Lawyers at Work: A Study of the Reading, Writing, and Communication Practices of Legal Professionals

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Lawyers at Work: A Study of the Reading, Writing, and Communication Practices of Legal Professionals

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I. Introduction

This paper reports the results of a three-year ethnographic study of attorneys in the workplace. The authors used ethnographic methods to identify how junior associates in a law firm setting engaged in reading and writing tasks in their daily practice. The goal was to learn the types of texts junior associates encountered in the workplace and to isolate the strategies these lawyers used to read and compose these texts. In turn, we used this information to identify areas and approaches not currently addressed in legal education. In particular, we identify the need to develop and incorporate effective instruction in the various types of reading skills junior attorneys have to bring to bear in their work. We hope now to use the information to empower law faculty to teach skills in a way that will make law students more prepared for practice and, more importantly, ready to observe and learn within the context of practice. In the end, this project constitutes a step toward improving communication between the legal academy and the legal profession.

Part II, below, begins with a review of the relevant literature on legal pedagogy and the origins of our project. Part III explains our use of ethnography to capture the reading and writing practices of junior associates. Part IV provides a detailed analysis of our results, presenting the reading, writing, and interpersonal skills we observed. Part V discusses the implications of our findings, and Part VI briefly concludes this paper.
II.  Background

A.  Examining Legal Pedagogy

Members of the legal academy, the practicing bar, and the popular press have called into question the efficacy of legal education.¹ Much of the criticism focuses on the traditional and still widely used method of educating law students through case study and Socratic dialogue, which focuses on acquiring higher level analytical skills and learning to “think like a lawyer.”² The Carnegie Report suggests that law schools do teach students how to reason through the use of the Socratic dialogue.³ Other studies are more critical of law schools than the Carnegie Report,


² FREDERICK SCHAUER, THINKING LIKE A LAWYER: A NEW INTRODUCTION TO LEGAL REASONING (2012).

³ The Report states, however, that law schools are not teaching students how to be legal professionals in terms of the full set of skills and values. THE CARNEGIE REPORT, supra note 1. See also the studies by Dorothy H. Evensen et al., DEVELOPING AN ASSESSMENT OF FIRST-YEAR LAW STUDENTS’ CRITICAL CASE READING & REASONING ABILITY: PHASE 2 (L. Sch. Admin. Council Grants Rpt. 08–02, Mar. 2008) (available at http://www.lsac.org/docs/default-source/research-(lsac-resources)/gr-08-02.pdf); Herring & Lynch, Teaching Skills of Legal Analysis, supra note 1, at 85; and Kevin D. Ashley, Teaching a Process Model of Legal Argument with Hypotheticals, 17 ARTIFICIAL INTELLIGENCE AND THE L. 321

Forthcoming publication in Volume 21 of the Legal Writing Journal
suggesting that law schools also fail to teach students how to reason. While critics debate whether law students leave law school “thinking like lawyers,” many legal educators and lawyers seem to share the concern that too many students complete three years of law school ill-prepared to practice law. Along with these concerns, the rising costs of legal education and an increasingly competitive legal employment market have put additional pressure upon law schools to do more to prepare their students for legal practice.

In an effort to respond to concerns surrounding legal education, many law schools have implemented curricular reforms and introduced courses focusing on problem-solving and practical skills. While these reforms may bring positive results in terms of preparing young
attorneys for practice, the reforms are accompanied by little research examining their efficacy. In fact, the literature focused generally on pedagogy in legal education and focused in particular on practical skills is surprisingly limited.\(^8\) Similarly, there is a lack of pragmatic knowledge as to precisely how various tasks are performed.\(^9\) With the exception of several studies on the way lawyers and law students read, we have little sustained pedagogical research examining the skills lawyers actually draw upon in their practice.\(^10\) So while survey data examining legal practice is legal education in order to train new lawyers to the highest standards of competence and professionalism.” http://educatingtomorrowslawyers.du.edu/.


\(^9\) Large studies such as the study at Berkeley Law, Marjorie M. Shultz & Sheldon Zedeck, Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions, 36 L. & SOC. INQUIRY 620 (2011) and the Foundations for Practice study, led by Educating Tomorrow’s Lawyers http://educatingtomorrowslawyers.du.edu/projects/ do not examine tasks in any detail.


Forthcoming publication in Volume 21 of the Legal Writing Journal
available and this data provides valuable information as to how lawyers describe and perceive the practice of law, this data does not provide a complete understanding of the practice of law, let alone the learning process and outcomes. Surveys and other self-reported data explain, for example, what lawyers say they do and their perceptions about their work, but there is little data validating these reports.\(^{11}\)

This lack of pedagogical research is not unique to legal education. A *Chronicle of Higher Education* article by Dan Berrett suggests that teachers in all areas of higher education too often “teach according to habits and hunches.”\(^ {12}\) Given the limited availability of rigorous studies focused specifically on legal pedagogy, legal educators seem all the more likely to be following “habits and hunches” in their choice of teaching methodology. When it comes to teaching lawyering skills, legal educators may find even their habits and hunches extremely deficient. Law professors, who often have limited practice experience and have been away from practice for a number of years, frequently lack a solid understanding of what it means to practice law in the current market.\(^ {13}\) Even if these educators do possess current knowledge of the field and feel

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11 The flaws in such data include “social desirability bias”: The tendency of humans to present themselves in the best light, which can distort the information within self-reported data. Robert J. Fisher, *Social Desirability Bias and the Validity of Indirect Questioning*, 20 J. CONSUMER RES. 303 (1993).


13 Alfred S. Konefsky & Barry Sullivan, *The Winter of Our Discontent*, 62 BUFFALO L. REV. 659 (2014) (“I[t] is up to the law schools to see to it that students receive the grounding necessary for [students’ professional] development. In a sense, that has become more difficult in recent years, as fewer
comfortable teaching legal skills, they may find it difficult to locate suitable teaching materials. Despite this challenging environment, the current scrutiny of legal education presents legal educators with a unique opportunity to enhance understanding of both what and how to teach. This period of transformation provides an opportunity to study legal practice and to assess how to instruct law students effectively in the pertinent practical skills and knowledge. Our ethnography is just one example of how researchers can seize the moment.

B. Origins of our Study

The idea for this study arose out of conversations we, the authors, engaged in several years ago while creating and implementing a lawyering skills class taught at the University of Pittsburgh School of Law. The class was part of a series of curricular reforms we implemented at Pitt Law several years ago. The objectives of the reform included: helping students to develop professional competency; encouraging active and reflective learning; and creating resilient and flexible young professionals. The initiative also sought to encourage innovation and assess the efficacy of legal pedagogy. The specific aim in creating a lawyering class was to give students a better sense of what legal practice is like and to enable them to enter practice with a better sense of what they will need to do as legal professionals in these areas: legal reading and reasoning, fact development, and written communication. We wanted to help our students to identify and develop the characteristics of successful lawyers. Additionally, we aspired to help students

full-time law professors have had any substantial amount of experience in the practice of law.”). *Id.* at 689.

Forthcoming publication in Volume 21 of the Legal Writing Journal
transfer the knowledge and skills they gained in law school to the context of legal practice. In other words, we sought to contextualize their learning.

As we planned this course, we became increasingly frustrated by the lack of sustained, systematic pedagogical research on legal education and teaching methodology, particularly as it relates to practice. We were designing a course just as Dan Berrett reported: According to our own “habits and hunches” about legal practice.\textsuperscript{14} We had been away from practice for years, and asking lawyers what they do simply could not tell us what they were actually doing. Even where lawyers have given thought to their methodology, what they are actually doing from the eyes of an objective observer might appear to be different, perhaps more complex or nuanced.

To address these gaps in our understanding, we decided to begin a sustained and systematic study of the type of tasks completed by junior associates working in law firm settings. This study is unique in that it objectively and systematically collected data on reading and writing skills as opposed to relying exclusively on self-reports by legal professionals who may to a large extent be unconscious of the skills they draw upon to perform their work. Through intensive and extended observation focused on reading and writing practices of lawyers at work, we have begun to uncover the fundamental skills that establish professional competency. We have seen how lawyers make sense of their tasks and develop practical judgment.

III. Methodology

A. Ethnographic Research

\textsuperscript{14} Berrett, \textit{supra} note 12.
To capture information on the practices of junior associates, we used ethnography, a method of inquiry originally used by cultural anthropologists to study unfamiliar peoples and cultures. This methodology has also been applied by researchers in fields, such as sociology, psychology, business, linguistics, communication, and rhetoric to study unfamiliar and familiar aspects of our own culture. A common characteristic in ethnography is “fieldwork,” which enables researchers to observe humans and human behavior in natural contexts. As expressed by LeCompte and Preissle, “ethnographies are analytical descriptions or reconstructions of intact cultural scenes and groups.” Researchers using ethnography seek to examine and accurately describe familiar and unfamiliar events in a way that allows readers to “envision the same scene that was witnessed by the researcher.” From this detailed description, researchers have been able to uncover verifiable information about a diverse range of human behaviors and practices. Ethnographers use different techniques to capture data, including observation, field notes, collection of artifacts, interviews, and surveys, all of which were used in this study.

15 http://www.americananthro.org/.


18 LECOMPTE & PREISSLE, supra note 17, at 2.

19 Id.

20 http://www.americananthro.org/learn&teach.

21 LECOMPTE & PREISSLE, supra note 17, at 158.

Forthcoming publication in Volume 21 of the Legal Writing Journal
Ethnography has been used in the past to study various aspects of law and the legal profession: For instance, ethnographic methods have been applied to study the attorney-client relationship in divorce law,\textsuperscript{22} the attorney-client relationship in the context of a criminal trial,\textsuperscript{23} the impact of gender roles in a corporate law firm,\textsuperscript{24} and to study the features of legal discourse to determine how language use influences perceptions about the law.\textsuperscript{25} A few studies have also explored the law school classroom: Cauthren, for example, examined a legal writing class and Mertz studied the first year of law school.\textsuperscript{26} We have, however, been unable to locate studies that use ethnography to explore the role of rhetorical skills in legal practice and professional competency. Nor have we identified prior studies that have observed legal practice with the objective of informing legal pedagogy, the subject of our work.

Outside of the legal context, ethnography has been effectively used to further understanding of professional competency and has been used to understand rhetoric and communication with pedagogical implications in mind.\textsuperscript{27} Of particular relevance to our proposed

\textsuperscript{23} Cunningham, supra note 16, at 1345-49.
\textsuperscript{24} Jennifer L. Pierce, Gender Trials: Emotional Lives in Contemporary Law Firms (1995).
\textsuperscript{26} Randy Cauthren, Black Letters: An Ethnography of a Beginning Legal Writing Course (2010); Elizabeth Mertz, The Language of Law School (2007).
\textsuperscript{27} Theresa Lillis, Ethnography as Method, Methodology, and “Deep Theorizing”: Closing the Gap Between Text and Context in Academic Writing Research, 25 Written Communication 353 (2008); Stephen Doheny-Farina & Lee Odell, Ethnographic Research on Writing: Assumptions and

Forthcoming publication in Volume 21 of the Legal Writing Journal
study are those studies that have focused on the role of rhetorical skills in the workplace, such as Doheny-Farina’s work on the role of writing and evolution of a “start-up” company and the work of Brown and Herndl on the composing processes of employees in corporate settings. Brown and Herndl used ethnography to explore why employees resisted employer attempts to change what employers identified as “problematic” writing behaviors. By focusing on these rhetorical practices as their object of study, the researchers uncovered important insights about the culture of the workplace as well as insights relevant to teaching practices.

B. Junior Associates as Informants

Over a three-year period, with the help of seven upper-level law students and two doctoral students, who worked for academic credit, we completed a preliminary study of six practice groups (labor and employment, litigation, immigration, real estate, education law, and civil rights). The attorneys we observed worked at a large Pittsburgh law firm, a medium size firm, a nonprofit agency, and a solo practice. We initially approached the large law firm to begin this project because several of its members are colleagues at the University of Pittsburgh School of Law and teach as adjunct faculty. Moreover, its practice is representative of the Pittsburgh Methodology, in Writing in Nonacademic Settings 503 (Lee Odell and Dixie Goswami eds., 1985); Carl G. Herndl, Writing Ethnography: Representations, Rhetoric, and Institutional Practices, 53 C. Eng. 320 (1991); David Kaufer, David Fleming, Mark Werner & Ann Sinsheimer-Weeks, Collaborative Argument Across the Visual-Verbal Interface, 2 Technical Comm. Q. 37 (1993).


