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LAWYERS AT WORK: A STUDY OF THE READING, WRITING, AND COMMUNICATION PRACTICES OF LEGAL PROFESSIONALS

Ann Sinsheimer and David J. Herring*

I. INTRODUCTION

This Article reports the results of a three-year ethnographic study of attorneys in the workplace. We used ethnographic methods to identify how junior associates in a law firm setting engaged in reading and writing tasks in their daily practice. Our goal was to learn more about the types of texts that junior associates encountered in the workplace and to isolate the strategies that these lawyers used to read and compose these texts. In turn, we used this information to identify areas and approaches not commonly addressed in legal education, but which should be. In particular, we identify the need to develop and incorporate effective instruction in the various types of reading skills that junior attorneys have to bring to bear in their work. We hope now to use the information to encourage law faculty to teach skills in a way that will make law students more prepared for practice and, more specifically, ready to observe and learn within the context of practice. In the end, we hope that this project helps improve communication between the legal academy and the legal profession.

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Part II begins with a review of the literature on legal pedagogy and the origins of our project. Part III explains our use of ethnography to capture the reading and writing practices of junior associates. Part IV provides a detailed analysis of our results, presenting the reading, writing, and interpersonal skills we observed. Part V discusses the implications of our findings, and part VI concludes.

II. BACKGROUND

A. Examining Legal Pedagogy

Members of the legal academy, the practicing bar, and the popular press have called into question the efficacy of legal education.¹ The criticism often focuses on the traditional and still widely used method of educating law students through case study and Socratic dialogue, which focus on acquiring higher level analytical skills and learning to “think like a lawyer.”² The *Carnegie Report* suggests that law schools do teach students how to reason through the use of Socratic dialogue.³ Other studies are more critical of law

1. See, e.g., ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 7–37 (2007); W.M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR PROFESSION AND PRACTICE (2007) [hereinafter CARNEGIE REPORT]; David J. Herring & Collin Lynch, *Teaching Skills of Legal Analysis: Does the Emperor Have Any Clothes?*, 18 LEGAL WRITING 85 (2012) [hereinafter Herring & Lynch, *Teaching Skills of Legal Analysis*]; David J. Herring & Collin Lynch, *Law Student Learning Gains Produced by a Writing Assignment and Instructor Feedback*, 19 LEGAL WRITING 103 (2014) [hereinafter Herring & Lynch, *Law Student Learning Gains*]; Elizabeth Mertz, *Social Science and the Intellectual Apprenticeship: Moving the Scholarly Mission of Law Schools Forward*, 17 LEGAL WRITING 427, 428–30 (2011); David Segal, *What They Don't Teach in Law School: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at A1, available at http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?_r=0 [hereinafter Segal, *What They Don't Teach in Law School*] (“So, for decades, clients have essentially underwritten the training of new lawyers, paying as much as \$300 an hour for the time of associates learning on the job. But the downturn in the economy, and long-running efforts to rethink legal fees, have prompted more and more of those clients to send a simple message to law firms: Teach new hires on your own dime.”); David Segal, *Law School Economics: Ka-Ching!*, N.Y. TIMES, July 16, 2011, available at <http://www.nytimes.com/2011/07/17/business/law-school-economics-job-market-weakens-tuition-rises.html>.

2. E.g. FREDERICK SCHAUER, THINKING LIKE A LAWYER: A NEW INTRODUCTION TO LEGAL REASONING 1–12 (2012).

3. The Carnegie Report states, however, that law schools are not teaching students the full set of necessary skills and values to be legal professionals. CARNEGIE REPORT, *supra* note 1, at 4. See also the studies by Dorothy H. Evensen et al., *Developing an Assessment of First-Year Law Students' Critical Case Reading & Reasoning Ability: Phase 2* (LSAC Grants Rep., Mar. 2008), available at [http://www.lsac.org/docs/default-source/research-\(lsac-resources\)/gr-08-02.pdf](http://www.lsac.org/docs/default-source/research-(lsac-resources)/gr-08-02.pdf); Kevin D. Ashley, *Teaching a Process Model of Legal Argument with Hypotheticals*, 17 ARTIFICIAL INTELLIGENCE & L. 321 (2009); and Herring & Lynch, *Teaching Skills of Legal Analysis*, *supra* note 1. In all of these studies, the authors diagnose a lack of

schools than the *Carnegie Report*, suggesting that law schools do not even succeed in teaching students how to reason.⁴ While critics debate whether law students leave law school “thinking like lawyers,” many legal educators and lawyers share the concern that too many students complete three years of law school ill-prepared to practice law.⁵ Along with these concerns, the rising costs of legal education and an increasingly competitive legal employment market have put additional pressure upon law schools to do more to prepare their students for legal practice.⁶

In an effort to respond to these concerns, many law schools have implemented curricular reforms, such as introducing courses focusing on problem-solving and practical skills.⁷ While these reforms are intended to bring positive results in terms of preparing young attorneys for practice, the reforms are accompanied by little research examining their efficacy. In fact, the empirically based literature on pedagogy in legal education, as well as that focused particularly on practical skills, is surprisingly limited.⁸ Similarly, a

learning gains from the traditional case-dialogue teaching approach.

4. Evensen et al., *supra* note 3; Herring & Lynch, *Law Student Learning Games*, *supra* note 1; Herring & Lynch, *Teaching Skills of Legal Analysis*, *supra* note 1; *see also* Kristen Holmquist, *Challenging Carnegie*, 61 J. LEGAL EDUC. 353 (2012).

5. *See, e.g.*, CARNEGIE REPORT, *supra* note 1; Dorothy H. Evensen et al., *supra* note 3; *see also* Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 624 (2015) (challenging the notion of “success” in the legal profession and calling on legal educators to “amend [the understanding of success] so that talented students and lawyers consistently avoid choices in the pursuit of material success that will undermine their happiness”).

6. Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES, Jan. 30, 2013, *available at* <http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html>; Segal, *What They Don't Teach in Law School*, *supra* note 1; *see also* Alfred S. Konefsky & Barry Sullivan, *In This, the Winter of Our Discontent*, 62 BUFFALO L. REV. 659, 676–77 (2014) (“The price of legal education is excessive, but there is little consensus if any, as to what constitutes a sound legal education.”).

7. *See*, as one example, the Harvard Law School’s problem-solving workshop. Elaine McArdle, *Beyond the Case Method: A First-of-Its-Kind Problem-Solving Workshop Prepares 1Ls for the Realities of Law Practice*, <http://today.law.harvard.edu/an-innovative-new-course-teaches-students-to-solve-problems-right-from-the-start-video/> (Feb. 23, 2010). *See also* the Educating Tomorrow’s Lawyers Initiative at the University of Denver Sturm College of Law, whose mission is to “encourage and facilitate innovation in legal education in order to train new lawyers to the highest standards of competence and professionalism.” Univ. of Denver, Inst. for Advancement of Am. Legal Sys., *Educating Tomorrow’s Lawyers*, DU.EDU, <http://educatingtomorrowlawyers.du.edu/> (last visited July 6, 2016).

8. There is a general absence of empirical work and there has been little measurement of student learning in legal education. *But see* Andrea A. Curcio, *Assessing Differently and Using Empirical Studies to See If It Makes a Difference: Can Law Schools Do It Better?*, 27 QUINNIPIAC L. REV. 899 (2009); Andrea A. Curcio, *Moving in the Direction of Best Practices*

lack of pragmatic knowledge exists as to precisely how various lawyering tasks are performed.⁹ With the exception of several studies on the way lawyers and law students read,¹⁰ we have little sustained pedagogical research examining the skills that lawyers actually draw upon in their practices. So while survey data examining legal practice is available, and this data provides valuable information as to how lawyers describe and perceive the practice of law, this data does not provide a complete understanding of the practice of law, let alone the learning process and outcomes. Surveys and other self-reported data explain, for example, what lawyers say they do and their perceptions about their work, but there is little data validating these reports.¹¹

This lack of pedagogical empirical research is not unique to legal education. A *Chronicle of Higher Education* article by Dan Berrett suggests that teachers in all areas of higher education too often

and the Carnegie Report: *Reflections on Using Multiple Assessments in a Large-Section Doctrinal Course*, 19 WIDENER L.J. 159 (2009); Andrea A. Curcio et al., *Developing an Empirical Model to Test Whether Required Writing Exercises or Other Changes in Large-Section Law Class Teaching Methodologies Result in Improved Exam Performance*, 57 J. LEGAL EDUC. 195 (2007); Andrea A. Curcio et al., *Does Practice Make Perfect? An Empirical Examination of the Impact of Practice Essays on Essay Exam Performance*, 35 FLA. ST. U. L. REV. 271 (2008); Carol Springer Sargent & Andrea A. Curcio, *Empirical Evidence That Formative Assessments Improve Final Exams*, 61 J. LEGAL EDUC. 379 (2012). See also the following empirical work: Ashley, *supra* note 3; Herring & Lynch, *Law Student Learning Gains*, *supra* note 1; Herring & Lynch, *Teaching Skills of Legal Analysis*, *supra* note 1.

9. See the large studies, such as the study at Berkeley Law, by Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOC. INQUIRY 620 (2011), and the *Foundations for Practice* study, led by Educating Tomorrow's Lawyers, *supra* note 7.

10. Leah M. Christensen, *The Paradox of Legal Expertise: A Study of Experts and Novices Reading the Law*, 2008 B.Y.U. EDUC. & L.J. 53; Elizabeth Fajans & Mary Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts*, 78 CORNELL L. REV. 163 (1993); Mary A. Lundeborg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 READING RES. Q. 407 (1987); Elizabeth Mertz, *Social Science and the Intellectual Apprenticeship: Moving the Scholarly Mission of Law Schools Forward*, 17 LEGAL WRITING 427 (2011); James Stratman, *How Legal Analysts Negotiate Indeterminacy of Meaning in Common Law Rules: Toward a Synthesis of Linguistic and Cognitive Approaches to Investigation, Language, and Communication*, 24 LANGUAGE & COMM. 23 (2004) [hereinafter Stratman, *How Legal Analysts Negotiate Indeterminacy*]; James Stratman, *When Law Students Read Cases: Exploring Relations Between Professional Legal Reasoning Roles and Problem Detection*, 34 DISCOURSE PROCESSES 57 (2002) [hereinafter Stratman, *When Law Students Read Cases*].

11. The flaws in such data include "social desirability bias": The tendency of humans to present themselves in the best light, which can distort the information within self-reported data. Robert J. Fisher, *Social Desirability Bias and the Validity of Indirect Questioning*, 20 J. CONSUMER RES. 303, 303 (1993).

“teach according to habits and hunches.”¹² Given the limited availability of rigorous studies focused specifically on legal pedagogy, legal educators seem all the more likely to be following “habits and hunches” in their choice of teaching methodology. When it comes to teaching lawyering skills, legal educators may find even their habits and hunches extremely deficient. Law professors, who often have limited practice experience and have been away from practice for a number of years, frequently lack a solid understanding of what it means to practice law in the current market.¹³ Even if these educators do possess current knowledge of the field and feel comfortable teaching legal skills, they may find it difficult to locate suitable teaching materials.

Despite this challenging environment, the current scrutiny of legal education presents legal educators with an opportunity to enhance understanding of both what and how to teach. This period of transformation provides an opportunity to study legal practice and to assess how to instruct law students effectively in the pertinent practical skills and knowledge. Our ethnography is just one example of how researchers can seize the moment.

B. Origins of Our Study

The idea for this study arose out of conversations we engaged in several years ago while creating and implementing a lawyering skills class at the University of Pittsburgh School of Law as part of a series of curricular reforms. The objectives of the reforms included helping students to develop professional competency; encouraging active and reflective learning; and creating resilient and flexible young professionals. The initiative also sought to encourage teaching innovation and to assess the efficacy of legal pedagogy. The specific aim in creating a lawyering class was to give students a better sense of what legal practice is like and to enhance their abilities as legal professionals in the areas of legal reading and reasoning, fact development, and written communication. We

12. Dan Berrett, *Harvard Conference Seeks to Jolt University Teaching*, CHRON. OF HIGHER EDUC., Feb. 5, 2012, available at <http://chronicle.com/article/Harvard-Seeks-to-Jolt/130683/>.

13. Konefsky & Sullivan, *supra* note 6, at 689 (“[I]t is up to the law schools to see to it that students receive the grounding necessary for [students’ professional] development. In a sense, that has become more difficult in recent years, as fewer full-time law professors have had any substantial amount of experience in the practice of law.” (Footnotes omitted)).

wanted to help our students identify and develop the characteristics of successful lawyers. Additionally, we aspired to help students transfer the knowledge and skills they gained in law school to actual legal practice. In other words, we sought to contextualize their learning.

As we planned this course, we became increasingly frustrated by the lack of sustained, systematic pedagogical research on legal education and teaching methodology, particularly as it relates to practice skills. We were designing a course just as Dan Berrett would later criticize: According to our own “habits and hunches” about legal practice.¹⁴ We had been away from practice for years, and asking lawyers what they do could not tell us what they were actually doing. Even when lawyers have given thought to how they go about their typical legal tasks, what they are actually doing might appear to be different to the eyes of an objective observer, perhaps more complex or nuanced.

To address these gaps in our understanding, we decided to begin a sustained and systematic study of the type of tasks completed by junior associates working in law firm settings. This study is unique in that it objectively and systematically collected data on reading and writing skills, as opposed to relying exclusively on self-reports by legal professionals who may to a large extent be unconscious of the skills they draw upon to perform their work. Through intensive and extended observation focused on the reading and writing practices of lawyers at work, we have started to see how lawyers make sense of their tasks and develop practical judgment. In short, we have begun to uncover exactly how lawyers engage in the fundamental skills that establish professional competency.

III. METHODOLOGY

A. Ethnographic Research

To capture information on the practices of junior associates, we used ethnography, a method of inquiry originally used by cultural anthropologists to study unfamiliar peoples and cultures.¹⁵ This methodology has also been applied to study unfamiliar and famil-

14. Berrett, *supra* note 12.

15. Am. Anthropological Ass'n, *What Is Anthropology*, <http://www.americananthro.org/> (last visited July 6, 2016).

iar aspects of our own culture by researchers in fields such as sociology, psychology, business, linguistics, communication, and rhetoric.¹⁶ A common characteristic in ethnography is “fieldwork,” which enables researchers to observe humans and human behavior in natural contexts.¹⁷ As expressed by Margaret LeCompte and Judith Preissle, “ethnographies are analytical descriptions or reconstructions of intact cultural scenes and groups.”¹⁸ Researchers using ethnography seek to examine and accurately describe familiar and unfamiliar events in a way that allows readers to “envision the same scene that was witnessed by the researcher.”¹⁹ From this detailed description, researchers have been able to uncover verifiable information about a diverse range of human behaviors and practices.²⁰ Ethnographers use different techniques to capture data, including observation, field notes, collection of artifacts, interviews, and surveys,²¹ all of which were used in this study.

