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NEWER SCHOLARS WORKSHOP

The Newer Scholars Workshop was hosted by Arizona State University, Sandra Day O'Connor College of Law, on May 15, 2024.

The organizers were ASU Professors Susan McMahon, Mary Bowman, Tenielle Fordyce-Ruff, and Alyssa Dragnich. The workshop was designed to support “newer scholars” as defined inclusively—particularly those who have written fewer than two full-length articles, but open to anyone who feels new to scholarship. The workshop began with a panel discussion about producing scholarship, including both how to think about legal scholarship and how to work through the necessary steps to produce it. This panel discussion is presented here as a lightly edited transcript. The remainder of the afternoon was devoted to giving feedback and comments to eleven newer scholars who had submitted drafts in advance of the workshop.

Participants and Moderator

MARY BOWMAN
ALEXA CHEW
MICHAEL HIGDON
SUSAN MCMAHON
SARAH MORATH

A. Introduction

SUSAN MCMAHON:¹

Greetings, and welcome to the Newer Scholars Workshop. Today, we are going to do what we, as a legal writing community, do best. We're here to learn from each other, support one another, and work together to build our skills as scholars. We're going to begin by hearing from some experienced legal writing academics about scholarship: what it is, why we do it, and how to do it well.

Let's start by defining that term "scholarship." What is it?² What counts as scholarship? What should you be thinking about as you're considering whether to engage in scholarship, and what kind of scholarship to engage in? Our panelists—Mary Bowman, Alexa Chew, Michael Higdon, and Sarah Morath—will each answer some of those questions and share parts of their scholarship journey.

B. What Is Scholarship? Why Write?

SARAH MORATH:³

The first question to be thinking about as you begin your personal scholarship journey is this: How might *you* define scholarship? And your answer is going to depend on two things. The first is your institution's definition and its expectations of you. The second part of the answer will be your personal goals as a writer. What do you want to write about? What brings you joy? Why are you going to engage in this endeavor?

I would encourage you all to first review what your institution has set forth in its bylaws as the expectations for your writing requirement.

¹ At the time of this workshop, Susan McMahon was a Clinical Professor of Law at Arizona State University, Sandra Day O'Connor College of Law. She has since joined the law faculty at the University of California—Irvine. Her scholarship explores legal bias, especially the criminal justice system's biases against individuals with mental health conditions.

² Defining legal writing scholarship specifically was the focus of an earlier issue of *Proceedings* entitled "[Defining Legal Writing Scholarship](#)." Law review articles have been written on the topic, and bibliographies of legal writing scholarship have been published, but the question issue lingers.

³ Sarah Morath is a Professor of Law and Associate Dean for International Affairs at Wake Forest University School of Law. She teaches legal writing to JD and international LLM students and an upper-level legal writing course in environmental justice.

What is your obligation? What is your dean, and your associate dean, expecting you accomplish? Also, be thinking about whether you might get compensated for your scholarship efforts. Writing takes a lot of time and energy, so the possibility of getting paid extra is something to be considering before you engage in developing your scholarly agenda.

Second, I'd recommend thinking about the personal aspect. What are your professional goals? Are you a Visiting Assistant Professor who will soon be searching for a long-term academic position? Or are you in a short-term, contract academic position, seeking a position with more status and job security? Do the institutions that you're looking at require scholarship? A key consideration is how you want to develop in your career as a legal writing professor. Do you want scholarship to be a part of that that package? Or are you more interested in focusing on teaching and having scholarship as something additional? Because scholarship takes a lot of time, you want to think about the role you want scholarship to play in your life now. This might not be the season for scholarship, but in the future, you might have an opportunity to engage in scholarship. We all have personal obligations, so think about how scholarship is going to fit in your life in the long term.

After addressing those two big questions, you want to think about (a) the type of publication where you're going to place your articles and (b) what topic you are going to write about. Obviously, the law review is what we're all familiar with. If you served on a law journal in law school, that venue is very familiar to you. You might consider peer-reviewed publications like the *Journal of the Legal Writing Institute* or *Journal of Legal Communication and Rhetoric: JALWD*, or venues for shorter pieces, like *The Second Draft* or *Perspectives*. You might think about monographs or textbooks. Or perhaps ABA and state bar publications, or op-eds and essays. All of those are scholarship in my mind because I take a very broad view of scholarship. But you'd want to make sure that each of those aligns with your institution's expectations and your goals.

Next, consider broadly what you want to write about. Articles and books have been written on pedagogy, the legal profession, technology in the law, the law school experience, storytelling, narrative and persuasion, and production of legal documents. Those are all broad categories of scholarship you might pursue.

I want to explain my journey, what I write about, and where I've published my scholarship. I recently received tenure, and in my last job search, I was seeking a tenure-track position. Much of my motivation for engaging in scholarship was to seek and acquire a tenure-track position. I had previously worked at two institutions where writing was encouraged, but not required. While I was in those positions, which did not require writing, I continually wrote because I wanted to become known for my expertise in an area of law. I wanted to make connections in the academy. I was engaging in writing and preparing for an eventual transition to a tenure-track position. That's what motivated me personally, but that doesn't need to be your reason for writing, as you'll hear from others soon.

For topics, I often write about environmental law, although I also write about what is happening in the legal writing classroom. I have a master's degree in environmental studies, so it's natural for me to think about and explore topics in environmental, food, and animal law. In addition to legal writing, I teach an animal law class as well as an environmental justice class. Those are all sources for my scholarship.

As for venues, I've written several law review articles. So, I've done the traditional law review route. But I've also spent a lot of time writing op-eds for newspapers. I've written a couple of books: one I edited, and one is a monograph I wrote on plastic. I've written two book reviews. I've written some shorter pieces for online journals and for some of our legal writing publications—*Perspectives*, *The Second Draft*, and *Proceedings*.

