



2015

# Analysis, Research, and Communication in Skills-Focused Courses

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## Recommended Citation

Analysis, Research, and Communication in Skills-Focused Courses, in *Building on Best Practices: Transforming Legal Education in a Changing World* (Maranville, Bliss, Kaas, & Sedillo Lopez, eds.) (Lexis 2015)

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**University of Baltimore  
Legal Studies Research Paper No. 2015-28**

**Analysis, Research, and Communication in Skills-  
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## CHAPTER 5: IMPLEMENTING EFFECTIVE EDUCATION IN SPECIFIC CONTEXTS

### SECTION B: Analysis, Research, and Communication in Skills-focused Courses

By Ruth Anne Robbins, Amy Sloan & Kristen K. Tiscione<sup>1</sup>

#### 1. Introduction

Since the CARNEGIE REPORT and BEST PRACTICES FOR LEGAL EDUCATION were published, a new focus has emerged on building students' traditional foundational skills through increased opportunities for experiential education, including legal research and writing instruction.<sup>2</sup> In recommending that apprenticeships in intellectual development, practical skills, and professional identity and purpose be integrated in legal education,<sup>3</sup> the CARNEGIE REPORT recognized that legal writing courses are particularly well-suited to teaching the first two apprenticeships.<sup>4</sup>

In recent years, scholars have explored how skills-focused courses such as first-year legal analysis, research, and writing develop the third apprenticeship as well, that of professional identity and purpose.<sup>5</sup> Although the CARNEGIE REPORT explored legal writing pedagogy in some detail,<sup>6</sup> BEST PRACTICES devoted little attention to how foundational analytical, research, and writing skills are or should be taught with specificity,<sup>7</sup> which provided the impetus for more extended treatment here. This section identifies some "better practices" being used and urges adoption of best practices.

In skills-focused courses, legal analysis, research, and writing should be taught as a fluid and recursive process in a client-centered context, giving students the opportunity to write, reflect, and revise. To build and retain fundamental skills, law students should have at least one

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<sup>1</sup> Readers for this section were Linda L. Berger, Charles R. Calleros, Kenneth D. Chestek, Linda H. Edwards, Ellie Margolis, Carol McCrehan Parker, Louis R. Sirico, and Michael R. Smith.

<sup>2</sup> The *Glossary for Experiential Legal Education* developed by the Alliance for Experiential Learning in Law includes experiential education clinics, externships, co-ops, internships, labs, practicum courses, modules in doctrinal courses, and simulation or skills-focused courses (including legal research and writing courses). <http://ssrn.com/abstract=2532208>, archived at <http://perma.cc/ZW8F-TVNW>. The Alliance was founded in 2011 at Northeastern University School of Law to develop a shared vision and vocabulary of experiential education in law. The Alliance includes almost 100 law schools and has organized two national conferences. See [www.northeastern.edu/law/experience/leadership/alliance.html](http://www.northeastern.edu/law/experience/leadership/alliance.html).

<sup>3</sup> WILLIAM M. SULLIVAN, ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PRACTICE OF LAW 13 (2007) [hereinafter THE CARNEGIE REPORT] ("We propose an integration of student learning of theoretical and practical legal knowledge and professional identity").

<sup>4</sup> *Id.* at 110.

<sup>5</sup> See, e.g., Shelley Kierstead & Erika Abner, *Text Work as Identity Work for Legal Writers: How Writing Texts Contribute to the Construction of a Professional Identity*, 9 LEGAL COMM. & RHETORIC: JALWD 327 (2012); Carole Silver, Amy Garver, & Lindsay Watkins, *Unpacking the Apprenticeship of Professional Identity and Purpose: Insights from the Law School Survey of Student Engagement*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 373 (2011).

<sup>6</sup> THE CARNEGIE REPORT, at 104-11.

<sup>7</sup> ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007) [hereinafter BEST PRACTICES], text at notes 145-220 (2007).

significant writing experience each semester of law school.<sup>8</sup> It could take the form of practice-related or “instrumental” writing, “writing to learn” exercises,<sup>9</sup> or other forms. Although the ABA requires two rigorous writing courses in the J.D. curriculum,<sup>10</sup> many schools require that only one be practice-related.<sup>11</sup> Some schools have addressed the inadequacy of the ABA requirements by expanding their legal writing programs from two to three or four semesters.<sup>12</sup>

The best practice is also to offer advanced, upper-level courses in analysis, research, and writing. For maximum effectiveness, all foundational writing, research, and analysis courses taught in the first year should be taught in small classes by full-time law teachers with practice experience and equal status.<sup>13</sup> A true integration of theory and practice in legal education, as envisioned by the CARNEGIE REPORT, cannot occur until research and writing are taught across the curriculum and all law teachers are treated equally.

## 2. Innovations in Teaching Analysis and Synthesis Effectively

Legal analysis is a process. To describe it only as “thinking like a lawyer” can lead students to believe that legal analysis is nothing more than rules of law and syllogistic reasoning. In practice, legal analysis includes a duty to focus on the client as well as the law, its structure, and interpretive tools. In an experiential course, legal analysis begins with an understanding of the client’s problem or question and desired outcome, whether that outcome is achievable or otherwise. To understand the resulting legal issues, a lawyer then identifies, locates, and engages

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<sup>8</sup> See, e.g., Sherri Lee Keene, *One Small Step for Legal Writing, One Giant Leap for Legal Education: Making the Case for More Writing Opportunities in the “Practice-Ready” Law School Curriculum*, 65 MERCER L. REV. 1 (2013) [hereinafter Keene, *One Small Step*]; Carol McCrehan Parker, *Writing throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 NEB. L. REV. 561, 563 (1997) [hereinafter Parker, *Writing Throughout*]; Kristen K. Tiscione, *A Writing Revolution: Using Legal Writing’s “Hobble” to Solve Legal Education’s Problem*, 42 CAP. U. L. REV. 143 (2014) [hereinafter *Writing Revolution*].

<sup>9</sup> Such exercises call on students to use writing “to explore the nuances of law and fact and reflect on the social policies underlying legal issues.” Parker, *Writing Throughout*, at 562.

<sup>10</sup> ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCH. 2014-2015 Standard 303(a) (2) (2014), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2014\\_2015\\_aba\\_standards\\_chapter3.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_chapter3.authcheckdam.pdf) archived at <http://perma.cc/V25F-AJBN>.

<sup>11</sup> The top law schools according to U.S. NEWS AND WORLD REPORT, for example, have an upper class writing requirement of roughly thirty pages that can be exclusively scholarly writing. See Tiscione, *Writing Revolution*, at 150; see also ALWD/Legal Writing Inst., REPORT OF THE ANNUAL LEGAL WRITING SURVEY 27 (2014) [hereinafter 2014 SURVEY], available at <http://www.lwionline.org/surveys.html>, archived at <http://perma.cc/3DXQ-SCRT>. Harriet N. Katz, *Fulfilling “Skills” and “Writing” Requirements in Externship*, 21 CLINICAL L. REV. (forthcoming 2015) (advocating that law schools embrace externship writing as one of the ways students can have a practice-focused rigorous writing experience).

