

2013

# What Do Legal Employers Want to See in New Graduates? Using Focus Groups to Find Out

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# What Do Legal Employers Want to See in New Graduates?: Using Focus Groups to Find Out

SUSAN C. WAWROSE\*

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\* Susan C. Wawrose, Director, Graduate Law Programs & Professor of Lawyering Skills, University of Dayton School of Law. I cannot sufficiently thank Sheila Miller and Victoria VanZandt, my co-researchers, for their work on the Bench and Bar Outreach Project. Thank you to former Dean Lisa Kloppenberg for supporting this Article and our research with summer funding. Thanks to my Dayton Law colleagues: Tim Swensen, Assistant Dean and Director of Career Services; Tim Stonecash, Assistant Dean for External Relations; and, externship faculty, Denise Platfoot-Lacey, and Monique Lampke, for their help with recruiting focus group participants. Many thanks to Sam Conrad and Nicholas Edwards for their excellent research assistance. Thank you to Michelle Altenau, who took the short research assignments from start to finish. I am grateful to Kim Bertke and Maribeth Miller for their meticulous transcription of the audiotapes from our three focus group sessions.

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#### ABSTRACT

What do legal employers expect from new law school graduates? What skills and competencies do employers value most? With the slow legal hiring market and the pressure on law schools to produce graduates with adequate skills to enter law practice, these are burning questions at law schools today.

We went directly to typical employers of our law school’s graduates to find the answers. This Article describes the original research of a Bar Outreach Project formed by three legal research and writing professors at the University of Dayton School of Law. We conducted formal focus groups with legal employers and used that data to support updates and revisions to our legal writing courses. This Article describes the methodology of using focus groups for research, discusses the results of our conversations with employers, and offers recommendations for updating legal writing instruction to reflect employer preferences.

## I. INTRODUCTION

What do legal employers expect from recent law school graduates? What skills and competencies do these employers value most in new hires?

These are burning questions at law schools today. Particularly with the slowdown in the legal hiring market,<sup>1</sup> law schools are under pressure to produce graduates who are highly skilled and can “hit the ground running.”<sup>2</sup> To find answers to these questions, three of us at the University of Dayton School of Law<sup>3</sup> conducted formal focus groups<sup>4</sup> with some typical legal employers of our law school’s graduates.<sup>5</sup>

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1. When we began this project in 2009, law firm hiring was at historic lows. See Gerry Shih, *Downturn Dims Prospects Even at Top Law Schools*, N.Y. TIMES, Aug. 26, 2009, <http://www.nytimes.com/2009/08/26/business/26lawyers.html> (describing fall 2009 as “the most wrenching job search season in over 50 years”). Three years later, the National Association for Law Placement reported that the 2011 graduating class faced a “brutal entry-level job market.” Nat’l Assoc. for Law Placement, *Class of 2011 Law School Grads Face Worst Job Market Yet—Less Than Half Find Jobs in Private Practice*, Employment for the Class of 2011—Selected Findings, 2012, at 1, <http://www.nalp.org/uploads/Classof2011SelectedFindings.pdf>. See also Joe Palazzolo, *Law Grads Face Brutal Job Market*, WALL ST. J., June 25, 2012, at A1 (online version available at <http://online.wsj.com/article/SB10001424052702304458604577486623469958142.html>).

2. The call to produce graduates with well-developed legal skills has been sustained over many years. See, e.g., AM. BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 8 (1992) [hereinafter MACCRATE REPORT]; ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 1 (2007), [http://www.cleaweb.org/Resources/Documents/best\\_practices-full.pdf](http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf); WILLIAM A. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 28 (2007) [hereinafter CARNEGIE REPORT]. It perhaps feels even more urgent now because of economic pressures throughout the legal community. See e.g. E. Joan Blum et al., *What Legal Employers Want . . . and Really Need: Report from a Conference at Boston College Law School*, 25 SECOND DRAFT, Spring 2011, at 4.

3. We are: the author, Sheila F. Miller, and Victoria L. Van Zandt. All of us are professors of lawyering skills in the Legal Profession Program at the University of Dayton School of Law. See Susan Wawrose, U. OF DAYTON SCH. OF L., [http://www.udayton.edu/directory/law/wawrose\\_susan.php](http://www.udayton.edu/directory/law/wawrose_susan.php) (last visited Jan. 19, 2013); Sheila Miller, U. OF DAYTON SCH. OF L., [http://www.udayton.edu/directory/law/miller\\_sheila.php](http://www.udayton.edu/directory/law/miller_sheila.php) (last visited Jan. 19, 2013); Victoria Van Zandt, U. OF DAYTON SCH. OF L., [http://www.udayton.edu/directory/law/vanzandt\\_victoria.php](http://www.udayton.edu/directory/law/vanzandt_victoria.php) (last visited Jan. 19, 2013).

4. The focus groups were one component of a larger research project that we designated the Bench & Bar Outreach Project (the “Project”). See Susan Wawrose, *supra* note 3. A second component was a survey of recent graduates of the law school at Dayton to determine their research and writing practices. For a discussion of the survey of graduates and results, see Sheila F. Miller, *Using an Alumni Survey to Assess Whether Skills Teaching Aligns with Alumni Practice 4-35* (2012) (unpublished manuscript), available at [http://works.bepress.com/sheila\\_miller/1](http://works.bepress.com/sheila_miller/1).

5. The University of Dayton School of Law is a small, private law school located in Dayton, Ohio, a city of about 150,000. See State & County QuickFacts: Dayton (city), Ohio, U.S. CENSUS BUREAU, (Jan. 10, 2013 10:42:34 EST), <http://quickfacts.census.gov/qfd/states/39/3921000.html>. Graduates of the law school work primarily in private practice in small law offices. To illustrate, more than sixty percent of the alumni who responded to our 2009 survey of Dayton Law’s recent graduates reported working in law offices with twenty-five or fewer attorneys. See Miller, *supra* note 4, at 9-11. In addition, nearly seventy percent indicated that their practice was primarily litigation or a mix of litigation and transactional work. *Id.* at 11-13. For a more detailed discussion of how we chose the participants in our focus groups, see *infra* Part II.

The reasons for undertaking this project were two-fold and will likely resonate with many legal writing faculty. First, we wanted to be sure that our course objectives accurately reflect the skills our students need to enter today's law practice.<sup>6</sup> The practice of law has always been dynamic, but it seems especially so in recent years. Rapid, regular advances in technology,<sup>7</sup> a brisker pace in communication, and the increased use of a growing body of internet-based sources for research<sup>8</sup> have changed the day-to-day face of law practice dramatically since we began teaching.<sup>9</sup> Thus, to adequately prepare our current students, we decided to investigate the specific skills and competencies law offices value and expect in new hires. In short, we wanted to ensure we were preparing our students not for the law offices we left, but for the law offices they would join. We wanted to gather this data in a formal rather than anecdotal way, so that we could feel confident in our conclusions.

Second, we were (and are) confronted with crammed syllabi and wanted to use employer feedback to inform our choices about what to include in the limited time we have with our first-year students. The mainstay of our teaching loads is the required first-year legal research, analysis, and writing

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6. Legal Research and Writing ("LRW") faculty at other schools have also questioned whether their courses (and the field generally) have been keeping pace with the needs of practice. *See, e.g.*, Amy Vorenberg & Margaret Sova McCabe, *Practice Writing: Responding to the Needs of the Bench and Bar in First-Year Writing Programs*, 2 PHOENIX L. REV. 1, 3 (2009) (arguing that there is a "disconnect between what students learn in legal-writing classes and what professional legal-writing skills they need once they graduate.").

7. Today, lawyers and law offices rely heavily on devices, software, and applications that did not even exist when we were in practice: including Blackberries, smartphones, iPads, and the many applications associated with all of these. *See* Jeff Richardson, *2012 ABA Tech Survey Reveals Surge in Lawyer iPhone, iPad Use*, IPHONE J.D. (July 20, 2012), [http://www.iphonejd.com/iphone\\_jd/2012/07/2012-aba-tech-survey-reveals-surge-in-lawyer-iphone-ipad-use.html](http://www.iphonejd.com/iphone_jd/2012/07/2012-aba-tech-survey-reveals-surge-in-lawyer-iphone-ipad-use.html).

8. This is a topic unto itself, but suffice it to say that the days of choosing between paper sources, Westlaw, or LexisNexis when researching are long gone. *See, e.g.*, Ellie Margolis, *Surfin' Safari – Why Competent Lawyers Should Research on the Web*, 10 YALE J. L. & TECH. 82 (2007) (reporting, in part, on the results of several surveys and other research which showed the widespread use of internet sources besides Westlaw and LexisNexis in legal practice). *See also* Laura K. Justiss, *A Survey of Electronic Research Alternatives to LexisNexis and Westlaw in Law Firms*, 103 LAW LIB. J. 71, 73-75 (2011) In this article, Justiss reports on the results of her survey of the electronic databases subscribed to by law firm librarians. *Id.* at 71. Although she concludes that Westlaw and, to a lesser extent, LexisNexis are still the "dominant players" in large law firms, the survey showed the increased use of alternatives such as Loislaw, Bloomberg Law, Fastcase and Casemaker for locating primary sources. *Id.* at 75-77, 85. In addition, BNA newsletters and reporters and HeinOnline were subscribed to by the majority of firms for researching secondary source material. *Id.* at 78-80. As a possible trend, Justiss cites the example of a major law firm that recently issued a directive that all non-billable research and, where possible, billable research, should be done using Loislaw, not Westlaw or LexisNexis. *Id.* at 73.

9. We are three veteran legal research and writing professors with, collectively, more than thirty years of law school teaching experience among us. We also have significant past practice experience. Prior to teaching, we worked in large law firms, small firms, state and federal trial and appellate courts, and other law job settings. We all stay current in our academic discipline, but none of us has been employed in a law office in several years. *See supra* note 3.

(“LRW”) courses.<sup>10</sup> It is a challenge to cover even the basic material in these three-credit courses. As we considered making choices about course coverage for Dayton law students, we sought input from typical legal employers of *our* law school’s graduates, so that our students would be prepared to meet actual employer expectations.

What were some of the specific questions that we had? Like all legal writing teachers, we are constantly making large and small course corrections. For instance, some years ago we removed a unit from our LRW curriculum that would once have been unthinkable to omit: updating legal research using the Shepard’s Citation Service in paper form.<sup>11</sup> At the start of this project, we wondered whether some other foundational elements of our first-year legal research and writing curriculum should be next on the chopping block.

#### Questions about research

- Should we continue to teach students to research in the law library using books and other resources in paper? Do employers expect new attorneys to be able to research any of the major secondary or primary sources offline? And, if so, which paper sources still warrant instructional time?<sup>12</sup>
- Indeed, with law libraries reducing their holdings in response to budget cuts,<sup>13</sup> the overwhelming rise of web-based research, and the

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10. At the University of Dayton, our first-year legal writing program consists of two required three-credit courses, Legal Profession I and II. Legal Profession I focuses on fundamental legal research skills and predictive writing. The major assignments are typically one closed and one open interoffice memo. In Legal Profession II, students learn advanced legal research skills, draft pre-trial briefs, and engage in a short oral argument on a trial court motion. We also require students to take an upper-level two-credit writing course, but our focus for this project was on the first-year curriculum. All of us teach outside the first-year curriculum from time to time, primarily in other skills courses.

11. Although this decision does not seem radical now, it was not so long ago that the lifespan of print Shepard’s was a topic of discussion. See, e.g., Jane W. Morris, *The Future of Shepard’s Citations in Print*, 26 THE CRIV SHEET, no.3, May 2004, at 3-4, [http://www.aallnet.org/main-menu/Publications/spectrum/Archives/Vol-8/pub\\_sp0405/pub-sp0405-criv.pdf](http://www.aallnet.org/main-menu/Publications/spectrum/Archives/Vol-8/pub_sp0405/pub-sp0405-criv.pdf) (“Learning to Shepardize in print was once a rite of passage for all first-year law students. Until quite recently, generations of lawyers Shepardized in print to be sure their authorities were still good law . . . [W]e wouldn’t want to predict that the end of the road for *Shepard’s* in print will *never* arrive—but we’re confident it won’t be soon.”).

12. To illustrate how quickly the landscape changes, at the start of this project, one of the questions I had was whether to continue teaching students how to use the West Digest in paper form. Only three years later, the question itself seems wildly outdated.

13. See generally Taylor Fitchett et al., *Law Library Budgets in Hard Times*, 103 LAW LIBR. J. (2011), <http://www.aallnet.org/main-menu/Publications/lj/LLJ-Archives/Vol-103/2011-01/2011-5.pdf> (reporting on shrinking law library budgets and the resulting shift in emphasis from print to electronic collections).

increase in sources that are “paper” online<sup>14</sup> is there any need to take students into the library stacks at all?

#### Questions about writing

- As for writing, do employers still ask new associates to write fifteen-page, or more, research memoranda using the traditional format that includes a Question Presented, Brief Answer, Facts, and Discussion and is structured around an IRAC, or similar, paradigm? Or, do they expect research results in a shorter, less-labored format? If the latter, is there any reason to continue to teach the former as we have been doing?
- Even more specifically, in practice would students ever be expected to use features of legal writing that were required in our courses? Would they use case illustrations to articulate case law facts, holding, and reasoning? Would they be asked to draw analogies with or distinguish precedent? Had the nature of legal writing in practice changed in a way that would affect the content of our classes?

Finding answers to questions like these was pressing since there were new topics that had found their way into our syllabi. In the past five years, these have included: legal research beyond Westlaw and LexisNexis, including Casemaker, court and government websites, Google Scholar, legal-themed blogs and law firm websites; the “responsible use” of general websites like Google and Wikipedia; cost-effective researching; and greater emphasis on professionalism in communications of all sorts.<sup>15</sup>

Meeting with employers in focus groups has helped guide our thinking on some of these questions and the information derived from the focus groups has been beneficial to our LRW program. The direct responses of

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14. More and more state courts are ceasing to publish opinions in bound reporters, opting instead for electronic publication and a public domain format of citation. *See, e.g.*, Press Release Ill. Sup. Ct. Illinois Supreme Court Announces New Public Domain Citation System, Ending Era of Printed Volumes (May 31, 2011), <http://state.il.us/court/Media/PressRel/2011/053111.pdf> (announcing that Illinois is joining the several other states that will no longer publish official court opinions in bound volumes). Table 1 of *The Bluebook* indicates which other states now publish their decisions electronically and use a public domain citation format for cases decided after a certain date. *See* THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 215 tbl.T.1 (Columbia Law Review Ass'n et al. eds., 19th ed. 2010). In addition, other sources that formerly required a trip to a law library to “touch” the paper source for citation purposes can now be accessed and cited from a computer. For instance, an “exact copy” of the United States Code is available at [www.gpoaccess.gov/uscode/index.html](http://www.gpoaccess.gov/uscode/index.html) and according to *The Bluebook* “these versions may be cited as if they were the print code.” *See id.* R. 12.2.1, at 112.

