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A Writing Revolution: Using Legal Writing's 'Hobble' to Solve Legal Education's Problem

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**A WRITING REVOLUTION:
USING LEGAL WRITING’S “HOBBLE” TO SOLVE
LEGAL EDUCATION’S PROBLEM**
KRISTEN KONRAD TISCIONE*

“American education will never realize its potential as an engine of opportunity and economic growth until a writing revolution puts language and communication in their proper place in the classroom.”¹

I. INTRODUCTION

In 2011, Professor John Lynch suggested that the “new legal writing pedagogy”² is the hobble of legal writing faculty.³ He implied that legal writing faculty “have allowed the perfect to become the enemy of what would more than suffice” and “created a job that no one in his or her right mind would want to do.”⁴ Lynch recommended a pedagogical about-face and “ponder[ed] whether the Church of Legal Writing should happily embrace doctrinal variations among its adherents.”⁵

Legal writing may be hobbled, as Lynch observed, but legal education is limping a bit too at the moment, and their conditions are related.⁶ The problem with legal writing is not, as Lynch suggested, its process pedagogy. The problem is that law schools have failed to commit to teaching writing. At most law schools, the responsibility for teaching

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¹ NAT’L COMM’N ON WRITING IN AM.’S SCH. & COLLS., THE NEGLECTED “R”: THE NEED FOR A WRITING REVOLUTION 3 (2003), available at <http://www.vantagelearning.com/docs/myaccess/neglectedr.pdf>.

² See John A. Lynch, Jr., *The New Legal Writing Pedagogy: Is Our Pride and Joy a Hobble?*, 61 J. LEGAL EDUC. 231, 231 (2011). Lynch uses this term to refer to the process approach to teaching writing that developed in the 1980s. *Id.* at 231, 234; see also *infra* Part II.

³ Lynch, *supra* note 2, at 231, 244.

⁴ *Id.* at 232.

⁵ *Id.*

⁶ See TASK FORCE ON THE FUTURE OF LEGAL EDUC., AM. BAR ASS’N, DRAFT REPORT AND RECOMMENDATIONS 1 (2013) (“At present, [law schools] face[] . . . economic stresses . . . and diminished public confidence in the system of legal education.”).

writing falls primarily on first-year legal writing faculty.⁷ Although most law students must satisfy an upper-level writing requirement,⁸ it is likely to be scholarly writing.⁹ Until recently, legal educators have ignored the fact that, regardless of the rigor of a first-year course, it is just an *introduction* to legal writing. Its benefits are at substantial risk because law schools do not require students in their second and third years to take advanced practical writing or other skills-based courses.¹⁰ As a result, legal writing faculty—with little job security¹¹—strive to teach as much as possible in the first year to prepare their students for the workplace and, at the same time, preserve their reputations as teachers and those of their employers.

Legal writing's burden—its “hobble,” as Lynch describes it—has now become legal education's problem. Over the past several years, increasing economic downturns, rising tuition rates, and decreasing applicant pools have thrown a spotlight on the need for law schools to prepare students to practice law.¹² Law schools can no longer afford to focus on teaching students simply to think; now they must also teach students to write. A meaningful commitment to teaching writing requires students to produce a substantial piece of writing each semester of law school. Due to the fact

⁷ See, e.g., Melissa A. Moodie & Brette S. Hart, *The Missing Link: The Need for Good Writing Programs in Law Schools*, 74 J. KAN. B. ASS'N, Jan. 2005, at 9 (“Traditionally, the ABA requirements have allowed schools to hire underpaid faculty, adjuncts, or upper-division law students to teach the core principles of written legal analysis and synthesis.”).

⁸ See AM. BAR ASS'N, 2012–2013 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 302 (2012) [hereinafter ABA STANDARDS], available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf (“[L]aw school[s] shall require . . . at least one additional rigorous writing experience after the first year . . .”).

⁹ See, e.g., *Academic Curriculum*, U. ME. SCH. L., <http://mainelaw.maine.edu/academics/academic-program/curriculum.html> (last visited Jan. 12, 2014); *Academic Policies*, U. VA. SCH. LAW, http://www.law.virginia.edu/html/academics/policies/policies_procedures_6.htm (last visited Jan. 12, 2014); *Upper-Level Writing Requirement*, AM. U. WASH. C.L., <http://www.wcl.american.edu/studentaffairs/writingreq.cfm> (last visited Jan. 12, 2014).

¹⁰ See Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 NEB. L. REV. 561, 563 (1997) (“Neither a single ‘rigorous writing experience’ nor a first-year legal writing class is sufficient to provide basic competence in written communication.”).

¹¹ Craig T. Smith, *Technology and Legal Education: Negotiating the Shoals of Technocentrism, Technophobia, and Indifference*, 1 J. ASS'N LEGAL WRITING DIRECTORS 247, 252–53 (2002).

¹² See TASK FORCE ON THE FUTURE OF LEGAL EDUC., *supra* note 6, at 1, 24.

that matriculating students have less writing skill and experience than they did a decade ago,¹³ the need for a six-semester writing requirement is even greater.

To date, legal educators have responded to the barrage of criticism from all fronts by developing practicum courses or externship programs to prepare students for practice.¹⁴ Certainly, these are a start in the right direction for interested students, but the real solution is simpler. To teach students to think and to write, all law faculty must share the responsibility for teaching writing.¹⁵ As demonstrated below, increased writing instruction can take a variety of forms without unduly burdening the law school or its faculty.¹⁶ It does not matter so much what law students write—they *just need to write*.

II. PROCESS PEDAGOGY IS ESSENTIAL FOR TEACHING GOOD LEGAL WRITING

Lynch's major criticism of the "new" process pedagogy is that legal writing faculty martyr themselves with a labor-intensive approach.¹⁷ Interpretation 302-1 of American Bar Association (ABA) Standard 302¹⁸ troubles Lynch, as he finds that it "forces a rigid orthodoxy in the approach to the course"¹⁹ by requiring students to write multiple drafts and conference with their professor.²⁰ In Lynch's view, "Interpretation 302-1

¹³ See Ellie Margolis & Kristen E. Murray, *Say Goodbye to the Books: Information Literacy as the New Legal Research Paradigm*, 38 U. DAYTON L. REV. 117, 131–38 (2012).

¹⁴ Washington and Lee, for example, introduced a new third-year curriculum "entirely based on learning through engagement—combining practicum courses, practice simulations, client interactions, the formation of professional identity[,] and the cultivation of practice skills." *About the J.D. Program at W&L*, WASH. & LEE U. SCH. L., <http://law.wlu.edu/admissions/page.asp?pageid=311> (last visited Jan. 12, 2014).

¹⁵ Pamela Lysaght & Cristina Lockwood, *Writing Across the Curriculum: Theoretical Justifications, Curricular Implications*, 2 J. ASS'N LEGAL WRITING DIRECTORS 73, 73–74 (2004) ("[T]he burden of teaching 'good legalwriting' . . . must be shared within the wider law school community.").

¹⁶ See *infra* Part VI.

¹⁷ See Lynch, *supra* note 2, at 235–36.

¹⁸ See ABA STANDARDS, *supra* note 8, at 20; Lynch, *supra* note 2, at 236.

