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Peer Review Across the Curriculum

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Peer Review Across the Curriculum

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“It is time for legal educators, lawyers, judges, and members of the public to reevaluate [their] assumptions about the roles and methods of law schools and to explore new ways of conceptualizing and delivering learner-centered legal education.”¹

INTRODUCTION

In 2007, two very influential institutes published reports that challenged legal educators to reconsider how they design courses, deliver instruction, assess their students’ learning and explore new

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¹ ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 3 (2007).

ways to prepare students for the profession of law. The Carnegie Foundation for the Advancement of Teaching published its report, *Educating Lawyers: Preparation for the Profession of Law*² (“Carnegie Report”), and the Clinical Legal Education Association published its study, *Best Practices for Legal Education*³ (“Best Practices Report”) (collectively, the “Reports”). Both Reports came to the same conclusion: law schools must devote more attention and resources to helping students develop the professional skills they will need in practice.⁴

Therefore, the Reports urged law schools to integrate formal knowledge and the experience of practice into their instruction as a means of achieving the core goal of developing students’ competence—that is, their ability “to resolve legal problems effectively and responsibly.”⁵ They also exhorted law schools to graduate law students who possess strong intellectual and analytical skills and other “attributes of effective, responsible lawyers.”⁶ Among those attributes, law students should demonstrate practical judgment and the ability to collaborate effectively; express a genuine sensitivity to the racial, cultural, and socio-economic diversity of law practice; and be dedicated to lifelong learning through reflection and mentoring.⁷

As the then-current model for legal education primarily neglected these and other important goals, the Reports called on law schools to “clarify and expand their educational objectives” as well as “improve and diversify” the way they teach the law and evaluate their students’ knowledge of it.⁸ “Students need a dynamic curriculum that moves them back and forth between understanding and enactment, experience and analysis, as they strive to become mature legal professionals.”⁹ For that reason, the Reports recommended that law schools revamp their programs to incorporate more collaborative and

² WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

³ STUCKEY ET AL., *supra* note 1.

⁴ *Id.* at 18, 27; SULLIVAN ET AL., *supra* note 2, at 12–14; *see also* Marilyn R. Walter, “Writing as Conversation”: Using Peer Review to Teach Legal Writing, 16 J. LEGAL WRITING INST. 411, 411–12 (2010).

⁵ STUCKEY ET AL., *supra* note 1, at 43–48; SULLIVAN ET AL., *supra* note 2, at 12, 194–97.

⁶ STUCKEY ET AL., *supra* note 1, at 48–49; SULLIVAN ET AL., *supra* note 2, at 145–46.

⁷ STUCKEY ET AL., *supra* note 1, at 48–49, 65–67, 88.

⁸ *Id.* at 5; SULLIVAN ET AL., *supra* note 2, at 128.

⁹ SULLIVAN ET AL., *supra* note 2, at 197.

active learning, foster greater professionalism, expand the number of formative assessments, and provide more prompt and substantive feedback to students, among other things.¹⁰

Though legal education has made progress since the publication of the Reports, and many law schools have been receptive to change,¹¹ most legal educators are still reluctant. Even willing law schools remain uncertain about how to implement changes to their curricular offerings.

Peer review, the process in which students review and critique each other's work, is a fairly simple and cost-effective way to meet many of the Reports' recommendations. It is a powerful tool that not only involves students in their learning process, but also teaches them the knowledge, skills, and values essential to becoming a competent and professional lawyer. Through peer review, students improve their legal analysis and writing, enhance their editing skills, learn to cooperate with others, manage and evaluate constructive criticism, and develop a deeper appreciation of audience.¹² For professors, it is an opportunity to assess their students' understanding of the legal doctrine and competence in legal analysis and writing.¹³ It is also an effective way for them to give additional and more continuous feedback on their students' performance.¹⁴

As writing and professional skills instruction, not just in writing and skills courses, becomes more standard throughout the law school curriculum, law professors will need to find new and innovative ways to help their students achieve practical proficiency.¹⁵ Peer review is one such effective pedagogy. Thus, this Article proposes that peer

¹⁰ STUCKEY ET AL., *supra* note 1, at 59–62, 88–89, 92–93, 191–93; SULLIVAN ET AL., *supra* note 2, at 84–86, 145–46; *see also* Vernellia R. Randall, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 T.M. COOLEY L. REV. 201, 213 (1999) (“Law professors must put more . . . effort into creating the conditions within which students can construct their own meaning and develop their own skills.”).

¹¹ *See* Walter, *supra* note 4, at 412.

¹² *See* Kirsten K. Davis, *Designing and Using Peer Review in a First-Year Legal Research and Writing Course*, 9 J. LEGAL WRITING INST. 1, 2–3 (2003); *see also* Susan M. Taylor, *Students as (Re)Visionaries: Or, Revision, Revision, Revision*, 21 TOURO L. REV. 265, 283–84 (2005) (“Peer review also enhances one’s ability to transfer those skills from one . . . project to another.”).

¹³ *See* Cassandra L. Hill, *Peer Editing: A Comprehensive Pedagogical Approach to Maximize Assessment Opportunities, Integrate Collaborative Learning, and Achieve Desired Outcomes*, 11 NEV. L.J. 667, 674–75 (2011).

¹⁴ *Id.*; *see also* Taylor, *supra* note 12, at 283–84 (discussing the benefits of adding peer feedback to that ordinarily given by professors).

¹⁵ *See* Hill, *supra* note 13, at 704–05.

review be integrated across the curriculum into both doctrinal and skills courses.

Specifically, the Article first explores some of the Reports' key goals for a more practice-oriented legal education. Next, it discusses how to plan, design, and implement peer review exercises across the curriculum with these goals in mind. Finally, it illustrates how peer review achieves the goals of the Reports and greatly benefits both law students and professors. This Article encourages law professors to experiment with peer review, even if it has some limitations.¹⁶ It is a valuable, learner-focused approach to teaching that can easily assist in "foster[ing] the formation of integrated, responsible lawyers."¹⁷

I

KEY GOALS FOR A MORE PRACTICE-ORIENTED LEGAL EDUCATION

The primary goal for legal education should be to unite "formal knowledge" with the "experience of practice."¹⁸ Students need to know more than what the law is; they need to learn the "skills and inclinations, along with the ethical standards, social roles, and responsibilities that mark" a professional lawyer.¹⁹ There are several important components to creating a more practice-oriented legal education. They include: (1) opportunities for collaborative and active learning; (2) experiences in professionalism; and (3) continuous assessment and feedback.²⁰ Though there are others, improvements in these key areas are central to enhancing the learning experience for today's law students and graduating more competent professionals.

A. Collaborative Learning

Other than experiential courses, such as clinics and externships, most law schools give only casual attention to teaching students the interpersonal and cooperative skills that an actual law practice demands. For the most part, the law school culture discourages students from sharing their work, discussing and testing their analyses

¹⁶ See generally Libby A White, *Peering Down the Edit*, 16 PERSP.: TEACHING LEGAL RES. & WRITING 160 (2008) (discussing how concerns over time management and the quality of actual student feedback call into question whether peer editing exercises are worthwhile).

¹⁷ SULLIVAN ET AL., *supra* note 2, at 128.

¹⁸ *Id.* at 12; see also STUCKEY ET AL., *supra* note 1, at 71–73.

¹⁹ SULLIVAN ET AL., *supra* note 2, at 28.

