

Writing Like a Lawyer: How Law Student Involvement Affects Self-Reported Gains in Writing Skills in Law School

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I. Introduction

Complaints that new lawyers struggle with legal writing skills are not new. Nearly thirty years ago, in 1992, the American Bar Association's MacCrate Report suggested law schools improve the writing curriculum because there was "the widely held perception that new lawyers today are deficient in writing skills."¹ Later, in a 2003 article, the surveyed judges, attorneys, and legal writing faculty agreed in large numbers (57.3%) that new lawyers have difficulty with writing in practice.² In particular, respondents noted that new lawyer writing was wordy, unfocused, incomplete, unclear, and disorganized.³ It also suffered from a misunderstanding of the issues at hand and problems with grammar and writing fundamentals.⁴ Some of these observations were echoed in a 2009 article whose authors surveyed lawyers, judges, and judicial law clerks and found that they, too, noticed lawyers struggling to be organized

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1. LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 332 (Am. Bar Ass'n Section of Legal Educ. & Admissions to the Bar ed., 1992) [hereinafter MacCrate Report]. This was not the first time an ABA task force complained about legal writing skills. In 1979, an ABA task force opined that "too few students receive rigorous training and experience in legal writing during their three years of law study." REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS 15 (Am. Bar Ass'n Section of Legal Educ. & Admissions to the Bar ed., 1979).
2. Susan Hanley Kosse & David T. ButleRitchie, *How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study*, 53 J. LEGAL EDUC. 80, 86 (2003).
3. *Id.* at 87.
4. *Id.* at 87.

and concise in their writing.⁵ Focus groups with legal employers revealed that they wanted new lawyers to advocate for a position and explain the strengths and weaknesses of a client's case in written work instead of merely reviewing the law.⁶ More recently, 47% of the litigation attorneys surveyed in a 2015 study cited writing and drafting as the most deficient skills in new lawyers.⁷ This is especially notable given that 66% of these litigation attorneys considered these skills crucial for new attorneys.⁸ In particular, certain types of litigation documents—trial briefs, motions, and pleadings—were cited as important documents new lawyers write but lacked the skills to do so.⁹

Even while in law school, some students perceive that their writing skills may not be at the level needed for legal practice. In the Law School Survey of Student Engagement's (LSSSE) 2008 Annual Survey Results, nearly 40% of the students surveyed wanted more writing opportunities that reflected the work they would do in law practice.¹⁰ An even higher percentage of students (45%) opined that "their legal education does not contribute substantially to their ability to apply legal writing skills in real-world situations."¹¹ Furthermore, some law students working as summer associates in larger firms surveyed in 2016 struggled with writing in the law firm setting, with 35% feeling unprepared for at least one writing project.¹² Additionally, a number of these summer associates thought more training in creating contracts (29.7%), memos (28.8%), pleadings and motions (22.7%), and briefs (21.5%) would have been helpful.¹³

These complaints by legal professionals and student concerns are alarming, as writing is especially critical at the start of a new lawyer's career. Passing the state bar exam is the first step to law practice, and, in most states, the written

5. Amy Vorenberg & Margaret Sova McCabe, *Practice Writing: Responding to the Needs of the Bench and Bar in First-Year Writing Programs*, 2 PHOENIX L. REV. 1, 9 (2009).
6. Susan C. Wawrose, *What Do Legal Employers Want to See in New Graduates?: Using Focus Groups to Find Out*, 39 OHIO N.U. L. REV. 505, 539-40 (2013).
7. *White Paper: Hiring Partners Reveal New Attorney Readiness for Real World Practice*, LexisNexis 7 (2015), https://www.lexisnexis.com/documents/pdf/20150325064926_large.pdf [hereinafter LexisNexis 2015].
8. *Id.* at 5.
9. *Id.* at 4.
10. *2008 Annual Survey Results: Student Engagement in Law School: Preparing 21st Century Lawyers*, Law School Survey of Student Engagement 10 (2008), https://lssse.indiana.edu/wp-content/uploads/2016/01/LSSSE_Annual_Report_2008.pdf [hereinafter LSSSE 2008 Annual Survey Results].
11. *Id.* at 10.
12. *Summer Associates Identify Writing and Legal Research Skills Required on the Job*, LexisNexis 3 (2016), http://www.lexisnexis.com/documents/pdf/20161109032544_large.pdf [hereinafter LexisNexis 2016].
13. *Id.*

portion of the exam usually comprises essay questions and/or performance tests.¹⁴ These written portions of the state bar exam are usually weighted at half the total score or more.¹⁵ This makes writing an important skill for success on the bar exam. Furthermore, writing skills are important in obtaining a job and working as a new attorney. Legal employers have expressed that good writing and communication are highly relevant skills in new lawyers being evaluated for jobs.¹⁶ Once on the job, new lawyers learn that writing is essential to their chosen profession. In a 2013 job analysis focusing on the work of new lawyers, all respondents indicated they used written communication.¹⁷ The same respondents also thought written communication was important to their work, rating it the highest on a list of thirty-six skills and abilities needed for law practice.¹⁸ In 2019, another job analysis revealed that writing continued to be a critical skill for new attorneys, ranking third on a list of thirty-six skills and abilities.¹⁹

Because writing is essential to new lawyer success, this article recommends law schools maintain their current first-year legal writing programs and increase upper-level curricular opportunities to practice writing and writing-related skills such as speaking, critical and analytical thinking, and legal research. These recommendations are based on the author's doctoral dissertation research study, which sought to determine whether any law school involvement activities affected student self-reported gains in writing skills in full-time, third-year law students, using responses to the 2018 administration of LSSSE.²⁰ LSSSE queries law students about their cocurricular activities, interactions with peers and professors, class participation and coursework, activities outside law school such as holding a job, satisfaction with various aspects of law school, and perceptions of skills gains.²¹ Specifically, this

14. *Comprehensive Guide to Bar Admission Requirements 2020*, National Conference of Bar Examiners 36–38 (Judith A. Gundersen & Claire J. Guback, eds., 2020), http://www.ncbex.org/assets/BarAdmissionGuide/CompGuide2020_021820_Online_Final.pdf [hereinafter *Bar Admission Requirements 2020*].

15. *Id.*

16. Neil W. Hamilton, *Changing Markets Create Opportunities: Emphasizing the Competencies Legal Employers Use in Hiring New Lawyers (Including Professional Formation/Professionalism)*, 65 S.C. L. REV. 547, 551–58 (2014).

17. Susan M. Case, *The NCBE Job Analysis: A Study of the Newly Licensed Lawyer*, THE BAR EXAMINER 52–53, 55, (Mar. 2013), <https://thebarexaminer.org/wp-content/uploads/PDFs/820113testingcolumn.pdf>.

18. *Id.*

19. National Conference of Bar Examiners, *Testing Task Force Phase 2 Report: 2019 Practice Analysis*, 25, 62 (Mar. 2020), https://testingtaskforce.org/wp-content/uploads/2020/03/TestingTaskForce_Phase_2_Report_031020.pdf.

20. See discussion *infra* Part II.

21. E-mail from Chad Christensen, LSSSE Project Manager, Center for Postsecondary Research, Indiana University, to author (Jan. 24, 2019, 10:10 CST) (on file with author). This e-mail contained a copy of the questions for the 2018 administration of LSSSE. See also

study used blocked stepwise multiple regression to determine if any of these activities, behaviors, or perceptions (collectively referred to in this study as involvement activities) affected the scores on a LSSSE question asking law student respondents to rate how much their law school experience “contributed to your knowledge, skills, and personal development”²² in writing. Alexander Astin’s Involvement Theory²³ and I-E-O Model²⁴ served as the theoretical and conceptual frameworks for this study, which created a basis for the study and guided the data analysis process.²⁵ After analyzing the responses of 3803 full-time third-year law students who participated in the 2018 LSSSE administration, the three items that had the strongest positive impacts on law student self-reported gains in writing skills were three areas related to writing: speaking skills, critical and analytical thinking skills, and legal research skills.²⁶ This essentially means legal writing is developed in conjunction with other related skills. As such, law schools should use current first-year legal writing programs and expand opportunities in the upper-level curriculum so students can practice writing alongside speaking, critical and analytical thinking, and legal research.²⁷ While this approach has some drawbacks, including law school institutional inertia and the financial costs of curricular implementation,²⁸ helping students develop the writing skills needed for success on the bar exam and the start of legal practice outweigh these concerns.

Furthermore, this study and its implications contribute to the existing legal education literature. As this study formed the basis of a doctoral dissertation, an in-depth review of the legal education literature on law student perceptions of their writing skills and activities affecting law student self-reported gains in writing skills during law school revealed few articles on these topics. The few that surfaced included both quantitative and qualitative studies. For example, one quantitative study examined first-year law students’ confidence in learning legal writing before starting their legal writing course and their confidence in their legal writing skills several weeks after starting the course.²⁹ Another quantitative study used LSSSE data to determine which law school activities

LSSSE Survey, Law School Survey of Student engagement, <https://lssse.indiana.edu/about-lssse-surveys> (last visited May 25, 2020).

