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A Contemporary Model for Using Teaching Assistants in Legal Writing Programs

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A CONTEMPORARY MODEL FOR USING TEACHING ASSISTANTS IN LEGAL WRITING PROGRAMS

Patricia Grande Montana[†]

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I. INTRODUCTION

As law schools downsize their faculty to offset falling student enrollment, faculty members will likely face greater teaching loads and increased pressure to produce graduates who can not only pass the bar, but are “practice ready.”¹ Formative assessment, prompt

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1. For years now, the general consensus has been that law school graduates

and individualized feedback, mentoring, and one-on-one conferences are all integral to achieving those goals.² As a consequence, faculty will need to rethink their approach to teaching so that they can meet these new expectations. This is particularly true in legal writing courses, where students are researching and writing throughout the year, and the demand for practice writing opportunities and feedback is high. Teaching assistants are an underutilized resource available at most law schools that could greatly assist legal writing faculty in preparing students for the practice of law.

This Article argues that legal writing programs should incorporate teaching assistants into their teaching model. To the extent legal writing faculty already rely on teaching assistants to teach research and citation, or provide general instruction in predictive and persuasive writing, they should assess whether they are maximizing their use to improve first-year students' performance in these essential skills.³ Teaching assistants should be used more purposefully as well as in more varied ways. Thus, this Article proposes a contemporary legal writing instructional model whereby teaching assistants help in all areas of instruction. They

are not adequately prepared for the practice of law. In 2007, The Carnegie Foundation for the Advancement of Teaching published its report, "Educating Lawyers: Preparation for the Profession of Law", and the Clinical Legal Education Association published its study, "Best Practices for Legal Education". See generally ROY STUCKEY ET AL., *Best Practices for Legal Education: A Vision and A Road Map* (2007); WILLIAM M. SULLIVAN ET AL., *Educating Lawyers: Preparation for the Profession of Law* (2007), http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary_pdf_632.pdf. These reports validated what lawyers, judges, academics, and even non-lawyers had been saying all along: "[M]ost law school graduates are not as prepared for law practice as they could be or should be. Law schools can do much better." STUCKEY ET AL., *supra* at 7. This sentiment has only intensified recently, as legal employment opportunities continue to shrink and law school tuition continues to grow. See, e.g., David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 9, 2011, at BU1; Brian Z. Tamanaha, *The Mismatched Economics of Legal Education*, 85 N.Y. ST. B.J. 14–15 (2013).

2. See STUCKEY ET AL., *supra* note 1, at 119–20, 123–27, 259–61 (explaining how more active learning, regular and prompt feedback, and assessments throughout, among other things, can assist in better preparing law students for the practice of law); see also SULLIVAN ET AL., *supra* note 1, at 188–89 (arguing that law schools should give more attention to formative assessment whereby "feedback is provided primarily to support students' learning and self-understanding rather than to rank or sort").

3. See Ruth C. Vance, *The Use of Teaching Assistants in the Legal Writing Course*, 1 No. 1 Persp: Teaching Legal Res. & Writing 4 (1992).

will teach, provide feedback, and mentor students throughout. With the professor's guidance, teaching assistants will reinforce what students have learned in class and expand on that knowledge and experience by leading small group sessions.

Specifically, the Article first examines how law schools have traditionally used teaching assistants.⁴ Though there is a fair amount of information on how many law schools use teaching assistants and to what extent, there is not much detail on the way they are used. Nevertheless, the general impression is that teaching assistants are ancillary in most programs, serving mostly an affective role.⁵ Next, the Article explains the design of St. John's University School of Law's first-year legal writing program and its recent move to more fully integrate the use of teaching assistants.⁶ Drawing on my own use of teaching assistants as a model, the Article illustrates how a program that uses teaching assistants in a highly organized way to teach, provide feedback, as well as mentor students can greatly enrich the legal research and writing experience for first-year students.⁷

Then, the Article discusses how using teaching assistants in this way benefits everyone: first-year students, professors, and the teaching assistants themselves.⁸ For example, learning from a peer helps students acquire a firmer grasp on concepts because they can review what they learned or did not understand from their professors' instruction and ask clarifying questions.⁹ They can do all of this in a very supportive and collaborative environment, as working with a peer is usually far less intimidating than working directly with a professor. The use of teaching assistants also means that there are more opportunities for students to practice research and writing, revise and polish their drafts, and receive emotional and other academic support.

4. See *infra* Part II.

5. See Jay M. Feinman, *Teaching Assistants*, 41 J. LEGAL EDUC. 269, 270 (1991) (describing how teaching assistants have "related cognitive and affective roles").

6. See *infra* Part III.

7. See *infra* Part III.A.

8. Ted Becker & Rachel Croskery-Roberts, *Avoiding Common Problems in Using Teaching Assistants: Hard Lessons Learned from Peer Teaching Theory and Experience*, 13 LEGAL WRITING: J. LEGAL WRITING 269, 273 (2007); see *infra* Parts III.B.1-3.

9. See *infra* Part III.B.1.

The addition of teaching assistants will allow professors to use their time more efficiently and productively too.¹⁰ Because teaching assistants will underscore important class instruction and answer many of the students' pressing questions, professors will have more time to meet with students in groups or individually on discrete topics and specific writing projects. The extra time will allow them to delve deeper into the law and teach advanced research and writing techniques as well. Additionally, they can use their teaching assistants to explore different teaching methods and experiment with new material. The result is a more enriched curriculum and an overall improved learning experience for the students.

Lastly, the teaching assistants themselves benefit from the experience because they are able to develop and refine their own research and writing skills.¹¹ For example, "the processes of reviewing and organizing material might even lead to a partial or complete reformulation of the subject, giving rise to new insights or a more thorough comprehension of the deep structure of the material."¹² By moderating class discussions and meeting with students, teaching assistants also improve their oral presentation skills. Moreover, they learn to develop confidence in their writing and editing skills, collaborate with different types of people, and manage their time more effectively.

In addition to these many benefits, using teaching assistants is a very "reliable" and "low-cost method" to improving first-year students' legal research and writing skills.¹³ Accordingly, they should be utilized more regularly and productively. Thus, this Article presents a proposal for how to do so.¹⁴ At a time where budgets are tight but law schools must still improve upon how they prepare students for the practice of law, it's only logical that they should make greater use of teaching assistants.

10. See *infra* Part III.B.2.

11. See *infra* Part III.B.3.

12. Becker & Croskery-Roberts, *supra* note 8, at 277.

13. Julie M. Cheslik, *Teaching Assistants: A Study of Their Use in Law School Research and Writing Programs*, 44 J. LEGAL EDUC. 394, 411, 414 (1994).

14. See *infra* Part IV.

II. THE TRADITIONAL ROLE OF TEACHING ASSISTANTS IN LEGAL WRITING PROGRAMS

For decades, law schools have been using teaching assistants in some fashion to help administer their first-year legal research and writing courses.¹⁵ Yet, there is scarce detail on how law schools employ their teaching assistants and the specific role they play in the first-year legal writing curriculum. ALWD/LWI's annual surveys are helpful in showing their general use. For example, in the 2014 survey, about 69% (122 of 176) of North American law schools reported using teaching assistants in their legal writing programs.¹⁶ Only a handful of law schools reported using teaching assistants to do most of their classroom teaching.¹⁷ Rather, most law schools used them moderately to assist, rather than assume, their teaching load. Specifically, about 60% (105 of 176) of them used the teaching assistants to teach a total of 25% or less of their total classroom teaching hours.¹⁸

Not surprisingly, law schools use teaching assistants largely to instruct on citation.¹⁹ Nearly 81% of the schools (94 of 113) reported using teaching assistants in this way.²⁰ Most law schools

15. Cheslik, *supra* note 13, at 394 (“One of the most prevalent uses of peer teachers in the law school setting is the employment of upper-level law students as teaching assistants in the first-year legal research and writing . . . course.”); *see generally infra* note 16.