In addition to satisfying my tenure-track requirements, another component to why I engaged in scholarship is the very academic

component to writing. I think that when we write, we become better teachers of writing. We just become better at our craft. When we're engaging in the act of writing, we gain insights, tips, and tricks from the very exercise of writing. Sometimes, too, my writing serves as a source for assignments, exercises, or examples in my legal writing classroom.

Like me, many legal writing professors teach upper-level writing courses. We might teach a class in scholarly writing or an upper-level writing course in areas related to our own scholarship. In the second example, our writing helps us answer student questions about writing because we are actively engaging in and answering those questions for ourselves. What does a good thesis statement look like? What makes for good organization? How might I be more persuasive? As writers, we become better teachers and share our expertise with our students.

MICHAEL HIGDON:⁴

The reason I started writing wasn't very noble. I was teaching in a position where I was contract faculty, and there were disparities in status. These disparities were always justified by the scholarship of the tenure-track faculty. As a result, I internalized the idea that "Wow! Scholarship must be this impossible thing that they're doing. And thank God they get paid so much more money than me to make up for the pain that they go through." Then, at one point I thought, "Well, I'll just try it." And it really wasn't that hard. That demystified the process for me. I'll be honest. At first, I didn't like writing. For a few years, I was just thinking, "Well, I'll show you that I can do it, too." And then I came to love it.

I love it for two reasons. One, as Sarah said, is that I do think it makes me a better teacher. I like writing about the things I teach that I find interesting or even weird. Delving into those things makes me teach

⁴ Michael Higdon is a Professor of Law and the Interim Associate Dean for Academic Affairs at the University of Tennessee College of Law. He has been teaching legal writing for twenty years and has published articles in journals such as the *Alabama Law Review*, the *Duke Law Journal*, and the *Iowa Law Review*.

them better. But I also just find it cathartic to really spend this time exploring such issues. I love that, as academics, we have this ready-made platform of law reviews that will publish what we write. I don't know how many people read what I write. I imagine it's not many. I think even my mom lies when she says she read my latest article. But it feels good to me to know that I wrote something that is out there in the world to be read.

ALEXA CHEW:⁵

I am not in a tenure-track position. And for personal reasons, I'm committed to staying where I am, at least for the next few years, so my main motivation for scholarship is not that I'm planning for a move. In that sense, my journey is different from Sarah's and Michael's. But I started writing, in part, for some of the reasons that Michael did.

My law school now compensates non-tenure-track faculty for writing scholarly pieces with the same bonus summer money as the tenured and tenure-track faculty receive. We have parity in that compensation. We also have access to research assistants and library assistance, which we didn't have I when I first started at my school. To get the bonus and the assistance, it took a few years of people writing—doing the work and showing, “Hey, look! I'm publishing books and law review articles.” Some of those early years of my writing were, to some extent, about proving myself. Other people on my faculty who are not actually any smarter than I am were getting paid to write, and I want to get paid as well. Now we're recruiting new legal writing professors, and they want to write, too. And these colleagues who are coming in, whoever we're going to hire in the future, they should all have access to the same compensation and resources as well. So, those are all external reasons for why I am writing.

⁵ Alexa Chew has taught legal writing at the University of North Carolina for twelve years. She has co-authored two legal writing textbooks and writes scholarly articles about legal citation, legal style, and law school pedagogy.

And what am I writing? Because there's no expectation of scholarship, and it's not a part of my promotion or contract renewal process, my law school counts my scholarship as service. I have plenty of other service, so I don't need publications for that. But the situation does give me a fair amount of freedom to just write about whatever I want to write about, and to publish in whatever venues I want to publish in.

My first few articles I published in traditional law reviews because I wanted to know what that was like. And then I decided I really wanted to experience working with my peers in the legal writing community. And so, the last several big things that I've published have been in legal writing journals where I've gotten to work with editors who are my legal writing colleagues, who do what I do in the classroom and have the same kind of expertise in the subject area. That's been different and fun, and it's been a great way to connect with people I don't know as well. Sarah mentioned this idea of using scholarship to make connections, and I have really found that to be true in a way that just focusing on my teaching has not. Our conferences in the legal writing field are primarily teaching-focused, so there are always opportunities to talk about teaching and learn about teaching, and really connect about teaching. But I find that a scholarly connection is a little harder. Without the conference venue, it's harder to get into a scholarly relationship with somebody—whether that's about subject matter or with somebody where you like to read each other's papers or bounce ideas off each other.

And then, to echo what Michael and Sarah said, we all get better at what we're doing through that process of writing and having to focus our thoughts and get them into those formats that we need for publication. Doing that kind of work, in conversation with other people, is for me intellectually very stimulating. I'm lucky I have other people on my faculty who also write, but I also jump at every opportunity, like doing this presentation because I got to talk with Sarah, Michael, Sue, and Mary. We had a pre-presentation call, and it was exciting to hear how other people

do their scholarship. Even though I admitted, “I’m Alexa, and I’m a chaotic writer,” it was refreshing to hear another writer say, “I’m also chaotic!” and talk about our different approaches to chaos.

MARY BOWMAN:⁶

I came at this discussion of scholarship fighting for status at the institution where I previously taught. Once we got the opportunity to be tenure track, I thought, “Oh, now I really must do the writing!” I had some partial things in computer files and started to write. Then, I started thinking about the list of things that Sarah went through, and I got overwhelmed. When I began writing, I had all sorts of different people’s voices in my heads, and it was incredibly frustrating. I worked through it, and we can talk more later in the session about my process, but I just want to flag that.

