

# Saint Louis University Law Journal

---

Volume 68  
Number 3 *Teaching Legal Research, Writing,  
Communication, and Feedback (Spring 2024)*

---

Article 3

2024

## Doing Less—Reflections on Cognitive Load and Hard Choices in Teaching First-Year Legal Writing

Ellie Margolis

Temple University Law School, [ellie.margolis@temple.edu](mailto:ellie.margolis@temple.edu)

Follow this and additional works at: <https://scholarship.law.slu.edu/lj>



Part of the [Law Commons](#)

---

### Recommended Citation

Ellie Margolis, *Doing Less—Reflections on Cognitive Load and Hard Choices in Teaching First-Year Legal Writing*, 68 St. Louis U. L.J. (2024).

Available at: <https://scholarship.law.slu.edu/lj/vol68/iss3/3>

This Article is brought to you for free and open access by Scholarship Commons. It has been accepted for inclusion in Saint Louis University Law Journal by an authorized editor of Scholarship Commons. For more information, please contact [Susie Lee](#).

## DOING LESS—REFLECTIONS ON COGNITIVE LOAD AND HARD CHOICES IN TEACHING FIRST-YEAR LEGAL WRITING

ELLIE MARGOLIS\*

### ABSTRACT

*The evolving landscape of legal research and writing (LRW) education requires LRW professors to balance a multitude of expectations and demands in the process of teaching foundational skills and ensuring that students are “practice-ready.” This essay argues that attempting to cover too wide an array of skills and competencies often leads to ineffective learning outcomes and suggests that a “less is more” approach may be more beneficial. It explores the challenges faced by LRW professors in teaching a comprehensive set of skills while ensuring students can transfer their learning to new contexts. Drawing on research and personal teaching experiences, the essay advocates for a strategic approach of “doing less” to achieve more effective learning outcomes. This approach involves prioritizing foundational skills like research, organization, and analysis, which are essential for success in practice and increasingly important in light of changes in the legal profession, such as the emergence of generative AI. The article also suggests reevaluating course design to focus on optimizing foundational skills, simplifying assignments, and reducing cognitive overload. Furthermore, it proposes de-emphasizing certain aspects of practice-ready professionalism, such as strict adherence to formatting rules and deadlines, to create space for deeper learning and metacognition. By making thoughtful decisions about what to prioritize and how to structure their courses, LRW professors can better equip students for the complexities of modern legal practice while fostering a more meaningful and transferable learning experience.*

---

\* Professor of Law, Temple University Beasley School of Law. I would like to thank Leonore Carpenter and Beth Hirschfelder Wilensky for helpful comments on earlier drafts of this essay. I would also like to thank Temple Law School for its ongoing support of my work.

I often say that the longer I teach, the less I do. This is not out of a desire to reduce my workload, but because I have come to understand that students learn more, and better, in a first-year LRW<sup>1</sup> course that focuses on fundamentals and does not try to do too much by layering on “practice-readiness”<sup>2</sup> skills.

Teaching first-year law students is exhilarating and challenging. First-year students are anxious and eager. Most have no idea what they are doing. Everything is new. Many recognize they are in unfamiliar territory, but even those who think they are prepared because of their undergraduate majors, or because they have worked in law firms, or have lawyers in the family, don’t really know what they are in for. The amount they have to learn is overwhelming.

This is especially true for the first-year legal research and writing course, where students are simultaneously introduced to the building blocks of legal reasoning and analysis they need as novice learners, and expected to absorb the law practice skills for the kind of work they will do as experts.<sup>3</sup> In the legal writing classroom, students begin to form their professional identity as lawyers while learning the basic legal vocabulary of common law and statutory analysis and the different forms of legal communication. They are often expected to conform to professional norms of behavior before fully understanding what those norms are. They are expected to come out of the first-year legal writing curriculum practice-ready.<sup>4</sup> And they are expected to hold onto that knowledge through the rest of the law school experience,<sup>5</sup> and move into their first jobs with writing skills intact, able to adapt to the writing typical of their practice area and satisfy the quirks of individual employers.

The dual goals of teaching fundamental, building-block skills and ensuring that students are practice-ready are sometimes in tension with each other. This essay will explore some of those tensions and suggest that too often, legal writing professors emphasize the second goal at the expense of the first. Holding

---

1. Law schools call their first-year skills programs by many different names, and the programs are structured differently. Most incorporate legal research, though some teach it separately. Courses vary in the documents they cover. Some schools have required semesters beyond the first year. For purposes of this essay, I will use “LRW” to represent the core first-year course(s) focusing on legal research, analysis, and writing.

2. *See infra* Part III.

3. Sherri Lee Keene, *Are We There Yet? Aligning the Expectations and Realities of Gaining Competency in Legal Writing*, 53 DUQ. L. REV. 99, 103 (2015).

4. Sherri Lee Keene, *One Small Step for Legal Writing, One Giant Leap for Legal Education: Making the Case for More Writing Opportunities in the “Practice-Ready” Law School Curriculum*, 65 MERCER L. REV. 467, 493 (2014).

5. Most law schools require only two, and at most three, practice-based legal writing courses, and those are in the first semesters of law school. That means that by the time they graduate, most students will be eighteen-months to two years away from their LRW instruction. *See* ASS’N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., LWI/ALWD LEGAL WRITING SURVEY REPORT 2021-2022: REPORT OF THE INSTITUTIONAL SURVEY 24 (2021-2022).

students to the standard of practicing lawyers before they are ready can interfere with learning the foundational skills they need to master. While the instinct to treat students as junior associates at a law firm and hold them to the standards and expectations of practice is a logical one, many students don't have the legal knowledge or sense of professionalism to meet those expectations.

In the long run, the consequence is that students are unable to transfer skills to new settings and suffer a deficit in the fundamentals that they have to struggle with as they move through school and into practice. With the growth of artificial intelligence tools to assist with legal writing, a deep understanding of the foundational analytical skills for legal reasoning is becoming even more important for lawyers. LRW professors should be thinking carefully about how to prepare students for whatever comes. While it may seem counterintuitive, doing less in the first-year LRW course will better set students up for success and help them to be practice-ready than a course chock-full of exercises and requirements that hold students to a professional standard they are not yet ready to meet.