16. ASSOCIATION OF LEGAL WRITING DIRECTORS/LEGAL WRITING INSTITUTE, REPORT OF THE ANNUAL LEGAL WRITING SURVEY 89, 89 (2014), [hereinafter ALWS], <http://www.alwd.org/wp-content/uploads/2014/07/2014-Survey-Report-Final.pdf>. The Association of Legal Writing Directors (ALWD) “is a non-profit professional association of directors of legal reasoning, research, writing, analysis, and advocacy programs from law schools throughout the United States, Canada and Australia.” ASSOCIATION OF LEGAL WRITING DIRECTORS, <http://www.alwd.org/> (last visited Jan. 23, 2016). The Legal Writing Institute (LWI) “is a nonprofit organization dedicated to improving legal communication by supporting the development of teaching and scholarly resources and establishing forums to discuss the study, teaching, and practice of professional legal writing.” LEGAL WRITING INSTITUTE, <http://www.lwionline.org/> (last visited Jan. 23, 2016).

17. *See* ALWS, *supra* note 16, at 89. Only about 9% of the surveyed schools “substantially” or “significantly” use teaching assistants. *Id.* “Substantially” means 75% of the classroom teaching hours and “significantly” means 50% of the classroom teaching hours. *Id.* And only one school used teaching assistants “exclusively.” *Id.*

18. *Id.*

19. *See id.*

20. *Id.*

also reported using teaching assistants to teach research, advocacy or moot court, and objective legal writing.²¹ In addition to their teaching responsibilities, most teaching assistants also hold office hours where they address research and writing and other law school questions.²² The average number of students assigned to a single teaching assistant was approximately 22 students, with each spending on average between 67 to 73 hours a semester on their duties.²³ Despite this heavy work load, law schools devote an average of 10.2 hours on training their teaching assistants.²⁴

To date, Julie Cheslik's 1994 survey on the use of teaching assistants by sixty-six accredited law schools is the only one that has further analyzed the roles of teaching assistants in legal writing programs. Cheslik's survey showed that teaching assistants typically serve four distinct functions.²⁵ They act as: (1) classroom teachers; (2) graders or evaluators; (3) mentors; and (4) mediators.²⁶ As classroom teachers, teaching assistants "present[] substantive material or evaluate[] and even grade[] written work."²⁷ Cheslik found that nearly every program used teaching assistants to evaluate student work and slightly over half of them used teaching assistants to grade student work.²⁸ More than half of the responding schools also used teaching assistants to "present[] new substantive information, usually in a small-group setting."²⁹ The most common subjects were legal research, writing, and citation form.³⁰

As graders or evaluators, teaching assistants either evaluate or grade the students' written work.³¹ Nearly every law school allowed teaching assistants to evaluate or comment on student work.³² Approximately 57% of them indicated that the teaching assistants

21. *See id.* (noting that approximately 55%, 62 out of 113, reported using teaching assistants to teach research, 50%, 56 out of 113, to teach advocacy or moot court, and 42%, 47 out of 113, to teach objective legal writing).

22. *See id.* at 91 (noting that approximately 82%, 115 out of 140, of the law schools reported that their teaching assistants hold office hours).

23. *Id.* at 90–91.

24. *Id.*

25. Cheslik, *supra* note 13, at 395.

26. *Id.*

27. *Id.* at 396.

28. *Id.* at 396–97.

29. *Id.* at 397.

30. *Id.*

31. *Id.*

32. *Id.* at 400.

provided the final critique whereas approximately 17% stated they provided only an initial critique, which was then reviewed by the instructor.³³

Interestingly, slightly more than half of the law schools gave teaching assistants responsibility for some part in the grading decision.³⁴ However, grading appeared to be “largely clerical,” whereby the teaching assistant evaluated research and citation, “presumably against an approved key”.³⁵ Nevertheless, a majority of schools reported “problems with variation in quality, variation in standards, and dissemination of information” when teaching assistants participated in the grading.³⁶ Therefore, many schools explained ways that they had mitigated these problems; for example, they made the grades subject to faculty approval or counted them as only a portion of the course grade or limited them to pass/fail.³⁷

Finally, as mentors, teaching assistants give feedback and advice on student writing and serve as a “sounding board.”³⁸ Likewise, in their roles as mediators, teaching assistants “report to their faculty on student achievement, student understanding of the material, and student complaints.”³⁹ Though there are great variations in how teaching assistants are used, the primary goal seems to be the same: to assist in improving first-year law students’ skills in legal research and writing.

Other than ALWD/LWI’s annual surveys and Cheslik’s study, most of what is known about the use of teaching assistants is anecdotal or described only cursorily in the literature. But what is known is that teaching assistants provide tremendous support to the legal writing programs that do use them. For example, in 1992, Ruth Vance, Professor of Law at Valparaiso University School of Law, wrote about the law school’s use of teaching assistants in its legal writing program.⁴⁰ There, legal writing professors had one

33. *Id.*

34. *Id.* at 397.

35. *Id.* at 399.

36. *Id.* at 398.

37. *Id.* at 399.

38. *Id.* at 396.

39. *Id.* 400.

40. Vance, *supra* note 3, at 4; *see also* James D. Gordon, *An Integrated First-Year Legal Writing Program*, 39 J. LEGAL EDUC. 609 (1989) (describing Brigham Young University Law School’s use of teaching assistants to teach legal writing in an integrated manner as part of a small-section substantive law course). At Brigham

teaching assistant for every twelve to fifteen students.⁴¹ The teaching assistants would assist the professors by developing and “troubleshoot[ing]” assignments, commenting on student papers, and judging oral arguments.⁴² With respect to commenting on student papers, they would “provide[] extensive critical feedback on student assignments short of assigning the final grade.”⁴³ They would also hold weekly group meetings with students; the “agenda . . . include[d] reviewing directions for assignments, answering questions about pending assignments, and pointing out common errors on the graded assignments.”⁴⁴ Finally, they would counsel students individually by commenting on their drafts and discussing comments on their graded assignments.⁴⁵

In 2003, Professor Carol Wallinger described Rutgers Law-Camden’s teaching assistant program as an “instrumental part of [its] legal writing curriculum.”⁴⁶ At the time, each legal writing professor was assigned four teaching assistants, who were selected through a competitive application process and received academic credit for their work.⁴⁷ The teaching assistants served two main functions: to assist the professor in preparing student materials and to assist the students in learning research, citation, and other legal writing topics.⁴⁸ They prepared sample memos and briefs and helped with the oral arguments.⁴⁹ “They also h[e]ld weekly ‘theme’ office hours, schedule[d] two to three individual appointments with each student each semester, and [taught] the final citation

Young University Law School, each professor used several upper-class teaching assistants to “help develop the assignments, critique the students’ first drafts, and hold conferences with students.” Gordon, *supra* at 609. “Dividing the duties [between professors and teaching assistants] avoids burnout and interference with the professors’ other teaching interests.” *Id.* at 611.

41. Vance, *supra* note 3, at 4.

42. *Id.*

43. *Id.* at 5.

44. *Id.* at 4.

45. *Id.* (noting that teaching assistants often would “find that they must switch from the role of teacher to that of counselor to allay the fears and recognize the frustrations that go with being a first-year law student.”).

46. Carol Lynn Wallinger, *Our Teaching Assistants Set Us Apart*, THE SECOND DRAFT, July 2003, at 16, <http://lwionline.org/publications/seconddraft/jul03.pdf> (describing the use of teaching assistants at Rutgers-Camden law school).

47. *Id.*

48. *Id.*

49. *Id.*

class of the semester.”⁵⁰ They informally mentored students too by “answering questions one-on-one, often in the library or hallway.”⁵¹

Also in 2003, Stetson Law used upper-class students, called Teaching Fellows, to staff its Legal Writing Clinic.⁵² Each Teaching Fellow worked six to seven hours each week in the clinic, conducting twenty-minute appointments with students.⁵³ They also “log[ged] several additional hours each week reviewing and commenting on papers.”⁵⁴ “Their primary function [was] to provide targeted feedback on drafts of assignments.”⁵⁵ In short, they “help[ed] [Stetson Law] achieve [its] mission of teaching fundamental communication and analytical skills.”⁵⁶

In 2011, the then director of Legal Writing at University of Maryland School of Law, Susan Hankin, described how the law school used teaching assistants for its integrated legal writing program. The program connected its Legal Analysis and Writing course to a substantive course in Torts, Contracts, or Civil Procedure, taught by the same professor.⁵⁷ The teaching assistants “help[ed] by giving feedback on drafts, meeting one-on-one with students, and teaching some in-class workshops.”⁵⁸ Notably, the teaching assistants participated in a Teaching Fellow seminar, which trained them for the “various roles they . . . play[ed].”⁵⁹

Based on the survey data and these examples, it is apparent that law schools are using teaching assistants in varied ways, but largely for tasks other than classroom teaching. Professors will use them to help prepare assignments, provide written and oral feedback on students’ writing, and answer student questions

50. *Id.*

51. *Id.*

52. Brooke J. Bowman, *Our Extended Family*, THE SECOND DRAFT, July 2003, at 16, <http://lwionline.org/publications/seconddraft/jul03.pdf>.