30 Id. at 24.
legal market, encompasses a variety of state and federal issues, and serves local, national, and international clients. In the second and third years of our study, we continued our fieldwork at the three additional sites, specifically the midsize firm, nonprofit agency, and solo practice. These sites are representative of the type of employment placements that the majority of our graduates at the University of Pittsburgh School of Law obtain.\textsuperscript{31}

Our objects of study at these sites included four junior associates at the large law firm, one junior associate at a midsize firm, one junior associate at a nonprofit agency, and a senior attorney in solo practice. Specifically, our seven informants were: two fifth year associates, R and J, both in the labor and employment group at the large law firm, a fourth year immigration attorney, K, and a third year litigation attorney, L, who worked at the same large firm, a second year associate, G, in the real estate group of the midsize firm, a third year associate, N, at the nonprofit agency, and solo practitioner, H, who had more than twenty-years experience and was close to retirement.\textsuperscript{32}


\textsuperscript{32} Although H, an experienced attorney, was not the primary focus of our study, her work habits often helped us to identify the skills that the less experienced attorneys were developing. H, near the end of her career, was also thinking a lot about the practice of law and was eager to participate in a project aimed at training new attorneys.
With the help of two graduate students from the Rhetoric program in the English Department at Carnegie Mellon University, we established a protocol to train second-year law students to carry out the fieldwork. Our student observers were seven-second year law students and one of the PhD students. The student observers participated in several weeks of training before traveling to the sites where they spent about two hours per week for approximately six to eight weeks following the activities of their attorney informants. They observed at different times during the business day, occasionally on weekends. They gathered data by passively and actively observing, taking copious field notes, analyzing these notes for patterns and recurring themes, carrying out formal and informal interviews with the informants and their supervisors, designing and administering questionnaires, collecting artifacts such as writings and supervisors’ comments on writings, and conducting think aloud protocols. These think aloud protocols sometimes were prearranged and prompted and sometimes occurred spontaneously.

IV. Results

33 The authors thank Ana Cooke and Mary Glavan for their participation in this project.

34 The authors thank Kaasha Benjamin, Megan Block, Jaimie Cremeans, Tyler Deluco, Theresa Donovan, Kathryn Douglass, and John Stranahan for their assistance during their law school tenure.

35 In a think aloud protocol, observers ask participants to think aloud as they perform specific tasks, describing what they are reading or writing, for example, and explaining their thoughts or feelings as they complete their tasks. The observers take notes of these verbal reports, trying to remain objective and not interpret the participants actions or words. Often these sessions are recorded to capture the exact language used by the participants. Hannu Kuusela & Pallab Paul, *A Comparison of Concurrent and Retrospective Verbal Protocol Analysis*, 113 AM. J. OF PSYCHOL. 387, 389 (2000). For a full discussion of the technique, see the work of K. Anders Ericsson & Herbert Simon, *PROTOCOL ANALYSIS: VERBAL REPORTS AS DATA* (1993). See also Lundeberg, *supra* note 10 & Stratman, *supra* note 10 (in which both authors used think aloud protocols to gather data).
We categorized our results into three areas: reading, writing, and interpersonal skills. We learned from these observations that lawyering for these junior associates was fundamentally about reading. They read constantly, in digital and hardcopy form. What they read and why was determined by the client, although client contact was limited for the junior associates and the clients’ needs were typically conveyed through the supervising attorney, usually a senior partner. They read primary authority, but they also read more broadly, frequently accessing secondary authority and non-legal texts. They read closely, but more often than not, we observed these attorneys skimming and scanning documents, trying to hone in on the most relevant information as quickly as possible. They were focused and read with a purpose. When they wrote, their writing process began by reading and rereading the information they would use to substantiate their written texts. They often worked from templates and revised their work multiple times before sending their work to their supervising attorney. Email accounted for a lot of what they read and wrote, and their composing process for email exhibited meticulousness and a high degree of concern for word choice and tone.

The environments in which these attorneys worked were frequently stressful. They felt pressed for time and had to juggle multiple tasks and even in the most congenial work place settings, the attorneys expressed frustration or concern over how best to manage their time. We observed these attorneys undergoing an acculturation process in which they were trying to adapt to explicit and implicit norms. The ability of the attorneys to understand their role influenced their sense of wellbeing as well as their capacity to successfully perform their reading and writing tasks. In the following three sections, we present our specific findings as to A) what and how these attorneys read; B) what and how they wrote; and C) the interpersonal skills they used.

A. **What They Were Reading and How**

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Unsurprisingly, the lawyers we observed did lots of reading. They read a variety of materials. Many of the documents they read were the type of texts they had read at some point during law school. In other words, they read material that legal educators use in class. They read the law: primary sources such as judicial opinions, statutes, and regulations. However, they also read many types of texts that they had not encountered in law school but that are an integral part of legal practice: pleadings, interrogatories, depositions, motions, contracts. Additionally, they read texts that related to specific situations that were not legal texts: grant agreements, mortgage notes, statistical reports, and they spent a great deal of time reading email. They had to read to learn, to educate themselves and inform themselves so that they could handle situations or solve problems, which at times were situations or problems that had no immediate solutions. They sometimes read quickly, sometimes painstakingly slowly, reading and rereading the same text, but they were always aware of the need to read efficiently and time-effectively.

What they read was primarily client-driven in the sense that their reading was related to their research and writing projects and communication tasks, all of which primarily addressed a client’s issue or a supervisor’s request on behalf of a client. When the attorneys engaged in “research,” they were almost always engaging in a reading task. In the case of the two newest attorneys, G & L, they engaged in research and read material not for a specific client, but to identify “hot topics” for a CLE presentation and a marketing presentation by senior partners. All the attorneys read, edited and reread their own prose.

Over the three-year period we saw attorneys read:

- judicial decisions
- statutes
- local rules and federal rules
- rules of evidence
- rules of civil procedure

Forthcoming publication in Volume 21 of the Legal Writing Journal
• regulations
• treatises & other secondary sources
• dockets
• court orders
• injunctions
• complaints
• answers
• praecipes
• motions
• briefs
• legal memoranda
• letters from clients and attorneys
• templates and other forms and compliance documents
• conflict reports
• client/case files
• immigration petitions
• contracts
• discovery documents including discovery requests
• new business forms
• closing books
• policy reports
• statistical data
• trade and professional association publications
• company organizational charts
• international, local and legal newspapers
• online blogs
• social media
• grant agreements
• marketing materials
• deeds
• tax assessments
• easement terms
• stock redemption agreements
• mortgage notes
• email and more email.

The attorneys had to read broadly and strategically to solve a variety of problems, which meant that the attorneys we observed had to read non-legal materials that we did not anticipate they would read nor did we necessarily associate these materials with legal practice. They read primary legal authority, but they needed to read secondary authority as well as other texts.

Several of the attorneys expressed a need to keep apprised of local and national news. For
example, G, the second-year real estate associate, daily reviewed *The Pittsburgh Business Times*, looking specifically for developments related to his firm’s practice and any notices regarding their clients and other attorneys with whom they had a referral relationship. He also followed *The Pittsburgh Legal Journal* to keep his colleagues up to date with their cases and issued reminders as needed.\(^{36}\) Our solo-practitioner, H, reported a similar reliance on local and national newspaper reports, watching for news about a client or other stories with parallel fact patterns. For example, H described a recent case that was in the news that she argued was a comparator case to her current one. She learned details about this case in the news and then did further research to determine if the case contained important similarities to hers.\(^{37}\) Perusing the local and national newspapers was also an important part of N’s daily routine at the nonprofit agency.

Several attorneys used on-line resources to get background information on their client or on the opposing party in a case. The solo practitioner, H, used Pacer to run “a search on the opposing party to see what cases they had been involved in prior to this one. She said that by doing this, “sometimes there can be a ‘pattern as to how the organization has treated people in the past.’” \(^{38}\) Similarly, G, in the real estate group of the midsize firm who was sometimes involved with cases in litigation, and L, the young associate in litigation, both accessed websites such as county websites containing property assessments to determine if a defendant was

\(^{36}\) John Stranahan, Field notes, February 21, 2014. PDF (on file with author).

\(^{37}\) Kaasha Benjamin, Field notes, January 27, 2014. PDF (on file with author).

\(^{38}\) *Id.* at February 6, 2014.
judgment proof.\textsuperscript{39} In the same fashion, K looked to Wikipedia to find more information about what her client, a scientist, did so that she could complete an immigration petition on his behalf.\textsuperscript{40}

The fourth-year attorney, N, who worked for the non-profit agency, read statistical data frequently, either for use in presentations or written reports. As she read a report on school suspension rates, N told her observer: “Every law student should have to take a statistical analysis and research methods course. Any public interest attorney should be trained how to analyze data. Disparate impact work requires swimming in data. It’s a powerful tool to have as a lawyer.”\textsuperscript{41} She reiterated this point several days later while reviewing statistical data from the Office of Civil Rights: “I know that I’ve said this before, but law students should really learn how to do statistical analysis, especially if they are interested in civil rights.”\textsuperscript{42} The solo-practitioner, H, who had worked for many years in employment discrimination, also relied heavily on statistical reports. Her observer noted H’s use of a report that showed disciplinary rates for whites versus non-whites. She believed that she could use the report to show a connection between race and the disciplinary action to which her client was subjected. She hoped

\textsuperscript{39} Stranahan, \textit{supra} note 36, at February 12, 2014. Additionally, L said, “her firm researched damages before even bringing a claim to know if it is worth it and what liabilities their clients might be opening themselves up to.” Jaimie Cremeans, Field notes, October 10, 2012. PDF (on file with author).

\textsuperscript{40} Tyler Deluco, Field notes, January 16, 2013. PDF (on file with author).

\textsuperscript{41} Megan Block, Field notes, November 21, 2012. PDF (on file with author).

\textsuperscript{42} Block, \textit{supra} note 41, at November 29, 2012.

Forthcoming publication in Volume 21 of the Legal Writing Journal
to use the report as an exhibit at trial without having to hire an expert witness to validate the chart contained within the report.\footnote{Benjamin, supra note 37, at February 13, 2014.}

A great number of the texts these attorneys read were related to the process of document review, a process which involved sorting documents, identifying information within the texts, and coding the documents for later use. Without exception, all seven of the attorneys we observed at some point engaged in document review in which they read discovery documents or documents related to pretrial disclosures by parties to a lawsuit or legal proceeding. Even K, whose immigration practice did not involve civil litigation, engaged in document review, for example, while reviewing information on a client prior to a removal hearing. In the large and midsize law firms, the documents associated with discovery were housed in digital form on a shared server and were accessed simultaneously by multiple attorneys. The amount of time spent reading these sorts of documents was striking, particularly because relatively little time, if any, is spent in the traditional law school curriculum explicitly discussing the process or the reading skills associated with this type of task.

The young associate in the litigation practice group, L, spent weeks on document review and discovery requests. Her task at one point was to review her client’s documents before they were to be presented to the opposing side. She reviewed the documents for relevance, confidentiality, and privilege according to guidelines previously established in a team meeting led by a supervising partner.\footnote{Kathryn Douglass, Field notes, October 26, 2012. PDF (on file with author).} L sifted through a large body of information relatively quickly. On
one of the days we observed L, she was reviewing digital copies of emails housed on the firm’s
database along with four other people. One week, L reported spending 18 hours on a document
review project that she would not finish for several more weeks.\textsuperscript{45} Another day she anticipated
spending all weekend on another document review project.\textsuperscript{46} She joked just before Thanksgiving
that she was “‘going home . . . to have a nice break from document review.’”\textsuperscript{47}

Eventually the 4th and 5th year associates at the firm would use the results of L’s
document review. These more senior associates continued to comb the information for data that
they would use to generate theories and corroborate claims in motions and appellate briefs. For
example, R, in the labor and employment group at L’s firm, read through a series of discovery
documents, explaining that his project was:

A Federal case currently in “discovery,” which R describes as the process through
which documents are shared. He’s responding to the opposition. He describes
how parties may request 25 interrogatories, or questions, but may request an
unlimited amount of documents. In this case, there are nine interrogatories and 24
document requests. They are requesting personnel files, discipline, searches of
claimant’s computer. \textbf{R will select the relevant documents, which will then be
prepared by a first year associate or a paralegal.} R describes that he has to go
through all the documents that “relate.” R doesn’t have to read thoroughly; he’s
looking for information that needs to be redacted. He first breaks the task up into
the different types of documents, for example “Performance,” “Witness
Statements,” and “Impeachment.”\textsuperscript{48}

\textsuperscript{45} Benjamin, \textit{supra} note 37, at February 13, 2014.
\textsuperscript{46} Douglass, \textit{supra} note 44, at November 16, 2012.
\textsuperscript{47} \textit{Id.}
\textsuperscript{48} Mary Glavan, Field notes, February 10, 2012. PDF (on file with author).

Forthcoming publication in Volume 21 of the Legal Writing Journal
Reading and ultimately responding to email occupied a great deal of the associates’ time. For example, the junior associate in litigation at the large firm, L, spent time carefully reading and rereading incoming emails. She also scrutinized the text of her own emails—reading, rereading, and revising them before sending them. After watching L for several weeks, one observer noted: “L used email to communicate with partners, clients, and various staff in the office and always had to decide the manner in which to convey her ideas appropriately. L examined virtually every email she wrote in terms of how it could be misconstrued, trying to preempt any kind of disapproval. L’s careful approach to email seems to stem from a critical atmosphere in which every written sentence is vulnerable to a partner’s analysis and potential criticism for weaknesses.”49 Most of the emails L received came from other attorneys, often supervising attorneys who assigned work through email, but she also sometimes received emails from clients.50

K, one of two junior associates in the immigration practice of a large law firm, dealt with a huge volume of email primarily from her two supervisors, but also from her clients, and from colleagues. After eight weeks of observations, one of two observers following K concluded, “the majority of K’s time is spent checking, printing, writing, and reading emails. Most of the firm emails are from Partner A.”51 K was systematic in her approach to email: “She receives many

49 Jaimie Cremeans, Unpublished seminar paper: Comparing Professions: The Educational Problems with Educating Lawyers and Teachers and Proposed Solutions, April 2013. PDF (on file with author).

