

## CRACKING STUDENT SILOS: LINKING LEGAL WRITING AND CLINICAL LEARNING THROUGH TRANSFERENCE

MARY NICOL BOWMAN AND LISA BRODOFF\*

*Why do highly competent and hard-working law students struggle to apply what they learn in legal writing to later clinical courses and law practice? The authors of this article are uniquely qualified to answer this question and to provide strategies for helping students overcome these common struggles.*

*The authors direct the nationally renowned legal writing and clinical programs at Seattle University School of Law, where they have engaged in cutting-edge collaborative teaching projects for nearly a decade. Even so, their students, when faced with the messiness of real client representation, struggled with typical research and writing problems, even as the legal writing faculty exclaimed “We know we taught them that!” So, after extensively studying the educational literature on transference, the authors spent nearly two years taking each other’s courses to understand more deeply how we could help our students apply what is taught in each program to future client work.*

*This article describes what we learned from these endeavors. It details the typical barriers to transference, most significantly the effects of course-dependent siloing of student learning. The article is the first to explore the ways in which faculty siloing of clinics and legal writing can exacerbate underlying transference issues. Finally, and most importantly, this article offers specific, extensive, and attainable strategies for both legal writing and clinical faculty to implement that can overcome these challenges, crack their students’ siloed learning, and help them become reflective practitioners engaged in the life-long learning necessary for excellent legal practice.*

“It is not enough to teach so that students will understand, nor that they will remember. Instead, to be valuable, your teaching must be

---

\* Mary Nicol Bowman is the Director of the Legal Writing Program and an Associate Professor of Law at Seattle University School of Law. Lisa Brodoff is the Director of the Ronald A. Peterson Law Clinic and Associate Professor of Law at Seattle University School of Law. Lisa and Mary would like to thank those who have provided feedback on this project, including our colleagues at Seattle University School of Law and attendees at the AALS Annual Meeting joint clinical-legal writing section program, the AALS Clinical Conference, the Western Region Legal Writing Conference, and the Legal Writing Institute Biennial Conference.

usable by your students outside the classroom.”<sup>1</sup>

When clinicians<sup>2</sup> and legal writing faculty at Seattle University School of Law came together at a retreat in 2014 to talk about common research and writing issues, we expected a really positive discussion. Instead, we had a rude awakening. The 2014 retreat followed several years of joint meetings to get out of our teaching silos, create a more collegial faculty community, and work on improving our students’ learning across the curriculum.<sup>3</sup> While we had largely met our first two goals, we realized that we had only had limited success with respect to improving our students’ ability to apply their significant learning from their foundational legal writing courses to their later work with real clients in clinics, externships, and, we suspected, in their legal work outside of the law school.

Here’s what we discovered to our chagrin in our joint retreat. First, clinicians talked about the research and writing problems they were seeing when their students were faced with applying their skills to real clients in real time. Clinicians described seeing their students falter and appear confused when it came to drafting anything other than a faculty-assigned research memo with the issues and facts given to them in advance by the faculty or a formal appellate brief. They saw their students latch on to the tiniest of legal research issues rather than first looking broadly at the possible research paths in developing a case theory. When asked to research anything other than statutes or case law, clinic students often failed to use the research processes and tools needed, and they focused too much on narrow discrete tasks rather than thinking about broader policy considerations underlying the case. Clinic students also struggled with even beginning to figure out how to get important facts developed from messy client stories. As clinic students drafted memos, motions, client advice letters, or other documents, they struggled to organize the information logically or ex-

---

<sup>1</sup> Shaun Archer et al., *Reaching Backward and Stretching Forward: Teaching for Transfer in Law School Clinics*, 64 J. LEGAL EDUC. 258, 258-59 (2014) (citing Nancy Pennington et al., *Transfer of Training Between Cognitive Subskills: Is Knowledge Use Specific?* 28 COGNITIVE PSYCHOL. 175, 176 (1995)).

<sup>2</sup> Throughout this article, whenever we use the terms “clinicians” or “clinical faculty” or “clinic students” we are also including externship faculty and students because at Seattle University School of Law, our clinical and externship programs are integrated into the Clinical Law Program. For a brief but useful explanation of clinical and externship courses, including the ways that they are complementary but distinct, see Katherine R. Kruse, *Legal Education and Professional Skills: Myths and Misconceptions About Theory and Practice*, 45 MCGEORGE L. REV. 7, 32-34 (2013).

<sup>3</sup> See generally e.g., Sara K. Rankin et al., *We Have a Dream: Integrating Skills Courses and Public Interest Work in the First Year of Law School (and Beyond)*, 17 CHAP. L. REV. 89 (2013); Mary Nicol Bowman, *Engaging First-Year Law Students Through Pro Bono Collaborations*, 62 J. LEGAL EDUC. 586 (2013) [hereinafter *Engaging First-Year Law Students*].

plain it clearly, which echoes the concerns identified in the foundational article on transference in the clinical context.<sup>4</sup> When legal writing faculty heard the clinicians' concerns, there was a universal response: "We know we taught them that!" Frustrated, the legal writing faculty explained that many of the learning issues raised by clinicians had been covered in earlier legal writing required courses, and things that had not explicitly been covered should follow easily from what had already been taught.

So we asked ourselves, "Why are our students not retrieving that prior learning and applying it to their client work in clinical and externship courses and perhaps later in practice?" We expected better student progress after our earlier joint retreats for sharing syllabi and developing common vocabulary on legal research and writing issues; we had even created real client research projects where clinicians and legal writing faculty collaborated to create 1L memo problems based on actual clinic cases.<sup>5</sup> Yet these efforts were not enough to get our students to crack open their course-dependent learning. This realization motivated us to study learning theory and, specifically, concepts about teaching for transfer,<sup>6</sup> so that we and our students would be able to crack our teaching and learning silos.<sup>7</sup>

Transfer is "the use of knowledge or a skill acquired in one situation to perform a different task."<sup>8</sup> The ability to transfer learning is essential to practicing law; for example, lawyers use transfer when doing formal legal analysis by applying rules and analogies from prece-

---

<sup>4</sup> See Archer et al., *supra* note 1, at 269 (noting student struggles with, *inter alia*, producing research memoranda with inadequate analysis and support, as well as connecting persuasive writing and oral advocacy training from legal writing courses to conducting a hearing or interview for the first time in a clinical course). "The same transfer problem is found in every field of study, workplace, and clinical teaching program." *Id.* See also Tonya Kowalski, *Toward a Pedagogy for Teaching Legal Writing in Law School Clinics*, 17 CLINICAL L. REV. 285, 287-89 (2010) [hereinafter *Teaching Legal Writing*] (discussing transference problems she observed as a clinician and then later as a legal writing professor).

<sup>5</sup> See Mary Bowman et al., *Adding Practice Experiences to Legal Research and Writing Courses*, in THE NEW 1L: FIRST-YEAR LAWYERING WITH CLIENTS (Eduardo R.C. Capulong et al. eds., 2015) [hereinafter *Adding Practice Experiences*].

<sup>6</sup> See Part I, *infra*.

<sup>7</sup> "There is a crack in everything, that's how the light gets in." LEONARD COHEN, ANTHEM (Columbia Records 1992).

<sup>8</sup> Laurel Currie Oates, *I Know I Taught Them How to Do That*, 7 LEGAL WRITING: J. LEGAL WRITING INST. 1, 1 (2001). A related definition is "the ability to generalize from lessons and skills gathered in one place and circumstances and transfer such lessons and skills to a different set of circumstances." Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 CLINICAL L. REV. 489, 494 (2013). See also Tonya Kowalski, *True North: Navigating for the Transfer of Learning in Legal Education*, 34 SEATTLE U. L. REV. 51, 60-61 (2010) [hereinafter *True North*] (summarizing several relevant definitions from educational and psychological research on transference).

dent cases to new legal problems.<sup>9</sup> “Because law schools cannot teach students every area of the law or every skill they will use as lawyers, the focus should be on teaching them how to transfer their learning in law school to the novel situations they will face in the legal profession[.]”<sup>10</sup>

The importance of transfer has been implicit in the recent call for law schools to produce “practice-ready lawyers.”<sup>11</sup> Some legal writing faculty, including Seattle University School of Law’s own Laurel Currie Oates, have incorporated educational theory on teaching for transfer into the design of the legal writing curriculum.<sup>12</sup> Additionally, teaching for transfer has been identified as “the heart . . . and theoretical base of what we now call clinical pedagogy.”<sup>13</sup>

In practice, however, almost all legal writing and clinical programs and faculty operate in “silos,” with relatively little interaction or collaboration. This separation of programs makes it very hard for students to break out of their own course dependent learning silos to transfer what they learn in a class such as legal writing to other settings such as clinics, externships, and legal practice.<sup>14</sup> Our joint retreat drove home to us how much that was true for our students, despite our prior collaborative efforts and the features of our own courses to encourage transfer.

As we studied transference together in the year following this revelatory 2014 retreat, we soon realized that we each needed to know much more about what was being taught in each other’s courses. How

<sup>9</sup> *True North*, *supra* note 8, at 51-52; see also Anthony Niedwiecki, *Teaching for Lifelong Learning: Improving the Metacognitive Skills of Law Students Through More Effective Formative Assessment Techniques*, 40 *CAP. U. L. REV.* 149, 152-54 (2012) [hereinafter *Lifelong Learning*] (“Lawyers need to learn new material on a daily basis, whether that material is a legal concept, a procedural rule, or a completely new discipline that is the underlying substance of a legal problem. Those who are able to learn efficiently and thoroughly are able to handle the constant learning required of lawyers, and learning theorists describe these individuals as expert learners.”).

<sup>10</sup> *Lifelong Learning*, *supra* note 9, at 153.

<sup>11</sup> See, e.g., Elizabeth Adamo Usman, *Making Legal Education Stick: Using Cognitive Science to Foster Long-Term Learning in the Legal Writing Classroom*, 29 *GEO. J. LEG. ETHICS* 355, 357 (2016).

<sup>12</sup> See generally Oates, *supra* note 8; Kowalski, *True North*, *supra* note 8.

<sup>13</sup> Grose, *supra* note 8, at 494 (collecting other sources detailing the role that transference theory plays in clinical pedagogy).

<sup>14</sup> Many people have recognized the difficulty that siloing creates for students in applying what they’ve learned in their courses into legal practice. See, e.g., Kathleen Vinson, *What’s Your Problem?*, 44 *STETSON L. REV.* 777, 780 (2015) (“Although doctrine, theory, and skills are all taught in law schools, they are often taught in silos, making it difficult for students to see their connection and understand how to apply them to the practical realities in legal practice.”). Kruse, *supra* note 2, at 9-10 also has a good discussion of the false dichotomy between “skills courses” and “doctrinal courses,” as well as the problems that result from siloing in legal education as a result of this false dichotomy.

R

R

R

R

R

could clinicians effectively “reach back”<sup>15</sup> to required legal writing teachings in their clinical courses if they didn’t truly understand what was being taught there? And, how could legal writing faculty effectively “stretch forward”<sup>16</sup> with their students if they didn’t know what clinicians were teaching and how they were applying research and writing concepts to real client work?

This realization opened up a new possibility: what if we audited each other’s courses to learn in detail what and how we teach? While this would take a significant effort and time commitment, the rewards for us and our students could be immense given the learning theory we had studied.

This article summarizes what we learned from that process, including taking each other’s classes and reflecting together about our experiences. It shows how teaching across the curriculum using transference theory can help to unite legal writing and clinical faculty to help students crack their own learning silos and improve their development of essential lawyering skills. Most importantly, we argue that, without teaching collaborations, information sharing, and a coordinated application of transference learning theory in our legal writing and clinical courses, our students will achieve competency in critical lawyering skills much less quickly and effectively than if we work together in our teaching.

Specifically, section I of this article provides an overview of the research on teaching for transfer and how that research can help legal writing and clinical faculty work more effectively together to facilitate student learning. Section II describes our experiences when our clinic director, Lisa Brodoff, spent the entire 2016-17 academic year taking the first-year legal writing class taught by Mary Bowman, the legal writing program director, and when Mary then took Lisa’s clinical course in the spring of 2018; that section discusses why we committed to this intensive project and introduces the benefits and key insights from doing so. Section III then provides several specific strategies for both legal writing and clinical faculty to promote transference of student learning. These strategies flow from what we learned from studying transfer and from taking each other’s courses. The article concludes by encouraging legal writing and clinical faculty to collaborate in adopting some of the strategies discussed in order to help their students crack their course-dependent silos, unlock their learning potential, and become lifelong learners in the process.

---

<sup>15</sup> See Part I(B), *infra*.

<sup>16</sup> See *id*.

## I. THEORETICAL BASIS FOR TEACHING LEGAL SKILLS FOR TRANSFER

Although legal educators generally “aim to teach doctrine, skills, and critical reasoning and expect that students will readily apply them in the workplace,” students often struggle to do so.<sup>17</sup> For example, 1L students learn to write a legal memo analyzing how the elements of a criminal statute apply to a particular fact-pattern, but they then can seem lost when asked to write a memo doing the same thing for a tort issue, or they fail to see the connections between researching a state law issue and a federal law issue.<sup>18</sup> And, upper level clinical students will forget to apply procedural due process concepts that they just studied in their Constitutional Law course when researching legal theories to reinstate a client’s Medicaid benefits cut by the agency in an incomprehensible termination notice. Transfer, or lack thereof, has been a perennial issue in legal education, but it may be even more critical now as legal education has seen a downturn in both the number of applicants to law school and the academic preparation of those who do apply.<sup>19</sup> Additionally, these challenges persist far beyond law school, as “[t]he process of researching law, discovering facts, and conveying concepts to various audiences requires more learning than most careers.”<sup>20</sup>

While this problem generally frustrates all law faculty, it may be particularly challenging for clinical faculty because students often take clinics shortly before they graduate and enter practice, which makes learning for transfer a crucial goal of clinical legal education.<sup>21</sup> When clinic students struggle to apply their foundational legal training to client representation, clinicians must spend more time on those issues and less time on “the finer clinical skills, such as narrative persuasion, case theory, professional identity formation, and so on.”<sup>22</sup> These struggles also raise concerns about whether students will be able to transfer learning from the clinic into their work in practice.<sup>23</sup>

The good news, however, is that the research into teaching for transfer provides a helpful framework for understanding how to over-

---

<sup>17</sup> Archer et al., *supra* note 1, at 269.

<sup>18</sup> Oates, *supra* note 8, at 1.

<sup>19</sup> See generally Jennifer Cooper, *Smarter Law Learning: Using Cognitive Science to Maximize Law Learning*, 44 *CAP. U. L. REV.* 551 (2016).

<sup>20</sup> Anthony S. Niedwiecki, *Lawyers and Learning: A Metacognitive Approach to Legal Education*, 13 *WIDENER L. REV.* 33, 41 (2006) [hereinafter *Lawyers and Learning*].

<sup>21</sup> See Grose, *supra* note 8, at 493-94 (noting that the three broad goals of clinical education are teaching for transfer, exposing students to social justice issues, and providing opportunities for learning and using lawyering skills).

<sup>22</sup> Archer et al., *supra* note 1, at 269.

<sup>23</sup> *Id.*

come these struggles. This section first discusses key insights for understanding how students transfer prior learning to future changed situations and the barriers that hinder transference. Then, it introduces transference solutions that are useful for cracking students' course-dependent silos.

*A. Framework For Understanding Why Students Fail To Transfer Learning From Legal Writing To Clinical Courses*

Much has been written on teaching for transfer, particularly in the last forty years, including a number of useful articles applying that research to legal education.<sup>24</sup> Transference research shows the same kinds of evolution in thinking and disagreements within the field as are found in many knowledge areas.<sup>25</sup> This article does not attempt to summarize all that information or resolve all those disagreements. Instead, it synthesizes key insights from that prior work that are relevant to teaching legal skills throughout the law school curriculum.