<sup>12</sup> Seattle University School of Law, for example, requires three semesters of legal research and writing, and The John Marshall Law School requires four, one of which must be a drafting course. See John Marshall Law Sch., *Lawyering Skills Program*, <http://www.jmls.edu/academics/lawyering-skills/>, archived at <http://perma.cc/S6MX-FUXQ>; see also *A Third Semester of Legal Writing*, SECOND DRAFT (Legal Writing Inst.), May 2002, available at <http://www.lwionline.org/publications/seconddraft/may02.pdf>, archived at <http://perma.cc/YME6-3VZ4>.

<sup>13</sup> SOURCEBOOK ON LEGAL WRITING PROGRAMS 87-98 (Eric B. Easton ed., 2006) [hereinafter SOURCEBOOK ON LEGAL WRITING PROGRAMS].

in a close reading<sup>14</sup> of the legal and non-legal sources that will help construct the best answer for the client (or the most persuasive argument about the best answer).

Legal analysis merges the relevant legal rules with the determinative facts – or arguably determinative facts – of the client’s situation. It is normally organized based on the applicable rules of law and their own internal organization. The easiest rules to structure are those based on elements that may be conjunctive (this **and** that) or disjunctive (this **or** that), or both. Rules might also be aggregative, (a flexible standard, such as reasonableness, that requires the balancing of different relevant factors), or they might use a combination of these structures. Most rules use a combination, as it is the rare element test that does not also require some factor balancing to help define or parse the nuances of key terms.

### **A. Use Writing to Teach Analytical Skills in Doctrinally-focused and Skills-Focused Courses.**

Writing and learning activities work well in both doctrinally-focused and skills-focused courses; they improve class discussion, give the teacher a sense of the students’ understanding of the material, and help students prepare to write final exams.<sup>15</sup> At this point, it is clear that a best practice is to use writing and learning activities to teach analytical skills.<sup>16</sup>

In legal writing courses, writing assignments should expose students to a variety of documents – litigation and transactional – typically used in law practice. And, because law students often practice statutory or regulatory interpretation for the first time in a legal writing classroom, those practice documents should introduce the basic structure of statutes, the standard tools for interpreting them, and the inherent ambiguity of language.<sup>17</sup> Sources of law; state and federal judicial structures; and the concepts of precedent, *stare decisis*, and mandatory and persuasive authority should also be taught so students can synthesize cases from a given jurisdiction, articulate specific and reasonable rules of law, and effectively apply those rules to the facts of a client’s problem or question.

### **B. Combine Theory and Practice in Teaching All Forms of Legal Reasoning**

Legal analysis draws on multiple forms of reasoning. In doctrinally-focused courses, the analytical process tends to be deconstructive. To construct good legal reasoning, students should learn the theory and structure of legal reasoning in both doctrinally-focused and skills-focused

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<sup>14</sup> For teaching critical reading skills, see Leah M. Christensen, *Show Me, Don’t Tell Me! Teaching Case Analysis by “Thinking Aloud,”* 15 PERSP. 142 (2007), available at <http://info.legalsolutions.thomsonreuters.com/pdf/perspec/2007-winter/2007-winter-7.pdf>, archived at <http://perma.cc/UK83-6D4E>; RUTH ANN MCKINNEY, *READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT* (2005).

<sup>15</sup> See, e.g., Parker, *Writing Throughout*, at 577.

<sup>16</sup> Interactive learning activities that incorporate writing include “think-pair-share” exercises, concept mapping, collaborative learning groups, case studies, asking students to summarize a lecture and then read a few summaries aloud, and asking students to bring a chart with the elements and key facts of a group of related cases to synthesize a rule in class. See, e.g., Jessica Erickson, *Experiential Education in the Lecture Hall*, 6 NE. UNIV. L. J. 87 (2013).

<sup>17</sup> See, e.g., WILLIAM N. ESKRIDGE JR., PHILIP P. FRICKEY & ELIZABETH GARRETT, *LEGISLATION AND STATUTORY INTERPRETATION* (West 2000); Karl Llewellyn, *Remarks on the Theory of Appellate Decisions and the Rules or Canons about How Statutes Are to Be Construed*, 3 VAND. L. REV. 395 (1950).

courses. Understandably, students crave samples of good legal analysis, which they often strive to imitate. Samples demonstrate organizational approaches and encourage students to identify for themselves useful techniques.<sup>18</sup> Used alone, samples can stifle learning and inhibit creativity. If students are familiar with the theory behind legal reasoning, they are more likely to transfer their newly acquired skills from one situation to the next.

These are the major forms of legal reasoning that law students should learn about in the first year:

### ***Rule-Based Reasoning***–

***Induction*** – Induction moves from the specific to the general – accumulating a series of specific observations to form a general rule. The process resembles what we think of as the scientific method. Induction is used to synthesize rules of law in a given jurisdiction.<sup>19</sup>

***Deduction*** – Because the law is composed of a set of rules, deduction is the *sine qua non* of legal analysis. It moves from the general to the specific – applying general rules of law to the client’s problem to predict or argue for a specific outcome. Deductive reasoning in the law is modeled on the logical syllogism – composed of a major premise, a minor premise, and a conclusion – where the rule of law represents the major premise, and the facts of the case represent the minor premise.<sup>20</sup> Unlike in formal logic, the premises and conclusion in legal reasoning are rarely indisputably true. Various acronyms have been created to help students construct sound deductive structures in their legal writing.<sup>21</sup>

***Analogical Reasoning*** – Analogical reasoning is often considered a form of induction, where the accumulated similarities (or differences) between two situations or cases are considered sufficient to treat them similarly (or differently).<sup>22</sup> This is the essence of *stare*

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<sup>18</sup> See, e.g., Patricia Grande Montana, *Meeting Students’ Demand for Models of Good Legal Writing*, 18 PERSP. 154 (2010); Terrill Pollman, *The Sincerest Form of Flattery: Examples and Model-Based Learning in the Law School Classroom*, 64 J. LEGAL EDUC. (forthcoming 2014); Judith B. Tracy, “*I See and I Remember; I Do and Understand*”: *Teaching Fundamental Structure in Legal Writing through the Use of Samples*, 21 TOURO L. REV. 297, 307-08 (2005).

<sup>19</sup> See, e.g., RUGGERO J. ALDISERT, *LOGIC FOR LAWYERS: A GUIDE TO CLEAR LEGAL THINKING* 50, 91 (3d ed. 1997) [hereinafter *LOGIC FOR LAWYERS*]; EDWARD P.J. CORBETT & ROBERT J. CONNORS, *CLASSICAL RHETORIC FOR THE MODERN STUDENT* 68 (4th ed. 1999); Jane Kent Gionfriddo, *Thinking Like A Lawyer: The Heuristics of Case Synthesis*, 40 TEX. TECH. L. REV. 1, 4-7 (2007).

<sup>20</sup> See, e.g., ALDISERT, *LOGIC FOR LAWYERS*, at 45, 53-88; CORBETT ET AL., *CLASSICAL RHETORIC*, at 48; JAMES A. GARDNER, *LEGAL ARGUMENT: THE STRUCTURE AND LANGUAGE OF EFFECTIVE ADVOCACY* 6 (2d ed. 2007) [hereinafter *LEGAL ARGUMENT*].

