answers, like research quizzes, to the “ill-defined” problems without clear answers that characterize law practice.⁸⁸ Gerdy stresses the need for students to work on “ill-defined” problems in order to move to the “active experimentation” phase of learning that is too often missed in curricula that keep LRW problems closed or very closely defined.⁸⁹

The second way in which research and writing are disassociated is through the use of “closed universe” memorandum assignments.⁹⁰ The theory behind closed assignments is that students will be able to concentrate on one skill at a time; they can focus on analysis if they are not distracted by trying to find the sources that they are analyzing.⁹¹ Closed universe assignments can and do effectively teach analysis, but they do not prepare students for the complexity of analysis required when approaching a client problem from the beginning, with no handy packet of materials provided.⁹²

The one-skill-at-a-time approach runs counter to accepted notions of learning and composition theory. Composition theorists and teachers have long recognized the critical importance of focusing on the writing process and not just the end result. They have recognized that students learn to write most deeply if they and their professors work through the process together and view writing as a way of learning and of constructing meaning, not simply as an instrument of transcription.⁹³ Legal analysis is also a complex process of constructing meaning through the recursive effort of defining the issue, developing a research plan, refining the issue through one’s research, further refining the research task, developing the analysis through conveying it in writing, and

88. Gerdy, *supra* note 30, at 66-67.

89. *See id.* at 66-68.

90. *See* Suzanne E. Rowe, *Legal Research, Legal Writing, and Legal Analysis: Putting Law School Into Practice*, 29 STETSON L. REV. 1193, 1202 (2000). These are assignments in which students are given a list of authorities or a packet of material containing the authority to be used in analyzing a problem and drafting the memorandum. *See id.* (discussing how LRW models the practice of law).

91. *See* Gerdy, *supra* note 30, at 66-67 (discussing “well-defined” or closed problems).

92. *See id.*

93. *See supra* notes 27-29 and accompanying text.

returning to research the gaps and holes that the writing process reveals. It is not a simple linear process of finding the cases, organizing them, outlining, and writing up the results.⁹⁴

Closed universe assignments preclude the learning that comes from constructing the law, "making meaning" by defining the issues to be explored, redefining as you explore, refining what matters, and how the available law (case and statute) intersects with a client's story. Providing students with the relevant sources fosters the illusion that research is mechanical and subsidiary to the real work of writing the brief, rather than emphasizing the importance of seeing writing as connected to the research process. Closed universe assignments also give students an unrealistic understanding of law practice. Lawyers are rarely, if ever, in the position of having a set universe of cases and/or statutes with which to work. Even a lawyer who is well versed in a particular area of law does not limit herself to the two lead cases on the issue. The process of selecting authority based on complete research is an integral part of the writing process. Without one, students cannot truly learn the other.

In the Temple LRW Program, students never need to make the leap from isolated skill to real-world application because they learn in a real-world context from the very start. They never conduct research that does not lead to a writing assignment and never write legal analysis based on research they have not done themselves. From the beginning of the semester, students are "situated" in the role of lawyers and asked to solve a client problem by first researching and then analyzing the issue in writing.⁹⁵ The early start during

94. The value of integrating research and writing is analogous to the value of integrating learning through writing throughout the law school curriculum. Philip C. Kissam contrasts transcription, or "instrumental writing," with critical writing in which

the writing process itself can serve as an independent source, or critical standard, that alters and enriches the nature of legal thought. . . . This special perspective thus can enhance the creation of new thoughts, the articulation of complex thoughts, and the recognition of subtleties, nuances, and qualifications that are so important to the art of lawyering.

Philip C. Kissam, *Thinking (by Writing) About Legal Writing*, 40 VAND. L. REV. 135, 140 (1987).

95. See Blasi, *supra* note 71, at 318, 359 (discussing the importance of "situated learning" for adult learners). Blasi draws from cognitive science's

orientation week allows the students to immerse themselves, learning how to use legal materials, to make meaning of them in the context of practicing law.⁹⁶ At Temple, all research is taught through the vehicle of an open memorandum assignment.⁹⁷ On the first day of class, students are presented with a client problem and are taught about research in the context of that particular problem. For example, one professor uses an assignment in which a client wants to sue her employer for sexual harassment. The student is directed to research federal law. In class, the professor teaches the students about the various secondary and primary sources for researching federal law. Students are taught about how to find statutes and other materials in the United States Code Annotated. They are taught how to find U.S. Supreme Court cases and lower federal court cases using the digests. The professor focuses on the sources students will need to find the materials necessary for writing the memorandum. By the end of the first week, students are in the library and able to find the materials they need.

As students conduct their research, they must read and analyze the materials they find and make decisions about

examinations of how experts gain their expertise, how they develop a stock of schemas from which they can extract and develop solutions to new problems by using the schemas analogically. *See id.* The novice who is put in the position of problem-solver, rather than being relegated to the more passive role of observer, gains more experience and understanding. *See id.*

96. Paul T. Wangerin, *Skills Training in Legal Analysis: A Systematic Approach*, 40 U. MIAMI L. REV. 409, 420 (1986) (identifying analytical skills essential to learning law and mentioning their potential use in orientation programs).

97. Defenders of bibliographic treasure hunt assignments stress that they give students exposure to a wider variety of research sources than is often possible in a single open memo assignment. *See Levy, supra* note 82, at 94 & n.30. We address that potential problem in several ways. First, the research reports require the students to plan a strategy first and to approach their research through several routes. For example, they must try to generate a digest search and an annotated code search for the same body of authority. Second, our students research and write on three different issues over the course of the semester. As long as the memo problems are designed to expose the students to both federal and state law, to multiple jurisdictions, and to common-law as well as statutory problems, the students will get hands-on experience with at least all of the major research and updating sources. Use of a good research text is also crucial, and will educate students about the wealth of sources available. Students must develop the skills of recognizing which sources are most likely to be of use for a particular issue, and of double-checking their coverage by trying to research the same problem through a different route. *See also Gerdy, supra* note 30, at 72.

whether the sources will be useful for solving the client's problem. In this way, they both see the real purpose and context of legal research and begin the writing process. Once the materials are found, class discussion turns to an analysis of these sources and an explanation of how to use these materials to write a memorandum. For example, in an assignment that addresses the definition of the parent-child relationship under the California Family Code,⁹⁸ the class discusses statutory interpretation and analyzes the meaning of the statute. The professor provides a list of scenarios that allow the students to explore, collectively, the arguments for parentage in each scenario under the code provisions. The professor then guides the class through a discussion of what the statute does not address, how it is limited in analyzing the issue raised by the students' client, and how case research may help round out the definition of the parent-child relationship under California law. In this manner, students simultaneously begin to develop the analysis for their memos and hone their research skills by learning the role research plays in developing an issue.