15. *See, e.g.*, CHRISTINE COUGHLIN ET AL., A LAWYER WRITES: A PRACTICAL GUIDE TO LEGAL ANALYSIS 269-78 (2008) (example of recent LRW textbook that includes chapter on writing professional emails).

the focus group participants provided an eye-opening “inside scoop,” rich with current tips and advice from practicing attorneys that we can pass along to students as they begin their legal careers.<sup>16</sup> In addition, the participants’ responses provide a lens through which we have been able to review and evaluate the content of our own first-year LRW courses. Finally, running the formal focus groups required that we reach out to members of the local legal community, opening up valuable lines of communication. Establishing and maintaining connections between LRW faculty and practitioners is invigorating, enjoyable, and, one could easily argue, essential for both groups.<sup>17</sup> Even so, reaching beyond the classroom and the halls of the law school can all too easily take a backseat to the steady demands of academic life.

The results of our focus group research should also be helpful to other LRW programs. Our findings will be particularly relevant to faculty at schools demographically similar to Dayton Law or to those with similar employment patterns. For schools with a different student population, the model we used for the focus group research is one that can easily be replicated by other LRW professors who wish to reach out to attorneys and law offices associated with their own schools.

This Article describes the process and results of our focus group research with legal employers of our law school’s graduates. Part II of this article explains our rationale for using focus groups and describes our research methods. Part III presents the results of our research. Part IV suggests revisions to the first-year LRW curriculum in response to our research.

## II. FOCUS GROUP RESEARCH: RATIONALE & METHOD

A focus group is a small group of people who have something in common and who are gathered together for the purpose of sharing opinions or information on a particular topic.<sup>18</sup> Each group of five to eight people<sup>19</sup>

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16. When offering rationale or suggestions to students, it can be very effective to be able draw on actual comments by employers. It is my impression that students listen closer to advice when I am able to preface it with statements like, “A partner at a law firm downtown says . . . .”

17. Others have found this to be the case as well. *See, e.g.*, Blum et al., *supra* note 2, at 5 (concluding a conference that brought practitioners and legal writing faculty together presented an opportunity that “was inordinately valuable, but far too rare” and calling for “legal educators [to] continue working with the bench and bar to reflect on, and discuss what it means and what it takes for new graduates to be practice-ready.”); Vorenberg & McCabe, *supra* note 6, at 4 (“Our research suggests that legal skills programs should engage in continuous conversations with the profession to ensure that legal-writing curricula reflect modern practice.”).

18. *See* RICHARD A. KRUEGER & MARY ANNE CASEY, FOCUS GROUPS: A PRACTICAL GUIDE FOR APPLIED RESEARCH 2, 6-8 (4th ed. 2009). For those interested in engaging in focus group research, this book is an excellent primer.

is led by a skilled, neutral moderator who asks questions to elicit honest responses and reactions from the group while avoiding leading them to consensus.<sup>20</sup>

Focus groups have been used for market research since the 1950s.<sup>21</sup> They have relatively recently become more widely accepted as a valid option for qualitative academic research despite some initial skepticism as to their value and validity in academic circles<sup>22</sup> For existing programs, they can be used for needs assessment, planning and goal setting, to guide program development, and to provide insight into various aspects of the organization.<sup>23</sup> Although the use of focus groups is not free from criticism,<sup>24</sup> they are largely considered to be a systematic form of qualitative research that can produce valid and reliable results.<sup>25</sup>

The theory behind the focus group process is that by bringing selected individuals together in a non-threatening, relaxed environment, researchers will be able to gather insights and honest responses to a set of carefully framed and sequenced questions.<sup>26</sup> Researchers typically collect information and opinions (data) from no fewer than three groups of similar composition until they reach saturation, the point at which no new information is gathered.<sup>27</sup> This helps ensure that the responses are not idiosyncratic to one group or a few people.<sup>28</sup> Once all the groups have met,

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19. *See id.* at 67-68 (For non-commercial topics, as opposed to market research, the “ideal size” is five to eight participants. Larger groups are hard to control and may “limit each person’s opportunity to share insights and observations.” Smaller groups of four to six may limit the responses, simply because fewer people mean fewer experiences to draw on).

20. *Id.* at 8, 87.

21. *Id.* at 4.

22. For a short discussion on the role of focus groups in academic research, see *id.* at 145-47. *See also* MICHAEL BLOOR ET AL., FOCUS GROUPS IN SOCIAL RESEARCH 8 (2001); SHARON VAUGHN ET AL., FOCUS GROUP INTERVIEWS IN EDUCATION AND PSYCHOLOGY 12 (1996).

23. KRUEGER & CASEY, *supra* note 18, at 8-13.

24. Krueger and Casey identify and briefly discuss some common criticisms of focus groups: participants tend to intellectualize, the groups do not tap into emotions, participants may make up answers, groups may produce trivial results, dominant individuals can influence results, and results can be undependable. *See id.* at 13-15. They also raise and discuss responses to questions about the quality of focus group research researchers may encounter. *See id.* at 197-205. These include: “Is this scientific research?,” “Isn’t focus group research just subjective opinions?,” “Isn’t this soft research?,” among others. *See id.*

25. *Id.* at 199-202; see John Knodel, *The Design and Analysis of Focus Group Studies: A Practical Approach*, in SUCCESSFUL FOCUS GROUPS: ADVANCING THE STATE OF THE ART 35, 50 (David L. Morgan ed., 1993) (because focus group research involves a number of groups, reliability of the data can be assessed across sessions).

26. KRUEGER & CASEY, *supra* note 18, at 4-8, 35-58; see also Nancy Grudens-Schuck et al., *Focus Group Fundamentals*, IOWA STATE U. (May 2004), <https://store.extension.iastate.edu/ItemDetail.aspx?ProductID=6457>.

27. KRUEGER & CASEY, *supra* note 18, at 21.

28. *Id.*; Grudens-Schuck et al., *supra* note 26.

analysis of the results takes place and researchers compare responses across the different groups to look for patterns and trends.<sup>29</sup>

A. *Why We Used Focus Groups*

At the start of our research we weighed various methods of gathering information from employers, considering surveys and individual interviews in addition to focus groups. In the end, we chose focus groups because we wanted to engage in the type of “deep research” that is possible with the extended opportunity for questioning and follow-up that focus groups allow, because the focus groups provide reliable, useful data, and because they would allow us to strengthen connections with our practitioner colleagues.<sup>30</sup>

We chose not to survey employers in part because we were concerned about a low response rate. In the companion project where we surveyed our own recent graduates,<sup>31</sup> our response rate—at twenty percent—was deemed merely “good” by a member of the University’s institutional research office.<sup>32</sup> If employers responded at a lower rate than our law school’s recent graduates, which seemed entirely possible, there was a risk that the results would not be statistically significant. We were uncomfortable with the idea of sending additional surveys to employers if the response rate to a first survey was low. Because we perceived that we had one opportunity to catch the attention of employers, or one “bite at the apple,” we opted for the greater control over the research process that comes with collecting information through focus groups.

We also chose focus groups over interviews with individual employers. We considered using individual interviews because we were interested in obtaining the type of deep, rich qualitative data that face-to-face interaction can provide.<sup>33</sup> In the end, we decided against interviews because, as between the two, only the focus group setting encourages participants to interact with and respond to the ideas and observations of their colleagues, providing an immediate “test” of the reasonableness of participant

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29. KRUEGER & CASEY, *supra* note 18, at 2, 21; *see* Grudens-Schuck, *supra* note 26.

30. *See* Knodel, *supra* note 25, at 50.

31. *See* Miller, *supra* note 4, at 4.

32. *Id.* at 9.

33. *See, e.g.,* Vorenberg & McCabe, *supra* note 6, at 11 (reporting that interviews with judges were “more valuable” than a survey of the same judges because while surveys are an “excellent way to identify issue,” interviews allowed for “in-depth conversations”); *see also* Leslie C. Levin, *Preliminary Reflections on the Professional Development of Solo and Small Firm Practitioners*, 70 *FORDHAM L. REV.* 847, 854-55 (2001) (presenting the data and results of interviews of forty-one solo and small firm lawyers).

comments.<sup>34</sup> Focus groups also allow the moderator to dig deeper into responses by asking probing questions as unexpected responses emerge.<sup>35</sup> These can be put before the group immediately for further exploration and comment.<sup>36</sup> This dynamic, but guided, interchange seemed most likely to lead to the type of reflection, insight, and idea generation we were seeking.<sup>37</sup>

In addition, the systematic nature of focus group research matched well with the goal of our inquiry. With its reliance on multiple perspectives and emphasis on themes and patterns, we could see the utility of focus groups as a means of collecting data that would serve as a basis for evaluating and revising our first-year LRW curriculum.<sup>38</sup> While individual experience and anecdotes are informative and can be powerful, we felt strongly that curriculum changes needed to be based on more than a collection of individual impressions. And, indeed, during the focus group process, we were able to observe where employers from a range of settings reached agreement around different topics.<sup>39</sup> We could easily identify the topics that engaged each group (or more than one group), i.e., which topics were of greatest interest to employers, as well as those that were of little interest or seemingly little importance to the participants. Later, as we analyzed the data, the momentum of the group discussions, as well as the individual responses, were factors in our generalizations and recommendations for course reform. Finally, as an unexpected benefit, running the focus groups was a fun way to collect useful data; they left us energized and enthusiastic about our research.

### B. Our Research Methods

To prepare for our focus groups, we largely followed the guidelines set out in the Krueger & Casey book, *Focus Groups: A Practical Guide for Applied Research*, cited throughout this Article.<sup>40</sup> As novices to this type of

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34. See Benjamin F. Crabtree et al., *Selecting Individual or Group Interviews*, in *SUCCESSFUL FOCUS GROUPS: ADVANCING THE STATE OF THE ART* 137, 143-44 (David L. Morgan ed., 1993).

35. See *id.*

36. See *id.* at 142 (“[I]t should be apparent that the results are going to be considerably different if 6 to 10 people are discussing a topic over the course of 1 or 2 hours than if only one person is doing so. Not only is there a different dynamic . . . but there is a broader range of ideas expressed.”).

37. *Id.* at 143-44. For a thorough comparison of the benefits of individual versus focus group interviews, see generally *id.* at 137-38, 149.

38. Richard A. Krueger, *Quality Control in Focus Group Research*, in *SUCCESSFUL FOCUS GROUPS: ADVANCING THE STATE OF THE ART* 65, 67, 79-80, 84 (David L. Morgan ed., 1993).

39. See, e.g., Susan Wawrose, Sheila Miller & Vicki VanZandt, U. of Dayton Sch. of Law, Bench & Bar Outreach Project, Outline and Questions from Focus Group, at 18, 22, 29, 40 (June 16, 2012) [hereinafter Focus Group III] (unpublished transcript on file with author).

40. See generally KRUEGER & CASEY, *supra* note 18.

research, we found this to be an excellent “how to” guide. We also supplemented this with some additional sources mostly to confirm that our methods followed a conventional research path. The steps in our preparation included: recruiting participants, locating an experienced moderator, developing a list of questions, planning for the focus group meetings, and working with the University’s institutional research board (“IRB”) to ensure that we would remain in compliance with federal regulations concerning “research using human subjects.”<sup>41</sup> Once the focus group sessions were completed, our administrative staff transcribed the recordings. We then coded transcripts and reviewed them for common themes.

### 1. *Selecting the Focus Group Participants*

In some ways, deciding on the composition of our focus groups was a relatively straightforward matter.<sup>42</sup> Since the purpose of our study was to learn from legal employers of our graduates, we had a readily identifiable, broad target group.<sup>43</sup>

Well-composed focus groups are “characterized by homogeneity,” but with sufficient contrast for diverse opinions to emerge.<sup>44</sup> The common features of our focus group members were that they were actual or potential employers of graduates of the University of Dayton School of Law who would be able to speak to the desirable traits, strengths, and weaknesses of recent law school graduates, among other related topics. The employers who participated in this project were nineteen Dayton-area attorneys. All but three were graduates of the University of Dayton School of Law, and their practice experience at the time ranged from five to thirty-five years with the mean at fourteen years.<sup>45</sup>

The participants were all involved in some type of law practice, but came from a range of practice settings representative of the types of offices where Dayton Law graduates typically work.<sup>46</sup> The variation in practice

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41. See Informed Consent of Human Subjects, 21 C.F.R. §§ 50.20-27 (2010); Institutional Review Boards, 21 C.F.R. §§ 56.101-.124 (2010).

42. *But see* KRUEGER & CASEY, *supra* note 18, at 63-64 (recruitment of focus group participants can be difficult and “successful recruitment requires special efforts”).

43. “The purpose [of the study] should guide the invitation decision.” *Id.* at 64-65. Purpose is the first of three “ingredients” that researchers should consider when inviting participants. *Id.* at 65. The other two are knowledge about the participants (i.e., whether they are identifiable, reasonably homogeneous, and reasonable to locate) and the budget. *Id.*

44. *Id.* at 66.

45. See Focus Group III, *supra* note 39, at 2.

46. See Career Servs., *Employment Statistics for the Class of 2011*, UNIV. OF DAYTON SCH. OF L., [http://www.udayton.edu/law/career\\_services/employment\\_stats.php](http://www.udayton.edu/law/career_services/employment_stats.php) (last visited Jan. 26, 2013); Focus Group III, *supra* note 39, at 2. This is one of the primary reasons we would encourage others

settings provided the contrast that would allow for differences of opinion among the individual members of our homogeneous larger group. Four of the participants were employed in local branches of large firms.<sup>47</sup> Five worked for mid-sized Dayton law firms.<sup>48</sup> Five were employed by small firms of seven or fewer attorneys or were solo practitioners. Two were employed as in-house counsel; one worked as an assistant federal public defender; and one worked for legal aid. Although we sought attorneys from area prosecutors' offices—a relatively large employer of our graduates—none were able to attend. Judges and judicial clerks, including career clerks, were intentionally omitted from the groups out of concern that their presence might inhibit open conversation among attorneys who practice before them and vice versa.