50 Cremeans, supra note 39, at October 5, 2012.


Forthcoming publication in Volume 21 of the Legal Writing Journal
emails per hour and deals with them as they come. Folders are organized by Employer; then subfolders organized by client name. If the email doesn’t require her to do something that she still needs to do, it stays in her inbox. She hates having emails in her inbox so this motivates her to perform certain tasks.”52 Her observer reported: “K is always checking work email even when not at work. Checks emails but rarely replies in the morning before work. Checks emails in the evening and often replies. (These emails are from clients and Partner A who K jokes never puts his phone down.)”53

At one point K commented, “ ‘I don’t know how people did work without email. Emails often contain PDF files of official documents, [on this day she] receives an email containing a reference letter for an ‘outstanding researcher.’ ”54 The emails were often so detailed in content that K would print them out to deal with them. A second observer, who also followed K, recorded “K then lines up print-outs of numerous emails she has on her desk; says that is the order she will respond to them.”55 At times the emails were extremely informal, such as Partner A’s jesting email, “‘WTF?’ ” in reply to K’s email explaining that she would be late to a meeting with A because Partner L “volunteered her for an initial meeting of a pro-bono client.”56

52 Deluco, supra note 40, at October 31, 2012.
53 Id. at November 14, 2012.
54 Id. at November 28, 2012.
55 Theresa Donovan, Field notes, November 11, 2012. PDF (on file with author).
56 Deluco, supra note 40, at December 5, 2012.
Like K, N, the only associate at the nonprofit agency, spent a great deal of time reading email.\(^{57}\) During 45 minutes of a one-hour long observation, N read email from a local civil rights organization, several from her supervisor, the organizer of an equity advisor panel, job applicants, her receptionist, a doctor consulting with the agency, colleagues in their Philadelphia office, and the director of a statewide organization. Most of these emails contained attachments. Her observer recorded that “N is very systematic about her emails. She has several folders in her email that are labeled by events and organizations. Whenever there is an email that she does not need to respond to, she puts it in the corresponding folder.”\(^{58}\)

The scope of what these attorneys read was something surprising to both the associates and the law student observers, particularly given the emphasis on reading judicial opinions in the traditional law school curriculum. In fact, our law student observers were surprised by the relatively few judicial opinions these attorneys read. Consider for example the following excerpt from the 2L observer who followed L, a third year litigation associate at a large law firm:

The types of documents L read varied based on what type of case she was working on and how big her role was within the case. What surprised me most about this was how little time she actually spent reading judicial decisions. While I was there, I witnessed her reading mostly treatises, statutes, case summaries, emails, discovery documents, and secondary sources. She did read some judicial opinions while I was there, particularly when she was researching a legal issue, but not as frequently as one would expect based on the strong focus on what seems like only judicial opinions in law school. A lot of L’s time was actually spent reading documents that most law students never see, such as discovery documents, business documents, contracts, and bids.\(^{59}\)

\(^{57}\) Block, supra note 41, at November 14, 2012.

\(^{58}\) Id. at November 21, 2012.

\(^{59}\) Cremeans, supra note 49.
This observation was representative of each observer’s experience. The attorneys we followed devoted far less time reading judicial opinions than law students, particularly first year law students. In the case of K, our immigration attorney, our observers witnessed her access a case only one time over the eight-weeks of observation: “K googled *Ruiz Diaz v. United States* and pulled up a PDF of the case. After looking at it for about three minutes, she said, ‘Never mind, I think this is way off topic.’”

When the observers did see the attorneys using cases, it was in a very focused manner. They searched for and read cases with a particular situation in mind. They often read and summarized cases in context, while working on a letter to a client or brief to the court for instance. The attorneys read secondary materials before turning to relevant judicial opinions. Before researching case law, they read what they could to inform themselves generally on the area of law pertaining to an issue. When they did turn their attention to the case law, they tried to quickly identify what were likely to be relevant cases. For example, during one observation, R, a 5th year associate in the labor and employment group of a large law firm, moved back and forth, reading a hearing transcript to judicial opinions. He had already begun drafting a brief on behalf of the employer at the point he began looking for relevant case law. When R turned to the judicial opinions, he already had a good sense of how he wanted to use these opinions. His search began with an unemployment compensation treatise, and scanned the table of contents, tabbing cases that had to do with what he read in the transcript. For example, he tabbed cases that


Forthcoming publication in Volume 21 of the Legal Writing Journal
addressed “what is voluntary?” and occasionally, multitasking, he marked cases that seemed to address issues in another case. He was reading quickly with his particular fact scenarios in mind.

As he moved away from the treatise to finding and reading the actual opinions, he continued to read with his clients in mind, checking to see if he could identify how the opinion might be useful. While he skimmed these cases, he was thinking of more possible search terms that could lead him to more case law, for instance starting with “picked on by supervisor,” and broadening to “dissatisfied,” and “work conditions,” or moving from “telecommuting” to “working from home.” His understanding of his task, specifically the writing of a brief, and his knowledge of the facts of his case, enabled him to pose questions and read the judicial opinions with a particular focus. When the observers saw the attorneys using judicial opinions, they reported a pattern similar to R’s approach: The attorneys read widely to get a general sense of a concept or an issue before they read case law.62

In terms of what the attorneys were reading, the attorneys we observed had to read so widely that it is probably unreasonable to expect law schools to expose law students to the breadth of texts new attorneys will encounter in practice.63 However, in terms of how the attorneys read, law schools can prepare law students for practice by teaching them to read strategically and to use their reading skills to acquire knowledge. Legal educators can impress upon law students the extent to which these students, as attorneys, will need to become life long

62 For L, “Judicial opinions were also usually the last resort even when she was researching legal issues, as she would start by reading secondary sources, treatises, and statutes before she would read or print out any opinions.” Cremeans, supra note 49.

learners who are able to use their reading skills to access information and acquire new knowledge as the circumstances necessitate. These reading skills are teachable. Just as legal educators currently help students to read closely, to analyze judicial opinions and statutes, educators can develop exercises which both expose students to a larger variety of texts and which also help students to practice different reading styles, for example reading quickly, scanning information for answers to solve particular problems, and reading with a purpose or “problematizing”\(^\text{64}\)

Reading occupied much of the attorneys’ working hours, and the amount of time they had to devote to reading was a repeated concern and this concern influenced how they read. The attorneys expressed a constant need to read efficiently, and they engaged in a variety of strategies to achieve this goal. In response to a question by the second-year observer about whether G, the second-year real estate attorney, reads differently in practice as opposed to in law school, G replied: “I have more knowledge as to what to expect in certain documents, so I read certain things much faster looking for the key phrases/ clauses. I also have a lot less free time than I did in law school, where I had the luxury of reading a case thoroughly and briefing it (maybe even reading it twice) before lecture in case I was called on. So I guess you could say I read more efficiently and focused on the bottom line now.”\(^\text{65}\)

\(^\text{64}\) By problematize, we are referring to a form of critical analysis of a text by which a reader poses problems about the text in an effort to read more deeply. D. Deegan, Exploring individual differences among novices reading in a specific domain: The case of law, 30 Reading Res. Q. 154-70. Leah M. Christensen, Legal Reading and Success in Law School: An Empirical Study, 30 Seattle U. L. Rev. 604, 609 (2007). See also infra p. 28 & nn.77 & 78.

\(^\text{65}\) Stranahan, supra note 36, at March 24, 2014.

Forthcoming publication in Volume 21 of the Legal Writing Journal
These attorneys had a variety of reading strategies such as skimming, scanning, and close reading, carefully parsing prose at times. The strategy they used depended largely on the task and the purpose for which they were reading. When searching for relevant information, such as reviewing documents on the firm database for probative evidence, trying to get a sense of documents that a client provided, or trying to identify applicable primary authority, the attorneys would scan items quickly and skim passages to determine if a text was worth reading more closely. When writing a brief or a document for the court for instance, the attorneys would often read substantiating legal or factual texts, extremely carefully. Likewise when reviewing documents to determine if they were privileged or in identifying problematic passages in a contract, the attorneys would slow down considerably. They would also read their own prose extremely carefully when editing their own work. This careful reading extended to the emails they composed.

Reading from a computer screen was the norm. The attorneys frequently read online accessing the Internet or documents housed on their firms’ database. Typically when starting a

66 L’s observer noted L using a variety of reading styles: “L’s style of reading changed depending on the type of document she was reading. She had a very defined system in which she read faster or slower depending on the relevance, density, and use for each document. When reading statutes, treatises, secondary sources or discovery documents, she usually started by skimming through when first reading the document. In these cases, she usually had an idea of what she was looking for that could be relevant. When she would see something that could be relevant, she would slow down and re-read it a few times. She did not ever highlight anything, but she did make notes and underline words frequently. She always preferred to read documents in print instead of on her computer when she could, presumably because it was easier to underline and make notes that way.” Cremeans, supra note 49. L’s reading styles were reflective of all the informants.

67 The observer recorded L reading the Brief in Opposition to a Motion to Compel Discovery that she composed line by line in a deliberate fashion before turning over to a partner for review. Cremeans, supra note 39, at October 5, 2012.

Forthcoming publication in Volume 21 of the Legal Writing Journal
research project, the attorneys turned to the Internet. They were conscious of the cost of commercial databases like Westlaw or Lexis and tried to use free sources whenever possible. Frequently, they accessed Google or Wikipedia to get a general sense of the issue. However, they all accessed material in hardcopy forms on a regular basis, often expressing a preference to read information from books or to print out information. During the course of our observations, the junior associate in litigation at the large firm, L, and the real estate attorney at the midsize firm, G, used their firms’ law libraries several times to access information in books. Our immigration attorney, K, used primarily Internet websites, including government websites, the Code of Federal Regulations in print, and Kurzban’s Immigration Law Sourcebook on a regular basis. She rarely used Westlaw and Lexis.  

Often the attorneys turned to books or printed text to read in detail or when they needed to annotate a document.

When L decided to begin a new research project, she began by accessing information in a treatise, and then moved to Internet sources. L was guided by her very broad understanding of the facts. She explained that the case was based in New York law and it was a stock/securities issue involving the sale of a company, specifically whether the sale was for the whole business or only a percentage. L needed to find case law or statutes to help her assess the sale:

She started by using books she had taken from the library; they were Fletcher’s treatises. She said she uses books a lot because it’s easier when she doesn’t know where to start because she can use the index.

She started by using the index to find any topics she thought might be relevant and writing down page numbers of all of them before she started turning to the pages. Then she went to the pages for each topic and skimmed them to determine

Donovan, supra note 55, at 10/26/12; Deluco, supra note 40, October 31, 2012.

Forthcoming publication in Volume 21 of the Legal Writing Journal
if they were relevant or not. She went through four that she said were useless before she found one that was sort of helpful. The one that she found that was helpful had a footnote that mentioned both a Delaware statute and the Model Business Code Annotated (MBCA). She wrote down these statutes, but then continued reading the rest of the passage. Next she started looking for the Delaware statute and the MBCA. She started with Google to see if she could find them for free so she could read them to see if they were useful before Westlaw searching them; said if it was useful she would WL it to Shepardize <sic>, but wanted to read it on Google first if she could. Couldn’t find it at first so she went to Google Scholar. Looked for language of it in cases that came up, but couldn’t find it. When she couldn’t find it on Google or Google Scholar, she went to Westlaw.

She searched the Delaware Code first. Because the Delaware Code and MBCA were listed together, she said they might be the same. Found the statute and highlighted a passage as she read it. Went to the subject index of the statute and decided it might be relevant. She doesn’t like reading on the computer so she emailed it to herself so she could print it later; also so she could put it in the case’s folder in her inbox. She has a separate folder for each case in her email inbox.

The secretary walked in at this point with a document for her. It was a large brief. L said the secretary had just gotten done scanning the document so she could share it in Dropbox with co-counsel. She said when they have co-counsel they usually use Dropbox because it is an easy way to share all documents without having to email and fax everything. L then went back to searching; she started this time by looking up the MBCA on Wikipedia.69

L moved from books to Internet sources, alternating between paid databases and free sources, which was characteristic of many of the attorneys’ approach to research. Also a characteristic of all the attorneys was L’s need to pick up where she left off after constant interruptions.

When dealing with transcripts or discovery documents, the attorneys often began with on-line sources, skimming, scanning, and marking passages to return to at some later point.