As noted above, "transfer" is "the use of knowledge or a skill acquired in one situation to perform a different task."<sup>26</sup> Broadly speaking, then, transference requires both the initial acquisition of skills or knowledge (foundational learning)<sup>27</sup> and the later use of that skill or knowledge to perform a different but related task.<sup>28</sup> Problems can arise at both stages that hinder students' ability to transfer learning from one situation to another.<sup>29</sup>

*1. Problems With Creating Memory Of Foundational Learning*

First, in order for students to have foundational knowledge to

<sup>24</sup> See, e.g., *True North*, *supra* note 8, at 59-77 (summarizing history of transfer research), & 53 n.10 (collecting articles applying transfer theory to legal education). R

<sup>25</sup> See, e.g., *id.* at 59-77 (noting the various disagreements and interdisciplinary underpinnings of this research); Laurel Currie Oates, *Did Harvard Get It Right?*, 59 *MERCER L. REV.* 675, 678-702 (2008) [hereinafter "*Harvard*"] (summarizing various studies on transfer, including aspects of disagreement among researchers).

<sup>26</sup> *Supra* note 8. R

<sup>27</sup> See, e.g., *True North*, *supra* note 8 at 54 (discussing acquiring "knowledge by storing and encoding it in schematics"). R

<sup>28</sup> This process includes both retrieval and application of the prior material. See, e.g., *id.* (discussing later use of knowledge to "to evaluate future learning environments and to reason by similarity."); see also Oates, *supra* note 8, at 4-7 (discussing the processes of search and retrieval, mapping, and application); Cooper, *supra* note 19, at 572 ("The learning process requires time for learning, storage, forgetting, retrieving, and consolidating information."). R

<sup>29</sup> These two steps can certainly be further broken down. See, e.g., Oates, *supra* note 8 at 3 (describing four steps involved in transfer: "problem representation, search and retrieval, mapping, and application"). However, for purposes of thinking about curriculum design, the two step process is easier to use because it more easily correlates with the design of how foundational and upper-division courses fit together. R

transfer, they must remember their earlier learning. Therefore, to understand transference, we must first start with examining memory - “how the brain learns, stores, and recalls information.”<sup>30</sup>

Memories do not work like photographs or digital records of prior events.<sup>31</sup> Instead, we often remember things for only a short time and do not store the information into our long-term memory, such as when we remember someone’s name long enough to repeat it back initially but not when we see them again a short time later.<sup>32</sup> Information that is only stored in short-term memory disappears quickly, but “long-term memory describes the practically limitless capability of the human brain to store vast amounts of information for a functionally indefinite period of time; to decentralize information throughout the brain; and to remove the necessity that information be held in conscious thought in order for it to be remembered.”<sup>33</sup> Thus, effective teaching and true learning first requires the creation of long-term memories.<sup>34</sup>

One barrier to the creation of long-term memory involves “cognitive load theory,” which suggests that learners can become overwhelmed by “the number of interactive information elements that need to be processed simultaneously before meaningful learning can commence.”<sup>35</sup> Cognitive load theory posits that a student’s working memory can be overloaded by trying to deal with too many different tasks, which hinders the student’s ability to learn from the tasks being performed.<sup>36</sup> Legal writing students may face cognitive load challenges when being asked to simultaneously perform two learning tasks involving writing: drafting a memorandum or other legal document, and “generalizing rules and procedures from the process of writing one document . . . to the next document they must compose.”<sup>37</sup>

<sup>30</sup> Archer et al., *supra* note 1, at 260. *See also Harvard*, *supra* note 25, at 689 (“You cannot transfer what you do not know. If students do not learn the material that is to be transferred, they cannot transfer that information to the new task.”).

<sup>31</sup> Archer et al., *supra* note 1, at 260-61.

<sup>32</sup> *Id.* at 261-62.

<sup>33</sup> *Id.* at 262.

<sup>34</sup> The process of converting short-term memories into long-term memories is called “consolidation,” which “involves deep processing of the new material, during which scientists believe that the brain replays or rehearses the learning, giving it meaning, filling in blank spots, and making connections to past experiences and to other knowledge already stored in long-term memory.” Usman, *supra* note 11, at 361 (quoting PETER C. BROWN, HENRY L. ROEDIGER III & MARK A. McDANIELL, *MAKE IT STICK: THE SCIENCE OF SUCCESSFUL LEARNING* 73 (2014)).

<sup>35</sup> Terrill Pollman, *The Sincerest Form of Flattery: Examples and Model-Based Learning in the Classroom*, 64 J. LEGAL EDUC. 298, 299 (2014) (internal citation omitted).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* Professor Pollman concludes that the common focus in legal writing on grading the students’ written product but not their ability to generalize the learning to apply to

R

R

R



Additionally, students may fail to create long-term memories effectively based on problems with their individual writing processes.<sup>38</sup> Generally speaking, “both effort and repeated brain activity is required to create and maintain memories.”<sup>39</sup> For example, robust research consistently demonstrates that cramming on a particular subject is less effective than studying a subject over a longer time frame.<sup>40</sup> “Correspondingly, short and intense learning sessions—be they caused by student procrastination or by ambitiously designed course work—may ultimately be counterproductive to the successful long-term transferal of information to students.”<sup>41</sup> Instead, spaced learning, working on the same thing over time, is more effective for creating long-term memory.<sup>42</sup> Relatedly, “interleaving,” *i.e.* study of multiple related topics for shorter periods of time, has been shown to be more effective than “blocked study,” *i.e.* cramming or intense focus only on a single topic.<sup>43</sup> Thus, students who are only willing to write during large blocks of time devoted to legal writing are likely doing themselves a disservice compared to students who can effectively break their legal writing work into smaller segments and weave them together with work in their other classes.<sup>44</sup>

## 2. *Problems With Later Retrieval And Application Of Foundational Learning*

Additionally, even when long-term memory is created, it may not be stored in the best way for future retrieval. Active retrieval of information from memory is essential to learning, much more effective than simply re-encountering or rereading information that has previously been examined.<sup>45</sup> But the ways in which we store information that we have learned can hinder this retrieval process. Generally

---

future documents may make students “much more likely to expend cognitive energy on the document that earns a grade and not on learning from the process.” *Id.* at 300.

<sup>38</sup> Professor Usman suggests that the structure of the typical legal writing curriculum may also contribute to this problem, given that it can emphasize massed and repetitive practice rather than spaced learning and interleaving. *See Usman, supra* note 11, at 387-91.

<sup>39</sup> Archer et al., *supra* note 1, at 263.

<sup>40</sup> *Id.* at 264.

<sup>41</sup> *Id.*

<sup>42</sup> Cooper, *supra* note 19, at 564 (noting that spaced learning “is one of the most robust findings in educational psychology”).

<sup>43</sup> Archer et al., *supra* note 1, at 265-66.

<sup>44</sup> *See, e.g., Teaching Legal Writing, supra* note 4, at 339-41 (regarding student struggles with “cognitive overload” and the benefits of breaking the writing process down into smaller steps to help overcome that challenge); LAUREL CURRIE OATES ET AL., *THE LEGAL WRITING HANDBOOK* § 24.3 (7th Ed. 2018) (regarding strategies for overcoming procrastination, including the value of “taking it one step at a time” by breaking a writing project down into small pieces that can each be done in relatively short periods of time).

<sup>45</sup> *See Cooper, supra* note 19, at 562.

R  
R

R  
R

speaking, “people integrate new information into existing frameworks of knowledge.”<sup>46</sup> Connecting new learning to old information, or “chunking,” helps maximize the amount of new information that can be stored.<sup>47</sup> Unfortunately, however, students tend to use narrow rather than broad frameworks in doing this “chunking,” which can hamper their ability to retrieve useful information later. Specifically, they tend to use courses as their framework for new knowledge, *e.g.* storing information learned in legal writing with other information learned in legal writing but not with related information learned in a contracts class or a law clinic.<sup>48</sup>

That storage system works fairly well when we want students to transfer knowledge within a particular course (*e.g.* from a first legal memo problem in legal writing to a later memo assignment). However, that structure makes it harder for students to apply knowledge or skills across classes (*e.g.* taking what they learned about organizing a memo in legal writing and applying it to writing a memo in a clinical course for client representation) or from law school into legal practice.<sup>49</sup> This process can lead to “cue-dependent forgetting: the inability to recall information not because a memory has been lost, but rather because of missing cues, contexts, or stimuli that were present when the memory was encoded.”<sup>50</sup> These related problems of course-dependent siloing and cue-dependent forgetting significantly impact student transference.

Even if students successfully learn foundational material by storing it into long-term memory and creating a framework in which they can retrieve the information, they may still encounter other barriers to effectively applying that foundational learning to a new situation. One such barrier relates to problem representation, *i.e.* whether students understand an issue based on its surface features or deep structures.<sup>51</sup> Novices tend to understand an issue (and therefore look for similar prior knowledge) in terms of the same or similar surface features (*e.g.* similar facts), but experts are able to pick up on underlying structural similarities even when the facts are not that similar.<sup>52</sup> A foundational piece of transference research demonstrates this issue well. It involved two problems, one involving military strategy for attacking a fortress

---

<sup>46</sup> Archer et al., *supra* note 1, at 265.

<sup>47</sup> See Cooper, *supra* note 19 at 563 (“When unrelated material can be subjectively grouped, the subjects who created the groups and chunked the material can better remember the information than if arbitrary groups were created”).

<sup>48</sup> Oates, *supra* note 8, at 5.

<sup>49</sup> See *id.*

<sup>50</sup> Archer et al., *supra* note 1, at 266.

<sup>51</sup> Oates, *supra* note 8, at 3-4.

<sup>52</sup> See, *e.g.*, *id.* at 4.

R

R

R

R

and the other involving treating a tumor, that both require separating “forces” and attacking simultaneously, converging the forces together to achieve a goal.<sup>53</sup> Most study participants were unable to connect the two problems, likely in part because they were focused on the surface features (military situation versus medical situation) rather than the underlying structural similarities of the problems and solutions.<sup>54</sup>

Relatedly, when novices are asked to make explicit comparisons between the old and new problems, they may focus incorrectly on surface differences rather than underlying similarities.<sup>55</sup> In the context of legal analysis, a student may incorrectly focus on the similarity of facts between a precedent case and the client’s situation (*e.g.* both involve children who injured other people with guns) while failing to realize that the legal issue in the two cases is different (*e.g.* the client’s case is about the parent’s liability for negligent supervision of the child but the precedent case is about the validity of the child’s criminal conviction for assault). Therefore students can use the “wrong law” by concluding that the two situations are similar when they in fact are legally dissimilar. Similarly, students can focus too much on surface dissimilarities while missing the underlying structural similarity, such as when they discount a case on unlawful display of a weapon because it involves a knife rather than a gun. Therefore, they fail to recognize important cases that apply to the analysis of their client’s situation.

The focus on surface level features rather than underlying structures can be compounded when the student is asked to do “far transfer” rather than “near transfer.” Near transfer involves closely-related contexts, such as learning to drive a car and then a truck, where the required skills needed are very similar with minor adaptations.<sup>56</sup> In a legal context, students use near transfer when they realize that they need to look for the facts, holding, rationale, and policy considerations any time they brief a case.<sup>57</sup> Far transfer, on the other hand, involves more variation in context or surface level details, such as moving from drafting a motion for summary judgment in a contract case in a legal writing class to an appellate brief on a criminal procedure issue in a criminal defense clinic.<sup>58</sup> Both briefs require the same use of persuasive techniques and application of prior law to the current facts, but the surface-level differences between the legal and procedural issues and the different class contexts may lead novice learners to struggle to

---

<sup>53</sup> *Id.* (discussing the experiment described in Mary L. Gick & Keith J. Holyoak, *Analogical Problem Solving*, 12 *COGNITIVE PSYCHOL.* 306 (1980)).

<sup>54</sup> Oates, *supra* note 8, at 4-5.

<sup>55</sup> *See id.* at 6.

<sup>56</sup> *True North*, *supra* note 8, at 62-63.

<sup>57</sup> *Id.* at 62.

<sup>58</sup> *See id.*

see the underlying similarities.

*B. Introduction To Strategies For Facilitating Student Transfer:  
Reaching Backwards And Stretching Forward*

The educational literature provides several different strategies that can help students more effectively overcome these challenges and transfer their learning from one context to another. One key strategy involves providing repeated opportunities for practice over the longer term, with variation in contexts and circumstances.<sup>59</sup> This strategy is grounded on the research on “interleaving, where study is performed on multiple related topics.”<sup>60</sup> The research on interleaving shows that even though students tend to believe that “cramming” is an effective way to learn, in fact students who “interleave” study of multiple topics “show a significantly greater ability to recall studied information.”<sup>61</sup> This improvement likely comes at least in part from the students’ ability to create connections between materials and broaden the cues that will help them retrieve the learned information.<sup>62</sup> “Accordingly, not only is a diverse course of study prudent to ensure attorneys-in-training are able to intelligently engage a wide variety of legal topics, but evidence also indicates course diversity increases a student’s ability to effectively learn—and apply—each discrete topic studied.”<sup>63</sup>

Additionally, repeated practice over an extended period of time allows students to encounter examples that have similar structures but different surface details, helping students more effectively compare old and new problems.<sup>64</sup> For example, the underlying process of legal research is generally similar from context to context (*e.g.* start with a secondary source, locate primary authority). And, the underlying structures of many legal documents are often similar. However, given the time constraints within a single class, it can be difficult to provide students with enough different examples of the same problem with different surface features so that they can generalize more easily to the underlying structures.<sup>65</sup> Students are therefore naturally presented with spaced learning of problems involving similar structures but different surface features when they move from a legal writing class to a

---

<sup>59</sup> See Archer et al., *supra* note 1, at 271 (listing “create opportunities for practice over the longer term . . . across the curriculum” as a backward-reaching strategy, and listing “practice repeatedly” and “practice under varied contexts and circumstances” as forward-reaching strategies).

<sup>60</sup> *Id.* at 265.

<sup>61</sup> *Id.* at 264-66.

<sup>62</sup> *See id.*

<sup>63</sup> *Id.* at 266.

<sup>64</sup> Oates, *supra* note 8, at 7.

<sup>65</sup> *Id.* at 8.

R

R

subject-matter specific clinic.<sup>66</sup>

As noted above, however, students may focus incorrectly on surface-level differences rather than on the underlying structures, so it is not enough to provide repeated exposure or practice and hope that students make the connections needed for effective transference. Instead, legal writing faculty and clinicians should work together to use a series of “linking” strategies<sup>67</sup> to help students see the applicability of their foundational legal writing training to externships, clinics, and future law practice. These linking strategies, as explained in the seminal article by Shaun Archer and others in the *Journal of Legal Education*, can be categorized as “reaching backwards and stretching forward.”<sup>68</sup> “A number of teaching strategies can help students not only to recognize the applicability of previous learning to a new context (backward-reaching transfer), but also the importance of building schematic locations for possible future applications of current learning (forward-reaching transfer).”<sup>69</sup> These linking strategies include a variety of “reaching backwards” techniques that clinical faculty can use to help their students retrieve and apply the foundational learning from legal writing. They also include a variety of “stretching forward” techniques that legal writing faculty can use to help make that foundational learning easier to retrieve and apply later.<sup>70</sup>

When we studied the transference theories discussed above, we realized that, while we were in fact providing repeated opportunities for practice of core skills through the legal writing and clinical curricula, we were not maximizing the benefits for student learning from these opportunities because we were not effectively “reaching backwards” or “stretching forward” to connect the foundational and advanced learning. We discuss the details of the linking strategies in Part III below, after first describing how understanding the roots of the problem led us to take each other’s courses and how doing so gave us a deeper understanding of how we could more effectively provide these missing links for our students.

---

<sup>66</sup> See also *Harvard*, *supra* note 25, at 691 (noting that research suggests it is helpful to have students solve similar problems in a variety of different contexts, and offering other approaches that may be less time-consuming).

<sup>67</sup> See Archer et al., *supra* note 1, at 271. Although there are other approaches to improving transfer, these linking strategies are particularly valuable in the context of legal skills education because they address the issues described above, such as memory (making it easier for students to remember prior learning in ways that facilitate retrieval), and they help students correctly apply the prior learning to new situations.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 276-77.

<sup>70</sup> These “reaching backwards” strategies are discussed in more detail in Part III(B)(1) *infra*, and the “stretching forward” strategies are discussed in more detail in Part III(A)(1) *infra*.