Part I of this essay will review the first-year LRW course, including the many expectations and general pedagogical approaches taken in most schools. Part II will review the importance of building transferable skills, how best to do that, and why trying to do too much can get in the way of deeper learning. Part III will make the case for doing less, provide some suggestions about how to decide what to cut out, and why a focus on fundamental building-blocks in the first year LRW course will be more important than ever in light of the challenges facing legal education and changes in the legal profession.

#### PART I: THE OVERSTUFFED LRW COURSE

The LRW course as we know it today has evolved over the last half-century.<sup>6</sup> The earliest “research and writing” courses date to the early twentieth century and focused primarily on legal bibliography—the organization of legal information.<sup>7</sup> During the late 1940s and early 1950s, more law schools began to offer courses focusing on both research and legal writing, though their focus was largely remedial and focused on formal rules of writing rather than the underlying skills of legal analysis and reasoning.<sup>8</sup> It wasn't until the 1980s, driven by employer expectation, that law graduates receive training in practical

6. AMERICAN BAR ASSOCIATION, LEGAL WRITING SOURCEBOOK 39 (J. Lyn Entrikin & Mary B. Trevor eds., 3d ed. 2020) [hereinafter LEGAL WRITING SOURCEBOOK].

7. Marjorie Dick Rombauer, *First Year Legal Research and Writing: Then and Now*, 25 J. LEGAL EDUC. 538, 539 (1973).

8. *Id.* at 542. See also Terill Pollman, *Building a Tower of Babel or Building a Discipline? Talking about Legal Writing*, 85 MARQ. L. REV. 887, 896-97 (2002) (describing the formalism of early courses which emphasized the product—legal documents—rather than the process of writing).

skills during law school, that a majority of law schools began offering more comprehensive courses to formally train students in legal research and writing.<sup>9</sup>

In the ensuing 50 years, law schools have increased their course offerings and credit allocation, as well as moved towards staffing models in which skills courses are taught by long term professional faculty.<sup>10</sup> With more time to develop expertise and engage in scholarship, legal writing professors have developed a robust disciplinary scholarship and pedagogy,<sup>11</sup> and dramatically improved the quality of LRW courses in most law schools. While the number of courses and credit hours devoted to LRW have increased since the 1980s, the demands on the course and those teaching it have far outpaced that growth, sometimes to the detriment of student learning.

The increased demands on what the LRW course should cover have come from a number of well-meaning sources. In 1992, the American Bar Association Task Force on Law Schools and the Profession issued a report calling for law schools to respond to the demands of the legal profession by focusing on practical skills training, including an expanded focus on legal analysis, research, and writing.<sup>12</sup> Then, in 2007, the Carnegie Report made an even more explicit call for law schools to bridge the gap from theory to practice and to better prepare students for practice by using formative assessment and identifying learning outcomes.<sup>13</sup> These suggestions and others have made their way into the ABA standards for law school accreditation, which have gone through many changes over the last 50 years.

The current law school accreditation standards require law schools to “maintain a rigorous program of education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.”<sup>14</sup> As part of that, law schools must offer at least one writing experience in the first year and the rigor of that experience will be evaluated based on “the number and nature of writing projects assigned to students, the form and extent of individualized assessment of a student’s written products, and the number of drafts that a student must produce

---

9. Pollman, *supra* note 8, at 894-95.

10. LEGAL WRITING SOURCEBOOK, *supra* note 6, at 39-41. While most schools have moved from staffing models involving adjuncts or short-term recent law school graduates to long-term professionals with law practice experience, there is still a great deal of inequity between the job status of skills professors and more traditional tenure-track faculty. See WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 88 (2007) [hereinafter *Carnegie Report*].

11. *Id.*

12. ROBERT MACCRATE ET AL., LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 5, 8, 331-32 (1992).

13. *Carnegie Report*, *supra* note 10, at 87, 95.

14. 2023-24 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 301(a) (AM. BAR ASS’N 2023) [hereinafter *ABA Standards and Rules*].

for any writing experience.”<sup>15</sup> Standard 314 requires law schools to use both formative and summative assessment.<sup>16</sup> And finally, Standard 302 requires law schools to develop learning outcomes to assess competency in “legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context.”<sup>17</sup> While many law school courses involve one or more of these skills, they are central to the first-year LRW course and LRW pedagogy. Taken together, these standards have contributed to the development of the LRW course and its importance in the law school curriculum.

In response to the legal employment market, calls for legal education reform, and accreditation standards, the LRW course has steadily grown to include more—more skills, more methods, more activities. At most law schools, the LRW course is two 14-week semesters and five or six credits. In that time students are expected to understand the U.S. legal system; learn how to conduct legal research; read and analyze facts and case law, statutes, regulations and other legal sources; solve complex legal issues by applying law to fact; develop legal arguments in contested cases; and communicate that analysis in a variety of written and oral formats.<sup>18</sup> The identified learning outcomes at one law school with a typical LRW course include seventeen separate outcomes on four main categories.<sup>19</sup> The LRW course “constructs the foundation for what lawyers *do*.”<sup>20</sup> Thus, the first-year LRW course must simultaneously teach entering law students the foundational skills of research, legal reasoning, and analysis while ensuring they are prepared for practice. This is a tall order. Professor David Thomson compares this to asking students to “build the airplane as they are flying it.”<sup>21</sup>

The foundational knowledge and analytical skills that are at the heart of lawyering are numerous, complex, and interrelated. Many of the skills covered in first year LRW are the building blocks on which novice students develop the skills to become expert lawyers.<sup>22</sup> Students must understand the structure of the legal system, sources of law and the role of legal authority in legal decision-making, the weight of authority and relationship between types of authority, and legal citation. That knowledge is essential for performing common law and statutory analysis, rule synthesis, and the application of law to fact. LRW courses should also cover different forms of reasoning including rule-based,

---

15. *Id.*

16. *Id.*

17. *Id.*

18. LEGAL WRITING SOURCEBOOK, *supra* note 6, at 67.

19. David I.C. Thomson, *What We Do: The Life and Work of the Legal Writing Professor*, 50 J.L. & EDUC. 170, 178 (2021).

20. *Id.* at 173; LEGAL WRITING SOURCEBOOK, *supra* note 6, at 67-68.

