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THE USE OF JOURNALS IN LEGAL EDUCATION: A TOOL FOR REFLECTION

J.P. OGILVY*

I. INTRODUCTION

When I tell colleagues that I am using journals in my classes, I usually get a quizzical look and then the question: "You mean law reviews?" "No," I say, "I mean journals, like diaries, only more public."

My colleagues' lack of familiarity with the use of journals is no reflection on their professional reading habits. In fact, the literature on legal education contains only a few scattered references to journal writing by law students.¹ Even among these references, there is no discussion of the contributions from learning theory that support the use of journals, no critical examination of the relative costs and benefits of the practice, and no exploration of the practical challenges inherent in their use. This absence of academic dialogue on the use of journals in the literature on legal education is remarkable for several reasons. First, the use of journals as a pedagogical tool enjoys over two thousand years of recorded history. Second, our colleagues in other academic disciplines have been using journals extensively and there is much to learn from their analysis and experience. Third, journals are used extensively in some areas of legal education, notably in conjunction with externship programs.²

* Associate Professor and Coordinator of Clinical Programs, The Catholic University of America. I would like to thank David Chavkin, Louise Howells, Harriett Katz, Kathryn Kelly, Lisa Lerman, Shira Perlmutter, Geoff Watson, and Leah Wortham for providing valued input during the drafting of this article. I would also like to thank my two research assistants, James Sullivan and Jennifer Hayes, for their work on this article.

¹ See, e.g., KENNY HEGLAND, INTRODUCTION TO THE STUDY AND PRACTICE OF LAW IN A NUTSHELL 107-10 (2d ed. 1995); James R. Elkins, *Rites de Passage: Law Students "Telling Their Lives,"* 35 J. LEGAL EDUC. 27 (1985) [hereinafter Elkins, *Rites de Passage*]; James R. Elkins, *The Quest for Meaning: Narrative Accounts of Legal Education,* 38 J. LEGAL EDUC. 577, 580-81 (1988); Elizabeth Fajans & Mary R. Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts,* 78 CORNELL L. REV. 163 (1993); Lawrence K. Hellman, *The Effects of Law Office Work on the Formation of Law Students' Professional Values: Observation, Explanation, Optimization,* 4 GEO. J. LEGAL ETHICS 537, 565-68 (1991); Charles R. Lawrence, III, *The Word and the River: Pedagogy as Scholarship as Struggle,* 65 S. CAL. L. REV. 2231 (1992).

² Professors Robert F. Seibel and Linda H. Morton conducted a nationwide survey of externship programs during 1992-93. Their data show that 44 (44%) of the 98 programs that responded to the survey used journals in their pedagogy. Robert F. Seibel & Linda H. Morton, *Field Placement Programs: Practices, Problems and Possibilities,* 2 CLIN. L. REV.

This Article demonstrates that the journal is a pedagogical tool worthy of more explicit attention by both clinical law teachers and non-clinical faculty alike. It introduces some of the literature on critical thinking and learning theory that supports the assignment of journals as an important tool in legal education; it provides a starting point for articulating pedagogical goals that can be met through journal assignments; and it alerts the first-time user to the challenges inherent in the use of journals in legal education. But first things first. My answer to my colleagues is obviously incomplete; just what is a journal and how does it work?

A journal, as I am using the term throughout this Article, is a regular, written communication from a student to a teacher, related to the course of study, that is authored by the student at the request of the teacher and to which the teacher may respond in writing. The journal, unlike a diary, is only semi-private in that it is intended to be read by at least one person other than the author, the teacher. The journal tends to be more factual and objective than emotive and subjective, but its contents may span the continuum reflected by these terms. Although the journal is used in conjunction with a specific law school course and most entries tend to focus on the content of that course, the author's reflections are not necessarily confined to the subject matter or processes of the course.

I have used some form of journaling as a pedagogical tool for over a decade.³ I have been using the device of a two-person journal

413, 435 n.50 (1996).

³ Journals have been used as educational tools for over two thousand years. One form of the academic journal, the *hypomnema*, was used for centuries by the ancient Greeks as a staple of rhetorical education. *Hypomnema* were repositories of observations, ideas, quotations, and maxims that the speaker maintained as source material from which he constructed an original speech. Ken Autrey, *Toward a Rhetoric of Journal Writing*, 10 RHETORIC REV. 74, 75 (1991).

Another ancient journal form, the *topoi*, "played a prominent role in Aristotle's rhetoric of invention and maintained its importance in the rhetorical teachings of Cicero and Boethius. The *topoi* were a list of topics, such as 'cause and effect,' which provided a speaker with lines of argument applicable to various subjects." These topics were standard, widely accepted rhetorical tactics, in contrast to the entries in the *hypomnema*, which were made up of actual passages to be memorized and drawn upon in speaking. *Id.*

In the Middle Ages, the rhetorical conventions based on the *hypomnema* and *topoi* were replaced with a more formalistic rhetoric. Students were expected to be familiar with a variety of forms, but there was less emphasis on the discovery of arguments from a store of ancient wisdom. During the Renaissance, there was a resurgence of interest in the use of a journal as a means of gathering ideas from various sources. Francis Bacon, among others, recommended the keeping of such collections. *Id.* In his *ADVANCEMENTS OF LEARNING* (1605), Bacon recommended the use of a commonplace book in order to retain knowledge, although he disapproved of the narrow range of topics in the typical commonplace book. See RUTH MOHL, *JOHN MILTON AND HIS COMMONPLACE BOOK* 16 (1969). Another Renaissance thinker, Juan Luis Vives, also endorsed the use of journals. See VIVES, *ON EDUCATION - A TRANSLATION OF THE DE TRADENIS DISCIPLINIS* OF JUAN

for the past five years. It is my experiences with the use of journals in a live-client clinic,⁴ in an academic support program,⁵ in an externship

LUIS VIVES xxxvii-xl (Foster Watson trans., 1913) (translator's introduction).

Erasmus explained that the advantages of reading good authors included learning literary style by imitation and securing examples of sound styles of argumentation. See ERASMUS, *Copia: Foundations of the Abundant Style (De duplia copia verborum acrerum commentarii duo)*, in COLLECTED WORKS OF ERASMUS 280, 635-48 (Betty I. Knott trans., 1978). "With the *De Copia* as a text [students] would learn what to look for in their own reading, and, lest they should forget what they read, 'they must have paper books ready to write them in.' Hence the commonplace book." MOHL, *supra*, at 16.

Donald Lemen Clark's study of John Milton documents the prominence of this form of journal along with other elements of classical rhetorical instruction in seventeenth-century English schools. "According to Clark, two kinds of journals were used: first, there were published 'gleanings of gems from the literature of antiquity,' many of these based upon collections by Erasmus published two centuries earlier; . . . second, there were collections gathered by students themselves, such as Milton's own *Commonplace Book*, which he organized with a series of headings and subheadings." Autrey, *supra*, at 75 (citation omitted). See DONALD LEMEN CLARK, JOHN MILTON AT ST. PAUL'S SCHOOL 218-19 (1948). Milton's *Commonplace Book* can be found in 1 COMPLETE PROSE WORKS OF JOHN MILTON 344 (Don M. Wolfe ed., 1953). These devices were used "until the early nineteenth century as a way of assimilating communal knowledge for individual expression." Autrey, *supra*, at 75.

With the ascendancy of Romanticism and the accompanying emphasis on personal insights rather than societal norms, these journal devices were replaced by the vernacular readers in the teaching of rhetoric. See Robert Connors, *Personal Writing Assignments*, 30 C. COMPOSITION & COMM. 166, 174-75 (1987). In the twentieth century, a revival of interest in academic journals in classrooms has been traced to a 1965 article by Gordon Rohmann in which he recommends the journal as a technique for encouraging original writing. Gordon Rohmann, *Prewriting: The Stage of Discovery in the Writing Process*, 16 C. COMPOSITION & COMM. 106 (1965). Over the past thirty years, the academic journal has changed from a tool of composition teachers for encouraging invention by novice writers to a more complex and widespread pedagogical tool used in an expanding number of disciplines.

⁴ At the Center for Applied Legal Studies (CALs), a client-based clinical program at Georgetown University Law Center, we maintained a common journal, which we called the CALs Log. The journal was a small hardbound notebook that was maintained in the clinic as a tool for communication within the clinic among its instructors, students, and staff. Students were advised that "almost anything may be an appropriate log book entry: entries might include ruminations about a clinic meeting, thoughts about the condition of the office, ideas for a practicum topic, notes about things missing from the clinic library, diatribes about the teaching methodology, invitations to begin a dialogue, poems, cartoons, or insights gained from the students' work in the clinic." Center for Applied Legal Studies, Georgetown University Law Center, Office Manual (1982). The CALs Log was intended to become a permanent, although informal, running commentary on the semester. The design and operation of CALs are described in Jane H. Aiken, David A. Koplrow, Lisa G. Lerman, J.P. Ogilvy & Philip G. Schrag, *The Learning Contract in Legal Education*, 44 MD. L. REV. 1047 (1985); see also Michael Meltsner & Philip G. Schrag, *Scenes from a Clinic*, 127 U. PA. L. REV. 1 (1978). For another discussion of the use of a class log, see Jeanne M. Jacobson, *Writing a Conversation: Journals in the College Classroom* (paper presented at the Spring Conference of the National Council of Teachers of English, Charleston, SC, April 6-8, 1989) (ERIC Document Reproduction Service No. ED 311 462) ("Class journals are the obvious solution when student-student communication is a goal."). For an account of the use of an "office log," see Karen M. Hackman, *There's a Place for a Log in the Office*, in THE JOURNAL BOOK 391 (Toby Fulwiler ed., 1987).

program,⁶ in simulation courses,⁷ and in a traditional classroom,⁸ to-

⁵ I assigned a journal as part of the "Critical Thinking and the Law" program at Thurgood Marshall School of Law. This program was a pilot project involving 28 students for four weeks in the summer prior to their enrollment in the first year of legal studies at the law school. In this context, the primary purpose of the journal was to encourage reflection or introspection by each student about what he or she was learning and, above all, about how these lessons could be transferred and utilized to facilitate the student's first-year law studies. For a more detailed description of this project see Danyne Holley & J.P. Ogilvy, *Critical Thinking and the Law*, 1 INT'L J. LEGAL PROF. 343 (1994).

⁶ As part of the externship program at the Columbus School of Law, The Catholic University of America, students are required to maintain a reflective journal in addition to keeping detailed time records. Students are instructed that the journal has several functions, among which are the provision of a shared set of data for the student extern and the faculty advisor that offers material for discussions of the demands and constraints of the lawyer's role; the enforced opportunity for the student extern to reflect consciously on her experiences; and an opportunity for the extern to clarify ideas and feelings through writing.

⁷ I have taught one-semester courses in Interviewing, Counseling, and Negotiation; Mediation and Negotiation; and Interviewing and Counseling. Each week during the semester, students are required to role play an interview, counseling, mediation, or negotiation exercise. All performances are peer critiqued and selected performances are critiqued by me. The courses are designed so that most of the learning comes from peer critique, class discussions, and self-reflection. I use a journal assignment in each, as a mechanism to encourage self-reflection. Here is an excerpt from my instructions to students about journals in a simulation class:

During your semester of enrollment in Interviewing and Counseling, you are required to keep a journal. A journal has many functions, however, for the purposes of this course the most significant are these: (1) A journal provides a mechanism by which your reflections on the concepts and skills under study in the course can be reduced to a concrete form (This, I suggest, encourages deeper and more detailed reflection.); (2) A journal provides you and me with data for discussion of topics central to the seminar; and (3) A journal provides you with a systematic way to reflect on and analyze your experiences by pushing you to examine critically and in depth your performance, thoughts and feelings.

Your journal should not be primarily an account of your activities—a time sheet can adequately capture this type of information. Rather, the journal should record what you are thinking and feeling about your experiences with the materials, concepts, and skills under study in the course. There are no strict requirements for the content of your journal entries. You should record entries that assist your own learning. If you have a problem in deciding what to record, you might try to write entries for one or more of the following topics/sections:

1. Critique of a performance by yourself or another person in light of the skills and concepts being examined in the course.
2. An exploration of the technical skills being learned in terms of the broader web of professional and personal values in the context in which the skills are being practiced.
3. An examination of what you are learning about how to learn from experience. How do you best learn a specific type of content or process? What facilitates your learning? What inhibits your learning?
4. How does group dynamics impact on your learning? What have you observed about the nature and impact of group dynamics in the classroom? How may this learning be transferred to the legal domain?
5. How do you see applying what you are learning now to your future endeavors? Is your learning transferrable to other settings? How

gether with my study of the use of journals in other disciplines,⁹ that I draw upon in these pages. As I reviewed the thousands of journal entries that I collected in preparing to write this article, I was struck by the quality of reflection that the journals exhibit. Although most do not seem to demonstrate sophisticated critical thinking, overall they do consistently represent a quality of introspection and reflection that, while not deeply philosophical, is substantial. The journals provide a fascinating and enlightening window into the thinking and the lives of my students.

might this best be accomplished?

6. How are you feeling about your current or anticipated role in the legal system?
7. What are your perceptions or feelings about the legal system?

⁸ The final context in which I have assigned personal narrative journals is in my semester-long, four-hour, first-year course in federal civil procedure. The course typically enrolls approximately 65 students. In my syllabus for the course, I advise the students that I will award class participation points for journal entries. The syllabus ordinarily advises students of my rationale for the journal assignment and suggests that journal writing can: (1) facilitate learning the concepts, rules, principles, and processes that are the subject of this course; (2) improve written communication skills; (3) help to develop higher order thinking skills; (4) improve the acquisition and retention of metacognitive skills; (5) assist in relearning or acquiring basic academic skills; (6) relieve stress; and (7) enhance the chances of becoming a "reflective practitioner."

⁹ See, for example, the use of journals in teaching and learning **sociology**: Ron Miller & Rita Seiden Miller, *The Student's Sociological Diary*, 4 TEACHING SOC. 67, 68-69 (1976); Theodore C. Wagenaar, *Using Student Journals in Sociology Courses*, 11 TEACHING SOC. 419, 424-25 (1984); **history**: Henry Steffens, *Journals in the Teaching of History*, in THE JOURNAL BOOK 219 (Toby Fulwiler ed., 1987); **geography**: Bradley H. Baltensperger, *Journals in Economic Geography*, in THE JOURNAL BOOK 387 (Toby Fulwiler ed., 1987); **literature**: Leon Gatlin, *Losing Control and Liking It: Journals in Victorian Literature*, in THE JOURNAL BOOK 111 (Toby Fulwiler ed., 1987); **foreign languages**: Karen Wiley Sandler, *Letting Them Write When They Can't Even Talk? Writing as Discovery in the Foreign Language Classroom*, in THE JOURNAL BOOK 312 (Toby Fulwiler ed., 1987); **psychology**: Paul Hettich, *The Journal: An Autobiographical Approach to Learning*, 2 TEACHING PSYCHOL. 60 (1976); Paul Hettich, *The Journal Revisited*, 7 TEACHING PSYCHOL. 105 (1980) [hereinafter Hettich, *The Journal Revisited*]; Janina M. Jolley & Mark L. Mitchell, *Two Psychologists' Experiences with Journals*, 17 TEACHING PSYCHOL. 40 (1990); **physics**: Judy Grumbacher, *How Writing Helps Physics Students Become Better Problem Solvers*, in THE JOURNAL BOOK (Toby Fulwiler ed., 1987); **physical geology**: F.W. Cropp, *Student Journals in Physical Geology*, 28 J. GEOLOGICAL EDUC. 132 (1980); **study skills**: Steve Hoffman, *Using Student Journals to Teach Study Skills*, 26 J. READING 344 (1983); **teacher education**: Hugh B. Wood, *Opening the Classroom Through the Use of Student Journals*, 26 IMPROVING C. & UNIV. TEACHING 25 (1978); and **academic support**: Kathleen Schatzberg-Smith, *Dialogue Journal Writing and the Initial College Experience of Academically Underprepared Students* 9 (paper presented at the Annual Meeting of the American Educational Research Association, San Francisco, CA, March 27-31, 1989) (ERIC Document Reproduction Service No. ED 308 737). See generally Toby Fulwiler, *Journals Across Disciplines*, 69 ENGLISH J. 14 (1980); National Clearinghouse on Literacy Education, *Dialogue Journal Bibliography: Published Books, Articles, Reports and Dissertations About Dialogue Journal Research and Use* (1991) (ERIC Document Reproduction Service No. ED 333 722); Abbie Robinson-Armstrong, *Academic Journals: Annotated Bibliography* (1991) (ERIC Document Reproduction Service No. ED 329 977).