R

R

## II. IMPROVING TRANSFERENCE OF LEARNING: TAKING EACH OTHER'S COURSES

This section begins by taking a deeper look at the missing links, *i.e.* the challenges that the clinicians were seeing that led Lisa to commit to taking Mary's 1L legal writing course and later Mary to taking Lisa's clinical course. It then describes what happened when we took each other's courses, which was easier and more energizing than expected. Finally, this section offers our four key insights from this process that we think apply to legal writing and clinical courses generally, providing the basis for our recommendations below.

### A. *Why We Took Each Other's Courses: A Deeper Look At The Missing Links*

Clinical courses require students to do a significant amount of legal research and writing. When law students arrive in the clinic to take their first faculty supervised live client course, they generally have a solid foundation of legal writing and research skills under their belts. These upper division<sup>71</sup> students have almost all taken a full year or more of legal writing faculty taught courses that include researching and drafting objective memoranda, creating a research plan, reading and analyzing statutes and cases, explaining the law, crafting arguments applying the law to facts, formatting citations, and revising and editing of their own work.<sup>72</sup> But, clinic faculty are often not fully aware of what exactly is taught to our students before we meet them in the clinic, nor do we know how these concepts were taught. And, even when we have some idea of the content of our students' prior courses, we still are not effectively helping our students transfer what they learned from the faculty-created facts and legal queries in legal writing courses to the new and changing world of real client representation and problem-solving.

As explained above, despite shared syllabi, discussions of common vocabulary, and joint teaching projects, clinicians and legal writing faculty at Seattle University found that our students still struggled

---

<sup>71</sup> At most law schools, clinics and externship experiences are reserved for upper-division students. See ROBERT R. KUEHN ET AL., THE 2016-17 SURVEY OF APPLIED LEGAL EDUCATION (2017), [http://www.csale.org/files/Report\\_on\\_2016-17\\_CSALE\\_Survey.pdf](http://www.csale.org/files/Report_on_2016-17_CSALE_Survey.pdf) (this point is implied in the structure, content, and framing of the survey). This is still generally the norm but there have been a few exceptions, such as the 1L clinical experience at Yale, and there has been some pressure for additional reform. See generally THE NEW 1L: FIRST-YEAR LAWYERING WITH CLIENTS, *supra* note 5.

<sup>72</sup> For information about similarities and variations in the required legal writing courses across the country, see ASS'N. OF LEGAL WRITING DIRS./LEGAL WRITING INST., ANNUAL LEGAL WRITING SURVEY 2016-17 at 21 (2018), <https://www.lwionline.org/sites/default/files/Report%20of%20the%202016-2017%20Survey.pdf>. See also *id.* at 19-35.

to apply their previous legal writing learning to the new context of real client work. In the parlance of transference theory, it turns out that clinicians were having trouble “reaching back” with our students because we did not really understand what they had been taught. Similarly, legal writing faculty were having trouble “stretching forward” to our students’ future clinic and externship courses.

It therefore became apparent to both the clinical and legal writing faculty that, in order to fully engage and use what we learned about transfer theory, Lisa needed to audit the 1L legal writing course, reflect, and work with Mary to apply what we learned to our teaching. Similarly, we realized that Mary needed to audit at least one clinical course in order to more fully recognize the opportunities to connect the 1L legal writing material to students’ later clinical work to help minimize such siloed storage in the first place.

For example, Mary hoped that legal writing faculty could help minimize course-dependent siloed learning by more effectively stretching forward to future applications of what we taught for work in clinics and beyond. She also hoped that legal writing faculty could build a better foundation for clinical work through a deeper understanding of how near and far transfer issues play out in the clinic, including developing a better recognition of how the deep structures of the material we taught related to the structures of clinical work.<sup>73</sup> Similarly, Lisa hoped that she could more effectively break through course-dependent siloed learning if she had a deeper understanding of what students had learned in 1L legal writing. She thought that taking Mary’s course would help her use linking strategies with clinic students to more effectively help them navigate application issues, seeing how to translate their legal writing work into the new context of clinical work.<sup>74</sup>

Beyond these transference issues, we also had other reasons for taking each other’s courses. When Lisa honestly appraised her own research skills, she realized that she may not be as up to date in this area as she would like or even as current in her skills as her students are upon entering the clinic. She, like many older clinicians, had come to rely on research assistants and faculty assigned law librarians to help with current research techniques. Lisa therefore hoped that taking the 1L legal writing class would both bring her up to date on current research methods and help her reinforce this learning with

---

<sup>73</sup> Also, faculty identifying underlying similar structures for what students will be doing in the future as practitioners helps to promote later retrieval and application for jobs they do after graduation. Stretching forward also promotes interleaving/course diversity. See *supra* section I(B).

<sup>74</sup> See *supra* section I(A)(2).

clinical students doing research for their clients. Relatedly, Mary had been teaching for many years, so she worried that her practice experiences were relatively stale. Mary wanted to gain a more current perspective on law practice from observing a clinic. And while we had talked about legal writing and clinical pedagogies for years, we both wanted to see the other discipline's key pedagogies in action. Given these considerations, we realized that knowing what and how the other taught would help us build our own skills and support our students much more effectively.

*B. What Happened: Why It Was Fun, Easy, And A Gift*

Taking each other's courses was a transformative experience for both of us, one we recommend to others.<sup>75</sup> First, we found that auditing each other's classes was fun and actually much easier to do than we had anticipated. Although Lisa needed to allocate approximately 100 minutes/week to go to the legal writing class, she did not need to do any significant preparation or homework for it. Similarly, Mary did not have to prepare before attending the clinical seminar for about two hours a week, plus, occasionally attending supervision meetings. We therefore found the time commitment to be less daunting than we had expected.

This relatively small investment of time created significant returns. We listened, took notes, and occasionally participated in the class discussions when it was relevant to helping students make connections between the two courses.<sup>76</sup> Lisa had the pleasure of watching newly minted law students take their first baby steps into becoming attorneys under the guidance of a highly skilled and engaging faculty member, and Mary enjoyed watching 2L students deepen their development as lawyers and 3L students take their final steps before graduation. As we watched these processes unfold, we frequently had insights about what we were seeing and how they could apply to our own teaching.

At the end of each class, we would take a few minutes to check in

---

<sup>75</sup> We have written this article in part to share what we've learned with those for whom auditing another faculty member's course might not be feasible. However, for those who can do what we did, we highly recommend doing it as early as possible in your teaching career, once you are comfortable with your foundation in the subjects that you teach and once you have built a relationship with a faculty member whose course you would like to audit. We were excited about having our colleague come into our class only because we already had a pre-existing trust relationship.

<sup>76</sup> We discussed at the outset of the project that we would generally try to stay quiet, so that we were really observing how class typically went rather than changing the dynamic significantly. As each course went on, however, we began to invite each other to participate a bit when we saw value for transference in doing so.



with each other and talk about what we were learning. Sometimes, after time to reflect on the class, we might email each other with a quick idea or small “a-ha” on how to better link a particular class’s learning objectives more effectively to past legal writing course training or to future client representation. As a result of these discussions, we each began making small changes to our own courses, and we began making quick contributions to the discussions in each other’s courses as appropriate.<sup>77</sup>

*C. Key Insights From A Clinician Taking 1L Legal Writing And A Legal Writing Professor Taking A Clinic*

While we had many “a-ha” moments throughout the year, our reflections since then about the experience has led us to four key insights that we think are generally applicable to legal writing and clinical faculty and courses across the country: (1) there is a disconnect for students between the necessarily lawyer-centered curriculum in legal writing and the client-centered curriculum in clinics; (2) there is an additional disconnect between legal writing and clinical courses related to the role of the supervising attorney that can affect student work; (3) legal writing and clinical faculty could more effectively share key teaching techniques so that students can link up the learning from both courses; and (4) many of the changes by legal writing and clinical faculty to fix these missing links and improve transference are minimal and easy rather than structural and difficult.

First, perhaps the most important insight we had about our students’ transference struggles involved the exacerbation of course-dependent siloing from the lawyer-focused legal writing curriculum and the client-centered focus of the clinic. From Mary’s perspective, the legal writing curriculum has to be largely lawyer-focused, given that our 1L legal writing students are brand new to law school.<sup>78</sup> A big part of the first-year curriculum generally, and 1L legal writing in particular, necessarily involves helping them think, act, and write like lawyers.<sup>79</sup> To do that, legal writing faculty tend to assign many lawyer-

---

<sup>77</sup> The specific changes are discussed in more detail in Part III below. While we enjoyed and implemented the frequent “aha” moments, we found, however, that the big insights took more digestion and reflection. This next section, Part II(C), provides the larger takeaways that took us more sustained reflection to develop.

<sup>78</sup> See, e.g., *Teaching Legal Writing*, *supra* note 4, at 314 (“Legal writing pedagogy for first-year law students recognizes that novices must learn to play scales before they can play a sonata. Once students have learned their scales in legal writing, clinicians can bring them further along the path, bridging beginner’s skills into the more dynamic, unpredictable world of live-client law practice.”).

<sup>79</sup> See, e.g., *id.* at 309-10 (discussing models used in legal writing programs, but noting that legal writing programs typically cover the research and analysis necessary to produce objective memoranda in the fall semester and motion or appellate briefs in the spring

focused projects, including in-house objective memoranda written to a senior partner and pretrial or appellate briefs written for judges.<sup>80</sup> Those assignments, and the overall goal of helping students learn to think and write like a lawyer, are valuable.<sup>81</sup> However, without expressly linking that work up to future client work, that lawyer-centered focus helps create a disconnect for students between their foundational legal writing learning and their later clinical work.<sup>82</sup>

When Lisa took Mary's 1L legal writing course, we both realized that the lawyer-centered focus of legal writing assignments<sup>83</sup> contributed to the disconnect between legal writing and clinical courses. In clinics, students rarely wrote the lengthy objective memos<sup>84</sup> or formal

---

semester).

<sup>80</sup> See, e.g., Usman, *supra* note 11, at 388-92 (discussing the typical structure of the legal writing curriculum and how it could be improved by some restructuring to create more opportunities for interleaving). See also generally Grace Tonner & Diana Pratt, *Selecting and Designing Effective Legal Writing Problems*, 3 LEGAL WRITING: J. LEGAL WRITING INST. 163 (1997) (regarding underlying principles of traditional legal writing assignment design).

<sup>81</sup> But these approaches are also subject to valid criticism from within the legal writing community. See, e.g., Kathryn M. Stanchi, *Resistance Is Futile: How Legal Writing Pedagogy Contributes to the Law's Marginalization of Outsider Voices*, 103 DICK. L. REV. 7, 9 (1998) (noting that "because legal writing pedagogy reflects the biases in legal language (including legal reasoning), its effectiveness in 'socializing' law students comes at the price of suppressing the voices of those who have already been historically marginalized by legal language."). Professor Stanchi notes the fundamental tension that legal writing faculty must grapple with, at least implicitly:

Encouraging 'socialization' means that legal writing pedagogy is contributing to the suppression of certain unique and valuable voices, cultures and concepts in law, and ensuring that law remains a language of power and privilege. On the other hand, if students are not socialized, have legal writing teachers 'set up' already marginalized students to fail in legal practice?

*Id.* at 10. See also Teri A. McMurtry-Chubb, *Writing at the Master's Table: Reflections on Theft, Criminality, and Otherness in the Legal Writing Profession*, 2 DREXEL L. REV. 41, 54-57 (2009) (exploring how the relative scarcity of people of color teaching legal writing impacts what students are taught, including making it "more likely that LRW faculty will not problematize the process by which lawyers and jurists analyze and reason.").

<sup>82</sup> This distinction is an important barrier between legal writing and clinical programs. See Sarah O'Rourke Schruppe, *The Clinical Divide: Overcoming Barriers to Collaboration Between Clinics and Legal Writing Programs*, 14 CLINICAL L. REV. 301, 303 (2007) ("The most fundamental barrier to collaboration and integrated learning between LRW programs and clinical programs stems from differences in the development of the two disciplines and the resultant differences in teaching approaches. Using broad generalizations, these differences are defined on the clinical side by a progressive or 'rebellious' approach to lawyering that is at odds with the more traditional or 'regnant' approach that is adopted in many first-year LRW classes."). Professor Kowalski rightly urges legal writing and clinical faculty to discuss these philosophical differences and to look for common ground, which is often extensive. *Teaching Legal Writing*, *supra* note 4, at 304.

<sup>83</sup> This focus on lawyers rather than clients is infused throughout the law school curriculum as a whole rather than being a problem specific to legal writing. See, e.g., Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the "Heart" of Lawyering*, 87 NEB. L. REV. 1, 30-31 (2008).

<sup>84</sup> They did, however, more often write shorter research memos to the file or memo-

R

R

appellate briefs traditionally taught in the legal writing curriculum. Instead, they more often wrote client-focused documents, such as advice letters, declarations, transactional documents like wills and advance directives, or shorter and less formal motion briefs. As a result, students were not readily linking up their well-developed research and writing skills to problem solving for actual clients in the clinic.<sup>85</sup> They were storing information by assignment type and class because we had not built in links in our teaching to help them see how this lawyer focused research and writing related to real client representation, and the connections were less obvious to the students than we expected given the different focuses of the two courses. We therefore provide a number of suggestions in Part III(A)(2)(c) below about how to supplement the necessary lawyer-focus of 1L legal writing with some client-centeredness that will make it easier for faculty in both programs to link the learning between courses.

We also realized that there was a second layer to this disconnect related to the role of the “supervising lawyer” in legal writing versus clinical classrooms. In legal writing, professors simulate being the student’s supervising lawyer, and in clinics, the professor is actually a supervising lawyer. However, in legal writing, the supervising attorney is receiving the junior attorney’s work while remaining the “first chair” on the case. But in the clinic, the professor is teaching the student to be the first chair, and the professor plays a more supporting role.<sup>86</sup> That difference in role affects the supervising attorney’s expectations and needs, creating a subtle but important shift in “audience and purpose” taught in legal writing versus the clinical course. This shift in role can lead students to fail to link up the skills developed in 1L legal writing courses to writing for client representation. It also leads some students to resisting their first-chair role in the clinic, as they expect the clinical professor to have all the answers for their individual cases.

Third, we realized that legal writing and clinical faculty could communicate more effectively about key teaching techniques that

---

randa in support of motions, as discussed below in part III(B)(2)(b).

<sup>85</sup> The lack of client focus in the law school curriculum may well have significant implications beyond just transference of students’ legal research and writing skills, making them more generally resistant to the cycle of learning and reflection that is necessary for law practice. Gerdy, *supra* note 83, at 32-33.

<sup>86</sup> See Susan L. Brooks, *Meeting the Professional Identity Challenge in Legal Education Through a Relationship-Centered Experiential Curriculum*, 41 U. BALT. L. REV. 395, 412-13 (2012). Clinics place students in the first-chair role, while externships may function more similarly to the approach taken in the legal writing classroom, with students in a “mentee” role. See Kruse, *supra* note 2, at 35. Professor Kowalski also describes a number of approaches to clinical supervision that fall between these extremes. *Teaching Legal Writing*, *supra* note 4, at 306-09.

R

R

R

could help students link their learning in the two courses.<sup>87</sup> For example, Lisa had been suggesting for years that Mary and her legal writing colleagues incorporate more reflection into their legal writing courses, given the central role of reflection in clinical pedagogy.<sup>88</sup> Mary had always resisted based on concerns about the amount of time it would take and her perceived need to provide individualized feedback on anything her students write; the larger class sizes in legal writing as compared to clinical courses made that impossible. However, as a result of taking each other's courses, Mary came to appreciate both the value of reflection and the ways in which it could be done simply and easily in the legal writing classroom, as discussed in more detail in Part III(A)(2)(b) below.

Similarly, we realized that legal writing faculty could more effectively teach clinicians about how to break tasks like legal research and legal writing down into their component parts.<sup>89</sup> In taking Mary's class, Lisa realized how much she knows about legal research and writing as an experienced practitioner and teacher, but also how unaware she was about the multiple steps she takes automatically to get to a result.<sup>90</sup> In taking Mary's class and observing new law students at the start of their legal careers, Lisa gained awareness of those steps and additional language and tactics for teaching what she already knew but had not fully articulated. Lisa had a similar reaction when seeing Mary break down the parts of a legal memo or working with students on writing process issues; as a practitioner, she did many of the same things that Mary was teaching, but she had not stepped back to think about how to deconstruct the component parts for novices in the same way.<sup>91</sup>

We also realized that legal writing faculty had much to share with

---

<sup>87</sup> See Schrupe, *supra* note 82, at 306 (noting that clinicians and legal writing faculty could improve their teaching by incorporating the best of each other's methodologies, including composition theory from legal writing and the social justice commitments of the clinics).