You are not alone if you are feeling frustrated by trying to write and maybe doing it for more extrinsic motivations rather than intrinsic motivations. It doesn’t have to stay that way, as it didn’t for me. Now writing is one of my favorite things, and part of why I changed schools is that I have more time to do scholarship, and more of a forum to do it and do it well. But I’m also happy to chat with anyone one-on-one, if that’s you because that certainly was me. Now I love it, but that’s not how I started.

C. Stages of the Writing Process: Idea Generation

SUSAN MCMAHON:

Now, we’re going to walk through the different stages of the writing process and solicit some ideas from these accomplished scholars about how to do each of these stages well. We’ll start with the pre-writing stage. And, Alexa, I want to target this question at you. How do you come up with

⁶ Mary Bowman is a Clinical Professor of Law at Arizona State University, Sandra Day O’Connor College of Law. Broadly speaking, her scholarship focuses on how we make decisions, particularly how cognitive biases and rhetorical choices affect that process. More specifically, she writes about legal education and law student learning, search warrants, and racially biased prosecutorial rhetoric.

ideas? How do you research ideas? How do you stick with ideas when you're in that pre-writing phase? What are some strategies that have been successful for you?

ALEXA CHEW:

I tend to get ideas from things that come up when I'm teaching. My first law review articles were about citation and teaching citation because I had a lot of thoughts and feelings around teaching citation; the traditional approach didn't seem right to me. It seemed like there could be something better. And that kind of feeling is often where my idea kernels or idea seeds come from.

In addition to coming from teaching, my ideas can also come from reading what others have written. A crucial part of writing scholarship is first *reading* scholarship. There's so much written in the legal writing field, and also in other fields where you might be writing legal scholarship. As I'm reading, I'm not only absorbing the information, but also asking if I agree with it. There's a point of view in what I'm reading. Do I agree with it? Do I think that an inference that's been drawn is wrong? Is there a question I have that hasn't been answered? Those are the places where my ideas come from.

I tend to be a person who has too many ideas. I think of ideas for scholarship all the time. I might be in the carpool lane, and I cannot record my ideas, so hopefully, the better ideas come up multiple times. Honestly, that's my sorting mechanism: if I've thought of an idea multiple times, enough that I remember it, then it's a keeper. Some people keep a journal or a spreadsheet as ideas come up. Then, as they're reading something, and they're having another thought they might remember, "I feel like I had an idea about that." With a journal, they have a way to check and keep track. It's also a way of tracking trends. Do I seem to be gravitating towards the same topic or the same question? Is this the same issue that seems not quite right, or is information missing?

As I alluded to before, I'm a messy, messy writer. I'll have an idea and decide I want to read everything that's ever been written that touches the idea. I go on SSRN, and I download a thousand articles. But instead of labeling the articles, maybe making a spreadsheet of the articles I'm going to keep, I just start randomly clicking in my downloads folder. It's terrible, but I do get through a fair amount of material that way, and I find pieces that I want to come back to. I might print out key articles or maybe label the file. Admittedly, there are neater ways of doing that initial research that are probably more efficient, but this messy process can lead me to yet another question, and I find connections among articles and my ideas.

And then, sometimes, I might just follow one idea, one author, because sometimes people will write on the same topic repeatedly, looking at different aspects of the same question. With some authors, I find everything they write is so interesting to me. When I find an author like that, I'll just read everything they've written. That gives me a lot to think about.

My research trail is messy, but I like to see what else is out there and then refine my question. It's like we teach students with regular, practical legal research: You get started and then ask where else you might want to look.

MICHAEL HIGDON:

Like Alexa, I'm a big fan of reading. I almost always have a binder of articles I've printed out to read. For example, right now, I want to write something on pre-nuptial agreements and the intersection of contract theory. But I don't know much about contract theory. I just think that sounds like a cool topic, and I want to learn more about it. So, I know I need to read a lot. When I have a free moment here and there, I'll do some research, and when I find things that look interesting, I'll print them out, and when I have a chance, I'll read them and highlight points I find interesting or that advance my understanding or knowledge. When I go

into a new article, I often don't know what I'm going to say about an idea just yet, and I probably won't for a while. Beginning a new article is like this leap of faith: I'm writing the piece, and I still don't know what my thesis is, but it's going to come. But I begin by reading all those articles and figuring out, "Where is there an opening for me to add something?"

One other great place to find ideas is through the law library at your school. I've asked librarians to send me law journals as they come out from different schools. I used to get the top 100 journals sent to my office, and I would peruse the student notes. These are short pieces that students have written, and often, they have a really good idea for a full article that you can develop. You can also then cite the student's work, which is lovely for them.

Lastly, I think new scholars are too quick to feel preempted. They choose to write on a topic, but when they find even one somewhat-related piece, they jump to the conclusion that someone else has already written about the topic, so they can't. However, I think it's rare that you're truly preempted, even if the other piece is very similar. It could have been written many years ago. Things change, and it's helpful to know how this idea has played since the last time it was written about. Or you're viewing the topic through a different lens—for example, feminist jurisprudence or law and economics—which is an easy way to pivot. Or you're just going to write about the topic differently, in your own voice. In other words, I don't know that preemption really exists, unless you find that just six months earlier someone wrote the exact same piece that you want to write. But that's just rarely the case. I have experienced this feeling many times when I'm reading something, and fear, "Darn it, I can't write that!" Almost always, if I put that piece aside for a couple of days and come back and read it again, I'll see that my piece is a little bit different.

MARY BOWMAN:

I wholeheartedly agree both that reading is key and that preemption is not really a major concern. One of the things that got me out of scholarship paralysis was the idea of scholarship as joining a scholarly conversation. You don't have to have all the answers. You don't have to say all there is to say about a particular topic or area. You just want to join the conversation—contribute to the body of scholarship in a particular area and add something to it. Thinking about scholarship that way helped me get past feeling like I was doing it because I had to, and instead made me want to write to contribute to conversations.