53. *Id.*

54. *Id.*

55. *Id.* The Teaching Fellows also “enhanced communication” between the students and professors by informing the professors about common questions the students have or identifying particular students who might be struggling. *Id.*

56. *Id.*

57. Susan J. Hankin, *Bridging Gaps and Blurring Lines: Integrating Analysis, Writing, Doctrine, and Theory*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 325, 334–35 (2011), <http://www.legalwritingjournal.org/wp-content/uploads/2015/07/17-13-Hankin.pdf>.

58. *Id.* at 335.

59. *Id.* at 335 n.29.

informally or formally in office hours, for example. Almost always, the teaching assistants also serve as role-models to the students, mentoring them on legal writing and other first-year issues. It's less obvious that law schools are using teaching assistants to facilitate substantive classroom teaching on legal research and writing. Though they are certainly used to teach workshops or classes on discrete topics, like citation, they appear to be limited and sporadic. Thus, there is ample room to integrate teaching assistants more formally into the teaching of legal research and writing.

III. ST. JOHN'S UNIVERSITY SCHOOL OF LAW'S USE OF TEACHING ASSISTANTS

Recently, the legal writing faculty at St. John's University School of Law expanded how it used teaching assistants in its program. Though individual legal writing professors might have experimented with using teaching assistants in the past, it was typically in an ad hoc way. For example, they might have used them to research writing assignments, teach a citation, research a class, or informally meet with and mentor students.⁶⁰ But it was not until fall 2013 that the legal writing faculty,⁶¹ as a group, first decided that the use of teaching assistants in a more formal way would serve to enhance the first-year legal writing program.

This decision was motivated largely by significant improvements the faculty had just made to the first-year legal writing curriculum—a two semester, 4 credit sequence of legal research and writing. Earlier in 2013, the entire faculty, at the legal writing faculty's request, revised the curriculum to better prepare its students for the practice of law and more accurately reflect the realities of a modern law practice. Specifically, the requirement that the students write (and then rewrite) an appellate brief for a grade was eliminated, as so few students wind up practicing

60. For instance, for years, I had used teaching assistants to research statutes and case law for assignment ideas. On occasion, I had asked teaching assistants to be creative and suggest topics for possible assignments. However, I had never used teaching assistants to assist in formally teaching my first-year students how to research and write effectively.

61. During the 2013–2014 academic year, there were five full-time legal writing professors who taught in the day division. St. John's University School of Law has an evening program as well, but because an evening program presents different issues with respect to scheduling, I've only included the general experiences in the day program.

appellate advocacy immediately upon graduation. Additionally, the faculty increased the number of writing assignments the students must complete for a grade and agreed to assign different and more practical types of legal writing assignments throughout both semesters.⁶² The goal was twofold: to allow students to engage in written legal analysis more frequently as well as work on writing assignments that are more relevant in today's legal market.

As a result, the students now complete about eight graded assignments throughout the year, two of which are rewrites of earlier graded drafts. They include a variety of documents, such as a client advice letter, an inter-office email report, a modern inter-office memorandum, a letter to opposing counsel, a preliminary injunction brief, and a summary judgment brief. Previously, students were assigned at most three different types of writing projects—a closed-universe memo, a trial brief, and an appellate brief—all of which were lengthy and took nearly a month each to complete.

Not surprisingly, the increase in the number and type of assignments meant a substantial increase in workload for both the faculty and students.⁶³ The increase in assignments naturally increased the demand and need for quick and helpful feedback. Thus, the legal writing faculty decided to use teaching assistants as a way to give more and faster feedback as well as alleviate some of the burden that the new workload would create.

Therefore, each legal writing professor hired at least two teaching assistants to make that happen.⁶⁴ Though each professor ultimately used the teaching assistants in slightly different ways, there was one central theme. The teaching assistants served a more expansive role than they had in the past. They were not just mentoring students or serving an ancillary role anymore; they were teaching too.

62. The names of the courses were also changed to Legal Writing I and Legal Writing II. Legal Writing I teaches students legal writing, research and analysis, focusing on predictive legal writing. Legal Writing II further develops students' writing, analytical, and research skills, focusing primarily on persuasive legal writing. In Legal Writing II, students also participate in an oral argument.

63. This was especially true since the number of credits allotted to the first-year legal writing classes remained unchanged.

64. Each legal writing professor was assigned approximately forty first-year students.

A. *An Example Use of Teaching Assistants*⁶⁵

In 2013, I hired four second-year students to serve as teaching assistants for the entire academic year. Because there is no formal teaching assistant program at St. John's, faculty can hire teaching assistants directly using whatever criteria or method they prefer. I elected against an open application process and instead hand-picked some of my strongest students from the first-year class. They were strong students not only because they were outstanding writers and performed well in both Legal Writing I and Legal Writing II, but also because they demonstrated excellent oral presentation and time management skills, had pleasant and encouraging personalities, understood the program's goals, and were very respectful of my authority.⁶⁶ Of course, they were highly proficient in writing, analysis, research, and oral advocacy as well. Finally, because these students had just completed their first-year with me, they were familiar with my teaching style and expectations, and could easily relate to the students' experiences.

Both my Legal Writing I and Legal Writing II class was divided into two parts: a large class session followed by a small class session later in the week. The entire class, of approximately 40 students, would meet with me on Tuesday mornings for two hours. The students would then meet with their designated teaching assistant on Thursdays for another hour for what were called "breakout sessions." Each teaching assistant was assigned about ten students. The teaching assistants ran all of the breakout sessions; I was not present for any of them.

In the large class session, I covered all of the relevant skills instruction. In other words, I was the one who taught the students how to research and analyze legal problems, how to write predictive and persuasive legal documents, how to cite, and how to prepare and present an oral argument. The breakout sessions provided an opportunity for students to revisit that instruction in smaller groups and, for many, in a more comfortable setting. Significantly, the teaching assistants did not teach anything new in the breakout

65. For this article, I will describe how I used my teaching assistants. One of my faculty colleagues, Elyse Pepper, used teaching assistants in virtually the same way. From time to time, I might draw on our collective experiences.

66. Feinman, *supra* note 5, at 277 (explaining how teaching assistants must be "dependable, communicate well, deal well with people, and have reasonable command of the subject matter").

sessions. Rather, they reviewed what I had presented in class and, when time permitted, delved deeper into the material and presented more writing opportunities for the students.

The breakout sessions were purposefully learner-focused too. The teaching assistants led the classes, but rarely lectured. Therefore, the first-year students were able to engage with the material in a very active way. For example, they would write discrete sections of an assignment, revise their drafts, edit sample drafts, work through research problems, and practice citation. There were opportunities for the students to work individually as well as collaborate with their peers on guided exercises. But unlike a large class, which due to its size, naturally presents fewer occasions for active leaning, all of the breakout sessions were entirely student-focused.

The teaching assistants also served to clarify any confusion, address concerns the students might have had about the material or assignments, and answer questions. Not surprisingly, the teaching assistants often informally mentored students on how to manage their time, balance a personal life, and cope with the general stress and anxiety associated with law school, among other things.

In addition to leading the breakout sessions, the teaching assistants would assist me in providing feedback on the students' writing, including on the graded assignments. The teaching assistants would comment electronically on student papers, as was my practice, by using the "comment" feature in Microsoft Word. Occasionally, they used the "track changes" feature to demonstrate how a word, sentence or citation should be edited, for example. For every assignment, I randomly assigned a group of student papers to each teaching assistant for commenting. Though the teaching assistants critiqued the graded assignments, they did not participate in assigning grades. I alone graded the assignments.⁶⁷

67. This was communicated to the students in my course guidelines. *See infra* Appendix A. This is important for a number of reasons but particularly for the relationship between the teaching assistant and students. "Allowing TAs to grade—or even to suggest grades—introduces a dangerous complication into their relationship with students." Feinman, *supra* note 5, at 274. "If it is clear to all that the TAs' role is limited to providing help, students have an incentive to make the most of the resource without worrying about being formally evaluated." *Id.*

Because I selected my former students for the position, there was no need for me to extensively train them.⁶⁸ Before each semester began, however, I met with them as a group and described my course goals, my expectations for them, and the overall organization of the course and assignments. We periodically met as a group again throughout the year, but we connected routinely every week either in person or over email so that I could closely monitor their performance. I also had extremely tight control over what they taught in the breakout sessions and how they taught it. After the large class on Tuesdays, I would email the teaching assistants a summary of what I taught.⁶⁹ I would explain where I thought the students were confused and where they would benefit from additional instruction.

