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Creating A Six-Semester Writing Requirement: Using Legal Writing's "Hobble" to Solve Legal Education's Problem"

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Creating A Six Semester Writing Requirement: Using Legal Writing’s “Hobble” to Solve Legal Education’s Problem

Kristen K. 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.”

In 2011, John Lynch suggested that the “new legal writing pedagogy” is the hobble of legal writing faculty. He implied that we 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.” Lynch proceeded to recommend a pedagogical about-face and “ponder[ed] whether the Church of Legal Writing . . . should happily embrace doctrinal variations among its adherents.”

“Legal writing” may be hobbled as Lynch observes, but legal education is limping a bit too at the moment. Legal writing’s problem is not, as Lynch suggests, process pedagogy. It is law schools’ continued lack of commitment to teaching writing. At most law schools, the responsibility for teaching writing falls primarily on first-year legal writing faculty.

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2 See John A. Lynch, Jr., The New Legal Writing Pedagogy: Is Our Pride and Joy a Hobble? 61 J. LEGAL EDUC. 231, 231 (November 2011). Lynch uses this term to refer to the process approach to teaching writing that developed in the 1970s-80s. See infra, Section I.
3 Lynch, supra n. 2, at 231.
4 Id. at 235-36, 240.
5 See, e.g., Melissa A. Moodie & Brette S. Hart, The Missing Link: The Need for Good Writing Programs in Law Schools, 74 J. KAN. BAR ASS’N 9 (Jan. 2005) (“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.”).
Although most law students must satisfy an upper class writing requirement, it is likely to be scholarly writing. Regardless of the rigor of the first-year course, it is just an introduction to legal writing. Its benefits are at substantial risk because they are not reinforced in the second and third years unless — to the extent these options are available — students voluntarily take an advanced practical writing or other skills-based course. As a result, legal writing faculty — with little job security — 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 and those of their employers.

Legal writing’s hobble has now become legal education’s problem. Over the past several years, a confluence of economic downturns, rising tuition rates, and a decreasing applicant pool has thrown a spotlight on the need for law schools to prepare students to practice law. Law schools can no longer afford to focus on teaching students “to think”; now they must also teach them to write. A meaningful commitment to teaching writing would require students to produce a substantial piece of writing each semester of law school. Because matriculating students have less writing skill and experience than they did even a decade ago, the need for a six-semester writing requirement is that much greater.


7 See Carol McCrehan Parker, Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It, 76 Neb. L. Rev. 561, 563 (“Neither a single ‘rigorous writing experience’ nor a first-year legal writing class is sufficient to provide basic competence in written communication.”).
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. These are certainly 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. As demonstrated below, increased writing instruction can take a variety of forms without unduly burdening the law school or its faculty. It does not matter so much what our students write; they just need to write.

I. Process Pedagogy Is Essential for Teaching Good Legal Writing

Lynch's major criticism of process pedagogy is that legal writing faculty have martyred themselves with a labor intensive approach. He is troubled by Interpretation 302-1 of ABA Standard 302, which “imposes a rigid orthodoxy in the approach to the course” by requiring students to write multiple drafts and conference with their professor. In Lynch’s view, Interpretation 302-1 “implicitly requires more than one meeting with a legal writing professor,” which is impractical at best (especially for evening

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8 Washington and Lee, for example, has 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.” Washington and Lee University School of Law, About the J.D. Program at W&L, available at http://law.wlu.edu/admissions/page.asp?pageid=311.

9 Pamela Lysaght & Cristina Lockwood, Writing Across the Curriculum, 2 J. ALWD 73, 73-74 (noting that the burden of teaching writing “must be shared within the wider law school community”).

