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Kristina V. Foehrkolb

Marc A. DeSimone Jr.

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## DEBUNKING THE MYTHS SURROUNDING STUDENT SCHOLARLY WRITING

KRISTINA V. FOEHRKOLB\* & MARC A. DESIMONE, JR.\*\*

There is a tendency to view scholarly writing by law students as an exercise that has little utility in preparing them for the actual practice of law. This assumption is unfounded; to the contrary, scholarly writing in law school gives students a unique learning opportunity that is surprisingly close to how students will learn and write when they enter practice. While few law schools take advantage of this valuable learning tool, law school journals have long served as a vehicle and an outlet for student scholarship. Relying on the practices of some of the country's top journals and using our own experiences—collectively, as a former journal editor, student author, practitioner, legal writing professor, and faculty advisor for several student-authored articles—we discuss some steps journals can take to make the student scholarly writing process more effective and how law schools and law faculty, through a committed emphasis on scholarly writing, can produce better and more sophisticated legal thinkers at graduation.

Part I of this Article emphasizes the importance of scholarly writing for students, as compared to other writing and substantive law courses, and identifies the unique pedagogical advantages of scholarly writing. Part II argues that law school journals are excellent places for teaching and learning scholarly writing and describes the results of a survey of journals' approaches to teaching scholarly writing. Part III outlines several of the steps journals and faculty can take to help students have a more enriching scholarly writing experience. Regardless of whether students will pursue scholarly writing beyond their journal years, these efforts are worth undertaking because scholarly writing skills will make the students stronger instrumental legal writers and, ultimately, better lawyers.

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\* Litigation associate, Squire Patton Boggs (US) LLP, Washington, D.C.; former Law Clerk to the Honorable Sally D. Adkins of the Maryland Court of Appeals; former Executive Notes and Comments Editor for the *Maryland Law Review*.

\*\* Assistant Public Defender, Maryland Office of the Public Defender (Appellate Division); Adjunct Professor, University of Maryland Francis King Carey School of Law; former Law Clerk to the Honorable Vanessa Ruiz of the District of Columbia Court of Appeals.

## I. SCHOLARLY WRITING IS AN IMPORTANT BUT UNDERUTILIZED PART OF LEGAL EDUCATION

Although virtually all law students are required to take first-year writing courses that focus on instrumental writing and some try their hand at scholarly writing through the upper-class writing requirement,<sup>1</sup> according to a recent survey of judges and practitioners, “most lawyers, including most new lawyers, do not write well.”<sup>2</sup> One reason for this disappointing reality may be the fact that the typical writing curriculum does not give students an opportunity to experience what it is like to learn and write in practice.<sup>3</sup> It seems that much of students’ learning is compartmental: students learn how to research in a research class, study legal doctrines in doctrinal lecture-type classes, and are taught how to write in writing classes. In practice, however, these intellectual processes take place simultaneously.

Writing a scholarly piece—where the author identifies a problem and offers a solution that builds upon a basis of knowledge in multiple subject areas—comes very close to how students will approach a problem and communicate their analysis in writing when they enter practice, and does so in a manner which is very different, and fosters different skills, than the instrumental writing tasks which are part of the typical legal writing curriculum. For that reason, scholarly writing should be an important part of legal education.

### A. Law Schools and Law Faculty Should Promote Scholarly Writing

Law schools, and in turn faculty, should promote scholarly writing by law students because it engages cognitive processes and problem-solving skills which are not implicated by other elements of the standard legal writing curriculum. While predictive memoranda, persuasive briefs, and legal drafting projects have a necessary place in the legal writing pedagogy, scholarly writing should be viewed as an opportunity for students to engage different elements of the critical thinking process and to foster different el-

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1. See John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 400, 401 n.517 (2007) (noting that, out of sixty schools randomly surveyed in 2006, twenty-six had an upper-class writing requirement).

2. Susan Hanley Kosse & David T. ButleRitchie, *How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study*, 53 J. LEGAL EDUC. 80, 91 (2003); see also Amy Vorenberg & Margaret Sova McCabe, *Practice Writing: Responding to the Needs of the Bench and Bar in First-Year Writing Programs*, 2 PHOENIX L. REV. 1, 9 (2009) (describing a survey of practitioners and judges where the respondents noted problems with legal writers’ “conciseness, organization, and analytical skills”).

3. See Pamela Lysaght & Cristina D. Lockwood, *Writing-Across-the-Law-School Curriculum: Theoretical Justifications, Curricular Implications*, 2 J. ASS’N LEGAL WRITING DIRECTORS 73, 73 (2004) (observing that “good legal writing” requires that “the author competently researches and analyzes the legal issues, effectively communicates that analysis in the appropriate rhetorical context, accurately quotes and cites sources, and correctly follows formal conventions”).

ements of their skills as communicators. By giving students the opportunity to engage in the scholarly process—and faculty commitment to helping law students navigate the scholarly process—law schools offer their students a heightened, mature, and more rigorous intellectual enterprise and ultimately place sophisticated legal thinkers into the profession.

1. *The Present “Typical” Legal Writing Curriculum Does Not Completely Serve the Needs of Law Students*

The “standard” law school writing curriculum focuses on several common forms of student writing: predictive legal memoranda,<sup>4</sup> persuasive trial memoranda and appellate briefs,<sup>5</sup> and, occasionally, legal drafting tasks.<sup>6</sup> These writing tasks are a necessary bedrock of legal education and resemble, for the most part, the day-to-day writing tasks of a practicing lawyer; such as, encountering a legal problem; offering an objective appraisal or a client-centered solution; and satisfying the client’s needs, by either producing a necessary legal document or, if necessary, advocating for a desired outcome in litigation.

From a pedagogical perspective, however, these writing tasks stimulate only a select few of the cognitive domains.<sup>7</sup> In a basic legal drafting task, students are, at most, demonstrating their ability to recall, compre-

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4. See, e.g., Vorenberg & McCabe, *supra* note 2, at 6.

5. See *id.* Students usually have multiple opportunities—some mandatory, some not—to produce written advocacy while in law school. This paper will refer to this work generically as advocacy writing, or appellate briefs, but recognizes that this writing may be submitted in a first-year legal writing or legal method class, see *id.*, or as part of a Moot Court competition—both internally within the school, and externally, in competing against teams of students from other schools—as well as in a clinical education setting.

6. Some schools and some legal writing programs have long offered elective courses in legal drafting, and some professors have sought to develop these practical skills by having students produce legal documents as part of the course requirements. Instruction in these basic tasks may be even more important in the present professional milieu, as law schools have recently been criticized for producing graduates who lack skills in basic legal tasks, such as contract drafting. See David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES (Nov. 19, 2011), <http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?pagewanted=all>.

7. The educational psychologist Benjamin Bloom and his colleagues developed a taxonomy of thinking skills (“cognitive domains”) which are ordered in terms of their sophistication: (1) knowledge; (2) comprehension; (3) application; (4) analysis; (5) synthesis; and (6) evaluation. See TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS 201–07 (Benjamin S. Bloom et al. eds., 1956) [hereinafter TAXONOMY]. While this taxonomy has been critiqued and modified when applied to legal pedagogy, and has been modified in the intervening years, its approach remains valid and forms the backbone of modern educational theory. See Jay Feinman & Marc Feldman, *Pedagogy and Politics*, 73 GEO. L.J. 875, 891–92 (1985); J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 CLINICAL L. REV. 55, 61–63 (1996) (describing alternative taxonomies of thinking skills, each emphasizing the importance of different skills); Christine M. Venter, *Analyze This: Using Taxonomies to “Scaffold” Students’ Legal Thinking and Writing Skills*, 57 MERCER L. REV. 621, 635 (2005).

hend, and apply legal principals.<sup>8</sup> When writing a predictive legal memorandum, students apply sources of legal authority—almost always preselected by the professor—to a static set of facts to offer a reasoned and educated prediction of the likely result.<sup>9</sup> In advocacy-oriented writing tasks, students build upon these reasoning skills to advocate for a particular result. When writing both objective memoranda and persuasive briefs, students are applying only the application and analysis aspects of the cognitive process;<sup>10</sup> at best, when students combine the sources of authority into coherent rules, students engage in a synthesis of ideas.<sup>11</sup>

A disadvantage to these usual forms of instrumental writing,<sup>12</sup> however, is that these writing tasks fail to approximate the typical “life cycle” of the reasoning and writing process for most lawyers,<sup>13</sup> or to engage the high-

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8. See TAXONOMY, *supra* note 7, at 201–07.

9. See Vorenberg & McCabe, *supra* note 2, at 6–7 (“Use of the IRAC formula means that students will first set out the rules of law, and then explain the rules by describing the facts and reasoning of cases. Next, students apply the reasoning from the cases to the facts in an assignment, and through a process of analogizing and distinguishing, show support for their conclusion.”). One critique of the use of IRAC or any of the other similar analytical constructs is that reliance on these formulas “does not explain to students how to do analysis, it merely provides an organizational formula for writing up that analysis.” Venter, *supra* note 7, at 624.

10. Utilizing Bloom’s taxonomy of thinking skills, see TAXONOMY, *supra* note 7, at 201–07, in the typical predictive memorandum assignment, the students are given an assigned body of facts and sources of legal rules, and they must report the likely legal result; this assignment, therefore, implicates only the application and analysis domains, as students are merely applying the given rules to the given results and reasoning to an objective conclusion. In advocacy-based writing tasks, such as an appellate brief submitted in a writing class, a moot court competition, or in a clinical setting, students are engaging the same mental processes, by applying a body of law (this time, hopefully, the product of their own research) to a supplied and static set of facts, to advocate for the outcome which the client desires. In both instances, the students are showing merely their ability to comprehend, apply, and analyze the component parts of a legal issue, and they may not stray from either their assigned task or where the objective “right answer” or subjective desire of the client must take them.