69 Cremeans, supra note 39, at October 5, 2012.
Several of the attorneys had two computer screens and kept multiple documents open at a time. G reported that 60% of his firm had two monitors. He did most of his research online, and the two-monitor system allowed him to use different Internet browsers for different things.\textsuperscript{70} Litigators at L’s large firm all had two screens for document review.\textsuperscript{71} L explained that the second monitor allowed her to zoom in on a particular document, an attachment perhaps that contained several scanned documents. She said “the whole reason for having two computers is for document review like this, but L does not use it very often because she thinks it is not worth the effort a lot of times.”\textsuperscript{72}

L’s approach to document review varied according to what stage in the process she was at any given time and whether she was reviewing documents that they had requested on behalf of their client or whether she was responding to a request for their client to produce documents. The initial pass often involved reviewing scanned pages that contained images of several hundred documents per page. She explained that “Every page has 600-700 documents,” and it took “20-30 seconds/page when you first start. 5-10 seconds/page once you get experienced.”\textsuperscript{73} Her task was to eliminate those documents that did not pertain to a particular transaction. Once she identified documents in the specified date range, she looked for documents most likely to contain relevant information, like emails with attachments or information that might be confidential or

\textsuperscript{70} Stranahan, \textit{supra} note 36, at January 31, 2014.

\textsuperscript{71} Douglass, \textit{supra} note 44, at October 26, 2012.

\textsuperscript{72} Cremeans, \textit{supra} note 39, at November 9, 2012.

\textsuperscript{73} Cremeans, \textit{supra} note 39, at October 26, 2012.

Forthcoming publication in Volume 21 of the Legal Writing Journal
privileged. She tagged them in the firm’s e-discovery program, Case Logistix, as requiring further review or as being irrelevant.\textsuperscript{74} This was often a matter of looking for key words and applying the Federal Rules of Evidence’s, which L articulated as: “Is the information reasonably calculated to lead to admissible evidence?”\textsuperscript{75} As L eliminated the irrelevant documents and began to review relevant information, her work took longer. She had to read each document more carefully for relevant and privileged information. It could take her almost three hours to read through a page of documents at this stage.\textsuperscript{76}

When these attorneys read, they read with a focus or a purpose. They drew upon active reading skills.\textsuperscript{77} They “problematized” the text, trying to make the text meaningful or relevant to themselves by posing questions or thinking of how the information could be useful; the process is sometimes referred to as “talking back to a text”\textsuperscript{78} because talking to the text helps a reader to think critically about the text or challenge ideas contained within it. After observing L spontaneously think aloud while reading, her observer noted, “[W]hile L was reading, it was clear that she was constantly problematizing, or looking for solutions to the problems presented in her case, and strategizing how the documents she was reading could be relevant to her case

\textsuperscript{74} Douglass, supra note 44, at October 26, 2012; Cremeans, supra note 39, at October 26, 2012.

\textsuperscript{75} Douglass, supra note 44, at November 9 & 30, 2012.

\textsuperscript{76} Cremeans, supra note 39, at November 9, 2012.

\textsuperscript{77} Christensen, supra note 64, at 609. \textit{See also} TERESA BROSTOFF & ANN SINSHEIMER, UNITED STATES LEGAL LANGUAGE AND CULTURE: AN INTRODUCTION TO THE U.S. COMMON LAW SYSTEM 57-60 (3d ed. 2013) (in which authors describe reading strategies in the context of reading a judicial opinion).

\textsuperscript{78} See Stratman, supra note 10, at 88 (citing D.H. Deegan, \textit{Exploring individual differences among novices reading in a specific domain: The case of law}, 30 \textit{READING RES. Q.} 154 (1995)).

Forthcoming publication in Volume 21 of the Legal Writing Journal
and what issues or solutions they posed.”\textsuperscript{79} L engaged in a process of categorizing information as irrelevant, relevant, helpful or harmful as she read the text. Her observer labeled her purpose at one point as “problem-solving”:

Another thing L did a lot while she was researching, reading, or writing was constant problem solving. As she was researching and reading, she was constantly considering how the information she found could help or hurt her client’s case. While she was writing, she was constantly thinking to make sure she used the perfect words that would get her point across in the most clear and concise manner. She read over sentences multiple times after she would write them, and she would often change the wording around at least once after re-reading a sentence. She also emphasized that she was careful not to use words that could have double meanings or be construed in a way that hurt her case.\textsuperscript{80}

The attorneys we observed all engaged in this problem-solving process, evaluating what they were reading at some point, and they all marked up the texts, verbalized thoughts aloud about the text, or engaged in some sort of commentary about the text, signaling to our observers that the attorneys were problematizing.

L was constantly probing information to make sense of it, to order it. One example of this occurred as a litigation partner brought L in on a new breach of contract action. L indicated that she was even thinking through why he was bringing her this case as she read through the facts, because she is admitted to practice in Eastern Pennsylvania.\textsuperscript{81} She continued to question the text or problematize as she considered the information the partner has provided her, a complaint from

\textsuperscript{79} Cremeans, \textit{supra} note 49.

\textsuperscript{80} \textit{Id}.

\textsuperscript{81} L explained to her observer that she “is the only litigation associate at the firm barred in the Eastern District of PA. L has no idea why, but figures there is usually no need to be barred there because there are Philadelphia attorneys.” Douglass, \textit{supra} note 44, at November 16, 2012.
the opposing side: “L notes that the complaint was poorly drafted. The contract was not included in the complaint—L says if you are basing the complaint on a breach of contract you should include it in the complaint. This is law in state court; she is not sure about federal court but thinks it likely is the law there as well. Other side alleging ‘we’ breached the contract—client owes $25,000—a lot of money.”

L tried to organize the information from the client and attempted to construct a timeline. She orally reviewed, for herself and for her observer, what she knew about the case and tried to make sense of the information the partner has given her. She indicated that she was appreciative that the client provided so many documents and speculated that the plaintiff “is shady” so the case may be hard to settle. The observer recorded:

All the information she [L] has so far is from the complaint and from talking to the partner. “Our client is an international corporation with business in the Middle East. The plaintiff suing us is a broker. A lot of international businesses are brokers. A broker acts as an intermediary for the most part—goes out and gets business—the company then provides the broker with a % of the profit or retains brokers for a certain salary. We allege the contract between our company and the broker had been terminated; he says it was only suspended.”

L is reading a letter—almost positive that its author is not a native English speaker. L notes [to herself] to keep in mind that getting documents from people who keep things all over the world is difficult. As is getting money from them. L reads the contract the company made with the broker—$15,000/month retainer and a % of each project that the company retains due to broker’s introduction. His expense of flying from Colorado to the Middle East is covered. Contract also provides for a $20,000 advance. Termination: Either party may terminate the contract with 60 days prior written notice. If terminated, each party is released. There is also a confidentiality provision—L notes this could be good for a counter claim.

\[82\] Id.
L notes that both the client and the plaintiff signed the contract so there is no issue there. There was an addendum to the contract. L says just because it is not signed doesn’t mean that it is not valid. There could be another version or the parties could have acted in such a way as to indicate an understanding of the contract. She won’t discount it just because it isn’t signed.83

In addition to organizing the information, as L read through additional information from her client and tried to get a handle on her client’s claim, she was apparently trying to put the information into story form, constructing a simple narrative. After reading a string of email, she commented, “Our company is telling the broker to put ‘a hold on your activities.’” Her narration continued as she read through more of the information, summarizing aloud the content of each item she read, seemingly working through the story. The observer recorded this process, paraphrasing and quoting L as she read quickly through the available information:

Letter from defendant to plaintiff—hold on our relationship/stay in touch. Plaintiff responds trying to provide more opportunities to the company. September, President of the company says that their deal is still on hold; best of luck. “Plaintiff’s Colorado attorney first contacted our company in October to say that we owed back fees.” Emails from Plaintiff—are you going to finalize our new agreement? (Two in a row). Defendant is ignoring; then responds that it is still working on the new deal—telling Plaintiff to be patient. Plaintiff kept working—“we kept telling him not to.” Letter to a new attorney from New York. “Failed to live up to our side of the bargain. Response from the president of the company is that we suspended all work.”84

L seemed to be considering the strength of her client’s claim, that the broker had been terminated, as she read the facts. She was mentally evaluating the case, considering what was relevant.

83 Id.

84 Id. at November 6, 2012.

Forthcoming publication in Volume 21 of the Legal Writing Journal
The two most junior associates, L and G, seemed to struggle at times with not knowing exactly what they were reading or the expectations of the partners assigning the task. Sometimes their ability to effectively problematize or read with a purpose seemed to be diminished because their knowledge of the case was limited, even though they had been given parameters to consider. In other words, they lacked the intuition and self-direction that we observed in the more experienced attorney. Instead they seemed to be interpreting, reading for someone else’s purpose, their supervisor’s purpose, and they were concerned with interpreting correctly. L referred to the notes she had taken while receiving an assignment as she carried out her research. She articulated aloud what she believed the partner had asked her to consider in addition to articulating her own thoughts on how her research should progress. Her problematization or sense of purpose in reading was expressed in terms of what she had been told. In contrast, the more senior associates, those with four to five years of experience, framed their purpose in reading in terms of their own goals, as opposed to the goals of a supervisor. For example, as L tried to make headway on a fairly recent assignment:

She looked again at her notes and said the most likely damages in her situation were consequential damages, but since the partner did not give her all of the facts she would not rule out the possibility that property damages might be involved as well. She looked again through the notes of decisions from the statute to see when the statute of limitations accrues—said some jurisdictions still don’t use discovery rule so she needed to figure out if this one does. Scrolled slowly through as she skimmed summaries again; clicked on a case and said it was helpful so she emailed it to herself.

She said she was also told to look into fitness for particular purpose, even though usually the statute of limitations is the same for that. She searched that next and scrolled down reading summaries of cases. Clicked on a case in which the summary said the statute of limitations was for most contracts for sale, but six years for express warranties. She said she didn’t understand why there would be a difference, so she was curious. She also said this is why it is important to do more research than just finding a statute on something and stopping because case law can interpret things in ways you wouldn’t think.

Forthcoming publication in Volume 21 of the Legal Writing Journal
She first noticed the year of the case was 1978, and said that might be why the outcome was different. She skipped to the bottom/conclusion and clicked a link to the statute that governs. She saw the court had said there was no inclusion of express warranties, but now there was, so she assumed it had been amended since then. She looked at the statute history and saw it was amended in 1983. She noted that Westlaw had not given the case a red flag, so it was important that she look to see what the deal was. She then went to the citing references for the case to see if anything recent had cited it. She clicked on a 2008 case after reading the summary of it and said it might explain it. She went to where the older case was cited and the 2008 case confirmed that the legislature had amended the law to clarify its intentions after that case. She noted at this point that she had kind of gone “down a rabbit hole” and that this issue may not even be relevant because it deals with express warranties, and this case may not but she is not sure. She said when you don’t know if something is relevant or not, it is good to know it anyway just in case the partner needs to know it.

Sometimes L appeared to flounder a bit because the problem was big or the relevant legal authority was new to her. She questioned for instance the time she spent looking for a provision in the Delaware code and seeking out the Model Business Code Annotated as she researched stock/security issue being tried in New York. When one avenue of research yielded no results, L tried another approach, but L wondered aloud if she might be headed in the wrong direction:

She found some sources on Westlaw Next that called it the MBCA instead of spelling out “Model Business Code Annotated.” She said this might work better for searching, so she went back to Google and searched the abbreviation. Still was unsuccessful. At this point she [L] sat back and put her hands to her face and thought for a few minutes. She said she was not sure if the Delaware code would be relevant because the case is being tried under New York law, but it was all she could find. She . . . said she would try one more thing—went to citing references to see if New York had cited the Delaware statute. She found it cited in the 2d Circuit and in New York courts. She scanned through the first case to see why it was cited. This one was only citing it because the case was tried under Delaware law, so not relevant. She scanned the second case and found the Delaware Code cited next to a New York Code, so she clicked on the New York Code. She emailed the New York Code to herself and saved it in the folder. She

85 Cremeans, supra note 39, at October 10, 2012.
also scanned the case where she found the code to see if it was relevant case law, but said it was not relevant to her case.\textsuperscript{86}

L’s self-talk seemed to indicate self-doubt.

The youngest attorney, G, a second year associate, carried on a similar dialogue with himself and his observer as he attempted to identify potential topics for a partner’s upcoming presentation. G tried to narrow what was a broad research task into a manageable project. As he searched, he made comments suggesting that he was trying to keep the potential audience for the presentation in mind. G was asked to do what G refers to as a marketing project, “legal research underpinning the presentation of a partner. The research is on land use.”\textsuperscript{87} In an effort to “keep organized,” before turning to Internet research, he began by creating a list of topics and articles and explained that eventually he would suggest a possible topic to the partner.\textsuperscript{88} He had located an article called “Bus Rapid Transit and Land Use” on a land use associate website. He told his observer “‘BRT is a hot topic. . . . It is a good article, but really short.’” He next used Google to look for “land use” and “brokers,” which yields results related to timberland. He tried “land use navigators,” and told his observer that “some days I sit and do a lot of research on things for publication.”\textsuperscript{89} His observer continued to follow his research as he probed potential topics and stopped to explain how each topic he considered potentially related to development in Pittsburgh:

\textsuperscript{86} Id. at October 5, 2012.

\textsuperscript{87} Stranahan, supra note 36, at February 21, 2014.

\textsuperscript{88} Id.

\textsuperscript{89} Id.

