



TOURO COLLEGE
JACOB D. FUCHSBERG LAW CENTER
Where Knowledge and Values Meet

Touro Law Review

Volume 28 | Number 4

Article 7

November 2012

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Catherine J. Wasson

Barbara J. Tyler

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Recommended Citation

Wasson, Catherine J. and Tyler, Barbara J. (2012) "How Metacognitive Deficiencies of Law Students Lead to Biased Ratings of Law Professors," *Touro Law Review*: Vol. 28 : No. 4 , Article 7.

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HOW METACOGNITIVE DEFICIENCIES OF LAW STUDENTS LEAD TO BIASED RATINGS OF LAW PROFESSORS

Catherine J. Wasson* & Barbara J. Tyler** †

*“[H]e who knows most, knows best how little he knows.”*¹

I. INTRODUCTION

“This course sucks.”

“To [sic] much emphasis on grammar [sic].”

Admit it! You have long felt that teaching law students should come with a warning: “Student ratings can be hazardous to your career!”² Not to mention hazardous to your mental health.

* Catherine Wasson is an Associate Professor of Law and Director of Legal Method & Communication, Elon University School of Law.

** Barbara Tyler is a Professor Emerita and former Director of Legal Writing, Research and Advocacy, Cleveland Marshall College of Law, Cleveland State University.

† We thank Professors James Levy, who suggested that we write this article. Kristin Gerdy, Pamela V. Lysaght, Judith Fischer, and Louis J. Sirico, Jr. provided thoughtful comments and suggestions. Thanks also go to Paul Elledge, Elon University School of Law, Class of 2013. We are extremely grateful to our many legal writing colleagues who were willing to share some of their student comments with us.

¹ THOMAS JEFFERSON, THE PROCEEDINGS OF THE GOVERNMENT OF THE UNITED STATES, IN MAINTAINING THE PUBLIC RIGHT TO THE BEACH OF THE MISSISSIPPI, ADJACENT TO NEW-ORLEANS, AGAINST THE INTRUSION OF EDWARD LIVINGSTON 89 (1812).

² “Ratings” is the name we give to the questionnaires that students complete about the course they took and the professor who teaches it. Students submit the questionnaires anonymously, usually on one of the last days of the course and typically while the professor is out of the room. Our use of the term “student ratings” rather than the more traditional “student evaluations” is deliberate. Many writers prefer “student ratings” as the more correct term. See, e.g., 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. LEGAL WRITING INST. 111, 114 n.23 (2004) [hereinafter *A Plea for Holistic Evaluation*] (“Although the completed questionnaires are sometimes called ‘student evaluations,’ the phrase ‘student ratings’ is more exact and has been adopted by most researchers in the field because it ‘distinguish[es] between the people who provide the information (sources of data) and the people who interpret it (evaluators).’” (quoting William E. Cashin, *Student Ratings of Teaching: A*

“Thousands of articles have been published about student evaluations of teaching.”³ Scholars who specialize in learning theory and teaching generally agree that student ratings provide useful information about learning.⁴ Law professors, however, generally “have negative views of student evaluations”⁵ This Article does not attempt to resolve empirical disputes about the reliability or validity of student rating instruments. What it does do is examine the competence of the student raters themselves. Although we believe that our conclusions are applicable to all law professors, we chose to review comments on student ratings shared by our legal writing colleagues. There are 201 accredited law schools in the United States,⁶ and each employs several legal writing professors.⁷ These legal writing professors mark hundreds of pages of student work and hold hours of conferences,⁸ often locked into positions of low status within their law schools,⁹ because they are committed to their students’ success and teach to help their students achieve that success. At the end of this exercise, however, the professors often find themselves the target of unfocused anger, insults and diatribe, coupled with a stunning lack of respect—all delivered anonymously via the student ratings process.

Many of our colleagues have long believed that a small fraction of the poorest-performing students are likely responsible for the harshest ratings. An active and growing body of psychological studies now bears out this hypothesis.¹⁰

Summary of the Research, IDEA PAPER NO. 20 (Kan. State Univ. IDEA Ctr. for Faculty Educ. & Dev. Sept. 1988, at 1)), available at http://www.theideacenter.org/sites/default/files/Idea_Paper_20.pdf (alterations in original). There is also evidence that students, who by definition lack competence in the intellectual domain of legal study, lack the cognitive ability to recognize competence in others and thus are not competent to truly “evaluate” their professors. See *infra* Part II.

³ Arthur Best, *Student Evaluations of Law Teaching Work Well: Strongly Agree, Agree, Neutral, Disagree, Strongly Disagree*, 38 SW. L. REV. 1, 3 (2008).

⁴ *Id.* at 1-2.

⁵ *Id.* at 2.

⁶ AM. BAR ASS’N, *ABA-Approved Law Schools*, http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html (last visited April 7, 2012).

⁷ See *ALWD/LWI 2011 Survey Report*, ASS’N OF LEGAL WRITING DIRS. LEGAL WRITING INSTITUTE: REPORT OF THE ANNUAL LEGAL WRITING SURVEY, 1 (2011), http://www.alwd.org/surveys/survey_results/2011_LWI_ALWD_Survey.pdf [hereinafter *2011 Survey*]. One hundred and eighty-seven United States law schools and one Canadian law school responded to the 2011 annual survey of legal writing programs, a 94.5% response rate. *Id.*

⁸ See *id.* at X.

⁹ See *infra* note 79.

¹⁰ See Justin Kruger & David Dunning, *Unskilled and Unaware of It: How Difficulties in*

The phenomenon called the “Dunning-Kruger effect” argues that poor performers grossly overestimate their performance, lack self-insight, and underestimate the competence of others because they lack the metacognitive skills necessary to recognize their deficits.¹¹ In addition, this research indicates that poor performers do not benefit from feedback.¹² This Article builds upon a growing body of new research into cognitive bias and, for the first time, applies that research to student ratings of law professors, leading us to conclude that law schools should not rely on student ratings when making important personnel decisions.

Kruger and Dunning suggested in 1999 that across many intellectual and social domains, it is the poorest performers who are least able to accurately assess their skills and performances, continually overestimating how well they perform when compared with their peers.¹³ For example, undergraduate students performing in the bottom twenty-five percent of the class on a test of grammar skills—i.e., in the tenth percentile—rated themselves above the sixtieth percentile.¹⁴ The same pattern was seen when researchers examined undergraduate students’ performance on classroom exams, “medical students assess their interviewing skills[,] clerks evaluating their performance, and medical laboratory technicians evaluating their [job performance]. . . .”¹⁵ In addition, the fascinating part of the equation seems to indicate that the weakest students are dramatically overconfident in their performance even when they have received feedback suggesting a need to improve.¹⁶ Since legal writing teachers provide constant feedback, this finding is particularly disturbing.

This Article samples a stunning array of actual student comments. Specifically, it focuses on the *aberrant* student comment—the comment that generates scalding heat, but no light. We focus on

Recognizing One’s Own Incompetence Lead to Inflated Self-Assessments, 77 J. PERSONALITY & SOC. PSYCHOL. 1121, 1127 (1999); Joyce Ehrlinger et al., *Why the Unskilled Are Unaware: Further Explorations of (Absent) Self-Insight Among the Incompetent*, 105 ORG. BEHAVIOR & HUM. DECISION PROCESSES 98, 99 (2008), available at <http://www.ncbi.nlm.nih.gov/pmc/ArticlesPMC2702783/pdf>.

¹¹ See generally Kruger & Dunning, *supra* note 10.

¹² See Ehrlinger et al., *supra* note 10, at 119.

¹³ Kruger & Dunning, *supra* note 10, at 1121.

¹⁴ *Id.* at 1126.

¹⁵ Ehrlinger et al., *supra* note 10 (citations omitted). “[T]op performers consistently underestimate how superior . . . their performances are relative to their peers.” *Id.*

¹⁶ *Id.* at 119.

these comments because it is time to expose a deeply disturbing aspect of the student ratings process at its worst: it allows students to use the ratings process to abuse and bully a professor with no responsibility for the consequences of their actions. Students know that their ratings and comments will be read by others; certainly the professor and his or her dean will see the comments. Program directors, deans of faculty, and faculty promotion and retention committees see the student ratings. At some schools, the whole law school community can see the ratings because student ratings are published, available to all. Yet students can intentionally publicize any kind of comment with impunity. They will never be called upon to defend their comments, never be called to account if their comments are false, and never be held accountable if false comments damage a professor's career and reputation.