¹⁹ Lynch, *supra* note 2, at 236.

²⁰ Interpretation 302-1 states:

Factors to be considered in evaluating the rigor of writing instruction include: . . . the opportunities a student has to meet with a writing instructor for purposes of individualized assessment of a student's written products; the number of drafts that a student must

(continued)

implicitly requires more than one meeting with a legal writing professor,” which is impractical at best (especially for evening students).²¹ At worst, this interpretation “coddl[es]” students with endless one-on-one conferences²² and may even discourage them from working hard on preliminary drafts.²³

As for legal writing being too labor-intensive to teach at most law schools, Lynch is right—it is. Most legal writing faculty have too many students, too much work, or both. Designing problems and commenting on student papers throughout the semester make it difficult to participate fully in the life of law school, engage in scholarship, and work reasonable hours. In 2013, the class size for a required first-year legal research and writing course ranged from 10 to 210 students (about 39 on average).²⁴ In that same year, the average number of major writing assignments each semester was three, and the total number of student pages read in one semester ranged from 175 to 12,000 (the latter figure is truly hard to believe).²⁵ In addition, about 145 of the 170 schools that responded to the survey indicated that legal writing faculty must serve on faculty committees,²⁶ and about 148 schools indicated that legal writing faculty teach other courses besides the required first-year course.²⁷ Even more troubling, only 19 or so schools employ solely tenure-track faculty to teach

produce of any writing project; and the form of assessment used by the writing instructor.

ABA STANDARDS, *supra* note 8, at 20.

²¹ Lynch, *supra* note 2, at 240. Presently, it is unclear whether other professors have interpreted this language to require multiple student conferences for all students. Even the ABA recognized that “[c]onferences are extremely time-consuming . . . and that resource allocation must be considered in constructing the course syllabus.” SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, SOURCEBOOK ON LEGAL WRITING PROGRAMS 60 (2d ed. 2006) [hereinafter SOURCEBOOK ON LEGAL WRITING PROGRAMS].

²² Lynch, *supra* note 2, at 236 n.25.

²³ *Id.* at 241.

²⁴ ASS’N OF LEGAL WRITING DIRECTORS/LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY 82 (2013) [hereinafter 2013 SURVEY], available at <http://www.lwionline.org/uploads/FileUpload/2013SurveyReportfinal.pdf>. The American Bar Association recommends that full-time faculty have no more than thirty to thirty-five students per class to avoid “burn-out.” SOURCEBOOK ON LEGAL WRITING PROGRAMS, *supra* note 21, at 89.

²⁵ 2013 SURVEY, *supra* note 24, at 82.

²⁶ *Id.* at 83.

²⁷ *Id.* at 84.

legal writing,²⁸ and most schools seem either to encourage, expect, or require legal writing faculty to produce scholarship.²⁹

Understandably, as Professor Lynch has done and traditional faculty have suggested to me, legal writing faculty could revert to product pedagogy and cut out most of the time-consuming “intervention piece.” They could reduce the number of assignments per semester, assign the same problems year after year, skim their students’ drafts, and provide only standardized feedback or model answers. Legal writing faculty could eschew what feels like sole responsibility for preparing students for their initial entry into the workplace and preserving their law schools’ reputations. This is appealing because it would be easier and, at times, it would feel more like treating law students as graduate students.

This “easy” solution, however, creates its own problems. First, the product approach works for just a fraction of students. When a professor gives students an assignment and simply sends them off to complete it, only a fraction of students excel in any typical class (in my experience, about 10%). The top-performing 10% tend to be strong writers and independent learners who would get *As* or high passes in legal writing courses with or without faculty intervention. Good teaching takes time, and teaching writing to the majority of the class takes even longer. As Professor Lynch acknowledged, composition teachers have known, since at least the 1970s, that good writers distinguish themselves by the way they conceive of their task and the process they use to accomplish it.³⁰ By teaching students how to think about their writing process, faculty hasten and improve learning. Although the skepticism of postmodern theory has permeated all aspects of the legal academy,³¹ many still consider the

²⁸ *Id.* at 5.

²⁹ *Id.* at 81.

³⁰ See, e.g., JANET EMIG, *THE COMPOSING PROCESS OF TWELFTH GRADERS* 20, 99 (1971); Linda Flower & John R. Hayes, *The Cognition of Discovery: Defining a Rhetorical Problem*, 31 *C. COMPOSITION & COMM.* 21 (1980), reprinted in *THE WRITING TEACHERS' SOURCEBOOK* 92, 99 (Gary Tate & Edward P.J. Corbett eds., 2d ed. 1988).

³¹ For example, postmodern critics have questioned the ability to describe a universal process of writing—such as prewriting, writing, and revising. See *BEYOND POSTPROCESS* xvi–xvii (Sidney I. Dobrin et al. eds., 2011) (“When we understand writing as something we do—a series of cognitive steps, or a . . . recursive practice of drafting, editing, and redrafting—we imagine that writing may be reduced to a set of necessary and sufficient conditions, and once these conditions are met, satisfactory communication is more or less assured.”).

process approach the best way to teach writing at all educational levels.³² The inherent promise of the process approach has always been that students can learn to imitate and, then, assimilate good legal writing practices. Why else *teach* writing?

Second, the product approach effectively condones the traditional assumption that writing cannot be taught: “Legal writing is a talent; either you have it or you don’t.”³³ This assumption disenfranchises weaker writers and leaves them on their own to “struggle as best they can.”³⁴ It also perpetuates the notion that legal writing faculty teach only grammar, punctuation, and citation format.

Third, most legal writing faculty cannot afford to take Professor Lynch’s advice. Disgruntled students inevitably blame their legal writing professors for poor grades when completing teaching evaluations, which can have a disproportionate impact on faculty with little or no job security.

Lynch also argues that, in addition to imposing a “crushing workload,”³⁵ process pedagogy is inappropriate where faculty intervene in the students’ writing process, but grade the final product.³⁶ Although he appears equally frustrated by mandatory grading curves, Lynch worries that the process approach produces unfair grades: “[A]s the student’s work improves in the process of rewriting, it may be impossible to assess how much of the improvement is attributable to the intervenor/professor’s

³² See, e.g., COUNCIL OF WRITING PROGRAM ADM’RS ET AL., FRAMEWORK FOR SUCCESS IN POSTSECONDARY WRITING 8 (2011), available at <http://wpacouncil.org/files/framework-for-success-postsecondary-writing.pdf> (“Teachers can help [students prepare for college] by having students practice all aspects of writing processes, including invention, research, drafting, sharing with others, revising in response to reviews, and editing . . .”); COUNCIL OF WRITING PROGRAM ADM’RS, OUTCOMES STATEMENT FOR FIRST-YEAR COMPOSITION (2008), available at <http://wpacouncil.org/files/wpa-outcomes-statement.pdf> (“By the end of [freshman year in college], students should . . . develop flexible strategies for generating, revising, editing, and proof-reading [and u]nderstand [that writers] use later invention and rethinking to revise their work.”); NAT’L COMM’N ON WRITING, WRITING AND SCHOOL REFORM 10 (2006), available at http://www.collegeboard.com/prod_downloads/writing-com/writing-school-reform-natl-comm-writing.pdf (The best writing teachers in elementary and secondary education “called on students to draft, compose, and revise a variety of writings for a variety of audiences, purposes, and occasions.”).