22. *Id.*
23. Alexander W. Astin, *Student Involvement: A Developmental Theory for Higher Education*, 25 J. COLLEGE STUDENT PERSONNEL 297 (1984), reprinted in 40 J. COLLEGE STUDENT DEV. 518, 528–29 (1999).
24. ALEXANDER W. ASTIN, WHAT MATTERS IN COLLEGE? FOUR CRITICAL YEARS REVISITED 7 (1993).
25. See discussion *infra* Part II.
26. See discussion *infra* Part II.
27. See discussion *infra* Part III.
28. See discussion *infra* Part IV.
29. Miriam E. Felsenburg & Laura P. Graham, *Beginning Legal Writers in Their Own Words: Why the First Weeks of Legal Writing are So Tough and What We Can Do about It*, 16 LEGAL WRITING 223, 239–40, 279–80 (2010).

affected student self-reported gains in academic skills (writing was included in academic skills) in third- and fourth-year law students.³⁰ LSSSE staff have also looked at the relationships between certain law school activities covered by LSSSE questions and student self-reported gains in writing skills as part of their annual publications in 2006³¹ and 2008.³² Additionally, a qualitative study examined the habits of students who had varying degrees of academic success in a legal writing course.³³ Finally, only one prior doctoral dissertation applied Astin's Involvement Theory or I-E-O Model to law students³⁴ as this article's study has done. Thus, this study makes a new contribution to the current legal education literature on law student perceptions of their writing skills and activities affecting law student self-reported writing gains during law school.

This article consists of four additional parts. Part II provides an overview of the author's dissertation study, including the theoretical and conceptual frameworks, LSSSE data used, methodology for data analysis, and key findings. Part III recommends maintaining current first-year legal writing programs and expanding the upper-level curriculum to integrate more writing and skills that may improve student self-reported gains in writing. Part IV examines why law schools may struggle to adopt these recommendations, and Part V provides concluding remarks.

II. Overview of Dissertation Study

This study was developed as a way to help address the issue of new lawyer struggles with writing early in legal practice by examining whether any law school involvement activities improve student self-reported gains in writing. The following sections delve into the dissertation study's research question and frameworks, LSSSE dataset, study limitations, data analysis, and research findings.

A. Research Question and Frameworks

This study's research question asked whether any law school involvement activities affected student self-reported gains in writing skills in full-time third-year law students. Self-reported gains in writing were measured by

30. Carole Silver et al., *Gaining from the System: Lessons from the Law School Survey of Student Engagement About Student Development in Law School*, 10 U. ST. THOMAS L.J. 286, 287, 298-99 (2012).
31. *2006 Annual Survey Results: Engaging Legal Education: Moving Beyond the Status Quo*, Law School Survey of Student Engagement 11, 13, 15-16 (2006), http://lssse.indiana.edu/wp-content/uploads/2016/01/LSSSE_2006_Annual_Report.pdf [hereinafter LSSSE 2006 Annual Survey Results].
32. LSSSE 2008 Annual Survey Results, *supra* note 10, at 10-11.
33. Anne M. Enquist, *Unlocking the Secrets of Highly Successful Legal Writing Students*, 82 ST. JOHN'S L. REV. 609, 610-11 (2008).
34. ROBERT R. DETWILER, ASSESSING FACTORS INFLUENCING STUDENT ACADEMIC SUCCESS IN LAW SCHOOL 41-43 (2011), https://etd.ohiolink.edu/apexprod/rws_etd/send_file/send?accession=toledo1318730664&disposition=inline.

student responses to the LSSSE question that asked: “To what extent has your experience at your law school contributed to your knowledge, skills, and personal development in the following areas? . . . Writing clearly and effectively.”³⁵ Student respondents were given the following answer choices: “Very much, Quite a bit, Some, Very little.”³⁶ Examples of law school involvement activities covered by LSSSE questions included cocurricular activities, interacting with peers and professors, participating in classes, undertaking various types of coursework, holding a job, and perceptions of the law school experience.³⁷ To assist with data analysis, the research question was broken into seven parts, with law school involvement activities divided among parts three to seven: (1) Inputs (student characteristics), (2) Between-College Characteristics (law school characteristics), (3) Academic Involvement, (4) Student-Faculty Involvement, (5) Student-Student Involvement, (6) Nonacademic Involvement, and (7) Intermediate Educational Outcomes. Similar setups have been used by other researchers.³⁸

After the research question was determined, the study needed theoretical and conceptual frameworks to provide both a theory underpinning the research and a guide for the data analysis. Serving as the theoretical and conceptual frameworks were Alexander Astin’s Involvement Theory³⁹ and I-E-O (Input-Environment-Outcome) Model,⁴⁰ respectively.

Astin succinctly summarized his Involvement Theory as follows: “[T]he greater the student’s involvement in college, the greater will be the amount of student learning and personal development.”⁴¹ To accomplish this, a school’s curriculum “must elicit sufficient student effort and investment of energy to bring about the desired learning and development.”⁴² In other words, students who engage themselves in school-related activities will likely learn more from those experiences than students who choose to be less engaged or unengaged. Astin focused on undergraduate students in developing his Involvement Theory,⁴³ and only one researcher is currently known to have applied Involvement Theory to a law student population.⁴⁴ Thus, using

35. E-mail from Chad Christensen, *supra* note 21.

36. *Id.*

37. *Id.*

38. See DETWILER, *supra* note 34, at 5-6; see also ASTIN, *supra* note 24, at 13-15, 33-34, 70-77, 80-81.

39. Astin, *supra* note 23, at 528-29.

40. ASTIN, *supra* note 24, at 7.

41. Astin, *supra* note 23, at 528-29.

42. *Id.* at 522.

43. *Id.* at 523.

44. See DETWILER, *supra* note 34, at 41-42.

Involvement Theory in the author's dissertation study helps further expand its use in studies of law students and enriches the literature in this area.

What does Involvement Theory mean for law schools? It may mean that the more involved law students are with coursework, student organizations, faculty members and peers, and cocurricular activities, the more knowledge and skills gains (including those in writing) they may self-report as a result of their legal education. The use of LSSSE data works well with this theory, since LSSSE itself "is centered on the concept of student engagement—which is based on the simple, yet powerful observation that the more engrossing the educational experience, the more students will gain from it."⁴⁵

In Astin's I-E-O model, used here as the study's conceptual framework, researchers examine three types of data—inputs, environment, and outcomes.⁴⁶ Inputs (I) are the characteristics students possess when they first enter higher education.⁴⁷ Environment (E) encompasses all the facets of the educational experience—"the various programs, policies, faculty, peers, and educational experiences to which the student is exposed."⁴⁸ Outcomes (O) are the characteristics students possess after spending time in higher education.⁴⁹ Researchers then review how student characteristics change over time (such as between starting and finishing higher education) by comparing inputs to outcomes and determining what impact an environment has on students' outcomes.⁵⁰ However, in this dissertation's study, legal education was substituted for higher education in the I-E-O model, following the conceptual framework of a similar dissertation study.⁵¹

Figure 1 visually demonstrates the I-E-O model and the relationships among inputs, environment, and outcomes. This study used inputs such as student demographic characteristics, Law School Admission Test (LSAT) scores, and undergraduate GPA. Activities students participate in during law school and their perceptions of the law school experience served as environmental factors.

45. *LSSSE Survey*, Law School Survey of Student engagement, <https://lssse.indiana.edu/about-lssse-surveys> (last visited May 25, 2020).

46. ASTIN, *supra* note 24, at 7.

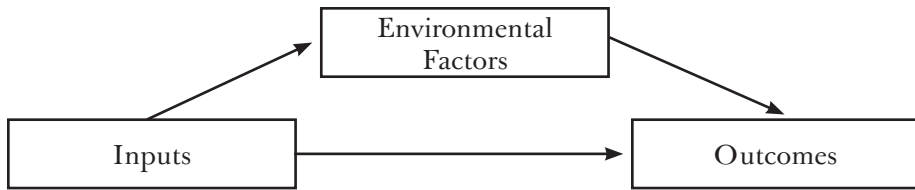
47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. DETWILER, *supra* note 34, at 42.



The outcome of interest was student self-reported gains in writing skills by full-time third-year law students. All of the data used in the I-E-O model came from student responses to the 2018 LSSSE administration.

Figure 1. Astin's I-E-O model⁵²

B. LSSSE Dataset

To determine whether any law school involvement activities affected student self-reported gains in writing skills, this study used a dataset comprised of all full-time, third-year law students who responded to LSSSE when it was administered at their law schools in the spring semester of 2018. The goal of limiting the dataset to solely full-time third-year law students was to obtain a set of similarly situated survey respondents. Part-time students may not be present at their law schools as often as full-time law students, and thus may have different involvement levels or patterns from full-time students. This approach was similar to how Astin limited one of his wide-ranging studies to students who started college as full-time students because he recognized that a full-time student population was very different from a part-time one.⁵³ Second, because most full-time law students complete their studies in three years, these third-year students would have taken LSSSE shortly before they graduated from law school. This timing is important because some writing-focused law school activities take place during the latter part of a student's time in law school, such as serving on a law review or journal, participating on moot court, or working in a law school's legal clinic.⁵⁴ Furthermore, these students have already completed the first-year writing experience and have finished or are nearly finished with upper-level writing experience required by the American Bar Association (ABA).⁵⁵

Before examining the dataset used in the study, an overview of the law school and law student participation in the 2018 administration of LSSSE

52. Figure adapted from ALEXANDER W. ASTIN & ANTHONY LISING ANTONIO, *ASSESSMENT FOR EXCELLENCE: THE PHILOSOPHY AND PRACTICE OF ASSESSMENT AND EVALUATION IN HIGHER EDUCATION 19-20* (2d ed. 2012); ASTIN, *supra* note 24, at 7.