The full integration of research and writing allows students to engage in the "active experimentation" necessary for adult learners to master fully the material.⁹⁹ The contemporaneous guidance and immediate feedback allows students to see how the learning experience fits into their overall professional development.¹⁰⁰ The Temple LRW course is based on the assumption that the students will make mistakes, try again, and eventually get it right. The real-life context of the assignments, along with the early start, give students powerful motivation to work hard and "get it right." The improvement and rate of progress we observe over the course of the semester are remarkable.

B. Teaching Through the Problems—A Cooperative and Collaborative Approach.

Another key aspect of the Temple LRW Program is that all discussion of research and writing technique is done through the vehicle of the assignment on which the students

98. CAL. FAM. CODE § 7610 (Deering 2005).

99. Gerdy, *supra* note 30, at 67-68.

100. See Levy, *supra* note 82, at 91-97 (criticizing the traditional lecture and bibliography exercise approach for not giving students appropriate feedback).

are currently working. It is well established that writing is most effectively taught if the professor focuses on the student's writing process, rather than teaching the document itself.¹⁰¹ By engaging with students in the common enterprise of solving a client's problem through research, analysis, and drafting of a legal memorandum or appellate brief, Temple LRW professors provide students with a deep understanding of the writing process that they are able to apply in new situations.

Legal writing scholars have increasingly recognized the benefits of following the process model of teaching writing.¹⁰² Temple's LRW program follows the process model by engaging in the process with the students, rather than educating them about the process and expecting them to do it on their own. Classes focus on the analysis and writing of the assignments on which the students are currently working. Professors review and provide feedback on drafts, and conferences occur in the drafting phase, not after the document is finished. The professor's input is aimed at guiding the students toward their own editing and revision, rather than copyediting each draft document. By learning the skills of research and analysis in the context of the assignment they are actually writing, students deepen their understanding of what it is to be a lawyer.¹⁰³

Much like the treasure hunt exercises used to teach research,¹⁰⁴ legal writing professors have traditionally used exercises to illustrate particular skills, such as drafting a question presented or organizing a discussion of legal analysis.¹⁰⁵ These exercises are often unrelated to the assignment the student will eventually be called upon to

101. See *supra* notes 27-32 and accompanying text.

102. See Fajans and Falk, *supra* note 23; Berger, *supra* note 27; Pollman, *supra* note 4; Durako et al., *supra* note 22; Rideout & Ramsfield, *supra* note 17; DeJarnatt, *supra* note 10. These scholars have drawn deeply from composition theory, beginning to break down the insularity of law school pedagogy criticized by Paul T. Wangerin in Paul T. Wangerin, *Law School Academic Programs*, 40 HASTINGS L.J. 771 (1989).

103. See Blasi, *supra* note 71, at 359.

104. See *supra* notes 83-89 and accompanying text.

105. All of the major legal writing textbooks contain this type of exercise. See, e.g., RICHARD K. NEUMANN, JR., *supra* note 36, at 362-63; LINDA HOLDEMAN EDWARDS, *LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION* 311-14 (3d ed. 2002). See generally HELEN S. SHAPO, ET AL., *WRITING AND ANALYSIS IN THE LAW* (rev. 4th ed. 2003).

write.¹⁰⁶ Many legal writing professors resist teaching the memo or brief problem directly, out of fear that they will give away too much or that the students will fail to try to do their own work on the problem.¹⁰⁷ The students may find the exercises easy to grasp; however, as novice learners, they often have trouble taking these skills and transferring them to a real-world context.¹⁰⁸

At Temple, we believe that you cannot give away too much and that the benefits of cooperative and collaborative learning far outweigh the risk that students will not do their own work. Learning theory supports the pedagogical choices of the Temple program. Professor Kristin Gerdy has analyzed how law students, as adult learners, need to have experience with four basic learning modes: feeling, thinking, watching, and doing.¹⁰⁹ Although students will have different preferences among these modes, they will learn best “not when learners work [only] in their preferred style but when they work in all four predominant modes and move around the learning cycle.”¹¹⁰ Focusing the class discussion and activity on the research and writing that the students are currently doing increases their opportunities to learn in all four modes. By actively engaging in the material and discussing and receiving feedback from their professor and peers, students gain a fuller understanding of how their writing and analysis meets the needs of their audience.¹¹¹

The Temple LRW program uses both cooperative and collaborative techniques for engaging students in the

106. See, e.g., NEUMANN, JR., *supra* note 105, at 362-63; SHAPO, ET AL., *supra* note 105; HOLDEMAN EDWARDS, *supra* note 105, at 311-14.

107. Anonymous grading and grading assignments throughout the semester exacerbate these concerns. See *infra* Part IV.C for a discussion on why this is not a problem in the Temple program.

108. Kristin Gerdy and Andrea Lunsford have both discussed the difficulty students have in making the leap required to “abstract and generalize a principle from the drill and then apply that principle to enormously varied writing situations.” Lunsford, *supra* note 44, at 303; Gerdy, *supra* note 30, at 66-67.

109. Gerdy, *supra* note 30, at 62-63. Professor Gerdy relies on David A. Kolb’s learning theory, which identifies the four modes as concrete experience, abstract conceptualization, reflective observation, and active experimentation. *Id.* at 62.

110. *Id.* at 63.

