

# A Writing Life

by **Linda H. Edwards\***

This Essay is written on the occasion of the twenty-fifth anniversary of the Legal Writing Institute (LWI), celebrated at the Mercer University Walter F. George School of Law, the LWI's current home. In a sense the Essay is retrospective, for it is written to honor the scholars whose work has moved us toward a vision of legal writing scholarship and all it can offer. Many of those experienced and inspiring scholars have kindly offered their advice for inclusion in this Essay. That advice is probably the most important content included here, and it is placed, appropriately, at the end of the text as the Essay's capstone section.

Yet the Essay primarily looks forward, for it is written to and dedicated to the next generation of scholars whose work will lead the discipline into a future we cannot yet imagine. While the Essay may have value for experienced scholars, its primary purpose is to serve as a primer for readers just beginning to build their own writing life, so the Essay will speak informally and directly to those particular readers. It will cover some of the hardest parts of the process—the stages and challenges relevant to getting a draft ready for submission. After a few preliminary points, the topics begin with the threshold challenge of finding time to write, followed by sections on the size of the project and the importance of reading—a theme that reappears throughout later stages. Other sections cover finding topic ideas and choosing among them (including the potentially thorny question of whether to write about legal writing) and the role of good mentors and the critical importance of their feedback. Finally, the Essay offers a vision of

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\* Professor of Law, University of Nevada, Las Vegas, William S. Boyd School of Law. The title is a poor homage to Annie Dillard's beautiful collection of ruminations about writing and about the lives of writers. ANNIE DILLARD, *THE WRITING LIFE* (1989). I am grateful for the wise and generous contributions of Linda Berger, Kirsten Davis, Lisa Eichhorn, Anne Enquist, Elizabeth Fajans, Mary Falk, Steve Johansen, Jan Levine, Joan Magat, Richard Neumann, Terry Phelps, Terry Pollman, Jill Ramsfield, Chris Rideout, David Ritchie, Ruth Anne Robbins, Lou Sirico, and Kathy Stanchi.

writing as a highly personal and satisfying creative act, one that can enrich and enlarge the lives of writers and readers alike.

### I. GETTING STARTED

Three points should be made at the outset. First, as every writing professor knows, the creative process is individual, so no advice, however wise, can be applied generically. On the other hand, few writers fully understand their own writing process at the beginning of their careers, so be open to trying strategies you might not have thought would work for you. Since the suggestions in this Essay come from some of the best writers in the field, take their wise counsel seriously and consider experimenting with the suggestions themselves or with variations on them. You might discover important aspects of your own creative process, and you might save yourself the years it took our experts to discover the advice they now can provide.

Second, give some thought to your reasons for writing. Of course there are external, instrumental reasons to write. You may need to satisfy requirements for your present position, prepare for a future position, or increase your salary through scholarship grants or a higher base salary. But these are not the *best* reasons to write. Write because you are serious about your academic role. Writing will provide you with a vibrant, dynamic life of the mind and with the chance to participate in interesting scholarly conversations. It will sharpen your analytical ability and expand your knowledge, and it will be the vehicle for your own contribution to humanity's ongoing search for understanding.

Writing will give you the chance to practice what you teach. If you write about legal writing, your work will help establish the intellectual underpinnings of this exciting young discipline. No matter which subject matter you choose, you will build relationships with law teachers at other schools and better collegial relationships with faculty members at your own school. Perhaps best of all, you will have the personal pleasure of doing a creative, difficult, and important task well.

Third, while you may initially feel insecure about your own ability or circumstances, you *can* produce good scholarship. There is nothing magical about it. True, it can be a daunting project. It takes time, hard work, determination, and the generosity of a good group of mentors who will give you honest feedback. It takes patience with yourself and willingness to rewrite over and over until a good finished product begins to emerge. It takes the courage to keep writing even when you have no confidence in yourself or your idea. But none of that is magic. It is exactly what every writer has to do, and you can do it too. So let us think about how to begin.

## II. FINDING TIME

For virtually every author of legal scholarship, the biggest challenge is finding time. Writing takes a lot of time, and it always takes more time than the author expects. For a legal writing professor, time can be in especially short supply. But in each of our lives, there is always some time available for writing if we look for it and are willing to devote it to the task. Experienced scholars of all stripes tend to take primarily one of the two following approaches, filling in around the edges with the other approach.

### A. *Disciplined Weekly Work Throughout the Year*

Some scholars put in sustained work on their scholarship virtually every week of the year. Often they arrange their teaching schedules so that on at least one day a week, they do not teach. They make it a discipline to devote all or part of that day to working on scholarship. I know several writers who have picked Monday as their day. They stay home almost every Monday to avoid the distractions and interruptions they would face at their office. They work on their current writing project for part or all of that day. They may also devote part of that day to reading more broadly in their field. Essentially, they treat writing as part of their weekly job, and they schedule it into their calendar along with classes, student conferences, and committee meetings. They use research assistants and often discipline themselves, in part, by the need to prepare for the next scheduled meeting with their student assistants.

These writers are admirably disciplined because they resist the inevitable powerful urges to use that time to attend to other obligations that seem more pressing at the moment. They do make exceptions, of course, for those weeks when they have a stack of papers to grade, but most of us are not grading more than a third of the weeks of each semester. I have tremendous respect for these writers, in part, because I have rarely been able to take this approach myself. For me, the second approach works best.

### B. *Writing as Mostly a Summer Activity*

Other scholars do not try to write (that is, actually produce text) during the academic year. For these writers, summer is the key time for generating text. Commonly, classes end around May 1, and with discipline, grading can be completed by mid-May. By about August 1, most professors will need to start devoting full time to preparation for

the semester,<sup>1</sup> with classes beginning in about the third week of August. After accounting for two weeks of summer conference attendance and personal and family time, a writer realistically has only about eight available weeks to write. Those are eight precious weeks, so treat them accordingly. Here is one way to do that.

First, be ready to start writing (that is, actually producing drafts of parts of the text) by the time you turn in the spring semester grades. That means that during the prior academic year, you'll need to have chosen your topic, developed a thesis, and identified and read the primary sources. Even in a busy academic year, each of us has enough discretionary time between August and May to get this preparation done, especially if the topic is manageable and if we use research assistants wisely. The day after you turn in your grades, rough out a tentative outline of your article and schedule the following eight weeks, deciding what you hope to have done at the end of each week. Then Monday through Friday of each of those weeks, try to be at your computer by 8 a.m. and keep writing until 5 p.m., taking only enough breaks to let your thoughts percolate and your mind rest. The most important requirement for getting the writing done is keeping yourself in the chair until you finish. If you don't let yourself get up and get distracted by other matters, you *will* produce the necessary words on the page, and at the end of the summer, you will have a solid draft of an article.<sup>2</sup>

Of course, these two approaches overlap considerably. Summer writers have to find time during the semester for preparation, and weekly writers still concentrate their efforts in the summer. No matter which approach seems most workable, the key component will be the determination it will take to keep other tasks from encroaching on your writing time. People will ask you to devote some of your time to other activities, and when the writing seems stalled, you will be tempted to

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1. Some professors need to create their assignments or do other kinds of semester preparation on an earlier schedule, but that would simply adjust the calendaring rather than reduce the time available. If you find that preparation for the semester is taking more than eighty to one hundred hours of focused, productive work, give careful thought to strategies to reduce that time requirement. Almost always, you can find good strategies that will help you get that preparation time under better control.

2. Having a solid draft of an article by mid-August does not mean that you should immediately submit it to journals. You will still have significant work to do at that point as this Essay describes in sections VIII to X. Unless you have an urgent time pressure, work on revising the article during the fall and submit it at the beginning of the spring submission season, starting in mid-February. Most of the higher ranked primary journals fill their volumes in March, so your article should be among those waiting to be reviewed when the new editors assume their responsibilities.

escape by doing these things. The key is to stay focused and determined to use those weeks for your writing. When you return to school with a solid draft, you won't yet be done, but the part that remains will be easier to do while teaching than actually producing text might be.