For students in any instructional setting, the journal encourages writing; probing beneath the surface of problems; thinking more deeply about the materials, products, and processes of learning; and taking more responsibility for their own learning. It offers some students a less threatening alternative to in-class questions and can provide a safe place for healthy release of the intense emotional stress that is generated by the law school experience, particularly in first-year courses. For teachers in non-clinical classes, the journal assists in surfacing misconceptions that frequently go undetected until the final examination. Moreover, by engaging the teacher in a written academic dialogue with a student for an extended period of time, the journal can generate a level of personalized instruction not commonly found in the large, traditional classroom. Used in externships and clinics, the journal promotes reflective behavior by encouraging students to record critical incidents from their lawyering experiences for deeper examination and study. The students' journal entries can provide the faculty supervisor in a clinic or externship with data from which to draw in conducting "grand rounds" in clinic or in focusing discussions about issues of lawyering theory and practice in externship or clinical seminars and individual mentoring sessions.

No pedagogic tool, whatever its benefits, is employed without cost. The most significant cost to the teacher who uses the journal is the investment in time required to collect, read, comment on, and return the student journals. The most significant cost to the student is the time invested in the creation of the journal. For the student, the benefit will be in direct proportion to the time spent. The benefits for the teacher, though tangible, are less directly correlated with time spent. Despite these costs, most students come to realize the benefits of the academic journal and make good use of it. As a teacher, I have found that the benefits derived from assigning journals to law students in all types of courses far outweigh the costs.

This Article seeks to explain these benefits, and to address the challenges educators face in achieving them. I begin, in Part II, with a discussion of the pedagogical goals that I seek to achieve through journal assignments. These goals reflect my current thinking about the important goals of legal education in general and my assessment of the contribution that journal assignments can make to these general objectives. With respect to each goal, accordingly, I also discuss in Part II the ways that journal assignments can assist in accomplishing it. In Part III, I explore some of the challenges inherent in the use of journals and suggest how to respond to those challenges in a way that maximizes the pedagogical benefits journals can provide, while minimizing their costs, including the time commitment for the teacher.

II. PEDAGOGICAL GOALS AND THE EXTENT TO WHICH JOURNALS CONTRIBUTE TO THEM

Journals enhance students' learning in a variety of ways. We will not fully understand these effects until we completely understand the processes of learning. In turn, we will not fully understand the processes of learning until we fully grasp the nature of thinking, in particular the kinds of thinking required for the practice of law. Although we do not fully understand these matters yet, those who study them have offered a diverse array of concepts in their attempts to capture the complexity of human and lawyerly thinking. For example, Benjamin Bloom and his colleagues developed a taxonomy of six types of thinking skills, which are presented in order from the most basic to the most sophisticated: (1) recall, (2) comprehension, (3) application, (4) analysis, (5) synthesis, and (6) evaluation.¹⁰ Edys S. Quellmalz proposes a different taxonomy based on his conclusion that "the goal of higher order thinking is for students to engage in purposeful, extended lines of thought in which they use problem-solving strategies and become skillful in monitoring, evaluating, and improving those strategies."¹¹ Other experts focus attention on what they call "critical thinking" skills and values.¹² Within our own discipline,

¹⁰ TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS 201-07 (Benjamin Bloom et al. eds., 1956); *see also* MICHAEL JOSEPHSON, 1 LEARNING AND EVALUATION IN LAW SCHOOL 50-98 (1984) (Josephson describes in detail the sequence of cognitive skills to be taught in law school. His list of skills is derived from Bloom's, but varies slightly; for instance, Josephson lists judgment at the top of his taxonomic hierarchy.).

¹¹ Edys S. Quellmalz, *Developing Reasoning Skills*, in TEACHING THINKING SKILLS: THEORY AND PRACTICE 86, 89-91 (Joan Boykoff Baron & Robert J. Sternberg eds., 1987). In his taxonomy of higher order thinking skills, Quellmalz lists thinking strategies (identify the task or type of problem; define and clarify essential elements and terms; gather, judge, and connect relevant information; evaluate the adequacy of the information and procedures for drawing conclusions and/or solving problems); cognitive processes (analysis; comparison; inference/interpretation; and evaluation); and metacognitive processes (planning; monitoring; and reviewing/revising).

¹² Skills identified by experts as elements of critical thinking include: seeking out evidence and giving evidence when questioned; suspending judgment when there is insufficient evidence; reasoning logically; recognizing ambiguity in reasoning; distinguishing reason and fact from opinion; distinguishing what is relevant from what is irrelevant; identifying contradictions in arguments; evaluating the empirical soundness of conclusions; testing and refining generalizations; identifying and evaluating assumptions underlying beliefs, ideas, and values, including one's own; transferring ideas and concepts to new contexts and situations; and making interdisciplinary connections and using insights from one subject to illuminate other subjects. In addition, the literature suggests that critical thinking requires an attitude of reflective skepticism; an attitude that avoids oversimplification and is comfortable with complexity; an attitude that firmly adheres to rational principles despite the opposition of others; and an attitude of awareness and appreciation of the diversity of values, behavior, social structures, and artistic forms in the world. *See, e.g.*, BARRY K. BEYER, TEACHING THINKING IN SOCIAL STUDIES: USING INQUIRY IN THE CLASSROOM

there have been many attempts to characterize what it means to "think like a lawyer."¹³

It is not necessary here to fully resolve which of these taxonomies or characterizations of thinking skills most accurately captures the dynamic complexity of human thinking and learning. All of them are consistent with at least two conclusions: first, people vary quite significantly in their ways of thinking and learning, so that no one teaching technique will equally or identically serve all students; and, second, there are certain intellectual skills—we can call them skills of critical thinking and reflection—that are probably essential elements in the thinking of almost all truly effective lawyers. These are two of the primary principles that I use to set the goals for my classes. Each pedagogical tool available to me is evaluated in light of its ability to accomplish my pedagogical goals; for my goals, the journal has proven to be an extremely versatile tool. The goals that I have set for my journal assignments are the following:

(rev. ed. 1979); PAUL CHANCE, *THINKING IN THE CLASSROOM—A SURVEY OF PROGRAMS* (1986); REUVEN FEUERSTEIN, YAACOV RAND, MILDRED B. HOFFMAN & RONALD MILLER, *INSTRUMENTAL ENRICHMENT: AN INTERVENTION PROGRAM FOR COGNITIVE MODIFIABILITY* (1980); *FOSTERING CRITICAL THINKING* (Robert E. Young ed., 1980); DIANE F. HALPERN, *THOUGHT AND KNOWLEDGE: AN INTRODUCTION TO CRITICAL THINKING* (1984); MARCIA HEIMAN & JOSHUA SLOMIANKO, *CRITICAL THINKING SKILLS* (1985); JOHN E. MCPECK, *CRITICAL THINKING AND EDUCATION* (1981); CHET MEYERS, *TEACHING STUDENTS TO THINK CRITICALLY* (1986); W. EDGAR MOORE & WINSTON WOODWARD LITTLE, *CREATIVE AND CRITICAL THINKING* (1967); RAYMOND S. NICKERSON, D.N. PERKINS & EDWARD E. SMITH, *THE TEACHING OF THINKING* (1985); BARBARA Z. PRESSEISEN, *CRITICAL THINKING AND THINKING SKILLS: STATE OF THE ART DEFINITIONS AND PRACTICE IN PUBLIC SCHOOLS* (1986); BARBARA Z. PRESSEISEN, *THINKING SKILLS* (1986); JUDITH W. SEGAL, SUSAN F. CHIPMAN & ROBERT GLASER, *THINKING AND LEARNING SKILLS* (1985); ROBERT J. STERNBERG, *INTELLIGENCE APPLIED: UNDERSTANDING AND INCREASING YOUR INTELLECTUAL SKILLS* (1986); ARTHUR WHIMBEY & JACK LOCHHEAD, *BEYOND PROBLEM SOLVING AND COMPREHENSION: AN EXPLORATION OF QUANTITATIVE REASONING* (1984); Barry K. Beyer, *Common Sense About Teaching Thinking Skills*, 41 *EDUC. LEADERSHIP* 44 (1983); Barry K. Beyer, *Improving Thinking Skills—Practical Approaches*, 65 *PHI DELTA KAPPAN* 556 (1984); Edward de Bono, *The Cognitive Research Trust (CoRT) Thinking Program*, in *Thinking: The Expanding Frontier* 115 (William Maxwell ed., 1983); Raymond S. Nickerson, *Kinds of Thinking Taught in Current Programs*, 42 *EDUC. LEADERSHIP* 26 (1984); Robert A. Pauker, *Teaching Thinking and Reasoning Skills: Problems and Solutions*, in *AASA CRITICAL ISSUES REPORT* (Ben Brodinsky ed., 1987); William A. Sadler, Jr., & Arthur Whimbey, *Teaching Cognitive Skills: An Objective for Higher Education*, 60 *NAT'L F.* 43 (1980); Robert J. Sternberg, *Criteria for Intellectual Skills Training*, *EDUC. RES.*, Feb. 1983, at 6; Marilyn Watson, *Critical Thinking: Repackaging or Revolution?*, 65 *LANGUAGE ARTS* 543 (1988); Arthur Whimbey, *Reading, Writing, Reasoning Linked in Testing and Training*, 29 *J. READING* 118 (1985).

¹³ See, e.g., Holley & Ogilvy, *supra* note 5; John O. Mudd, *Thinking Critically About "Thinking Like a Lawyer,"* 33 *J. LEGAL EDUC.* 704 (1983); Andrew J. Pirie, *Objectives in Legal Education: The Case for Systematic Instructional Design*, 37 *J. LEGAL EDUC.* 576, 587 (1987).

- A. To encourage the exploitation of the demonstrated connection between writing and learning
- B. To nurture a lifetime of self-directed learning
- C. To improve problem-solving skills
- D. To promote reflective behavior
- E. To foster self-awareness
- F. To allow for the release of stress
- G. To provide periodic student feedback to the teacher

Any articulation of a set of goals for the use of journals in legal education must be to some degree idiosyncratic and tentative. Goals will be idiosyncratic because each teacher and each student will approach the journal with individualized interests and needs. Therefore, not all of the goals that I present here may be included by a teacher making a journal assignment for any particular course. Rather, the list is my synthesis of the goals that I have derived from the literature on the use of journals in other disciplines¹⁴ and the goals that I have advanced in the five contexts in which I have used journal assignments.¹⁵ The articulation is tentative because learning and teaching goals, in general, may be framed broadly or narrowly or somewhere in between. The same is true of any set of goals that I articulate for the use of journals. I am constantly revising my goals in light of my experience, and other teachers should rework my tentative list of goals to reflect their particular teaching goals and their students' learning goals.¹⁶ Moreover, while the goals I describe here are broad enough to apply in a wide range of educational settings, teachers in any given context, such as a client-based clinic, externship, simulation course, or traditional classroom, will certainly want to adapt them to that particular setting—and I will discuss some of the context-specific functions of journals in the pages that follow.

¹⁴ For examples of that literature see note 9 *supra*.

¹⁵ See notes 4-8 *supra*.

¹⁶ For example, many legal educators believe that ethics and professional responsibility should be taught as part of every course. A teacher whose goal is to sensitize her students to professional responsibility issues could use journal assignments as a tool for achieving that goal. Professor Lawrence K. Hellman, in a study on the effects of law office work on the formation of law students' professional values, reports on the use of journals by externship students to observe, record, and analyze questions of professional responsibility that came to their attention in their externship placements. In this setting, a student who identified an issue of professional responsibility was expected to record the event in a journal and then to describe the steps she took to resolve the issue. With respect to each issue identified, the student was to locate the relevant provision of the Code of Professional Responsibility and other sources of professional guidance that spoke to the issue. Finally, the student was directed to describe her personal resolution of the question by analyzing the sources previously identified together with any "practical" or "ethical" factors that she found relevant. Hellman, *supra* note 1, at 565-68.

Because the goals form a web and act synergistically to enhance learning, I do not offer my list as an attempt at hierarchical ordering. The borders between these broadly cast goal statements are not bright lines; the categories shade into each other and overlap in many cases. For instance, it is not possible to talk about the goal of becoming more reflective without also talking about the goal of becoming a more self-directed learner.¹⁷ It is worth separating these two goal categories for purposes of discussion, however, because a teacher or student may want to focus more attention on one objective, such as the self-directed learner aspect of becoming a reflective practitioner, and leave aside, for the time being, other objectives within that category. The same is true for other overlapping goals that I distinguish here. With this brief introduction to how the goals interact, I now turn to a discussion of each.

A. *To Encourage the Exploitation of the Demonstrated Connection Between Writing and Learning*

A significant reason for assigning journal writing is the demonstrated connection between writing and learning.¹⁸ Current theories of learning and instruction derived from studies in cognitive science¹⁹ explain the correlation between writing and learning in various ways, but all agree that it exists. Requiring students to write journals can therefore be a way to encourage students to interact with the materials under study in a deeper and more critical manner. Through writing about what and how they are studying, students can move from superficial comprehension to employing critical thinking skills in their engagement with the material.

A cognitive sciences view of the learner emphasizes that learning

¹⁷ See Donald A. Schön, *Educating the Reflective Legal Practitioner*, 2 CLIN. L. REV. 231, 250 (1995) (urging the “design [of] methods of teaching for a reflective practicum that more directly assists students to seek self-learning and to find it”).

¹⁸ “The word ‘write’ has two meanings. As a concrete activity, it means putting one’s thoughts into words and then putting those words onto paper. . . . In a second and much broader sense, however, ‘write’ refers to all one does in a project that culminates in a written product. . . . In higher education, it is coming to be understood that writing projects *are* intellect at work and that helping students see and direct those processes is central to development of their intellectual competence.” Peter Gross, *Intellect Beyond Law: The Case of Legal Education*, 33 CLEV. ST. L. REV. 391, 430 (1984-85).

¹⁹ Cognitive science is “a federation of older disciplines—psychology, linguistics, computer science—all concerned with aspects of human mental functioning. Cognitive science offers a reconceptualization of the nature of the learning process and new approaches to the investigation of learning.” Robert Glaser, *Cognitive Science and Education*, 40 INT’L SOC. SCI. J. 21, 21 (1988). For a useful introduction to the broader application of the developments in cognitive science to legal education see Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313 (1995).

occurs chiefly when a person actively seeks to interpret and make sense of the world.²⁰ As new information is presented to the learner, she perceives and processes it by making connections and associations between it and existing knowledge that is stored in the form of schema.²¹ The new information is interpreted and new knowledge organizations are formed. The process of writing requires this same kind of connecting and organizing. Writing is a learning task that activates, makes concrete, and refines schema.²²

Journals not only provide an occasion for recording and so reinforcing lessons that might otherwise have been forgotten, but also can encourage students to "do something" with their class notes and recollections rather than simply to put them aside until the examination. In a journal entry drafted in response to class notes, the student immediately reviews the material, attempts to organize the information in ways that better incorporate it into the student's existing knowledge base, and rehearses and revises the information. This active manipulation of the information increases the likelihood of retention and deeper understanding more than simply recording class notes and reviewing them later in the term.²³

²⁰ Robert J. Yinger, *Journal Writing as a Learning Tool*, 87 *VOLTA REV.* 21, 23 (1985).

²¹ "A schema is a cognitive structure that consists in part of the representation of some defined stimulus domain. The schema contains general knowledge about that domain, including a specification of the relationships among its attributes, as well as specific examples or instances of the stimulus domain. . . . The schema provides hypotheses about incoming stimuli, which include plans for interpreting and gathering schema-related information. . . . It may also provide a basis for activating actual behavior sequences or expectations of specific behavior sequences, i.e., scripts for how an individual behaves in a social situation." Shelly E. Taylor & Jennifer Crocker, *Schematic Bases of Social Information Processing*, in 1 *SOCIAL COGNITION: THE ONTARIO SYMPOSIUM* 89, 91 (E. Tory Higgins, C. Peter Herman & Mark P. Zanna eds., 1981).