111. Cathaleen Roach argues that professor feedback during the writing process is necessary to put students on the road to autonomy. Roach, *supra* note 78, at 690-92.

assignments.¹¹² The benefits of cooperative and collaborative learning include “building judgment, increasing analytical ability, gaining greater subject matter understanding, sparking genuine, life-long subject matter interest, and easing anxiety, worry, and fear.”¹¹³ By encouraging students to talk with their peers and their professor about the assignment on which they are working, we actively engage them in their own learning process, which brings them into the discourse community through discourse itself.¹¹⁴ Students engage much more willingly in the process when they see that it directly relates to the assignment they will be submitting for feedback from the professor.

Collaborative learning through small group work in and out of class allows students to develop a greater sense of the audience for their work.¹¹⁵ Learning theorists have noted that adult learners need to see how their academic work fits their professional development.¹¹⁶ Collaborative exercises in class on an aspect of the actual memo problem are more likely to engage students than work on an unrelated problem. These exercises also give them a greater sense of the collaborative work they are likely to experience in practice, where lawyers frequently produce their writing in some kind

112. In cooperative learning, the teacher works with the group, defining students' roles and tasks and guiding them towards a final product that they will ultimately complete individually. See Elizabeth Inglehart et al., *From Cooperative Learning to Collaborative Writing in the Legal Writing Classroom*, 9 LEGAL WRITING: J. LEGAL WRITING INST. 185, 188 (2003). In collaborative learning, students work in groups to create a collective product. *Id.*

113. *Id.*

114. See Bruffee, *supra* note 71, at 422 (recommending that writing teachers engage students in conversation about their writing at as many points in the writing process as possible to “contrive to ensure that students' conversation about what they read and write is similar in as many ways as possible to the way we would like them eventually to read and write”); DeJarnatt, *supra* note 10, at 519-20 (discussing ways to enable students to practice being members of the knowledge community of law, including having students present their drafts to each other as lawyers would in the practice context).

115. Composition theorists from the process and community schools have closely considered the problem of audience and the writer's need to envision her audience. See, e.g., Walter J. Ong, S.J., *The Writer's Audience Is Always a Fiction*, 90.1 PMLA 9-21 (1975), reprinted in CROSS-TALK, *supra* note 17, at 55. Ong stresses how speech provides the immediacy of audience response that the writer lacks. See *id.* at 57. DeJarnatt examines the law student's difficulty of invoking the true audience for her writing when she has no experience with that audience or experience in being the audience for another legal writer. DeJarnatt, *supra* note 10, at 497, 513-18.

116. Gerdy, *supra* note 30, at 64-66.

of collaboration with other lawyers.¹¹⁷

Temple students begin to work collaboratively the first week of school when they are sent into the library in teams of three to conduct the research for their first memorandum assignment.¹¹⁸ This serves several purposes. First, the research-related anxiety often exhibited by first-year students is dramatically lower when they have peers to ask questions of and with whom they can discuss the materials they find.¹¹⁹ Often, different students will grasp different aspects of the research and their collective "mind" will produce much better work than if they had worked as individuals.¹²⁰ In answering the guided research questions¹²¹ and determining whether they have the necessary cases and statutes, students also begin to talk with each other about the analysis of the problem, setting the stage for the writing process.

The collaborative work continues in the classroom. For example, for a class meeting on the use of case law and counter-analysis, one professor has the students bring to class the three leading cases relating to the issue of their memo assignment.¹²² In small groups, with the professor and teaching assistants moving around the room to provide guidance, students discuss which cases provide the greatest

117. Law practice is typically hierarchical but collaborative. Lawyers often work together or rework the writing of others. DeJarnatt, *supra* note 10, at 512-13; Gerdy, *supra* note 30, at 80 n.74.

118. See LEVINE, COURSE MATERIALS, *supra* note 33, at 16.

119. See *id.* at 16. Bruffee notes that even novices have experiences to contribute to collaborative work and that talking with others new to a knowledge community can help the group make the leap to understanding the community's discourse. Bruffee, *supra* note 71, at 424-26. Williams and Colomb also emphasize the value of novice discussion, guided by more knowledgeable members of the discourse community, in their discussion of the University of Chicago writing program. Williams & Colomb, *supra* note 71, at 108.

120. See Inglehart et al., *supra* note 112, at 188-89.

121. See *supra* notes 42-46 and accompanying text (describing research in Temple's LRW program).

122. Professor DeJarnatt does this exercise during the time the students are working on their final memorandum assignment of the semester. The situation involves the definition of the parent-child relationship under California law. The statute provides that women can establish legal motherhood by giving birth, by adoption, or by using the rather confusing paternity provisions where "practicable." CAL. FAM. CODE §§ 7610, 7650 (Deering 2005). The situation is a complex one, for which the case law offers no clear answer, as is typical of all Temple final memorandum assignments. For further description of the assignment, see *supra* note 98 and accompanying text.

support and the biggest obstacles to the positions of the parties to the dispute. The entire class then compares their reactions to the cases. This exercise allows students to share their feelings about an emotional issue, to share their understanding of these cases and how they apply to the facts at hand, to observe what their classmates feel and think about the problems presented, and to articulate their own developing analysis.¹²³

Temple legal writing professors also encourage cooperative learning in the classroom by facilitating a class environment in which students are actively engaged in their own learning process.¹²⁴ For example, during a class intended to teach students about how to synthesize a rule from a series of cases, a professor may take a selection of cases from the assignment on which the students are working and walk the class through the synthesis process. By the end of the class, the whole class will have the synthesized rule they ought to be using in their assignment. In a class on organization, a professor will work with the students to create an outline on the blackboard of the Discussion of Authority for the memorandum the students will be submitting. By the end of a series of classes on a particular assignment, the class as a group, facilitated by the professor, will have discussed all aspects of writing and analysis associated with the assignment.