Part II argues that metacognitive deficiencies in poor performing students are thrown into sharp relief by the rigors of the legal writing classroom and may be exacerbated by the gender and status of the professors. Student biases and frustration will find expression on student rating forms. Part III then presents comments from actual student ratings contributed by members of the Legal Writing Institute and the Association of Legal Writing Directors.¹⁷ We have categorized the comments according to their dominant themes and discuss how these comments exemplify the Dunning-Kruger effect at work in the legal writing course.

Part IV argues that changing the process used to evaluate law professors is necessary to provide fair outcomes. Part V concludes by encouraging all law teachers, new and experienced, to change what is warranted and to ignore the insensitive, aberrant comments we all inevitably receive. In all likelihood, the student comments say far more about the institutional biases that permit them and the cognitive biases of the students who write them than they do about the professors who receive them.

¹⁷ See ALWD, <http://www.alwd.org/> (last visited Mar. 7, 2012); see also LEGAL WRITING INSTITUTE, <http://www.lwionline.org/> (last visited April 7, 2012). The authors asked professors for the best and worst comments that they received on student ratings of their course. As you will see, the comments know no pattern and are inflicted upon all teachers regardless of job status, number of years teaching, or any other factor. In fact, some of our respondents have received teaching awards from their law schools and national organizations.

II. HOW DO YOU DO IT?¹⁸ THE DYNAMICS OF STUDENT RATINGS

“[I]gnorance more frequently begets confidence than does knowledge”¹⁹

We chose to begin our discussion with two assumptions. First, we assume that most law students and most law professors want to be engaged in the common endeavor of teaching and learning. Second, we assume that most law students and most law professors are neither evil nor insane. Taking these assumptions as true, what is the genesis of the unfairly negative student comment? We believe that the aberrant and ugly comments on student ratings arise synergistically from two sources: (1) students’ metacognitive deficiencies, specifically the phenomenon known as the Dunning-Kruger effect;²⁰ and (2) definitive factors that have a particular effect on ratings of legal writing professors.

A. Students’ Metacognitive Deficiencies & the Dunning-Kruger Effect

“The fact that I have been admitted to law school means you should give me credit for knowing this stuff.”

“Metacognition refers to the deliberate conscious control of one’s own cognitive actions;”²¹ not the acquisition of knowledge, but “the understanding of that knowledge.”²² Metacognitive skills “include many of the skills required for active learning, critical thinking, reflective judgment, problem solving, and decision-making.”²³ These same skills and abilities are essential to successful legal study and

¹⁸ A good question, and also the title of a song by Mitch Murray. *How Do You Do It?*, as recorded by Gerry and the Pacemakers, was a Number 1 hit in the U.K. and the U.S. in 1963-64. (“How do you do what you do to me? I wish I knew.”).

¹⁹ CHARLES DARWIN, *THE DESCENT OF MAN* 4 (1871).

²⁰ Kruger & Dunning, *supra* note 10.

²¹ Ann L. Brown, *Metacognitive Development and Reading*, in *THEORETICAL ISSUES IN READING COMPREHENSION* 453, 453 (R. J. Spiro, B. C. Bruce, & W. F. Brewer eds., 1980).

²² *Id.*

²³ Dr. Theo L. Dawson, *Metacognition and Learning in Adulthood*, DEVELOPMENTAL TESTING SERVICE, LLC, Aug. 2008, at 3, available at <https://www.devtestservice.org/PDF/Metacognition.pdf>.

successful law practice.

Although much of the early work in metacognitive development focused on rote learning in young children,²⁴ “[m]etacognitive deficiencies are the problem of the novice, regardless of age. Ignorance is not necessarily age related; rather it is more a function of inexperience in a new (and difficult) problem situation.”²⁵ Law students—especially first-year law students—are, by definition, “novices.” Their lack of knowledge is a function of the fact that they are embarking on a new and intellectually challenging professional career.

Ann L. Brown discusses metacognitive ability in terms of four forms of self-awareness: (1) knowing when you know, (2) knowing what you know, (3) knowing what you need to know and (4) knowing the utility of active intervention.²⁶ The first year law student quoted above who said she should be given credit for knowing this “stuff” clearly lacks three of the basic forms of self-awareness that Brown says define metacognitive ability; the student does not know when she knows, what she knows, or what she needs to know. In short, as a new law student she does not know “where her knowledge ended and her ignorance began.”²⁷

Lack of self-awareness is directly related to the psychological bias²⁸ called the “Dunning-Kruger effect.” Although law students generally have had great academic success as undergraduates, “[m]etacognitive skills learned in one context are not automatically transferred to another context.”²⁹ Furthermore, “the development of cognitive complexity progresses at different rates in different knowledge domains, depending upon experience and learning in particular domains.”³⁰ Consequently, prior academic success does not neces-

²⁴ Brown, *supra* note 21, at 475.

²⁵ *Id.*

²⁶ *See id.* at 458-62.

²⁷ *Id.*

²⁸ *See* Dawson, *supra* note 23, at 11 (“Although it is clearly part of the subtext of much research in metacognition (especially critical thinking), the subject of psychological bias is rarely raised explicitly.”).

²⁹ *Id.* at 13 (citing K. Anders Ericsson et al., *Acquisition of a Memory Skill*, in *SCIENCE AND ENGINEERING ETHICS*, 208, 1181-82 (1980)).

³⁰ *Id.* at 7 (citing Kurt W. Fischer & Ellen Pruyne, *Reflective Thinking in Adulthood: Development, Variation, and Consolidation*, in *HANDBOOK OF ADULT DEV.*, 169 (J. Demick & C. Andreoletti eds., 2003)); Kurt W. Fischer et al., *Adult Cognitive Development: Dynamics in the Developmental Web*, in *HANDBOOK OF DEV. PSYCHOL.*, 491 (J. Valsiner & K. Connolly

sarily translate into immediate success in the new knowledge domain of law school. Being a good college student does not translate into being a good *law* student; high class standing in college does not translate into high class standing in law school. Although this reality often takes our students by surprise, it would not surprise Kruger and Dunning.

Kruger and Dunning posit that “the skills that engender competence in a particular domain are often the very same skills necessary to evaluate competence in that domain—one’s own or anyone else’s. Because of this, incompetent individuals lack . . . *metacognition*”³¹ This lack not only causes incompetent individuals to “grossly overestimate their skills and abilities[,]”³² but it prevents them from recognizing competence in others.³³ Kruger and Dunning argue:

[W]hen people are incompetent in the strategies they adopt to achieve success and satisfaction, they suffer a dual burden: Not only do they reach erroneous conclusions and make unfortunate choices, but their incompetence robs them of the ability to realize it. Instead . . . they are left with the mistaken impression that they are doing just fine.³⁴

Kruger and Dunning also argue that the skills needed for any pursuit are the same skills necessary to recognize competence in that pursuit.

Kruger and Dunning proved their hypothesis by conducting four studies with Cornell University undergraduate students.³⁵ They asked students to assess their ability to recognize humor, engage in logical reasoning, and estimate their grammar ability. In three of the studies, Kruger and Dunning found that the lowest-performing quartile performed in the tenth to twelfth percentile, yet those low performers believed that they had performed in the fifty-eighth to sixty-eighth percentile.³⁶ In the fourth study, Kruger and Dunning discovered that training in a particular knowledge domain could improve

eds., 2003).

³¹ Kruger & Dunning, *supra* note 10, at 1121 (citation omitted).

³² *Id.* at 1122.

³³ *Id.* at 1126-27.

³⁴ *Id.* at 1121.

³⁵ *See generally id.*

³⁶ Kruger & Dunning, *supra* note 10, at 1123, 1125-26.

the ability of poor performers to accurately appraise their own performance.³⁷

Ehrlinger and her colleagues built upon the foundation laid by Kruger and Dunning and found support for their conclusions. Ehrlinger and her colleagues found “that overestimation among poor performers emerged across a variety of tasks and in real world settings.”³⁸ Moreover, in the authors’ five studies “poor performers offered overconfident assessments of their absolute performance (e.g., raw score on test; judge’s ratings on debate performance) as well as ones of relative performance on a range of challenging real world tasks.”³⁹

What Ehrlinger found most fascinating, however, is the fact that poor performers “show dramatic overconfidence on tasks about which they have likely received substantial feedback in the past. . . . [P]oor performers do not learn from feedback suggesting a need to improve.”⁴⁰

What might this research mean in the context of law school student ratings? Based on the research, we can infer that the weak students, who in all likelihood were successful undergraduates, are unpleasantly surprised by their failure to replicate their college success in law school, but lack the metacognitive ability to understand why they are not succeeding. The students do not know what they need to know to succeed, and therefore can neither identify their own deficiencies nor recognize the professor’s proficiencies. Consequently, the students overestimate their own competence and underestimate that of the professor.