10 See, e.g., Lynch, supra n. 2 at 236.

11 Id.

12 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 produce of any writing project; and the form of assessment used by the writing instructor.” See ABA Standard 302, Interpretation 302-1, supra n. 6, at 20.
students).\textsuperscript{13} At worst, it coddles students “with endless oneonone [sic] conferences”\textsuperscript{14} and may even discourage them from working hard on preliminary drafts.\textsuperscript{15}

As for teaching legal writing being too labor-intensive at most law schools, Lynch is right; it is. Most legal writing faculty have too many students or 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 2012, the class size for a required first-year legal research and writing course ranged from ten to 210 students (about thirty-eight on average).\textsuperscript{16} 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).\textsuperscript{17} In addition, about 144 of the 170 schools that responded to the survey indicated that legal writing faculty are required to serve on faculty committees,\textsuperscript{18} and about 148 schools indicated that legal writing faculty teach other courses besides the required first-year course.\textsuperscript{19} Although only seventeen or so schools employ solely tenure track

\textsuperscript{13} Lynch, supra n. 2, at 240. I am unaware that this language has been interpreted by others to require multiple student conferences for all students. Even the ABA has recognized that “[c]onferences are extremely time-consuming . . . and that resource allocation must be considered in constructing the course syllabus.” Am. Bar Ass’n, \textit{Sourcebook on Legal Writing Programs} 60 (2d ed. 2006).
\textsuperscript{14} Lynch, supra n. 2, at 236, n.25.
\textsuperscript{15} Id. at 241.
\textsuperscript{17} 2013 Survey, supra n. 16, at 82.
\textsuperscript{18} Id. at 83.
\textsuperscript{19} Id. at 84.
faculty to teach legal writing, about 146 schools encourage, expect, or require legal writing faculty to produce scholarship.

As Professor Lynch has understandably done and traditional faculty have suggested to me, legal writing faculty could simply 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. They could also eschew what feels like sole responsibility for preparing students for their initial entry into the workplace and preserving the 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. Students who are given an assignment, sent off to complete it, and excel constitute a fraction of any typical class (in my experience, about ten percent). The top-performing ten percent tend to be strong writers and independent learners who would get A’s 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 are distinguished by the way they conceive of their task and the process they use to accomplish it. By teaching students how to think about their writing process, we hasten and improve learning. Although the skepticism of

20 Id. at 81.
21 Id.
postmodern theory has permeated all aspects of the legal academy, the process approach is still considered the best way to teach writing at all educational levels. The inherent promise of the process approach has been that students can imitate and then assimilate good legal writing practices. Why else teach writing?

Second, the product approach effectively condones the traditional assumption that writing can’t be taught: “Legal writing is a talent; either you have it or you don’t.” This assumption disenfranchises weaker writers and leaves them on their own to “struggle as best they can.” It perpetuates the notion that legal writing faculty teach 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 in teaching evaluations, which can have a disproportionate impact on faculty with little or no job security.

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23 For example, post-modern critics have called into question the ability to describe a universal process of writing – such as pre-writing, writing, and revising. See, e.g., BEYOND POSTPROCESS xvi (Sidney I. Dobrin, J.A. Rice, & Michael Vastola, 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.”)

24 See, e.g., Council of Writing Program Administrators, Framework for Success in Postsecondary Writing (2011) (stating that to prepare students for college, they should “practice all aspects of writing processes, including invention, research, drafting, sharing with others, revising in response to reviews, and editing.”); Council of Writing Program Administrators, Outcomes Statement for First-Year Composition (2008) (recommending that college freshman be able to “develop flexible strategies for generating, revising, editing, and proof-reading” and understand that writers “use later invention and rethinking to revise their work.”), available at http://wpacouncil.org/files/wpa-outcomes-statement.pdf; The Nat’l Comm’n on Writing, Writing and School Reform (2006)(noting that 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”), available at http://www.collegeboard.com/prod_downloads/writingcom/writing-school-reform-nati-comm-writing.pdf.


26 Id.
Lynch also argues that in addition to imposing a “crushing workload,”\textsuperscript{27} process pedagogy is inappropriate where faculty intervene in the students’ writing process but grade the final product.\textsuperscript{28} 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 contributions . . . and how much reflects the student’s ‘aha’ moment.”\textsuperscript{29} For these and other reasons, he has returned to a product approach, where his evaluation of a student’s writing comes primarily in the form of a grade after assignments are submitted.\textsuperscript{30}

To the extent the process approach skews final grades, especially when curves are mandatory, the problem can indeed be “overcome through creative design of assignments.”\textsuperscript{31} 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.\textsuperscript{32} As for coddling students, good teaching is not coddling. To the extent the current generation of law students has been or is being coddled by law schools or society generally, it is not solely attributable to process pedagogy.\textsuperscript{33}