Does this approach give the students too much opportunity to become free riders, relying too heavily on the work of others? Not in our experience. While class meetings give students a common baseline for writing the assignment, their individual efforts produce dramatically different results. The quality of student work varies from poor to excellent, just as one would expect in a law school class. Because they are such novices to the discourse community, even being told what to write or “seeing” the answer does not inevitably give the students an internalized understanding of what an

123. See DeJarnatt, *supra* note 10, at 520.

124. See generally Boyle, *supra* note 79 (advocating active learning process in law school instruction); Michael Hunter Schwarz, *Teaching Law Students to be Self Regulated Learners*, 2003 MICH. ST. DCL L. REV. 447 (2003) (describing how to teach law students to be self-regulated learners or motivated, disciplined, and organized from within).

analysis of a problem should look like.¹²⁵

In a stark example of this, several years ago two sample "A" papers from the previous year were inadvertently left on reserve in the library.¹²⁶ The papers were samples of the final, graded memorandum assignment¹²⁷ that two LRW sections were working on. This was discovered two weeks before the current year's papers were due. The students were too far into the problem to start over with a new problem, so the professors decided to let all students look at the samples to ensure an even playing field. Since the students knew the professors were aware that they were looking at the papers, they understood that merely copying what they saw was not an option.

The results of this accidental experiment were interesting in several different ways. First, many students opted not to look at the sample "A" paper because they felt confident that they understood what they needed to do from class. Second, many of the students who looked at the paper reported that it was "exactly" what they had been told to do in class, so they didn't find it particularly helpful. Finally, the professors grading the memos that year reported that they fell along the same range of grades as any other year. It appeared that the poorer students were not especially helped by viewing the "answer," and that the better students were still able to rise above the average level of the class. If the overall quality of the class work was improved, i.e., everyone did somewhat better than they might have with less guidance and without seeing the "answer," we viewed this as a positive sign that the students were gaining a deeper understanding of the purpose and content of a memorandum of law.

125. See generally Durako et al., *supra* note 22, at 729-31 (describing the use of an annotated sample memo detailing the reasoning and purpose behind every sentence and then following up with student self-critiques and assessments of their work that mirrors the annotations designed to help with internalization of the reasoning).

126. It is a common practice of Temple professors to place on reserve copies of the best two or three papers from the fall semester so that the students can see what we are looking for. Because we reuse assignments, see *infra* notes 173-78 and accompanying text, the sample left on reserve was identical to the assignment that two sections of LRW students were currently working on.

127. The students' grade in the course is based solely on this assignment. For Temple's grading practices, see *supra* notes 53-54 and accompanying text and *infra* Part IV.C. For our practices regarding reusing assignments, see *infra* notes 173-78 and accompanying text.

This experience confirmed to the Temple LRW faculty that working through the problem cooperatively in the classroom with the students was the right approach. Helping the students to see where they should be going makes them into more self-directed learners.¹²⁸ Class discussion of the assignment actively engages the students in their own work and reveals points and ideas that they may have overlooked. It is also important for students to see how others react to the same materials.¹²⁹ This is comparable to a Socratic discussion in a doctrinal class, but with much greater opportunity for students to express their thoughts through active small group discussion.¹³⁰

The cooperative relationship between professor and student continues outside the classroom. Temple's program design requires professors to provide individual feedback to students at numerous points in the writing process.¹³¹ We provide substantial written commentary on each student's first memorandum assignment, followed by an individual conference with the student. The students then revise and expand the first memo, which is again critiqued by the professor. This entire process is repeated during the course of the final memorandum assignment, allowing the student the benefit of the professor's response during the writing process instead of after it is complete. Through this interaction, the professor helps the student to internalize the norms of the discourse community and understand the writing process at a sophisticated level.

C. Grading Only the Final Writing Project of the Semester

Because the Temple program is built around the idea that students learn by doing and that they will make many mistakes along the way, we grade only the final product in each semester.¹³² Rather than grading intermediate projects,

128. See generally Roach, *supra* note 78, at 681 (discussing how appropriate guidance leads to better learning).

129. See Inglehart et al., *supra* note 112, at 190 ("[G]roup work reaches a broader range of students than traditional teaching methods, reaching across race, gender, class, and learning style differences.").

130. See Romantz, *supra* note 1, at 136-42 (showing similarities between traditional Socratic method in doctrinal courses and the more narrowed and individual Socratic methods employed in legal writing courses).

131. See, e.g., LEVINE, *COURSE MATERIALS*, *supra* note 33, at 3.

132. *Id.* Specifically, the grading policy provides:

we provide detailed critiques, conferences, and rewrites to teach the lessons of LRW.¹³³ Thus, we do not penalize students for being novices by grading their early attempts, and we do not penalize those with slower learning curves. By grading only the final product, students are evaluated on what they have learned, rather than on the mistakes they have made along the way. This system of grading not only creates synergy with the other design elements of the Temple LRW program, but also enhances student learning and ensures that students view LRW similarly to their other law school courses.¹³⁴

It is rare for the grade in a LRW course to be based solely on the final draft of the final assignment of the semester.¹³⁵ Historically, many programs were pass/fail, and some still are.¹³⁶ Currently, most LRW programs adhere to the grading

[T]o pass the course, a student must complete each and every assignment to the professor's satisfaction, although we grade only the final assignment of the semester. The two versions of the first memorandum assignment and the partial draft of your final memorandum will *not* bear a letter or number grade when returned to you, but will be returned with detailed commentary on your work. You may have to rewrite any written work that is not considered to be of passing quality when first submitted, and any rewriting must be done to an acceptable standard, and within the prescribed time. . . . Similarly, if the paper is significantly too long or too short, if it is not in an acceptable format, or if it is submitted late or at the wrong place, your professor has the discretion not to read it, or to require you to revise and resubmit it without receiving any further critique. . . . *We base the course grade for the fall semester wholly on the quality of your final draft of the last memorandum assignment.* We do *not* base the grade assigned for the final paper on our assessment of your improvement during the semester, your effort, class attendance and participation, or other extraneous factors, although the quality of the final memorandum, and by that your grade, will intrinsically reflect those factors.

Id. at 13-14 (emphasis added).

133. *Id.* at 3.

134. The classic law school model of basing the course grade only on a final examination has been the subject of controversy and critique. *See, e.g.*, Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879 (1997); Philip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433 (1989). In this article, we do not tackle that larger issue, but merely suggest that there are good reasons for LRW to be based on the same grading system as other courses. *See infra* notes 142-52 and accompanying text.