21. Thomson, *supra* note 19, at 179.

22. Beth Hirschfelder Wilensky, *Dethroning Langdell*, 107 MINN. L. REV. 2701, 2707 (2023).

narrative, analogical, and policy-based reasoning, and how and when to use these different forms of reasoning.<sup>23</sup>

At many schools, LRW courses have also expanded the types of documents and activities students learn. While early LRW courses covered office memos and appellate briefs, modern legal writing courses often include documents such as client letters, demand letters, settlement letters, trial briefs and email communication, and activities including client interviewing, client counseling, and oral presentation in a variety of contexts.<sup>24</sup>

In addition to teaching students the building blocks of legal reasoning and forms of legal communication, the LRW course plays an important role in imparting professionalism norms—the importance of ethical conduct, adherence to deadlines, conforming to length limits, the value of clarity and precision in legal communication, and the form and substance of legal citation.<sup>25</sup> The ABA accreditation standards again play a role here, requiring law schools to provide students with opportunities for “the development of a professional identity.”<sup>26</sup> The LRW course plays an important role in the student’s professional identity formation, and LRW professors work to make sure students understand the ethical dimensions of legal research and writing. For example, many LRW courses include exercises in which students role-play as lawyers and require students to adhere to typical court rules involving formatting, procedure, and ethical conduct.<sup>27</sup>

Is this sounding like a lot? It is. LRW professors, who care deeply about teaching students and preparing them for the practice of law, feel the pressure to accomplish all of this and have developed a voluminous literature on skills pedagogy while simultaneously raising concerns about trying to do too much, especially for those professors burdened with high student loads and little institutional support.<sup>28</sup> The result of trying to develop both foundational skills and practice-ready professionalism in a relatively short time frame is that often the LRW course becomes “overstuffed.”

An overstuffed course is one that tries to do too many things within the confines of one semester. That could mean too many individual assignments, too many exercises or activities focused on professional identity that are tangential to the foundational skills, too many rules or standards of professionalism that are too advanced for novice students, and too many different document types. While individually each might be a great idea, collecting them all in one semester interferes with students’ ability to develop

---

23. LEGAL WRITING SOURCEBOOK, *supra* note 6, at 7.

24. See LEGAL WRITING SOURCEBOOK, *supra* note 6, at 41-42; Thomson, *supra* note 19, at 176.

25. Thomson, *supra* note 19, at 178-79.

26. *Standards and Rules*, *supra* note 15, at § 303(b)(3).

27. LEGAL WRITING SOURCEBOOK, *supra* note 6, at 192.

28. *Id.* at 87.

and learn in a way that allows them to transfer their knowledge to new situations.<sup>29</sup>

## PART II: THE PROBLEM WITH MORE

While the hope of every law professor is that each student emerges from the first year LRW class a fully formed lawyer, able to solve client problems, communicate legal analysis in the myriad of forms lawyers use in practice, and adhere to the norms of professional conduct, this is not the reality. Even the slightly more limited goal of teaching students the wide variety of legal documents they may need to write during their careers as lawyers is “folly.”<sup>30</sup> It is impossible to accomplish everything the LRW course purports to do in two semesters and then expect students to hold on to that knowledge through the rest of law school.

Law schools and legal writing professors express their goals for the LRW course in lofty terms. Students should become “lifelong learners” and learn to “think like lawyers.”<sup>31</sup> They should be “practice ready” which means the knowledge and skills they learn during first year should “transfer” to law practice.<sup>32</sup> Yet despite the growth and development of LRW pedagogy, the general perception of the practicing bar, as well as the students themselves, is that students are not practice ready when they graduate from law school.<sup>33</sup>

It is a common lament of LRW professors that, despite all of the thought and effort that goes into teaching LRW, students can’t transfer skills, don’t remember what they have been taught, and don’t exercise professional judgment.<sup>34</sup> While the reasons for this are numerous and complex, they boil down to three main categories—students didn’t learn in the first place, they learned but not in a way that allows them to transfer that learning to new contexts, or they learned but then forgot. Trying to do too much in the first-year course contributes to all of these.

### *Learning transferable skills through metacognition*

First-year LRW professors are well aware that students will need to transfer what they learn in the course in many different ways—to succeed in exams for their other classes, to succeed in internships and summer jobs, and to succeed in

29. Thomson, *supra* note 19, at 173-74.

30. Katie Rose Guest Pryal, *Genre Discovery 2.0*, 28 BARRY L. REV. 1, 14 (2023).

31. *Id.* at 26.

32. *Id.*

33. Steven K. Homer, *From Langdell to Lab: The Opportunities and Challenges of Experiential Learning in the First Semester*, 48 MITCHELL HAMLINE L. REV. 265, 270 (2022).