My process is a combination of Alexa's and Michael's in terms of lots of reading, lots of notetaking, and seeing how my thinking evolves. Often, I'm not coming in with a thesis. Instead, I start by seeing what ideas are out there, what other people have said, and that begins my train of thought of figuring out how I can contribute. What's my perspective that that adds something to the conversation?

In terms of idea generation, some of my early pieces, for example, my interest in search warrants and prosecutorial rhetoric, came out of cases that I was teaching in the legal advocacy class at Seattle University. We used cases that were pending in the Washington State Court of Appeals to generate course content, using real records and real legal advocacy problems. Throughout the course, certain topics related to search warrants and to prosecutorial misconduct kept coming up because what the lawyers were doing was problematic. Then the courts were doing things that I thought were problematic analytically. So, that idea of "something feels wrong here" can come not only from reading existing scholarship but also from what we teach.

Another thing about idea generation is that, every time I started to write in a particular area, I've started with one slice. And sometimes what I write is that slice. Or I start thinking I'll write about one slice, but it keeps morphing and I write about a different slice. What I think is an individual

project almost always turns into multistage projects. As an example, I'm currently writing on racially biased prosecutorial rhetoric, which started as a carve-out from an article I wrote about appellate review of prosecutorial misconduct in closing arguments. In that earlier article, I noted that I wanted to think more about whether racially biased arguments should be treated differently. That topic I initially carved out has turned in to two articles, with about four more in the works, because as I get deeper into the topic, I find that I have more to say. My advice to new scholars is to find something that interests you, find something that you have an instinct about—that something is wrong or missing—and then follow the trail from there.

SARAH MORATH:

Again, I want to echo what others have already stated about this fear that you've been preempted. One suggestion I have for my students when they're writing their scholarly articles is that their thesis can just be, "This article adds to the discussion" and saying in what way. Another suggestion is to limit the thesis. The thesis can say, "This article does not address . . ." and name an area or issue that is too big to be covered. That relieves a lot of stress and anxiety up front.

Let me offer a few more ways to generate ideas. If your law school allows you to hire research assistants, they are excellent for the pre-writing stage because they can read those articles that you've downloaded and summarize them for you. You can then go back and read the summaries and decide which articles to spend a little more time on.

Next, I love following trends. I tend to write about very timely environmental law issues, so I often consult daily news reports on these topics. There's a news tab in your Google Search Bar, and you can type in your topic and get news items related to that topic. That's a good place to find ideas. Right now, my trend is looking at an attorney general's role in environmental protection because I'm seeing a lot of attorney general

action towards climate change and towards recycling and plastic pollution. That becomes my idea. What am I going to say about that? I don't know yet. I've sent my RA to look at these cases and see what I can distill from there.

Finally, SSRN has a tool that can lead to ideas. "Digital Commons Networks" sends regular alerts (e.g., weekly or monthly) for recent articles that have been uploaded to SSRN in disciplines you have preselected. Reading those articles might spark ideas.

D. Stages of the Writing Process: The Writing Phase

SUSAN MCMAHON:

Next, let's turn to the writing phase. You have your idea. And you're now putting pen to paper. Mary, what are some suggestions for that stage of the process?

MARY BOWMAN:

When we had our pre-presentation call, one thing that came out was that there is no perfect process for writing. We each apologetically described our process, admitting that it was our approach, but not really a model. I think that's actually a very important message. There is not one perfect process. It doesn't have to be a perfect process.

For me, I don't have a sharp line between pre-writing and writing. I tend to take a lot of notes as I'm going, some combination of outlining, paraphrasing, saving articles, categorizing, and moving them around in folders. As I take notes on articles, I indicate which I have read and taken notes on versus articles I still need to read in a particular topic area. As I work through the research, I tend to pull big chunks of block quotes from things I'm reading that I think are interesting and that I want to sit with and review later.

When I'm really in the middle of a project, shifting from the pre-writing into the writing stage, I tend to have a whole bunch of different Word documents, each one with notes on a different aspect of the topic.

That approach lets me drill into each idea separately, without getting lost with too many pieces together. That's when I'm doing synthesis, when I'm figuring out where to put things. In contrast, for a couple of articles, I had one long 200-page document. Having everything in one long document was terrible. So, I prefer moving ideas around, breaking things down, and synthesizing by topic as I'm going.

I tend to outline after I have a bunch of notes of the sort I just described. Even though I tell my students to outline, I find that I struggle with outlining my longer articles. I outline, and then I decide the outline is terrible, so I outline it a completely different way. And I do that two or three more times and then think, "Oh, please, I may as well just start writing." So, I start writing little pieces of it, and eventually I get the whole thing written. Almost inevitably, I look back and realize that none of those draft outlines were the right outline. Once I've written the article's first draft, I can see where the pieces go, and then I spend some time reorganizing and reworking the draft into the right structure. I envy those of you who can write a good outline initially, and my messy organizational process always renews my empathy for my students who struggle with organization.

The writing process that works for you will affect how you find time to write. I tend to want more than just a morning here, an hour there. I like to have carved off bigger blocks of time to really make the big shift from the messy prewriting phase into starting to turn things into an article. Those big blocks of time are hard to find, so I do as much as I can in the prewriting stage, which I find is easier to break into smaller pieces. Some people are much more disciplined than I am, and write every day, or write one day a week consistently. I find that to be hard with the rhythm of our semester and with the rhythm of grading. That means I tend to be a feast-or-famine writer, but it requires me to chip away at small pieces in the prewriting stage.

Another topic is getting feedback, finding the right time for feedback. Sometimes it's earlier in the process than when you have a full draft. The last piece I wrote, I got stuck writing and rewriting the first five pages several times. Then I participated in an ALWD Scholarship Workshop, where I talked through the article and got unblocked. After that, I wrote the whole piece in two weeks.