135. Gerdy & Berres-Paul, *supra* note 2, at 16 tbl.25 (of 176 schools responding to survey, twelve grade 0-25% of major assignments, while 128 grade 75-100%).

136. Rideout & Ramsfield, *supra* note 17, at 91-92 (noting that in 1992, most schools assigned grades that counted for the grade point average, and only

system for other first-year courses in terms of following a curve or arriving at a standard mean;¹³⁷ however, the grade is based on multiple assignments, usually a combination of drafts and rewrites.¹³⁸ In some LRW programs, quizzes and tests can form the basis of the grades as well.¹³⁹ While some LRW professors have indicated discomfort with requiring students to hand in multiple ungraded assignments,¹⁴⁰ the benefits of doing so far outweigh any detriment for many reasons.

Delayed grading is consistent with the process model of teaching LRW.¹⁴¹ Grading, by definition, is an evaluative process, which focuses on the quality of the product.¹⁴² Indeed, grades will often reflect how the student did with respect to others in the class, rather than the degree to which the student objectively achieved the goals of the course.¹⁴³ A

sixteen schools "still used the pass-fail system").

137. See Gerdy & Berres-Paul, *supra* note 2, at 8 tbl.16 (108 of 176 programs responding to the survey grade in the same manner as other first-year courses). See also Jay M. Feinman, *Academic Evaluations Focus: Law School Grading*, 65 UMKC L. REV. 647, 648-50, 652 (1997) (describing the relationship between grading on a curve and ranking student performance, and discussing the processes of grade normalization across courses and among course sections); Douglas A. Henderson, *Uncivil Procedure: Ranking Law Students Among Their Peers*, 27 U. MICH. J.L. REFORM 399, 399, 404-05, 418-19 nn.120 & 121 (1994) (noting that law schools commonly base course grades on final exam scores scaled to the normal curve and then rank students on the basis of those grades, discussing historical and other reasons for employing the normal curve, and explaining the mechanics of how normal curves and class ranks are calculated).

138. See Gerdy & Berres-Paul, *supra* note 2, at 12 tbl.23 (37 of 176 reporting schools grade only rewrites); see also Arrigo, *supra* note 5, at 147, 163-64 (noting the difference between the grading load of doctrinal and LRW professors); BRILL ET AL., *supra* note 10, at 53-54 (presuming that the alternative to a pass/fail course is a graded course in which early assignments are graded).

139. Cf. Laurie Magid, *Awarding Fair Grades in a Process-Oriented Legal Research and Writing Course*, 43 WAYNE L. REV. 1657, 1660-61, 1670-73 (1997) (describing the use of a graded research report exercise that is one component of the LRW course grade); see also Gerdy, *supra* note 30, at 74-75 n.59 (summarizing and discussing the numerous forms of assessment tools used to teach legal research).

140. BRILL ET AL., *supra* note 10, at 54 (indicating fear that students will not be sufficiently motivated to work on ungraded assignments and, thus, will not learn).

141. See *supra* notes 22-30 and accompanying text (noting the shift from product to process-based teaching of LRW).

142. See Berger, *supra* note 27, at 168 (noting that, in spite of claims that legal writing has turned to the process model, the product approach "still prevails" when the papers are graded).

143. See Glesner Fines, *supra* note 134, at 886-96 (critiquing law schools' reliance on curves as undercutting students' intrinsic learning and promoting

grade by itself may give students a sense of how they are doing, but will not help the students to learn.¹⁴⁴ If students are to construct meaning through the process of writing, then feedback, coming from professor-as-fellow-writer rather than professor-as-evaluator, is much more conducive to learning.¹⁴⁵ Feedback without an accompanying grade gives the students more freedom to focus on the process of learning, without the worry or distraction of how their performance will be evaluated.

Grades can create a significant distraction that creates an impediment to real learning. When working on assignments for a grade, students tend to focus on getting the grade, rather than learning.¹⁴⁶ In addition, in a system with a curve or a standardized mean, students are more likely to engage in competitive learning strategies aimed at doing just enough to get the best grade, rather than focusing on true mastery of the subject.¹⁴⁷ Because early writing assignments are not graded, Temple students focus more directly on the written feedback and conferences, increasing their ability to learn the important skills of writing and analysis.¹⁴⁸

The delayed grading creates synergy with other aspects of the Temple LRW program. Without the threat of a grade riding on their early efforts at legal research and analysis,

competition at the expense of cooperative learning); see also Feinman, *supra* note 137, at 648-50, 652 (describing how grading on a curve ranks students' performance in comparison to each other without regard to a previously-established objective standard, thus limiting the professor's ability objectively to evaluate students on the basis of their performance).

144. Mark Weisberg, *Epilogue: When (Law) Students Write*, 27 LEGAL STUD. FORUM 421, 428 (2003) ("[A] grade . . . doesn't provide any information useful to someone wanting to improve."); see also Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1 (2004) (suggesting that grades alone do not give students meaningful information about how they have done, and that learning is greatly enhanced by providing the specific criteria on which the grade is based).

145. Berger, *supra* note 27, at 174-77; see also Terri LeClerq, *Principle 4: Good Practice Gives Prompt Feedback (Seven Principles for Good Practice in Legal Education)*, 49 J. LEGAL EDUC. 418, 421-22 (1999) (describing the difference between "formative feedback," which assists in improvement, and "summative feedback," which "measures, grades, or compares performance to expectations").

146. See Weisberg, *supra* note 144, at 425-26.

147. See Glesner Fines, *supra* note 134, at 899-900.

148. Weisberg, *supra* note 144, at 428-29 (indicating that student writers are more likely to experience comments as they are intended when not accompanied by a grade).

students are able to plunge into that first research and writing assignment with the goal of learning, rather than performing. When no grade is involved, students are more open to collaborative learning, such as the research groups.¹⁴⁹ Because they are not being evaluated against each other, students do not engage in the competitive learning strategies that are counter-productive to learning.¹⁵⁰ Instead, the fact that they are not graded helps the students to adopt an “all in this together” attitude that allows them to work cooperatively.