²⁰ See STUCKEY ET AL., *supra* note 1, at 59–62, 88–89, 92–93; SULLIVAN ET AL., *supra* note 2, at 84–86.

with peers, or collaborating in other ways with each other.²¹ Thus, law professors rarely ask students to work together on in-class or take-home questions, assignments, or exams, even when they are ungraded. In fact, many professors have strict guidelines that specifically prohibit any collaboration with their peers or others on assignments or exams.²² Sometimes, the prohibition is so broad that students are not even allowed to talk about their theories of the law or analysis of the facts of a case with anyone other than the professor. The rationale is that, by working alone, students will be forced to think independently and thus learn self-reliance.²³ They also serve an ulterior purpose of reducing opportunities for plagiarism and cheating, allowing professors to more fairly grade the actual abilities of each law student.

The drawbacks to these types of restrictions, however, are significant, as they can easily undermine a student's confidence in his or her abilities.²⁴ For example, when students work in isolation, they have no way of knowing how their performance compares to their peers' or whether they are meeting their professors' expectations.²⁵ This lack of confidence "can lead to the kind of stress, anxiety and frustration that inhibits learning."²⁶ Therefore, while restrictions on collaboration might seem sensible, they can easily create an atmosphere of learning that is stressful as well as contrary to how real lawyers typically practice law.²⁷

In an actual law practice, lawyers regularly collaborate with others. It is quite customary for attorneys who work in the same practice to discuss their facts and legal strategy for a case with their colleagues. They also will share research and other resources, and often solicit written and oral feedback on their legal analysis and writing. Attorneys will review and comment on all types of writing, including

²¹ See Ann Piccard, *Using Peer Editing to Supplement Feedback*, SECOND DRAFT, June 2001, at 14 ("In the rarefied atmosphere of law school, collaboration is often a dirty word.").

²² See *id.*

²³ James B. Levy, "Can't We All Just Get Along?" – *Cooperative Legal Writing Assignments*, SECOND DRAFT, June 2001, at 1.

²⁴ See *id.*

²⁵ See *id.*

²⁶ *Id.*

²⁷ See Piccard, *supra* note 21, at 14 (arguing that no collaboration in law school does not accurately reflect real world law practice and thus urging that peer editing—a form of collaboration—should be encouraged).

correspondence with clients or opposing attorneys, internal office memoranda, and procedural or substantive motions to a court.

The reason is simple: writing is not a solitary activity, but a social collaborative one.²⁸ Ideas are improved and thoughts are clarified by sharing them with others. In fact, successful practitioners pride themselves on their team spirit and willingness to trust in the advice and feedback of others.

Lawyers regularly collaborate with those outside of their practice, too. They share their work with their clients and decide on legal strategies together. They also cooperate with the court and its clerks to assure that their clients' needs are served. Moreover, despite how antagonistic opponents can be, lawyers often find themselves negotiating and cooperating with their adversaries on matters like discovery, scheduling, and settlement. Thus, the reality is that the practice of law is naturally cooperative.

With few formal opportunities to collaborate²⁹ in a traditional law school class, students miss out on learning the essential interpersonal and cooperative skills needed for practice. Instead, they become accustomed to working alone. Moreover, by pushing students to work alone, law schools further cultivate competitiveness and isolation. Students hesitate to help each other for fear that they will lose their edge over their classmates or, worse, inadvertently violate a professor's policy against collaboration. As a consequence, law students learn to perform and think like students, rather than "apprentice practitioner[s]."³⁰ This "typically unbalanced emphasis" on treating students as "competitive scholars" instead of "attorneys engaged with the problems of clients" can create serious problems as students "transition to practice."³¹

Therefore, law schools must address these problems by placing greater emphasis on collaborative learning.³² Collaborative learning is

²⁸ Walter, *supra* note 4, at 414 (explaining how peer editing is a collaborative learning experience because tasks such as "reading and writing are not solitary, individual activities, but social and collaborative ones").

²⁹ There are many informal opportunities for collaboration in law school through student activities, such as journals, moot court, and student bar associations. Also, students often naturally group together to form study groups in preparation for exams.

³⁰ SULLIVAN ET AL., *supra* note 2, at 188.

³¹ *Id.* (citing RONIT DINOVIETZ ET AL., AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 79 (2004)).

³² See STUCKEY ET AL., *supra* note 1, at 88–89. "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 206.

essentially a work process in which participants share ideas and feedback concerning a particular task.³³ It recognizes that tasks such as writing, reading, and strategizing are “social process[es] rather than . . . individual endeavor[s].”³⁴ “Collaborative learning involves placing students in a wide variety of team projects and group assignments which allows the students to ‘compare and challenge perspectives, add insights, and strengthen their grasp [of] academic material.’”³⁵ Collaborative learning has countless benefits, the most important of which is that it prepares students for the reality of law practice.³⁶

It also fosters the development of professional identity and produces higher achievement.³⁷ Through teamwork, students build trust in and mutual support and respect for others, and thus develop more positive relationships with each other. In turn, these relationships make students less competitive and, as a result, more psychologically healthy.³⁸ They no longer feel that they are alone; they see that others share their same enthusiasm or questions and concerns about the law. All of this goes a long way toward improving learning:

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.³⁹

Additionally, it promotes “academic excellence.”⁴⁰ In teams, students want to be the best and thus usually set high goals. Team members do not want to disappoint each other and, consequently, will work hard to meet those goals. This phenomenon is typical in a law

³³ See Randall, *supra* note 10, at 203–04.

³⁴ Hill, *supra* note 13, at 671.

³⁵ STUCKEY ET AL., *supra* note 1, at 88 (quoting David Dominguez, *Seven Principles for Good Practice in Legal Education: Principle 2: Good Practice Encourages Cooperation*, 49 J. LEGAL EDUC. 386, 387 (1999)).

³⁶ See Davis, *supra* note 12, at 2–3 (discussing the value of incorporating peer review exercises into first-year legal writing classes as they help students develop important practice skills including cooperation, which is mostly absent from the law school experience).

³⁷ See STUCKEY ET AL., *supra* note 1, at 88.

³⁸ See Randall, *supra* note 10, at 221.

³⁹ STUCKEY ET AL., *supra* note 1, at 88 (quoting Tim Hatfield & Susan Rickey Hatfield, *Cooperative Learning Communities*, in *THE SEVEN PRINCIPLES IN ACTION: IMPROVING UNDERGRADUATE EDUCATION* 23 (Susan Rickey Hatfield ed., 1995)).

⁴⁰ *Id.*

practice as well, where attorneys “put pressure on each other to meet deadlines, to produce their best work, and to be accountable to affected third parties.”⁴¹ That team spirit can ultimately lead to better academic performance.⁴² Accordingly, law schools should create conditions in which students can collaborate more.

B. Active Learning

With the exception of experiential courses, law school learning is primarily passive. The Socratic method, in which professors ask a single student a series of questions about a case while the rest of the class silently observes, is still the dominant teaching pedagogy in the traditional law school class.⁴³ Though the professor might engage in a Socratic dialogue with more than one student during a given class period, the exchanges typically exclude the majority of the class, as only those “on call” are expected to participate.⁴⁴ In other words, they are the only ones who are invited to engage in their learning for that particular class period. Consequently, only a fraction of the class is challenged to think critically about the material and share their understanding of it with their professor and classmates.