Feedback is valuable later in the process, too. I usually don't want people to read my very messy, shifting outlines and early drafts. At the end of the semester, when I've had a block of time to clean up the piece, then it is helpful to get additional feedback. The key is to try to find people you can get feedback from at various times. Again, there's variation in the process, and not one size fits all, even for the same person who is writing different kinds of pieces.

ALEXA CHEW:

I'm a messy, chaotic writer, and very much identify with Mary's feast-or-famine approach. In my mind, I like to think that I'm a person who is disciplined, that I write every day, that I have word count goals. But that's not actually how it goes for me at all. Instead, if it's the right season, and there's a good rhythm, then that's when I'm writing. I find that even with my prewriting, I'll be doing a lot of thinking for months, months, years, and then my actual writing will take two or three weeks. But for all that "prewriting time," it's just all the thinking, all the reading, for maybe a very long time.

I like to print and highlight, especially papers that I'm going to be looking at a lot. Sometimes I'll highlight in a PDF, and then I can use my PDF reader to give me a kind of summary—it'll just read the highlighted portions. It also works for comments I wrote while I was reading. It's important that I can see the thoughts that I already thought, because if I don't write them down, they're gone until they occur to me for the very first time the next time.

I want to touch on two very concrete things that I also find work well for my not very linear writing process. One is this concept of the “tk,” which is a way to mark words for me to fill in later. That combination of letters doesn’t occur very often in English. So, typing it in while I’m trying to get a draft done gives me an easy way to control F and go back to the spots I need to fill in. For example, I use “tk” with placeholders for myself, like, “write amazing roadmap paragraph here tk.” Then I can keep going; I can’t write that roadmap yet because I don’t know where I’m going with the article, but I’ve left a placeholder. Or “great topic sentence here tk.” “Give example from Sue McMahan’s article here tk?” And then I can go back to it when I have a chunk of time.

Another concrete suggestion is to do a reverse outline. It’s something legal writing professors know because we ask students to do them—take your draft document and extract the key ideas to create an outline. I find this super helpful to do myself with my own writing, but it’s also a helpful but low effort way for someone to give you feedback. I have a writing partner who will look at my absolute garbage, early drafts. She’ll just skim through, make a quick reverse outline for me, and start explaining it to me. Then I say, “Oh, oh, that’s here, and that’s there, and I see it now.” And I can move things around. If you’re a good initial outliner and that works for you, you don’t need this tool. But if you make a big mess when you write, and then you need to take the mess and make it great, then a reverse outline helps.

SARAH MORATH:

Sometimes you must write because you have a deadline. An example for me was when I had a book deadline. Writing the book had to become part of my life. I got up every morning very early, and I just wrote what I could before anyone else got up. I had to do that for a year of my life, and that was a crazy year. That was a deadline-imposed environment, and I don’t recommend it all the time! But I do think that sometimes,

having that external pressure is helpful. A less intense deadline is presenting on your topic at a conference, which gives you an external date. That date in the future that you're working towards can force you to write along the way.

Attending writing workshops provides a communal exercise where you are writing and finding someone who you feel comfortable sharing your ideas with. Alexa and Mary noted that we have a very supportive legal writing community, so please take advantage of all those writing workshops that are available. You can also think about workshops or colloquia at your own institution, or something very informal. At Wake Forest, we organize little retreats where we write at a more fun location than the law school, where it's quiet, and you bring snacks, and you agree to write for two or three hours in the afternoon, and you block that time. And you're with other people who are writing, so you're getting some good energy that way.

Finally, try thinking about the long term with little projects along the way. What is your goal for this project? Is it going to be a law review article? Is it going to be a book? And are there little things that you can do along the way that keep your interest in that topic or that just keep you writing? If you stop thinking about it or working on it, you'll lose it. So, I always think of a small project I can put out there that's going to have me practice my writing, my editing, and my concision. This little project is not going to be such a time suck as a law review article, but it's going to help me get to the final goal of a law review article, maybe an opinion editorial, writing for the Hill, or writing for the Conversation. These are shorter pieces that I can do in two weeks that might be 800 to 1,000 words in length.

Working on a small piece like that keeps my name out there. It keeps me interested in the idea. It keeps me on top of the research. And it provides content that I can add to the final product because I'm becoming more of an expert on this topic as I work on it. I really had to do that for

my book on plastic. I was getting so sick of plastic. To get me started writing about the global plastic treaty, I wrote a little op-ed on the treaty, and that led me to write my chapter on international law, even when I was sick of it. Having these little building blocks along the way helped me get to the to the finish line. A smaller piece makes you feel like you're getting somewhere. You publish this now, and then do that longer piece later.

One final comment is that sometimes your ideas need to germinate for a while. Here's my example for this: I was writing about organic regulations before the pandemic, and then I got sidetracked. I got an invitation to write the plastics book, which I published in 2022. I finally published my organic regulation piece in 2023, meaning the idea had been around for maybe five or six years before it finally got out there in law review form. So, don't be discouraged if you get sidetracked. Even if you want to write about a topic, now might be the season to write about it. You may have to table that idea to put your energy and effort into another project, trusting you will have time on day to return to that original idea. Maybe the idea is a little bit different when you come back to it. In my case, there was new statutory law that had been introduced that needed to be discussed, but the same point that I wanted to make with the piece was still there.

SUSAN MCMAHON:

Michael, I want to hear your thoughts on writing. But I also want to ask you about the post-submission process. So, in the interest of time. Do you have tips for both of those aspects of the writing process?