<sup>21</sup> See, e.g., Tracy Turner, *Finding Consensus in Legal Writing Discourse Regarding Organizational Structure: A Review and Analysis of the Use of IRAC and Its Progenies*, 9 LEGAL COMM. & RHETORIC: JALWD 351 (2012).

<sup>22</sup> See, e.g., ALDISERT, *LOGIC FOR LAWYERS*, at 51, 93; STEVEN J. BURTON, *AN INTRODUCTION TO LAW AND LEGAL REASONING* 25-40 (3d ed. 2007); CORBETT ET AL., *CLASSICAL RHETORIC*, at 104; GARDNER, *LEGAL ARGUMENT*, at 7. For exercises on teaching analogy, see Maureen J. Arrigo, *Analogization: Lost Art or Teachable Skill?* 1 PERSP. 36 (1993); Jane Kent Gionfriddo, *Using Fruit to Teach Analogy*, SECOND DRAFT (Legal Writing Inst.), Nov. 1997, at 4, available at <http://www.lwionline.org/publications/seconddraft/nov97.pdf>, archived at <http://perma.cc/LF9L-53HK>.

*decisis*. Analogical reasoning often occurs at the point in deduction when a rule of law is applied to the facts. To assess its strength in legal analysis, an analogy must include sufficient information about the cited authority, including its holding and significant facts.

***Policy-Based Reasoning*** – Policy-based reasoning focuses on the outcome most likely to encourage desirable behavior and considers the impact of decision-making on future cases and society as a whole.<sup>23</sup> Policy arguments are derived from a wide range of disciplines, including sociology, economics, and political science.<sup>24</sup> Students are often introduced to these in their first persuasive writing assignment.<sup>25</sup>

***Narrative Reasoning*** – Narrative reasoning weaves the key elements of a story – setting, character, conflict, resolution, organization, and point-of-view – into legal arguments to make them more persuasive.<sup>26</sup> Story-telling expands the focus of analysis to include the client and the client’s goals.<sup>27</sup> Narrative reasoning is used primarily in persuasive writing but arguably in predictive writing as well to explain how legal rules were created and applied in past cases and to create convincing analogies.<sup>28</sup> Both narrative and policy-based reasoning may be used to challenge the rule of law (major premise) in rule-based reasoning.

***Inferential Reasoning*** – Inferential reasoning uses legal or non-legal facts known to be accurate to reach factual or legal conclusions.<sup>29</sup> Inferences may be made at any step in a deductive or inductive chain of reasoning. For example, a rule of law may not be stated directly but may follow from cited authority, and circumstantial evidence may be used to infer a defendant’s liability or guilt.<sup>30</sup> Legal writing courses historically spend very little

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<sup>23</sup> See, e.g., Linda H. Edwards, *The Convergence of Analogical and Dialectic Imaginations in Legal Discourse*, 20 LEGAL STUD. FORUM 1, 10 (1996).

<sup>24</sup> *Id.*; see also Ellie Margolis, *Beyond Brandeis: Exploring the Uses of Non-legal Materials in Appellate Briefs*, 34 U.S.F. L. REV. 197 (2000).

<sup>25</sup> See Ellie Margolis, *Closing the Floodgates: Making Persuasive Policy Arguments in Appellate Briefs*, 62 MONT. L. REV. 59 (2001).

<sup>26</sup> See, e.g., Christy H. DeSanctis, *Narrative Reasoning and Analogy: The Untold Story*, 9 LEGAL COMM. & RHETORIC: JALWD 149 (2012).

<sup>27</sup> See, e.g., Kenneth D. Chestek, *The Plot Thickens: The Appellate Brief as Story*, 14 LEGAL WRITING: J. LEGAL WRITING INST. 127 (2008); Brian Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*, 32 RUTGERS L.J. 459 (2001). Dozens of articles have been written in the sub-field of Applied Legal Storytelling. See, e.g., J. Christopher Rideout, *A Twice-Told Tale: Plausibility and Narrative Coherence in Judicial Storytelling*, 10 LEGAL COMM. & RHETORIC: JALWD 67 (2013). A more complete bibliography of Applied Legal Storytelling scholarship will be published as J. Christopher Rideout, *Applied Legal Storytelling: A Bibliography*, 12 LEG. COMM. & RHETORIC: JALWD (forthcoming 2015) and will be available on the Legal Writing Institute website at <http://lwionline.org/AppliedLegalStorytellingBibliography.html>, archived at <http://perma.cc/V4PL-BV99>.

<sup>28</sup> See, e.g., Christy H. DeSanctis, *Narrative Reasoning and Analogy: The Untold Story*, 9 LEGAL COMM. & RHETORIC: JALWD 149 (2012); see also Stephen Paskey, *The Law is Made of Stories: Erasing the False Dichotomy between Stories and Legal Rules*, 11 LEG. COMM. & RHETORIC: JALWD 51 (2014).

<sup>29</sup> See ALDISERT, LOGIC FOR LAWYERS, at 26; GARDNER, LEGAL ARGUMENT, at 50.

<sup>30</sup> See, e.g., Albert J. Moore, *Inferential Streams: The Articulation and Illustration of the Advocate’s Evidentiary Intuitions*, 34 UCLA L. REV. 611 (1987).

time expressly teaching this type of reasoning, but the best practice is to introduce it explicitly in the first-year.<sup>31</sup>

### C. Teach Factual as Well as Legal Analysis

Like inferential reasoning, factual analysis is often neglected but should be taught explicitly.<sup>32</sup> For example, first-year persuasive writing exercises often ask students to argue issues of “pure law,” which eliminate the client as the central focus of advocacy. A better practice is to develop factually rich client problems and simulations that teach students to recognize the dispositive or “trigger” facts in precedential cases and identify which of the client’s facts are outcome-determinative.<sup>33</sup> Students should be aware that their thinking may morph as they develop a deeper understanding of the legal rules and their use in analogous situations.

### 3. Innovation in Teaching Research and Information Literacy Effectively

Instruction in legal research has undergone a major transformation. Research was originally taught as “legal bibliography” focused on the mechanical steps involved in using various research sources.

As research instruction became more sophisticated, two different instructional approaches emerged, both organized around sources of legal information. One approach focuses on the structure of the legal system. It introduces students to sources of primary authority and methods of locating those sources and then to traditional legal secondary sources.<sup>34</sup> The other approach is process-oriented. Students learn about various sources in a sequence that mimics a typical first-year research assignment, starting with secondary sources and proceeding through various primary sources.<sup>35</sup>

These approaches worked well when different types of authority were available through discrete sources. Researchers had to select a source of information as the first step in locating content (a source-driven approach).<sup>36</sup> In a print environment in which cases are published in individual reporters and statutes are published by jurisdiction in codes, a curriculum organized around sources of information made sense. Even as electronic research became more prevalent, Westlaw, Lexis, and other providers organized their content into databases that dovetailed with the traditional print sources. As information technology changes research methods, however, pedagogical approaches to teaching research must evolve.

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<sup>31</sup> For legal writing texts that address inferential reasoning, see LINDA H. EDWARDS, *LEGAL WRITING AND ANALYSIS* 60 (3d ed. 2011); RICHARD K. NEUMANN, JR., & KRISTEN KONRAD TISCIONE, *LEGAL REASONING AND LEGAL WRITING* 136 (7th ed. 2013) [hereinafter *LEGAL REASONING*].