Though there are students who try to stay active regardless of whether they are “on call” by listening attentively to the professor’s questions and anticipating the answers, the classroom experience is essentially passive for most. For those students who want to stay engaged nonetheless, it is challenging, if not impossible, as technology and other things can easily distract, particularly when the students know they are not responsible for immediately responding to what is being taught. Moreover, exchanges between any one student and the professor as part of a Socratic interchange are relatively brief and happen only periodically. Thus, any involvement the “on call” student has with the material is limited anyway. In short, the Socratic method does little to “promote active learning.”⁴⁵

⁴¹ *Id.* (quoting David Dominguez, *Seven Principles for Good Practice in Legal Education: Principle 2: Good Practice Encourages Cooperation*, 49 J. LEGAL EDUC. 386, 387 (1999)).

⁴² *See id.*

⁴³ *See* STUCKEY ET AL., *supra* note 1, at 97–100; SULLIVAN ET AL., *supra* note 2, at 50–51.

⁴⁴ Randall, *supra* note 10, at 206 (“[W]ithin the typical [S]ocratic classroom environment, most students are passive participants in the learning process.”).

⁴⁵ STUCKEY ET AL., *supra* note 1, at 91–92 (“Socratic dialogue does not promote active learning, except for the student who happens to be on the hot seat, and perhaps not even

Active learning recognizes that students are “engaged in behavior and activities other than listening” in class.⁴⁶ Such activities might include talking, writing, reflecting, and evaluating information.⁴⁷ Not surprisingly, the Reports conclude that law schools need to reduce their reliance on the Socratic method as the primary mode of teaching and work harder to infuse active learning into the classroom.⁴⁸ For one, “[s]tudents learn better when they are actively engaged in the learning process.”⁴⁹ By sharing “responsibility for acquiring knowledge, skills, and values,” students naturally “undertake higher-order thinking,” which “forc[es] them to engage in analysis, synthesis, and evaluation”—the primary activities of a practicing lawyer.⁵⁰

C. Professionalism

In addition to engaging their students in active learning, law schools should teach professionalism more pervasively.⁵¹ Though legal profession and ethics classes are vital in this area, there are opportunities to instruct students on the attributes of a professional lawyer in doctrinal courses as well.⁵² These attributes include “respect, civility, responsibility, and honor.”⁵³ They also include the “capacity to deal sensitively and effectively with clients and

then. Other students do not participate in the dialogue but are expected to learn vicariously by watching the interchange. This is not active learning.”).

⁴⁶ *Id.* at 91; see also Paul L. Caron & Rafael Gely, *Taking Back the Law School Classroom: Using Technology to Foster Active Student Learning*, 54 J. LEGAL EDUC. 551, 552–53, 555 (2004) (discussing the importance of active student learning and noting how poorly law schools fare on this measure).

⁴⁷ Caron & Gely, *supra* note 46, at 552–53.

⁴⁸ STUCKEY ET AL., *supra* note 1, at 91 (“It has long been known that active methods of learning are more effective than passive ones.” (quoting DONALD A BLIGH, WHAT’S THE USE OF LECTURES? 254 (2000))); SULLIVAN ET AL., *supra* note 2, at 146 (concluding that students need to develop “moral values, goals, identity, and compassion, as well as ethical understanding and skills”). However, “[t]hese outcomes depend even more on pedagogies that actively engage the students than do more traditional dimensions of academic understanding.” SULLIVAN ET AL., *supra* note 2, at 146.

⁴⁹ STUCKEY ET AL., *supra* note 1, at 91 (quoting Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 102 (2002)).

⁵⁰ *Id.* (internal quotation marks omitted).

⁵¹ See *id.* at 73–74; SULLIVAN ET AL., *supra* note 2, at 14 (“[P]rofessionalism needs to become more explicit and better diffused throughout legal preparation.”).

⁵² See STUCKEY ET AL., *supra* note 1, at 73–74.

⁵³ *Id.* at 74.

colleagues from a range of social, economic, and ethnic backgrounds.”⁵⁴

Students generally do not know “intuitively what constitutes professional or unprofessional behavior” and thus need to be taught how to act responsibly and respond appropriately and positively to others.⁵⁵ Rather than fostering professional conduct, the competitive atmosphere of law school can “impede the development of [these] attributes.”⁵⁶ Therefore, law schools need to be more deliberate about fostering a culture of professionalism and integrating the teaching of professional skills into all aspects of their classroom experiences.⁵⁷

D. Continuous Assessment

Law schools also fail to provide adequate assessments of their students’ learning.⁵⁸ In a traditional law school course, the only assessment comes at the end, in the form of a final exam.⁵⁹ In most cases, that exam decides the students’ entire final grade, as class participation and other assignments usually carry negligible, if any, weight. That exam is also the first time professors can assess, using objective criteria, whether students achieved their desired learning outcomes.⁶⁰

In addition to the obvious shortcomings this practice has for students, discussed *infra*, it provides no real opportunity for professors to evaluate the success of their instruction until after the semester has ended. While that evaluation might help the new class of students—that is, assuming professors use that assessment to reshape the content and style of their future teaching—it is of no help to the students who have already completed the course. “[I]ts after-the-fact

⁵⁴ *Id.* at 66.

⁵⁵ *Id.* at 74.

⁵⁶ *Id.* at 73.

⁵⁷ See SULLIVAN ET AL., *supra* note 2, at 188 (concluding that one limitation of the signature pedagogy of the case-dialogue method is that students are not given sufficient “opportunities to learn about, reflect on, and practice the responsibilities of legal professionals”).

⁵⁸ See STUCKEY ET AL., *supra* note 1, at 176–78; SULLIVAN ET AL., *supra* note 2, at 189; see also Deborah Maranville, *Infusing Passion and Context Into the Traditional Law Curriculum Through Experiential Learning*, 51 J. LEGAL EDUC. 51, 52 (2001) (arguing that law schools’ failure “to assess systematically what is actually happening in the classroom and to provide ongoing feedback” explains why many law students lack passion for justice and the enthusiasm for helping others).

⁵⁹ SULLIVAN ET AL., *supra* note 2, at 162.

⁶⁰ See *id.* at 162–63.

character forecloses the possibility of giving meaningful feedback” in order to support opportunities to improve learning as the course proceeds.⁶¹ As a result, professors do not have a handle on whether students are learning what they want them to learn. Without that knowledge, law schools are delayed in identifying and responding to ineffective teaching pedagogies. To ensure that students are learning adequately and empower professors with the right information to “rethink their approach, practices, and goals,”⁶² law schools need to conduct more continuous and diverse types of reliable assessments.⁶³

E. Prompt Feedback

“Prompt feedback is widely acknowledged to be an important component in effective learning.”⁶⁴ Accordingly, professors must give more prompt feedback to students throughout a course, not just at the end.⁶⁵ The single assessment that students typically receive at the end of a course is wholly inadequate in helping students improve their learning. For example, it creates a very stressful and competitive experience for students; as a course progresses, they become uncertain about their knowledge of the material and consumed by how they measure up to their classmates. They also become extremely concerned about their ability to successfully communicate what they know on paper at exam time. That stress and uncertainty can be overwhelming for students and oftentimes can result in feelings of inadequacy and incompetence. Such negative feelings can hinder a student’s ability to learn.⁶⁶

Moreover, without proper feedback, students have no way of knowing their strengths and weaknesses, which can lead to

⁶¹ *Id.* at 164.

⁶² *Id.* at 180.

⁶³ *See id.*; STUCKEY ET AL., *supra* note 1, at 190–92; *see also* Hill, *supra* note 13, at 678 (arguing that the recent shift from the ABA to outcome measures, not input ones, compels law professors to employ new strategies in the classroom that consider “projected outcomes and assessment together with class dynamics, student engagement, and required training”); Paula Lustbader, *Walk the Talk: Creating Learning Communities to Promote a Pedagogy of Justice*, 4 SEATTLE J. FOR SOC. JUST. 613, 640–41 (2006) (concluding that assessment and reflection are integral to a law student’s learning process).