²² "Recording information from one mode of presentation to another, deriving feedback from what has been written, and making connections and imposing structure each facilitate awareness of propositional knowledge. However, it may also be that the psychological requirements of writing, such as the need to structure and represent meaning, enable writers to construct new meaning or discover new knowledge. By writing out what is known and by juxtaposing this knowledge with other pieces of knowledge to create new connections, new relations and structures come into being and new knowledge is created. This same process makes evident the gaps or inconsistencies in one's knowledge, which in turn may promote further learning and reorganization." Yinger, *supra* note 20, at 25.

²³ See JUDITH A. LANGER & ARTHUR N. APPLEBEE, *HOW WRITING SHAPES THINKING: A STUDY OF TEACHING AND LEARNING* 42-43 (1987). Langer and Applebee review previous studies that indirectly examined the effects of writing on learning and report on a series of studies of secondary school students that they conducted to focus on the ways that different kinds of writing-after-reading activities affect students' thinking about and learning of their course materials. They conclude, *id.*:

First, the more that content is manipulated, the more likely it is to be remembered and understood. In general, any kind of written response leads to better performance than does reading without writing. Within groups of students who complete the same tasks, students who write at greater length tend

Journals also enable the learner to make an active response—going beyond even “active manipulation”—to reading and other learning acts. Professors Elizabeth Fajans and Mary Falk use a *reading journal* in their advanced legal writing seminar to help students become more active and critical readers of legal text. Students are first instructed to “create their own ‘thinking-aloud’ protocol while they read.”²⁴ To accomplish this task, students are directed, when reading a case that is to be the focus of their writing, “to record their personal associations, reactions, evaluations, interpretations, and questions.”²⁵ Once they have collected this raw data in their reading journals, the students are asked to reflect upon it.²⁶ Professors Fajans and Falk see the reading journal’s benefit to students in moving them from simply summarizing or paraphrasing what they read toward real analysis of the text.²⁷

Whether a student is learning concepts, principles, or performance skills, journals can provide a place to articulate what is known as well as what is not known. Here is an example of a student in civil procedure trying to understand the concept of personal jurisdiction. The student first articulates an understanding of the doctrine and then creates an illustrative scenario to test that understanding:

Under International Shoe, if the contacts are continuous and systematic and the litigation arose out of those contacts, then there is jurisdiction. If the contacts are casual and sporadic but

to perform better than students who write less, even after allowing for a general tendency for better students to do better at everything.

Second, the effects of writing tasks are greatest for the particular information focused upon during writing. Our results suggest that the effects of writing on learning are highly specific and limited to information and ideas that are expressed again in the process of writing about them . . . [T]hese results suggest that the particular writing task chosen may matter a great deal, depending upon a teacher’s objectives.

Third, writing tasks differ in the breadth of information drawn upon and in the depth of processing of that information that they invoke. Thus note-taking, comprehension questions, and summarizing tasks, which focus attention across a text as a whole, have relatively generalized effects, though they lead to relatively superficial manipulation of the material being reviewed. They may be the tasks of choice when the purpose is to review a general body of information. Analytic-writing tasks, on the other hand, focus the writer more narrowly on a specific body of information. . . .

Finally, if content is familiar and relationships are well understood, writing may have no major effect at all. In these cases, simply reading the passage without any other attendant activity may be all that is needed to ensure comprehension and to remind readers of what they already know.

²⁴ Fajans & Falk, *supra* note 1, at 202.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 203.

the litigation arose out of those contacts, there may or may not be jurisdiction. Similarly, if the contact is continuous and systematic but the litigation did not arise from those contacts, there may or may not be jurisdiction. However, if the contacts are casual and sporadic and the litigation did not arise from those contacts, there would be no jurisdiction. For example, assume that I own a home in NJ and rent it out to someone, and I go to NJ once every two or three years to check up on the house. When returning from NJ, I injure a NJ person in MD. The injured person sues me in NJ court. This situation would probably fall under the fourth situation since my contacts with NJ are casual and sporadic and the litigation did not arise from those contacts.²⁸

Because the student is writing in a journal, the entry is more than an articulation of understanding at one moment. It is also available for review and revision as the student's knowledge base increases and the student's capacity to process legal problems increases. In addition, since the student's understanding is published to the teacher, and is available for comment by the teacher, the student can receive contemporaneous feedback on it, which should lead to a deeper and broader understanding of the concept. This interaction between the student and the material and between the student and the teacher is an important aspect of the journal's pedagogical value.

Here is an excerpt from a student journal in which the student, early in the semester, sets forth an understanding of the process of a lawsuit and explicitly requests feedback from the teacher:

I wanted to briefly run through the order which things happen/ occur in a lawsuit. I have never participated in a suit from start to finish, so I want to see if I have a clue (This was just a random thought I had in class the other day when I probably should have been paying attention). A suit commences with

²⁸ JK, Civ. Pro., fall 1992. Each of the journal excerpts used in this article is used with the permission of the author of the entry. I have assigned a randomly chosen pair of initials to each excerpt to preserve the confidentiality of the student. The other identifying information for each entry includes the course for which the journal entry was written, such as Civ. Pro. for Civil Procedure or ICN for Interviewing, Counseling, and Negotiation, and the semester and year in which the entry was written. Excerpts are presented here as originally written by the students.

The journal excerpts presented throughout this article are intended to illustrate how the students' writings address the goals that I have set for the journal assignment. I have not attempted a comprehensive study that would allow me to say with certainty that the journal assignment is meeting my pedagogical goals. Such a study, although theoretically of immense value, would be very difficult to construct and administer and, ultimately, might not provide data of more significance than my subjective assessment of the thousands of journal entries that I have read.

the filing of a complaint, okay I know this isn't earth shattering but I have to start somewhere. This is usually followed with a form of notification, usually a summons, to the other party in the suit, that says yes you are being sued. The other party responds to this summons, but not always, and can either make its own motion and/or answer. For example, a 12(b)(6) motion to dismiss for failure to state a claim may be filed by the opposing party. Assuming that all motions have been filed and decided and the case has not been dismissed, then the attorneys for both sides begin the discovery process. This process involves finding the issues the other side has for its argument and against your argument in an effort to prepare for a speedy, efficient trial. Assuming the case is not settled or dismissed then the case goes to trial. Here the plaintiff presents his case in chief, followed by the defendant's case, which is usually followed by rebuttal by the plaintiff. From here the case either goes to the jury to decide or the judge(s) decide the case. Upon reaching a verdict the loser in most trial level cases can appeal to a higher court and things go on from there. My idea in doing this brief sketch, and I realize it is very brief, is to go back and add to it, breaking each section down in an effort to help me prepare for the final exam. I realize the intricacy of the FRCP and how important it is to see how they work and interrelate but I also hope this type of broad overview will act as a skeleton. I would also welcome any suggestions.²⁹

By providing students with a tool by which they can interact, in a concrete way, with the products and processes of their learning, the journal serves a valuable purpose, but it has other goals and benefits as well. One of these is to ensure that this interaction continues after the student leaves the class and the school.

B. To Nurture a Lifetime of Self-Directed Learning

It is generally agreed that learning is a life-long quest. It is certainly true that a law student cannot in three or four years of law school learn all that is necessary to function successfully as an attorney over an entire career. In law school, as in all efforts at formal education, teachers must strive to assist the student in "learning how to learn," that is, in becoming a self-directed learner.³⁰

²⁹ EF, Civ. Pro., fall 1992.

³⁰ See generally GUIDEPOSTS TO SELF-DIRECTED LEARNING (Gary J. Confessore & Sharon J. Confessore eds., 1992) (providing summaries of 12 of the most widely respected writings on self-directed learning together with references to another 7 more recent publications on the topic).

There are a number of ways in which a teacher may nurture self-directed learning. Every new learning or thinking skill the teacher helps the student acquire potentially enhances the student's capacity for self-directed learning. Teachers can also focus directly on fostering self-directed learning, for example, by assisting the student to learn to take more responsibility for her own learning. Because I believe that self-directed learning is a central skill for an attorney, I ask students in all of my clinical courses (whether based on in-house cases, externships, or simulations) to prepare learning agendas in which they identify goals and objectives for their participation in the course.³¹ The learning agenda may be prepared on a form that I distribute, but frequently it simply becomes the initial journal entry for the class. From time to time throughout the semester, students are asked to review and, where appropriate, to revise their initial learning agenda. The students can take some time to reflect on their initial goal statements, to evaluate their progress toward meeting their goals, and to reevaluate their goal statements in light of experience in the course.

Teachers can also encourage students to achieve self-directed learning by helping them to become more aware of their own learning style preferences. Journals can help students engage more deeply with what they learn about themselves. From observation and experience, teachers know that students learn in different ways that seem systematic and lend themselves to categorization. Since 1960, over two dozen diagnostic instruments for learning styles have been published.³² The two most widely known and used, both in law schools and in other disciplines, are David Kolb's Learning Style Inventory (LSI)³³ and the Myers-Briggs Type Indicator (MBTI).³⁴ None of

³¹ See, e.g., Aiken et al., *supra* note 4, at 1063-66.

³² See George H. Jenson, *Learning Styles, in APPLICATIONS OF THE MYERS-BRIGGS TYPE INDICATOR IN HIGHER EDUCATION* 181, 181 (Judith A. Provost & Scott Anchors eds., 1987). Each construct has its adherents and critics. For a brief critique of twenty learning-style instruments, including Kolb's Learning Style Inventory (LSI) and the Myers-Briggs Type Indicator (MBTI), see Wayne B. James & William E. Blank, *Review and Critique of Available Learning-Style Instruments for Adults, in NEW DIRECTIONS FOR ADULT AND CONTINUING EDUCATION* 57 (Sharon B. Merriam ed., 1993). Kolb's LSI and the MBTI are the only instruments that I have used.

³³ Kolb's LSI, originally published in 1976 and revised in 1985, is probably the most widely used of all of the instruments. The theory underlying the LSI is that people develop different learning styles to acquire or employ cognitive skills and that these differences can be categorized along two primary dimensions. The first dimension is a continuum, beginning with people who employ concrete experiences (CE) and ending with people who rely primarily upon abstract conceptualism (AC). The second dimension is also a continuum, beginning with people who employ active experimentation (AE) and ending with those who rely primarily upon reflective observation (RO). These two dimensions can be treated as defining an X (CE—AC) and a Y (AE—RO) axis. A twelve question inventory is administered to subjects. Each question has four options, representing a choice between the four endpoints of the two dimensions, and the subject is asked to rank the four options

these assessments of learning styles reliably and completely describes the way that any particular individual learns in any specific context, but they do provide a mechanism for the learner to reflect upon how he learns. Bringing to awareness issues of learning that often go unnoticed or get taken for granted in itself has benefit to the learner.³⁵

This is what one student wrote in a journal after being exposed to the Myers-Briggs Type Inventory, which I had administered in my In-

in the order of his or her preference. The responses are then graphed on the X and Y axes.

Kolb describes a person who prefers to learn more by concrete experience and active experimentation as an "Accommodator," and characterizes such persons as relying on action rather than theory formation. Learning for "Accommodators" results most readily from "hands-on" experience. Kolb describes a person who prefers to learn more by concrete experience and reflective observation as a "Diverger," and depicts such persons as relying on imagination and multiple perspectives. Kolb describes a person who prefers to learn more by abstract conceptualism and active experimentation as a "Converger," and portrays "Convergers" as relying on technical skills and practical solutions. Finally, Kolb describes a person who prefers to learn more by abstract conceptualism and reflective observation as an "Assimilator," and views them as relying on inductive reasoning and logic for purposes of theory building.

Studies using the Learning Style Inventory have examined whether students or professionals from particular disciplines have common learning styles. Accounting students and accountants have been found to be predominantly "Convergers." See Beverly Jenkins & Joyce Holley, *Learning Style Preferences and the Prospective Accountant: Are There Gender Differences?*, 53 WOMAN CPA 46, 49 (1991). Studies of law students and law professors demonstrate preference for the Converger or Assimilator styles. Indeed, Professor Cynthia Kelly has argued that "the traditional law school is generally oriented toward only one type of learner: the assimilator, who is most comfortable with abstract theoretical models and a reflective approach to learning." See Cynthia Ann Kelly, *Education for Lawyer Competency: A Proposal for Curricular Reform*, 18 NEW ENG. L. REV. 607, 621 (1983). A survey of the learning styles of faculty at The University of Tulsa College of Law in 1985 found that the faculty overwhelmingly preferred the Converger style. Letter from Professor Taunya L. Banks to J.P. ("Sandy") Ogilvy (July 10, 1985) (on file with the author). A survey of the participants in the Leadership Institute in Judicial Education, a program offered by the State Justice Institute in 1990, found that appellate judges were generally Assimilators, while the administrators in attendance were typically Accommodators. See Paul Nejelski, *Symposium Seeks New Approaches to Judicial Education*, 74 JUDICATURE 104 (1990).

³⁴ The Myers-Briggs Type Indicator is not strictly speaking an instrument to assess learning styles. It was developed, based upon Jungian type theory, as an assessment of personality type. One of the uses to which the instrument has been put, however, is in assessing and facilitating learning. See, e.g., APPLICATIONS OF THE MYERS-BRIGGS TYPE INDICATOR IN HIGHER EDUCATION 181 (Judith A. Provost & Scott Anchors eds., 1987); GORDON LAWRENCE, PEOPLE TYPES AND TIGER STRIPES: A PRACTICAL GUIDE TO LEARNING STYLES (1989); Barbara J. Gilchrist, *Myers-Briggs Type Indicator as a Tool for Clinical Legal Education*, 10 ST. LOUIS U.L.J. 601 (1991); Raymond B. Marcin, *Psychological Type Theory in the Legal Profession*, 24 U. TOL. L. REV. 103 (1992); Don Peters & Martha M. Peters, *Maybe That's Why I Do That: Psychological Type Theory, the Myers-Briggs Type Indicator, and Learning Legal Interviewing*, 35 N.Y.L. SCH. L. REV. 169 (1990).

³⁵ For discussions of learning and teaching styles, see generally KATHLEEN A. BUTLER, LEARNING AND TEACHING STYLE—IN THEORY AND PRACTICE (1987); PAT BURKE GUILD & STEPHEN GARGER, MARCHING TO DIFFERENT DRUMMERS (1985); THE NED HERRMANN GROUP, 9 THE INTERNATIONAL BRAIN DOMINANCE REVIEW (1993-4).

terviewing, Counseling and Negotiation class:

I found the discussion on the Myers-Briggs type indicator very interesting. I have taken the indicator a few times before and I really hadn't given it much thought until now. This might be directly linked to the fact that I had never had such an in depth explanation of what the indicator types represent.

It was really interesting to see that we all were spread, relatively, across the board. I thought that there would have been more of a pattern among a similar group. I'm glad that there wasn't it's nice to know that we are all different, even when we seem a lot alike. Along similar lines I was thinking about how I have picked out study partners in the past; I have tried to pick someone who thinks along different lines than I do. Why? Because I already know how I would analyze a problem, I don't need affirmation. What I need is a new perspective, a different perspective. I think that's why people sometimes have problems with study groups they do so much work and then don't get the results they expected maybe it's because they all thought the same way and were only able to analyze a problem one way. I'm glad we were able to take the time to go over the indicator it gave me a deeper insight into who I am.³⁶

Whether or not a student is aware of her learning style preferences, journals can help the student become more aware of her strengths and weaknesses as a learner. Students can use journals to engage in and become more efficient at self-evaluation. They can explore weaknesses in study skills and take corrective action in response to self-diagnoses.³⁷ They can also explore how to transfer learning and skills from the classroom to "real world" practice settings. This is how one student in Interviewing, Counseling, and Negotiation reacted to segments in class on brainstorming and critiques:

For example, one of my journal entries concerned the brainstorming lecture given in class. I thought about the lecture and used my journal to transcribe the benefits brainstorming provides an attorney. By writing these thoughts and ideas down on paper, it helped me focus on its importance. This helped me actually realize the benefits instead of just giving it "lip service." Another journal I wrote was on critique administration. This helped reinforce my personal goals to work on

³⁶ HI, ICN, spring 1993.

³⁷ Sharyn Sondra Lowenstein, *The Personal Journal - Journal Keeper Relationship as Experienced by the Journal Keeper: A Phenomenological and Theoretical Investigation* 168-204 (1982) (unpublished Ph.D. dissertation, Boston University) (on file with the author).

this objective and helped me to view the positive aspects of giving constructive criticism.

By writing these thoughts down on paper, I thought about how I could apply what I had learned to my real life experiences and my future career. For instance, last summer I had difficulty getting my superiors to administer constructive critiques to me on projects I had turned in. Before this class, I was hesitant to push too hard for criticism, partially because I felt uncomfortable giving critiques myself. However, through the exercises, my journal entries and some self analysis, I feel more comfortable giving critiques. I believe this will help me in the future speak my mind on this issue and get what I want.

