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Kathleen E. Vinson
Suffolk University Law School, kvinson@suffolk.edu

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IMPROVING LEGAL WRITING: A LIFE-LONG LEARNING PROCESS AND CONTINUING PROFESSIONAL CHALLENGE

Kathleen Elliott Vinson[1]

I. INTRODUCTION

Writing skills do not get the recognition, priority, and resources they deserve even though they permeate the daily life of lawyers in every facet of the legal profession. This article examines the need to improve legal writing beyond law school and the responsibility of the legal profession to join efforts with the academy to meet that challenge. Indeed, writing skills are fundamental to success in the legal profession and serve as the foundation for effective communication;[2] "[w]riting today is not a

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[1] Director of the Legal Practice Skills Program, Suffolk University Law School; B.A., Stonehill College; J.D., Suffolk University Law School. I want to thank the Scholarship Incentive Grant Program of the Association of Legal Writing Directors. In addition, I am grateful for the suggestions and comments made by Lisa Healy, Herb Ramy, and David Romantz. Finally, I appreciate Steven Sharobem's research assistance.

[2] *See* Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 NEB. L. REV. 561, 580 n.71 (1997) (citing William L. Prosser, *English as She is Wrote*, 7 J. LEGAL EDUC. 155, 156 (1954) (describing a career in the legal field as a literary profession and estimating that average lawyers write more than a novelist)); *see also* Jim Dunlap, *Will Women Ever Be Equal*, NAT'L JURIST, Nov. 2004, at 18, 20 (noting how judges and lawyers agree that an attorney's most important skill is legal writing).

frill for the few, but an essential skill for the many."[3] Lawyers make their living through the effective use of words.[4] Yet, lawyers are perceived as producing incomprehensible and confusing legal writing.[5] Such perceptions about bad legal writing are not new.[6] This article, however, advocates a new recognition of the need and responsibility to improve legal writing throughout a lawyer's career. It calls for a united effort; neither academia nor the legal

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[3] *The Neglected R: The Need for a Writing Revolution*, (Nat'l Comm'n on Writing in Am. Sch. and Coll., Coll. Entrance Examination Board), Apr. 2003, at 11, *available at* www.writingcommission.org/prod.downloads/ writingcom/ neglectedr.pdf (last visited Apr. 10, 2005) [hereinafter *Writing Revolution*]; *see Out In The Field: Most Employers Say Many Lack Writing Skills*, BOSTON GLOBE, Sept. 19, 2004, *available at* http://bostonworks. boston.com/ globe/out_field/ archive.shtml (last visited Apr. 10, 2005) (surveying 120 resource directors of corporations, where 64 companies, or 54% of the resource directors surveyed, responded that employees, not just students, need to improve their writing) [hereinafter *Many Lack Writing Skills*]. The Globe article notes that in the fast-paced workplace, the demand for good writing is greater and accuracy and brevity are essential. *Id.*

[4] *See* 3 ASS'N BAR EIGHTH CIRCUIT CT. APPEALS 1, 4 (Jan. 2005), *available at* www.law.ualr.edu/eightcircuitbar/ (last visited Apr. 10, 2005) (discussing how Judge Steven Colloton of the United States Court of Appeals for the Eight Circuit estimates that approximately 90 to 95% of lawyers' and judges' work involves written work product) [hereinafter EIGHTH CIR. BAR].

[5] *See* George D. Gopen, *The State of Legal Writing: Res Ipsa Loquitur*, 86 MICH. L. REV. 333, 333 (1987) (describing how the public associates professors with tweed, doctors with money or bad handwriting, and lawyers with incomprehensible writing); Debra R. Cohen, *Competent Legal Writing-A Lawyer's Professional Responsibility*, 67 U. CIN. L. REV. 491, 495 (1999) (stating how empirical studies show that a substantial amount of legal writing is unclear). *See generally* Sam Dillon, *What Corporate America Cannot Build: A Sentence*, N.Y. TIMES, Dec. 7, 2004, at A23.

[6] *See* Milward v. Welden, 21 Eng. Rep. 136 (Ch. 1566). In *Milward*, a 1566 case, a judge was so mad at a lawyer's verbose pleading of 120 pages that he ordered a hole cut in the middle of the document, through which the lawyer's head was thrust. *Id*. The lawyer was then led around Westminster Hall during court sessions as an example to others. *Id*. *See also* Gopen, *supra* note 5, at 362 (noting how in recent years, awareness has grown about how poor writing abilities cause inefficiencies, poorly written legal works, and needless monetary

profession can ignore their obligation to improve writing because "[w]riting is everybody's business."[7]

In order to recognize the need to improve writing beyond the classroom and share this responsibility, this article attempts to raise the consciousness of the legal profession that improving legal writing skills is a life-long learning process and a continuing professional challenge.[8] For practical and pedagogical reasons, the legal profession and academia must unite around the challenge of improving legal writing.[9] Finally, this article offers recommendations to meet this challenge.[10] While the recommendations require resources, time, and a unified commitment to writing, implementing them will ultimately allow lawyers to realize their full potential by harnessing the power and clarity of the written word through improved writing skills.[11]

A. Purpose

Recognizing the need and sharing the responsibility to improve writing beyond law school will help fill the gap in the

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expense). "The abuse of the language in law . . . exists and has existed for hundreds of years." *Id.* at 365.

[7] *Writing Revolution*, *supra* note 3, at 5.

[8] *See* discussion *infra* Part III.B.

[9] *See* discussion *infra* Part III.A.

[10] *See* discussion *infra* Part IV.A-E.

[11] *See Writing Revolution*, *supra* note 3, at 36. Abraham Lincoln, in giving tribute to the power of the written word, once said:

> Writing — the art of communicating thoughts to the mind — is the great invention of the world. . . . Great, very great, in enabling us to converse with the dead, the absent, and the unborn, at all distances of time and space, and great not only in its direct benefits, but its great help to all other inventions.

educational continuum between both law school and the legal profession, and will ultimately improve the practice of law.[12] Although law schools should offer more writing opportunities and instruction, pragmatic reasons prevent the legal profession from waiting for law schools to catch up with trends to incorporate more writing in the curriculum.[13] Even if education reform ultimately includes incorporating more writing instruction, the reform fails to address the present needs of firms and the legal profession that have attorneys who need to improve their writing skills.[14]

Also, no matter how extensive and thorough a legal writing program is in law school, it only gives students the initial foundation to refine their legal writing skills.[15] Good legal writing

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Id.

[12] *See* Lisa Eichhorn, *The Legal Writing Relay: Preparing Supervising Attorneys to Pick Up the Pedagogical Baton*, 5 J. LEGAL WRITING INST. 143, 144 (1999) (advocating the training of supervising attorneys to fill the instructional gap by instructing junior associates on writing); Jane Bowers, *How to Improve Associates' Writing*, 34 PRAC. LAW. 35, 35 (1988) (suggesting that attorneys "[t]each associates how to write well now, or continue editing them forever").

[13] *See* Eichhorn, *supra* note 12, at 148 n.21 (noting that law schools typically teach writing courses only in the first year, and as a result, "students have two years before graduating to forget anything they may have learned").

[14] *See* Bowers, *supra* note 12, at 36. *See also* Terrill Pollman, *Building a Tower of Babel or Building a Discipline? Talking About Legal Writing*, 85 MARQ. L. REV. 887, 894 (2002) (discussing how attorneys who attended law school before 1980 may have had no formal legal writing course).

[15] *See* Eichhorn, *supra* note 12, at 143; *see also* J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 93 (1994) (describing how transition to legal discourse continues after law school); Thomas R. Newby, *Law School Writing Programs Shouldn't Teach Writing and Shouldn't Be Programs*, 7(1) PERSP. TEACHING LEGAL RES. & WRITING, at 4, 7 (1998) (suggesting that improving writing requires proficiency testing prior to, during, and after law school, and devoting more time and resources to teaching legal problem solving); Teresa Godwin Phelps, *Writing Strategies for Practicing*

includes the effective communication of legal analysis, rather than just technical proficiency with rules of grammar, syntax, and punctuation.[16] Effective communication of legal analysis through writing can always improve.[17] Good legal writing follows sophisticated legal thinking; thus, expecting law graduates to perfect legal writing while they are novices in the legal field is not realistic.[18] Therefore, their poor writing should not necessarily be attributed to law school.[19]

Efforts to improve legal writing should not end after graduation from law school. As lawyers transition into practice and their legal analysis skills become more sophisticated throughout their career, lawyers need to make a professional, educational, and intellectual commitment to continue improving their writing skills beyond the classroom. For lawyers to continue to refine their legal

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Attorneys, 23 GONZ. L. REV. 155, 155-56 (1988) (challenging the assumption that it is too late for students who have not learned how to write by law school).

[16] *See* Parker, *supra* note 2, at 565-67; Gopen, *supra* note 5, at 353 (discussing how poor legal writing results from poor legal thinking); Newby, *supra* note 15, at 3 (describing writing as a tool for legal analysis and stating that legal writing courses should focus on problem solving rather than the mechanics of writing). *See also* Suzanne E. Rowe, *Legal Research, Legal Writing, and Legal Analysis: Putting Law School into Practice*, 29 STETSON L. REV. 1193, 1201, 1205 (2000) (stating that poor writing results from poor analysis); Philip C. Kissam, *Thinking (By Writing) About Legal Writing*, 40 VAND. L. REV. 135, 140-41 (1987) (discussing how the "critical writing process" allows the writer to "enter into a sustained and serious dialogue about the subject matter under consideration").

[17] *See* Rowe, *supra* note 16, at 1206 n.5 (discussing the connection between legal writing and legal analysis); Suzanne Ehrenberg, *Embracing the Writing-Centered Legal Process*, 89 IOWA L. REV. 1159, 1199 (2004) (discussing how writing helps to refine legal analysis). According to composition theorists and anthropologists, the ability to examine thoughts on paper improves the quality of analysis because it allows examination of the text for logic and consistency. *Id.* at 1186-88.

[18] *See* Rideout & Ramsfield, *supra* note 15, at 41.