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\textsuperscript{27} Lynch, supra n. 2, at 237.
\textsuperscript{28} See id. at 240-41.
\textsuperscript{29} Id. at 240.
\textsuperscript{30} Id. at 242.
\textsuperscript{31} Id. at 241.
\textsuperscript{32} Sixty-six percent of the schools responding to the 2013 Survey also indicated using anonymous grading for at least some of their written assignments. 2013 Survey, supra n. 16, at 10.
\textsuperscript{33} See infra, Section III.
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II. Legal Education’s Problem Is an Institutional Lack of Commitment to Teaching Writing

The hobble for us all is law schools’ lack of commitment to teaching writing. At most law schools, and certainly at the top-ranked law schools, writing continues to be relegated to a first-year introductory course, some of which are still taught by upper class law students. Only a small percentage of legal writing faculty are eligible for tenure, and they tend to be paid far less than doctrinal colleagues with similar years of service. Even more surprising, some law schools discourage 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.”

For these reasons, the idea that legal writing is equivalent to “college composition” or remedial in nature persists. Its lesser importance to law schools is evident in its having been graded pass/fail; being taught by students, instructors, or faculty ineligible for tenure; and being under-credited. Although the ABA requires that law schools provide rigorous writing instruction in the first year, very few schools require that students take additional practice-related writing courses such as advanced legal writing, drafting, or advanced advocacy courses. Based on a sampling of graduation requirements available online,

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34 2013 Survey, supra n. 16, at 10.
36 See ABA Standard 302, supra n. 6.
37 2013 survey, supra n. 16, at 24-25.
upper class students at prestigious law schools are required to write roughly thirty or so pages to graduate, but that can be exclusively scholarly writing. Students who write more write better, and law students are just not writing enough to develop their analytical skills and transfer them to practice. In 2011, The New York Times’ David Segal “exposed” law schools for graduating students who did not know what documents were needed to effect a corporate merger. 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 graduate could learn to write every legal document imaginable. Unlike prior advocates for reform in and outside the academy, though, Segal embarrassed law schools by revealing how little attention has been paid to skills training overall. What Segal failed to understand is that providing students with sufficient writing opportunities to develop skills allows them to adapt those skills to a variety of new situations, such as corporate mergers.

38 Barbara J. Busharis & Suzanne E. Rowe, The Gordian Knot: Uniting Skills and Substance In Employment Discrimination and Federal Taxation Courses, 33 J. MARSHALL L. REV. 303, 313 (noting 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 30-60 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, available at http://www.law.harvard.edu/academics/writing/j.d.-wwr.html. 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 Appendix B Writing Requirement, available at http://www.law.berkeley.edu/184.htm. Similarly, Georgetown Law has a 6,000 word requirement for upper seminar class papers, which amounts to 25-30 pages. See Upperclass Legal Writing Requirement, available at http://www.law.georgetown.edu/academics/academic-programs/jd-program/full-time-program/upper-class.cfm.

39 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.”); Dept. of Ed., The Nation’s Report Card, Writing 2011, National Assessment of Educational Progress at Grades 8 and 12, p. 33 (“Students who write four to five pages a week for English/language arts homework score higher than those who write fewer pages.”) available at http://nces.ed.gov/nationsreportcard/pdf/main2011/2012470.pdf.

III. Diminished Writing and Professional Skills of Matriculating Law Students Further Exacerbate the Problem

Teaching law graduates to be competent professional writers has gotten harder because matriculating law students have less writing experience and perhaps weaker research, reading comprehension, critical thinking, and writing skills than in the past.\(^{41}\) With the exception of students taking courses in communications and the humanities, only about fifty percent of college graduates write more than twenty pages in their freshman and sophomore years.\(^{42}\) According to Arum and Roksa, who surveyed a diverse group of 2,322 students at twenty-four four-year colleges across the country,

>[g]rowing 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 nonexistent. At least 45 percent of students in our sample did not demonstrate any statistically significant improvement . . . during the first two years of college.\(^{43}\)

Although some have called the validity of Arum and Roksa’s study into question,\(^{44}\) no one seems to disagree with the ultimate conclusion that colleges are not producing strong

\(^{41}\) A recent survey of first-year law students indicates that thirty percent have no formal research training before coming to law school. See Ellie Margolis & Kristen E. Murray, Say Goodbye to the Books: Information Literacy as the New Legal Research Paradigm, 38 U. DAYTON L. REV. __, __ [at fn 147] (2013). 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 [fn 104] (citations omitted); 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. LEG. WRITING 295, 309 (2005) (suggesting “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 (2013) (concluding that “today’s law 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”), available at http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1115&context=law_fac_pubs.