The size of our focus groups, at between six and eight, was on the small side.<sup>49</sup> This type of “mini-focus group” works well when participants with a high level of expertise are asked to share experiences and may have a lot to share.<sup>50</sup> They are also appropriate where the purpose of the group is to understand an issue (versus testing an idea), where a topic is complex, and where there are a large number of questions to cover.<sup>51</sup> Since our groups met all of these criteria, we were comfortable organizing three groups of this smaller size.

Even though our groups were small, recruiting participants required some effort. We were lucky to have support from several members of our law school's administration, including the dean, the offices of career services and external (including alumni) relations, and our externship faculty. From these sources we received a list of advisory board members, as well as suggestions for adjunct faculty, and externship field supervisors

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interested in this type of data to run their own focus groups. The demographics of our law school (i.e., small, located in a small, Midwestern city, drawing largely from a regional applicant pool) results in many of our graduates finding employment in small to mid-sized law offices in the Great Lakes region. See Career Servs., *supra*; *The Dayton Region*, UNIV. OF DAYTON SCH. OF L., [http://www.udayton.edu/law/about\\_law/explore\\_dayton.php](http://www.udayton.edu/law/about_law/explore_dayton.php) (last visited Feb. 1, 2013); *Class Profile for Summer and Fall 2012*, UNIV. OF DAYTON SCH. OF L., [http://www.udayton.edu/law/about\\_law/class\\_profile.php#Student Profile](http://www.udayton.edu/law/about_law/class_profile.php#Student Profile) (last visited Feb. 1, 2013). Schools with demographics similar to ours might well have similar results while interviews with employers of graduates from large urban schools would likely lead to different results.

47. The four firms range in size from 250-450 attorneys. However, the number of attorneys employed in the branch offices varied from 12-170.

48. The total number of attorneys at these firms is twenty-two to forty-five.

49. See Focus Group III, *supra* note 39, at 2. The suggested size of a typical focus group is eight to twelve participants. James H. Frey & Andrea Fontana, *The Group Interview in Social Research*, in SUCCESSFUL FOCUS GROUPS: ADVANCING THE STATE OF THE ART 20, 28 (David L. Morgan ed., 1993) (identifying eight to twelve people as traditional). *But see* KRUEGER & CASEY, *supra* note 18, at 67 (“traditionally recommended size . . . within marketing research is 10 to 12 people”).

50. KRUEGER & CASEY, *supra* note 18, at 67-68.

51. *Id.* at 68.

to contact. We also spent one evening recruiting at one of the law school's Alumni Weekend events.<sup>52</sup> Former colleagues, students, friends, and acquaintances were all represented in the focus groups. Finally, to round out the groups for diversity—particularly by race and practice area—it was necessary to make some cold calls to local practitioners.

## 2. *Selecting a Moderator*

Each focus group should be led by a “skillful moderator” whose job it is to encourage open discussion around questions provided by the researchers while retaining some control over the direction of the conversation.<sup>53</sup> The moderator needs the social skills to allow him to meet a group of strangers<sup>54</sup> and quickly make them feel at ease and comfortable enough to freely share their opinions.<sup>55</sup> In addition to being able to “project sincerity, have a sense of humor, be flexible, and have a keen memory,”<sup>56</sup> important moderator qualities include demonstrating “warmth, energy, and diplomacy,”<sup>57</sup> having “the ability to listen,” and demonstrating respect for the participants and their views.<sup>58</sup> The moderator must also be able to respond to participants in a way that shows he respects and encourages their contributions, but that does not telegraph his approval or disapproval of the ideas expressed.<sup>59</sup>

The moderator is much more than a good host. He must also keep participants focused on the purpose of the meeting and reign in discussions that get off track.<sup>60</sup> It is essential that the moderator be well-grounded in both the larger purpose and the nuances of the project, so that he can put participants' comments in perspective, understand when a comment requires further probing, and put meaningful questions and probes before the participants.<sup>61</sup>

We chose to use an outside moderator for our focus groups because we were “too close to the topic,” and because we wanted to be able to stand apart from the focus groups to observe the interactions, rather than direct

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52. Although this recruiting effort was, frankly, awkward, and resulted in only a couple of participants, it did give us a valuable opportunity to discuss our project and our LRW program with alumni.

53. KRUEGER & CASEY, *supra* note 18, at 85-88; Krueger, *supra* note 38, at 67, 73, 76.

54. Or, in our case, professional colleagues who may have heard of each other, but mostly did not know each other, or at least not well.

55. KRUEGER & CASEY, *supra* note 18, at 85-86.

56. Krueger, *supra* note 38, at 73.

57. *Id.* at 75.

58. *Id.* at 82-83.

59. *Id.* at 75.

60. *Id.* at 100-01.

61. KRUEGER & CASEY, *supra* note 18, at 86 (“The moderator must be fully grounded in the purpose of the study and understand enough about the topic to know what type of information will be most useful to the study.”).

them.<sup>62</sup> We wanted a moderator with prior experience. An on-campus search led us to a faculty member in the business school, who had run several focus groups in the past.<sup>63</sup> Moderators are consultants and can be expensive.<sup>64</sup> To keep costs down, we asked him to serve as moderator only and did not request that he analyze the transcripts or draft a report on the groups—services experienced moderators often provide.<sup>65</sup>

### 3. *Questions for Discussion*

The moderator prepared for the focus groups by reviewing a detailed list of questions that was our “wish list” for the focus groups. Our key questions were:

- How would you describe the ideal recent law school graduate?
- What would you expect a recent law graduate to be able to do?
- What research skills would you expect a new graduate to have?
- What writing skills would you expect a new graduate to have?
- What analytical skills would you expect a new graduate to have?
- What strengths do you see in your recent hires?
- What weaknesses do you see in your recent hires?
- What are the essential components of a first-year legal research, analysis, and writing program?

Related to each of these, we had some very specific questions on which we wanted employer feedback. At our moderator’s request, we sent him our laundry list of broad and detailed questions. Then, he met with us to clarify the goals of our project and to be sure he understood the technical legal research and writing references well enough to determine when follow-up questions were needed. Following this meeting, the moderator prepared his own questioning route. The route was organized around the broad inquiries and included our detailed questions as follow-ups.<sup>66</sup> Open-ended questions typically are prescribed for focus groups, but this more

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62. *See* Krueger, *supra* note 38, at 74.

63. *See id.* at 70.

64. *See id.*

65. *See id.* at 80-81. We were also able to use our research budgets to pay his fee.

66. *See generally* *See* Susan Wawrose, Sheila Miller & Vicki VanZandt, U. of Dayton Sch. of Law, Bench & Bar Outreach Project, Outline and Questions from Focus Group (June 12, 2012) [hereinafter Focus Group I] (unpublished transcript on file with author); Susan Wawrose, Sheila Miller & Vicki VanZandt, U. of Dayton Sch. of Law, Bench & Bar Outreach Project, Outline and Questions from Focus Group (June 14, 2012) [hereinafter Focus Group II] (unpublished transcript on file with author); Focus Group III, *supra* note 39.

detailed approach seemed appropriate due to the technical nature of legal research and writing and the goals of our research project.<sup>67</sup>

#### 4. *Preparing for the Sessions*

Hosting focus groups requires the preparation needed to hold any meeting, but with some key additional requirements. The logistics of the groups must unfold smoothly so as not to distract or unsettle participants.<sup>68</sup> Researchers' roles for each session should be determined before the group convenes. In addition, groups must be approved by the University's institutional review board and participants must give their informed consent to participate.<sup>69</sup> Arrangements for data preservation should be completed with recording equipment and accessories in place.<sup>70</sup>

First, because participant attendance is essential to the groups, confirmation letters and email reminders must be sent to both participants and the moderator.<sup>71</sup> We anticipated that participants would rely on us to put the meeting on their calendar, so we sent a confirmation letter and two reminder emails to each group member, including one the day before their meeting. Our communications included a map and parking information. We also placed welcome signs with directions in the lobby of the law school; we wanted participants to experience a "hassle-free" arrival and to arrive relaxed and ready to engage with the moderator.

Following the advice in the Krueger & Casey book, we arranged for simple refreshments that would not distract participants from the conversation, but that would be a modest incentive.<sup>72</sup> We also wanted to sustain our participants' comfort and energy levels during the discussion.

The three of us each attended one focus group session. We worked together to set up all three groups, but the person designated to attend was responsible for recording, note taking, and dealing with any concerns that came up during the session. Later, we each took primary responsibility for reviewing the transcript of the session we attended.

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67. See KRUEGER & CASEY, *supra* note 18, at 53 (advising that researchers should "use open-ended questions" because they "allow the respondents to determine the direction of the response," but acknowledging "[c]losed-ended questions aren't totally off-limits.").

68. *Id.* at 75, 80.

69. *Id.* at 30-31.

70. For a detailed checklist for preparing for focus groups see *id.* at 107-11.

71. See KRUEGER & CASEY, *supra* note 18, at 32, 76. Our confirmation letter was drafted by Professor Sheila Miller. It is modeled after the sample letter in *id.* at 83 app. 4.2. A copy of the letter is on file with the author.

72. See KRUEGER & CASEY, *supra* note 18, at 79. Each of our groups lasted about three hours, including a fifteen-minute break after an hour and one-half of discussion. One group met on a Saturday morning, so we served breakfast. Two groups met after work hours. For these we ordered sandwiches for a light supper.

Focus group research is “research using human subjects” and, as such, our project required the approval of the IRB.<sup>73</sup> Approval lasts for one year, and our project required annual status updates to the IRB until the research was complete. Once the project is approved, the research can move forward, but participants in the groups must sign an informed consent form.<sup>74</sup> Some university IRBs may already have a model form available. Consent forms should be short and easy to read so that participants can quickly understand their purpose and the protection they promise.<sup>75</sup> Our form closely followed the regulatory requirements by identifying the title of the project, the names of the investigators, the purpose of the research, the procedure to be followed, any anticipated risks or discomfort to the participants, and benefits to the participants.<sup>76</sup> It also explained how the data collected would be kept confidential and provided a contact person for questions or problems.<sup>77</sup>

### 5. Preserving the Data

Some means of preserving the discussion must be in place before the group convenes.<sup>78</sup> We chose to have one member attend the focus group and take notes, thus relying on memory and field notes. In addition, we recorded our focus group sessions two ways, using a video camera on a tripod a short distance from the table and a digital tape recorder placed on the table beside the researcher in attendance.<sup>79</sup> The video camera was positioned so that as much as possible all the participants and the moderator were visible to allow researchers to see participant body language and facial expressions when reviewing the sessions.<sup>80</sup> Breaks were scheduled to coincide with the need to check equipment and put in new recording discs. Data must be kept confidential and stored securely.<sup>81</sup> Anyone who works with the data, including secretarial staff, should be reminded that the transcripts are confidential and should not be left on printers or visible on computer monitors.

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73. See 21 C.F.R. §§ 50.20-.27; 21 C.F.R. §§ 56.101-.124.

74. See 21 C.F.R. §§ 50.20-.27.

75. See *id.* § 50.20.

76. See *id.* §§ 50.20-.27.

77. See generally *id.*

78. KRUEGER & CASEY, *supra* note 18, at 93-96. Some options for capturing the discussion include: memory, field notes, flipcharts, audio recording, and video recording. *Id.*

79. We also tested the devices several times and brought extra recording discs, tapes, and batteries to the focus group sessions.

80. Despite concerns that recording the sessions would make participants self-conscious, they did not appear to be uncomfortable around the devices.

81. We keep ours in a locked, secure location.

### 6. *Analyzing the Results*

Analyzing the data generated by focus groups involves both mechanical and interpretive tasks.<sup>82</sup> On the mechanical side, audio recordings must be transcribed and the textual data (the responses), sorted by topic.<sup>83</sup> The “Classic Analysis Strategy” is a cut-and-paste sorting process using either physical means (i.e., scissors and tape) or word processor features.<sup>84</sup> As a first step, text from each of the transcripts is physically moved so that it appears in response to each of the main questions.<sup>85</sup> On the interpretive side, responses are then coded in a way so that themes and connections begin to emerge.<sup>86</sup>

Our coding method followed this two-step process:

1. First, we aligned the participant responses under the broad questions using the cut-and-paste feature of Microsoft Word. To do this, each of us reviewed all the transcripts for responses regarding two to three of the eight key questions. After this step in the coding process, there was a document that contained all of the material from each of the three transcripts aligned under the related question.

2. Then, we reviewed the responses to questions, specifically looking for broad themes. Using the “Table” feature of Microsoft Word, we coded the responses by labeling the themes and listing them in the left column, the “evidence”—verbatim comments from the transcripts—that supported the theme were compiled in a center column, and a third column contained citations to each transcribed response comment so we could locate it in the original transcript.

After this coding process, we exchanged coded transcripts and each of us reviewed all coding independently with the goal of identifying what employers look for in new graduates.

Finally, we met to exchange conclusions. At this meeting, it was quickly evident that we had independently reached similar conclusions from reviewing the coded data. These conclusions are set forth below.

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82. See Knodel, *supra* note 25, at 44-45.

83. See *id.*

84. See KRUEGER & CASEY, *supra* note 18, at 118-23.

85. *Id.* at 120.

86. *Id.* at 121-22.

### III. FOCUS GROUP RESULTS: PREFERENCES OF LEGAL EMPLOYERS

The comments of the employers in our focus groups fell into two main categories. First and predominant was an employer preference for attorneys who have well-developed professional or “soft skills[,]” such as a strong work ethic, willingness to take initiative, the ability to collaborate well with colleagues and clients, and the ability to adapt to the demands of supervisors.<sup>87</sup> Second, employers want new hires with strong fundamental practice skills, i.e., legal research, written and verbal communication, and analysis.<sup>88</sup> When it comes to these fundamental skills, employers have high expectations.

