



SCHOOL OF LAW
TEXAS A&M UNIVERSITY

Texas A&M Law Review

Volume 1 | Issue 3

2014

The Theoretical and Practical Underpinnings of Teaching Scholarly Legal Writing

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Recommended Citation

Jessica W. Clark & Kristen E. Murray, *The Theoretical and Practical Underpinnings of Teaching Scholarly Legal Writing*, 1 Tex. A&M L. Rev. 523 (2014).

Available at: <https://doi.org/10.37419/LR.V1.I3.2>

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THE THEORETICAL AND PRACTICAL UNDERPINNINGS OF TEACHING SCHOLARLY LEGAL WRITING

By: *Jessica Wherry Clark** and *Kristen E. Murray***

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I. INTRODUCTION***

Scholarly writing has long been a part of the upper-level law school curriculum. Like children thrown into the deep end of the pool to see if they can swim, every year, thousands of upper-level law students are asked to write a scholarly paper to satisfy an upper-level writing requirement on a topic likely of little acquaintance to them. For many of these law students, the scholarly writing process is daunting¹ given the unknown subject matter, the lack of structured feedback and guidance, and the inability to become engaged or inspired by the project because of the often-isolating experience of writing a scholarly paper. These students, whether they are writing journal notes, seminar papers, independent writing projects, or LL.M. theses, will have varying levels of success with these projects. Like a swimmer who barely makes it to the other side of the pool, some will sink—submitting a weak paper that meets the minimum requirements. Some will reach the other side of the pool more successfully, but only after struggling through long periods of treading water. These students will submit a final paper, but even the well-written papers will not reflect an enjoyable, engaged experience for students. A handful of students will take on the challenge with strong instruction and guidance from an able coach; this group of students will have a uniquely enjoyable scholarly writing experience producing a strong contribution to student scholarship. Some of these students will even see their work published.

Most law schools require a foundational legal writing course as a key component of the first-year curriculum.² Legal analysis and writing are skills unfamiliar to most novice law students, and introductory legal writing courses teach students the core concepts in the field, emphasizing the process and conventions of legal writing and providing

*** We would like to thank Peter Smyth for his excellent research assistance and all the members of the legal writing community who responded to our LRW-listserv requests for information about scholarly writing instruction. We are also thankful for the support and feedback we received from our deans and colleagues at George Washington University Law School, Georgetown University Law Center, and Temple University, Beasley School of Law. We presented an early version of this project at the 2009 Central States Legal Writing Conference at Marquette University Law School in Milwaukee, Wisconsin, where we also received valuable feedback.

1. Lissa Griffin, *Teaching Upperclass Writing: Everything You Always Wanted to Know But Were Afraid to Ask*, 34 GONZ. L. REV. 45, 62 (1999) (“One of the hardest parts of scholarly writing is formulating a thesis. . . . For a variety of reasons, including lack of experience and confidence, or lack of a larger world-view, students find this extremely difficult.”).

2. 2012–13 ABA Standards and Rules of Procedure for Approval of Law Schools, ABA 19 (2012), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/chapter_3_2012_2013_aba_standards_and_rules.authcheckdam.pdf [hereinafter *Standards*]; ALWD/LWI 2012 Survey Rep., ASS’N OF LEGAL WRITING DIRS. & LEGAL WRITING INST. 7 (2012), available at <http://www.lwionline.org/uploads/FileUpload/2012Survey.pdf> [hereinafter *Survey Report*]; see also ERIC B. EASTON ET AL., SOURCEBOOK ON LEGAL WRITING PROGRAMS 5 (2d ed., ABA 2006) [hereinafter *SOURCEBOOK*].

numerous opportunities to write predictive and persuasive memoranda and briefs.³ Though there is significant variation among law schools in how first-year legal writing programs are organized, how they are staffed (e.g., full time professors or adjuncts, directed or directorless), number of required semesters, and number of credits earned, for the most part first-year writing programs take a similar pedagogical approach.⁴ These courses almost always provide detailed guidance, instruction, feedback, and support to go along with the anxieties, stresses, unknowns, and confusions about legal writing. This is generally not the case, however, for upper-level scholarly writing.⁵

Over half of all law schools require their J.D. students to write a scholarly paper to satisfy an upper-level writing requirement, yet most of these students will take on these tasks without specific instruction on the process of writing a scholarly paper, and with minimal guidance and feedback throughout the scholarly writing process.⁶ Thus, for many students, the process of writing a scholarly project will remain daunting, and some students will struggle just to make it to the deadline. Instead of letting some students flounder as they navigate their way through these writing projects, law schools should recognize the challenges posed by a scholarly project and enhance the amount of instruction, guidance, and support they provide to students in their scholarly writing endeavors. Providing better scholarly writing instruction, and more of it, to students will enrich the experience of student scholarly writing for the students and faculty members involved and will lead to better student work product and development of important high-level skills.

Most law faculty members are experienced scholars who frequently author articles, books, and essays of their own. However, this experience does not translate directly into adequate instruction for students working on their own scholarly writing projects, for several reasons. First, not all law faculty are well versed in writing pedagogy, and may find themselves at a loss when considering how to teach a student to successfully complete a scholarly paper from start to finish.⁷ Other law

3. *Survey Report*, *supra* note 2, at 13 (Question 20); *SOURCEBOOK*, *supra* note 2, at 13–25.

4. *Survey Report*, *supra* note 2, at 5–8 (Questions 10–13); *SOURCEBOOK*, *supra* note 2, at 49–63, 83–84.

5. *SOURCEBOOK*, *supra* note 2, at 194 (“Unfortunately, the seminar/independent study requirement does not always provide a good research or writing experience. Too often, the supervisor provides no feedback to the student, but merely accepts the work and gives it a grade. And even where feedback is given, the professor often focuses only on the substance of the paper and provides no instruction or feedback to the student on research and writing.”).

6. *Standards*, *supra* note 2, at 19; *Survey Report*, *supra* note 2, at 25 (Question 33); *SOURCEBOOK*, *supra* note 2, at 93.

7. See Elizabeth Fajans & Mary R. Falk, *Comments Worth Making: Supervising Scholarly Writing in Law School*, 46 J. LEGAL EDUC. 342, 343 (1996) (“Successfully guiding a student through an extended writing project calls on a law professor to

faculty may feel comfortable teaching writing but are operating in an environment where time is too precious a resource to devote much discussion to the writing process, whether in class or one-on-one. Other faculty mistakenly think that first-year legal writing courses do or should teach scholarly writing. Acknowledging this fundamental problem in how some faculty may think—or not think—about an obligation to teach scholarly writing when students are writing scholarly papers under their supervision is critical to thinking about how to approach the delivery of scholarly writing instruction in law schools. Treating these challenges as insurmountable, and thus settling for the status quo, is a missed opportunity for faculties and students to more fully engage in the scholarly writing experience.

At a time when many law schools are considering changes to curricular requirements and addition of elements such as experiential learning, many faculty members and law school administrators may already be thinking about how to get their upper-level students to write more and to write better. Many faculty members may have developed elements of a scholarly writing pedagogy that could be scaled across upper-level classes and seminars, but because these seminars are likely not housed under an umbrella structure (like most first year writing programs are), they may lack a mechanism for sharing information or leveraging existing ideas and resources. And many law schools may have untapped resources that could easily be employed to enhance their students' scholarly writing experiences.

This Article can serve as a guide for law schools, individual law faculty members, or journal editors trying to think creatively about how to deliver scholarly writing instruction to students, in various forms, by leveraging different resources and populations. In our research on teaching scholarly writing, we have cataloged how various law schools implement the requirement for upper-level scholarly writing, collected data about what populations are involved in teaching scholarly writing at law schools nationwide, and developed various vehicles for law schools to use in considering how to implement a scholarly writing curriculum for their students.

The Authors do not mean to suggest that this is a low-cost task, or one that is not without challenges, disadvantages, and tradeoffs. For example, it is often difficult to strike the right balance between teaching a broad conceptual scholarly writing framework and providing individual feedback on student drafts. It is also sometimes difficult to engage students in their scholarly writing endeavors as more than just a check-the-box exercise on the way to graduation. In addition, the

exhibit skills beyond those of teaching the law itself, specialized skills in which most of us have had no training.”). In her survey on upperclass writing programs, Professor Griffin reported that professors supervising upperclass writing requirements were “not expected to have training or experience in teaching writing, and there is little support or training given to them.” Griffin, *supra* note 1, at 50.

viability of the student scholarly writing requirement itself has been questioned.⁸ Despite these challenges, student scholarly writing remains a vital and important part of the law student learning experience.⁹ As long as it remains a prominent part of most upper-level curricula, law schools should strive to provide some form of scholarly writing instruction to enrich students' scholarly writing experiences.

This Article is thus intended as a theoretical and practical guide for instruction in student scholarly writing. The intended audience is any individual, group, or institution seeking to enhance the way scholarly writing projects are currently constructed: law professors supervising individual student scholarly projects; professors supervising student writing through a law school course, practical research project, or seminar; or administrators contemplating formalizing scholarly writing instruction within the law school curriculum. The Article begins with some background (Part II) about upper-level writing requirements at law schools, and specifically, scholarly writing requirements. Part III discusses the current state of student scholarly writing and the resources that can be used to provide more instruction in scholarly writing. Part IV offers several practical models for teaching scholarly writing, at varying levels of formality. Finally, the Article concludes with a discussion of some of the common challenges that accompany the decision to devote more resources to the teaching of student scholarly writing and identifies ways to use resources and populations to manage these challenges.

II. BACKGROUND

In response to complaints by the bench and bar that students were graduating from law school without the necessary skills to be competent lawyers, the American Bar Association formed a Task Force on Lawyer Competency in the late 1970s. In 1979, Notre Dame hosted a conference discussing the education of lawyers where Roger Cramton, Dean of the Cornell Law School and Chairman of the Task Force, stated, "There is also need for more individualized instruction that builds student competence in skills of writing and oral expression, that puts students in professional roles of professional decision-making such as interviewing, counseling, negotiation, arbitration, and the like."¹⁰ Dean Cramton recognized that

8. The viability of the student scholarly writing requirement is discussed *infra* in Part III.

9. *Standards*, *supra* note 2, at 19; *Survey Report*, *supra* note 2, at 25 (Question 33); *SOURCEBOOK*, *supra* note 2, at 193.