53. ASTIN, *supra* note 24, at xxv-xxvi.

54. RUTA K. STROPUS & CHARLOTTE D. TAYLOR, *BRIDGING THE GAP BETWEEN COLLEGE AND LAW SCHOOL: STRATEGIES FOR SUCCESS 157* (2d ed. 2009).

55. *ABA Standards and Rules of Procedure for Approval of Law Schools 2019-2020*, Am. Bar Ass'n Section of Legal Educ. & Admissions to the Bar, at 16 (2019) [hereinafter *ABA Standards*].

is instructive. In the 2018 spring semester, seventy-four U.S. law schools administered LSSSE.⁵⁶ Only one of these law schools was not approved by or seeking approval from the ABA.⁵⁷ With 203 ABA-approved law schools nationwide,⁵⁸ this means approximately 36% of ABA-approved law schools participated in the 2018 LSSSE administration. At these participating schools, 17,928 students from all years of law school participated in the survey, for an overall response rate of 49%.⁵⁹

Because law schools must pay to administer LSSSE⁶⁰ and students decide whether to participate in the survey,⁶¹ LSSSE respondents are not a random sample of all U.S. law students. This is a significant limitation of the dissertation's study. Because of this, Tables 1 and 2 are included to show how U.S. law schools administering the 2018 LSSSE compared with all ABA-approved law schools. LSSSE-administering schools tended to skew private and slightly smaller (fewer than 500 students) than most ABA-approved law schools, but otherwise they were fairly comparable.

Table 1⁶²*Comparison of Law School Size*

Law School Size (in Students)	2018 LSSSE-Administering Law Schools	All ABA-Approved Law Schools
Fewer than 500	61%	53%
500-900	31%	35%
More than 900	8%	12%

Table 2⁶³

56. E-mail from Jacquelyn Petzold, Research Analyst, Law School Survey of Student Engagement, Center for Postsecondary Research, Indiana University, to author (Oct. 22, 2018, 15:17 CST) (on file with author).
57. E-mail from Jacquelyn Petzold, Research Analyst, Law School Survey of Student Engagement, Center for Postsecondary Research, Indiana University, to author (Oct. 23, 2018, 14:14 CST) (on file with author).
58. *ABA-Approved Law Schools*, Am. Bar Ass'n Section of Legal Educ. & Admissions to the Bar, https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/ (last visited May 25, 2020).
59. E-mail from Jacquelyn Petzold, *supra* note 56.
60. *Timeline and Fees*, Law School Survey of Student Engagement, <http://lssse.indiana.edu/timeline-and-fees/> (last visited May 25, 2020).
61. *Administering LSSSE*, Law School Survey of Student Engagement, <http://lssse.indiana.edu/administering/> (last visited May 25, 2020).
62. E-mail from Chad Christensen, LSSSE Project Manager, Center for Postsecondary Research, Indiana University, to author (Oct. 10, 2018, 13:15 CST) (on file with author).
63. *Id.*

Comparison of Law School Type

Type of Law School	2018 LSSSE-Administering Law Schools	All ABA-Approved Law Schools
Public	34%	42%
Private	66%	58%

This dissertation's study sought to analyze survey responses of just one group of LSSSE participants—full-time third-year students at U.S. law schools who participated in the LSSSE when it was administered at their law schools during the 2018 spring semester. This group equated to 4330 full-time third-year law students. LSSSE staff were unable to provide a response rate specifically for *full-time* third-year law students but recorded a response rate of 47.4% for *all* third-year law students.⁶⁴ However, the actual number of full-time third-year students whose survey responses were analyzed in this study was slightly smaller, since certain student participants were excluded. Student respondents were excluded if they did not answer the question about self-reported gains in writing skills, which was the study's outcome measure. Students were also excluded if they did not answer both the LSAT score and undergraduate GPA questions, as these served as proxy pretests for self-reported gains in writing, since LSSSE does not have a pretest for writing skills. After removing these students, this study analyzed the responses of 3803 full-time third-year law students. This represented a loss of 527 students, or approximately 12.2%, of the original group of all full-time third year students who participated in the 2018 LSSSE administration.

In terms of the student demographics for the dataset used in the regression, 52.9% of the students identified as female and 43.5% identified as male. The rest (3.6%) either did not answer the question, did not wish to respond, or selected “another gender identity.” The majority of students identified as white (63.2%), while 26.8% identified as minority and 10% did not answer the minority status question, declined to respond, or chose “other.” Regarding sexual orientation, 86.1% of the students in the dataset identified as heterosexual; 7.5% identified as either gay, lesbian, bisexual, or questioning/unsure; and 6.4% did not respond, preferred not to respond, or chose “another sexual orientation.” As such, the average student in the dataset was a white heterosexual female.

Generally speaking, the student demographics of the dataset compared favorably with those collected on all third-year law students by the ABA. As of fall 2017 (the semester before the students in the dataset took LSSSE) there were 33,726 total full- and part-time law students enrolled in ABA-approved law schools.⁶⁵ Of this total, approximately 49.9% were female and 50.1% were male

64. E-mail from Jacqueline Petzold, *supra* note 56.

65. *Section of Legal Education—ABA Required Disclosures*, Am. Bar Ass'n Section of Legal Educ. & Admissions to the Bar, <http://abarequireddisclosures.org/Disclosure509.aspx> (under “Compilation—All Schools Data” select “2017” and “JD Enrollment and Ethnicity”) (last visited May 25, 2020). This information is collected by the ABA each fall from all ABA-

(“other” gender consisted of a fraction of a percent).⁶⁶ In terms of minority status, approximately 61.1% of all third-year law students were white, 30.7% were minority, 3.5% were nonresidents, and 4.8% had an unknown minority status.⁶⁷ While the ABA did not report information on sexual orientation and the demographic data was not limited to full-time students, it did demonstrate that the dataset’s gender and minority status reflected well the overall population of all third-year law students at ABA-approved law schools. The students in the dataset did skew slightly white and female, though.

A brief note about minority status and sexual orientation is in order. LSSSE allows survey takers to choose from a large number of minority categories.⁶⁸ In the dissertation’s study, several of these categories did not have students represented in the dataset, so it was decided to have two broad categories—minority and nonminority. As for sexual orientation, even though the majority of the students in the dataset were heterosexual, a decision was made not to use two broad categories—heterosexual and nonheterosexual. The difference in approach simply reflected the dataset’s inclusion of student respondents from each of the sexual orientation categories, unlike the minority status categories.

For the academic profile, students in the dataset reported a mean LSAT measure of 3.31 (the median was 3.00), with 3 representing an LSAT score in the range of 151–155 and 4 representing an LSAT score in the range of 156–160. As for undergraduate GPA measures, students in the sample reported a mean of 4.14 (the median was 4.00), with 4 representing a GPA range of 3.00–3.49 and 5 representing a GPA range of 3.50 and higher. Last, for the question “What have most of your grades been up to now at this law school?”⁶⁹ the mean response was 5.85 (the median was 6.00), with a 5 being a “B” grade and 6 being a “B+” grade.

The students in the dataset came from law schools that were fairly evenly spread out among all four 2018 U.S. News tiers, which are basically quartiles. The tier breakdown was as follows: Tier 1: 26.3%, Tier 2: 20.4%, Tier 3: 21.4%, and Tier 4: 31.9%. (LSSSE staff provided a school’s U.S. News tier for each survey respondent in the dataset after a request from the author; it is not a question on the survey.) The majority of the students in the dataset came from private law schools (64.1%) vs. public law schools (35.9%). Additionally, law schools attended by the students in the dataset generally enrolled 900 or fewer students. LSSSE divides law schools into three categories by size: fewer than 500 students (47.9% of the students in the dataset), 500–900 students (39.4% of the students in the dataset), and more than 900 students (12.6% of the

approved law schools as part of its annual questionnaire.

66. *Id.*

67. *Id.*

68. E-mail from Chad Christensen, *supra* note 21.

69. E-mail from Chad Christensen, *supra* note 21.

students in the dataset).⁷⁰ Thus, the average student in the dataset came from a private law school with a relatively small student body.