[19] *See* Rideout & Ramsfield, *supra* note 15, at 41.

writing skills beyond law school, legal employers and the entire legal profession must offer opportunities to continue this process of improvement throughout lawyers' careers.[20]

B. Scope

Unlike many articles that focus exclusively on the role of writing in law school, or merely criticize the state of writing in the legal profession, the scope of this article explores the stage of the learning continuum that continues after law school graduation; "[t]he skills and values of the competent lawyer are developed along a continuum that starts before law school, reaches its most formative and intensive stage during the law school experience, and *continues throughout a lawyer's professional career.*"[21] Indeed, the MacCrate Report, a report produced by the American Bar Association that studied legal education and professional development, emphasized the need for cooperative efforts between

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[20] *See, e.g.*, Eichhorn, *supra* note 12, at 148 n.25 (noting how some firms employ outside coaches); Robert L. Clare, Jr., *Teaching Clear Legal Writing — The Practioner's Viewpoint*, 52 N.Y. ST. B.J. 192, 193-94 (Apr. 1980) (discussing the hiring by law firms of writing specialists to train new associates because partners did not believe they could teach writing); C. Edward Good, *The "Writer-in Residence": A New Solution to an Old Problem*, 74 MICH. B.J. 568, 569 (1995) (indicating that firms employ writing specialists to train partners and associates, and predicting that more firms will follow suit); Dan Seligman, *The Gobbledygook Profession: Why Do Lawyers Write So Lousily? They Think It's Good for Business*, FORBES, Sept. 7, 1998, at 174 (explaining the role of writing coaches at large urban law firms).

[21] Robert MacCrate, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development - an Educational Continuum*, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISS. BAR 1, 3 [hereinafter *MacCrate Report*] (emphasis added). *See also* Rodney J. Uphoff et al., *Preparing the New Law Graduate to Practice Law: A View from the Trenches*, 65 U. CIN. L. REV. 381, 382 (1997).

legal educators and practicing lawyers, stressing that lawyers and legal educators should "stop viewing themselves as separated by a 'gap' and recognize that they are engaged in a common enterprise — the education and professional development of the members of a great profession."[22]

While examining the cause of poor writing is useful, mere assignment of blame or responsibility is not enough to solve the problem.[23] The legal profession blames academia while educators blame each other.[24] Legal educators and law students

[22] *MacCrate Report*, *supra* note 21, at 3.
[23] David M. Becker, *My Two Cents on Changing Times*, 76 WASH. U. L.Q. 45, 57-58 (1998).
[24] *See* Kissam, *supra* note 16, at 152. *See also* Joseph Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development*, 1 J. LEGAL WRITING INST. 1, 1 (1991).

tend to blame the lack of general analytical abilities and writing skills on the undergraduate institutions.[25] Colleges then blame high schools who in turn blame primary education.[26] Whatever the reasons for poor writing skills, academia and the profession share the result of the problem: lawyers who cannot write effectively.

If the process of writing can develop and clarify legal analysis, then law students and lawyers need to pursue development of critical writing opportunities throughout their endeavors in an effort to improve their analytical writing.[27] This article examines how improving legal writing is a life-long learning process and a continuing professional challenge. Specifically, the first section discusses the need to improve legal writing beyond law school by reviewing the state of legal writing and the importance of legal writing skills. The second section analyzes the responsibility for improving legal writing by exploring the role of the learning continuum and the improvement of legal writing as a continuing professional challenge. Finally, the article discusses possible solutions and recommendations for the legal profession to improve legal writing skills and promote

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[25] Williams, *supra* note 24, at 1.
[26] Williams, *supra* note 24, at 1.
[27] *See* Kissam, *supra* note 16, at 152; Ehrenberg, *supra* note 17, at 1185; *Writing Revolution*, *supra* note 3, at 14 (noting how writing is how students connect the dots of their knowledge).

professional development.

C. Audience

Lawyers must pay more than lip service to produce better legal writing.[28] After all, "[p]erhaps no aspect of legal life is more important, yet more widely misunderstood, than legal writing."[29] Until the legal profession shows it values legal writing and offers opportunities to improve it, the quality of legal writing will continue to suffer.[30] Indeed, law firms should recognize "the market value of clear writing."[31] Overall, improving legal writing will ultimately promote professional development and provide

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[28] Cohen, *supra* note 5, at 505. "[T]o revise the traditions of legal writing and to reduce some of the costs associated with reforming legal writing, the profession needs to change the signals it sends to its members." *Id*. at 517.

[29] Pollman, *supra* note 14, at 892 n.21 (quoting JAMES BOYD WHITE, FROM EXPECTATIONS TO EXPERIENCE: ESSAYS ON LAW AND LEGAL EDUCATION 25-26 (1999)).

[30] *See* Cohen, *supra* note 5, at 494. Cohen advocates expressly requiring competent legal writing in the rules of professional responsibility, along with the comments to the rules stating guidelines and examples to describe what competent legal writing means. *Id*. In addition, she notes that the ABA and state bar associations must then implement competent legal writing through training via mandatory CLEs and enforcement. *Id*. at 517-23. Some suggestions include paying a fine for using legalese and assessing liability for noncompliance, along with judicial discretion to impose non-traditional remedies, including an order to rewrite a document, an order to stop using a noncomplying document, or an order requiring a lawyer to take a CLE course. *Id*. at 524. *See also* David C. Elliot, *A Model Plain-Language Act*, 3 SCRIBES J. LEGAL WRITING 51, 57-59 (1993); Pamela Lysaght & Cristina D. Lockwood, *Writing-Across-the-Law-School Curriculum: Theoretical Justifications, Curricular Implications*, 2 J. ASS'N LEGAL WRITING DIRECTORS 73, 73-74 (2004) (noting how teachers of legal writing cannot succeed until their instruction is supported and extended by non-teachers of LRW).

[31] *See* Good, *supra* note 20. *See generally* Charles V. Bagli, *Towers' Insurers Must Pay Double*, N.Y. TIMES, Dec. 7, 2004, at A1 (noting that a jury found two planes crashing into the World Trade Center on September 11th to constitute

both lawyers and the legal profession with the tools necessary to realize their full potential.[32]

II. RECOGNIZING THE NEED TO IMPROVE LEGAL WRITING BEYOND LAW SCHOOL

In order for the legal profession to be willing to spend both time and resources on improving writing beyond law school, it must first recognize the need to improve writing throughout a lawyer's career, by acknowledging its importance and the state of legal writing.[33] Generally, a wide discrepancy does not exist between the views of law professors and members of the legal profession that lawyers do not write well.[34] By academia and the legal profession combining efforts and sharing the responsibility to improve writing, this view can be altered.

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two separate attacks under the language of the insurance policy, thereby requiring the insurance comp anies to pay twice).

[32] *See* Pollman, *supra* note 14, at 892-93.

[33] *See* Gopen, *supra* note 5, at 362-63. "With any problem, you have to understand what is really going on before you can begin to change things." Mary Beth Beazley, *Stand Up and Be Counted!*, 14(2) THE SECOND DRAFT (Bulletin of the Legal Writing Institute), May 2000, at 1.

[34] Susan Hanley Kosse & David T. ButleRitchie, *How Judges, Practioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study*, 53 J. LEGAL ED. 80 (2003). *See also* Lily Whiteman, *Raising the Bar on Legal Writing*, LEGAL TIMES, June 5, 2000, at 26 (discussing how "650 lawyers, judges, law professors, instructors of legal writing, and legal journalists unanimously agreed that most lawyers write badly, according to an informal survey by Tom Goldstein and Jethro Leiberman for their book, *The Lawyer's Guide to Writing Well*").

A. The Importance of Legal Writing

Lawyers need to practice, refine, and further develop their legal writing skills as if their professional life depended on it because it often does.[35] " 'Law is a profession of words.' "[36] Thus, written communication skills, rather than substantive legal knowledge, are deemed to be one of the most important skills necessary for beginning lawyers.[37] Also, throughout a lawyer's career, legal writing pervades every type of practice at every

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[35] *See* Rowe, *supra* note 16, at 1215 (acknowledging that once becoming a member of the bar, lawyers are required to write).

[36] Cohen, *supra* note 5, at 492 (quoting DAVID MALLINKOFF, LANGUAGE OF THE LAW vii (1963)). *See* Lorne Sossin, *Discourse Politics: Legal Research and Writing's Search for a Pedagogy of Its Own*, 29 NEW ENG. L. REV. 883 (1995). "In the world of legal practice, whether academic, government, corporate or public interest, the importance of legal writing is rarely disparaged, and indeed is regularly cited as the most critical skill a law student should acquire." *Id.* at 855. "As Allen Boyer remarked, grades in substantive courses help students obtain starting positions, but it is research and writing skills which make careers." *Id.* *See also* EIGHTH CIR. BAR, *supra* note 4, at 4 (noting how Judge Michael Melloy urged students to prioritize learning how to communicate effectively through writing because "writing and analytical skills are what stays [sic] with a lawyer after law school").

[37] *See* Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469, 488-90 (1993). When asked what skills are the most important for beginning lawyers, from a list of 17 skills, oral and written communication skills were deemed the most important. *Id.* at 475. The results of the hiring partners' opinions follow: 91% stated oral communication should be brought to the job, 9% stated it should be developed in practice; 90% stated written communication should be brought to the job, 10% stated it should be developed in practice; 81% stated ability in legal analysis and legal reasoning should be brought to the job, 19% stated it should be developed in practice; 92% stated legal research should be brought to the job, 9% stated that it should be developed in practice; 84% stated computer legal research should be brought to the job while 16% stated that is should be developed in practice; 9% stated that drafting legal documents expertise should be brought to the job, 91% stated it should be developed in practice; and 30% stated that knowledge of the substantive law should be brought to the job while 70% stated that it should be developed in practice. *Id.* at 490.

level.[38] Thus, to enter the profession, obtain and maintain a legal job, and have a successful legal career, superior legal writing skills are required.[39]

For example, to become licensed to practice law, state bar exams test law graduates' writing and analytical skills in a variety of ways.[40] One typical method to test these skills is through the essay portion of bar exams.[41] Recently, numerous states also include the Multistate Performance Test (MPT).[42] The MPT tests problem-solving skills reflected in legal writing by requiring bar students to write a realistic legal document.[43] Thus, effective writing is required to even begin a legal career.