⁶⁴ Maranville, *supra* note 58, at 72.

⁶⁵ *See* Jennifer Jolly-Ryan, *Promoting Mental Health in Law School: What Law Schools Can Do for Law Students to Help Them Become Happy, Mentally Healthy Lawyers*, 48 U. LOUISVILLE L. REV. 95, 110–11 (2009) (discussing how lack of feedback contributes to a student’s feelings of inadequacy).

⁶⁶ *Id.*

misdirected or inefficient studying.⁶⁷ If students do not know what areas they need to improve upon, it is also harder for them to seek and receive the right type of help.⁶⁸ For some, early intervention is the key to passing a course. Prompt feedback would allow them “to take control over their own learning by obtaining necessary remediation for identified deficiencies in their understanding and to adjust their approaches to future learning endeavors.”⁶⁹ Thus, students need more continuous and immediate feedback to stay engaged with and on top of their own learning.⁷⁰

II

PEER REVIEW IN ACTION

A peer review exercise should challenge students to reflect on their work product, identify areas for improvement, and apply lessons learned to future tasks.⁷¹ It should “cultivate the professional habit of critically evaluating every task [a student] perform[s] as a lawyer.”⁷² Therefore, professors will need to plan carefully, considering how students will work together and give feedback, and train their students accordingly.

⁶⁷ See Terri LeClercq, *Principle 4: Good Practice Gives Prompt Feedback*, 49 J. LEGAL EDUC. 418, 418 (1999) (“Knowing what you know and don’t know focuses learning.” (citation omitted)); see also SULLIVAN ET AL., *supra* note 2, at 165 (“[I]n the absence of feedback during the semester, [students have] no basis on which to gauge whether they [are] mastering the material or making adequate progress toward the desired proficiencies.”). The Carnegie Report detailed the following comments made by students in a focus group: One student stated, “We don’t get a lot of feedback. The way success is measured is antiquated and irrelevant to the process”; another student commented, “There is poor feedback about student learning. Students get their grades at the end of the semester, and there is no way of knowing how they are doing in the course.” SULLIVAN ET AL., *supra* note 2, at 165. These comments were typical of student reaction to feedback. *Id.*

⁶⁸ See LeClercq, *supra* note 67, at 418.

⁶⁹ STUCKEY ET AL., *supra* note 1, at 92.

⁷⁰ See *id.* at 92–93; see also SULLIVAN ET AL., *supra* note 2, at 26–27 (“Feedback from more accomplished performers directs the learner’s attention, supporting improved attempts at reaching a goal.”).

⁷¹ See Peggy Cooper Davis et al., *Making Law Students Healthy, Skillful, and Wise*, 5 N.Y.L. SCH. L. REV. 487, 495, 497, 511 (2011) (describing New York University Law School’s lawyering program—a year-long sequence of practice experiences and structured reflection—and the way it positions students to be active, reflective, and collaborative, in part by providing “regular, structured, formative feedback” through peer- and self-critique assignments).

⁷² *Id.* at 513 (highlighting language that appears in the instructions to the sample critiquing guidelines used by New York University Law School’s lawyering program).

A. The Planning

The first step in planning a peer review exercise is deciding at what point in the semester it should be introduced. Ideally, the exercise should come after students have completed a major topic or sub-topic, in the case of doctrinal courses, or produced a substantial outline or draft, in the case of skills and writing courses.⁷³ For doctrinal courses, professors can have students prepare and then exchange written answers to hypothetical or real legal problems that raise the key issues taught in a topic.⁷⁴ The problems can simulate exam questions so that students practice problem solving and exam writing. To streamline the exercise, professors can ask students to prepare their answers at home and bring their drafts to class. The questions, and the exercise itself, need not be long, particularly if the professor intends to use this pedagogy throughout the semester to review all major doctrinal areas taught.

For skills and writing courses, professors can have the students complete the exercise after they have outlined their analysis or completed a first draft or rewrite of an assignment. Whatever the case, students should have a coherent piece of writing to share. The point is that students should be comfortable with the material and have something substantive to exchange with each other before a peer review is carried out.⁷⁵

Professors can use peer reviews in the absence of written drafts too. Even though a traditional peer review relies on some sort of writing to exchange, the exercise does not have to be designed that way. Professors can have students explain their analysis orally to one another and then comment on their explanations using specialized criteria guidelines. This is certainly a good way for students to practice their presentation skills and quickly test their understanding of the law. It might also help students brainstorm content and organization at the initial stages of a writing assignment.

⁷³ See Hill, *supra* note 13, at 682–83.

⁷⁴ See, e.g., Greg Sergienko, *New Modes of Assessment*, 38 SAN DIEGO L. REV. 463, 483 (2001) (describing an ungraded peer assessment exercise for a Civil Procedure class). For example, professors can craft an “exercise in which students seek to discover features of the final exam.” *Id.* Students can work in groups and share their results with other groups; the groups would evaluate each other’s work and provide a critique. *Id.* This type of exercise, especially if repeated throughout the semester, will teach the students “considerable professionalism both in the substance of their comments and in how they are conveyed.” *Id.*

⁷⁵ See Hill, *supra* note 13, at 682–83.

There are obvious potential problems with having students talk out their thinking, though. The student presentations might be awkward and unorganized, especially if the students are not given time to think about the problems beforehand. Moreover, students might have difficulty giving feedback because they must manage several critical tasks at one time: listening to and processing what they hear, evaluating it based on the criteria, and then formulating and communicating the feedback. Thus, this style of peer review might be more appropriate for advanced students, rather than first-years, because they will have a better sense of what is good analysis and will be more accustomed to critiquing.⁷⁶

The next step in planning is establishing the professor's "desired outcomes."⁷⁷ Because the core task of a lawyer is to be able to research and analyze legal problems completely and accurately, a peer critique should make a student's legal reasoning a priority. Even though problems with small-scale organization, paragraphing, topic sentences, style, grammar, punctuation, citation, and other non-analytical errors can be very distracting, they should not be the primary goal for peer review of another's writing. "The student's legal 'thinking' must be clear before comments on basic writing will be helpful."⁷⁸ In fact, "[h]eavy emphasis on style and grammar in early drafts usually detracts from time needed for better analysis, and tends to be wasted because sentences, paragraphs, and even entire sections will be removed or substantially altered in successive drafts."⁷⁹

Additionally, implying that legal analysis does not matter so long as the student's writing is grammatically correct and polished sends the wrong message to students. That is not to say that elegant writing has no value. Its value is considerable when supported by strong legal analysis. The legal analysis is the indispensable element, though. An

⁷⁶ See Lucia Ann Silecchia, *Designing and Teaching Advanced Legal Research and Writing Courses*, 33 DUQ. L. REV. 203, 219 (1995) (arguing that peer critique is better suited for advanced students for these very same reasons).

⁷⁷ Hill, *supra* note 13, at 678 (explaining how professors must identify the desired outcomes for their peer-editing exercises as part of the planning phase).

⁷⁸ Daniel L. Barnett, *Triage in the Trenches of the Legal Writing Course: The Theory and Methodology of Analytical Critique*, 38 U. TOL. L. REV. 651, 655 (2007) (discussing the importance of critiquing and suggesting that professors should "triage" when they comment on legal writing assignments, focusing on analysis first and issues of style and basic writing last).