10. Scott E. Thompson, *Developing a Comprehensive Approach to Teaching Lawyering Skills: A Response to the MacCrate Report 15 Years Later*, 3 *LIBERTY U. L. REV.* 47, 49–50 (2009); see *Report and Recommendations of the Task Force on Lawyer Competency: The Role of Law Schools*, ABA (ABA, 1979) [hereinafter *Cramton Report*].

[m]ost of the writing that law students do is examination writing, done under extreme time pressure without either a chance for self-criticism and self-editing or constructive criticism from the instructor. It offers neither the opportunity to write to the student's own standards nor the possibility of learning much from the experience.¹¹

Throughout the 1980s, due to a new emphasis in the practicing community on business practices and the bottom line, law firms began to raise salaries for new associates.¹² Firms that formerly spent time and money to train incoming associates could no longer spare the expense.¹³ Rather, firms reasoned that new associates' time would be better spent working on billable projects to justify the high salaries.¹⁴ Surveys continued to affirm firms' views that new lawyers should possess fully developed writing skills upon graduation.¹⁵

Due to these ongoing complaints from practitioners about the inadequacy of legal education, the ABA Section on Legal Education and Admissions to the Bar (the Section)¹⁶ conducted another study to evaluate the quality of legal education and reported its findings in the MacCrate Report.¹⁷ The report is widely known for its Statement of Skills and Values, outlining the fundamental lawyering skills that were essential for competent representation of clients.¹⁸ The report determined that in order to train students in the skills necessary for competent lawyering, schools should develop a teaching curriculum that emphasized legal analysis and reasoning, research, and writing.¹⁹

11. *Cramton Report*, *supra* note 10, at 15.

12. Terrill Pollman, *Building a Tower of Babel or Building a Discipline? Talking About Legal Writing*, 85 MARQ. L. REV. 887, 895 (2002).

13. *Id.* at 895–96.

14. *Id.* at 896.

15. *Id.*; see Bryant G. Garth et al., *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469 (1993) (surveying Chicago lawyers to rank legal skills in importance and to determine whether firms expect students to leave law school with necessary skills or develop them on the job).

16. The Section of Legal Education and Admissions to the Bar—the section responsible for accreditations of law schools—dates back to 1878, when the ABA was established. SOURCEBOOK, *supra* note 2, at 213.

17. *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, ABA SEC. LEGAL EDUC. & ADMISSIONS TO THE B. 3 (Student Ed. ABA 1992).

18. *Id.* at 121–24 (defining ten fundamental skills: (1) problem solving, (2) legal analysis and reasoning, (3) legal research, (4) factual investigation, (5) communication, (6) counseling, (7) negotiation, (8) litigation and alternative dispute resolution procedures, (9) organization and management of legal work, and (10) recognizing and resolving ethical dilemmas).

19. *Id.* at 139–44 (describing in detail the legal analysis and reasoning skill). As stated in the commentary to this skill description, “The importance of the skill of legal analysis is universally acknowledged.” *Id.* at 143 (citations omitted); see also WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 194 (2007) (generally known as the “Carnegie Report” because it was undertaken by the Carnegie Foundation for the Advancement of Teaching) [hereinafter CARNEGIE REPORT]; WILLIAM M. SULLIVAN ET AL., SUMMARY OF EDUCATING LAW-

Following the MacCrate Report, the Section revised the requirement that accredited schools provide at least one “rigorous” writing experience during the course of a student’s education.²⁰ First, Standard 302 was amended to include 302(a)(2): “A law school shall offer to all students . . . an educational program designed to provide its graduates with basic competence in legal analysis and reasoning, legal research, problem solving, and oral and written communication.”²¹ Other changes to the Standards provided greater job security for those teaching legal writing, which facilitated an environment in which Standard 302 could be properly attained.²²

The current Standard 302(a) provides that

[a] law school shall require that each student receive substantial instruction in: . . . (2) legal analysis and reasoning, legal research, problem solving, and oral communication; (3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year; (4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession²³

Although the requirement for upper-level writing instruction was in some respects a codification of current practice because many schools were already requiring students to complete both a first-year legal writing course and an upper-level seminar course, the additions to the Standards were further recognition of the importance of legal writing instruction in the law school curriculum.²⁴

Standard 302(a)(3) requires that students receive substantial instruction in legal writing after the first year, but encourages each writing program to be creative in designing a curriculum that uses the strengths and resources available to the school.²⁵ It is generally accepted that there are four categories of upper-level writing programs—although some programs may not fit squarely within one group:²⁶

In “horizontal” courses, professors seek to broaden their students’ knowledge of legal writing by exposing them to different types of legal documents. In “vertical” courses, professors seek to deepen

YERS: PREPARATION FOR THE PROFESSION OF LAW 4 (2007), http://www.carnegiefoundation.org/sites/default/files/publications/elibrary_pdf_632.pdf (“The dramatic results of the first year of law school’s emphasis on well-honed skills of legal analysis should be matched by similarly strong skill in serving clients and a solid ethical grounding.”).

20. SOURCEBOOK, *supra* note 2, at 217.

21. *Id.* at 218–19.

22. *Id.* at 217–19.

23. *Standards*, *supra* note 2, at 19.

24. SOURCEBOOK, *supra* note 2, at 220.

25. *Standards*, *supra* note 2, at 20 (Interpretation 302-2).

26. See Michael R. Smith, *Alternative Substantive Approaches to Advanced Legal Writing Courses*, 54 J. LEGAL EDUC. 119, 120 (2004).

their students' understanding of legal writing by giving them more knowledge of and practice in legal writing methods. In "hybrid" courses, teachers attempt to both broaden and deepen their students' knowledge. Finally, in "integrated" courses, teachers use a variety of methods, including writing, to teach course material.²⁷

Under the horizontal approach, advanced legal writing is seen as an opportunity to introduce students to new "genres" of legal writing, genres that are different from the types of documents in a first-year course.²⁸ The first-year legal writing course typically employs objective office memoranda and at least one persuasive brief to teach legal analysis and writing.²⁹ These documents are useful vehicles for teaching new law students to understand the mechanics of legal analysis, to use legal doctrine to communicate information, and to develop knowledge about particular areas of the law.³⁰ However, as the ABA Sourcebook on Legal Writing has noted, every type of legal document has unique analytical, legal, and communicative requirements, and exposing students to more documents will increase their knowledge in all of these areas.³¹ Exposure to new types of documents through the upper-level curriculum may be important to students' practice as lawyers, particularly client letters and legal drafting.³²

In compliance with the ABA Standards, 168 of the 184 schools responding to the 2012 ALWD/LWI Survey require J.D. students to "satisfy an upper-level writing requirement, beyond the required program, for graduation."³³ These requirements are most often satisfied by a scholarly paper written under the auspices of faculty supervision, either as part of an upper-level seminar course, membership on a journal, or as an independent study project.³⁴ This type of "critical analysis writing" (as it is sometimes called) communicates the critical evaluation of a specific aspect or area in the law in terms of relevant legal principles, policy considerations, or jurisprudential concepts.³⁵

Student scholarly writing comes in various forms—from the traditional law review case note to a legal research paper written as a credit component of a seminar course and many things in between. This type of writing is distinct from other legal writing done in law school because students are not asked to practically analyze a given set of facts but rather are tasked with finding their own topics to explore, analyz-

27. SOURCEBOOK, *supra* note 2, at 177.

28. Smith, *supra* note 26, at 121–22.

29. *Survey Report*, *supra* note 2, at 13 (Question 20) (showing 172 schools assign office memoranda, while 95 assign pretrial briefs, 52 assign trial briefs, and 138 assign appellate briefs).

30. SOURCEBOOK, *supra* note 2, at 18–21.

31. *Id.* at 177.

32. Smith, *supra* note 26, at 131.

33. *Survey Report*, *supra* note 2, at 25 (Question 33).

34. *See id.* at 25–26, 29 (Questions 33–34, 36).

35. Smith, *supra* note 26, at 125; *see also* Fajans & Falk, *supra* note 7, at 344.

ing and writing about their topic, and seeing the project to completion with varying amounts of supervision, depending on the nature of the project.³⁶

Scholarly writing requires students to work with complex source materials, providing the students with advanced research experience and helping them to engage in a new type of critical legal thinking that is unlike the types of analysis required for other forms of legal writing.³⁷ In addition to the benefits acquired from in-depth research development, scholarly writing provides students with an opportunity to get feedback on their writing skills after the first year.³⁸ Some students even publish their work during law school or upon graduation.³⁹ Others enter scholarly writing competitions through which the best scholarly research papers on a specified topic can win money, prizes, and publication opportunities.⁴⁰

Despite these various opportunities, the notion of upper-level scholarly writing requirements has been called into question.⁴¹ Law faculty have wondered if the requirement is antiquated or requires too much of law students who are only barely out of the first year. Others have noted that law professors supervising student scholarly writing projects often hold law students to an unfair standard, asking the students to create the same type of scholarship as faculty members do, but on a much more compressed time frame and with fewer resources.⁴² In light of this and other, broader discussions about the law school curriculum,⁴³ law schools may indeed soon revisit the idea of a scholarly writing project required of all upper-level students. However, good reasons exist to maintain the status quo; in the meantime, without altering the current requirements, professors can enhance the student writing experience through increased instruction to student writers engaged in these projects.

The amount, if any, of scholarly writing instruction students currently receive varies by law school. Because of the wide parameters given to law schools for implementation of the requirement of “at

36. *See, e.g.*, Fajans & Falk, *supra* note 7, at 344.

37. SOURCEBOOK, *supra* note 2, at 193.

38. *See generally* Fajans & Falk, *supra* note 7.

39. SOURCEBOOK, *supra* note 2, at 193.

40. *Id.* at 195.