I would also detail what I wanted the teaching assistants to cover in the breakout sessions and give them all of the necessary material. Though the teaching assistants contributed often to the lesson planning, they did not design the lessons or any of the in-class exercises. Thus, if I wanted the students to work on exercises during the breakout sessions, I would prepare them and then explain them to the teaching assistants. In fact, I would prepare accompanying answer keys for every exercise so that the teaching assistants could effectively guide the students to the right answers and communicate the best approach.⁷⁰

68. When using former students, professors “can assign a wide range of tasks with confidence.” JOEL ATLAS ET AL., *A GUIDE TO TEACHING LAWYERING SKILLS*, 152 (Carolina Academic Press 2012). “Former students are familiar with the professor’s teaching style and preferences and can explain first-hand to current students what the professor expects.” *Id.* at 165. “Moreover, former students also may feel a special loyalty or connection to their professor and will more likely agree with the professor’s preferences and goals for the course; thus, they will be less likely to contradict or undermine the professor’s instructions or teaching.” *Id.*

69. Ideally, I would have liked the teaching assistants to observe my classes. But it was not possible, as all of them had class conflicts at that time. Going forward, I will make attending my large classes a requirement so that I do not have to explain what happened in class each week and so that the teaching assistants are more familiar with what was covered and how it was presented.

70. See *infra* Appendices B, C. Appendix B is an example of an in-class exercise used in one of the breakout sessions. It guided the students through the writing of the thesis in Defendant’s memorandum of law in support of its motion for summary judgment, dismissing Plaintiff’s Title IX sexual harassment complaint. Appendix C is the completed version (i.e., a model thesis) that was given to the teaching assistants so that they could competently work through the exercise with the students.

Similarly, if the students were asked to edit their work or peer critique another student's work in a breakout session, I would give the teaching assistants examples of how the students could do so effectively. For the sessions on research, I would outline the research steps I wanted the students to work on in class and explain to the teaching assistants what the students should find and what cases are relevant or not. Additionally, I would direct the teaching assistants to demonstrate specific useful research paths to the class using WestlawNext or LexisNexis.⁷¹ Moreover, when reviewing citation, I would provide the sample citations that needed to be corrected as well as the corrections and pertinent Bluebook references.⁷² Further, I would tell the teaching assistants how they should run the exercises: individually, in pairs or groups, as a class, etc.⁷³ Therefore, I provided both the content as well as the teaching methodology for every exercise used in each breakout session. As a result, there was low risk that the teaching assistants would teach something that was inaccurate or inconsistent with my instruction.

I also had tight control over how the teaching assistants gave feedback on the assignments. For every assignment, the teaching assistants were given an annotated sample answer.⁷⁴ The annotations extrapolated on what I was looking for and how the teaching assistants could best provide feedback in that regard. For example, if there was another suitable case that the students could use in lieu of the one in the sample, that information would be included in an annotation. If the organization of a particular point was important, that would be noted. If there was a concept or a case that was necessary to the analysis and thus could not be omitted, that would be indicated too. If there was an obviously ineffective way to organize the analysis or incorrect way to state the law, that

71. See *infra* Appendices D, E. Appendix D is an example of an in-class research exercise used in one of the breakout sessions. The students were asked to find authority relevant to their summary judgment brief assignment. Appendix E is a completed version for the teaching assistants. It also includes research path ideas for the teaching assistants to share with the students.

72. See *infra* Appendix F. Appendix F is an example of an answer key for an in-class citation exercise addressing some recurring citations mistakes. The students had to identify and correct the errors in the citations.

73. The teaching assistants always followed my recommendations, but had the discretion to vary the teaching methodology if they thought it would result in a more productive session.

74. Though Professor Pepper and I collaborated on writing the sample answers, she was the primary author.

would be explained. The annotations also explained my expectations for the assignment and suggested ways that the teaching assistants could frame their comments. Therefore, the sample not only provided a model answer, but it also helped the teaching assistants write effective comments. This level of control ensured that there was consistency in the number and type of comments as well.⁷⁵

Even though the teaching assistants did the lion's share of the commenting throughout the year, they did not do it alone. I would always take a set of papers for myself to comment on.⁷⁶ After reading a few papers, I would easily spot where most students had problems. It is at this point that I would give the teaching assistants additional direction on how to comment on those common problems.⁷⁷ For the first few assignments, I also asked the teaching assistants to send me one of the papers that they had commented on so that I could review it for accuracy, completeness, tone, etc. I then provided comments on their comments so that they could improve. Once they became more comfortable with the process and better at commenting, I dropped this added step. Nevertheless, I always reviewed every comment that a teaching assistant made on a student's paper. If any of the comments needed editing, I would do so. If a comment was not appropriate, I would delete it. If a comment was lacking, I would add it. I would then communicate my suggestions for improvement to the teaching assistants so that they could better their commenting on future assignments. This process, though tedious, allowed me to control for consistency as well as assign a final grade.

B. Benefits of Using Teaching Assistants in a Legal Writing Program

The benefits of using teaching assistants in a first-year legal writing program are numerous. Teaching assistants “give students additional supervised engagement with the material and provide opportunities for evaluation of students and feedback to the

75. This was particularly important since there were five of us (myself and four teaching assistants) who would comment on each assignment.

76. I would vary the set each time so that every student received comments exclusively from me at least once each semester.

77. For the longer assignments, I also would send the teaching assistants my draft comments on two student papers as well. The purpose was to show, rather than explain, what I expected in terms of the students' work product and how to write useful feedback to the students.

professor, all at a lower cost in professor's time and other resources."⁷⁸ They also promote a more collaborative learning environment and richer mentoring experiences for students. Beyond the benefits to the students and the faculty, the teaching assistants themselves gain from their participation. By reading and commenting on other students' legal writing and leading class discussions, they inevitably refine their researching, writing, and oral advocacy skills, among others.

1. *Benefits to Students*

The biggest benefit is that the students receive more of everything. They get more individualized instruction, more contact with the professor, and much more feedback.⁷⁹ "Feedback is an essential aspect of learning, and students who receive feedback tend to be more engaged in their study of the law."⁸⁰ The feedback is also prompter,⁸¹ which is similarly beneficial to the students' learning. "The more time that passes between assessment and feedback, the less likely it is that students will even remember the exercise, let alone be able to adjust their approach based on their performance."⁸²

Teaching assistants "can also help with student learning *because* they are closer to being novices than experts."⁸³

Professors, whose knowledge of the law is comparatively vast, may find it difficult to place themselves in the shoes of the first-year law student. In contrast, [teaching assistants] may be better at modeling a neophyte's step-by-step approach to understanding a topic due to their

78. Feinman, *supra* note 5, at 276.

79. Wallinger, *supra* note 46, at 17 (explaining how Rutgers-Camden views its teaching assistants as "essential resources of the program, because they exponentially increase the amount of individual feedback each student receives").

80. Herbert N. Ramy, *Moving Students from Hearing and Forgetting to Doing and Understanding: A Manual for Assessment in Law School*, 41 CAP. U. L. REV. 837, 852 (2013) (urging that law schools increase assessments and explaining how teaching assistants can help; students who receive more feedback tend to prepare more for class and work harder to meet the course expectations).

81. Now that I use my teaching assistants to help comment on assignments, I am able to turn them around much faster, typically within two weeks, which is remarkable given that I have over forty first-year students and teach other advanced intensive writing courses at the same time.

82. Ramy, *supra* note 80, at 853.

83. *Id.* at 866 (emphasis added).