Ethnography has been used to study various aspects of law and the legal profession. For instance, ethnographic methods have been applied to study the attorney-client relationship in divorce law,²² the attorney-client relationship in the context of a criminal trial,²³ and the impact of gender roles in a corporate law firm,²⁴ as well as to study the features of legal discourse to determine how language use influences perceptions about the law.²⁵ A few studies have also explored the law school classroom. Cauthren, for example, examined a legal writing class, and Mertz studied the first year of law school.²⁶ We have, however, been unable to locate studies that use

16. Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298, 1345–49 (1992).

17. MARGARET D. LECOMPTE & JUDITH PREISSELE, *ETHNOGRAPHY AND QUALITATIVE DESIGN IN EDUCATIONAL RESEARCH* 1 (1993).

18. *Id.* at 2.

19. *Id.*

20. Am. Anthropological Ass'n, *Learn & Teaching*, <http://www.americananthro.org/learnandteach/index.aspx?navItemNumber=503> (last visited July 6, 2016).

21. LECOMPTE & PREISSELE, *supra* note 17, at 158.

22. AUSTIN SARAT & WILLIAM L. F. FELSTINER, *DIVORCE LAWYERS AND THEIR CLIENTS: POWER AND MEANING IN THE LEGAL PROCESS* (1995).

23. Cunningham, *supra* note 16, at 1345–49.

24. JENNIFER L. PIERCE, *GENDER TRIALS: EMOTIONAL LIVES IN CONTEMPORARY LAW FIRMS* (1995).

25. JOHN M. CONLEY & WILLIAM M. O'BARR, *RULES VERSUS RELATIONSHIPS: THE ETHNOGRAPHY OF LEGAL DISCOURSE* (1990).

26. RANDY CAUTHREN, *BLACK LETTERS: AN ETHNOGRAPHY OF A BEGINNING LEGAL WRITING COURSE* (2010); ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER”* (2007).

ethnography to explore the role of rhetorical skills in legal practice and professional competency. Similarly, we have been unable to identify prior studies that have observed legal practice with the objective of informing legal pedagogy, the subject of our work.

Outside of the legal context, ethnography has been effectively used both to further understanding of professional competency and to understand rhetoric and communication with pedagogical implications in mind.²⁷ Of particular relevance to our proposed study are those studies that have focused on the role of rhetorical skills in the workplace, such as Doheny-Farina's work on the role of writing on the evolution of a "start-up" company and the work of Brown and Herndl on the composing processes of employees in corporate settings.²⁸ Brown and Herndl used ethnography to explore why employees resisted employer attempts to change what employers identified as "problematic" writing behaviors.²⁹ By focusing on these rhetorical practices as their object of study, the researchers uncovered important insights about the culture of the workplace as well as insights relevant to teaching practices.³⁰

B. Junior Associates as Informants

Over a three-year period, with the help of seven upper-level law students and two doctoral students, we completed a preliminary study of attorneys who worked in six practice groups (labor and employment, litigation, immigration, real estate, education law, and civil rights). The attorneys we observed worked at a large Pittsburgh law firm, a medium size firm, a nonprofit agency, and a solo practice. We initially approached the large law firm to begin this project because several of its members are colleagues at the

27. *E.g.*, Stephen Doheny-Farina & Lee Odell, *Ethnographic Research on Writing: Assumptions and Methodology*, in *WRITING IN NONACADEMIC SETTINGS* 503 (Lee Odell & Dixie Goswami eds., 1985); Carl G. Herndl, *Writing Ethnography: Representations, Rhetoric, and Institutional Practices*, 53 *C. ENG.* 320 (1991); David S. Kaufer et al., *Collaborative Argument Across the Visual-Verbal Interface*, 2 *TECHNICAL COMM. Q.* 37 (1993); Theresa Lillis, *Ethnography as Method, Methodology, and "Deep Theorizing": Closing the Gap Between Text and Context in Academic Writing Research*, 25 *WRITTEN COMM.* 353 (2008).

28. Stephen Doheny-Farina, *Writing in an Emerging Organization: An Ethnographic Study*, 3 *WRITTEN COMM.* 158 (1986); Robert L. Brown & Carl G. Herndl, *An Ethnographic Study of Corporate Writing: Job Status as Reflected in Written Text*, in *FUNCTIONAL APPROACHES TO WRITING RESEARCH PERSPECTIVES* 11 (Barbara Couture ed., 1986).

29. Brown & Herndl, *supra* note 28, at 11–13.

30. *Id.* at 19, 24 (For example, the Authors found that superfluous nominalization was correlated with a writer's feelings of job insecurity.).

University of Pittsburgh School of Law and teach as adjunct faculty. Moreover, the large law firm practice is representative of the Pittsburgh legal market, encompasses a variety of state and federal issues, and serves local, national, and international clients. In the second and third years of our study, we expanded our fieldwork to the midsize firm, nonprofit agency, and solo practice. These sites are representative of the type of employment placements that the majority of our graduates at the University of Pittsburgh School of Law obtain.³¹

Our objects of study at these sites included four junior associates at the large law firm, one junior associate at a midsize firm, one junior associate at a nonprofit agency, and a senior attorney in solo practice. Specifically, our seven informants were two fifth-year associates, R and J, both in the labor and employment group at the large law firm; a fourth-year immigration attorney, K, and a third-year litigation attorney, L, who worked at the same large firm; a second year associate, G, in the real estate group of the midsize firm; a third year associate, N, at the nonprofit agency; and solo practitioner, H, who had more than twenty years' experience and was close to retirement.³²

With the help of two graduate students from the Rhetoric program in the English Department at Carnegie Mellon University,³³ we established a protocol to train second-year law students to carry out the fieldwork. Our student observers were seven second-year law students³⁴ and one of the graduate students. The student observers participated in several weeks of training before traveling

31. Employment data for the University of Pittsburgh School of Law is available at <http://www.law.pitt.edu/careers/employment-data>. For national data relating to the sizes of law firms that employed the graduating classes of 2011, 2012, and 2013, see NAT'L ASS'N LAW PLACEMENT, JOBS & JD'S: EMPLOYMENT & SALARIES OF NEW GRADUATES 32–34 (2014); NAT'L ASS'N LAW PLACEMENT, JOBS & JD'S: EMPLOYMENT & SALARIES OF NEW GRADUATES 32–34 (2013); NAT'L ASS'N LAW PLACEMENT, JOBS & JD'S: EMPLOYMENT & SALARIES OF NEW GRADUATES 31–33 (2012).

32. Although H, an experienced attorney, was not the primary focus of our study, her work habits often helped us to identify the skills that the less experienced attorneys were developing. H, near the end of her career, was also thinking a lot about the practice of law and was eager to participate in a project aimed at training new attorneys.

33. The Authors thank Ana Cooke and Mary Glavan for their participation in this project. These students received academic credit for their work.

34. The Authors thank Kaasha Benjamin, Megan Block, Jaimie Cremeans, Tyler Deluco, Theresa Donovan, Kathryn Douglass, and John Stranahan for their assistance during their law school tenure. These students received academic credit for their work.

to the sites, where they spent about two hours each week for approximately six to eight weeks observing the activities of their attorney informants. They observed at different times during the business day and occasionally on weekends. They gathered data by observing, taking copious field notes, analyzing these notes for patterns and recurring themes, carrying out formal and informal interviews with the informants and their supervisors, designing and administering questionnaires, collecting artifacts such as the informants' writings as well as their supervisors' comments about those writings, and conducting think-aloud protocols.³⁵ These think-aloud protocols sometimes were prearranged and prompted and sometimes occurred spontaneously.

IV. RESULTS³⁶

We categorized our results into three areas: reading, writing, and interpersonal skills. We learned from these observations that lawyering for these junior associates was fundamentally about reading. They read constantly, in digital and hardcopy form. What they read and why was determined by the client, though client contact was limited for the junior associates, and the clients' needs were typically conveyed through the supervising attorney, usually a senior partner. They read primary authority, but they also read more broadly, frequently accessing secondary authority and non-legal texts. They frequently read closely, but more often than not, we observed these attorneys skimming and scanning documents, trying to hone in on the most relevant information as quickly as possible. They were focused and read with a purpose.

When they wrote, their writing process began by reading and rereading the information they would use to substantiate their written texts. They often worked from templates and revised their

35. In a think-aloud protocol, observers ask participants to think aloud as they perform specific tasks, describing what they are reading or writing, for example, and explaining their thoughts or feelings as they complete their tasks. Hannu Kuusela & Pallab Paul, *A Comparison of Concurrent and Retrospective Verbal Protocol Analysis*, 113 AM. J. PSYCHOL. 387, 389 (2000). The observers took notes of these verbal reports, trying to remain objective and not interpret the participants' actions or words. *Id.* Often these sessions are recorded to capture the exact language used by the participants. *Id.* For a full discussion of the technique, see the work of K. Anders Ericsson & Herbert Alexander Simon, *PROTOCOL ANALYSIS: VERBAL REPORTS AS DATA* (1993); see also Lundeberg, *supra* note 10 (using think-aloud protocols to gather data); Stratman, *When Law Students Read Cases*, *supra* note 10, at 75 (same).

36. In this part, the Authors draw on unedited excerpts from the observers' field notes. These notes are on file with the Authors.

work multiple times before sending their work to their supervising attorney. Email accounted for a lot of what they read and wrote, and their composing process for email exhibited meticulousness and a high degree of concern for word choice and tone.

The environments in which these attorneys worked were frequently stressful. They felt pressed for time and had to juggle multiple tasks. Even in the most congenial workplace settings, the attorneys expressed frustration or concern over how best to manage their time. We observed these attorneys undergoing an acculturation process in which they were trying to adapt to explicit and implicit norms of their employers and the other attorneys that they worked for or closely with. The ability of the attorneys to understand their role influenced their sense of well-being as well as their capacity to successfully perform their reading and writing tasks. In the following three sections, we present our specific findings as to what and how these attorneys read; what and how they wrote; and the interpersonal skills they used.

A. What They Were Reading and How

1. *What They Read*

Unsurprisingly, the lawyers we observed did lots of reading. They read a variety of materials. Many of the documents they read were the type of texts they had read at some point during law school. In other words, they often read material that legal educators use in class. For example, they read the law: primary sources such as judicial opinions, statutes, and regulations; they also read many types of texts that they had not frequently encountered in law school but that are an integral part of legal practice: pleadings, interrogatories, depositions, motions, contracts, including grant agreements and mortgage notes. Additionally, they read non-legal texts that related to specific situations such as statistical reports. They spent a great deal of time reading email.

They had to read to learn, to educate themselves, and to inform themselves so that they could handle situations or solve problems that, at times, had no immediate solutions. They sometimes read quickly, sometimes painstakingly slowly, reading and rereading the same text, but they were always aware of the need to read efficiently and time-effectively. All the attorneys read, edited and re-read their own prose.

What they read was primarily client-driven in the sense that their reading was related to their research and writing projects and communication tasks, all of which primarily addressed a client's issue or a supervisor's request on behalf of a client. When the attorneys engaged in "research," they were almost always engaging in a reading task. In the case of the two newest attorneys, G and L, they engaged in research and read material not for a specific client, but to identify "hot topics" for a CLE presentation and a marketing presentation by senior partners.

Over the three-year period we saw attorneys read:³⁷

- judicial decisions
- statutes
- local rules and federal rules
- rules of evidence
- rules of civil procedure
- regulations
- treatises & other secondary sources
- dockets
- court orders
- injunctions
- complaints
- answers
- praecipes
- motions
- briefs
- legal memoranda
- letters from clients and attorneys
- templates and other forms and compliance documents
- conflict reports
- client/case files
- immigration petitions
- contracts
- discovery documents including discovery requests
- new business forms
- closing books
- policy reports
- statistical data
- trade and professional association publications

37. This list is not meant to indicate the frequency or importance of what was read.

- company organizational charts
- international, local and legal newspapers
- online blogs
- social media
- grant agreements
- marketing materials
- deeds
- tax assessments
- easement terms
- stock redemption agreements
- mortgage notes
- email and more email

a. Secondary Authority and Non Legal Materials

The attorneys had to read broadly and strategically to solve a variety of problems, which meant that the attorneys we observed had to read non-legal materials that we did not anticipate they would read nor necessarily associate with legal practice. They read primary legal authority, but they needed to read secondary legal and non-legal authority as well as other non-legal texts. For example, several of the attorneys expressed a need to keep apprised of local and national news. G, the second-year real estate associate, daily reviewed *The Pittsburgh Business Times*, looking specifically for developments related to his firm's practice and any notices regarding their clients and other attorneys with whom they had a referral relationship.³⁸ He also followed *The Pittsburgh Legal Journal* to keep his colleagues up-to-date and issued reminders as needed.³⁹ Our solo practitioner, H, reported a similar reliance on local and national newspaper reports, which she watched for news about a client or other stories with parallel fact patterns. For example, H described a recent case that was in the news that H believed to be comparable to her current case.⁴⁰ She learned details about the other case in the news and then did further research to determine if that case bore important similarities to hers.⁴¹ Perusing the local and national newspapers was also an important part of N's daily routine at the nonprofit agency.⁴²

38. John Stranahan, Field notes, at Feb. 21, 2014 (on file with Authors).

39. *Id.*

40. Kaasha Benjamin, Field notes, at Jan. 27, 2014 (on file with Authors).

41. *Id.*

42. Megan Block, Field notes, at Nov. 8, 14, 21 & 29, 2012 (on file with Authors).

Several attorneys used online resources to get background information about their client or the opposing party in a case. The solo practitioner, H, used Pacer to run “a search on the opposing party to see what cases they had been involved in prior to this one. She said that by doing this, sometimes there can be a ‘pattern as to how the organization has treated people in the past.’”⁴³ Similarly, G, in the real estate group of the midsize firm and L, the associate in litigation, both accessed websites such as county websites containing property assessments to determine if a defendant was judgment proof.⁴⁴ In the same fashion, K looked to Wikipedia to find more information about what her client (a scientist) did so that she could complete an immigration petition on his behalf.⁴⁵

N, the fourth-year attorney who worked for the non-profit agency, read statistical data frequently, either for use in presentations or written reports. As she read a report on school suspension rates, N told her observer, “Every law student should have to take a statistical analysis and research methods course. Any public interest attorney should be trained how to analyze data. Disparate impact work requires swimming in data. It is a powerful tool to have as a lawyer.”⁴⁶ She reiterated this point several days later while reviewing statistical data from the Office of Civil Rights: “I know that I’ve said this before, but law students should really learn how to do statistical analysis, especially if they are interested in civil rights.”⁴⁷ The solo practitioner, H, who had worked for many years in employment discrimination, also relied heavily on statistical reports. Her observer noted H’s use of a report that showed disciplinary rates for whites versus non-whites. She believed that she could use the report to show a connection between race and the disciplinary action to which her client was subjected.⁴⁸ She hoped to use the report as an exhibit at trial without having to hire an expert witness to validate the chart.⁴⁹

43. *Id.* at Feb. 6, 2014.