34. Laurel Currie Oates, *I Know That I Taught Them How to Do That*, 7 J. LEGAL WRITING INST. 1, 1 (2001).



the practice of law after graduation.<sup>35</sup> The LRW course is different than other first-year courses in that students are not primarily learning a subject matter that they will then demonstrate expertise with on an exam.<sup>36</sup> In LRW, students learn primarily to write memos and briefs as a vehicle for modes of thinking and processes that they will need to use throughout law school and their careers. The end goal isn't primarily the product—the format and style of legal writing—but the process of researching, analyzing, and figuring out the best form of communication given the needs of the situation.<sup>37</sup>

Cognitive science research has taught us much about how students best learn for deep understanding and long term retention.<sup>38</sup> For example, research shows that working through difficult problems rather than being told “how to” aids in deep learning and skill transference.<sup>39</sup> Counterintuitively, repetition to gain competence in one skill before moving on to the next is not optimal, though this approach is common in LRW courses.<sup>40</sup> Instead, varying and spacing out the practice of different skills may improve long-term retention of skills.<sup>41</sup> Focusing students on their own learning process throughout the semester, so they are aware of not just what they are learning, but how, is another key to deep learning.<sup>42</sup> In other words, students need to develop an awareness of how to learn and apply that awareness to new situations—learning theorists call this metacognition.<sup>43</sup>

Reviewing the vast literature on metacognition and adult learners is beyond the scope of this essay, but it is clear that metacognition is key to teaching

35. Judith B. Tracy, “*I See and I Remember; I Do and I Understand*” *Teaching Fundamental Structure in Legal Writing Through the Use of Samples*, 21 *TOURO L. REV.* 297, 299 (2005).

36. While the focus of the LRW course is not any particular substantive area of law, students do have to learn an underlying subject matter as a part of learning to perform legal analysis. See Leonore F. Carpenter & Bonny Tavares, *Learning by Accident, Learning by Design: Thinking About the Production of Substantive Knowledge in the LRW Classroom*, 88 *UMKC L. REV.* 39, 42 (2019).

37. Pryal, *supra* note 30, at 14; Miriam E. Felsenburg & Laura P. Graham, *A Better Beginning: Why and How to Help Novice Legal Writers Build a Solid Foundation by Shifting Their Focus from Product to Process*, 24 *REGENT U.L. REV.* 83, 93 (2011).

38. Elizabeth Adamo Usman, *Making Legal Education Stick: Using Cognitive Science to Foster Long-Term Learning in the Legal Writing Classroom*, 29 *GEO. J. LEGAL ETHICS* 355, 357 (2016) (citing PETER C. BROWN, HENRY L. ROEDIGER III, & MARK A. MCDANIEL, *MAKE IT STICK: THE SCIENCE OF SUCCESSFUL LEARNING*, AT IX (2014)).

39. *Id.* at 360-61; see also Wilensky, *supra* note 22, at 2710.

40. Usman, *supra* note 38, at 388.

41. *Id.* at 389.

42. *Id.* at 393.

43. See Anthony Niedwiecki, *Teaching for Lifelong Learning: Improving the Metacognitive Skills of Law Students Through More Effective Formative Assessment Techniques*, 40 *CAP. U. L. REV.* 149, 155 (2012).

students how to transfer knowledge.<sup>44</sup> Metacognition involves “awareness of which knowledge and skills a person brings to the learning task, an awareness of what the new task requires, and matching the knowledge and skills to the new task.”<sup>45</sup> Expert learners employ three steps in controlling their learning process: planning, monitoring, and evaluating.<sup>46</sup> Novice law students in the first year need to be guided through this process, with an opportunity to step back from the immediate assignment they are working on and reflect on the process. Formative assessment—feedback provided during the learning process—is key to developing metacognitive skills.<sup>47</sup>

Classic LRW pedagogy focuses students on the process of research, analysis, and writing, rather than the product of the assignment, and includes a great deal of formative feedback.<sup>48</sup> Despite this, many students do not come out of the course with the metacognitive skills they need to be “practice-ready,” at least not in the way that practicing lawyers understand that term. It is unrealistic to expect law students to be ready to jump into law practice after two semesters, but it should be possible to put the building blocks in place to get them there. Setting aside whether “practice-ready” is a realistic expectation,<sup>49</sup> the time to absorb formative feedback and reflect on the process can be difficult to find when the LRW course tries to do too many things, and on top of the demands of other classes. An overstuffed LRW course that focuses directly on multiple products and tries to accomplish too much in too little time can cause cognitive overload and prevent students from learning transferable skills.

*Too much focus on the product interferes with metacognition*

As novice learners, students tend to be very literal and focus more on the immediate document than the more abstract metacognitive skills. Research shows that novice learners tend to focus on surface features while experts are able to see the underlying structure and procedures required to solve problems.<sup>50</sup> Students learning legal analysis and communication will thus focus on the surface of the immediate assignment before them—they want to write the best version of the analysis of the specific fact pattern before them. Unless a professor

44. Pryal, *supra* note 30, at 28 (citing Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 366 (2001)).

45. Niedwieki, *supra* note 43, at 159.

46. *Id.* at 161.

47. *Id.* at 174-75.

48. See Ellie Margolis & Susan L. DeJarnatt, *Beyond Product to Process: Building a Better LRW Program*, 46 SANTA CLARA L. REV. 93, 131-32 (2005).

49. See Homer, *supra* note 33, at 270 (suggesting that the practice of law is so complex and varied it is unlikely that any law school can teach students all that law practice might demand of them).

50. Oates, *supra* note 34, at 3.

explicitly focuses on metacognitive skills and creates conditions for the students to focus on them, it is too easy for students to focus on the assignment before them and not learn in a way that allows them to transfer their learning to new contexts.<sup>51</sup>

LRW professors sometimes send mixed messages about the relative importance of product and process, even in a course that purports to focus on process. While a professor may say they are teaching the processes of research, analysis, and writing, the students' grades are primarily, and sometimes entirely, based on the products.<sup>52</sup> A student will logically be motivated to get the best grade by focusing on creating the best product, especially when grading is done on a curve. The more individual assignments (i.e., products) a course includes, the more likely a student will be to focus on each product in isolation rather than engaging in metacognitive reflection about the process. Typical LRW courses require students to produce more than one full office memorandum in the fall and each time hold students to the standard of practice when it comes to grading.<sup>53</sup> Similarly, spring-semester briefs are held to the highest standards of professionalism, including formatting, citation, and compliance with other rules. It is no surprise that students are fixated specifically on the documents they will be graded on.