In addition, students are able to focus on what works best for them as writers. The lack of grades means they feel freer to experiment and try different approaches to the assignments. This tends to make them more open to feedback from the professor and to take themselves more seriously as writers.¹⁵¹ Students can move at their own pace, without fear that they will be penalized for having a different learning curve than their classmates. Because they are not penalized for making mistakes, students can actually learn from their mistakes, rather than defensively try to justify them. The students can take their professor’s assessment and use it to improve their learning and performance.¹⁵²

Giving feedback without a grade also provides more freedom for the professor. There is little debate that feedback from the professor is one of the most critical aspects of a good LRW program.¹⁵³ Free from the burden of measuring students against each other, the legal writing professor can focus entirely on the individual student, responding as reader rather than as evaluator.¹⁵⁴ The professor can focus what the individual student needs in order to develop as a writer. It is generally more enjoyable for the professor to focus feedback on teaching, rather than on evaluation.

In addition to being more conducive to learning, delayed

149. See *supra* notes 44-46 and accompanying text (describing the research program).

150. See Glesner Fines, *supra* note 134, at 899-900.

151. Weisberg, *supra* note 144, at 429.

152. Gerdy, *supra* note 30, at 78.

153. See Anne Enquist, *Critiquing and Evaluating Law Students' Writing: Advice From Thirty-Five Experts*, 22 SEATTLE U. L. REV. 1119, 1126 (1999) (noting that, in a poll of experienced LRW professors, the vast majority rated commenting on papers one of the most important activities of a LRW professor).

154. Weisberg, *supra* note 144, at 425-26, 429.

grading prevents students from becoming discouraged early in the semester. Most students come to law school having been quite successful in their undergraduate education and expecting to do well. In a system that grades early assignments, students are likely to receive their first law school grade in LRW.¹⁵⁵ In a school with a required curve and/or mean, many will not do as well as they expect. A poor grade in legal writing is more likely to discourage a student from trying to master the subject, rather than to motivate her to try to do better.¹⁵⁶ When grades are received early in the semester, a student could easily give up on the course before having a real chance to learn.¹⁵⁷

At Temple, many students who perform poorly on early assignments end up doing as well or better than their classmates who did well on the early assignments. As a result of our grading system, these students end up with a grade that reflects their ultimate competence, rather than a learning curve that is less steep than their classmates. It would be a shame if these students, discouraged by poor early grades, gave up on the course and did not fulfill their potential. By delaying the grade until the final assignment of the semester, we evaluate students based on what they are capable of doing at the end of the semester, rather than whether or not they got it right the first time around. The extensive feedback students receive helps them to learn without discouraging those who do not do well initially, and without giving a false sense of security to those who start off strong.

Many schools deal with the problems of early grading with a weighted grading system.¹⁵⁸ While this may minimize some of the effects of early grading, it does not address the fundamental problem of focusing students on the grade

155. Rowe, *supra* note 90, at 1210 (“[M]ost students receive their first law school grades in LRW.”).

156. Glesner Fines, *supra* note 134, at 901 (noting that students who are disappointed in their grades, even when they are not “bad” grades, are more likely to withdraw than to work harder).

157. See Sparrow, *supra* note 144, at 21 (noting that students in her LRW class became frustrated with the course early in the semester after receiving grades because they did not know what was expected).

158. Rideout & Ramsfield, *supra* note 17, at 92 (discussing early assignments that are a small percentage of the final grade and later assignments that increase in percentage value).

instead of learning.¹⁵⁹ Weighted grading alleviates some of the pressure of early failure, but students are still aware that their work is for a grade. For most, it will be the first grade they receive in law school.¹⁶⁰ The importance they attribute to the grade, as a sign of their likely success (or failure) in law school, is likely to be out of proportion to its actual significance. For many students it will be the first time that they have received a low grade.¹⁶¹ The fact that the grade is only a small percentage of the student's ultimate grade in the course is not likely to allay the discouragement the student feels for not doing well.¹⁶² Feedback without a grade, on the other hand, is more likely to motivate a student to work to achieve better results when it comes time for the graded assignment.

The most common objection to ungraded course work is that students will not take the course as a whole seriously¹⁶³ and that students will not take the individual ungraded assignments seriously.¹⁶⁴ While these may be valid concerns when the entire course is pass/fail,¹⁶⁵ delayed grading does not create the same problem at Temple. We are careful to point out to the students that if they do not invest time and effort on the ungraded assignments, they are not likely to do well on the graded one. This, along with the individual attention provided by the conferences, the high level of

159. See Jan M. Levine, Response, "You Can't Please Everyone, So You'd Better Please Yourself": Directing (Or Teaching In) A First-Year Legal Writing Program, 29 VAL. U. L. REV. 611, 616-17 (1995) [hereinafter Levine, *You Can't Please Everyone*] (suggesting that weighted grading does not do away with the problems of giving grades throughout the semester).

160. Rowe, *supra* note 90, at 1210.

161. Levine, *You Can't Please Everyone*, *supra* note 159, at 616.

162. See Peter Brandon Bayer, *A Plea for Rationality and Decency: The Disparate Treatment of Legal Writing Faculties as a Violation of Both Equal Protection and Professional Ethics*, 39 DUQ. L. REV. 329, 364 (2001) (discussing resentment and shock many students feel when receiving what are usually their first grades in law school: those in LRW).

163. See Magid, *supra* note 139, at 1662.

164. BRILL ET AL., *supra* note 10, at 54; see also e-mails from various LRW faculty, various law schools, to LRWPROF-L@LISTSERV.IUPUI.EDU listserve, LRWPROF-L, *Pass Fail or Graded Legal Writing* thread (Feb. 26, 2002), *Pass/Fail v. Grades, a Dissenting View* thread (Feb. 27, 2002) (e-mails from these threads archived on listserves mentioned *supra* note 20) (representative e-mails on file with the Santa Clara Law Review).