Forthcoming publication in Volume 21 of the Legal Writing Journal
G says, “Let’s see, ‘Land Use for Brokers’ sounds like a great topic. This is what we want.” He clicks on an article with a similar title. B is the author for this article. G says, “Hi B.” The article is on zoning and land use for brokers. G asks, “Where is this guy? Pittsburgh, great.” He hops on Avvo, a website that shows information about attorneys. . . . [G mentioned another on-going project to John involving a Brownfield.]

“Tax Incremental Financing. I don’t think brokers care about that.” There is an article on “TIF and Brownfield Development.” G says, “Oh, that’s Pittsburgh!” TIF provides a 10-year deferral with a structure where at six years 30% of tax is paid with a subsequent gradual increase of the tax rate. There is a Pennsylvania TIF Guaranteeing Program. It is a $100 million fund. G says, “Where’d that go? I was going to save it. I am just going to print it because why not?” He types possible topic TIF into his research.90

Both G and L problematized, but they interjected comments that suggested their uncertainty and tentativeness about their process that was absent in attorneys L and H, who had five years and more than twenty years of experience respectively. Attorneys G and L, in their second and third years of practice appeared to stumble a bit as they read, expressing some difficulty internalizing their purpose.

Critical analysis of the text was more refined in our more experienced informants, N, K, R, H, and J. For example, our two 5th year associates R and J and solo practitioner H were frequently observed “talking back to the text, marking them up, talking to themselves while reading, engaging in spontaneous think alouds. The observer who followed R, a 5th year associate, probed a bit on this point. He responded in a way that indicated his reading was guided by his knowledge of employment discrimination law and what facts he needed to successfully

90 Id.

Forthcoming publication in Volume 21 of the Legal Writing Journal
negate the opposing side’s claim of discrimination. He looked at a transcript and claimant’s initial claim form, pondering why she claimed she was “picked on,” but not “harassed.” His self-talk eventually led him to the unemployment compensation treatise to explore her potential claims and his client’s potential arguments.

Several days later, R engaged in this sort of problematized reading:

Today he is working on a task involving researching reasonable accommodations based on the ADA. He describes the case to me: Their client’s employee gets motion sickness in the company van, so the company has been paying mileage so that she can drive to the job site instead of taking the company provided transportation. He’s researching similar cases to give the client (via the partner) advice, that they either “yes” or “no” should pay the mileage. R thinks they have to pay her because it’s a benefit; he says it would be good to know why they don’t want to pay it. R begins by narrating the task and by posing questions: What is a reasonable accommodation? Does driving her own car solve the problem? He thinks they’ll tell them to pay it unless they can’t afford to. He starts pulling cases from the treatise—writes down the case numbers, cases that support either yes or no. As he reads the cases, he says he’s looking for ones that have to do with reasonable accommodations. Each case that has to do with reasonable accommodation, he highlights, then types a quick synopsis in the Yes or No section of the document. He paraphrases the cases because what he reads makes no sense to quote.

The observer noted: “R seems to interact a lot with the texts (verbally) possibly because I am there?” Even if R’s verbalization is for the observer’s benefit, what seems clear from this observation is that R approached his task with a clear sense of the situation and the goal: to advise the client via the partner. He also had a sense of what he thought the client should do, but he read further to test his own sense, to look for possible alternative solutions. He engaged in a


[92] Id.

[93] Id.

Forthcoming publication in Volume 21 of the Legal Writing Journal
brainstorming exercise that began with an understanding of the legal standard, “reasonable accommodation.” He thought of accommodations he might propose, that the employee drive her own car. He held the statutory standard, the situation, and the proposed solutions in mind as he skimmed the treatise for applicable cases. When he encountered a relevant case, he captured its meaning in his own words, making sense of it for himself.

His ability to read with such purpose appears to be, in part, the result of his keen understanding of the task, including his awareness of what his supervisor, the partner assigning the task expects:

R offers that at some point, you just have to stop. You know this when you start seeing the same stuff come up over and over again. R works through a pile of printed documents he had already compiled before I got there. I ask him how he knows what to read: He says that he knows exactly what they [the partners] are looking for based on his experience. He doesn’t waste time searching everything. As R reads each document, he either highlights it and adds a citation to the document he’s making or else discards it. He seems quite comfortable in the process—reading, citing, discarding. He moves quickly through the documents, skimming. When he finds key works like “transportation,” he adds a citation to the document on his computer screen. As he researches cases, he talks through possible outcomes: Could they provide Dramamine for clients? R also tabs the non-discarded printed documents for the partner “so he can see.”

R was also guided by his familiarity with the client’s story.

As he’s flipping through a document, I ask him if he’s looking for anything specific. He says he’s “seeing if you can offer medication as a reasonable accommodation”; he finds his answer—you cannot make an employee take medication. He tabs it “in case the partner wants to see where I came up with that. After he works through all his sources and his list of case citations for each side (yes and no), R says “so now I’m just going to read cases.” He pulls the cases based on a typed list of notes. He prints the cases. As he reads each case, he highlights the case name just “to know that I’ve looked at it.”

94 Id.

Forthcoming publication in Volume 21 of the Legal Writing Journal
I ask R: Are you actually reading? He responds that he is skimming for particular things, and that he slows down when he finds something that has to do with accommodation. As he reads, he highlights and tabs the case and adds quotes to the document he’s typing on the screen—under the No section. He also points out the differences between the example case and the current case. He reads another case, highlights a section, and adds a note to the document. He asks himself “what does in the workplace actually mean?”

Like the junior associate in litigation, L, this more senior attorney, R, read with the client’s story in mind and was thinking through the strengths and weaknesses of his client’s case as he read. R openly expressed a discomfort with predictive writing, the style of writing associated with the legal memorandum in first year legal writing, as a style used in practice: “R describes how in law school, they make you write arguments for both sides. He explains how he prefers to write an argument instead of considering all potential perspectives and positions.”

However, as R read through the cases, he engaged in a process of critical thinking that did address potential arguments that the employee might raise. His clear understanding of how this information would be used, to advise the client, made it difficult for him to suspend his advocacy role and adopt what in the first year of law school may seem like a “neutral stance.” He was clearly willing to tell his client bad news, pay for the mileage, if the law dictated this result, but he was also exploring ways to fulfill his client’s goals so in this sense he was considering all reasonable potential perspectives and positions.

A pattern to R’s approach emerged. The observer wrote:

At this point, I seem to see a fairly regular process: He skims, reads—if relevant, highlights or tabs (repeats skimming reading process) then adds quote from the

95 Id.
96 Id.

Forthcoming publication in Volume 21 of the Legal Writing Journal
case to the document. Then types an explanation. Sometimes he comments on what he’s read/written: “That’s stretching, but whatever,” “I love a case that I can put in both places.” R repeats the process for each case: Skim, read, highlight (tab), repeat, then add a quote to his document and explanation to that quote. R says that he’s pretty efficient with reading. He doesn’t “waste time.” He says “do waste time skimming, but not sure if it’s wasting time.” R laughs out loud at what he’s reading, says “hmm” while highlighting. . . . R continues reading and tossing out cases that are not relevant. I ask him what makes something relevant; he responds by describing the case to me in a narrative (i.e. this case they provided an interpreter but it’s not exactly the same thing).\footnote{Id.}

At the end of an hour and a half, the observer captured what she believed was R’s system:

He skimmed, read closely if relevant, highlighted by tabbing or making notes and questioned what he was reading and vocalized potential theories. When he found a relevant document he quoted, cited, and explained the document in his own words within the text he was composing. To determine relevancy, he relied on a narrative recounting of the case, the story, to analogize or distinguish from his client’s situation. This seems to be a system dependent upon a high degree of autonomy and responsibility and an understanding of the intricacies of the situation and the workplace environment. R was perhaps able to problematize more effectively than more junior associates because he has a greater sense of what mattered, which did not necessarily involve his knowledge of the outcome. He was more concerned with getting the partners what they needed, his immediate audience at this stage in his career. He told the observer after completing one task, a brief, that he would not hear if they “‘won’ for a while if at all. He says he’s not too concerned

\footnote{Id.}

Forthcoming publication in Volume 21 of the Legal Writing Journal
about the outcome.”

He was at this point in his career, comfortable with the process, and with his role in the division of labor operating in his firm.

After more than twenty years of practice as a plaintiff’s attorney in employment discrimination cases, our solo practitioner seemed to have internalized or habituated this approach to reading critically. It had become an integral part of her approach to reading. As her observer noted “[T]he first thing K did while looking through [documents part of a request for production] was to look at the documents ‘with an eye for depositions.’” In subsequent notes, the observer commented:

One observation that stood out in terms of H’s reading patterns was her attention to detail and understanding of every document, file or pleading that she read. This can be correctly identified as close reading. For example, during one of our sessions, H spent time reading a report that showed varying disciplinary rates for white vs. non-white employees in the same occupation as her client. She studied each line of the report, and made notes and highlights on the document. For each figure, she made sure that she understood what it meant and how it connected to the other figures in the report. This level of detail, she said is important when attorneys view material that they are not expert in. . . . During our sessions, H would talk about how she had to constantly stay abreast of developments with her client’s employer and its business, in order to adequately represent their case. H does this by reading newspaper, online local news sources, and national news sources on a daily basis. Specifically, H learned about a recent case that was in the news and discovered that it might be a good comparator for her client’s case. Moving on from her initial reading, H followed up with her own independent research to develop her theory of how the comparator case connected with her client’s situation.

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Forthcoming publication in Volume 21 of the Legal Writing Journal
At this point in her well-established career, H was proficient at reading with an eye for how the material could be useful to her or her client. She engaged in a sorting and categorizing process that reflected a deep understanding of how a case progressed, and she was able to efficiently scan for the information she wanted, probe the text, and envision how to use the information gleaned. Problematizing came naturally to her.

H was able to anticipate potential problems and take action to minimize their effects. For example, H described the importance of thinking about interrogatory questions as she reviewed documents in case she could not depose someone and had to ask them to respond to questions: “She said that it is important to do this simultaneously while thinking about depositions because the ideas or questions are often linked and it is hard to remember things later after looking at hundreds of documents.”100 This high degree of autonomy and expertise is the end goal for the practice-ready attorney.

B. What they Were Writing and How

In terms of writing, we observed the junior associates working on a large variety of documents. In contrast to what is taught in the traditional first year legal writing class, these associates wrote few formal legal memoranda; instead they more often summarized research findings in informal email communications to supervising attorneys.101 Many of the writing projects were related to litigation. Email correspondence accounted for a lot of what they were

100 Benjamin, supra note 37, at January 27, 2014.

101 L said she only writes a formal memorandum if the research will be used in a brief, but she said that was very rare. She also said that when she wrote memos or emails she did not usually describe the cases in detail. She just mentioned the relevant language or conclusion. Cremeans, supra note 39, at October 10, 2012.

Forthcoming publication in Volume 21 of the Legal Writing Journal
writing. They were primarily ghostwriting, writing text that would be ultimately authored by a senior partner. They relied heavily on templates and sample documents to understand the format their documents should take. The texts went through multiple revisions, even before being reviewed by a supervisor. The associates scrutinized their own work, making sure that their claims were substantiated and selecting their words with great care. As a result, the writing process was quite time consuming and often involved close reading. They composed on-line, but all of our informants brainstormed with pen and paper at some point in their composing process. During any given hour, they worked on four to five projects over several days or weeks. Because they were juggling several tasks, they needed strategies to pick up where they left off after an interruption, or they needed to schedule a time to write which would involve few interruptions, like writing later in the evening or on weekends.

They wrote formal and informal summaries of their research findings. They worked on court documents:

- Motions to Compel Discovery
- Motions to Dismiss
- Motions of Summary Judgment
- Motions to Expedite Discovery, and
- Briefs in Support of these motions.

They drafted:

- Pleadings
- Complaints and Answers
- Briefs in Support and Opposition to Preliminary Injunctions
- Letter Briefs
- Certificates of Service
- Responses to Summons
- Contracts
- Letter Agreements
- Discovery Requests
- Interrogatories
- Cease and Desist Letters

Forthcoming publication in Volume 21 of the Legal Writing Journal
and they prepared presentations for senior partners. They took notes, by hand and on-line, recording their research trail, brainstorming, and outlining.

Over the course of our observations, we saw the seven attorneys write hundreds of emails. The email went to supervising attorneys, other associates, paralegals, collaborating attorneys outside the firm, opposing counsel, and to clients. While hardly shocking given the volume of email we all deal with each day, these attorneys used email as a primary form of communication. Even in the smallest workplace, email exceeded face-to-face communication and phone calls as the means of communication, which meant that these attorneys were writing constantly.