³³ Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 43 (1994).

³⁴ *Id.*

³⁵ Lynch, *supra* note 2, at 237.

³⁶ See *id.* at 240–41.

contributions . . . and how much reflects the student's 'aha!' moment."³⁷ For these and other reasons, he returns to a product approach, where he evaluates a student's writing primarily in the form of a grade after students submit assignments.³⁸

To the extent the process approach skews final grades, especially with mandatory curves, the problem can indeed be "overcome through creative design of assignments."³⁹ At Georgetown, for example, first-year legal research and writing faculty use process pedagogy to teach ungraded writing assignments throughout the year-long course. At the end of each semester, students take a graded take-home exam that requires them to complete an independent research and writing assignment that builds on the skills acquired throughout the semester.⁴⁰ As for coddling students, good teaching is not coddling. To the extent law schools—or society generally—coddle the current generation of law students, one cannot solely attribute that to process pedagogy.⁴¹

III. LEGAL EDUCATION'S PROBLEM IS INADEQUATE INSTRUCTION IN THE RELATIONSHIP BETWEEN THINKING AND WRITING AND ITS IMPORTANCE IN THE WORKPLACE

The resulting hobble for the legal community, as a whole, is that students do not get adequate instruction in the relationship between thinking and writing and fail to appreciate the importance of writing to the legal profession. As already indicated, at most law schools, and certainly at the top-ranked law schools, legal writing is relegated to a first-year introductory course, which, in some cases, upper-class law students still teach.⁴² Despite nearly sole responsibility for preparing students for initial entry into the workplace, only a small percentage of full-time legal writing faculty are eligible for tenure, and law schools tend to pay them far less than doctrinal colleagues with similar years of service.⁴³ Even more

³⁷ *Id.* at 240.

³⁸ *Id.* at 242.

³⁹ *Id.* at 241.

⁴⁰ Sixty-six percent of the schools responding to the 2013 Survey also indicated using anonymous grading for at least some written assignments. 2013 SURVEY, *supra* note 24, at 10.

⁴¹ *See infra* Part IV.

⁴² 2013 SURVEY, *supra* note 24, at ix-x, 5-6.

⁴³ Kristen Konrad Robbins, *Philosophy v. Rhetoric in Legal Education: Understanding the Schism Between Doctrinal and Legal Writing Faculty*, 3 J. ASS'N LEGAL WRITING (continued)

surprising, some law schools have discouraged transfer applicants from submitting references from legal writing faculty on the theory that they cannot speak to the applicant's "ability to keep up with the subject material, contribute to class discussion, and think through difficult concepts."⁴⁴

For these reasons, the idea persists that legal writing is equivalent to college composition or is remedial in nature. Legal writing's lesser importance to law schools is evident in the fact that some schools: grade it pass/fail;⁴⁵ allow students, instructors, or faculty ineligible for tenure to teach it;⁴⁶ and under credit it.⁴⁷ Although the ABA requires that law schools provide rigorous writing instruction in the first year,⁴⁸ very few schools require that upper-class students take additional practice-related writing courses such as advanced legal writing, transactional or legislative drafting, or advanced advocacy courses.⁴⁹ Based on a sampling of graduation requirements available online, prestigious law schools require upper-class students to write roughly thirty pages to graduate, but that can be exclusively scholarly writing.⁵⁰

DIRECTORS 108, 108 (2006) (article previously written by this author, Kristen Konrad Tiscione).

⁴⁴ Asha Rangappa, *P.S.B.C.: Back by Popular Demand*, (203) ADMISSIONS BLOG (June 9, 2011, 10:31 AM), <http://blogs.law.yale.edu/blogs/admissions/archive/2011/06.aspx>; see also *Transfer Application Checklist*, LOYOLA U. CHI. SCH. L., http://www.luc.edu/law/media/law/admission/apply/pdfs/transfer_checklist.pdf (last visited Jan. 13, 2014) ("The letter must be from a law school faculty member, who taught the applicant in a course other than legal writing."). Dean Rangappa's post discouraging references submitted by legal writing professors appears to have been removed since last visited in November 2013. *Page Not Found*, YALE L. SCH. BLOGS, <http://blogs.law.yale.edu/error-notfound.aspx?aspxerrorpath=/blogs/admissions/archive/2011/06/09/back%E2%80%90by%E2%80%90populardemand.aspx> (last visited Jan. 13, 2014); see also (203) ADMISSIONS BLOG, <http://blogs.law.yale.edu/blogs/admissions/archive/tags/Ask+Asha/default.aspx> (last visited Jan. 13, 2014) (failing to list this blog under Dean Rangappa's posts).

⁴⁵ Jessica L. Clark, *Grades Matter; Legal Writing Grades Matter Most*, 31 MISS. C. L. REV. (forthcoming 2014) (manuscript at 7) (quoting SOURCEBOOK ON LEGAL WRITING PROGRAMS, *supra* note 21, at 77), available at <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2246&context=facpub>.

⁴⁶ Robbins, *supra* note 43, at 108.

⁴⁷ *Id.*

⁴⁸ See ABA STANDARDS, *supra* note 8, at 19.

⁴⁹ 2013 SURVEY, *supra* note 24, at 24–25.

⁵⁰ Barbara J. Busharis & Suzanne E. Rowe, *The Gordian Knot: Uniting Skills and Substance in Employment Discrimination and Federal Taxation Courses*, 33 J. MARSHALL (continued)

Students who write more write better,⁵¹ and law students are not writing enough to develop adequate writing skills for practice. In 2011, David Segal of the *New York Times* exposed law schools for graduating students who did not know the documents needed to effect a corporate merger.⁵² Segal's series of articles helped launch law school reform efforts, but not because law schools were embarrassed by failing to teach students how to draft merger certificates. Just as no law graduate knows all the law, no law student can learn to write every legal document imaginable. However, unlike prior advocates for reform inside and outside the academy, Segal embarrassed law schools by revealing how little attention law schools have paid to skills training overall.⁵³ What Segal fails to understand is that, if law schools provide sufficient opportunities to develop adequate writing skills, those skills will transfer well to a variety of new situations, such as corporate mergers.

L. REV. 303, 313 (2000) (“A significant number of law students across the country are able to graduate with only limited writing experiences after the first year of law school.”). Harvard, for example, requires students to write a thirty- to sixty-page research paper (suitable for a law journal) or two smaller papers, which may or may not consist of practical legal writing. See *J.D. Written Work Requirement*, HARVARD L. SCH., <http://www.law.harvard.edu/academics/writing/j.d.-wwr.html> (last visited Jan. 13, 2014). Berkeley Law requires its upper-class students to write a thirty-page paper in conjunction with a seminar or other course in order to graduate. See *Academic Rules: Appendix B—Writing Requirement*, BERKELEYLAW, <http://www.law.berkeley.edu/184.htm> (last visited Jan. 13, 2014). Similarly, Georgetown Law has a 6,000-word requirement for upper-level seminar class papers, which amounts to twenty-five to thirty pages. See *Upperclass Information*, GEORGETOWN U. L. CENTER, <http://www.law.georgetown.edu/academics/academic-programs/jd-program/full-time-program/upper-class.cfm> (last visited Jan. 13, 2014).