11. Explanatory synthesis is when the writer organizes around the common IRAC or TREAT formula but, when identifying or explaining the rule, does not regurgitate the legal principal directly from cases or other sources of authorities; rather, the writer “takes the relevant authorities . . . and derives from them one or more principles of interpretation and application of the rule.” MICHAEL D. MURRAY & CHRISTY HALLAM DESANCTIS, *ADVERSARIAL LEGAL WRITING AND ORAL ARGUMENT* 308 (2006). Accordingly, in going beyond the rule identified in a discrete case and divining a rule which runs as a common thread through several authorities, students may engage the synthesis aspect of the cognitive process.

12. Some commentators have drawn a distinction between “instrumental writing,” which “is designed to convey independently conceived ideas in a written form,” and “critical writing,” which “by contrast, involves the writing process itself as an important source of substantive thought.” See Philip C. Kissam, *Thinking (by Writing) About Legal Writing*, 40 VAND. L. REV. 135, 136 (1987). The typical law school writing tasks of memoranda and briefs would fall into the category of “instrumental writing,” while a scholarly writing project would be “critical writing” under this approach.

13. While objective memoranda and persuasive briefs represent a good deal of the work product of most practicing lawyers, the students’ writing process with regard to these tasks represents only the end-stages of the writing process for most lawyers, as students usually begin with the topic area, issues, and relevant authorities identified for them, and need only apply the legal

er levels of the cognitive process.<sup>14</sup> When writing a predictive memorandum, students begin with an assigned question and reason outward to a satisfactory conclusion. When engaging in advocacy-oriented writing, students begin with the conclusion (the client's desired objective), identify arguments which will lead to that result, and typically, begin with the issues pre-selected (although in a rare scenario such as a clinical setting, students may have the opportunity to identify issues within the case). In both instances, either the question or the answer are beyond the student's control and are usually pre-selected, immutable, or both.

## 2. *The Pedagogical Benefits of Scholarly Writing*

Scholarly writing presents a pedagogical approach that differs from instrumental writing courses in at least three ways. First, as scholarly writers, students both identify a problem and advocate for a proposed solution that is uniquely their own, which is essential to developing issue-spotting skills.<sup>15</sup> Second, developing a scholarly writing piece in many ways resembles the reflective and recursive nature of legal analysis and writing. Third, unlike other writing endeavors in law school, scholarly writing gives students the opportunity to step outside of the familiar role of an appellate attorney writing a brief or a first-year associate writing an office memorandum and experience writing with a different purpose, for a different audience, and with a different tone.

### a. *Learning to Issue-Spot*

One pedagogical benefit—identifying a question in need of an answer—is unique to the typical legal writing tasks in the present curriculum, and provides a rare opportunity to hone a student's ability to diagnose a legal problem. The diagnostic ability to “issue spot” is perhaps the greatest skill a practicing attorney can possess; but yet, it is both rarely taught and rarely teachable in a milieu of pre-assigned memorandum topics, closed research universes, and moot appellate briefs based on a truncated record with a pre-assigned appellate issue.

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rules to the facts at hand to predict a likely result or advocate for a desired one. Thus, these assignments permit students to experience only a truncated portion of the writing process.

14. By starting towards the end of the typical lawyer's writing process, *supra* note 13, the student is stimulating very few aspects of the cognitive process. See *supra* note 7. When presented with the tabula rasa of a problem in need of a solution—as most lawyers are—we submit that the student will be forced to engage additional aspects of the cognitive process.

15. See Scott M. Martin, *The Law Review Citadel: Rodell Revisited*, 71 IOWA L. REV. 1093, 1100 (1986) (arguing that student participation in a law review provides a unique educational benefit); see also Lissa Griffin, *Teaching Upperclass Writing: Everything You Always Wanted to Know But Were Afraid to Ask*, 34 GONZ. L. REV. 45, 48 (1999) (noting that one of the benefits of scholarly writing by upper-class law students is “to make students more self-directed learners”).

By contrast, in scholarly writing, students begin with a clean slate: they identify their own “problem” and find their own solution. In so doing, they have control over both the question—that is, the topic—and are free to identify a range of proposed answers, critique each, and advocate for the one which the author believes is intellectually superior. In identifying both problem and answer, the writer is freed from the usual strictures of instrumental writing and, most importantly, engages in the heightened cognitive domains of evaluating and creating.<sup>16</sup> Encouraging the development of ideas, by engaging in creative and original thoughts and identifying problems in need of solutions, therefore, provides future lawyers with a laboratory in how to identify a legal issue and, accordingly, builds a skill that is absolutely essential in a successful legal career.

*b. Appreciating the Reflective and Recursive Nature of Legal Writing*

Another pedagogical benefit of scholarly writing is that it frees the student from fidelity to a client (and, hence, the need to focus on justifying a desired conclusion, as the student must do in crafting a piece of advocacy such as an appellate brief submitted for a first-year legal methods class, moot court competition, or clinical endeavor), and allows the student to write for the sake of writing. The way a student approaches a topic—and, more importantly, writes about that topic—is directly influenced by the type of writing product the student must produce at the end of the process.<sup>17</sup> Moreover, having freedom in choosing a topic and a thesis stimulates creativity and intellectual interest, which produces its own pedagogical advantages.<sup>18</sup>

This independence from a predestined conclusion or thesis (which is the necessary focus in client-centered representation) allows students to creatively craft a thought that is uniquely their own,<sup>19</sup> and provides a forum to defend their thesis and justification.<sup>20</sup> Developing the ability to craft a unique, original, and defensible solution to a problem gives students an op-

16. See TAXONOMY, *supra* note 7, at 201–07.

17. See, e.g., Teresa Godwin Phelps, *The New Legal Rhetoric*, 40 SW. L.J. 1089, 1094–97 (1986) (emphasizing the importance of audience, purpose, and occasion in framing legal writing).

18. Ruthann Robson has noted, “[w]riting what one wishes to write . . . serves the pedagogical purposes of student legal scholarship,” and therefore, “a student’s passion for the topic should be primary and non-negotiable.” Ruthann Robson, *Law Students as Legal Scholars: An Essay/Review of Scholarly Writing for Law Students and Academic Legal Writing*, 7 N.Y. CITY L. REV. 195, 199 (2004).

19. See *id.* at 196 (“For students alienated by their legal education, by certain theoretical perspectives, or by specific doctrines, engaging in legal scholarship can provide a chance to argue their points of view.”).

20. Martin, *supra* note 15, at 1099–1100 (noting that the typical first-year writing curriculum “provides comparatively little opportunity” for research and writing, and that “[t]he reviews can do an excellent job of making up for these omissions in the curriculum”).

portunity to take their first steps toward becoming “problem solvers”<sup>21</sup> and puts students on the path to becoming life-long “reflective practitioners.”<sup>22</sup>

Additionally, due in part to the freedom students enjoy at the beginning and end stages of the thinking and writing process, scholarly writing gives students an opportunity to appreciate that good writing is a recursive process,<sup>23</sup> and does so in, perhaps, a better way than other types of legal writing. Instead of “moving sequentially through planning, writing, and rewriting,” effective legal “writers shuttle back and forth among these activities.”<sup>24</sup> Experienced writers use the writing process to their advantage and “carry out a variety of problem-solving operations involving content-identifying goals and constraints, searching, testing, revising goals, and modifying knowledge in response to gaps, inconsistencies, and the like.”<sup>25</sup> As a result, for experienced writers, “writing [itself] enhances or develops legal thought.”<sup>26</sup> Novice legal scholars, however, may not “fully understand how writing can improve thinking” and often write merely to remember and summarize the results of their research.<sup>27</sup> They may be more comfortable viewing the writing process as linear and feel overwhelmed by the recursive nature of the writing process.<sup>28</sup>

Scholarly writing, however, can teach students to appreciate the complexity of the writing process and learn to use it to their advantage. The freedom at the beginning (topic selection) and at the end (thesis crafting) can allow students to “shuttle” through this recursive process with greater ease than in other settings.<sup>29</sup> Indeed, more than other types of writing, scholarly writing “can provide manifold opportunities for feedback to a writer about her ideas, and this kind of writing, when it becomes habitual, is

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21. See Venter, *supra* note 7, at 627 (“While lawyers’ roles are often multifaceted, one important role is that of problem solver. . . . To be able to think rhetorically, students must understand that they need to select an appropriate mode of response from those available, which is dependent on the context, audience, relations, limits, constraints, and values of the parties to whom the lawyer is beholden.”).

22. See Ogilvy, *supra* note 7, at 75–76.

23. See, e.g., Patricia Grande Montana, *Better Revision: Encouraging Student Writers to See Through the Eyes of the Reader*, 14 J. LEGAL WRITING INST., 291, 305–09 (2008) (discussing how the recursive process can help students critique their reading from the reader’s perspective, thereby improving their writing).

24. Elizabeth Fajans & Mary R. Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts*, 78 CORNELL L. REV. 163, 176 (1993).

25. Mary Barnard Ray, *Writing on the Envelope: An Exploration of the Potentials and Limits of Writing in Law*, 49 DUQ. L. REV. 573, 586 (2011) (quoting Carl Bereiter, P.J. Burtis & Marlene Scardamalia, *Cognitive Operations in Constructing Main Points in Written Composition*, 27 J. MEMORY & LANGUAGE 261, 261 (1988)).

26. Philip C. Kissam, *Lurching Towards the Millennium: The Law School, the Research University, and the Professional Reforms of Legal Education*, 60 OHIO ST. L.J. 1965, 2006–07 (1999).

27. Ray, *supra* note 25, at 586–88.

28. See *id.* at 586 (“Managing the writing process entails dividing the task into steps that do not overwhelm the writer with complexity”).