Even when the attorneys responded to partners’ queries by email in lieu of drafting a formal memorandum, the emails they composed were carefully drafted. One observer watched as L drafted a response to “Partner M” explaining her findings regarding a summons with notice from New York. She spent two hours researching the question and referred to this research and her handwritten notes as she wrote. She cited the relevant law to substantiate her claims. She hesitated at points because she lacked specific facts, saying in one case, “I don’t know how the Defendant was served; I want to explain that is the reason why I am not going through the analysis for 20-30 days.” She often quoted sections of the law, because “it is easier than paraphrasing.” When she had drafted the majority of the content, she read through her email aloud and edited as she went along. Before sending it she added, “Hopefully this is helpful. Please let me know if you have any questions.” She forwarded it to the partner so, she explained,
“He can send it to the client.” The observer noted: “L says that she is pretty positive that when it’s sent it won’t be coming from her.” She was correct. About 20 minutes later, L received an email from the Partner to the Client. He had replaced the opening of her email with the words, “L’s research confirms our discussion. Looks like. . . .” L commented, “The partner probably won’t be happy that she spent 2.3 hours on that email. A lot of work for very little acknowledgment.”

That same morning, Partner M had asked L to draft another email to a client who was about to receive a huge bill. The partner wanted L to draft an email explaining what work they had done in the past month.

The observer recorded as “L sits back and thinks for a minute. L begins to take notes on her legal pad because ‘she doesn’t know where to start.’” As she provided the story of the case to the observer, she searched through a past email to the client providing an update. Before putting anything into an email, L took notes on a legal pad, which was her practice when she didn’t know what she wanted to say. She reviewed her text and took out “this was only the beginning,” commenting that “This [language] would scare them [the clients].” She told the observer that “normally when drafting emails they are supposed to be short and concise. If she typed something like this update in an email initially she might send it too soon. For something like this, she wanted to write it as a letter and then attach it or cut and

102 Douglass, supra note 44, at November 2, 2012.
103 Id.
104 Id.
105 Id.
106 Id.

Forthcoming publication in Volume 21 of the Legal Writing Journal
paste from a word document. It should be formal; [she has a] different mindset when typing in an email browser.”^107 For L, the use of the legal pad forced reflection and slowed down the pace of email correspondence in an attempt to prevent errors.

Tone was also a concern for L as she composed email. As L consecutively composed two emails,

She told me she was working on an email to co-counsel about a confidentiality agreement. . . . She said he emailed her asking if they had one yet, and said it was sort of dumb of him to ask because it was clear they did not have one. . . . She had the email typed already, but she reread it. She said she realized one line about how “obviously they do not have an agreement yet” sounded condescending so she changed it. She said you should always reread emails before sending them to make sure of things like that, and she usually does not notice how things sound when she is first typing them. She cc’d a partner who is involved in the case in the email. She said she always cc’d a partner if it is communication with other counsel, especially if the other counsel is a partner. [She] does this even if the partner is not involved or is barely involved, so they at least know what is going on.

She then started a new email to New York counsel for [her firm] to ask about getting a confidentiality agreement. She opened with a friendly but still professional opening, “I hope you are doing well.” [She] said she likes to do this especially with people she has met before, and she has met the New York counsel she was emailing. Makes it not strictly business, even though she said New York attorneys probably wouldn’t even notice. She typed the email very fast, but used backspace a lot. The sign-off was “Please let me know at your earliest convenience.” Said she likes this sign-off because it is polite, but it is a passive aggressive way of saying to get back to her ASAP. She also explained that she use the partner’s name first when mentioning him, “M and I are working on . . .” because she is cc’ing him. She also said she used his name even though he is barely involved in the case, just because partners always want to be recognized. She then reread it once more and pressed send.^108

^107 Douglass, supra note 44, at November 2, 2012.


Forthcoming publication in Volume 21 of the Legal Writing Journal
L constantly considered the tone and appropriateness of her choice of language within her emails. She changed the close of an email to a client, “have a good weekend” that she wrote at 1:30 p.m. on a Friday, because she said it was not late enough in the day to say this nor was it necessary. She rephrased a sentence so that she used active instead of passive voice in an informal email to a partner, and attached documents to this email so that her partner would know exactly what she was questioning. She was acutely aware that her choice of language conveyed an image. Furthermore, she was sensitive to the fact that her emails replaced face-to-face meetings or phone calls, communication styles that would have allowed more give and take or more opportunity to clarify so she wanted to be precise. This tremendous care in responding to email was a recurring theme for all of our informants.

The attorneys frequently began a writing task by accessing a template. They sometimes found a similar document housed on their firms’ databases or they used their own similar work from a past project. We also observed them mirroring the opposing sides’ arguments to begin organizing their own documents. Importantly, they were not often starting from scratch, but were adapting a prior document to fit their needs. L, for example, was able to draft a Brief in Opposition to a Motion to Compel Discovery in less than a day because “she already had a brief from a previous opposition to the same motion on the same issue in Michigan. She just changed words from that brief to fit specifics of this motion and Sheparded the case law that was used.”

\[109\]

\[109\] \textit{Id.} at October 5, 2012.

Forthcoming publication in Volume 21 of the Legal Writing Journal
The attorneys had similar composing processes. They engaged in brainstorming and planned out what they wanted to say, sometimes using an outline depending on whether they were writing from scratch or altering a template. We often observed them writing down initial ideas on a legal pad. They would revise their plan as they read more or began to write, making more notes and annotating existing notes. As they tried to decide on a theory or thesis, they spent a lot of time reviewing and refining. As the observer followed R, the 5th year associate in employment discrimination at a large firm, as he drafted a brief, she characterized his process as translating the human story into legal terms, reading and writing simultaneously, consulting case law, the transcript, and a draft of his brief. He would insert quotes, reread authority, write a section distinguishing or analogizing to precedent, and then review what he wrote.110

All of the attorneys revised their work multiple times, first revising their own work, and later receiving feedback from a supervising attorney. R explained his process for writing a brief: He used an old brief as a template, making sure that it matched the outcome for his current case. He composed an initial draft on the computer because he had an easier time thinking while typing. He was the only one who would read this draft. In his first draft, he “put everything where he thought it belonged.” As he revised this first draft, he aggressively cut unnecessary words, places where he “used two words instead of one.” His first drafts were typically “too wordy” so he looked for words to cut like “uncorroborated” and “undeniably.” His next draft would go to his secretary. Then a draft went to the senior partner after incorporating revisions from his secretary. After that he sent a draft to the client. After receiving comments from his


Forthcoming publication in Volume 21 of the Legal Writing Journal
client, he would file the brief with the court. In L’s experience, she explained that there were usually two people editing documents before they were filed, the associate who wrote it and a partner. In bigger cases the associate, a junior partner and a senior partner read them.

What was apparent from observing their composing processes was that these attorneys, as writers, were methodical and meticulous. They documented almost everything they wrote, checking their notes, working with legal authority, transcripts, depositions, or answers to interrogatories as they composed. They were precise, thinking carefully about their word choice and the implication of the choice. The process appeared painstaking at times, moving back and forth between writing and reading so often that writing a few lines of texts could at times take hours. Yet, they were keenly aware of how much time they had to complete a task and how much time they were taking. They strove to be efficient.

We observed J, a fifth year associate, a colleague of R in the labor and employment group of the large law firm as she drafted a Brief in Support of a Summary Judgment Motion. J wrote over several weeks, beginning work on February 4 for the brief that was due on March 11. She worked on it as much as she could throughout the week and came in over the weekend during this time to complete it. The first several weeks, she reread and studied the documents that supported her theory. Her early writing consisted almost exclusively of note taking and brainstorming. In fact, her composing process revealed an intimacy between reading and writing tasks that was apparent in all the attorneys’ writing processes.

111 Id. at February 10, 2012.
112 Cremeans, supra note 39, at October 5, 2012.

Forthcoming publication in Volume 21 of the Legal Writing Journal
J began work on the brief on a Saturday. She articulated her purpose in writing this brief as supporting the motion, which “requests that the case should not go to trial because based on the facts, the plaintiff cannot win as a matter of law. In other words, the law says we win.”113 She had a yellow legal pad filled with notes. She explained, “I have to gather my thoughts” and that “she likes brainstorming with a pencil.”114 Her next step was to pull up old briefs, three other summary judgment briefs she had written in the prior two years. She also planned to reread the complaint to make sure she did not miss anything important that the plaintiff alleged. She kept a list on her legal pad of any factual things that she needed to confirm with her client. Her goal for the day was “to get a good handle on the elements of the case.”115 Although she said she had a good knowledge of the case, she needed to review the facts. This meant reviewing the transcript of the deposition because “the deposition is the most important.”116 She organized the facts by tabbing up the transcript, rereading and reviewing it to identify the facts upon which she wanted to rely. At the same time, she referred to the summary judgment brief she wrote in 2010. J told the observer “she is looking for elements that the plaintiff needs to prove. She will attack those elements and show that the plaintiff can’t in fact prove them.”117

Four days later, J still had not composed any text for the brief. Instead, she reread the documents that contained factual data. She was reading these documents slowly, looking for

114 Id.
115 Id.
116 Id.
117 Id.
specific information and confirming the absence of information that would pose conflict. When
the observer asked J what exactly she was looking for as she read, J explained that she was
“looking for an admission in the deposition that they agree on the facts. She’s looking for
statements that might create a problem, might create questions about the facts.”118 J had many
notes written on her legal pad and the deposition was heavily tabbed with post-it notes. She
checked discovery documents collected from the client, documents such as benefit files,
personnel files, and emails, which she was able to access electronically with E-discovery
software. As she reviewed these documents she simultaneously went through the notes on her
legal pad, looking for questions that needed to be answered. J occasionally tagged questions on
her legal pad, marking them in some way to indicate that she needed more information. For
example, J wrote: “Problem—plaintiff had trouble completing paperwork.”119 These tags seemed
to indicate that the information might affect her argument in some way. As she anticipated
writing the brief, working through it in her mind, she noticed gaps in her understanding that the
documents alone did not address so she noted questions for her client. This stage of her
composing process involved the juggling of several texts, looking at them from multiple
perspectives, and ultimately mastering the information contained within them and using them to
tell a coherent story.120

118 Glavan, supra note 48, at February 8, 2012.
119 Id.
120 Id.

Forthcoming publication in Volume 21 of the Legal Writing Journal
Three days later, one week after her official start, she began to write, again coming in on a Saturday.121 Even after she actually began composing text, her process remained predominately a reading task. At this point, she was still reading more than writing; she reread the texts that substantiated her legal argument. During one 73-minute period, the observer noted that J transitioned eight times from writing to reading, spending only 22 minutes on writing.122

J is using the position statement to help structure the brief. She explains how she needs evidence for every fact; I ask her what she means by evidence, and she explains that she needs to be able to cite testimony, a document, sworn interrogatory, or an affidavit. At this point, J asks me to close the door so she won’t be distracted. In the brief that J has written, she leaves informal citations as notes to herself. A paralegal will help her construct the appendix; different districts have different rules for brief construction and citation. The text that J has already been working on is highlighted in a few sections. I ask her why they are highlighted. She says they are markers to remind her to ask the client a question. Beneath the constructed text, she has section headers in the form of questions.

J begins writing by flipping through the deposition and rereading sections. The deposition is very tabbed and noted. I start timing how long J spends reading versus writing:

4:17—reading deposition.

4:23—begins typing bulleted points (not prose) that are details concerning the above claim.

4:24—back to mixture of reading the deposition and writing bulleted points and then translating them into prose. She summarizes three pages of deposition with one line of summary; she does this a total of three times with three bulleted summary statements beneath the section of the facts she’s working on. To convert the bulleted points into prose, she “narratives” them, with extensive stylistic and word choice changes and rearrangements. Once J has converted the bulleted point into prose, she deletes it from the document.

121 Id. at February 11, 2012.

122 Id.
J is back to rereading the deposition. This time she is reading the supervisor’s deposition. She explains that some depositions have an electronic word index; she searches the word “training”; she explains that she is looking for evidence. Her dad calls. They talk about morel mushrooms for about five minutes.

J starts typing again; she also reviews the position statement. The prose she writes seems to be a narrative summary of events. These facts are narrative summaries of 1-3 pages of deposition. As she constructs and crafts the prose section, she deletes the bulleted summary from the document. She begins rereading a section of the brief that is already written and decides to move the new paragraph up to a “better location.”

J goes back to reading the deposition.

J begins rereading the section she has already written. She begins a new section D.

Back to reading the position statement.

Types “D.T.’s Performance” and then beneath it, she makes a numbered list of dates, based on when the claimant received performance appraisals. J types a note to herself and highlights it, “discuss her high sales.” Highlights remind J of places where she needs more information from the client.

J goes back to reading the purpose statement and other documents (emails, more of the deposition).

J is still working. I leave.  \(^{123}\)

The junior associates, particularly the most junior attorneys, L in the litigation group of a large firm & G in the real estate practice of a midsize firm, were typically ghostwriting for a senior partner. Because L was aware of the need to match the assigning partner’s style, her writing projects often began with a search of the firm’s database to see a partner’s writing style. \(^{124}\) Sometimes these associates openly expressed their discomfort with this role. For

\(^{123}\) *Id.*

\(^{124}\) Douglass, *supra* note 44, at October 5, 2012.

Forthcoming publication in Volume 21 of the Legal Writing Journal
example, although K was authorized to sign for the senior partner when he was out of town, she referred to it as “forging his signature,” conveying her view that she was participating in a deception. She said she did not like to “forge” his name and gave it to his secretary because she was “very good at forging L’s signature.”