After passing the bar, lawyers' writing will continue to be scrutinized while they work in the legal profession. For example,

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[38] *See* Mark Cooney, *Get Real About Research and Writing*, 32(9) STUDENT LAWYER, May 2004, *available at* http://www.abanet.org/lsd/studentlawyer/may04/get-real.html (last visited Apr. 10, 2005) (refuting the myth that you can choose a practice area where you will not need strong research or writing skills).

[39] *Id*. *See also infra* notes 52-64 and accompanying text (discussing the stages of a lawyer's career where writing is required).

[40] *See* Andrew Perlman, *A Bar Against Competition: The Unconstitutionality of Admission Rules for Out-of-State Lawyers*, 18 GEO. J. LEGAL ETHICS 135, 141 (2004).

[41] *Id.* at 8 (discussing the fact that most state bar examinations include essay questions).

[42] *See* Joseph Kimble, *The Best Test of New Lawyer's Writing*, 80 MICH. B.J., July 2001, at 62-64; Rowe, *supra* note 16, at 1214.

[43] *See* Maureen Straub Kordesh, *Reinterpreting ABA Standard Section 302(f) in Light of the Multistate Performance Exam*, 30 U. MEM. L. REV. 299, 302 (2000) (describing the MPT as requiring test takers to complete tasks under time constraints that lawyers perform daily in practice); *Admission Commission Says Essay Bar Exam Could Benefit From Others' Innovations*: *Abbreviated Test Would Be No More*, 23 MONT. LAW., Mar. 1998, at 15, 16 (explaining that "[t]he MPT tests an applicant's ability to separate relevant information from the irrelevant, analyze legal materials, understand principles of law, apply the law to a case, identify ethical dilemmas, communicate effectively in writing, and complete a lawyering task within time constraints").

before receiving a job offer, lawyers' writing is carefully examined through both writing samples and written tests.[44] Also, good legal writing is often a significant factor in both the retention of the job and future promotion.[45] In recent years, many lawyers utilize a quick, yet shortsighted solution to a lawyer's poor writing skills, which is to terminate the associate.[46] A better alternative to either termination or incessant editing is to teach sub par writers to become proficient writers.[47] Hence, to cultivate good writers, "[supervising attorneys] must cease thinking of themselves as editors and begin thinking of [themselves] as teacher[s]."[48]

Once lawyers obtain a job and begin working, their legal writing must meet professional standards.[49] Poor legal writing that does not meet the profession's standards of quality weakens the public's confidence in lawyers and creates inefficiencies in the court.[50] Moreover, poor legal writing can have serious

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[44] *See* Ritchenya Shepherd, *Firm Exam Tests Writing Skills*, NAT'L L.J., Feb. 15, 1999, at A16 (discussing the timed essay examination given to candidates applying to the Chicago labor and employment litigation boutique Connelly, Sheehan, and Moran).

[45] *See* Bowers, *supra* note 12, at 37.

[46] Bowers, *supra* note 12, at 37

[47] Bowers, *supra* note 12, at 38.

[48] Bowers, *supra* note 12, at 38.

[49] *See* John D. Feerick, *Writing Like a Lawyer*, 21 FORDHAM URB. L.J. 381, 386 (1994) ("Practicing lawyers have a responsibility to produce legal writing that meets professional standards.") *See generally infra* note 139 (discussing various court rules regarding writing).

[50] *See generally* Judith D. Fischer, *Bareheaded and Barefaced Counsel: Courts React to Unprofessionalism in Lawyers' Papers*, 31 SUFFOLK U. L. REV. 1 (1997) (discussing cases regarding professionalism in legal writing). "No lawyer can avoid his or her professional role as a reader and writer of words." *Id*. at 37. "Written words pervade the practice of law." *Id*.

consequences for the legal profession, a lawyer's credibility, and even clients.[51]

Poor writing can result in a loss of integrity for the legal profession, disrespect for both the law and lawyers, increased legal fees, malpractice, and misled clients and citizens.[52] In addition, an interpretation of a carelessly drafted phrase or punctuation in a contract, will, or other legal document can expose a client to a lawsuit resulting in unnecessary litigation and costs.[53] Furthermore, judges have sanctioned attorneys for bad writing.[54] Thus, a strong professional, ethical, and economic motive exists

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[51] *See* Feerick, *supra* note 49, at 383-84. *See also* Fischer, *supra* note 50, at 5 (tracking cases and noting a lack of professionalism related to poor writing); Wendy B. Davis, *Consequences of Ineffective Writing*, 8(2) PERSP. 97 (Winter 2000) (discussing the potential consequences facing attorneys for poor legal writing); Adam Liptak, *Judge Finds a Typo-Prone Lawyer Guilty of Bad Writing*, N.Y. TIMES, Mar. 4, 2004, at A16. *See generally* Benjamin Weiser, *On Second Thought, Court Finds A Law 'Makes No Sense,'* N.Y. TIMES, Dec. 7, 2004, at B1 (discussing an appellate court's finding that a "scrivener's error" in congressional legislation resulted in overly harsh sentencing for defendants).

[52] *See* Fischer, *supra* note 50, at 4; Feerick, *supra* note 49, at 381-84; Alison Julien & Jessica Price, *Teaching Professionalism in the Legal Writing Classroom: Yes, the Small Stuff Does Matter*, Presentation, Eleventh Biennial Conference of the Legal Writing Institute (LWI) (July 21-24, 2004).

[53] *See, e.g.*, Criswell v. European Crossroads Shopping Ctr., Ltd., 792 S.W.2d 945, 948 (Tex. 1990) (holding that a drafter's use of a semicolon in contract proved that no condition precedent existed, thus reversing the lower courts' rulings to the contrary). *See also* Bagli, *supra* note 31, at A1 (discussing the litigation that resulted from ambiguity within a legal document).

[54] *See In re* Shepperson, 674 A.2d 1273, 1275 (Vt. 1996) (suspending an attorney for not less than six months and until he could show fitness in practicing law because the attorney drafted "inadequate and incomprehensible" legal briefs over a seven year period, and failed to complete a legal writing tutorial program); *cf.* State v. Bridget, No. 70053, 1997 WL 25518, at *9 n.3 (Ohio Ct. App. Jan. 23, 1997) (recognizing that appellant attorney's brief was replete with punctuation, citation, and spelling mistakes, and urging the attorney to pay closer attention to his writing in respect of the court for which the attorney had clerked in the past).

for lawyers to engage in good legal writing and for the legal profession to share in the responsibility to improve it.

B. The State of Legal Writing

"[T]he term 'legal writing' has become synonymous with poor writing: specifically, verbose and inflated prose that reads like — well, like it was written by a lawyer."[55] The perception in society reveals that if someone says "[y]ou think like a lawyer, it is taken as a compliment."[56] In contrast, when someone says "[y]ou write like a lawyer,…it is a serious criticism."[57] Some practitioners have even highlighted examples of bad writing by giving "Legaldegook Awards" for atrocious legal writing.[58]

Poor writing skills are pervasive throughout the legal profession. Therefore, a large number of lawyers need more guidance on writing.[59] If the problem of bad legal writing is

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[55] *See* Steven Stark, *Why Lawyers Can't Write*, 97 HARV. L. REV. 1389, 1389 (1984).

> If you don't need a weatherman to know which way the wind blows, you don't need a literary critic to know how badly most legal prose is written. You need only turn to any page of most legal briefs, judicial opinions, or law review articles to find convoluted sentences, tortuous phrasing, and boring passages filled with passive verbs.

Id.

[56] Feerick, *supra* note 49, at 381.

[57] Feerick, *supra* note 49, at 381.

[58] *See* Cohen, *supra* note 5, at 508 n.112 (discussing the "Legaldegook Awards" created by the Plain Language Committee of the State Bar of Texas). *See generally Legaldegook Awards: 1991-92*, 3 SCRIBES J. LEGAL WRITING 107 (1992).

[59] *See* Bowers, *supra* note 12, at 38. Most employers, not just legal employers, complain that employees lack writing skills. *See also Many Lack Writing Skills*, *supra* note 3 (noting how the demand for good writing has become greater as

passed onward and upward, the legal profession, including "[l]aw firms, corporations, and government agencies," will inherit "the writing problems faced (or not faced) by the law schools."[60] Nevertheless, lawyers not only desire and seek to improve their writing, but they can also achieve it if given the opportunity.[61]

As a result of the importance and state of legal writing, the legal profession must first acknowledge the need to improve writing throughout a lawyer's career.[62] Then, the legal profession must be willing to share the responsibility. Without such recognition and united effort between academia and the legal profession, the problem of poor legal writing will continue.

III. SHARING THE RESPONSIBILITY OF IMPROVING LEGAL WRITING

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opposed to writing itself becoming worse). "In a fast-paced workplace, precision and brevity are essential." *Id*.

[60] *See* Gopen, *supra* note 5, at 362.

[61] *See* Lynne Agress, *Teaching Lawyers the Write Stuff*, LEGAL TIMES, Oct. 2, 1995, at 37 ("[W]riting and editing workshops should be offered to those lawyers who fully understand the law, who write and edit important letters and arguments, and who work closely with the first-and-second-year associates."). *See generally* STEVEN PINKER, THE LANGUAGE INSTINCT: HOW THE MIND CREATES LANGUAGE (First Harper Perennial ed. 1995) (stating how writing has to be learned rather than hard-wired into the brain according to a linguist studying neurolinguistics, and in terms of neuro mechanics, writing has to be learned by practice, practice, practice); ALICE W. FLAHERTY, MIDNIGHT DISEASE: THE DRIVE TO WRITE, WRITER'S BLOCK, AND THE CREATIVE BRAIN (2004) (explaining that written communication must be learned).

[62] *See* Agress, *supra* note 61, at 37 (noting the overall deterioration of writing skills over the last twenty years and that as a result, "more law firms than ever before are acknowledging the need to improve communication, specifically writing and editing").