29. See Fajans & Falk, *supra* note 24, at 176.

an excellent way to improve a law student's grasp and use of doctrinal knowledge and analytical skills."<sup>30</sup> The "understanding of the ways writing benefits thinking can give [students] another tool to aid them in complex legal analysis. . . . [and] can help students recognize and reorganize their own text as needed, thus sharpening their thought as well as their writing."<sup>31</sup> This, in turn, makes students better writers and lawyers, regardless of their practice area.<sup>32</sup>

*c. Writing for a Different Audience, with a Different Purpose, and with a Different Tone*

Given all these differences, scholarly writing forces students to experiment with writing to a different audience, for a different purpose and, thus, with a different voice as compared to other components of the legal writing curriculum. When drafting an objective legal memorandum, the student must employ an objective tone and write to either a senior attorney—inevitably a generalist, who is not an expert in the field—or to the client, who may be intelligent but lacks legal sophistication. The purpose is to inform the client or partner of the legal landscape, evaluate the available options, and propose the best course of action. The student is limited to identifying and utilizing legal authorities as they are, and not as they might be. In writing an appellate brief, the audience is a panel of appellate judges, and the purpose is to persuade the court that the position espoused in the brief is the superior way to resolve the case.

Scholarly writing, of course, has a different audience, a different purpose, and therefore, demands that the author write in a different voice. The purpose of the paper is to identify a problem, undertake an exploratory analysis of the issue, and propose a solution. The audience is composed of other academics, practitioners, and perhaps even judges who will find the work useful when they, in turn, confront the issue. The tone is scholarly, studious, and beholden to no one and nothing except the process and integrity of the intellectual endeavor. Therefore, when a student undertakes a scholarly writing project, the student will think, and write, about the topic in a far different manner than if the student intended to produce an objective legal memorandum or a persuasive brief about the topic. A scholarly writing endeavor, therefore, provides the student with an opportunity to write for a different audience, for a different purpose, and in a far different voice than in other writing endeavors during their educational career.

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30. Kissam, *supra* note 26, at 2007.

31. Ray, *supra* note 25, at 587–88.

32. See Kathleen Elliott Vinson, *Improving Legal Writing: A Life-Long Learning Process and Continuing Professional Challenge*, 21 *TOURO L. REV.* 507, 516–17 (2005) (noting that written communication skills are important for all lawyers, as legal writing “pervades every type of practice at every level”).

Scholarly writing is a necessary part of the legal writing curriculum because it provides unique pedagogical benefits that other forms of instrumental writing do not provide. Specifically, students are free to identify a topic of interest<sup>33</sup> and propose a unique solution and, in so doing, must engage different processes and communicate for a different purpose, to a different audience, and in a different voice. Scholarly writing, therefore, presents a unique opportunity within the law school curriculum to engage and develop these skills.

### *B. Students Should Embrace Scholarly Writing*

In addition to the pedagogical benefits outlined above, scholarly writing can be an empowering experience for students. First, beyond any doctrinal course, writing a scholarly piece gives students an opportunity to “obtain a greater mastery of doctrine in a particular area and greater sophistication in thinking than provided by any final exam.”<sup>34</sup> By the time a student author researches his or her chosen topic, develops a thesis, and presents the arguments, the student undoubtedly will have become an expert in that—albeit narrow—area of the law.<sup>35</sup> This feeling of profound understanding of *something* can be very satisfying and comforting to an aspiring attorney and will serve as a gauge for what it means to be an expert practitioner in a particular area of the law.<sup>36</sup>

Second, the type of learning that takes place during the writing of a scholarly piece in many aspects resembles the way practicing attorneys learn. Unlike other aspects of legal education where the student learns substantive law in a doctrinal course and writing in a writing class,<sup>37</sup> scholarly writing combines these two opportunities in one. This fosters an appreciation for career-long learning.<sup>38</sup> Also, unlike doctrinal and legal writing classes where the student learns what only he or she is taught by the professor, in developing their scholarly topics, student authors are their own teachers and evaluators.<sup>39</sup> Scholarly writing thus helps develop the stu-

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33. Griffin, *supra* note 15, at 61 (noting that “topic selection and formulation of a thesis can be the most creative and difficult part of the writing process”).

34. Claire R. Kelly, *An Evolutionary Endeavour: Teaching Scholarly Writing to Law Students*, 12 LEGAL WRITING: J. LEGAL WRITING INST. 285, 285 (2006).

35. *Id.* (“[Scholarly writing] teaches students what it means to ‘really’ know something.”).

36. *See id.* Furthermore, scholarly writing teaches students to appreciate that the process of “really” learning something is not easy but can be “long, uncertain, and daunting.” *Id.*

37. Kissam, *supra* note 26, at 1989.

38. *See Kissam, supra* note 12, at 141 (“If beginners do not develop an instinctive habit of learning, developing, and applying the law through a critical writing process, they are less likely to be interested in or capable of engaging in the continual task of learning, creating, and applying the law by writing when they enter practice.”).

39. *See Paul T. Wangerin, Law School Academic Support Programs*, 40 HASTINGS L.J. 771, 789–90 (1989) (naming a number of independent learning skills).

dents' ability to learn independently, which is how students will learn when they begin practicing law.<sup>40</sup>

Third, writing a substantial piece of written work within time constraints teaches students useful time-management skills. For many students, writing a scholarly piece "is intense, time-consuming work often jeopardized by elements outside one's control."<sup>41</sup> As novice legal writers, students may not be able to gauge the amount of time a writing project will take, use their time effectively, or recognize when to stop their research and begin writing.<sup>42</sup> They may also be accustomed to receiving their research and writing assignments from professors and employers in increments and, as a result, lack the skills necessary to impose structure upon themselves.<sup>43</sup> The ability to successfully balance a substantial writing project with "other competing work and family-related pressures,"<sup>44</sup> however, will be an invaluable skill for the students' legal career.

### C. Law Schools Do Not Teach Enough Scholarly Writing

Despite the many benefits of scholarly writing, it takes a back seat to other types of writing and learning in law school.<sup>45</sup> In general, "conventional law school curriculum provides little training or experience in the techniques of legal research and writing beyond the first-year legal method course," which emphasizes "oral and analytical skills" over "writing and research."<sup>46</sup> Although the American Bar Association requires that students

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40. Teaching law students how to be able to learn on their own when they enter practice is seen as the main goal of legal education by many educators. See, e.g., Cathaleen A. Roach, *A River Runs Through It: Tapping into the Informational Stream to Move Students from Isolation to Autonomy*, 36 ARIZ. L. REV. 667, 683 (1994) (arguing that "the transformation from fledgling law student to a practicing attorney involves . . . 'autonomous learning, the ability to learn what needs to be learned to cope with a novel situation'" (quoting Feinman & Feldman, *supra* note 7, at 894)).

41. J. Scott Colesanti, *On Supervising the Law Review Note*, 18 THE LAW TEACHER 10, 11 (2011), available at <http://lawteaching.org/lawteacher/2011fall/lawteacher2011fall.pdf>.

42. Jacqueline D. Lipton, "Ph.D. Lite": A New Approach to Teaching Scholarly Legal Writing, 2009 CARDOZO L. REV. DE NOVO 20, 26 (2009) ("Over-researching, particularly within a limited time frame, can be a trap for new players.").

43. See Christian C. Day, *In Search of the Read Footnote: Techniques for Writing Legal Scholarship and Having it Published*, 6 LEGAL WRITING: J. LEGAL WRITING INST. 229, 233 (2000) ("Inexperienced associates, law clerks, in-house counsel, and clinicians normally do not immediately grasp that work schedules delineating research and writing *must* be set, and are critical to completing the task.").

44. Lipton, *supra* note 42, at 25.

45. Not many law schools offer scholarly writing courses. One example is a scholarly writing seminar at the Brooklyn Law School. See Kelly, *supra* note 34, at 285-92 (describing the author's scholarly writing seminar). Stetson University College of Law also offers a three-hour online course on scholarly writing, required for all students taking a seminar course or working on an independent written project. SCHOLARLY WRITING SERIES, STETSON UNIV. COLL. OF LAW (2009), available at <http://www.law.stetson.edu/policies/home/media/scholarly-writing-series-pdf.pdf>.

46. Martin, *supra* note 15, at 1099.

at all ABA-accredited law schools receive “at least one additional rigorous writing experience after the first year,”<sup>47</sup> and many schools use scholarly writing to satisfy this upper-class “rigorous” writing requirement,<sup>48</sup> scholarly writing is not being used as effectively as it could be.

First, in most instances, professors who supervise students’ scholarly writing in the context of a seminar are more focused on teaching the particular substantive course than using the writing process itself as a learning tool.<sup>49</sup> Second, because upper-class writing seminars usually last only one semester, learning scholarly writing simultaneously with a substantive area of the law may be an impossible task, as it requires students to provide insight and commentary on a discrete part of the subject area, while they are trying to grasp a survey-level introduction to the topic.<sup>50</sup> As a result, students may not learn as much as one would hope by writing a scholarly piece to satisfy the upper-class requirement through a seminar class.

Given the benefits of scholarly writing, law schools should increase scholarly writing opportunities in their curriculum. Scholarly writing presents unique pedagogical advantages and stimulates more mature cognitive processes; accordingly, faculty should embrace and advance student scholarly writing precisely because it helps produce better, more well-rounded graduating students. Scholarly writing also inculcates students with more diverse and more rewarding intellectual opportunities, which contributes to a better legal education and better grounding in necessary skills. Therefore, given these benefits, there is a necessary place for scholarly writing in the law school curriculum.

## II. LAW SCHOOL JOURNALS: FILLING THE SCHOLARLY-WRITING GAP

Although the law school curriculum does not emphasize scholarly writing—or, at least, not as much as it should—there is one place in law school where scholarly writing takes center stage: the school’s law review and other student-run journals. For those students who are fortunate to be on a law school journal,<sup>51</sup> journals “can do an excellent job of making up

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47. ABA SEC. LEGAL EDUC. & ADMISSIONS TO BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2013–2014, at 1, 21 (2013).

48. *See supra* note 1.

49. *See* Griffin, *supra* note 15, at 50 (noting that most schools with an upper-class writing requirement often rely on non-writing teachers to satisfy their upper-class writing requirements through seminars or independent study projects). In preparation for writing her article, Griffin distributed a questionnaire seeking information on upper-class writing requirements to all Association of American Law School members. *Id.* at 49. She received one hundred and twenty-five responses. *Id.* at 50.