It is also common for students to assume, based on the name of the course, that it is about the mechanics of legal writing.<sup>54</sup> A course description only goes so far in helping students understand the complex array of skills and professional judgment involved in the LRW course and that what they are to learn is the process rather than the product of performing individual assignments. Unless the professor is explicit, students may not understand that they cannot fully master legal writing and analysis by writing one or two memos and briefs.<sup>55</sup> When a course contains so many components and holds students to the standard of practice, it can reinforce students' perception that they are learning everything they need and frustrate the kind of metacognition that creates transferable skills.

### *Cognitive overload as an obstacle to learning*

Cognitive overload is the enemy of learning. Cognitive load theory posits that learning is impeded when a student is asked to learn too many complex

---

51. Niedwiecki, *supra* note 43, at 169-70.

52. Terri L. Enns & Monte Smith, *Take a (Cognitive) Load Off: Creating Space to Allow First-Year Legal Writing Students to Focus on Analytical and Writing Processes*, 20 LEGAL WRITING: J. LEGAL WRITING INST. 109, 109 (2015). See also Pollman, *supra* note 8, at 300 (suggesting that when faced with writing a specific document and learning how to generalize the process of learning, students are likely to spend their energy on the document that gets graded rather than the process that does not).

53. Felsenburg & Graham, *supra* note 38, at 102.

54. *Id.* at 93.

55. *Id.* at 90.

elements simultaneously.<sup>56</sup> Cognitive research shows that the working memory has a limited capacity, and when students try to learn too many interactive elements at once, the working memory can become overloaded and impede learning.<sup>57</sup> In particular, cognitive overload can impede the kind of complex learning necessary to develop metacognitive skills law students need in order to generalize from their assignments and apply their skills in new contexts.

Thus, when LRW professors express frustration that students haven't learned what they have been taught, it is likely that this is not because students are deliberately rejecting what we are teaching, but is because cognitive overload prevents them from learning all the things we want them to learn in the time frame we are trying to teach them.<sup>58</sup> This is no surprise when looking at the overstuffed LRW course and considering everything the professor is trying to cover.

In addition to the wide array of skills most first-year courses try to cover, most professors try to cover them simultaneously. This is out of necessity. Many of the core lawyering research and analysis skills cannot be taught in isolation because they are dependent on each other. There is no logical way to separate out the skills and teach them in isolation in an order that makes sense.<sup>59</sup>

Consider how many things a student must do simultaneously when writing an office memo assignment analyzing whether a client is liable for a simple common law tort. Assuming the research has already been completed and the student identified relevant case law, the student must do all of the following:

- Read and understand the legal language in each case, including the procedural posture and the court's analysis.
- Identify the rule of law represented by the case, the operative requirements and how they are satisfied.
- Apply the rule to the client facts using a recognized form of legal reasoning.
- Predict a conclusion.
- Draft each required section of the memo, most likely including an issue presented, brief answer, statement of facts, and analysis section.
- Organize each of these sections to conform to the professional expectations of a legal reader, as conveyed by the professor through lecture, samples, exercises or other means.

---

56. Enns & Smith, *supra* note 53, at 111; Pollman, *supra* note 8, at 299.

57. Pollman, *supra* note 8, at 299.

58. Enns & Smith, *supra* note 53, at 121.

59. Thomson, *supra* note 19, at 179.

- Understand the purpose and form of legal citation and cite appropriately to each source with the frequency and form required by the applicable rules.
- Write in clear, concise language with few to no spelling or grammatical errors.<sup>60</sup>

And that is just one of many assignments a student is likely to have during the course of a semester. It's no wonder that cognitive overload plays a role. Every one of these tasks is likely to be new to the student (with the possible exception of grammar and spelling) and to take up a substantial portion of working memory. Indeed, it may not be possible for students to produce a document for a grade and simultaneously practice metacognition to generalize from the experience, even where that might help more in the long run.<sup>61</sup>

Given the limited capacity to learn based on limited working memory, it is predictable that students respond strategically in ways that run counter to developing deep learning of foundational, transferable skills. It is logical to prioritize by focusing on the most immediate and achievable tasks—that typically means focusing on completing the document that will be graded at the expense of reflecting on the analytical and writing process in a more abstract way.<sup>62</sup> It makes sense that students choose to spend their cognitive energy on the tasks they perceive will have the most immediate pay-off.<sup>63</sup>

Another consequence of overload is that even when acting strategically, students will make poor decisions about what to prioritize in their learning, again frustrating the development of metacognitive skills. In her book review of the book *Subtract: The Untapped Science of Less*,<sup>64</sup> Professor Romig highlights research showing that when students are overwhelmed with information, it can impair their decision-making leading to poor choices including cheating.<sup>65</sup> Many LRW professors will confirm that they have seen this poor decision-making first hand, as some students will fixate on correcting minutiae such as citation and formatting while the substance of their analysis is severely lacking.

The learning theory provides insight into why students don't develop transferable skills. The overstuffed LRW course—trying to do too much and prioritizing the wrong things in too little time—contributes significantly to why

---

60. This is a non-exhaustive list based on my own experience and sense of what colleagues expect.

61. Pollman, *supra* note 8, at 307.

62. Enns & Smith, *supra* note 53, at 112.

63. *Id.* at 113; Pollman, *supra* note 8, at 300.

64. Jennifer Murphy Romig, *Book Review of Leidy Klotz, Subtract: The Untapped Science of Less*, Emory Legal Stud. Res. Paper 1, 6 (2022), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4192037](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4192037) [https://perma.cc/TF7A-NDXK].

65. *Id.*

students don't retain what they learn and lack the ability to transfer their knowledge to new situations. The solution is to do less.

### PART III: DOING LESS—MAKING THE HARD CHOICES

With all of the pressures on LRW to do so many things, doing less may seem counterintuitive. Everything is important and students need to be able to do all of it. But if trying to do everything results in students not learning in a way that allows them to transfer that learning into new contexts—to perform well on exams, to complete writing assignments on internships and in practice—then it is a futile endeavor. While our natural response to ineffectiveness is to try to do more, doing less could have more success in the long run.<sup>66</sup> Doing less is a win-win approach that improves student learning and alleviates workload for the professor (especially useful for those in programs with overly high student workloads).