<sup>32</sup> William Twining, *Taking Facts Seriously—Again*, 55 *J. LEGAL EDUC.* 360, 363 (2005).

<sup>33</sup> See NEUMANN, *LEGAL REASONING*, at 135. For a related text, see STEFAN H. KRIEGER & RICHARD K. NEUMANN, JR., *ESSENTIAL LAWYERING SKILLS, INTERVIEWING, COUNSELING, NEGOTIATION AND PERSUASIVE FACT ANALYSIS* (4th ed. 2011).

<sup>34</sup> See, e.g., STEVEN M. BARKAN, ROY M. MERSKY & DONALD J. DUNN, *FUNDAMENTALS OF LEGAL RESEARCH* (9th ed. 2009).

<sup>35</sup> See, e.g., CHRISTINA L. KUNZ ET AL., *THE PROCESS OF LEGAL RESEARCH* (7th ed. 2008); LAUREL CURRIE OATES & ANNE ENQUIST, *JUST RESEARCH* (3d ed. 2011); MARK C. OSBECK, *IMPECCABLE RESEARCH: A CONCISE GUIDE TO MASTERING LEGAL RESEARCH SKILLS* (2010).

<sup>36</sup> AMY SLOAN, *BASIC LEGAL RESEARCH* (5th ed. 2012) (coining the term “source-driven” research process).

## A. Research Instruction Should Keep Pace with Developing Research Technologies

Changes in the quantity and organization of information have made it difficult to organize research instruction around sources of information. Information is no longer a scarce resource available from a limited number of outlets. Students are now awash in ever-increasing amounts of information and must sort through content that is readily available from multiple outlets. Additionally, students can and do search for content without first selecting a source (a content-driven approach).<sup>37</sup> WestlawNext, Lexis Advance, Bloomberg Law, and the ubiquitous Google allow students to specify the content they seek before selecting a source of information.

Research instruction must be reoriented around a flexible search process that can be adapted to different types of research instead of individual sources of information.<sup>38</sup> This is not to suggest that the source of information is irrelevant. The hierarchy of authority still determines the relative weight of any particular document. But because primary authorities can be accessed in multiple ways and because students have access to a growing universe of non-traditional secondary sources, research instruction can no longer revolve primarily around sources of information.<sup>39</sup>

## B. Students Must Learn a Flexible Search Process

To be effective, students must internalize a flexible process that they can adapt to different research needs. If students are instructed to follow a rigid, linear process with set beginning and ending points, they will not learn skills they can use in new settings and will likely ignore their instruction when they conduct research on their own.

Instead, students should be introduced to a thought process that will help them narrow a wide field of information to the subset of information necessary to solve a client's problem. This narrowing process involves three steps: (1) pre-search analysis to focus the research process; (2) searching for information using a variety of search techniques; and (3) post-search filtering to narrow the search results according to criteria likely to identify the most useful information.

***Conduct pre-search analysis*** – Pre-search analysis involves using the available information to limit the scope of the research. Criteria such as jurisdiction and type of authority, if known, can be used to focus the scope of a research project before searching for content. For example, if a student needs to locate a specific state statute, the scope of the research should first be limited to the relevant state's statutes. If the student knows the jurisdiction but not the type of authority, the scope of the search can be similarly limited. Effective pre-search analysis requires a student to know the hierarchy of authority and relationships among sources of information.

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<sup>37</sup> *Id.* (coining the term “content-driven”).

<sup>38</sup> Ellie Margolis & Kristen E. Murray, *Say Goodbye to the Books: Information Literacy as the New Legal Research Paradigm*, 38 U. DAYTON L. REV. 117, 125 (2012) [hereinafter Margolis & Murray, *Say Goodbye*].

<sup>39</sup> As the information landscape continues to change, research instruction will continue to evolve. See, e.g., RAVEL, [www.ravellaw.com](http://www.ravellaw.com), archived at <http://perma.cc/AX75-E234> (using visual mapping to display the results of case research).

***Search for content*** – After engaging in pre-search analysis, a student must search for content. Students should be familiar with the range of search techniques available on most research platforms. Many students gravitate toward word searching because that is a common way to look for information in daily life. Students should be familiar with both natural language and Boolean word search techniques. Further, although all concepts must ultimately be expressed with words, searching according to individual words in a document can retrieve too much (or too much irrelevant) content to be useful. Therefore, students need to learn not only word search techniques but also other search techniques (e.g., subject searching with index headings or headnotes).

***Evaluate and filter*** – Once a student has located content, that content should be evaluated and filtered to target the most relevant subset of information. Again, criteria such as jurisdiction and type of authority become important. Document-specific criteria, such as key words in a document, may also be used. As the field narrows, students should gain insight about the law applicable to the problem, which they can then use to revise the initial pre-search analysis, search technique, or both. Students should be taught they will likely have to repeat these steps in an iterative process to complete the research task successfully.

This flexible approach instructs students on many of the same concepts taught in a source-driven approach, including the hierarchy of legal authority, the relationships among sources, and the types of search techniques available. The difference is that these concepts are integrated into a flexible research process, not a linear process that requires use of specific sources in a defined order.

### **C. Effective Research Instruction Must Build a Foundation in the First Year and Continue in the Upper-Level Curriculum**

As the amount of information available to us and the methods of locating it proliferate, defining the appropriate scope of research instruction becomes difficult. Students are unlikely to be able to learn everything they need to know about research in the first year, and even if they are, they need to reinforce their research and writing skills in the upper-level curriculum. Further, although much legal information is available electronically, print research continues to have a role in the curriculum.

#### **i. The First-Year Curriculum Must Cover the Fundamental Research Process and the Sources of Law**

In the first-year curriculum, students should gain facility with the flexible research process described above. As with effective legal analysis, effective research requires that students understand the hierarchy of authority and relationships among various sources of law. Inability to evaluate source material effectively is an identified weakness for so-called digital natives.<sup>40</sup>

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<sup>40</sup> Margolis & Murray, *Say Goodbye*, at 131.

Their facility with electronic searching can mask shallow understanding of the weight of source material.<sup>41</sup>

Students should be familiar with the structure of the legal system, including the relationships among constitutional provisions, statutes, cases, and secondary sources. Additionally, they should learn how to assess whether the information they find is current, using techniques for updating research, including use of citators. They should be familiar with traditional secondary sources, including legal encyclopedias, A.L.R. Annotations, legal periodicals, and treatises, as well as non-traditional secondary sources, such as commentary posted on law firm web sites. Students will independently turn to general search engines such as Google and general sources such as Wikipedia. A sound research curriculum engages students with all of these sources and provides a context for them to evaluate the strengths and weaknesses of each. Effective techniques for first-year students include showing or asking that students locate examples of different types of information and assess the content and authoritative value of each. This process can be repeated any time students are asked to conduct research.

To research effectively, students must also gain experience with multiple search techniques, including word searching and subject searching. Lexis and Westlaw remain important vehicles for electronic research, and students should be familiar with West's Key Number system. Students must also gain facility with other platforms, which may include Bloomberg Law, FastCase, Case Maker, and free services such as Findlaw, the Legal Information Institute, Google Scholar, and government websites containing statutory and regulatory material.