50. *See* Lipton, *supra* note 42, at 22–23 (describing the challenges of a typical seminar class that combines acquiring substantive knowledge and learning the particulars of scholarly writing within a very short time period).

51. *See* Martin, *supra* note 15, at 1104 (pointing out that a very “small number of students . . . are able to reap the benefits of review membership at most schools”). For instance, the

for [the scholarly writing] omissions in the curriculum.”<sup>52</sup> A survey conducted during the writing of this Article shows that many journals are involved in their members’ scholarly writing experience.<sup>53</sup>

#### A. *Journals Are Prime Places to Learn Scholarly Writing*

Although some view law journals only as a vehicle for scholarly debate, “[t]he law review’s educational role is at least as important as its scholarly function.”<sup>54</sup> Some commentators have gone so far as to call law journals “periodicals [that] are published primarily in order that they may be written.”<sup>55</sup> Whether that is entirely true,<sup>56</sup> law journals indeed provide their members a great opportunity not only to edit other scholars’ articles but also to experiment with their own scholarly writing.<sup>57</sup> Most journals require members to produce a piece of scholarly writing, such as a casenote or a comment, and then the journals publish the best of these pieces.<sup>58</sup> In providing those opportunities, journals serve as a training camp and a forum for the “temporary”<sup>59</sup> and “the unknown scholar.”<sup>60</sup> They “teach students to write, edit, and think critically.”<sup>61</sup> They are “an indispensable learning tool for law students—possibly the best they will receive in their legal toolbox.”<sup>62</sup>

#### B. *Many Journals Report Involvement in Students’ Scholarly Writing*

Other than the actual published student pieces, there is no readily available information about student writing on journals. To find out what journals are doing, we conducted a survey. The survey consisted of two

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*Maryland Law Review* invites approximately twenty percent of participants of the annual write-on competition to join its ranks.

52. *Id.* at 1100.

53. *See infra* Part II.B.

54. Cameron Stracher, *Reading, Writing, and Citing: In Praise of Law Reviews*, 52 N.Y.L. SCH. L. REV. 349, 352 (2008).

55. *See, e.g.*, Harold C. Havighurst, *Law Reviews and Legal Education*, 51 NW. U. L. REV. 22, 24 (1956).

56. *See* Phil Nichols, Note, *A Student Defense of Student Edited Journals: In Response to Professor Roger Cramton*, 1987 DUKE L.J. 1122, 1129 (1987) (observing that there is little truth left to the saying that law reviews are primarily published in order to be written).

57. *See* Havighurst, *supra* note 55, at 24 (“The principal value [of law reviews] comes from the training which the . . . students receive in writing the notes and comments.”).

58. Martin, *supra* note 15, at 1101. For instance, out of approximately twenty-eight student pieces submitted for publication annually by its first-year members, the *Maryland Law Review* publishes on average approximately eight pieces in print and two pieces in its online companion, *Maryland Law Review Endnotes*.

59. EUGENE VOLOKH, *ACADEMIC LEGAL WRITING: LAW REVIEW ARTICLES, STUDENT NOTES, SEMINAR PAPERS, AND GETTING ON LAW REVIEW* 13 (3d ed. 2007).

60. Martin, *supra* note 15, at 1101.

61. Stracher, *supra* note 54, at 360.

62. *Id.* at 352.

waves, taking place in the fall of 2011 and the summer of 2012. We reached out to the top one hundred general, student-edited journals in print, as ranked by the Washington & Lee Law Library.<sup>63</sup> Fifty-four journals responded.<sup>64</sup>

The survey questionnaire consisted of twenty-four yes-or-no and multiple-choice questions. It asked journals general and specific questions about student scholarly writing, including scholarly writing training for student authors, training for student-author editors, faculty involvement, and scholarly writing courses at their schools.<sup>65</sup> The questions identified what we believe to be good practices in teaching scholarly writing in law schools including, among others, giving sufficient time to student authors to find topics and formulate theses, providing support in finding faculty advisors, and training student-author editors to provide effective feedback.<sup>66</sup>

Forty-six of the fifty-two journals that responded to the survey require their members to produce a piece of scholarly writing, but even at the journals that have no such requirement, some members nevertheless write case-notes or comments.<sup>67</sup> At thirty-six journals, student authors are entirely responsible for finding a topic for a casenote or comment; fourteen journals encourage student authors to come up with topics on their own but suggest topics to students who are unable to do so; and two journals provide a list of potential topics, but student authors are free to choose their own topics with

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63. See *Law Journals: Submissions and Ranking, 2006–2013*, WASH. & LEE UNIV. SCH. OF LAW, LAW LIBRARY, <http://lawlib.wlu.edu/LJ/> (last visited Sept. 3, 2014).

64. These journals included the *Alabama Law Review*, the *Albany Law Review*, the *Boston University Law Review*, the *Brigham Young University Law Review*, the *California Law Review*, the *California Western Law Review*, the *Cardozo Law Review*, the *Case Western Reserve Law Review*, the *Colorado Law Review*, the *Connecticut Law Review*, the *Florida Law Review*, the *Florida State University Law Review*, the *Fordham Law Review*, the *George Mason Law Review*, the *Georgetown Law Journal*, the *George Washington Law Review*, the *Georgia Law Review*, the *Hastings Law Journal*, the *Harvard Law Review*, the *Howard Law Journal*, the *Iowa Law Review*, the *Louisiana Law Review*, the *Loyola of Los Angeles Law Review*, the *Loyola University of Chicago Law Journal*, the *Kansas Law Review*, the *Kentucky Law Journal*, the *Maryland Law Review*, the *Michigan Law Review*, the *Michigan State Law Review*, the *Missouri Law Review*, the *Nebraska Law Review*, the *Nevada Law Journal*, the *New York University Law Review*, the *Ohio State Law Journal*, the *Penn State Law Review*, the *San Diego Law Review*, the *South Carolina Law Review*, the *Southern California Law Review*, the *Stanford Law Review*, the *Texas Law Review*, the *Tulane Law Review*, the *UCLA Law Review*, the *University of California at Davis Law Review*, the *University of Miami Law Review*, the *University of Pennsylvania Law Review*, the *University of Pittsburgh Law Review*, the *Virginia Law Review*, the *Wisconsin Law Review*, and the *Yale Law Journal*. Five journals chose to remain anonymous.

65. The questionnaire is on file with the authors and available upon request.

66. See *supra* note 65. Our belief that these are good practices in teaching scholarly writing is based on our combined experiences as a student author, an editor, a teaching assistant in several first-year legal writing courses, and a faculty advisor to several student authors at the University of Maryland Francis King Carey School of Law.

67. Journals that do not have a specific writing requirement include the *Fordham Law Review*, the *Georgia Law Review*, the *Harvard Law Review*, the *New York University Law Review*, the *Stanford Law Review*, and the *Yale Law Journal*.

the approval of an executive board member. Regardless of whether student authors are solely responsible for topic selection, the majority of journals that responded to the survey give their members approximately one month to find a topic<sup>68</sup> and approximately one semester to produce a casenote or comment.<sup>69</sup>

Journals offer a varying degree of support to their members during the writing process. An overwhelming number of the journals that responded to the survey conduct scholarly writing training for new members.<sup>70</sup> At most journals, such training is taught by journal editors<sup>71</sup> and covers a number of scholarly writing aspects, including topic selection, thesis development, research, analysis, organizational structure of notes and comments, revising, editing, and citations. Members at about half of the journals that responded to the survey receive internal handbooks or articles on scholarly writing.<sup>72</sup> Nineteen journals, however, do not provide any materials on scholarly writing to their members.

Although most journals assign notes and comments editors to work with the students, more than half of all journals that responded to the survey indicated that they do not provide any training to those editors.<sup>73</sup> Most of the journals that do provide training cover only selected aspects of scholarly writing, such as thesis formulation or commenting, but not both.<sup>74</sup> Many

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68. Twenty-two journals give student authors more than one month to come up with a topic; eighteen journals give approximately three weeks; six journals give two weeks; and five journals do not monitor how long student authors take to come up with topics. Notably, one journal indicated that its members selected topics "over summer through third week of school."

69. Specifically, four journals indicated that from the time student authors select topics, they have less than one semester to produce a casenote or comment. Twenty-one journals indicated that they give their members one or approximately one semester. One journal reported that it gives six months, and four journals give their members one and a half semesters. A total of fourteen journals give their members two semesters to write a note or comment, and two journals give their members two and a half semesters. Six journals either did not respond to this question or indicated that their members can submit casenotes or comments "at will" or at any time.

70. Out of the fifty-two journals that responded to the survey, only five do not provide scholarly writing training to student authors, and eight journals indicated that whether they provided such training varied from year to year.

71. Only nine journals indicated that faculty members or faculty members together with editors lead or participate in their scholarly writing training.

72. Specifically, twenty-eight journals indicated that they provide their new members with internal handbooks and/or articles on scholarly writing. Five journals require their members to purchase a textbook on scholarly writing, and one journal provides an internal handbook and requires that members purchase a textbook.

73. Specifically, thirty out of the responding fifty-two journals do not provide any training to their notes and comments editors, while twenty-two do provide such training.

74. Out of twenty-two journals that provide some sort of training to notes and comments editors, fourteen journals address only effective commenting techniques. Only seven journals cover both thesis formulation and commenting, and only eight journals address topic selection in conjunction with thesis formulation and/or commenting. One journal's training of notes and comments editors covers topic selection, thesis development, research, analysis, organizational structure of notes and comments, and citations. One journal teaches its notes and comments editors

but not all journals provide editors with internal handbooks on scholarly writing, and a few journals supply articles on commenting or scholarly writing generally.<sup>75</sup> At many journals, a notes and comments editor works with fewer than seven student authors, but at some journals, editors work with over seven and up to ten student authors at any given time.<sup>76</sup> The editors of most journals review multiple drafts of student pieces and are available for meetings throughout the writing process.<sup>77</sup>

Notably, an overwhelming majority of the journals that responded to the survey require or recommend that student authors work with a faculty advisor at some point during the writing process.<sup>78</sup> A majority of these journals provide assistance with establishing relationships with the faculty to either all student authors or those authors who need such assistance.<sup>79</sup> Almost all journals that require or recommend faculty assistance require or recommend faculty involvement at the thesis development stage, and many journals require or recommend that faculty advisors review student authors' first and final drafts.<sup>80</sup>

A few of the journals that responded to the survey indicated that their schools offer a scholarly writing course.<sup>81</sup> Furthermore, a few journals ac-

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“general line-editing skills.” One journal equates one year on the journal to training as a notes and comments editor.