Doing less requires hard choices. How do we alleviate cognitive overload while still teaching students everything the LRW course is supposed to accomplish? The answer is not one-size-fits-all and will depend on the type of law school, nature of the student body, structure and staffing of the LRW program, etc. However, understanding the way students learn can guide us in prioritizing what is most important and finding places to do less. I do not purport to know what is best for every program, but this essay offers some thoughts and guidelines to make decisions based on the research as well as my many years of teaching experience.

#### *Focus on the foundation*

While priorities may vary from school to school, the majority of LRW professors likely agree that the foundational skills of research, organization, and analysis are the building blocks of lawyering and should be emphasized.<sup>67</sup> A predictive office memo with perfect citation form but where the citations are to the wrong cases, or the cases are used incorrectly, is not going to satisfy an internship supervisor. An appellate brief turned in on time and with perfect formatting but without sound legal analysis to support the conclusions is going to get a lower grade than a brief with excellent and clearly communicated analysis but with errors in citation form and typos.<sup>68</sup> Thus in deciding to do less, the LRW professor must first decide what skills and concepts are foundational,

---

66. *Id.*

67. Wilensky, *supra* note 22, at 2707.

68. Of course, a document with sound, sophisticated analysis, clarity of expression, perfect citation, and conforming to all rules is the ideal that all legal writers should aspire to. I do not suggest otherwise. My point is that the student cannot achieve that without developing the underlying foundational analytical and organizational skills at the heart of the document.

consider the metacognitive strategies involved in developing those skills and concepts, and identify what may get in the way of that learning.

While the foundational building blocks for legal analysis and communication have always been important, recent changes in the legal profession and technology are making them even more so. The NextGen Bar Exam<sup>69</sup> is set to debut in 2026 and will focus more on core lawyering skills and less on knowledge of substantive law subjects.<sup>70</sup> The sample questions suggest that the focus of the exam will include legal research and analytical skills, some of which will be presented in the same format as the current Multistate Performance Test.<sup>71</sup> This description highlights exactly the foundational skills at the heart of the LRW course and, as more states adopt the NextGen Bar Exam, they will become even more important for students to learn, retain, and transfer.

In addition, the rise of generative artificial intelligence (AI) in the form of products such as ChatGPT has heightened the need for law students and lawyers to have excellent foundational analytical skills in order to use these products effectively and responsibly. The legal profession is abuzz with ideas about ways to use generative AI, as well as concerns about the problems it may cause.<sup>72</sup> Generative AI has many potential uses in law practice, including making writing easier, but it cannot be used responsibly without both understanding how it works and understanding what good legal research and analysis is.

Stories of lawyers getting in trouble for using AI are proliferating.<sup>73</sup> The problem in these situations is not that the lawyers used ChatGPT to write a brief—there is and should be no ban on using technological tools. In fact, they are essential to modern law practice. The problem is that the documents the AI produces contain many flaws—including invented case law and poor analytical reasoning. As use of AI becomes more common, it will be more and more important for students to gain a deep understanding of the foundational aspects of legal research and analysis so they can evaluate and edit the documents AI creates.

---

69. Nat'l Conf. of Bar Exam'rs, *About the NextGen Bar Exam*, NEXTGEN BAR EXAM NAT'L CONF. OF BAR EXAM'RS, <https://nextgenbarexam.ncbex.org/> [<https://perma.cc/JC5V-XMGH>].

70. O.J. Salinas, *Secondary Course Taught by Secondary Faculty: A (Personal) Call to Fully Integrate Skills Faculty and Skills Courses into the Law School Curriculum Ahead of the Nextgen Bar Exam*, 107 MINN. L. REV. 2663, 2696 (2023).

71. Nat'l Conf. of Bar Exam'rs, *NextGen Bar Exam Sample Questions*, NEXTGEN BAR EXAM NAT'L CONF. OF BAR EXAM'RS, <https://nextgenbarexam.ncbex.org/nextgen-sample-questions/> [<https://perma.cc/W88A-CEEK>].

72. *New Report on ChatGPT & Generative AI in Law Firms Shows Opportunities Abound, Even as Concerns Persist*, THOMSON REUTERS (Apr. 14, 2023), <https://www.thomsonreuters.com/en-us/posts/technology/chatgpt-generative-ai-law-firms-2023/> [<https://perma.cc/PVN2-JC82>].

73. See, e.g., Sara Merken, *New York Lawyers Sanctioned for Using Fake ChatGPT Cases in Legal Brief*, THOMSON REUTERS (June 26, 2023), <https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22> [<https://perma.cc/9SHB-FSET>].

The rise of AI highlights another reason to prioritize foundational skills. As Professor Kirsten Davis says, AI can't think so it is not good at reasoning, research, or analysis, but it is excellent at expression.<sup>74</sup> This means that while lawyers can use products like Chat GPT to assist with things like clarity of expression, correct grammar and citation, and possibly even organization, they cannot rely on it for content and analysis. To bring value to clients and employers, lawyers are going to have to be better than Generative AI, which means excelling in analytical skills. The same will be true for students. We don't yet know all the ways that generative AI will change law teaching and lawyering, but one thing we know at least for now, is that AI makes developing foundational skills more important and the mechanical aspects of writing less so. LRW professors should keep this in mind in deciding what to prioritize in their courses.

With so many compelling reasons to focus on foundational skills, LRW professors should be deliberate in identifying the skills the LRW course should cover and use that as a guide in thinking through what aspects of the course foster the skill development and what might be cut or modified to allow the cognitive space for deep learning.

#### *Consider Course Design*

It is worth revisiting course design in light of the foundational skills the professor wants to prioritize. Both new and more experienced teachers should consider which elements of the course are in service of the primary goals and consider whether some elements of the course can be cut altogether. While the temptation to include a variety of documents and practice skills is high, students may benefit from doing less—developing transferable skills that they can adapt to new documents. In teaching legal research, many professors tell students that once they know how to research, they can teach themselves about any area of law. Similarly, once the student learns how to communicate legal analysis, they can transfer that skill to new contexts. Cutting out an assignment or activity may, in the long run, help students more than overstuffing the course with too many different things.