The journal entries made me sit down to think carefully about the experiences. Even though they were not required during the last part of the semester for each class, I had already gotten into the habit of thinking about my activities. This demonstrated the benefits of thinking about improvement and experimenting with different activities. I am by nature a very rushed individual and I seem to be busy most all of the time. The opportunity for reflection and "quiet time" became very enjoyable for me. I learned the importance of it as well.³⁸

If assisting students to become self-directed learners is a pedagogical goal for a particular course—and I think it should be an important goal across the curriculum—then students should be made aware of this goal and of its importance and should be encouraged to devote some time and conscious effort to moving toward it. When using journals to facilitate this goal, teachers can encourage students to devote some entries to topics that entail thinking about learning by including some sample topics of this sort in the materials that describe the journal assignment and by inviting further entries through their written responses to the journals.

C. To Improve Problem-Solving Skills

I suspect that both legal educators and practitioners would list *learning to solve legal problems* as one of the most important skills that law students should possess upon graduation from law school.³⁹ Yet what passes for "problem-solving" practice in much of law school is recitation of heuristic responses to well-structured problems rather

³⁸ JJ, ICN, spring 1992.

³⁹ Problem solving is the first of the fundamental lawyering skills discussed in the MacCrate Report. ABA TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 141 (1992) [hereinafter MACCRATE REPORT].

than a true grappling with messy, ill-structured problems, such as those found in the actual practice of law.⁴⁰ Many well-structured problems can be resolved through the efficient use of memory. Few ill-structured problems can be resolved without a more complex and wide-ranging struggle for solutions, and a journal can be a valuable tool for pursuing, as well as recording, that struggle. Journals can be a place for learners to engage in active problem-solving by putting into concrete form an expression of the problem to be solved; by articulating sub-problems; by sorting through the often chaotic circumstances surrounding a problem to clarify issues and obstacles; by identifying emotional baggage that is interfering with a solution to the problem; and by brainstorming, analyzing, and evaluating solutions.

The use of a specialized journal for a specific type of problem-solving is illustrated by the *research journal* assigned by my colleague, Professor Lucia Silecchia, in her Advanced Legal Research and Writing course. In class, Professor Silecchia and the students discuss various research tools, which are then used by the students to advance the research of their final papers. Professor Silecchia asks the students to

⁴⁰ Ill-structured problems are those that "cannot be described with a high degree of completeness or solved with a high degree of certainty; in fact, it is sometimes difficult to determine when a solution has been reached." PATRICIA M. KING & KAREN S. KITCHENER, *DEVELOPING REFLECTIVE JUDGMENT* 10 (1994). King and Kitchener elaborate the defining features of well- and ill-structured problems, offer examples of each, and also identify the teaching goals appropriate to preparing students for these very different types of situations, *id.* at 11:

A Comparison of Well- and Ill-Structured Problems
(Adapted from KING & KITCHENER, *supra*)

| | Well-Structured Problems | Ill-Structured Problems |
|-------------------|------------------------------------------------------|------------------------------------------------------------------------------------------------|
| Definition | Can be described with a high degree of completeness | Cannot be described with a high degree of completeness |
| | Can be solved with a high degree of certainty | Cannot be resolved with a high degree of certainty |
| | Experts usually agree on the correct solution | Experts often disagree about the best solution, even when the problem can be considered solved |
| Examples | Solving for x in an algebraic equation | Judging the adequacy of a theoretical proposition |
| | Calculating the amount of lost wages | Predicting the settlement value of a personal injury case |
| | Finding the date of enactment of a congressional act | Interpreting the meaning of specific language in legislation |
| Educational Goals | Learn to reason to correct solutions | Learn to construct and defend reasonable solutions |

keep track of their own research efforts by using a journal to outline all of their research steps.

Professor Silecchia provides each student with a bound booklet containing 25 identical pre-printed pages. The students are directed to fill out a page for each research tool that they examine. The students are told to take notes on how they used each tool, whether it was helpful to their research, and whether they had any particular problems using the source that they would like to review with her. Professor Silecchia collects the research journals several times during the term and returns them to the students with a memorandum containing her comments. Typical comments include suggestions of further research avenues that the student did not note and of more effective ways to exploit the materials that the student did choose to use. This is an example of a specialized journal assignment that helps the teacher to guide students through an explicit problem-solving methodology of legal research.⁴¹

In clinics, a journal with a problem-solving emphasis can help students by providing a space in which the students can record each step of the problem-solving process from the initial task of problem definition to the evaluation of possible solutions and their implementation.⁴² Having a record of each step (and misstep) in the process facilitates problem-solving in many ways. The availability of the record reduces the likelihood of inefficient repetition of steps and helps ensure that others who are involved in the problem-solving process are aware of all that has been done. In addition, the concrete record can be reviewed during each stage of the process and provides a baseline for the next steps in decisionmaking.

⁴¹ In her memorandum to the students, Professor Silecchia also relates the use of the journal to good professional practice: "Part of being a successful practitioner is knowing which resources will help you and which will be a waste of your time and your client's money." In addition, she notes that "keeping a journal is good preparation for practice. As an attorney, always keep a record of where you have looked in your research so that you can avoid repeating yourself if time lapses between different stages of your research; pass your project on to someone new who will not have to reinvent the wheel; discuss research problems if you are not finding what you are looking for; and protect yourself should you ever be accused of doing your research carelessly and not in accord with professional standards." Lucia A. Silecchia, *Research Journal* (Summer 1992) (instructions to students) (on file with the author). Thus, she has made explicit her expectation that her students will use methods learned in an academic setting in their professional roles. Such guidance helps the students recognize that learning is a life-long quest and equips them for their journey, and so also helps them to develop into self-directed learners. See text and notes at notes 30-38 *supra*.

⁴² The MACCRATE REPORT, *supra* note 39, at 142, specifies the skills and concepts involved in problem-solving as: identifying and diagnosing a problem, generating alternative solutions and strategies, developing a plan of action, implementing the plan, and keeping the planning process open to new information and ideas.

In fact, supervisors in client-based clinics often require students to keep a form of journal that either meets or can be adapted to meet these goals. Sometimes called a case log, a journal of this type can be much more than a mere summary of steps taken. A sufficiently detailed case log can help the student attorneys with problem-solving within their cases and can facilitate the information flow between student attorneys and supervising attorneys with respect to the cases. Externship students can use journals to help work through a variety of problems that they might be called upon to solve or that they identify for themselves. From tracing how the extern student approached and resolved an assignment to recording the extern's struggle to understand and accommodate herself to the institutional setting, these journals provide a valuable tool for problem-solving. Even in the large, traditional classroom setting, students come to recognize the value of keeping a journal as they work to understand how to assimilate and accommodate the contents and processes of the course into their own knowledge base. Here is what a student wrote toward the end of the course in civil procedure:

[I]t has allowed me to "talk out" theoretical problems concerning cases or legal theories we had in class. Although I look back sometimes at past journal entries and cringe at my initial reactions to specific cases in light of what we later learned, the journal captured my initial concerns and thoughts concerning a matter before we totally dived into the subject in class. This has reflected upon my thinking processes, has let me see what angles I approach things at and that relation to my thinking upon receiving more knowledge through class discussions. It has also been quite helpful upon doing my outline—as I can see what questions I originally had about something which I then use my subsequent knowledge to answer. This has helped "frame" it quite nicely.⁴³

D. To Promote Reflective Behavior

Donald Schön has argued convincingly that the best practitioners in various professions develop their skills through continual reflection about the uncertainties, complexity, and value conflicts that confront them in practice situations.⁴⁴ One of the principal goals of my teach-

⁴³ LM, Civ. Pro., fall 1992.

⁴⁴ DONALD SCHÖN, *THE REFLECTIVE PRACTITIONER* (1983). Schön argues that both *reflection-on-action* and *reflection-in-action* are necessary components of professional artistry. Schön explains the difference between reflection-on-action and reflection-in-action this way:

We may reflect *on* action, thinking back on what we have done in order to

ing is to motivate students to adopt a more reflective attitude and to assist them to develop reflective judgment. Reflective judgment is a process of critical inquiry and evaluation that recognizes our knowledge of reality is subject to our own perceptions and interpretations, but that nevertheless permits us to determine that some judgments are more correct than others.⁴⁵ A student who generates hypotheses about a legal problem and tests them against other knowledge she has is being reflective. Reflection of this sort can help students to develop critical thinking skills, and that is an important achievement. My goal in promoting reflective behavior, however, is even broader. A student who observes and evaluates herself—her thinking, feelings, learning or acting—is also being reflective, and valuably so. I want students to improve their ability to be reflective in all aspects of their personal and professional lives, not just within the cognitive domain and not just with legal problems.

Although I do not expect the students to become “reflective practitioners” within the course of one semester, I feel so strongly about the concept that I have set it as a primary pedagogical goal in all of my classes. This means helping students to value reflective behavior; assisting them to become more conscious of engaging in reflection and to monitor their reflectiveness; aiding them in improving their ability to be reflective; and encouraging them to modify their actions in light of reflection. For me, this pedagogical goal is an important reason for using journals. In fact, I would say that if the process of keeping a journal during the semester encourages enhanced reflective processes, which become internalized even to a small degree, the exercise has value for the student, even if the student never again makes use of the journal device as such in her academic or professional work.

Journals are a powerful tool for encouraging reflective behavior, though not the only tool teachers can use for this purpose.⁴⁶ The jour-

discover how our knowing-in-action [tacit knowledge] may have contributed to an unexpected outcome. We may do so after the fact, in tranquility, or we may pause in the midst of action to make what Hannah Arendt . . . calls a “stop-and-think.” In either case, our reflection has no direct connection to present action. Alternatively, we may reflect in the midst of action without interrupting it. In an *action-present*—a period of time, variable with the context, during which we can still make a difference in the situation at hand—our thinking serves to reshape what we are doing while we are doing it. I shall say, in cases like this, that we reflect-*in-action*.

DONALD A. SCHÖN, EDUCATING THE REFLECTIVE PRACTITIONER 26 (1987) (citation omitted). See Gross, *supra* note 18, at 422-34 (making a similar argument with regard to legal education and legal practice).

⁴⁵ See Karen S. Kitchener & Patricia M. King, *Reflective Judgment: Concepts of Justification and Their Relationship to Age and Education*, 2 APPLIED DEV. PSYCHOL. 89 (1981); see also KING & KITCHENER, *supra* note 40.

⁴⁶ Debriefing during and after a critical incident in a clinical practice or during and

nal's impact results from its providing a specific time and place in which to engage in reflection. A journal also provides space for the products of reflection to be made concrete and therefore available for further immediate, or future, reflection and analysis. Moreover, by providing guided opportunities for self-reflection, journal requirements can create in the student the willingness to engage in self-conscious reflective behavior—the first step in becoming a reflective practitioner in Schön's sense. As the following journal excerpts demonstrate, students do use journals as tools for reflective behavior.

A student is being reflective when she thinks about what she knows, considers the gaps in her knowledge, and contemplates what she still needs to learn.⁴⁷

As I mentioned above, my Journals began as an expression of my dismay about the amount of work. They also expressed my fear over my inability to apply what I was learning in class into the working world because I opted not to work, and instead, wrote an Essay in the hope of getting it published in the Health Law Journal rather than take a job. But as the semester progressed, I was able to incorporate my thoughts on what we had learned in the previous class. More than a rehash of what we covered, I attempted to analyze what we were doing and how it would help me in the future when I enter the profession.⁴⁸

A student is being reflective when he considers his relationship to the course material.

If you do not come out of this class with anything else, you do come out a more reflective person. The required writing assignments force you to be more reflective. You have to think about what to write in journal entries. You have to think about what to write in critiques. You have to think about what to write in memos to the file. With all of this thinking going on, you are sure to drift off and reflect upon how what you have learned, or what you have reflected upon to complete a writing assignments affects other areas of your life. As a result of having to keep journal entries, I decided to keep a personal journal. Hopefully, this will be much easier to do when I am not

after a simulation exercise also provides opportunities for reflection, as do longer reflective papers.

⁴⁷ Thinking-aloud protocols show that some of the dominant traits of sophisticated learners are their ability to recognize: (1) what they know and do not yet know; (2) what is important to know and what can be disregarded; and (3) when it is important to seek information previously overlooked. See Fajans & Falk, *supra* note 1, at 178.

⁴⁸ AB, ICN, spring 1992.

*juggling four classes and I really do have more time to be more reflective.*⁴⁹

*By far, one of the best components of the class was the weekly journal. As much as everyone moaned and groaned (including me!), this class would not have been the same without them. This goes back to what I said earlier about the introspective nature of this course. It is important to reflect on what you're doing in the class and what you're getting out of the course. Writing my weekly journal was the best way to pinpoint the pluses and minuses of each class at the beginning of the semester. Moreover, I found that journal to be an excellent forum to relay my feelings about what was good and bad about individual class activities, and what progress was in achieving my class objectives.*⁵⁰

The student is being reflective when she monitors her own learning.

*I wanted to use my last journal entry to give you my opinion of the course in general as well as having to do journal entries. I found doing the journal entries helped me to understand rules or concepts I was having trouble with. In a lot of my entry's I took a rule and broke it down into sections and analyzed them, I think this technique really helped me because I am the type of person that has to write things down in order to memorize and understand them. Seeing, for example, rule 13 on paper in my own words helped me work it through in my head so that I understand it better. Sometimes just reading the rules or cases is enough for me to grasp the meaning of what is being said, but often times doing a journal was almost necessary. My only regret is that I waited so long into the semester to do a lot of entry's. To really make this technique as useful as possible I think you need to use it as you go along from topic to topic in Civil Procedure. I think this would be part of the advice I would give to students about to take this course.*⁵¹

The student is being reflective when he seeks to clarify his values, examines assumptions, or expresses tentative understandings.

My class journal was a new experience for me. I honestly do not think I had been asked to prepare any type of journal since high school. It took a few entries before I was able to represent in depth the reflection that I was giving to the topics

⁴⁹ BC, ICN, spring 1992.

⁵⁰ DE, ICN, spring 1992.

⁵¹ EF, Civ. Pro., fall 1992.

of the class. Yet, as the semester churned on, I began to enjoy preparing the journal entries and I believe that their quality improved quickly from the first effort forward.

The journal was a place where I not only reflected upon class performance but also discussed application of principles and ideas that I learned in class to my part-time job. I was very lucky to have these opportunities and I thought it important that these areas be discussed. I also employed the journal for the simple purpose of discussing some of my beliefs without getting too syrupy. I believe then that the journal was a success for me because it helped me evaluate myself and reflect upon my work in class and how I envisioned my work would be after graduation.⁵²

The student is being reflective when he engages in hypothesis generation and speculation. He is being reflective when he writes about his experience in legal education and how it affects his life.⁵³

What hath Romulus wrought?

The law confounds me. Not that I have great difficulty understanding it, nor do I readily complain, as I have often heard done, of "legalese," that whiny little word for the way legalists write—that, at least, is a boon to us. Legalese is strict and formal, it means what it says. It is rivaled only in specificity by Aristotle and the metaphysicians.

But here is the crux of my complaint, or thought, or whatever: law is a Pandora's box.

The law says, for example, "I am red." Then years pass, and by and by we learn that indeed, the law is usually red, but here it is orange, there it is purple, and occasionally, when something really unexpected weasels its way into the appellate level, it is actually green or yellow, as distinct from red as red can get. So then the poor student looks at the law and says, "Okay, so then the law is red, except when it is now." Is that a rule?

I'm not as dull as I sound; I do understand that the reasons for this are found in a fear of being Draconian in our application of the law. Yet the moment we decide as a culture to make exceptions, to twist and turn, let one side win because, by god, it seems the right thing to do, the law gets just a little less meaningful. And then we turn to the task of lawyers:

⁵² CD, ICN, spring 1992.

⁵³ See James R. Elkins, *The Stories We Tell Ourselves in Law*, 40 J. LEGAL EDUC. 47, 59 (1990); Elkins, *Rites de Passage*, *supra* note 1.