#### A. *The Ideal Law School Graduate Exemplifies Professionalism*

The most surprising outcome of our research was the primary importance employers placed on the “intra- and interpersonal (socio-emotional)”-soft skills—needed for workplace success.<sup>89</sup> A partner in a medium-sized firm summed up “the number one thing” she wanted to see in new law graduates: “they need to have some general sense about how to . . . interact in a professional setting” without the “need for hand holding, . . . constant stroking, [or] reaffirmation . . . .”<sup>90</sup> The focus on these skills caught us by surprise in part because we were seeking (and expecting) comments related to the basic practice skills, i.e., writing, analysis, and research. But more than that, we also did not anticipate that beyond being mentioned, they would threaten to dominate the discussion. Yet, they were of great interest to employers, so much so that at times the moderator needed to steer employers away from this topic of discussion.<sup>91</sup>

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87. “Soft skills’ refer to a cluster of personal qualities, habits, attitudes and social graces that make someone a good employee and compatible to work with. Companies value soft skills because research suggests and experience shows that they can be just as important an indicator of job performance as hard skills.” See, e.g., Kate Lorenz, *Top 10 Soft Skills for Job Hunters*, AOL (Jan. 26, 2009), <http://jobs.aol.com/articles/2009/01/26/top-10-soft-skills-for-job-hunters/> (identifying a strong work ethic, good communication skills, problem-solving skills, including taking ownership of the problem, acting as a team player (collaboration), flexibility/adaptability, as key soft skills).

88. Some focus group members also requested several specific abilities, such as being able to use PowerPoint, create a trial notebook, or speak a foreign language, but there was no broad consensus that these were essential for new graduates. See generally Focus Group I, *supra* note 66; Focus Group II, *supra* note 66; Focus Group III, *supra* note 39.

89. See MINA WELSCH ET AL., *TEACHING AND ASSESSING SOFT SKILLS* 28, 33 (K. Kechagias ed., 2011), [http://mass-project.org/attachments/396\\_MASS%20wp4%20final%20report%20part-1.pdf](http://mass-project.org/attachments/396_MASS%20wp4%20final%20report%20part-1.pdf).

90. Focus Group II, *supra* note 66, at 4 ll.1-6.

91. When probing one group for comments on strengths and weaknesses, the moderator commented that the employers “spent most of the time . . . on things I would assess as personality characteristics,” and had to push the group for “anything with respect to the more specific *legal* training that you regard as particular strengths and weaknesses?” Focus Group I, *supra* note 66, at 19 ll.43-46 (emphasis added).

The comments of our focus group members emphasize soft skills called for generally by employers in service sector jobs.<sup>92</sup> As it turns out, they also reflect the preferences of many large law firms for new hires.<sup>93</sup>

Law students should be aware of the value of soft skills to legal employers because, according to employers, “law is a business,” and “the business of running a business.”<sup>94</sup>

### 1. *The Ideal Law School Graduate Has a Strong Work Ethic*

Legal employers emphasized the importance of a strong work ethic in new employees.<sup>95</sup> When asked to describe the ideal law school graduate, employers responded that they wanted to see an employee who was “willing to work hard[,]”<sup>96</sup> to put in the time needed to get a job done, and go the proverbial “extra mile” on an assignment.<sup>97</sup>

Showing up at the office regularly and putting in the “extra hours” are basic expectations.<sup>98</sup> One employer noted that law practices are not nine to five jobs.<sup>99</sup> Another cited a trend among new graduates who “want to work from home all the time, come in and work from nine to four,” noting that this “doesn’t really work when you are working with a team of attorneys and paralegals.”<sup>100</sup>

Employers described the ideal new hire as some who is “dedicated and driven,” complaining about the reluctance of some new attorneys to extend themselves:<sup>101</sup> “We’ve had some recent graduates who come to work with us who just really didn’t seem that they were willing to put in the hours . . .

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92. See, e.g., Lorenz, *supra* note 87.

93. See, e.g., *Attorney – Tax Associate Job in Barker and McKenzie – Dallas, TX*, ATT’Y JOBS IN USA (Aug. 23, 2012), <http://www.attorneyjobsinusa.com/2012/08/attorney-tax-associate-job-in-barker-and-mckenzie-dallas-tx> (the law firm Baker & McKenzie stating a preference for new hires who, in addition to having strong legal skills, “[m]ust be able to integrate well in a team-oriented environment”); *CareeRS*, REED SMITH (2013), <http://www.reedsmith.com/careers/careerdevelopment> (looking for “a well-rounded business professional who works effectively as part of a team, interacts well with clients and colleagues, is a good firm citizen, can lead a team through a case or deal, and develops and manages ongoing client relationships”); *Why Jones Day?*, JONES DAY, (2012), [http://www.jonesdaycareers.com/offices/office\\_detail.aspx?office=23&subsection=1](http://www.jonesdaycareers.com/offices/office_detail.aspx?office=23&subsection=1) (web site of Jones Day, looking for lawyers who “share certain fundamental principles: exemplary integrity, a selfless dedication to the Firm and our clients, and a sense of responsibility and initiative that leads them to take ownership of assignments . . .”).

94. This was the comment of one of the focus group participants who works in a small law firm. Focus Group I, *supra* note 66, at 2 *ll.*16, 22, 42-45.

95. See, e.g., Focus Group II, *supra* note 66, at 1 *ll.*22-25.

96. *Id.* at 1 *l.*22.

97. See, e.g., *id.* at 19 *ll.*36-38.

98. *Id.* at 19 *l.*38.

99. Focus Group III, *supra* note 39, at 3 *ll.*22-25.

100. *Id.* at 3 *ll.*22-24.

101. *Id.* at 3 *ll.*17-20, 30-31.

[or] they are more interested in themselves.”<sup>102</sup> Part of this is understanding that, at least in litigation, “it is all the team,” and that wanting to “be there” and “be part of the team and do what’s needed” are desirable characteristics.<sup>103</sup> This includes stepping up to help without being asked. New hires should be “willing to jump in to help if you’ve got a couple of assignments you are not too busy on and [they] see someone has just gotten swamped with something” and “willing to be part of the team and work towards the end rather just focus on themselves.”<sup>104</sup>

Employers also expressed their perception that some new associates lacked initiative or had a sense of entitlement that interfered with their ability to work hard.<sup>105</sup> One attorney described new hires who “come in . . . [with] this expectation that we’ll sit down and kind of spoon feed them . . . versus jumping in or diving in . . . .”<sup>106</sup> Others agreed that some new attorneys “think [] they have a law school degree so they’re entitled to rise up and become partner . . . .”<sup>107</sup>

Finally, when it comes to work ethic, employers want new hires without a sense of “false confidence,” or who are, perhaps, motivated by their own inexperience to work harder.<sup>108</sup> One in-house attorney compared her own experience of “spend[ing] an extra twenty hours on something before I would dare go in and try to talk to the partner” with the experience of getting “a project back that is half done” or that could have been taken further by a new attorney and “they feel it is good.”<sup>109</sup> The employer remembered her experience with putting in extra hours as valuable time spent, describing them as “good training because [I] learned more about the law, and [was] exposed to things longer.”<sup>110</sup>

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102. *Id.* at 3 *ll.*5-7.

103. *Id.* at 3 *ll.*8-9, 25.

104. Focus Group III, *supra* note 39, at 3 *ll.*10-11, 32-34.

105. Focus Group II, *supra* note 66, at 3 *ll.*19-20.

106. *Id.* at 3 *ll.*5-7.

107. *Id.* at 1 *ll.*23-24.

108. Focus Group III, *supra* note 39, at 4 *ll.*27-29.

109. *Id.* at 4 *ll.*28-29, 32-33.

110. *Id.* at 4 *ll.*30-31.

**Representative Quotes on Work Ethic**

- [New attorneys must be] “dedicated and driven . . . willing to put in the extra hours . . .” and “willing to work on the weekends if [they] need to.”<sup>111</sup>
- “Ask if there is something you can do to help.”<sup>112</sup>
- “Showing up, staying through the day to make sure the tasks are done, . . . put in the hours necessary to get an excellent work product out.”<sup>113</sup>
- “[New hires need to understand that] eight, nine, ten hours you might spend in the office is completely separate from what you need to do in your own time to kind of get comfortable [in practice].”<sup>114</sup>
- “When you have your partners working harder than your associates and your associates are supposed to be goal oriented to become a partner someday, it doesn’t make sense . . . .”<sup>115</sup>
- [Associates should not] think “they’re entitled to rise up and become partner because they show up every day.”<sup>116</sup>

*2. The Ideal Law School Graduate Takes Initiative and Steps Up to “Own the Case”*

Employers want new graduates who take initiative, are fully engaged in their work, and see the work of the larger law office as part of their individual responsibility.<sup>117</sup> With regard to assignments, employers expressed a preference for new graduates who have the ability to work independently without an excess amount of “hand holding, . . . constant

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111. *Id.* at 3 ll.30-32.

112. *Id.* at 3 l.34.

113. Focus Group I, *supra* note 66, at 1 ll.16-17.

114. Focus Group II, *supra* note 66, at 19 ll.40-45.

115. *Id.* at 19 ll.4-6.

116. *Id.* at 1 ll.24-25.

117. *See* Focus Group III, *supra* note 39, at 21 ll.42-43.

stroking, reaffirmation . . .”<sup>118</sup> and who “can take a problem and analyze it from start to finish.”<sup>119</sup>

Employers noticed a shift in the amount of guidance they need to provide to new graduates. “I used to get ten minutes with somebody. You would come in and have your note pad, and you wrote down what they wanted and you brought back a summary judgment [motion].”<sup>120</sup>

In contrast, today’s supervising attorneys feel they have to guide new lawyers more: “[L]et me do an outline for you. Here’s the points I want you to hit, remember to go read the depositions, and look at the exhibits . . .”<sup>121</sup>

Taking initiative includes being “capable of making independent judgments.”<sup>122</sup> While employers understood that “mentoring has been a long-standing tradition in our profession,” they wanted to see new lawyers balance asking questions with taking individual responsibility.<sup>123</sup> One employer advised against returning too quickly for advice when faced with a difficult concept: “[t]ry to figure it out and then let me fill in the gaps . . . there’s a difference between clerks and associates that want to learn versus [those that] want to be taught.”<sup>124</sup> Another expressed frustration over attorneys who were overly reliant on the supervisor: “[i]t’s a little unnerving when somebody comes in and asks a question and you think . . . did you try to figure that out on your own[?] . . .”<sup>125</sup>

In addition, employers discussed the need for new hires to know when to look beyond discrete individual assignments to see the big picture and “own[] the case.”<sup>126</sup> This includes both understanding where an assignment fits in the larger context of the case and what the supervising attorney expects the role of the new attorney to be. Is it to quickly and efficiently come up with an answer to a discrete question? Or, is it to be a full member of a team who is expected to think independently and creatively?

While there are occasions where a quick and limited response to an assignment is preferred, the attorneys we spoke with articulated a clear preference for new hires who do not treat assignments like homework that they simply complete and hand in. This can be perceived as a weakness or a “lack of drive to win the project, the case or the trial [and more like a

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118. Focus Group II, *supra* note 66, at 4 ll.5-6.

119. Focus Group III, *supra* note 39, at 2 l.25.

120. *Id.* at 22 ll.22-24.

121. *Id.* at 22 ll.24-25.

122. *Id.*

123. Focus Group II, *supra* note 66, at 3 ll.11-12.

124. *Id.* at 3 ll.13-15.

125. *Id.* at 3 ll.8-10.

126. Focus Group I, *supra* note 66, at 22 l.32.

desire to] just get it done . . . .”<sup>127</sup> Indeed one employer cited, “myopia” about the larger context of a case as “the number one issue that I see . . . [with] perspective [(or lack thereof) as the] ‘biggest weakness.’”<sup>128</sup>

Instead, new attorneys should be “thinking about the case as they are completing the assignment”<sup>129</sup> and “thinking about the assignment in the context of the case.”<sup>130</sup> Thus, “if they are given a discrete writing project . . . they know enough about the case to go beyond what [they have been] asked . . . so they come across things that I had not thought of.”<sup>131</sup> Put another way, new attorneys should have “long-term vision” and ask “how is what I’m doing now going to fit into the rest of what I’m working on in the process of resolving this issue for this client[?]”<sup>132</sup> This ability to see beyond or behind the assignment is “the big picture difference. . . . [It’s t]hat process of listening to what’s being asked and still hearing the message beyond that.”<sup>133</sup>

Owning the case can also mean that new attorneys “[t]ake responsibility for projects”<sup>134</sup> and approach the case from the vantage of someone with a stake in the outcome.<sup>135</sup> This includes demonstrating careful attention to quality. When approaching a case, one employer advised new attorneys to consider: “How are you involving yourself [in the case] in a way to make sure that the case is successful as possible?”<sup>136</sup>

Employers described being engaged in a project in a positive way as being “eager”<sup>137</sup> and “enthusiastic.”<sup>138</sup> This is reflected in an attorney who “wants to be involved in the case, wants to know more about the case and what else [he can] do on this case. How can I help you more?”<sup>139</sup> But it is also reflected in a general attitude of wanting to come to work and being “excited to be there and excited to accept the challenges that there may be.”<sup>140</sup>

Finally, being engaged in a case, a client, or a law office means taking an interest in clients and taking the time to understand a client’s business.

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127. Focus Group III, *supra* note 39, at 26 ll.23-25.

128. Focus Group I, *supra* note 66, at 18 ll.39, 45.

129. Focus Group III, *supra* note 39, at 2 ll.43-44.

130. *Id.* at 2 ll.39-40.

131. *Id.* at 2 ll.40-42.

132. Focus Group I, *supra* note 66, at 18 ll.42-43.

133. *Id.* at 22 ll.36-42.

134. Focus Group III, *supra* note 39, at 4 l.17.

135. Focus Group I, *supra* note 66, at 22 ll.34-37.

136. *Id.* at 22 ll.32-34.