41. *See, e.g.*, Jessica Erickson, *Does the Traditional Seminar Paper Make Sense?*, CONCURRING OPINIONS BLOG (May 25, 2011, 8:35 AM), <http://www.concurringopinions.com/archives/2011/05/does-the-traditional-seminar-paper-make-sense.html>; Jessica Erickson, *Legal Writing After the First Year*, CONCURRING OPINIONS BLOG (May 31, 2011, 3:24 PM), <http://www.concurringopinions.com/archives/2011/05/legal-writing-after-the-first-year.html>; *see also* Matt Bodie, *Yes, Law Students Create and Select Legal Scholarship*, PRAWFSBLAWG (June 2, 2011, 11:30 AM), <http://prawfsblawg.blogs.com/prawfsblawg/2011/06/students-and-scholarship.html> (discussing the role of student journal editors in the creation, editing, and distribution of legal scholarship).

42. *See, e.g.*, Fajans & Falk, *supra* note 7, at 369.

43. CARNEGIE REPORT, *supra* note 19, at 194.

least one additional rigorous writing experience after the first year,⁴⁴ upper-level legal writing curricula are as varied as they are numerous.⁴⁵ In the 2012 ALWD/LWI Survey, only 6 schools out of 184 responding schools reported that no elective legal writing courses were offered beyond a required sequence that all entering law students must take, such as legal research, legal writing, or appellate advocacy/moot court.⁴⁶

By far, scholarly writing is the most common type of advanced legal writing required by law schools with an upper-level writing requirement; 78 schools require scholarly writing and 91 more schools count scholarly writing towards the requirement.⁴⁷ In 2007, Professor Kenneth Chestek identified “a trend toward accepting academic writing, rather than practice-oriented writing, to satisfy the upper-level writing requirement.”⁴⁸ In addition to comparing the results of the ALWD/LWI Survey over time, Professor Chestek did his own independent survey.⁴⁹ His results from that survey included “54 of 65 responding schools (83%) report[ing] that an ‘academic paper’ satisfied the school’s upper-level writing requirement.”⁵⁰ The survey results also indicated that “nationwide nearly 70% of schools require only an academic paper . . . to satisfy the upper-level writing requirement.”⁵¹

In a vast majority of schools that require students to write a scholarly paper before graduation, most scholarly writing instruction comes from within the courses for which the paper is written—142 of the responding schools answered in this way.⁵² Students can also gain instruction through separate courses not associated directly with the stu-

44. *Standards*, *supra* note 2, at 19.

45. *See LRW Programs*, ALWD, <http://www.alwd.org/resources/lrw-programs/> (last visited Dec. 29, 2013) (listing outlines of 11 law schools’ legal writing programs); *see also Advanced Syllabus Bank*, LEGAL WRITING INST., http://www.lwionline.org/syllabus_bank_advanced.html (last visited Dec. 29, 2013) (compiled January 2003) (listing over 50 syllabi for advanced writing courses).

46. *Survey Report*, *supra* note 2, at 24 (Question 32).

47. *Id.* at 25 (Question 33).

48. Kenneth D. Chestek, *MacCrate (In)Action: The Case for Enhancing the Upper-Level Writing Requirement in Law Schools*, 78 U. COLO. L. REV. 115, 131–32 (2007).

49. *Id.* at 125–27.

50. *Id.* at 128.

51. *Id.* at 135. Even though most law students engage in scholarly legal writing in order to satisfy their school’s upper-level writing requirement, scholarly writing as an elective course is the fifth most commonly offered in the elective writing curriculum. *Survey Report*, *supra* note 2, at 27–28 (Question 35). Litigation and transaction drafting courses dominate the elective course offerings, followed by advanced research courses and general advanced legal writing courses. *Id.* In terms of enrollment in elective writing courses, scholarly writing courses have by far the highest average enrollment, at 100 students, with a five-student minimum and a maximum of 422 students. *Id.* at 29 (Question 36). Only two courses average more than 50 students enrolled: advanced advocacy and “other,” with other course enrollment averages ranging from 17.9 students (judicial opinion writing) to 45.3 students (general drafting). *Id.*

52. *Id.* at 26 (Question 34).

dents' papers or through writing workshops.⁵³ As a result, student scholarly writing may be supervised by full-time doctrinal and legal writing faculty and part-time and adjunct faculty alike. According to the ALWD/LWI Survey, only 21 schools offer little or no training in scholarly writing.⁵⁴

This data, however, may paint a rosier picture than is actually the case, for two reasons. One reason is that the ALWD/LWI Survey solicits information from legal writing professors who comprise only a small slice of law school faculties and likely make assumptions in answering the survey.⁵⁵ If the professor-respondent knows her school does not provide scholarly writing instruction outside seminar courses, the natural assumption is that instruction about the writing process and feedback on interim assignments are built into the seminar courses themselves.⁵⁶ This assumption may well be unfounded, despite the best intentions of the seminar professors.

53. *Id.* The specific responses to this question are as follows: 27 schools offer instruction in writing workshops that are not law school courses; 18 offer it in a course taught by non-writing faculty; 19 offer it through a course taught by LRW faculty or a director; and 26 schools offer some "other" type of instruction. *Id.*

54. *Id.*

55. ALWD/LWI Survey—Call for Hot Topics & Responder Information, e-mail from Mary B. Trevor, Assoc. Professor & Dir. of Legal Research & Writing, Hamline Univ. Sch. of Law, to LRWPROF listserv (Jan. 22, 2013, 9:15 AM) (copy on file with Author); Confirming Your Status As a School Responder for ALWD/LWI Survey, e-mail from Marci Rosenthal, Assoc. Professor & Dir. of Legal Skills & Values Program, Fla. Int'l Univ. College of Law (Feb. 4, 2013, 3:38 PM) (copy on file with Author); see also Chestek, *supra* note 48, at 138 (identifying potential for inherent bias in the ALWD/LWI Survey answers because the "surveys are generally completed by writing program directors or other faculty in the legal writing programs").

56. Law schools often have guidelines for upper-level writing requirements; these guidelines can include interim-assignment requirements, word minimums, and citation and research rules, among other things. For example, Georgetown University Law Center's Bulletin lists four technical requirements for satisfying the upper-level writing requirement:

- (1) use of legal forms of citation (when appropriate);
- (2) submission of an outline and a first draft, in accordance with the professor's instructions and schedule;
- (3) submission of a revised final paper based on the professor's comments; and
- (4) submission of both the first draft and the final paper of at least 6,000 words (excluding footnotes), which is approximately 25 typewritten pages using customary margins and spacing.

2012–13 *Georgetown Law Bulletin*, GEORGETOWN UNIV. L. CTR. 21, (2012) (copy on file with Authors).

Despite requirements often identified in a law school bulletin, such instructions are often not policed. In other words, that law schools have guidelines probably intended to formalize some minimal amount of scholarly writing instruction is no guarantee that the guidelines are being executed accordingly, if at all. See Griffin, *supra* note 1, at 50 (identifying supervision requirements for topic selection, outlines, drafts, and conferences); see also Chestek, *supra* note 48, at 138 ("Nearly three quarters (72.3%) of the schools responding to my survey said students were not required to submit anything but a final draft for required upper-level writing, while 63% of respondents said that supervising faculty typically do not read preliminary drafts.").

The data may also be misleading because it likely overstates the amount of scholarly writing instruction at law schools; our research suggests that there is far less actual instruction than these numbers indicate. The reality is that there is little consistency among and within law schools in how scholarly writing instruction is delivered, if at all. And among the schools that do provide scholarly writing instruction, the actual instruction varies from school to school, and even from seminar to seminar at the same school.⁵⁷

Of course variation among law schools in their approach to scholarly writing instruction is not cause for alarm, as long as each law school actually has a systemized way of providing scholarly writing instruction. But a lack of instruction or extreme variation in instruction from course to course even within the same law school is problematic. Law schools should think about creating, developing, or refining scholarly writing instruction as part of their duty to satisfy ABA Standard 302(a). To help law schools in this endeavor, the next section of this Article identifies how to begin, with two initial inquiries.

III. GETTING STARTED: TWO INITIAL INQUIRIES

There is no set formula or “right way” to teach scholarly writing in law schools and no one reason to strive to find one. As noted above, Standard 302(a)(3) requires that students receive substantial instruction in legal writing after the first year, but encourages each school and writing program to be creative in designing a curriculum that uses the strengths and resources available to the school.⁵⁸ This section explores two threshold questions to ask when considering additional instruction for student scholarly writers. First, why maintain the scholarly writing requirement for upper-level students? Second, what resources and populations are available for law schools that seek to increase the amount of instruction in scholarly writing?

A. *Why Maintain the Research Paper Requirement?*

Reasonable minds can differ about the continued vitality of an upper-level research paper requirement.⁵⁹ An exploration of the pros and cons of requiring an upper-level research paper could itself be the

57. Much of the data about scholarly writing instruction comes from professors. In a future research project, we plan to survey students to better understand their perspective on writing a scholarly paper, in addition to compiling scholarly writing course evaluation results to further develop our research in scholarly writing pedagogy.

58. *Standards*, *supra* note 2, at 20 (Interpretation 302-2).

59. Blake Rohrbacher, *Decline: Twenty-Five Years of Student Scholarship in Judicial Opinions*, 80 AM. BANKR. L.J. 553 (2006); Stephen I. Vladeck, *That's So Six Months Ago: Challenges to Student Scholarship in the Age of Blogging*, 116 YALE L.J. POCKET PART 31, 36 (2006); Bernard J. Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 637 (1996).

subject of its own article. However, some of the criticisms levied against such a requirement lack the strength to lead to rapid and widespread change to law school curricula, in part because there are in fact good reasons to maintain it. Thus, though we do not unconditionally support the status quo research paper requirement, it makes sense to assume that the requirement will remain in place for at least the near future, for several reasons.

First, the research paper is the best way to maximize a school's ability to create and administer the upper-level writing requirement set forth by the Standards. The research paper is a natural progression from the first-year curriculum; it builds on students' mastery of basic legal analysis skills and sets the stage for deeper learning on more specific areas of the law. Encouraging students to think outside the box is welcome but hard to scale in terms of whether the specific non-traditional project meets the requirements for a robust writing experience; the research paper as the standard is a way to leverage the experience for most students.