165. See Levine, *You Can't Please Everyone*, *supra* note 159, at 616 n.19 (noting that in a pass/fail system, many students work just hard enough to pass).

professor feedback, and the skill-building that takes place over the course of the assignments, tends to take care of any problems relating to motivation and interest in the course.¹⁶⁶

Finally, early grading may play a role in the adverse views many students hold of LRW courses.¹⁶⁷ Students who receive grades lower than those they expect on early assignments may resent the course, the professors, or both.¹⁶⁸ This is especially true when the students perceive the grade to be disproportionate to the amount of work that they did.¹⁶⁹ This resentment can lead to poor evaluations for their LRW professor and for the course as a whole.¹⁷⁰ While students may have some of the same negative reactions to feedback without a grade,¹⁷¹ overall, our delayed grading system makes LRW more similar to other first-year courses and more likely to be perceived similarly.

For all of these reasons, a system in which early assignments are given intensive feedback without a grade and only the final assignment is graded provides the best of both grading worlds. The ungraded interactions between professor and student “maximiz[e] the positive factors in

166. We are also fortunate that there is strong word-of-mouth from upper-level students confirming how important the course is generally and how important it is to do all of the work.

167. Judith D. Fischer, *The Use and Effects of Student Ratings in Legal Writing Courses: A Plea for Holistic Evaluation of Teaching*, 10 LEGAL WRITING: J. LEG. WRITING INST. 111 (2004) (analyzing results of an empirical study on the use of student ratings of LRW professors, concluding that more holistic evaluations will better promote improved teaching, and noting that evaluations can be negatively affected by students' receipt of interim grades); Bayer, *supra* note 162, at 364. See also Melissa Marlow-Shaffer, *Student Evaluation of Teacher Performance and the “Legal Writing Pathology”: Diagnosis Confirmed*, 5 N.Y. CITY L. REV. 115, 122-23 (2002) (analyzing survey responses of legal writing directors nationally that demonstrate the negative effect of interim grading on LRW course evaluations).

168. David D. Walter, *Student Evaluations—A Tool for Advancing Law Teacher Professionalism and Respect for Students*, 6 LEGAL WRITING: J. LEGAL WRITING INST. 177, 189 (2000) (quoting Paul T. Wangerin, *The Evaluation of Teaching in Law Schools*, 11 J. PROF. LEGAL EDUC. 87, 108 (1993)).

169. *Id.*

170. *See id.*

171. Lisa Eichhorn notes that students often react defensively to comments on their LRW papers and, where the students have already picked up on the common institutional prejudice that LRW is not an important part of the law school curriculum, the student may easily blame the LRW professor for the comments instead of viewing the comments as a guide to learning. Lisa Eichhorn, *Writing in the Legal Academy: A Dangerous Supplement?*, 40 ARIZ. L. REV. 105, 125 (1998).

learning, while minimizing the negative factors associated with grades."¹⁷² The grade at the end of the semester brings LRW in line with other law school courses and ensures that students will put effort into the course. The end result is a program that, in conjunction with the full integration of research and writing, and with teaching through the problems, maximizes student learning.

D. Making the Program Work for the Teacher and the Student

The distinctive elements of the Temple program that we have discussed so far primarily work to benefit the students' learning. The intensive start, full integration of research and writing, and the process orientation all help the students, but do not lessen the teacher's burden. Each year, we must prepare for and begin the semester early with well-designed problems fully in place, and we must connect individually with each student and her writing from the beginning of the semester. Our approach to grading relieves us of the need to wrestle with grades until the end of the semester, but our intense focus on feedback and critique occupies a significant amount of time and energy throughout the year. Two aspects of the Temple program, reuse of assignments and small class size, do make our professional lives easier even while they improve the quality of the student experience.

One of the biggest challenges of teaching LRW is problem design.¹⁷³ Creating a good LRW problem is daunting. 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.¹⁷⁴ Programs that carry the final memo problem over into the spring and use it as the basis for persuasive writing must also make sure that the memo problems are balanced. We have designed effective problems that are excellent vehicles for teaching students the

172. Levine, *You Can't Please Everyone*, *supra* note 159, at 617 n.20.

173. See Gerdy, *supra* note 30, at 68 n.19 (collecting articles on problem design); Levine, *Designing Assignments*, *supra* note 40, at 58.

174. Gerdy, *supra* note 30, at 66-69 (emphasizing that the more complex, open-ended problems must be designed realistically to help students move from "inert" knowledge of the possible resources to "active" knowledge—the ability to use the resources to solve the problem).

essentials of legal research, analysis, and writing, but we do not force ourselves to reinvent the wheel every year and to create new vehicles.¹⁷⁵ We update and tweak our problems, but reuse them year in and year out. The benefits to the professor are obvious—torts professors do not reinvent their syllabi using a new casebook every year to prevent students from relying on outlines developed by their predecessors. The torts professor spends her summers on scholarship or otherwise deepening her knowledge of her field or on other valued activities. LRW professors should give themselves the same advantage. The first year of teaching is very hard. The novice teacher constantly feels that she is only one step ahead of the students and that her carefully guarded appearance of expertise will be shattered. Creating and using a brand new set of LRW problems every year forces even the experienced LRW professor back into the novice role. Reusing a problem, in contrast, deepens the professor's expertise. We become intimately familiar with the law of our problems. We come to know the points of greatest challenge for the students and are prepared to meet them. We get to build our expertise year by year instead of forcing ourselves to start over each year.

Recycling helps the professor improve because the process of refining a previously used assignment forces the professor to reflect on the earlier experience with the problem. The professor will also have more time available to read and review student papers, to work individually with students, and to conduct other scholarly activities, instead of playing catch up all year long. Students will write better papers each time we reuse an assignment because our deepening expertise allows us to teach it better. Reusing a problem makes sense unless the assignment no longer has utility as a teaching tool, perhaps because the skills targeted are no longer applicable, a new development has mooted the issue, or the professor is tired of teaching the assignment.

The oft-repeated reason for not reusing assignments is the fear that students will cheat if assignments are reused. Although fear of cheating is legitimate, it should not be dispositive. First, remember that even with new assignments, cheating can occur. Students may, unfortunately, receive illicit assistance from other students or

175. Levine, *Designing Assignments*, *supra* note 40, at 62.

from sources outside the law school, even if the assignment was never used before. The best ways to remove the temptation to cheat are to require evidence of research, including narrative reports about the student's research efforts and copies of finding aids, and prewriting activities, including outlines and partial drafts. Professors should also conduct individual conferences with the students. These are all elements of good process pedagogy. Good problems are realistic and the law itself advances from year to year. Those changes have to be dealt with as the years pass. A final, easy curb on cheating is tweaking the details of the problem. The professor can change the names of subsidiary characters, the address of the hospital, and the dates of events. The more changed details the student has to identify and revise, the less incentive she has to use someone else's work. We structure the system to make it harder and less rewarding for students to cheat than to do the work properly in the first place.