‘imperfect mastery’ of the material.⁸⁴

Experienced legal writers make decisions about organization, framing, sentence structure, phrasing, and tone, among other things, largely intuitively. It is not always easy to break down into simple terms a process that is intuitive. Having just learned the process, and it likely not yet being intuitive to them, teaching assistants are in a unique position to explain it in a way that is relatable to first-year students.⁸⁵ They are credible teachers too because they were students in the same class just a year or two earlier.⁸⁶

Also significant, teaching assistants may provide feedback or guidance in a different, and perhaps more useful, way than the professor⁸⁷:

Professors and [teaching assistants] may evaluate a particular concept in different ways, and the variety of approaches may make it more likely that students receive explanations that are meaningful to them. Professors who are intimately familiar with a concept might unintentionally omit helpful information or procedural steps when teaching that concept. Because peer instructors have only a limited mastery of the material, they may be less likely to omit necessary steps in their explanations. A peer instructor also may be better able to communicate some concepts to first-year students in terms that they will understand.⁸⁸

They also are useful because they “serve as a non-judging audience.”⁸⁹ Law students are typically very anxious as they work on their legal writing assignments.⁹⁰ Therefore, it is easier for them to learn and adapt when they feel that their readers are not judging

84. *Id.*

85. *Id.*

86. Benjamin E. Alba, *Team Up with Your TA: Incorporating Late-Night TV Elements into the LRW Classroom*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1943706 (last visited Jan. 23, 2016) (suggesting that “strategic classroom participation by the teaching assistant can be an excellent way to maintain attention and enhance [student] learning”).

87. ATLAS ET AL., *supra* note 68, at 160.

88. *Id.*

89. Kristen E. Murray, *Peer Tutoring and the Law School Writing Center: Theory and Practice*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 161, 175 (2011) (advocating that law school legal writing programs use peer-staffed writing centers).

90. *Id.*

or grading them, as is the case of peer teaching assistants.⁹¹ “A non-judging audience allows students to explore ideas in the early stages of the writing process.”⁹² Likewise, students can ask teaching assistants basic questions that they might have otherwise shied away from asking in the large class or to the professor directly.⁹³ The more comfortable students are in finding answers to their questions and experimenting with their research and writing, the more engaged they will be in their learning.⁹⁴

A related benefit to feedback from their peers is that students become accustomed to considering “audiences beyond the traditional ‘audience of one’ that is the professor.”⁹⁵ “[S]tudents begin to differentiate between standard legal syntax and usage and the style preferences of their ultimate, specific audience.”⁹⁶ When writing for law practice, students will need to address both their “primary and secondary audiences.”⁹⁷ The feedback they receive from both the teaching assistants and professors prepare them in this regard.

Additionally, the students benefit tremendously from the supplemental lessons they receive in the small class breakout sessions.⁹⁸ The breakout sessions provide more practice writing

91. *Id.* at 175–76.

92. *Id.* at 176.

93. See Philip C. Kissam, *Lurching Towards the Millennium: The Law School, the Research University, and the Professional Reforms of Legal Education*, 60 OHIO ST. L. J. 1965, 2010 (1999) (arguing for legal education reform that includes writing across the curriculum and suggesting use of teaching assistants as a low cost method of achieving that reform). “[M]any students in large classes often seem more willing to approach teaching assistants than professors to obtain feedback or simply to ask (their self-defined) ‘stupid questions’.” *Id.*; see also Becker & Croskery-Roberts, *supra* note 8, at 280 (“[S]ome students may be afraid to speak directly to the professor [particularly when the student has a complaint], and a teaching assistant may provide the less formal mentoring function that allows a timid student to get the help he or she needs.”).

94. Further, the more questions the teaching assistants are able to field, the more time the professor will have to address challenging topics with students. As a result, professor-student interactions are much more productive.

95. Murray, *supra* note 89, at 176.

96. *Id.*

97. *Id.*

98. Jared Lamb, *The Path of the Law School: Three Implementable Law School Reforms*, 3 FAULKNER L. REV. 343, 384 (2012) (recommending the use of teaching assistants to assist in developing alternative learning environments for law school students). “[U]sing teaching assistants will increase practical and theoretical learning opportunities that are necessary to develop a young lawyer’s

experiences and chances to study the subject in greater depth. They also give the students “additional opportunities to discuss their writing choices.”⁹⁹ “These interactions help to further enhance the students’ understanding of legal writing conventions.”¹⁰⁰ When the material is reinforced in small group sessions, this leads to “increased retention of difficult material.”¹⁰¹

Further, the breakout sessions lend themselves to more collaborative learning.¹⁰² Collaborative learning is essentially a work process in which participants share ideas and feedback concerning a particular task; it emphasizes cooperative efforts among students and others.¹⁰³ Peer teaching is a subset of collaborative learning.¹⁰⁴ Law schools are encouraged to present more collaborative learning opportunities throughout the curriculum, as its positive effects on student learning are clear¹⁰⁵:

Learning is enhanced when it is more like a team effort than a solo race. Good learning, like good work, is collaborative and social, not competitive and isolated. Working with others often increases involvement in learning. Sharing one’s ideas and responding to others’ reactions improves thinking and deepens understanding.¹⁰⁶

Finally, teaching assistants provide invaluable emotional support to students and assist in “creat[ing] an emotionally healthy learning environment.”¹⁰⁷ They can be a “positive force for reducing the stress and alienation felt by law students.”¹⁰⁸ They “have a foot in two different worlds—teacher and student—and as such, may be better able to relate to students who are struggling

specialization in a particular area of law.” *Id.*

99. Hankin, *supra* note 57, at 335.

100. *Id.*

101. Becker & Croskery-Roberts, *supra* note 8, at 282.

102. See STUCKEY ET AL., *supra* note 1, at 119–21. “Students should be trained how to work in collaborative groups and be closely supervised to ensure these experiences reflect aspects of law practice collaboration and build their collaborative skills.” *Id.* at 277.

103. Becker & Croskery-Roberts, *supra* note 8, at 275.

104. *Id.*

105. See STUCKEY ET AL., *supra* note 1, at 120.

106. *Id.* (quoting THE SEVEN PRINCIPLES IN ACTION: IMPROVING UNDERGRADUATE EDUCATION 11–12 (Susan Rickey Hatfield ed., 1995)).

107. Ramy, *supra* note 80, at 866.

108. *Id.* 865.

with the law school experience.”¹⁰⁹ They also “help students acclimate to the academic and emotional requirements of law school by helping them develop work strategies and form relationships with classmates and teachers.”¹¹⁰ Thus, in what can be the most stressful period of law school—the first year—students have the teaching assistants as a resource to support them.¹¹¹

In the end, the increased individual attention that results from the use of teaching assistants enhances the students’ practice and understanding of the fundamental skills of legal research and writing while at the same time reducing the stress and anxiety that naturally arises when first learning these skills in law school.

2. *Benefits to Professors and the Law School*

Teaching assistants “can increase the efficiency and effectiveness of the legal writing professor . . . and benefit the larger law school community.”¹¹² The most obvious benefit is that they “lighten the faculty’s load and ease the time commitment necessary for one-on-one meetings with students.”¹¹³ In short, teaching assistants “allow the professor to focus on higher-level tasks, by performing routine tasks that professors would otherwise have to perform themselves.”¹¹⁴ Professors can devote more time to modifying the materials, evaluating new texts, developing new assignments, and experimenting with different teaching methodologies, for example—all of which lead to more current and exciting teaching on the part of the professor.

Additionally, teaching assistants can bridge any gaps in communication between the students and their professors. For example, they “can make the professors aware if they receive many questions about a particular topic, or if several students are struggling with a particular topic or skill.”¹¹⁵ They can report on

109. *Id.*

110. Feinman, *supra* note 5, at 272.

111. See K. J. Topping, *The Effectiveness of Peer Tutoring in Further and Higher Education: A Typology and Review of the Literature*, 32 HIGHER EDUCATION 321, 325 (1996) (explaining how students feel that peer tutors are better “at understanding their problems, were more interested in their lives and personalities, and were less authoritarian,” thus reducing “social isolation” and anxiety).