### III. SIZE MATTERS

One of the first questions you'll confront is what kind of project to use as your entry point into your writing life. Unless you have pressing deadlines caused by requirements of a tenure or contract process, you might want to begin with a shorter piece, such as a newsletter submission, a bar journal article, or a short book review.<sup>3</sup> There are both advantages and disadvantages to starting small. Like any skill, writing becomes easier and you become faster with practice, so starting small can let you begin at a less intimidating level. Initial short pieces can help you explore your own writing process and begin to learn what strategies help you produce good work. Shorter projects also can help you begin to think of yourself as a writer, and in the final analysis, that self-image is among the most important qualities necessary for a career of good writing.

On the other hand, starting small can bring dangers. Perhaps the most troublesome is the danger of not progressing beyond the style and substantive requirements of those shorter pieces. In fact, the strategies that work best for those pieces might be inconsistent with those you'll need for more significant projects, but because they worked well for the work you've already done, it might take a long time to realize that they are less appropriate for larger projects. For shorter pieces, you can have a good idea, write it out quickly, cite to only a few major sources, use a less academic voice, skip any significant review by friendly readers, and submit it. Because the expectations for newsletter pieces often are consistent with that strategy, your submission may be published and

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3. A short book review in a less formal publication usually requires only reading the book and providing an overview of its strengths, weaknesses, and probable uses. A book review published in a peer-reviewed or student-edited journal, however, requires more. It is, in essence, a substantive response to the book and generally makes its own original points about the subject matter of the book it reviews. It may agree with the book and add additional reasons in support, or it may disagree with the book and make its own substantive case in opposition. A substantive book review can be as demanding as a traditional law review article. Keep in mind also that many journals do not publish book reviews they have not solicited unless the reviewer is a member of that school's faculty. If you want to write a substantive book review, try to secure a publication commitment first. Better yet, write your own substantive article not styled as a review of someone else's work.

may, in fact, be praised by readers who, rightly, find it interesting and helpful.

Larger and more academic projects, however, require much more time, work, care, and attention to detail. They are also much more intimidating. Ask yourself whether you are tempted to write a shorter piece as a way to avoid a larger project. Be honest with yourself. If you think that you might continue writing shorter pieces to avoid swimming out to the deep end of the pool, it might be better to jump in at that end right away. Or if you think that you might be tempted to continue using the work patterns appropriate for shorter pieces even when you begin a larger project, you might be better off avoiding those patterns at the outset. After you have written several substantive articles and solidified your more rigorous writing patterns and strategies, you can always relax those patterns and strategies for a few short, less ambitious projects.

So what are these larger projects? The most typical, of course, is an article published in either a student-edited or a peer-reviewed journal.<sup>4</sup> Once your article is ready for submission and you have offers in hand, you can decide between the two kinds of journals. Ironically, the academy traditionally considers publication in a student-edited law review to be more prestigious than publication in a peer-edited journal. One might well wonder what could be the reason for trusting the selection and editing judgment of second- and third-year law students<sup>5</sup> over the judgment of a team of law professors who are, as editors of a subject-specific journal, presumably experts both in academic writing and in the substance of that particular field.

As puzzling as the traditional preference might be, your decision should be based primarily on your own situation and the primary advantages of each kind of journal. If you are writing in part to satisfy tenure or contract obligations, select the journal that will be most valued by your school's faculty. If you are writing to enhance your resume for a future position, select the journal that would be most valued by a generic, traditional law faculty. If you are not constrained by either of those purposes, you may still have a difficult decision to make. If you are writing about a legal writing topic, you might want to publish in a traditional student-edited law review as a way to help make legal

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4. An intermediate level project is an essay (such as this one) rather than an article. Customarily, the differences lie in the length, the degree of footnoting, and the difficulty of the material. Many law reviews or peer-edited journals publish both articles and essays.

Over the course of their careers, most scholars aspire to produce a steady pattern of articles with an occasional essay included in the mix.

5. I must exempt the students of the *Mercer Law Review*, whose judgment is, of course, impeccable.

writing topics more mainstream in the academy.<sup>6</sup> On the other hand, you might prefer to publish in a peer-edited journal, which probably will be read and subsequently cited by more of your colleagues in that particular field.<sup>7</sup> A good article submitted during the traditional spring submission season will receive more than one offer of publication, so you will have time to think carefully about your own placement decisions. Meanwhile, we'll assume that you have decided to write a law review-style article that would be appropriate for either student-edited or peer-reviewed journals. How to begin?

#### IV. READING

Begin by reading. At this stage, you'll be reading for at least three critically important reasons. First, you need to study the genre so you can recognize good articles and identify the criteria that make an article good. If you have been writing practitioner documents, especially briefs, you'll also need to begin the shift from the voice of advocacy to the voice of the academy.<sup>8</sup> It would be ideal to form a small reading group and take a few months to read good articles and meet to critique them. You might ask some of the leaders of your faculty to recommend articles for you to read. Consider selecting articles of different types: traditional case-crunching doctrinal articles, empirical articles, interdisciplinary articles, and theoretical or jurisprudential articles. Some of the criteria

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6. At least two student-edited law reviews have articulated a particular interest in legal writing articles: the *Mercer Law Review* and the *Stetson Law Review*.

7. The two primary peer-edited journals for legal writing are *Legal Writing: The Journal of the Legal Writing Institute*, and the *Journal of the Association of Legal Writing Directors*. Another peer-edited journal of particular significance is the *Journal of Legal Education*, published by the American Association of Law Schools. Copies of this journal are mailed to every faculty member at every member school, and the journal has often been receptive to articles about legal writing.

8. The voice of advocacy is the voice of a brief-writer. This writer makes assertions strongly and defends against all possible objections. Section headings are boldly worded declarations of the rightness of a position. The writer has a client, after all. A reader assumes that the writer's only goal is to accomplish the client's agenda. That assumption minimizes the confidence the reader can place in the text because the text is expressly an instrument not only of persuasion in general, but of persuasion to establish *someone else's* position, not the writer's position. The primary goal of academic writing, on the other hand, *should* be to explore a particular subject from a neutral position. The traditional academic voice, then, does not make such bold assertions and such bald and stubborn defenses against any possible counter-argument. Instead, the academic voice should recognize the complexities of the topic and the possible weaknesses in the proposed solutions. In fact, a wise academic voice will err on the side of understating the importance or effectiveness of the article's proposition, leaving it to the reader to conclude that the article's point is even more important than the writer has asserted.

for a quality product will be the same for all these types of articles, and some will be unique to that particular type. Recognizing these differences may help you decide which type of article you will choose for your first piece and will provide samples to use as guides.

Supplement your reading by attending presentations made at your own school, no matter what the topic. There will be presentations by job candidates, and most schools allow legal writing professors to attend job talks even if legal writing professors are not entitled to vote on hiring decisions. Also, most schools have some sort of faculty enrichment program that brings outside scholars to the school each year, and many schools host annual symposia with the top scholars on particular topics. Make time to attend as many of these presentations as you can. Soon you will be much more sophisticated about the discourse of the academy and about how to participate in that discourse, either orally or in print.

After you have read enough to develop your sense of the genre, start reading the best articles in the field in which you would like to write.<sup>9</sup> You have two additional purposes now. You will be educating yourself in your own discipline, so you know what has already been said, and you will begin to notice where your interest lies. Go to conferences in your chosen field, and read the works you hear referenced there. What sparks your curiosity? What wrinkles your brow? What focuses your attention most intensely? Pay attention to your own reactions as you read. Write your reactions in the margins of the articles, or better yet, keep a reading journal in which you can note the questions or confusions the article prompts or the disagreements you have with it. Often the best topics are inspired by reading a related piece by another author. That author's article invites you to look at a subject in a different way, and once you do that, you may find that you have something to add to the discussion. Be alert for ideas of your own and write them down. You almost certainly will forget them if you do not record them when they occur to you, so start a file of possible topics. Include clippings and notes about sources, your own ideas, and what interests you about that subject. All this reading leads to the next step: finding and choosing a topic.