Second, even if law schools change the paper requirement, the structure of law reviews is also not likely to change or at least to change quickly. In part this is due to the student-run nature of law journals: with little to no big-picture approach to managing the journals, most students' journal experience lasts two years and then completely ceases at graduation, so there is little time to consider and implement widespread change. Any change is also unlikely to remove the requirement for student writing. Though the form, structure, or publication opportunities may change, writing a note is a traditional part of journal membership, and any changes to law reviews on a large scale would likely retain a student-run writing component at least as long as the law reviews continued to publish student scholarship. Thus, even if a journal note is unlinked from satisfying an upper-level writing requirement, the academic honors associated with journal membership will likely mean a new population of student writers each year. Even without direct faculty oversight of law journals, more faculty-led scholarly writing instruction can help the student writers who would otherwise be without faculty guidance throughout the course of the project.

Third, the requirement is not without practical value. One common objection to the research paper requirement is that it is too dissimilar to the type of writing done in practice.⁶⁰ Many attempt to put student writing in one of two broad categories: practical, client-based writing;

60. Chestek, *supra* note 48, at 137 (“[I]t seems unlikely that writing [academic] papers is ‘rigorous’ in the same way that a paper written for an upper-level legal writing course would be rigorous. . . . [A]cademic papers have a different purpose and a different audience than more practice-oriented writing assignments. This is because the professor evaluating the papers is evaluating students’ mastery of the subject matter of the course, not their ability to communicate effectively in writing.”).

and non-practical, scholarly writing in the form of seminar papers, research papers, and journal notes. This is a false dichotomy. Ironically, with more discussion about the creation and architecture of the paper, the more practical the instruction becomes. Engaging with the writing process and developing skills in executing the specific research paper at hand translates to refining skills applicable to all writing projects.⁶¹ Moreover, the scholarly writing experience can have an even broader impact in partially satisfying ABA Standard 302(a)(4) to develop “professional skills related to various responsibilities lawyers are called upon to meet.”⁶²

Furthermore, the experience is also an exercise in student-centered learning, something that is often too absent in the upper-level curriculum.⁶³ Seminars in particular are the right laboratories for this kind of instruction. For example, the traditional research paper (or journal note) meets several of the Best Practices for delivering instruction in legal education: it supports student autonomy;⁶⁴ encourages collaborative learning;⁶⁵ engages students and teachers by allowing them to di-

61. Fajans & Falk, *supra* note 7, at 344 (“[Scholarly writing develops students’ legal reasoning skills by requiring them to adopt a more global perspective than any individual case presents. It introduces students to a perspective and a type of writing other than the purely instrumental or practical—namely, critical writing. And far from being useful only to scholars, this new dimension enhances the practitioner’s ability to draft appellate arguments, estate plans, and other complex documents.”).

62. *Standards*, *supra* note 2, at 19. ABA Standard 302(a)(4) has been seen as a push for skills at the cost of doctrine, but thinking about scholarly writing instruction may be an opportunity to unify skills and scholarship. The skills required by this standard include traditional lawyering skills, such as counseling and interviewing. *Id.* at 20 (Interpretation 302-2). But the phrase “various responsibilities of lawyers” is vague and expansive. Lawyers’ various responsibilities include effective written and oral communication, mastery of the law and complex information, satisfaction of deadlines, and incorporation of feedback from clients and supervisors. These skills are part of scholarly writing—or they can be in a well-designed scholarly writing program of instruction. Successful completion of a scholarly writing project requires time management, the ability to communicate complex analytical ideas to an audience in writing and in oral discussions, building confidence in a subject area, and satisfying the commitment to complete a lengthy and rigorous writing project. See Karen Thornton, *It’s Not Purely Academic: Using Practitioners to Increase the Rigor and Practical Learning in Scholarly Writing*, 20 *PERSP.* 87, 90–91 (2012), available at <https://info.legalsolutions.thomsonreuters.com/pdf/perspec/2012-winter-spring/2012-winter-spring.pdf>.

63. *SOURCEBOOK*, *supra* note 2, at 194 (“In the final year of law school, the student is apt to possess the depth of doctrinal knowledge and analytical skills to be able to undertake a highly sophisticated project. Moreover, because the student often has an opportunity to select the topic, the student’s interest in that topic can provide a strong incentive to do a high quality job in researching and writing the paper.”).

64. ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* 112 (2007), available at http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf.

65. *Id.* at 119–20.

rect the nature of the project;⁶⁶ and requires regular and prompt feedback.⁶⁷

In this way, a research paper has the potential to bridge the gap between experiential learning and doctrinal learning, but only if the experience includes a meta-discussion of the project and supervision throughout the writing process.⁶⁸ It cannot simply be that the students are writing papers on their own time, on a track completely separate from the course itself. With proper guidance and instruction, however, scholarly writing offers students the opportunity to develop a mastery understanding of an area of law, continue developing and refining their approach to legal analysis,⁶⁹ broaden their ideas about how to approach a legal issue, and “hone fundamental cognitive processes,”⁷⁰ all of which contribute to students’ overall learning and transition to practice.

Along similar lines, scholarly writing presents an opportunity for increasing student interaction with faculty. Giving students the opportunity, and even requiring them, to work closely with a faculty member can strengthen law students’ “law school experience as a whole.”⁷¹ Data from the recent Law School Survey of Student Engagement indicated that “25% [of law students responding to the survey] have never talked with [faculty] outside of class about course issues or readings.”⁷² Effective supervision of a scholarly project necessarily entails a close working relationship between student and faculty-supervisor.⁷³ If part of a scholarly writing course of instruction includes one-on-one meetings with faculty, law schools will be providing students with faculty interactions that contribute to overall student success and engagement in law school.⁷⁴ Interacting with faculty through a scholarly writing project can open the door to other interactions students find critical to satisfaction, such as discussions about which courses to take, career planning, or other topics unrelated to a particular course.⁷⁵ The

66. *Id.* at 122–23.

67. *Id.* at 125.

68. Fajans & Falk, *supra* note 7, at 344–45.

69. *Id.* at 344.

70. *Id.*

71. Law School Survey of Student Engagement (LSSSE), *Lessons from Law Students on Legal Education: 2012 Annual Survey Results* 11, http://lssse.iub.edu/pdf/2012/LSSSE_2012_AnnualReport.pdf (last visited Dec. 29, 2013) [hereinafter *LSSSE Survey*].

72. *Id.*

73. See JESSICA L. CLARK & KRISTEN E. MURRAY, *SCHOLARLY WRITING; IDEAS, EXAMPLES, AND EXECUTION* 8–10 (2d ed. 2012) (describing various levels of advisor engagement).

74. *LSSSE Survey*, *supra* note 71, at 11.

75. The survey reported that 32% had conversations with faculty about future courses to take; 25% discussed career plans or sought career advice; and 19% “talked with faculty outside of class about topics unrelated to coursework.” *Id.* “These data underscore the impact the faculty can have on student growth, student outcomes—even student satisfaction with the law school experience as a whole.” *Id.*

report calls for increased opportunities for faculty interaction; supervising scholarly writing projects is an ideal way to increase faculty interaction with students.⁷⁶

To be sure, there are good reasons to consider alternate models to the traditional legal research paper, and available alternatives will be shaped by resources and goals unique to each law school. But for now, we assume scholarly writing is a requirement that is likely to be in place for the majority of law students for some time, and thus thinking about expanded instruction in scholarly writing is a worthy task.

B. *What Resources and Populations Can and Will Be Involved in the Teaching of Student Scholarly Writing?*

The first step in increasing the amount of scholarly writing instruction is assessing both the scholarly writing resources currently employed at the law school and the school's existing resources and populations that might be involved in such instruction going forward. The second step is to think about the roles that these populations might play. Potential resources and populations include upper-level students, faculty members, law school administrators, alumni, and others. It is useful to think about these elements as separate component parts before considering how any larger endeavor may operate.⁷⁷

1. Upper-Level Students

The major population here is the upper-level students; every endeavor to teach scholarly writing will include a constituency of student writers who are the heart of this enterprise. This group can include journal staff members, upper-level seminar students, students working on independent writing projects, and graduate candidates working on thesis projects. If some or all of the effort to formalize the teaching of scholarly writing includes journal students, the population may also include upper-level students in supervisory roles. The group of upper-level students will be primarily comprised of journal editors, although it could also include teaching assistants used in the teaching of legal writing.

Upper-level students can play various roles in the scholarly writing enterprise. The role of the student writers is obvious and likely the same in all contexts. Upper-level student editors on the journals may have a role in supervising the execution of the writing project or may have an administrative role in determining whether the student writer has satisfied the criteria for journal membership that may be related to earning credit. Likewise, outside the journal construct, upper-level students may be teaching assistants in seminar courses.

76. *Id.*

77. The inter-operation of these components is discussed *infra* in Part IV.

Upper-level students also provide the potential for a powerful tool in scholarly writing instruction: peer review.⁷⁸ This can come from students working in a supervisory capacity—in the form of feedback from journal editors—or peer review exercises contained within a seminar, scholarly writing course, or writers' group. A peer-staffed writing center may be an additional resource as well.

Student writers can also benefit from student- or faculty-led works-in-progress sessions where they present their papers to the group and get immediate feedback. Alternatively, students may exchange papers in advance and then have a group feedback session. These can be organized for journal students, seminar enrollees, or students working independently.

2. Faculty Members

In terms of resources for the student writers, faculty members function in various ways. Faculty members may serve as general supervisors of the journals' work. Their journal advisory role may vary depending on how the journal is structured or on factors unique to the assigned faculty member such as personal preferences or management styles. Other individual faculty members supervise students on a one-to-one basis, either as part of the journal system, through seminars that carry a writing requirement, or in independent, credit-bearing projects. Faculty may also be involved in the teaching of scholarly writing in a formal course.

Faculty participation in scholarly writing instruction can take place on a large or small scale. On a large scale, faculty members may offer their expertise to students through lectures on scholarly writing. These lectures may be given via a formal course or informal workshops for student writers or as training for journal editors. They may be provided by one faculty member who oversees the entire endeavor, or various "guest" faculty lecturers who speak on different topics. Seminar faculty may incorporate scholarly writing instruction into their courses, by discussing approaches to meeting interim deadlines or defining expectations for these interim projects.

On an individual level, faculty members may be involved in the supervision of individual student works, sometimes working collaboratively with the journal editor who is also supervising the student. They may also teach upper-level doctrinal seminars in which the culminating exercise is a student research paper, graded by the professor. Individual faculty members may also be working with students on independent research projects that are not associated with a formal course.