112. ATLAS ET AL., *supra* note 68, at 159.

113. Cheslik, *supra* note 13, at 411–12.

114. ATLAS ET AL., *supra* note 68, at 159.

115. Bowman, *supra* note 52, at 16.

student achievement, student understanding of the material, as well as student complaints. “Having this additional source of information about the class allows the professor to make ongoing adjustments to the course as needed, for example, in pacing, reading assignments, or depth of explanations.”¹¹⁶ “When the professor knows what is truly troubling students, the professor can better tailor the course to meet student difficulty head-on.”¹¹⁷

Finally, “[i]ncreased efficiency may not only make professors more productive in teaching but may permit greater efforts in scholarship, professional development, and service as well.”¹¹⁸ These efforts are equally important in ensuring that what is taught is relevant and that students are supported in other areas beyond academics. They are invaluable in maintaining a vibrant law school community too.

3. *Benefits to Teaching Assistants*

Teaching assistants get to work closely with professors and thus develop strong personal and professional relationships with them. These relationships are helpful in building their credentials.¹¹⁹ In fact, legal employers highly value the teaching assistant “credential,” believing that the experience provides useful training for the practice of law.¹²⁰ Moreover, these relationships make it easy for professors to recommend them for employment and write very personal and favorable references.

They also have “increased opportunities to practice professional behavior.”¹²¹ “Seeing themselves as role models to more-junior students . . . inculcate[s] the need for professionalism in a real and concrete way, and interacting with the professor . . . prepare[s] [teaching assistants] to work effectively with more-senior professional colleagues.”¹²²

116. ATLAS ET AL., *supra* note 68, at 155.

117. Becker & Croskery-Roberts, *supra* note 8, at 280.

118. ATLAS ET AL., *supra* note 68, at 160.

119. A related benefit is the pay. Teaching assistants can earn some money while in law school. Though the pay may not be great, any amount is helpful when faced with large student loan debts.

120. See Wallinger, *supra* note 46, at 16 (sharing a story about how a partner at a large law firm explained that “she values the credential more highly than a law journal position because of the extra training they receive”).

121. ATLAS ET AL., *supra* note 68, at 161.

122. *Id.*

Importantly, the experience also strengthens their research, writing, and oral presentation skills.¹²³ By critiquing student papers, they get to examine effective as well as ineffective legal writing. They are exposed to different writing styles too, thus allowing them to build on their writing repertoire. The repetition of the same assignments also results in a more complete learning of the subject matter, as they are more mentally engaged in the material as teachers.¹²⁴

“Peer teaching can also benefit teaching assistants on an affective level.”¹²⁵ “By assisting first-year students, [teaching assistants] may enhance their own self-confidence as well as their tolerance of others.”¹²⁶ “They also learn about group dynamics and interpersonal skills, which are important for lawyers to know.”¹²⁷ And, they develop new friendships and “experience the joy of helping others.”¹²⁸

Finally, teaching assistants benefit from the cooperative learning in very much the same way the students do. It prepares them for the practice of law, as lawyers regularly collaborate with others.

C. *The Disadvantages of Using Teaching Assistants in a Legal Writing Program*

The “greatest burden” of using teaching assistants is on the professor’s time.¹²⁹ A large part of the professor’s time is spent communicating and meeting with teaching assistants, devising exercises and answer keys for the breakout sessions, reviewing their feedback, and preparing sample drafts of the graded assignments for them to use when commenting. This time is essential to

123. See Bowman, *supra* note 52, at 16 (explaining how the Teaching Fellow program at Stetson helps its legal writing professors achieve their “mission of teaching fundamental communication and analytical skills to the first-year students” while “continuing to develop the communication and analytical skills” of their teaching fellows).

124. Becker & Croskery-Roberts, *supra* note 8, at 277; see also Topping, *supra* note 111, at 324 (explaining how peer tutoring enhances the tutor’s cognitive processing because, among other things, “existing knowledge is transformed by re-organisation [sic], involving new associations and a new integration”).

125. Becker & Croskery-Roberts, *supra* note 8, at 278.

126. *Id.*

127. Feinman, *supra* note 5, at 282.

128. *Id.*

129. *Id.*

ensuring that there is consistency in what is being taught by the professor and the teaching assistants. Thus, it cannot be bypassed. Yet, some of the time, like developing practice exercises and answer keys, is fixed, once a system has been established.¹³⁰

On the other hand, the greatest disadvantage to the students is the “dissemination of misinformation.”¹³¹ If a teaching assistant makes a mistake or says something that is contrary to the professor’s instruction, it can create confusion and elevate, rather than reduce, student stress and anxiety. Similarly, when the written feedback they receive from the professor and teaching assistant differs, students might not know which advice is proper. This too can be a frustrating experience for a novice writer. Nonetheless, “there is substantial value obtained through student awareness that reasonable persons can have differing perceptions of competent writing.”¹³² Ultimately, the students need to cope with “occasional differences of opinion” as “such disputes will be par for the course in everyday legal practice.”¹³³

Even with these real costs on a professor’s time and risks associated with incorrect or conflicting information passing to the students, the benefits of using teaching assistants are far too numerous to disregard. This is especially true since there are simple ways to lighten the professor’s workload and minimize the risks of disseminating misinformation.

IV. A MODEL FOR USING TEACHING ASSISTANTS

To begin, professors should handpick their teaching assistants, preferably selecting former students who performed well in their first-year legal writing classes. Presumably, those students will require less training because they mastered the skills and are accustomed to the professors’ coursework and teaching methodologies. In addition to a strong academic record, the students should be likeable, responsible, and comfortable with public speaking as well as giving written feedback.

130. *Id.* at 281.

131. Cheslik, *supra* note 13, at 405–06 (explaining that “by far the most often mentioned disadvantage of using TAs—cited by more than 70 percent of respondents—is that TAs disseminate misinformation”).

132. Donald S. Cohen, *Ensuring An Effective Instructor-Taught Writing and Advocacy Program: How to Teach the Teachers*, 29 J. LEGAL EDUC. 593, 606 (1978).

133. Becker & Croskery-Roberts, *supra* note 8, at 300.

Teaching assistants should serve three main functions: (1) providing written feedback on assignments; (2) teaching the breakout sessions; and (3) mentoring students. Professors should clearly explain these responsibilities and likely demands on their time. They should also explain their expectations and curricular goals for the program. They should do so at the beginning of the semester and reiterate them throughout the year as necessary.¹³⁴ Specifically, “[i]nitial training should inform [the teaching assistants] of relevant program policies, set forth [the teaching assistants’] roles, explain the professor’s expectations for [the teaching assistants], and expose [the teaching assistants] to scenarios that they are likely to face in the course of their duties.”¹³⁵ This training is important to ensuring that the teaching assistants understand their job functions as well as work in harmony with the professor.

The professor should have regular contact with the teaching assistants throughout the semester, even if it is only over the phone or by e-mail. During these meetings, the professor should continue to train the teaching assistants on the substantive material and effective teaching methodologies. This “[o]ngoing training [also] should include detailed discussions of the professor’s pedagogy, classroom exercises, course assignments (including the specific goals of the assignments), and the first-year students’ progress.”¹³⁶ These discussions are helpful because they often shed light on student confusion and struggles.

In addition to staying in contact with the teaching assistants, the professor must closely supervise their work, particularly the feedback they give on assignments. Though professors should have faith in their teaching assistants’ work, and communicate that trust to them often, they nonetheless must scrutinize everything they do:

The professor must bear the ultimate responsibility for directing the teaching assistants, and walks a fine line when doing so. On one hand, the professor must guide [the teaching assistants] without being too overbearing;

134. *Id.* at 291–92 (noting that professors should explain upfront: (1) their “overall expectations for the class”; (2) the teaching assistant’s “role as a vital component of the course”; (3) “the goals to be achieved by individual course assignments”; and (4) “[a]ny subjects on which the professor[s] want[] to provide a unified message.”).

135. *ATLAS ET AL.*, *supra* note 68, at 168.

136. *Id.*

over-supervision is likely to create a group of teaching assistants that lack initiative. On the other hand, under-supervision has its own set of dangers, particularly because . . . [teaching assistants] have had little prior teaching history and thus cannot fall back on their own experience if questions arise about a task or if problems emerge with a student.¹³⁷

Thus, everything that a teaching assistant intends to use—from research and writing exercises and examples to PowerPoint presentations—must be reviewed. The teaching assistants should get feedback from the professor before and after every breakout session as well.¹³⁸ This type of supervision is needed to not only control the flow of information to the students but also to minimize the risk of their disseminating wrong or contradictory information. It is also useful in guiding the students on how to answer common questions and student concerns.