#### V. FINDING TOPICS

With luck, the reading and journaling you have been doing have produced several topic ideas, but if not, don't despair. While you

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9. If you decide to write about legal writing, you can start with the articles identified in Kathryn Stanchi's recent bibliography, *Persuasion: An Annotated Bibliography*, 6 J. ALWD 75 (2009).

continue to think about the articles you've read, think also about your own prior education and experience. Before you entered the academy, you had already learned and done a great deal. You bring all of that experience and knowledge to the table. If you practiced law, think back to the legal issues you encountered. What interesting questions or problems did you confront? What disciplines other than law have you studied? Where and how do those disciplines intersect with law?

Your own teaching can be a rich source of topic ideas as well. Each year you will use writing assignments that pose an interesting legal question. Almost always, that legal question will be undecided in some sense. Otherwise it would not work well as a writing assignment. By the time you have created the assignment, taught it, and graded the resulting papers, you have become a mini-expert on that topic. You may be able to use that expertise to give you a head start on writing. You can identify the unresolved question, set out the existing authorities, and propose and justify your own solution. That paradigm is precisely what the classic case-crunching law review article undertakes to do.

Your teaching can also provide topic ideas from the area loosely known as "legal method." As you teach a writing assignment, legal method questions may well arise. Perhaps there will be a plurality opinion by the United States Supreme Court. You may wonder what the precedential value of a plurality opinion might be. To what extent are lower courts bound by a plurality opinion, which by definition does not represent the majority of the Court?<sup>10</sup> What an intriguing topic this might be, with the added advantage that it relates directly to your teaching.

The odds are excellent that if you are reading, attending presentations, and paying attention to the issues raised in your own classroom, you will find a wealth of potential topics.<sup>11</sup> Some of those topics will be

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10. In *Marks v. United States*, 430 U.S. 188 (1977), the Court explained that the holding should be considered to be the position taken by the justices who concurred in the judgment on the narrowest ground. *Id.* at 193. You might suspect that this murky standard may have sparked controversy about how it should apply to a particularly fractured set of opinions. You might also suspect that lower courts, the media, and other interested parties tend not to apply that complicated standard, parsing all of the opinions to find their commonalities, but instead tend to simply treat the opinion with the largest number of subscribing justices as the controlling opinion. These musings might send you off to find answers, but most likely, you will also find more questions. Those questions could become the basis of your own article on the subject.

11. If all else fails, you can always use strategies commonly used by law review students in selecting their topics, such as reading *U.S. Law Week* to find topics on which the federal circuits are divided and reading recent Supreme Court opinions to predict and critique their impact.

related to legal writing and some will not, so it is time to talk about the common and potentially difficult question of whether to write about legal writing.

#### VI. DECIDING WHETHER TO WRITE ABOUT LEGAL WRITING

If you are writing in part to satisfy job requirements, you may encounter the question of whether to write about legal writing. Like any good lawyer, your first question should be definitional: What does the phrase *a legal writing article* mean? If you have received advice from someone on your faculty suggesting that you refrain from writing “a legal writing article,” what does *that person* mean by that phrase? The chances are good that your advisor has not thought very deeply about what criteria define the category. Your advisor likely is imagining an article that describes a teaching technique and does so without theoretical support from law, composition theory, or learning theory. Or maybe your advisor is imagining an exhortatory article on the virtues of the active voice or the vices of nominalizations, again without theoretical support or a thesis not already made many times in the literature. These imagined articles reflect your advisor’s lack of knowledge, both about what a modern legal writing course actually teaches and about what developments have occurred in legal writing scholarship in recent years. This lack of knowledge is fully understandable. Most torts professors do not know what developments have taken place in tax scholarship and vice versa. It simply means that you must interpret your advisor’s remarks in light of what meaning he or she intends, just as any good rhetorician would do.

So what kinds of articles can be fairly included in the category of legal writing articles? Our starting point should be the subjects that arise in the teaching of a modern legal writing course. For instance, our imagined topic of analyzing the precedential value of a Supreme Court plurality opinion<sup>12</sup> came directly from teaching legal writing. In fact, in the curriculum of most law schools, such “legal method” topics are expressly taught *only* in legal writing courses. Yet, most of the scholarship written on those topics is written by non-legal writing professors, so most law faculties do not recognize those topics as “legal writing topics.” If you mentioned the topic on plurality opinions to your advisor, he or she likely would say something like, “That sounds good—much better than writing about a legal writing topic.” You do not need to tell your advisor that the topic on plurality opinions actually *is* a legal writing topic, at least not until you achieve tenure or a long-term

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12. See *supra* note 10 and accompanying text.

contract. Just smile, agree that it sounds like a good topic, and go forward with it.<sup>13</sup>

Other kinds of legal writing topics can include interdisciplinary questions raised at the intersection of law with a related discipline, such as narrative theory,<sup>14</sup> rhetoric,<sup>15</sup> philosophy,<sup>16</sup> neuroscience, social science, and cognitive studies.<sup>17</sup> Often these articles expressly apply their theoretical material directly to legal writing, so once written, they may be more clearly identified as legal writing articles. But again, it is unlikely that your advisor is imagining these excellent, thoroughly researched, theoretically sophisticated articles when he or she is giving you advice.

The two kinds of legal writing articles that are most risky in a tenuring process are articles primarily about teaching and articles about institutional choices affecting the teaching of legal writing, such as articles about status or programmatic design. If you are on a track toward tenure or a long-term contract, assess your faculty's attitude toward these articles before choosing a topic in either of those categories. There will be plenty of time to write in those areas after you are tenured or have a long-term contract. Choose instead a legal writing topic that likely will not be recognized for the legal writing topic that it is.

#### VII. MORE READING

Once you have selected your topic, it is time for more research. One of the two or three most common criticisms of weak articles is the lack of thorough research.<sup>18</sup> If the topic is a traditional law topic, most writers know how much research is necessary and how to go about it. Find and read all the major cases and all the commentators you can locate and cite to most or all of them. Part of your article's value to a reader will be as a source for other sources.

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13. For more about what kinds of topics might fairly be characterized as legal writing topics, see Terrill Pollman & Linda H. Edwards, *Scholarship by Legal Writing Professors: New Voices in the Legal Academy*, 11 J. LEGAL WRITING INST. 3 (2005).

14. E.g., J. Christopher Rideout, *Storytelling, Narrative Rationality, and Legal Persuasion*, 14 J. LEGAL WRITING INST. 53 (2008).

15. E.g., Linda L. Berger, *Of Metaphor, Metonymy, and Corporate Money: Rhetorical Choices in Supreme Court Decisions on Campaign Finance Regulation*, 58 MERCER L. REV. 949 (2007).

16. E.g., Joel R. Cornwell, *Legal Writing as a Kind of Philosophy*, 48 MERCER L. REV. 1091 (1997).

17. E.g., Kathryn M. Stanchi, *Playing with Fire: The Science of Confronting Adverse Material in Legal Advocacy*, 60 RUTGERS L. REV. 381 (2008).

18. Probably the two others are failing to make an original contribution and failing to provide a thorough analysis of the problem or proposed solution.

Inadequate research is more of a potential problem for articles outside the traditional case-crunching mode, such as interdisciplinary articles or articles about legal writing teaching or program design. If you are writing about teaching or program design, read everything you can find about teaching or program design. That sounds like an extreme statement, and perhaps it is, but many of these articles are easily located in the legal writing discipline's peer-reviewed journals,<sup>19</sup> and many of them are fairly short and easy to read. Legal writing has been a topic of serious attention in the academy now for well over twenty years, so the odds are good that a number of published articles say something relevant to your thesis. Be sure to find these articles, cite them, and say something new or different on the subject. Look outside the legal writing world, too. Non-legal writing professors may well have written related articles, and reliance on those articles may supply significant credibility and support to your own thesis.