When we examine specific factors that affect student ratings with reference to the metacognitive deficiencies typical of the novice learner and the resulting unawareness of the actual competence of oneself and others, the actual meaning—and perhaps actual value—of many of the most perplexing student comments quoted in Part III below becomes clearer.

³⁷ *Id.* at 1122-23.

³⁸ Ehrlinger et al. *supra* note 12, at 23.

³⁹ *Id.*

⁴⁰ *Id.* at 25 (citing D.J. Hacker et al., *Test Prediction and Performance in a Classroom Context*, 92 J. EDUC. PSYCHOL. 160, 160 (2000)).

B. Factors That Affect Student Ratings of Legal Writing Professors

*“She wasn’t nurturing enough,
but her clothing was very color-coordinated.”*

A certain (very) small number of students use the anonymous ratings process to abuse and bully their professors. The written comments that students make on their legal writing teachers’ ratings are often mean-spirited and unwarranted, if not pointedly nasty.⁴¹ Research indicates that at least three (often overlapping) factors can have a negative effect on students’ ratings of their professors: (1) the nature of the course;⁴² (2) the student’s grades and the methods of assessment used in the course;⁴³ and (3) specific biases that may affect particular professors, including the professor’s race,⁴⁴ gender,⁴⁵ and status within the legal academy.⁴⁶ The interplay between these factors and a student’s metacognitive skills—or lack thereof—almost certainly accounts for many of the aberrant negative comments on student rating forms.

⁴¹ See comments *infra* Part III. See generally Fischer, *A Plea for Holistic Evaluation*, *supra* note 2. Prof. Fischer’s article provides an extensive review of the literature on student ratings in American universities and a conclusion pointing out and documenting the inaccuracy and negative effects of the ratings. The author advocates a holistic approach to rating college and graduate school teaching rather than one dominated by student ratings. *Id.* at 159-61.

⁴² See generally Melissa Marlow-Shafer, *Student Evaluations of Teacher Performance and the “Legal Writing Pathology”*: *Diagnosis Confirmed*, 5 N.Y. CITY L. REV. 115 (2002).

⁴³ See, e.g., Judith D. Fischer, *How to Improve Student Ratings in Legal Writing Courses: Views from the Trenches*, 34 U. BALT. L. REV. 199, 201 (2004) [hereinafter *How to Improve Student Ratings*].

⁴⁴ Law professors of color are victims of student bias and have received “harshly negative” student ratings. See generally Deborah J. Merritt, *Bias, the Brain, and Student Evaluations of Teaching*, 82 ST. JOHN’S L. REV. 235, 235 n.2 (2008) (giving an extensive bibliography of the literature on racial bias in legal education); see also Robert S. Chang & Adrienne D. Davis, *An Epistolary Exchange Making Up is Hard to Do: Race/Gender/Sexual Orientation in the Law School Classroom*, 33 HARV. J.L. & GENDER 1 (2010). We do not examine racial bias in this Article because minority professors are underrepresented in the legal writing community.

⁴⁵ See generally Christine Haight Farley, *Confronting Expectations: Women in the Legal Academy*, 8 YALE J.L. & FEMINISM 333 (1996).

⁴⁶ See generally Merritt, *supra* note 44, at 241-52 (discussing the non-verbal signals to which students respond during the first seconds and minutes of class).

I. *The Nature of the Course*

The modern legal writing course is characterized by multiple assignments, extensive written feedback, and one-on-one conferences between professor and student. Many first-year law students have never experienced such rigor.

In a recent New York Times op-ed piece, Richard Arum and Josipa Roksa commented on their research into the quality of undergraduate learning.⁴⁷ In a study involving several thousand students in many undergraduate programs, the authors “found that large numbers of students were making their way through college with minimal exposure to rigorous coursework, only a modest investment of effort and little or no meaningful improvement in skills like writing and reasoning.”⁴⁸ In discussing the causes of poor undergraduate learning, the authors note that cultural changes have empowered students to see themselves as customers, some of whom “look for ways to attain an educational credential effortlessly and comfortably.”⁴⁹ If, as Arum and Roksa report, students were accustomed to studying only twelve or thirteen hours per week in college,⁵⁰ the amount of studying required in law school is overwhelming. Students may not ever have been required to develop the study skills or discipline required to succeed in law school, so they will find that learning in this new environment is neither effortless nor comfortable. Unfortunately, however, “students appear to . . . punish professors who increase deep learning”⁵¹

The legal writing class may differ from a student’s other law school classes in many ways, all of them stressful. For example, the workload in a legal writing course is often heavy,⁵² and the consequences of failing to keep up can be severe. It is not easy to “cram” for a fifteen-page memorandum that was designed to be written in stages over several weeks. In addition to the graded drafts and re-

⁴⁷ Richard Arum & Josipa Roksa, *Your So-Called Education*, N.Y. TIMES, May 15, 2011, at WK 10.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Scott E. Carrell & James E. West, *Does Professor Quality Matter? Evidence from Random Assignment of Students to Professors*, 118 J. POL. ECON. 409, 412 (2010).

⁵² In 2010/2011, the average first-year writing student was required to draft approximately 69-77 pages of work. *2011 Survey*, *supra* note 7, at Questions 54 and 82.

writes common in most legal writing classes, students also may be asked to complete homework assignments, including exercises on research, citation and writing style.⁵³ These assignments can be challenging and time-consuming, and even if they are not graded, they provide practice opportunities that help students achieve better results on their graded assignments. Some law schools allocate insufficient credit to the legal writing class. For example, some law schools require three hours of class time but awarding only two credits for the course⁵⁴—such inequity frustrates students.

Legal study also exposes weaknesses that were undisclosed or unnoticed during undergraduate school. Students who arrive in law school without strong composition skills may be frustrated and demoralized when they discover that their grammar, spelling, and general writing skills are inadequate for the demands of law school and law practice. Some students would rather criticize a professor's emphasis on "grammer [sic]" than acknowledge their own deficits and the amount of additional work that they will have to do to overcome their lack of basic composition skills.

Finally, the nature of the assignments and in-class activities make it easy to identify the student who is unprepared. A substantial majority of law schools include in-class writing, and individual and group exercises in their legal writing classes.⁵⁵ The odds are good that a student who does not read for Contracts class will not be called on that day. In contrast, however, the legal writing "slacker" is almost always found out and likely to be embarrassed and resentful.

The highest-performing subjects in Kruger and Dunning's study were better able to recognize competence in others.⁵⁶ This ability may allow strong students to solidify and increase their skills with each new opportunity to observe their peers and to practice new skills. Thus, the strong student would appreciate the professor who required her students to do more work. Weak students, however, "fail, through life experience, to learn that they are unskilled."⁵⁷ To these students, the same professor is "unfair" because she "made us

⁵³ See, e.g., *2011 Survey*, *supra* note 7, at Questions 27, 54, and 82.

⁵⁴ At nineteen law schools the number of in-class hours per week is greater than the number of credits allocated to the course. *2011 Survey*, *supra* note 7, at Question 14.

⁵⁵ *Id.* at Question 21.

⁵⁶ Kruger & Dunning, *supra* note 10, at 1127.

⁵⁷ *Id.* at 1131.

do more work.”⁵⁸

Writing is the basis for successful law practice. Learning to write well, however, is a life-long endeavor for the lawyer who strives for excellence. Poor performers are inclined to shoot the messenger because they cannot accept that message.

2. *Methods of Student Assessment and Grading*

Some of our legal writing colleagues believe that good teachers generally receive good ratings,⁵⁹ but that is not always so. In fact, researchers have found that teacher ratings are more closely correlated with students’ expected grades than with the quality of the teaching.⁶⁰ When institutions rely on student course evaluations to assess teaching, the institution measures student satisfaction instead of student learning, “creat[ing] perverse incentives for professors to demand little and give out good grades.”⁶¹ In fact, some authors suggest quite openly that grading “leniently”⁶² and giving lots of high grades⁶³ work to improve student ratings.

⁵⁸ See comments *infra* Part III.A.5.