⁵¹ See, e.g., RICHARD ARUM & JOSIPA ROKSA, *ACADEMICALLY ADRIFT: LIMITED LEARNING ON COLLEGE CAMPUSES* 93 (2011) (A course that requires college students to read more than forty pages a week and write more than twenty pages a semester “is associated with improvement in students’ critical thinking, complex reasoning, and writing skills.”); U.S. DEP’T OF EDUC., *WRITING 2011: NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS AT GRADES 8 AND 12*, at 33 (2012), available at <http://nces.ed.gov/nationsreportcard/pdf/main2011/2012470.pdf> (“Students who write four to five pages a week for English/language arts homework score higher than those who write fewer pages.”).

⁵² See David Segal, *What They Don’t Teach Law Students: Lawyering*, N. Y. TIMES, Nov. 20, 2011, at A1.

⁵³ See *id.*

IV. DIMINISHED WRITING AND PROFESSIONAL SKILLS OF MATRICULATING LAW STUDENTS FURTHER EXACERBATE THE PROBLEM

Teaching law graduates to be competent, professional writers may become more difficult because matriculating law students have less writing experience and, perhaps, weaker research, reading comprehension, critical-thinking, and writing skills than in the past.⁵⁴ With the exception of students taking courses in communications and the humanities, only about 50% of recent college graduates wrote more than a twenty-page paper in their freshman or sophomore years.⁵⁵ According to Arum and Roksa, who surveyed a diverse group of 2,322 students at twenty-four 4-year colleges across the country:

Growing numbers of students are sent to college . . . , but for a large proportion of them the gains in critical thinking, complex reasoning[,] and written communication are either exceedingly small or empirically nonexistent. At least [45%] of students in our sample did not demonstrate any statistically significant improvement . . . during the first two years of college.⁵⁶

⁵⁴ A recent survey of first-year law students indicates that 33% of them have no formal research training before coming to law school. See Margolis & Murray, *supra* note 13, at 135. Margolis and Murray also note that, “while today’s students have grown up using computers, they have not learned with sufficient rigor the skills necessary for complex and in-depth research projects.” *Id.* at 131. See also, e.g., Cathaleen A. Roach, *Is the Sky Falling? Ruminations on Incoming Law Student Preparedness (and Implications for the Profession) in the Wake of Recent National and Other Reports*, 11 J. LEGAL WRITING INST. 295, 309 (2005) (“[A] causal relationship may exist between reduced research readiness in law school and the generic decline in students’ writing abilities and reading exposure that results, presumably, from reduced thesis and research paper writing in high school and college.”); Susan Stuart & Ruth Vance, *Bringing a Knife to the Gunfight: The Academically Underprepared Law Student & Legal Education Reform*, VALPARAISO LAW FACULTY PUBLICATIONS 1 (2013), http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1115&context=law_fac_pubs (“[T]oday’s entering law students are demonstrably less prepared for law school because their critical thinking and problem-solving skills are significantly lower than those of students in the 1970s and 1980s.”).

⁵⁵ See ARUM & ROKSA, *supra* note 51, at 80 tbl.A3.5.

⁵⁶ *Id.* at 121.

Although some question the validity of Arum and Roksa's study,⁵⁷ no one seems to disagree with the ultimate conclusion that colleges are not producing strong writers.⁵⁸ A 2006 survey indicated that corporate employers cited oral and written communications as among the most important skills for workforce readiness, but roughly 30% rated college graduates as "deficient" in written communications.⁵⁹

Likewise, high school graduates do not begin college adequately prepared to write at a post-secondary level. A 2011 study indicated that roughly half of the students graduating from public high schools in the United States write at a "basic," as opposed to a "proficient" or "advanced," level.⁶⁰ In 2011, 52% of twelfth graders performed at a basic level in writing on the National Assessment of Educational Progress, 24% performed at a proficient level, and just 3% at an advanced level.⁶¹ Although the average writing score for twelfth graders has remained

⁵⁷ See, e.g., Murray Sperber, *We Must Overhaul College Writing*, JOHN WILLIAM POPE CENTER FOR HIGHER EDUC. POL'Y (June 21, 2011), <http://www.popecenter.org/commentaries/article.html?id=2539>. This author notes that, even if college students write over 100 pages per semester, they often have "difficulty mounting a logical argument . . . and . . . serious problems writing clear sentences" and recommends that colleges invest in more and better writing instruction. *Id.*

⁵⁸ See, e.g., Samuel R. Lucas, *Book Review Essay*, 90 SOC. FORCES 1429, 1430 (2012) (reviewing ARUM & ROKSA, *supra* note 51) ("Most faculty don't need anyone to tell them that their students de-prioritize academic pursuits, and despite some stellar class performances the general trend is downward and has been for a long time.").

⁵⁹ CONFERENCE BD. ET AL., ARE THEY REALLY READY TO WORK?: EMPLOYERS' PERSPECTIVES ON THE BASIC KNOWLEDGE AND APPLIED SKILLS OF NEW ENTRANTS TO THE 21ST CENTURY U.S. WORKFORCE 7, 14 (2006), available at http://www.p21.org/storage/documents/FINAL_REPORT_PDF09-29-06.pdf. Four hundred employers articulated the most important skills needed to succeed in the workplace and then rated the skill levels of recent graduates hired for entry-level jobs as excellent, adequate, or deficient. *Id.* at 9, 15.

⁶⁰ See U.S. DEP'T OF EDUC., *supra* note 51, at 28. The 2011 Assessment tested 28,100 students from 1,220 schools. *Id.* at 6. The assessment board defined *basic* as "partial mastery of prerequisite knowledge and skills that are fundamental for proficient work at each grade." *Id.* at 7.

⁶¹ See *id.* at 28. *Proficient performance* "represents solid academic performance" and "competency over challenging subject matter." *Id.* at 7. *Advanced* "represents superior performance" and the ability to write prose that is "coherent and well structured." *Id.* at 7, 40. Generally, whites, Asians, and students of two or more races have higher writing scores. *Id.* at 29. Females perform better than males, and suburban students perform better than students in cities and rural locations. *Id.* at 30, 32. For more information on the demographics of the students tested in 2011, see *id.* at 29-35.

relatively stable since 1998, the fact that “only one-quarter of U.S. [high school] students are proficient in writing” is deeply troubling.⁶²

Some attribute weak writing skills among public school students, in part, to the after-effects of the No Child Left Behind Act⁶³ (the Act), which

⁶² Sharon Noguchi, “*Nation’s Report Card*” Releases Results from First Writing Test Using Computers, MERCURYNEWS.COM (Sept. 14, 2012, 4:38 PM), http://www.mercurynews.com/education/ci_21545157/nations-report-card-releases-results-from-first-writing.

The average score for twelfth graders was 150, 148, 153, and 150 in 1998, 2002, 2007, and 2011, respectively. U.S. DEP’T OF EDUC., WRITING 2007: NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS AT GRADES 8 AND 12, at 36 (2008), <http://nces.ed.gov/nationsreportcard/pdf/main2007/2008468.pdf>; U.S. DEP’T OF EDUC., *supra* note 51, at 28.