75. Namely, twenty-eight journals provide their notes and comments editors with an internal handbook on scholarly writing. (Unfortunately, the questionnaire did not clarify whether this internal handbook was specific to assisting student authors or the same handbook student authors received.) Seven journals provide articles on commenting and/or scholarly writing (five of these journals were also the journals that provided internal handbooks). Nineteen journals do not provide their editors with any materials on scholarly writing.

76. Out of the fifty journals that have notes and comments editors, seventeen indicated that their editors work with fewer than four student authors. Editors of eighteen journals work with four to seven authors. Editors of eleven journals work with seven to ten authors, and four journals reported that their editors work with more than ten student authors.

77. One journal noted, however, that a senior editor “edits after notes/comments are accepted for publication.”

78. Twenty-six journals reported that they require student authors to work with faculty, twenty-one journals reported that they merely recommend such collaboration, and only five journals indicated that they neither require nor recommend faculty involvement in the students' writing process.

79. Out of the forty-seven journals that require or recommend faculty involvement, twenty-six journals provide assistance in establishing relationships with faculty members.

80. Out of the forty-seven journals that require or recommend faculty involvement, only eleven do not require or recommend faculty supervision at the thesis development stage. Out of those eleven, only two do not require or recommend faculty supervision at the outline preparation or first draft stage, focusing instead on topic selection and the final draft.

81. These journals included the *Boston University Law Review*, the *Brigham Young University Law Review*, the *California Law Review*, the *California Western Law Review*, the *Case Western Reserve Law Review*, the *Colorado Law Review*, the *Florida State University Law Review*, the *Georgetown Law Journal*, the *George Mason Law Review*, the *George Washington Law Review*, the *Kentucky Law Journal*, the *Loyola of Los Angeles Law Review*, the *Nevada Law Journal*, the *Penn State Law Review*, the *Southern California Law Review*, the *Stanford Law Review*, the *University of California at Davis Law Review*, the *UCLA Law Review*, and four journals that did not

tually require their members to take the course.<sup>82</sup> The remaining journals at the schools offering such a course indicated that, although they do not require their members to take the course, some members nevertheless take it.<sup>83</sup>

### III. TEACHING SCHOLARLY WRITING AT JOURNALS: WHAT SOME JOURNALS ARE DOING AND WHAT ALL JOURNALS CAN DO

As the survey responses demonstrate, many of the top law journals are involved in their members' scholarly writing processes.<sup>84</sup> Our own experiences demonstrate, however, that although there are many ways in which journals can support student authors in the writing process, an editor working with student authors may simply not think of them all in time to incorporate them into practice. Using other journals' approaches and our own experiences as an editor and a faculty advisor, we will discuss, in the remainder of this paper, some best practices that journals may find beneficial for their members. These recommended practices concern (1) topic selection; (2) thesis formulation; (3) faculty involvement; (4) meaningful feedback; (5) emotional support; (6) workshops; and (7) use of textbooks.

#### A. *Topic Selection: Have Student Authors Begin Searching Even Before They Join Your Journal*

Topic selection comes first in our list of good practices because it is probably one of the most important prerequisites to a successful and fulfilling scholarly writing experience<sup>85</sup> on a journal. As Professors Fajans and Falk expressively point out in their book on student scholarly writing, "[w]riting about something that simply does not interest you is an invitation to procrastination and mediocrity."<sup>86</sup> Since producing a scholarly writing

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provide their names. Even though the number of journals that responded that their schools offer a scholarly writing course is rather high, the number of responses in this survey probably does not undermine the belief of some commentators who assert that "[i]n almost all schools there is no major curricular planning, systematic instruction, faculty training, or institutional support for upperclass writing." See, e.g., Griffin, *supra* note 15, at 47-48. After all, this survey targeted only one hundred top law journals in the country.

82. Out of the twenty-two journals at the schools with scholarly writing courses, seven require their members to take the course.

83. Fifteen journals stated that some of their members take the scholarly writing course even though the journals do not require them to do so.

84. See *supra* Part II.

85. One scholar emphasizes that something as simple as the topic choice can be "one of the biggest roadblocks in developing scholarship." Kevin Hopkins, *Cultivating Our Emerging Voices: The Road to Scholarship*, 20 B.C. THIRD WORLD L.J. 77, 79 (2000).

86. ELIZABETH FAJANS & MARY R. FALK, *SCHOLARLY WRITING FOR LAW STUDENTS: SEMINAR PAPERS, LAW REVIEW NOTES, AND LAW REVIEW COMPETITION PAPERS* 18 (3d ed. 2005).

piece requires a substantial time commitment,<sup>87</sup> finding a topic that the student author feels passionate about is crucial.<sup>88</sup>

Fortunately, all of the journals that responded to the survey indicated that they do not arbitrarily assign topics. Most journals have student authors select topics on their own and generate a list of topics for those students who have difficulty coming up with a topic. Although giving student authors an opportunity to select their own topics is a great practice, the survey reveals that journals may not give student authors enough time to think through their topic selection.

Only one journal reported giving student authors the entire summer and three weeks of the fall semester to come up with a topic. Some journals reported that they give student authors over a month to find a topic, but many journals only allot three weeks or less for this important task. That is understandable because at many journals student authors get only one semester to produce a piece of publishable quality; many journals simply may not have the luxury of giving student authors more time to think through their topic selections.

Finding a topic worthy of time investment and capable of inspiration,<sup>89</sup> however, takes time. To mitigate the inevitable time constraints accompanying student scholarship, journals may consider including information about topic selection to prospective journal members during the journal orientation presentations. For instance, at the University of Maryland Francis King Carey School of Law, the informational meetings about the write-on competition are held in April, the competition takes place at the end of May, and results are usually announced at the beginning of July. Letting the prospective journal members know in the spring that they will be responsible for selecting topics in the fall substantially lengthens the time students can devote to topic selection. Additionally, encouraging prospective new members to search for writing topics at the informational meetings also emphasizes the importance of the student scholarly writing aspect of journal work to journal applicants.

Because the goal of bringing up topic selection during the informational meetings is simply to get prospective members to start thinking about what they would like to write about *if* they are invited to join a journal, it would suffice to highlight the main points relating to topic selection during the informational-meeting process. Journals may suggest that prospective members think of scholarly topics as problems in the law they would like to

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87. See Richard Delgado, *How to Write a Law Review Article*, 20 U.S.F. L. REV. 445, 448 (1986) (noting that producing the typical law review article will take “at least 150 hours from start to finish”).

88. For an argument about the importance of the writer’s passion, as opposed to the hypothetical audience’s interest, see Robson, *supra* note 18, at 197–99.

89. See *id.* at 203 (“It is passion that is the litmus test for a topic—all else is negotiable and subject to exceptions.”).

solve.<sup>90</sup> Journals should also emphasize the originality, importance, timeliness, professional and personal interest, prior knowledge, and manageability of a topic<sup>91</sup> as some of the factors to consider in selecting a topic.

Among the places to look for a suitable topic, journals may suggest that prospective members keep in mind topic selection as they read legal and nonlegal periodicals, talk to professors,<sup>92</sup> do research in their summer jobs, or read textbooks.<sup>93</sup> More enthusiastic prospective members may begin checking out legal listservs, legal blogs, and keeping up-to-date on recent U.S. Supreme Court and the state's highest court's opinions.<sup>94</sup> Alternatively, journals may simply point prospective members to resources on finding topics, including pieces dedicated to describing creative ways for students to identify interesting and compelling legal issues to study.<sup>95</sup>

Even if only a small number of prospective members begin to explore topic selections early, emphasizing the importance of topic selection in the spring will give the willing participants an opportunity to begin thinking about their topic when they are not so overwhelmed with summer jobs or on-campus interviews.

#### *B. Thesis Formulation: (1) Contemplate; (2) Challenge; (3) Condense*

Just like topic selection, the importance of the thesis formulation stage of the writing process cannot be overstated. But since thesis formulation is not as tangible as an outline or a complete draft, it is easy for it to slide through the cracks.<sup>96</sup> Because no amount of strong writing can compensate

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90. FAJANS & FALK, *supra* note 86, at 21.

91. *Id.* at 17–19. Simply stated, the topic must be “big enough to be important and interesting but small enough to be manageable.” Eugene Volokh, *Writing a Student Article*, 48 J. LEGAL EDUC. 247, 248 (1998).

92. Although professors are great sources for finding topics, student authors should be careful not to select a topic simply because a professor suggested it. Otherwise, the student may end up writing about a topic that is interesting to the professor instead of the student.

93. FAJANS & FALK, *supra* note 86, at 18–19.

94. See Heather Meeker, *Stalking the Golden Topic: A Guide to Locating and Selecting Topics for Legal Research Papers*, 1996 UTAH L. REV. 917, 920–33 (1996) (discussing methods for selecting topics for scholarly and legal research pieces). Mary Whisner, a reference librarian at the University of Washington School of Law, offers some creative search terms and strategies to find topics. Mary Whisner, *Seeking Inspiration*, 100 LAW LIBR. J. 773, 777 (2008). For instance, she suggests searching for topics that professors identify as areas of interest but refrain from developing in their own scholarly work (that is, issues identified when authors note that a particular issue is of interest but “beyond the scope of this article”) by performing the following search on Lexis or Westlaw: “interesting or intriguing or open /s issue or question or topic /p ‘beyond the scope’ or ‘another day.’” *Id.* For a more in-depth discussion of topic selection, see *Writing for & Publishing in Law Reviews: Finding & Developing Topics*, GALLAGHER LAW LIBRARY, UNIV. WASH. SCH. L., <http://lib.law.washington.edu/ref/lawrev.html> (last visited Oct. 5, 2014).