78. Griffin, *supra* note 1, at 72–74.

3. Other Resources

Several other populations may become involved in the teaching of scholarly writing, be it through an informal or formal method.⁷⁹

The research experts in the law library may be a good resource for discussions of scholarly research generally or on specific subject areas that may interest a large group of students (for example, international law journal staff members). Law librarians are also often available to provide one-on-one advanced research training to students. Computer-Assisted Legal Research (CALR) representatives may also be prepared to discuss scholarly writing resources on the various electronic research services.

Alumni practitioners may wish to get involved in the enterprise, including former journal staff members and editors and local alumni who work in the specific fields that the students are writing about. Student writers could be paired with adjunct faculty in formal or informal ways, involving classroom instruction, supervision and assessment of individual papers, or oversight of peer review or works-in-progress sessions.

Finally, the administration of the law school may be able to provide resources to support the teaching of scholarly writing, from staffing and financial support to general administrative assistance.⁸⁰ The law school could also facilitate faculty information-sharing: Individual faculty members may want to share with colleagues their experiences with successful approaches to supervising scholarly writing as well as identify go-to professors for other professors seeking advice. For example, if a faculty member writes a set of detailed guidelines for seminar paper writing, he could share those guidelines as a resource for others to use or modify. This would also help less experienced colleagues in directing their questions to a seasoned supervisor of student scholarly writing.⁸¹

Law schools may have some or all of these resources at their disposal as they develop a plan for teaching scholarly writing; some of them may not have been previously identified but are worth pursuing as

79. These various methods to teaching scholarly writing are discussed *infra* in Part IV.

80. In our world of academic freedom, most faculty members should be able to develop their own courses and any writing guidelines attached to them. This notion of information-sharing thus is not meant to suggest that the guidelines should be uniform, just that most schools' current system, if not centralized, is likely inefficient, and that colleagues are an excellent first resource for professors seeking to develop a method for delivering in-class scholarly writing instruction.

81. Short of detailed guidelines, professors could craft checklists for their students to use in approaching and finalizing their scholarly paper. *See* Griffin, *supra* note 1, at 59 ("A checklist for scholarly writing should demonstrate the requirements for each of the sections of a traditional law review article (introduction, background, analysis, conclusion) offering the student a quick criteria list for clear, well-organized and thorough presentation of those sections.").

plans develop. The more resources that become involved, the more formal the teaching of scholarly writing may become, and thus a need for administrative oversight may arise.

This is just a sampling of the types of components that can be included in the teaching of scholarly writing. Law schools can choose to implement one or many of these options; in various combinations, these components can enrich students' scholarly writing experience. Choosing among them must involve an accounting of available resources, including the knowledge that one may be asked to participate in this enterprise without additional compensation for doing so,⁸² and a balancing of concerns that are individual to each law school, such as the balance between student journal autonomy and faculty oversight of a credit-bearing exercise.

IV. MODELS FOR TEACHING SCHOLARLY WRITING

There are a number of potential models for teaching scholarly writing that put together various components of the resources and populations identified in Part III. This section describes models for offering additional scholarly writing instruction at three levels: a formal, required scholarly writing curriculum; smaller-scale elements that can be offered to the general upper-level student population; and informal elements that individual faculty members can integrate into their own classes.

A. *A Formal Model: A Scholarly Writing Co-Requisite Course*

A formal scholarly writing program can be structured as a co-requisite course for students committed to writing a scholarly paper, usually called a note, as part of their journal membership. In this model, faculty members teach scholarly writing by lecturing on the scholarly writing process and providing practical tips for executing the steps of the project. The course can be structured according to the interim deadlines set by the individual journals, with lecture and demonstration by example in the early part of the writing process and works-in-progress discussions toward the middle and end of the writing process. Journal editors and faculty members⁸³ can be involved in providing

82. We do not mean to suggest that it is acceptable for faculty to take on additional teaching burdens without additional compensation; we merely acknowledge the possibility exists.

83. For example, the University of Arkansas at Little Rock Bowen School of Law's course, "Legal Scholarship" is "offered fall semester to law review apprentices who are writing their notes to gain full membership. The course is a combination of guided peer reviews and lectures; . . . Their writing is evaluated by law review editors and by a faculty or attorney advisor," not by the faculty member teaching the course. Scholarly Writing, e-mail from Lindsey Gustafson, Assistant Prof. Legal Writing, Univ. Ark. Little Rock Bowen Sch. of Law, to Author (Nov. 22, 2010, 11:49 AM) (on file with Author). Employing adjunct faculty to provide feedback and assess students' papers is another way to structure the course in a way to avoid over-burdening the

feedback to students throughout the writing process; in the end, the journal editors can make decisions about publication and faculty members can evaluate and grade the students' notes to satisfy the credit requirements for the course.⁸⁴ Such a program could be organized by journal, with multiple sections of the course—one for each journal. Or there could be multiple sections of the course offered, and students could choose based on scheduling preferences, resulting in a mix of journal membership within the class.

A formal program could also reach non-journal students through a co-requisite course for students taking seminars with a paper requirement. For example, California Western School of Law requires students to take Legal Scholarship Training Seminar while enrolled in a seminar course in which the students are writing a paper.⁸⁵ This course meets three times during the semester and the meetings' content and dates are structured around the writing process.⁸⁶ Short of a required co-requisite, a school can offer an optional course for students to take during the semester in which they are writing a paper for a seminar course. At George Washington University Law School, a course called Upper-Level Writing aids students in their scholarly paper project by requiring interim assignments, providing feedback on the interim assignments, and facilitating student works-in-progress meetings.⁸⁷

Similarly to the journal co-requisite, faculty members could structure the course to provide instruction and guidance on the writing process, and to the extent allowed by the seminar professor, give students the opportunity for peer review through works-in-progress meetings. Faculty members could also provide non-journal students the option of an elective scholarly writing course, designed for students writing a scholarly paper to satisfy an upper-level writing requirement or for other reasons—for example, an independent writing project or a writ-

faculty member teaching the scholarly writing course. For example, at George Washington University Law School (GW), there are over seventy students on law review alone, and instead of requiring one professor to teach the scholarly writing course and evaluate all the papers, GW employs a cadre of adjunct professors assigned to small groups of students, responsible for running works-in-progress meetings and grading the students' final papers.

84. A scholarly writing course can be offered for credit or no credit. See *infra* Part V for a discussion about credit concerns for scholarly writing instruction.

85. Bobbie Thyfault, Legal Training Seminar Syllabus Fall 2010 (on file with Author). Students earn no credit for the LSTS, and the seminar professor is responsible for evaluating the paper; students earn credit for the seminar itself. Scholarly Writing, e-mail from Bobbie Thyfault, Legal Writing Professor, Cal. W. Sch. of Law, to Author (Nov. 22, 2010, 3:51 PM) (on file with Author).

86. According to Professor Thyfault's syllabus, "Although no independent grade is given for this class, a student may not receive scholarly writing credit for their paper unless they: 1) attend the entire Legal Scholarship Training Seminar class . . ." Legal Training Seminar Syllabus Fall 2010, *supra* note 85.

87. Students earn one ungraded credit for satisfactory completion of the Upper-Level Writing course, determined by completion of interim assignments and participation in class including works-in-progress meetings.

ing competition. At Duke University Law School, students have two upper-level elective options, Writing for Publication and Legal Writing: Craft & Style Course.⁸⁸ These electives are intended for a variety of students including “students who are writing articles to meet their journal note’s requirement, journal editors who have previously written and published articles, and others who are simply looking for a very structured form in which to write a paper that fulfills Duke’s upper-level writing requirement.”⁸⁹

Regardless of the intended audience, the course coverage would be the same. The course would begin by guiding students through the process of writing a scholarly paper, which includes topic selection and thesis development. Next, students would learn research and attribution in the scholarly context. Then, the students would move to drafting, rewriting, revising, and editing a paper based on feedback from different audiences. Finally, the process would end with polishing the final product.⁹⁰ These concepts build on, but are not covered in, the traditional first-year legal research and writing course nor most upper-level doctrinal seminars. Such courses could also include some of the mid-range options offered in the next part of the Article.

B. *Mid-Range Formality: Options Provided by the Law School Administration*

Law schools can also provide class-wide scholarly writing resources without creating a full-blown co-requisite course. Determining which options work best will, of course, depend on the resources available at a particular school. Whatever the construct, the Authors offer examples of how a school could employ small-scale components for conducting a scholarly writing enterprise. Schools might offer one, some, or all of these elements as part of a less formal scholarly writing curriculum.

1. *Facilitating Peer Review Through Student-Run Works-in-Progress Sessions*

Almost all student scholarly writing is done alongside a group of peers—seminar classmates or fellow journal staff members. It is also sometimes done under the watchful eye of a more senior student: a journal editor or, more rarely, a course teaching assistant. One forum

88. Scholarly Writing, e-mail from Jeremy Mullem, Assistant Dir. of Legal Writing, Duke Univ. Law Sch., to Author (Dec. 1, 2010, 3:08 PM) (on file with Author). As an example of an even more broadly designed upper-level writing course, Professor Sarah Ricks at Rutgers-Camden has taught Advanced Legal Writing, a course designed to “allow[] students to do practical legal writing or academic papers.” Scholarly Writing, e-mail from Sarah Ricks, Clinical Professor & Co-Dir., Pro Bono Research Project, Rutgers Sch. Law—Camden, to Author (Nov. 23, 2010, 6:30 AM) (on file with Author).

89. E-mail from Jeremy Mullem, *supra* note 88.

90. Sample syllabi from such courses are on file with the authors.

for useful feedback can be student-run works-in-progress sessions similar to the workshops and colloquia common to law school faculty research endeavors. Students are, in some ways, the ideal audience for legal scholarship—even without subject matter expertise, students can weigh in on whether a paper is credible, well-supported, interesting, and so on. Additionally, unlike with a professor-led discussion, the student-author might feel “safer” with an audience of students. During these sessions the authors exchange drafts and offer feedback, either with a student leader or among peers. These sessions can be useful both in providing feedback to the students and setting an interim milestone for the project, thus incentivizing them to make progress on the draft.