The Council of Writing Program Administrators, the National Council of Teachers of English, and the National Writing Project now recommend that high school teachers prepare students for college, in part, by teaching students to:

- use a variety of electronic technologies intentionally to compose;
- analyze print and electronic texts to determine how technologies affect reading and writing processes;
- select, evaluate, and use information and ideas from electronic sources responsibly in their own documents (whether by citation, hotlink, commentary, or other means);
- use technology strategically and with a clear purpose that enhances the writing for the audience;
- analyze situations where print and electronic texts are used, examining why and how people have chosen to compose using different technologies; and
- analyze electronic texts (their own and others’) to explore and develop criteria for assessing the texts.

COUNCIL OF WRITING PROGRAM ADM’RS ET AL., *supra* note 32, at 10.

⁶³ See No Child Left Behind Act, Pub. L. 107-110, 115 Stat. 1452 (codified at 20 U.S.C. §§ 6301–6578 (2012)). The Bush Administration introduced the Act and the legislature passed it with bipartisan support in 2001. *The No Child Left Behind Act of 2001*, U.S. DEPT. EDUC. 1 (Nov. 17, 2013), <http://www2.ed.gov/nclb/overview/intro/execsumm.pdf>. Its stated purposes include: “to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments” and to “clos[e] the achievement gap between high- and low-performing
(continued)

conditions federal funding for public schools on states administering annual statewide standardized tests to measure student learning.⁶⁴ Many have widely criticized the Act for forcing teachers to “teach to the test” and sacrifice critical course content.⁶⁵ Now, a decade later, teachers are speaking out about the effects of standardized testing on students’ critical thinking skills and writing proficiency. In February 2013, Kenneth Bernstein, a newly retired high school history teacher, published a sobering warning to college professors about incoming freshmen: “They may be very bright. But we have not been able to prepare them for the kind of intellectual work that you have every right to expect of them.”⁶⁶ As Bernstein explains, most of the tests consist largely of multiple-choice questions; if there is a writing component, “the level of writing required for such tests often does not demand that higher-level thinking be demonstrated, nor does it require proper grammar, usage, syntax, and structure.”⁶⁷

The digital revolution, too, has affected student performance in ways educators are just beginning to explore.⁶⁸ As modes of communication

children, especially the achievement gaps between minority and nonminority students, and between disadvantaged children and their more advantaged peers.” 20 U.S.C. § 6301 (2012).

⁶⁴ *No Child Left Behind Act of 2001*, *supra* note 63, at 1–2.

⁶⁵ See, e.g., Susan J. Hobart, *One Teacher's Cry: Why I Hate No Child Left Behind*, PROGRESSIVE, August 2008, at 24, 26 (“We’ve got things backwards today. Children should be in the front seat, not the testing companies. And teachers should be rewarded for teaching, not for being Stanley Kaplan tutors.”).

⁶⁶ Kenneth Bernstein, *Warnings from the Trenches*, ACADEME, January–February 2013, <http://www.aaup.org/article/warnings-trenches#.UtS177QufzP>; see also George David Clark, *How to Heed the Warning*, CHRON. OF HIGHER EDUC. (Feb. 12, 2013, 2:31 PM), <http://chronicle.com/blogs/onhiring/how-to-heed-the-warning/36651>; Michelle Goodwin, *Law Professors See the Damage Done by “No Child Left Behind,”* CHRON. HIGHER EDUC. (Mar. 12, 2013, 11:40 AM), <http://chronicle.com/blogs/conversation/2013/03/12/law-professors-see-the-damage-done-by-no-child-left-behind/>.

⁶⁷ Bernstein, *supra* note 66. Bernstein explained that, in a typical Advanced Placement U.S. Government exam, graders primarily grade “free response” questions based on content. *Id.* “There is no consideration of grammar or rhetoric, nor is credit given or a score reduced based on the format of the answer.” *Id.*

⁶⁸ Students who have grown up with the Internet will “face information overload throughout their lives.” JOHN PALFREY & URS GASSER, *BORN DIGITAL: UNDERSTANDING THE FIRST GENERATION OF DIGITAL NATIVES* 194 (2010). Students typically have difficulty assessing the quality of information they find, and “[t]he majority of the population born digital doesn’t perceive quality of information as an important issue” *Id.* at 161, 194.

have evolved from instant messaging to emailing, texting, and tweeting, writing standards for informal correspondence have changed.⁶⁹ Students may need to be reminded that they are not free to ignore mistakes in grammar, spelling, and punctuation. Although texting—the communication mode of choice for teens and young adults—does not necessarily decrease students’ skills in standard English, there is reason to believe it may decrease the breadth of their vocabulary.⁷⁰ The immediacy of texting, tweeting, and email, as well as the ease of electronic legal research, may contribute to students’ frustration levels when it comes to the painstaking process associated with good legal analysis and writing.⁷¹ Students accustomed to quick composition may also be more willing to sacrifice accuracy for expediency.⁷² Although not the focus of this Article, the challenges associated with teaching legal research and writing skills will likely change, if not become more difficult, as the digital divide between faculty and students continues to grow.

In conjunction with a decline in students’ research and writing skills, law faculty have observed a related decline in first-year law students’ professionalism,⁷³ and for good reason. Faculty at 415 colleges and universities nationwide reported significant increases in upper-class students’ sense of entitlement and inappropriate use of technology.⁷⁴ Similarly, recent studies indicated a perceived decline in professionalism

⁶⁹ See Joan Hwechong Lee, *What Does Txting Do 2 Language?* 1–2 (April 2011) (unpublished M.A. thesis, University of Calgary), available at http://dspace.ucalgary.ca/bitstream/1880/48490/1/2011_Lee_MA.pdf.

⁷⁰ See, e.g., *id.* at 2; Lindsay Gustafson, *Texting and the Friction of Writing*, 19 J. LEG. WRITING INST. (forthcoming 2014) (manuscript at 12), available at <http://ssrn.com/abstract=2244481>.

⁷¹ See Gustafson, *supra* note 70 (manuscript at 21–22).

⁷² *Id.* (manuscript at 23).

⁷³ See, e.g., Kristen E. Murray, *Legal Writing Missteps: Ethics and Professionalism in the First-Year Legal Research and Writing Classroom*, 20 PERSP.: TEACHING LEGAL RES. & WRITING 134, 134–36 (proposing a way to bring “legal writing gone bad” into a discussion about professionalism and ethics).