D. Study Limitations

Before discussing the data analysis process, it should be noted that this study contained several notable limitations. The most significant limitation was that LSSSE relied on students to accurately and honestly self-report the information requested by the survey. Law students participating in LSSSE could have overestimated their involvement in law school or the gains in skills they achieved, either because they did not know how to gauge their level of involvement or progress, or they wanted to portray themselves in the most favorable light. For example, one study found that first-year law students were very optimistic in assessing their writing skills and predicting their legal writing aptitude before taking a legal writing course.⁷¹

Another important limitation was that this study had no pretest measure for self-reported writing skills. LSSSE asked students to self-report their gains in writing skills at the time they took the survey⁷² (a post-test), but there was nothing that measured students' self-reported level of writing skills when they entered law school (a pretest). Thus, there was no objective way to measure these self-reported gains. To partially compensate for this lack of a pretest, this dissertation's study used students' undergraduate GPAs and LSAT scores—as measured by the corresponding LSSSE questions⁷³—as proxy measures for the level of writing skills students had when starting law school. Furthermore, student self-reported writing skills gains are not an objective measure of these skills like a graded writing assignment or exam. However, student self-reported measures have merit because “[t]hese gains are based on students’ reflections on their own development stemming from law school [T]hey are a useful complement to provide a more comprehensive understanding of student learning and development.”⁷⁴

Last, there were no available data on the full-time third-year law students who did not participate in LSSSE, either those students declining to participate when LSSSE was offered at their law schools or those students whose schools did not choose to participate in the 2018 administration of LSSSE. Thus, it must be assumed that responding students' answers to the survey were representative of all law students nationwide, including those who did not participate in the survey.

70. E-mail from Chad Christensen, *supra* note 62.

71. Felsenburg & Graham, *supra* note 29, at 239-40.

72. E-mail from Chad Christensen, *supra* note 21.

73. *Id.*

74. Silver et al., *supra* note 30, at 292.

C. Data Analysis

To start the data analysis process, student response data from the 112 LSSSE questions used in this dissertation's study were divided into seven blocks: (1) Inputs, (2) Between-College Characteristics, (3) Academic Involvement, (4) Student-Faculty Involvement, (5) Student-Student Involvement, (6) Nonacademic Involvement, and (7) Intermediate Educational Outcomes. These blocks corresponded to the seven parts of this study's research question. This setup also follows Astin's I-E-O model,⁷⁵ as it has blocks representing inputs as well as the different types of involvement activities in which students can participate (environmental factors) so the researcher can determine whether any of these activities affect the outcome of student self-reported writing skills.

Block One (Inputs) contained demographic information including LSAT score, undergraduate GPA, gender identity, race/ethnicity, sexual orientation, age, and years between college graduation and starting law school, among others. These were controlled to prevent bias in the outcomes.⁷⁶ Block Two (Between-College Characteristics) comprised three law school characteristics—size, status as public or private, and 2018 U.S. News ranking tier, as these were the only law school characteristics provided in the dataset by LSSSE staff. Block Three (Academic Involvement) grouped together educationally related activities students may participate in during their time in law school, such as class preparation; number of pages written; or participation in cocurricular activities such as moot court, law review or journal, or law clinics. These activities were of particular interest because a prior study with LSSSE data found activities such as class preparation, class participation, and law review or moot court participation had positive impacts on a measure of student self-reported skills called academic gains (which included writing).⁷⁷

Block Four (Student-Faculty Involvement) included student activities such as having conversations with faculty members, receiving feedback from faculty, and working on projects or committees unrelated to coursework with faculty members. One study using LSSSE data found a positive relationship between frequent faculty feedback and student self-reported gains in writing;⁷⁸ another found a positive relationship between faculty interactions and student self-reported academic gains.⁷⁹ Block Five (Student-Student Involvement) included variables describing collaboration with other students, as well as conversations with other students, including those of diverse backgrounds. Block Six (Nonacademic Involvement) included student activities unrelated to law school such as having a job and commuting.

75. ASTIN, *supra* note 24, at 7.

76. *Id.* at 90.

77. Silver et al., *supra* note 30, at 298, 307-08.

78. LSSSE 2006 Annual Survey Results, *supra* note 31, at 11.

79. Silver et al., *supra* note 30, at 307.

Block Seven (Intermediate Educational Outcomes) comprised mainly student satisfaction measures for different aspects of the law school experience, student self-reported gains in various skills, and the likelihood that a student would choose this law school or do a law degree once again. As such, this block deserves some explanation. Astin's I-E-O model is based on the assumption that "the environmental variables occur prior in time to the outcome variables."⁸⁰ While inputs describe students at entry into college, environmental variables describe students' activities during their time in college, which takes place over the course of several years.⁸¹ A student's choice of activity early in college may affect or influence the choice of activities later in college, and these later-in-college activity choices (intermediate outcomes) could then influence the outcomes (the O in the I-E-O model).⁸² Interestingly, these intermediate outcomes can even be regular outcome measures themselves, depending on how the research is structured.⁸³ Because the influence and timing of these intermediate educational outcomes is uncertain, this block is entered last in a regression.⁸⁴ If there are multiple intermediate outcome blocks, they are added "according to their known or expected temporal sequencing, with the most ambiguous variables, such as student satisfaction with the college, consigned to the last block."⁸⁵

The SPSS software program analyzed the seven blocks of student response data. Within SPSS, blocked stepwise multiple regression was used to statistically determine whether any law school involvement activities affected student self-reported gains in writing. In other words, this statistical analysis revealed whether any law school involvement activity "adds anything to the prediction of" student self-reported gains in writing beyond what might be predicted by a student's demographics, undergraduate GPA, LSAT score, and other input measures.⁸⁶

The regression analysis controlled the input variables, because if there were any existing relationships between certain inputs and environments, "the possibility remains that any observed correlation between an environment and an outcome measure may reflect the effect of some input characteristic rather than the effect of the college environment."⁸⁷ The actual blocked stepwise multiple regression followed a process similar to that laid out by other researchers.⁸⁸ The first block contained all the student responses to the various

80. ASTIN, *supra* note 24, at 80.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.* at 327.

85. *Id.* at 330.

86. *Id.* at 301.

87. ASTIN, *supra* note 24, at 13-14.

88. ASTIN & ANTONIO, *supra* note 52, at 305-07; DETWILER, *supra* note 34, at 54-56, 64-65.

input questions and SPSS added each of these input questions (or variables) individually into the regression “until no additional variable in that block is capable of adding significantly to the prediction of”⁸⁹ law student self-reported gains in writing. If an input question did not help predict student self-reported gains in writing, it was not added to the regression equation. This process was repeated for each of the six remaining blocks. When SPSS finished all the blocks, the independent variables that remained in the final step helped to predict student self-reported gains in writing. However, any variables in the final step having beta weights that were not significant at the $p < 0.05$ level were removed from the regression, and another regression was run in order to obtain a set of variables in the final step that were all significant at the $p < 0.05$ level. These final variables were the law school involvement activities that had statistically significant relationships to student self-reported writing gains.

D. Research Findings

While this study yielded fifteen law school involvement activities having a statistically significant impact on student self-reported gains in writing skills, this article will discuss only the three strongest ones. Interestingly, the three involvement activities with the strongest impacts on student self-reported gains in writing were not student involvement activities in the traditional sense—they were other skills gains reported by students in the dataset. Speaking, critical and analytical thinking, and legal research skills had the strongest impacts on student self-reported gains in writing, respectively. The impact of each one was positive, which means students who self-reported higher skills gains in speaking, critical and analytical thinking, or legal research were more likely to self-report higher skills gains in writing. Table 3 provides the numerical strength of these impacts.

Table 3

Variables Affecting Student Self-Reported Gains in Writing Skills by Impact Strength

Ranking	Law School Involvement Activity	Final Step β (Standardized Coefficient β)
1	Speaking Clearly and Effectively	0.29***
2	Thinking Critically and Analytically	0.22***
3	Developing Legal Research Skills	0.21***

$N = 3,803$ $R^2 = 0.571$ Adjusted $R^2 = 0.569$

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

89. ASTIN & ANTONIO, *supra* note 52, at 305-07.

The main implication of these research findings is that writing skills in law school are not developed in a vacuum—they are developed alongside speaking, critical and analytical thinking, and legal research skills. This is unsurprising, given that good speaking, thinking, and research go into effective legal writing. For example, a description of a first-year writing course summarizes how several of these skills are related:

[The course] does not just involve researching and writing. Legal research itself is a complex task that may require reading, evaluating, and filtering large amounts of material just to enable the student to identify the issues to analyze. Then, reading, reasoning, understanding, analyzing, and even rereading must occur between the research process and the writing process. Moreover, the writing process itself should typically encompass outlining, multiple efforts at drafting, revising, editing, formatting, and proofreading.⁹⁰

Additionally, a qualitative study of students in an introductory brief-writing course reflected how these three skills were intertwined with legal writing.⁹¹ In terms of speaking skills, more than half of the studied group of students reported that their work in preparing for oral arguments helped them write the first of two briefs for the course.⁹² As for critical thinking skills in the academically successful students, there was “an obvious connection between their critical reading and critical thinking skills” as their notes reflected how the cases they found would support their position (or their opponent’s position) and how different cases might work together in their briefs.⁹³ Finally, the academically successful students excelled at legal research—“[t]hey had the ability to find the key cases, zero in on what was important in those cases, and then know when to stop researching and start writing.”⁹⁴

III. Recommendation: Maintaining or Adding More Writing and Writing-Related Activities to the Law School Curriculum

Based on the findings of this study, this section recommends maintaining the first-year legal writing program and adding more curricular opportunities for upper-level students to write and practice the skills shown to further students’ self-reported writing skills gains. Allowing students to practice writing as well as speaking, critical and analytical thinking, and legal research will help

90. Felsenburg & Graham, *supra* note 29, at 293–94.

91. Enquist, *supra* note 33, at 657–58, 670.

92. *Id.* at 657–58.