44. Stranahan, *supra* note 38, at Feb. 12, 2014. Additionally, L said, “her firm researched damages before even bringing a claim to know if it is worth it and what liabilities their clients might be opening themselves up to.” Jaimie Cremeans, Field notes, at Oct. 10, 2012 (on file with Authors).

45. Tyler Deluco, Field notes, at Jan. 16, 2013 (on file with Authors).

46. Block, *supra* note 42, at Nov. 21, 2012.

47. *Id.* at Nov. 29, 2012.

48. Benjamin, *supra* note 40, at Feb. 13, 2014.

49. *Id.*

b. Discovery Documents

A great number of the texts these attorneys read were related to document review, a process that involved sorting documents, identifying information within the texts, and coding the documents for later use. Without exception, all seven of the attorneys we observed at some point engaged in document review in which they read discovery documents or documents related to pretrial disclosures by parties to a lawsuit or legal proceeding. Even K, whose immigration practice did not involve civil litigation, engaged in document review; for example, while reviewing information on a client prior to a removal hearing. In the large and midsize law firms, the documents associated with discovery were housed in digital form on a shared server and were accessed simultaneously by multiple attorneys. The amount of time spent reading these sorts of documents was striking, particularly because relatively little time, if any, is spent in the traditional law school curriculum explicitly discussing the process or the reading skills associated with this type of task.

The young associate in the litigation practice group, L, spent weeks on document review and discovery requests. Her task at one point was to review her client's documents before they were to be provided to the opposing side.⁵⁰ She reviewed the documents for relevance, confidentiality, and privilege according to guidelines previously established in a team meeting led by a supervising partner.⁵¹ L sifted through a large body of information relatively quickly. On one of the days we observed L, she was reviewing digital copies of emails housed on the firm's database along with four other people.⁵² One week, L reported spending 18 hours on a document review project that she would not finish for several more weeks.⁵³ Another day, she anticipated spending all weekend on a different document review project.⁵⁴ She joked just before Thanksgiving that she was "going home . . . to have a nice break from document review."⁵⁵

Eventually the fourth- and fifth-year associates at the firm would use the results of L's document review. These more senior

50. Kathryn Douglass, Field notes, at Oct. 26, 2012 (on file with Authors).

51. *Id.*

52. *Id.*

53. Benjamin, *supra* note 40, at Feb. 13, 2014.

54. Douglass, *supra* note 50, at Nov. 16, 2012.

55. *Id.*

associates continued to comb the information for data that they would use to generate theories and corroborate claims in motions and appellate briefs. For example, R, in the labor and employment group at L's firm, read through a series of discovery documents, explaining that his project was

[a] Federal case currently in "discovery," which R describes as the process through which documents are shared. [He is] responding to the opposition. He describes how parties may request 25 interrogatories, or questions, but may request an unlimited amount of documents. In this case, there are nine interrogatories and 24 document requests. They are requesting personnel files, discipline, searches of claimant's computer. *R will select the relevant documents, which will then be prepared by a first year associate or a paralegal.* R describes that he has to go through all the documents that "relate." R [does not] have to read thoroughly; [he is] looking for information that needs to be redacted. He first breaks the task up into the different types of documents, for example "Performance," "Witness Statements," and "Impeachment."⁵⁶

c. Email

Reading and ultimately responding to email occupied a great deal of the associates' time. For example, the junior associate in litigation at the large firm, L, spent time carefully reading and re-reading incoming emails. She also scrutinized the text of her own emails—reading, rereading, and revising them before sending them. After watching L for several weeks, one observer noted: "L used email to communicate with partners, clients, and various staff in the office and always had to decide the manner in which to convey her ideas appropriately. L examined virtually every email she wrote in terms of how it could be misconstrued, trying to preempt any kind of disapproval. L's careful approach to email seems to stem from a critical atmosphere in which every written sentence is vulnerable to a partner's analysis and potential criticism for weaknesses."⁵⁷ Most of the emails L received came from other attorneys,

56. Mary Glavan, Field notes, at Feb. 10, 2012 (on file with Authors) (emphasis added).

57. Kathryn Douglass, *Final Summary* 1–2 (Apr. 2013) (unpublished seminar paper) (on file with author) (The author of the seminar paper was a law student observer. This paper was written as part of this project.).

often her supervisors who assigned work through email, but she also sometimes received emails from clients.⁵⁸

K, one of two junior associates in the immigration practice of a large law firm, dealt with a huge volume of email, primarily from her two supervisors but also from her clients and from colleagues. After eight weeks of observations, one of two observers following K concluded, “[T]he majority of K’s time is spent checking, printing, writing, and reading emails. Most of the firm emails are from Partner A.”⁵⁹ K was systematic in her approach to email: “She receives many emails [each] hour and deals with them as they come. Folders are organized by employer; then subfolders organized by client name. If the email requires her to do something that she still needs to do, it stays in her inbox. She hates having emails in her inbox so this motivates her to perform certain tasks.”⁶⁰ Her observer reported, “K is always checking work email even when not at work. [She checks] emails but rarely replies in the morning before work. [She checks] emails in the evening and often replies. (These emails are from clients and Partner A who K jokes never puts his phone down.)”⁶¹

At one point K commented, “I [do not] know how people did work without email.”⁶² The observer explained that her “[e]mails often contain PDF files of official documents. [On this day she] receives an email containing a reference letter for an ‘outstanding researcher.’”⁶³ The emails were often so detailed in content that K would print them out to deal with them. A second observer who followed K recorded that “K then lines up print-outs of numerous emails she has on her desk [and] says that is the order she will respond to them.”⁶⁴ At times, the emails were extremely informal, such as Partner A’s jesting email, ““WTF?”” in reply to K’s email explaining that she would be late to a meeting with A because Partner L “volunteered her for an initial meeting of a pro-bono client.”⁶⁵

58. Cremeans, *supra* note 44, at Oct. 5, 2012.

59. Tyler Deluco, *Absent Art of Communication: Lessons from a Law Firm*, at app. (Apr. 2013) (unpublished seminar paper) [hereinafter Deluco, Seminar Paper] (on file with author) (The author of this seminar paper was a law student observer. This paper was written as part of this project.).

60. Deluco, *supra* note 45, at Oct. 31, 2012.

61. *Id.* at Nov. 14, 2012.

62. *Id.* at Nov. 28, 2012.

63. *Id.*

64. Theresa Donovan, Field notes, at Nov. 29, 2012 (on file with author).

65. Deluco, *supra* note 45, at Dec. 5, 2012.

Like K, N, the only associate at the nonprofit agency, spent a great deal of time reading email.⁶⁶ During 45 minutes of a one-hour-long observation, N read email from a local civil rights organization, several from her supervisor, the organizer of an equity advisor panel, job applicants, her receptionist, a doctor consulting with the agency, colleagues in their Philadelphia office, and the director of a statewide organization. Most of these emails contained attachments. Her observer recorded that “N is very systematic about her emails. She has several folders in her email that are labeled by events and organizations. Whenever there is an email that she does not need to respond to, she puts it in the corresponding folder.”⁶⁷

d. Judicial Opinions

The scope of what these attorneys read was surprising to both the associates and the law student observers, particularly given the emphasis on reading judicial opinions in the traditional law school curriculum. In fact, our law student observers were surprised by the relatively few judicial opinions these attorneys read. Consider, for example, the following excerpt from the 2L observer who followed L, a third year litigation associate at a large law firm:

The types of documents L read varied based on what type of case she was working on and how big her role was within the case. What surprised me most about this was how little time she actually spent reading judicial decisions. While I was there, I witnessed her reading mostly treatises, statutes, case summaries, emails, discovery documents, and secondary sources. She did read some judicial opinions while I was there, particularly when she was researching a legal issue, but not as frequently as one would expect based on the strong focus on what seems like only judicial opinions in law school. A lot of L's time was actually spent reading documents that most law students never see, such as discovery documents, business documents, contracts, and bids.⁶⁸

66. Block, *supra* note 42, at Nov. 14, 2012.

67. *Id.* at Nov. 21, 2012.

68. Jaimie Cremeans, *Comparing Professions: The Educational Problems with Educating Lawyers and Teachers and Proposed Solutions* 19 (Apr. 2013) (unpublished seminar paper) [hereinafter Cremeans, Seminar Paper] (on file with author) (The author of the seminar paper was a law student observer. This paper was written as part of this project.).

This observation was representative of each observer's experience. The attorneys we followed devoted far less time to reading judicial opinions than do law students, particularly than do first-year law students. In the case of K, our immigration attorney, our observers witnessed her access a case only one time over the eight weeks of observation: "K googled *Ruiz Diaz v. United States* and pulled up a PDF of the case. After looking at it for about three minutes, she said, 'Never mind, I think this is way off topic.'"⁶⁹

When the attorneys did use cases, it was in a focused manner. They searched for and read cases with a particular situation in mind. They often read and summarized cases in context, while working on a letter to a client or brief to the court. Further, they typically read secondary materials before turning to relevant judicial opinions. Before researching case law, they read what they could to inform themselves generally in the area of law pertaining to an issue. When they did turn their attention to the case law, they tried to quickly identify what were likely to be relevant cases. For example, during one observation, R, a fifth-year associate in the labor and employment group of a large law firm, moved back and forth between reading a hearing transcript and judicial opinions. He had already started drafting a brief on behalf of an employer at the point he began looking for relevant case law. When R turned to the judicial opinions, he already had a good sense of how he wanted to use these opinions.⁷⁰ He began his search with an unemployment compensation treatise and first scanned the table of contents, tabbing cases that were pertinent to what he read in the transcript. For example, he tabbed cases that addressed "what is voluntary?" and, occasionally multitasking, also marked cases that seemed to address issues in another case. He was reading quickly with his particular fact scenarios in mind.

As he moved away from the treatise to finding and reading the actual opinions, he continued to read with his clients in mind, checking to see if he could identify how the opinion might be useful. While he skimmed these cases, he was thinking of additional possible search terms that could lead him to more case law, for instance starting with "picked on by supervisor," and then broadening the scope to "dissatisfied" and "work conditions" or moving from "telecommuting" to "working from home." His understanding of his task, specifically the writing of a brief, coupled with his knowledge

69. Donovan, *supra* note 64, at Nov. 2, 2012.

70. Glavan, *supra* note 56, at Feb. 6, 2012.

of the facts of his case, enabled him to pose questions and read the judicial opinions with a particular focus. When other observers saw the attorneys using judicial opinions, they reported a pattern similar to R's approach: the attorneys read widely to get a general sense of a concept or an issue before they read case law.⁷¹

2. *How They Read*

In terms of what the attorneys were reading, the attorneys we observed were obligated to read so widely that it is almost certainly unreasonable to expect law schools to expose law students to the breadth of texts new attorneys will encounter in practice;⁷² however, in terms of *how* attorneys read, law schools can prepare law students for practice by teaching them to read strategically and to use their reading skills to acquire knowledge. Legal educators can impress upon law students the extent to which these students, as attorneys, will need to become life-long learners who are able to use their reading skills to access information and acquire new knowledge as the circumstances necessitate. These reading skills are teachable. Just as legal educators currently help students to read closely, to analyze judicial opinions and statutes, educators can develop exercises that both expose students to a larger variety of texts and that also help students to practice different reading styles. For example, students could be exposed to exercises that prioritize reading quickly, scanning information for answers to solve particular problems, and reading with a purpose or "problematizing."⁷³

Reading occupied much of the attorneys' working hours. The amount of time they were expected to devote to reading was a repeated concern, which influenced how they read. The attorneys expressed a constant need to read efficiently, and they engaged in a variety of strategies to achieve this goal. In response to a question

71. For L, "Judicial opinions were also usually the last resort even when she was researching legal issues, as she would start by reading secondary sources, treatises, and statutes before she would read or print out any opinions." Cremeans, Seminar Paper, *supra* note 68, at 19.

72. See *supra* note 37 and accompanying list.

73. By "problematize," we are referring to a form of critical analysis of a text by which a reader poses problems about the text in an effort to read more deeply. See, e.g., Dorothy H. Deegan, *Exploring Individual Differences Among Novices Reading in a Specific Domain: The Case of Law*, 30 READING RES. Q. 154 (1995); Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 609 (2007); see also *infra* nn. 89–90 and accompanying text.

by an observer about whether G, the second-year real estate attorney, reads differently in practice as opposed to in law school, G replied,

“I have more knowledge as to what to expect in certain documents, so I read certain things much faster looking for the key phrases/clauses. I also have a lot less free time than I did in law school, where I had the luxury of reading a case thoroughly and briefing it (maybe even reading it twice) before lecture in case I was called on. So I guess you could say I read more efficiently and focused on the bottom line now.⁷⁴

These attorneys pursued a variety of reading strategies such as skimming, scanning, and close reading, carefully parsing prose at times. The strategy they used depended largely on the task and the purpose for which they were reading.⁷⁵ When searching for relevant information, such as reviewing documents on the employer’s database for probative evidence, trying to get a sense of documents that a client provided, or trying to identify applicable primary authority, the attorneys typically scanned items quickly and skimmed passages to determine if a text was worth reading more closely. But when writing a brief or a document for the court, the attorneys often read extremely carefully any texts that they intended to use to substantiate their legal or factual position. Likewise, when reviewing documents to determine if they were privileged or when identifying problematic passages in a contract, the attorneys slowed down considerably. They also read their own

74. Stranahan, *supra* note 38, at Mar. 24, 2014.

75. L’s observer noted L using a variety of reading styles:

L’s style of reading changed depending on the type of document she was reading. She had a very defined system in which she read faster or slower depending on the relevance, density, and use for each document. When reading statutes, treatises, secondary sources or discovery documents, she usually started by skimming through when first reading the document. In these cases, she usually had an idea of what she was looking for that could be relevant. When she would see something that could be relevant, she would slow down and re-read it a few times. She did not ever highlight anything, but she did make notes and underline words frequently. She always preferred to read documents in print instead of on her computer when she could, presumably because it was easier to underline and make notes that way.