⁷⁴ CTR. FOR PROF’L. EXCELLENCE, 2012 PROFESSIONALISM ON CAMPUS 15–17, 35–38 (2013). Inappropriate use of technology includes the following: texting or accessing the Internet during class; poorly written emails in terms of grammar, spelling, and punctuation; and texting or emailing when a direct conversation would be more appropriate. *Id.* at 17. See also Gustafson, *supra* note 70, at 9 (indicating that students are more frequently using texts to communicate with professors).

among college students and college graduates in the workplace.⁷⁵ Four hundred one employers nationwide reported significant increases in a sense of entitlement and technology abuses among new hires similar to those observed in students.⁷⁶ The vast majority of employers also reported a decreased work ethic, evidenced by “too casual of an attitude toward[] work”⁷⁷ and an increase in “allowing technology to interrupt one’s focus.”⁷⁸

A sense of entitlement and a lack of professionalism in law students are consistent with traits associated with “Millennial” students—those born between 1982 and 2003.⁷⁹ Many often describe Millennials negatively as students who think like consumers and want “the best educational credentials with the least amount of effort.”⁸⁰ Having been raised in an educational system where “every child received an award just for showing up,”⁸¹ Millennials have been described as overconfident, risk averse, high achieving, narcissistic, and anxious.⁸² Not surprisingly, law students often seem unapologetic for their lack of preparation,⁸³ discomfort with constructive criticism,⁸⁴ and willingness to excuse themselves for failing to perform well or on time.⁸⁵ If accurately described, the Millennial mindset will have a far-reaching effect on legal education. Law schools should no longer assume that students have basic writing skills, and due, in part, to Millennials being digital natives, they should expect incoming students to

⁷⁵ See, e.g., CTR. FOR PROF'L. EXCELLENCE, 2013 PROFESSIONALISM IN THE WORKPLACE 8–9, 26–34 (2013), available at <http://www.ycp.edu/media/york-website/cpe/York-College-Professionalism-in-the-Workplace-Study-2013.pdf>.

⁷⁶ *Id.*

⁷⁷ *Id.* at 41.

⁷⁸ *Id.* at 37.

⁷⁹ Amelia J. Uelmen, “*Millennial Momentum*” for Revising the Rhetoric of Lawyers’ Relationships and Roles, 9 U. ST. THOMAS L.J. 446, 446 (2011).

⁸⁰ Stuart & Vance, *supra* note 54, at 22; see also James Etienne Viator, *Legal Education’s Perfect Storm: Law Students’ Poor Writing and Legal Analysis Skills Collide with Dismal Employment Prospects, Creating the Urgent Need to Reconfigure the First-Year Curriculum*, 61 CATH. U. L. REV. 735, 742–43 (2012) (“[L]aw students . . . desire to do little work in exchange for the quick gratification of a high reward.”).

⁸¹ Stuart & Vance, *supra* note 54, at 25.

⁸² See, e.g., *id.* at 24–30.

⁸³ See *id.* at 29.

⁸⁴ See *id.* at 31.

⁸⁵ *Id.* at 31–32.

need “basic training in interpersonal, listening, and other social skills so they will be able to function in the legal community.”⁸⁶

V. STUDENTS MUST WRITE EVERY SEMESTER OF LAW SCHOOL

With rising tuition rates⁸⁷ and a decreased applicant pool,⁸⁸ some law schools are now considering whether to admit fewer students⁸⁹ or to reduce the number of years to obtain a Juris Doctor from three to two.⁹⁰ Some law schools are struggling just to survive.⁹¹ At the same time, many have responded to calls for reform by developing experiential learning programs,⁹² externships,⁹³ and practicum courses.⁹⁴ However, several

⁸⁶ *Id.* at 28.

⁸⁷ From 1985 to 2011, law school tuition for public schools increased more than five times the inflation rate, and tuition for private schools increased 2.5 times the rate of inflation. See *Tuition Tracker*, L. SCH. TRANSPARENCY, <http://www.lawschooltransparency.com/reform/projects/Tuition-Tracker/> (last visited Jan. 13, 2014); see also SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, LAW SCHOOL TUITION 1985–2012, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/ls_tuition.authcheckdam.pdf (last visited Jan. 13, 2014); Brian Z. Tamanaha, *The Failure of Critics and Leftist Law Professors to Defend Progressive Causes*, 24 STAN. L. & POL'Y REV. 309, 312 (2013) (“Tuition and debt went up relentlessly at the same time that law [school graduates] have struggled through the worst market for legal employment in decades.”).

⁸⁸ Joe Palazzolo & Chelsea Phipps, *Law Schools Apply the Brakes*, WALL ST. J., June 11, 2012, at B1 (“[T]he number of law-school applicants this year is 65,119, down 14% from a year earlier . . .”).

⁸⁹ *Id.* (“[T]he planned reductions by at least 10 of the roughly 200 laws schools accredited in the U.S.[] suggest a new reality is sinking in . . .”); Mitch Smith, *Prestigious Law School Reduces Admissions, Marks New Trend*, USA TODAY (May 1, 2012, 2:30 PM), <http://usatoday30.usatoday.com/news/education/story/2012-05-01/hastings-law-school-admissions/54662710/1> (“Hastings will admit 20% fewer students than in years past . . .”).

⁹⁰ See, e.g., BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 27 (2012) (“[Not] all students [need] to undergo a third year [of law school] for intellectual ‘enrichment’ at the cost of their financial impoverishment.”).

⁹¹ See *id.* at 160–66.

⁹² See, e.g., *Experiential Learning Lab*, N.Y.U. L. <http://www.law.nyu.edu/experientiallearninglab> (last visited Jan. 13, 2014); *Clinics and Experiential Learning*, YALE L. SCH., <http://www.law.yale.edu/academics/clinicalopportunities.htm> (last visited Jan. 13, 2014).

⁹³ See, e.g., *Cornell Law School: Externships*, CORNELL U.L. SCH., <http://www.lawschool.cornell.edu/Clinical-Programs/externships/> (last visited Jan. 13, 2014); *Legal Externships*, CATHOLIC U. AM. COLUMBUS SCH. L., <http://clinics.law.edu/externships.cfm> (last visited Jan. 13, 2014).

years into this multiply determined “crisis,” these sometimes quick fixes feel more like packaging than pedagogy.⁹⁵

Law schools must implement meaningful and long-lasting reform incrementally, with thought and a clear-minded purpose. The answer is staring legal educators in the face, and they must not look away. A student whose writing is weak, unstructured, and ineffective cannot practice law (or succeed in a related profession), and incoming law students have less writing experience and skill than in years past.⁹⁶ For that reason alone, law schools can no longer afford to relegate legal writing to an introductory course in the first year and an upper-class scholarly paper. To do so ignores the awareness that Segal and others have raised about problems in legal education, continues to signal that writing is unimportant, perpetuates an artificial distinction between thinking and writing, ignores the impact of technology on law practice, and continues to hobble a small percentage of faculty with the responsibility that all law faculty should share.

To prepare the underprepared Millennial student for competent practice of any sort, writing must be at the core of the law school curriculum.⁹⁷ Students must engage in meaningful writing during each semester of law school. In first-year legal research and writing courses, students typically learn to write memoranda and briefs.⁹⁸ In contrast, a course that satisfies the school's upper-level writing requirement usually requires students to write something akin to a law review article.⁹⁹ These two types of writing are so different that, without adequate instruction and repetition, students do not graduate with sufficient mastery of either type.

⁹⁴ See, e.g., *Business Law Practicum*, LOYOLA L. SCH. L.A., <http://www.lls.edu/academics/clinicexperientiallearning/businesslawpracticum/> (last visited Jan. 14, 2014); *Practicum Courses*, GEORGETOWN U. L. CENTER, <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/practicum/> (last visited Jan. 14, 2014).

⁹⁵ See, e.g., *Denver to Offer Experiential Training Program*, NAT'L JURIST (June 11, 2013), <http://www.nationaljurist.com/content/denver-offer-experiential-training-program>.