95. See *supra* note 94.

96. It is much easier to review and provide feedback on outlines and drafts than to actively participate in the thesis formulation process. See Fajans & Falk, *supra* note 24, at 202 (noting that

for a weak thesis, it is important to (1) allocate sufficient time for thesis formulation; (2) provide a neutral evaluation of the thesis to help student authors make sure their theses have support; and (3) in the end encourage students to reduce their theses to a one-sentence line.

*1. Give Student Authors Time to Think Through Thesis Ideas*

Formulating a thesis is not easy.<sup>97</sup> Like topic selection, thesis formulation also takes time, but because most journals require student authors to produce a scholarly piece within one semester,<sup>98</sup> editors may expect to see some concrete results before student authors are able to produce them. Even when there is no external pressure to come up with a tangible work product shortly after selecting topics, student authors may be anxious to settle on a thesis and begin writing before they know what they want to say.<sup>99</sup> This is a dangerous impulse that student authors should resist because, if they are wed to an idea they have not thought through, changing the course later would result in wasted time. Thus, it is important to let student authors work through the possible solutions to the problems they have identified for as long as the writing schedule allows it.

To alleviate the anxiety of working for some time without much to show for their efforts, journals could consider encouraging student authors to keep reading journals, experiment with freewriting, or adopt a “problem-solving approach.”<sup>100</sup> Not all student authors may be familiar with these techniques, but they are extremely valuable in promoting critical thinking and saving time. This approach to thesis formulation would help editors demonstrate to student authors that the line between thesis formulation and research, on the one hand, and writing, on the other hand, is only arbitrary. Furthermore, taking an approach that results in a tangible work product, such as a reading journal or freewriting material—as opposed to “just”

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much of writing instruction focuses on the quality of writing, as opposed to the quality of the critical reading that produces strong theses).

97. See Griffin, *supra* note 15, at 62.

98. See *supra* note 69 and accompanying text.

99. This, of course, does not imply that students should begin to write only after they formulate their thesis. On the contrary, students should begin writing as early as possible and expect to learn through the process of writing. See Linda H. Edwards, *A Writing Life*, 61 *MERCER L. REV.* 867, 890–92 (2010) (presenting advice from accomplished legal scholars, several of whom emphasize the importance of “us[ing] the writing itself as a way for understanding and discovery” and “[s]tart[ing] writing before you think you’re ready”).

100. Griffin, *supra* note 15, at 63. Here, keeping a reading journal does not mean note-taking, but rather a reflection of thoughts and ideas prompted by the material read. *Id.* at 61 n.47. A problem-solving approach is a legal analysis method developed by Karl Llewellyn. *Id.* It seeks to have the reader approach legal issues as problems that need to be solved. *Id.*

reading<sup>101</sup>—should make student authors rightfully feel that they are making progress.

### 2. *Play the Devil's Advocate*

Once student authors come up with a tentative thesis, another way in which journals may play an active role in student authors' thesis formulation is having students talk through their proposed solutions<sup>102</sup> and challenging their assertions and positions.<sup>103</sup> Although it may be hard to know what questions to ask about topics the editors themselves are unfamiliar with, listening passively to a student author's description of his or her thesis is not helpful to the author. In fact, passive listening in this case may do a disservice to the student author if it conveys the idea that the editor somehow "approves" of a proposed solution.

To make sure that does not happen, editors need to make every effort to be truly engaged in students' writing and encourage critical thinking by asking questions<sup>104</sup> and bombarding the student with hypotheticals that challenge the student to apply his or her proposed solution in a variety of fact patterns.<sup>105</sup> To facilitate the process, editors may require that students come to student conferences with a few prepared hypotheticals.

### 3. *At the End, Ask for a Thesis in One Sentence for Better Focus*

At the end of the preliminary research reflected in the reading journals and the vetting process, it may be helpful for student authors to condense their thesis into one sentence.<sup>106</sup> Journals should have members think of their theses "as a T-shirt slogan."<sup>107</sup> If members "can't explain [their theses] in one breath, it isn't focused."<sup>108</sup> The one-sentence requirement will crystallize the students' theses, focus their further research, and jump-start their writing.

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101. See Edwards, *supra* note 99, at 892 ("[D]on't let endless research be a sophisticated form of procrastination.")

102. Professor Griffin calls this process "getting the ears involved." Griffin, *supra* note 15, at 69 n.72. She explains that at an "early stage in the writing process, hearing one's self talk may assist in exposing the lack of connection between thoughts." *Id.*

103. This process may also occur concurrently with the students' work with their faculty advisor. See *infra* Part III.C.2.

104. Fajans and Falk point out that "[o]ne of the best ways to probe a text is to ask questions about it." FAJANS & FALK, *supra* note 86, at 23.

105. *Id.* at 42. Professor Volokh calls this process a "test-suite." For a discussion and examples of a test suite, see Eugene Volokh, *Test Suites: A Tool for Improving Student Articles*, 52 J. LEGAL EDUC. 440 (2002); see also Part III.D.1.

106. See VOLOKH, *supra* note 59, at 9.

107. CHERYL HANNA, *THE NUTS AND BOLTS OF SCHOLARSHIP OR THE RULES FOR LEGAL SCHOLARS* 1 (2001).

108. *Id.*

Although the proposed approach to thesis formulation may be labor-intensive for the editors, it will help student authors produce, and allow journals to publish, better student scholarship.

### C. *Coordinate Faculty Involvement*

Another way journals can improve the writing experience of their members is to make sure student authors partner with a faculty member who is willing and able to provide the student author with feedback and advice throughout the writing process. Working with a faculty member may move the student's writing experience to the next level because the student would be able to discuss his or her ideas with an expert in the field.<sup>109</sup> Because faculty are particularly effective in helping student authors ensure their arguments have a strong foundation, these discussions are most important at the early stages of writing, such as thesis formulation, outline preparation, and first drafts. The relationship with a faculty member has the potential of not only helping the student with the particular note or comment,<sup>110</sup> but may also become an empowering learning experience for the student.<sup>111</sup> Faculty involvement is also beneficial for the journal because it helps ensure that published student pieces present solid arguments.<sup>112</sup>

Considering the many benefits of faculty involvement, it was not surprising that an overwhelming majority of journals that participated in the survey indicated that they require or recommend faculty involvement in the production of student pieces at some point in the writing process. Probably due to the personal nature of the student-faculty mentorship, however, many journals do not get involved in the faculty advisor selection or monitor the relationship. But because the quality of the dialogue between a faculty advisor and a student depends so much on the availability and willingness of the faculty member to invest time in working with the student author, it may be worthwhile for a journal to be more actively involved in the faculty advisor-student relationship.

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109. See Volokh, *supra* note 91, at 249 (encouraging student authors to run their topic ideas by a faculty member).

110. See Robin S. Wellford-Slocum, *The Law School Student-Faculty Conference: Towards a Transformative Learning Experience*, 45 S. TEX. L. REV. 255, 257 (2004) ("Law professors and law students alike are likely to recall examples from personal experience when an out-of-class conversation between professor and student resulted in a new way of thinking or the identification and elimination of a barrier to understanding—i.e., the proverbial 'light bulb' that 'came on.'").

111. *Id.* at 264–65.

112. This may be difficult to do without an expert since, with the exception of topics of particular interest to the editors, the editors themselves may not always know whether an argument has a strong foundation. As Fajans and Falk point out, "One difficulty in writing a publishable student piece . . . is that your audience is more experienced and more knowledgeable than you are." FAJANS & FALK, *supra* note 86, at 19.

For instance, journals may (1) designate a faculty-advisor coordinator to coordinate the students' efforts in finding a faculty advisor,<sup>113</sup> (2) prepare a clear explanation statement of the role of a faculty advisor so that at the outset the faculty advisor is aware of the journal's expectations,<sup>114</sup> and (3) maintain a database of faculty advisors who are willing to put in the time and effort to work with student authors. By being more involved in the faculty relationships, journals will help more student authors truly benefit from the wealth of doctrinal knowledge and experience in scholarly writing that the faculty has to offer.

Faculty, in turn, should embrace their role in helping to produce excellent student scholarship and endeavor to mentor students through the scholarly writing process. Faculty advisors must embrace this mentorship with the recognition that it is a separate—and different—process from developing their own scholarship and is undertaken for a different purpose. The purpose is different precisely because of the unique pedagogical benefits of scholarly writing and, thus, utilizes those teaching moments to provide a different experience for, and inculcate different skills in, students.<sup>115</sup> Faculty involvement does not exist to help provide the answer to the student; rather, the faculty member's presence serves to help guide the student through the process of finding the answer.<sup>116</sup>

The role of the faculty advisor, therefore, is to be a guide in the student's maiden voyage into legal scholarship. The advisor is present to advise the students of the reefs and shoals which may lie in the way, but must ensure that the student always remains at the helm. Within this context, faculty advisors are useful resources through any and all of the steps outlined in this article for producing good student scholarship. For example, in the typical casenote or comment scenario, faculty advisors can communicate with the editorial staff of the school's law review to keep the journal aware of recent decisions or other developments in the law that may be appropriate for a student comment or note. Once a student identifies a prom-

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113. In 2011, the *Maryland Law Review* designated one of the notes and comments editors as a faculty advisor coordinator. The *Maryland Law Review* editors found that more involvement in the faculty advisor-student relationship resulted in more satisfaction among student authors.

114. Michael Meltsner et al., *The Bike Tour Leader's Dilemma: Talking About Supervision*, 13 VT. L. REV. 399, 437 (1989) (discussing the importance of clarity in expectations in a supervisor/mentor-supervisee/mentee relationship).

115. There has been a recent focus on inculcating in our students the ability "to challenge assumptions, find patterns, and generate new ideas as they are reading." Venter, *supra* note 7, at 632 (citing RUTH ANN MCKINNEY, *READING LIKE A LAWYER* 53 (Carolina Press 2005)). Thus, "students need to be taught and specifically instructed to do this. The patterns inherent in the law are not automatically clear to them. Connections often need to be laid out and made explicit before students begin to acknowledge them." *Id.* Scholarly writing, therefore, is a foray into this process for the student and a teaching opportunity within this process for the advisor.