This article does not simply advocate pointing the finger at the practicing bar to solve the problem with legal writing.[63] Indeed, the history of legal education shows that training cannot be solely left to employers; rather, law schools originated, in part, as a response to inadequate training by a student's first employer.[64] The burden, however, should not be placed solely on law schools because "the issue of bad legal writing is more than a law school's problem to solve."[65] Thus, academia and the legal profession need to share the responsibility of improving legal writing.

Many factors, such as pre-law school, law school, continuing legal education programs, and the practicing bar, contribute to a significant portion of a lawyer's professional growth.[66] The instruction of legal writing, a fundamental skill,[67] must not get lost during the periods of legal education and

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[63] *See* Matthew J. Arnold, *The Lack of Basic Writing Skills and Its Impact on the Legal Profession*, 24 CAP. U. L. REV. 227, 228 (1995) (noting the obvious solution to improve writing is for educational institutions to prepare law students with better writing skills before entering law school).

[64] *See* William R. Trail & William D. Underwood, *The Decline of Professional Legal Training and a Proposal for its Revitalization in Professional Law Schools*, 48 BAYLOR L. REV. 201, 203-04 (1996). "Law schools originated as a response to inadequate on-the-job training of new layers in the context of apprenticeships." *Id*. *See also* David Romantz, *The Truth About Cats and Dogs? Legal Writing Courses and the Law School Curriculum*, 52 KAN. L. REV. 105, 109-12 (2003) (discussing the evolution of the study of law from apprenticeships to law schools).

[65] Feerick, *supra* note 49, at 386. *But see* Arnold, *supra* note 63, at 228 (stressing that the problem of poor writing can be solved by educational institutions prior to law school).

[66] *MacCrate Report*, *supra* note 21, at 14. Pedagogically and practically speaking, improving legal writing skills follows a learning continuum of pre-law school, law school, and post-law school. *Id*.

[67] *See generally* DAVID ROMANTZ & KATHLEEN ELLIOTT VINSON, LEGAL ANALYSIS: THE FUNDAMENTAL SKILL (1998) (demystifying the process of communication of legal analysis through writing).

professional development.[68] Instead, the role of writing should be continuously developed throughout the stages of a lawyer's learning continuum. Improving writing throughout a lawyer's career is a continuing professional challenge because the advancement of legal writing proficiency requires motivation, discipline, diligence, and an expenditure of resources.[69]

A. The Role of Writing Along the Learning Continuum

Legal writing skills are formed from the skills students bring to law school.[70] Some people speculate that unfortunately, for various reasons, writing skills have deteriorated.[71] The decline in writing skills and students' perception of their skills have

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[68] *See* Arnold, *supra* note 63, at 244.

[69] *See* Feerick, *supra* note 49, at 384.

[70] *See* Cohen, *supra* note 5, at 515 (stating how "legal writing skills build upon basic writing skills"). "Elementary writing skills are ingrained early on, before students ever apply to law school. Unfortunately, many lawyers lack these elementary writing skills." *Id*.

[71] See Agress, *supra* note 61, at 37 (noting decline in pre-law students majoring in English or history, lack of required writing courses in college, and priority of watching videos instead of reading); LYNNE TRUSS, EATS, SHOOTS & LEAVES, THE ZERO TOLERANCE APPROACH TO PUNCTUATION 178-179 (2004) (discussing the effect the electronic age has had on language). *See also* James B. Levy, *A Neurologist Suggests Why Most People Can't Write-A Review of the Midnight Disease: The Drive to Write, Writer's Block, and the Creative Brain*, 13(1) PERSP. TEACHING LEGAL RES. WRITING, Fall 2004, at 32 (book review). *See generally* FLAHERTY, *supra* note 61 (offering a scientific reason for why writing is so poor as a matter of neuro-biology). Most people are not programmed to write, the skill has to be learned. Thus, more writing in a curriculum will enhance writing skills. *Id*. Written communication is complex for the brain to perform and thus involves other parts of brain working together through consistent practice. *Id.* Cognitive effect, limbic action and motor skills are all involved in writing. *Id*. *But see Many Lack Writing Skills*, *supra* note 3 (reasoning that writing skills are not worse, but the demand is greater for better and more efficient writing in a fast-paced workplace).

resulted in serious effects on law school performance and the legal profession as a whole.[72]

One reason for the deterioration of writing skills is the alarming neglect of writing in schools that has resulted in a national crisis, calling for a writing revolution in education reform.[73] Arguably, students do not write well because they are not asked to write.[74] For example, the National Commission Report on Writing in American Colleges and Schools notes that 39% of 12th grade high school students are "never," or "hardly

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[72] *See* Cathleen A. Roach, *Is the Sky Falling: Ruminations on the Incoming Law Student "Preparedness" (and Implications for the Profession) in the Wake of Recent National and Other Reports*, Presentation, Eleventh Biennial Conference of the Legal Writing Institute (July 22, 2004) (forthcoming) (on file with author); *see also* Rowe, *supra* note 16, at 1205 (stating how poor writing results from poor analysis). *See generally Writing Revolution*, *supra* note 3, at 36.

[73] *See* Roach, *supra* note 72; *Writing Revolution*, *supra* note 3, at 3. *See also Reading at Risk: A Survey of Literary Reading in America*, RES. DIVISION REP. #46 (National Endowment for the Arts, Washington, D.C.), June 2004, at 1 (discussing the decline of reading, particularly the reading of literature, by the American public); Andrew Solomon, *The Closing of the American Book*, N.Y. TIMES, July 17, 2004, at A17 (describing the decline in reading as a crisis in national education).

[74] *See Writing Revolution*, *supra* note 3, at 28 ("Because writing requires time, the Commission is troubled by findings that most students spend little time writing. It is small wonder that students do not write well. Most do not have sufficient time to practice the art."); Karen Nerney, *Authors Urge Parents to 'Get Into' Reading*, BOSTON GLOBE, Sept. 28, 2000, at 10 (noting "[t]he average 14-year-old in 1950 had a vocabulary of 25,000 words; today, that 14-year-old has a command of just 10,000"). *But see* Marie C. Franklin, *Art Works at School*, BOSTON GLOBE, June 25, 2000, at M5 (discussing an after school 4th and 5th grade writers club that promotes writing by creating its own newspapers). *See also* ANDREA MCCARRIER ET AL., "INTERACTIVE WRITING" HOW LANGUAGE AND LITERACY COME TOGETHER, K-2 xv (2000). "Young children want to be writers." *Id*. The thesis of McCarrier's book states that, in order to have children begin the journey of writing, the most effective instructional support is an interactive writing/collaborative literacy event where children actively compose together and share the pen with the teacher. *Id.* at xv.

ever," assigned papers of three or more pages in English class.[75] The report also stated that a high school thesis or research paper is rarely required.[76]

Although writing can play a critical role in colleges to establish a solid foundation for the effective communication of critical thinking, fewer pre-law students major in English or history.[77] Moreover, "composition is no longer a required college course, and watching videos often takes precedence over reading books."[78] Incidentally, more than 50% of first-year college students could not write papers free of language errors.[79] Additionally, the ability to analyze and synthesize are outside the

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[75] *Writing Revolution*, *supra* note 3, at 20. The report includes several recommendations, including the following: establishing a National Writing Agenda, requiring a comprehensive writing policy, doubling the time and resources for writing, supporting teachers' professional development, reviewing the use of technology, encouraging writing throughout the curriculum in every class, including math and science, and encouraging fair and authentic assessment. *Id. at* 8.

[76] *Writing Revolution*, *supra* note 3, at 20.

[77] Agress, *supra* note 61, at 37. *See also* Newby, *supra* note 15, at 2 n.5 (citing Lynn B. Squires, *A Writing Specialist in the Legal Research and Writing Curriculum*, 44 ALB. L. REV. 412, 415 (1980) (recognizing that incoming law students, like most college seniors, write poorly)). Newby suggests that increasing the importance of writing skills in the application process for law schools will send a message to undergraduates to "take advantage of every opportunity their undergraduate school offers them to develop their analytical and written communication skills." *Id*. at 4. *See generally* John Merrow, *Grade Inflation: It's Not Just an Issue for the Ivy League*, CARNEGIE PERSP. (Carnegie Foundation for the Advancement of Teaching, Stanford, Cal.), June 2004, at 2 (noting that although today's college students receive higher grades, "[o]ver the last thirty years, SAT scores of entering students have declined, and fully one-third of entering freshmen are enrolled in at least one remedial reading, writing or mathematics course").

[78] Agress, *supra* note 61, at 37. *See generally* Molly Warner Lien, *Technocentrism and the Soul of the Common Law Lawyer*, 48 AM. U. L. REV. 85 (1998) (examining how an over-reliance on technology may negatively impact the process of legal reasoning).

scope of the college freshman's abilities.[80]

Finally, "[w]riting has suffered the status of a poor relation in the law school curriculum."[81] Unlike other law school courses, the subject of legal writing, and full-time faculty specializing in the legal writing field, have emerged as a distinct and vital area of study and teaching over approximately the last twenty years.[82] Despite recommendations advocating improved legal writing, most law schools did not provide formal instruction in legal writing as a separate discipline or offer writing classes taught by full-time legal writing professionals prior to the 1980s.[83] "Thus, lawyers and judges who graduated from law school before the mid-1980s may lack any formal training in legal writing."[84] This lack of training may contribute to the problem of poor legal writing skills and increase the necessity for the legal profession to both improve legal

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[79] *Writing Revolution*, *supra* note 3, at 14.

[80] *Writing Revolution*, *supra* note 3, at 14.

[81] Cohen, *supra* note 5, at 492. *See* Newby, *supra* note 15, at 2 (describing how legal writing has been treated as the "black sheep" of law school courses). "If law students are not minimally proficient in basic writing skills, we can't make them proficient regardless of how many hours we squeeze out of our syllabus at the expense of instruction in legal problem solving." *Id*. at 3. Also, the best students may be frustrated by a class where grammar, active voice and paragraph development are taught instead of legal analysis. *Id*.

[82] Pollman, *supra* note 14, at 887.