Cremeans, Seminar Paper, *supra* note 68, at 19–20. L’s reading styles were reflective of all the informants.

prose extremely carefully when editing their own work.⁷⁶ This careful reading extended to the emails they composed.

Reading from a computer screen was the norm. The attorneys frequently read online, either by accessing the Internet or documents housed on their firms' database. Typically, when starting a research project, the attorneys turned to the Internet. They were conscious of the cost of commercial databases like Westlaw or Lexis and tried to use free sources whenever possible. Frequently, they first accessed Google or Wikipedia to get a general sense of the issue; however, they all accessed material in hardcopy forms on a regular basis, often expressing a preference to read information from books or to print out information. During the course of our observations, the junior associate in litigation at the large firm, L, and the real estate attorney at the midsize firm, G, used their firms' law libraries several times to access information in books. As another example, our immigration attorney, K, used primarily Internet websites, including government websites but also turned on a regular basis to the Code of Federal Regulations in print, as well as Kurzban's *Immigration Law Sourcebook*.⁷⁷ She rarely used Westlaw and Lexis.⁷⁸ Often, the attorneys turned to books or printed text to read in detail or when they needed to annotate a document.

a. Juggling Information and Projects

When L decided to begin a new research project, she began by accessing information in a treatise and then moved to Internet sources. L was guided by her very broad understanding of the facts. She explained that the case was based in New York law and it was a stock/securities issue involving the sale of a company, specifically whether the sale was of the whole business or only a percentage. L needed to find case law or statutes to help her assess the transaction:

She started by using books she had taken from the library; they were Fletcher's treatises. She said she uses books a lot

76. The observer recorded L reading the Brief in Opposition to a Motion to Compel Discovery that she composed line by line in a deliberate fashion before turning over to a partner for review. Cremeans, *supra* note 44, at Oct. 5, 2012.

77. Ira J. Kurzban, *KURZBAN'S IMMIGRATION LAW SOURCEBOOK: A COMPREHENSIVE OUTLINE AND REFERENCE TOOL* (14th ed. 2014).

78. Deluco, *supra* note 45, at Oct. 31, 2012; Donovan, *supra* note 64, at Oct. 26, 2012.

because [it is] easier when she [does not] know where to start because she can use the index.

She started by using the index to find any topics she thought might be relevant and writing down page numbers of all of them before she started turning to the pages. Then she went to the pages for each topic and skimmed them to determine if they were relevant or not. She went through four that she said were useless before she found one that was sort of helpful. The one that she found that was helpful had a footnote that mentioned both a Delaware statute and the Model Business Code Annotated (MBCA). She wrote down these statutes, but then continued reading the rest of the passage. Next she started looking for the Delaware statute and the MBCA. She started with Google to see if she could find them for free so she could read them to see if they were useful before Westlaw searching them; said if it was useful she would WL it to [Key Cite], but wanted to read it on Google first if she could. [She could not] find it at first so she went to Google Scholar. Looked for language of it in cases that came up, but [could not] find it. When she [could not] find it on Google or Google Scholar, she went to Westlaw.

She searched the Delaware Code first. Because the Delaware Code and MBCA were listed together, she said they might be the same. Found the statute and highlighted a passage as she read it. Went to the subject index of the statute and decided it might be relevant. She [does not] like reading on the computer so she emailed it to herself so she could print it later; also so she could put it in the case's folder in her inbox. She has a separate folder for each case in her email inbox.⁷⁹

As this excerpt demonstrates, L moved from books to Internet sources, alternating between paid databases and free sources. This strategy was characteristic of many of the attorneys' approach to research.

Also characteristic of all the attorneys was L's need to pick up where she left off after constant interruptions. While observing L's research process, the observer noted

[t]he secretary walked in at this point with a document for her. It was a large brief. L said the secretary had just gotten done scanning the document so she could share it in Dropbox

79. Cremeans, *supra* note 44, at Oct. 5, 2012.

with co-counsel. She said when they have co-counsel they usually use Dropbox because it is an easy way to share all documents without having to email and fax everything. L then went back to searching; she started this time by looking up the MBCA on Wikipedia.⁸⁰

All of the attorneys we observed dealt with similar disruptions.

b. Reading for a Purpose and Problematizing

When dealing with transcripts or discovery documents, the attorneys often began with online sources, skimming, scanning, and marking passages to return to at some later point. Several of the attorneys had two computer screens and kept multiple documents open at a time. G reported that 60% of the attorneys in his firm had two monitors.⁸¹ He did most of his research online, and the two-monitor system allowed him to use different Internet browsers for different things.⁸² Litigators at L's large firm all had two screens for document review.⁸³ L explained that the second monitor allowed her to zoom in on a particular document, for example an attachment that contained several scanned documents. She said, "the whole reason for having two computers is for document review like this, but L does not use it very often because she thinks it is not worth the effort a lot of times."⁸⁴

L's approach to document review varied according to the stage in the process and whether she was reviewing documents that the firm had requested on behalf of its client or whether she was responding to a request for her client to produce documents. The initial pass often involved reviewing scanned pages of images of several hundred documents on each page. She explained that "[e]very page has 600-700 documents," and it took "20-30 seconds/page when you first start. 5-10 seconds/page once you get experienced."⁸⁵ Her task was to eliminate those documents that did not pertain to a particular transaction. Once she identified documents in the specified date range, she looked for documents most likely to contain relevant information, such as emails with attachments or

80. *Id.*

81. Stranahan, *supra* note 38, at Jan. 31, 2014.

82. *Id.*

83. Douglass, *supra* note 50, at Oct. 26, 2012.

84. Cremeans, *supra* note 44, at Nov. 9, 2012.

85. *Id.* at Oct. 26, 2012.

information that might be confidential or privileged. She tagged them in the firm's e-discovery program, Case Logistix, as requiring further review or as being irrelevant.⁸⁶ This was often a matter of looking for key words and applying the Federal Rules of Evidence, which L articulated as: "Is the information reasonably calculated to lead to admissible evidence?"⁸⁷ Once L eliminated the irrelevant documents and began to review relevant information, her review took longer. She had to read each document more carefully for relevant and privileged information. It could take her almost three hours to read through a page of documents at this stage.⁸⁸

When these attorneys read, they read with a focus or a purpose. They drew upon active reading skills.⁸⁹ They "problematized" the text, trying to make the text meaningful or relevant to themselves by posing questions or thinking about how the information could be useful; the process is sometimes referred to as "talking back to a text"⁹⁰ and helps a reader to think critically about the text or challenge ideas within it. After observing L spontaneously think aloud while reading, her observer noted, "[W]hile L was reading, it was clear that she was constantly problematizing[] or looking for solutions to the problems presented in her case[] and strategizing how the documents she was reading could be relevant to her case and what issues or solutions they posed."⁹¹ For example, L engaged in a process of categorizing information as irrelevant, relevant, helpful, or harmful as she read the text. Her observer labeled her purpose at one point as "problem-solving":

Another thing L did a lot while she was researching, reading, or writing was constant problem solving. As she was researching and reading, she was constantly considering how the information she found could help or hurt her client's case. While she was writing, she was constantly thinking to make sure she used the perfect words that would get her point across in the clear[est] and [most] concise manner. She read over

86. Douglass, *supra* note 50, at Oct. 26, 2012; Cremeans, *supra* note 44, at Oct. 26, 2012.

87. Cremeans, *supra* note 44, at Nov. 9 & 30, 2012.

88. *Id.* at Nov. 9, 2012.

89. See Christensen, *supra* note 73, at 609; see also TERESA BROSTOFF & ANN SINSHELMER, UNITED STATES LEGAL LANGUAGE AND CULTURE: AN INTRODUCTION TO THE U.S. COMMON LAW SYSTEM 57–60 (3d ed. 2013) (describing reading strategies in the context of reading a judicial opinion).

90. See Stratman, *When Law Students Read Cases*, *supra* note 10, at 88 (citing Deegan, *supra* note 73, at 160).

91. Cremeans, Seminar Paper, *supra* note 68, at 20.

sentences multiple times after she would write them, and she would often change the wording around at least once after re-reading a sentence. She also emphasized that she was careful not to use words that could have double meanings or be construed in a way that hurt her case.⁹²

The attorneys we observed all engaged in this problem-solving process, evaluating what they were reading at some point. As part of this process, they all marked up the texts, verbalized thoughts aloud about the text, or engaged in some sort of commentary about the text, signaling to our observers that the attorneys were problematizing.

L was constantly probing information to make sense of it, to order it. One example of this occurred as a litigation partner brought in L on a new breach of contract action. L first indicated that she was thinking through why he was bringing her this case as she read through the facts, concluding that he was doing so because she is admitted to practice in the Eastern District of Pennsylvania.⁹³ She continued to question the text or problematize as she considered the information the partner provided her (a complaint filed by the opposing side): “L notes that the complaint was poorly drafted. The contract was not included in the complaint—L says if you are basing the complaint on a breach of contract you should include it in the complaint. This is law in state court; she is not sure about federal court but thinks it likely is the law there as well. Other side alleging ‘we’ breached the contract—client owes \$25,000—a lot of money.”⁹⁴

L tried to organize the information from the client and attempted to construct a timeline. She orally reviewed, for herself and for her observer, what she knew about the case and tried to make sense of the information the partner had given her. She indicated that she appreciated that the client provided so many documents and speculated that the plaintiff “is shady” so the case may be hard to settle. The observer recorded,

92. *Id.*

93. L explained to her observer that she “is the only litigation associate at the firm barred in the Eastern District of PA. L has no idea why, but figures there is usually no need to be barred there because there are Philadelphia attorneys.” Douglass, *supra* note 50, at Nov. 16, 2012.

94. *Id.*

All the information she [L] has so far is from the complaint and from talking to the partner. “Our client is an international corporation with business in the Middle East. The plaintiff suing us is a broker. A lot of international businesses are brokers. A broker acts as an intermediary for the most part—goes out and gets business—the company then provides the broker with a [percent] of the profit or retains brokers for a certain salary. We allege the contract between our company and the broker had been terminated; he says it was only suspended.”

L is reading a letter—almost positive that its author is not a native English speaker. L notes [to herself] to keep in mind that getting documents from people who keep things all over the world is difficult. As is getting money from them [sic]. L reads the contract the company made with the broker—\$15,000/month retainer and a [percent] of each project that the company retains due to broker’s introduction. His expense of flying from Colorado to the Middle East is covered. Contract also provides for a \$20,000 advance. Termination: [e]ither party may terminate the contract with 60 days’ prior written notice. If terminated, each party is released. There is also a confidentiality provision—L notes this could be good for a counter claim.

L notes that both the client and the plaintiff signed the contract so there is no issue there. There was an addendum to the contract. L says just because it is not signed [does not] mean that it is not valid. There could be another version or the parties could have acted in such a way as to indicate an understanding of the contract. She [will not] discount it just because it [is not] signed.⁹⁵

In addition to organizing the information, L apparently tried to put the information into story form and construct a simple narrative as she read through additional information from her client and tried to get a handle on her client’s claim. For example, after reading a string of email, she commented, “Our company is telling the broker to put ‘a hold on your activities.’” Her narration continued as she read through more of the information, summarizing aloud the content of each item she read, seemingly working

95. *Id.*

through the story. The observer recorded this process, paraphrasing and quoting L as she read quickly through the available information:

Letter from defendant to plaintiff—hold on our relationship/stay in touch. Plaintiff responds trying to provide more opportunities to the company. September, President of the company says that their deal is still on hold; best of luck. “Plaintiff’s Colorado attorney first contacted our company in October to say that we owed back fees.” Emails from Plaintiff—are you going to finalize our new agreement? (Two in a row). Defendant is ignoring; then responds that it is still working on the new deal—telling Plaintiff to be patient. Plaintiff kept working—“we kept telling him not to.” Letter to a new attorney from New York. “Failed to live up to our side of the bargain. Response from the president of the company is that we suspended all work.”⁹⁶

As she read the facts and tentatively constructed a narrative of events, L seemed to be considering the strength of her client’s claim that the broker had been terminated. She was mentally evaluating the case, considering what was relevant.

c. Understanding Expectations and Reading Efficiency

The two most junior associates, L and G, seemed to struggle at times with not knowing exactly what they were reading or the expectations of the partners assigning the task. Sometimes their ability to effectively problematize or read with a purpose seemed to be diminished because their knowledge of the case was limited, even though they had been given parameters to consider. In other words, they lacked the intuition and self-direction that we observed in the more experienced attorneys. Instead, they seemed to be interpreting and reading for someone else’s purpose, such as their supervisor, and they were concerned with interpreting that purpose correctly. In one instance, L referred as she carried out her research to the notes she had taken while receiving the assignment. She articulated aloud what she believed the partner had asked her to consider in addition to articulating her own thoughts on how her research should progress. Her problematization or sense of purpose in reading was expressed in terms of what she had been told. In

96. *Id.* at Nov. 6, 2012.

contrast, the more senior associates, those with four to five years of experience, framed their purpose in reading in terms of their own goals, as opposed to the goals of a supervisor.

The following excerpt illustrates L's attempts to decipher her supervisor's expectations. As L tried to make headway on a fairly recent assignment:

She looked again at her notes and said the most likely damages in her situation were consequential damages, but since the partner did not give her all of the facts she would not rule out the possibility that property damages might be involved as well. She looked again through the notes of decisions from the statute to see when the statute of limitations accrues—said some jurisdictions still [do not] use discovery rule so she needed to figure out if this one does. Scrolled slowly through as she skimmed summaries again; clicked on a case and said it was helpful so she emailed it to herself.

She said she was also told to look into fitness for particular purpose, even though usually the statute of limitations is the same for that. She searched that next and scrolled down reading summaries of cases. Clicked on a case in which the summary said the statute of limitations was for most contracts for sale, but six years for express warranties. She said she [did not] understand why there would be a difference, so she was curious. She also said this is why it is important to do more research than just finding a statute on something and stopping because case law can interpret things in ways you [would not] think.