⁷⁹ Tonya Kowalski, *Toward a Pedagogy for Teaching Legal Writing in Law School Clinics*, 17 CLINICAL L. REV. 285, 347 (2010).

attorney's prediction as to how an issue will be resolved, or advice on how to proceed on a problem must be sound; others will rely on that attorney's work to take action. It is only after attorneys demonstrate proficiency in legal reasoning that people begin to fully place trust in their recommendations. That trust grows exponentially when an attorney is then able to clearly and eloquently explain his or her recommendations and the legal basis for them.

Thus, it is preferable that a peer review exercise be structured so that a student's legal reasoning and organization are the only elements evaluated. Other non-analytical problems could still be addressed by the professor and students, just not through the vehicle of peer review. If a professor prefers to address both legal reasoning and presentation in a single exercise, it should be designed with this hierarchy in mind: analysis before presentation. Students should be made to internalize this hierarchy through clear guidelines and critiquing criteria that put analysis first.⁸⁰ When critiques treat both analytical and non-analytical problems the same way, or at the same time, students often have difficulty understanding which issues are most important and, as a result, struggle with improving their analysis and revising their writing.⁸¹

Professors must also carefully plan how they will organize and manage the exercise itself. Though a peer review can certainly be completed outside of class time, they are usually more productive and insightful in terms of assessment when they are completed in class. The presence of the professor tends to reduce distractions and increase engagement, particularly when the professor walks around the room and monitors the students' progress.⁸² If done in class, the professor should try to dedicate long, uninterrupted periods of time so that the students can completely concentrate on the task.⁸³

Though there is no limit to the number of students that can work together in a critique exercise, the most efficient and manageable size ranges from two to four people. If there are multiple peer reviews over the semester, the partners should be changed to expose students to as many different viewpoints and styles as possible. Relatedly, the

⁸⁰ See *id.* (arguing that a professor's critique of a student's early draft should address overall organization and large-scale analysis, and should focus on the finer points, such as strategy, and smaller-scale organization and issues of grammar and style only after the draft becomes more "rigorous").

⁸¹ Barnett, *supra* note 78, at 657–58.

⁸² See Hill, *supra* note 13, at 683, 700.

⁸³ See *id.* at 700–01.

students should not review each other's work anonymously. "[B]lind review not only hinders students' growth and maturity in terms of being able to exchange their opinions openly and provide constructive feedback," but also prevents students from discussing the feedback with their partners and fully participating in a debriefing session.⁸⁴ Lack of anonymity also gives students a better flavor for what happens in practice where lawyers regularly and openly receive and give feedback.⁸⁵ Moreover, experience has shown that "writers are more likely to do a better job when they know their editors will know who they are."⁸⁶ The opposite is true too: editors are more likely to do a better job when they know their writers will discover who they are.

Even with the best planning, students might resist the idea of a peer review exercise at first.⁸⁷ For one, students might be embarrassed or uncomfortable with sharing their ideas and writing with others.⁸⁸ This is particularly true for students who lack confidence or consider themselves incompetent or weak writers.⁸⁹ Also, students—more often the stronger ones—are sometimes hesitant to trust in the feedback of other novice students because of the innately competitive law school environment.⁹⁰

⁸⁴ *Id.* at 688.

⁸⁵ *See id.*

⁸⁶ *Id.* (quoting DAN KIRBY ET AL., *INSIDE OUT: DEVELOPMENTAL STRATEGIES FOR TEACHING WRITING* 234 (Heinemann, 3d ed. 2004)). *But see* Jo Anne Durako et al., *From Product to Process: Evolution of a Legal Writing Program*, 58 U. PITT. L. REV. 719, 740–41 (1997) (finding that students were more favorable to a peer review exercise when the reviewers were completely anonymous), and Tracy Bach, *Collaboration in Legal Writing—and Beyond*, SECOND DRAFT, June 2001, at 9 (June 2001) (suggesting that the critiques her students produced in an anonymous peer critiquing exercise were more "forthright and supportive" and "seemingly freed from the peer pressure of knowing who was critiquing whom").

⁸⁷ *See* Jo Anne Durako, *Peer Editing: It's Worth the Effort*, 7 PERSP.: TEACHING LEGAL RES. & WRITING 73–74 (1999).

⁸⁸ *See id.*

⁸⁹ *See id.*; Sheila Rodriguez, *Letting Students Teach Each Other: Using Peer Conferences in Upper-Level Legal Writing*, 13 FLA. COASTAL L. REV. 181, 207 (2012) (adding that, conversely, students with strong skills might resent showing their work to those they consider weaker writers). However, in a collaborative setting, ability is irrelevant. Rodriguez, *supra*, at 207. "Students will become better writers regardless of the strength of their partners' critique of their work." Hill, *supra* note 13, at 693; *see also* Terry Jean Seligmann, *Testing the Waters*, SECOND DRAFT, June 2001, at 12 (arguing that peer review exercises should be used later in the semester when students are more comfortable with showing their work).

⁹⁰ *See* Rodriguez, *supra* note 89, at 209; *see also* Hill, *supra* note 13, at 677; Davis, *supra* note 12, at 4; Seligmann, *supra* note 90, at 12 ("[S]tudents feel uncomfortable sharing their work and research early on, both out of insecurity about their own stage of preparation, and out of a competitive desire not to do others' work for them.").

Professors can cure some of these problems by giving students sufficient notice that peer review is a course requirement and explaining the value of it early on.⁹¹ Peer review exercises should be included in the syllabus; if not, students should know when their analysis or writing will be subject to a peer review well ahead of time.⁹² Professors can allow students to choose their own partners. Students might be more open to the process if they collaborate with someone they know and trust. Professors can also assign the groups so that not all of the weaker or stronger students are placed together. Students can submit drafts of their writing in advance of class so that the professor can review them and strategically select partners based, in part, on their skill level and effort. Professors can also use their submissions to identify common problems areas and tailor the evaluation criteria around them. Finally, professors can also count the peer critique as part of the student's final grade, either by assigning it a grade or calculating it into a class performance component. All of these strategies will drive students to be more open to, and excited about, the peer review process.

B. The Design

A professor's written instructions for the exercise should detail what is expected of the students and obviously should reinforce whatever verbal instructions the professor gives. It is imperative that students have written guidelines on the critiquing criteria, however.⁹³ This can be in the form of a checklist or questions; the questions can demand explanations or require a simple "yes" or "no" response. The instructions should outline whether students should jot down questions, problems, or comments in the margins as they occur, or whether they should write them down somewhere else in a specified order.

The critiquing guidelines should take inspiration from Mary Beth Beazley's "self-graded draft."⁹⁴ Students can be directed to identify

⁹¹ See Hill, *supra* note 13, at 691–92 (discussing ways that professors can "pitch" a peer review exercise to students); see also Davis, *supra* note 12, at 15 (explaining how professors can convince students peer review will enhance self-editing skills).

⁹² See Hill, *supra* note 13, at 692; see also Rodriguez, *supra* note 89, at 208.

⁹³ This Article offers criteria guidelines mainly based on the assumption that students will be exchanging written drafts. However, the same criteria can be easily modified for a purely verbal exchange.

⁹⁴ Mary Beth Beazley, *The Self-Graded Draft: Teaching Students to Revise Using Guided Self-Critique*, 3 J. LEGAL WRITING INST. 175 (1997); see also Kowalski, *supra*

and mark the physical and intellectual locations within a document.⁹⁵ The “physical locations” would include thesis sentences, conclusions, and beginnings and endings to point heading sections, whereas “intellectual locations” include statements of the rule, rule synthesis, applications, and analogical reasoning segments.⁹⁶ The students can highlight these various sections using a coloring system or bracket out and label the corresponding text in the margins. The actual technique will depend greatly on the length of the text and number of areas the students must locate. This type of critique is incredibly effective in evaluating whether a document is comprehensive and organized appropriately. It is also helpful in isolating the individual parts of an analysis so that they can be examined further for accuracy, completeness, and clarity.