[83] Pollman, *supra* note 14, at 894. *See* Terrill Pollman & Judith M. Stintson, *IRLAFARC! Surveying the Language of Legal Writing*, 56 ME. L. REV. 239, 240-241 (2004) (noting how the legal writing field is an emerging discipline in the legal academy).

[84] Pollman, *supra* note 14, at 894; Pollman & Stintson, *supra* note 83, at 245-46 (recognizing that many judges, lawyers, and non-legal writing faculty "graduated before law schools began to teach legal writing as a separate discipline").

writing beyond law school and share the responsibility with academia.[85]

The history of American legal education reveals the reasons why law schools first recognized the need to offer students legal writing instruction.[86] In the late 1940s and 1950s, based on the apparent weak skills of incoming students, law schools began acknowledging the need to train students in legal writing.[87] As salaries of associates rose in the 1980s, law firms expected new associates to use their time to bill to justify the higher salaries, rather than to spend numerous hours in legal writing training that the firm had previously offered.[88] Many law firms' reluctance to provide training and mentoring for new associates resulted in expectations that new associates possessed fully matured writing abilities upon entering practice.[89] Then, between 1985 and 1990, in response to the lack of training beyond law school, to the expectations and requirements of the legal profession, and to entering students' weak skills, academia started developing more

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[85] *See* Pollman, *supra* note 14, at 927-28.

[86] *See generally* Rideout & Ramsfield, *supra* note 15, at 40-48 (describing the history of legal writing instruction in law school); Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117, 123-30 (1997); Jan M. Levine & Kathryn M. Stanchi, *Women, Writing & Wages: Breaking the Last Taboo*, 7 WM. & MARY J. WOMEN & LAW 551, 553-69 (2001) (discussing the history of surveys of legal writing programs and faculty); Romantz, *supra* note 64, at 105.

[87] *See* Pollman, *supra* note 14, at 894-95. *See generally* Romantz, *supra* note 64, at 105.

[88] Pollman, *supra* note 14, at 895-96.

[89] Pollman, *supra* note 14, at 896.

substantial legal writing programs, and thus a writing movement in law schools began.[90]

Although law schools developed substantial legal writing programs and have continued to improve them in recent years, the opportunity to do more exists.[91] While this article acknowledges

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[90] Pollman, *supra* note 14, at 896. *See* Pollman & Stintson, *supra* note 83, at 248 n.22 (discussing the founding of LWI and noting the current Institute is housed at Mercer University Law School). Other indicators of the legal writing field as an emerging discipline in the legal academy include the establishment of the Legal Writing Institute and the Association of Legal Writing Directors; two list-serves the legal community primarily uses: DIRCON (the list-serve of the Association of Legal Writing Directors (ALWD) and LRWPROF-L@listserv.iupui.edu (the list-serve for the Legal Writing Institute); the number of textbooks and scholarships given by the legal writing faculty; and the publication of professional periodicals and other professional publications, such as Perspectives, The Second Draft, the Journal of Legal Writing Institute, and the Scribes Journal of Legal Writing. *See id.* at 241 n.4, 248 n.22, 253 nn.34-36, 254 n.37. *See also* George D. Gopen & Kary D. Smout, *Legal Writing: A Bibliography*, 1 J. LEGAL WRITING INST. 93 (1991) (noting that between 1970-1979, 83 legal writing books or articles were published as compared to 207 published from 1980-1991).

[91] *See* Arnold, *supra* note 63, at 254-56 (suggesting several changes for improving writing in law school). Proposed solutions include: acknowledging the lack of basic writing skills in incoming law students and making it a rebuttable presumption; revising the Law School Admissions Test (LSAT) writing section by making it a scored section; including multiple choice grammar or sentencing questions on the LSAT; and encouraging law schools to administer their own pre-admission writing exams. *Id.* at 254-56. If the student does not rebut the presumption, then they should be mandated to take a remedial composition, grammar, and punctuation course taught by non-lawyer English professors prior to admission. *Id.* at 255. *See also* Cohen, *supra* note 5, at 515-16; Pollman & Stintson, *supra* note 83, at 240 n.3, 241 (noting how the legal writing field is an emerging discipline in the legal academy and increase in the title "legal writing professor" to designate those who consider teaching legal writing as their primary professional focus). *See generally* Romantz, *supra* note 64, at 105. *See also* EIGHTH CIR. BAR, *supra* note 4, at 4 (stating that Judge Colloton of the Eight Circuit Court of Appeals ranks writing as the most important skill taught in law school); Association of Legal Writing Directors & Legal Writing Institute, *2004 Survey Results*, at 28, 62 (2004) (reporting the increased number of credits for legal writing courses, as well as the number of courses spanning several years; increased tenure and status for legal writing faculty; increased scholarship on legal writing and by legal writing

and applauds the excellent work done to improve writing at some law schools, much remains to be accomplished. Numerous examples illustrate how the low status of legal writing courses and those who teach them, still leave the impression on students and the legal profession that writing skills are not as important as other skills obtained in law school.[92] For example, some "law schools have elevated oral communication skills over written communication skills."[93] At other schools, writing courses often

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professionals; and increased professionalizing of the legal writing field), *available at* http://www.alwd.org (last visited Apr. 12, 2005) [hereinafter *2004 Survey*]; Lysaght & Lockwood, *supra* note 30, at 73 (noting the strides in legal writing programs).

[92] *See* Linda H. Edwards, *A Chance to Teach Analytical Skills Intentionally and Systematically*, 16(2) THE SECOND DRAFT (Bulletin of the Legal Writing Institute), May 2002, at 1, 10 ("Analytical legal writing — that is, writing an expository document that analyzes a legal issue using the basic forms of normative legal reasoning — is the hardest form of writing to learn and the form least likely to be learned well in practice."); Ruth Anne Robbins, *Students Should Have a Choice*, 16(2) THE SECOND DRAFT (Bulletin of the Legal Writing Institute), May 2002, at 10-11 ("Any approach that involves completing formal writing education a full two years before students are expected to write for a living only handicaps them). *See generally* Pollman & Stintson, *supra* note 83, at 240 n.3 (noting that some people argue that an impression exists regarding how some schools "track" women into status legal writing jobs); Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537, 554 (1988), Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313 (2000); Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto*: *Gender Bias in Legal Writing*, 50 J. LEGAL EDUC. 562 (2000); Pamela Edwards, *Teaching Legal Writing as Women's Work: Life on the Fringes of the Academy*, 4 CARDOZO WOMEN'S L.J. 75 (1997).

[93] *See* Cohen, *supra* note 5, at 492. *See also* Ehrenberg, *supra* note 17, at 1168-70 (comparing virtues of written communication over spoken communication in the legal context); Edwards, *supra* note 92, at 10 (describing legal writing as the "hardest form of writing to learn and the form least likely to be learned well in practice."); Robbins, *supra* note 92, at 11 (cautioning that handicapping of students results from limiting writing to the first year of law school). *See generally* FLAHERTY, *supra* note 61 (noting from a neuro-mechanical standpoint, writing is more difficult than verbal communication because it requires more cognitive effort, uses more limbic action and motor skills; discussing how

have minimal credit, are offered for the first-year only, are graded pass/fail, and are not computed in students' grade point average.[94] Also, the faculty that teaches legal writing often has less status, salaries, and security than tenure-track faculty teaching doctrinal courses.[95]

Despite the negative impression on students regarding the importance of legal writing based on these characteristics, students need to practice writing throughout the law school curriculum.[96] Neither students nor lawyers learn to write better by merely reading about good legal writing; they have to practice it.[97] After all, law students are exposed to bad legal writing by reading poorly written decisions, statutes, briefs, and casebooks, and then they

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writing requires the brain to use more areas than oral communication; and also examining how rules of written communication vary in different cultures).

[94] *See* Rowe, *supra* note 16, at 1209 (comparing legal writing courses to science labs, and how they represent a disproportionate amount of work for credits); Douglas Laycock, *Why the First-Year Legal-Writing Course Cannot Do Much About Bad Legal Writing*, 1 SCRIBES J. LEGAL WRITING 83 (1990) (arguing that first-year legal writing programs can do little to turn mediocre writing into good writing). "[W]e should not kid ourselves into believing that the complaints about legal writing can be addressed in the first year." *Id*. at 86; Edwards, *supra* note 92, at 10 (discussing the difficulty of learning legal writing); Robbins, *supra* note 92, at 10-11 (stressing the negative impact for students with minimal writing training).

[95] *See generally 2004 Survey*, *supra* note 91.

[96] Parker, *supra* note 2, at 562. "Words are the tools of a lawyer's trade." *Id*. In order to produce competent writers and provide a foundation to refine writing throughout a career, legal writing programs should not be limited to one year. *Id*. Improving writing must include every year of law school at every opportunity to get more practice and feedback. *Id*. *See* Laycock, *supra* note 94, at 85. Laycock argues that first-year legal writing programs can do little to turn mediocre writing into good writing. *Id*. at 83. *See also* Lysaght & Lockwood, *supra* note 30, at 73 (noting that the burden of legal writing needs to be shared throughout the law school community).

[97] *See* Cohen, *supra* note 5, at 500.

attempt to replicate a similar style in their own writings.[98] Improving legal writing, however, does not simply mean focusing on basic writing skills; rather, having students focus on legal analysis and problem solving may be the best way to improve writing.[99]

For example, while acknowledging that law students' inadequate writing may be due to incompetence in basic writing skills, learning theorists reason that first-year law students write poorly because of their deficiencies in understanding legal analysis, not because they were poorly educated.[100] Novice learning theory reveals that as students and lawyers enter "points of transition" into a new discourse community (law school and the legal profession), they seemingly lose skills previously learned (like writing skills) while they struggle to develop new skills.[101]

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[98] Cohen, *supra* note 5, at 517; Rowe, *supra* note 16, at 1206 (mastering legal writing is like learning new logic).

[99] *See* Newby, *supra* note 16, at 2 (suggesting that legal writing courses in law school should not teach grammar, basic usage, style, punctuation, sentence or paragraph structure; instead they should teach more legal analysis skills because by understanding problem solving, students could write better). *See also* Phelps, *supra* note 15, at 155-56. *See generally Writing Revolution*, *supra* note 3, at 16 (noting how basic writing itself is not the problem, rather the issue is that students cannot write to meet the expectations of the reader at a proficient or advanced level). "Experiments over the last 50 years have shown negligible improvement in the quality of student writing as a result of grammar instruction." *Id.* at 40 n.4.