*learning not the law but how to practice with it, dance with it—leave it, occasionally.*⁵⁴

Journal writing allows the student to be reflective in each of these ways and in others. By encouraging and valuing reflective behavior, we increase the likelihood that students will internalize the activity and carry it forward into their personal and professional lives after formal legal education ends. In a slightly different context Phillip C. Kissam has said, “[i]f [law students] do not develop an instinctive habit of learning, developing, and applying the law through a critical writing process, they are less likely to be interested in or capable of engaging in the continual task of learning, creating, and applying the law by writing when they enter practice.”⁵⁵ What is true of the habit of writing is no less true of the habit of reflection which writing can help create.

E. To Foster Self-Awareness

A primary objective of all education is personal growth, and a central element of such growth is increasing self-awareness. Journals can contribute to students' self-awareness in two ways that seem to me particularly important for law students and legal educators. The first is that journals can provide a space for students to discover their own voices, test them, and experiment with them.⁵⁶ Journal assignments permit, indeed encourage, students to write without trying to sound the way they think lawyers sound. Students frequently complain that they thought they knew how to write before they came to law school, but now they are told that they are novice writers. There is indeed some domain specificity to legal writing that students need to master.

⁵⁴ FG, Civ. Pro., fall 1993.

⁵⁵ Philip C. Kissam, *Thinking (By Writing) About Legal Writing*, 40 VAND. L. REV. 135, 141 (1987). See generally Anders K. Ericsson, Ralf T. Krampe & Clemens Tesch-Römer, *The Role of Deliberate Practice in the Acquisition of Expert Performance*, 100 PSYCHOL. REV. 363 (1993) (presenting a theoretical framework to explain expert performance as the end result of individuals' prolonged efforts to improve performance while negotiating motivational and external constraints).

⁵⁶ The term “voice” owes much of its popularity to Carol Gilligan's exploration of moral development in women, IN A DIFFERENT VOICE: A PSYCHOLOGICAL THEORY OF WOMEN'S DEVELOPMENT (1982). In the view of James Boyd White “the central aim of a legal education should be to enable each student to develop a voice of his own as a lawyer.” James Boyd White, *Doctrine in a Vacuum: Reflection on What a Law School Ought (and Ought Not) to Be*, 36 J. LEGAL EDUC. 155 (1986). See also Lawrence, *supra* note 1, at 2249-50 (“In my teaching about law, I try to leave space for, to encourage and value, the articulation of feeling and experience. This is particularly important in teaching law, where the story that is told within the dominant discourse has systematically excluded the experience of people of color and other outsiders and where we are trained to believe that the story told by those in power is a universal story.”). For extensive additional references, see James R. Elkins, *A Bibliography of Narrative*, 40 J. LEGAL EDUC. 203 (1990).

All too frequently, however, students pick up jargon and other superficial indicia of writing "like a lawyer" that do nothing to make their writing more precise or more persuasive and that strip from their work those unique elements of personal style that contribute to understanding, or at least do not interfere with it, and that distinguish one writer from another. Journal writing provides a space for personal, declarative discourse that is stifled in most law school writing assignments.

The second contribution that journals can make is to help the law student to maintain a sense of self throughout the process of professional socialization that takes place in law school.⁵⁷ By using the journal to relate the values that she brought to law school to the methods and materials of law study, the student can appropriately evaluate what is being taught and learned. Journals provide a space for students to work through how they feel about the roles that they are asked to assume in the law school, whether in the traditional classroom or the clinic.

In his article: "The Word and the River: Pedagogy as Scholarship as Struggle,"⁵⁸ Professor Charles R. Lawrence, III has reported on the assignment of *reflection pieces*, which are similar to extended journal entries. In Professor Lawrence's pedagogy, the reflection pieces serve two purposes. Since the essays are due the day before the class meets, students come to class prepared for the discussion.⁵⁹ "But more than that, they come having already engaged in the process of experiencing the harmony or dissonance between their own perspectives and the perspectives described in the readings."⁶⁰ The assignment, according to Professor Lawrence, validates each student's experience and articulation of that experience. Professor Lawrence adds, "[t]he power of these pieces is not just in their usefulness as a method for discovering

⁵⁷ For examples of the literature on the socialization of law students through the law school experience, see Avrom Sherr & Julian Webb, *Law Students, the External Market, and Socialization: Do We Make Them Turn to the City?*, 16 J.L. & Soc. 225, 227-29 (1989). For books recommending the keeping of personal journals, see CHRISTINA BALDWIN, *ONE TO ONE: SELF-UNDERSTANDING THROUGH JOURNAL WRITING* (1977); JOAN DIDION, *SLOUCHING TOWARDS BETHLEHEM: ON KEEPING A NOTEBOOK* (1968).

⁵⁸ Lawrence, *supra* note 1. Professor Lawrence first used reflection pieces in connection with a semester-long simulation exercise in the course. Students were assigned to a five-member group. Each group was asked to keep a "detailed account of internal group process." In addition, "each student was also required to write two or three pages following each group meeting reflecting on his or her ideas, role in the group, and feelings evoked by both the process and substantive issues discussed." Later, Lawrence began requiring students "to write a brief essay recording their reactions to some portion of the readings for that week or to the impact of the readings as a whole." *Id.* at 2245-47.

⁵⁹ See notes 24-27 *supra* (on the use of "reading journals" to encourage students to move from mere paraphrase of textual materials to real analysis of text).

⁶⁰ Lawrence, *supra* note 1, at 2248.

new insights gained from a diversity of experience and perspective, but in the authority they give to the voices of those who have come to experience themselves as lacking in authority."⁶¹

Here is how one of my first-semester civil procedure students described hearing her voice in her journal as she struggled to become a lawyer:

*This is the first day of the church new year; the last week of class and time to look back on what's been. I've gone through my journal. I'm glad that I wrote it and I appreciate the comments that you've enriched me with. I have not been faithful to it lately, but when I had been it was helpful. I like having the document to look back on. I don't know where the semester went. I'm aware that my mind has been actively engaged and expanded. The experience of writing out some of my thinking was very positive. It was interesting to see the things that concerned me. I recognize me in my writing. Hopefully, there's a lawyer in there somewhere.*⁶²

Through journals, students can be helped to value their own experiences and to integrate those experiences with those of the students of the law who came before them. Here is one student's recognition just before the midpoint of the first semester of law school that judicial opinions are not handed down from Mount Sinai:

*I still find it startling that most of the questions don't have an answer. There would not be much to learn if only one answer existed. Most of the cases I read could be justifiably decided in several different ways. It seems to come down to who is better at persuading why her interpretation is the appropriate one. At first, I was reading cases without questioning the decisions. It seems silly to me now that I started out that way. Obviously, just because a judge's words are published doesn't mean those words are right or wrong.*⁶³

F. To Allow for the Release of Stress

I do not explicitly assign journal exercises for therapeutic purposes. I have found, however, that many students successfully use their journals as an outlet for frustration and anger and as a place for emotional and intellectual release.⁶⁴ The therapeutic effect of journals

⁶¹ *Id.*

⁶² BD, Civ. Pro., fall 1994.

⁶³ CE, Civ. Pro., fall 1994.

⁶⁴ Patient journals are not infrequently used by therapists as part of therapeutic intervention. See, e.g., Raymond Fox, *The Personal Log: Enriching Clinical Practice*, 10 CLIN. SOC. WORK 94 (1982); Sharyn Lowenstein, *A Brief History of Journal Keeping*, in THE

cannot be overstated. The study of law is, for many people, intensely stressful.⁶⁵ A journal provides a place for learners to vent their frustrations and to discuss the tensions inherent in balancing law school with other commitments to family, friends, and, increasingly, part-time employment. Journals provide an empathetic “ear” for complaints about the administration of the law school, the course, other courses, colleagues, or other responsibilities.⁶⁶

Where students are assured of confidentiality, some, consciously or unconsciously, will use the act of writing in a journal as a healthy discharge of potentially disabling stress. I have found that first-year students especially appreciate the journal for this purpose. This is what one of my first-year students wrote at the end of the first semester of law school:

Well, this is my final journal entry—I've reached that magic number of 40. I have a few thoughts (as I'm sure everyone has had with their last journal entry) upon reaching this milestone. I wasn't really too sure about this requirement when we began this semester. I thought it would be tough to write most every day, that it would be an arduous process, that I would repeat myself most of the time. As we went along, I found out that this was not to be the case. One of the reasons mentioned in the syllabus struck me as the most pertinent reason for keeping the journal—the relief of stress by “talking” out problems or thoughts. I have found this to be the most valuable effect of the journal requirement. It really does have a therapeutic effect for me.⁶⁷

JOURNAL BOOK 87, 94-95 (Toby Fulwiler ed., 1987) (“Journals have been used to rehearse for and to synthesize the work of the therapy hour, to generate more widely-based material than is usually discussed during the sessions, and to speed up treatment for some patients”). Others have written about the use of journals as techniques for personal growth, self-awareness and self-therapy. See, e.g., ANAIS NIN, *THE NOVEL OF THE FUTURE* (1968); IRA PROGOFF, *AT A JOURNAL WORKSHOP* (1975); TRISTINE RAINER, *THE NEW DIARY* (1978).

⁶⁵ See G. Andrew H. Benjamin, Alfred Kazniak, Bruce Sales & Stephen B. Shanfield, *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225. This article reviews the literature suggesting that the process of legal education impairs the maintenance of emotional well-being in law students, and presents the results of a study testing this hypothesis. The authors find that before law school, subjects expressed psychopathological symptom responses that were similar to the normal population. Yet during law school and after graduation symptom levels were significantly elevated. *Id.* at 246-47.

⁶⁶ Professor Kenny Hegland, who encourages students to keep journals, recognizes that many journal entries “will be ‘bitching’ and gossip,” but, he says, by stepping back from the hurly-burly of law study for 20 to 30 minutes a few times a week, students can get a great deal out of keeping a journal. HEGLAND, *supra* note 1, at 107-10.

⁶⁷ LM, Civ. Pro., fall 1992.

Or listen to a third-year student in Professor Abbe Smith's criminal defense clinic express his frustration with the clinical methodology early in the semester:

I am so damn frustrated! I can barely express my anger and aggravation connected with this class. I feel like I'm being toyed with for stupid pedagogical reasons or only being given half of the information I need to do my cases. I've never felt like my professors played "hide-the-ball" before, but now I do think I'm being forced to participate in some game and it's very disturbing.⁶⁸

Some students, such as the first-year student in the example above, recognize for themselves the value of using the journal as a safety valve to release stress. Others may need the assistance of the teacher, through appropriate feedback on the journal entries or other interventions, to work through their stress or frustration. For this latter group of students, the journal also alerts the teacher to the opportunity for intervention.

G. To Provide Periodic Student Feedback to the Teacher

In addition to furthering the student-centered goals sketched above, journals individually and collectively have value to the teacher. Reading student journals can help the teacher to get a sense of class dynamics so as to identify interpersonal problems that might interfere with learning. Journals can generate solicited or unsolicited student evaluation of class sessions, group projects,⁶⁹ or of the course as a whole. Such comments can help the teacher adjust her pedagogy in response to valid criticisms and suggestions at that point or in future iterations of the course.⁷⁰

Just as importantly, journals can help teachers identify topics that need additional pedagogical attention, because the journals provide feedback from students to the teacher about areas of confusion and misunderstanding within the course. In a traditional classroom course

⁶⁸ Robert Rader, *Confessions of Guilt: A Clinic Student's Reflections on Representing Indigent Criminal Defendants*, 1 CLIN. L. REV. 299, 313 (1994).

⁶⁹ For example, Professor Lawrence assigned students to work in groups of five in a semester-long simulation exercise in his course on race discrimination law. As I explained in note 58 *supra*, each group was asked to keep a detailed account of group process observations and each individual "was also required to write two or three pages following each group meeting reflecting on his or her ideas, role in the group, and feelings evoked by both the process and substantive issues discussed." Lawrence, *supra* note 1, at 2245. These journal entries could be used to guide the students' efforts at collaboration.

⁷⁰ See, for example, the comments of AC, Civ. Pro., fall 1993, quoted in note 85 *infra*, regarding the perception of one class member that the contributions of female students made during an in-class drafting exercise were ignored by some members of the class.

like civil procedure, for instance, if the journal entries of several students reveal continued confusion between personal jurisdiction and subject matter jurisdiction, I can allocate additional class time to discuss the doctrines. Absent journals, I may not discover until I grade final examinations at the end of the course that a significant number of students failed to master that critical distinction. If I find only a few journal entries that reveal confusion, I can work with those students, without the need to spend additional class time that is of limited benefit to the remainder of the class.

Journals are not a panacea for diagnosing misapprehension and confusion by students. Given the topical latitude that I have traditionally granted to students to write about whatever they wish, it is certainly possible, and in my experience probable, that one or more misapprehensions by a number of students will go undetected until the final examination. Reducing the scope of permissible journal topics and directing students to write about the content of the course in such a way as to encourage the demonstration of doctrinal understanding could make journals more useful in surfacing misunderstandings. That benefit, however, would not be without cost. What could be lost are several of the other purposes for which a journal exercise is important. How the teacher chooses between relatively open topic selection and narrower, focused assignments depends upon her choice of goals for the journal exercise as a whole.⁷¹

In externship and live-client clinic supervision, journals can be an especially valuable source of information for the teacher to use in constructing a reflective seminar or in individual tutorial meetings. Students do not always recognize the significance of issues that could be brought to the class for discussion. The teacher is often in a better position to draw from the students' journals critical incidents that deserve further discussion, either because of the nature of the issues raised in a single journal or because of the commonality of theme

⁷¹ If the teacher's primary goal is to discover possible widespread misunderstanding of doctrine by students, short quizzes or frequent, end-of-unit examinations are probably more efficient than a journal. A technique that preserves the topical latitude of the journal, but also serves to surface doctrinal misunderstandings, involves the use of "in-class" journal writing combined with "out-of-class" writing. The out-of-class writing can still be open and relatively unguided, while the in-class writing can be more focused. For the in-class exercise, I tell the students, either at the beginning or end of a class period, to write a journal entry on a particular topic or in response to a particular question. The students are given five minutes to complete their entries, which I then collect. For example, I might ask students to compare and contrast two concepts, such as claim preclusion and issue preclusion, or to comment on a particular case or series of cases. The data generated by these five-minute exercises can help to inform my teaching in a number of ways, depending upon the nature of the topics and questions posed for the students and my goals in framing the questions.

presented in the journals of several students. For example, consider the following journal entry from a criminal defense clinic:

I sent a couple of letters out to clients, one to a client who stood me up, another to one I'm trying to re-schedule. . . . I'm a little concerned about my tendency to write a letter and consider that a satisfactory resolution to whatever I'm working on. It's always easier, especially for me, to just write something and avoid messy human contact. There's a lot more to fear from the latter.⁷²

A clinical teacher might use this journal excerpt to explore with the individual student, or with the class as a whole, such issues as the reluctance to deal with clients face-to-face, approaches to problem solving, or the preference for easier, less threatening tasks rather than more critical ones.

III. HOW TO ENSURE THAT JOURNALS WORK EFFECTIVELY TO ACHIEVE THEIR GOALS

These, then, are the primary goals and benefits of a journal assignment. In this Part, I want to focus on some of the challenges and difficulties in the use of journals as a pedagogical tool and to suggest how those interested in using journals in their teaching might deal with these challenges and so ensure that their journal assignments, in fact, meet the pedagogical goals that they have set for them. This discussion will focus on the challenges that I have faced in my use of journals around five sets of issues: (A) student reluctance to engage in journal assignments; (B) privacy, confidentiality, and student self-revelation; (C) feedback to students; (D) grading; and (E) effective and efficient expenditure of teacher time.

A. Student Reluctance to Engage in Journal Assignments

This is my last journal entry. I have to be honest, I have resented writing in this journal most of the semester. So much so that 10 entries have been saved for this last week. But now that I've done those 10 entries, I realize that they have at least helped me vent my frustration. And, if nothing else, that's a benefit. It seems I haven't written about much but now when I look back, I said more than I originally thought. I shouldn't comment on the journal experience too much because I know you have journal evaluation forms. But I just wanted you to know that it's pretty cool to be able to go back to a day in Sept.

⁷² Rader, *supra* note 68, at 335-36.

*and read about what I was thinking. I know it will be even cooler 20 years from now.*⁷³

This journal entry is fairly typical. Although not all students will admit they *resented* writing journal entries, a significant number find the assignment somewhat burdensome, at least initially. The reluctance to embrace the journal limits its effectiveness and potentially can damage the students' perception of the teacher and evaluation of the course. My sense that many students approach the journal assignment with reluctance is based upon an impressionistic assessment of the content of the journal entries, including explicit statements of resistance like the entry quoted above. In addition, the last time that I taught civil procedure, I invited students to turn in journals, but did not require them. Of the sixty-nine students enrolled, seventeen students turned in at least one journal entry, but only nine students gave me more than a few entries over the course of the semester.