\(^{42}\) See Arum & Roksa, supra n. 39, at 80 and Table A3.5.

\(^{43}\) Id. at 121.

\(^{44}\) See, e.g., Murray Sperber, We Must Overhaul College Writing, COMMENTARIES, The John William Pope Center for Higher Education Policy, June 21, 2011 (noting that even if college students write over 100 pages per semester,
A 2006 survey indicates that corporate employers cite oral and written communications as among the most important skills for workforce readiness, but roughly thirty percent rated college graduates as “deficient” in written communications.46

Nor do high school graduates begin college adequately prepared to write at a post-secondary level. A 2011 study indicates that roughly half of the students graduating from public high school in the United States write at a Basic as opposed to a Proficient or Advanced level.47 In 2011, fifty-two percent of twelfth graders performed at a Basic level in writing on the National Assessment of Educational Progress. Twenty-four percent performed at a Proficient level, and just three percent at an Advanced level.48 Although the average writing score for twelfth graders has remained relatively stable since 1998, the fact they often have “difficulty mounting a logical argument . . . and serious problems writing clear sentences” and recommending that colleges invest in more and better writing instruction), available at http://www.popecenter.org/commentaries/article.html?id=2539.

45 See, e.g., Samuel R. Lucas, Book Review Essay: Academically Adrift: Limited Learning on College Campuses, 90(4) SOCIAL FORCES 1430 (2012) (“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.”).

46 The 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, 11, 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.

47 See The Nation’s Report Card, supra n. at 39, at 28. The 2011 Assessment tested 28,100 students from 1,220 schools. Id. at 6. Basic is defined as “partial mastery of prerequisite knowledge and skills that are fundamental for proficient work at each grade.” Id. at 7.

48 See id. at 28. Proficient performance “represents solid academic performance” and “competency over challenging subject matter.” Advanced “represents superior performance,” id. at 7, and the ability to write prose that is “precise, engaging, and coherent.” Dept. of Ed., The Nation’s Report Card, Writing 2003, National Assessment of Educational Progress at Grades 8 and 12, p. 16. Generally, writing scores are higher for Whites, Asians, and students of two or more races. Females perform better than males, and suburban students perform better than students in cities and rural locations. The Nation’s Report Card, supra n. 39, at 36. For more information on the demographics of the students tested in 2011, see id. at 29-35.
that “only one-quarter of U.S. [high school] students are proficient in writing” is deeply troubling.\textsuperscript{49}

Weak writing skills among public school students have been attributed, in part, to the after-effects of the No Child Left Behind Act,\textsuperscript{50} which conditions federal funding to public schools on the administration of annual state-wide standardized tests to measure student learning. The Act has been widely criticized for forcing teachers “to teach to the test” and sacrifice critical course content.\textsuperscript{51} 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 freshman: “They may be very


\textsuperscript{50} See \textit{20 U.S.C. §§ 6301-6578 (2006)}. The Act was introduced by the Bush Administration and passed with bipartisan support in 2001. 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 children, especially the achievement gaps between minority and non-minority students, and between disadvantaged children and their more advantaged peers.” \textit{Id.} at § 6301.

\textsuperscript{51} See, e.g., Susan J. Hobart, \textit{One Teacher’s Cry: Why I Hate No Child Left Behind} (August 2008) (“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.”), available at \url{http://progressive.org/mag/hobarto808.html}. 