[100] Williams, *supra* note 24, at 30. Williams discusses the novice learning theory and dispels the myth that poor education is the reason for why first-year law students write poorly. *Id*. *See also* Lysaght & Lockwood, *supra* note 30, at 75 (discussing how learning to write teaches students to enter the legal writing discourse community).

[101] Newby, *supra* note 15, at 4. *See also* Williams, *supra* note 24, at 15 (discussing the examples of people who lose writing skills at points of transition, including young children, high school students, college freshmen, and medical students).

Thus, pursuant to the novice learning theory, many writers seem to write poorly "at points of transition — from high school to college, from the general education of freshman composition to some academic concentration, from college to graduate or professional school, from professional school to a profession."[102] Such complaints about writing at these points of transition are predictable and sometimes inevitable.[103] Just as students struggle to acclimate into a specialized discourse community, like law school, lawyers that transition into the legal profession also struggle.[104]

Improving writing is not simply completed after formal education; rather, it is a life-long learning process. One might conclude that the entire educational establishment is failing to teach students how to write or how to think.[105] However, instead of blaming the educational system at all levels for failing to focus attention on the quality of writing, the legal profession needs to accept its share of the responsibility for improving legal writing skills.[106] Considering the demands of the legal field, improving legal writing is a continuing professional challenge, but one that

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[102] Williams, *supra* note 24, at 1.
[103] Williams, *supra* note 24, at 2.
[104] *See* Williams, *supra* note 24, at 1-2. *See also* Rideout & Ramsfield, *supra* note 15, at 93.
[105] *See* Williams, *supra* note 24, at 1.
[106] *See* Clare Jr., *supra* note 20, at 195.

will ultimately benefit the profession and promote professional competence.[107]

B. A Continuing Professional Challenge

The acculturation to the legal discourse community that begins in law school continues into practice.[108] Thus, good critical thinking and good writing in the legal field do not naturally occur, but rather result from skills learned and experience gained by novice learners from more experienced members of the law community.[109] Because the acculturation process is progressive, as novices learn skills and gain experience, skills developed from the initial stages of acculturation, such as imitating the community's

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[107] *See* Rowe, *supra* note 16, at 1215 (arguing that advancement in the legal profession can be furthered if attorneys remember what they learned in their legal writing course in law school).

[108] *See* Rideout & Ramsfield, *supra* note 15, at 93.

[109] *See* Williams, *supra* note 24, at 10. Williams describes the cognitive burden of transitioning into a new community:

> Whenever we face the task of joining a new community, we have to manage a number of demanding tasks. We have to acquire a new body of knowledge, including both the current state of knowledge and the history of how that knowledge came about; we have to master new ways of thinking that may conflict with ways of thinking to which we have already habituated ourselves and which work just fine in some other community. We also have to find the voice of the community, and . . . all of this is compounded by the anxiety, insecurity, strangeness, etc. that accompanies all ventures into new social space. It is not a surprise that as novices struggle to acquire new skills, many — perhaps most, to some degree — temporarily lose skills they seem to have once mastered. . . . What we should find astonishing is not that so many novice writers write badly, but that any of them writes well.

Id. at 14-15, 23.

voice (i.e., legalese), change to more sophisticated skills in practice.[110]

For example, novices struggle to find their own voice within the community as they begin to understand how writing in law practice differs from writing in law school.[111] During the first years of practice, when writers transition from law school, they take a more pragmatic, rather than academic, approach to writing.[112] In practice, lawyers face new time and institutional challenges and pressures, such as billable hours and competition for clients, making the writing process more difficult.[113] Such influences shape the way recent graduates approach writing.[114] Furthermore, even if lawyers acclimate to legal practice without losing their writing skills, many lawyers have not received adequate writing instruction beyond a freshman English composition course or a legal writing and research course in the first year of law school. As their legal knowledge progresses, they

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[110] *See* Rideout & Ramsfield, *supra* note 15, at 93; Rowe, *supra* note 16, at 1206 (stating that legal writing requires mastering new language; however, it should not emulate legalese while learning the law).

[111] *See* Rideout & Ramsfield, *supra* note 15, at 93. Even with law school, writing styles may differ depending on the audience and purpose, including exam writing, seminar papers, legal memoranda, and law review articles. *Id*. *See also* ELIZABETH FAJANS & MARY R. FALK, SCHOLARLY WRITING FOR LAW STUDENTS (West Group 3d ed. 2005); Pollman & Stintson, *supra* note 83, at 241 (examining whether the language used by legal writing professors to teach legal writing "fosters the kind of sophisticated discourse about writing which will be helpful to other users of the language — students, lawyers, judges, and law professors").

[112] *See* Rideout & Ramsfield, *supra* note 15, at 93. *See also* STEVEN V. ARMSTRONG & TIMOTHY P. TERRELL, THINKING LIKE A WRITER, A LAWYER'S GUIDE TO EFFECTIVE WRITING AND EDITING 3-12 (1993) (discussing the stages of a lawyer's writing development).

[113] Rideout & Ramsfield, *supra* note 15, at 93.

need to improve their writing skills to reflect more sophisticated analysis.[115]

Improving legal writing beyond the classroom is necessary to reflect the continuous development of analytical skills throughout the different stages of growth as lawyers transition into practice and develop sophisticated legal expertise.[116] During law school and the beginning of legal practice experience, lawyers tend to master the first stage of the intellectual development of their writing and analysis — the complexity of legal issues.[117] However, to be an effective writer, in addition to mastering the complexity of the law, lawyers need to continue to master another stage of development — the ability to communicate their analysis of complex legal issues in a clear, concise, and logical manner that meets the reader's needs.[118] If writing ends in law school, lawyers do not reach this second, more critical stage of development.[119] Therefore, "[w]hat begins in law school must continue in practice."[120]

A continuing professional challenge requires lawyers to continue to improve their writing to simplify the logic, precision,

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[114] Rideout & Ramsfield, *supra* note 15, at 93.
[115] *See supra* notes 77-85 and accompanying text.
[116] *See* Rideout & Ramsfield, *supra* note 15, at 93. *See also* ARMSTRONG & TERRELL, *supra* note 112, at 3-12 (discussing the difference between writing for law school and writing for legal practice); Williams, *supra* note 24, at 10, 14-15, 23.
[117] *See* ARMSTRONG & TERRELL, *supra* note 112, at 4.
[118] ARMSTRONG & TERRELL, *supra* note 112, at 4.
[119] ARMSTRONG & TERRELL, *supra* note 112, at 4.
[120] Rideout & Ramsfield, *supra* note 15, at 93 n.183 (comparing legal education training to medical training as applied in internships and residencies).

and complexity for the reader without over-simplifying.[121] Lawyers' writing often reflects the logic and precision of the law without imposing organization, focus, and coherence on the document or merely engages in superficial or conclusory analysis of the legal issues.[122] This writing does not serve the document's purpose and audience and often leaves the reader feeling confused, disengaged, and unpersuaded.[123]

While lawyers continue to develop their expertise in a substantive area of the law, they often neglect to develop their writing to ensure that it reflects that expertise in a way that is accessible and clear for the reader to understand.[124] As a result, not only in law school or during the first years of practice, but throughout lawyers' careers, legal writing must be further developed, refined, and advanced to reflect not only the sophistication of their understanding of the law but also their ability to simplify that sophistication in a pragmatic way to guarantee clarity of the logic for the reader. Such improvement in legal writing, while necessary, poses a significant professional challenge.

IV. IMPLEMENTING SOLUTIONS TO IMPROVE LEGAL WRITING

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[121] *See* ARMSTRONG & TERRELL, *supra* note 112, at 4.
[122] ARMSTRONG & TERRELL, *supra* note 112, at 4.
[123] ARMSTRONG & TERRELL, *supra* note 112, at 4.
[124] ARMSTRONG & TERRELL, *supra* note 112, at 4.

In addition to recognizing the need to improve legal writing skills beyond law school and to share the responsibility, the legal profession must acknowledge that the problem of poor writing is solvable.[125] The legal profession and academia must spend the time and resources to signal the importance of writing and the willingness to take action to improve it.[126] Only then will writing skills improve in the legal profession.

Numerous ways exist to implement solutions to improve legal writing; however, there must be a combined and continuous effort and commitment by the legal profession and academia, beginning in academia and continuing throughout a lawyer's career.[127] Solutions should be proactive and creative. The article discusses a spectrum of recommendations to meet the challenge of improving writing, ranging from the incremental to the far-reaching ideas. These solutions include devoting more time, resources, leadership, professional development, and coordination to improve writing.[128] Some solutions build upon ideas that may have only been implemented on a sporadic or ad hoc basis. This article recommends a cooperative approach between the legal profession and academia, creating an environment of shared

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[125] *Many Lack Writing Skills*, *supra* note 3 (acknowledging that writing skills can be learned).

[126] *See* Roach, *supra* note 72 (noting the implications for incoming law students' "preparedness," and for the legal profession, resulting from law students coming in with fewer technical, analytical, and organizational skills). *See Writing Revolution*, *supra* note 3, at 3.

[127] *See* Newby, *supra* note 15, at 4 (advocating proficiency testing of writing skills throughout the learning continuum).

[128] *See Writing Revolution*, *supra* note 3, at 8 (the report recommends more time, resources, and professional development to improve writing).

responsibility to develop good writing, on a systematic and continuous basis, seeking a unified and structured approach to focused legal writing that serves the needs of all interested parties.

A. Prerequisites to Practice

At key points before entering the legal profession, various methods to improve legal writing can be used. For example, prior to admissions, the writing section of the Law School Admissions Test can be given more weight.[129] Often, the LSAT essay may not even be reviewed or heavily considered unless the student is on the borderline of being admitted to the law school.[130] Instead, law school admissions committees should weigh the LSAT essay more heavily in the admissions process to consider the applicant's writing skills.[131] After all, writing skills in law school build upon the skills students bring and their ability to communicate their analysis is reflected by those skills or lack thereof. Also, if law school admissions programs carefully review a required submission of a writing sample with the law school application, undergraduate students will be encouraged to focus on writing skills earlier in their education.