I can identify a number of reasons for this reluctance to embrace the journal assignment. First, for a variety of reasons students may simply misjudge the potential value of this assignment. Some students have had no experience at all with journals and thus are, at best, neutral towards them. Others may have had some experience with journals, since they are a common feature in many undergraduate humanities classes, especially in English composition and psychology courses; if that experience was unsatisfactory, the student may be hostile to the idea now. In addition, many students undervalue the journal assignment because they do not see journals as "lawyer-like" work. Lawyers read cases and statutes, interview clients, negotiate contracts, draft motions and briefs; lawyers do not keep journals.⁷⁴ In some students' time management schemes, such non-legal work takes a lower priority—and may fall off the bottom of the list.

⁷³ RS, Civ. Pro., fall 1993.

⁷⁴ In fact lawyers, including some very famous lawyers, do keep journals and some of them have been published. See, e.g., SALMON P. CHASE, *DIARY AND CORRESPONDENCE OF SALMON P. CHASE* (1971); MARIO M. CUOMO, *DIARIES OF MARIO M. CUOMO: THE CAMPAIGN FOR GOVERNOR* (1984); MARIO M. CUOMO, *FOREST HILLS DIARY* (1974); FELIX FRANKFURTER, *FROM THE DIARIES OF FELIX FRANKFURTER: WITH A BIOGRAPHICAL ESSAY AND NOTES* (1975); ISAAC A. GREEN & RONALD A. STEWART-BROWN, *LANCASHIRE LAWYER OF THE 18TH CENTURY, WITH THE DIARY OF IRELAND GREEN* (1921); JOHN B. HALLUM, *THE DIARY OF AN OLD LAWYER, OR SCENES BEHIND THE CURTAIN* (1895); OLIVER WENDELL HOLMES, JR., *TOUCHED WITH FIRE: CIVIL WAR LETTERS AND DIARY OF OLIVER WENDELL HOLMES, JR. 1861-1864* (Mark De Wolfe Howe ed., 1969); *THE DIARY OF GEORGE TEMPLETON STRONG* (VOL. 1: *YOUNG MAN IN NEW YORK, 1835-1849*; VOL. 2: *THE TURBULENT FIFTIES, 1850-1859*) (Allan Nevins & Thomas M. Halsey eds., 1952); AMON B. RICHMOND, *LEAVES FROM THE DIARY OF AN OLD LAWYER—INTEMPERANCE: THE GREAT SOURCE OF CRIME* (1880); ROBERT P. SORLIEN, *THE DIARY OF JOHN MANNINGHAM OF THE MIDDLE TEMPLE 1602-1603* (1976); ROBERT H. TAYLOR, *DIARY OF A DISBARRED LAWYER: AN AUTOBIOGRAPHY* (1962).

Second, despite assurances of confidentiality and anonymous grading schemes, students may be anxious about self-revelation. They may not want to reveal what they perceive as weaknesses to an authority figure. They may feel exposed to criticism and judged by what they would write and therefore choose not to write or not to write with any depth or conviction.

Third, for some students, journal writing may be incompatible with their preferred learning styles.⁷⁵ Some students are more consciously reflective than others. Journal assignments may appeal more to those students. Even those who are reflective may prefer to talk through problems rather than to write about them.

What then can be done to overcome the reluctance of students to embrace the journal assignment? In some cases, nothing is required. Usually, students who are willing to give the assignment an honest chance discover for themselves the value that journal writing can have for them.⁷⁶ For example:

⁷⁵ See notes 32-36 *supra* and accompanying text for a discussion of learning style preferences.

⁷⁶ In order to measure student reaction to the journal assignment, I collected data from four classes in which I used a journal assignment, using a questionnaire that I adapted from the work of Dr. Paul Hettich, who teaches in the psychology department of Barat College, Lake Forest, IL, and has written extensively on his use of journal assignments in the teaching of psychology. See Hettich, *The Journal Revisited*, *supra* note 9, at 105. Because I wanted to compare data obtained from the students in my courses with data obtained by Dr. Hettich in his psychology courses, I modified the form very little.

The results were as follows (the first number in each pair reported is the median for all law students responding to the survey [n=135]; the second number in the pair is the median for all psychology students from Hettich's 10 psychology courses [n=440]). On a seven point scale where 7="Very much" and 1="Not at all," the journal was most highly rated by the law students and psychology students as a source of self-feedback from learning (M=4.81; 5.59), as an aid to the self-directed expression of learning (M=4.75; 5.72); as an opportunity to better understand the meaning of legal or psychological concepts (M=4.48; 4.29, n=8); and as a means of stimulating critical thinking (M=4.99; 5.92). Particularly among law students, the journal was not perceived as strongly as a motivation to learn (M=3.81; 4.80), or as a measure of learning (M=3.86; 5.08). Finally, the journal was not regarded enthusiastically as a substitute for examinations (M=2.64; 4.04), but was regarded by some as a possible supplement to examinations (M=3.81; 5.10).

On every measure except one, the median for psychology students was .78 to 1.40 points higher than the corresponding value for law students. The exception was for understanding of legal/psychological concepts, where the law student median was slightly higher (.17), but the number of psychology students responding on this question was very low (n=8) because Hettich used this measure only in one small section of Educational Psychology. Law students rated the journal most highly as a means of stimulating critical thinking and lowest, understandably, as a substitute for examinations. I have no comparative data for other law school pedagogical tools that would suggest that these values are high, low, or average.

These data might suggest that students of psychology value journal assignments at a significantly higher rate and on more measures of value than do law students, but the data are too limited to warrant any firm conclusions. I suspect that the measurement categories used in the surveys are more familiar to psychology students than to law students, and this

I cannot believe this is it. My final journal entry. Although I did a lot of complaining about these journals I have to admit I found them very helpful. I especially enjoyed getting your feed back from my answers when I did a problem as a journal entry. Since I still have not overcome my inhibitions about speaking in class I appreciated the interaction. Sometimes it was nice just to "talk" to you about the class in general. I don't know if this is the first time you had a class submit journals but I highly recommend it.⁷⁷

Even though many will arrive at this point of appreciation on their own, it is useful to anticipate student reluctance to the journal assignment and to take steps to reduce or eliminate this resistance. What can one do? There are steps that teachers can take at the outset of the assignment, steps meant to anticipate some of the points of resistance. There are other steps that can be taken during the course of the semester after the teacher has arrived at a diagnosis of the source of resistance.

First, teachers can respond to the possibility that students are misjudging the value of the journal assignment in a number of ways. Especially for students who are unfamiliar with journals, a careful explanation of the assignment's goals and benefits along with a detailed set of guidelines for maintaining a journal can be helpful.⁷⁸ My basic journal assignment memorandum runs to thirteen pages and is constantly being revised in light of experience.⁷⁹ In addition, I maintain a teaching journal and I provide the students with several excerpts from my journal when I make the journal assignment. I make the excerpts available to illustrate for students the nature and style of journal entries and, more importantly, to suggest to students that I think keeping a journal is so valuable that I do it for myself.

For students who have had a prior, unsatisfactory experience with

may account for some of the difference in the comparable median values. If I were to repeat the survey, I would tailor it more closely to my announced goals for the journal assignment.

⁷⁷ TU, Civ. Pro., fall 1992.

⁷⁸ Among the suggestions offered by Alfie Kohn in *ALFIE KOHN, PUNISHED BY REWARDS* (1993), for motivating students without the use of extrinsic rewards and punishments is this: "**Give the reason for an assignment.** If a task isn't heuristically valuable, it probably shouldn't be assigned. . . . If a task is valuable, its value should be explained to those being asked to do it. One study found that a 'major reason for the students' low quality of engagement in assignments was teacher failure to call attention to their purposes and meanings.'" *Id.* at 212 (quoting Jere Brophy & Kher Neelam, *Teacher Socialization as a Mechanism for Developing Student Motivation to Learn*, in *THE SOCIAL PSYCHOLOGY OF EDUCATION: CURRENT RESEARCH AND THEORY* 257, 267 (Robert S. Feldman ed., 1986) (bold type and italics in original).

⁷⁹ I would be happy to share copies of my memoranda with interested readers.

journals, the teacher might choose at the outset to acknowledge this possibility and attempt to distinguish that experience from this assignment. For instance, the teacher can assure students that they will not be required to reveal any personal information that they do not wish to disclose. Furthermore, students may be given the flexibility to write about whatever they choose, rather than being required to address a particular topic. Even where the teacher wants to limit the range of topics, she can create several topics that meet the pedagogical needs she has identified and then permit the students to choose from among them.⁸⁰ This flexibility may lessen resistance from all students, not just those with prior, negative journal experiences. Finally, reactions to previous journal experiences may be the suggested subject of an early journal entry. Thus, the student can begin by writing about the past experiences and then attempt to isolate "what went wrong" in order to avoid a repetition. If the student does not get that far alone, the teacher can respond to the entry by directly addressing the student's concerns as inferred from it.

Second, assuring students of the confidentiality of their writing should reduce resistance to a journal assignment that is based on students' concerns that their journals will be read by someone other than the teacher. This message cannot be broadcast too many times or in too many ways. The teacher should be explicit about the meaning of confidentiality and any limits on it.⁸¹ Students should be assured of the confidentiality of their entries in the document making the journal assignment. When the journal assignment is discussed in class, confidentiality should be among the topics covered.

⁸⁰ In her externship seminar during the 1994 spring semester, Professor Lisa G. Lerman assigned the following five topics for journal entries, Lisa G. Lerman, Course Syllabus: *Becoming a Lawyer 5-7* (Jan. 1994) (on file with the author):

(1) What is the institutional mission or purpose of the organization where you are working? Is the institutional mission (in your opinion) useful or important? Why or why not? How well is that mission being accomplished? What leads the organization to do its work well or poorly?

(2) Sizing up your supervisor. You might reflect on the quality of supervision, the work style of your supervisor, his or her effectiveness as a lawyer, talents and shortcomings;

(3) Evaluating your abilities. Discuss your perception of your talents and shortcomings as a soon-to-be-lawyer, what you do well or poorly, how you are perceived, how you feel about your own performance;

(4) Ethics in practice. Identify an ethical quandary or decision that occurred during the semester, explain the issue, how it was resolved, and whether you think the resolution was proper and why;

(5) Your placement and your future. How does this experience fit into your future plans? What have you learned that will help you to make decisions about future employment?

⁸¹ See notes 86-96 *infra* and accompanying text for a discussion of the possible limits on confidentiality with respect to journals.

If the teacher desires to share a student's journal entry with anyone, the teacher should remember to get explicit permission from the student before doing so. There can be great value in sharing journal entries among the students in the class,⁸² but care must be taken against a breach of the promise of confidentiality that the teacher has made, or even the appearance of one. For example, if the teacher shares an entry, the teacher should announce (if the entry is read out loud) or print on it (if it is duplicated) that it was reproduced by permission of the author for class use only and that no further reproduction is authorized. Even after I have obtained the student's permission to publish an entry, I edit the entry, if necessary, to protect the identity of the author.

Students also may be concerned that the journal exercise will require that they reveal personal thoughts and details that they consider private. Therefore, in addition to assuring the students that their journals will not be broadcast to the world, the teacher should explicitly give each student permission to withhold, without penalty, any journal entry that the student does not want even the teacher to read. This instruction has the additional benefit of emphasizing that the journal is a process designed to facilitate the student's learning, not a product done for the teacher's benefit.

Although I have suggested that a third source of student resistance to journals may be that for some this technique does not fit well with their preferred learning styles, I am doubtful that teachers can, or even should, try to respond to this problem in advance. Realistically, teachers' ability to identify such problems in advance usually will be limited. Without some form of diagnostic before the journal assignment is made, it is unlikely that the teacher or the student will have enough information about the student's learning style preferences to be able to predict the student's response to the journal assignment.

Moreover, the concept of learning style preferences is itself complex and the instruments by which learning style preferences are measured may not be sufficiently precise to allow a teacher to predict accurately whether a particular student may prefer a journal assignment or some other mode of learning. Even where a student demonstrates a specific learning style preference, the preference may be weak or task-specific. Most important, no one, regardless of how strongly or ubiquitously she demonstrates a learning style preference, is incapable of using or even preferring a different style of learning when faced with learning a specific skill that calls for another style. If faced with the task of learning to ride a bicycle, for example, the stu-

⁸² See notes 84-85 *infra* and accompanying text for a discussion of the benefits of sharing student journal entries among classmates.

dent will of necessity employ an experiential style of learning, that is, she will learn by doing. No amount of abstract thinking about the physics of bicycling is going to teach the learner how to ride. For these reasons, even students who demonstrate a preferred style of learning through active experimentation (learning by doing)—students who might not be expected to take readily to a journal assignment—can still benefit from reflecting in a journal. Indeed, by encouraging those in the class who are not “naturally” reflective to become more so, the journal assignment may actually prove to be of greater benefit to them than to those who would have reflected even without the assignment.

Finally, it probably is impossible to distinguish resistance to the journal assignment based on learning style preferences from resistance based on the other factors previously mentioned, such as inertia caused by unfamiliarity with the technique or privacy concerns. This practical consideration suggests that the most realistic course for the teacher who wants to use a journal assignment is to anticipate and ameliorate the known barriers to its success by acknowledging them in advance and by providing appropriate guidance and assurances to the students. Once the assignment is underway, the teacher should be on the lookout for evidence of resistance in the journal entries themselves, should then take appropriate steps to acknowledge students' concerns, and should guide each student through the process.

B. Privacy, Confidentiality, and Student Self-Revelation

Self-revelation is often integral to meaningful journal writing. As I have already explained, however, students do not always engage in such writing readily. One reason they do not is that they may fear that their private revelations will become public. Especially where students are being encouraged to address topics that call for some degree of self-revelation, they need to be assured that their semi-private communications with the teacher through their journal entries will be held in the strictest possible confidence. They must know that, absent special circumstances, the journal entries will not be shared by the teacher with anyone, even the teacher's spouse or colleagues, absent the explicit permission of the student author. Such an assurance of privacy may be necessary for many students to create anything more than superficial entries.⁸³

Honoring this assurance, of course, does not prevent the teacher from using student journal entries in class provided student permis-

⁸³ See pages 90-91 *supra* (discussing the role of assurances of confidentiality in overcoming student resistance to journals).

sion has been obtained. I have found that the best way to do this is to publish a collection of journal entries from a number of student journals. Sharing journal entries with the other students in the class from time to time in this way has several benefits. Sharing journal entries can promote a collaborative learning community by offering students models from which they can learn and by promoting a dialogue and discussion about the shared materials.⁸⁴ Reading the wide-ranging journals of their classmates helps some students validate their own writing, while it expands the topic selection of others who had a narrower understanding of the range of permissible journal topics. Students have frequently remarked how much they appreciated the opportunity to read journal entries written by their classmates.⁸⁵ Through reading the journals of other students similarly situated, they

⁸⁴ On fostering collaborative learning, see Aiken et al., *supra* note 4, at 1054-55; David F. Chavkin, *Matchmaker, Matchmaker: Student Collaboration in Clinical Programs*, 1 CLIN. L. REV. 199 (1994). Professor Chavkin collects references to empirical studies of collaboration or cooperative learning, *id.* at 201 n.4.

⁸⁵ The following three journal excerpts are illustrative:

(1) *I really enjoyed reading the compilation of journal entries (first batch) It made me realize that other people had the same concerns and thoughts I did. So I was just wondering—does ordinary life seem different to everyone or is it just me?* YZ, Civ. Pro., fall 1993.

(2) *The journal compilation was fun to read. I had no idea people wrote about matters outside the civil procedure course. I know you said we are free to write whatever came into our mind. However, I had a tendency to limit myself within the civil procedure subject matters. No offense, but this subject can be boring at times. That is, the subject matters seem so technical.*

I was also excited to see two of my journal entries in the compilation. Somehow my writing in the compilation appeared more sophisticated than when I actually wrote it.

I did want to say that the journal compilation was a great idea. It gave me an insight as to what is going on in the minds of other class-mates. ZA, Civ. Pro., fall 1993.