137. Focus Group III, *supra* note 39, at 3 l.17.

138. Focus Group I, *supra* note 66, at 1 l.42.

139. Focus Group III, *supra* note 39, at 3 ll.18-20.

140. Focus Group I, *supra* note 66, at 1 ll.43-44.

An attorney at a large firm remarked: “[T]he number one thing . . . I hear . . . [from outside counsel, is:] understand my business, understand what I need, understand where my business is going, and keep up with whatever is being published in the newspaper.”<sup>141</sup>

#### Representative Quotes on Taking Initiative and Owning the Case

- “[They should not] just view[] [work] as an assignment,” [but should see it as] “part of the case . . . .”<sup>142</sup>
- “It’s a little unnerving when somebody comes in and asks a question and you think . . . did you try to figure that out on your own[?] . . . .”<sup>143</sup>
- “[T]here’s a difference between clerks and associates that want to learn versus [those that] want to be taught.”<sup>144</sup>
- [Recent graduates] “want to be told what to do with very detailed instructions. They want 1-2-3 . . . it is a lot more complicated than that.”<sup>145</sup>
- “We have mentoring systems . . . and it’s not like we are hanging people out to dry but it just feels like they need such tender loving care. And you just can’t do that while you are trying to maintain your own practice.”<sup>146</sup>
- [I want] “someone who is eager. Who comes to me and we can have discussions about a research project or something I have given them and wants to be involved in the case, wants to know more about the case and what else can I do on this case. How can I help you more?”<sup>147</sup>

141. Focus Group II, *supra* note 66, at 22-23 ll.45-2.

142. Focus Group III, *supra* note 39, at 26 l.24.

143. Focus Group II, *supra* note 66, at 3 ll.8-10.

144. *Id.* at 3 ll.14-15.

145. Focus Group III, *supra* note 39, at 26 ll.42-43.

146. *Id.* at 21 ll.40-42.

147. *Id.* at 3 ll.17-20.

### 3. *The Ideal Law School Graduate Works Well with Colleagues and Clients*

The “ideal law school graduate”<sup>148</sup> should be “enthusiastic and personable,”<sup>149</sup> have a “positive attitude,”<sup>150</sup> be able to “work well with others,”<sup>151</sup> including colleagues, clients and other “people completely outside the realm of law.”<sup>152</sup> The inability to do so “can make working relationships really challenging.”<sup>153</sup>

Employers from diverse practice backgrounds stressed the importance of bringing a positive attitude to the workplace.<sup>154</sup> This includes the ability to “stay positive”<sup>155</sup> or “pretty steady”<sup>156</sup> in the face of challenging work assignments or difficult cases and being able to “go on to your next case” and “not dwell” after an unfavorable outcome in court.<sup>157</sup> For some employers, a positive attitude means new hires who are “excited about the work that [they] do.”<sup>158</sup>

Employers also want new hires who can “communicate with clients” and other non-attorneys.<sup>159</sup> Previous “work experience dealing with people outside the legal arena” was seen as desirable by one partner in a medium-sized firm.<sup>160</sup> A member of a small firm strongly agreed that new hires “better be able to socially interact with people.”<sup>161</sup> In particular, employers identified the ability to “have a client conversation”<sup>162</sup> or “relate to a client as they walk in the door”<sup>163</sup> as a “basic expectation,”<sup>164</sup> with a preference for new hires who are “[p]ersonable from the standpoint of being able to speak with clients, and being able to relay what’s going to happen.”<sup>165</sup>

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148. Focus Group I, *supra* note 66, at 1 l.22.

149. *Id.* at 1 l.42.

150. *Id.* at 1 l.38.

151. *Id.* at 3 l.1.

152. Focus Group II, *supra* note 66, at 2 ll.10-11. At a recent regional conference, a panel of legal employers echoed this sentiment. *See* Blum et al., *supra* note 2, at 25 (“Representatives of the bench and bar made it clear that to succeed in the work place, students need more opportunities to work collaboratively during law school just as they will be expected to in practice.”).

153. Focus Group I, *supra* note 66, at 4 ll.22-23.

154. *Id.* at 1 l.38.

155. *Id.* at 1 ll.23-24.

156. *Id.* at 2 l.1.

157. *Id.* at 2 l.3.

158. Focus Group I, *supra* note 66, at 2 ll.39-40.

159. Focus Group III, *supra* note 39, at 7 ll.11-12.

160. Focus Group II, *supra* note 66, at 1 l.13.

161. *Id.* at 2 l.11 09: “know the price of mayonnaise,” be passionate, “information preservation,” enations, speak a foreign language, and under.

162. *Id.* at 5 ll.44-45.

163. *Id.* at 5-6 ll.45-1.

164. *Id.* at 5 l.44.

165. Focus Group I, *supra* note 66, at 1 ll.44-45.

### Representative Quotes on Working with Colleagues and Clients

- “[B]eing enthusiastic and personable . . . are important skills.”<sup>166</sup>
- “When people come to work . . . you want them to be excited to be there and excited to accept the challenges that there may be.”<sup>167</sup>
- “If they can’t get along with others, they are not going to last very long.”<sup>168</sup>
- “[C]an relate to the common man.”<sup>169</sup>
- “[I]f I’m going to employ you, you better be able to . . . deal with people completely outside of the realm of law.”<sup>170</sup>
- “What do I look for in the ideal new graduate? . . . Somebody who is confident and can talk to the client.”<sup>171</sup>

#### 4. *The Ideal Law School Graduate Is Flexible and Able to Adapt to the Needs of Supervising Attorneys*

Almost all the employers in our focus groups had an idiosyncratic wish list<sup>172</sup> for new hires that could be translated to a general request to “do what I do the way I do it.” In short, to work successfully with a range of supervisors, new attorneys would do well to consider each supervising

166. *Id.* at 1 *l.*42.

167. *Id.* at 1 *ll.*43-44.

168. *Id.* at 4 *ll.*23-24.

169. *Id.* at 2 *ll.*31.

170. Focus Group II, *supra* note 66, at 2 *ll.*9-11.

171. *Id.* at 4 *ll.*23, 26.

172. In addition to the fundamental legal research, writing and analysis skills, the list of discrete skills employers mentioned as desirable was as varied as the individuals and includes knowing how to: use the rules of procedure, spot issues, try a case, create a trial notebook, “land a contract,” Focus Group II, *supra* note 66, at 5 *l.*20, draft and respond to discovery, find and use Restatements and jury instructions, use the local rules, “understand the Ohio jurisprudence exists,” Focus Group III, *supra* note 39, at 7 *ll.*3-4, draft interrogatories, draft motions to suppress, give effective PowerPoint presentations, speak a foreign language, and understand “metadata and all the technology that’s behind...information preservation,” Focus Group I, *supra* note 66, at 31 *ll.*33-34. As one attorney put it, they should be “passionate [and] confident,” Focus Group II, *supra* note 66, at 2 *l.*41, and “know the price of mayonnaise,” *id.* at 2 *ll.*30-31.

attorney as their audience and adapt their work habits to meet audience expectations.<sup>173</sup>

New attorneys should be aware that an essential part of each assignment should be to understand the supervisor's expectations for the assignment. They should be prepared to "assess a new situation when [they] go to work for somebody for the first time . . . ."<sup>174</sup> Attorneys should recognize that employers have "different language styles, different writing styles, different memo styles, different research styles"<sup>175</sup> and, generally, different expectations.<sup>176</sup> So, new hires need to find a way to "assess that in a polite and efficient way in the beginning."<sup>177</sup>

Other employers noted that this ability to adapt is helpful when working with clients since "[n]ot every client comes to you the same way or wants to be communicated with in the same way."<sup>178</sup> And, it can also apply to the attorney's interaction with courts.

#### Representative Quotes on Adapting to Supervisor Preferences

- Supervising attorneys or partners will have "different language styles, different writing styles, different memo styles, different research styles. Somebody expects ninety pages of research and wants the cases attached and somebody else just wants me to give them the answer."<sup>179</sup>
- New lawyers must be able to "assess a new situation when you go to work for somebody the first time[: H]ow do you prefer to be contacted[?] Do you prefer that I print out a memo and leave it in the box? Do you want me to email it to you?"<sup>180</sup>

173. See Blum et al., *supra* note 86, at 4 ("students should be better prepared to assess and adapt to different employer cultures.").

174. Focus Group I, *supra* note 66, at 5 ll.1-2.

175. *Id.* at 5 ll.20-21.

176. From time to time attorneys publish general practice advice. See, e.g., Peter R. Silverman, *Forty-five Litigation Writing Rules*, OHIO LAWYER 32-34 (May/June 2005). While these ideas are helpful, new attorneys may do well to seek out and follow the specific preferences of lawyers in their firms first before these general prescriptions. For instance, one local Dayton firm provides its attorneys with its own detailed list of "Local Rules of Legal Writing," containing a collection of "common errors" and "stylistic preferences" that range from broad suggestions such as "use active, not the passive voice" to specific required edits like "use different FROM, not different THAN." These "Local Rules of Legal Writing" are on file with author.

177. Focus Group I, *supra* note 66, at 5 l.27.

178. *Id.* at 5 ll.37-38.

179. *Id.* at 5 ll.20-22.

180. *Id.* at 5 ll.1-3.

*B. Employers Depend on New Hires to Have Strong Legal Research Skills*

The employers in our focus groups value new attorneys' ability to research well. They had few complaints about new attorneys' ability to research "[e]fficiently and cost-effectively."<sup>181</sup> They reported overall that new hires meet their expectations with regard to research.<sup>182</sup> Some also stated that new hires are able to locate relevant material and make good decisions when they report results.<sup>183</sup>

*1. "There's a huge reliance there. There really is."*

Employers, particularly those with more years in practice, rely on new attorneys to be research experts. The employers in our focus groups have high expectations when it comes to new hires' research skills, i.e., "[t]hey should be able to adequately and effectively find everything that's up to the minute . . . ."<sup>184</sup> Law students and new attorneys would do well to understand that supervisors expect them to take responsibility for their research projects. Employers greatly value a new attorney who can both "find anything that pertains to [a] topic . . . [and] summarize it, so that [the supervisor doesn't] have to pour through each document to read each case and figure it out . . . ."<sup>185</sup>

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181. *Id.* at 6 l.11.

182. *See* Focus Group II, *supra* note 66, at 8 ll.30-31.

183. *See id.* at 8 ll.30-39.

184. *Id.* at 8 ll.26-27.

185. *Id.* at 6 ll.16-18.

### Representative Quotes about Legal Research: General Expectations

- “I really have a huge reliance on [the person] . . . doing my research for me because I don’t do it.”<sup>186</sup>
- “I depend on our law clerks and our new grads to build my research files.”<sup>187</sup>
- “[F]or the most part . . . what I’ve seen with all the law clerks, law students, [and] externs [is that] they really know how to research. They get everything . . . .”<sup>188</sup>

## 2. Research Strategically: Plan and Assess Your Research

Whether researching online or in paper, new attorneys should have the tools to develop a sound research strategy. Employers expressed a strong demand for both “efficient and effective” research.<sup>189</sup> They expect new attorneys to be aware of the cost of researching online and “the cost implications of particular [research] approaches.”<sup>190</sup>

Employers recognize that good researching is not just about finding results. Instead, “[i]t’s really a planning process to think through how you’re doing your work.”<sup>191</sup> Employers want associates to be thinking strategically about putting together the best combination of sources for the task: “[W]hat’s the problem I’m being asked, what’s the resolution being required, and what are my tools to get there[?]”<sup>192</sup>

New attorneys should also determine the scope of the project and ask, “what’s the best process for this[?]”<sup>193</sup> This can mean evaluating the project from a cost standpoint to avoid the “\$10,000 bill” by asking: “What should I get? Where’s the cheapest place to get it?”<sup>194</sup> It may also mean clarifying the amount of time they are expected to spend on research. Time may be limited by the client’s ability to pay: “[i]f you’re spending five hours on a

186. *Id.* at 8 *ll.*13-14.

187. Focus Group II, *supra* note 66, at 6 *l.*28.

188. *Id.* at 8 *ll.*30-32.

189. Focus Group I, *supra* note 66, at 13 *l.*20.

190. Focus Group III, *supra* note 39, at 8 *ll.*27-31.

191. Focus Group I, *supra* note 66, at 30 *l.*38.

192. *Id.* at 20 *ll.*28-30.

193. *Id.* at 7 *l.*8.

194. *See id.* at 6 *ll.*15-22.

project that should take two hours, you've lost three hours."<sup>195</sup> Or research may be on a tight deadline: "I need answers over lunch sometimes. I mean, [I] leave court and come back at one[,] I need a memorandum in an hour."<sup>196</sup>

Employers value the employee who is proactive and considers the best choices: "it's nice to have someone thinking through it. Do I need to look at rules, do I need to look at statutes, do I need to look at regulations or case law? What do we already have?"<sup>197</sup>

New attorneys should consider the mix of free and paid sources that comprise the best sources for the task as well as their employer's comfort level with various sources. Several employers were willing to accept the use of free sources for limited purposes. An employer from legal aid found it "really helpful" when new hires bring "creativity" to the table to reduce costs by using free resources.<sup>198</sup> Others valued new lawyers' ability "to have sufficient Internet searching ability to find local rules, statutes, [and] things like that."<sup>199</sup> Employers themselves saw the benefit of turning to Google or Wikipedia "for background information" or as a "starting point."<sup>200</sup> They also were willing to trust a low-cost or free alternative to Westlaw and LexisNexis to "pull a quick case" or "to browse a chapter of the [R]evised Code."<sup>201</sup>

The same employers were more tentative about new attorneys using alternative databases for a full-blown research project or to cite from in a brief, expressing concerns about their comprehensiveness: "I don't trust . . . some of the other databases because I think you can do a search on those and not get a complete picture."<sup>202</sup> Thus, attorneys using new types of sources need to know how to evaluate the reliability of websites. One attorney emphasized that researching attorneys should keep detailed records of their research process.<sup>203</sup> Keeping a research trail helps new attorneys assure employers that both the research process and result are sound. They should also be able to explain their research process, walk employers through the steps of their research if asked, and be able to assure employers that the research is up to date and accurate.

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195. *Id.* at 6 *ll.*28-29.

196. Focus Group III, *supra* note 39, at 12 *ll.*19-20.

197. Focus Group I, *supra* note 66, at 7 *ll.*36-37.

198. *Id.* at 6 *l.*42.

199. *Id.* at 28 *ll.*39-40.

200. *Id.* at 11 *ll.*1, 6.

201. Focus Group III, *supra* note 39, at 8 *ll.*12, 14.

202. *Id.* at 8 *ll.*5-7.

203. *See* Focus Group I, *supra* note 66, at 30 *ll.*29-30.