Electronic research will likely be the focus of instruction, both because much legal information is available electronically and because law libraries have reduced and continue to reduce their print holdings. Nevertheless, students need some exposure to print research for three reasons. First, not everything is online. Second, the layout of some information online is still based on the print version of the information, especially with legal secondary sources. Students need to learn basic citation formats, and citation rules are still largely driven by the print format of information. Thus, students need to know the basic "index → main text → pocket part" process for print research. Third, the cognitive processes involved in print research are different from those involved with online research. Knowing different ways of approaching research problems will help students be effective researchers.<sup>42</sup>

First-year students should have multiple opportunities to practice conducting research in settings in which they both work independently and receive feedback as they work. They should also learn techniques for organizing their search results. The best practice is to teach research across the curriculum, in doctrinally-focused and skills-focused courses in much the same way analysis should be taught using writing across the curriculum.

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<sup>41</sup> See, e.g., Simon Canick, *Infusing Technology Skills into the Law School Curriculum*, 42 CAP. U. L. REV. 663(2014) [hereinafter *Infusing*]; Aliza B. Kaplan & Kathleen Darvil, *Think [and Practice] Like a Lawyer: Legal Research for the New Millennials*, 8 LEGAL COMM. & RHETORIC: JALWD 153 (2011) [hereinafter *New Millennials*].

<sup>42</sup> Stefan H. Krieger & Katrina F. Kuh, *Accessing Law: An Empirical Study Exploring the Influence of Legal Research Medium*, 16 VAND. J. ENT. & TECH. L. (2014).

## **ii. The Upper-Level Curriculum Should Introduce New Concepts and Reinforce Fundamental Skills**

Although students need to learn research fundamentals in their first year, first-year instruction is not sufficient by itself. In addition to the sources identified above, students need to learn to research legislative history, administrative materials, foreign and international materials, and, if appropriate, sources unique to the jurisdiction where they attend law school. Few law schools devote sufficient credit hours to legal research to cover all of this in the first year. It can be difficult for first-year students to complete assignments with sufficient complexity to involve these types of sources while they are learning the fundamentals of written analysis. Further, if students learn about research only in their first year, they may not retain their skills without reinforcement.<sup>43</sup>

Research instruction can be incorporated into the upper-level curriculum in several ways. One way is through advanced research courses, which are often electives because law schools do not have enough teachers to require or offer them to all students. Like writing, though, research can be incorporated into other upper-level courses in a variety of ways. For example, research instruction could be required in an upper-level seminar or other writing course, or as part of law journal participation, clinical coursework, or doctrinally-focused courses. While virtually any doctrinal course lends itself to research instruction, the following subject areas are especially well-suited as vehicles for teaching upper-level students some types of research rarely covered in the first year: administrative law, international law, intellectual property, mass media or telecommunications, tax, employment, and labor law.

Law school librarians are natural partners to assist law teachers in providing this additional research instruction. Librarians may teach research to first-year and upper-level students in research courses. They may also be available to provide instruction to journal members and clinic students. Additionally, librarians can assist teachers who want to integrate a research component into a doctrinally-focused course, either by helping the teacher develop course materials or potentially team-teaching research components of the curriculum. Many teachers who teach specialized upper-level courses research and write in the field and may be uniquely qualified to teach students about how to conduct research in the subject area.

Peer instructors are another possibility. Although students generally lack the expertise to instruct first-year students, some upper-level students could be trained to provide targeted instruction to peers in the context of doctrinal courses or even under the auspices of a law school writing center.

Although vendor representatives are often very knowledgeable about various research products, having vendor representatives play a significant instructional role is a questionable practice. The representatives' sales mission often varies from the pedagogical goals of law school classes. Further, the law teacher may not appear vendor neutral if representatives from only selected services participate in instructing the class.

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<sup>43</sup> Brooke J. Bowman, *Researching across the Curriculum: The Road Must Continue beyond the First Year*, 61 OKLA. L. REV. 503 (2009); Canick, *Infusing*; Kaplan & Darvil, *New Millenials*, at 159 n.42.

For students to benefit maximally from research instruction, it must factor into their grades. For example, students can complete graded research projects in the subject area. Or defined topics within a course can be covered with material students locate through research in lieu of casebook material. Students' mastery of research sources relevant to the subject area could also be assessed on an exam.

Although students are unlikely to receive research instruction in all of these contexts, law schools should strive to provide a range of opportunities for students to learn about and practice their research skills.

#### **4. Innovation in Teaching Legal Writing and Oral Communication**

Client-centered legal writing and oral communication are an extension of the analytical process. A lawyer must convey information, advice, and argument effectively. To be effective orally and in writing, students must understand the needs of the legal audience in a variety of contexts and adjust the organization, style, and delivery of their analysis accordingly.

##### **A. Shift the Focus from Document Types to the Role of a Lawyer**

The typical legal analysis, research, and writing course tends to concentrate on preparing legal memoranda and briefs more than on the role that these and other documents play in lawyering. But the best practice is to teach students how these and other conventions of legal writing function in the context of representing a client.<sup>44</sup> Focusing the students on the client and on their own role helps students understand the importance of investigating and reasoning with specific facts, and develop empathy and better professional judgment.<sup>45</sup>

##### **B. Keep Pace with Matriculating Students and the Evolving Practice of Law**

Law teachers must keep pace with changes in matriculating students and the practice of law. Students come to law school with a wide disparity in preparation and many of them grew up with ubiquitous digital technology and the internet. Despite their many and unique talents, some students may have insufficient research, critical thinking, writing, interpersonal, and professional

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<sup>44</sup> As of the date this book went to print, the only legal writing textbook to mention the word client in its title is RUTH ANNE ROBBINS, STEVE JOHANSEN & KEN CHESTEK, *YOUR CLIENT'S STORY: PERSUASIVE LEGAL WRITING* (2013).

<sup>45</sup> See, e.g., Ian Gallacher, *Thinking Like Non-Lawyers: Why Empathy Is a Core Lawyering Skill and Why Legal Education Should Change to Reflect Its Importance*, 8 LEGAL COMM. & RHETORIC: JALWD 110 (2011). Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the "Heart" of Legal Writing*, 87 NEB. L. REV. 1 (2008). Other issues such as moral concerns and social justice can and should be part of legal education. See, e.g., Nantiya Ruan, *Experiential Learning in the First-Year Curriculum: The Public Interest Partnership*, 8 LEGAL COMM. & RHETORIC: JALWD 191 (2011); Pamela Edwards & Sheila Vance, *Teaching Social Justice Through Legal Writing*, 7 LEGAL WRITING: J. LEGAL WRITING INST. 63 (2001); THE CARNEGIE REPORT, at 142-44.

skills.<sup>46</sup> Scholarship on the best practices for understanding and teaching millennial generation students is rapidly growing.<sup>47</sup>

Skills must also be taught in light of changes in the practice of law due to rapidly developing technologies and a fluctuating legal economy. Course content should reflect the growing use of digital communication and counseling, such as email, text messaging, Twitter, attorney-client interfaces, predictive models, and even social media.<sup>48</sup> A shift in focus from document types to client counseling will make it possible to incorporate these new forms of communication seamlessly into existing curricula. Skills teaching must also reflect the reality that employment prospects for many law students have shifted from corporate law firms to a more diverse range of opportunities, including small or solo practices, public service, and law-related jobs that do not require a J.D. degree.