⁵⁹ As one legal writing professor put it, “With very few exceptions, good teachers get good evaluations, mediocre teachers get mediocre evaluations, and bad teachers get bad evaluations.” E-mail from anonymous contributor to LRWPROF-L listserv, *Re: Good Teaching = Good Evals; Bad Teaching = Bad Evals* (April 24, 2006, 15:35:19) (copy on file with the authors). This comment inspired much debate, but we believe that most of our colleagues would agree with this conclusion: “[I]f evals are bad it usually means that our teaching is breaking down.” E-mail from anonymous contributor to LRWPROF-L listserv, *Re: Good Teaching = Good Evals; Bad Teaching = Bad Evals* (April 24, 2006, 13:16:48) (copy on file with the authors). As we noted at the outset, legitimate criticisms should be taken seriously. However, in this Article, we are focusing on the causes of the unwarranted aberrant comment made about a competent professor for reasons unrelated to poor teaching.

⁶⁰ See Bryan W. Griffin, *Grading Leniency, Grade Discrepancy, and Student Ratings of Instruction*, 29 CONTEMP. EDUC. PSYCHOL. 410, 410-12 (2004) (reporting that the ratings given by students in a large study correlated with their expected grade in the class, even among students who were receiving the same teaching in the same class); see also Carrell & West, *supra* note 51, at 412 (concluding that “[s]tudent evaluations are positively correlated with contemporaneous professor value added and negatively correlated with follow-on student achievement. That is, students appear to reward higher grades in the introductory course, but punish professors who increase deep learning . . .”).

⁶¹ Arum & Roksa, *supra* note 47.

⁶² See Griffin, *supra* note 60, at 422 (discussing studies that indicated students tend to rate professors who are lenient graders higher).

⁶³ See, e.g., *id.* at 411, 422 (noting that studies have revealed that professors who assign higher grades are “rewarded” with higher ratings).

The rigors of law school are the stuff of legend.⁶⁴ Students who come to law school from a less-than-rigorous undergraduate experience are even more likely to be overwhelmed by the expectations to which they are subjected when they begin their 1L year. Furthermore, many law schools adopt grading guidelines that substantially interfere with a professor's ability to "grade leniently" even if she wanted to. The shock of difficult material, mandated curves and high-stakes final exams is bad enough for many law students, but the ante is raised even higher in their legal writing classes.

Anecdotal evidence from legal writing teachers, and studies of student ratings in legal writing courses specifically, indicate that legal writing courses produce sharp written criticism of the teacher for reasons that are directly related to the manner in which students are assessed and graded in the course. First, legal writing professors conduct extensive critiques of student writing.⁶⁵ The comprehensive and unrelenting nature of this assessment may shake a student's confidence and engender a negative response.

For some students, the demands of numerous and difficult assignments coupled with the dismay of receiving less than exemplary grades generates a degree of discontent, even hostility, towards legal writing faculty. Although many students accept grades and accompanying detailed assessments of their work with grace and a professional interest in improvement, others become angry, confused, and even resentful. Rather than accept their own need to improve, they blame the quality of instruction.⁶⁶

Tragically, however, Dr. Ehrlinger and her colleagues have found that despite clear and repeated feedback, "poor performers do not learn from feedback suggesting a need to improve."⁶⁷ One cannot

⁶⁴ See, e.g., *THE PAPER CHASE* (Twentieth Century Fox Film Corp. 1973); SCOTT TUROW, *ONE L* (1988).

⁶⁵ In 2010/2011, the average legal writing professor read 3,121 pages of student work and held almost 97 hours of individual student conferences. *2011 Survey*, *supra* note 7, at 79. Given an average student load of 40.75 students, a typical student would have received individual feedback on almost 77 pages of work. *Id.*

⁶⁶ 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).

⁶⁷ Ehrlinger et al., *supra* note 10, at 119.

help but wonder whether legal writing professors should reconsider their faith in the value of detailed and comprehensive feedback.

Second, legal writing professors usually evaluate and/or grade students *during* the semester, rather than only at the end of the semester as is traditional in most law school courses. In fact, respondents to the most recent survey of legal writing programs reported that they gave between twelve and thirteen assignments each year.⁶⁸ Thus, a grade in legal writing might intrude rudely upon a student's belief that he is progressing well in law school and will finish the semester at the top of the class, with unfortunate results for the professor's student ratings.

[S]tudents who "have received fairly low grades on earlier assignments, grades below what they were used to getting in undergraduate school, and often, in their minds, disproportionately low compared to the amount of work they perceive that they did in preparing the documents" may "tend to resent the course or the teacher or both."⁶⁹

Students who do poorly may then " 'mirror back' the evaluations that they receive from instructors[,] . . . protect[ing] their sense of self-esteem by attributing their poor performance to the instructor. The blame manifests itself in the way that such students complete items in [student ratings] . . . by devaluing the source of the evaluations"⁷⁰—the professor.

3. *Professor's Gender and Status*

The gender of the teacher, also, may be a factor contributing to lower student ratings. While women comprise approximately fifty

⁶⁸ 2011 Survey, *supra* note 7, at Questions 54, 82; *see also* Bayer, *supra* note 66, at 363-64 ("Unlike most law school courses that test students via one examination at the end of the semester, a sound writing program consists of numerous graded assignments of increasing degrees of complexity. Students receive their first law school grades in legal writing . . .").

⁶⁹ David D. Walter, *Student Evaluations—A Tool for Advancing Law Teacher Professionalism and Respect for Students*, 6 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)). "The teachers of courses that offer grades during the semester—before students complete their evaluation forms—are at risk of lower evaluations from students disappointed with their grades." *Id.* (citing Richard Abel, *Evaluating Evaluations: How Should Law Schools Judge Teaching?*, 40 J. LEG. EDUC. 407, 419 (1990)).

⁷⁰ *See* Marlow-Shafer, *supra* note 42, at 122-23 (citations omitted).

percent of law students, empirical studies have shown a bias against women law professors.⁷¹ Students' perception of gender and its stereotypes affect how students evaluate faculty.⁷² For decades, legal writing has been deemed "women's work," performed in the "pink ghetto" of the legal academy.⁷³ When, even today, more than seventy percent of legal writing teachers are women,⁷⁴ it stands to reason that gender is another nail in the proverbial coffin of our student ratings.

Status may also have an impact on student ratings as most legal writing professors still hold lower-status positions in the law school hierarchy than their "doctrinal" colleagues. In the 2010/2011 academic year, with 188 law schools reporting, only forty-four legal writing programs reported having writing professors on the tenure-track or tenured; only fifty-three programs reported having a program director with tenure or on the tenure-track.⁷⁵ Many writing professors are not given the usual titles of Assistant, Associate, or full Professor of Law. Instead, they may be specifically designated "[p]rofessor[s] . . . of legal writing," or hold the title "lecturer," "senior lecturer," or even "instructor."⁷⁶

Lack of status is also reflected in lower pay and reduced job security.⁷⁷ The median salary for legal writing program directors was

⁷¹ See Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEG. EDUC. 313, 319, 323 (2000) (showing the representation of female faculty members at all law schools based upon 1996-99 data); see also Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools' Dirty Little Secrets*, 16 BERKELEY'S WOMEN'S L.J. 3, 4 (2001) (documenting that women hold only 26% of the tenure-track doctrinal positions in law schools but 73% of the non-tenure-track legal writing positions).

⁷² See generally Farley, *supra* note 45; see also Fischer, *A Plea for Holistic Evaluation*, *supra* note 2, at 128-29 (discussing evidence of bias against women in fields that are traditionally male-dominated, and a professor's opinion that some students "view[] women as less competent than men[,] . . ." negatively affecting a woman's student ratings).

⁷³ See generally Pamela Edwards, *Teaching Legal Writing as Women's Work: Life on the Fringes of the Academy*, 4 CARDOZO WOMEN'S L.J. 75 (1997); Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 J. LEGAL EDUC. 562 (2000).

⁷⁴ See Jan M. Levine & Kathryn Stanchi, *Women, Writing, & Wages: Breaking the Last Taboo*, 7 WM. & MARY J. WOMEN & L. 551, 574, 580 (2001); see also 2011 Survey, *supra* note 7, at Question 2 (female directors comprised 78.7% of those responding; male directors comprised 21.3%). Approximately 71% of full-time legal writing faculty (not including program directors) are women. 2011 Survey, *supra* note 7, at Question 71(b).

⁷⁵ 2011 Survey, *supra* note 7, at Questions 45, 65.