⁹⁶ Viator, *supra* note 80, at 751–52.

⁹⁷ See, e.g., Lysaght & Lockwood, *supra* note 15, at 74 (recommending writing across the curriculum in doctrinal and legal writing courses); Moodie & Hart, *supra* note 7, at 9 (“Legal writing should continue throughout the law school curriculum, not just the first year.”); Parker, *supra* note 10, at 562 (“[L]aw school[s] . . . should . . . include[e] opportunities to use writing to promote professional competence throughout all three years of law school.”).

⁹⁸ Moodie & Hart, *supra* note 7, at 9.

⁹⁹ *Id.*

The following table proposes a six-semester writing curriculum that is both sound and viable.

Table 1. A Six-Semester Writing Curriculum

Proposed Curriculum Changes	Number of Semesters	
Extend the introductory legal research and writing course from two to three semesters	three semesters	to be spread out over the fourth through sixth semesters
Require one practice-related writing course such as advanced legal writing, business transactions, or legislative drafting	one semester	
Require one upper-level seminar with a scholarly writing component	one semester	
Require students to take at least one practicum, clinic, or externship	one semester	

The first step in implementing a six-semester writing requirement is to follow the lead of several law schools and extend the required, introductory legal research and writing course from two to three semesters. The typical first-year course introduces students to the following: the structure of federal and state court systems; sources of law; the research and writing process; statutory interpretation; case synthesis; deductive and inductive reasoning; objective and persuasive analysis; legal writing conventions, such as memoranda, opinion letters, motions, and briefs; the language of the legal discourse community; increasingly, some basics in grammar and punctuation; and citation format.¹⁰⁰ Given the increase in the amount of information available via the Internet, the mechanisms for retrieving it, and the various modes of communications lawyers now use, it is no longer possible to cover all of this material fully in two semesters.

¹⁰⁰ See Viator, *supra* note 80, at 766–68.

In a three-semester introductory course, students could devote their first year to developing reading and analytical skills, research techniques, and objective legal writing. Faculty could spend more time in the fall semester teaching students to understand the nature of the legal system, engage in comprehensive and cost-effective research, read cases critically, synthesize rules of law, formulate logical arguments, and recognize and produce strong objective analysis. In the spring semester, faculty and students could turn to more complicated legal questions, giving students a chance to practice their skills and draft a number of practice-related documents, including memoranda, letters, and email, among other documents. In the fall semester of the second year, perhaps after a summer job of applied learning, students would be far better prepared to build on the analytical skills learned in the first year, handle more complex legal questions, draft trial and appellate motions and briefs as well as other persuasive forms, and engage in oral argument exercises in a variety of contexts.

Over the next three semesters, law schools would then require students to take the following: (1) one approved course with a practice-related writing component, such as advanced legal writing, business transactions, or legislative drafting; (2) one advanced seminar with a scholarly writing requirement (the current upper-level writing requirement at most law schools); and (3) a one-semester (or more) practicum course, clinic, or externship. Many law schools already make these courses available to motivated students,¹⁰¹ but a six-semester requirement would ensure that all students receive adequate writing instruction and practice from a cross-section of faculty.

To the extent schools have trouble staffing courses with a practice-related writing component, this problem could be solved by some of these courses being doctrinal. Examples of writing assignments in doctrinal courses with a practice-related writing component could include drafting legislation, jury instructions, divorce settlement agreements, deeds, or administrative regulations.¹⁰² Writing in these courses becomes a “‘pedagogical partner’ enhancing a student’s doctrinal understanding of the subject while promoting the development of a student’s communications skills.”¹⁰³ To avoid undue burden, Lysaght and Lockwood recommend that faculty teaching a doctrinal course with a

¹⁰¹ See, e.g., Lysaght & Lockwood, *supra* note 15, at 92; Parker, *supra* note 10, at 580.

¹⁰² Lysaght & Lockwood, *supra* note 15, at 102 (footnote omitted).

¹⁰³ *Id.* at 100.

practice-related writing assignment focus on product, not process, and simply grade assignments.¹⁰⁴ This approach has the added benefit of teaching students “to take responsibility for the product they produce and that there are consequences to submitting a less-than-final draft.”¹⁰⁵ Thus, teaching process and product *at the same time* would improve students’ professionalism.

VI. ADDITIONAL RECOMMENDATIONS TO IMPROVE THE WRITING CURRICULUM

A. *Incorporate Instrumental Writing into One First-Year, Doctrinal Course*

Too often, first-year students fail to recognize the relationship between their subject-matter courses and their legal research and writing course. Incorporating a writing assignment into a traditional first-year course would improve students’ understanding of the subject matter of the course, help develop their writing skills, and demonstrate the relationship between theory and practice.

Doctrinal and legal writing faculty could work together to coordinate their assignments in a given semester. For example, students in a first-year legal research and writing course could write a memorandum that analyzes the viability of a breach-of-contract claim. The same students could then draft the complaint in Civil Procedure or a settlement offer in Contracts. To reduce workload, first-year, doctrinal faculty could take turns each year incorporating a writing assignment into their course, and faculty could simply grade or give credit for completing the assignments themselves.¹⁰⁶

B. *Encourage Faculty to Use Writing-to-Learn Exercises in Non-Writing Courses*

In addition to a six-semester writing requirement, students can use writing in all of their courses to gain a better understanding of legal concepts and how to use those concepts to solve concrete problems.¹⁰⁷ In

¹⁰⁴ *Id.* at 100–01.

¹⁰⁵ *Id.* at 102.

¹⁰⁶ *Id.* at 102–03.

¹⁰⁷ See, e.g., Philip C. Kissam, *Thinking (By Writing) About Legal Writing*, 40 VAND. L. REV. 135, 158 (1987) (urging law faculty to incorporate “critical writing”—Kissam’s term for writing to learn—throughout the law school curriculum); Parker, *supra* note 10, at 568 (“[The law school] should provide [students] with writing-to-learn tools they can use to
(continued)

the legal research and writing classroom, for example, students often “write to learn” when they chart their research, diagram the elements of a cause of action, outline their arguments for a brief, and work in groups to develop their ideas.¹⁰⁸ Students can also effectively write to learn in doctrinal classes. For example, students can bring written questions to class for discussion, turn in written answers to assigned questions about the day’s reading, take turns posting summaries of the reading on an online forum, or write in class about their reactions to issues the reading raised.¹⁰⁹ Writing exercises like these serve to improve class discussion, give the professor a sense of how well students understand the material, and help students prepare to write their final exam.¹¹⁰

C. Create Concentrations to Focus Students on a Particular Area of Interest

Many law students treat their legal education like a liberal arts degree because there is little incentive for them to focus their studies on a particular area of interest.¹¹¹ By offering writing majors or concentrations, law schools would encourage students to spend their time wisely and choose a course of study to develop expertise in an area of interest. Examples of writing concentrations include litigation, legislation, public policy, corporate law, real estate transactions, tax, and trusts and estates.¹¹² Writing concentrations typically do not strain existing faculty or resources, and they likely would be of great interest to employers.¹¹³

D. Require Students to Compile Writing Portfolios for Job Searches and Graduation

Moodie and Harte recommend that law schools require third-year law students to compile their completed writing assignments in a portfolio to

explore, organize, and clarify their thoughts as they research and analyze legal problems, first in law school and then in practice”).