<sup>88</sup> See, e.g., Margaret Martin Barry, *Reflective Lawyering*, in *LEARNING FROM PRACTICE: A PROFESSIONAL DEVELOPMENT TEXT FOR LEGAL EXTERNS* 145, 147 (2d ed., Leah Wortham et al. eds., 2007) ("Reflection is not just desirable or useful. Reflection is essential to learning from experience.").

<sup>89</sup> See *infra* section III(B)(2)(c).

<sup>90</sup> Lisa's realization that she does not break things down into their smallest steps reflects the research into expert/novice learning theory. See Kruse, *supra* note 2, at 29 (summarizing the cognitive psychology research into this issue and noting that "An expert problem-solver will move through the intermediate steps of reasoning so automatically and unconsciously that the process will seem intuitive.").

<sup>91</sup> These experiences initially made Lisa more confident in most of her research and writing skills but less confident in her teaching of them. After more reflection, however, Lisa has identified several suggestions that clinicians can use to become more confident in their teaching of these issues, as discussed *infra* in Part III(B)(2).

R

R

clinical faculty about providing feedback on student work.<sup>92</sup> From a learning theory perspective, feedback increases the benefits of spaced learning and retrieval of prior knowledge.<sup>93</sup> Just as the different contexts of legal writing versus clinical courses affect the type of writing projects done, these contexts also can impact the feedback that faculty provide on student work.<sup>94</sup> Clinicians work with students in the context of real cases, with real clients whose interests are at stake in the representation, and with immediate consequences attached when students' work product is inadequate. Due to the time constraints that often accompany the research and drafting needed to get done for real client representation, clinicians may understandably focus more narrowly on getting the particular documents written and revised rather than taking the broader perspective that legal writing faculty have about teaching students both how to improve a particular document and how that relates to working on other documents in the future. Clinicians can therefore have a harder time helping students to find their own voice in their writing and to improve their overall writing habits and skills. Additionally, legal writing faculty often focus on diagnosing the underlying reasons for the student mistakes, including student writing process issues, perspectives that clinical faculty may not have as they approach student writing.<sup>95</sup> Legal writing faculty provide students with tools and techniques that are explicitly designed to help students become self-regulated learners about their own writing.<sup>96</sup> Relatedly, legal writing faculty break down tasks into smaller

---

<sup>92</sup> See, e.g., Schrupe, *supra* note 82, at 312 (noting that one of the key tenets of legal writing scholarship and pedagogy is a "composition theory that is process-based and reader-based"); this process-based and reader-based approach to legal writing can be useful to clinicians in thinking about providing effective feedback on student work, although Schrupe rightly notes that this reader-based focus is somewhat in tension with the client-centeredness of clinical pedagogy. See *id.* See also *Teaching Legal Writing*, *supra* note 4, at 294 (discussing results of a survey of clinicians indicating that 60% of clinician respondents wanted to learn additional tools for teaching legal writing and commenting on student work more effectively, but 60 percent of respondents also "reported no pending discussions or plan for collaborating with their counterparts in the legal writing program.").

<sup>93</sup> See Cooper, *supra* note 19, at 568-69.

<sup>94</sup> For a good introduction to legal writing scholarship on critiquing legal writing, see, e.g., Anne Enquist, *Critiquing Law Students' Writing: What Students Say Is Effective*, 2 LEGAL WRITING: J. LEGAL WRITING INST. 145 (1996); 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, 652 (2007); and Alison Julien, *Going Live: The Pros and Cons of Live Critiques*, 20 NO. 1 PERSP.: TEACHING LEGAL RES. & WRITING 20 (2012).

<sup>95</sup> We do not mean to suggest that individual clinicians never have this perspective or the same tools that legal writing faculty do in terms of providing feedback on student work. We simply mean that legal writing as a discipline has focused on these issues more than clinical law teaching, and that this is one of many areas in which legal writing and clinical faculty can learn from each other.

<sup>96</sup> See, e.g., Leah M. Christensen, *The Power of Skills: An Empirical Study of Law-yeering Skills Grades as the Strongest Predictor of Law School Success (Or in Other Words,*

R

R

tasks for our novice students, while clinical faculty may do these steps automatically and rapidly, which makes it harder for clinical faculty to reinforce the processes that students learn in legal writing. Yet clinical students sometimes perform sub-par work in part because they forget to go through all the necessary steps in the process; for example, they might focus on editing for sentence-level changes without first revising the document's content and organization. We therefore realized that legal writing faculty and clinicians should focus on collaborating around how to effectively diagnose and provide feedback in response to ineffective student work product.<sup>97</sup>

Finally, while these three insights might at first seem like they would lead to large structural changes, we actually found that several of the most effective approaches to implementing changes were small and easy. Structural changes would generally be controversial and hard to implement, but once Lisa had a deeper understanding of the 1L legal writing curriculum and Mary had a clearer sense of the clinical curriculum, we identified a number of quick and easy ideas that we could implement right away to address the transference issues and provide more effective links between the 1L foundational learning and the upper-division clinical experiences. The next section therefore makes a number of recommendations for relatively small to moderate changes to both legal writing and clinical courses that can provide significant benefits for student learning.<sup>98</sup> We recognize that not all of these suggestions will work for everyone at every law school; instead, we are providing a menu of options in the hope that all readers can find one or more feasible suggestions.

---

*It's Time for Legal Education to Get Serious About Integrating Skills Training Throughout the Law School Curriculum If We Care About How Our Students Learn*), 83 ST. JOHN'S L. REV. 795, 819 (2009). For a useful discussion of how law schools could more effectively teach students to be self-regulated learners, see Jason S. Palmer, "The Millennials Are Coming!": *Improving Self-Efficacy in Law Students Through Universal Design in Learning*, 63 CLEV. ST. L. REV. 675 (2015).

<sup>97</sup> Ironically, it may take less overall time to produce high quality student writing by clinicians applying the specific transference teaching techniques we recommend in section III(B)(2)(d) *infra*. Using transference techniques, clinicians actually can save time in closely reviewing and editing student work while giving their students the tools to provide better quality later drafts for faculty review.

<sup>98</sup> Legal writing and clinical faculty who are doing these smaller collaborations may also want to think about bigger structural changes; we have a separate article in progress that will address possibilities for more structural changes, as well as the political and other potential barriers to those changes. But at schools where legal writing and clinical faculty are not currently working together on transference of student learning in particular, the smaller to moderate changes discussed in this article provide a better starting point.

### III. CRACKING STUDENT SILOS: TRANSFERENCE STRATEGIES FOR LINKING STUDENT LEARNING ACROSS COURSES

As in Section I (on transference generally), this section first discusses suggested changes to the foundation learning experience, *i.e.* the legal writing curricula, and then discusses changes to the clinical curricula in order for our students to best retrieve and build on that foundation. Throughout both sections of the article, though, we offer both legal writing faculty and clinician perspectives on why these suggestions are beneficial and effective.

#### A. *Simple Changes That Legal Writing Faculty Can Make To Improve Transference*

This section begins with an overview of what the learning theory tells us about “stretching forward” strategies generally. It then offers several relatively quick and easy changes that legal writing faculty can make to build a better foundation for student transference. Without requiring significant time or other resources, these changes can pay big dividends in terms of improving student learning.

##### 1. *Strategies For Stretching Forward Generally*

Many of the forward-stretching strategies build on the concept of “scaffolding,” which is the idea that “people integrate new information into existing frameworks of knowledge.”<sup>99</sup> As noted above, novices tend to scaffold based on surface-level features such as specific facts or based on the course in which they learn information. However, legal educators can help students create broader and more effective frameworks for storing their learning by doing more intentional scaffolding.

One key technique involves “explicitly identifying opportunities for future application of the material being learned.”<sup>100</sup> For example, when teaching the structure of a memo, professors can refer to how that same structure can be adapted for different types of documents, such as client advice letters or demand letters.<sup>101</sup> Or legal writing faculty can talk briefly about how students will be asked to write similar memos in their clinical courses. Doing so can help students store and retrieve the material within a broader rather than a course-spe-

---

<sup>99</sup> Archer et al., *supra* note 1, at 265. “As an example, intentional scaffolding can be observed when an instructor builds on an understanding of arithmetic in order to teach algebra.” *Id.* In law school, we build from teaching new 1Ls case briefing for class discussion to use of case analysis in legally sound briefs and memoranda for client work.

<sup>100</sup> Archer et al., *supra* note 1, at 280.

<sup>101</sup> *See id.*

cific framework.<sup>102</sup>

Another key technique legal writing faculty can use is to “generalize and abstract rules and concepts for future application.”<sup>103</sup> As noted above, novices tend to focus on surface-level features rather than underlying structures, but researchers have “found that transfer can be substantially increased by specifically teaching students underlying structures and then providing them with examples of those structures in specific fact situations.”<sup>104</sup> Thus, legal writing faculty could start by talking about the underlying components of a memo first, and then introduce the students to a variety of sample memos using those underlying components.<sup>105</sup> Doing so can help focus students on the underlying structures (*e.g.* statement of facts, issue statement, brief answer, discussion, conclusion) rather than the surface-level information (*e.g.* elements of the particular tort or crime being discussed in a specific memo).

A third technique involves modeling “the desired approach and outcome.”<sup>106</sup> Clinicians frequently use modeling in teaching legal skills; legal writing faculty could partner with clinicians to introduce concepts of client interviewing or advising when teaching client letter assignments.<sup>107</sup> Legal writing and clinical faculty can also work together to come up with shared model memos or briefs that students could refer back to in both classes.

Finally, reflection can be helpful for students stretching forward. “Reflective practice encourages students to learn from their experiences and engage in self-reflection to embark on a process of continual learning—one of the defining characteristics of professional practice.”<sup>108</sup> Faculty teaching foundational classes should transparently teach metacognition,<sup>109</sup> including the role of reflection in student learning and professional practice.<sup>110</sup> Students will get more out of a particular activity if they reflect on what went well, how they could translate those positives to future experiences, and how they could

---

<sup>102</sup> See Oates, *supra* note 8, at 5 (“Similarly, *unless told to do otherwise*, our students will store new information about contracts with the other information that they have learned in contracts[.]”) (emphasis added).

<sup>103</sup> Archer et al., *supra* note 1, at 280.

<sup>104</sup> Oates, *supra* note 8, at 8.

<sup>105</sup> See *id.* at 10-11.

<sup>106</sup> Archer et al., *supra* note 1, at 281.

<sup>107</sup> See *id.*

<sup>108</sup> Vinson, *supra* note 14, at 812.

<sup>109</sup> “Metacognition refers to the self-monitoring by an individual of his own unique cognitive processes.” *Lawyers and Learning*, *supra* note 20, at 35.

<sup>110</sup> See Vinson, *supra* note 14, at 812-13. See also Usman, *supra* note 11, at 392-93 (summarizing recent scholarship on the benefits of teaching law students about metacognition, self-regulated learner theory, and mindset).

R

R

R

R

R

R



improve on areas that did not go as well.<sup>111</sup>

## 2. *Application To The Legal Writing Curriculum – Suggestions For Legal Writing Faculty Stretching Forward*

This section takes the techniques identified above and applies them more concretely to the legal writing curriculum, offering suggestions based on our own experiences.

### *a. Focus On Future Applications As Well As Task Completion*

One simple and quick way that legal writing faculty can help law students improve transference is to make explicit references to future applications of what we teach.<sup>112</sup> As noted above, students often experience cue-dependent forgetting: they store information by course (e.g. legal writing) rather than by task (e.g. writing a memo), so they have trouble retrieving and applying what they learned later.<sup>113</sup> Once we understood this research, we made it a priority to add more explicit references in the legal writing classes to potential future applications, such as discussing with students how they might use a longer formal memo in their clinical course to summarize their analysis of whether to proceed on a particular claim in a client's case and then use shorter "e-memos"<sup>114</sup> to summarize the results of discrete research sessions.<sup>115</sup>

Although this is a quick and easy thing to do, we didn't do it often enough until Lisa took Mary's course. Mary would often be so focused on giving the students what they needed to draft the particular section of the memo that was due before the following class that she would

---

<sup>111</sup> The research on metacognition indicates that the reflection needs to focus not just on *what* is learned but also on *how* the learning happened. Cheryl B. Preston et al., *Teaching "Thinking Like a Lawyer": Metacognition and Law Students*, 2014 B.Y.U. L. REV. 1053, 1082-83 (2014) (noting that some "legal scholars mistook metacognition as meaning reflection on the subjects learned rather than on the process of thinking as its own concern"). Thus, "Metacognitive work could also employ a journal, but the point would be for the student to reflect on and record *how* the student learned, rather than *what* the student learned." *Id.* at 1059. See also the discussion of reflection at section III(B)(1) *infra*.

<sup>112</sup> See Archer et al., *supra* note 1, at 280; *Teaching Legal Writing*, *supra* note 4, at 293.

<sup>113</sup> See *supra* section I(A)(2).

<sup>114</sup> See *infra* section III(B)(2)(b) for a discussion of "e-memos" and how they can be useful in clinical courses.

<sup>115</sup> Depending on the circumstances, it may be helpful to generalize and abstract the concepts being presented (e.g. discussing formats for explaining application of law to fact generally rather than focusing narrowly on task completion, such as how to organize arguments in a memo generally or this particular memo in particular). See *supra* section III(A)(1) (regarding techniques for reaching forward, including the discussion of generalizing concepts for future application). Doing so can help students see underlying analytical similarities or differences that will help the student avoid confusion over near/far transfer in application of the material when the student retrieves it later in the clinic. See *supra* section I(B)(2) (discussing near-far transfer issues).

fail to stop and discuss how that section fit into the students' overall skill development. With so much material to cover in legal writing, she often felt like she did not have enough time to talk about future application as well.

However, with Lisa sitting in the legal writing classroom, Mary began to naturally make more references to future application. For example, sometimes Mary added a few sentences to her opening lecture in a class session about how that day's material would be used later in the clinic. On other days, Mary asked Lisa to provide a bit of context for the students; for example, in one class on drafting issue statements for a memo, Mary talked about understanding the question that the senior lawyer was asking the student, and then Lisa talked about how in the clinic and in practice later, the students would sometimes have to identify and frame for themselves the questions to be researched and analyzed. In the academic year after Lisa took Mary's class, Mary made it a priority to raise the same kinds of issues with her new group of students, to help create a broader context for students that should help minimize cue-dependent forgetting. These brief statements or discussions generally only took a few sentences to a few minutes, so they did not take too much time or interfere with accomplishing other learning objectives for the class session.

For legal writing faculty interested in implementing this suggestion at their own schools, we would recommend a few things that may make it easier. First, you could look at your syllabus and identify times when you are teaching key foundational skills that you want students to be able to transfer and make notes to yourself about how those skills create a foundation for work that the students will be doing later. Second, talk to clinical faculty, perhaps over coffee or at a brown bag lunch, about common tasks that clinicians have their students do and how those relate to what is taught in the legal writing classroom. You may not have a clinical faculty member with you in class, but you can have those discussions outside of class and then use that information to create a broader context for students. You could even visualize your clinical colleague in your classroom to help prompt you to bring in the discussion. Third, while Lisa took Mary's entire class, you could select some key moments in the legal writing course to have clinical faculty come in briefly to make the connections explicit for the students.<sup>116</sup> That approach would give clinical faculty the opportunity to watch legal writing faculty teach about key foundational concepts, which would later help the clinician to reach back to

---

<sup>116</sup> See *Teaching Legal Writing*, *supra* note 4, at 325-26 (recommending that legal writing faculty bring clinicians into the legal writing classroom at key moments to help provide connections to future applications of material being taught).

that discussion, and it would provide an opportunity for clinical faculty to talk to 1Ls. Both sides could agree on a set amount of time that the clinicians would discuss future applications, so that this approach would not come at the expense of the typical material being taught in that section.