⁷⁶ *Id.* at Question 68. The use of inferior titles for program directors is somewhat less likely, but still common. *Id.* at Question 48.

⁷⁷ See *id.* at Questions 47, 65 (showing that most legal writing professors work on short-term contracts). Nine law schools still impose a "cap" on the number of years that a legal

\$104,000 in 2010/2011, while the median salary for legal writing professors was only \$70,500.⁷⁸ In fact, legal writing professionals with years of experience may earn less than a new graduate who was in their 1L writing class three years earlier.⁷⁹ In contrast, the median salaries for law professors generally are much higher. According to the most recent survey by the Society of American Law Teachers (SALT), median salaries in the 2009/2010 academic year were approximately \$100,194 for assistant professors, \$112,084 for associate professors, and \$146,468 for full professors.⁸⁰ The overwhelming majority of legal writing professors, regardless of their length of experience, work on short-term contracts, with little if any security of position.⁸¹ Law professors generally, however, are far more often tenured or on the tenure-track, especially at the higher ranks.⁸² If students are aware that their legal writing professors are at the bottom of

writing professor may teach. *Id.* at Question 66.

⁷⁸ 2011 Survey, *supra* note 7, at Questions 49, 75.

⁷⁹ See Levine & Stanchi, *supra* note 74, at 574, 578 (“[L]egal writing salaries start low regardless of the teachers’ practice experience, and remain low despite the teachers’ seniority in their field or even among other faculty in their schools.

....

Not only do law schools pay legal writing teachers substantially less than their colleagues in academia, but they also pay them much lower salaries than those earned by the law school graduates of the class of 1998.”)

⁸⁰ See Soc’y of Am. Law Teachers, 2009-10 SALT Salary Survey, SALT EQUALIZER (June 2010), <http://www.saltlaw.org/contents/view/salariesurvey>. Of the 200 law schools surveyed by SALT in 2009/2010, eighty-four responded—a response rate of 42%. *Id.* The LWI/ALWD Survey response rate of more than 94% obviously yields far more reliable results than the SALT response rate. See 2011 Survey, *supra* note 7.

⁸¹ 2011 Survey, *supra* note 7, at Question 65 (showing that professors at 138 law schools—73.4% of the schools reporting—worked under contracts that were not characterized as complying with ABA Standard 405(c)). 405(c) requires “a form of security of position reasonably similar to tenure” American Bar Ass’n, *ABA Standards for Approval of Law Schools 2011-2012*, AMERICANBAR.ORG, http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2011_2012_aba_standards_chapter4.authcheckdam.pdf (last visited Mar. 7, 2012). Interpretation 405-6 explains that “[a] form of security of position reasonably similar to tenure includes a separate tenure track or a program of renewable long-term contracts.

....

‘[L]ong-term contract’ means at least a five-year contract that is presumptively renewable or other arrangement sufficient to ensure academic freedom.” *Id.*

⁸² See Ass’n of Am. Law Schools, 2008-2009 AALS Statistical Report on Law Faculty, ASS’N OF AM. LAW SCHOOLS, <http://www.aals.org/statistics/2009dlt/security.html> (last visited Mar. 7, 2012) (illustrating that although only 20% of Assistant Professors are tenured or on the tenure-track, the percentage rises to 47% for Associate Professors and to more than 87% for Professors).

the professorial pecking order at the law school, students may be much more inclined to criticize. Professor Bayer suggests that:

[d]isrespect from the faculty and administration, coupled with observable discrepancies of status, send a resolute message that students need not accord their writing professors the same regard as they do other faculty.

....

... When faculty and administrators denigrate the importance of legal writing as a curriculum and writing professors as professionals, students respond to such indicia of disrespect. They feel free to criticize legal writing for any number of perceived deficiencies.⁸³

Institutional discrimination against legal writing as a discipline and against legal writing professors personally can only reinforce a student's metacognitive deficiencies. After all, if the subject was difficult and the professors highly competent, the law school would treat the course and its teachers with more respect. Thus, a student's inflated assessment of his or her own competence is validated by a law school's denigration of the course, and a student's inability to recognize his or her professor's expertise is validated by the law school's denigration of the professor. In fact, the professors' title, gender, race, status and the value accorded to the course may doom a professor's student ratings from the first day of class.

Recent well-designed studies have shown that students form an impression of a professor within the first seconds or minutes of the first class. These impressions are based mostly on nonverbal criteria, such as facial expressions, gestures, dress, and hairstyle.⁸⁴ Research into such "thin slice" judgments⁸⁵ established a link between a professor's nonverbal behavior and his or her student ratings.

Researchers abstracted a few seconds from parts of a class, al-

⁸³ Bayer, *supra* note 66, at 363.

⁸⁴ See generally Merritt, *supra* note 44 (providing a comprehensive view of new studies of student ratings and making suggestions for change in law school ratings to eliminate the effect of bias and intuitive judgment).

⁸⁵ "[T]hin slices [are] . . . excerpt[s] of expressive behavior sampled from the behavioral stream, . . . [that are] less than 5 min [sic] long[.]" *Id.* at 246 n.47 (quoting Nalini Ambady et al., *Toward a Histology of Social Behavior: Judgmental Accuracy from Thin Slices of the Behavioral Stream*, 32 *ADVANCES IN EXPERIMENTAL SOC. PSYCHOL.* 201, 203-04 (2000)).

lowing students who did not know the teacher to view a mere nine to thirty seconds of tape of the teacher's non-verbal behavior.⁸⁶ "After viewing no more than thirty seconds of an instructor's nonverbal behavior, the students substantially agreed with one another about which instructors were more competent, professional, and possessed other positive classroom qualities."⁸⁷ These "thin-slice" judgments proved to be remarkably consistent with the end-of-semester evaluations given to the professor by his or her own students.⁸⁸ In fact, "[t]he correlation between thin slices of behavior and teaching evaluations . . . are the highest researchers have obtained in thin-slice research."⁸⁹ Thus, the impact of "very subtle affective nonverbal behaviors . . ."⁹⁰ has a profound impact on both the teacher and the teaching process.

Gender bias, disparate treatment of legal writing professors, and nonverbal clues foster judgments based on irrelevant criteria. The metacognitive deficiencies identified by Kruger and Dunning virtually guarantee that students will not recognize either the irrelevance of the criteria or the inaccuracy of their judgments.

III. STUDENT RATINGS

"Prof. X, Thanks for nothing this year. You were a shitty teacher and now I have to take legal research and writing over again.

Thanks, H__ S__."

Do not be deceived by the comments you are about to read. Legal writing teachers are far more often praised—even sainted—by their grateful students than they are vilified.⁹¹ For the unhappy student, however, even though he or she is decidedly in the minority, the legal writing professor may become the target of astonishingly irrelevant, vicious, and sometimes unintentionally comical comments. And as we have discovered, it is the anomalous negative comment

⁸⁶ See generally *id.* at 247-48.

⁸⁷ *Id.* at 248.

⁸⁸ *Id.* at 249.

⁸⁹ Merritt, *supra* note 44, at 249 n.62 (citing Ambady et al., *supra* note 85, at 217-20).

⁹⁰ *Id.* at 249 (quoting Nalini Ambady & Robert Rosenthal, *Half a Minute: Predicting Teacher Evaluations from Thin Slices of Nonverbal Behavior and Physical Attractiveness*, 64 J. PERSONALITY & SOC. PSYCHOL. 431, 440 (1993)).

⁹¹ See, e.g., *infra* Part III.A.5.

that stays with us, often for years. The far-more-common positive comments do not have the same power to uplift as the negative comments have to hurt.

Adrienne Davis recently observed that faculty members:

recount funny stories, frequently ones that do not cast our students in the best light. But we rarely share concerns over student hostility and fears of poor evaluations, I suspect, out of embarrassment, shame, fear of prematurely publicizing our inadequacy, and loss of institutional capital. Particularly when we are junior, there is real risk in doing anything other than acting like everything is going well in our classes.⁹²

We understand the dynamic described by Professor Davis—and as legal writing professors, we feel compelled to add that the disabilities associated with being a junior member of the faculty are exacerbated and magnified by the disabilities that are still too often associated with being a legal writing professor. We are all aware that many of our colleagues are even less than “junior;” they are second-class citizens in the legal academy,⁹³ working with even less protection than “junior” faculty who are tenured or on the tenure-track.