93. *Id.* at 670.

94. *Id.* at 670.

prepare them for the writing they will encounter in legal practice and on the state bar exam. As previously discussed, some students have reported feeling unready for some law firm writing projects⁹⁵ and generally seem to want more opportunities to work on writing they will use in legal practice.⁹⁶ Employers seek to hire new lawyers with developed writing skills⁹⁷ and have lamented that these writing skills have been lacking for decades.⁹⁸ However, students will encounter difficulties in obtaining employment if they cannot pass the bar exam, which includes writing sections comprising half or more of their score.⁹⁹

The next sections explore two recommendations. The first section will discuss maintaining the current first-year legal writing curriculum, since it generally incorporates writing and the three skills whose gains improved students' self-reported writing skills gains in the author's dissertation study. The second section discusses ways to integrate more opportunities to practice writing and the three aforementioned skills in the upper-level curriculum.

A. Maintaining the First-Year Legal Writing Curriculum

The first-year legal writing course has long served as an introduction for law students to the world of legal writing and should remain in its current form as a key part of the law school curriculum. As the ABA mandates a first-year writing experience,¹⁰⁰ the vast majority of law schools require students to take two first-year legal writing courses.¹⁰¹ Generally, the first course covers objective and predictive writing and the second course covers persuasive writing.¹⁰² Many legal writing faculty require students to complete office memorandums and appellate or trial briefs as part of these courses.¹⁰³ Office memorandums

95. LexisNexis 2016, *supra* note 12, at 3.

96. LSSSE 2008 Annual Survey Results, *supra* note 1-0, at 10; LexisNexis, *supra* note 12, at 3.

97. Hamilton, *supra* note 16, at 551-58.

98. MacCrate report, *supra* note 1 at 332; Kosse & ButleRitchie, *supra* note 2, at 80, 86; LexisNexis 2015, *supra* note 7, at 7.

99. Bar Admission Requirements 2020, *supra* note 14, at 36-38.

100. *ABA Standards*, *supra* note 55, at 16.

101. *ALWD/LWI Annual Legal Writing Survey: Report of the 2017-2018 Institutional Survey*, Ass'n of Legal Writing Directors & Legal Writing Institute at 25-26 (2017-2018), <https://www.lwionline.org/sites/default/files/Final%20ALWD%20LWI%202017-18%20Institutional%20Survey%20Report.pdf> [hereinafter ALWD/LWI 2017-2018 Survey].

102. *Id.*

103. AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, SOURCEBOOK ON LEGAL WRITING PROGRAMS 17, 21 (Eric B. Easton, ed., 2d ed. 2006) [hereinafter SOURCEBOOK]; see also *Report of the Annual Legal Writing Survey 2015*, Ass'n of Legal Writing Directors & Legal Writing Institute at 13 (2015), [https://www.alwd.org/images/resources/2015%20Survey%20Report%20\(AY%202014-2015\).pdf](https://www.alwd.org/images/resources/2015%20Survey%20Report%20(AY%202014-2015).pdf) [hereinafter ALWD/LWI 2015 Survey]. ALWD/LWI's Annual Legal Writing Survey was overhauled after the 2015 survey. As such, some footnotes reference this version (2015) or the most recent version of the survey (2017-2018) depending on the data sought simply because many of the questions have changed and thus the data is not directly comparable.

are usually written by students to a fictional law firm partner predicting the outcome of a client matter.¹⁰⁴ The goal of this assignment is objective legal analysis that is written in a clear, organized way and includes correct legal citations.¹⁰⁵ Mock briefs are written by students to persuade a trial or appellate court to rule in favor of the students' clients; the goal of the assignment is to explore more challenging legal issues and analysis.¹⁰⁶ The emphasis on legal analysis in both assignments is critical because "[l]egal writing is, after all, the written expression of legal analysis."¹⁰⁷

Two studies support the use of office memorandums and briefs as writing assignments. Both assignments are created by legal writing faculty to mimic documents students will see or use in legal practice. First, LSSSE found that "practice-oriented writing assignments are more highly related to [student self-reported] gains in . . . clear and effective writing" than academic papers.¹⁰⁸ Importantly, LSSSE included both memorandums and appellate briefs as types of practice-oriented writing assignments.¹⁰⁹ Second, some summer associates at larger firms thought additional training on how to write certain types of documents would be helpful.¹¹⁰ Almost 29% and 22% of the summer associates surveyed specifically mentioned memorandums and briefs, respectively, as areas where more training would be helpful.¹¹¹ Since students may work as law firm summer associates after their first or second year of law school, this means the first-year legal writing courses should continue or increase their use of memorandums and briefs to prepare students for this work. However, if students do not work as law firm summer associates until after their second year of law school, their skills in memorandum and brief writing may become rusty from lack of use.

Briefly reviewing how legal research is incorporated into the first-year legal writing course is in order. It is usually taught by the course professor, a law librarian, or both.¹¹² The amount of legal research practice law students get in the first-year legal writing course varies with the writing assignments. Some assignments require law students to do their own legal research, while others require no research (a closed-universe assignment).¹¹³ In most closed-universe assignments, students are provided with the research materials needed to complete the assignment. When students do their own research, that research

104. SOURCEBOOK, *supra* note 103, at 17.

105. *Id.* at 21.

106. *Id.*

107. *Id.* at 14.

108. LSSSE 2008 Annual Survey Results, *supra* note 10, at 11.

109. *Id.*

110. LexisNexis 2016, *supra* note 12, at 3.

111. *Id.*

112. ALWD/LWI 2015 Survey, *supra* note 103, at x, 11.

113. *Id.* at 12.

is closely intertwined with analysis and writing. Basically, “research, analysis, and writing are not independent steps[;] [r]ather, students are taught to begin their analysis and writing as they go through the research process.”¹¹⁴ This process accords with the findings of this article’s dissertation study, as it is reasonable to imagine that gains in self-reported critical and analytical thinking or legal research skills would lead to self-reported gains in writing skills.

Students in first-year legal writing courses typically receive feedback from their professors as they prepare written drafts. Specific written feedback is usually contained in margin notes, with general suggestions written at the end of the draft.¹¹⁵ Verbal feedback is usually provided in individual conferences with the student and professor.¹¹⁶ The professor may use the written comments as a starting point for discussion, and students have the benefit of asking the professor questions and learning more about the strengths and weakness of their work.¹¹⁷ Students are then able to incorporate this feedback into subsequent drafts, strengthening their writing.¹¹⁸ Discussions between students and their professors about their writing are key to integrating speaking skills into the first-year legal writing course, as there are fewer opportunities to develop speaking skills compared with the legal research and thinking skills that are integral to this course. However, for faculty to provide personalized feedback and individual student conferences, these courses must have small section enrollments. As such, the average course section has only twenty-one to twenty-two students.¹¹⁹

This feedback is important to students’ development as legal writers and as professionals who will meet high expectations. For example, LSSSE data showed that 87% of surveyed law students who reported receiving timely faculty feedback “very often” realized substantial gains in self-reported writing skills; this percentage dropped slightly to 80% for students reporting they received this feedback “often.”¹²⁰ Additionally, LSSSE found statistically significant and positive correlations for two survey questions related to receiving timely faculty feedback and working to achieve the high expectations of faculty members with student self-reported gains in writing skills.¹²¹

A final component of the first-year legal writing course is oral advocacy. Approximately 73% of surveyed law schools indicated they teach appellate

114. SOURCEBOOK, *supra* note 103, at 65.

115. *Id.* at 55.

116. *Id.* at 60.

117. *Id.* at 60–61.

118. *Id.*

119. ALWD/LWI 2017–2018 Survey *supra* note 101, at 27–28.

120. LSSSE 2006 Annual Survey Results, *supra* note 31, at 11.

121. *Id.* at 15.

argument skills in this course.¹²² This allows students to argue the brief they have written or are in the process of writing.¹²³ If students present oral arguments while still writing the brief, they may “gain insights from the oral argument that enhance their legal analysis, resulting in a much better written brief.”¹²⁴ Students may similarly benefit if they argue a completed brief and then revise it afterward.¹²⁵

The first-year legal writing course allows law students to practice their writing skills and the three skills this article’s dissertation study found to enhance student self-reported gains in writing skills. Students use speaking skills when they meet with their professor to discuss feedback on their writing or when they present mock oral arguments. Critical and analytical thinking skills are woven throughout the first-year writing course, as are legal research skills. As such, the first-year legal writing course in its present iteration must be maintained.