Interdisciplinary articles are probably the most difficult to research because they require knowledge of two disciplines rather than one. The pitfall to avoid is the understandable temptation to read one or two sources in the other discipline and then try to apply those one or two sources to a legal topic as if they defined the universe of the other discipline. If you are considering writing an interdisciplinary article, you must read thoroughly in both disciplines. That is a daunting task, so unless you already have significant expertise in the non-legal discipline, be sure to give yourself enough time to do the necessary research and reading. Also be sure to ask experts in the other discipline to read your drafts. This process of seeking guidance brings us to our next topic: the crucial need for mentors.

#### VIII. MENTORS AND GOOD ARTICLES

When you are ready to begin your project, remind yourself of what makes an article good. Thankfully, the answers are straightforward. A good article has at least five characteristics: (1) It is widely and deeply researched with ample citations to relevant authorities. (2) It identifies a question that matters. (3) It presents an original answer. In other words, it is not just descriptive. It does more than merely summarize what has already been said on the subject. (4) It supports its thesis with well-reasoned analysis. (5) It is stylistically well-written.

Mentors can be of great help with each of these criteria. They can mention sources you have not yet found. They can tell you whether the question seems important and whether your proposal appears to be

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19. See *supra* note 7.

original enough. They can pinpoint organizational problems you had not noticed or points of confusion for a reader. They can help you find your own academic voice and spot stylistic problems. Most importantly, they can help you deepen your analysis and strengthen the support for your original thesis. Perhaps the most common mistake a writer can make, and the one most easily corrected, is sending out an article before it has been thoroughly vetted by good readers. *Do not submit an article for publication until it has been read and thoroughly critiqued by at least ten good colleagues and more if possible.* No matter how good your draft appears, it will be three times better after it has been read by a series of good readers.

Notice that the prior sentence called for a *series* of good readers. You'll want to send the article to readers several times during the writing process because you'll have different goals and different concerns at each stage. A common strategy is to send the article's first draft to a small inner group of trusted mentors. These should be people who will understand that you are sending an early draft and will not expect more of the draft than its stage in the process can deliver. They will not think less of you if your draft has fundamental mistakes. In fact, your goals for this stage are to catch any big mistakes and to confirm that your direction is promising. Then revise based on your readers' comments and your own continuing work. Send out the revised draft to readers a bit more removed from your inner circle. These are readers you do not know as well but who have significant expertise in the field, so they can help you add even more support or analysis than you already have. Then revise again. Finally, send the current revision to the riskiest of your mentors, those whose opinions of it and of you are most important but whose feedback can be especially helpful. Then revise again.

It seems we have a theme here: revise, get feedback, revise, get feedback, revise, get feedback, and revise again. As the old saying goes: there is no good writing; there is only good rewriting. No matter how experienced the scholar, every one of us needs mentoring. At the very least, we need mentors to help us identify what we do not yet know about our topic, to find sources to address those gaps in our knowledge, to read and comment on drafts of our work, and ultimately, to help us think about placement decisions.

Potential mentors are everywhere. Consider senior colleagues on your faculty, including both casebook faculty and legal writing faculty. These experienced colleagues have years of wisdom to impart, and they can help you anticipate how your school's other faculty members will respond to your article. Consider also junior faculty members, who will be more attuned to the challenges everyone faces at an early stage in their scholarship. If they too are untenured, you and they will share a

common bond and, perhaps, a desire to help each other succeed. Consider getting to know presenters at faculty colloquia at your own school and people you meet at conferences or hear from on relevant listservs. Consider people who have written in your area, even if you have not yet met them. Many established authors are happy to be sought out and are willing to offer advice or read drafts. Don't forget your former law professors, who probably have a personal investment in your success in the academy.

Because potential mentors are everywhere, finding them is not the challenge. Instead, the challenge is selecting wisely among them and deciding what kind of help to seek. Think consciously about what kind of mentoring you need at each stage, and select mentors for each of those stages. Some potential mentors are excellent at encouraging a friend and brainstorming ideas but may not have enough time to read and comment on drafts. Some are excellent readers of drafts but may not be quite as savvy about placement decisions. Some potential mentors may prove problematic because they cannot see a subject from a perspective other than their own or because they are professionally insecure.

Selecting mentors who are members of your own faculty can bring political risks at your school or can create awkwardness if the mentor has a different vision for your article than you do. You may wonder whether that person would harbor animosity if you do not always take his or her advice. On the other hand, you may wonder whether that person would feel slighted if you do not seek his or her mentoring. No generic advice can be effective on this point. Selecting mentors requires wisdom and sensitivity on your part. Aim for a variety of kinds of mentors, perhaps seeking different mentors at each writing stage and proceeding cautiously when seeking mentors on your own faculty.

One final point on mentors is worth mentioning. Some of the functions of individual mentors can also be provided by making presentations to groups. During the thinking and writing process, try to find opportunities to present your topic and your thesis. Present it as a work in progress, and ask for feedback from each audience. Take notes on the comments you receive, ask a friend to take notes for you, or record the presentation. The goal is to harvest every comment and use it for all the potential it may offer. Here, as with sharing drafts, choose your groups wisely. If possible, present first to a small group of trusted colleagues. Then retool the presentation and present to a group somewhat further from your comfort zone. Ideally, you can retool once again and then present to a more intimidating group. If you can arrange to present three times (or even more) while actively working on the topic, your resulting article will be significantly stronger and more thorough than it would have been with only individual readers of drafts.

## IX. WRITING AS A CREATIVE ACT

All these stages of the writing process may seem daunting. Undoubtedly, writing an article requires much more time and effort than one might initially predict. For most writers, it takes at least a year of disciplined, focused work to produce a good product. Given likely uncertainties and false starts, it often takes even longer, especially for the first article of a scholar's career.

The good news is that, overall, this difficult and sometimes laborious<sup>20</sup> set of tasks can be deeply personally satisfying. Creativity is the saving grace. Fundamentally, you are taking something that already exists (a body of work by others) and molding it into something new, interesting, and perhaps even beautiful. The metaphor that comes most to mind is that of a potter who holds the clay and carefully works it on the wheel until it takes its shape. With skill, presence of mind, and attention to each slight pressure and angle, something interesting begins to emerge. Then by the fire of the kiln, the shape becomes strong. With color and glaze, that strong and interesting shape can become lovely.

In some ways, the work at the wheel correlates to the process of producing the first solid draft. A good initial draft is interesting. Its thesis and organization provide its shape. It holds its reader's attention. It says, "Look closer; there is potential here." But like the work at the wheel, the first solid draft marks only the halfway point. For a potter, the clay must be strengthened by the heat of the kiln, or its consistency will not stand up over time. For a writer, that strengthening comes from the fire of careful and honest critique. Then comes the writer's equivalent of color and glaze—the smoothing out of transitions; the removal of small distractions; the refinement of the writer's voice; and the addition of energy, grace, and elegance to the language.

There are times during the creative process when the work is slow and its outcome seems doubtful. But patient work through all the necessary stages can produce something new and interesting, substantively strong, useful, and even aesthetically pleasing. Your writing will be a reflection of a part of yourself. You will learn to know yourself better as you write, and your writing will be your introduction to a larger world. In the final analysis, it is the highly personal, creative nature of the writing process that will call you back time and again to the keyboard and the screen.

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20. The use of *laborious* here is meant to include the optional connotations of dullness, excessive attention to detail, and lack of spontaneity.