But silence obviously allows injustice to flourish. Moreover, silence increases our sense of isolation and forecloses necessary discussions about the nature of teaching and learning, the changing law school culture, and the validity of entrenched hierarchies in the legal academy. Education is a joint endeavor: it requires a teacher *and* a learner. Until we can discuss—openly and publicly—student comments like the ones below, we appear to tacitly accept them, giving the comments a power they do not deserve. As long as we keep these comments to ourselves, we cannot begin to analyze or understand them, and we certainly will not be able to find more effective ways to obtain meaningful feedback from our students that will enable us to teach them more effectively.

The following comments are uncensored; they appear exactly as reported by our legal writing colleagues. We have kept all the comments on file but have chosen to protect the identities of the con-

⁹² See Chang & Davis, *supra* note 44, at 49.

⁹³ See *infra* Part II.B.3.

tributors.⁹⁴ We received many comments from members of the Legal Writing Institute⁹⁵ and the Association of Legal Writing Directors,⁹⁶ both before and after the 2006 biennial conference of the Legal Writing Institute. Additional comments were sent to us as recently as 2011. They run the gamut from hilarious to heartbreaking, from crude to bizarre. Many are laced with gratuitous insults, biting and vituperative statements, and complete irrelevancies. To be sure, some of the teachers who contributed these comments are among the best in our profession, so a negative comment here and there is certainly not indicative of failure. The fact remains, however, that many students lack the metacognitive skills to properly assess their own competence, let alone their professor's. Student ratings of legal writing professors are therefore not reliable, and should not play a significant role in the faculty evaluation process.⁹⁷

A. Actual Student Comments⁹⁸

1. *The Novice Knows Best*

“The fact that I have been admitted to law school means you should give me credit for knowing this stuff.”⁹⁹

⁹⁴ Although many who responded did not request anonymity, several did. We therefore decided to avoid identifying any respondent by name. All comments were sent to us, however, with the knowledge that we intended to publish “the best of the worst” comments, and some readers may recognize a colleague’s story from the comments shared. Obviously, by maintaining the anonymity of the contributors of these comments, we insert another layer of anonymity between the reader of this Article and the students whose comments are quoted here.

⁹⁵ The Legal Writing Institute (LWI) provides a forum for the exchange of ideas about legal writing pedagogy and scholarship. It has more than 2100 members, including representatives of all of the ABA-accredited law schools in the United States. See LEGAL WRITING INSTITUTE, www.lwionline.org (last visited Mar. 7, 2012).

⁹⁶ The Association of Legal Writing Directors (ALWD) provides professional support for those who administer legal writing programs, and encourages and supports legal writing research and scholarship. Its members represent a large majority of American law schools. See ASSOCIATION OF LEGAL WRITING DIRECTORS, www.alwd.org (last visited Mar. 4, 2012).

⁹⁷ See Fischer, *A Plea for Holistic Evaluation*, *supra* note 2, at 154; see also Marlow-Shafer, *supra* note 42, at 139.

⁹⁸ To maintain what we believe is a rational text-to-footnote ratio in this Article, we now provide a single all-purpose footnote for the great majority of comments that follow: E-mails to the authors, *various subjects* (various dates) and to LRWPROF-L listserv, *various subjects* (April 20-26, 2006) (copies on file with the authors).

⁹⁹ This student may be suffering from the “Lake Wobegon effect,” named for the fictional

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“The professor spends to [sic] much time on gram-mar.”

“Too much emphasis on grammer [sic].”

“The professor spends to [sic] much time on grammer [sic].”

“She wasted an entire hour talking about grammer [sic].”

“His techsing [sic] style is to [sic] confusing. I asked for answers butt [sic] he does not respond to questions to [sic] well. May be [sic] he does knot [sic] now [sic] the material.”¹⁰⁰

“This course sucks.”

“This course blows.”

“Which one of the three f—ing stooges designed this course?”

2. *The World’s Worst Teacher*

“FIRE HER!”

“This professor should be fired immediately because he is incompetent.”

“Professor X is the worst teacher I have ever had in

Lake Wobegon, Minnesota, “where all the women are strong, all the men are good looking, and all the children are above average.” Garrison Keillor, *Monologue*, A PRAIRIE HOME COMPANION, Massachusetts Public Radio (Mar. 4, 1995). The “Lake Wobegon effect” refers to the tendency to overestimate one’s abilities. See Nan L. Maxwell & Jane S. Lopus, *The Lake Wobegon Effect in Student Self-Reported Data*, 84(2) AM. ECON. REV. 201, 201 (1994); see also the discussion of the “Dunning-Kruger effect,” *infra* Part II.A.

¹⁰⁰ This comment was sent directly to the dean of the law school. When questioned by the dean, the professor reported responding: “I wish eye [sic] kud [sic] half [sic] spoken two [sic] the studnt [sic].”

school. My dad says I say that about all my teachers, but she really is.”

“This teacher was the worst teacher I’ve had at any level.”

“This professor is the worst teacher I’ve ever had at any level, including Kindergarten.”¹⁰¹

“Class was useless and the teacher was not good.”

“Hire someone else.”

“Prof. X, Thanks for nothing this year. You were a shitty teacher and now I have to take legal research and writing over again. Thanks, H___ S___.”

“I can’t believe they actually pay this guy. He was useless.”

“The lectures were not helpful. I learned more from the teaching assistant.”

“The professor’s comments were deemed unhelpful.”

“No wonder this school’s rank has dropped with people like her teaching here.”¹⁰²

“She was a really nice person who will never be a good teacher.”¹⁰³

“I sincerely wish you the best in your future endeavors, and I hope they do not include teaching.”¹⁰⁴

¹⁰¹ The recipient of this comment took a philosophical view: “Good to know that I trumped even the usually conflict-filled relationship with Kindergarten teachers.”

¹⁰² Earlier in the semester the professor had received a teaching award, complete with an engraved plaque, from the student body at the law school.

¹⁰³ Barbara Busharis, *Tips for New Teachers: Learning From Your First Evaluations*, 16(2) SECOND DRAFT 21 (2002).

¹⁰⁴ *Id.*

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3. *Give Us Food for the Body, Not the Mind!*

A colleague posits that legal writing teachers are the functional equivalent of cafeteria food at a university: something to complain about even when it is good. Perhaps the well-known student obsession with food accounts for this next group of comments:

Question: “What was the best thing about this class?”

Answer: “The teacher brought candy.”

Question: “What was the best thing about this class?”

Answer: “The teacher baked for the class.”

Question: “How can this class be improved?”

Answer: “Professor should bring coffee and donuts.”

“The best thing about Prof. X’s class was the home-made cookies. Sadly, that was the only good thing.”¹⁰⁵

Unfortunately, this desire for food for the body is not matched by a desire for food for the mind. Quite the contrary, in fact:

“This course is too much work for an elective.”¹⁰⁶

“I don’t think it’s fair that students who go to his office hours get help beyond what’s offered to everyone in class. And it’s not fair that those students get better grades than students who don’t go to office hours.”

“She thinks we’re as smart as she is.”¹⁰⁷

“She doesn’t keep her word. She told me I was on track during my conference but I didn’t get and A.”

¹⁰⁵ *Id.*

¹⁰⁶ This comment was received at the end of an upper-level Family Law class taught by one of the authors. A few other students in the class also objected to the reflective writing and collaborative work that the professor assigned, and reminded the professor that “this isn’t a legal writing class!”

¹⁰⁷ The student who wrote this comment gave the professor the lowest possible rating in every possible category.

“I worked as hard as anyone could and did everything she said. And I just got a ‘B.’ The teacher must have just decided that was what I got right from the beginning.”

“The professor was evasive never answering hard questions, always calling on his favorite students, but the air conditioning worked.”

4. *Sick Wardrobe Syndrome*

Question: How can this course be improved?

Answer: “Hair.”

“Give us a professor that’s NOT PREGNANT.”

“His ties are always too short. This is a distraction.”

“She wasn’t nurturing enough, but her clothing was very color-coordinated.”

“Her coughing was insulting for the tuition we pay.”¹⁰⁸

The next two comments were made about the same professor, who had a benign condition that caused her hands to tremble:

“She’s obviously an alcoholic, because she had the goddamned D.T.’s every day in class.”

“Student hours spent by teacher in conferences = 9900 Contact hours for the semester. No wonder she’s nervous.”¹⁰⁹

¹⁰⁸ This professor was suffering from “sick building syndrome.”