The same level of monitoring applies to any written feedback that the teaching assistants give as well. First, professors should give the teaching assistants “[d]etailed written instructions for [all of the] specific assignments.”¹³⁹ They should prepare models or sample answers to the assignments when possible too. Second, they should review their comments on student assignments and discuss any potential issues, including concerns related to the substance, organization, clarity, or tone of the comments. Like the students, the teaching assistants similarly benefit from learning about what they are doing well and hearing suggestions about how they can improve. Thus, “it is important for the professors to work closely with the [teaching assistants], to discuss the assignments with them, and to review the [teaching] assistants’ comments on the first drafts before returning them to the students.”¹⁴⁰

This guidance is essential to making certain that students receive clear, consistent, and useful feedback. Even though the teaching assistants’ review of the students’ work does not dictate a grade for the assignment, the comments should represent the professor’s expectations for that assignment. Thus, the feedback

137. Becker & Croskery-Roberts, *supra* note 8, at 290–91.

138. Vance, *supra* note 3, at 5 (explaining how at Valparaiso University School of Law they hold “morning sessions” so that professors could “achieve consistency among TAs in the correcting of student assignments”).

139. Becker & Croskery-Roberts, *supra* note 8, at 297.

140. Gordon, *supra* note 40, at 612.

must be clear and reliable. The only way to be certain of this is to read over all of the teaching assistants' comments before they are returned to the students.

In addition to providing feedback to the students, the teaching assistants' other major task should be to teach the weekly breakout sessions. The class size for the breakout sessions should be small, preferably no more than fifteen students, and they should follow the professor's large class meeting with the students. The focus of the breakout sessions should be on reinforcing the skills taught by the professor and providing as many practice research and writing experiences as possible. The instruction should not be limited to discrete topics, such as citation, grammar, and punctuation. They should be teaching the fundamentals of good legal research and writing. They should be discussing and reviewing important topics, like reading cases, rule synthesis and development, large- and small-scale organization, persuasion, tone, etc. Though the teaching assistants should be encouraged to suggest ideas for the breakout sessions and prepare draft materials, the professor should be the one to define the goals for each breakout session and design or approve of all the materials and exercises they will use.

Importantly, the teaching assistants should not grade the students in any way, nor should they suggest or recommend grades to the professors. "Not only can [teaching-assistant] grading hurt the cooperative relationship between [the teaching assistant] and student, but it can also cause administrative and pedagogical problems."¹⁴¹ As students themselves, they lack the experience and ability to judge how a student has performed, especially relative to his or her peers. Besides, many of the benefits that teaching assistants add to a legal writing program—the non-judging audience, collaborative learning, and emotional support—are immediately lost once they take on the role of an evaluator. Even a perception that they are involved in the grading can be detrimental. Thus, not only should the teaching assistants play no part in deciding interim or final grades, but that fact should be clearly communicated to the students.¹⁴²

Finally, the teaching assistants should serve a mentoring role. They should make themselves available to the students, either

141. Cheslik, *supra* note 13, at 398.

142. See *infra* Appendix A. This is why I include an explicit statement in my course guidelines that I alone grade the assignments.

through the use of office hours or by telephone or email, to address whatever questions or concerns the students might have. They should be prepared to answer non-legal research and writing questions too, as the students will look to them for emotional support and other academic guidance. Though the professor can certainly dictate a minimum amount of time for which teaching assistants should be available, it is preferable to let the teaching assistants decide on how they will meet this particular obligation. The relationship between teaching assistants and their students will be more durable and productive if it develops organically.

V. CONCLUSION

As economic pressures to save money increase, law schools should look to the integration of teaching assistants as an effective and affordable way to help deliver quality education to their students; “[t]he use of teaching assistants, especially when contrasted with traditional modes of education, enriches the atmosphere of the law school by demonstrating a commitment to the success of its students and a concern for their welfare.”¹⁴³ Thus, law schools should make the use of teaching assistants a key feature of their first-year legal writing programs.

143. Feinman, *supra* note 5, at 282.

VI. APPENDIX A

[Excerpt from Legal Writing I Course Guidelines]

TEACHING ASSISTANTS AND BREAKOUT SESSIONS

I have engaged four outstanding second-year students as Teaching Assistants for the course. _____¹⁴⁴, _____, _____, and _____ were first-year students of mine. They are all excellent legal thinkers and writers. They will conduct the weekly Breakout Sessions. In those sessions, they will help you to: (1) understand the material we cover in class; (2) practice the reasoning and writing skills you acquire during the course; (3) develop good writing habits; and (4) grasp the principles of legal research. They will not discuss how to write graded assignments or provide the answers to graded assignments. Although they will assist me in commenting on the papers you submit, I alone grade your assignments. You should follow my class instruction and directions when completing all assignments. Also, you should always seek clarification from me if you have any questions about what you were taught during any of the Breakout Sessions.

144. I have deleted the names of my teaching assistants for their privacy.

VII. APPENDIX B

Guided Writing Exercise for Thesis—Defendant

1. **State Congress’s purpose in enacting Title IX in a way that favors your client; cite a case in support.**
2. **Using a quote from *Jennings*, assert what Title IX is not intended to be.**
3. **Set out the relevant portion of Title IX; cite the statute.**
4. **State the elements of Title IX in a way that favors your client; cite a case in support.**
5. **Assert that Plaintiff has failed to offer sufficient evidence to establish a genuine issue of material fact for all the elements of her Title IX claim.**
6. **Assert that, although she established that the undisputed elements are satisfied, she cannot raise a genuine issue of material fact on the disputed elements, explaining why and citing cases.**
7. **Conclude that because Plaintiff cannot meet her burden, the Court must grant the motion for summary judgment.**

VIII.APPENDIX C

**Guided Writing Exercise for Thesis - Defendant
(Completed Version for Teaching Assistants)****1. State Congress's purpose in enacting Title IX in a way that favors your client; cite a case in support.**

Congress enacted Title IX “[t]o avoid the use of federal resources to support discriminatory practices and to provide effective protection against those practices.” *Gebser v. Lago Vista Indep. Sch. Dist.* 524 U.S. 274, 286 (1998).

2. Using a quote from *Jennings*, assert what Title IX is not intended to be.

Nevertheless, Title IX is not intended to be a “general civility code.” *Jennings v. Univ. of N.C.*, 483 F.3d 686, 696 (4th Cir. 2007).

3. Set out the relevant portion of Title IX; cite the statute.

Title IX provides, in pertinent part, that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a) (2012).

4. State the elements of Title IX in a way that favors your client; cite a case in support.

To prevail on a Title IX claim, a plaintiff must prove that: (1) the institution is a federal funding recipient; (2) a school official with authority to address the discrimination was “deliberately indifferent” to known acts of sexual harassment in its programs or activities; (3) the harassment was “severe, pervasive, and objectively offensive”; and (4) the harassment “effectively denied equal access to” the institution’s resources. *Davis v. Monroe*, 526 U.S. 629, 650–51 (1999).

5. Assert that Plaintiff has failed to offer sufficient evidence to establish a genuine issue of material fact for all the elements of her Title IX claim.

Ridgefield has failed to offer sufficient evidence to establish a genuine issue of material fact for every element of her Title IX claim.

6. Assert that, although she established that the undisputed elements are satisfied, she cannot raise a genuine issue of material fact on the disputed elements, explaining why and citing cases.

Although Ridgefield established that WPSC is a federally funded recipient and that it had actual knowledge of the complaints she lodged between December 2012 and February 2013, she cannot demonstrate a genuine issue of material fact that White's enthusiastic romantic attention was so severe, pervasive, and objectively offensive that it deprived her of access to WPSC. *Sauerhaft v. Bd. of Educ. of Hastings-on-Hudson Union Free Sch. Dist. (Hastings I)*, No. 05 Civ. 09087 (PGG), 2009 WL 1576467, at * 5 (S.D.N.Y. June 2, 2009), *aff'd sub nom, R.S. v. Bd. of Educ. of Hastings-on-Hudson Union Free Sch. Dist. (Hastings II)*, 371 F. App'x 231 (2d Cir. 2010). Nor can she establish that Johnson's one-on-one counseling sessions with White and Ridgefield amounted to deliberate indifference. *Davis*, 626 U.S. at 654.