Although employers recognized that the face of legal research is changing, some expressed their uneasiness with attorneys relying on free websites instead of paid services like LexisNexis or Westlaw: “[s]ometimes that [free] stuff makes me nervous . . . I don’t know how updated it is.”<sup>204</sup> There was recognition among employers that not all sources are equally trustworthy and that as researchers, new attorneys “need to be able to find authoritative sources for those things too.”<sup>205</sup> Moreover, some employers perceived that new attorneys were more likely to use free sources that may be less trustworthy: “from my experience law clerks are more willing to rely on some of the scarier stuff that I wouldn’t rely on as much.”<sup>206</sup>

Strategic research also means checking in with employers to make sure research is on the right track. As one employer shared, “[i]f someone came to me and said, I’ve done some initial attempts and I’m having trouble, can you direct me, that’s fine.”<sup>207</sup> Before seeking more guidance, however, employers expect new attorneys to educate themselves using available resources: “there’s so much out there [on Google, law firm web sites, and Wikipedia], that at least you could get some clue and have an educated conversation with me. I can then help direct you.”<sup>208</sup> “Coming back with, I don’t know anything about this, where do I look, doesn’t help me because I don’t know what you’ve seen already.”<sup>209</sup>

Finally, employers recognized the inherent tension between researching efficiently and researching for accuracy. A partner in a large firm stressed the importance of accuracy: “[e]fficiency is important, but it is more important to get it right.”<sup>210</sup> While another deferred to the reality of time pressures: “[i]f you have an hour to get some kind of answer, you have to get some kind of answer in an hour. As best as it is, as close to right as you can.”<sup>211</sup>

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204. Focus Group II, *supra* note 66, at 13 *ll.*11-12.

205. Focus Group I, *supra* note 66, at 28 *ll.*40-41.

206. Focus Group II, *supra* note 66, at 13 *ll.*14-15.

207. Focus Group I, *supra* note 66, at 10 *ll.*41-42.

208. *Id.* at 11 *ll.*7-9.

209. *Id.* at 10 *ll.*23-24.

210. Focus Group III, *supra* note 39, at 12 *l.*25.

211. *Id.* at 12 *ll.*32-33.

### Representative Quotes on Efficient, Cost-Effective, Strategic Research

- “[K]nowing how to[research] in a cost effective manner is key when you’re in a business.”<sup>212</sup>
- Legal services: “We use a lot of resources in our office that don’t cost anything. . . . So, being able to come to the table with some of those skills already and just the creativity is really helpful.”<sup>213</sup>
- “[T]here is this organic process of searching for information . . . maybe [they] can take a step back and say, what’s the best process for this, what information am I seeking?”<sup>214</sup>
- “If someone says go pull a case, and you’re cost sensitive, Google Scholar now has most of the cases online, and you can get those cases for free. Do they know to think [of] that?”<sup>215</sup>
- “I think that that process itself is something that can be emphasized . . . .”<sup>216</sup>

### 3. “Online is fine.”

As for paper versus online researching, employers in these focus groups were clear: “Online is fine.”<sup>217</sup> Even the most basic use of one of the most basic sources—being able to locate a case in paper and pull the book off the shelf—was not an expectation employers have of new hires.<sup>218</sup> Some employers saw the preference for online research as a business decision: “it’s more efficient to be able to [research] online” than “walk or drive to the library.”<sup>219</sup> Another partner noted that there was no expectation that “we’re going to stick [new hires] in the library . . . to use the books. They’re not even updated anymore.”<sup>220</sup>

212. Focus Group II, *supra* note 66, at 6 ll.21-22.

213. Focus Group I, *supra* note 66, at 6 ll.37, 41-42.

214. *Id.* at 7 ll.6-8.

215. *Id.* at 7 ll.9-11.

216. *Id.* at 7 ll.15-16.

217. Focus Group II, *supra* note 66, at 11 l.20.

218. *Id.* at 10 ll.23-28.

219. Focus Group I, *supra* note 66, at 28 l.26-28.

220. Focus Group II, *supra* note 66, at 32 ll.10-12.

What paper sources *should* new attorneys be familiar with? Statutes, treatises and encyclopedias, and desk books are the sources employers still use in paper form. For this reason, new attorneys may want to be familiar with these paper sources. Employers agreed that there was still an advantage to knowing how to find a statute in print because of the ability to get an “overview”<sup>221</sup> of the statute, to move “back and forth between sections,”<sup>222</sup> and to “flip to the heading [and] table of contents.”<sup>223</sup>

Employers also mentioned state and federal desk books or rule books as important tools: “not a single day [] goes by that I don’t pick up those[]and look through them.”<sup>224</sup> They are also more likely to use these books to find rules or related forms that they would be to research the rules or forms online. And treatises, such as Wright and Miller and Moore’s, were cited as useful book resources,<sup>225</sup> in part because sometimes they “are not available in your online subscription”<sup>226</sup> and they provide “a thousand cases” on an issue.<sup>227</sup>

#### Representative Quotes on Online Versus Print Researching

- Q: “What if students were no longer taught to research in the books?”<sup>228</sup>  
A: “I didn’t even know they still did that.”<sup>229</sup>
- “Treatises are about the only thing I still use in print.”<sup>230</sup>
- For statutes: “Oh yeah, you need the books.”<sup>231</sup>
- Q: “Would you expect them to be able to pull a case off a shelf using a state, regional or federal reporter, for example?”  
A: (All) “No. No. No.”<sup>232</sup>

221. Focus Group III, *supra* note 39, at 10 l.4.

222. *Id.* at 9 ll.25-26.

223. Focus Group II, *supra* note 66, at 11 ll.6-7.

224. Focus Group III, *supra* note 39, at 10 ll.44-45.

225. *Id.* at 9 ll.40-41.

226. Focus Group I, *supra* note 66, at 28 ll.11-12.

227. *Id.* at 28 l.10.

228. Focus Group II, *supra* note 66, at 31 l.44.

229. *Id.* at 32 l.7.

230. Focus Group I, *supra* note 66, at 8 l.10.

231. Focus Group III, *supra* note 39, at 9 l.26.

232. Focus Group I, *supra* note 66, at 7 ll.43-46.

- “I think it’s a fundamental skill that you should have. I don’t know if you will ever have to actually go into a stack and pull books, but I think you should still learn it.”<sup>233</sup>
- “We keep trying to shrink our library down to nothing.”<sup>234</sup>
- “Online is really fine with anything.”<sup>235</sup>

### C. *The Best Legal Writing & Analysis Attends to Audience & Purpose*

#### 1. *“Writing is an audience thing.”*

What is the right document for a new attorney to produce in response to a research question? The answer is “context dependent”<sup>236</sup> and requires a “back-to-the-basic[s]” awareness that audience and purpose should drive the response.<sup>237</sup>

Employers in the focus groups did not sound the death knell for the formal legal research memo.<sup>238</sup> But they were clear: the full-blown research memo with headings (Question Presented, Brief Answer, Discussion) and recommendations is but one possible response.<sup>239</sup> This comment by a senior associate got an enthusiastic reception from other participants: “[t]here will be times where [I] want a long drawn out twenty-five page memo and there are other times when an email will suffice. Or sometimes if you’ve got an hour, maybe just an oral report. . . . And sometimes I just want the case . . . highlighted.”<sup>240</sup>

Employers want new attorneys to produce the form of response that is “efficient and effective” for the situation.<sup>241</sup> “[D]on’t just have one mode of communicating all the time.”<sup>242</sup> Full-blown memos have value, both as research “for the file” and as precursors to summary judgment or other motions.<sup>243</sup> But, shorter responses, like emails in a “bullet form or an

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233. *Id.* at 8 ll.34-35.

234. Focus Group II, *supra* note 66, at 10 l.7.

235. *Id.* at 11 l.25.

236. Focus Group III, *supra* note 39, at 15 l.34.

237. Focus Group II, *supra* note 66, at 13 l.31.

238. Our recent graduates report that they still write them. *See* Miller, *supra* note 4, at 23.

239. *See* Focus Group III, *supra* note 39, at 15-16 ll.34-36, 3.

240. *Id.*

241. Focus Group I, *supra* note 66, at 13 l.20.

242. Focus Group III, *supra* note 39, at 19 ll.29-30.

243. Focus Group I, *supra* note 66, at 29 ll.34-37.

outline form”<sup>244</sup> that set out the “strengths . . . and weaknesses of our position” can also be acceptable when a quick response is needed.<sup>245</sup>

The purpose and audience of the assignment are the key. “[T]hey need to be very cognizant of who their audience is.”<sup>246</sup> Is the document for a client? And, which client? Is it the one who is “very busy” and “want[s] to know, ‘boom,’ ‘what’s the answer[?]’”<sup>247</sup> Or, is it the client who is “all into the details” and will feel “nervous if you don’t give them all the specifics.”<sup>248</sup>

Regardless of the form, new attorneys need to take a position. “They need to be brave enough to do that.”<sup>249</sup> They should not “write a memo just kind of giving [an overview of th[e] law.”<sup>250</sup> That may mean producing an objective analysis.<sup>251</sup> One employer wants to know the “strengths of the claim[] and the weakness[es] of our position” so they could advise clients.<sup>252</sup> Another, prefers associates who “include . . . any problems or weaknesses they see,”<sup>253</sup> noting that the “overachievers . . . [then] tell you how to deal with it. . . . And that’s what you like to see[!]”<sup>254</sup>

It may also mean putting the client’s perspective first. When a “summary judgment motion is down the line,”<sup>255</sup> the memo may need to be written “from the client’s perspective with the client argument”<sup>256</sup> taking a persuasive tone “because that’s what it is going to ultimately wind up being.”<sup>257</sup>

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244. Focus Group III, *supra* note 39, at 29 l.12.

245. *Id.* at 34 ll.28-29.

246. Focus Group II, *supra* note 66, at 25 l.14.

247. Focus Group I, *supra* note 66, at 12 ll.3-4.

248. Focus Group III, *supra* note 39, at 19 ll.25-26.

249. *Id.* at 14 ll.1-2.

250. *Id.* at 13 ll.20.

251. Although one employer stated “objective [writing] doesn’t really come into play much at all,” several employers effectively disagreed.

252. Focus Group III, *supra* note 39, at 29 ll.11-12.

253. *Id.* at 13 ll.44-45.

254. *Id.* at 17 ll.1-5.

255. *Id.* at 13 l.19.

256. *Id.* at 13 l.23.

257. Focus Group III, *supra* note 39, at 13 ll.31-32.

### Representative Quotes: On Writing for a Specific Audience

- “My clients are non-lawyers . . . . They are very busy people, and they don’t want a lot of legalese. They want to know, boom, what’s the answer?”<sup>258</sup>
- Some clients “want the answer yesterday. They expect it sooner, and they don’t need a big, fancy document.”<sup>259</sup>
- “I represent a lot of businessmen who are really, really busy and they do not want to spend their time talking to me. So if [I] send a letter or communication to them, [I] keep it short and sweet.”<sup>260</sup>
- “[T]hat’s the main writing problem that we have to fix in new people is that they . . . don’t take sides.”<sup>261</sup>
- Attorney A: “[T]he overachievers, once they point out the weaknesses will tell you how to deal with it.”<sup>262</sup>  
Attorney B: “Which is what you would *really* like to see!”<sup>263</sup>
- They need to “take that extra step and say how we are going to deal with the bad stuff cause of the two . . . I’m more concerned with [the] bad stuff.”<sup>264</sup>
- “[F]inding case law and doing research law students can do that. But being a lawyer is knowing how to apply it and make an argument and . . . bring that all together . . . [T]hat’s the lawyering.”<sup>265</sup>

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258. Focus Group II, *supra* note 66, at 12 ll.2-4.

259. Focus Group I, *supra* note 66, at 12 ll.12-13.

260. Focus Group III, *supra* note 39, at 19 ll.13-15.

261. *Id.* at 17 ll.14-15.

262. *Id.* at 17 ll.1-2.

263. *Id.* at 17 l.8 (emphasis added).

264. *Id.* at 17 ll.23-25.

265. Focus Group III, *supra* note 39, at 23 ll.24-28.

2. *“The shorter, the better.”*

Employers stated a preference for succinct writing, particularly when writing to a court: “Five to ten pages would be the max.”<sup>266</sup>

When asked to make suggestions for the first-year legal writing curriculum, all agreed it would be better to have several short assignments in first-year legal writing class, rather than one or two lengthier memos and briefs.<sup>267</sup> One attorney stressed the value of repetition and practice, noting that with “three or four . . . small problems . . . they can do it over and over again rather than just the one time.”<sup>268</sup> Another pointed out the difference between school, where there is usually a minimum number of pages required, and law practice, where attorneys must stay within a page limit.<sup>269</sup>

3. *“Structure that thought process.”*

Finally, employers agreed on the need to use the common law school acronym “IRAC” (Issue, Rule, Analysis, Conclusion) for legal writing, or some similar familiar structural device when writing memos or briefs. While employers generally agreed that “[t]he whole IRAC thing . . . is important”<sup>270</sup> there was also general recognition that “it doesn’t have to be a perfect academic IRAC.”<sup>271</sup>

Part of the reason for using a version of IRAC in writing is to meet employer expectations. One employer preferred it because “that’s still kind of the process that goes through my head.”<sup>272</sup> Another found it to be a useful way to ensure “effective communication.”<sup>273</sup> “If you can just learn how to go through that process and you’re going to get it right eventually.”<sup>274</sup>

#### IV. SUGGESTIONS FOR REVISING THE FIRST-YEAR LRW COURSE TO ADDRESS EMPLOYER PREFERENCES

The focus group comments of legal employers provided some insights into employers’ preferences for new hires. The next challenge was to consider whether and how to respond by changing the contents and syllabi

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266. Focus Group I, *supra* note 66, at 30 l.10.  
267. *Id.* at 30 ll.2-4.  
268. Focus Group III, *supra* note 39, at 29 ll.40-42.  
269. Focus Group II, *supra* note 66, at 26 ll.10-13.  
270. *Id.* at 15 l.29.  
271. *Id.* at 6 ll.40-41.  
272. Focus Group I, *supra* note 66, at 31 ll.21-22.  
273. *Id.* at 29 l.15.  
274. Focus Group II, *supra* note 66, at 25 ll.7-8.

of the first-year LRW courses.<sup>275</sup> Fortunately, the employer comments did not warrant a total overhaul. Indeed, several Dayton Law graduates who participated in the focus groups commented they felt well prepared for practice as a result of the school's Legal Profession Program. To incorporate employer comments, I opted to target three areas for refinement. All three of these changes would benefit students, but the gradual change would also be manageable for me. First, given the importance employers place on professionalism and the "soft skills," I decided to make this part of the final course grade, at least in the second semester of the year-long course sequence. Second, to expose students to the types of assignments they would likely encounter in practice, I added "shorter, more frequent" writing assignments with quicker turnaround time to the second semester syllabus. Finally, the combination of the changing landscape for legal research and employers' acknowledgement that they rely heavily on new graduates for research, confirmed for me the importance of emphasizing strategy development and evaluation in the advanced research component of the course.