*b. Add In Short Reflection Assignments To Help Students Create Connections*

Another fairly simple step that legal writing faculty can take to improve student transference is adding short reflection assignments to the 1L legal writing class. These reflection assignments can take a variety of forms, from “warm-up questions” that students take a few minutes to complete at the beginning of class to short wrap up questions at the end of a class session to more detailed reflections on interim or final drafts of an assignment. In any of these forms, students can be asked to think about positive things like what they’ve done well on a particular assignment or what they understand well from a class session. They could also be asked what they think they need to improve on.<sup>117</sup> For transference purposes, though, reflection is particularly likely to be effective if students are asked specifically about how they anticipate applying what they learn in future classes like clinics or in law practice more generally.<sup>118</sup>

Relatedly, we would particularly recommend asking students to reflect on their writing process. For example, some students procrastinate and then run out of time to effectively draft, revise, and then edit their writing. Other students spend an adequate amount of time on their writing, but they get writers block if they don’t know what exactly they want to write, so they waste a great deal of time drafting and deleting or staring at their screens. Some students even use legal research as a way to procrastinate from writing while feeling like they are working on their memos. These writing process issues, and others like them, often get in the way of students producing their best work, both in legal writing classes and in their clinical course work. And from a transference perspective, they may well contribute to students not storing the material that they were supposed to be learning into long-term memory.<sup>119</sup> Legal writing faculty can help students overcome these challenges by helping them reflect on the ways in which their own writing processes get in the way and how to develop more

---

<sup>117</sup> See *supra* notes 109-111 and related text regarding metacognition research.

<sup>118</sup> See Cooper, *supra* note 19, at 571 (noting that generating responses or trying to solve a problem when being presented with multiple-choice answers is a beneficial form of self-testing the student’s understanding).

<sup>119</sup> See *supra* section I(A)(1).

effective writing processes. Doing so should help both with increased ability of the students to remember the current material and with later retrieval.

*c. Add A Client-Centered Focus To The Legal Writing Curriculum*

One of the biggest takeaways from our 2014 joint legal writing and clinician faculty retreat was that clinic students were not readily retrieving the skills they had learned in legal writing courses when confronted with the messiness of real client work. As discussed above, legal writing faculty have good reason to focus a significant portion of their class on lawyer-centered thinking, but legal writing faculty can provide a better scaffold for student learning by supplementing that focus with some client-centeredness. As explained above, we realized from taking each other's courses that the different focuses of the legal writing and clinical curricula, and the different roles that supervisors play in each course, exacerbated our students' normal course-dependent siloing. Legal writing faculty were teaching students to educate and defer to senior lawyers, while clinicians were teaching students to function as the supervising lawyer who is responsible for focusing on the client's goals and needs. By supplementing the legal writing curriculum with some client-centered activities, however, legal writing faculty can better prepare students to retrieve and correctly apply their legal writing learning in their client-centered clinical courses.

The suggestions below generally involve bringing in more "lawyering skills" training into the legal writing curriculum, to supplement rather than supplant the traditional legal writing curriculum.<sup>120</sup> The introduction of these legal skills can provide context for the traditional legal writing assignments, and that context more closely resembles the ways in which legal research and writing tasks will come up in clinics, externships, and beyond in practice. This additional context, when combined with an explicit focus on how the new skills will be useful in the clinic, should help break down course-dependent siloing in terms of how students store the information being taught. Additionally, the introduction of lawyering skills can help create "interleaving" within the legal writing curriculum, a technique that is helpful for

---

<sup>120</sup> For a good discussion of how legal skills can supplement rather than compete with existing legal writing curriculum, see generally Lucia Ann Silecchia, *Legal Skills Training in the First Year of Law School: Research? Writing? Analysis? Or More?*, 100 *DICK. L. REV.* 245 (1996). See also Stefano Moscato, *Teaching Foundational Clinical Lawyering Skills to First-Year Students*, 13 *LEGAL WRITING: J. LEGAL WRITING INST.* 207, 219 (2007) ("Perhaps most importantly, demonstrating to first-year students from the outset the overlap and interdependence between legal writing and the clinical techniques described in this Article is critical to the effective teaching of lawyering skills.").

long-term learning.<sup>121</sup>

The idea here is not to teach any of these additional skills to mastery. Instead, these additional skills should be introduced in the legal writing class to use the transference techniques of providing additional opportunities for practice over time, linking students' legal writing experiences explicitly to their clinical or externship opportunities, and minimizing near/far transfer problems by giving them more tools to reflect on deep structures and to help the clinicians work on similarities versus differences when they get to the clinic.<sup>122</sup> Clinicians can then build on these client-focused skills introduced in the first year, rather than starting from scratch.

This client-centered supplement to the legal writing curriculum can be done in a variety of ways, from relatively minor to more ambitious. This section therefore offers a variety of approaches that could be used, and legal writing faculty can pick however many or few of the suggestions below make sense for their class at their school. Some legal writing faculty already do some of the things suggested below; for those faculty, we hope the discussion below will help them make the most of these assignments from a transference perspective.

*i. Introduce Client Counseling Through A Client Advice Letter*

One of the most powerful ways legal writing faculty can add client-centeredness is having students write a client advice letter based on their analysis from a completed memo assignment. From a transference perspective, shifting from a memo to a client letter on the same topic helps students work a bit with near versus far transfer. Doing so requires near transfer in the sense that the assignments have similar content and are done close in time to one another, but it requires far transfer in the sense of having to adapt the audience and purpose of the material and to grapple with the differences between

---

<sup>121</sup> See Usman, *supra* note 11, at 366 (“In essence, when one engages in spaced practice she forces her brain to retrieve forgotten information, strengthening the recall cues for the next time the information needs to be recalled”); *id.* at 367 (regarding the importance of interleaving for long-term learning).

<sup>122</sup> While we have focused in this article largely on the benefits for transference from adding a client-centered approach to the legal writing curriculum, this approach has other potential benefits as well. See, e.g., Nantiya Ruan, *Experiential Learning in the First-Year Curriculum: The Public Interest Partnership*, 8 LEGAL COMM. & RHETORIC: JALWD 191, 193 (2011) (hereinafter “*Experiential Learning*”) (discussing the public-interest partnership, in which 1L legal writing students do research and analysis for a preselected non-profit). Professor Ruan also offers important guidance on implementing these projects effectively, particularly regarding the applicable ethical rules and considerations raised by these projects. Nantiya Ruan, *Student, Esquire?: The Practice of Law in the Collaborative Classroom*, 20 CLINICAL L. REV. 429 (2014) (hereinafter “*Student, Esquire?*”).

the two documents.

Additionally, adding a client letter assignment provides an opportunity to explicitly reach forward to the work that students might do in their clinical classes. Clinicians like Lisa often find that when students in clinical courses are asked to describe the tasks that lawyers do for their clients, they focus on things like doing legal research, drafting documents, and representing clients at hearings, but they rarely mention giving clients “advice” as a key lawyering task.<sup>123</sup> Yet client counseling is a crucial component of lawyering, and students need to understand client counseling topics such as the scope of lawyer versus client decision-making, the importance of exploring options that the client could pursue, and lawyering as problem-solving.<sup>124</sup> Introducing 1Ls to client-counseling concepts through a client letter on a topic they have already analyzed can thus create a useful foundation for the more advanced skill of client counseling. It also reinforces more traditional 1L legal writing teaching on concepts like attention to writing for a different audience, judgment on what arguments to include and how much to explain, etc. as well as aiding in memory storage for later retrieval when representing real clients.

This project can provide significant benefits without requiring much additional work. Assigning a client advice letter based on a memo problem can provide students who struggled with the memo topic a chance to revisit and deepen their analysis.<sup>125</sup> It can also help students understand the practical significance of their legal conclusions. For example, one professor described asking her legal writing students to write a memo about a covenant not to compete; the students in the class were split over whether the covenant was enforceable.<sup>126</sup> When they all had to counsel the client, however, they had to

---

<sup>123</sup> “Problem solving begins with a process by which a lawyer chooses which of the multiple substantive problems presented by a client or a situation the lawyer will attempt to solve. . . . For novice lawyers [clinic students] working for the first time in the real world, the difficult adjustment from the closed world of the law school classroom to one in which situations are unstructured, the issues difficult to identify, and the facts undeveloped, subject to change, and hard to find, is an ongoing struggle.” SUSAN BRYANT ET AL., *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* 338 (2014).

<sup>124</sup> See, e.g., Vinson, *supra* note 14, at 791-92 (discussing problem-solving in terms of considering all available options, including non-legal ones, in light of the client’s short-term and long-term goals, as well as options for communicating the alternatives to the client).

<sup>125</sup> Legal writing faculty can decide whether or not to provide sample memos to give struggling students some assistance with the analysis or whether to rely on the comments on the final memos and the class discussions about the client letter instead. Mary has done it both ways, depending on the difficulty of the memo topic and the quality range of the memos.

<sup>126</sup> Nancy Oliver, *Coming Face-to-Face with a Legal Research and Writing Client*, 13 NO. 3 PERSP.: TEACHING LEGAL RES. & WRITING 149, 151-52 (2005).

grapple with the significance of the fact that the conclusion was not clear, brainstorm potential options that the client could pursue, and analyze the negotiating positions and interests of both sides.<sup>127</sup> To help students evaluate the client's options, legal writing faculty can provide basic secondary source information about newly relevant topics, such as preliminary injunctions or mediation.<sup>128</sup> With only minimal additional work, students could learn practical problem-solving skills and deepen their understanding of how lawyers will use the research and objective analysis typically taught in the legal writing curriculum.<sup>129</sup>

Additionally, client letters provide great opportunities to work with students on fundamental legal writing concepts like audience and purpose; we focus so much of the 1L year on getting them to sound like lawyers that they sometimes forget how to communicate with "real people," to let go of their hard-earned legal vocabulary and to recognize what clients likely will and won't know about the issues and the law more generally. Client letters also provide an opportunity to practice conciseness and legal judgment, as students have to synthesize complex information and use judgment about how much information that they need to provide for the client.

## *ii. Introduce Fact Development*

Another way to help 1L students engage in client-centered activities is to work with them on fact development. As noted above, many law school courses outside the legal writing curriculum focus on appellate cases, in which trial courts have resolved contested views of the facts.<sup>130</sup> In traditional legal writing courses, students may see a bit more about how facts develop and may be contested, but when legal writing faculty provide all the facts for an issue in one assigning memo, we fail to replicate how lawyers develop facts in practice. "Law

---

<sup>127</sup> *See id.*

<sup>128</sup> This past year, Mary had her students write a memo on protection of a customer list as a trade secret. The students concluded that the customer list likely was protectable as a trade secret, and the follow-up client letter project provided an opportunity for me to give students some foundational secondary sources on topics such as preliminary injunctions, sealing court files, and alternative dispute resolution options that had not been covered in the students' civil procedure class.

<sup>129</sup> *See id.* at 153 ("Finally, when the students recognized the clients as real people, they realized that the job of a lawyer doesn't end when the lawyer makes a prediction about the client's legal situation in his or her objective memo. It wasn't enough for Dr. Kowalski to hear from her lawyer that her CNC was likely overbroad, and, therefore, unenforceable. She needed to know how to proceed with this knowledge.").

<sup>130</sup> *See* Kruse, *supra* note 2, at 18 ("The statements of facts in appellate opinions consist of only a few facts drawn from the record of a lower court, selected and presented to lend rhetorical support to the legal conclusion that the author of the appellate opinion has drawn.").

students and attorneys can develop facts in numerous ways: by reviewing documents, such as a contract or lease, emails, notes from a client meeting, or pictures; listening to the client or other parties in the case, including the lawyer's supervisor; or visiting the scene of the problem to collect or confirm facts."<sup>131</sup>

Not every type of fact development will work for every legal writing problem, nor is it necessary to engage in significant fact development for every legal writing problem. But "[e]ffective development of written legal analysis simply cannot take place independently from the facts underlying the legal issue in question, how those facts are perceived, [and] how that perception is influenced by the contexts in which those facts arise[.]"<sup>132</sup> Legal writing faculty should therefore look for opportunities to introduce students to fact-development concepts in connection with their legal writing problems. For example, many legal writing faculty already provide case-file materials like deposition transcripts or contracts for students to consider; faculty could get even more out of that approach by talking briefly with students about how those documents were created, preparing students for their later roles in creating similar documents.

Another simple way to introduce fact-development is to ask students what other information they would want to know, how urgent is it for their legal or other analysis of their client's case, and how might they try to find that information if they were really handling the case.<sup>133</sup> Or legal writing faculty can teach fact-development when teaching brief-writing: "As students prepare to write a summary judgment motion, for example, they can be encouraged to analyze what facts they have to support their written motion, what gaps or inconsistencies exist in the facts, how those facts can ethically be presented in the light most favorable to the client, and what techniques would be used to gather any additional facts."<sup>134</sup> Doing so can provide context for the legal analysis that legal writing faculty ask their students to engage in and can create a foundation for clinicians to reach back to

---

<sup>131</sup> Vinson, *supra* note 14, at 788.

<sup>132</sup> Moscato, *supra* note 120, at 224.

<sup>133</sup> For example, Mary has begun assigning a chapter on fact-development, JAMES W. McELHANEY, McELHANEY'S TRIAL NOTEBOOK 75 (4th ed. 2005). After the students wrote a memo concluding that the client likely had a valid claim for misappropriation of trade secrets, she then had the students brainstorm what other information they would want to know in order to prove the claim at trial and how they would go about developing that information, including who they would talk to, what documents they would want to review, etc. That same exercise could be used with a variety of legal memo topics.

<sup>134</sup> Silecchia, *supra* note 120, at 288. Professor Silecchia notes that raising these questions "will be a much more efficient and effective use of the students' writing time than spending that same amount of time in discrete lectures about deposition techniques, subpoenas, or witness preparation." *Id.*



when engaging clinical students in real client work that requires fact development for students' research and analysis.

*iii. Client Interview To Get Facts*

Relatedly, legal writing faculty might replace the typical written summary of facts for legal writing assignments with one or more client interview exercises. Prior to our transference collaborations, Mary often provided students with a summary of the key facts as part of each project's assignment sheet. This approach, while convenient for Mary as a legal writing teacher, did not help students recognize or practice the lawyering skill of developing facts, including interviewing their clients or other witnesses to develop the relevant information.

As a result of our collaborations, Mary began requiring students to do at least one client interview during the first year to gather facts for their memo assignments.<sup>135</sup> In doing so, she discovered that doing an interview for a memo assignment does not really take that much time, but it does help the students to think about fact development more effectively. There are a number of different ways to incorporate client interviewing into the legal writing classroom.<sup>136</sup> She often starts early in the fall by having all the students prepare for the interview, then asking for two student volunteers to do the interview in front of the class, with the rest of the students asking follow up questions. Later in the year, she will have students interview in small groups, with former student volunteers playing the clients.<sup>137</sup> All students then write a memo to the file summarizing the interview, and then Mary prepares master interview notes so that all students are working with the same facts. A colleague uses a third approach, having half her current class play the clients for one interview and then play the attorney for the interview in a subsequent assignment.<sup>138</sup> Regardless of the

---

<sup>135</sup> For transference purposes, multiple opportunities to practice are preferable to a single opportunity. See *supra* notes 59-66 and related text.

<sup>136</sup> See, e.g., Cara Cunningham Warren, *Client Interview Training: A Reflection on the "Quantum Shift" in Legal Education*, MICH. B. J., Dec. 2017, at 42, 42 (discussing a number of techniques she uses to teach client interviewing in her legal writing class); Moscato, *supra* note 120, at 226-27 (describing various methods of incorporating client interviewing at multiple schools).