116. See Robson, *supra* note 18, at 199 (noting that within the process of producing a scholarly work, "students should not be surprised when the faculty member discusses research strategies for such queries instead of providing definitive answers").

ising case (or is in the process of searching for one), the faculty advisor—hopefully an expert, or at least highly conversant, in this area of law—can help put the case in its proper legal context for the student.

Throughout the thesis formation process, the faculty advisor can help the student identify the key existing cases and how this particular case is in line with, extends, modifies, or conflicts with existing legal authorities. The faculty advisor can also help the student locate any “gaps” between the subject case and the existing cases, or, in other words, fertile areas of unexplored law that might call for a new, unique, and different solution.<sup>117</sup> As the student develops a thesis, the faculty advisor can recommend other scholarship in the field to the student, so the student has a proper sense of the existing and competing scholarly thoughts on the topic.<sup>118</sup> Once the student has placed the case within its jurisprudential and scholarly context, the faculty advisor can help the student advance a thesis that adds new scholarly thought to the area and can challenge the student by identifying practical or logical flaws with the thesis or conflicts with existing authority.

Within this process, it is essential that the faculty advisor engage in a Socratic-advisory relationship with the student. In serving as faculty advisor for student scholarship,<sup>119</sup> the advisor may want to begin by having the student identify the primary case and fully brief the advisor as to the holding and how the student believes this case fits within the existing legal landscape. The advisor may then refer the student to some of the key cases in the field and direct the student to further research the issue before reporting back. The faculty member should try to omit at least one of the leading cases to test the competence and thoroughness of the student’s research, as well as her dedication to the task and ability for independent work.<sup>120</sup> The advisor may then test the student’s knowledge and sense of how this particular case fits within the field. By asking questions, the advisor should at-

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117. See Colesanti, *supra* note 41, at 10 (noting that, in the process of supervising a law review note, the faculty advisor can help the student to focus the thesis by asking “the student to amend the statute, case decision, or pronouncement she is vetting—how would she have worded it differently? This task is universally resisted by young writers, who feel that they lack the experience to cure an ill (and have grown accustomed to learning issues from journalism, which need not solve a discovered dilemma).”).

118. See *id.* (“Before preparing 30–40 pages, the student should undoubtedly ensure originality. Direct the student to look at texts, secondary authority, and even the editorials in the papers. Has anyone else noticed the idea? If so, how can the idea become more specific or timely?”). Professor Volokh encourages students to “run” their thesis “by your faculty advisor” because the advisor “will probably know better than you do whether there’s already too much written on the subject, or whether there’s less substance to the problem than you might think.” VOLOKH, *supra* note 59, at 14.

119. The majority of this section is written based on the experiences of one of the authors in serving as a faculty advisor for several student-authored articles.

120. See Robson, *supra* note 18, at 199 (noting that “there is no substitute for consultation and research” within the student scholarly writing context).

tempt to have the student explicate her understanding of how this case fits within the present context.<sup>121</sup>

Once the student identifies her working thesis, the student should research the area of law fully and identify supporting authority and conflicting scholarly alternatives. The advisor, in the role of a devil's advocate, can then vet the issue again with the student to ensure that the student's thesis can withstand this scrutiny. When it can—that is, when it has been subjected to several drafts and revisions—the paper may be submitted to the journal's editorial staff—which usually has been contemporaneously critiquing and supporting the student in a similar fashion<sup>122</sup>—to go through the usual editorial approval process.

The key throughout this process is to provide the student with context—the knowledge of existing judicial and scholarly thought. The role of the faculty advisor is to draw upon her knowledge in the field to help the student place the project within the existing legal and scholarly milieu.<sup>123</sup> The role is as a kindly and experienced traveler in the field who ensures that the student finds his or her own way. It is important that the advisor does not interfere too much in the process of finding and defending the answer because the student benefits most by engaging in the process, especially when the student makes mistakes and, thus, is presented with learning opportunities. When the student has gone astray, it is the faculty advisor's role to alert the student and help the student work back to where he or she should be. Throughout, the faculty advisor must always guide, but never force, the student through the process.

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121. This, alone, may be part of the student's educational growth as one critique of the standard Socratic dialogue is that when a professor focuses a lecture and attendant questions on the particular case at hand, students cannot "necessarily see the relationship between parts of the law, or how the elements or rules of a given case interrelate with the law as a whole." Venter, *supra* note 7, at 630.

122. See *infra* Part III.D.

123. Thus, vis-à-vis faculty and student, this process draws upon the distinction between an expert and a novice in the field. See, e.g., Venter, *supra* note 7, at 628 ("The difference between an expert and a novice is that experts are efficient and precise about problem solving and, in addition, have developed domain-specific patterns of thought."). While experts are "able to classify problems appropriately" and possess a "large repertoire of knowledge in schematic form," a novice is "often unable to distinguish or identify the category within which a specific piece of information falls," may "often summarize the applicable law without analyzing it, or . . . analyze it in a superficial way." *Id.* (quoting Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science and the Functions of Theory*, 45 J. LEGAL EDUC. 313, 343 (1995)) (internal quotation marks omitted). Accordingly, novice writers "do not know how to process the information[;] they only know they have to report it in some way." *Id.* Due to these novitiate limitations, novices also "struggle to accord priority to information." *Id.* The faculty advisor, therefore, provides the context of an expert to the student as the student develops from being a novice in the field through the process of authoring a scholarly article on the topic.

*D. Help Student Authors Improve Their Writing by Giving Meaningful Feedback*

Journals can give more valuable assistance to student authors by pairing them up with notes and comments editors who are well-equipped to give meaningful assistance. In this vein, journals could take into consideration the editors' areas of interest or "expertise." Most importantly, however, student author editors must know how to help student authors navigate the scholarly writing process.

To provide effective writing assistance to students, editors need to know how to provide feedback that inspires student authors to keep working on strengthening their notes and comments. Although forty-eight of the fifty-four journals that responded to the survey assign editors to work with student authors, only twenty-two of those journals provide training to the editors. Furthermore, most of the journals that do provide training cover only selected aspects of scholarly writing, such as, for example, thesis formulation but not commenting, or vice versa.<sup>124</sup>

Because the ability to write well does not necessarily translate into the ability to teach someone else how to write, journals should strive to teach student author editors how to provide effective feedback to student authors.<sup>125</sup> At a minimum, the training may cover thesis formulation assistance<sup>126</sup> and commenting techniques. Several articles addressing effective guidance in these areas are available,<sup>127</sup> and describing in detail the useful approaches in these materials would be unnecessary. The most prominent of these useful tips, however, are worth mentioning here.

*1. Feedback During the Thesis Formulation Stage of Writing*

For the reasons discussed above, student author editors need to receive training on helping student authors formulate a thesis.<sup>128</sup> To facilitate this process, the editors should be able to help student authors develop counter-examples or test cases. Professor Volokh used a computer programming

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124. See *supra* note 74 and accompanying text.

125. See Bernadette T. Feeley, *Training Field Supervisors to Be Efficient and Effective Critics of Student Writing*, 15 CLINICAL L. REV. 211, 211–12 (2009) (emphasizing importance of training of field supervisors because, although field supervisors themselves may have superior legal writing skills, they may not have the necessary skills to be effective legal writing teachers).

126. See *supra* Part III.B.

127. See, e.g., Kirsten K. Davis, *Building Credibility in the Margins: An Ethos-Based Perspective for Commenting on Student Papers*, 12 LEGAL WRITING: J. LEGAL WRITING INST. 73 (2006); Anne Enquist, *Critiquing Law Students' Writing: What the Students Say Is Effective*, 2 LEGAL WRITING: J. LEGAL WRITING INST. 145 (1996); Elizabeth Fajans & Mary R. Falk, *Comments Worth Making: Supervising Scholarly Writing in Law School*, 46 J. LEGAL EDUC. 342 (1996); Montana, *supra* note 23, at 291; Nancy Sommers, *Responding to Student Writing*, 33 COLL. COMPOSITION & COMMUN 148 (1982).

128. See *supra* Part III.B.

test, called a “test suite,” to describe the process for testing a thesis to make sure the proposed solutions would work in various situations.<sup>129</sup> In his article, *Test Suites: A Tool for Improving Student Articles*, Professor Volokh suggests that, in order to run a successful test suite, students first identify the legal principle that needs to be tested, and then craft a test suite with various attributes to ensure that the principle is thoroughly tested. For instance, he recommends that (1) all test cases be plausible, (2) the test suite include famous cases in the field and a few cases that challenge the proposal, (3) the test cases differ from one another in relevant ways and yield different results, and that (4) the test cases appeal to different political perspectives.<sup>130</sup>

These steps are critical in testing a student’s thesis. In lieu of using Volokh’s suggested computer program, journals could conduct conferences in which editors discuss possible test cases with students. Alternatively, journals could host roundtable discussions at which several student authors would be able to run test suites on their proposed theses. To make these student conferences or group discussions most effective, editors may provide students with guidelines for test cases beforehand and have students prepare a few test cases to discuss at the meetings.

## 2. *Feedback on Students’ Writing*

Ideally, the editors working with student authors would also be familiar with the following commenting techniques: (1) providing both marginal comments and summary comments at the end of the paper;<sup>131</sup> (2) resisting the temptation to edit;<sup>132</sup> (3) being specific (do not just say something works or does not work but describe why);<sup>133</sup> (4) giving examples of how the student may improve the piece;<sup>134</sup> (5) when possible, instead of categorically pointing out that something does not work, asking questions which, in answering, the student author would realize the deficiency on his or her own;<sup>135</sup> (6) giving the type of feedback that is appropriate at a given stage

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129. See Volokh, *supra* note 105, at 440.

130. *Id.* at 443–44.