MICHAEL HIGDON:

I have two quick tips for the writing process. One is, I don't cite while I'm writing. Now, there's an obvious risk to my approach because when I finalize the piece, I may wonder, "Who said that? Where?" But citing breaks my flow as a writer, and I want to get the article done sooner

rather than later. So, the best tip I have for writing is getting momentum. It's like when you're grading 30 papers. If you haven't graded any, you really don't want to start. But once you've graded 25, you realize you just need to do these last 5, and you'll typically be quite motivated to finish.

My second tip is to begin with the background section of the article. When I write an article, I think a lot about the background section. I typically write that first because I don't really have to do much thinking to draft it. For instance, my first article was about intestate succession and how it's a mismatch with family models outside the nuclear family model. I knew there was going to be a section on what intestate succession does in the family and a section on the various family models. I spent months writing those sections first, like a book report that I would have written in college. I'm explaining what others have said, I often don't have to have any original thoughts (other than synthesizing these resources). However, when I finish that section, I have twenty pages already! Now let me just add my thoughts on the topic, and I'll pretty much be done! At least that's how it feels.

E. After Writing: How and When to Submit

MICHAEL HIGDON:

Now let me move on to post-writing, as Susan mentioned. This is what you do after you write your article. I like talking about this phase because a lot of legal writing faculty simply don't get mentoring on this crucial phase.

First, you should clarify what your goal is. Even if your goal is just to see your name in print, and it doesn't matter where you publish right now, I would encourage you to aim a little bit higher. Your goal could change. If your goal is getting a certain job or getting tenure, it's going to matter where you place this piece. Even though many people may not read your piece, they are going to read your resume, and they're going to judge you based on where the piece is placed. Is that smart? No, it's extremely

short-sighted, but that is the world that we live in. Where your piece gets placed is often not entirely meritocratic (and sometimes not at all), but people in the academy often act like it is. I'd really like to say just ignore that nonsense, but the truth is, it matters a lot. It was important to me in the career path that I took. While it may not seem important you now, it's rare that a stronger placement is not going to help you. So, if you're thinking you don't care, then I would encourage you to really think long and hard about that.

Here are some things you can do to maximize where your piece gets placed. When you send it out, make it perfect. I know people who just casually pitch an idea to see what law review wants it. No, don't do that! If you are new, or you are at a school that's not "fancy," or you don't have a fancy title, your piece needs to be perfect. It needs to look ready to print when you send it out. That's what I strive for. Every citation is done, and the article is formatted in a law review format.⁷ You want the editors to open your piece and think that it is ready to print right now, meaning their job to get it ready for publication is going to be easy.

Substantively, make sure some people have seen the piece. I would make sure several people have seen it whose names are impressive, and I would thank them in the first footnote, so that the law review editors are impressed that these people have read this piece. If it sounds now like I'm talking about marketing, I am. Publishing your article is a marketing exercise at this point. A lot of people are uncomfortable with that, and I get it. But it's the reality of academic publishing.

There are other ways to make sure your submission is competitive. Your article should have an abstract, and the abstract should be compelling. Your submission should have a cover letter, and the cover letter should be compelling and should communicate the following: (1) This article is timely. (2) This article is important. (3) This thesis is novel. (4) I am someone with expertise in this area. Why am I saying all

⁷ Eugene Volokh created a template (which you can Google) to put your piece in law review format.

this? Because most law review editors are going to read either the abstract or the cover letter. Maybe not both. And they're often going to decide whether to pass your piece on to the next level review based on those materials alone.⁸

In terms of timeliness, I usually like to start with something in the news that's arguably related to what I'm talking about in the article, trying to communicate that my thesis is relevant to current events. I'm happy to send samples of my cover letters to anybody. In terms of why your piece is important, show why the very interesting thing you chose to write about is meaningful or has an impact. And, you want to convince law review editors that your topic is novel. To help do that, in every one of my cover letters, I have a sentence that begins "This is the first article to do X." I think it's important to frame the piece that way for the editors — it's also powerful for you to see what it is specifically that you're doing, especially if you're worried about preemption. In terms of expertise in the cover letter, you can mention that you have taught this subject before or have written on this topic before.

Let me revisit a few things we've talked about already that you can do to promote your piece. You can put it on SSRN if you want to, and you can start to get downloads, which can indicate interest in the topic. Some people at my school put a piece on SSRN, and then they promote the heck out of it to get a high download count. They mention that count in the cover letter to journals. Another thing I do is write the piece and send it to law blogs devoted to my area. When I send it to the blogs, I note that I've just recently written this piece, and say I'm sending it along in case they want to mention it to their readers. Then I can in turn tell law review editors that my piece has been featured on these blogs. Basically, I think promoting the piece is good.

⁸ Please let me pause and say I'm largely talking about general law reviews. I'm not talking about our wonderful legal writing journals, which I have not published in much, largely because I think those submissions are much harder to do. It's much easier just write an article on what the Supreme Court said, argue that it's a bad decision, and get that published somewhere in a general journal.

The CV you send out with your article, abstract, and cover letter is important as well. I have a CV that's different for article submission. I think law review editors can be a little insecure about the decisions they have to make (and no one's ever said I was wrong to think so). Thus, they're looking for ways to justify the decision to publish. They're looking for specific criteria they can point to showing why they accepted this piece. I want to give them those things. The biggest thing you can do, and this may not apply to you yet, is to list your past publications. When I send out an article, the very first page of my CV lists past publications. Normally, I wouldn't do that on my CV. Also, I put where I got my JD later because it's simply not impressive to law reviews. Now, it should be because I received my JD from an amazing school. But in terms of law review editors, it doesn't speak to them the way Harvard or Yale does. So, think about what you have going for you, what speaks very highly of you, and put that early on your CV. These student editors are going to look to such things to help ensure you are someone whose work they can trust.