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

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


\textsuperscript{52} See \textit{20 U.S.C. §§ 6301-6578 (2006)}. The Act was introduced by the Bush Administration and passed with bipartisan support in 2001. 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 children, especially the achievement gaps between minority and non-minority students, and between disadvantaged children and their more advantaged peers.” \textit{Id.} at § 6301.
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.”52 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.”53

Even the digital revolution has had an impact on student performance in ways we have just begun to understand.54 As modes of communication have evolved from instant messaging to emailing, to texting, and to tweeting, writing standards for informal correspondence have changed. Students 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.55 The immediacy of texting, tweeting, and email, as well as the ease of electronic legal research contribute to students’ frustration levels when it comes to the


53 Bernstein, supra n. 52. Bernstein explains that in a typical AP U.S. Government exam, “free response” questions are graded based primarily on content. “There is no consideration of grammar or rhetoric, nor is credit given or a score reduced based on the format of the answer.” Id.

54 Students who have grown up with the Internet will “face information overload throughout their lives.” See, e.g., 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, id. at 161, and the “majority of the population born digital doesn’t perceive of information quality as an important issue.” Id. at 194.

painstaking process associated with good legal analysis and writing. Students accustomed to quick composition may be more willing to sacrifice accuracy for expediency. Although not the focus of this article, the challenges associated with teaching legal research and writing skills will likely change, if not get more difficult, as the digital divide between faculty and students continues to grow.

In conjunction with a decline in student’s research and writing skills, law faculties have observed a related decline in first-year law students’ professionalism and for good reason. Faculty at 415 colleges and universities nationwide report significant increases in upper-class students’ sense of entitlement and inappropriate use of technology. Similarly, recent studies indicate a perceived decline in professionalism among college students and college graduates in the workplace. Four hundred and one employers nationwide report significant increases in a sense of entitlement and technology abuses among new hires similar to those observed in students. The vast majority of employers also reports a decreased work ethic evidenced by “too casual an attitude towards work” and an increase in “allowing technology to interrupt one’s focus.”

A sense of entitlement and a lack of professionalism in law students are consistent with traits associated with students born between 1982 and 2001. “Millennials” are often

56 See Gustafson, supra n. 55, at [text page 20].
57 Id. at [text page 22].
58 Ctr. for Prof. Excellence, 2012 Professionalism on Campus, 16-17, 35-38 (2012), available at http://www.ycp.edu/media/yorkwebsite/cpe/York-College-Professionalism-on-Campus-Study.pdf. Inappropriate use of technology includes 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; see also Gustafson, supra n. 55, at [text page 6] (indicating that students are using texts more often to communicate with professors).
60 Id. at 41.
61 Id. at 37.
described as students who think like consumers and want “the best educational credentials with the least amount of effort.” Having been raised in an educational system where “every child received an award just for showing up,” millennials are said to be sheltered, overconfident, risk averse, high achieving, narcissistic, and anxious. Not surprisingly, law students often seem unapologetic for their lack of preparation, uncomfortable with constructive criticism, and willing to excuse themselves for failing to perform well or on time. The effect of the millennial mindset on legal education is far-reaching. Law schools can no longer assume that students have basic writing skills, and due, in part, to millennials being digital natives, they should expect them to need “basic training in interpersonal, listening, and other social skills so they will be able to function in the legal community.”

IV. Students Must Write Every Semester of Law School

With rising tuition rates and a decreased applicant pool, some law schools are now considering whether to admit fewer students or to reduce the number of years to

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62 Stuart & Vance, supra n. 41, 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. L. REV. 735, 743 (2012) (describing law students as wanting “to do little work in exchange for the quick gratification of a high reward”).

63 Stuart & Vance, supra n. 41, at 25.

64 See, e.g., id. at 25-30.

65 Stuart & Vance, supra n. 41, at 28.

66 Law school tuition for public schools has increased 5 times the inflation rate, and tuition for private schools has increased 2.5 times the rate of inflation. See Law School Transparency, Tuition Tracker, available at http://www.lawschooltransparency.com/reform/projects/Tuition-Tracker/; see also Am. Bar Ass’n, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/ls_tuition.authcheckdam.pdf; Brian Z. Tamanaha, The Failure of Critics and Leftist Law Professors to Defend Progressive Causes, 24 STAN. LAW & POL’Y REV. ___ (2013) (“Tuition and debt went up relentlessly at the same time that law grads have struggled through the worst market for legal employment in decades.”).

obtain a J.D. degree from three to two. Some are struggling just to survive. At the same time, many have responded to calls for reform by developing experiential learning programs, externships, and practicum courses. However, several years into this multiply determined “crisis,” these quick fixes can feel more like packaging than pedagogy.