(3) *I like that we receive compilations of journal entries, they give me something to write about for future entries. First, I just simply want to reiterate what many students have already expressed—that it's nice to know that everyone else is feeling a bit overwhelmed with the thought of exams, outlines, study-groups, etc. I think that maybe we will feel a little more at ease once lawyering skills is over (ok, so that's wishful thinking). Second, although it was entertaining to read, I did not see the same interaction in class as did the writer who discussed the complaint drafting in class. I didn't think it was that out of hand! I was even more surprised to read about the two female classmates who suggested that the class was chauvinistic. They had mentioned to the writer that "every time a girl made a good point, no one listened." . . . My response is their point must not have been very good! I don't know, I saw the point of the exercise as to argue amongst ourselves our ideas as to what should be included; not to have one person raise his/her hand, make a suggestion, and let the "secretary" start typing away w/o any discussion first.*

(In case this entry is published in the next compilation, I would like to insert after this comment that I am a female, not "chauvinistic male" in the class merely trying to stick up for his own.) AC, Civ. Pro., fall 1993.

come to appreciate that they have in common experiences, concerns, and anxieties that they often thought were unique.

This use of journals is entirely consistent with confidentiality, but there are at least two contexts in which confidentiality may have to be limited. First, students may disclose (unwittingly or not) a violation of the law,⁸⁶ the honor code,⁸⁷ or the governing rules of professional responsibility⁸⁸ as they describe incidents in which they are enmeshed. The competing concerns of various reporting obligations and student confidentiality expectations are a challenging mix.⁸⁹ Second, the student may make statements alluding to such problems as substance abuse, severe emotional distress, or suicidal ideation, that lead the teacher to conclude that some sort of intervention is necessary.⁹⁰ In my experience, examples of either scenario are exceedingly rare, but the consequences of the teacher receiving journal entries of this nature are significant enough that the teacher should consider how to respond to them before the journal assignment is made.⁹¹

⁸⁶ Although there is no general obligation for citizens to report violations of the law, most states have child abuse reporting statutes or elder abuse reporting statutes, or both, which to some degree modify the general rule. In his 1992 survey of child abuse statutes that mandated reporting, Robert P. Mosteller found 22 states with "mandatory reporting systems applicable specifically or generally to lawyers." Of these, 4 states specifically listed lawyers as a group subject to the reporting requirements, while the others imposed a duty on all persons. Robert P. Mosteller, *Child Abuse Reporting Laws and Attorney-Client Confidences: The Reality and the Specter of Lawyer as Informant*, 42 DUKE L.J. 203, 217 (1992).

⁸⁷ For instance, the Rules of Professional Conduct for Law Students of the Columbus School of Law of The Catholic University of America provide: "Each member of the law school community must report to the designated dean or to the chair of the Honor Board any conduct he or she has reason to believe violates these Rules of Professional Conduct which raises a question as to the honesty, trustworthiness or fitness of the student to become a lawyer, unless the person receives the information in the context of a confidential relationship, as defined below . . ." THE COLUMBUS SCHOOL OF LAW 1995-1996 ANNOUNCEMENTS 90 (1995).

⁸⁸ For example, D.C. RULES OF PROFESSIONAL CONDUCT Rule 8.3(a) (1991) makes obligatory the reporting of unprivileged knowledge that another lawyer has committed a violation of the rules of professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer.

⁸⁹ For a stimulating discussion of what a law teacher should do when a student raises an issue of unethical conduct by a faculty colleague, see *A Teacher's Trouble: Risk, Responsibility and Rebellion (Transcript of the 1995 AALS Annual Meeting's Joint Plenary Session of the Sections on Professional Responsibility and Clinical Legal Education)*, 2 CLIN. L. REV. 315, 323-34 (1995).

⁹⁰ See Marti Singer, *Responding to Intimacies and Crises in Students' Journals*, 79 ENG. J. 72 (1990); Kent D. Syverud, *Taking Students Seriously: A Guide for New Law Teachers*, 43 J. LEGAL EDUC. 247, 250-51 (1993).

⁹¹ Of course, you may be faced with responding to such crises in the lives of your students even if you do not use journals as a pedagogical tool. It is important to note that these issues can and do surface whether or not journal assignments are made. Any communication with students has the potential for raising these issues, whether the communication is in the form of a formal assignment, an office meeting, or an informal conversation

The first scenario presents a challenge because the teacher may be required to report to third persons information received from students, despite the strong assurances of journal entries' confidentiality that the teacher gives to the students to encourage deep reflection by them. Can assurances of confidentiality that are absolute (and therefore potentially inaccurate) still be given? It may be that students will understand assurances of their journals' complete confidentiality as not applying to disclosures of violations of law, the school's honor code, or applicable codes of professional responsibility—but I think that is unlikely. It may be that an expression of absolute confidentiality is appropriate because the chance of any entry actually triggering a need to breach the promise of confidentiality is extremely remote, while even mentioning this possibility would have an unnecessary chilling effect on the students' willingness to engage in the journal exercise. This is the position I have taken in the past.⁹²

I now think that this position needs to be reconsidered. Exploring the limits on absolute confidentiality with the students may well be a valuable teaching opportunity. Since a lawyer faces a parallel dilemma with respect to the assurance of confidentiality that the lawyer may give the client, the teacher's dilemma might be shared with the students by explicitly drawing the parallels to the lawyer's situation.⁹³ I want my students to communicate with me openly and freely; the lawyer expects the same of the client. Both student and client, however, may be entitled to know that there are some limits to the promise of confidentiality. Having the student view this problem from the perspective of a client may assist the student to better understand the dilemma that the student will face when in the role of lawyer. In light

in the hallway. Kent Syverud has commented that, "[i]f you are the kind of teacher I think you should be, you will learn about these people. You will look over the rows as you teach and know what a struggle—and what a triumph—it is for some of your students to be sitting there at all. If you are the kind of teacher I think you should be, these students under severe stress will come to you, or their closest friends or classmates will come to you, and they will want your help." *Id.* at 255-56.

⁹² My instructions contain a privacy reminder like this one:

As distinguished from a diary, which is usually written with the understanding that no one but the author will read it, the academic journal must necessarily be read by at least one other person, the teacher. Your academic journal will be a private dialogue between you and me. You control what you will let me read and I promise to keep strictly confidential all journal entries that you share with me. Absent your explicit permission, your journal will not be shared with any other person. However, I give my permission for you to share with anyone you wish my comments to you on your journal.

J.P. Ogilvy, *Civil Procedure Academic Journal* (Statement of Purposes and Instructions) 5 (1994) (on file with the author).

⁹³ For a discussion of the importance of protecting lawyer-client confidences and the various rules which might require disclosure of those confidences, see MONROE FREEDMAN, *UNDERSTANDING LAWYERS' ETHICS* 87-108 (1990).

of the value of this potential discussion, I now believe it is probably appropriate to draft a nuanced confidentiality statement that strives to alert the student to the limits of confidentiality while at the same time not chilling an open and frank dialogue.⁹⁴

The second challenge is the receipt by the teacher of student revelations that may warrant intervention by health care professionals.⁹⁵ I do not want to prohibit the student from revealing intensely personal feelings, because I believe that a teacher should be receptive to a student's need to confide in a trusted person. On the other hand, I do not want to encourage students to use the journal as their only forum for such revelations, primarily because I certainly am not the most competent person in the university community to receive such communications. I am careful not to *require* students to write about their personal lives, but some still do so voluntarily.

The confidentiality issues posed by such revelations are present whether the information is received through a conversation with the student or through the medium of a journal entry. Yet even though any ethical or legal duties of reporting or intervention would probably not depend on the form of the communication as such, the fact that the information is committed to writing in the form of a journal entry seems to give the challenge a greater sense of urgency. Where, in the judgment of the teacher, the student reveals information that suggests the appropriateness of professional intervention, it is certainly appropriate for the teacher to discuss the information with the student and counsel the student to seek professional help. If this intervention is not effective, however, the teacher will face a moral question of whether to involve third parties without the student's consent.⁹⁶

⁹⁴ It is also necessary to remind students who are in positions where they may learn client confidences and secrets, which they might wittingly or unwittingly disclose in journal entries, that they have a duty to protect against such disclosure. A harder question, and one that I will address in a later article, is what instruction should be given to students with respect to reporting on their observations and conversations in their workplaces.

⁹⁵ See Susan Swartzlander, Diana Pace & Virginia Lee, *The Ethics of Requiring Students to Write About Their Personal Lives*, CHRON. HIGHER EDUC., Feb. 17, 1993, at B1. The authors, counselors at a university counseling center, report that some students arrive at the counseling center for help because they had blocked out unpleasant childhood experiences, only to have an intrusive writing assignment elicit a flood of excruciating memories. Such journal entries are much more likely to be assigned as part of creative writing or personal psychology courses, but we all must be attentive to the possible unforeseen consequences of our pedagogy.

⁹⁶ Conceivably, the teacher ultimately may be found to have a legal duty to act as well. It has been argued that the law should impose a tort duty on the teacher to seek assistance. See, e.g., *Brooks v. Logan*, 903 P.2d 73 (Idaho 1995) (parents of student who committed suicide could sue a school district and teacher for the teacher's failure to intervene by warning the parents or seeking appropriate help for the student, who allegedly had displayed suicidal tendencies in journal entries that were part of an assignment in English composition); *Eisel v. Board of Educ. of Montgomery County*, 597 A.2d 447 (Md. 1991)

C. Feedback to Students

Unquestionably the biggest drawback of the journal assignment to the teacher is the amount of time required for reading and writing comments on the journals. Without feedback of some sort, the journal is nothing but a "public" diary. This is not necessarily bad, for even journal entries that are written without the expectation of feedback can be extremely useful to the writer, but the success of the journal assignment can be greatly enhanced by feedback to the student on her journal entries. How extensive and how frequent should the feedback be? What type of feedback should be given? The answers to these questions depend in part on the goals that the teacher and the students set for the journal assignment and on the number of journals the teacher is required to read and the time frame within which the journals must be read.⁹⁷

In the following paragraphs I will describe my personal feedback strategy, focusing first on aspects of the process and then on the contents of my comments. I would like to say that my feedback strategy was fully informed by my goals for the journal assignment, but that would not be true. As I completed my research for this article and moved to a deeper level of analysis, I was persuaded that I should pay more attention to my goals for the journal assignment when making comments on the students' journals in order to assist the students in meeting the goals that I have established. Although many of my comments already are tied to these goals, I have been primarily concerned with encouraging students to write in their journals, in the belief that they would discover their own goals and benefits for the journals if they would just use them enough. Encouraging students to write is certainly important, but in the future, I plan to be even more explicit with students about what learning goals their journal entries seem to implicate and what they can do with the journal exercise to further

(school counselor had duty to warn parents of thirteen-year-old girl of suicidal statement made to friends who reported it to counselor). The prospect of tort liability on this ground is remote, for even if such a "duty to intervene" exists in some school contexts, any case against a law school professor would have to overcome such hurdles as the age of the student (not a minor) and the requirement of proximate cause (can the failure to intervene be characterized as a proximate cause of the suicide?). Quite aside from questions of legal duty or likely liability, however, the professor would have to consider whether she has a moral duty to intervene.

⁹⁷ Because of the time required to read and to comment on journals, Professor Paul Hettich recommends journals as a tool for classes with 25 or fewer students. See Hettich, *The Journal Revisited*, *supra* note 9, at 106 (psychology). I disagree. I have used journals in classes with 65 students. Others have also reported using journals in large classes. See, e.g., Cropp, *supra* note 9 (physical geology); Henry Steffens, *Using Informal Writing in Large History Classes: Helping Students to Find Interest and Meaning in History*, 82 SOC. STUD. 107 (1991) (history); Wood, *supra* note 9 (teacher education).

these goals.

Teachers using journal assignments must make a number of decisions about the feedback process—that is, for example, about the length and timing of their comments and about the kind of response they wish to elicit from the students. Where the journal is the central feature of a teacher's pedagogy, feedback can be extensive, frequent, and current. Although journals are an important element of my teaching, they are not my central pedagogical tool. Therefore my feedback on student journals tends not to be extensive, although I strive for frequency and currency. I try to respond to students' journals within a week of receiving them and to make at least one comment on every set of journal entries that a student turns in to me, although I do not comment on each entry in the set. At a minimum, I place a mark on the paper that indicates that I have read the entries.

Although I have had brief exchanges in writing with students, I have never been successful in engaging a student in a sustained dialogue on a topic. In part I suspect this results from the conversational delay produced by collecting journals once a week, turning them back a week later, and collecting them again a week after that. If journals could be collected on a daily basis and turned back to students the next day, it might be possible to generate an ongoing dialogue.⁹⁸ In addition, students may not be as interested in a dialogue on a topic as I might be in inviting a dialogue, because, among other reasons, of the time pressures they experience in balancing academic tasks with jobs and personal lives. It may be, too, that my comments are not read by students as inviting a dialogue, even when I mean to do just that. What I offer as a sincere expression of desire to continue a discussion may be taken as rhetorical questions.⁹⁹ Longer comments from me might elicit more explicit responses from the students.¹⁰⁰ Finally, sus-

⁹⁸ See Schatzberg-Smith, *supra* note 9, at 30 (suggesting that in order to generate a meaningful student-teacher dialogue there must be a frequent and rapid exchange of journals and comments).

⁹⁹ *Id.* (suggesting that teachers' questions may help spark dialogue, but that if they are too numerous or too rhetorical they may have the opposite effect of inhibiting both the dialogue and question-asking on the part of students).

¹⁰⁰ Schatzberg-Smith believes that teachers must respond to student entries at length. While recognizing that length must necessarily be balanced by the need of the teacher to respond to many students, she finds that brief responses imply less interest and concern for the student than do longer responses. *Id.*

Jana Staton, who recommends using journals as an initial developmental step to provide beginning writers with extensive opportunity for successful communication in written language before asking them to try more complex forms, offers six general guidelines for teacher responses to student journal entries to promote dialogue. She suggests that the teacher should: (1) acknowledge the students' topics and encourage them to elaborate on their interests; (2) affirm and support each student; (3) add new, relevant information about topics, so that the teacher's response is interesting to read; (4) avoid glib comments

tained dialogue is not necessarily critical to the development of the student's thinking. My feedback in the form of questions or reactions to a student entry that are meant to encourage deeper reflection on the part of the student may in fact have the intended effect, even if it is not reflected back to me in the form of a follow-up journal entry.

Because there is so much that could be discussed, teachers also must consider carefully what the substantive focus of their comments should be. I tend to use comments that praise or encourage entries demonstrating one of the goals for the journal assignment. For example, I may point out to the student that the entry illustrates that she is making progress toward one of the articulated goals.

I also comment in those instances where the student uses a journal entry to discuss a point of law and the student demonstrates misconceptions or misunderstandings of the material. My comments may simply suggest that the student re-read certain materials, or provide guidance to other materials for the student to read. In some cases, however, I may comment extensively to disabuse the student of a significant error in understanding. Since I do not respond to every indication of misunderstanding or every misstatement of law, I make clear to students that they are not to rely on me to catch all of their errors in understanding. To promise to do so would place an enormous burden on me to carefully read and respond to each journal entry of every student and would be counterproductive to my goal of developing self-directed learners.

Unless students have explicitly chosen the goal of using the journal experience to improve their written communication skills, I permit them to disregard grammar, spelling, and syntax errors in their journal entries. Writing with care can be encouraged, but demanding too much editing and proof-reading is counterproductive. By placing too much emphasis on such errors, the teacher runs the risk of discouraging the free, open, and creative communication that can be fostered by journal writing.¹⁰¹ Occasionally, of course, I make exceptions to my general rule. Where, for example, a student frequently and consist-

like "good idea" or "very interesting," which tend to cut off rather than promote dialogue; (5) ask very few questions; and (6) not write (much) more than the students do. Staton asserts that the goal of teacher comments should be to get students to ask the teacher questions, by making the comments so interesting that the students will want to know more. Jana Staton, *The Power of Responding in Dialogue Journals*, in *THE JOURNAL BOOK 62* (Toby Fulwiler ed., 1987).

¹⁰¹ My instructions to students usually include something like this: "The point of the journal is to think on paper. Therefore, do not worry too much about spelling, punctuation, or grammar. If possible, you should use correct spelling, punctuation and grammar, but you should not interrupt your writing to edit. You should use language that feels natural, that expresses your personal voice and style. Do not try to write as you think a lawyer might."

ently misspells a word commonly used in the subject matter of the course—writing “defendent” for defendant—I will gently point out the misspelling. In addition, I once received journal entries from a student that were created on a word processor but were so replete with misspellings that they were painful to read. With this student, I suggested that he at least run the document through the spell check utility in his word processing software.