Next, when to send your article out? For general law reviews, there are two submission seasons. First, there's August and the first half of September. Second, there's February and the first half of March. The August season is kind of dead. By that point, a journal is likely to have only one or two spots remaining, and if they have already agreed to publish anything close to what you've written about, they're not going to accept your piece, too. That means most people I know don't submit in the fall anymore, or they do it realizing that if they don't get good offers, they'll pull the piece and resubmit in the spring.

The spring submission season is better. Each law review has a whole new editorial team, their issues are empty, and they're trying to fill them. The problem is that you're dealing with law review editors who are brand new to their job, and they're looking for the most perfect piece out there. Thus, they usually start off rejecting most pieces as not good

enough, and then they realize that perfect is too high a standard; they then begin to accept more.

F. Expedited Review and Student Editors

MICHAEL HIGDON:

One of the things we have to deal with in publication of law review articles is “expedited review,” also called “trading up.” It’s a gross process. What happens is you get an offer from one journal, and then you contact journals that are ranked higher,⁹ and you say, “Hey, I have this offer and my deadline is this, but I’d really be interested in publishing with you. Would you like to make an offer?” And the reality is, you almost have to engage in expedited review. I say that because some journals won’t even look at your piece until they get an expedited review request. Why do I say it’s gross? Because it disadvantages those journals that are kind enough to accept your article without an expedited review. But I digress.

Working with student editors is always fun. If you do end up having a disagreement, keep in mind that you have more power than you know. You don’t always know that dealing with the editors. They will write back and want you to change a lot of things (and that can happen at the acceptance stage or later in the editing process). You can generally say no to that. I don’t mean to beat up the editors. Indeed, I think they do a wonderful job for the huge task that we put on their shoulders.

You will sign a publication agreement about your piece. One thing to note is whether you get to keep the copyright in your piece. Historically, it’s been quite common that you get to keep it. Now, some of the journals are not doing that. I think it’s important because, as Mary was saying earlier, sometimes you write one piece and you’re going to write several more in that same area. You want to know that you can use portions of that first piece in subsequent pieces without having to worry about a

⁹ Among ways law journals are ranked is the [scoring](#) produced by Washington and Lee University School of Law.

journal holding the copyright. We've had some authors on my faculty who have been asked to sign over the copyright per the agreement. But they have pushed back, and the journal relented.

G. Peer-Edited Legal Writing Journals

MICHAEL HIGDON:

I know we want to address peer-edited journals in legal writing, but I'm going to kick this topic to my co-panelists because I published one piece in the ALWD journal,¹⁰ and it was quite small. I haven't worked with peer review as much as others, and those journals have wonderful editors. I'd love to hear others talk about how that's different from publishing with student editors.

ALEXA CHEW:

I've published pieces in the *Journal of Appellate Practice and Process*, which is run now by legal writing faculty at the University of Arizona, although I worked with the prior set of editors at the University of Arkansas-Little Rock. I've published two pieces with the ALWD journal, one with the LWI journal,¹¹ and a shorter piece with *Perspectives*,¹² which is one of our discipline's journals that publishes shorter pieces. I would say that the big difference has been the level of involvement with the editors. For some of those pieces, the amount of substantive conversation that I was having with the editors was pretty high. The article I published with the *Journal of Appellate Practice and Process* was an empirical piece with lots of numbers and tables of data. The main audience for that piece is practitioners and judges. And so, the editor there was really focused on the best way to present all the information in ways that fit that audience best. The editor, because she had been the editor of that journal for so long, had many helpful substantive questions. My co-author and I didn't agree on all

¹⁰ *Legal Communication & Rhetoric*: JALWD is published by the Association of Legal Writing Directors and sometimes referred to as JALWD or the ALWD journal.

¹¹ *Legal Writing: Journal of the Legal Writing Institute* is often referred to as the LWI journal.

¹² *Perspectives: Teaching Legal Research and Writing* is published by Thomson Reuters.

the editor's suggestions, but it was useful to get these very particular questions that I don't think a student editor would have asked.

With the most recent piece I published with *J.ALWD*, I did the thing that Michael said don't do. I sent the piece when it was 80% finished and told them how good it was going to be, even though it wasn't yet. This was another empirical study that was still messy, and I was still deciding which way to take it. I was honest that, if the editors accepted it, the editors would help me with that decision. Fortunately, I was paired with somebody whose writing I really admire and who publishes in that same area, Amy Griffin at Georgetown. I feel bad that the article is only under my name because in so many ways it seemed like we were getting to almost a co-author relationship. She recommended ways to adjust the methodology and offered some different ideas about places to take the data. And I did a lot of what she recommended.

I had already rewritten that piece numerous times before I submitted it, but working with a peer editor was like I just started over. After I worked with her, it was still the original piece that I had thought of, but it was so much better and deeper and richer because I had worked with this person who was one of the few other people who writes in that area. And it was awesome. It was so much work, way more work than when I work with student editors who suggest adjusting the citation or fight with me about whether to capitalize the letter after a colon.

H. Community Resources for Scholarship

SUSAN MCMAHON:

I know there's so much more to say, but we're starting to run short on time. And so, I have one final question before we open it up to others to ask questions. Alexa, this one's for you. What are resources that our colleagues have here in the legal writing community to help them with scholarship?

ALEXA CHEW:

Obviously, there's this workshop you're at right now. There are a good number of these scholarship workshops aimed at different slices of the legal writing community.¹³ Probably every quarter there's at least one that you could participate in, and they're posted on the LWI listserv.

Next, we have the LWI Conference coming up this summer, with a track of presentations on building the discipline and scholarship. That track includes speed mentoring, which is exactly what it sounds like: You've got an idea, you've got people who are mentors, and you have five or ten minutes where you just talk about your idea with this other person who has experience doing scholarship. There are also feedback sessions for getting and giving feedback on drafts.