At other times, the associates were asked to write directly to clients or opposing counsel, signing their own names because, as L put it, the partner wanted her “to be the bad guy.” L also noted the challenges that arose when working with multiple authors. She pointed out a place where the general counsel of her client’s company had changed language in her draft. These changes resulted in contradictions in the document that might result in their motion being denied. At other times, the changes made the text sound worse, in her opinion, and she had to evaluate whether she had the discretion to ignore the revision.

The need to pick words for someone else or finish a project for a senior partner posed challenges for these attorneys, especially where the attorneys lacked background knowledge or experience to understand the context in depth. At times, even selecting the proper template to use was difficult. For example, G expressed slight frustration with not having a depth of knowledge. He was working on a Mortgage Foreclosure Complaint.

He is using the firm’s proprietary document system on his computer. He says that there are template documents to choose from to create a new document. He says,

125 Deluco, supra note 40, at November 28, 2012.
126 Douglass, supra note 44, at November 16, 2012.

Forthcoming publication in Volume 21 of the Legal Writing Journal
“I guess I’ll use the complaint one.” There are several forms, including letters, memos, and briefs. He pulls up a Common Pleas Complaint Template. He says it is a challenge to name the file, as he does not know the client yet. . . . He searches for the client in the system. Unable to find anything, he puts a generic number in that he will correct later.129

The most junior attorney in his midsize law firm, G described himself to the observer as “a jack of all trades [at his firm] taking assignments from basically anyone who needs anything done.130 He explained, “He does a bit of everything. Every day is different: Real estate, employment disclaimers, hearings, construction litigation today. He is a blend of transactional and litigation attorney, hoping to narrow it in the coming years.”131 Currently, G said that he “works with three handfuls of attorneys. He hopes to work with one handful someday.”132

Their sometimes ill-defined sense of the task affected the junior associates’ ability to write as confidently as their more experienced colleagues. They indicated at times that they were striving to be come more effective, maybe as a result of critical feedback. For example, L had learned to save earlier versions of drafts when incorporating suggested changes in case a partner wanted to see what she had done. She told her observer that it was best to “hang onto revised versions of documents you turn into partner in case he questions a particular change in the future.

129 Id.
130 Id. at January 24, 2014 (initial session).
131 Id.
132 Id. at January 31, 2014.
Can show him the revised version as to why something was changed.\textsuperscript{133} On another occasion, L saved a revision “of the Motion with M’s [a partner’s] notes ‘in case I get yelled at later.’”\textsuperscript{134}

After almost twenty years litigating employment discrimination cases at her own firm, H had a well-defined composing process and exhibited tremendous poise in executing it. Her observer captured H’s confidence in the following description of her writing:

In regards to patterns of writing that I observed during my sessions with H, I found that a lot of the writing tasks that she routinely performed were related to building a case. For example, H said that she had pretty much developed a routine practice when it came to case-building tasks such as creating a file cover page, writing the initial client letter and putting together a timeline of relevant events in the case. The core of H’s case-building task seemed to center around her created “chronology” document. H said that she creates this document at the beginning of every case, even before she has all of the relevant information, and continues to develop and add to it during the course of the discovery and pre-trial strategy phase of the case. To build the chronology, H takes the documents that she receives from her client, researches on her own, or receives via her requests for production, and puts them in order according to date. After this, in her chronology document, H lists the date of each document she has compiled, makes notes of the time that the document was sent and received by her, and the point in the case at which she came across the document (i.e., discovery, deposition, etc.) H also makes notes in her chronology for each document if she thinks of questions to add to her interrogatories, [information for] pleadings, future requests for production, or just general questions for her opposing counsel. H said that having a good chronology helps to remind an attorney of how the case has progressed, and where facts and issues arose in the case, creating a narrative. . . . Although attorneys accomplish this task in various ways, H noted that it is essential to be able to understand the progression of a case—from the date the first pleading is filed all the way through trial.\textsuperscript{135}

\textsuperscript{133} Douglass, \textit{supra} note 44, at October 12, 2012.

\textsuperscript{134} \textit{Id.} at November 2, 2012.

\textsuperscript{135} Benjamin, \textit{supra} note 99.
As a solo-practitioner, H had a deep appreciation for her role throughout the whole process, an understanding that the most junior associates and even the more seasoned associates seemed not to have. Moreover, she had the opportunity to repeatedly perform these tasks, reflect upon her work, and systematize her approach, which undoubtedly contributed to her confidence.

C. The interpersonal situations they faced

Our goal was to understand the reading and writing strategies of the junior associates, but as we watched them read and write, we also learned about their interpersonal skills. Lawyering, for these young associates, involved interacting with supervisors and support staff, opposing counsel, other associates, clients, third parties, judges, and the community. They worked in hierarchical or stratified spaces, with many unspoken expectations and time pressures. It was, even in the most relaxed office space we observed, a stressful environment that they had to learn to navigate on the job. Law school, for this group of attorneys, had taught them little about these aspects of practice.

Law schools often talk about the need for teamwork in legal practice. However, it is less common for law schools to address the hierarchical nature of teamwork in the law firm setting. Teamwork in the law firms we observed occurred in a vertical fashion, with usually only the more senior partners interacting directly with clients.

In the large or midsize law firms, we observed all the associates interacted primarily with their supervising attorneys. Senior partners assigned work to associates based on the partners’ communication with clients and most collaboration occurred through email or via comments on written drafts of documents. The associates had limited contact with clients and typically did not contact the clients directly unless told to do so. The associate at the midsize firm, G, felt he interacted more with clients than his colleagues at larger law firms did, but in our observations,

Forthcoming publication in Volume 21 of the Legal Writing Journal
he had relatively little direct client interaction. He interacted with clients through email, responding when a partner was on vacation for example. G did not participate in client interviews. The immigration associate, K, had the most direct contact with clients, but after four years of practice with this firm was still receiving mentoring on client counseling. K’s supervisor explained to our observer that “making a client comfortable is the key to being a lawyer and building a practice. K is very good at client relations, and [I] am teaching her how to be even better.”¹³⁶ When contacted directly by a client, the associates would copy the partner on their responses and in many cases would not respond to follow-up questions from the client even when contacted directly, but would forward the question to the partner so that the partner could respond.¹³⁷

Sometimes partners assigned work to multiple associates at once, with document review projects, for example, but there was little discussion among associates about shared projects and the associates completed the work by making notes on documents housed on a shared database. Support staff, such as secretaries, librarians, and paralegals, had a wealth of information, but were not always accessible to associates. K explained that she shared a secretary with Partner L, which meant she doesn’t “really have a secretary.”¹³⁸ L said her decision as to whether to use a paralegal or librarian was a cost benefit analysis. She would evaluate whether it was faster for

¹³⁶ Deluco, supra note 40, at October 31, 2012.
¹³⁷ See, e.g., Cremeans, supra note 39, at, November 30, 2012.
¹³⁸ Deluco, supra note 40, at October 31, 2012.
her to do a task herself or to request help. She usually would include the assigning partner’s name in the request for help because she felt it gave her request more weight.¹³⁹

In the smallest office we observed, the non-profit agency, there was face-to-face collaboration between the junior associate and the only other attorney in the office, the managing partner. Although they had a close and respectful relationship, it was still hierarchical. The managing partner determined the focus of the office, assigned work, directed changes, and made clear that the junior associate was second in command. Even our solo-practitioner worked as part of a stratified team. She collaborated with her clients, mediated settlements with opposing counsel, supervised a paralegal, and interacted with judges and courtroom staff. The work was interactive, driven by clients’ needs, but the attorneys spent many hours a day working alone on their portion of a project.

Working in these environments required both organizational and time management skills. There were constant interruptions and multiple projects to manage. We saw the attorneys sort work into email folders and physical folders, use email flags, and color-coded file systems. The solo practitioner, H, created a paper file for each case with different color folders—yellow for correspondence, purple for documents given to her during client meetings, green folders for pleadings, and so forth. She preferred having the physical documents readily accessible as opposed to scanning the documents and storing them electronically.¹⁴⁰ The attorneys had systems for recycling, for saving drafts, and deleting drafts. The attorneys needed to manage large bodies

¹³⁹ Douglass, supra note 44, at November 9, 2012.
¹⁴⁰ Benjamin, supra note 37, at February 13, 2014.
of information and be able access information again at a later point in time. They printed, tabbed, and used colored ink and sticky notes to keep track of information.

They also needed to prioritize projects and keep track of their time. For almost all of the attorneys this meant they kept a list of the tasks they needed to complete, and they tried to keep only emails that needed immediate attention in their inboxes. They used calendars to keep track of events and on several occasions alarms alerted the associates of events, such as phone calls, deadlines, meetings, that they had almost forgotten. Most of the attorneys we observed worked on billable hours and had to account for small increments of time. L believed that being a good organizer and presenter of information was a tremendous asset. She described it as a “skill” that did not come naturally to a lot of people.\textsuperscript{141}

Time management was challenging, particularly because the associates lacked total control of their schedules. We witnessed numerous examples of upheaval to the associates’ schedules; some that were minor annoyances and some that triggered more significant stress. For instance, K found herself arriving late to a meeting with one managing partner because her other managing partner unexpectedly volunteered her for a pro bono project. For another associate, J, the lack of control involved an unforeseen revision. J, who worked for hours on a motion brief, received negative feedback from her senior partner on her first draft. She found herself having to rework her brief and feeling demoralized. She cancelled the observation, explaining in the email

\begin{flushleft}
\textsuperscript{141} Douglass, \textit{supra} note 44, at November 9, 2012.
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Forthcoming publication in Volume 21 of the Legal Writing Journal
that she “got it wrong.”¹⁴² When G attempted to assert control over his schedule and take his student observer, on a “fieldtrip” to view Motions Court, he was indirectly rebuked for exercising this discretion when he ran into a senior attorney from his firm at Motions Court. After G introduced the student observer and explained why they were at the court, this attorney, who had very recently made partner, told G that maybe he should ask G to argue this Motion for him “so that he could get back to his work at the office.” G explained that he would not be able to do this because he was expected on a call soon with another (more senior) partner. G said, appearing to be slightly thrown, that “It might not be about anything that important, but it might be something important. Otherwise, I would definitely fill in for you.”¹⁴³ Shortly thereafter, G returned to his office leaving the observer at the court.

In perhaps the most difficult scene we witnessed in which a junior associate was asked to reprioritize time, L cautioned her observer by email, “Warning in advance: I just found out I have a filing this afternoon. It might get crazy. My apologies in advance if I have to kick you out early.”¹⁴⁴ By the time the observer arrived at 1:30, L was in a hold pattern, waiting for the court’s permission to file a preliminary injunction under seal or confidentially. Several minutes later, L, clearly confused, observed the assigning partner leaving the office for the day without saying anything to her. Subsequently, L’s secretary entered L’s office, commented that, “Communication is overrated,” and asked L if the partner had told her he was leaving. He had

¹⁴² Glavan, supra note 48, at February 11, 2012 (referring to J’s email communication asking Mary not to come because J would prefer to work unobserved).

¹⁴³ Stranahan, supra note 36, at February 28, 2014.

¹⁴⁴ Douglass, supra note 44, at November 2, 2012.

Forthcoming publication in Volume 21 of the Legal Writing Journal
not. L told the observer that one of the worst parts of her job was the “false fire alarms.” She said it was very stressful when she was told to get something filed immediately. And the stress that day had taken its toll on L. She said that she had cried a little at lunch “for nothing.”¹⁴⁵ L had her coping strategies, however. She would, for instance, always accept work from partners she liked working with because she never knew when they would call again. Having projects with these people would allow her to turn down work from those for whom she did not like working.¹⁴⁶

Communication skills were fundamental to these attorneys, but the sort of skills they drew upon are not a key part of the traditional law school curriculum. Communicative acts in law school often involve preparation for courtroom appearances or client interviews. The sort of communication the attorneys we observed engaged in was intra and interoffice or business communication. These attorneys made few court appearances and had limited client communication. Their need to communicate effectively was a theme that emerged in all of our observations. The disparity between the amount and type of communication that occurred in practice and the amount of discussion about the need to draw on these skills in law school was a source of surprise for all of our observers. One of the second-year law student observer discussed this disparity in his final summary:

I observed that lawyers must communicate, understand, cooperate, and work with supervisors, co-workers, third parties, and clients. Furthermore, communication with these individuals—each with different background and personality—necessitates a wide range of interpersonal skills. Conversely, law students are rarely required to communicate. In lectures taught with the Socratic

¹⁴⁵ Id.

¹⁴⁶ Id. at November 30, 2012.