<sup>137</sup> Some legal writing faculty use actors or volunteers from outside the school. See, e.g., Gerdy, *supra* note 83, at 60. Regardless of who plays the client, the legal writing professor should make sure that the person playing the role of the client understands what facts are key to the assignment to avoid changing any of the material facts; the professor should also give the "client" "leeway to add emotion and, if warranted by the students' interplay, anger and frustration, to the portrayal of the client's perspective." *Id.*

<sup>138</sup> This approach is somewhat similar, although on a smaller scale, to an exercise from medical education that Gerdy describes as being valuable for doctors learning empathy. See *id.* at 49-53. Medical students who were hospitalized in order to learn from the experience (rather than for treatment of an actual medical condition) reported that the experi-

R

R

R

specific approach used, adding one or more client interviews to the legal writing classroom can provide students with the opportunity to practice obtaining information and developing a relationship with the client, both skills they will need in the clinic or practice, while at the same time honing their writing and judgment skills by requiring them to draft a memo to the file on what important facts they discovered in the interview.<sup>139</sup>

#### iv. *Identify Client Goals*

Finally, regardless of whether students get facts from a client interview or a traditional assignment sheet, legal writing faculty can provide information about the client's goals. When Lisa began working with Mary on incorporating more client interviewing into her legal writing class, she stressed the idea of identifying client goals as being at least equal to, if not more important than, gathering information from the initial client meeting. Lisa argued that additional information could always be sought in a follow up meeting or phone call, but the failure to identify the client's goals can have more serious consequences for the representation as a whole. She also pointed out that the Rules of Professional Conduct require that "a lawyer *shall* abide by a client's decisions concerning the objectives of representation."<sup>140</sup> So, teaching our students how to inquire about and understand client goals and objectives is particularly important throughout the attorney/client relationship.

Lisa's perspective is echoed in the literature on teaching problem-solving as a lawyering skill: "Because clients come with varied wants, values, and interests, lawyers and law students must consider the clients' current and developing values to determine how to best serve the clients' interests—not impose the lawyer's own morals and values in the guise of legal advice."<sup>141</sup> While law students and lawyers often

---

ence helped them recognize the value of being empathetic as a doctor and made them more focused on empathy going forward. *Id.* (discussing Michael Wilkes et al., *Towards More Empathic Medical Students: A Medical Student Hospitalization Experience*, 36 MED. EDUC. 528, 528 (2002)).

<sup>139</sup> See, e.g., Oliver, *supra* note 126, at 149-50 (noting that traditional teaching methods throughout the curriculum rarely provide opportunities for students to engage with the client and discussing the importance of the lawyer-client relationship); Gerdy, *supra* note 83, at 6-8 (arguing that the "quality of the client-lawyer relationship may be at least equal in importance with a lawyer's substantive legal knowledge" and summarizing studies showing high levels of client dissatisfaction with their lawyers and the legal profession generally).

<sup>140</sup> MODEL RULES OF PROF'L CONDUCT r. 1.2 (AM. BAR ASS'N 2002) (emphasis added). This model rule of professional conduct is consistent with the client-centered view of clinical lawyering, which offers a more egalitarian rather than paternalistic view of the attorney-client relationship. See Schrupe, *supra* note 82, at 309.

<sup>141</sup> Vinson, *supra* note 14, at 790 (internal citation omitted).

R

R

R

R

focus too narrowly on legal interests and issues, in order to problem-solve effectively, lawyers should consider “all types of goals: financial, emotional, personal, moral, religious, political, and psychological, as well as legal.”<sup>142</sup> Focusing on client goals and concerns is necessary to help problem-solvers, including lawyers, move beyond their own preconceived notions, biases, and tolerance for risk.<sup>143</sup>

This literature reflected Lisa’s experience with her clinic students that they were generally ill-prepared to think beyond their own assumptions about client goals. She noted that clinic students often assume without asking or exploring what their clients want. For example, clinic students might assume that clients want to sue, or that they want money rather than an apology or something else. These misunderstandings could damage the attorney-client relationship,<sup>144</sup> and they lead students to misunderstand the professional conduct rule regarding the allocation of decision-making between the lawyer and the client.<sup>145</sup>

Once Lisa helped Mary recognize the importance of having students focus on understanding the client’s goals, we added that to the client interview scripts. Mary had previously focused more on the material facts and the client’s likely hostility or openness to questions, but she now tries to provide more information about other things that would shape the client’s perspective, and she allows her “clients” to ad-lib as needed in response to questions from the “lawyer.” And starting this year, Mary is going to add that type of information into the assignment sheet on the now-rare occasions when she provides students with written facts for a memo problem.<sup>146</sup> Doing so will help legal writing faculty take 1L students beyond a pure prediction of the legal outcome of the case, to consider whether the law provides a good solution to meet the client’s goals. Legal writing faculty can then stretch forward to client representation in clinics and beyond, helping students anticipate how they will then research, analyze, and write as

---

<sup>142</sup> *Id.* at 788.

<sup>143</sup> *Id.* at 789.

<sup>144</sup> See Kruse, *supra* note 2, at 17-18 (noting that lawyers’ training can contribute to a “mismatch between what clients actually want and what lawyers pursue for them,” with lawyers not adequately recognizing the specific client’s non-legal goals or interests).

<sup>145</sup> See MODEL RULES OF PROF’L CONDUCT r. 1.2(a) (AM. BAR ASS’N 2002) (“Subject to [narrow exceptions], a lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by RPC 1.4, shall consult with the client as to the means by which they are to be pursued.”).

<sup>146</sup> For example, Mary does some “timed” memo problems where the students are given a task and have to complete it within a class period. Those projects do not lend themselves to client interviewing, but instead require that she provide the students with a summary of the relevant facts. She now plans on adding some language as appropriate for each individual problem about the client’s underlying concerns or fears as well as hopes for what the representation might accomplish.

preparation for advising the client.

v. *Add A Real Client Experience To 1L Legal Writing*

Finally, the most ambitious, but potentially most beneficial, way to make the 1L legal writing curriculum more client-centered is to add a “real client” project.<sup>147</sup> Typical legal writing problems, even when designed to be realistic and to raise important questions about ethics or the lawyer’s role, still create artificialities that real client work can address.<sup>148</sup> Typical legal writing problems are “reverse-engineered” so that the hypothetical client’s facts are created based on the known legal authorities; students are expected to find and analyze these known authorities, making arguments that the professor expects based on her knowledge of the law.<sup>149</sup> Real legal work, however, is far messier, and reliance solely on canned problems does not adequately prepare students to deal with the indeterminacy and uncertainty of legal practice or help them learn to write for a senior lawyer (such as their clinical professor) who truly does not know the answer to the question the students were asked to research.<sup>150</sup> Thus, canned problems can reinforce lawyer-centered rather than client-centered thinking, as students try to figure out the path that the professor wants them to follow, discouraging problem-solving or creative thinking.<sup>151</sup> In clinics and externships, however, the supervising attorney does not

---

<sup>147</sup> For a deeper discussion of this topic, see generally *Adding Practice Experiences*, *supra* note 5, and *Student Esquire?*, *supra* note 122.

<sup>148</sup> *Adding Practice Experiences*, *supra* note 5, at 51-52.

<sup>149</sup> *Id.* at 52.

<sup>150</sup> In clinical courses, students often do not truly believe that the professor does not really know in advance the answers to the client problems presented by their cases. This is because, in virtually all of their prior law school experience, their legal writing faculty had reverse engineered the problems they had to research and did know the answers. Providing a real client project in the first year helps students to overcome this skepticism and engage with clinic faculty as partners in the research and representation, and also gives students agency in the client work.

<sup>151</sup> *Id.* Professor Nantiya Ruan describes the distortions in student thinking that come from over-reliance on canned problems:

Additionally, because the problem is admittedly constructed by the professor as an academic exercise, students are aware that they are being asked to find the legal arguments and solutions that the professor herself found, as opposed to constructing their own answer. This can lead to a ‘gold rush’ mentality—the students believe they have to mine various legal authorities to find the ‘right’ answer to the problem. Ultimately, this does not reflect a realistic legal issue because attorneys never follow a predetermined path but instead must use their analytical skills to build arguments from a variety of legal authorities and compare and evaluate any potential answers with client interests and goals. Students are not asked to develop their problem-solving skills beyond unearthing easily found answers, and such an understanding perpetuates the illusion that legal answers are easily found and are rational and controlled.

*Experiential Learning*, *supra* note 122, at 202.

have the answers to the student's case work, often does not have prior knowledge of the issues that students write about, and generally wants students to engage in problem-solving to come up with creative responses to the clients' problems. Furthermore, the real legal work of clinics and externships often comes with much greater responsibility, and the feeling of that responsibility, while canned problems in legal writing lack the same motivating weight.<sup>152</sup>

For these and other reasons, we have taught "real client" projects at Seattle University School of Law for nearly 10 years.<sup>153</sup> We began with two legal writing faculty having their 1Ls provide factual and legal research in support of an asylum application being handled by the immigration clinic; this endeavor has grown into a program-wide collaboration, where since 2009, all Seattle University School of Law faculty teaching 1L legal writing have paired with either a clinician or an external legal nonprofit.<sup>154</sup> Through these partnerships, which we now call the "Real Clients in the First Year" (RCFY) project, all 1L legal writing students have the capstone experience of researching and writing about a live legal issue and presenting that work to the collaborative partner so that it can be used in support of the partner's ongoing work.<sup>155</sup> These projects are intentionally the most difficult assignment within our legal writing curriculum, and they require students to struggle through the difficulties of dealing with the messiness of real legal work, with the legal writing faculty serving as senior lawyers who can provide some guidance but who do not have "the answer" to the assignment.

These RCFY projects have been valuable to our students, the legal writing faculty, the clinical faculty, the law school, and the community.<sup>156</sup> We have found that the projects increase the motivation of our 1L students, who generally work very hard on these projects; that in turn helps them learn or deepen their appreciation for the legal writing lessons that we have been teaching them all along.<sup>157</sup> Additionally,

---

<sup>152</sup> *Adding Practice Experiences*, *supra* note 5, at 58, 61.

<sup>153</sup> *See Engaging First-Year Students*, *supra* note 3, at 590-92 (discussing the history and evolution of these projects).

<sup>154</sup> *See Adding Practice Experiences*, *supra* note 5, at 57. While some individual faculty at other schools do similar collaborations, our project is unique (or at least very unusual) in that all legal writing faculty at Seattle U work on one of these projects.

<sup>155</sup> *Id.*

<sup>156</sup> *See Rankin et al.*, *supra* note 3, at 94-96.

<sup>157</sup> This experience is consistent with the research into the effects of grit and mindset on student learning. *See Usman*, *supra* note 11, at 395 (noting that "students are much more willing and able to demonstrate grit in pursuit of a goal, when they are passionate about their goal."). *See also True North*, *supra* note 8, at 58 (noting that it is "easier to perform [a] task well if [you] can activate the parts of [your] brain that respond to altruistic, humanistic motives").

the projects have created community between the legal writing and clinical faculty and students, increased recruitment into clinical courses, and deepened connections between the law school and our frequent external partners for these projects. We have also found that these projects have helped break down institutional silos between clinicians and legal writing faculty and have enhanced faculty engagement and satisfaction.<sup>158</sup> By working together on the design and teaching of these projects, the legal writing and clinical faculty have gotten to know and trust each other at a much higher level than before we began these projects. That collegiality and trust was essential to the transference work that followed.

From a transference perspective, these projects should be invaluable. They provide repeated opportunities to practice the skills taught in 1L legal writing, although with significantly different contexts and information to manage. As with other memo projects, students must find relevant sources to support their analysis, explain the results of their research to someone who has not read the same sources, and analyze the strengths and weaknesses of the arguments on both sides of the issue. However, these projects often expose students to legal issues and analysis that is different, and often more complex, than the typical subjects for canned problems.<sup>159</sup> For example, some RCFY projects involve significant policy analysis, such as when 1Ls researched policy arguments for or against Medicaid coverage of drugs that cure Hepatitis C or the rationales behind whether or not to allow recipients of public benefits a “good cause” exception that would excuse late filing of a hearing request. Other projects require students to analyze constitutional issues such as whether an agency’s procedures regarding placement on an abuse registry violate due process.

Some projects are very broadly framed, allowing students to research the issue broadly and then decide what “slice” of the issue to take, which was the case for the “good cause” problem for public benefits hearing requests. That type of project gives students an introduction to the advanced skill they use in clinical courses of framing the specific research queries themselves. More generally, these projects engage students with near versus far transfer, figuring out what from their prior work translates directly to these new types of analysis while determining how differences should lead to new approaches to their

---

<sup>158</sup> Rankin et al., *supra* note 3, at 95.

<sup>159</sup> These projects are consistent with the experiential learning model of clinical legal education that provides students with “disorienting moments” and the opportunity to reflect on and learn from those moments. *See* Schrupe, *supra* note 82, at 310.

analysis and the organization of their writing.<sup>160</sup> And the difficulty inherent in these projects is consistent with the learning theory research showing that difficult work that requires students to struggle and generate new approaches is helpful for long-term learning.<sup>161</sup>

However, our joint legal writing/clinical faculty retreat described above revealed that students were not getting the full transference benefits that we expected from these projects. That realization started us on the path of studying and collaborating on transference, which led us to realize that the transference concepts discussed above help explain why these projects have historically been less successful than we expected from a transference perspective. For example, even though RCFY projects often require students to formulate specific research questions from the partner organization's broad question and messy fact situation, legal writing faculty likely did not cue the students to anticipate how they would need to do similar tasks when confronted with their first clinical case.<sup>162</sup> Additionally, clinicians who did not work with a particular set of students would not know enough about the particular RCFY project that their clinic students had done as a 1L,<sup>163</sup> which made it hard for the clinicians to "reach back" to the students' prior learning from those projects. Relatedly, a clinician would not know whether the student's particular RCFY project involved teaching a particular skill, like formulating research questions, given the variation in topics and skills covered from project to project. These challenges are not insurmountable; for example, clinicians could have asked students to reflect on their RCFY experiences. But they went unnoticed before we focused on transference principles.<sup>164</sup>

---

<sup>160</sup> See *supra* section I(A)(2) (regarding surface-level and underlying structural similarities and differences that cause application problems after retrieval).

<sup>161</sup> See Usman, *supra* note 11, at 362 (discussing "desirable difficulty" in assignment design, in which students "work through the difficulty, with or without guidance, to arrive at the correct answer or technique."). Legal writing professors provide the guidance necessary to ensure that students arrive at the correct answer, *i.e.* produce sound analysis of the issue the students were asked to research, both through class discussions and individualized feedback on draft memos.

<sup>162</sup> See *supra* section III(A)(1) (re. stretching forward by helping students anticipate future applications of the skills they are learning).

<sup>163</sup> As noted above, some legal writing faculty pair with outside non-profits rather than clinicians, so not every clinician is involved with RCFY projects even every few years. Some clinics tend to lend themselves more effectively to RCFY collaborations; it is easier to plan a collaboration with a clinic that takes cases that tend to last longer, such as our administrative law clinic, than with a clinic that takes more cases that resolve very quickly, such as a housing eviction defense clinic. When clinic cases have longer timelines, then it is easier to identify a topic that the clinic would like research and analysis from the 1Ls, fit that project into the 1L legal writing curriculum at the appropriate time for the 1L learning, and still have the results be useful to the clinic case going forward. See *Engaging First-Year Law Students*, *supra* note 3, at 592.

<sup>164</sup> The projects have actually been more consistently successful from a transference per-

R

R

We still firmly believe in the value of these projects, and we encourage faculty at other schools to explore bringing in real legal work to the 1L legal writing curriculum, whether using the Seattle U model or one of the models used at other schools.<sup>165</sup> In order to maximize the transference benefits of these projects, though, we recommend being very transparent with students about the expected transference benefits, including focusing more explicitly on the near/far transfer and application issues that arise in these projects, helping students explore what does and does not transfer from prior memo projects to these RCFY memos. We have also prioritized making sure that the legal research components of the projects are taught with explicit reference to transference, including making clear to students that the research techniques taught may prove to be more helpful in future cases even if they lead to dead-ends in the current project.<sup>166</sup> Additionally, we recommend drawing more explicit connections between the 1L RCFY project and how that relates to the work that the clinic students do. After our study of transference, we have prioritized making class time for the clinic students or partner organizations to report back to the 1Ls about how they use the work, providing additional voices to help crack course-dependent siloing. And we prioritize making sure that students understand that their discomfort with the “messiness” of the project is designed to prepare them for the similar messiness of their real client work in clinics, externships, and beyond.<sup>167</sup>

### *B. Simple Changes That Clinicians Can Make To Improve Transference*

Clinicians also have a key role to play in cracking student silos. This section begins with an overview of what the learning theory tells us about “reaching backwards” strategies generally. It then offers some quick and easy techniques that clinicians can use to promote

---

spective for our clinical students engaged in these collaborations, because they have required clinic students to reach back to their prior learning and have given them the opportunity to see how the work they did as 1Ls fits into real client representation. See Rankin, *supra* note 3, at 95.