Students often recognize the value of working collaboratively through peer review because they see it as more like the “real world” than when they do projects without any collaboration, as many do in the first-year legal writing courses.⁹¹ The LSSSE Survey reported that 65% of law students “frequently discuss ideas from their courses with others outside of class.”⁹² The Survey further “confirm[ed] that students benefit from opportunities to learn collaboratively,” and these student “interactions allow students to develop competencies that are essential to practice.”⁹³ The Survey also noted that students recognized the value of collaboration in their development as law students and future attorneys.⁹⁴ Law schools, by formalizing peer review and collaborative student discussions as part of a scholarly writing project, can capitalize on this opportunity for development.⁹⁵ Incorporating collaboration within scholarly writing courses can help “prepare students fully for future practice,” a goal for all law schools.⁹⁶

From a purely financial resources perspective, involving peer review from students is likely to be least expensive and has the potential to be incredibly valuable, as students can learn from upper-level students who have already successfully completed, and in some cases, published a scholarly article.⁹⁷

91. See *infra* note 103 and accompanying text.

92. LSSSE Survey, *supra* note 71, at 13.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. Kirsten K. Davis, *Designing and Using Peer Review in a First-Year Legal Research and Writing Course*, 9 J. LEGAL WRITING 1, 2–3 (2003) (defining the advantages of peer review in a first-year legal writing course as: encouraging cooperation among students, understanding audience, reinforcing legal writing concepts learned in class, developing meta-cognition skills, building confidence, and “articulat[ing] criticism in a coherent and constructive manner”). Peer review among upper-level students in a scholarly writing course also has these advantages. In fact, peer review among upper-level students may be even more productive because students are more confident, have a better sense of their goals, and have been exposed to multiple critiques of their writing, and thus can better appreciate the collaborative, engaged opportunity peer review presents. See Griffin, *supra* note 1, at 73–74; see also Fajans & Falk,

2. Employing Adjunct Faculty to Supervise and Evaluate Scholarly Writing

In a program with a large number of students, the heaviest burden on resources is likely to be the substantive evaluation of the writing projects, including review of interim assignments. Consider a journal with seventy new members, all assigned to write a scholarly note during their second year of law school. Though it would be relatively easy for one faculty member to provide classroom instruction to a group of seventy students, effectively supervising seventy lengthy law review notes would be virtually impossible. To distribute this burden, a scholarly writing program can consider using adjunct faculty, especially recent alumni who wrote their own law review notes in the not-too-distant past. Or, in the case of a subject-specific journal, adjuncts could come from the geographically-available pool of practitioners in the specified subject area. Adjuncts can be assigned to a small group of students, ten for example, and provide interim feedback, facilitate works-in-progress meetings, and grade final papers. Depending on the structure of the journal, adjuncts can be paired with student journal editors to ensure feedback complies with the journal's rules for publication.

This option may not be available to all law schools; for example, if the law school is located geographically in a place where it would be difficult to find local practitioners, incorporating adjunct professors as supervisors may prove impossible. However, this shortage could lead to creative uses of technology to bring alumni in as distance-adjunct supervisors.

3. Class-Wide Lectures on Hot Topics

Law schools might also consider class-wide lectures to provide students with ideas on how to find a paper topic or what specific areas of the law are ripe for scholarly exploration. The school may want to involve local practitioners and alumni by asking them to identify and share hot topics or issues in their field. Students could use these ideas as starting points for thinking about topics and theses for their scholarly writing projects. Faculty members might also be called upon to deliver lectures on the areas of their expertise. In the journal context, this could happen at journal orientation, through an interactive web discussion between journal members and practitioners, or through a lecture provided to all upper-level students.

supra note 7, at 369–70 (suggesting “peer writing groups” as a tool for advancing student scholarly writing experiences).

4. Training Upper-Level Journal Editors to Provide Feedback on Journal Members' Writing Projects

Many journals are student-run enterprises, and, as such, faculty may simply not have access to the students writing scholarly notes as part of their journal membership, at least not in a comprehensive, structured way. Or for other resource-related reasons, upper-level students may be the only available population to employ in establishing a system for guidance and feedback to students. Faculty can, however, offer a workshop, lecture series, or even a semester-long course on the role of journal editors. Faculty can also advise editors in evaluating their junior peers' written work, providing feedback intended to improve that work, and ultimately helping the journal publish as many student notes as possible. This way, faculty can play a useful role in providing instruction to the journal students but also maintain a hands-off relationship with the writing, evaluating, and publishing of the student notes—to the extent that this is the relationship desired by the law journal.

5. Facilitating Brown Bag Discussions Among Students

Law schools might also organize a brown bag lunch series with discussion topics ranging from understanding the purpose of a scholarly paper and developing a thesis to how to get a scholarly paper published. A brown bag lunch series could be offered as a response to journal editors' requests for specific guidance to the journal members tasked with writing scholarly notes.⁹⁸ Or faculty members could arrange lunch discussion topics according to the writing process with an eye toward providing guidance to students in seminar courses. A semester- or year-long lecture series or mandated workshop could work as well, which could be targeted to students writing a scholarly paper in any construct: law journal note, seminar paper, independent writing project, or graduate thesis.⁹⁹

98. E-mail from Michelle Cue, Legal Writing Instructor, DePaul Univ. College of Law, to Author, Scholarly Writing (Dec. 7, 2010, 3:40 PM) (on file with Author); E-mail from Tamara Herrera, Clinical Professor of Law, Ariz. State Univ. Sandra Day O'Connor Sch. of Law, to Author, Scholarly Writing (Nov. 22, 2010, 3:17 PM) (on file with Author).

99. Fajans & Falk, *supra* note 7, at 369. Among several suggestions for improving the student scholarly writing experience, Professors Fajans and Falk suggest various workshops or a "mini-course on legal scholarship and on the process of scholarly writing." *Id.* Such workshops or mini-courses could "describe the writing process itself and teach brainstorming techniques," "focus on research strategies for scholarly writing," "familiarize students with the conventions of legal scholarship," "teach[] strategies for getting ideas out on paper and getting them organized," and "focus[] on sentence-level revision." *Id.*

C. An Informal Model: What Individual Faculty Members Can Do

There are a number of ways individual faculty members can provide support to students writing scholarly papers. At the most informal level, individual faculty members can get involved in students' scholarly writing projects to provide formative feedback as the students begin their work on their papers by facilitating or encouraging one-on-one contact with student authors who are working on journal notes or other individual student scholarly writing projects. Faculty members are well-positioned to offer advice to students on choosing a topic; developing a thesis; or, even more generally, describing what a scholarly paper is supposed to be or look like. Students may seek out faculty subject-matter experts when attempting to write on a topic with which the faculty member is familiar, but these faculty experts are often not writing teachers. To bridge the gap between offering advice on topics and theses and explaining how to approach writing a scholarly paper, individual faculty members can point students to scholarly writing resources, such as a scholarly writing textbook, a sample paper, or a published note, which students could look to as examples for their own scholarly writing project.¹⁰⁰ Faculty members may also develop a set of guidelines for their supervision of student scholarly work, clearly delineating expectations for interim assignments, frequency of meetings, and other such elements.

Seminar faculty can do a number of things to take a more involved approach to scholarly writing instruction. Seminar faculty can help students develop topic and thesis ideas by identifying potential topics during class lectures and discussion.¹⁰¹ As likely subject-matter experts, the seminar faculty can identify gaps in the scholarly literature and help students seek out their own narrow contribution.¹⁰² Combining topic development with establishing connections to the practicing bar, seminar faculty could invite alumni practitioners to discuss hot topics in the related practice area.

Seminar faculty can also incorporate a "guest lecturing" faculty member (that is, not the faculty member who is teaching the seminar) to teach scholarly writing concepts to students currently enrolled in a

100. See Griffin, *supra* note 1, at 57 ("A simple but effective way to improve students' writing is to require that every student undertaking an upperclass writing project purchase and use a writing text or manual in addition to whatever substantive text is required.").

101. *Id.* at 62 ("Some professors may wish to offer students a list of possible topics. Alternatively teachers might find it helpful in the first class, or before the first class in a memo to all registered students, to draw students' attention to various sources for ideas . . . and instruct them to begin the process of selecting an issue.").

102. Beyond the seminar course, professors teaching a course in a journal subject area may also offer topic ideas. For example, Professor Joshua Schwartz, Co-Director of the Government Procurement Law Program at the George Washington University School, teaches a Government Contracts course in which he often suggests issues for consideration as note topics by student-members of the *Public Contract Law Journal*.

seminar with a research paper requirement. This could work by scheduling thirty-minute lectures during three seminar class sessions over the course of a semester.¹⁰³ The seminar professor may appreciate the opportunity for a guest lecturer to cover the writing aspects of the course requirements, giving the seminar professor the ability to focus on the subject matter. In a scenario like this, the seminar and guest lecturer faculty members could work closely to schedule the sessions and determine the most appropriate and useful content for the guest lectures. Several law schools have tried this already, and in at least one case, this method resulted in the creation of an elective one-credit scholarly writing course that students take concurrently with the seminar course in which they are writing a scholarly paper.¹⁰⁴

Seminar faculty might also reserve one or more class sessions for peer review exercises, such as the one discussed above, or can require peer review of papers to occur outside of the class. Finally, individual faculty, most likely those teaching legal writing, can offer workshops on writing scholarly papers to any interested student.¹⁰⁵ These workshops could also be partnerships among legal writing faculty, faculty journal advisors, and upper-class journal editors.¹⁰⁶

V. MANAGING COMMON CHALLENGES

Formalizing the teaching of student scholarly writing will likely come with challenges—some expected and some not. This Part identifies some known challenges to this endeavor and offers ideas for managing the challenges to avoid losing traction in an effort to create, develop, or reform scholarly writing instruction. These challenges in-

103. For example, a writing professor can offer “topic-specific lectures on writing academic legal papers” during several seminar class meetings. Scholarly Writing, e-mail from Clare Keefe Coleman, Visiting Assistant Professor & Writing Specialist, Earle Mack Sch. of Law, Drexel Univ., to Author (Nov. 22, 2010, 11:24 AM) (on file with Author).

104. Professor Karen Thornton at the George Washington University Law School proposed and implemented a Scholarly Writing Seminar in 2011, after a successful one-semester pilot program.