Forthcoming publication in Volume 21 of the Legal Writing Journal
method, a student can typically expect, depending on the size of the class, to be called on only a few times per semester.\footnote{Deluco, supra note 51.}

The attorneys were constantly adjusting their communication to address their audiences appropriately. Several worked for multiple attorneys who had very different styles, and even in the smallest office we observed, the associate was continually evaluating what mode of communication to use and when to reach out. At times, the attorneys had to translate ideas. They tried to express complex material in an accessible form, regularly engaging in an exercise of cross-cultural communication and sometimes experiencing culture shock. Our most obvious example of how these attorneys had to draw on communicative competence involved K’s interactions with clients who were non-native speakers of English. She said she had “gotten good at communicating with people whose second language is English. Many are very good and many have handlers.” However, she grumbled at one point about a client whose English was “exceptionally bad.” His email to K suggested that he did not understand information K had sent to him nor was she able to understand his reply. She asked her partner if he was able to follow the email, but he too was confused. In the end K used the firm’s intranet to access an employee database for “multilingual skills.”\footnote{Deluco, supra note 40, at October 31, 2012.}

We also observed other more subtle examples of what could be characterized as communication across cultures. For example, when G attempted to convey information to a client, he worried about whether his explanation of the law would confuse his clients or appear too negative, making comments such as “I keep using ‘unfortunately.’ I should not use it so
much."149 G responded to a question about what he wished he had known in law school, by saying that he wished he had more experience with clients and billing. In explaining his response, what he revealed was a sense of uncertainty as to the most appropriate forms of communication for clients:

I would say I wish I know more on how to interact with clients, although that just comes with time. I’ve interacted much more with clients than my colleagues at larger firms, but probably far less than my colleagues at solo firms. Despite that, I still feel relatively unsure of how to deal with client communications—how often do you report to them? (Do you tell them every single thing you do or are going to do?) How do you tell them bad news, and how do you deal with combative clients who do not think you have enough experience?150

G went on to explain a similar desire to have had more experience with billing, a common feature of the legal culture, but a feature that was difficult to adjust to for many of our attorneys. G’s response, however, indicated that the billing process involved a complicated communicative task that he was unsure how to manage:

I also wish I knew more about billing, which is quite hard to adjust to. As I told you, entering time in increments of .1 an hour is hard enough, but then describing what you do is quite hard, and every partner (and client) is different in what they expect. Some want huge amounts of detail, and sometimes it takes longer to enter your time for something than it did for the actual work. Others stress uniformity—so that if three attorneys are working on the project, the partner expects each of those three entries to be uniform in the description and story. It seems like an unimportant thing because it really is not practicing law, but when it comes down to it, clients read their itemized bills more closely than they read the complaint that you file with the court.151

149 Stranahan, supra note 36, at January 31, 2014.

150 G’s written response to interview with John Stranahan, March 24, 2014. PDF (on file with author).

151 Id.
In discussing his desire to have more practical experience in law school with billing, he was also expressing a desire to know how to communicate effectively with a key subculture, the partners of the law firm.

One of our attorneys, L, commented frequently on different practice styles among attorneys in other firms and outside of Pittsburgh. She talked about how the New York attorneys she dealt with would not notice her efforts to be friendly in her emails and how “Philadelphia lawyers are typically more adversarial than Pittsburgh lawyers.”152 Her understanding of these differences informed her communication patterns. For example, she opted to contact the escrow agent rather than the opposing counsel in Philadelphia, whom she perceived to be “rude.”153 Her sense of difference in practice styles helped her to maintain her sense of self-worth as a novice professional in an often unfamiliar legal culture. She passed off, for example, a motion filed by the opposing side asserting that L had incorrectly filed the complaint by naming the trust as a person instead of naming the trustee for the trust assets. She viewed the motion as “petty and it was just something they were doing to make them look dumb.”154

When we watched the attorneys read, write, and communicate, we saw talented individuals endeavoring to establish professional identities in a profession filled with explicit and implicit expectations. The associates had to acculturate to the legal profession, while managing a range of emotions—exhilaration, fear, frustration, disappointment—in ways that were consistent


153 *Id.*

154 *Id.* at November 29, 2012.

Forthcoming publication in Volume 21 of the Legal Writing Journal
with the norms of the profession. These norms were not always clearly stated and even when they were the known realities of the profession sometimes posed challenges. The lawyering involved emotional labor, and this aspect is something law schools could more openly address.

Even in the most collaborative setting we observed, the non-profit agency, the deadlines and understaffing repeatedly challenged N. Moreover, N had to learn how to manage a small but politically charged legal community. She had to learn when to ask questions and who to keep “in the loop.” K, in immigration, grappled with clients who lied, third parties who were sometimes extremely unhelpful, and often absent but demanding partners. She had to learn how to interact with very different styles of supervision and to develop her own persona as a manager, delegating tasks to paralegals. She was learning how to blend in, and how to look the part, right down to her shoes. She had to know when to wear her comfortable shoes or when to slip into the numerous more fashionable pairs she kept under her desk and throughout her desk drawers.

The two newest associates, G and L, displayed the most visible awkwardness. Often unsure whether what they were doing was correct, they at times seemed to be at home with their emerging professional identities as lawyer and other times seemed to feel out of place or uncomfortable with the norms of the profession. They manifested their discomfort in different ways—G with his sarcastic wit and L with a meticulousness toward detail that provided only a

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155 Emotional labor, as defined by Amy S. Wharton, is the “process by which workers are expected to manage their feelings in accordance with organizationally defined rules and guideline.” Amy S. Wharton, The Sociology of Emotional Labor, 35 ANN. REV. SOC. 147 (2009).

156 Block, supra note 41, at November 14, 2012.

thin veil for her worry. Both G and L indicated that they felt many of their workplace’s expectations were unspoken and that they would only become aware of the expectations by chance or when they received negative feedback. They were busy learning the rules and trying not to go astray.

The associates’ tentativeness was in stark contrast to the more senior associates and particularly to the solo practitioner, who was nearing the end of her career and had learned to manage her emotions. H had established her professional identity. She had a strong sense of control over her environment and her professional role was well established. She was for the most part adhering to the cultural norms. Only as her career neared its end was she willing to take more risks, deviate from standard practice, and challenge the social structure and institutions of legal practice. She wanted to surrender some of her control over a process she knew very well, mediation. Acting on the advice of a mediation instructor she had recently met, H decided to allow her client to express his views during a mandatory mediation session. It was an idea that she initially viewed with skepticism, in part because letting her client speak could interject unmanaged emotion, her client’s feelings, into an otherwise controlled, orderly process. Her decision proved successful, but the degree of caution she exercised in making her decision signaled the depth of her assimilation to her culture, a culture that imposes constraints upon feelings.

V. Implications

This ethnography, like many ethnographic studies, involves a close look at an extremely small number of attorneys so it is difficult to generalize from our results. However, our work has implications for those doing research on legal pedagogy, as well as for law firms training junior associates and for legal educators. In this section, we focus on some of the ways our findings
might be used to advance research on legal education and contribute to the training of new attorneys.

In terms of legal research, our ethnography provides a model that can be expanded to study these same practice areas and other practice areas at law firms of all sizes throughout the country, examining criminal as well as civil practices. Expanding these types of studies to include a wider array of law firms will enrich our findings and enable us to validate our findings across practice areas and firms and achieve a more accurate understanding of legal practice. Carrying on close, systematic observations of junior associates in a variety of geographic locations will also help to validate our findings here in Pittsburgh and enable us to obtain generalizable results. We could potentially build a database making field notes accessible to researchers interested in reading and writing or other relevant areas of legal work.

At law firms, our findings may be used to help train junior associates. Our findings shed light on the tasks that new attorneys struggle with and reveal the areas in which new attorneys are perhaps most ill prepared. Consequently, supervising attorneys could address some of these issues in orientation programs or through summer employment of law students. Practicing attorneys who adjunct at law schools may also want to consider talking to students about practice or using our findings to design classroom exercises or projects that simulate practice. Moreover, our findings suggest that junior associates, law students, legal educators, and law firms could all benefit from more transparency about the practice of law. Law firms could assist legal education by opening their doors to legal researchers and law students, either by engaging in projects such as our ethnography or by developing mentoring or shadowing programs for law students. By facilitating the study of the legal workplace, law firms will help young attorneys acculturate.
more quickly to the norms and expectations of the legal culture and build their own professional identities.

For legal educators, our findings can be used to develop classroom exercises and to train new teachers. While our study looked mainly at reading and writing, the data has implications well beyond the legal writing classroom. Our findings can be used to develop exercises that use practical training to contextualize learning in doctrinal courses, which have traditionally concentrated on legal theory and used only casebooks to convey information. Our findings suggest that law students could benefit from exercises that build professional skills in addition to acquiring substantive knowledge and legal theory. In the remainder of this section, we examine several ways in which our findings can be used in teaching law generally as well as teaching legal research and writing.

A. Reading Skills

Because legal practice involves so much reading, legal educators could help law students by explicitly talking about what and how lawyers read. They can also help law students to practice different reading styles. For example, exercises that require deep or close reading for a particular purpose can help students to learn how to problematize. While students likely use close reading when reading the judicial opinions in casebooks, they are not often asked to read with a particular focus or purpose in mind beyond reading to prepare for class. To strengthen their close reading skills, they could, for example, be asked to read in light of a client’s particular problem. Law students also need practice with skimming and scanning for a particular purpose. These skills might be taught by using timed exercises or by asking students to read quickly to locate certain information in a case or to read broadly to determine what a document contains.

Forthcoming publication in Volume 21 of the Legal Writing Journal
As our research also suggests, law students could benefit from exposure to more types of documents. Increasing the types of reading materials used in the classroom will better prepare students for practice; by this we mean using reading materials other than judicial opinions, materials such as complaints, discovery materials, contracts, on-line research results, email, and newspapers. Finally, legal educators can model the way to read by using the think aloud method\(^{158}\) in connection with a close reading exercise or when skimming and scanning a document. Students could benefit, for example, from hearing how an experienced reader reconciles two judicial opinions or by witnessing the strategies an experienced reader draws upon to locate specific information quickly. Empirical research on legal reading has yielded useful insights that legal educators can build upon to develop materials and teach a broad range of skills.\(^ {159}\) Using this earlier research, educators should also experiment with new teaching methods and rigorously measure the results.

\(B.\) Writing Skills

As with reading, our findings suggest that law students would benefit by doing more writing and by producing more types of texts. Legal educators should consider developing exercises that require students to compose emails in various contexts. Students need practice using email as a means of professional communication, using it to convey information to supervisors, co-counsel, opposing counsel, clients, community groups, and support staff. Students also need practice responding to emotionally charged messages in a professional

\(^{158}\) Supra note 35.

\(^{159}\) Supra note 10.

Forthcoming publication in Volume 21 of the Legal Writing Journal
manner. Other possible writing exercises include ones that require students to find and use templates and forms. In other words, students should practice using past work to produce new documents. Students can learn to effectively use models to guide their own writing by being asked to examine the rhetorical features of a particular type of document, to evaluate the strength or weakness of a sample document or to identify an author’s preferred style after reviewing a series of documents written by the same author. Exercises that ask students to write and read together in an integrated work process will help students to develop skills in summarizing and also substantiating claims. Exercises that combine tasks—simultaneously researching, reading, and writing—could be used as a complex, capstone exercise. Alternative capstone exercises could involve impromptu writing assignments and writing that has strict word and time limits. Students also need exercises that require painstaking self-editing in which the stakes are high and editing mistakes financially or emotionally costly.

C. Workplace Communication and Interpersonal Skills and the Development of Realistic Exercises

Our findings suggest the need to explicitly prepare students for workplace dynamics and to give them opportunities to develop interpersonal skills to navigate the sort of high pressure, hierarchical workplaces we observed. These sorts of skills could, for example, be developed through simulation exercises that require communication with supervisors. Such exercises should allow for debriefing and discussion of emotional reactions, stress management techniques, and self-reflection and self-evaluation. In a similar vein, students need to complete exercises that are realistic. For example, an email inbox exercise that asks students to view an inbox, organize, prioritize, and respond to email accordingly would be a realistic way to discuss email and work/life balance issues. Another possible exercise could require students to practice defining
what tasks should be completed with only vague conversations or emails to direct them and to practice follow-up questions. Our research suggests that other such realistic exercises could include conducting research with free resources as a starting point or tool, reading and using statistics, and practicing doing tasks with numerous interruptions.

There are undoubtedly countless other ways in which legal researchers, law firms, and educators could draw upon our findings. We encourage the exploration of these ideas. It is crucial that we make genuine and coordinated efforts to provide law students with a practical understanding of the legal profession in addition to providing them with a theoretical foundation in the law.

VI. Conclusion

This small study of junior associates began in 2012 as a way to educate ourselves to design a class that would help prepare our students for legal practice. What we learned is that we needed much more than a single class to prepare our students for the current practice of law. Our students faced a steep learning curve upon entering the legal profession. Since 2012, the need for law students to leave law school ready for practice has only become more important and more pressing. Young attorneys continue to face a highly competitive legal job market, high student debt, and demanding workplaces. Legal education may not be able to alter this situation, but it could do more to help. Notably, legal educators should consider devoting more time to teaching reading skills. Although, legal educators often assume that students possess the necessary reading skills, this study indicates that this assumption is faulty and that instruction in this area is likely a key component in the successful transition to practice.

We hope that these preliminary findings will generate interest in this type of study, inspiring others to engage in the direct observation of junior associates at work. There is much

Forthcoming publication in Volume 21 of the Legal Writing Journal
more to be done and it will require a collective effort to develop sound pedagogical methods for training new attorneys. But such efforts will go a long way toward improving legal education and advancing the legal profession.