X. THE CAPSTONE SECTION: ADVICE FROM SOME OF LEGAL  
WRITING'S BEST SCHOLARS<sup>21</sup>

Much more can be said about beginning to build a writing life, but among all of that advice, what might be the most important? What do our best scholars know now that they wish they had known earlier? Some of the legal writing field's best scholars have graciously offered their responses to these two questions. Here are their answers.<sup>22</sup>

*Linda Berger*<sup>23</sup>

1. Know your process. As a legal writing professor, you understand the writing process. Apply that knowledge to your own writing: If you tell students to start writing before they have finished doing their research because that helps them figure out where they are going, do the same thing. If you tell students to share a rough draft with someone (you, other students, someone not in law school) to test the ideas early, do the same thing. Read Fajans & Falk for great "process" advice on scholarly writing.<sup>24</sup>

2. Know your product. In addition to the law review articles that you read for your research, find several law review articles that you like and study them to see what makes them good. Emulate their tone, voice, and structure (introduction, situating yourself within the academic context, background on the problem and the approach, apply approach to problem, recommend and conclude). Read Volokh for "product" guidance on academic legal writing.<sup>25</sup>

3. Understand two or three basics about scholarship—you are supposed to be writing something new and interesting (and important). It can't be new unless you do your homework thoroughly and credit all those who have written significantly in the field before. It won't be interesting unless you have written and rewritten it so often that you

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21. The advice from these scholars was sent to the Author by e-mail and is contained within the Author's files. Only minor changes have been made to the text.

22. Notice the many points of agreement here and the many common themes, especially the critical need for thorough research and feedback from multiple careful readers. These experienced scholars submitted their advice before they read the advice from the others in the group, so the similarities are a reliable indicator of the importance of these common themes.

23. Linda L. Berger is a Professor of Law at the Mercer University Walter F. George School of Law.

24. ELIZABETH FAJANS & MARY R. FALK, SCHOLARLY WRITING FOR LAW STUDENTS (3d ed. 2005).

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

have made the material your own. It won't be important unless you can identify some practical applications or solutions. (This is not always necessary; your article may perform the essential first step of identifying, defining, and examining the problem.)

4. Write about something you are interested in. For most legal writing people, that's easy. (I have been told by some legal writing professors that there is nothing interesting to write about in legal writing; I wonder how we can happily teach a subject that is not interesting!) Most of us are interested in the "texts" that we read and write. Many of us are interested in specific "topics" in those texts. All you have to do is find a lens (theory, approach, analytical framework) to examine what you and your students are already reading and writing. Finding a lens is also fairly easy. Understanding the lens—the theory or approach or analytical framework—is hard. The Berger/Smith materials from Seattle<sup>26</sup> help introduce some of the lenses you might be interested in.

5. You alone are responsible for making sure the article fits into and builds upon the ongoing scholarship. Do (or redo) the work of researching and synthesizing the background materials. Research assistants can help you locate information, and they may even be able to synthesize some of it, but they love to cut and paste and they really can't understand the material for you.

6. Legal writing professors understand the value of feedback and should welcome it. No one really likes to get criticism, but it is essential to seek it out anyway. Ask for feedback early and often. Ask friends first. On later drafts, ask people you admire or people who have written in the area. Ask people who will be critical but who will deliver the criticism the way you deliver feedback on a paper—with a tone and touch that will leave the writer feeling capable to move on toward future improvement. Ask people who don't have power over your future or who will exercise their power carefully. This means primarily people who are not from your school, but it is helpful to have one or two more experienced people at your school who can give political guidance as well as helpful feedback.

7. Once you find a text, a topic, and a lens that you are interested in, develop it into a continuing line in your scholarly agenda. You will write better articles once you know more—and it will be easier to write those articles. Multiply the value of any piece that you write by publishing

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26. Linda L. Berger & Michael R. Smith, *Scholarship Guides: Journals, Passports, Roadmaps* (Legal Writing Institute Conference, July 24, 2004), available at [http://www.alwd.org/JALWD/Scholarship/Berger\\_Smith.pdf](http://www.alwd.org/JALWD/Scholarship/Berger_Smith.pdf).

related versions and making presentations in multiple forums and formats (conferences, workshops, practitioner pieces, teaching materials).

8. Set goals that will keep you writing over the long run. One of my goals is to write one piece that doesn't need more editing. That will keep me writing for a very long time.

*Kirsten Davis*<sup>27</sup>

Here are some ideas (although I preface this with saying that I'm not particularly great at any of these—I do my best work when I am putting these principles into action, however):

1. Make a habit of reading the literature in our field. It is important to hear what others are saying in order to enter the conversation.

2. Read outside our field in complimentary areas. Read composition theory, rhetorical theory, pedagogical theory, educational psychology. Making interdisciplinary connections can stimulate new ideas.

3. Keep an "idea" book and write in it often. Ideas that originated years ago are still percolating. Sometimes I find that it takes me years to fully ruminate on an idea before it is ready to be written about. In addition, keeping track of my ideas gives me something to draw upon when I need to generate more ideas or new content. It also gives me a place to brainstorm without pressure to be perfect.

4. Mix smaller projects with larger ones and oscillate between them. There can be some great synergy in that process.

5. Say "yes" to opportunities to present your work whenever you can, either before or after you've written something. Presenting can be an impetus to write or an opportunity to refine what you are writing. Plus, it leads to recognition of your work and the opportunity to do even more speaking and writing.

6. Commit yourself to writing in legal writing. Legal writing scholarship is real scholarship if it has the characteristics shared by all scholarship of quality. Our disciplinary growth is dependent on our willingness to commit to writing in our field. For others to recognize us as a field, we must be willing to do so ourselves; anything else undermines disciplinary legitimacy.

7. Find others to read your work, and let them read it no matter how poorly drafted you think it is. The input from others is invaluable, particularly for those who write in legal writing. Writing is a social process, and many of us deny ourselves that important aspect because we lack the confidence to share our work in the drafting process. But the earlier you can get good feedback, the better.

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27. Kirsten Davis is an Associate Professor of Law and the Director of Legal Research and Writing at the Stetson University College of Law.

8. There are good books out there about academic writing and how to effectively engage in the process.<sup>28</sup> If others are like me and have a tendency to “block” in the writing process, those books can be very helpful because they make suggestions for ways to overcome those blocks.

*Lisa Eichhorn*<sup>29</sup>

1. Consider your audience when considering a topic. Do you wish to address only scholars in a narrow field (which is fine)? Legal academics in general? Judges, judicial clerks, or legislatures whose decisions may have a direct and practical effect on an issue? For better or worse, your audience will also likely include student-editor gatekeepers who have only three or four semesters of legal education under their belts. These folks may be brilliant but are unlikely to know the key texts or to have monitored recent technical legal developments with which you and your intended audience are familiar. You’ll have to use your introduction or abstract to convince the gatekeepers as to why they should care about your topic and thesis.

2. Read widely and deeply to develop an area of expertise, and keep reading because the law changes constantly. It’s hard to make time for this reading because it’s not as urgent as grading, class prep, and administrative deadlines, but you need to read if you’re going to know what you’re talking about. Something you read will eventually intrigue, anger, or puzzle you, and therein lies a potential article.

3. Enlist the help of faculty with impressive publication records, both folks at your own school in various fields and folks in your field at various schools. Read the work of these folks, and find someone who has a good sense of whether a topic is feasible. You will eventually develop that sense for yourself, but it may take a few false starts.

Now, if only I could consistently follow my own advice!

*Anne Enquist*<sup>30</sup>

1. Familiarize yourself with the genre of law review writing by reading a fair number of the best articles in the kind of review or journal

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28. Kirsten Davis notes that these texts include, of course, FAJANS & FALK, *supra* note 24, and VOLOKH, *supra* note 25. To her, the most helpful text for academic writing generally is ROBERT BOICE, *PROFESSORS AS WRITERS: A SELF-HELP GUIDE TO PRODUCTIVE WRITING* (1990).

29. Lisa Eichhorn is a Professor of Law and the Director of Legal Writing at the University of South Carolina School of Law.

30. Anne Enquist is a Professor of Lawyering Skills and an Associate Director of the Legal Writing Program at the Seattle University School of Law.

in which you would like to be published. Unlike most times when you have focused on what the author was saying, this time focus on *how* the author is writing about his or her topic.