#### A. *Emphasize and Evaluate Professionalism*

Our focus group research was clear: professionalism matters to legal employers. Although the definition of "professionalism" is, of course, almost maddeningly elusive,<sup>276</sup> employers identified as important qualities in new hires several "values, behaviors, [and] attitudes,"<sup>277</sup> commonly included in definitions of professionalism.<sup>278</sup> The focus group employers expressed a preference for new hires who are competent (e.g., have a strong work ethic, take initiative, and "own the case"), responsible, collaborative, and civil (e.g., communicate appropriately and work well with others).<sup>279</sup> Legal research and writing professors can help students develop these competencies by explicitly articulating professionalism objectives as part of

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275. At this point, any changes would be only to my sections of the courses and not programmatic since we are an autonomous program, and we do not work from a common syllabus.

276. See Neil Hamilton & Verna Monson, *The Positive Empirical Relationship of Professionalism to Effectiveness in the Practice of Law*, 24 GEO. J. LEGAL ETHICS 137, 143 (2011) ("Legal scholars have not been able to construct and agree on a widely-accepted, clear, and succinct definition of professionalism."); Melissa H. Weresh, *An Integrated Approach to Teaching Ethics and Professionalism*, 18 PROF. LAW., no. 2, 2007, at 25, 26 ("professionalism, [is] an admittedly vague term used to describe conventions accepted within the legal community").

277. STUCKEY ET AL., *supra* note 2, at 59.

278. These qualities have also been included in a definition of lawyer "effectiveness." See Hamilton & Monson, *supra* note 276, at 157-59 (constructing a definition of lawyer effectiveness from "an analysis of the underlying qualities and skills that clients, experienced lawyers, and judges define as necessary for a lawyer to be effective.>").

279. See Focus Group III, *supra* note 39, at 7 ll.11-12.

the first-year LRW curriculum<sup>280</sup> and by evaluating student performance in these areas.<sup>281</sup>

It is fair to ask why this job belongs on the shoulders of LRW faculty, particularly when there is a danger of trying to accomplish too much in the first-year LRW course, which has as its central focus teaching the fundamental skills of legal analysis, research, and writing. One of the major arguments for its inclusion is that the presence, and particularly the absence, of professionalism leaves a long-lasting impression.<sup>282</sup> The student who shows up to a scheduled writing conference empty-handed saying, “I have no idea how to approach this assignment” may have a writing problem, to be sure. But, this student also has not met professionalism expectations. Whether those are phrased as “follow document submission requirements,” “seek appropriate assistance,” “come to all classes and conferences prepared,” or some other way, students should be aware that professors, like employers, evaluate and judge not just the work, but students’ *approach* to the work. To fully prepare students for practice, we have an obligation to communicate the importance of professionalism and help students develop expertise with the related workplace skills identified by employers.

Moreover, many LRW faculty *already* embed aspects of professionalism in their courses and students can benefit when professors cluster these expectations under the meaningful heading of professionalism. LRW professors who use a problem-based approach and set up their courses to mimic law practice, with professors in the role of supervising attorneys and students as associates, expect students to approach the course and their communications in a professional way.<sup>283</sup> Some of these, like the expectation that work be turned in on time, are already articulated and evaluated explicitly by professors; but others, like the expectation that students prepare for class, may or may not even be articulated, much less assessed.<sup>284</sup> Basing professionalism expectations on employer feedback and defining professionalism expectations informs students what employers and professors expect. It also identifies professionalism competencies as important skills that students can attend to and develop.

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280. See Sophie Sparrow, *Practicing Civility in the Legal Writing Course: Helping Law Students Learn Professionalism*, 13 LEGAL WRITING: J. LEGAL WRITING INST. 113, 134-37 (2007) (defining, articulating and providing students with learning goals to let them know “what we expect” is an important first step in teaching civility, one aspect of professionalism, because it helps students understand the professor’s rationale and how expectations relate to practice).

281. See *id.* at 151 (giving examples on how to evaluate student performance).

282. See *id.* at 134.

283. See *id.* at 134-35.

284. See *id.* at 136 (explaining the directive “be on time” has its own nuances).

Failure to meet some professionalism expectations (i.e., coming to class regularly or submitting work on time), may result in sanctions that lower a student's grade,<sup>285</sup> but when professionalism is not graded, successful compliance with expectations does not always boost a student's grade.<sup>286</sup> In addition, students at times may fail to meet some expectations (e.g., coming to class prepared), without repercussion. While I understand that students should be intrinsically motivated to "do the right thing" when it comes to attitude and behavior, the results of our focus groups suggest that omitting professionalism from the grading rubric may inadvertently put students at risk of later failing to meet important employer expectations. The weight our focus group employers place on professionalism support giving it a more prominent role in the LRW course structure.

Like many LRW professors, I have attempted to encourage professional behavior in first-year students by listing my expectations in course descriptions.<sup>287</sup> My expectations are not exceptional. For example, I advise students they are expected to attend class regularly, be prepared, and be ready to participate.<sup>288</sup> I also expect them to use technology responsibly (e.g., refrain from cell phone use or surfing the Internet for non-class purposes in class), and submit assignments on time.<sup>289</sup> Other faculty ask

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285. For example, I either will not accept or will deduct points for late assignments. I also have a strict attendance policy that results in a reduced final grade after a stated number of absences.

286. At the University of Dayton School of Law, we grade anonymously, so the benefit of meeting ungraded expectations may follow the rule of "virtue is its own reward." Admittedly, the student who meets these expectations may produce better final work as a result of coming to class prepared, participating regularly, being attentive, and so on. In addition, when students meet these expectations I can comment on their performance in letters of recommendation.

287. LRW syllabus (on file with author).

288. *Id.*

289. In a second semester LRW syllabus, I recently used a slightly adapted version of the professionalism policy developed by Professor Peter Nemerovski of the University of Miami School of Law. My adapted version is set forth below:

[D]emonstrating professionalism includes:

1. Punctual attendance to classes, conferences, and oral arguments
2. Preparing for classes by completing all reading and homework assignments
3. Preparing for and participating fully in all writing and research conferences
4. Participating actively in classroom discussions, out-of-class activities, and group work
5. Completing and submitting all assignments on time
6. Proofreading and editing your documents to ensure they comply with requirements, e.g., format, word limits, rules of citation, and have a professional appearance
7. Showing respect and civility when giving and receiving feedback, sending email, or otherwise communicating with me, your colleagues, and any guest speakers
8. Seeking assistance when you need it
9. Using laptops, cell phones, and other electronic devices only as permitted

*Id.*

students to: show “improvement and progress throughout the semester;”<sup>290</sup> engage in “reflectiveness and self-critique of work, in conferences and writer’s memos;”<sup>291</sup> or “show[] up for conferences with solid effort drafts and prepared questions.”<sup>292</sup> All of these expectations, whether stated or unstated, are similar to the list of desirable attitudes and behaviors cited by the focus group employers, suggesting that LRW expectations are already in tune with what legal employers want to see in new hires.<sup>293</sup>

In discussing professionalism requirements with students, it can be helpful to state expressly that these are the types of competencies that employers value and that you will be able to comment on in letters of recommendation.<sup>294</sup> In addition, naming the qualities that comprise professionalism gives students language they can use to talk about their own performance when they begin the job search.

Professionalism performance can be counted towards the final grade in the course. Professor Peter Nemerovski of the University of Miami School of Law grades professionalism, including it as part of students’ final grade and factoring it in alongside written assignments, research projects, oral advocacy, and other more traditional bases for graded evaluation.<sup>295</sup> In Professor Nemerovski’s Spring 2011 LRW course for first-years, professionalism counted for twenty percent of the final grade.<sup>296</sup> Other

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290. E-mail from Susan Markus, C.U.N.Y. Law School, to LRWPROF-L@listserv.iupui (Aug. 5, 2011) (on file with author).

291. *Id.*

292. E-mail from Sue Liemer, S. Ill. U. Sch. of L., to LRWPROF-L@listserv.iupui (Aug. 15, 2011) (on file with author).

293. Interestingly, even students come up with similar requirements. In a class activity designed by Professor Kirsten Davis of Stetson University College of Law, students were asked to read various state standards for professional conduct and derive their own rules for exhibiting professionalism in their Spring 2011 1-L LRW class. They were stricter than the professor-created policies I have seen and, in addition to some of the requirements listed above, included standards like: “[k]eep a calendar and check course webpage and email regularly for information about the course;” “[r]espect the ideas of others and engage in civil dialogue in the classroom; treat each other with dignity and refrain from acting in a way that hampers others’ efforts to learn;” [m]aintain a high level of competence and diligence when doing group work and respect others’ schedules and pre-existing conditions.” E-mail and attachment from Kirsten K. Davis, Stetson U. College of L., to LRWPROF-L@listserv.iupui (Aug. 15, 2011) (on file with author).

294. Sparrow, *supra* note 280, at 130-31 (asserting that one of the benefits of students practicing civility is the likelihood that they will receive “glowing letters of recommendation”).

295. Professor Nemerovski, Presentation at the 2011 Empire State Legal Writing Conference: Teaching, Modeling, and Evaluating Professionalism in the First-Year Legal Writing Class (May 12-13, 2011) [hereinafter Nemerovski, Presentation] (on file with author); Professor Nemerovski, Syllabus for Legal Communication and Research Skills II (Spring 2011) [hereinafter Nemerovski, Syllabus] (on file with the author).

296. Nemerovski, Syllabus, *supra* note 295.

LRW faculty have reported they allocate five to twenty percent of the final grade to professionalism.<sup>297</sup>

Professors can also grade professionalism affirmatively using a “points to Gryffindor” model, that is, assigning positive or negative point values to various behaviors.<sup>298</sup> Alternatively, they can take the approach of Professor Coleen Barger of the University of Arkansas William H. Bowen School of Law who reports allotting five percent of the final grade to professionalism.<sup>299</sup> Under this system, all students begin the course with fifty professionalism points and can only lose points for unprofessional behavior.<sup>300</sup>

When I broke my own requirements down for grading purposes, I realized that several of my professionalism expectations were already accounted for in other aspects of my course evaluation procedures. For instance, I evaluate professionalism in written work explicitly when I grade assignments, and I have always deducted points from assignments for late submissions.<sup>301</sup> The three aspects of professionalism that I had not previously evaluated were the categories of preparation, participation, and civility. I now count these three components as five percent of the final grade for the course to promote student engagement (by encouraging students to come to class prepared and participate fully in class, conferences, and group work) and refinement of student oral and written communication.

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297. This information comes from a discussion thread on the Legal Writing Institute (LWI) listserv (on file with author). The percentages were reported by: Professor Sue Liemer, Southern Illinois University School of Law (five percent); Professor Susan Markus, C.U.N.Y. Law School (ten percent); Professor Lisa A. Mazzie, Marquette University Law School (fifteen percent); and Professor Amy Vorenberg, University of New Hampshire School of Law (twenty percent in the first semester). Copies of the E-mail posts to this thread are on file with author: E-mail from Sue Liemer, S. Ill. Univ. Sch. of L., to LRWPROF-L@listserv.iupui (Aug. 15, 2011) (on file with author); E-mail from Susan Markus, C.U.N.Y. L. Sch., to LRWPROF-L@listserv.iupui (Aug. 15, 2011) (on file with author); E-mail from Lisa A. Mazzie, Marquette Univ. Sch. of L., to LRWPROF-L@listserv.iupui (Aug. 15, 2011) (on file with author); E-mail from Amy Vorenberg, Univ. of N. H. Sch. of L., to LRWPROF-L@listserv.iupui (Aug. 15, 2011) (on file with the author).

298. “Points to Gryffindor” is an allusion to the popular Harry Potter series. The points system is explained in the first book of the series. J.K. ROWLING, HARRY POTTER AND THE SORCERER’S STONE 114 (1997) (“The four houses are Gryffindor, Hufflepuff, Ravenclaw, and Slytherin. Each house has its own noble history and each has produced outstanding witches and wizards. While you are at Hogwarts, your triumphs will earn your house points, while any rule-breaking will lose house points.”).

299. See E-mail from Coleen M. Barger, William H. Bowen Sch. of L., to LRWPROF-L@listserv.iupui (Aug. 15, 2011) (on file with author).

300. *Id.*

301. Part of my rubric for written work is a professionalism component. In addition, ungraded credit/no credit homework assignments that are not professional in appearance do not receive credit. Susan C. Wawrose, Univ. of Dayton Sch. of L., Grading Rubric (on file with author).

Professionalism can be difficult to evaluate and can be open to charges of subjectivity. To reduce subjectivity, Professor Nemerovski suggests keeping a file for each student that supports your evaluation.<sup>302</sup> Handwritten notations on aspects of student performance, copies of illustrative emails, and attendance records can all be included.<sup>303</sup> If participation is part of students' professionalism grade, keep a participation log.<sup>304</sup> It takes just a few minutes after class to reflect on who participated, in what context, and what the quality of the participation was.

Midterm (or more frequent) updates to students on their professionalism grades help clarify expectations and prevent unpleasant surprises at the end of the term. These can be timed to coincide with draft conference or other scheduled meetings. Like any feedback, they should address the components of professionalism you have identified as important, and address strengths as well as room for improvement. These meetings help students understand how their behavior affects your assessment of their professionalism. For instance, if part of the professionalism grade is based on participation in class and a student seems to spend a large portion of each class checking his cell phone, this can be addressed in the language of professionalism expectations: “[t]his is a violation of the classroom technology policy, but it also gives me the impression that you are not fully engaged in classroom discussion or activities.” Or, for the quiet student: “[y]ou do not volunteer when we have full class discussions, but I notice that you take an active role when we break into small groups. I value that participation, but I would also like to see you contribute more to full class discussion.”

*B. Move Away from the Memo: Ask Students to Communicate to a Range of Audiences in a Variety of Formats*

One of the major structural changes to the first-year LRW syllabus our research suggests is the inclusion of short research and writing assignments to supplement the traditional memo and brief assignments often used in first-year LRW classes.<sup>305</sup> We are not the first to reach this conclusion.

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302. Nemerovski, Presentation, *supra* note 295.