¹⁰⁸ Parker, *supra* note 10, at 574.

¹⁰⁹ *Id.* at 577–78.

¹¹⁰ *See, e.g., id.* at 577.

¹¹¹ *See* Patricia Mell, *Law Schools and Their Disciples*, MICH. B. J., Oct. 2000, at 1395.

¹¹² Matthew C. Cordon, *Beyond Mere Competency: Advanced Legal Research in a Practice-Oriented Curriculum*, 55 BAYLOR L. REV. 1, 23 (2003).

¹¹³ Larry Catá Backer, *Toward General Principles of Academic Specialization by Means of Certificate or Concentration Programs: Creating a Certificate Program in International, Comparative and Foreign Law at Penn State*, 20 PENN. ST. INT'L L. REV. 67, 74–76 (2001).

present to employers.¹¹⁴ Law schools might also require third-year students to reflect on the skills acquired and growth demonstrated in their writing and to articulate how they anticipate transferring these skills to the workplace.¹¹⁵

E. Encourage Students to Reflect on Their Writing Process as They Complete Major Writing Assignments

In any course—doctrinal or writing—with a writing assignment, students can use reflective exercises throughout the writing process to evaluate their own learning. Collectively, many often refer to these as writing journals or portfolios, but they differ from those suggested above¹¹⁶ because they are a collection of the students' thoughts about their writing, not the assignments themselves. As Niedwiecki explains, reflective writing exercises help students develop metacognitive skills, which enable them to better transfer what they have learned to new situations.¹¹⁷ Niedwiecki recommends that, in a given course, professors should require that students first write their expectations for the course and the skills they will bring to it.¹¹⁸ Once students have written an assignment, they can reflect on the success of their writing, the extent to which their opinion differed from that of their professor, and how they need to improve in light of the feedback the professor provided.¹¹⁹ Reflective writing can give professors rare insight into their students' thought processes—what they think they have mastered and what they think they still need to learn.¹²⁰

F. Maintain a Writing Center Designed for and Available to All Law Students

If law schools require six semesters of writing without unduly burdening individual faculty, they will need to provide adequate outside resources for students. A writing center is an effective way to help students with specific writing assignments, writing portfolios, and basic

¹¹⁴ Moodie & Hart, *supra* note 7, at 9.

¹¹⁵ See *infra* Part VI.E.

¹¹⁶ See Part VI.D.

¹¹⁷ Anthony Niedwiecki, *Teaching for Lifelong Learning: Improving the Metacognitive Skills of Law Students Through More Effective Formative Assessment Techniques*, 40 CAP. U. L. REV. 149, 152 (2012).

¹¹⁸ *Id.* at 186–87.

¹¹⁹ *Id.* at 188–91.

¹²⁰ *Id.* at 185.

writing strategies and techniques.¹²¹ By improving students' ability to evaluate their writing process, as well as the quality of their written work, writing centers increase students' metacognitive skills, which are essential to higher-order thinking.¹²² In addition to increasing individualized instruction without overburdening professors,¹²³ writing centers "serve as a non-judging audience to anxious law students as they work on their legal writing projects."¹²⁴ Writing center tutors are typically upper-class students, whose own writing and metacognitive skills improve in the process of tutoring their students.¹²⁵ Law schools can compensate these students relatively inexpensively, either through a modest stipend or course credit.¹²⁶

VII. CONCLUSION

Legal writing's hobble has become legal education's problem because law schools have failed to commit to teaching writing—the single most important skill a law student has to offer upon graduation. If law schools continue to burden a small percentage of underpaid, undervalued faculty with the responsibility for teaching writing, they cannot hope to achieve their potential as "engine[s] of opportunity and economic growth."¹²⁷ To continue doing so is to signal the unimportance of writing and mislead students about its relationship to analytical thinking.

¹²¹ See Susan R. Dailey, *Linking Technology to Pedagogy in an Online Writing Center*, 10 J. LEG. WRITING INST. 181, 186-90 (2004) (describing the parameters of an online writing center for law students akin to those used at the undergraduate level). Although eighty law schools have university-run writing centers that law students may use, only thirty-five law schools have their own writing centers dedicated to law student needs. See 2013 SURVEY, *supra* note 24, at 22.

¹²² See, e.g., Casey Jones, *The Relationship Between Writing Centers and Improvement in Writing Ability: An Assessment of the Literature*, 122 EDUC. 3, 17 (2001).

¹²³ Kristen E. Murray, *Peer Tutoring and the Law School Writing Center: Theory and Practice*, 17 J. LEG. WRITING INST. 161, 174-75 (2011). Writing centers can also reduce the workload for writing specialists, who provide services outside the writing center. *Id.* at 175 n.85.

¹²⁴ *Id.* at 175-76.

¹²⁵ See Jones, *supra* note 122, at 17 ("[B]oth tutor and tutee benefit from the non-hierarchical, complementary relationship that enables both partners to refine and expand their writing and communication skills.")

¹²⁶ Murray, *supra* note 123, at 194.

¹²⁷ NAT'L. COMM'N. ON WRITING IN AM.'S SCHOOLS AND COLLS., *supra* note 1, at 3.

Despite Lynch's suggestion, law schools cannot afford to revert to the fiction that the product approach works well with most students.¹²⁸ The process approach continues to be the best way to teach writing and is necessary to teach and reach the majority of law students. This is not the time to abandon what law schools already know about teaching writing and shirk responsibility because it is difficult, time-consuming, and labor-intensive. Lynch urges legal writing faculty to "look out for number one,"¹²⁹ but as educators, we are charged with putting our students first.

The current writing requirements at most law schools are inadequate to prepare students for practice. As Millennials come to law school with less writing skill and experience than ever before,¹³⁰ writing will need to become a core part of the law school curriculum. Students must write each semester of law school,¹³¹ and both doctrinal and writing faculty should participate in their writing instruction.¹³² As a part of a six-semester writing requirement, students should take the following: legal research and writing the first three semesters of law school; one practice-related writing course, such as advanced legal writing, business transactions, or legislative drafting; one upper-level seminar with a scholarly writing component; and a one-semester (or more) practicum, clinic, or externship.¹³³

To underscore the relationship between learning to think like a lawyer and to write like one, at least one first-year doctrinal course should also include a related writing assignment.¹³⁴ In addition, law schools should encourage all faculty to incorporate writing-to-learn and self-assessment exercises in their classrooms, create writing concentrations to focus students on particular areas of interest, require students to compile portfolios to show prospective employers, and maintain writing centers created specifically for law student use.¹³⁵ Without meaningful change, the hobbling will continue, and our students will pay the ultimate price.

¹²⁸ See *supra* Part II.

¹²⁹ Lynch, *supra* note 2, at 238.

¹³⁰ See *supra* Part IV.

¹³¹ See *supra* Part V.

¹³² See *supra* Part VI.A.

¹³³ See *supra* Part V, Table 1.

¹³⁴ See *supra* Part VI.A.

¹³⁵ See *supra* Part VI.