B. Adding More Writing and Writing-Related Skills to the Upper-Level Curriculum

Currently, the ABA requires only one faculty-supervised writing experience after a student’s first year of law school.¹²⁶ In the past, law students fulfilled similar requirements “only by doing some sort of scholarly writing, such as a journal article or seminar paper,” but there has been a trend toward allowing students to take a practically oriented writing course instead.¹²⁷ As such, this section discusses the primary types of courses law schools offer for students to meet this ABA requirement or gain additional practice in legal writing after their first year. It also examines how these courses incorporate opportunities to practice the speaking, critical and analytical thinking, and legal research skills found by this article’s dissertation study to boost student self-reported gains in writing skills. Finally, this section recommends ways to integrate these skills into traditional doctrinal courses in addition to legal writing courses.

While first-year legal writing courses are similar among law schools, the same cannot be said of upper-level writing courses. For example, they can cover topics as diverse as drafting for a specific area of law, more generalized drafting for contracts or litigation, and scholarly writing.¹²⁸ Also, scholarly writing is a major component of most seminar courses, as students usually write a well-researched paper similar to the ones submitted to law reviews and

122. ALWD/LWI 2015 Survey, *supra* note 112, at xi, 13.

123. SOURCEBOOK, *supra* note 103, at 31.

124. *Id.*

125. *Id.*

126. ABA Standards, *supra* note 56, at 16.

127. ALWD/LWI 2015 Survey, *supra* note 103, at x.

128. ALWD/LWI 2017-2018 Survey, *supra* note 101, at 38.

journals.¹²⁹ Despite the variety of upper-level writing courses, they tend to fall into two categories: scholarly writing and practical writing.

Both types of writing—scholarly and practical—help students practice their writing skills, deepen their knowledge of the law, and prepare for their work as attorneys. For instance, scholarly writing forces students to learn and write about a topic in the way that practicing attorneys do—they must identify the issue at hand and find a solution while teaching themselves about the subject matter.¹³⁰ In doing so, students learn that writing is not linear—it is very much recursive—and learn to balance this time-intensive process with other competing responsibilities.¹³¹ Similarly, practically focused writing helps students prepare for legal practice through its emphasis on technical writing and “the knowledge, skills, and professional judgments that are required for successful writing.”¹³²

Scholarly writing is commonly taught in a seminar course.¹³³ A key part of this course is student production of a paper of scholarly quality with feedback and supervision from a faculty member, making it a popular way for law schools to comply with the ABA Standards mandating another writing experience after a student’s first year of legal education.¹³⁴ In a scholarly paper, students write about a particular issue and propose a resolution “that builds upon a basis of knowledge in multiple subject areas.”¹³⁵ Doing so requires students to synthesize doctrinal legal knowledge and writing skills into the same project when these skills may otherwise be taught separately in different classes.¹³⁶ Ideally, the goals of a scholarly writing course can be summarized as follows: “[T]he student will work with complex materials, receive advanced research experience, and engage in a type of critical legal thinking that is unlike the types of analyses required for other forms of legal writing.”¹³⁷ Despite its scholarly nature, this writing can hone certain skills students need for law practice, such as spotting issues and explaining how best to resolve them.¹³⁸

129. SOURCEBOOK, *supra* note 103, at 183, 193.

130. Kristina V. Foehrkolb & Marc A. DeSimone, Jr., *Debunking the Myths Surrounding Student Scholarly Writing*, 74 MD. L. REV. 169, 173–74, 177–78 (2014).

131. *Id.* at 175, 178.

132. Sherri Lee Keene, *One Small Step for Legal Writing, One Giant Leap for Legal Education: Making the Case for More Writing Opportunities in the “Practice-Ready” Law School Curriculum*, 65 MERCER L. REV. 467, 493 (2013).

133. SOURCEBOOK, *supra* note 103, at 193.

134. *Id.*

135. Foehrkolb & DeSimone, Jr., *supra* note 130, at 170.

136. *Id.* at 170, 177.

137. SOURCEBOOK, *supra* note 103, at 193.

138. Foehrkolb & DeSimone, Jr., *supra* note 130, at 170, 173–74.

From these descriptions, it is clear that scholarly writing courses allow students to practice legal research and critical and analytical thinking skills. However, one area in which these courses may be improved is in the area of speaking skills. While there are likely some student speaking skills already involved in the course—such as exploring paper topics and strategies and discussing feedback with their professor—more can be added. For instance, the professor can require students to make a formal presentation on their paper topic or the final version of their paper to their course peers. Explaining their work to peers helps students think about their writing in a different way and allows them to answer questions and obtain feedback from another source. Students can use the information gained from their presentation to revise and strengthen their written work.

Recommending that students discuss or present their written work and obtain feedback is not without precedent. Law faculty do this with their own scholarly work when they “expand their knowledge and learn from the expertise of their peers by discussing scholarly drafts before working groups and providing feedback to one another on written drafts.”¹³⁹ Also providing support for this recommendation is a quantitative study using LSSSE data to identify aspects of legal education that promote third- and fourth-year law students’ self-reported academic gains.¹⁴⁰ In the study, “academic gains” comprised student self-reported gains in seven related areas: writing, speaking, thinking, legal research, independent learning, job skills, and broad-based education in law.¹⁴¹ All seven skills are arguably used in a scholarly writing course, so the results of this study are particularly pertinent. The aspects of legal education that aided this cluster of skills called academic gains were student interactions with professors and peers, the use of higher-order learning in educational activities, preparation for and participation in courses, and moot court or law review service.¹⁴² The finding that interactions with professors and peers stimulate academic gains gives additional credence to the recommendation that students be given opportunities to discuss and get feedback on their work in scholarly writing courses. However, to facilitate this feedback and interaction with both the professor and peers, scholarly writing courses must have a low student-faculty ratio. These courses may enroll only about a dozen students per section.¹⁴³

The other type of law school writing course is practical writing. Courses on practical writing center around the types of writing and documents used in law practice. These courses can be more of an overview; a number of law schools

139. Keene, *supra* note 132, at 491.

140. Silver et al., *supra* note 30, at 287, 291–92.

141. *Id.* at 298.

142. *Id.* at 307–08.

143. ALWD/LWI 2017–2018 Survey, *supra* note 101, at 45.

offer courses in general drafting or creating contracts.¹⁴⁴ A general course on drafting may include “draft[ing] a contract, a will or trust, a statute, and a set of jury instructions to give students the broadest range of experience.”¹⁴⁵ Other drafting courses focus on the documents needed for general or appellate litigation.¹⁴⁶ Finally, other courses may focus on a particular legal practice area (such as real estate), which allows students to write and familiarize themselves with documents pertinent to that practice area.¹⁴⁷

Practical writing is important to students’ development as legal writers. As part of a study using LSSSE data, researchers found that practical legal writing had a stronger positive relationship to student self-reported gains in writing, legal research, and job skills than more academic or scholarly writing.¹⁴⁸ Furthermore, this stronger positive relationship with practical writing also extended to students’ self-reported gains in “[a]pplying . . . legal writing skills to real-world situations.”¹⁴⁹

Practical writing courses offer several benefits to law students. Like other legal writing courses, they “aid the students’ understanding of theory and doctrine, sharpen their analytical skills, improve their understanding of the legal profession, and in some instances cultivate their practical wisdom.”¹⁵⁰ Students receive faculty feedback on their work, since “[t]he best way to learn this important skill [legal drafting] is by drafting documents and getting timely, quality, individualized feedback.”¹⁵¹ While the feedback helps students improve their current writing, it also prepares them for the collaborative nature of law practice. New attorneys must view written work as an ongoing work-in-progress involving multiple drafts and feedback from colleagues or supervisors.¹⁵² As with other legal writing courses, enrollments must be kept small. This generally limits course sections to about ten to fifteen students.¹⁵³

Practical writing courses integrate well the critical and analytical thinking skills this article’s dissertation study found to advance students’ self-reported gains in writing skills. Speaking skills are used in the course when students discuss feedback or work with the professor to improve their draft documents.

144. *Id.* at 38.

145. SOURCEBOOK, *supra* note 103, at 178.

146. ALWD/LWI 2017-2018 Survey, *supra* note 101, at 38.

147. SOURCEBOOK, *supra* note 103, at 179-80.

148. LSSSE 2008 Annual Survey Results, *supra* note 10, at 11.

149. *Id.*

150. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP 148-49 (2007) [hereinafter BEST PRACTICES FOR LEGAL EDUCATION].

151. SOURCEBOOK, *supra* note 103, at 182.

152. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 98-99 (2007) [hereinafter Carnegie Report].

153. ALWD/LWI 2017-2018 Survey, *supra* note 101, at 42-45.

These speaking opportunities may be significant, since practical writing courses optimally include “at least three and as many as six or seven graded and critiqued drafts and assignments.”¹⁵⁴ However, legal research needs to be incorporated into practical writing courses whenever possible. While the focus of the course is document drafting, faculty can require students to do some related independent legal research. For example, students can explore common practitioner materials or form books for a particular type of document or area of law. Not only does this exercise help students with their coursework, but it also exposes them to resources used by practicing attorneys.