105. Workshops can be structured as anything from a one-time ninety-minute overview of writing scholarly writing papers to a regular weekly meeting throughout the semester. Scholarly Writing, e-mail from Robert Ruescher, Professor & Coordinator Legal Writing Program, St. John’s Univ. Sch. of Law, to Author (Nov. 22, 2010, 12:01 PM) (on file with Author).

106. For example, at St. John’s University School of Law, Professor Ruescher “work[s] closely with the notes and comments editors; we often conference with the student together, sometimes joined by the ‘expert’ prof.” Scholarly Writing, e-mail from Robert Ruescher, Professor & Coordinator Legal Writing Program, St. John’s Univ. Sch. of Law, to Author (Dec. 6, 2010, 8:50 AM) (on file with Author). At Arizona State University Sandra Day O’Connor School of Law, new journal students receive one to two hours of scholarly writing instruction and the content “varies from year to year based on what the specific editors need.” E-mail from Tamara Herrera, *supra* note 98.

clude financial and human resource limitations, curricular integration, student buy-in, law journal autonomy, and assessing outcomes.

A. *Limited Financial and Human Resources*

An obvious potential challenge to the expansion of scholarly writing instruction is the money and time that it might take. Any curricular addition, no matter how justified, comes at a cost, whether in the form of compensation for a full-time faculty member, teaching assistants, adjunct faculty, a combination of these populations, or the additional work passed to existing faculty and staff members.¹⁰⁷ The extent of this challenge depends on the unique elements of a particular school's scholarly writing program, but faculty and administrators should be aware of this potential challenge before moving forward in planning a scholarly writing program.

However, even a school facing severe financial strain need not see this as a roadblock to providing scholarly writing instruction, because there are low- or no-cost options that could be implemented for schools under a resource strain. Formalizing student writers' groups or requiring participation in a works-in-progress meeting as part of a seminar course costs nothing. The benefits from peer review are well-established; thus, the cheapest option is also a good option for schools with no money to invest in a new faculty-staffed initiative. If there are limited financial resources available, hiring adjuncts to grade and supervise student scholarly writing is possible at a significantly lower cost than full-time faculty. Practitioners and local alumni may even be willing to forego any adjunct salary and supervise student writers for the experience and opportunity to work with students.

Depending on the size of the school and program, there may be a human resources challenge, particularly with respect to the supervision of scholarly writing projects. Though one professor could teach the scholarly writing process to a relatively large group of students, requiring that same professor to supervise—review drafts, provide feedback, organize and facilitate works-in-progress meetings, and evaluate the final products—would be unmanageable, unless the faculty member has no other teaching responsibilities and the group of students is fairly small. Supervising the writing projects is likely to be the most time-intensive part of the scholarly writing enterprise. This challenge can be managed by employing a system of various populations with different roles in supervision to help ensure students get the necessary feedback without overwhelming any single population. Strain on any one or small group of professors can also be managed by regular teaching committee workshops or faculty

107. See Griffin, *supra* note 1, at 47 (“While most schools have committed resources to the development and teaching of the first-year writing curriculum, most schools seem to have ignored the need for systematic writing training in the upper-level curriculum.”).

development programs on how to effectively supervise a scholarly paper. These workshops could apply to both the seminar course context and as part of an independent writing project, thus expanding the opportunities for students to receive scholarly writing instruction.¹⁰⁸

Another resource challenge may be determining whether or how to make a scholarly writing course credit-bearing. In a formal model, with classroom instruction and works-in-progress meetings, the issue of allocating course credit becomes whether students are earning double credit. Part of this challenge is thinking about whether students can (or should) earn credit for formative assessments—such as completing interim assignments and participating in class and works-in-progress meetings—separately from the credit earned for completion of the final paper.¹⁰⁹ This challenge can also arise in an informal model when the scholarly writing instruction is available to students but is not required nor controlled by the faculty members responsible for grading the scholarly writing assignment, including seminar papers and journal notes.

A formal model that includes classroom instruction by one set of faculty and evaluation of the papers by another set of faculty could resolve the credit issue by assigning one credit for the course completion and one or two credits for the completed paper but treating the credits as inseparable, meaning students would be required to complete both the course work requirements and the final paper to earn the full set of credits. Flexibility of ungraded credits or pass/fail credits can also help this issue as a way to validate the utility of the course instruction while avoiding assigning grades based on attendance, interim work toward a final paper, and participation in works-in-progress meetings. Informal scholarly writing instruction, which would not be considered a part of a course, probably must remain non-credit-bearing, but this challenge is surmountable if the instruction

108. *Id.* at 75–77 (proposing a faculty “colloquium devoted to the topic of teaching and supervising upperclass writing”).

109. In her article on upperclass writing, Professor Griffin proposed that “the final grade for the writing component of the course be composed of independent grades for the draft and the final product, with a higher proportion of the grade (say 60%) given to the final product, a smaller proportion (say 30%) given for the draft, and a small portion (say 10%) being rewarded for the diligence, completeness, and quality of any other written work. Students should clearly be rewarded for any improvement between the draft and final-product stages.” *Id.* at 75.

The problem with this approach is that it is at least in part grading based on effort. In our experience supervising scholarly writing, we have seen students put little effort in along the way but then manage to produce a quality final paper. Should that student receive a lower grade than reflected by the quality of the final paper? Thinking of the other common experience sheds more light on the problematic approach to grade effort. A student may work really hard, trying to develop a sound thesis, meeting regularly with the professor, seeking help, committing to the project, but still produce only an average, or even a below-average paper. Should that student get a higher grade than the paper merits because she tried really hard? That seems anathema to the norms of law school grading.

proves useful to students and they want to receive it regardless of credits.

B. *Integration into the Existing Curriculum*

Another challenge is finding a way to integrate the teaching of scholarly writing into existing doctrinal seminars. Here, the major challenges are time, expertise, and interest in teaching writing.¹¹⁰ An upper-level seminar syllabus may already be at capacity, with no room for formal instruction on writing a scholarly paper. The professors teaching these seminars understandably may not want to cut content in favor of writing instruction, nor may they feel competent to teach the writing process to their students.

There are a number of ways to combat the common challenge of lacking enough time in a semester to do everything that needs doing. Faculty can think about restructuring their syllabi; adding a class session for writing instruction; or requiring out-of-class writing activities, such as regular participation in a writers' group, works-in-progress meetings, or other similar opportunities for students to engage in the writing process. These outside-of-class components could be supervised by the seminar professor, a teaching assistant, or students playing various leadership roles. Professors interested in teaching scholarly writing, either within co-requisite courses or as guest lecturers, can make this interest known through contact with seminar professors.¹¹¹ As a way to ensure students are getting the material, but without stepping on any toes in the seminar course itself, faculty members could provide seminar professors with teaching materials for the scholarly writing process.

110. A related challenge, though one outside the scope of this Article, is the challenge that comes with assessing student scholarly writing. Assessment is a topic that has been discussed and debated a great deal in recent years, as law schools have considered whether and how to incorporate more formative feedback (through midterms and other mid-course evaluations) when most law school feedback has been summative (based on an end-of-semester examination or paper). See, e.g., Susan M. Case & Beth E. Donahue, *Developing High-Quality Multiple-Choice Questions for Assessment in Legal Education*, 58 J. LEGAL EDUC. 372 (2008); Andrea A. Curcio, *Moving in the Direction of Best Practices and the Carnegie Report: Reflections on Using Multiple Assessments in a Large-Section Doctrinal Course*, 19 WIDENER L.J. 159 (2009); Gregory S. Munro, *How Do We Know If We Are Achieving Our Goals? Strategies for Assessing the Outcome of Curricular Innovation*, 1 J. ALWD 229 (2002). The supervision of scholarly writing provides many rich opportunities for offering formative feedback, but is not without challenges such as setting and meeting student expectations; developing a metric or rubric that captures the goals of the assignment; and properly weighting the effect of the amount of supervision and intervention that has been done by the various players in the writing process.

111. For example, Professor Karen Thornton reached out to seminar professors and offered to lecture about the scholarly writing process in a few of the seminar sessions—using thirty minutes in three different sessions. This was a model for success that led to the stand-alone Upper-Level Writing Course now offered at GW.

One potential issue here is avoiding any actual or perceived disconnect between what the faculty member teaches about scholarly writing and what the faculty member teaching the seminar expects and how she evaluates the scholarly paper. Rather than thwart efforts to provide scholarly instruction, any concerns about conflicting messages are actually opportunities for faculty colleagues to engage in discussions about their expectations, learn from each other, and take that knowledge to the classroom. In fact, merely having conversations about what various faculty members expect from students' writing and how they have been successful or unsuccessful in having those expectations satisfied can be useful.¹¹²

There is another major curricular challenge related to seminar courses and scholarly papers written within the one-semester seminar course. For many students, the topic of a seminar is new and they are learning about a new substantive area of law while they are also tasked with developing a topic and thesis. Often, students submit interim assignments, such as a topic or thesis statement, in the first weeks of the semester, before they have delved deeply into the subject matter of the course. While it is important for students to choose a topic they are invested in, and to get started on the paper-writing enterprise sooner rather than later, this task can lead to frustration for both faculty members and student writers.

This approach to seminar papers only makes an already challenging project a source of anxiety or confusion and turns it into anything but an engaged and inspired opportunity to write an advanced paper, as is expected for students to write in seminar courses. It also means that these seminars essentially proceed on two tracks: (1) a horizontal track on which the professor leads a weekly discussion of broad based themes in the course and (2) a vertical, self-directed (and professor-supervised) track wherein the student pursues a specific paper topic.

There are several ways law schools could work around these challenges. For example, law schools could restructure seminar courses and their paper requirements.¹¹³ Instead of requiring completion of the paper by the end of the semester, a seminar could retain its stan-

112. Chestek, *supra* note 48, at 143 (“[F]aculty who supervise upper-level writing experiences might benefit from a frank discussion with the legal writing faculty as to what students have learned in the first-year courses and how the legal writing faculty evaluates student writing. Similarly, it would be useful for substantive law faculty to understand what a student has been taught so that faculty members know what to look for and understand why a student may have written a paper in a particular way.”).