She first noticed the year of the case was 1978, and said that might be why the outcome was different. She skipped to the bottom/conclusion and clicked a link to the statute that governs. She saw the court had said there was no inclusion of express warranties, but now there was, so she assumed it had been amended since then. She looked at the statute history and saw it was amended in 1983. She noted that Westlaw had not given the case a red flag, so it was important that she look to see what the deal was. She then went to the citing references for the case to see if anything recent had cited it. She clicked on a 2008 case after reading the summary of it and said it might explain it. She went to where the older case was cited and the 2008 case confirmed that the legislature had amended the law to clarify its intentions after that case. *She noted at this point that she had kind of gone “down a rabbit*

*hole” and that this issue may not even be relevant because it deals with express warranties, and this case may not but she is not sure. She said when you [do not] know if something is relevant or not, it is good to know it anyway just in case the partner needs to know it.*⁹⁷

Sometimes L appeared to flounder a bit because the problem was big or the relevant legal authority was new to her. For example, she questioned the time she spent looking for a provision in the Delaware code and seeking out the Model Business Code Annotated as she researched a stock/security issue being litigated in New York.

When one avenue of research yielded no results, L tried another approach, but L wondered aloud if she might be headed in the wrong direction:

She found some sources on Westlaw Next that called it the MBCA instead of spelling out “Model Business Code Annotated.” She said this might work better for searching, so she went back to Google and searched the abbreviation. Still was unsuccessful. At this point she [L] sat back and put her hands to her face and thought for a few minutes. *She said she was not sure if the Delaware code would be relevant because the case is being tried under New York law, but it was all she could find.* She . . . said she would try one more thing—went to citing references to see if New York had cited the Delaware statute. She found it cited in the Second Circuit and in New York courts. She scanned through the first case to see why it was cited. This one was only citing it because the case was tried under Delaware law, so not relevant. She scanned the second case and found the Delaware Code cited next to a New York Code, so she clicked on the New York Code. She emailed the New York Code to herself and saved it in the folder. She also scanned the case where she found the code to see if it was relevant case law, but said it was not relevant to her case.⁹⁸

L’s self-talk seemed to indicate self-doubt. In this, she was not alone; other attorneys expressed similar concerns about whether their projects were proceeding in an efficient way that corresponded to what their supervisors wanted or expected.

97. Cremeans, *supra* note 44, at Oct. 10, 2012 (emphasis added).

98. *Id.* at Oct. 5, 2012.

The most junior attorney, G, a second-year associate, carried on a similar dialogue with himself and his observer as he attempted to identify potential topics for a partner's upcoming presentation. G tried to narrow a broad research task into a manageable project. As he searched, he made comments suggesting that he was trying to keep the potential audience for the presentation in mind. G was asked to do what he referred to as a marketing project: "legal research underpinning the presentation of a partner. The research is on land use."⁹⁹ In an effort to "keep organized" before turning to Internet research, he began by creating a list of topics and articles and explained that eventually he would suggest a possible topic to the partner.¹⁰⁰ He had located an article entitled, *Bus Rapid Transit and Land Use*, on a land use association website. He told his observer that "BRT [Bus Rapid Transit] is a hot topic. . . . It is a good article, but really short." He next used Google to look for "land use" and "brokers," which yielded irrelevant results. He tried "land use navigators," and told his observer that "some days I sit and do a lot of research on things for publication."¹⁰¹ His observer continued to follow his research as he probed potential topics and stopped to explain how each topic he considered was potentially related to development in Pittsburgh:

G says, "Land Use for Brokers' sounds like a great topic. This is what we want." He clicks on an article with a similar title. B is the author for this article. G says, "Hi B." The article is on zoning and land use for brokers. G asks, "Where is this guy? Pittsburgh, great." He hops on Avvo, a website that shows information about attorneys. . . . [G mentioned another on-going project to John involving a Brownfield Development.]

"Tax Incremental Financing. I [do not] think brokers care about that." There is an article on "TIF and Brownfield Development." G says, "Oh, Pittsburgh!" TIF provides a 10-year deferral with a structure where at six years 30% of tax is paid with a subsequent gradual increase of the tax rate. There is a Pennsylvania TIF Guaranteeing Program. It is a \$100 million fund. G says, "Where'd that go? I was going to save it. I am

99. Stranahan, *supra* note 38, at Feb. 21, 2014.

100. *Id.*

101. *Id.*

just going to print it because why not?" He types possible topic TIF into his research.¹⁰²

Both G and L problematized, but they interjected comments that suggested an uncertainty and tentativeness about their process that was absent in attorneys R and H, who had five years and more than twenty years of experience respectively. Attorneys G and L, in only their second and third years of practice, respectively, appeared to stumble a bit as they read, expressing some difficulty internalizing their purpose.

Critical analysis of the text was more sophisticated for our more experienced informants, H, J, K, N, and R. For example, our two fifth-year associates R and J and solo practitioner H were frequently observed talking back to the text, marking them up, talking to themselves while reading, engaging in spontaneous think alouds. The observer who followed R, a fifth-year associate, probed a bit on this point. R responded in a way that indicated his reading was guided by his knowledge of employment discrimination law and the facts he needed to successfully negate the opposing side's claim of discrimination.¹⁰³ He looked at a transcript and the claimant's initial claim form, pondering why she claimed she was "picked on" but not "harassed."¹⁰⁴ His self-talk eventually led him to the unemployment compensation treatise to explore her potential claims and his client's potential arguments.¹⁰⁵

Several days later, R again engaged in the same sort of problematized reading:

Today he is working on a task involving researching reasonable accommodations based on the ADA. He describes the case to me: Their client's employee gets motion sickness in the company van, so the company has been paying mileage so that she can drive to the job site instead of taking the company provided transportation. [He is] researching similar cases to give the client (via the partner) advice, that they either "yes" or "no" should pay the mileage. R thinks they have to pay her because [it is] a benefit; he says it would be good to know why they [do not] want to pay it. R begins by narrating the task and by posing questions: What is a reasonable accommodation? Does driving her own car solve the problem? He thinks

102. *Id.*

103. Glavan, *supra* note 56, at Feb. 22, 2012.

104. *Id.* at Feb. 6, 2012.

105. *Id.*

they'll tell them to pay it unless they [cannot] afford to. He starts pulling cases from the treatise—writes down the case numbers, cases that support either yes or no. As he reads the cases, he says [he is] looking for ones that have to do with reasonable accommodations. Each case that has to do with reasonable accommodation, he highlights, then types a quick synopsis in the Yes or No section of the document. He paraphrases the cases because what he reads makes no sense to quote.¹⁰⁶

The observer noted, “R seems to interact a lot with the texts (verbally) possibly because I am there?”¹⁰⁷ Even if R’s verbalization is for the observer’s benefit, what seems clear from this observation is that R approached his task with a clear sense of the situation and the goal: to provide information that will allow the partner to thoroughly advise the client. He had a sense of what he thought the client should do, but he read further to test that tentative conclusion, to look for possible alternative solutions. In doing so, he engaged in a brainstorming exercise that began with an understanding of the legal standard of “reasonable accommodation.” He thought of accommodations he might propose, such as the employee driving her own car. He held the statutory standard, the situation, and the proposed solutions in mind as he skimmed the treatise for applicable cases. When he encountered a relevant case, he captured its meaning in his own words, making sense of it for himself.

His ability to read with such purpose appears to be, in part, the result of his keen understanding of the task, including his awareness of what his supervisor, the partner assigning the task expected

R offers that at some point, you just have to stop. You know this when you start seeing the same stuff come up over and over again. R works through a pile of printed documents he had already compiled before I got there. I ask him how he knows what to read: He says that he knows exactly what they [the partners] are looking for based on his experience. He [does not] waste time searching everything. As R reads each document[;] he either highlights it and adds a citation to the document [he is] making or else discards it. He seems quite comfortable in the process—reading, citing, discarding. He moves quickly through the documents, skimming. When he

106. *Id.* at Feb. 22, 2012.

107. *Id.*

finds key works like “transportation,” he adds a citation to the document on his computer screen. As he researches cases, he talks through possible outcomes: Could they provide Dramamine for clients? R also tabs the non-discarded printed documents for the partner “so he can see.”¹⁰⁸

R was also guided by his familiarity with the client’s story. R’s observer recorded,

As [he is] flipping through a document, I ask him if [he is] looking for anything specific. He says [he is] “seeing if you can offer medication as a reasonable accommodation”; he finds his answer—you cannot make an employee take medication. He tabs it “in case the partner wants to see where I came up with that. After he works through all his sources and his list of case citations for each side (yes and no), R says “so now I’m just going to read cases.” He pulls the cases based on a typed list of notes. He prints the cases. As he reads each case, he highlights the case name just “to know that I’ve looked at it.”

I ask R: Are you actually reading? He responds that he is skimming for particular things, and that he slows down when he finds something that has to do with accommodation. As he reads, he highlights and tabs the case and adds quotes to the document [he is] typing on the screen—under the No section. He also points out the differences between the example case and the current case. He reads another case, highlights a section, and adds a note to the document. He asks himself “what does in the workplace actually mean?”¹⁰⁹

Like the junior associate in litigation (L), R, a more senior attorney, read with the client’s story in mind and was thinking through the strengths and weaknesses of his client’s case as he read. R openly expressed a discomfort with predictive writing—the style of writing associated with the legal memorandum in first-year legal writing—when he was forced to write in that style in practice: “R describes how in law school, they make you write arguments for both sides. He explains how he prefers to write an argument instead of considering all potential perspectives and positions”;¹¹⁰ however, as R read through the cases, he engaged in a process of

108. *Id.*

109. *Id.*

110. *Id.*

critical thinking that did address potential arguments that the employee might raise. His clear understanding of how this information would be used to advise the client made it difficult for him to suspend his advocacy role and adopt what in the first year of law school may seem like a “neutral stance.” He was clearly willing to tell his client the bad news that it might have to pay for the mileage if the law dictated this result, but he was also exploring ways to fulfill his client’s goals. So, in this sense, he was considering all reasonable potential perspectives and positions.

A pattern to R’s approach emerged. The observer wrote,

At this point, I seem to see a fairly regular process: He skims, reads—if relevant, highlights or tabs (repeats skimming reading process) then adds quote from the case to the document. Then types an explanation. Sometimes he comments on what [he has] read [or] written: “[That is] stretching, but whatever,” “I love a case that I can put in both places.” R repeats the process for each case: Skim, read, highlight (tab), repeat, then add a quote to his document and explanation to that quote. R says that [he is] pretty efficient with reading. He [does not] “waste time.” He says “do waste time skimming, but not sure if [it is] wasting time.” R laughs out loud at what [he is] reading, says “hmm” while highlighting. . . . R continues reading and tossing out cases that are not relevant. I ask him what makes something relevant; he responds by describing the case to me in a narrative (*i.e.*, this case they provided an interpreter but [it is] not exactly the same thing).¹¹¹

At the end of an hour and a half, the observer captured what she believed was R’s system: He skimmed, read closely if the materials appeared relevant, highlighted pertinent information by tabbing or making notes, and questioned what he was reading and vocalized potential theories. When he found a relevant document, he quoted, cited, and explained the document in his own words within the text he was composing. To determine relevancy, he relied on a narrative recounting of the case to analogize or distinguish his client’s situation. This seems to be a system dependent upon a high degree of autonomy and responsibility and an understanding of the intricacies of the situation and the workplace environment. R was perhaps able to problematize more effectively than more junior associates because he has a greater sense of what mattered, which

111. *Id.*

did not necessarily involve his knowledge of the outcome. He was more concerned with getting the partners what they needed, his immediate audience at this stage in his career. He told the observer after completing one task, a brief, that he would not hear if they “‘won’ for a while if at all. He says [he is] not too concerned about the outcome.”¹¹² At this point in his career, he was comfortable with the process and with his role in the division of labor operating in his firm.

After more than twenty years of practice as a plaintiff’s attorney in employment discrimination cases, our solo practitioner H seemed to have internalized or habituated her approach to reading critically. It had become an integral part of her approach to reading. As her observer noted, “[T]he first thing H did while looking through [documents that were part of a request for production] was to look at the documents ‘with an eye for depositions.’” In subsequent notes, the observer commented,

One observation that stood out in terms of H’s reading patterns was her attention to detail and understanding of every document, file or pleading that she read. This can be correctly identified as close reading. For example, during one of our sessions, H spent time reading a report that showed varying disciplinary rates for white vs. non-white employees in the same occupation as her client. She studied each line of the report, and made notes and highlights on the document. For each figure, she made sure that she understood what it meant and how it connected to the other figures in the report. This level of detail, she said is important when attorneys view material that they are not expert in During our sessions, H would talk about how she had to constantly stay abreast of developments with her client’s employer and its business, in order to adequately represent their case. H does this [by] reading newspaper, online local news sources, and national news sources on a daily basis. Specifically, H learned about a recent case that was in the news and discovered that it might be a good comparator for her client’s case. Moving on from her initial reading, H followed up with her own independent research to develop her theory of how the comparator case connected with her client’s situation.¹¹³

112. Glavan, *supra* note 56, at Feb. 22, 2012.

113. Kaasha Benjamin, *Re-Structuring Legal Education: Necessary Attributes of Young*

At this point in her well-established career, H was proficient at reading with an eye for how the material could be useful to her or her client. She engaged in a sorting and categorizing process that reflected a deep understanding of how a case progressed, and she was able to efficiently scan for the information she wanted, probe the text, and envision how to use the information gleaned. Problematizing came naturally to her.

H was able to both anticipate potential problems and take action to minimize their effects. For example, she described the importance of thinking about potential interrogatories as she reviewed documents in the event she could not depose someone and had to ask that person to respond to interrogatories: “She said that it is important to do this simultaneously while thinking about depositions because the ideas or questions are often linked and it is hard to remember things later after looking at hundreds of documents.”¹¹⁴ This high degree of autonomy and expertise is the end goal for the practice-ready attorney.