¹⁰⁹ This professor has essential tremor, a benign neurological disorder “characterized by involuntary fine rhythmic tremor[s] . . .” primarily of the hands and arm. Web MD, *Brain and Nervous System Health Center: Benign Essential Tremor*, WEBMD, <http://www.webmd.com/brain/benign-essential-tremor> (last visited Mar. 7, 2012). The professor now explains the condition to her students so they understand the actual cause of her symptoms.

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“My legal writing teacher is clearly under the influence of Satan or demons.” This student repeatedly e-mailed this comment to the school’s dean over a period of several days. Needless to say, the professor was profoundly upset. But other students placed this professor on the side of the angels. When they found out that the teacher was leaving the school in another year, half of the rating forms said “GET HER BACK!”

As teachers, we often find it very difficult to sit down and read evaluations with such dichotomous comments. They create a jangling cognitive dissonance that is very confusing, but it happens more frequently than one might imagine.¹¹² The following pairs or groups of contradictory comments were made by students in the same class, about the same professor, during the same semester.

Devil: “She’s useless. The book was useless; didn’t read it.”

Angel: “She’s a blessing.”

Devil: “It was completely unfair that our professor made us do more work than the other sections.”

Angel: “My professor was better than the others because we did more work than the other sections.”

Devil: “The school should fire this professor.”
“She knows nothing and treats students disrespectfully.”

¹¹⁰ BLANCHE CARTER, *DEVIL OR ANGEL* (1960) (written by Blanche Carter, performed by Bobby Vee, but originally recorded by The Clovers in 1956: “Devil or Angel, I can’t make up my mind which one you are?”).

¹¹¹ DAN BROWN, *ANGELS & DEMONS* (2003).

¹¹² One professor deliberately shares contradictory pairs of comments from students in the same class with the same professor to “open [students’] eyes to the diversity of views out there.” For example: “We should cut out all the short assignments and get right to the full length memo,” and “More short assignments to gear us up, please.”

“Plays favorites and it’s obvious to all students in the class.”

Angel: “This professor changed my life.”

“This professor was the best teacher I ever had.”

“I’ve never felt so cared about.”

“This professor taught me so much about writing, law, and analysis.”

Devil: “I think he has ADD or something, none of his ideas are connected.”

“He spews out completely disjointed nonsense.”

Angel: “This guy ROCKS; he’s totally the man, the boss, the king.”

“The best teacher I’ve ever had not just in law school but all school.”

Devil: “The [] book stinks.”

Angel: “I really like the book. It really helped with examples.”

B. Discussion

*“[L]awyers . . . are among those in particular need of knowledge about where their expertise ends and the need for caution, advice, or research begins.”*¹¹³

As the quote above indicates, David Dunning, one the authors of the seminal study upon which this Article is based, understands that the law, more than most professions, requires superior metacognitive skills for lawyers to both competently and ethically advocate

¹¹³ David Dunning, *Not Knowing Thyself*, in CHRONICLE OF HIGHER EDUCATION (May 5, 2006).

for their clients. If there is a dominant theme in all of these aberrant student ratings it is that some beginning law students have no idea of the metacognitive skills needed for them to become successful lawyers.¹¹⁴ If students leave law school without mastering these skills, they are likely to overestimate their ability, underestimate their need for assistance, and place their clients—and their hopes for their careers—at risk.

“It would not be surprising if it were the nature of the legal writing class, with its emphasis on repeated practice of difficult skills, that accounted for many of the comments from students who believe they already know everything they need to know, and that the professor does not.”¹¹⁵ The fact that there are seldom definite “correct” answers in legal writing, and students’ discomfort with a new kind of learning and assessment also likely contribute to some students’ perceptions that professors are confused, unclear, or disorganized.¹¹⁶

Because students who perform in the bottom quartile on tests of competence consistently grossly over-estimate their actual competence,¹¹⁷ it is inevitable that some students in every class will be horrified to find that they received a C or a D in legal writing when they were certain that they would get an A or a B. Moreover, the weakest students will likely “continue[] to hold the mistaken impression that they had performed just fine[]”¹¹⁸ on each assignment, despite mounting evidence to the contrary, because the students “fail to gain insight to their own incompetence by observing the behavior of other

¹¹⁴ See generally Brown, *supra* note 21, and the discussion of metacognitive skills accompanying notes 21-27.

¹¹⁵ See, e.g., comments in sections III.A.1 & 2, *supra*.

¹¹⁶ See, e.g., comments in sections III.A.1 & 2, *supra*.

¹¹⁷ See generally Kruger & Dunning, *supra* note 10. Kruger and Dunning performed four studies to test their “predictions about the links between competence, metacognitive ability, and inflated self-assessment.” *Id.* at 1122. The least competent performers in each of the four studies—*i.e.*, those who scored in the bottom quartile—grossly overestimated their actual performance. *Id.* at 1123-24. In the first study the least competent subjects fell in the twelfth percentile, but they estimated themselves to be in the fifty-eighth percentile. *Id.* at 1123. In the second study the least competent subjects fell in the twelfth percentile, but they estimated themselves to be in the sixty-eighth percentile. *Id.* at 1125. In the third study the least competent subjects fell in the tenth percentile, but they estimated themselves to be in the sixty-seventh percentile. Kruger & Dunning, *supra* note 10, at 1126. In the fourth study the least competent subjects fell in the thirteenth percentile, but they estimated themselves to be in the fifty-fifth percentile. *Id.* at 1128. In all four studies the least-competent performers were “oblivious to their poor performance.” *Id.*

¹¹⁸ See *id.* at 1127.

people.”¹¹⁹ Research indicates that one of the most defining tasks of the legal writing professor—comprehensive feedback—is often futile, at least for our poorest performers.¹²⁰

Many of the most personal and outrageous student comments¹²¹ are likely traceable to the gender and status issues that continue to plague the legal writing field.¹²² A student who is frightened, confused, or insecure may lash out at the person who appears most vulnerable: the professor without a professional title, working without job security or a voice in faculty governance, who is—or at least appears to be—marginalized and disrespected by her colleagues.

Comments from students who presume to know what a professor should and should not teach¹²³ are inevitable if the course is treated as less-valuable than other courses in the 1L curriculum. The profound lack of respect expressed in comments about a professor’s appearance and physical condition are inevitable if the law school treats its legal writing professors disrespectfully. Similarly, if a law school appears to be oblivious to the gender inequity that persists within it, we should not be surprised if the law school’s students perpetuate gender stereotypes, lauding the professor who brings cookies to class and criticizing the professor who is “not nurturing enough.”

The comments shared in this Article are symptoms of metacognitive deficiencies as they are revealed during law study. But those same deficiencies will follow our students out of law school and into their professional lives, where they will have consequences far beyond personal frustration and low grades. The student who demanded a professor who was “not pregnant” is a most extreme case in point. This comment goes beyond disrespectful gender stereotyping. By passing judgment on the professor’s personal life and intruding on her privacy, the student demonstrates a complete lack of awareness of appropriate professional boundaries. As Brown noted,

¹¹⁹ *Id.*

¹²⁰ See generally Ehrlinger et al., *supra* note 12.

¹²¹ See, e.g., *supra* comments in sections III.A.3 & 4.

¹²² There is nothing new under *this* sun. Legal writing teaching has been referred to as the “pink ghetto” of legal academia for a long time. See, e.g., Susan Ayres, *Pink Ghetto*, 11 YALE J.L. & FEMINISM 1 (1999); Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 J. LEGAL EDUC. 562 (2000); Ann Farmer, *The Rocky Road to the Ivory Tower*, PERSPECTIVES—Q. MAG. WOMEN LAW. 4 (Spring 2007), available at <http://www.abanet.org/women/perspectives/RockyRoadIvoryTowerSpring07.pdf>.

¹²³ See, e.g., *supra* comments in sections III.A.1 & 2.

“[a]ppreciating what you need to know in order to act strategically appears to be a relatively late developing skill.”¹²⁴ Law school is late enough for our students to learn what they need to know to function with civility in the profession that they have chosen.

IV. CHANGING THE CULTURE OF STUDENT RATINGS

The ostensible purpose of student ratings is to provide information that can be used by faculty to improve their courses and their teaching and used by institutions to make personnel and program decisions. Faculty members often question what factors, apart from their performance, influence the ratings students give. We know anecdotally, as exemplified in this Article, that our own ratings fluctuate wildly, ranging in the same class from canonization to vilification.