### **C. Develop a Comprehensive Curriculum that Gives Students the Opportunity to Write Each Semester of Law School**

Students should have multiple opportunities to reinforce and hone their analytical, research, and client-centered writing skills beyond those provided by the required writing courses. The best practice is for students to have at least one significant writing experience each semester of law school and for all law teachers to use writing to teach. Some schools have merged their first-year research and writing course with a doctrinally-focused course such as Torts.<sup>49</sup> In the absence of such a merger, the best practice is to have first-year teachers coordinate assignments so students understand the relationship between their doctrinally-focused and skills courses.

#### **i. Best Practices for the Required First-Year Course**

Best practices include using several short, diverse assignments throughout each semester, in addition to any larger project. Varying the assignments gives students more experience researching, writing, reflecting, and revising. Students should be encouraged to work together,

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<sup>46</sup> See, e.g., Michelle Goodwin, *Law Professors See the Damage Done by “No Child Left Behind,”* CHRON. HIGHER EDUC. (Mar. 12, 2013), <http://chronicle.com/blogs/conversation/2013/03/12/law-professors-see-the-damage-done-by-no-child-left-behind/>, archived at <http://perma.cc/XR45-7NHT>; Margolis & Murray, *Say Goodbye*; Brittany Stringfellow Otey, *Millennials, Technology, and Professional Responsibility: Training A New Generation in Technological Professionalism*, 37 J. LEGAL PROF. 199 (2013); Susan Stuart & Ruth Vance, *Bringing a Knife to the Gunfight: The Academically Underprepared Law Student & Legal Education Reform*, 48 VAL. U. L. REV. 41 (2013).

<sup>47</sup> See, e.g., Shalini Jandial George, *Teaching the Smartphone Generation: How Cognitive Science Can Improve Learning in Law School*, 66 MAINE L. REV. 163 (2013); Lindsey P. Gustafson, *Texting and The Friction of Writing*, 19 LEGAL WRITING: J. LEGAL WRITING INST. (forthcoming 2014); M. H. Sam Jacobson, *Paying Attention or Fatally Distracted? Concentration, Memory, and Multi-tasking in a Multi-Media World*, 16 LEGAL WRITING: J. LEGAL WRITING INST. 419 (2010).

<sup>48</sup> See, e.g., Dionne Anthon, Anna Hemingway, & Amanda Smith, *A Technological Trifecta: Using Videos, Playlists, and Facebook in Law School Classes to Reach Today’s Students*, 40 RUTGERS COMP. & TECH L. J. 1 (2014); DAVID I.C. THOMSON, *LAW SCHOOL 2.0: LEGAL EDUCATION FOR A DIGITAL AGE* (2009).

<sup>49</sup> See Celeste M. Hammond, *Integrating Doctrine and Skills in First-Year Courses: A Transactional Attorney’s Perspective*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 409 (2011); Susan J. Hankin, *Bridging Gaps and Blurring Lines: Integrating Analysis, Writing, Doctrine, and Theory*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 325 (2011).

whether in a structured or informal manner,<sup>50</sup> should have opportunities to respond to their classmates' work,<sup>51</sup> and speak in the classroom to develop professional skills. Whenever possible, legal writing teachers should raise students' awareness of related ethical issues and encourage them to anticipate how to resolve them in practice.

A perennial debate among law teachers is whether a particular law school's first-year legal writing curriculum should be uniform. The best practice is to identify common teaching goals and collaborate around how to achieve them rather than to require a programmatic syllabus or assignments. Newer law teachers may need or appreciate a shared syllabus, but experienced law teachers of legal writing courses should make independent textbook and syllabus decisions. There are many available options to balance autonomy in teaching with having shared learning and teaching goals.

#### **a. Introduce the Context of Client Counseling in the First Semester**

The first semester of a year-long course introduces students to the basics of legal research and analysis. Often referred to as the "intra-office memo semester" because the major project usually requires students to conduct original research and write an intra-office memorandum of law, law teachers should conceive of this semester in terms of its ultimate goal: teaching students that legal research and forms of predictive analysis make client counseling possible. So re-conceived, students will better understand the connection between legal memoranda and other assignments that a law teacher might incorporate or substitute, such as a client letter or email memo. Students will also understand better the connection between these assignments and related classroom exercises, such as "client interviews" or "meetings with supervising attorneys."<sup>52</sup>

Although rhetorical theory is rich and vast, students develop better analytical, oral, and writing skills when informed by classical and modern theories of persuasion.<sup>53</sup> Law teachers should at least introduce students to the classic modes of appeal – *logos*, *ethos*, and *pathos* – and the

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<sup>50</sup> For articles on a structured approach, see Melissa H. Weresh, *Uncommon Results: The Power of Team-Based Learning in the Legal Writing Classroom*, 19 LEGAL WRITING: J. LEGAL WRITING INST. (2014); Sophie M. Sparrow & Margaret Sova McCabe, *Team-Based Learning in Law*, 18 LEGAL WRITING: J. LEGAL WRITING INST. 153 (2012). For an excellent book on the topic, see Eileen Scallen, Sophie Sparrow, Cliff Zimmerman, *WORKING TOGETHER IN LAW: TEAMWORK AND SMALL GROUP SKILLS FOR LEGAL PROFESSIONALS* (2014).

<sup>51</sup> See, e.g., Kirsten K. Davis, *Designing and Using Peer Review in a First-Year Legal Research and Writing Course*, 9 LEGAL WRITING: J. LEGAL WRITING INST. 1 (2003); Patricia Grande Montana, *Peer Review Across the Curriculum*, 91 OR. L. REV. 783 (2013).

<sup>52</sup> See Anthony Niedwiecki, *Partner Briefings: Bridging the Gap Between Oral and Written Skills*, SCRIVENER (Newsletter of American Society of Writers on Legal Subjects) (Winter 2002); Sarah E. Ricks, *Some Strategies to Teach Reluctant Talkers to Talk about Law*, 54 J. LEGAL EDUC. 570 (2004). The trend in assignments shows a steady increase in the past few years in client letters, oral reports to a "senior partner," and other speaking skills. 2014 SURVEY, above at 15.

<sup>53</sup> See, e.g., Barbara P. Blumenfeld, *Rhetoric, Referential Communication, and the Novice Writer*, 9 LEGAL COMM. & RHETORIC: JALWD 207 (2012); Linda L. Berger, *Studying and Teaching "Law as Rhetoric": A Place to Stand*, 16 LEGAL WRITING: J. LEGAL WRITING INST. 3 (2010).

indeterminacy of law early in the first year.<sup>54</sup> Upper-level courses should give students the opportunity to further explore rhetorical theory and its relation to law practice.