B. What They Were Writing and How

1. What They Wrote

In terms of writing, we observed the junior associates working on a large variety of documents. In contrast to what is taught in the traditional first-year legal writing class, these associates wrote few formal legal memoranda. Instead, they more often summarized research findings in informal email communications to supervising attorneys.¹¹⁵ Many of the writing projects were related to litigation. Email correspondence accounted for much of what they wrote. They were primarily ghostwriters, writing text that would be ultimately authored by a senior partner. The junior associates relied heavily on templates and sample documents to understand the format their documents should take. The texts went through multiple

Associates and Initiatives Beyond Preparing for the Bar 11–12 (May 2, 2014) (unpublished seminar paper) [hereinafter Benjamin, Seminar Paper] (on file with author) (The author of this seminar paper was a law student observer. This paper was written as part of this project.).

114. Benjamin, *supra* note 40, at Jan. 27, 2014.

115. “L said she only writes a formal memorandum if the research will be used in a brief, but she said that was very rare. She also said that when she wrote memos or emails, she did not usually describe the cases in detail. She just mentioned the relevant language or conclusion.” Cremeans, *supra* note 44, at Oct. 10, 2012.

revisions, even before being reviewed by a supervisor. The associates scrutinized their own work, making sure to substantiate their claims and to select their words with great care. As a result, the writing process was quite time-consuming and often involved close reading of their own texts and those on which they relied. They largely composed online, but all of our informants brainstormed with pen and paper at some point in their composing process. Because they were juggling several tasks, they needed strategies to pick up where they left off after an interruption, or they needed to schedule a time to write that would involve few interruptions, like writing later in the evening or on weekends.

They wrote formal and informal summaries of their research findings. They worked on the following documents:¹¹⁶

- Motions to Compel Discovery
- Motions to Dismiss
- Motions of Summary Judgment
- Motions to Expedite Discovery, and
- Briefs in Support of these motions.
- Briefs in Support of and Opposition to Preliminary Injunctions
- Pleadings
- Complaints and Answers
- Letter Briefs
- Certificates of Service
- Responses to Summons
- Contracts
- Letter Agreements
- Discovery Requests
- Interrogatories
- Cease and Desist Letters
- Client Letters

The associates prepared presentations for senior partners. They took notes, by hand and online, recording their research trail, brainstorming, and outlining.

Over the course of our observations, we saw the seven attorneys write hundreds of emails. These emails went to supervising attorneys, other associates, paralegals, collaborating attorneys

116. Again, this list is not meant to indicate the frequency or importance of the work.

outside the firm, opposing counsel, and clients. Given the volume of email we all deal with each day, it is hardly shocking that these attorneys used email as a primary form of communication. Even in the smallest workplace, email exceeded face-to-face communication and phone calls as the means of communication, which meant that these attorneys were writing constantly.

When the attorneys responded to partners' queries by email instead of drafting a formal memorandum, the emails they composed were carefully drafted. One observer watched as L drafted a response to "Partner M" explaining her findings regarding a summons with notice from New York. She spent two hours researching the question and referred to this research and her handwritten notes as she wrote. She cited the relevant law to substantiate her claims. At times, she hesitated because she lacked specific facts, saying in one instance, "I [do not] know how the Defendant was served; I want to explain that is the reason [that] I am not going through the analysis for 20–30 days." She often quoted sections of the law because "it is easier than paraphrasing." When she had drafted the majority of the content, she read through her email aloud and edited as she went along. Before sending it she added, "Hopefully this is helpful. Please let me know if you have any questions." She forwarded it to the partner so, she explained, "He can send it to the client." The observer noted, "L says that she is pretty positive that when [it is] sent it [will not] be coming from her."¹¹⁷ She was correct. About twenty minutes later, L received an email from the partner to the client. He had replaced the opening of her email with the words, "L's research confirms our discussion. Looks like. . . ." L commented, "The partner probably [will not] be happy that she spent 2.3 hours on that email. A lot of work for very little acknowledgment."¹¹⁸

That same morning, Partner M had asked L to draft another email to a client who was about to receive a huge bill.¹¹⁹ The partner wanted L to draft an email explaining the work they had done in the past month.¹²⁰ The observer recorded as "L sits back and thinks for a minute. L begins to take notes on her legal pad because 'she [does not] know where to start.'¹²¹ As she provided the story

117. Douglass, *supra* note 50, at Nov. 2, 2012.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

of the case to the observer, she searched through a past email to the client providing an update. Before putting anything into an email, L took notes on a legal pad, which was her practice when she did not know what she wanted to say. She reviewed her text and took out the phrase “this was only the beginning,” commenting that “This [language] would scare them [the clients].”¹²² She told the observer that “normally when drafting emails they are supposed to be short and concise. If she typed something like this update in an email initially she might send it too soon. For something like this, she wanted to write it as a letter and then attach it or cut and paste from a word document. It should be formal; [she has a] different mindset when typing in an email browser.”¹²³ For L, the use of the legal pad forced reflection and slowed down the pace of email correspondence in an attempt to prevent errors.

Tone was also a concern for L as she composed email. For example, she considered various ways to strike the appropriate tone as she composed separate emails to different attorneys outside her firm:

She told me she was working on an email to co-counsel about a confidentiality agreement. . . . She said he emailed her asking if they had one yet, and said it was sort of dumb of him to ask because it was clear they did not have one. . . . She had the email typed already, but she reread it. She said she realized one line about how “obviously they do not have an agreement yet” sounded condescending so she changed it. She said you should always reread emails before sending them to make sure of things like that, and she usually does not notice how things sound when she is first typing them. She cc’d a partner who is involved in the case in the email. She said she always cc’d a partner if it is communication with other counsel, especially if the other counsel is a partner. [She] does this even if the partner is not involved or is barely involved, so they at least know what is going on.

She then started a new email to New York counsel for [her firm] to ask about getting a confidentiality agreement. She opened with a friendly but still professional opening, “I hope you are doing well.” [She] said she likes to do this especially with people she has met before, and she has met the New York counsel she was emailing. Makes it not strictly business, even

122. *Id.*

123. *Id.*

though she said New York attorneys probably [would not] even notice. She typed the email very fast, but used backspace a lot. The sign-off was “Please let me know at your earliest convenience.” Said she likes this sign-off because it is polite, but it is a passive aggressive way of saying to get back to her ASAP. She also explained that she use the partner’s name first when mentioning him, “M and I are working on” because she is cc’ing him. She also said she used his name even though he is barely involved in the case, just because partners always want to be recognized. She then reread it once more and pressed send.¹²⁴

As these excerpts demonstrate, L constantly considered the tone and appropriateness of her choice of language within her emails. This attention to detail carried over to such matters as the closing phrase of an email. For example, she changed the close of one email to a client by omitting the phrase “have a good weekend,” concluding that it was neither late enough in the day (1:30 p.m. on a Friday) to say this nor necessary. She rephrased a sentence to use active instead of passive voice in an informal email to a partner and attached documents to the email so that the partner would know exactly what she was questioning. She was acutely aware that her choice of language conveyed an image. Furthermore, she was sensitive to the fact that her emails replaced face-to-face meetings or phone calls, communication styles that would have allowed more give and take or more opportunity to clarify. Thus, she wanted to be as precise as possible. This tremendous care in responding to email was a recurring theme for all of our informants.

2. *How They Wrote*

The attorneys frequently began a writing task by accessing a template. They rarely started from scratch, but instead adapted a prior document to fit their needs. These documents often came from various sources within their firm. Sometimes, they found a similar document housed on their firms’ databases that had been prepared by a colleague; on other occasions, they used their own similar work from a past project. L, for example, was able to draft a Brief in Opposition to a Motion to Compel Discovery in less than a day because “she already had a brief from a previous opposition to the

124. Cremeans, *supra* note 44, at Oct. 10, 2012.

same motion on the same issue in Michigan. She just changed words from that brief to fit specifics of this motion and Shepardized the case law that was used.”¹²⁵

We also observed the attorneys mirroring the opposing sides’ arguments when they began organizing their own documents. For instance, when working on a reply letter, G “tends to write in number and bullet points corresponding to the opposing counsel’s numbers and bullet points in the prior letter.”¹²⁶ G also used an earlier motion brought by opposing counsel to structure a Motion in Limine on behalf of his client in the same case.¹²⁷ R reported using the opposing parties’ testimony from a deposition transcript in constructing an argument on behalf of his client, stating “that he ‘always uses they’re own words against them.’”¹²⁸

The other attorneys had similar composing processes. They engaged in brainstorming and planned out what they wanted to say, sometimes using an outline depending on whether they were writing from scratch or altering a template. We often observed them writing down initial ideas on a legal pad. They revised their plans as they read more or began to write, making more notes and annotating existing notes. As they tried to decide on a theory or thesis, they spent a lot of time reviewing and refining. For example, when R (the fifth-year associate in employment discrimination at a large firm) drafted a brief, his observer characterized the process as translating the human story into legal terms, reading and writing simultaneously, consulting case law, the transcript, and a draft of his brief. He inserted quotes, reread authority, wrote a section distinguishing from or analogizing to precedent, and then reviewed what he had written.¹²⁹

All of the attorneys revised their work multiple times, first revising their own work, and later receiving feedback from a supervising attorney. R explained his process for writing a brief: he used an old brief as a template, making sure that it matched the outcome for his current case. He composed an initial draft on the computer because he had an easier time thinking while typing. He did not show this initial draft to anyone else. In his first draft, he “put everything where he thought it belonged.” As he revised this first

125. *Id.* at Oct. 5, 2012.

126. Stranahan, *supra* note 38, at Jan. 31, 2014.

127. *Id.* at Mar. 7, 2014.

128. Glavan, *supra* note 56, at Feb. 6, 2012.

129. *Id.* at Feb. 22, 2012.

draft, he aggressively cut unnecessary words, such as places in which he had “used two words instead of one.” His first drafts were typically “too wordy,” so he looked for words to cut, such as “un corroborated” and “undeniably.” His next draft went to his secretary. Then, after incorporating revisions from his secretary, he sent a draft to the senior partner, followed by sending yet another draft to the client. After receiving comments from his client, he then filed the brief with the court.¹³⁰ L’s experience was similar. She explained that two people usually edited documents before they were filed: the associate who wrote it and a partner. In bigger cases, the associate, a junior partner, and a senior partner read them.¹³¹

It was apparent from observing their composing processes that these attorneys, as writers, were methodical and meticulous. They documented almost everything they wrote, checking their notes, working with legal authority, transcripts, depositions, or answers to interrogatories as they composed. They were precise, thinking carefully about their word choice and the implications of the choice. The process appeared painstaking at times, moving back and forth between writing and reading so frequently that writing a few lines of text could at times take hours. Even so, they were keenly aware of how much time they had to complete a task and how much time they were taking. They strove to be efficient.

a. The Composing Process of the Fifth-Year Associate

We observed J (a fifth-year associate, and a colleague of R in the labor and employment group of the large law firm), as she drafted a Brief in Support of a Summary Judgment Motion. J wrote over several weeks, beginning work on February 4 for the brief that was due on March 11. She worked on it as much as she could throughout the week and came in over the weekend to complete it. For the first several weeks, she reread and studied the documents that supported her theory. Her early writing consisted almost exclusively of note-taking and brainstorming. In fact, her composing process revealed an intimacy between reading and writing tasks that was apparent in all the attorneys’ writing processes.

J began work on the brief on a Saturday. She articulated her purpose in writing this brief to support the motion, which “requests that the case should not go to trial because based on the facts, the

130. *Id.* at Feb. 10, 2012.

131. Cremeans, *supra* note 44, at Oct. 5, 2012.

plaintiff cannot win as a matter of law. In other words, the law says we win.”¹³² She had a yellow legal pad filled with notes. As she explained, “I have to gather my thoughts,” and “she likes brainstorming with a pencil.”¹³³ Her next step was to pull up three other summary judgment briefs she had written in the prior two years. She also planned to reread the complaint to make sure she did not miss anything important that the plaintiff had alleged. As the process unfolded, she kept a list on her legal pad of any factual matters that she needed to confirm with her client. Her goal for the day was “to get a good handle on the elements of the case.”¹³⁴ Although she said she had a good knowledge of the case, she still needed to review the facts. This meant reviewing the transcript of the deposition because “the deposition is the most important.”¹³⁵ She organized the facts by tabbing the transcript, rereading and reviewing it to identify the facts upon which she wanted to rely. At the same time, she referred to the summary judgment brief she wrote in 2010. J told the observer that “she is looking for elements that the plaintiff needs to prove. She will attack those elements and show that the plaintiff [cannot] in fact prove them.”¹³⁶

Four days later, J had not yet composed any text for the brief. Instead, she reread the documents that provided factual data. She read these documents slowly, looking for specific information and confirming the absence of information that would pose conflict. When the observer asked J what she was looking for as she read, J explained that she was “looking for an admission in the deposition that they agree on the facts. [She is] looking for statements that might create a problem, might create questions about the facts.”¹³⁷ By this time, J had many notes on her legal pad, and the deposition was heavily tabbed with post-it notes. She checked discovery documents collected from the client, such as benefit files, personnel files, and emails, which she was able to access electronically with e-discovery software. As she reviewed these documents, she simultaneously went through the notes on her legal pad, looking for questions that needed to be answered. J occasionally tagged questions on her legal pad, marking them in some way to indicate that

132. Glavan, *supra* note 56, at Feb. 4, 2012.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.* at Feb. 8, 2012.

she needed more information. For example, J wrote, “Problem—plaintiff had trouble completing paperwork.”¹³⁸ These tags seemed to indicate that the information might affect her argument in some way. As she anticipated writing the brief, working through it in her mind, she noticed gaps in her understanding that the documents alone did not address, and so she noted questions for her client. This stage of her composing process involved the juggling of several texts, looking at them from multiple perspectives, and ultimately mastering the information within them and using it to tell a coherent story.¹³⁹

Three days later, one week after her official start, she began to write, again coming in on a Saturday.¹⁴⁰ Even after she actually began composing text, her process remained predominantly focused on reading. At this point, she was still reading more than writing; she reread the texts that substantiated her legal argument. During one 73-minute period, the observer noted that J transitioned eight times from writing to reading, spending only 22 minutes on writing.¹⁴¹

J is using the position statement to help structure the brief. She explains how she needs evidence for every fact; I ask her what she means by evidence, and she explains that she needs to be able to cite testimony, a document, sworn interrogatory, or an affidavit. At this point, J asks me to close the door so she [will not] be distracted. In the brief that J has written, she leaves informal citations as notes to herself. A paralegal will help her construct the appendix; different districts have different rules for brief construction and citation. The text that J has already been working on is highlighted in a few sections. I ask her why they are highlighted. She says they are markers to remind her to ask the client a question. Beneath the constructed text, she has section headers in the form of questions.