We inadvertently proved the efficacy of this structure when, a few years ago, we discovered that the library staff had mistakenly left on reserve the best memos from the prior year for the problem being used by two sections.¹⁷⁶ The availability of the old memos may have raised the bottom a bit, but there was little other apparent impact. Because the students had already produced research reports and drafted Questions Presented and a draft argument, none of which were available to them, they had little incentive to use the old memos for anything other than guidance. Many students decided not to look at them at all; others noted that the memos reflected what had been discussed in class already. No one attempted to submit a memo that smacked of plagiarism.

In doctrinal classes, outlines from previous years are widely available. Use of such outlines is typically discouraged, but is never considered cheating.¹⁷⁷ Most students understand that there is no substitute for learning to do their own research and written legal analysis. They

176. See *supra*, notes 126-30 and accompanying text for a more complete discussion of this incident.

177. Use in violation of explicit rules, e.g., bringing such an outline into an exam when the rules allow only documents that a student has prepared herself, is, of course, a different story.

grasp that LRW is teaching them the skills they are going to have to use in their first legal job. The effort a student would have to undergo to cheat with the work product of another student is significant.¹⁷⁸ The close involvement we have with each student and her work makes the likelihood of success with plagiarism remote, in addition to making the effort to cheat highly unrewarding in light of the risks of getting caught and the long term disadvantage of not learning how to do written legal analysis.

The other element of the Temple LRW program that makes it so effective for students and so rewarding for teachers is the small class size. Our first-year day class is divided into four large sections of sixty to seventy students. Each large section comprises two LRW sections of thirty to thirty-five students.¹⁷⁹ The evening division is divided into LRW sections of ten to twelve students. Each LRW professor teaches one section of the LRW course. Temple is not unique in having classes this small, but it is in the minority.¹⁸⁰ It is common for LRW professors to teach fifty or more students per semester. We have calculated that each additional student adds at least ten hours of work for the professor over the course of a semester. Each student represents three more papers, two more drafts, two more conferences, one more set of interim assignments, and another person who may, and often will, have questions and need the professor's individual attention. The difference between thirty-five students and fifty students is enormous; the smaller size allows attention to the work of each student that is exceedingly difficult with a larger class size.

Scholars of education and learning have emphasized the

178. The student would have to go through the facts with a fine-tooth comb and find every change. He or she would have to change the prose so that it was not eerily familiar to the professor who read at least two versions of it closely when originally submitted. The student would have to reconstruct the research that would have been necessary and he or she would have to update it. The student would also have to create the interim assignments including the draft headings, questions presented, and the like.

179. Some sections are further divided. The LRW Director and the second-year graduate fellows have half-size LRW sections with sixteen to eighteen students in each class.

180. The average teaching load for a non-director LRW professor reported in the 2004 Survey was 45.03 first-year students in the fall semester. Gerdy & Berres-Paul, *supra* note 2, at 62 tbl.82.

importance of small class size at all levels of education.¹⁸¹ LRW's reliance on the individualized relationship between professor and student demands a workable ratio of students to professors. Temple's commitment to LRW includes a determination to keep our class sizes manageable. That in turn makes it possible for us to teach this course at a very high level.

V. CONCLUSION

So how does one implement this program without adequate administrative support and small classes? Reusing problems, integrating research and writing, and giving feedback rather than grades to interim assignments improve the lives of both the students and the professor. Designing an effective closed universe problem is even harder than designing an integrated problem. Concern about cheating is heightened when the universe is closed if the problem is used by more than one section.¹⁸² Reuse of well-designed teaching problems improves teaching and reduces the professor's workload. The biggest challenge is the time demands of conferences. Conferences are so critical to student learning that they are part of nearly every LRW program. The difference is when they occur. Conferences that take place during the writing process are no more work for the professor and infinitely more useful for the student than post-mortem conferences on a project that is already finished and evaluated. Small group conferences may be an option for some projects.¹⁸³ Delayed grading lessens student resistance

181. See, e.g., ALFIE KOHN, *THE SCHOOLS OUR CHILDREN DESERVE*, 155-56, 282 n.86 (reviewing research on the benefits of small class size, noting that smaller class size allows students to be heard and to be part of a learning community that fosters learning for all ages of students).

182. DeJarnatt formerly taught as an adjunct in a program that, at the time, attempted to use one closed research assignment for the entire first-year class. To avoid plagiarism across LRW classes, the director tried to add a different case for each different section. The challenge of having the extra case work was nearly insurmountable and reduced the value of the problem overall, despite the director's valiant efforts. In essence, the need for slightly different cases took precedence over the use of the most optimal cases and further reduced the students' understanding of the role research plays in the development of analysis.

183. Sarah Ricks discusses the benefits of structuring small group conferences on briefs as quasi-adversarial. She meets with two appellant and two appellee representatives to discuss the appeal after the students have

to collaborative work, benefiting them while allowing the professor to focus on feedback rather than evaluation. The early start is worth advocating in any program. Starting early really gives LRW a boost in being perceived as a help to students' adjustment to law school and learning legal analysis, instead of a burden that is somehow interfering with their "real" learning. In short, all of the elements of this structure benefit learning and teaching. Incorporating any of them should improve both.

We do not claim to have solved every challenge facing LRW professors. But we hope this article helps advance the discussion of how LRW can and should be taught, a discussion that should be grounded in our understanding of how adult students learn and how law students can be brought into full membership in the discourse community of law.

written a partial draft. This allows the students to respond directly to each other's arguments and positions. She follows this exercise with an individual conference on a more complete draft. Sarah E. Ricks, *Some Strategies to Teach Reluctant Talkers to Talk About Law*, 54 J. LEGAL EDUC. 570 (2004).