<sup>165</sup> See, e.g., *Adding Practice Experiences*, *supra* note 5, at 53-62, for a variety of different ways to incorporate real client work and practical tips for implementing them successfully.

<sup>166</sup> Given that legal writing faculty don't have “the answer” to these projects when assigning them, we don't necessarily know what research techniques will be helpful, so we teach research that we think might help.

<sup>167</sup> Mary has often talked to students who are frustrated in the middle of the project about how this is what real legal work is like sometimes, and she explains that she wants them to have experience in the confines of class, with support from our reference librarians and from her regarding problem-solving. The students generally appreciate that lesson by the end of the project.



student transfer of prior legal research and writing learnings to the tasks of client representation in clinical and externship courses, and most importantly, to their continuing skill development in their future careers.

### 1. Introduction To “Stretching Backwards” Techniques Generally

For novice legal practitioners like most clinic students, the goal is not to develop and then “transfer skills at the level of mastery” upon graduation, but to help our graduates remember to “‘reach back’ for previous learning and to continually enlarge one’s schema for future applications.”<sup>168</sup> The following techniques can be helpful to clinical faculty in aiding our students to do so.

First, clinicians should be transparent with their students about their use of transference learning theory. It is important to let our students know that we are intentionally applying credible learning theory to help them both retrieve skills they have already learned in their earlier legal writing courses and then to apply them to the new and dynamic task of client representation. Clinicians can help students reach back by reminding them of past learnings, having them reflect on what they have previously learned, and asking them to think deeply about the links to their current case work.

Clinicians can then make direct references to this past training or learning throughout the seminar, case supervision meetings, and in externship classes.<sup>169</sup> “In a variety of experiments, researchers have established that transfer is substantially increased when subjects are told that they should look to prior problems that they have solved for help in solving the current problem.”<sup>170</sup> When clinicians know what legal writing faculty have taught and how they have taught it, they can refer explicitly to the students’ legal writing and research experiences. For example, clinicians can ask students to reflect on what they learned in legal writing about how to write an effective memo or brief, or they can remind students of key concepts from those courses, such as techniques for making effective comparisons between prior cases and the client’s facts or persuasive techniques such as airtime or positions of emphasis.<sup>171</sup> Although students will likely still struggle with how to

---

<sup>168</sup> Archer et al., *supra* note 1, at 274.

<sup>169</sup> *Id.* at 279.

<sup>170</sup> Oates, *supra* note 8, at 15.

<sup>171</sup> If all the legal writing faculty at the same school use the same textbook, it would be helpful for clinicians to make sure they are familiar with that book. At Seattle U, we all use THE LEGAL WRITING HANDBOOK, *supra* note 44, which has detailed discussions on topics such as precise comparisons (*see* §§ 28.7 & 29.1.5) and use of persuasive techniques (§ 21.6.3). For readers at other schools, though, clinicians should consult with their legal writing colleagues to determine key techniques, resources, and topics that their students

R

R

R

adapt that foundational learning to a new context, explicitly cueing students to remember prior learning should help them remember at least some of that foundational learning.<sup>172</sup> This approach is especially important when “clinical professors expect particularly accurate and concrete transfer to an assignment.”<sup>173</sup>

Relatedly, clinicians can analogize to students’ past experiences.<sup>174</sup> If a student is writing a new type of document for the first time in a clinic, the clinical professor can help the student think about the similarities and differences between that type of document and legal writing assignments, which should help clinicians get more quickly to higher-order skills.<sup>175</sup> Clinicians can explicitly draw the analogy, or they can ask the student to reflect on the similarities and differences between the audience and purpose of the new document compared to documents written in legal writing.<sup>176</sup> For example, 1L legal writing students spend much of their first year researching and drafting objective memos for managing partners or appellate briefs for judges. In clinics, students have trouble adapting this type of writing format to more frequently used client representational formats like motions, declarations, transactional documents, or advice letters. If we can help them see where the structures are both similar and markedly different, they can access what they learned previously and adapt it more effectively and quickly to the task at hand. This process can help keep students focused on the underlying structural principles rather than distracted by the surface-level details of particular assignments.<sup>177</sup>

In drawing these explicit connections or analogies to prior learning, however, clinicians should be prepared for students to make mistakes in their transference.<sup>178</sup> Students sometimes try to transfer prior experiences too directly, such as trying to treat any legal analysis as an elements problem when the underlying case law instead involves balancing factors. Or students writing a client advice letter for the first time may be inclined to include too much information about rule explanations and precedent cases.<sup>179</sup> Clinicians therefore should be prepared to help students focus on differences from prior situations and

---

were exposed to as 1Ls.

<sup>172</sup> Archer et al., *supra* note 1, at 272.

<sup>173</sup> *Id.* at 280.

<sup>174</sup> *Id.* at 279.

<sup>175</sup> *Id.* at 275.

<sup>176</sup> See *id.* at 279 (using an example re. client letters versus memos); Oates, *supra* note 8, at 14-15 (discussing reflection questions that can be asked to help students explore similarities and differences between current and prior assignments).

<sup>177</sup> Archer et al., *supra* note 1, at 272.

<sup>178</sup> *Id.* at 279.

<sup>179</sup> *Id.*

R

R

R

adaptions that are needed from prior approaches to the new context of the student's clinical casework. This issue comes up most often for students doing clinical work when determining the audience for their writing. Rather than writing geared towards other lawyers or judicial branch judges, clinic and externship students write for a wide variety of people, including clients, legislators, opposing counsel, agency heads, administrative hearing officers, witnesses, and estate heirs. To most effectively transfer their earlier learning, clinicians should remind students of what they learned about audience, who they most frequently wrote for in their legal writing courses, and how that audience may now have changed.<sup>180</sup> Ask them how the change in audience may impact the surface elements and structure of the document they are working on in their clinic client representation.

Finally, reflection provides a key tool in helping students reach back to prior learning and apply it successfully.<sup>181</sup> In the clinical world, the ability of students to reflect on what they are learning and how it applies to problem solving is central to becoming a highly effective attorney, so it is one of the most important skills taught to clinic/externship students.<sup>182</sup> "Certainly, professionals do have specialized knowledge. But in professional work there are very few, if any, cookbook answers. Instead, what really distinguishes a professional is *a way of thinking* that enables the professional to solve problems even when a situation is wrapped in a fog of uncertainty, uniqueness, and conflict."<sup>183</sup>

Within the context of transference, "[r]eflection is the method

---

<sup>180</sup> For example, for the last several years Lisa's students in the Administrative Law Clinic have represented low-income clients asking an agency to change its rules to increase access to the administrative hearing process. In their memoranda in support of the petitions for rulemaking, the students consistently wrote the arguments as they had in their legal writing appellate briefs – to be persuasive to a judge in the judicial branch to rule in their favor. However, when the students were asked to reflect on how this writing, while structurally similar to their appellate briefs in their legal writing courses, was different than that writing, they suddenly realized that the audience was completely different. In the petition for rulemaking, they were asking an agency to change its own rules to favor their clients' positions rather than asking a judge to force the agency to do so. Once they saw the difference in who they needed to persuade, they quickly transferred and adapted the basic structures of the research and writing they had previously learned to the new audience.

<sup>181</sup> *Id.* at 279. See also Cooper, *supra* note 19, at 571 ("Reflection also involves several cognitive activities leading to more durable learning: retrieval, elaboration, and generation.").

<sup>182</sup> See Schrupe, *supra* note 82, at 310 ("Building on adult learning theory, which emphasizes bolstering the learners' ability to be a self-directed learner in the future through opportunities for reflection on the lessons gained through experience, clinical education has been called the ideal adult learning environment when accompanied by opportunity for reflection.") (internal quotation marks and citation omitted).

<sup>183</sup> STEFAN H. KRIEGER & RICHARD K. NEUMANN, *ESSENTIAL LAWYERING SKILLS* 7 (5th ed. 2015).

that guides students' extraction of theory from practice, and the application of practice to theory; and it pushes students to generalize from the specific and transfer their learning beyond that specific."<sup>184</sup> Reflection also draws on the spaced-learning research by helping students make explicit the connections that they may have made implicitly through interleaving.<sup>185</sup> Reflection in particular, and the rest of these techniques more generally, make "students more agile and more self-directed as they evolve from dutiful, passive students to resourceful, responsible attorneys."<sup>186</sup> So, reflections are a particularly valuable tool when they focus students specifically on past learnings in legal research and writing courses and their application to the uncertainty and messiness of client representation.

## 2. *Application Of "Reaching Backwards" Techniques To Clinical Courses*

Here, we offer more concrete applications of the general techniques described above.

### a. *Clinicians Should "Reach Back" To What Students Have Done In Legal Writing That Creates A Foundation For Work The Students Will Do In Clinic*

For transfer to occur, it is critical for students to access early in their clinic or externship courses the knowledge and skills they gained from their prior legal writing classes. Lisa now knows from taking the course herself that our clinic students have been taught so many skills that can be drawn upon for their client work but that are often forgotten by the time they reach us, or are not seen as readily relevant to their client representation. This harkens back to the "I know we taught them that" revelation at our joint retreat.

One easy way to help our students start to access this well of knowledge is to make them do it explicitly right at the start.<sup>187</sup> Early

---

<sup>184</sup> Grose, *supra* note 8, at 500.

<sup>185</sup> Archer et al., *supra* note 1, at 283.

<sup>186</sup> *Id.* at 296.

<sup>187</sup> This exercise is consistent with Professor Cooper's research on the importance of both retrieval and elaboration for effective law learning. See Jennifer Cooper & Regan Gurung, *Smarter Law Study Habits: An Empirical Analysis*, 62 ST. LOUIS U. L.J. 361, 388-89 (2018) (discussing results of empirical research showing that retrieval and elaboration activities both positively correlated with law school grade point average). It is also similar to the act of having college freshmen write about their thoughts and concerns regarding making the transition to college, which was shown to reduce the mental energy directed to those worries and therefore reduced demands on working memory, and ultimately strongly correlated with a higher grade point average than students who had not done this exercise. See Archer et al., *supra* note 1, at 268 (discussing Kitty Klein & Adriel Boals, *Expressive Writing Can Increase Working Memory Capacity*, 130 J. EXPERIMENTAL PSYCHOL. 520

in the clinic course, at a point just before your clinic students will start to do initial drafting of any client document, have your students write a reflection identifying three specific things from their legal writing courses that they think will help them in their client representation and explaining how they think those things will be helpful to their clinical work.<sup>188</sup>

Having them email you this simple reflection will require them to go back to their old legal writing notes, textbooks, handouts, and syllabi to refresh their memories on what they learned. It will also require the students to think ahead to the client work they will be doing in your particular clinic and start to make real connections to their earlier learnings about writing and research. Clinicians can either compile the result or have the students share their ideas with the whole class. Either way, clinicians can discuss with them the relevance of their ideas to the clients and casework they are about to encounter. Then, clinicians should save these reflections and raise them again in student case supervision meetings or when reviewing written work when one of the ideas could move the case forward or be adapted to the client's needs. Lisa found that the student drafts of documents significantly improved just by having her students do this exercise.<sup>189</sup>

*b. Use Prior Legal Writing Formats To Help Provide Familiar Structures For Clinic Students' Individual Case Work*

Transference is promoted when clinicians use tried and true legal writing techniques and formats developed and taught previously by their expert legal writing colleagues. Doing this helps students break out of their course dependent learning silos to access and adapt already familiar document production and research formats. We recommend choosing at least one recognizable legal writing format used in earlier legal writing courses and assign it to your clinic students related to their individual case work.<sup>190</sup>

For example, Mary's 1L legal writing course introduced Lisa for the first time to a writing format called e-memos.<sup>191</sup> As an older attor-

(2001)).

<sup>188</sup> See Attachment A for a sample email prompt for your students.

<sup>189</sup> See also *Teaching Legal Writing*, *supra* note 4, at 333-35 for other similar exercises that may be useful in promoting transfer. R

<sup>190</sup> Legal writing faculty can facilitate this process if they help students think about why the formats and approaches that they teach work well in some circumstances and less well in others; doing so requires going beyond a "how to" approach to legal writing teaching to a deeper preparation for future application. See *Lawyers and Learning*, *supra* note 20, at 34. R

<sup>191</sup> "[A]n e-mail memo should be defined as a presentation of legal analysis—or at least the fruits of legal research—set forth in a streamlined format in no more than one or two single-spaced pages so that a recipient on the move can read it without difficulty by scrol-

ney, Lisa was never exposed to the e-memo concept until Mary's class. However, she realized that all of our clinic students know about this structure and likely use it in their internships and externships.<sup>192</sup> This format came in handy for Lisa right away in her clinic teaching because the short e-memo concept is perfect for many legal research projects involving client work. When Lisa breaks down how she approaches developing a case theory,<sup>193</sup> she brainstorms possible legal approaches to the client problem. She then assigns herself the equivalent of an e-memo research assignment to see if each approach has any merit. She does a series of quick research tasks to start the process, and the e-memo provides a great tool to record the results of her quick and discrete research and analysis tasks.

Lisa now applies this approach more explicitly to teaching in the clinic. With her students, she reaches back and reminds them of what they learned in legal writing about e-memos. There, the students were given by the faculty the research topic and told to research and write the short e-memo answering the given question. Now, as attorneys at the front of the case and at the messy beginning right after the first interview meeting with the client, the clinic students must begin to formulate possible solutions and routes to meet the client goals. This is a scary and daunting task for clinic students. For most of law school, they have been given facts and some sources to use, although we discussed above how legal writing faculty can begin to create a better foundation for these tasks. Now, however, the student lawyer has minimal facts and no law given to them and a client with a difficult story looking to them for help. They must not only develop and identify the relevant facts but also determine what law should be applied to their

---

ling down the screen of a compact hand-held electronic device such as a BlackBerry® or iPhone.” Charles Calleros, *Traditional Office Memoranda and E-mail Memos, in Practice and in the First Semester*, 21 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 105, 105 (2013). See also OATES ET AL., *supra* note 44, at 147-151 (regarding writing effective e-memos).

<sup>192</sup> In a 2006 survey of Georgetown law graduates, 75% of respondents indicated that they write no more than three traditional memorandum a year; 93% of respondents thought writing at least one informal memo, such as an e-memo, while in law school would help prepare them for practice. Kristen Konrad Robbins-Tiscione, *From Snail Mail to E-Mail: The Traditional Memo of the Twenty-First Century*, 58 J. LEGAL EDUC. 32, 32-33 (2008).

<sup>193</sup> “We can think of case theory as an integration of the facts surrounding the client (the client’s “story”) and the law relevant to the client’s concerns. The purpose of case theory is to tell a persuasive story—sometimes to a factfinder (judge or jury), but often to an adversary or other individual. Our goal is to persuade that audience to do something for our client—to decide a case in our client’s favor, to accept a negotiated settlement favorable to our client, to forego litigation against our client. Case theory must therefore be designed to achieve the client’s goals and can only be developed in reference to those goals.” DAVID F. CHAVKIN, *CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS* 40 (2002).

client's problem. This is an overwhelming moment for most of our clinic students.<sup>194</sup> The e-memo is a method of helping them to break down the seemingly overwhelming task ahead into smaller pieces in the comfort of a structure they have learned earlier in law school.

Now, Lisa has her students start their case theory by creating a bite-sized query and assigning themselves an e-memo to test out their various beginning case theories.<sup>195</sup> Lisa asks them to create an e-memo assignment as a firm partner for an associate of their firm (themselves) and send it to her for review. Then, she either has the same student do the research, or she has them assign the e-memo research to another team in the clinic working on another case. In the latter scenario, students would then be the managing partner assigning e-memo research to another student team and would have to develop the query and give enough facts to get the research they need and will rely on, while the researching team would be exposed to another team's client issue. This is such a good way to get clinic students comfortable with taking more initiative on developing case theories because they are familiar with the structure, and it breaks down the research into smaller accessible parts.<sup>196</sup>

The e-memo is but one familiar format that can be used to help link up legal writing course teaching to real client work. There are many other formats that can be readily incorporated in clinic courses to help remind and connect our students to earlier developed skills, *e.g.*, having your clinic students write a longer predictive memo to the file on the pros and cons of the most salient legal theory they have for their client case, then converting it to a hearing brief or client advice letter.<sup>197</sup> Regardless of the particular format used, the impact of doing this repeated practice over time with varied details and of making direct references to their past training helps our students create long term memory of concepts learned and transfer it to their current and future client work.