131. See Fajans & Falk, *supra* note 127, at 366–67 (describing the differences between marginal and end comments).

132. See Montana, *supra* note 23, at 310–14 (warning against the pedagogical dangers of making superficial as opposed to substantive edits on student papers).

133. See Sommers, *supra* note 127, at 152–53 (warning against making comments that are “not text-specific and could be interchanged, rubber-stamped, from text to text” (emphasis omitted)).

134. See Davis, *supra* note 127, at 84–85 (citing a study in which law students indicated that they found it particularly helpful when their professors’ comments included examples).

135. See Montana, *supra* note 23, at 311–12 (explaining that in order to teach students how to see their writing through the eyes of the reader—instead of correcting mistakes, filling in missing gaps, or pointing out that something needs to be fixed—comments should be phrased as questions that the reader may have as he or she reads the text).

of the writing process;<sup>136</sup> and, perhaps most importantly, (7) always finding something positive to say about the student's writing.<sup>137</sup> These techniques will—without a doubt—make the editors' guidance more effective.

If possible, the supervising editor, a writing fellow, or a legal writing professor would explain these and other techniques to editors during a training session over the summer or at the beginning of the semester in which student authors will be writing their notes and comments. Prior to this training, the editors may read at least a few of the many available articles on teaching legal writing<sup>138</sup> and, in light of that reading, attempt to analyze their own past experiences of receiving feedback from professors, teaching assistants, and editors.<sup>139</sup> Alternatively or additionally, editors could practice giving feedback on an actual paper and discuss each other's comments during the training. By teaching notes and comments editors how to provide effective feedback, journals will tremendously improve the quality of the student pieces and improve the students' writing experience.

#### *E. Support Student Authors by Encouraging Them Along the Way*

Writing a scholarly writing piece of publishable quality within one semester may be one of the most challenging undertakings a law student accomplishes during law school. Although students have taken the required first-year writing classes by the time they join journals, those classes focused on writing legal memoranda and briefs.<sup>140</sup> For most journal members, writing a note or a comment for the journal is their first exposure to scholarly writing. Unlike the first-year classes that were part of the students' coursework, writing a note or comment for a journal has to be "squeezed onto an already full plate."<sup>141</sup> Moreover, simultaneously with writing a scholarly piece and attending classes, journal members perform source pulls, which—in and of themselves—may be a very substantial time commitment.

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136. See Fajans & Falk, *supra* note 127, at 347 & n.16 (distinguishing between four types of feedback: "exploratory, descriptive, prescriptive, and judgmental").

137. See Davis, *supra* note 127, at 86–87 (emphasizing the importance of positive feedback to the student's perception of the feedback and willingness to work on improving her writing).

138. See *supra* note 127.

139. It may be enlightening for the student authors if during the training editors shared with them the comments they had received and explained to the group why they had thought a particular comment was or was not helpful. See Enquist, *supra* note 127 (reviewing results of a study where four students reacted to comments by five different professors). This exercise would also remind editors what it is like to be on the receiving end of the comments. See Davis, *supra* note 127, at 85.

140. Kenneth D. Chestek, *Reality Programming Meets LRW: The Moot Case Approach to Teaching in the First Year*, 38 GONZ. L. REV. 57, 62–63 (2002).

141. Susan P. Liemer, *The Quest for Scholarship: The Legal Writing Professor's Paradox*, 80 OR. L. REV. 1007, 1012–13 (2001) (discussing a legal writing professor's difficulty in finding time for scholarship).

For all these reasons, writing a note or a comment for a journal is not easy. And, for all these reasons, it is important for the student authors to hear—as often as possible—that they can do it.<sup>142</sup> Although it is natural for student authors to “initially feel insecure about [their] own ability or circumstances, [they] can produce good scholarship,”<sup>143</sup> and editors need to remind them of that simple fact. Without a doubt, learning a new area of the law and writing about it in a new format, while juggling many other professional and personal responsibilities, may seem like an impossible task. Nevertheless, “[t]here is nothing magical about [writing]”<sup>144</sup> a publishable scholarly note or comment: often the students who write the strongest pieces “are simply the ones who persist.”<sup>145</sup>

As mentioned earlier, besides including positive written comments in every round of comments, the editors may ease some of the anxiety by explaining to the authors prior to their submission of drafts that they should expect constructive feedback on their writing.<sup>146</sup> Student authors may find it especially reassuring to see earlier drafts of a published note or comment, as well as the critical feedback those earlier drafts generated.<sup>147</sup> This should help student authors to feel less overwhelmed later when they receive comments and understand that all student pieces, including those that are selected for publication, receive critical comments.<sup>148</sup>

Student authors may also appreciate hearing the editors speak about their own scholarly writing hardships.<sup>149</sup> Student authors would probably find it particularly encouraging to hear from editors that they too at times felt frustrated, anxious, and hopeless; that they too changed topics and struggled with the research; but that it was all worth it in the end.<sup>150</sup> A supportive environment can make all the difference in a student author’s writing experience.

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142. See Edwards, *supra* note 99, at 895 (“One of the most important things for new scholars to hear is that you can do this.”).

143. *Id.* at 868 (emphasis omitted).

144. *Id.*

145. Ruthann Robson, *The Politics of the Possible: Personal Reflections on a Decade at the City University of New York School of Law*, 3 N.Y. CITY L. REV. 245, 254 (2000).

146. See Feeley, *supra* note 125, at 218–19.

147. See *id.* at 219 (“Sometimes legal writing professors prepare students by showing an earlier student submission filled with the professor’s written comments. They might tell students that this was the final paper receiving the highest grade in the previous semester. This helps diffuse anxiety that students may feel about the extent of written comments they might receive on their drafts.”).

148. See *id.* at 218 (“This should help diffuse students’ natural anxiety and help students digest later critical comments without taking them personally or defensively.”).

149. See *id.* at 221.

150. See Edwards, *supra* note 99, at 881 (“The good news is that, overall, this difficult and sometimes laborious set of tasks [of which writing consists] can be deeply personally satisfying.”).

### *F. Conduct Workshops on Scholarly Writing*

Another way in which journals can help their members be more comfortable engaging in scholarly writing would be to conduct training sessions. Many journals reported that they provide training for student authors, and all journals could benefit from doing the same. To help ensure that student authors get the most out of the training, journals could break the training into several workshops, covering those aspects of scholarly writing that are most critical at a particular time in the writing process.<sup>151</sup> Accordingly, the workshop series could begin with a topic selection workshop, continue with thesis development, and move on to other important aspects of scholarly writing, such as drafting the legal background section or effective use of headings and subheadings.<sup>152</sup>

Although conducting the workshops would undoubtedly require an even bigger time commitment on the editors' part, they would likely benefit from the workshops as well because preparing and presenting the workshops will give the editors an opportunity to practice their teaching, speaking, and presentation skills, as well as potentially reduce the amount of time the editors would need to spend on explaining certain concepts in their written comments or during one-on-one conferences.<sup>153</sup>

Moreover, if the editors see the value in scholarly writing workshops for its members but do not have the resources to devote to organizing the workshops, the editors may consider reaching out to the school's writing center to see if the writing fellows would be interested in conducting scholarly writing workshops. Writing centers may gladly do that or at least help the editors prepare such workshops, especially since they would be available not only to journal members but to the larger law school community and may be particularly beneficial to students writing scholarly papers in order to satisfy the upper-class writing requirement.

### *G. Require Members to Purchase a Textbook on Scholarly Writing*

Our final suggestion on facilitating student authors' journey through scholarly writing is to require them to purchase a textbook on scholarly writing. Unlike the other suggestions, this suggestion does not require an

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151. Cf. Iselin Gambert & Ben Grillot, *Making Workshops Work (for Everyone): Creating and Capturing a Student-Driven Writing Workshop Series*, 18 PERSP.: TEACHING LEGAL RES. & WRITING 133 (2010) (discussing a successful workshop series program at George Washington University Law School's Law Writing Center, which covers a variety of topics, ranging from case briefing to polishing briefs).

152. Other topics may include research, large-scale and small-scale organization, footnotes, and ethical use of sources. See FAJANS & FALK, *supra* note 86.

153. See Gambert & Grillot, *supra* note 151, at 135 (observing that the writing fellows who conducted the workshops at George Washington University Law School's Law Writing Center observed that they themselves benefitted immensely from the experience).

additional time investment from the editors but will undoubtedly be very helpful to the students. There are three great books on student scholarly writing: Clark and Murray's *Scholarly Writing*,<sup>154</sup> Fajans and Falk's *Scholarly Writing for Students*,<sup>155</sup> and Volokh's *Academic Legal Writing*.<sup>156</sup> These books provide invaluable information on topic selection, thesis formulation, preemption, research, and writing. Although many journals that participated in the survey reported that they provide student authors with internal handbooks,<sup>157</sup> those handbooks probably do not have the same depth as these books.<sup>158</sup> In comparison with many other law books, these three books are very modestly priced but convey a wealth of information.

#### IV. CONCLUSION

This Article has sought to emphasize the importance of scholarly writing in legal education and encourage law schools, the faculty, and journals to address the scholarly writing omissions from the law school curriculum. The Article has pointed out a number of steps journals may consider incorporating into the student scholarly writing aspect of their work. The authors realize that incorporating all of the suggestions in a given year would be difficult, but they hope that at least some of the approaches already are or would be part of a journal's efforts to teach scholarly writing to its members. Although all of the suggestions require varying degrees of time commitment from editors, the benefits are worth the effort: a successful scholarly writing experience would enrich the members' time on the journals, make them stronger legal writers, and result in stronger student pieces.

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154. JESSICA L. CLARK & KRISTEN E. MURRAY, *SCHOLARLY WRITING: IDEAS, EXAMPLES, AND EXECUTION* (2d ed. 2012).

155. See FAJANS & FALK, *supra* note 86.

156. See VOLOKH, *supra* note 59.

157. Twenty journals responded that they provided internal handbooks on scholarly writing.

158. See CLARK & MURRAY, *supra* note 154. For a comparison of Fajans & Falk's and Volokh's books, see Robson, *supra* note 18, at 196–97.