A growing body of evidence regarding what is now known as the Dunning-Kruger effect helps to explain rating fluctuation phenomenon, demonstrating that poor performers overestimate their performance while top performers underestimate theirs.¹²⁵ Recent research has explored many variables, other than teaching performance, which may influence the ratings.¹²⁶ College students, who become law students, have throughout their educations been given feedback on grammar and writing.¹²⁷ As we have long suspected, the poor performers, despite feedback, have not gained insight that they are doing poorly and often are responsible for harshly rating their professors.¹²⁸ We believe that the metacognitive deficiencies of some new law students account for many negative evaluations, and that those deficiencies are reinforced and exacerbated by specific factors that have a negative impact on legal writing professors. All of these factors combine to influence the snap judgments that students make in the early seconds and minutes of a class. Important judgments that affect careers should not depend on a few perceptions formed during small increments of a class, especially if those perceptions have little to do with whether the teacher effectively teaches the student.

¹²⁴ See Brown, *supra* note 21, at 461.

¹²⁵ See Kruger & Dunning, *supra* note 10, at 1121; Ehrlinger et al., *supra* note 10, at 1.

¹²⁶ See Kruger & Dunning, *supra* note 10, at 1121; Ehrlinger et al., *supra* note 10, at 5-6.

¹²⁷ See Ehrlinger et al., *supra* note 10, at 120.

¹²⁸ *Id.*

Whatever the reason for lower ratings—metacognitive deficiencies, the unique nature of the course compared to other 1L classes, biases based on gender and status, snap judgments made in the first ninety seconds of a class—the ubiquitous student ratings form is not a useful tool in a legal writing classroom. These ratings do not necessarily measure anything useful. Rather, they are subject to abuse by students and misuse by institutions. Decisions about retention, termination, promotion and tenure should not be based on such unreliable information. Unreliable information should not be used to justify continued inequitable treatment of legal writing professors—or of any professors for that matter.

What can be done to reduce the bias that is inherent in student ratings? As educators, we must take steps toward exploring and designing teaching evaluation systems that are not simply based on nonverbal behavioral and environmental cues.¹²⁹ Rather, these systems should be designed to eliminate bias, reduce stereotypes, enhance respect, and prompt more reflective, rational input so our faculty colleagues are treated more fairly in the process.¹³⁰ In order to do this we must also become familiar with the wealth of information on adult learning and metacognition so we can use that knowledge to craft evaluation systems that measure teaching skill and student learning, not popularity. To begin this transformation we suggest the following five steps:

1. Begin by creating equality. Change the status of legal writing and skills courses in law schools.¹³¹ Acknowledge the enormous amount of work that students are asked to do in these classes, assign the students the credits that they deserve, and grade them in the same manner that every other class is graded. Change the status of legal writing professors. Acknowledge the importance of their subject, respect their expertise as teachers and scholars, and give them the same rights and privileges that “doctrinal” law professors take for granted.
2. Do not ask students to use numbers to rate legal

¹²⁹ See Merritt, *supra* note 44, at 286-87.

¹³⁰ *Id.*

¹³¹ See Marlow-Shafer, *supra* note 42.

writing teachers'—or indeed, to rate any teacher's—performance.¹³² When making decisions about promotion and tenure, law faculties rely almost exclusively on numeric evaluations and class visits to assess teaching. This method is not reliable.¹³³

3. Rewrite evaluation forms to better reflect what legal writing courses teach. Rather than using numbers to rate amorphous characteristics, ask for written comments on specific skills learned.¹³⁴ Thus, students cannot merely assign a number from one to five to a teacher, but must explain what they have learned and the basis for their assessment of a teacher's competence.

4. End the practice of anonymous student ratings or, better yet, as some writers have suggested, abandon the use of student ratings all together.¹³⁵ Suggestions from those who have studied this subject range from the blunt proposal to eliminate student ratings altogether, to simply taking the anonymity out of the process.¹³⁶ At a minimum, diminish the student ratings' importance.¹³⁷ Markovits indicates that it is

¹³² *Id.* at 134.

¹³³ See Best, *supra* note 3, at 16 (citing NAT'L RESEARCH COUNCIL ET AL., *Learning: From Speculation to Science*, in HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL 13 (John D. Bransford et al., eds., 2000)) (proposing that “active learners, compared with passive learners, are better able to understand and communicate difficult concepts[,]” and suggesting that most ratings instruments “convey the idea that learning is a passive activity and that teaching consists of a one-way delivery process, with information and skills directed to students by the professor. Rarely represented is an alternative view of the teaching-learning process, that it is a collaborative enterprise with work to be done by both instructors and students.”).

¹³⁴ This suggestion has been utilized at many law schools to improve feedback and better assess the teacher. Often it is structured to ask questions about specific learning that has taken place.

¹³⁵ See Fischer, *A Plea for Holistic Evaluation*, *supra* note 2, at 159 n.248.

¹³⁶ *Id.* at 158-59; see also Richard L. Abel, *Evaluating Evaluations: How Should Law Schools Judge Teaching?*, 40 J. LEGAL EDUC. 407 (1990) (suggesting that student evaluations should be given less weight in personnel decision matters because of their weak reliability).

¹³⁷ See Richard S. Markovits, *The Professional Assessment of Legal Academics: On the Shift from Evaluator Judgment to Market Evaluations*, 48 J. LEGAL EDUC. 417, 421 (1998) (stating that “[l]aw students are simply not well placed to assess the value of a course or the quality of an instructor's teaching”); see also Carrell & West, *supra* note 51, at 430 (stating that “student evaluations reward professors who increase achievement in the contemporaneous course being taught, not those who increase deep learning. . . . [T]his finding draws into

clear that law teachers adjust teaching to improve ratings.¹³⁸ In judging the quality of teaching, especially for employment and promotion decisions, a holistic approach should be used that incorporates a variety of evaluative modalities such as portfolios, classroom visits, guidelines, and other methods.¹³⁹

5. Lastly, train the faculty, administration and possibly students to make sound judgments about their teachers. Teach them about the miscalibrations of competence revealed in Kruger and Dunning's work. Faculty members who sit on tenure and promotion committees should be shown the literature on student ratings and attend workshops that focus on the common biases in ratings.¹⁴⁰

The changes we propose could go a long way toward improving our present imperfect and unreliable system of student rating, and make us all better teachers in the process.

V. CONCLUSION

*"I try to find some humor in it, to ameliorate the hurt."*¹⁴¹

Student ratings are no laughing matter, although we know that some readers laughed at some of the comments so generously and selflessly shared by our many colleagues. But whether these comments made you laugh or cry, student ratings are "the single most-used source for teacher evaluation in legal writing courses"¹⁴² We know, however, both empirically and anecdotally, that student ratings alone do not do a good job of evaluating teaching perfor-

question . . ." the practice of using student ratings to measure "teaching quality for academic promotion and tenure decisions, . . .").

¹³⁸ Markovits, *supra* note 137, at 427.

¹³⁹ See Fischer, *A Plea for Holistic Evaluation*, *supra* note 2, at 159-61.

¹⁴⁰ See Donna L. Ali & Yvonne Sell, *Issues Regarding the Reliability, Validity and Utility of Student Ratings of Instruction: A Survey of Research Findings* (University of Calgary APC Implementation Task Force on Student Ratings of Instruction 1998), available at <http://www.ucalgary.ca/usri/node/48> (supporting the fact that elective courses are more highly rated than required courses).

¹⁴¹ E-mail from anonymous contributor to LRWPROF-L listserv (Apr. 24, 2006, 13:16:48) (on file with the authors).

¹⁴² See Fischer, *A Plea for Holistic Evaluation*, *supra* note 2, at 152.

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mance.¹⁴³

The current rating mechanism in place at most law schools is hurtful and often harmful to the teacher. Our colleagues have openly shared with us, and we with them, the pain that a thoughtless and hurtful anonymous comment can inflict upon a teacher. We do not mean to imply that student comments should be ignored; legitimate comments, even the ones that hurt, should be taken seriously by any teacher who wants to become a better teacher. So we certainly encourage teachers to read their student ratings, consider trends in legal education and pedagogical techniques, change their own techniques when circumstances warrant, and in every way seek to be the best teachers they can be.¹⁴⁴

All that is needed now is to eliminate the impediments to full membership in the legal academy for legal writing professors and learn how to solicit meaningful and reliable feedback from our students so all professors can do the job they love more effectively.

¹⁴³ See *id.* at 155-56.

¹⁴⁴ See Stewart Harris, *Sometimes, We Really Do Suck*, L. TCHR. 18 (Fall 2009) (advising professors to give due consideration to students' legitimate criticisms and "develop strategies to address them").