---

<sup>194</sup> See Schrupe, *supra* note 82, at 310-311 ("The clinician's role is to facilitate these 'disorienting moments' and to provide opportunities for reflection and the shift in perspective that accompanies the experience. In both teaching and supervision, the goal is to allow students to direct their own learning without excessive intervention and directiveness.") (internal quotation omitted).

<sup>195</sup> As the case progresses, the e-memo is generally too limited a format for the more conceptual research as students move into writing the brief or memo; in those situations, a more traditional memo may be useful.

<sup>196</sup> This method could also be useful in externship supervision. Faculty could ask externship supervisors to assign one e-memo to their student during the semester on a needed research issue.

<sup>197</sup> We have recommended some of the useful formats taught at Seattle U, but we urge our clinician readers to discuss formats and approaches with their legal writing colleagues at their own schools.

c. *Use At Least One Handout From 1L Legal Writing When Doing Client-Focused Document Drafting In Clinic*

Additionally, clinicians should use at least one handout developed by legal writing faculty and used in the earlier legal writing courses. These handouts might help get students started in their research and writing project, create a useful guide for writing and reviewing their own drafts, or set up a structure for writing the particular document. In any event, handout(s) from prior legal writing courses can explicitly cue student transference across courses and can help minimize application problems as students transfer their learning.

For example, when Lisa took Mary's course, she was struck by Mary's emphasis on the processes for developing their writing drafts for faculty review.<sup>198</sup> After students turned in a draft, Mary taught them to revise by reconsidering the overall content and organization of the draft. She then focused on revising for paragraph-level organization and making each sentence precise and concise. Only after those steps were complete should students focus on sentence-level edits for grammar, punctuation, and citation; students should end by proofreading their documents.<sup>199</sup> Lisa saw how helpful these steps, and the handout that reinforced them, were for helping students move from rough initial drafts to completed and polished work. Given the time constraints that so often occur in real client clinic work, our students and faculty frequently skip or shorten important steps in the writing and research plan process to get the work done. Lisa recognized that Mary's handout could be very helpful in moving clinical students through the same processes more quickly within the context of real client representation.

Based on these insights, Lisa now reminds her clinic students of this 1L legal writing method of creating and revising first drafts of their case documents so that her students can use it in preparing their drafts to her. At the start of the drafting portion of their case work, she provides them with the same handout they received from their legal writing professor,<sup>200</sup> and she asks them to follow that method

---

<sup>198</sup> See, e.g., OATES ET AL., *supra* note 44 (breaking out drafting, revising, editing, and proofreading for each type of document covered).

<sup>199</sup> See Appendix B (Mary's handout on creating personal revising and editing checklists).

<sup>200</sup> Not all legal writing faculty use the same handouts. The key here is not that the handout is used by all legal writing faculty, but that clinicians have access to handouts that the collective group of legal writing faculty think might be relevant for later clinical work. This requires joint discussion and collaboration amongst and between clinicians and legal writing faculty that may not have yet occurred at your institutions. We recommend starting these discussions with transference learning theory in mind. Finding even one common handout and applying it across the programs can provide learning benefits for our students.



*before* giving her their draft. In other words, she provides them with a familiar structure for evaluating and improving their own work before submitting it to her for feedback. She found that doing this resulted in much better early drafts of documents than she had previously received, allowing additional time for more nuanced and advanced comments on content, organization, persuasion, and audience.

Another example of clinicians using previously developed legal writing handouts to promote transference relates to student drafting in judicial externship seminars. Mary has developed a handout for 1L legal writing students on the components of an objective memo. This handout can be readily adapted by externship students to drafting a bench memo for a judge after they have read the parties' briefing. Faculty can engage the judicial externship students in a discussion of the similarities and differences between writing a predictive objective memo to a supervising attorney and one to a judge. The students can then use the handout to draft and review their own bench memos at the externship site.<sup>201</sup>

Additionally, Mary and Lisa are now working to pull together materials on introduction to persuasion that are used in our required legal writing program and could be useful for clinicians to refer back to when helping students begin advocacy work on real client cases. For example, our legal writing faculty have fairly standard materials on introducing persuasive techniques, drafting a persuasive fact statement, and organizing legal arguments for persuasive effect that could be useful to clinic students. Although clinic students often write different types of persuasive documents, such as briefs to administrative law hearing judges or motion memos in criminal defense cases, it would likely still be helpful for students to review the fundamentals taught in the legal writing program. Clinicians could then explore with students similarities and differences between their real client work and their legal writing projects to help students see which techniques transfer directly and how to adapt others to be more effective in this new context. In all these examples, the handouts from legal writing, and the underlying content covered by those handouts, can provide clinicians and students with a useful starting point that facilitates student retrieval of earlier learning and exploration of how that will both apply and need to be adapted in the clinical context.

---

<sup>201</sup> See *Teaching Legal Writing*, *supra* note 4, at 292 (noting that clinicians and legal writing faculty at several schools collaborate to provide similar refresher training for students beginning clinics or externships).

d. *When Reviewing And Commenting On A Draft Of Clinic Student Writing, Use Common Legal Writing Techniques And Terminology*

Beyond using common formats and handouts, clinical faculty should look for other ways to collaborate with legal writing faculty about commenting on student drafts. We recommend that clinicians meet with their legal writing colleagues to ask about how they diagnose and work on improving common student writing issues we see when students are immersed in real client representation for the first time.<sup>202</sup> Clinicians will get so many insightful suggestions to help move our students' research and writing skills to the next level. Implementing even just one of the numerous techniques already used by our colleagues will reap transference benefits.

Lisa particularly recommends using a commenting technique she learned from her legal writing colleagues: when reviewing the *earliest* draft of any clinic student document, only make comments and edit one representative section of the draft rather than the entire document. Then ask your students to apply the edits and comments you made on that section to the entire draft in the next iteration. This approach requires the students to take in, reflect on, and transfer learning from the comments you have made in the one section to the whole document.<sup>203</sup> It requires them to grapple with what you are saying, ask questions if they do not understand your concerns, and then apply these insights to other sections of the draft.

This simple technique has been invaluable for a number of reasons. First, it takes much less clinic faculty time to do big comments and edits on only one section of the draft. Doing a detailed review of an early draft takes so much time; Lisa did this because she thought it was both a better way to improve her students' writing and also to move the drafting along more quickly in the context of real client representational demands. She was wrong about both of these things.

---

<sup>202</sup> For good information about the variety of techniques that legal writing faculty use when commenting on student work and that may be similarly useful to clinical faculty as well, see, e.g., *Teaching Legal Writing*, *supra* note 4, at 345-49 (regarding "triaging" feedback on different issues, making feedback adequately specific without being too directive, and framing feedback with both positive comments and constructive criticism to maximize student receptivity to the feedback); Daniel L. Barnett, "Form Ever Follows Function": *Using Technology to Improve Feedback on Student Writing in Law School*, 42 VAL. U. L. REV. 755, 782 (2008) (discussing the mechanics of providing feedback, including the pros and cons of handwritten, typed electronic, voice electronic, and "live critique" commenting on student papers).

<sup>203</sup> This approach is consistent with the general approach in clinical pedagogy that seeks to balance "express instructions with . . . nondirective supervision" to "encourage[ ] and catalyze[ ]" but not "command or resolve." Kowalski, *Teaching Legal Writing*, *supra* note 4, at 305.

When Lisa did detailed edits on an early draft, her students tended to accept automatically the changes and comments in the document without really taking them in and applying them later. They did not get the benefit of thinking through how these comments would also apply in the next draft. As a result, what she thought was time well-spent by a thorough review of the first draft actually was not effectively promoting their learning. Ironically, using this less time consuming comment method resulted in much better second and later student drafts and final documents.

Second, Lisa found that using this technique helped to keep the students' unique voice more prominent in all of the documents they produced. One of the most difficult parts of clinical teaching is how to develop and keep our students' voice in the client documents produced for the representation. When editing student written work, it is hard not to re-write in the teacher's voice because we can almost always draft in a way that is, in fact, more persuasive or succinct or legally correct and sounds better to our ear. Lisa found that by using this less intensive technique early on, she and the students were forced to continue to write the draft in the students' own voice in the document because the faculty was giving more structural comments that had to be applied overall.

Third and perhaps most importantly, this technique directly promotes the transference of learning through the microcosm of one document review. It requires students to scaffold the comments by making connections between the things they learned in one section of a document to the remainder of it. It also requires them to reflect on the specific comments and generalize them to the whole by figuring out the similarities and differences between the edited section and the remainder of the document. Additionally, it helps students to later retrieve learning by focusing on relevant underlying similarities and differences between the sections of the draft. For all of these reasons—less time consuming for faculty, promotion of students' voice in drafting, facilitation of transference of learning to future writing—this legal writing faculty comment technique and so many others should be accessed by clinicians to link our students' prior learning to the skills they need for their future careers.

Finally, we recommend legal writing and clinical faculty work together to come up with a common vocabulary and common comments for feedback on writing.<sup>204</sup> In doing so, legal writing faculty can educate clinicians about key terms and concepts that they use to help le-

---

<sup>204</sup> See *Teaching Legal Writing*, *supra* note 4, at 363-71, for a detailed discussion of the variations in legal writing vocabulary and an explanation of the underlying core features of legal writing teaching, regardless of specific vocabulary used.

gal writing students learn foundational concepts that will apply later in the clinic. Similarly, clinicians can educate legal writing faculty about the vocabulary that they use when working with students. Legal writing faculty and clinicians can also share any documents or materials that they use to provide more effective feedback. For example, Mary and some of the other legal writing faculty in our program have developed a master sheet of comments that come up frequently on student work; the master comments include references to the pages in the legal writing textbook where the students can get more information about correcting the errors. We cut and paste these comments into the margins of student work as needed. Based on our collaborations described above, Mary provided her master feedback document to clinicians, along with a brief discussion of how she uses it and how it may be helpful to clinicians, so that they can use it to the extent that it is helpful as they work with students on writing projects within their real client representation.

#### IV. CONCLUSION

Some techniques discussed above can provide a better foundation for initial learning within the legal writing course, while others help clinicians aid students in retrieving and applying their foundational learning to clinical cases. Readers do not need to implement all the techniques described above. Instead, legal writing and clinical faculty at other schools should break out of their own teaching silos and work with their colleagues to pick one or more of these techniques that make sense at their own schools.

For clinical and legal writing faculty, getting outside of our own teaching silos to focus on transfer can be transformative. We found from taking each other's courses, studying transference theory, and applying what we've learned that this collaborative teaching is more fun and gratifying than our prior approaches. We were surprised at how easy many of these techniques were to implement, and they often actually save teaching time while providing more nuanced and deeper student learning.

For students, having their faculty teach this way helps them crack their course-dependent silos and reap significant educational benefits. These collaborative techniques allow students to achieve competency in critical lawyering skills more quickly. These techniques also give agency to our students, helping them become reflective practitioners and lifelong learners, linking and applying retrieved knowledge and skills to the ever-changing landscape of legal practice in all its forms.

Spring 2019]

*Cracking Student Silos*

321

## APPENDIX A: LISA'S "REACHING BACK" E-MAIL EXERCISE

Dear Administrative Law clinic colleagues:

In this course and in your future practice, you will be doing a significant amount of legal writing and research. You will write (and are writing now) memos to the file, reflections on your learning, advice letters, legal research memos, emails, etc. You are all about to develop outlines and drafts of hearing briefs and memos in support of rulemaking petitions to advocate for your clients' goals.

An essential part of learning is reaching back to things that you learned previously and applying those to new and changed environments. This is called "transfer of learning." Lawyers do this every day – it's what makes the "practice" of law so endlessly interesting, engaging, and challenging. We would like you to reach back to your learning in LW I/LW II to remind yourself of what you learned that you can now apply to your client brief/memo writing and research in this clinic course.

**Please send me a short email by the Wednesday, March 7, class that includes the following:**

1. Name three *specific* things you learned in LW I or II that you will apply or are currently applying to your research and brief/memo writing in the clinic. Include/attach any handouts or other cites to materials that you received in LW I/II that are relevant to your answer. Let me know who your professor was for the course, too.
2. For each thing you name, describe how you think you will apply it to your briefs/memos work in the clinic.

I audited Professor Bowman's LW I course last year as she is doing now in the Administrative Law Clinic. We now want to help you remember and apply directly the techniques to develop great drafts of documents in those courses to your work with real clients. We will discuss your answers and remind you of all that you learned in those excellent courses that you will bring to bear in your client representation. We look forward to reading your emails and client document drafts!

Lisa

APPENDIX B: MARY'S HANDOUT ON PERSONAL REVISING AND  
EDITING CHECKLISTS

Professor Bowman      Legal Writing, Skills, & Values, Spring 2018

**Creating Your Own Personal Revising and Editing Checklists  
for Evaluating, Revising, and Editing Your Own Writing**

One of the goals of this class is to give you the skills you need to evaluate your own strengths and weaknesses in your writing. To that end, review the grading standards from the course Policies and Procedures, to make sure that you are familiar with those standards. Then review the comments you have received on your prior work throughout Legal Writing I (both drafts and final memos), to help you evaluate the strengths and weaknesses in your writing so far in this course. Then use this checklist for each assignment that you write in the future.

As a foundational matter, make sure you distinguish between *revising* and *editing*.

- **Revising** means “re-visioning,” focusing on the substance of the document, including content and organization. Specifically, it includes things like working on content, organization, clarity, conciseness, and precision.
- **Editing** means focusing on the writing mechanics, on the sentence level details. It includes working on things like grammar, punctuation, and citation formatting and placement.

Spring 2019]

*Cracking Student Silos*

323

**Revising Issues – Synthesis of Comments on Previous Work**

<b>Revising Topics</b>	<b>Strengths</b>	<b>Weaknesses</b>
<i>Content</i> (Opening paragraph or issue statement/ brief answer; presentation of facts if appropriate; explanation of the law; application of law to fact that connects the two, that uses factual detail to explain, and that does not ignore important counter-arguments; conclusion/ wrap up)		
<i>Organization</i> (Use of headings as appropriate; moves from general to specific; organizes content in a logical way that will meet the reader's expectations; uses roadmaps, signposts, and transitions to help the reader understand the structure)		
<i>Presentation</i> (Paragraph organization by topic; principle-based topic sentences; precision; clarity; paragraphs that are not too long or too short)		

**Personal Revising Checklist** (Things to Watch for When Revising Your Own Work)

[Fill in your own checklist here.]

When you have multiple days to work on an assignment, you should be primarily focused on revising first, then take a break (24 hours at least if possible) before you move on to editing and proofreading.

**Editing Issues – Synthesis of Comments on Previous Work**

Editing Topics	Strengths	Weaknesses
<i>Grammar</i> (including parallelism, modifiers, pronoun usage, subject-verb agreement, etc.)		
<i>Punctuation</i> (including use of commas, semicolons, apostrophes, and colons)		
<i>Readability</i> (including consistent use of concrete subjects and action verbs, keeping subjects and verbs close together, using plain English rather than archaic words, etc.)		
<i>Citations</i> (including putting a citation after every statement of law or fact, attention to detail re formatting the citation correctly, and correct use of signals)		

**Personal Editing Checklist (Things to Watch For)**

[Fill in your own checklist here.]

Finally, when you can, you should print out a hard copy of your final draft to **PROOFREAD** it (giving the brief a final read-through (or two, or three . . . ) to catch any last errors that you missed in the editing process, plus any formatting or spelling errors). Proofreading tips: (1) work from a hard copy rather than the screen when possible; (2) consider changing the font and font size to make the document look different; (3) read your work out loud when possible; and (4) consider starting with the last paragraph and working backward to the first paragraph to help you avoid the temptation to focus on content.