### **b. Focus the Second (or a Third) Semester on Client Advocacy**

The second (and any third) semester of an introductory course should reinforce the lessons of the first and introduce students to the lawyer's role as client advocate. Students often research and write a trial or appellate brief, or both, and give a related oral argument. Whether the assignment is a trial or appellate brief, it should give students a factually rich problem with legal issues that foster, not overwhelm, their developing analytical skills.<sup>55</sup>

The discipline and pedagogy of legal writing have moved beyond litigation to include broader instruction in interdisciplinary studies of persuasion or rhetoric; international and comparative law; transactional and legislative drafting; and negotiation, mediation, and alternative dispute methods.<sup>56</sup> Related assignments can be incorporated in a first-year or upper-level course.<sup>57</sup> A 2010 report published by the ABA included "expanded course coverage to include skills beyond traditional advocacy" among one of the four notable changes in the first year curriculum in the past decade.<sup>58</sup>

#### **ii. The Best Practice for Upper Level Courses is to Focus on Client Counseling and Advocacy in a Variety of Contexts**

Students need more than two semesters to become good legal writers. Law schools must offer sufficient opportunities – in doctrinally-focused courses, skills-focused courses, or other experiential education – for students to write during all three years of law school. The best practice would be to require six semesters of writing, although the authors are unaware of any law school with such a requirement.<sup>59</sup> Students could choose to hone their skills either horizontally (*e.g.*, drafting pleadings or transactional documents) or vertically (*e.g.*, exploring

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<sup>54</sup> See, *e.g.*, Michael Frost, *Introduction to Classical Rhetoric*, 8 S. CAL. INTERDISC. L.J. 613 (1999). Several textbooks use rhetorical theory either implicitly or explicitly to teach legal writing. See, *e.g.*, ALDISERT, *LOGIC FOR LAWYERS*; CHARLES R. CALLEROS, *LEGAL METHOD AND LEGAL WRITING* (7th ed. 2014); MICHAEL D. MURRAY & CHRISTY H. DESANCTIS, *LEGAL WRITING AND ANALYSIS* (2009); Edwards, *LEGAL WRITING AND ANALYSIS*, at ch. 5; HELENE S. SHAPO ET AL., *WRITING AND ANALYSIS IN THE LAW* (6th ed. 2013); KRISTEN KONRAD TISCIONE, *RHETORIC FOR LEGAL WRITERS* (2009).

<sup>55</sup> For articles on cognitive overload, see George, at 47; Stefan H. Krieger, *Domain Knowledge and the Teaching of Creative Legal Problem Solving*, 11 CLINICAL L. REV. 149 (2004).

<sup>56</sup> See, *e.g.*, Susan L. DeJarnatt & Mark C. Rahdert, *Preparing for Globalized Law Practice: The Need to Include International and Comparative Law in the Legal Writing Curriculum*, 18 LEGAL WRITING: J. LEGAL WRITING INST. 3 (2012); Mary Dunnewold & Mary Trevor, *Escaping the Appellate Litigation Straitjacket: Incorporating an Alternative Dispute Resolution Simulation into a First-year Legal Writing Class*, 18 LEGAL WRITING: J. LEGAL WRITING INST. 209 (2012).

<sup>57</sup> For a discussion of horizontal and vertical approaches, see Michael R. Smith, *Alternative Substantive Approaches to Advanced Legal Writing Courses*, 54 J. LEGAL EDUC. 119 (2004); see also Louis R. Sirico, Jr., *Advanced Legal Writing Courses: Comparing Approaches*, 5 PERSP. 63 (1997).

<sup>58</sup> *Executive Summary of A SURVEY OF LAW SCHOOL CURRICULA: 2002-2010*, at 13, 15 (Catherine L. Carpenter ed., 2012). The same article also noted as positive the increase in credits in legal writing courses.

<sup>59</sup> Chicago-Kent requires five semesters. See Legal Research and Writing Program, CHICAGO-KENT COLLEGE OF LAW <http://www.kentlaw.iit.edu/academics/jd-program/legal-research-and-writing-program>, archived at <http://perma.cc/FJ4G-JZQ7>.

rhetorical theory or applied persuasive strategies in depth).<sup>60</sup> Courses designed to develop skills vertically should draw on the discipline and pedagogy of persuasion, including more skillful use of frames (such as master stories, metaphors, and categories), priming, managing adverse material, the use of literary allusion, and oral argument.<sup>61</sup> Law teachers should also strive to incorporate into their teaching discussions of professional ethics and obligations,<sup>62</sup> practice norms, and the notion that persuasion includes the ways in which audiences read and perceive legal writing.<sup>63</sup> The focus of upper level courses should be as much on developing students' "reflective capacities" and professionalism as on their mastering course content.<sup>64</sup>

#### **D. Use a Variety of Teaching Methods and Routinely Assess Their Efficacy**

To reach all types of learners, law teachers should employ multiple teaching methods, ranging from lecture to role-playing to modeling.<sup>65</sup> However, the hallmark of a strong legal research and writing course and the signature pedagogy is the individualized feedback that students receive in the form of written comments on their drafts, conferences, live critiques, or a combination thereof; and an opportunity to incorporate that feedback into subsequent drafts. Comments should reflect the expectations of a typical legal reader, respond specifically to the text, and suggest rather than prescribe ways to improve the analysis.<sup>66</sup> Law teachers should be forthcoming with students, guiding them towards understanding but recognizing their status as

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<sup>60</sup> The "vertical" and "horizontal" phrasing comes from Michael R. Smith's, *Alternative Substantive Approaches to Advanced Legal Writing Courses*, 54 J. LEG. EDUC. 119 (2004).

<sup>61</sup> See, e.g., Michael J. Higdon, *Something Judicious This Way Comes . . . The Use of Foreshadowing as a Persuasive Device in Judicial Narrative*, 44 U. RICHMOND L. REV. 1213 (2010); Kathryn Stanchi, *The Power of Priming in Legal Advocacy: Using the Science of First Impressions to Persuade the Reader*, 89 OR. L. REV. 305 (2010) (on cognitive and affective priming); Linda L. Berger, *The Lady or the Tiger? A Field Guide to Metaphor and Narrative*, 50 WASHBURN L. REV. 275 (2011); Barbara Gotthelf, *A Lawyer's Guide to Um*, 11 LEGAL COMM. & RHETORIC: JALWD 1(2014); Michael J. Higdon, *Oral Argument and Impression Management: Harnessing the Power of Nonverbal Persuasion for a Judicial Audience*, 57 KAN. L. REV. 631 (2009).

<sup>62</sup> See, e.g., Frances DeLaurentis, *When Ethical Worlds Collide: Teaching Novice Legal Writers to Balance the Duties of Zealous Advocacy and Candor to the Tribunal*, 7 DREXEL L. REV. (forthcoming 2014); Steven J. Johansen, *Was Colonel Sanders a Terrorist? An Essay on the Ethical Limits of Applied Legal Storytelling*, 7 LEGAL COMM. & RHETORIC: JALWD 63 (2010); MELISSA H. WERESH, LEGAL WRITING: ETHICAL AND PROFESSIONAL CONSIDERATIONS (2d ed. 2009).

<sup>63</sup> We include here the notion that all aspects of persuasive writing are part of advocacy, including the document itself. For materials on innovative document design and other forms of visual rhetoric, see Matthew Butterick, *TYPOGRAPHY FOR LAWYERS* (2011); Lucille A. Jewel, *Through a Glass Darkly: Using Brain Science and Visual Rhetoric to Gain a Professional Perspective on Visual Advocacy*, 19 S. CAL. INTERDISC. L.J. 237 (2010); Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 2 LEGAL COMM. & RHETORIC: JALWD 108 (2004).

<sup>64</sup> Keene, *One Small Step*, at 3.