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[129] *See* Arnold, *supra* note 63, at 254 (advocating revision of the LSAT writing section "so that it competently assesses a person's writing ability"). *See generally* Richard Rubin, *How to Survive the New SAT*, NEWSWEEK, Aug. 23, 2004, at 52-54 (discussing the importance of writing in the new SAT).

[130] *See* Arnold, *supra* note 63, at 246 (discussing the LSAT's writing requirement).

[131] *But see* Arnold, *supra* note 63, at 247 ("One should question what value, if any, a few sentences of hastily written prose will have in assessing an applicant's writing ability.").

Law schools should signal to prospective and enrolled students the importance of writing by strengthening the role of legal writing programs in students' curriculum. Credits for legal writing courses should be commensurate with the work required of the students.[132] Legal writing faculty should be afforded comparable status to other law school faculty in prestige and salary to emphasize the importance of the program to the students.[133]

In addition, as many states now do, to indicate how good writing is a prerequisite to a license to practice law, more states can require the MPT.[134] Thus, by testing, through a practical component, not only the knowledge of substantive law but the ability to communicate the analysis of that law, the message would be sent to students, faculty, and the bar, regarding the importance of writing skills. This testing would also help clarify the connection between doctrine and writing.

B. Leadership

While acknowledging that academia needs to increase the commitment, resources, and time it devotes to writing, leadership in the legal profession can also do more to use the bully pulpit to

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[132] *See supra* note 91 and accompanying text at *2004 Survey*.

[133] *See generally* Dunlap, *supra* note 2, at 20 (noting that women represent the majority of legal writing instructors, and these positions tend to be of low pay and low status, thus not only devaluing legal writing instruction but increasing the impressions of inequity at a gender level in law school). *See supra* note 92 and accompanying text (describing the strides made in the field of legal writing).

[134] *See* Kimble, *supra* note 42, at 63-64. *See also* Rowe, *supra* note 16, at 1214, 1214 n.83 (citing *Comprehensive Guide to Bar Admission Requirements*, 1999 A.B.A. SEC. LEGAL EDUC. ADMISS. BAR & NAT'L CONF. OF BAR EXAMINERS, at 19 (noting that over 30 states now have the MPT).

improve legal writing.[135] National, regional, and state bar associations and their leadership should recognize the unique role they have in making the need and commitment to improve legal writing a forefront issue.[136] For example, improving the ABA standards regarding the status and security of legal writing faculty sends a message to incoming students, faculty, and the profession regarding the value and status of writing.[137] Also, while bad

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[135] For example, at a minimum, academia can continue to improve and increase the instruction of legal writing in law schools throughout the curriculum via time, credits, and money including status, salaries, and security of those faculty who teach this critical skill. *See* Arnold, *supra* note 63, at 252.

[136] For example, the Legal Writing Institute (LWI) and the Association of Legal Writing Directors (ALWD) promote legal writing and advocate improving the status and conditions of the faculty teaching legal writing as well as the overall legal writing field.

[137] *See Quality Legal Writing Instruction and ABA Accreditation Standard 405: Report and Recommendations* (Report from the Association of Legal Writing Directors & Legal Writing Institute), Aug. 23, 2004, *available at* http://www.alwd.org/ALWD%20position%20statement%20to%20ABA%20re%20405%20Aug.%2004.pdf (last visited Apr. 12, 2005) (report by LIW and ALWD to the ABA Standards Review Committee of the ABA Section of Legal Education and Admission to the Bar suggesting that the ABA revise Standard 405 to solidify the job status and security of legal writing faculty by eliminating caps on employment). *See generally* Memorandum from John A. Sebert, Consultant on Legal Education, to Deans of ABA Approved Law Schools et al. (Aug. 23, 2004) (on file with author), *available at* http://www.abanet.org/legaled/standards/memor302and305standards.pdf (last visited Apr. 12, 2005) (discussing the proposed revisions to ABA Standards 302 and 305, and the new Interpretation 302-1 adopted by the Council of the Section of Legal Education and Admissions to the Bar at its August meeting). The interpretation provides a list of "[f]actors to be considered in evaluating the rigor of writing instruction," including:

> the number and nature of writing projects assigned to students; the opportunities a student has to meet with a writing instructor for purposes of individualized assessment of the student's written products; the number of drafts that a student must produce of any writing product; and the form of assessment used by the writing instructor.

Id. at 6. This interpretation will be presented to the ABA House of Delegates for concurrence in February 2005. *Id.* at 1.

writing may sometimes get notoriety, bar association and publications could give more accolades for good writing through awards and positive press.[138] Such positive reinforcement may inspire motivation to improve writing, which can be a daunting task.

The judiciary is another example of a powerful resource to promote and set the tone regarding the commitment to writing. For example, the local bar and judiciary should come together, where the judiciary can offer lawyers a unique view from the bench regarding the court's likes and dislikes regarding writing it sees in submitted memos and briefs. This guidance can be given in seminars and/or written material distributed to lawyers, including a sample memo or brief that exhibits good writing. The review of such information should be required for lawyers practicing in that

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[138] Matt Fleischer, *Legalese is Rampant, But, Sua Sponte, Lawyer has a Solution*, Nat'l Law J., July 17, 2000, at A1 (noting that Wall Street lawyer Bill Burton wanted to "highlight lawyers who dedicate energy and time to writing" and therefore created the Burton Awards for legal writing). " 'No ABA president, to my knowledge, has made legal writing a front-and-center issue since Charles Beardsley in 1940,' says Bryan Garner, who runs Law Prose, Inc., a Dallas company that offers legal-writing workshops." *Id.* *But see* Trial Lawyers for Public Justice, TLPJ's Trial Lawyer of the Year Award, *available at* http://www.tlpj.org/events_tloy.htm (last visited Apr. 12, 2005) ("The Trial Lawyer of the Year Award is presented to the trial attorney or attorneys who have made the greatest contribution to the public interest within the past year by trying or settling a precedent-setting case."); Montana Trial Lawyers Association, 2004 MTLA Awards, *available at* http://www.monttla.com/MTLA%20award_recipients.html (last visited Apr. 12, 2005) (identifying award winners from Montana for the following categories: Trial Lawyer of the Year, Appellate Advocacy Award, Public Service Award, Career Achievement Award, Citizens Award). *But see also supra* note 58 (describing how the Legaldegook Awards publicize bad writing). The legal profession should model awards similar to the recognition given by the Legal Writing Institute's Golden Pen Award, and the Association of Legal Writing Directors' distribution of the Thomas Blackwell Award.

court, just as reading and following court rules is required. Finally, court rules and regulations on good writing should be clearly expressed, emphasized, and enforced.[139]

In addition, positive feedback and recognition by judges should also be given to good writing. Judicial opinions could note and highlight examples of well-written briefs.[140] Also, all judges

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[139] *See, e.g.*, Westinghouse Elec. Corp. v. NLRB, 809 F.2d 419, 424-25 (7th Cir. 1987) (imposing a penalty for exceeding the length limitation in an opening brief); *In re* Benson, 69 P.3d 544, 547 (Kan. 2003) (disbarring an attorney for knowingly providing the court with false statements of material fact or law); *In re* Palmer, 594 N.E.2d 861, 864 (Mass. 1992) (upholding the public censure of an attorney who filed a probate action with errors and misrepresentations); Precision Specialty Metals, Inc. v. United States, 315 F.3d 1346, 1355-56 (Fed. Cir. 2003) (upholding sanctions where an attorney's edited quotation of authority distorted the law); Laitram Corp. v. Cambridge Wire Cloth Co., 919 F.2d 1579, 1583-84 (Fed. Cir. 1990) (imposing sanctions against counsel for both parties where their briefs and arguments on appeal did not seek to obtain the truth but to obfuscate it, even after the court rejected the initial briefs of the parties for failure to include record references); DeSilva v. DiLeonardi, 185 F.3d 815, 817 (7th Cir. 1999) (cautioning attorneys that clerks will "spot-check briefs" for word limitation compliance and return nonconforming briefs); Clifford S. Zimmerman, *A (Microsoft) Word to the Wise — Beware of Footnotes and Gray Areas: The Seventh Circuit Continues to Count Words*, 2 J. APP. PRAC. & PROCESS 205, 210 (2000) (discussing the DeSilva case); Wayne Schiess, *Ethical Legal Writing*, 21 REV. LITIG. 527, 527 (2002). *See also* Cohen, *supra* note 5, at 494 (mandating competent legal writing as a professional responsibility, advocating expressly this requirement in the rules of professional responsibility, mandating continuing legal education, paying fines, and promoting the judiciary to order rewrites for poor legal writing). *See supra* note 30 and accompanying text (suggesting ways to enforce the requirement of good writing). *See, e.g.*, MASS. GEN. LAWS ch. 43, § 16, 19, 20 (2004) (setting forth rules for briefs regarding content, citation, and format among other good writing requirements).

[140] *See, e.g.*, Stutzman v. City of Lenexa, 99 P.3d 145, 146 (Kan.App. 2004) (noting that the parties provided the court with well-written briefs); State v. Maisley, 600 S.E.2d 294, 297 (W.Va. 2004) (commenting that the State provided the court with a well-written brief regarding stop and frisk constitutional issues); Kennedy Ship & Repair L.P. v. Loc Tran, 256 F. Supp. 2d 678, 687 (S.D.Tex. 2003) (stating "[t]he Court appreciates the informative and well-written briefs that it has received from Parties' counsel in this case").

and law clerks should continuously attend writing workshops to signal the emphasis on writing at all legal levels.