After isolating a rule, for example, students can decide whether it is too broad or too narrow, and sufficiently persuasive for its purpose.⁹⁷ Students can then describe whether the authority used to support the rule caused them to have confidence in or doubt the writer.⁹⁸ Moving deeper into the analysis, students can comment on whether the writer appropriately applied the rule to the facts and effectively reasoned by analogy to the rule cases. For legal writing assignments, professors can elaborate on the questions so that they focus on particular legal arguments or cases relevant to the assignment.⁹⁹ If students are reviewing a more advanced draft, they can also be asked to focus on

note 79, at 341–42 (suggesting that Mary Beth Beazley’s self-graded draft can be modified and used as a checklist for a peer review exercise).

⁹⁵ Beazley, *supra* note 94, at 177.

⁹⁶ *Id.*

⁹⁷ See Cooper Davis et al., *supra* note 71, at 514.

⁹⁸ *Id.*

⁹⁹ See *infra* Appendices A & B. These are two example peer review critique worksheets. I give these to students in my advanced legal writing course (titled “Drafting: Federal Civil Practice Seminar”) late in the semester, after they have already completed a draft of a twenty-page summary judgment opposition brief. By that time, the students are sufficiently familiar with the material and have already participated in at least one other peer review. That is partly why the instructions are so brief. In these examples, the case involves a same-sex claim of workplace sexual harassment under Title VII of the Civil Rights Act. Appendix A shows the first peer review exercise, which is devoted to critiquing the thesis and first point heading addressing the summary judgment standard. Appendix B shows the second peer review exercise, which focuses on the two substantive point headings. Both exercises first direct the students to a particular intellectual point in the draft and then ask them to consider both organizational and substantive concerns. Issues of presentation, such as clarity, brevity, conciseness, etc., are purposefully not covered in these exercises.

the finer points of persuasion and small-scale organization.¹⁰⁰ Thus, the possibilities are tremendous.

Before the students begin their actual critiquing, they should be encouraged to write down their most “pressing questions or doubts or problems.”¹⁰¹ As part of the critique, students can be sure to address their peers’ concerns. Though it might seem more responsive to address them immediately, students should focus on the exercise criteria first.¹⁰² Oftentimes, the professor’s guidelines are drafted with student problem areas in mind; thus, by following them, students will eventually address all of their peers’ questions or concerns in a better-thought-out way. Obviously, if the exercise criteria do not address a student’s particular needs, the peer should respond to them separately at the end.

Immediately after the critique, students should be given an opportunity to discuss their comments with each other. It is during this conversation that students can explain or defend their comments and answer questions.¹⁰³ They should also discuss ways to implement their recommendations and debate different approaches to analysis and writing. These conversations tend to become very animated and often lead to more comprehensive and richer feedback.

Moreover, when students must explain their writing, they are more likely to see any disconnects between what they were thinking and what actually made it to paper. The process of discussing their analysis with someone else helps them internalize the suggested changes and make more meaningful revisions.¹⁰⁴ In sum, the feedback students receive from peers gives them one of the most powerful tools for good revision: “new eyes.”¹⁰⁵ With these “new eyes,” students are able to re-see, rethink, and improve their analysis and writing.¹⁰⁶

As part of the peer review exercise, the students should also reflect on their experience and the skills learned. The students should be encouraged to describe several specific areas in which the act of

¹⁰⁰ See Kowalski, *supra* note 79, at 347.

¹⁰¹ Linda L. Berger, *Applying New Rhetoric to Legal Discourse: The Ebb and Flow of Reader and Writer, Text and Context*, 49 J. LEGAL EDUC. 155, 180 (1999).

¹⁰² *But see id.* (suggesting that the reader focus on the author’s concerns first, before even reading a draft).

¹⁰³ See Davis, *supra* note 12, at 13.

¹⁰⁴ See generally Hill, *supra* note 13, at 671–74.

¹⁰⁵ Berger, *supra* note 102, at 177, 179 (internal quotation marks omitted).

¹⁰⁶ *Id.* at 180.

critiquing caused them to reevaluate their own work.¹⁰⁷ Additionally, they should describe what feedback they found most helpful and why. Students can complete a written self-evaluation;¹⁰⁸ however, the reflection component of the exercise does not have to be so formal and can be easily collapsed into a debriefing session.

At the conclusion of any peer review exercise there should be some sort of debriefing session. The most productive sessions involve an in-class discussion led by the professor during which the students share what they learned from the editing process as well as from the critiques they received. More importantly, the professor should explore with the students how they will apply their new knowledge to their future analysis and writing. The professor can also address questions or concerns the students might have about the process or analysis. This debriefing session also presents a great opportunity for the professor to summarize and reiterate major teaching points.¹⁰⁹ Here is where they can “reclaim some control over the content being discussed, and provide key information and examples for students to evaluate their learning and development.”¹¹⁰ It is a way for professors to create a positive and supporting learning environment, and also a way for them to reinforce skills taught in class and assess whether the students adequately grasped them.

C. The Training

The success of the exercise depends largely on the students' confidence in the process and ability to give useful feedback. There are generally two categories of feedback: criterion-based and reader-based.¹¹¹ Criterion-based feedback responds to the quality of the author's work, including the content, organization and effectiveness of language and usage.¹¹² Reader-based feedback, on the other hand, focuses on the reader's response to the work and addresses the rhetorical context—that is, audience, purpose, and tone.¹¹³

Students should receive some basic instruction on those two types of feedback as well as training on how to give useful feedback in

¹⁰⁷ See Cooper Davis et al., *supra* note 71, at 515.

¹⁰⁸ See Davis, *supra* note 12, at 8–9.

¹⁰⁹ See Hill, *supra* note 13, at 702–03.

¹¹⁰ *Id.* at 703.

¹¹¹ Walter, *supra* note 4, at 414.

¹¹² *Id.* at 415.

¹¹³ *Id.* at 415–16.

general.¹¹⁴ Useful feedback is feedback that “helps facilitate growth rather than frustration, self-criticism, or complete disconnect on the part of the student.”¹¹⁵ For example, students should be instructed to begin with a positive comment and be selective and specific throughout.¹¹⁶ Vague or cryptic comments are not productive; nor are exclusively positive ones.¹¹⁷ Though students should be honest in their evaluations, they should be constructive and critique only the performance, never the person.¹¹⁸ Even if most comments are not positive, the tone throughout should be.

Moreover, students should ask questions about points they do not understand rather than simply stating their confusion, or trying to clarify or fix them for the writer.¹¹⁹ “Questions . . . spur more revision than edit marks alone.”¹²⁰ They should consider using “I” statements, such as “I am having difficulty understanding . . . ,” to identify a concrete problem in the writer’s work.¹²¹ These types of statements and questions focus on the needs of the audience, not the competence of the writer; thus, they are less likely to confuse or offend the writer. In the end, because motivation is such a crucial part of performance, students should consider the emotional effect their comments might have on a peer.¹²² Therefore, when possible, students should give some positive feedback and always “frame critical feedback in terms of an opportunity to improve, rather than as a personal fault.”¹²³

If a professor intends to introduce multiple peer review exercises throughout a course, that professor might want to spend more time discussing the art of an effective critique. The professor can model different types of critiques for the class, illustrating poor and excellent

¹¹⁴ See Silecchia, *supra* note 76, at 219 (explaining that peer critiques are better suited for advanced, rather than first-year courses, because upper-level students have a better sense as to what good writing should aim to accomplish and are more accustomed to critiquing and being critiqued).