Relatedly, LRW professors should reflect on whether the assignments are designed to optimize the foundational skills they have prioritized. Most legal writing skills are taught through the vehicle of client problems to solve.<sup>75</sup> Legal writing scholars have written many articles about problem design; they identify multiple goals including keeping students engaged, introducing them to

---

74. Professor Kirsten Davis shared these thoughts orally during a presentation at the ALWD's Biennial Conference in July 2023. Kristen Davis, Law Professor, Presentation at the 2023 Biennial ALWD Conference: Happy 6-Month Birthday ChatGPT! Reflecting on Generative AI in the Legal Writing Classroom (July 12, 2023).

75. Margolis & DeJarnatt, *supra* note 48, at 100.



important social issues, and teaching particular areas of substantive law.<sup>76</sup> But it is important to keep in mind that students will have a more difficult time learning analytical skills if the problem is too complex.<sup>77</sup> In the interest of doing less, LRW professors should prioritize simple problems designed around the analytical skills they want the student to learn.<sup>78</sup> Relatedly, drawing on areas in which students already have prior knowledge can help lighten the cognitive load and help students focus on foundational skill development.<sup>79</sup>

These can be relatively small changes, but scaling back the number of different assignments and making assignments simpler can create space for professors to focus on metacognition and for students to engage in the kind of abstraction and reflection that fosters deeper learning and transferable skills. That is one side of the equation. The other is minimizing cognitive overload by deemphasizing some of the factors that cause it.

### *Deemphasize practice-ready professionalism*

If foundational building blocks are the most important part of the LRW learning process, things we do in the name of practice-ready professionalism probably contribute most to the cognitive overload that prevents effectively internalizing those building blocks. This is not to say these skills are unimportant, or that it is advisable to eliminate them altogether even if it were possible. But in thinking about doing less, we should consider what we communicate to students and how we can reduce cognitive overload by changing our approach.

Traditional LRW pedagogy puts a great deal of emphasis on following rules—complying with deadlines, conforming to format requirements, requiring perfect citation form—designed to mimic the expectations of lawyers in

76. See, e.g., Beth Hirschfelder Wilensky, *Assignments with Intrinsic Lessons on Professionalism (Or, Teaching Students to Act like Adults Without Sounding like a Parent)*, 65 J. LEGAL EDUC. 622 (2016); Lorraine K. Bannai et al., *Sailing Through Designing Memo Assignments*, 5 LEGAL WRITING: J. LEGAL WRITING INST. 193 (1999); Diana Pratt & Grace C. Tonner, *Selecting and Designing Effective Legal Writing Problems*, 3 LEGAL WRITING: J. LEGAL WRITING INST. 163 (1997); Rosa Castello, *Incorporating Social Justice into the Law School Curriculum with a Hybrid Doctrinal/Writing Course*, 50 J. MARSHALL L. REV. 221 (2017); Leonore F. Carpenter & Bonny Tavares, *Learning by Accident, Learning by Design: Thinking About the Production of Substantive Knowledge in the LRW Classroom*, 88 UMKC L. REV. 39 (2019); Pamela Edwards & Sheilah Vance, *Teaching Social Justice Through Legal Writing*, 7 LEGAL WRITING: J. LEGAL WRITING INST. 63 (2001); Rita Barnett-Rose, *Reduce, Reuse, and Recycle: How Using “Recycled” Simulations in an LRW Course Benefits Students, LRW Professors, and the Relevant Global Community*, 38 U. DAYTON L. REV. 1 (2012).

77. Elizabeth Esther Berenguer, *Designing Problems to Enhance Student Learning* 22 (2023), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4513341](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4513341) [<https://perma.cc/CWQ9-32MZ>].

78. *Id.*

79. Beth Hirschfelder Wilensky, *Collaboration with Doctrinal Faculty to Introduce CREAC*, 31 SECOND DRAFT: BULL. LEGAL WRITING INST. 32, 32 (2018).

practice.<sup>80</sup> These requirements come from a place of good intentions. Many LRW professors come directly from law practice and see it as important to inculcate students into the culture of law practice, sometimes forgetting how far novice first-year students are from the knowledge they will have when entering practice after graduation.<sup>81</sup> At the same time, some LRW professors hold students to a higher standard than what is common in many areas of law practice, particularly with regard to citation practice and formatting. Holding first-year law students to that standard can cause high levels of stress and contribute to cognitive overload. Emphasizing the importance of perfection and grading students on the quality of their citation, grammar, compliance with formatting rules etc. will both cause cognitive overload and lead them to strategically focus on those things at the expense of foundational learning.<sup>82</sup>

There are many ways to deemphasize these aspects of the LRW course without communicating that they are unimportant. First, by saying explicitly that. For example, teaching citation involves both a substantive component—understanding the role citation plays in conveying substantive information that informs the legal analysis—and a technical component—compliance with specific formatting rules.<sup>83</sup> When I teach citation, I focus on citation literacy (the substantive part) and emphasize to students that I care a lot about being able to tell what they are citing and what weight of authority it has, but I don't care very much if a word is abbreviated incorrectly or a piece of punctuation should be italicized. I let them know that they will encounter people who care about those things very much, and they will need to learn them eventually, but not to worry about them yet. This approach works with many of the more technical aspects of legal writing. Letting students know something is unimportant to you is one way to help them free up cognitive space for the learning you do want them to focus on.

In addition to telling students what they should and should not focus on, LRW professors can communicate that directly in the way they give formative feedback. Formative feedback is essential to good LRW pedagogy, but it is possible to give too much.<sup>84</sup> A student can easily be overwhelmed by too much

80. Margolis & DeJarnatt, *supra* note 48, at 98.

81. Some of this could, of course, be solved by a course in the final year of law school designed to facilitate the transition to practice. That sort of curricular reform is beyond the scope of this essay, but it is worth emphasizing that it is unrealistic to expect a student to emerge from the first year with the ability to practice at the standard of experienced lawyers, and to retain that ability throughout the remainder of law school.