<sup>65</sup> For articles on an array of teaching materials and methods, see PERSPECTIVES: TEACHING LEGAL RESEARCH AND WRITING, available at <http://info.legalsolutions.thomsonreuters.com/signup/newsletters/perspectives/>, archived at <http://perma.cc/X479-FFWS>.

<sup>66</sup> See, e.g., SOURCEBOOK ON LEGAL WRITING PROGRAMS, at 54-59; Elizabeth M. Bloom, A Law School Game Changer: (Trans)Formative Feedback, available at <http://ssrn.com/abstract=2437060>, archived at <http://perma.cc/L3JX-3T7K>. For additional articles on commenting, see The Legal Writing Institute, *The Art of Critiquing Written Work*, 1 MONOGRAPH SERIES, [http://www.lwionline.org/monograph\\_volume\\_one.html](http://www.lwionline.org/monograph_volume_one.html) archived at <http://perma.cc/D3TC-H2MM>; Providing Effective Feedback, SECOND DRAFT (Legal Writing Inst.), Fall 2007, available at <http://www.lwionline.org/publications/seconddraft/aug07.pdf>, archived at <http://perma.cc/XZ9M-ASBE>.

novice legal writers.<sup>67</sup> The ABA recognizes the importance of individualized feedback and subsequent revisions and includes these as key elements of any rigorous writing course required under Standard 303.<sup>68</sup> The best practice is for law teachers, not teaching assistants, to provide feedback. Classes too large for law teachers to provide individualized feedback should be reduced. Where class size makes individualized teacher feedback prohibitive, student assistants must be trained in composition theory, commenting techniques, and conference strategies.

Every student should have at least one individual conference per semester on a larger writing assignment,<sup>69</sup> and the best practice is to include several.<sup>70</sup> Conferences allow students to ask questions and explore prior, written comments; they should come to conferences prepared to ask questions about their research and writing process and the substance of the comments.<sup>71</sup> “Live critiques” provide feedback with the benefit of very little “dead time” between submission and feedback<sup>72</sup> but require sufficient time to allow students to process it. Recording live critiques allows students to listen to feedback without having to take notes at the same time. Students should leave either type of conference with a plan for improving their draft. In addition, the best practice is for the school to provide additional writing instruction outside the classroom, such as writing centers specifically for law students<sup>73</sup> and writing tutors or mentors as part of an academic support program.<sup>74</sup>

ABA Standard 314 now requires law schools to use assessment methods to improve student learning.<sup>75</sup> Formative and summative assessments are already a major component of writing instruction. Most legal research and writing courses are now graded (either on a series of

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<sup>67</sup> Joseph M. Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development*, 1 LEGAL WRITING: J. LEGAL WRITING INST. 111 (1999).

<sup>68</sup> Interpretation 303-2 provides, “Factors to be considered in evaluating the rigor of a writing experience include the number and nature of writing projects assigned to students, the form and extent of individualized assessment of a student’s written products, and the number of drafts that a student must produce for any writing experience.”

<sup>69</sup> SOURCEBOOK ON LEGAL WRITING PROGRAMS, at 61.

<sup>70</sup> See, e.g., Jennifer L. North, *How the Mini-Conference Transformed the Wallflower*, 21 PERSP. 94 (2013); Robin Slocum, *The Law School Student–Faculty Conference: Towards a Transformative Learning Experience*, 45 S. TEX. L. REV. 255 (2004).

<sup>71</sup> SOURCEBOOK ON LEGAL WRITING PROGRAMS, at 60.

<sup>72</sup> See, e.g., Anna P. Hemingway, *Accomplishing Your Scholarly Agenda Maximizing Students’ Learning*, 50 DUQ. L. REV. 545 (2012); Alison E. Julien, *Brutal Choices in Curricular Design . . . Going Live: the Pros and Cons of Live Critiquing*, 20 PERSP. 526 (2011).

<sup>73</sup> See, e.g., Kristen E. Murray, *Peer Tutoring and the Law School Writing Center*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 161 (2011); Susan R. Dailey, *Linking Technology to Pedagogy in an Online Writing Center*, 10 LEGAL WRITING: J. LEGAL WRITING INST. 181 (2004).

<sup>74</sup> Dionne Koller, *Legal Writing and Academic Support: Timing Is Everything*, 53 CLEV. ST. L. REV. 51 (2005-06); Cheryl E. Zuckerman, *Mentoring Matters: Teaching Law Students the Value of the Mentoring Relationship*, 20 PERSP. 126 (2012).

<sup>75</sup> Standard 314 requires law schools “to utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.” Standard 315 requires the dean and faculty to conduct an “ongoing evaluation of the law school’s academic program, learning outcomes, and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.” The new Standard 301(b) requires law schools to “establish and publish learning outcomes” designed to achieve the objectives of a rigorous program of legal education set out in Standard 301(a).

assignments or a take-home exam),<sup>76</sup> and the grade is incorporated into the student's GPA. Grading rubrics help students to understand the goals of each assignment and teachers to grade fairly and consistently.<sup>77</sup> New ABA standard 315 requires law teachers to go further and assess the effectiveness of their teaching by measuring students' learning outcomes.<sup>78</sup> Measuring learning outcomes shifts the focus from what teachers teach to what students learn; best practices include assessing the extent to which students take responsibility for their learning and having students assess their own learning.<sup>79</sup> The ABA Sourcebook on Legal Writing Programs suggests measuring the extent to which students develop an understanding of audience, purpose, process, and the levels of learning and skills needed to produce a variety of legal documents.<sup>80</sup>

## 5. Conclusion

As law schools develop their growing role in preparing students for practice, the teaching of legal analysis, research, and communication skills becomes ever more salient, as does the importance of integrating the teaching of those skills across the curriculum and within practice contexts. Law schools must continue to support the development of pedagogies to teach those skills effectively that are grounded in learning theory and empirical research.

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<sup>76</sup> 2014 SURVEY, at 12.

<sup>77</sup> See, e.g., Jessica Clark & Christy DeSanctis, *Toward a Unified Grading Vocabulary: Using Rubrics in Legal Writing Courses*, 3 J. LEGAL EDUC. 3 (2013); Beverly Petersen Jennison, *Saving the LRW Professor: Using Rubrics in the Teaching of Legal Writing to Assist in Grading Writing Assignments*, 80 U.M.K.C. L. REV. 353 (2011); Sophie M. Sparrow, *Describing the Ball: Improving Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1.

<sup>78</sup> Standard 315 requires the dean and law school faculty to conduct an “ongoing evaluation of the law school's academic program, learning outcomes, and assessment methods.”

<sup>79</sup> Cassandra L. Hill, *The Elephant in the Law School Assessment Room: The Role of Student Responsibility and Motivating Our Students to Learn*, 56 HOWARD L. J. 447 (2013); Steve Johansen, *What Were You Thinking: Using Annotated Portfolios to Improve Student Assessment*, 4 LEGAL WRITING: J. LEGAL WRITING INST. 123 (1998).

<sup>80</sup> SOURCEBOOK ON LEGAL WRITING PROGRAMS, at 18. For a detailed discussion of assessment at the course and institutional level, see Chapter 4, Section D, *Outcomes Assessment for Improving Student Learning*, above, and Chapter 7, Section A, *An Institutional Culture of Assessment for Student Learning*, below.