2. Talk to two or three trusted people at your law school about “the local rules.” What counts as scholarship at your school? Will your colleagues want you to write about legal writing or about other law topics? What are the specific requirements of your position and any future desired position?

3. Select a topic and thesis that you are genuinely interested in. You will be living with the subject matter for a fair amount of time, so the issue/question/concern should be one that you care about.

4. Befriend one or more law librarians. Ask them for guidance as you do research and thank them profusely when they do help you.

5. Write with an ideal reader in mind—exactly the person or type of person you hope will read your article and be persuaded by it. Visualize that person as you write and think of him or her as you make the myriad of decisions every writer must make.

6. Know yourself as a writer and create the ideal writing situation for yourself. By this, I mean set aside the best times and select a great place to work. This means that you cannot let your teaching consume all of your time. Set aside an hour a day, a day a week, weekends, or your summers for writing, whatever fits you as a writer, but keep that scholarship time sacred.

7. Create a way of keeping your research organized.

8. Find and use scholarship mentors, including at least one local mentor and one national mentor.

9. I think the most important thing for new legal writing scholars to hear is that they are uniquely qualified to be superb legal scholars. Why? As a group, they are disciplined, they are not intimidated by research or citation, they are good at writing, and they have a secret weapon—our national legal writing support system. The second most important thing to hear is that doing scholarship is *fun*! It is exciting, exhilarating, and a privilege.

*Elizabeth Fajans*<sup>31</sup>

I take pretty seriously the advice that an article has to advance the discussion of some issue, probably by articulating a problem (the problem can be new or old) and advancing a (new) solution.

I think articles have to be well researched to ensure the above and to show your familiarity with the relevant literature.

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31. Elizabeth Fajans is an Associate Professor of Legal Writing at the Brooklyn Law School.

I would avoid, especially at the beginning, biting off sweeping problems and instead begin with more modest projects and proposals.

I think clarity and style are important and worth cultivating. Obviously, everyone wants to be thought of as a good thinker, but there is a special distinction in being thought of as a good writer as well. I find it is easier to concentrate on an article when the style is conversational rather than highly formal.

I think I have a tendency to rush to publication, and often my thesis and arguments could be further refined, so I would urge young scholars not to do as I do.

*Mary (Mollie) Falk*<sup>32</sup>

Most law schools, however terrific in other respects, still just don't get it that legal writing scholarship is as intellectually rigorous and has the same potential to contribute to the development and practice of the law as scholarship in other areas. So if yours is one of those schools, keep reminding yourself that there is a community out there of like-minded legal writing folks who get it and will welcome you and value your work. I wish I had known this. And after twenty years, I still have to keep reminding myself.

Unless you are preternaturally disciplined and monastic, you can't write much during the school year. It is actually harder to write when you teach writing. During the school year, we spend so much time grading and conferencing and just being with students that we don't get as much quiet time as do our colleagues. The one time I tried to write an article while teaching, I did both badly. So make the most of summers.

Never write about anything just because you think you should. That trendy topic that seems so publishable will tie your syntax in knots. The article will take forever to finish and you'll never be happy with it. Think of your topic as a life partner. If you don't love it, it's just not worth it. If it isn't working, give it up and start over.

Think about writing with a colleague. It's a great way to get started and to keep motivated. From a practical standpoint, it also means that, working together, you can finish an article in a summer. And collaborative writing is magic. Of course, you need to have compatible prose styles and work habits.

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32. Mary (Mollie) Falk is an Associate Professor of Legal Writing at the Brooklyn Law School.

*Steve Johansen*<sup>33</sup>

What advice is most important to hear? It is a bit presumptuous to suggest that anything I could say would be the most important thing to hear, but what's most important to me is to know why you're writing. If the reason you're writing is to get promoted or to get tenure, it will likely be a tedious and difficult slog. Find another reason. I write out of a selfish desire to learn. That is, I will run across a topic that interests me that I do not know as much about as I would like. Writing about that topic satisfies my curiosity. As a result, my writing has a bit of a dilettante feel to it. I'm not sure that's a good thing in the age of "research agendas," but it has worked for me. Others write because they have something to share. The reason one writes doesn't matter so much as knowing what that reason is.

What do I know now that I wish I had known then? I'd like to rephrase this question into "what advice do you wish you had listened to?" There are two pieces of advice that I had heard and that I refused to believe:

1. "This will take longer than you think, no matter how long you think it will take." (I'm not sure whether this helps, but at least it should be some solace when the project seems like it will never end.)

2. "Figure out the title first." This seems silly, but it sure works for me. Knowing the title of a piece requires me to focus on the specific thesis. This keeps me from getting distracted from the thesis by really interesting tangents. Keeping focused is critical. Save the tangents for the next article.

*Jan Levine*<sup>34</sup>

A scholar ought to write about something he or she cares deeply about and write out of a desire to improve our understanding of writing, analysis, or education. Much as we tell our students, I would tell a new scholar to focus on something manageable for the first article or two, and not try to do everything at once. If the idea is large in scope and depth, consider narrowing the breadth and reach of your first few works to address separate facets of the idea.

A legal writing scholar ought to write simply and clearly and avoid the hyperbolic and obtuse language employed by many of our colleagues writing about other topics.

The problem for legal writing teachers is that the demands of teaching our course, and teaching it well, often leave little time and energy for

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33. Steve Johansen is a Professor of Law at Lewis & Clark Law School.

34. Jan Levine is an Associate Professor of Law and the Director of Legal Research and Writing at the Duquesne University School of Law.

scholarship, but scholarship has to be done. So planning and rigorous attention to scheduling is even more important to us than to other scholars. Put aside special days or certain hours of the day to write, and avoid all else that has to do with work.

Share drafts with other legal writing teachers for ideas and for constructive criticism; our field is so full of generous colleagues that one should never fear asking for guidance or help.

*Joan Magat*<sup>35</sup>

Scholarly writing is about research, empirical and otherwise, and about communicating those results and the reflection they inspire to an audience chiefly of one's peers. Oddly, this audience, anticipated and invisible, can contort the straightforward scholarly voice into verbal knots that will discourage the general reader. (And it is the general reader, not the aficionado, to whom the writer should aim her prose. It's like singing in church versus singing in the shower.)

The threads of scholarly prose can knot in many ways, from references that force the reader's eye to backpedal, like a topic sentence's unanchored "this," to soporific language-sprawling verbosity, do-nothing verbs and deadwood construction ("There is . . . that . . ."), and the petrification of nominalization. But these are the more-obvious stylistic knots. The less-obvious are those caused by preaching to the choir (as it were). When the writer assumes his audience knows his sources, the topic can be upstaged by names and quotes without context (Hilbert Higgens writes, ". . ."). Or the writer might do the upstaging herself, resorting to first person when the action is not, in fact, about herself. Or the article itself becomes a player (This Article will argue . . .) when, in fact, articles don't argue—authors do—and when any argument is most convincing if, like the syllogism, only the premises are visible.

So, that's my advice: Focus the dialogue on the actor who is the topic, not on the director or the prompter or even the playwright. Sing neither in the shower nor to the choirmaster, but to the congregation.

*Richard Neumann*<sup>36</sup>

Decide whether you need to write a doctrinal article. Some faculties want a doctrinal article just so they know you can do it. After they see you write one, they'll stop worrying about it, and you can write non-doctrinal articles. Others don't care whether you ever write a doctrinal article. Today, probably most faculties don't care. But find out what the norm is at your school.

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35. Joan Magat is a Senior Lecturing Fellow at the Duke University School of Law.

36. Richard Neumann is a Professor of Law at the Hofstra University School of Law.

If you're off tenure-track, it's ok to work up to writing law review articles. You can start with shorter pieces for *Second Draft* or *Perspectives* to develop your skills and then write law review articles. If you're on tenure track, at most schools you must produce a law review article in your first two years.