There's another not-really-a-workshop, but like a pairing, that is happening this summer through the ALWD Scholarly Publications Committee. You can have a fully baked draft or a half-baked draft, and then get feedback, paired with somebody who is willing to do feedback over the summer.¹⁴

The websites for LWI and ALWD have many resources that get into more detail about the writing process. There's some information on what Sarah was talking about at the beginning, like what is legal scholarship, and some of what Michael was talking about in terms of submission. But also, if you Google some of those things, you'll find a huge body of articles and essays about the journal writing and submission process. I very much appreciate Michael's lens of "some of this feels gross." I agree with that.

SARAH MORATH:

There are also opportunities outside the legal writing world, in the law academy generally, which focus on mentoring. I'm in AALS Section on Women in Legal Education, and you can sign up to have a mentor work

¹³ Examples include LWI's Sirico Workshops and ALWD's Scholarship Workshops and Forums.

¹⁴ Ashley Chase of Stetson Law School and David Ziff of University of Washington were among the organizers.

with you. The mentee who was assigned to me actually ended up being a legal writing person, and we had a conversation about her scholarship.

MICHAEL HIGDON:

Those opportunities are all important. I have seen people who didn't get the support from their own school, and they try to figure things out the best they can. But publishing is not an intuitive process, and if you make the wrong decisions here and there, it can really hurt you. For example, I've done outside reviews for people going up for tenure. And I basically wrote the letter to the school asking, how much they truly mentored that person, and I'll note things that I see that should have been dealt with by appropriate mentorship. And once a person at one of the schools responded with, "Yeah, you're right. We didn't do that." So, make sure you seize those outside opportunities because it's your future and your career. It's important.

I. Questions from Newer Scholars

SUSAN MCMAHON:

What questions do you all have for our panel?

QUESTION ABOUT LOGISTICS OF SUBMITTING ARTICLES:

Thank you all so much. This has been really informative. I have a question about the logistics about how to submit. Michael, you had mentioned that people don't really submit any more in the summer and, as someone who is deadline driven, I was thinking, "I'm going to get it done and submit at the end of this summer, before school starts." Is there a negative, do you think, to submitting then?

MICHAEL HIGDON:

I don't know why, but it seems like the editors are accepting more pieces in the spring, meaning they have fewer slots in the fall to give away.

So, when your fall piece comes in, they're not only judging the quality of the piece, but they're also judging it against the topics of the other things they've already agreed to publish. If you write in a very popular area, probably they already have a piece there, so yours could be rejected just on that basis. That being said, there's not much danger to sending it out anyway and seeing what happens. The only danger is getting an offer that doesn't thrill you and having to decide whether it's good enough or if you want to roll the dice again in the spring.

Some will say, however, that if you're going to resubmit in the spring, you should change the title. Also, some people say it's unethical to submit to a journal whose offer you will not accept. And that's a conversation we could have. My response is that does feel gross, but if we have a system where some journals won't even review the piece until they get an expedited review, what is one to do?

SARAH MORATH:

You can always pull your article. There's no one at Scholastica who says you can't. I've never done that, but I've had colleagues who just were not happy with their placement. And they're like, "I'm just going to try again later." Maybe it wasn't even read by the editors. So, there's really no harm there.

There was a question in chat just now about how many journals to submit to. Scholastica will allow you to submit to an unlimited number. You upload everything to Scholastica—your cover letter, your abstract, your CV, your article—and select the journals you wish to send it to. The gross thing is that you pick those lower journals first. You don't submit to the high ones just yet. You submit to the lower ones first, and you get that nibble, and then you apply to the higher journals and hit the expedite button and your piece goes to the editors with a notice that it is coming to them on an expedited review. You can communicate with the editors through email or the phone. Tell them you have offers from several

schools, a response is needed in X days, but you would really like to publish with them. The analogy I use to explain this negotiation is applying to law schools. You apply to one law school, you get in, and then you try to negotiate up. You ask the first school to give you more money, or I'll go to another school.

When you submit, you bulk submit, so you can submit to 10 or 20 or however many you want. Your school probably has a dean of research, and you can ask your dean of research about the submissions process. By the way, please ask your school to pay for your Scholastica account. Don't be paying out of pocket. It's expensive to do it that way. If you are a VAP, or if you are applying for a VAP position, be sure to ask if you will have access to Scholastica.

SUSAN MCMAHON:

I see that we have one more hand up, so we'll have time for a very quick question.

QUESTION ABOUT FINDING TIME TO WRITE:

Most people probably agree that it's easiest to write if you have big chunks of time to set aside, and you're just writing one topic. But what if you are on a schedule where you can only commit to maybe a couple of days a week, two or three hours at a time? Do you have tips on how to get quickly into the deep head space you need to write so that you can make progress in a short period of time?

MARY BOWMAN:

I keep a running list of things to do, pieces of a bigger project that I can work on. When I have a little time, I can pick a small piece to work on, rather than trying to write linearly. That way I can make a little bit of progress on a discrete piece of the project when I have a little bit of time.

I also find it helpful to have my project noodling in my head in the background, even when I'm not writing. I have become more intentional about using small blocks of time to help with that background processing of ideas so that I'm quicker when I do sit down to write. But I would just say that for legal writing faculty, spending a few hours at a time on a couple of days a week—that's actually lot of time, especially during the semester. Framing matters, so looking at it positively as a substantial amount of time, rather than framing it as a limited or scarce amount of time, can help you be more productive in that time as well.

SUSAN MCMAHON:

We're out of time. There is more to say, and we have lots more tips. You can email any one of us to ask questions or ask for advice, and I'm sure we'd all be happy help. But let's give a virtual round of applause to our panel. Thank you all so much for participating and for giving of your wisdom today.