¹¹⁵ STUCKEY ET AL., *supra* note 1, at 129.

¹¹⁶ *Id.*

¹¹⁷ See Hill, *supra* note 13, at 698; Kowalski, *supra* note 79, at 348 (explaining how a cryptic comment, like the word “awkward,” should be followed by an explanation in order to help the writer diagnose and remedy the perceived problem).

¹¹⁸ See Kowalski, *supra* note 79, at 348.

¹¹⁹ Durako, *supra* note 87, at 76.

¹²⁰ *Id.*

¹²¹ Hill, *supra* note 13, at 698.

¹²² Kowalski, *supra* note 79, at 348.

¹²³ *Id.*

ones.¹²⁴ The professor can use a sample draft that the professor created or a former student produced. If the professor's objective is solely to model critiquing, a draft on a different topic might work. On the other hand, if the professor simultaneously wants to reinforce the material he or she is teaching, a draft on the same topic should be used. The professor, together with the class, can do a step-by-step critique of the sample. Alternatively, the professor can assign the critique in class or as homework, and then discuss the process as a group in a debriefing-type session. Professors can also distribute a model written critique or role-play a peer review discussion and then evaluate the success of them in a subsequent class discussion.¹²⁵ Any one, or combination, of these suggestions will give the students a "parallel experience" in responding to rhetorical and other problems faced by other writers that they can then apply to their peer review.¹²⁶

Finally, students must also be taught how to receive and respond to feedback.¹²⁷ They should be open to criticism and not take personal offense to any comments or recommendations their peers might have. Instead, students should ask questions or seek clarification from their peers and look for ways to implement what they learned from the critique to improve their own work.¹²⁸ The more training students have, the more comfortable they will become with the process and more enthusiastic about its rewards.

III

HOW PEER REVIEW SERVES THE KEY GOALS OF THE REPORTS

Peer review is a method of teaching that effectively and efficiently achieves the goals of collaborative and active learning, professionalism, continuous assessment, and prompt feedback. As the Best Practices Report predicted, law "students benefit from instruction in and application of peer assessment . . . methods."¹²⁹

¹²⁴ See Rodriguez, *supra* note 89, at 211–14 (discussing the importance of teaching the students to be good reviewers and suggesting a number of approaches, all centered around "modeling"); Berger, *supra* note 101, at 179 (suggesting that students do some other peer review exercises before responding to each other's work in progress).

¹²⁵ See Rodriguez, *supra* note 89, at 214–15 (discussing how she uses a peer conference simulation to train students).

¹²⁶ Berger, *supra* note 101, at 179.

¹²⁷ STUCKEY ET AL., *supra* note 1, at 129–30.

¹²⁸ *Id.*

¹²⁹ *Id.* at 190.

First, peer review is an obvious form of collaborative learning.¹³⁰ In peer review exercises, students work in groups of two or more to exchange their critiques of each other's analysis and writing. The group members share a common goal of improving their knowledge and communication of the law. Though the members might have different personalities, learning styles, and interests, for example, they know they must work together to achieve their common goal. Through the experience, they learn to appreciate their fellow students' viewpoints and contributions.¹³¹ Thus, they are introduced to the "less tangible skills of teamwork and collaboration."¹³² In other words, students learn how to be good colleagues.¹³³

Second, peer review spurs active learning.¹³⁴ In peer review exercises, students are called upon not only to read or listen to another's analysis, but also to reflect on and ultimately evaluate that analysis. Students are also asked to prepare written or oral comments and communicate them in a respectful and constructive way to their peers. This process involves higher-order thinking and engages them in all of the essential activities of a practicing lawyer: listening, talking, writing, reading, reflecting, evaluating, etc. Additionally, students can practice applying what they have discovered to their own work.¹³⁵ If implemented effectively, there is no opportunity for students to sit passively. The design of a peer review exercise thus guarantees engaged learning.

Third, peer review teaches the basic principles of professionalism.¹³⁶ Students learn to be open-minded, respectful of diverse viewpoints, and accepting of criticism and suggestions.¹³⁷ Through peer review exercises, they interact with different people and are exposed to an array of approaches to problems. They also develop

¹³⁰ See Hill, *supra* note 13, at 671.

¹³¹ See *id.* at 672; see also Davis, *supra* note 12, at 13.

¹³² Durako, *supra* note 87, at 73 (arguing that peer editing should be incorporated into the first-year legal writing curriculum).

¹³³ See Walter, *supra* note 4, at 413; see also Kathleen Elliott Vinson, *Interactive Class Editing*, SECOND DRAFT, November 1999, at 10, 11 ("The [peer editing] class is collaborative and interactive because everyone participates with suggestions and responds to others' remarks.").

¹³⁴ See Caron & Gely, *supra* note 46, at 552–53.

¹³⁵ See Vinson, *supra* note 133, at 11 ("By participating in the editing process and watching it unfold, students enhance their editing skills. Students then apply what they have learned when they self-edit their papers."); Taylor, *supra* note 12, at 284.

¹³⁶ See Walter, *supra* note 4, at 418.

¹³⁷ See Hill, *supra* note 13, at 672–73.

a deeper appreciation for the role of audience.¹³⁸ They “learn to be cognizant of the reader’s needs and sensitive to the importance of clarity and precision in their [analysis and] writing.”¹³⁹ Moreover, they learn to give constructive feedback—feedback that is clear, specific, and helpful.¹⁴⁰ These qualities are the foundation to treating others with civility and respect. They are what help lawyers build long-lasting and positive relationships with colleagues, clients, and others.

Fourth, peer review is a viable mode of assessment for professors.¹⁴¹ Though students are the ones actually giving feedback to each other, there are countless ways that professors can tap into that feedback to gauge whether their students are learning what is expected of them. When the peer review exercises are conducted in class, professors can move around the classroom, observing and listening to the student conversations. In class, professors can also glance at any written suggestions or edits the students have made.

The debriefing session with the entire class at the conclusion of any peer review exercise is also a great source of information. Professors can ask questions and gain insight into what the students have learned from each other and how they will apply that knowledge to their own work. This information will reveal the students’ progress in relation to the professors’ goals. From that, professors can decide how they will proceed, making any necessary and appropriate adjustments to their teaching that will benefit the current crop of students. If professors want to more formally assess their students, they can ask them to submit their written critiques or a self-evaluation to review or even to grade. Though more time intensive for professors, written submissions might help them evaluate their students’ performance in a more comprehensive and structured way.

Finally, peer review supplies students with the feedback they demand and deserve.¹⁴² While the feedback does not come directly from the professor, it is guided by the professor and thus useful in

¹³⁸ See *id.* at 674; see also Durako et al., *supra* note 86, at 731 (describing the process-oriented approach to legal writing at Villanova Law School and how the use of peer critique exercises helped students become more “sensitive to the importance of audience” and “more proficient at self-editing”).

¹³⁹ Hill, *supra* note 13, at 674.

¹⁴⁰ See Davis, *supra* note 12, at 3 (“[P]eer review helps students learn to articulate criticism in a coherent and constructive manner, thoughtfully evaluate feedback from peers, and selectively integrate that feedback into their own writing.”).

¹⁴¹ See Hill, *supra* note 13, at 674.