Ask advice freely but carefully. Most senior faculty are pleased to be asked for advice, and some will genuinely care about you as a human being. Be careful, however, in two ways. First, if you ask too many people and too often for advice, you'll look like you don't have your own rudder. Second, some people are often wrong. And some of the ones who are often wrong talk as though they're always right.

An article is really a collection of small essays, which are listed at the beginning ("Part I explains," "Part II . . ."). To get over writer's block, write them separately, and then stitch them together to create the article. Then write the intro. Then write the conclusion. Thinking of the article as a big monolith can intimidate you into writer's block. To overcome that, break it down into smaller chunks.

*Teresa (Terry) Phelps*<sup>37</sup>

I got very good advice on scholarship some years ago when I was working on very difficult material (hermeneutics) that I wanted to master and apply to legal texts. I was reading Gadamer and conversing regularly with someone in the English Department who knew the material well. I told him that my plan was to read all summer until I completely understood it and wait to write for a while. He told me to start writing—to use the writing itself as a way for understanding and discovery. It felt very premature to me but I ended up writing *Questioning the Text: The Significance of Phenomenological Hermeneutics for Legal Interpretation*<sup>38</sup> (with a student coauthor).

The take-away is that we never completely understand something, and we always feel somewhat insecure about what we know. Nonetheless, if we begin to write—brazenly, perhaps, with some false bravado—we can end up with something interesting. It takes a leap of confidence, or something like that. We also can't fear showing our ignorance or limited knowledge.

I recall another remark I heard when I was thinking about writing my first "legal" piece. I was discussing random ideas about it with a criminal law professor at a party. He stopped me and said, "Stop

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37. Teresa Godwin Phelps is a Professor of Law and the Director of Legal Rhetoric at the American University Washington College of Law.

38. Teresa Godwin Phelps & Jenny Ann Pitts, *Questioning the Text: The Significance of Phenomenological Hermeneutics for Legal Interpretation*, 29 ST. LOUIS U. L.J. 353 (1985).

talking. Go home and write.” It turned out to be *The Criminal as Hero in American Fiction*,<sup>39</sup> my first law review article. I always tell aspiring writers that writing is ninety percent butt in the chair, staring at the blank page or screen.

*Terrill (Terry) Pollman*<sup>40</sup>

1. Start writing before you think you're ready.
2. Empirical work is more than sending out a survey and reporting results. Think twice before you do a study without yourself having, or having access to, some expertise on statistics and how to make a valid empirical study.
3. Send out your draft for peer edits. Send it to folks you absolutely trust *very* early in the process. And keep sending it around for more reviews.

*Jill Ramsfield*<sup>41</sup>

Choose your topics with passion. Your connection with the topic—your curiosity, fury, fear, or enthusiasm—will keep you well-interested in even the darkest and dullest hours of research.

Become an expert on the topic. You are entering a room where a conversation is taking place on this topic. What do you have to add? What have the experts not thought about? Acknowledge their work, show you know it, then take them somewhere new with your command of the topic.

Answer the “so what?” question. Why should my audience read this? What difference does it make? We want to know why this paper should be read.

Here is something I know now that I wish I had known a lot earlier: how absorbing and demanding is the prewriting process. It takes about ten times longer than you think, requires excellent note-taking, patience, and careful connection among ideas. Never think you will remember something you've read; mark it, color-code it, and record it well enough to connect it to new ideas you are having as you read further.

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39. Teresa Godwin Phelps, *The Criminal as Hero in American Fiction*, 1983 WIS. L. REV. 1427.

40. Terrill Pollman is the Ralph Denton Professor of Law and the Director of Lawyering Process at the University of Nevada, Las Vegas, William S. Boyd School of Law.

41. Jill Ramsfield is a Professor of Law and the Director of the Legal Research and Writing Program at the University of Hawai'i at Mānoa William S. Richardson School of Law.

*J. Christopher Rideout*<sup>42</sup>

Research:

Try to research with a purpose (unless you are at the “background reading” stage); having a purpose in mind will make your research more efficient. I find that research is a great thing to do during the school year because I can easily pick it up and put it down; I mainly write during the summer when relatively uninterrupted blocks of time are available.

Although you will ultimately be accountable for the relevant literature on your topic, I start outlining and sketching ideas when I have read “enough” of the literature, rather than all of it (if you are researching with a purpose, you will spot the most relevant pieces early on). In other words, don’t let endless research be a sophisticated form of procrastination.

Try not to be discouraged by all that has been previously written; most of the time, you are looking for your niche in the scholarly conversation.

Thesis:

As you are starting, regard your thesis as a “working thesis,” subject to change. A very common format for law review articles is “problem/solution”; so you might want to think of your thesis as a solution to a problem.

Audience:

Try to write for a specific audience, rather than an amorphous and general “scholarly” audience. For example, if you are writing for specialized journals (for example, legal writing or environmental justice), write with some people in mind whom you know in that field; if you are not writing for a specialized journal, still try to keep in mind some specific people who might be interested in the topic. An obvious audience is law review student editors, but with the exception of the introduction, I keep them out of mind until the end (when I am dealing with things they have been trained to look at, like footnotes and citation form).

But I do think a good introduction can hook law review editors (and everyone else).

Voice (my favorite topic):

Try to find your own scholarly voice and avoid the general, anonymous “scholarly” voice; if you can find your own voice, you will enjoy your writing much more. One way to find your own voice is to look for examples of voice that you admire and keep them in mind. This sounds contradictory, but I think it helps you acquire your own voice.

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42. J. Christopher Rideout is a Professor of Lawyering Skills and an Associate Director of the Legal Writing Program at the Seattle University School of Law.

*David Ritchie*<sup>43</sup>

First, new scholars should realize that while legal writing is a supportive community, normative judgments will and should be made about scholarly work. The only way we can move forward as a discipline is to not only allow but to encourage critical evaluations of the scholarship we produce. These critiques need to be productive and well-articulated, but they need to take place. We cannot confuse our affection and respect for each other with our roles as scholars. Within other disciplines, scholars critique each others' ideas, and we should too. If we are to have compelling, thorough, and rigorous scholarship, we need to open up more frank and honest scholarly critique.

Second, before writing on an interdisciplinary topic, a writer should be prepared to study the non-law discipline carefully so the resulting article does not treat the topic superficially. An article that uses cross-disciplinary methods (very desirable from my point of view) needs to stand on its own hind legs in both disciplines. It needs to be defensible in both disciplines. This may steer some new scholars away from interesting ideas, but it is better to choose another topic than to publish something that will be considered naïve or misguided in the other discipline.

All the subdisciplines in philosophy have faced these same problems. In postmodernism, feminism, and the like, scholars faced outside ridicule until the members of the subdiscipline were willing to be internally critical and were willing to master their understanding of related disciplinary theoretical concepts. Once they were able to do these things, they became a more valued and respected part of the profession. We find ourselves in this position presently. We, in large part, control our own destinies. If we can hear honest criticisms from our peers and master the concepts we decide to write about, our scholarship will become better as a result. That, in turn, will raise the appreciation of what we do in the eyes of our casebook peers.

*Ruth Anne Robbins*<sup>44</sup>

Here are some things that have helped me:

1. Have a writing mentor or two or five. You will get more honest feedback if you choose people outside of your home school. There are lots of opportunities to participate in small group workshops, and I

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43. David Ritchie is an Associate Professor of Law at the Mercer University Walter F. George School of Law.

44. Ruth Anne Robbins is a Clinical Professor of Law at the Rutgers School of Law-Camden.

recommend doing those as well. There's no such thing as a good piece of writing that hasn't been through some serious peer review.

2. Teach the topic once or twice before publishing it. You can do that with students or in presentations. It's all part of the process of fleshing out the ideas. You don't have to be one hundred percent finished in order to present it. The best presentations I have been to are those that are about eighty percent completed in terms of the article.

3. Know all of the literature in your field on that topic. That should go without saying, but you would be surprised. The fastest way to embarrass yourself is to not know the related area. And that's another good reason to carefully choose a mentor or two or three. They might see where you have accidentally missed something.