Meaningful, long-lasting reform should be implemented thoughtfully, incrementally, and with a clear-minded purpose. The answer is staring us in the face, and we must not look away. A student whose writing is weak, unstructured, and ineffective cannot practice law (or succeed in a related profession), and students coming to law school have less writing experience and skill than in years past. For that reason alone, we 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 is to signal that writing is unimportant, to perpetuate an artificial distinction between thinking and writing, to ignore the impact of technology on law practice, and to continue to hobble a small percentage of faculty with the responsibility that all law faculty should share.


69 See, e.g., Brian Z. Tamanaha, Failing Law Schools 27 (2012) (suggesting that not all students need “to undergo a third year [of law school] for intellectual ‘enrichment’ at the cost of their financial impoverishment”).


To prepare the underprepared millennial student for competent practice of any sort, writing must be at the core of the law school curriculum. 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. 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. These two types of writing are so different that without sufficient instruction and repetition, students do not graduate with sufficient mastery of either type.

A Six-Semester Writing Curriculum

- Extend the introductory legal research and writing course from two to three semesters (3)
- Require one practice-related writing course such as advanced legal writing, business transactions, or legislation (1)
- Require one upper-level seminar with a scholarly writing component (1)
- Require students to take at least one practicum, clinic or externship (1)

The first step is to extend the required legal research and writing course from two to three semesters. The typical first-year course introduces students to the structure of the federal and state court systems; the sources of law; the research process; the writing process; statutory interpretation; case synthesis; deductive and inductive reasoning;

74 See, e.g., Lysaght & Lockwood, supra n. 9 (recommending writing across the curriculum in doctrinal and legal writing courses); Moodie & Hart, supra n. 5, at 12 (“Legal writing should continue throughout the law school curriculum, not just the first year.”); Parker supra n. 7, at 562(urgent law schools to provide “opportunities to use writing to promote professional competence throughout all three years of law school”).
objective and persuasive analysis; legal writing conventions such as memoranda, opinion letters, motions, and briefs; the language of the legal discourse community; some basics in grammar and punctuation; and citation format. 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 this material well in two semesters.

If the course were expanded to three semesters, the first year could be devoted to developing reading and analytical skills, research techniques, and objective legal writing. Faculty could spend more time in the fall 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, faculty and students would 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, email, etc. In the fall 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 complex constitutional law questions, draft trial and appellate briefs, and engage in oral argument exercises.

Over the next three semesters, students would then be required to take 1) one approved course with a practice-related writing component, such as advanced legal writing, business transactions, or legislation, 2) one advanced seminar with a scholarly writing requirement (the current upper-level writing requirement at most law schools), and 3) at the least, a one-semester practicum course, clinic, or externship. At many law schools,
these courses are already available to motivated students (that top ten percent, perhaps), 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, some of these courses could actually be doctrinal courses. 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. 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.” To avoid undue burden, Lysaght and Lockwood recommend that faculty teaching a doctrinal course with a practice-related writing assignment focus on product, not process, and simply grade assignments. 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.” Teaching process and product at the same time would thus improve students’ professionalism.

V. 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

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75 Lysaght & Lockwood, supra n. 9, at 102.
76 Id. at 100.
77 Id. at 102.
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 legal research and writing could write a memo 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 the assignments themselves could simply be graded or given credit for completion.78

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 their courses to gain a better understanding of legal concepts and how they are used to solve concrete problems.79 In 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. Writing to learn can also be used effectively 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

78 Id. at 102-03.
79 See, e.g., Philip C. Kissam, Thinking (By Writing) About Legal Writing, 40 VAND. L.REV.135, 158 (urging law faculty to incorporate “critical writing,” Kissam’s term for writing to learn, throughout the law school curriculum); Parker, supra n. 9, at 568 (explaining that students can use writing-to-learn tools “to explore, organize, and clarify their thoughts as they research and analyze legal problems, first in law school and then in practice”).
write in class about their reactions to issues raised by the reading. 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.  