¹⁴² See STUCKEY ET AL., *supra* note 1, at 93.

directing students on their progress. In a structured peer review exercise, the professor has given detailed instructions on the areas students should critique, either through the use of pointed questions or editing guidelines modeled after the “self-graded draft.”¹⁴³ These instructions are in themselves feedback; they give students an indication as to how the professor thinks a particular problem should be analyzed and discussed or written. In a case in which a professor collects, reviews or grades the written critiques or self-evaluations, the feedback is direct and substantive.

The actual critique from peers is additional, meaningful feedback. In some cases, it is more helpful than a professor’s critique. Peer critiques have “the advantage of immediacy in time and space,” as students typically exchange their written or oral comments immediately after completing a review of each other’s work.¹⁴⁴ Student comments also tend to be “more focused, more specific, and more directive.”¹⁴⁵ For example, “students appear to respond to a draft in progress by trying to help the writer form an actual text while [professors] appear to respond by trying to help the writer form an ideal text.”¹⁴⁶ Moreover, a conversation with a professor is “always something of a performance” and the feedback given unavoidably evaluative in nature.¹⁴⁷ In contrast, a peer reviewer has the “advantage of being ‘a non-judgmental, non-evaluative helper . . . [someone] in whom the writer can confide.’”¹⁴⁸

If trained and well-guided through the peer review exercises, students can receive valuable and prompt feedback on the quality and content of their analysis, ideas, organization, use of language, and impact on the audience, among other things. By editing and commenting on someone else’s work, students heighten their awareness of these areas and learn to edit their own work more effectively and efficiently.¹⁴⁹ As a result, they develop an increased

¹⁴³ Kowalski, *supra* note 79, at 341–42.

¹⁴⁴ See Berger, *supra* note 101, at 180 (internal quotation marks omitted).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 180–81 (internal quotation marks omitted).

¹⁴⁷ Rodriguez, *supra* note 89, at 192.

¹⁴⁸ *Id.* (quoting Muriel Harris, *Collaboration Is Not Collaboration Is Not Collaboration: Writing Center Tutorials vs. Peer-Response Groups*, 43 C. COMPOSITION & COMM. 369, 376 (1992)).

¹⁴⁹ See Walter, *supra* note 4, at 414 (“[I]f students converse constructively with peers about their own and other people’s writing, they will internalize the language of that conversation [and] be able to carry on the same conversation with themselves about their own writing internally when they are working alone.” (alteration in original) (quoting

confidence in their analysis and communication skills, and a more positive attitude toward law school generally.¹⁵⁰ Thus, the more feedback that students give and receive, the more comfortable and skilled they will become in the tasks of a practicing lawyer.

CONCLUSION

The Reports present law professors with a unique opportunity to rethink their curriculum and experiment with successful pedagogies like peer review. Given the relative simplicity of incorporating peer review across the curriculum and the substantial benefits it brings, law professors should exploit the opportunity to do so.

It is time that legal education responds to the challenges of the Reports. Simply “shuffl[ing] the existing pieces” of the traditional law school model of teaching and learning is not enough.¹⁵¹ Legal educators need to introduce new pieces in order to “produce a more coherent and integrated initiation into a life in the law.”¹⁵² Peer review should be one critical piece.

KENNETH A. BRUFFEE, *A SHORT COURSE IN WRITING: COMPOSITION, COLLABORATIVE LEARNING, AND CONSTRUCTIVE READING 3* (Pearson Longman, 4th ed. 2007)).

¹⁵⁰ See Hill, *supra* note 13, at 671–72; Davis, *supra* note 12, at 2–3; Taylor, *supra* note 12, at 287 (discussing how peer review would make classes “more enjoyable” for students “because of the increased participation that group work requires”).

¹⁵¹ SULLIVAN ET AL., *supra* note 2, at 147.

¹⁵² *Id.*

APPENDIX A

**Drafting: Federal Civil Practice Seminar
Spring 2012****Peer Critique Guidelines**

1. Read your partner's draft once through without making any markings or edits to it.
2. On your second read, annotate the thesis, identifying in the margins or otherwise the following main parts:
 - a. Topic sentence (bold assertion reflecting the main argument)
 - b. Relevant statutory language
 - c. Context for Title VII
 - d. The Legal standard for Title VII
 - e. Application-of-law-to-facts topic sentence
 - f. Short statement on sexually hostile work environment and explanation
 - g. Short statement on employer liability and explanation
 - h. Concluding sentence (requesting relief)
3. Comment on the writer's organization of the thesis. Does the writer present the law before applying it?
4. Is the legal standard in the thesis framed persuasively?
5. Does the writer persuasively assert genuine issues of material fact on the disputed elements in the thesis?
6. On your second read, also annotate the summary judgment subheading, identifying in the margins or otherwise the following main parts:
 - a. Context for awarding summary judgment in Title VII cases
 - b. The legal standard for summary judgment
 - c. Topic sentence applying legal standard
 - d. Short explanation of application of legal standard

e. Concluding sentence

7. Comment on the writer's organization of the summary judgment subhead. Does the writer present the law before applying it?
8. Is the context and legal standard in the summary judgment subhead framed persuasively?
9. Does the writer persuasively apply the legal standard in the summary judgment subheading using rule language?
10. Comment on these three areas: conciseness, clarity, and continuity.

APPENDIX B

**Drafting: Federal Civil Practice Seminar
Spring 2012****Peer Critique Guidelines****Severe or Pervasive Subhead:**

1. How did the writer remind the court about the appropriateness of summary judgment?
2. Is it clear that the test is severe *or* pervasive, not both?
3. How did the writer respond to Defendant's argument that Title VII is not a general civility code?
4. How did the writer respond to the football field analogy? Is the conduct at issue even typical on a football field?
5. How did the writer respond to Defendant's approach in addressing the incidents of harassments? Is it proper to isolate them?
6. Is there a specific rule for severity? Is a single incidence of overt sexual touching sufficient to raise a genuine issue of fact?
7. Did the writer explain the rule using authority? Is there an explanation of cases like *Mack* and *Tainky*?
8. Is there a specific rule for pervasiveness? Do courts employ a mathematical formula? Is there an explanation of appropriate authority, like *Grief Bros.*?
9. How did the writer address the sexual images and threats? Should it be considered as part of the totality of circumstances?
10. How did the writer address the toll the harassment took on Plaintiff?
11. Did the writer adequately rebut Defendant's argument that the harassment was not subjectively hostile because Plaintiff himself socialized with the alleged harassers? Did the writer

address here or elsewhere the fact that Plaintiff himself referred to the conduct as “teasing” in an email?

On the Basis of Sex Subheading:

1. Did the writer present the general rule for “on the basis of sex”?
2. How did the writer frame the *Oncale* methods persuasively?
3. Did the writer effectively transition into the argument on the first method?
4. Is there a specific rule for *Oncale* method 1? Did the writer explain the rule using authority?
5. Was the writer’s argument that there is credible evidence that Plaintiff’s co-worker is also a homosexual convincing?
6. Did the writer effectively transition into the argument on the remaining *Oncale* methods?
7. Was the writer’s argument of the facts on these methods comprehensive?
8. How did the writer address the argument that Plaintiff has evidence that he was discriminated against based on sex stereotyping? Did the writer explain the rule using authority? Did the writer adequately address the bootstrapping claim?
9. How did the writer respond to Defendant’s argument about the real motivation for the harassment? Did the writer explain that it is contrary to the evidence? Does the writer conclude that this argument inadvertently raises a disputed issue of fact, making summary judgment improper?