Both scholarly and practical writing courses provide students an avenue to practice different types of legal writing. These courses also allow (or can be modified to allow) students to use the three skills this article’s dissertation study found to promote students’ self-reported gains in writing skills. However, while law schools should continue offering some scholarly writing courses, they must expand their practical writing course offerings, since these are directly applicable to the work students will do shortly after graduation.

C. Writing in Doctrinal Courses

Most doctrinal courses involve minimal, if any, writing practice for students.¹⁵⁵ This tradition, coupled with the ABA requirement of a first-year and upper-level writing experience,¹⁵⁶ means students may take only two or three courses focused on legal writing. Unless students seek out additional elective writing courses, they may graduate with only limited curricular writing experience. Limited opportunities for writing are worrisome, because the more practice students have in writing, the more they improve.¹⁵⁷ Accordingly, “[w]ith so little required writing, it is hardly surprising that new graduates do not write as well as more senior members of the [legal] profession. After all, repetition and practice are essential to improving writing skills.”¹⁵⁸

Some scholars suggest that legal writing should be a requisite part of all six semesters of law school.¹⁵⁹ Having a legal writing-focused course or legal writing experience in every semester of law school may not be easy or practical to implement for most law schools without significant planning

154. SOURCEBOOK, *supra* note 103, at 182.

155. Keene, *supra* note 132, at 468.

156. ABA Standards, *supra* note 52, at 16.

157. Patrick T. O’Day & George D. Kuh, *Assessing What Matters in Law School: The Law School Survey of Student Engagement*, 81 IND. L. J. 401, 406 (2006).

158. Kosse & ButleRitchie, *supra* note 2, at 87.

159. Adam Lamparello & Charles E. MacLean, *Integrating Legal Writing and Experiential Learning into a Required Six-Semester Curriculum that Trains Students in Core Competencies, “Soft” Skills, and Real-World Judgement*, 43 CAP. U. L. REV. 59, 63 (2015); see also Kristen Konrad Tiscione, *A Writing Revolution: Using Legal Writing’s “Hobble” to Solve Legal Education’s Problem*, 42 CAP. U. L. REV. 143, 159-60 (2014).

and resources. Thus, as an intermediate step, one way to ensure all students continue to practice legal writing is to incorporate writing assignments into existing doctrinal courses, focusing on legal documents relevant to that particular doctrinal area.¹⁶⁰ Also, in doctrinal courses whose subject matter is tested on the bar exam, faculty can assign bar exam-style essay questions. This type of assignment supports both writing practice and bar exam preparation. However, the type of writing assigned to students is not as important as simply having students engage in the act of writing.¹⁶¹ Furthermore, LSSSE data indicated a positive relationship between pages of writing completed during the school year and student self-reported writing skills gains.¹⁶² Students seem to be interested in adding writing to their doctrinal courses as well.¹⁶³ Finally, and not insignificantly, adding writing to doctrinal courses spreads the responsibility for teaching writing skills to the law faculty as a whole.¹⁶⁴ This may increase the amount of support for legal writing and emphasize its importance to students.

Adding writing as a component of a doctrinal course must include drafting assignments relevant to the topic of the course, as this allows students to combine their subject-matter knowledge and writing skills to create a practice-oriented document.¹⁶⁵ (The same idea applies to assigning bar exam essay questions related to bar-tested course topics.) Doing so is part of the “writing across the curriculum” pedagogical strategy and is specifically known as “writing in the discipline.”¹⁶⁶ There are numerous examples of implementation. “Students taking a Business Associations course could be required to draft a partnership agreement or corporate bylaws. Students taking a course in Intellectual Property could draft a licensing agreement Students taking Evidence could draft a motion in limine and a supporting memorandum of law.”¹⁶⁷ Subject-specific writing assignments should be used primarily in upper-level doctrinal courses because students already have a foundation to build upon from their first-year legal writing course.¹⁶⁸ As with other courses involving writing, it is important that students receive feedback and credit

160. Pamela Lysaght & Cristina D. Lockwood, *Writing-across-the-Law-School-Curriculum: Theoretical Justifications, Curricular Implications*, 2 J. ASS'N LEGAL WRITING DIRECTORS 73, 100 (2004).

161. Tiscione, *supra* note 159, at 145.

162. LSSSE 2008 Annual Survey Results, *supra* note 10, at 10–11.

163. Carnegie Report, *supra* note 153, at 104.

164. Lysaght & Lockwood, *supra* note 160, at 73–74.

165. *Id.* at 100.

166. *Id.* at 75.

167. Kenneth D. Chestek, *MacCrate (In)Action: The Case for Enhancing the Upper-Level Writing Requirement in Law Schools*, 78 U. COLO. L. REV. 115, 144 (2007).

168. Lysaght & Lockwood, *supra* note 160, at 76, 101–02.

for their written work product from their professor.¹⁶⁹ Feedback in doctrinal courses can be beneficial to both students and the professor—students learn whether their work would be acceptable in law practice (or on the bar exam), and the professor can determine whether students understand and can apply the concepts discussed in the course.¹⁷⁰ However, since doctrinal courses are usually much larger than writing courses, feedback may be less in-depth and individualized simply because of the higher student-faculty ratio.

Aside from giving students additional opportunities to practice writing, adding subject-specific writing assignments to doctrinal courses has a number of other benefits. First, students work like practicing attorneys by using doctrinal knowledge and practical skills simultaneously. As one scholar explained, “[M]ost legal skills cannot be easily segregated from legal theory and doctrine, but instead require attorneys to apply their knowledge of the law to accomplish specific tasks in the course of client representation.”¹⁷¹ Also, these assignments force students to learn “the resources and methodologies within various legal subjects,”¹⁷² thereby adding a legal research “in the discipline” component to the written work. Finally, adding practice-related writing to doctrinal courses is an efficient way for students to practice at least some of the skills this article’s dissertation study found to advance student self-reported gains in writing skills.

Efficiency aside, practicing these three skills (speaking, critical and analytical thinking, and legal research) in doctrinal courses is sensible in terms of preparing students to become attorneys. For example, students may complete basic background research on a topic or search for subject-specific materials such as formbooks or practice guides before drafting a document. This is good practice for students because key research materials vary depending on the area of law. Second, the law practice-oriented nature of the writing assignments can help improve students’ analytical thinking. “It forces students to see the legal doctrine in a very practical way. . . . Such assignments can capture a student’s imagination and help her picture herself as a professional, as well as force her to analyze the material in a different way so as to better understand its practical implications.”¹⁷³ Speaking skills can be more challenging to integrate because of the larger size of most doctrinal courses. However, students can work together in pairs or small groups during class to draft, for example, a basic contract or articles of incorporation. Doing so would require students to talk to one another to draft an acceptable document. Support for in-class group collaboration comes from LSSSE data showing that 46% of students who worked “very often” with their peers in class had higher self-reported

169. Chestek, *supra* note 167, at 144; *see also* Lysaght & Lockwood, *supra* note 160, at 103–04.

170. Lysaght & Lockwood, *supra* note 160, at 103–04.

171. Keene, *supra* note 132, at 475.

172. Lysaght & Lockwood, *supra* note 160, at 101.

173. Chestek, *supra* note 167, at 144.

gains in writing compared with students who never did this in-class work.¹⁷⁴ Additionally, in-class group collaboration reduces the grading and feedback required of the professor, and students experience the collaboration usually required to create a document in legal practice.¹⁷⁵

Few law schools have formal writing across the curriculum programs or require writing in some nonwriting and nonseminar courses.¹⁷⁶ However, a formal program is not required to add a practical writing component to upper-level doctrinal courses. Adding a writing component or expanding the number of doctrinal courses that provide a writing component gives students more opportunities in the upper-level curriculum to practice writing and the skills found to promote student self-reported gains in writing. Furthermore, refining these skills in law school benefits new attorneys. As one scholar noted: “[G]ood legal writing is often the culmination of many skills important to legal practice (such as *legal analysis*, *legal research*, factual investigation, *advocacy*, and problem-solving)” (emphasis added).¹⁷⁷

IV. Law Schools May Struggle to Adopt These Recommendations

Making changes to a law school’s curriculum takes significant time, energy, and advanced planning. As such, this article’s recommendations to maintain the first-year legal writing curriculum as is and increase the opportunities for students to practice legal writing in the upper-level curriculum were intentionally kept modest. The goal was to suggest smaller but effectual curricular changes that require students to use their writing skills and the three skills found to bolster student self-reported gains in writing. Furthermore, these recommendations were designed to encourage support for courses that already incorporate all these skills and demonstrate how more of these skills can be incorporated into existing courses. However, implementing these recommendations may still be challenging because of institutional inertia and financial costs to law schools and their students. Each of these issues is explored briefly in the following sections.