C. Continuing Legal Education

Furthermore, to meet the need and demand to improve writing, continuing legal education programs should offer comprehensive programs on legal writing on a regular basis as opposed to sporadic offerings.[141] These programs must go beyond the mechanics of grammar and instead focus on how writing reflects sophisticated legal analysis through the explanation, illustration, and application of legal principles. One example of a valuable continuing legal education course includes participants reviewing sample cases and drafting or editing a sample memo, subsequently reviewed by the instructor. In addition, by using interactive approaches in CLE programs, lawyers will be able to gauge their understanding by having to apply the material to a document rather than passively receive information on superficial writing tips. Overall, just as lawyers keep updated on their areas of specialty, they should continue to improve their writing.

D. Legal Employers

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[141] *See* George D. Gopen, *The Professor and the Professionals: Teaching Writing to Lawyers and Judges*, 1 J. LEGAL WRITING INST. 79 (1991) (discussing continuing legal writing education for lawyers and judges). Many lawyers experience the most empowering education in their careers through Continuing Legal Education programs. Robert D. Bickel, *Why Our Mission As CLE Professionals is So Important, 37th Annual Mid-Year Meeting of ACLEA*, at 4-5 (Feb. 4, 2001). Continuing the education lawyers receive promotes professional competence and ultimately benefits clients and the legal profession. *Id*. at 5.

Also, legal employers can improve legal writing in various ways. For example, more firms can indicate the importance of good writing by testing writing skills before hiring new associates.[142] Then, once practicing, the legal profession has an obligation to provide continuous training, supervision, and feedback on legal writing skills.[143] Associates' writing should be critiqued by supervisors articulating direct, specific, and constructive feedback.[144]

While feedback on writing should not be given only at the point of a formal evaluation, but rather continuously throughout an associate's submission of writing, by making writing a specific criteria in a review or evaluation process, the importance of writing skills is emphasized. If an evaluation process does not include writing, or a partner for any reason does not give specific

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[142] *See* Shepherd, *supra* note 44, at A16. Lawyers applying to the Chicago Labor and Employment Litigation Boutique, Connelly Sheehan Moran, are asked to take a timed exam, given both a hypothetical and the law, and asked to draft a brief supporting a motion for summary judgment. *Id*. The fourteen-lawyer firm does not have time to supervise new associates. *Id*. The test is designed to measure applicants' analysis and writing skills under timed pressure. *Id*. The test has proven to be a good predictor of success, and one of the hiring partners believes it is the best predictor in the hiring process. *Id*. "[A]ll applicants take the same tests, so the reviewing partners can compare apples to apples." *Id. See also* Whiteman, *supra* note 34, at 26 ("Only in recent years have even a modest number of law firms developed strategies to cultivate articulate writers.").

[143] *See* Whiteman, *supra* note 34, at 26 (noting that law firms are trying to reform legal writers by employing lawyer and non-lawyer "writers-in-residence to run in-house training programs on writing and to provide publishing advice and editing help").

[144] *See generally* Martha Neil, *The Value of Evaluations: Make the Best of the Review Process and Learn How to Become 'One of Them,'* 90 AM. BAR ASSOC. J. 56 (Dec. 2004) (describing techniques to make the evaluation process meaningful because an inadequate review process does not benefit the firm or the associates).

feedback, the associate needs to be encouraged to go into the review with specific questions regarding writing skills and come out with a plan with specific steps for how to reach the goal of achieving good legal writing skills.[145] Firms could also require associates to develop a plan to improve their writing that allows the associate and supervisor to develop appropriate training based on the specific writing requirements and deficiencies of the associate. Firms could also offer incentives for improved writing by acknowledging the best writers or best writing on a case each year.

As demonstrated in the past, as salaries of associates increase, tolerance and training often may decrease; however, lack of writing training should not occur.[146] Instead, the value of improving writing should be emphasized and encouraged by providing time, opportunities, and resources to refine their writing. Specifically, firms can hire writing consultants/coaches who provide continuous writing seminars followed by one-on-one tutorials or coaching to give individualized confidential feedback

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[145] *Id.*

[146] *See* Michael Rosenwald, *Lawyer Pay, Remnant of Boom Times, Shakes Many*, BOSTON GLOBE, June 12, 2001, at A1. Boom times of the late 1990s, resulting from a strong economy producing legal work, led law firms to significantly and dramatically increase salaries of associates for the purpose of recruiting law school graduates, and luring people from dot-com land. *Id.* at A1. For example, in Boston, first-year associates' salaries went from $90,000 in 1999 to $150,000 in 2000. *Id.* As a result of the downturn in the economy, the dot-com collapse, and the high salaries, partners and others from concerned firms will have less patience for strong training. *Id*. at A1, A29. In fact, over the last year, firms have been laying off associates as well as dissolving their businesses. *See* Kimberly Blanton, *Testa Hurwitz Expected to Consider Dissolution*, BOSTON GLOBE, Jan. 14, 2005, at A1 (discussing a meeting to dissolve a thirty-one-year-old partnership).

on a regular basis instead of just once at a firm orientation program.[147] Also, firms can provide writing mentors for each other, to ensure all documents are reviewed before released outside the firm.[148] Firms can also reform their legal writers by retaining writers-in-residence to train and provide feedback.[149] Partners and senior associate should also be trained on how to give effective feedback to associates.[150] Participation by partners not only improves partners' writing and editing skills, but also sends a message regarding the importance and priority of writing at the firm.

E. Academia and the Legal Profession

Writing programs are a good example of how academia and practice can work together to help each other. For example, legal writing professors can provide their expertise by serving as writing consultants or by training senior associates and partners on how to

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[147] *See* Good, *supra* note 20, at 569 (noting how law firms increasingly hire full-time writers to train associates and improve their writing).

[148] *See* Whiteman, *supra* note 34, at 26. In-house writing programs vary; however, many agree that the best programs feature the following: writing classes, one-on-one coaching that provides personalized feedback to supplement classroom teachings, the instructor's assurance that critiques will remain confidential; participation by senior members of the firm in both helping others and training themselves, encouragement for others to participate, adequate time; positive feedback and/or rewards for good writers; and the requirement that all documents by the firm be read by another attorney for editing purposes before being released. *Id*. "Unless compelled by their supervisors and trained to do otherwise, lawyers usually perpetuate impenetrable legalese through their reliance on forms and precedent." *Id*.

[149] Whiteman, *supra* note 34, at 26.

[150] *See* Eichhorn, *supra* note 12, at 148-49.

give effective feedback.[151] Such a partnership provides the ancillary benefit of strong academia/law firm ties and increases the prestige of writing programs. Also, alumni, recruiting employers, and judges can meet with writing faculty and deans at law schools to work together to consistently prepare students and lawyers with the writing tools and skills they need in practice to meet expectations of the profession. Also, law firms can sponsor writing awards financially at various law schools to express their desire for more thorough and quality writing.

Academia and the profession should unite behind the commitment to implement the recommendations. They should no longer be viewed as separate, but as a team united in an effort to foster ideas to achieve improved writing in the legal profession. While the cost, time, resources, and commitment to improving legal writing is a continuing professional challenge, if made a priority by both academia and the profession, the challenge can be met.

V. CONCLUSION

This article stresses that the need to improve writing exists beyond law school, that academia and the profession must share the responsibility to improve it, and finally, it offers ways to implement solutions to this problem. Improving writing does not end with formal education, but rather is a life-long endeavor that lawyers should continue to develop throughout their career.

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[151] Eichhorn, *supra* note 12, at 148-49.

For practical and pedagogical reasons, improving writing must continue after law school. As a result of the recent national decline in writing, serious implications of poor legal writing impact the legal profession as they inherit the problem. The focus for improving legal writing should not be solely placed on academia because many mandatory legal writing courses are often offered only in the first year of law school, when students are just beginning to develop their legal analysis skills.[152] Good writing is a reflection of good analysis.[153]

Furthermore, even if academia, specifically law schools, increases the emphasis on writing, the profession cannot wait. Many lawyers never had formal writing courses in law school or were only required to take a minimal amount of writing. Finally, because analytical skills continue to develop as lawyers transition into practice and develop expertise throughout their career, their writing must continue to be refined.

Lawyers' writing skills need to continue to reflect sophisticated analysis in a clear and pragmatic manner for the

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[152] *See* J. Lyn Entrikin Goering, *A Vision for the Future: Integrating Legal Research and Writing Across the Law School Curriculum*, 18(2) THE SECOND DRAFT (Bulletin of the Legal Writing Institute), June 2004, at 19 (discussing how although the fields of legal research, analysis and writing have achieved recognition as an academic discipline in their own right, the teaching of writing still does not receive the central importance it deserves). Goering hopes for the day "when legal writing becomes as thoroughly integrated into the law school curriculum as it is in the daily lives of lawyers." *Id*. at 20.

[153] *Id*. at 20 (noting that the ABA Standards for Accreditation of Law Schools recognize the skills taught in legal writing courses are prerequisites for " 'effective and responsible participation in the legal profession' " (citing Standard 302(a) of the August 2001 edition of the ABA Standards for Approval of Law Schools)).

reader. Writing and analysis skills go through several stages of development throughout a lawyer's career.[154] Through law school or legal practice experience, lawyers tend to master the first stage of intellectual development — that the law is complex.[155] To be a good writer and meet the reader's needs, however, lawyers need to master another stage of intellectual growth — the ability to communicate the analysis of that complex law in a clear, concise, and coherent way.[156] This second stage of development begins to be learned in law school but usually occurs much later.[157]

Thus, the legal profession needs to share the responsibility for improving legal writing. Becoming a better writer requires time, money, and resources as well as a united commitment and willingness to share the responsibility to implement the solutions to the problem. Although the cost may be high, the benefits outweigh the costs. After all, improving legal writing is a life-long learning process and continuing professional challenge that

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[154] *See generally* Williams, *supra* note 24. *See also* Rideout & Ramsfield, *supra* note 15, at 93; ARMSTRONG & TERRELL, *supra* note 112, at 3-17.
[155] ARMSTRONG & TERRELL, *supra* note 112, at 12.
[156] ARMSTRONG & TERRELL, *supra* note 112, at 4.
[157] ARMSTRONG & TERRELL, *supra* note 112, at 4.

ultimately improves professional competence and "[i]t is impossible to put a price tag on the value of professional competence."[158]

[158] *Revisiting Mandatory CLE in Conn.*, CONN. L. TRIB., July 1, 2002, at 19.