303. *Id.*

304. *Id.*

305. Both the Dayton Law survey of recent graduates and the employer focus group research support this shift in emphasis. *See, e.g.*, Focus Group I, *supra* note 66; Focus Group II, *supra* note 66; Focus Group III, *supra* note 39. Like many who teach first-year LRW courses, I have typically structured each semester around three major assignments: a closed memo or brief, an open memo or brief, and a research report related to the open brief assignment. Our research supports supplementing, not replacing, these assignments. *See* Miller, *supra* note 4, at 33 (“[T]he formal interoffice memo is the least common type of document that our alumni draft, yet 42% do draft them at least sometimes.”).

Professor Kristen Robbins Tiscione advocated for this curricular revision after her survey of Georgetown law school alumni.<sup>306</sup> A study of judges' expectations for new hires reaches the same conclusion.<sup>307</sup> Others have also suggested this as a way to make students more practice-ready.<sup>308</sup> And, even some students recognize that in practice they will need to respond quickly to a supervisor's research request and request more opportunities to do so.<sup>309</sup>

To more closely mimic the practice setting, these short assignments should require students to produce responses in forms other than the traditional, "full-blown" research memo or brief.<sup>310</sup> Professors should also use varied methods to communicate assignment instructions to students.<sup>311</sup> In trying to make the assigning process more realistic, I have conveyed research questions verbally, by E-mail, or using a mock text message. Since supervising attorneys do not always include every pertinent fact when they assign a project, I also encourage students to consider what critical information they do not know and to ask questions to obtain additional facts and information if they need it.<sup>312</sup>

From the LRW professor's point of view, there are several reasons to oppose a recommendation to include more assignments in the syllabus. First, each additional assignment has to be created—that is, it must be

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306. See Kristen K. Robbins-Tiscione, *Ding Dong! The Memo Is Dead. Which Old Memo? The Traditional Memo.*, 25 SECOND DRAFT, Spring 2011, at 6-7; Kristen Konrad Robbins-Tiscione, *From Snail Mail to E-mail: The Traditional Legal Memorandum in the Twenty-First Century*, 58 J. LEGAL EDUC. 32, 32 (2008) (reporting that of 140 Georgetown University Law Center graduates responding, seventy-five percent "write no more than three traditional memoranda per year").

307. See Vorenberg & McCabe, *supra* note 6, at 23 ("Developing professional judgment and skill requires frequent, varied practice. Instead of the typical long memo assigned in the first semester, first-year writing programs should require students to write several short complete analytical assignments, where the focus is on brevity and efficiency. Legal readers, including all of the judges interviewed for this article, said they rarely want to read anything more than five-to-six pages, and shorter would be better.").

308. See, e.g., Blum et al., *supra* note 2, at 5 (reporting on a conference panel discussion on how to "maximize the success of new law graduates" and stating that participants suggested including "LRW course assignments that mirror the work of new lawyers (e.g., e-mail versions of objective memoranda or client letters).").

309. While most students do not ask for more work, this comment from a student evaluation in answer to the question "[w]hat would improve the presentation of the subject matter?" was succinct: "[m]ore writing assignments." Student Evaluation, Univ. of Dayton Sch. of L., to Susan C. Wawrose (on file with the author).

310. These can include E-mails, with or without attachments; client letters; oral responses; short informal interoffice memos; among others.

311. Longer memo and brief problems are often accompanied by detailed assignment instructions that may even include some course policies and submission instructions. While this may have pedagogical and administrative value in a course, assignments will likely never be delivered this way in law practice.

312. For a more in-depth discussion of how to give oral instructions and the benefits of doing so, see Todd Haugh, *'Get Real' Giving Writing Assignments*, 19 PERS.: TEACHING LEGAL RES. & WRITING 179 (2011).

conceived of, researched, drafted, and a sample answer of some sort must be prepared. Second, every (or nearly every) assignment needs to be evaluated in some way, if not comprehensively graded by the LRW professor.<sup>313</sup> And, on that score, even if a professor is not physically grading assignments herself, relying on teaching assistants or peer review can reduce, but does not totally alleviate, the burden of grading thirty-five to fifty additional submissions.<sup>314</sup>

Despite these concerns, I decided to experiment with incorporating four short assignments into my second semester first-year syllabus.<sup>315</sup> I wanted my students to become comfortable with producing assignments requiring quick turnaround. I also wanted them to produce writing in different formats and sometimes to produce it with minimal guidance from me as to what the “correct” form of the final product would be. While it is true that in practice one can often find a model to work from, it is also true that sometimes there is no model. Given a clear audience and a defined purpose, it seemed to me that second semester LRW students should be able to solve the problem of *how* to write a response, i.e., the form and format of the response, as well as deciding what that response should include. Based on my experience, I have found that using these additional assignments can be manageable using the following approach.

First, I decided to add the additional assignments gradually and to include them only in the first two-thirds of the semester.<sup>316</sup> Following the general rule that students should spend three hours on homework for each hour of class, I designed the assignments as “three-hour” research and response problems.<sup>317</sup> I assigned each problem in the first class of the week and had them due at the start of the next class. I told students expressly that they should spend no more than three hours on the assignment. If it took

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313. LRW instructors grade 1,480 pages of student work per semester on average. ASS'N OF LEGAL WRITING DIR./ LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY 77 (2012), <http://lwionline.org/uploads/FileUpload/2012Survey.pdf>. With class sizes averaging around forty students, the addition of even a few more pages to grade per student is significant. *Id.*

314. When “outsourcing” grading to teaching assistants or using peer review, I have found that setting up the evaluation by others is time well spent, but it is time spent. This may include creating answer keys, drafting questions and preparing worksheets for peer reviewers, spot-checking random submissions, and reviewing borderline work to determine whether it should receive credit.

315. Susan C. Wawrose, Univ. of Dayton Sch. of L., Legal Research and Writing Class Assignments (on file with author).

316. I frontloaded the assignments because they are low-stakes, and provide formative, not summative, evaluation designed to allow students to develop and practice their skills. I do not use them as a means of determining what the student has learned from the course overall. In addition, by the last third of the semester students are, rightly, focused on researching and writing a longer multi-issue brief, and I want them to spend their out-of-class hours on that assignment.

317. See, e.g., Carol Andrews, *Four Simple Lessons About the Needs of First-Year Law Students*, THE L. TEACHER, Spring 2012, at 4.

longer, they were to stop and consult with me, another student, or a course teaching assistant.<sup>318</sup>

Second, to prevent the assignments from becoming unduly burdensome to me, I relied on a research assistant to develop and research the issues. We discussed ideas for short assignments that relied on different types of authority (i.e., state and federal law, statutory, common, and regulatory law). She then test-drove the research, keeping a detailed research trail that included potential pitfalls. She also drafted assignment instructions and sample answers, saved all the materials on a flash drive in well-named folders and packaged the assignments in a tabbed binder with a table of contents. This way, they were ready to go without additional preparation later in the semester.

Finally, evaluating the assignments did not take long. The sample answer allowed me to quickly assess and comment on each student's response. For some assignments, I developed a one-page rubric; for some, I simply wrote margin comments by hand. Before returning the graded assignments, I took a few minutes at the start of class to project models of a particular feature of legal writing and to quickly point out where the samples were successful. Although, I did not use alternative types of grading, such as peer review or teaching assistants, that is certainly an option.

These "three-hour" research and writing assignments have several benefits. They give students additional research and writing practice without being overly taxing to students or professors. They allow for flexibility and variety in the way projects are assigned, in the assignment parameters, and in the type of feedback. They also require students to be more flexible, to apply general principles of clear, appropriate communication to different formats. But, one of my favorite reasons for using these assignments is the following: by asking students to think independently and to step away from the highly structured IRAC framework and memo format, they give a different group of students the chance to shine.

### *C. Research: Emphasize Strategy, But Keep a Close Eye on Results*

The employer focus group conversations on research left two resounding impressions related to research competencies. The first is that supervising attorneys rely heavily on new attorneys for research.<sup>319</sup> The second is that there is little expectation that new attorneys be able to

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318. This has not yet happened.

319. See Focus Group II, *supra* note 66, at 8 *ll.*30-39; Focus Group III, *supra* note 39, at 5 *ll.*2-11.

research in print.<sup>320</sup> With the exception of a couple sources, such as treatises and deskbooks, even supervising attorneys who have been in practice for several years admit to relying heavily on online sources.<sup>321</sup> And, as one attorney indicated, if nothing else, it is simply more cost-efficient to research online in the office rather than traveling to a law library that may or may not have up-to-date print sources.<sup>322</sup>

Taken together, these observations support a change in the focus of legal research instruction. While the scope of this article does not support a full discussion of a new paradigm, it does strongly suggest a shift in emphasis in teaching research.

First, the heavy, if not sole, emphasis of research instruction should be online. Although there are cries for the abolition of print research from the research curriculum, it may be premature in some markets to make the cut.<sup>323</sup> Indeed, I will likely continue to at least expose my students to some volumes, i.e. reporters, statute books, treatises, and restatements, at least for the next few years. There is, in fact, a history to legal research and many employers who were raised to rely on books for research are “historical artifacts.”<sup>324</sup> Thus, while there may be no reason to teach students how to research using the West Digest in paper, there is still utility in providing students with the awareness that the law library is one of the many sources for legal information. If nothing else, I would prefer that they first learn what a case reporter is from me, rather than from a supervising attorney.

Second, students must be able to assess the value and appropriateness of the online sources they use.<sup>325</sup> As Margolis and Murray point out in their recent article, students will find information when they research online.<sup>326</sup> Whether that information is valuable or reliable is another question. Thus, as a major part of research instruction, professors should be requiring students to verify that the source of their information is sound. Professors can do this by asking questions that force students to be conversant about

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320. See Focus Group I, *supra* note 66, at 7 ll.39-46; Focus Group II, *supra* note 66, at 8 ll.30-39, 31 ll.43-46, 32 ll.1-16; Focus Group III, *supra* note 39, at 9, ll.40-41.

321. See Focus Group I, *supra* note 66, at 7, ll.33-35, 8 l.10, 9 ll.12-15; Focus Group III, *supra* note 39, at 9 ll.39-40, 10 ll.40-45, 11 ll.1-2.

322. Focus Group II, *supra* note 66, at 31 ll.43-45, 32 ll.1-16.

323. See, e.g., Ellie Margolis & Kristen E. Murray, *Say Goodbye to the Books: Information Literacy as the New Legal Research Paradigm*, 38 U. DAYTON L. REV. 117 (forthcoming 2012).

324. See *id.* at 118.

325. *Id.* at 129-30 (identifying five principles for law student competency in research, including being able to “critically evaluate legal and non-legal information” (citing *AALL Law Student Research Competency Standards Task Force 2011 Annual Report*, AM. ASS’N OF L. LIBR. 1, <http://www.aallnet.org/main-menu/Leadership-Governance/committee/cmte-annual-reports/2010-2011/c-lawresearchcomp.pdf> (last visited June 14, 2012))).

326. *Id.* at 158 & n.228.

their choices: Where did you look? What type of source provided the research results? Who is the author? Is it law or commentary? Is the source up to date? How do you know?<sup>327</sup> The ability to answer these questions may be particularly important to new attorneys for two reasons. As some employers indicated, there is distrust among some more experienced attorneys of the newer sources<sup>328</sup> and particularly free internet sources.<sup>329</sup> In addition, experienced attorneys in our focus groups admitted that they rely heavily on new attorneys for their research expertise.<sup>330</sup> The burden falls, then, on new attorneys to not only “own the case,” but to own the research and the research process.

Third, since the online landscape is changing rapidly, new lawyers need to know more than the particulars of one database or online source.<sup>331</sup> And, LRW professors simply cannot provide instruction in all of the databases available. Instead, the focus of research should be on strategy and process.<sup>332</sup> Students should be trained with the understanding that online research will continue to change and be provided with the ability to assess newcomers to the online world as they emerge.<sup>333</sup>

Fourth, instructors should not be afraid to emphasize the right tools to keep research efficient and cost-effective. Employers acknowledge that they are concerned about the cost of legal research.<sup>334</sup> Google or Wikipedia may be appropriate for providing background information. To simply locate and read a case, Google scholar may be the best choice. Databases such as LexisNexis and Westlaw can be consulted for updating and furthering research. Students should be taught to begin by considering the purpose of their research task and then determine the quickest, least expensive, and most reliable way to accomplish it.

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327. Margolis & Murray provide a list of similar questions asked from the students' perspective. *See id.* at 154.

328. This may be because older attorneys were trained to research in a different era of research instruction. *See* Margolis & Murray, *supra* note 323, at 118.

329. *See id.* at 120 (defining the concept of “information literacy” as “the ability to identify what information is needed, understand how the information is organized, identify the best sources of information for a given need, locate those sources, evaluate the sources critically, and share that information.”).

330. *See* Focus Group I, *supra* note 66, at 7 *ll.*39-46; Focus Group II, *supra* note 66, at 8 *ll.*30-39, 31 *ll.*43-46, 32 *ll.*1-16; Focus Group III, *supra* note 39, at 9, *ll.*40-41.

331. *See, e.g.,* Vicens Feliú & Helen Frazer, *Embedded Librarians: Teaching Legal Research as a Lawyering Skill*, 61 J. LEG. EDUC. 540, 541 (2012).

332. *Id.* at 551, 557.

333. Margolis & Murray, *supra* note 323, at 130 (stating that “students should also be able to transfer skills used for one source in order to master new information resources”).

334. Focus Group I, *supra* note 66, at 6 *ll.*11-21; Focus Group II, *supra* note 66, at 12 *ll.*31-36; Focus Group III, *supra* note 39, at 8 *ll.*25-35.

Finally, accuracy and thoroughness in research is not obsolete. As the approach to teaching legal research shifts to accommodate an online research environment, the purpose of research should not be forgotten. Employers, and clients, are looking for the *correct* answer to a question. Thus, one aspect of legal research should not change: students should still be expected to carefully read, interpret, and analyze what they find. As one law firm partner put it: “[e]fficiency is important, but it is more important to get it right.”<sup>335</sup>

#### V. CONCLUSION

Staying current with the practice of law is an ongoing requirement for law professors who teach legal skills. Using focus groups to reach out to the practitioners is a rewarding way for professors to connect with the local legal community to learn from potential employers and make sure students are well prepared to meet employer expectations.

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335. Focus Group III, *supra* note 39, at 12 *ll.*25.