7. Conclude that because Plaintiff cannot meet her burden, the Court must grant the motion for summary judgment.

Therefore, because she cannot satisfy her burden, the Court must grant the motion for summary judgment dismissing Ridgefield's Title IX sexual harassment claim.

IX. APPENDIX D

SJ Brief: Additional Research for the Substantive Issues

Assess the strength of your substantive arguments. Evaluate whether you have located the most relevant authority and know how to use it appropriately. You will need to state (and frame favorably) the law on the following questions:

- When do courts consider conduct to be severe?
- When do courts consider conduct to be pervasive?
- When is there a denial of educational benefits?
- When does a school act with deliberate indifference?

The Topic Civil Rights (78) and Key Number 1067(3) was the most relevant one. A search of West's Digests limiting cases to the Second Circuit using this topic and key number would have led you to some of the best Second Circuit cases. In the alternative, you could have run a topic/key number search (78k1067(3)) in the Second Circuit - Court of Appeals database.

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

→Note: When using WestlawNext, the 2d Circuit database includes the Court of Appeals decisions as well as district court decisions within the 2d Circuit. When using Westlaw Classic, the 2d Circuit database includes only decisions by the Court of Appeals. You should look for relevant NY district court opinions.

Which New York district court decisions are relevant to your Argument?

- 1.
- 2.

In reading the cases you should have seen citations to United States Supreme Court decisions. Which one is the most relevant to your Argument?

What authority should you use for the brief?

Certainly, you will use mandatory (binding) authority to state the rules and explain the law. However, as we have seen in past assignments, you might need to rely on persuasive authority (including decisions by other Circuit Courts of Appeals or district court decisions) to provide illustrations as to how the law is applied in situations like yours. These might be cases that you use for parenthetical or text explanations.

Identify three ways that you can find additional persuasive authority?

- 1.
- 2.
- 3.

Using these methods, identify three decisions by other Circuit Courts of Appeals that might be relevant to your Argument.

- 1.
- 2.
- 3.

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Key Cite the *Davis* decision and find a decision by the United States District Court of Kansas where a college student alleged her classmate touched her several times on the shoulder/back and mid-thigh areas.

Key Cite the *Davis* decision and find a decision by the Northern District Court of New York involving a doctrinal student's claim of sexual harassment by her faculty advisor.

X. APPENDIX E

SJ Brief: Additional Research for the Substantive Issues
(Completed Version for Teaching Assistants)

Assess the strength of your substantive arguments. Evaluate whether you have located the most relevant authority and know how to use it appropriately. You will need to state (and frame favorably) the law on the following questions:

- When do courts consider conduct to be severe?
- When do courts consider conduct to be pervasive?
- When is there a denial of educational benefits?
- When does a school act with deliberate indifference?

The Topic Civil Rights (78) and Key Number 1067(3) was the most relevant one. A search of West's Digests limiting cases to the Second Circuit using this topic and key number would have led you to some of the best Second Circuit cases. In the alternative, you could have run a topic/key number search (78k1067(3)) in the Second Circuit - Court of Appeals database.

[TAs: They should have identified these cases for Phase 1 Research Log. If you type 78K1067(3) and search in the Second Circuit Federal Cases database on WestlawNext, you will get a list of 54 cases. If you search in West Digest's System on WestlawNext using 78K1067(3) and limit the jurisdiction to 2d Circuit, you will get a list of 184 headnotes. Note the differences between the way the information is presented (cases v. headnotes).]

1. *Papelino*, 633 F.3d 81
2. *R.S. (Hastings-on-Hudson)*, 371 F. App'x 231
3. *Abramova*, 278 F. App'x 30
4. *East Haven*, 200 F. App'x 46
5. *Hayut*, 352 F.3d 733
6. *Murray*, 57 F.3d 243

→Note: When using WestlawNext, the 2d Circuit database includes the Court of Appeals decisions as well as district court decisions within the 2d Circuit. When using Westlaw Classic, the 2d Circuit database includes only decisions by the Court of Appeals. You should look for relevant NY district court opinions.

Which New York district court decisions are relevant to your Argument?

[TAs: These cases come up in the searches above. Demonstrate the topic and key number search on WestlawNext. Use 78K1067(3) and search in the Second Circuit Federal Cases database. Have the students review the list of 54 cases to find the relevant NY district court cases below.]

1. *Crandell*, 87 F. Supp. 2d 304 (S.D.N.Y. 2000)
2. *Sauerhaft*, 2009 WL 1576467 05 CIV 09087 (S.D.N.Y. 2009) (lower court decision to R.S. above—need it for facts)

In reading the cases you should have seen citations to United States Supreme Court decisions. Which one is the most relevant to your Argument?

Davis, 526 U.S. 629

[TAs: The students might mention Gebser. They should not use this case.]

What authority should you use for the brief?

Certainly, you will use mandatory (binding) authority to state the rules and explain the law. However, as we have seen in past assignments, you might need to rely on persuasive authority (including decisions by other Circuit Courts of Appeals or district court decisions) to provide illustrations as to how the law is applied in situations like yours. These might be cases that you use for parenthetical or text explanations.

Identify three ways that you can find additional persuasive authority?

1. **Searching the topic and key number 78K1067(3) using different databases**
2. **Key Citing *Davis* and the relevant 2d Circuit decisions, then using Citing References, limiting by jurisdiction filters when necessary**
3. **Reading cases cited within the relevant decisions**

Using these methods, identify three decisions by other Circuit Courts of Appeals that might be relevant to your Argument.

[TAs: Demonstrate Method 1 above. Use 78K1067(3) and search in US Courts of Appeals database on WestlawNext. There will be a list of 85 cases. If you were to search in West Digest's instead, you will get a list of 274 headnotes. It's easier for the students to review by cases, not headnotes, for this part of the research.]

1. *Hendrichsen*, 469 F.3d 479 (7th Cir. 2006).
2. *Jennings*, 482 F.3d 686 (4th Cir. 2007).
3. *Morse*, 154 F.3d 1124 (10th Cir. 1998).

[TAs: Demonstrate how to key cite *Davis* and use citing references using WestlawNext. Show the students how to filter the results to cases and by jurisdiction.]

Key Cite the *Davis* decision and find a decision by the United States District Court of Kansas where a college student alleged her classmate touched her several times on the shoulder/back and mid-thigh areas.

***Cubie*, 244 F. Supp. 2d 1191**

Key Cite the *Davis* decision and find a decision by the Northern District Court of New York involving a doctrinal student's claim of sexual harassment by her faculty advisor.

***Elgamil*, 2000 WL 1264122**

XI. APPENDIX F

CITATION EXERCISE
(ANSWER KEY)

Find and correct the citation errors:

1. *James v. Gannett Co.*, **353 N.E.2d 834, 834** (N.Y. 1976).

The bolded text should not be italicized. Only the case name (not the comma) should be italicized.

2. *Mahoney v. Adirondack Publ'g Co.*, 517 N.E.2d 1365, **at 1367 (N.Y.1987)**.

Delete the “at”.

Need space before “1987”.

3. A general purpose public figure is one who has obtained general fame or notoriety in the community. *Krauss v. Globe Int'l Inc.*, 674 N.Y.S.2d 662 **at 664 (App.Div. 1998)**. The person must have pervasive involvement in the affairs of society. *James v. Gannett Co.*, 353 N.E.2d 834, 836 (**1976**). The person must be famous in his own right. *Krauss*, 674 N.Y.S.2d at 664 (**App. Div. 1998**). For example, the former husband of television celebrity Joan Lunden was not a general public figure because he himself was not well-known. *Id.* **at 663**.

The bold text above indicates an error. Here are the correct citations:

Krauss v. Globe Int'l Inc., 674 N.Y.S.2d 662, 664 (App. Div. 1998).

→ Do not use “at” for full cite; use comma instead.

→ Rule 6.1(a). There needs to be a space between App. and Div.

James v. Gannett Co., 353 N.E.2d 834, 836 (N.Y. 1976).

→ Rule 10.4 (The reader needs to know *what* high state court decided this case since North Easter Reporter is a regional reporter. The legal reader

can tell it is a decision by the highest court, but not by which state.)

Krauss, 674 N.Y.S.2d at 664.

→ You can use short form here. When using short form, shorten case name and omit court/jurisdiction and year info.

Id. at 663.

→ The “at” should not be italicized. The period after “*Id.*” should be italicized.