J begins writing by flipping through the deposition and re-reading sections. The deposition is very tabbed and noted. I start timing how long J spends reading versus writing:

4:17—reading deposition.

138. *Id.*

139. *Id.*

140. *Id.* at Feb. 11, 2012.

141. *Id.*

4:23—begins typing bulleted points (not prose) that are details concerning the above claim.

4:24—back to mixture of reading the deposition and writing bulleted points and then translating them into prose. She summarizes three pages of deposition with one line of summary; she does this a total of three times with three bulleted summary statements beneath the section of the facts she is working on. To convert the bulleted points into prose, she “narratives” them, with extensive stylistic and word choice changes and rearrangements. Once J has converted the bulleted point into prose, she deletes it from the document.

4:40—J is back to rereading the deposition. This time she is reading the supervisor’s deposition. She explains that some depositions have an electronic word index; she searches the word “training”; she explains that she is looking for evidence. Her dad calls. They talk about morel mushrooms for about five minutes.

5:05—J starts typing again; she also reviews the position statement. The prose she writes seems to be a narrative summary of events. These facts are narrative summaries of 1-3 pages of deposition. As she constructs and crafts the prose section, she deletes the bulleted summary from the document. She begins rereading a section of the brief that is already written and decides to move the new paragraph up to a “better location.”

5:14—J goes back to reading the deposition.

5:19—J begins rereading the section she has already written. She begins a new section D.

5:20—Back to reading the position statement.

5:21—Types “D.T.’s Performance” and then beneath it, she makes a numbered list of dates, based on when the claimant received performance appraisals. J types a note to herself and highlights it, “discuss her high sales.” Highlights remind J of places where she needs more information from the client.

5:24—J goes back to reading the purpose statement and other documents (emails, more of the deposition).

5:30—J is still working. I leave.¹⁴²

For this attorney, the writing process, at least in the initial stages, was an exercise in close reading.

b. The Composing Processes of the Most Junior Associates

The junior associates, particularly the most junior attorneys (L in the litigation group of a large firm and G in the real estate practice of a midsize firm), were typically ghostwriters for a senior partner. Because L was aware of the need to match the assigning partner's style, her writing projects often began with a search of the firm's database to try to figure out that partner's writing style.¹⁴³ Sometimes these associates openly expressed their discomfort with this role. In addition to ghost-writing, the associates were asked to act on the behalf of the partners in other ways as well. For example, although K was authorized to sign for the senior partner when he was out of town, she referred to it as "forging his signature," conveying her view that she was participating in a deception. She said she did not like to "forge" his name and gave it to his secretary because she was "very good at forging L's signature."¹⁴⁴

At other times, the associates were asked to write directly to clients or opposing counsel, signing their own names because, as L put it, the partner wanted her "to be the bad guy."¹⁴⁵ L also noted the challenges that arose when working with multiple authors. She pointed out a place in her draft where the general counsel of her client's company had changed language. These changes resulted in contradictions in the document that might result in their motion being denied. At other times, the changes made the text sound worse, in her opinion, and she had to evaluate whether she had the discretion to ignore the revision.¹⁴⁶

The need to pick words for someone else or finish a project for a senior partner posed challenges for these attorneys, especially when the attorneys lacked background knowledge or experience to understand the context in depth. At times, even selecting the proper template to use was difficult. For example, G expressed

142. *Id.*

143. Douglass, *supra* note 50, at Oct. 5, 2012.

144. Deluco, *supra* note 45, at Nov. 28, 2012.

145. Douglass, *supra* note 50, at Nov. 16, 2012.

146. Cremeans, *supra* note 44, at Nov. 29, 2012.

slight frustration on one project, a Mortgage Foreclosure Complaint, at not having a sufficient depth of knowledge.¹⁴⁷ As the observer documents,

He is using the firm's proprietary document system on his computer. He says that there are template documents to choose from to create a new document. He says, "I guess I'll use the complaint one." There are several forms, including letters, memos, and briefs. He pulls up a Common Pleas Complaint Template. He says it is a challenge to name the file, as he does not know the client yet. . . . He searches for the client in the system. Unable to find anything, he puts a generic number in that he will correct later.¹⁴⁸

The most junior attorney in his midsize law firm, G described himself to the observer as "a jack of all trades [at his firm,] taking assignments from basically anyone who needs anything done."¹⁴⁹ He explained, "[I do] a bit of everything. Every day is different: Real estate, employment disclaimers, hearings, construction litigation today. [I am] a blend of transactional and litigation attorney, hoping to narrow it in the coming years."¹⁵⁰ Currently, G said that he "works with three handfuls of attorneys. He hopes to work with one handful someday."¹⁵¹

Their sometimes ill-defined sense of the task affected the junior associates' ability to write as confidently as their more experienced colleagues. They indicated at times that they were striving to become more effective, perhaps as a result of critical feedback they had received on prior assignments. For example, L had learned to save earlier versions of drafts when incorporating suggested changes in case a partner wanted to see what she had done. She told her observer that it was best to "hang onto revised versions of documents you turn [in to the] partner in case he questions a particular change in the future. Can show him the revised version as to why something was changed."¹⁵² On another occasion, L saved a revision "of the Motion with M's [a partner's] notes 'in case I get yelled at later.'"¹⁵³

147. Stranahan, *supra* note 38, at Feb. 7, 2014.

148. *Id.*

149. *Id.* at Jan. 24, 2014 (initial session).

150. *Id.*

151. *Id.* at Jan. 31, 2014.

152. Douglass, *supra* note 50, at Oct. 12, 2012.

153. *Id.* at Nov. 2, 2012.

c. The Composing Process of the Most Senior Attorney

After almost twenty years litigating employment discrimination cases at her own firm, H had a well-defined composing process and exhibited tremendous poise in executing it. Her observer captured H's confidence in the following description of her writing:

In regards to patterns of writing that I observed during my sessions with H, I found that a lot of the writing tasks that she routinely performed were related to building a case. For example, H said that she had pretty much developed a routine practice when it came to case-building tasks such as creating a file cover page, writing the initial client letter and putting together a timeline of relevant events in the case. The core of H's case-building task seemed to center around her created "chronology" document. H said that she creates this document at the beginning of every case, even before she has all of the relevant information, and continues to develop and add to it during the course of the discovery and pre-trial strategy phase of the case. To build the chronology, H takes the documents that she receives from her client, researches on her own, or receives [through] her requests for production, and puts them in order according to date. After this, in her chronology document, H lists the date of each document she has compiled, makes notes of the time that the document was sent and received by her, and the point in the case at which she came across the document (i.e., discovery, deposition, etc.).¹⁵⁴

H's years of expertise allowed her to structure her writing process according to the chronology of a case.

H also makes notes in her chronology for each document if she thinks of questions to add to her interrogatories, [information for] pleadings, future requests for production, or just general questions for her opposing counsel. H said that having a good chronology helps to remind an attorney of how the case has progressed, and where facts and issues arose in the case, creating a narrative. . . . Although attorneys accomplish this task in various ways, H noted that it is essential to be able to understand the progression of a case—from the date the first pleading is filed all the way through trial.¹⁵⁵

154. Benjamin, Seminar Paper, *supra* note 113, at 12.

155. *Id.*

H also exhibited a strong intuition as to what information she should pursue and had developed strategies to preserve information. As the preceding excerpt reveals, H's work was characterized by a sort of a practice wisdom or prudence.

As a solo practitioner, H had a deep appreciation for her role throughout the whole process, an understanding that the most junior associates and even the more seasoned associates seemed not to have; moreover, she had had repeated opportunities to perform these tasks, reflect upon her work, and systematize her approach, which undoubtedly contributed to her confidence.

C. The Interpersonal Situations They Faced

Our goal was to understand the reading and writing strategies of the junior associates, but as we watched them read and write, we also learned about their interpersonal skills. Lawyering, for these young associates, involved interacting with supervisors and support staff, opposing counsel, other associates, clients, third parties, judges, and the community. They worked in hierarchical or stratified spaces, with many unspoken expectations and time pressures. It was, even in the most relaxed office space we observed, a stressful environment that they had to learn to navigate on the job. Law school, for this group of attorneys, had taught them little about these aspects of practice.

1. *Teamwork*

Law schools often talk about the need for teamwork in legal practice.¹⁵⁶ It is less common for law schools to address the hierarchical nature of teamwork in the law firm setting. Teamwork in the law firms we observed occurred in a vertical fashion, with usually only the more senior partners interacting directly with clients.

For example, in the large or midsize law firms, we observed that the associates interacted primarily with their supervising attorneys. Senior partners assigned work to associates based on the partners' communication with clients, and most collaboration between the associates and senior attorneys occurred through email or by comments on written drafts of documents. The associates had limited contact with clients and typically did not contact the clients directly unless told to do so. The associate at the midsize firm (G)

156. See, e.g., Janet Weinstein et al., *Teaching Teamwork to Law Students*, 63 J. LEGAL EDUC. 36, 40–41 (2013).

felt he interacted more with clients than his colleagues at larger law firms did, but in our observations, he had relatively little direct client interaction. He typically interacted with clients through email, for example, responding when a partner was on vacation. G did not participate in client interviews. The immigration associate (K) had the most direct contact with clients, but after four years of practice with this firm was still receiving mentoring on client counseling. K's supervisor explained to our observer that "making a client comfortable is the key to being a lawyer and building a practice. K is very good at client relations, and [I] am teaching her how to be even better."¹⁵⁷ When contacted directly by a client, the associates typically copied the partner on their responses and in many cases did not respond to follow-up questions from the client even when contacted directly, instead forwarding the question to the partner so that the partner could respond.¹⁵⁸

Sometimes partners assigned work to multiple associates at once, such as with document review projects, but there was little discussion among associates about shared projects. Instead, the associates completed the work by making notes on documents housed on a shared database. Support staff, such as secretaries, librarians, and paralegals, had a wealth of information but were not always accessible to associates. K explained that she shared a secretary with Partner L, which meant that she does not "really have a secretary."¹⁵⁹ L said her decision as to whether to use a paralegal or librarian was a cost-benefit analysis. First, she needed to evaluate whether it was faster for her to do a task herself or to request help. Then, she usually included the assigning partner's name in the request for help because she felt it gave her request more weight.¹⁶⁰

In the smallest office we observed, the non-profit agency, the junior associate had frequent face-to-face collaboration with the only other attorney in the office, the managing partner. But although they had a close and respectful relationship, it was still hierarchical. The managing partner determined the focus of the office, assigned work, directed changes, and made clear that the junior associate was second in command. Even our solo practitioner worked as part of hierarchical or stratified teams. She collaborated

157. Deluco, *supra* note 45, at Oct. 31, 2012.

158. See, e.g., Cremeans, *supra* note 44, at Nov. 30, 2012.

159. Deluco, *supra* note 45, at Oct. 31, 2012.

160. Douglass, *supra* note 50, at Nov. 9, 2012.

with her clients, mediated settlements with opposing counsel, supervised a paralegal, and interacted with judges and courtroom staff. For all of the attorneys, their work was interactive, driven by clients' needs, but the attorneys spent many hours a day working alone on their portion of a project.

2. *Organization and Time Management*

Working in these environments required both organizational and time management skills. There were constant interruptions and multiple projects to manage. We saw the attorneys sort work into email folders and physical folders, use email flags, and color-code file systems. The solo practitioner, H, created a paper file for each case with different color folders—yellow for correspondence, purple for documents given to her during client meetings, green folders for pleadings, and so forth. She preferred having the physical documents readily accessible as opposed to scanning the documents and storing them electronically.¹⁶¹ The attorneys had systems for recycling, for saving drafts, and for deleting drafts. The attorneys needed to manage large bodies of information and be able to access information again at a later point in time. They printed, tabbed, and used colored ink and sticky notes to keep track of information.

The attorneys also needed to prioritize projects and keep track of their time. For almost all of the attorneys, this meant they kept a list of the tasks they needed to complete, and they tried to keep only emails that needed immediate attention in their inboxes. They used calendars to keep track of events; on several occasions, alarms alerted the associates of events, such as phone calls, deadlines, or meetings that they had almost forgotten. Most of the attorneys we observed worked on a billable hour basis and had to account for small increments of time. L believed that being a good organizer and presenter of information was a tremendous asset. She described it as a “skill” that did not come naturally to a lot of people.¹⁶²

Time management was challenging, particularly because the associates lacked total control over their schedules. We witnessed numerous examples of upheaval in the associates' schedules, some that were minor annoyances and some that triggered more significant stress. For instance, K found herself arriving late to a meeting

161. Benjamin, *supra* note 40, at Feb. 13, 2014.

162. Douglass, *supra* note 50, at Nov. 9, 2012.

with one managing partner because her other managing partner unexpectedly volunteered her for a pro bono project. For another associate, J, the lack of control involved an unforeseen revision. J, who had worked for hours on a motion brief, received negative feedback from her senior partner on her first draft. She found herself having to rework her brief and feeling demoralized. She cancelled the observer's visit, explaining in the email that she "got it wrong."¹⁶³

When G exercised discretion over his schedule and decided to take his student observer on a "fieldtrip" to view Motions Court, he was placed in an awkward situation of having to refuse work. G and his observer ran into a senior attorney from G's firm who was presenting a motion. G initially introduced the observer by name only. However, when the senior attorney sat down with G and the observer, G provided more information as to why G was in court. G explained that they were in court to keep the observer from being "bored." The observer's notes indicated that G might have been somewhat self-conscious that he was in the court for this purpose alone. At this point, G's colleague, who had recently made partner, told G that he might need help "parsing out some loans and foreclosures later this afternoon."¹⁶⁴ The partner added that maybe he should ask G to argue the motion for him "so that he could get back to his work at the office." G explained that he would not be able to do this because he was expected on a call soon with another (more senior) partner. G said, appearing to be slightly thrown by the request, that "It might not be about anything that important, but it might be something important. Otherwise, I would definitely fill in for you."¹⁶⁵ Shortly thereafter, G returned to his office, leaving the observer at the court.

In perhaps the most difficult scene we witnessed in which a junior associate was asked to reprioritize time, L cautioned her observer by email, "Warning in advance: I just found out I have a filing this afternoon. It might get crazy. My apologies in advance if I have to kick you out early."¹⁶⁶ By the time the observer arrived at 1:30, L was in a holding pattern, waiting for the court's permission to file a preliminary injunction under seal. Several minutes later,

163. Glavan, *supra* note 56, at Feb. 11, 2012 (referring to J's email communication asking Mary not to come because J would prefer to work unobserved).