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. 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. Writing concentrations typically do not strain existing faculty or resources, and they would likely be of great interest to employers.

D. Require students to compile writing portfolios for job searches and graduation.

As third-year law students Moodie and Harte recommend, law students should be required to compile their completed writing assignments in a portfolio to present to employers. They might also be required to reflect on the skills acquired and growth demonstrated in their writing and to articulate how they anticipate transferring these skills to the workplace.

E. Encourage students to reflect on their writing process as they complete major writing assignments.

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80 See, e.g., Parker, supra n. 9, at 574.
81 Moodie & Harte, supra n. 5, at 9.
82 See infra, Section V.E.
In any course — doctrinal or writing — with a writing assignment, students can use reflective exercises throughout the writing process to evaluate their own learning. These exercises are often collectively referred to as writing journals or portfolios, but they differ from those suggested above in Section V.D 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. Niedwiecki recommends that in a given course, students be required first to write their expectations for the course and the skills they bring to it. Once an assignment is written, students 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 they received. Reflective writing can give professors rare insight into the students’ thought processes, what they think they have mastered, and what they think they still need to learn.

**F. Maintain a writing center designed for and available to all law students.**

If law schools are to 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, their writing portfolios, and basic writing strategies and techniques. By improving students’

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84 Id. at 184-91.
85 Id. at 185.
86 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 n. 16, at 22. For a description of an online law student writing center akin to those used at the undergraduate level, see
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.\(^{87}\) In addition to increasing individualized instruction without overburdening professors,\(^{88}\) writing centers “serve as a non-judging audience to anxious law students as they work on their legal writing projects.”\(^{89}\) Writing center tutors are typically upper-class students, whose own writing and metacognitive skills improve in the process of tutoring their students.\(^{90}\) These students can be compensated relatively inexpensively either through a modest stipend or course credit.\(^{91}\)

VI. 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 we continue to burden a small percentage of underpaid, undervalued faculty with the responsibility for teaching it, law schools cannot hope to achieve their potential as engines of “opportunity and economic growth.”\(^{92}\) To do so is to signal the unimportance of writing and its relationship to thinking analytically.

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\(^{87}\) 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).

\(^{88}\) Kristen E. Murray, Peer Tutoring and the Law School Writing Center: Theory and Practice, 17 J. LEG. WRITING 161, 174 (2011). They can also reduce workload for writing specialists whose services are provided outside the writing center. \(\text{Id. at } n. 85.\)

\(^{89}\) Id. at 175.

\(^{90}\) See Jones, supra n. 87, at 17 (“both tutor and tutee benefit from the non-hierarchical, complementary relationship that enables both partners to refine and expand their writing and communication skills”).

\(^{91}\) Murray, supra n. 88, at 194.

\(^{92}\) The Neglected “R”: The Need for a Writing Revolution, supra n. 1, at 3.
Nor, as Lynch suggests, can we revert to the fiction that the product approach works well with most students. The process approach is still 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 we know about teaching writing and shirk our responsibility because it’s difficult, time-consuming, and labor-intensive. Lynch urges legal writing faculty to “look out for number one,” but aren’t we supposed to put our students’ education first?

The current writing requirements at most law schools are inadequate to prepare students for practice. Because millennials come to law school with less writing skill and experience than before, writing needs to become a core part of the law school curriculum. Students should write each semester of law school, and both doctrinal and writing faculty should participate in their writing instruction. As a part of a six-semester writing requirement, students should take legal research and writing the first three semesters of law school; one practice-related writing course such as advanced legal writing, business transactions, or legislation; one upper-level seminar with a scholarly writing component; and at least a one-semester practicum, clinic or externship.

To underscore the relationship between learning to think like a lawyer and write like one, at least one first-year doctrinal course should also include a related writing assignment. In addition to these curricular changes, law schools can encourage all faculty to incorporate writing to learn and self-assessment exercises in their classroom, create writing concentrations to focus students on particular areas of interest, require students to compile

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93 Lynch, supra n. 2, at 238.
portfolios to show prospective employers, and maintain writing centers created specifically for law student use.