A. Institutional Inertia

Most law schools are slow to embrace change and seem to prefer continuing with the teaching styles traditionally used in legal education. The Socratic method has been a long-standing hallmark of law school pedagogy, with one national report noting that “[t]ypical classroom instruction at most law schools today would be familiar to any lawyer who attended law school during the

174. LSSSE 2006 Annual Survey Results, *supra* note 31, at 13.

175. Lysaght & Lockwood, *supra* note 160, at 105.

176. ALWD/LWI 2017-2018 Survey, *supra* note 101, at 211.

177. Keene, *supra* note 132, at 476.

past hundred thirty years.”¹⁷⁸ First-year legal writing courses have a curriculum that has seen little change in a quarter-century.¹⁷⁹ In fact, most of the first-year curriculum has been static for decades as well.¹⁸⁰ Fortunately, bright spots in curricular innovation over the years have been the growth of law school clinics¹⁸¹ and the use of “professional lawyers” as legal writing faculty (as opposed to third-year law students or other law professors).¹⁸²

However, law schools can move quickly and decisively when the situation warrants it. For instance, during the COVID-19 pandemic, every ABA-approved law school converted in-person courses to online courses.¹⁸³ Despite online learning’s relatively limited use in legal education, law faculty converted their spring semester courses in mere weeks (if not days). Obviously, changing the curriculum to include more writing activities cannot be done this rapidly and requires significant advanced planning. Depending on the law school, additional practical writing courses may need to be developed and additional faculty may need to be hired because of the lower student-faculty ratios required for writing courses. However, at a minimum, law schools must give faculty time to prepare new courses or retool existing courses to include or increase opportunities to practice writing, speaking, critical and analytical thinking, and legal research skills.

B. Financial Costs to Law Schools

Expanding even modestly the availability of upper-level legal writing courses and doctrinal courses with a writing component entails fairly significant financial costs. More faculty may need to be hired to teach scholarly writing (or seminar) courses and practically oriented writing courses (such as general drafting courses), since these require a low student-faculty ratio. Additionally, if law schools seek to reduce the size of doctrinal courses to incorporate more writing assignments or increased faculty feedback on student writing, hiring more faculty will be necessary to accommodate additional course sections. Furthermore, some current faculty members will need time (and perhaps a course release) to design new writing courses or retool existing courses to incorporate more writing and writing-related skills.

178. BEST PRACTICES FOR LEGAL EDUCATION, *supra* note 150, at 133.

179. Vorenberg & McCabe, *supra* note 5, at 3.

180. John H. Garvey, *The Business of Running a Law School*, 33 U. TOL. L. REV. 37, 37 (2001).

181. *Id.* at 38; see also Ann C. McGinley, *Employment Law Considerations for Law Schools Hiring Legal Writing Professors*, 66 J. LEGAL EDUC. 585, 585 (2017).

182. McGinley, *supra* note 181, at 585.

183. Paul L. Caron, *100% of Law Schools Have Moved Online Due to the Coronavirus*, TAXPROF BLOG (Mar. 18, 2020), https://taxprof.typepad.com/taxprof_blog/2020/03/list-of-law-schools-that-have-moved-online-due-to-the-coronavirus.html.

Generally, the cost of teaching the curriculum accounts for the largest portion of a law school's budget.¹⁸⁴ This cost includes more than salary and benefits for faculty members; it also encompasses the support they need to do their jobs.¹⁸⁵ Such support may include funding for research and professional development, plus secretarial assistance.¹⁸⁶ However, the cost of salaries varies greatly depending on the type of faculty member hired. Tenure or tenure-track faculty are generally paid more than legal writing faculty, and adjunct faculty earn significantly less because of their part-time status.¹⁸⁷

According to law school-reported data collected by the Society of American Law Teachers, tenure-track faculty at responding schools earn a base salary of between approximately \$72,000 and \$150,000 annually.¹⁸⁸ This is a wide salary range, and only a limited number of law schools reported salary data.¹⁸⁹ According to the Association of Legal Writing Directors and the Legal Writing Institute's (ALWD/LWI) most recent annual survey, the base salary of an entry-level legal writing faculty member depends on status—is the faculty member considered traditional or programmatic tenure-track or another status?¹⁹⁰ The mean starting salary for legal writing faculty at the responding schools was between approximately \$69,000 and \$95,000.¹⁹¹ While these two surveys are not directly comparable and both have low law school response rates, they serve to show the significant contrast in starting salaries between tenure-track and entry-level legal writing faculty.

Adjunct law faculty are usually practicing attorneys.¹⁹² Since they are not full-time faculty, hiring adjunct faculty can be a cost-effective way to offer certain courses.¹⁹³ Adjunct faculty can “teach[] specialized subjects such as discovery, summary judgment, and transactional drafting . . . [and] bring law practice into the classroom.”¹⁹⁴ Some adjunct faculty may even become mentors to their students as well.¹⁹⁵ However, these benefits must be balanced with the understanding that adjunct faculty are not present at the law school

184. Garvey, *supra* note 180, at 37.

185. Martin J. Katz, *Understanding the Costs of Experiential Legal Education*, 1 J. EXPERIENTIAL LEARNING 28, 36, 38 (2015).

186. *Id.*

187. Garvey, *supra* note 180, at 40-41.

188. 2018-2019 *SALT Salary Survey*, Society of American Law Teachers, 1-4 (2019), <https://www.saltlaw.org/wp-content/uploads/2015/03/SALT-salary-survey-2019-final-draft.pdf>.

189. *Id.*

190. ALWD/LWI 2017-2018 Survey, *supra* note 101, at 138.

191. *Id.* at 138-140.

192. Lamparello & MacLean, *supra* note 159, at 85.

193. Garvey, *supra* note 180, at 41.

194. Lamparello & MacLean, *supra* note 159, at 85.

195. *Id.* at 85-86.

as frequently as full-time faculty and have competing law practice demands on their time.¹⁹⁶ Thus, adjunct faculty may have limited time to work with their students.

Hiring additional faculty represents a significant financial expenditure for law schools. How will law schools pay for the expansion of their faculties to increase opportunities for students to practice writing and the three skills promoting student self-reported gains in writing? One way is to pass the costs on to students in the form of higher tuition, which is discussed in the next section.

C. Financial Costs to Law Students

To cover the cost of hiring additional faculty to support the expansion of curricular writing opportunities, law schools may be forced to increase their tuition. When this occurs, students may need to rely more heavily on student loans to finance their legal education. The percentage of students using loans to finance their legal education varies by law school.¹⁹⁷ However, for the class of 2019, all but one law school surveyed had over 50% of their graduates with law school loans; this is especially significant considering that 181 ABA-approved law schools provided student loan data.¹⁹⁸ The average student loan debt also varies by law school.¹⁹⁹ For the class of 2019, law schools reported an average student loan debt of approximately \$110,000—which was approximately \$2000 higher than for the class of 2017.²⁰⁰

This high level of law student borrowing should not come as a surprise, as it has been increasing for years. LSSSE researchers examined trends on student loan debt over a decade, specifically analyzing data from LSSSE administrations in 2006, 2011, and 2015.²⁰¹ One of the findings was that the percentage of student respondents who expected to have law school debt greater than \$100,000 grew from 32% in 2006 to 44% in both 2011 and 2015.²⁰² LSSSE researchers also noted that “[w]ith a few slight exceptions, in every survey year, respondents were less likely to state that they would attend the

196. Garvey, *supra* note 180, at 41.

197. E-mail from Tiffane Cochran, Managing Director, Research, AccessLex, to author (Apr. 8, 2020, 17:59 CST) (on file with author). Ms. Cochran shared subscription-based U.S. News student loan data in a spreadsheet from which the author did some basic calculations.

198. *Id.*

199. *Id.*

200. *Id.*

201. *2015 Annual Survey Results: How a Decade of Debt Changed the Law Student Experience*, Law School Survey of Student Engagement 8 (2015), <https://lssse.indiana.edu/wp-content/uploads/2016/01/LSSSE-Annual-Report-2015-Update-FINAL-revised-web.pdf>.

202. *Id.* at 10.

same law school as expected debt increased.”²⁰³ They also observed a similar trend regarding student satisfaction with their law school experience—“respondents who expected to owe more than \$120,000 were noticeably less likely to respond favorably to the satisfaction questions.”²⁰⁴ This means law schools with higher average student debt loads could have less satisfied (or supportive) students and alumni than schools with smaller average debt loads.

V. Conclusion

Complaints by the bench and bar that new attorneys do not write well have lingered for decades. Due to these complaints and the fundamental importance of writing to the legal profession, the author sought to determine whether any law school involvement activities affected law student self-reported gains in writing skills in her dissertation research study. This article provided an overview of that research study, which examined the responses of full-time third-year law students responding to the 2018 administration of LSSSE. The results of the study revealed that law student self-reported gains in speaking, critical and analytical thinking, and legal research skills improved law student self-reported gains in writing skills.

Based on these results, this article recommends that law schools maintain their first-year legal writing curriculum, since it generally incorporates opportunities to practice writing and the three skills that boost law student self-reported gains in writing. The article further recommends increasing the opportunities for law students to practice writing and the three aforementioned skills in the upper-level curriculum through the use of scholarly and practical writing courses and integration of these skills into traditional doctrinal courses. Finally, this article acknowledges the challenges inherent in implementing its recommendations at law schools, namely institutional inertia and financial costs to law schools and their students.

203. *Id.* at 15.

204. *Id.* at 14-15.