113. Professors Fajans & Falk proposed curricular change over fifteen years ago when they suggested moving from the standard one-semester duration for writing a scholarly paper to a full year. Fajans & Falk, *supra* note 7, at 369. This suggestion was rooted in recognizing that “[m]ost expert scholarly writers would have difficulty producing a piece of serious writing in one semester on a topic relatively new to them, yet we routinely expect students to produce an original and polished paper in three and a half months.” *Id.* Of course, there would be logistical issues with changing deadlines

dard one-semester class meeting schedule, including one or two interim assignments for the paper, but postpone the final paper until the middle or end of the following semester. Faculty members could hold some sort of final class meeting to bring the students together, presenting their final papers. There could even be a day set aside each semester for a seminar paper symposium, with students from various seminars presenting their completed projects and receiving feedback from peers and faculty. This extension of time would give students the opportunity to learn the substantive material during the semester and use that knowledge in drafting and revising the paper.

Of course, changes in deadlines may give rise to logistical issues related to how students earn credits. Though not insignificant, involving the appropriate administrative office can likely lead to a solution here. For example, students taking a seminar could receive a grade of “In-Progress” at the conclusion of the semester, with the final grade posting after submission and grading of the paper. At any rate, logistical challenges should not stand in the way of curricular innovation and opportunities to improve students’ scholarly writing experiences.¹¹⁴

C. *Getting Student Buy-In*

Another challenge, most likely faced when the scholarly writing instruction is required as a separate course component or out-of-class time commitment, is audience. Students may be convinced that they do not need guidance and instruction on writing a scholarly paper, perhaps because they already wrote research papers in undergraduate coursework, they did well in the first-year legal research and writing program, or some other misplaced assumption about what it means to write a scholarly paper.¹¹⁵ Of course, faculty members know this to be generally untrue; students do benefit from guidance and instruction in

for papers, but “it might well be worth the administrative and curricular flexibility entailed.” *Id.*

114. *See id.*

115. *See* Student Evaluation Data (on file with Authors). Part of managing the student buy-in challenge is making sure students understand that scholarly writing is a different type of writing—different from legal writing memoranda and briefs; different from exams; and different from undergraduate research papers. At some point before students begin a scholarly writing project, someone has to make it clear to students that scholarly writing instruction is useful and beneficial to them because it is different from what they know. This requires explaining to students that the year of legal research and writing as a first-year student was intended to teach students basic skills of legal analysis, and even though much of what they learned is indeed transferable to various other kinds of writing, a transition to scholarly writing is not as easy as other transitions given the uniqueness of finding and developing a thesis. This information-sharing could be done at one or more points during law school, for example, as part of a spring semester course registration orientation program, within a legal writing class on other kinds of writing, or during journal orientation. The exact method for delivering the information is less important than delivering the information, and there is no harm in having the information come from multiple sources.

the scholarly writing process, even if the material is a refresher to some students.

The solution to this challenge is balancing lecture-based learning with individualized attention, such as works-in-progress and peer review. Early in the semester or academic year, classes should be structured with lecture to introduce the concepts of the scholarly writing process, using a healthy number of strong and weak sample deconstructions of student work. As students assemble drafts and begin the lengthy revision process, class meetings can be works-in-progress based, offering students specific and individualized feedback on their projects, as well as giving them the opportunity to ask questions on their specific project. Students are more likely to appreciate the latter method, to the extent that is a concern.¹¹⁶

D. *Law Journal Autonomy*

Beyond simple audience resistance, respecting the autonomy of student-run journals can be a challenge for faculty members teaching scholarly writing to journal students. Student-run journals usually have guidance about how a student's note (or other type of scholarly writing such as a comment or essay) should be structured and often include specific rules on topics, length, number of footnotes, and large-scale organization. Often these rules are simply inherited, and student editors may not even understand why the rules exist.

Teaching scholarly writing, then, may mean offering suggestions for how to write a paper within these constraints. Faculty should take the opportunity to offer guidance and support to students and that can be done without circumscribing student autonomy. A faculty member teaching scholarly writing, however, could also work with journal editors to develop better guidance on what constitutes a scholarly writing piece for purposes of the journal, to the extent journal editors value flexibility for their student writers. A conversation led by faculty about how to be more flexible in the specific note requirements could ultimately lead to greater autonomy, as journal editors would be empowered to refine existing rules rather than merely accept inherited rules.

Lack of institutional knowledge among student editors can also be a challenge in the law journal construct. Because journal editors change each year, and there might be little to no recordkeeping of past policies and procedures, journal editors may experience transition losses each year. This challenge is something faculty members can help combat to the extent a faculty member or members can invest time in working with the journal editors to help design a better system of turnover and recordkeeping. Often, faculty members are hands-off with respect to the internal workings of a journal, but there may be

116. *Id.*

opportunities lost by taking a completely hands-off role. Instead, faculty should consider how to help develop a more effective management system for students and work to ensure its execution.

Finally, in the journal context, the dual role of upper-level students as journal editors can raise issues. As editors, upper-level students are in a supervisory role over the junior staff members, but these upper-level editors learn their supervisory role as they execute it and generally have limited to no expertise in supervising scholarly writing. Much of what they teach their peers is simply what they learned or experienced, even if ineffective on an individual-student basis.

There is room here, too, for faculty involvement. Faculty could work with editors to provide training to upper-level journal editors for their role as supervisors of student scholarly writing. For example, faculty could provide a comprehensive training workshop or year-long series of workshops tracking the supervisory work. Faculty could develop sample feedback exercises to teach journal editors how to provide effective feedback on a piece of student scholarly writing. Faculty could even work with editors to develop assessment rubrics and other mechanisms for establishing consistency and predictability for the student writers, as well as help decrease the burden on the supervising students.

E. *Assessing Outcomes*

A final challenge is determining whether an increase in scholarly writing instruction has had a measurable impact.¹¹⁷ Any change in a law school curriculum requires assessment to maintain credibility and evaluate effectiveness; assessing outcomes also helps to identify gaps and make adjustments as needed, which may include rethinking about resources or seeking out additional populations to get involved in the scholarly writing teaching enterprise. Such an assessment can include questions that tie back to the goals of the program and the execution of the various participants' roles. What achievements were made? What roles were successful and which were less so? What resources are available going forward that are more, less, or different than were available during the initial time period? What challenges, expected or otherwise, were encountered?

Of course any evaluative process must be done in light of the motivation for increasing the amount of scholarly writing instruction. The desire to increase scholarly writing instruction or change an existing program structure may originate from a number of sources. The

117. See Griffin, *supra* note 1, at 78–79. Professor Griffin identified four elements as critical to assessment: “(1) systematic evaluation by experts; (2) a comparison between the papers received from the students in the newly designed course and those received from students in other earlier courses; (3) feedback from the students; and (4) feedback from the faculty who taught the upperclass writing courses.” *Id.* (citations omitted).

faculty or administration may decide that such instruction is appropriate or necessary as part of an upper-level writing requirement or oversight of the student journals.¹¹⁸ A law school committee may be tasked with rethinking the school's writing requirements or reworking the student-run journal system. Students themselves may identify the need because they are asked to write long-form research papers but do not receive particular writing instruction. It may also be that there is an existing mechanism for teaching scholarly writing, but someone has been tasked with assessing or rethinking that mechanism.

No matter the source of change, any move to increase scholarly writing instruction likely seeks overall improvement in the quality of student scholarly papers as well as enrichment of the student experience. Other goals might include providing a structured framework in which students will complete their projects, increasing the rate of student publication, increasing the number of student writing awards, finding ways to integrate writing instruction into upper-level doctrinal seminars, or expanding the mission of the school's legal research and writing program. Focusing on the motivation at the start of the endeavor will not only help those involved in carrying out their various roles, but it will create a standard for measuring outcomes.

Gauging the effectiveness of scholarly writing instruction is difficult because measuring improvement in student scholarly writing does not involve hard data such as a score on an exam. Instead, law schools will have to assemble other data to measure the outcomes, such as course evaluations, professors' evaluation of student performance in comparison to prior semesters, or a list of student publications and writing awards.¹¹⁹ The bottom-line questions will be: did the students receive more or better instruction in scholarly writing and did the written work product itself improve as a result of the increased instruction? Assessing the success of scholarly writing instruction will help determine whether the original goals and aspirations require revision and whether it is worth reevaluating the various components to improve resource use or better employ various populations.

To help assess outcomes, law schools can establish a system for evaluating outcomes at the same time they are creating, developing, or refining scholarly writing instruction. Faculty can write scholarly writing-specific course evaluations, for example, by asking questions about various steps of the writing process and whether students felt they received enough instruction, whether they felt successful in executing the various stages of the writing process, and whether the feedback they received was timely and sufficient.

118. This is especially true if student journal membership is a credit-bearing activity.

119. Griffin, *supra* note 1, at 77 (noting that "student and faculty input are both essential to an institution's evaluation of its upperclass writing program").

VI. CONCLUSION

Ideally, law schools would have ample time and resources to teach and train their students to write a scholarly paper and then sit back to witness their students' successes: improved student papers, increased publication opportunities, or more student writing awards. Given limited resources and other existing pressures in legal education, this ideal is likely out of reach. That does not mean, however, that law schools must accept the status quo of inadequate—or worse, a complete lack of—scholarly writing instruction. Instead of thinking of the ABA directive for upper-level writing as a burden, law schools should recognize the upper-level writing requirement as a real opportunity for innovation and growth for both faculty and students.

Ultimately, we need to reframe the goal of scholarly writing instruction so that it is more than just ensuring student survival. Instead, faculty should work to inspire the student to celebrate this project as an opportunity for invention, unlike any other in law school, where the student is free to develop her own ideas, untethered by client expectations or limitations in the law. With this new goal in mind, even small increases in guidance and instruction could make the seemingly insurmountable manageable for scholarly writing students.

What this increased attention looks like will vary based on the intentions and goals for the endeavor and on the different populations who are involved in the enterprise. Everything from small additions to seminar courses to a full-blown scholarly writing co-requisite course can have a net-positive effect on the bottom line. The key is to set goals, assess resources, and be mindful of potential challenges; this mindfulness will help those involved fine-tune the enterprise going forward and leverage the available resources to establish an enhanced experience for all participants.