4. Shorter is more readable. You are writing an article, not a book. Do you like reading sixty-page articles? Then why are you writing one? I believe that the best articles are about twenty-five pages. Maybe thirty. That doesn't mean the article should be superficial. Rather, it probably means that you want to be more careful about focusing it.

5. If you are writing about legal writing, the broader audience base includes both professors and practitioners. If you write for the practitioner, then you have automatically written for the professor. But if you write about teaching first-year legal writing, then you have just narrowed your audience quite considerably.

6. A wise person once told me that by the time you publish that article, you will be convinced that the time has come and gone and that everyone already knows what you have to say. It's normal to feel that way.

*Louis (Lou) Sirico*<sup>45</sup>

Here are four pieces of advice:

1. Read some law review articles so that you understand the format, conventions, and the nature of academic legal analyses. Conform.

2. Perform the most extensive research you can. Look under every rock. In your footnotes, let your readers know that you have read widely.

3. Think big. An adequate article deals fully with a specific issue—an unsettled issue of law, an issue of pedagogy. A superior article not only deals with the specific issue but also uses the analysis to explore larger issues about the nature of law or the philosophy of education.

4. Find some mentors who will read your drafts and help you along.

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*Kathryn Stanchi*<sup>46</sup>

1. One of the most important things for new scholars to hear is that you can do this. This is especially important for legal writing people who are often told they can't do it or they aren't good enough or it isn't worth it. (I was told this once upon a time—I always send that person my articles, ha!) I once heard Maria Hylton, a professor at the Boston University School of Law, say: "What do I do for a living? I just write papers." That's all scholarship is, writing papers. There's nothing magical about it.

2. In terms of tricks to get started, Kathy Abrams, a law professor at the University of California Berkeley School of Law, one of my mentors, and a generally wonderful person, told me that one of the tricks of scholarship was to find a "hook"—a niche or story or case or event that is simply the catalyst for what you want to say. Once you have a hook, you can write your first thoughts, even your first draft of an introduction. Similarly, at the very first legal writing conference I attended, the plenary speaker (I cannot remember his name) also gave great advice: find a problem that you wish to solve and define it. Part of what scholarship does is to define a problem. It sounds so simple but it has been a guiding light for me.

3. Start with something small. Write a short essay or something for a bar journal. This forces you to think about an idea, organize your thoughts, and corral your support.

4. Write about what you care about. Don't let others derail you from what you are passionate about. Also, if you are having trouble thinking of ideas: read, read, read. The more you read, the more thoughts you will have. The likelihood that you will agree with everything you read is pretty low—so you'll have something to say if you just read in the field.

5. Talk to people about your ideas. Show people your drafts. This is one piece of advice I wish I hadn't waited so long to take. I was scared to show people drafts. I thought they would criticize me or think I was stupid. But my papers are so, so, so much better when others read them and I talk out the ideas with others. I can't emphasize this enough. Yes, choose your readers carefully, but don't be scared to approach somebody with knowledge in the field. Most people are incredibly generous and kind, and they make your work better.

6. Put aside time to write, think, and read in your field. You really have to be vigilant about this. No e-mail, no students, nothing, for whatever time you can put aside. I try to put aside a day per week—but

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sometimes it is only a day every two or three weeks in the busy times of the semester. But I always set aside some time to read in my field, or work on my paper, or even just think about what I've taught, or talk to people, or read other people's drafts, or think about what other people are teaching, browse new books, and the like. You want to steep yourself in the field. This is not just important for the production of scholarship, but it is important for your own professional development and sanity.

7. The teaching part of the legal writing job can eat you: it can eat all your time; you can give everything to your students and their papers. I think that is a bad idea—it reduces your well-roundedness, and it makes you less knowledgeable. I worry that the job of teaching legal writing has been constructed in such a way as to force us to do the heavy lifting of teaching, leaving no room for other things that might interest us. (Feminists often say “who benefits,” as in “who benefits” from this rule? That question is aptly applied to the construction of legal writing teaching as one hundred percent about reading papers and meeting with students.) I think that we need not accept this construction of the job. Of course we have an obligation to our students, and we get great rewards from reading their work, critiquing it, and meeting with them. I love that part of my job. But it is, truly, *only part* of my job; it is not all of who I am professionally. I recommend that legal writing teachers put reasonable limits on what they can do—and strive for some balance in their jobs.

In the long run, I think my students benefit from my commitment to my scholarship and my knowledge about my discipline even perhaps more than they might benefit from my spending another day on their drafts or another day of answering their e-mails. I think it makes me a more interesting, better teacher—not to mention probably more patient and less resentful. Carve out the time, even if it means a little less time on other parts of the job. Balance is the key.

2010]

A WRITING LIFE

897

## RECOMMENDED READING

*Books*

ELIZABETH FAJANS & MARY R. FALK, *SCHOLARLY WRITING FOR LAW STUDENTS* (3d ed. 2005).

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

*Articles*

Mary Beth Beazley & Linda H. Edwards, *The Process and the Product: A Bibliography of Scholarship About Legal Scholarship*, 49 *MERCER L. REV.* 741 (1998).

Erwin Chemerinsky & Catherine Fisk, *In Defense of the Big Tent: The Importance of Recognizing the Many Audiences for Legal Scholarship*, 34 *TULSA L.J.* 667 (1999).

Roger C. Cramton, *Demystifying Legal Scholarship*, 75 *GEO. L.J.* 1 (1986).

Christian C. Day, *In Search of the Read Footnote: Techniques for Writing Legal Scholarship and Having it Published*, 6 *J. LEGAL WRITING INST.* 229 (2000).

Toni M. Fine, *Legal Writers Writing: Scholarship and the Demarginalization of Legal Writing Instructors*, 5 *J. LEGAL WRITING INST.* 225 (1999).

Colin P.A. Jones, *Unusual Citings: Some Thoughts on Legal Scholarship*, 11 *J. LEGAL WRITING INST.* 377 (2005).

Jan M. Levine, *Some Concerns About Legal Writing Scholarship*, 7 *PERSP.* 69 (1999).

Jan M. Levine & Grace C. Tonner, *Legal Writing Scholarship: Point/Counterpoint*, 7 *PERSP.* 68 (1999).

Susan P. Liemer, *The Quest for Scholarship: The Legal Writing Professor's Paradox*, 80 *OR. L. REV.* 1007 (2002).

Heather Meeker, *Stalking the Golden Topic: A Guide to Locating and Selecting Topics for Legal Research Papers*, 1996 *UTAH L. REV.* 917 (1996).

Mitchell Nathanson, *Taking the Road Less Traveled: Why Practical Scholarship Makes Sense for the Legal Writing Professor*, 11 *J. LEGAL WRITING INST.* 329 (2005).

Terrill Pollman & Linda H. Edwards, *Scholarship By Legal Writing Professors: New Voices in the Legal Academy*, 11 *J. LEGAL WRITING INST.* 3 (2005) (with bibliography).

Louis J. Sirico Jr., *What the Legal Writing Faculty Can Learn from the Doctrinal Faculty*, 11 *PERSP.* 97 (2003).

William R. Slomanson, *Legal Scholarship Blueprint*, 50 J. LEGAL EDUC. 431 (2000).

Michael R. Smith, *The Next Frontier: Exploring the Substance of Legal Writing*, 2 J. ALWD 1 (2004).

Symposium, *The New Legal Writing Scholarship*, 20 LEGAL STUD. F. 1 (1996).

Kathleen Elliott Vinson & David S. Romantz, *Who Will Publish My Manuscript?*, 7 PERSP. 31 (1998).

Eugene Volokh, *Writing a Student Article*, 48 J. LEGAL EDUC. 247 (1998).

Donald J. Weidner, *A Dean's Letter to New Law Faculty About Scholarship*, 44 J. LEGAL EDUC. 440 (1994).