As the teacher defines more precisely the goals for the journal assignment, she will also want to revise the nature and extent of her feedback.¹⁰² The teacher may find that certain feedback strategies are more effective than others in helping students to meet the goals that have been established for the journal assignment. Indeed, the feed-

¹⁰² Professor Paul Hettich, who has written extensively about the use and value of journals in the teaching of psychology, provides summary comments in the space of one to three sentences after the last entry. Hettich's primary goal is to encourage students to connect the facts, concepts, and principles that they acquire from their course in psychology to their daily experiences. He does not comment at all on individual entries unless they are special or unless the student requests comments, except to use prompts to reduce common problems that occur in student journals. See Paul Hettich, *Journal Writing: Old Fare or Nouvelle Cuisine?*, 17 *TEACHING PSYCHOL.* 36, 36 (1990). Here is a list of these prompts, reproduced from a handout Professor Hettich prepared in connection with his presentation on “Journal Writing for Teaching and Learning in Psychology,” at the 99th Annual Convention of the American Psychological Association (San Francisco, CA 1991) (on file with the author):

Common Problems Found in Student Journals and Prompts
Used to Address Them

| <i>Problem</i> | <i>Prompt (summary)</i> |
|---------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| Concepts used superficially | Be more specific. Check text/notes. |
| Concept/information is inaccurate | Not true. Check notes/text. |
| Comments not connected to course material | How does this relate to the course? Explain. |
| Illegible or long paragraphs | Underline course concepts. Please write clearly. |
| Repeats information verbatim; no personal contribution | Don't repeat information. Give example. Your thoughts? |
| Uses single concept where related concepts easily fit | Also, why not consider. . . ? |
| Entry or pattern of entries shows little evidence that concept is understood | Briefly explain <i>why</i> this experience is an example of . . . |
| Entries appear to have been written (crammed) on one occasion or hastily | Don't cram! Write regularly. Take your time. The journal is for you, not me. |
| Uses concepts superficially that are covered later in course | Write about this <i>after</i> we have discussed it. |

back strategy may need to be individualized to a particular student. It may happen, for example, that frequent questions by the teacher will promote discussion and inquiry with one student, but that similar feedback will have the opposite effect of inhibiting both dialogue and question-asking in the case of another.

Lastly, teachers should remember that feedback differs from evaluation of journals. Where journals are evaluated as part of the student's grade in the course, the feedback along the way should help the student to see what improvements in her journal entries will result in a more favorable evaluation. Feedback is best thought of as formative evaluation, whereas grading, which has its own set of challenges, is a summative evaluation.¹⁰³ I now turn to the challenge of grading journals.

D. Grading

I have chosen to grade journal entries primarily in quantitative terms. I set the number of journal entries that I require for each point level.¹⁰⁴ The points earned for the journal assignment are then included in my calculation of the overall grade based on the criteria that I announced to the class at the beginning of the semester. I reserve the right to adjust the point total down based on my subjective assessment of the seriousness with which the student approached the assignment, but in reality, to date, everyone has met the level of minimum seriousness.¹⁰⁵ Because almost everyone meets these minimum requirements, the journal entries have very little impact on the students' grades for the course. My decision to grade journal assignments only in these quantitative terms is based on both philosophical and practi-

¹⁰³ In drawing a distinction between formative evaluation and summative evaluation, I am suggesting that each form of evaluation has its own distinct purpose. Formative evaluation I see as an ongoing process of feedback that the teacher gives to the student to help her improve performance. By contrast, I see summative evaluation as principally a sorting process through which the student's products and performances are evaluated in order to assign a final grade. A summative evaluation also may provide information to the student that will help her improve her performance in the future, but that typically is not its principal use.

¹⁰⁴ For example, in civil procedure, the journal assignment constitutes the student's class participation points. The school limits grade adjustments for class participation to ten points (plus or minus five points), so I might establish a range of 5 points for 25-30 entries, 4 points for 20-24 entries, etc. In my course in Interviewing, Counseling and Negotiation, where there is no final examination, I place more emphasis on the journal assignment as a component of the grade, but I still evaluate the journals only on the basis of the number of entries turned in.

¹⁰⁵ If a student does not appreciate the seriousness of the assignment, he or she just does not turn in any entries. It is possible that a student would take the time to create 30 or so entries that are simply frivolous, but unlikely, since creating an equal number of entries that would meet the minimum standard for seriousness would not take significantly more time or effort.

cal considerations.

The philosophical issue, which is common to the grading of any assignment, is whether the assignment would be a better learning experience if it were graded. Teachers who choose to use a qualitative grading system for journals typically do so because they believe that students may not take the exercise seriously without the incentive that earning a grade may offer.¹⁰⁶ Underlying this belief is the assumption that students do not consider a task meaningful, or valued by the teacher, unless it has an impact on the overall course grade. Frankly, I find it difficult to use the prospect of a higher grade as a reason to motivate students to do an exercise that I believe they will discover has inherent value, particularly since I am also attempting to nurture self-directed learning.

I do not mean, however, to completely eschew the use of grades. I recognize that external motivators (such as grades) are sought and valued by everyone at some level. Providing some form of external motivation for students to do course work also in some ways mirrors professional life after law school. No associate in a law firm can prioritize her activities free of input from members of the firm. At best, there is some negotiation over how the associate wants to spend her time and how the partner wants the associate to spend her time. In the same way, by suggesting a minimum number of journal entries and a minimum length for the entries, I am trying to influence the priority-setting exercise in which every law student necessarily engages. To make greater use of grades than this, however, could undercut the goal of self-directed learning and would require solving a number of seemingly intractable practical problems.

The practical problems arise from the need to develop a valid and reliable scheme for grading journal entries on a qualitative basis. To be valid, the evaluation system would need to track the goals of the assignment and measure how close the student comes to achieving those goals. To be fair, the evaluation system would need to treat all students the same way. I perceive several difficulties in achieving such a scheme.

First, I would have to develop an elaborate system of assessing whether and to what extent each journal entry manifested the accomplishment of a goal of the assignment. Because of the complexity of

¹⁰⁶ Thus Theodore Wagenaar believes that grading communicates a message to students, "and students quickly learn that what is not graded and what is not included in a grade is less important and will therefore receive less of their attention." He wants "to communicate that the journal is a critical element of the evaluation process and therefore assign[s] a grade." Wagenaar, *supra* note 9, at 432. Alfie Kohn, however, argues that the results of numerous studies show that extrinsic rewards, including grades, actually diminish motivation. KOHN, *supra* note 78, at 42-48.

my web of goals, this system would require a significant investment of time at the outset to develop and a significant investment of time during the semester to apply. A qualitative evaluation might be more easily achieved, however, if the goals for the journal exercise were more limited in scope and less integrated with each other than are my goals. If, for example, the goal of the journal assignment is for the student to apply concepts learned in class to the student's daily experiences, then the teacher should be able to define with some precision the number of concepts that might be applied and to devise a marking scheme for evaluating the depth and breadth of the discussion.¹⁰⁷

¹⁰⁷ Theodore Wagenaar, who uses journals in teaching sociology, has created an elaborate set of criteria by which he grades student journals. Up to one-half of the final course grade is devoted to the journal assignment. Wagenaar employs five criteria in his evaluation process: accuracy, diversity, thoroughness, originality, and range of cognitive levels. By accuracy he means the "fit" between the student's illustration in the journal and the principle that the entry was describing. This criterion indicates how well the student understands the particular concept or principle being described. Wagenaar compares the entry with the text or with the class presentation of the concept or principle to assess the criterion. Diversity "reflects the number of different concepts illustrated" in the student's journal entries. To assess this criterion, Wagenaar counts the number of different concepts and principles used. Thoroughness "reflects the completeness of the entry." Occasionally, students will write a one-sentence description of a situation and then simply write a one- or two-word statement of the principle illustrated. Wagenaar indicates to students that the descriptive part should be about five to ten sentences long and the principle part should clearly indicate an understanding of the concept as it relates to the specific situation described. Originality "reflects the amount of creativity." Within the context of the course in sociology, this means "applying the sociological imagination to events or experiences that are not ordinarily thought of as sociologically relevant, such as analyzing a classroom situation or a dinner conversation." This criterion relates to Wagenaar's goal that students write entries that apply the concepts introduced in the classroom to experiences outside of the classroom. To encourage highly original entries, Wagenaar recommends that teachers make positive comments on such entries and provide examples in class of what they consider particularly original entries. Finally, the criterion of "entries over a range of cognitive levels" involves assessing whether the student's entries demonstrate higher order thinking skills or whether the entries are primarily at the lower levels of recall and understanding. Wagenaar admits that this criterion is the most difficult to evaluate: "it is difficult for students (and some instructors) to distinguish consistently and accurately among the [cognitive] levels." He suggests that it may be more feasible to request analyses at different levels but not insist on equal representation at each level, and perhaps not require students to identify specifically the level of each entry. Wagenaar, *supra* note 9, at 431-32.

Other teachers have devised different criteria. Sydney Butler, for example, asked the students at the end of the semester to read through their accumulated journal writings, and then to write an evaluation using the following topics as a guide: quantity, variety, depth, interest, and value (to the student). Butler grades these written self-assessments of the journals according to a holistic scale that measures the students' insight and learning from the experiences of journal keeping. Sydney Butler, *Assessing the Journal: An Exercise in Self-Evaluation*, 14 ENG. Q. 75, 76-78 (1981). O.T. Kent guarantees the student no less than a "C" if she "does every assigned entry and demonstrates minimal understanding of the readings and lectures. Assigned entries include summaries and responses to readings on specific topics to be done in class or as homework. Minimal understanding of the readings involves knowing the author's main thesis and arguments for supporting it. Minimal understanding of the lectures means, for example, that if [the teacher] shows a particular

Second, in reading students' journals I have noticed that I enjoyed (and therefore presumably valued more and would have given higher grades to) entries in which students applied concepts and processes presented in the course to experiences, including personal experiences (like the purchase of a car), work-related experiences (many students had part-time and summer jobs and most students from the evening division were working full-time), and other academic experiences (such as a trial practice course, moot court competition, or law review interviews for new editors). Such applications-to-experience are by no means the only type of entries I anticipate, and I would not want to make them the only criterion for evaluation. To apply a wider-ranging qualitative evaluation scheme fairly, however, would require that I be attentive to this type of bias and either communicate it to students so that they would have the opportunity to tailor their journals to it or consciously attempt to neutralize my preference during the grading process. Moreover, any attempt on my part to evaluate the content of student entries in this respect would be difficult to accomplish uniformly because of the varying opportunities that the students have to relate course concepts to personal experience. All students have experiences, of course, but not all have equal amounts of law-related experience. It is likely that students who are more frequently engaged in law-related activities will perceive more opportunities for relating course work to daily experiences than will other students.

Third, the more affectively oriented the journal entries are, the more ethically questionable is an attempt to grade their content. Even where students have an option about what they choose to reveal, students who are required to write about intensely personal topics may believe that the journals that receive the highest grades are those detailing highly emotional events or those that display the most drama.¹⁰⁸ Although I do not require students to write about intensely personal topics, I do not want to be put in the position of either prohibiting intensely personal communications or trying to evaluate their content and thoughtfulness.

Although these practical problems may be surmountable, particularly in a situation where the teacher has relatively limited goals and is prepared to make a significant investment of time, I have concluded

argument to be unsound, that argument should not be used by the student unless she addresses [the teacher's] reasons for rejecting it." One way a student may receive a grade higher than a "C" is by the number and length of her self-sponsored entries. O.T. Kent, *Students Journals and the Goals of Philosophy*, in *THE JOURNAL BOOK* 269, 271 (Toby Fulwiler ed., 1987).

¹⁰⁸ See Swartzlander, Pace & Lee, *supra* note 95, at B1.

that the modest benefit in marginally increased incentive for the student is not worth the cost of that investment. In emphasizing the issue of teacher time in grading, however, I am also raising a final, distinct challenge to the use of journals as a pedagogical tool, a challenge that has been anticipated in my earlier discussion of the nature and extent of teacher feedback on journals: the challenge of the amount of teacher time required for the journal exercise.

E. Effective and Efficient Expenditure of Teacher Time

Certainly the greatest cost to the teacher of assigning journals is the expenditure of time necessitated by collecting, reading, commenting upon, returning, and possibly grading each journal. Once the exercise is undertaken, some of this time commitment is beyond the teacher's control—but some is not. There are in fact a number of ways that teachers can modulate the time commitment entailed in using journals.

The teacher can control how much time is devoted to the journal by placing limitations on the exercise. For example, the teacher can limit the number of pages of text that each entry may have. I have not found it necessary to use this device. I typically require that each journal entry be the equivalent of at least one double-spaced, type-written page in length.¹⁰⁹ Some students will exceed this, but most will not.

The teacher also can limit the number of journal entries that students are required to submit. Typically, for small classes (twelve to sixteen students), I require at least one journal entry during each week of the fifteen-week semester. In larger classes (thirty-five to seventy students), I have required as many as forty-five entries during the semester (three a week) and as few as fifteen in a semester. One can see that requiring 45×70 entries will require a great deal more teacher time for reading and commenting than 15×70. It is not always the case that the creation of more frequent journal entries is better. If students can be encouraged to spend more time on fewer entries, both the student and the teacher benefit from what is likely to be a deeper reflective process.

In addition, the teacher can limit the nature and extent of the comments that are written on the students' journals. Clearly, if the teacher drafts a two-page response to each one-page journal entry, the time commitment will be significant. If the journal exercise is one of the primary tasks of the course, feedback of this extent may be a justi-

¹⁰⁹ The teacher could require that the entries be typed rather than handwritten. Since many students will not have access to a word processor or will not have access at the times and places convenient for journal writing, I have not required this.

fiable expenditure of teacher time. Even in courses where journals are important but not so central as to justify feedback of this length, there can be occasional journal entries for which the benefit of such extensive feedback to the student may outweigh the time cost to the teacher. In practice, I find that I can read and comment on 15 journals in 45 minutes to an hour.¹¹⁰ With more extensive comments, the time might expand to as much as two hours. Given my goals for the journal assignment, the benefits to me, and my perception of the benefits to the students, I feel that this expenditure of time is well justified.

IV. CONCLUSION

Journaling by law students is not entirely unknown. Because its origins are outside of legal education, however, this pedagogical tool is underutilized in comparison with its demonstrable benefits to both students and teachers. Although additional research is needed to measure the benefits of journal writing more precisely, my experience demonstrates that journal assignments can have a significant, positive impact on the nature and substance of learning in law school clinics, externships, simulation courses, and traditional classrooms.

My goals for the journal assignment are to encourage students to exploit the demonstrated connection between writing and learning; to nurture a lifetime of self-directed learning by those who are now my students; to improve their problem-solving skills; to promote reflective behavior on their part; to foster their self-awareness; to allow them an opportunity for the release of stress; and to provide periodic student feedback to me. In articulating these goals, I do not exclude other goals that individual teachers and students might bring to journals. Indeed, I seek to provide a starting place for the development of goals for each learning relationship. The tool is infinitely flexible in this regard because of what I have found to be its most important strength: its capacity to encourage students to be more reflective about whatever they are studying and how they are studying it.

To be successful, the journal assignment must be presented to the students with care. It is important that the purposes and benefits underlying the assignment be presented fully to the students. It is also important that the teacher continually reinforce the value of the journal by making stimulating comments on journal entries before re-

¹¹⁰ My pace varies somewhat, depending on the content of the entries as well as on their length and the number of comments I make. As with other aspects of teaching, the work is more enervating sometimes than others, depending on the intensity of the reading experience. Some student entries are more intellectually complex or emotionally charged than others.

turning them to the students and, with appropriate regard to issues of privacy and confidentiality, by sharing student journals with the entire class.

In addition to overcoming student resistance to the use of journals, teachers wishing to employ journals as teaching and learning tools face other challenges. Confidentiality issues may in some circumstances be very delicate and designing effective feedback and grading systems entails many multi-layered pedagogical decisions. Moreover, the journal assignment, like all assignments that require a student to create a product for review by the teacher, is not free. It requires student time to write the journals and teacher time to collect, read, comment upon, and return them.

The total benefit to students and to the teacher far outweighs the difficulties and the costs. Law teachers should make more use of this tool, appropriately tailored to their learning environments and pedagogical philosophies. Both students and teachers will benefit.