82. Enns & Smith, *supra* note 53, at 121.

83. See, e.g., Alexa Z. Chew, *Citation Literacy*, 70 ARK. L. REV. 869 (2018); Alexa Z. Chew, *Stylish Legal Citation*, 71 ARK. L. REV. 823 (2019).

84. Amanda Smothers, *Getting Students to Read and Respond to Feedback*, NIU CTR FOR INNOVATIVE TEACHING & LEARNING (Aug. 24, 2021), <https://citl.news.niu.edu/2021/08/24/getting-students-to-read-and-respond-to-feedback/> [<https://perma.cc/NB8M-P5GV>].

feedback on an early draft, and when that feedback focuses equally on technical aspects of the writing as well as those that involve deeper thinking, it can send mixed messages about what the professor thinks is important. One solution is to refrain from comment about citation form, grammar, format, and the like on early drafts. Another is providing live critique.<sup>85</sup> LRW scholars have written about many benefits of live critique.<sup>86</sup> For me, one of the greatest is that it makes it easier for the professor to avoid critiquing minutia, and to focus on foundational issues and the kind of reflection that aids metacognition.

Another way to deemphasize the aspects of the course that cause cognitive overload is through the grading policy. Since behaving strategically to maximize the grade can get in the way of deeper learning, the obvious answer is to have fewer graded assignments. Grades are important in law school and, especially for some schools, LRW grades play an important role in student job placement, among other things. But that does not mean that each individual assignment in an LRW class must be graded.<sup>87</sup> Giving students the opportunity to practice skills without the expectation of a grade allows them the freedom to experiment, reflect, and focus on metacognition. Giving them the freedom to make mistakes fosters a growth mindset and aids in long-term retention and skill transference.<sup>88</sup> In my experience, first-year students are sufficiently motivated by the knowledge that their effort on ungraded work will pay off when the time for grading comes, and beyond.

Relaxing deadlines is another strategy to reduce cognitive overload. Many LRW professors are strict with deadlines, requiring significant justifications and sometimes a complex process before granting an extension.<sup>89</sup> As with other requirements, this can be for a good reason—wanting students to understand what it feels like to write with time pressure and how that affects the writing process.<sup>90</sup> But until a student has a clearer understanding of what they are doing, time pressure only creates stress and cognitive overload.<sup>91</sup> And complex procedures for requesting deadlines can make that worse. In addition, requiring a compelling justification may deter some students from asking at all. I tell students I would rather have their best work than work they have rushed to meet

---

85. Live critique means providing the student with oral feedback in a one-on-one meeting rather than providing written comments. See Ruth Anne Robbins et al., *Implementing Effective Education in Specific Contexts*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 111, 127 (Deborah Maranville et al. eds., 2015).

86. *Id.*

87. Margolis & DeJarnatt, *supra* note 48, at 123-24.

88. Usman, *supra* note 38, at 370.

89. LEGAL WRITING SOURCEBOOK, *supra* note 6, at 101 (Section II(A)(3)).

90. See *id.* at 82 (Section II(A)(3)).

91. See Beth Hirschfelder Wilensky, *When Should We Teach Our Students to Pay Attention to the Costs of Legal Research?*, 24 PERSP.: TEACHING LEGAL RES. & WRITING 41, 41-42 (2016) (making a similar point in the context of legal research).

a deadline, and that I will grant extensions freely as long as they ask in advance, to the extent that I am able within the confines of the semester, balancing my workload and their need to move on to the next assignment. In my experience, few first-year students take advantage of this, but it does relieve stress and allow them the cognitive space to engage in metacognitive reflection. As with citation, it is possible to help students understand that deadlines are important to the practice of law (though in fact, deadlines can often be easily adjusted in real-world law practice) without holding them to deadlines in a way that interferes with their learning. In fact, a deeper understanding of research and analytical skills will make it easier for them to comply with deadlines in practice.

Finally, because many students do need instruction in and practice with what I have called the practice-ready professionalism skills, and because at some schools the first-year LRW course might be the only place for that to happen,<sup>92</sup> LRW professors should carefully consider where and when they get brought in. Emphasis on technical skills can be brought in towards the end of the semester instead of incorporated all the way through. For example, after focusing on citation literacy through the early part of the semester, a professor could indicate that they will focus more specifically on citation form and begin providing feedback in a draft of a final assignment. This can give the students the breathing room to develop a deeper understanding of the difficult analytical skills in the early part of the semester and focus on the professionalism skills later when there is more cognitive space.

### CONCLUSION

Teaching first-year LRW is a challenge and a responsibility. LRW professors are well aware of how important the course is in setting students up for success through law school and beyond. That sense of responsibility, along with changes driven by the accreditation standards, have driven us to add more and more to the course (or courses). We have followed the cognitive tendency to do more<sup>93</sup> when less might be more effective. Instead of trying to do it all, we should concentrate on doing it well.

In addition to modifying our courses, we can advocate for other changes in the law school curriculum that will help students to be practice-ready, such as advocating for additional upper-level courses to build and add professionalism skills. While focusing less on professionalism and more on metacognition may feel challenging and counterintuitive, it will pay off in the long run, both for student and professor.

---

92. While LRW may be the only course that covers these skills at many schools, it needn't be the case. There is nothing intrinsic about legal writing and analysis that makes it the only place to introduce professionalism norms and skills. These skills could be incorporated into all law school courses.

93. Romig, *supra* 64, at 6.

To sum all of this up, while the LRW course plays an important role in preparing students for law practice, it is school, not practice. When LRW faculty are faced with difficult decisions about what to focus on and how to maximize student learning, learning should take precedence over real-world standards. In the long run, slowing down and treating first-year students like the novices they are will better prepare them to be expert lawyers.