164. Stranahan, *supra* note 38, at Feb. 28, 2014.

165. *Id.*

166. Douglass, *supra* note 50, at Nov. 2, 2012.

L, clearly confused, observed the assigning partner leaving the office for the day without saying anything to her. Subsequently, L's secretary entered L's office, commented that, "Communication is overrated," and asked L if the partner had told her he was leaving; he had not. L told the observer that one of the worst parts of her job was the "false fire alarms." She said it was very stressful when she was told to get something filed immediately. And the stress that day had taken its toll on L—she said that she had cried a little at lunch "for nothing."¹⁶⁷ L had coping strategies, however. For instance, she always accepted work from partners she liked working with because she never knew when they would call again. Having projects with these people allowed her to turn down work from those for whom she did not like working.¹⁶⁸

3. *Communication*

Communication skills were fundamental to these attorneys, but the sort of skills they drew upon are not a key part of the traditional law school curriculum.¹⁶⁹ Communicative acts in law school often involve preparation for courtroom appearances or client interviews. In contrast, the sort of communication engaged in by the attorneys we observed was usually intra- and interoffice or business communication. Despite what their law school experience might have suggested, these attorneys made few court appearances and had limited client communication.

The attorneys' need to communicate effectively was a theme that emerged in all of our observations. The disparity between the amount and type of communication that occurred in practice and the amount of discussion about the need to draw on these skills in law school was a source of surprise for all of our observers. One of the second-year law student observers discussed this disparity in his final summary:

I observed that lawyers must communicate, understand, cooperate, and work with supervisors, co-workers, third parties, and clients. Furthermore, communication with these individuals—each with different background and personality—

167. *Id.*

168. *Id.* at Nov. 30, 2012.

169. G's written response to interview with John Stranahan, Mar. 24, 2014. (Notes on file with author).

necessitates a wide range of interpersonal skills. Conversely, law students are rarely required to communicate. In lectures taught with the Socratic method, a student can typically expect, depending on the size of the class, to be called on only a few times [each] semester.¹⁷⁰

The attorneys constantly adjusted their communication to address their audiences appropriately. Several worked for multiple attorneys who had very different styles, and even in the smallest office we observed, the associate was continually evaluating what mode of communication to use and when to reach out. At times, the attorneys had to translate ideas. They tried to express complex material in an accessible form, regularly engaging in an exercise of cross-cultural communication and sometimes experiencing culture shock. Our most obvious example of how these attorneys had to draw on communicative competence involved K's interactions with clients who were non-native speakers of English. She said she had "gotten good at communicating with people whose second language is English. Many are very good and many have handlers"; however, she grumbled at one point about a client whose English was "exceptionally bad." His email to K suggested that he did not understand information K had sent to him. Nor was she able to understand his reply. She asked her partner if he was able to follow the email, but he, too, was confused. In the end, K used the firm's intranet to access an employee database for "multilingual skills."¹⁷¹

We also observed other, subtler examples of what could be characterized as communication across cultures. For example, when G attempted to convey information to a client, he worried whether his explanation of the law would confuse his clients or appear too negative, making comments such as "I keep using 'unfortunately.' I should not use it so much."¹⁷² To a question about what he wished he had known in law school, G responded that he wished he had more experience with clients and billing. In explaining his response, he revealed a sense of uncertainty about the most appropriate forms of communication for clients:

I would say I wish I knew more on how to interact with clients, although that just comes with time. I've interacted much more with clients than my colleagues at larger firms, but probably

170. Deluco, Seminar Paper, *supra* note 59, at 14.

171. Deluco, *supra* note 45, at Oct. 31, 2012.

172. Stranahan, *supra* note 38, at Jan. 31, 2014.

far less than my colleagues at solo firms. Despite that, I still feel relatively unsure of how to deal with client communications—how often do you report to them? (Do you tell them every single thing you do or are going to do?) How do you tell them bad news, and how do you deal with combative clients who do not think you have enough experience?¹⁷³

G then explained a similar desire to have had more experience with billing, a common feature of the legal culture, but a feature that was difficult to adjust to for many of our attorneys. G's response, however, indicated that the billing process involved a complicated communicative task that he was unsure how to manage:

I also wish I knew more about billing, which is quite hard to adjust to. As I told you, entering time in increments of .1 an hour is hard enough, but then describing what you do is quite hard, and every partner (and client) is different in what they expect. Some want huge amounts of detail, and sometimes it takes longer to enter your time for something than it did for the actual work. Others stress uniformity—so that if three attorneys are working on the project, the partner expects each of those three entries to be uniform in the description and story. It seems like an unimportant thing because it really is not practicing law, but when it comes down to it, clients read their itemized bills more closely than they read the complaint that you file with the court.¹⁷⁴

In discussing his desire to have more practical experience in law school with billing, he was also expressing a desire to know how to communicate effectively with a key subculture, the partners of the law firm.

One of our attorneys, L, commented frequently on different practice styles among attorneys in other firms and outside of Pittsburgh. She talked about how the New York attorneys she dealt with did not appear to notice her efforts to be friendly in her emails and how “Philadelphia lawyers are typically more adversarial than Pittsburgh lawyers.”¹⁷⁵ Her understanding of these differences informed her communication patterns. For example, she opted to contact an escrow agent rather than opposing counsel in Philadelphia,

173. G's written response to interview with John Stranahan, *supra* note 169.

174. *Id.*

175. Cremeans, *supra* note 44, at Nov. 15, 2012.

whom she perceived to be “rude.”¹⁷⁶ Her sense of difference in practice styles helped her to maintain her sense of self-worth as a novice professional in an often unfamiliar legal culture. She discounted, for example, a motion filed by the opposing side asserting that L had incorrectly filed the complaint by naming the trust as a party instead of naming the trustee for the trust assets. Rather than view the motion as an implicit criticism of her legal abilities, she instead described it as “petty and it was just something they were doing to make them look dumb.”¹⁷⁷

4. *Acculturation to the Legal Profession*

When we watched the attorneys read, write, and communicate, we saw talented individuals endeavoring to establish professional identities in a profession filled with explicit and implicit expectations. The associates had to acculturate to the legal profession while managing a range of emotions—exhilaration, fear, frustration, disappointment—in ways that were consistent with the norms of the profession. These norms were not always clearly stated and, even when they were the known realities of the profession, sometimes posed challenges. The lawyering involved emotional labor,¹⁷⁸ and this aspect is something law schools could more openly address.

Even in the most collaborative setting we observed, the non-profit agency, the deadlines and understaffing repeatedly challenged N; moreover, N had to learn how to manage a small but politically charged legal community. She had to learn when to ask questions and who to keep “in the loop.”¹⁷⁹ K, in immigration, grappled with clients who lied, third parties who were sometimes extremely unhelpful, and often absent but demanding partners. She had to learn how to interact with very different styles of supervision and to develop her own persona as a manager, delegating tasks to paralegals. She was learning how to blend in, and how to look the part, right down to her shoes. She had to know when to

176. *Id.*

177. *Id.* at Nov. 29, 2012.

178. Emotional labor, as defined by Amy S. Wharton, is the “process by which workers are expected to manage their feelings in accordance with organizationally defined rules and guideline.” Amy S. Wharton, *The Sociology of Emotional Labor*, 35 ANN. REV. SOC. 147, 149 (2009).

179. Block, *supra* note 42, at Nov. 14, 2012.

wear her comfortable shoes or when to slip into the numerous more fashionable pairs she kept under her desk and throughout her desk drawers.¹⁸⁰

The two newest associates, G and L, displayed the most visible awkwardness. Often unsure whether what they were doing was correct, they at times seemed to be at home with their emerging professional identities as lawyer. At other times, however, they seemed to feel out of place or uncomfortable with the norms of the profession. They manifested their discomfort in different ways—G with his sarcastic wit¹⁸¹ and L with a meticulousness toward detail that provided only a thin veil for her worry.¹⁸² Both G and L indicated that they felt many of their workplace's expectations were unspoken and that they would become aware of the expectations only by chance or when they received negative feedback.¹⁸³ They were busy learning the rules and trying not to go astray.

The associates' tentativeness was in stark contrast to the more senior associates and particularly to the solo practitioner, who was nearing the end of her career and had learned to manage her emotions. H had established her professional identity. She had a strong sense of control over her environment, and her professional role was well established. She was for the most part adhering to the cultural norms of the legal profession. Only as her career neared its end was she willing to take more risks, deviate from standard practice, and challenge the social structure and institutions of legal practice. She wanted to surrender some of her control over a process she knew very well, mediation. Acting on the advice of a mediation instructor she had recently met, H decided to allow her client to express his views during a mandatory mediation session. It was an idea that she initially viewed with skepticism, in part because letting her client speak could interject unmanaged emotion, her client's feelings, into an otherwise controlled, orderly process.

180. Donovan, *supra* note 64, at Nov. 9, 2012.

181. For example, the observer noted G's "dry jokes about the occupation of an attorney." Stranahan, *supra* note 169, at Jan. 24, 2014.

182. For example, the observer reported "L says she cried a little at lunch for nothing"; L further explained feeling stress over her work. See Douglass, *supra* note 50, at Nov. 2, 2012.

183. See, e.g., G's written response to interview with John Stranahan, *supra* note 169; Glavan, *supra* note 56, at Feb. 6, 2012 (G reported feeling "unsure of how to deal with client communication."); see also Douglass, *supra* note 50, at Nov. 2, 2012 ("L saves the revised copy of the motion with M's notes 'in case she gets yelled at later.'").

Her decision proved successful, but the degree of caution she exercised in making her decision signaled the depth of her assimilation to her culture, a culture that imposes constraints upon feelings.

V. *IMPLICATIONS*

This ethnography, like many ethnographic studies, involves a close look at an extremely small number of attorneys, so it is difficult to generalize from our results; however, our work has implications for those doing research on legal pedagogy, as well as for law firms training junior associates and for legal educators. In this section, we focus on some of the ways our findings might be used to advance research on legal education and contribute to the training of new attorneys.

In terms of research on legal education, our ethnography provides a model that can be expanded to study these same practice areas and other practice areas at law firms of all sizes throughout the country, examining criminal as well as civil practices. Expanding these types of studies to include a wider array of law firms will enrich our findings and enable us to validate our findings across practice areas and firms, thus achieving a more accurate understanding of legal practice. Carrying on close, systematic observations of junior associates in a variety of geographic locations will also help to validate our findings here in Pittsburgh and enable us to obtain generalizable results. We could potentially build a database making field notes accessible to researchers interested in reading and writing or other relevant areas of legal work.

At law firms, our findings could be used to help train junior associates. Our findings shed light on the tasks that new attorneys struggle with and reveal the areas in which new attorneys are perhaps most ill-prepared. Consequently, supervising attorneys could address some of these issues in orientation programs or through summer employment of law students. Practicing attorneys who serve as adjunct professors at law schools may also want to consider talking to students about practice or using our findings to design classroom exercises or projects that simulate practice; moreover, our findings suggest that junior associates, law students, legal educators, and law firms could all benefit from more transparency about the practice of law. Law firms could assist legal education by opening their doors to legal researchers and law students, either by engaging in projects, such as our ethnography, or by developing

mentoring or shadowing programs for law students. By facilitating the study of the legal workplace, law firms and other legal employers may help to accelerate the acculturation process junior attorneys will face when exposed to the norms and expectations of the legal culture.

For legal educators, our findings can be used to develop classroom exercises and to train new teachers. While our study looked mainly at reading and writing, the data has implications well beyond the legal writing classroom. Our findings can be used to develop exercises that use practical training to contextualize learning in doctrinal courses, which have traditionally concentrated on legal theory and exclusively used casebooks to convey information. Our findings suggest that law students could benefit from exercises in doctrinal classes that build professional skills in addition to acquiring substantive knowledge and legal theory. In the remainder of this section, we examine several ways in which our findings can be used in teaching law generally as well as teaching legal research and writing.¹⁸⁴

A. Reading Skills

Because legal practice involves so much reading, legal educators could help law students by explicitly talking about what and how lawyers read. They could also help law students to practice different reading styles. For example, exercises that require deep or close reading for a particular purpose can help students learn how to problematize. While students likely use close reading when reading the judicial opinions in casebooks, they could also be asked to read with a particular focus or purpose in mind beyond reading to prepare for class.¹⁸⁵ To strengthen their close reading skills, they could, for example, be asked to read in light of a client's particular problem in much the same way that students are asked to read in their legal writing classes. Law students also need practice with skimming and scanning for a particular purpose. These skills might be taught by using timed exercises or by asking students to read quickly to locate certain information in a case or to read broadly to determine what a document contains.

184. We recognize that some legal educators have already identified and are addressing the implications we discuss below. This Article is intended to encourage further experimentation and discussion.

185. Stratman, *When Law Students Read Cases*, *supra* note 10, at 64-67.

As our research also suggests, law students could benefit from exposure to additional types of documents. Increasing the types of reading materials used in the classroom will better prepare students for practice. By this we mean asking students to read documents other than judicial opinions, such as complaints, discovery materials, contracts, online research results, email, and newspapers. Finally, legal educators can model the way to read by using the think aloud method¹⁸⁶ in connection with a close reading exercise or when skimming and scanning a document. Students could benefit, for example, from hearing how an experienced reader reconciles two judicial opinions or by witnessing the strategies an experienced reader draws upon to locate specific information quickly. Empirical research on legal reading has yielded useful insights that legal educators can build upon to develop materials and teach a broad range of skills.¹⁸⁷ Using this earlier research, educators should also experiment with new teaching methods and rigorously measure the results.¹⁸⁸

B. Writing Skills

As with reading, our findings suggest that law students would benefit by doing more writing and by producing more types of texts. Legal educators should consider developing exercises that require students to compose emails in various contexts. While such exercises are increasingly used in legal writing classes, these exercises could be used across the law school curriculum. Students need practice using email as a means of professional communication to convey information to supervisors, co-counsel, opposing counsel, clients, community groups, and support staff. Students also need practice responding to emotionally charged messages in a professional manner.¹⁸⁹ Other possible writing exercises include ones, which are currently found in many drafting courses that require students to find and use templates and forms. In other words, students should practice using their own past work or the work of

186. *Supra* note 35 (discussing the think-aloud protocol).

187. *See, e.g.*, Christensen, *supra* note 10; Fajans & Falk, *supra* note 10; Lundeberg, *supra* note 10; Mertz, *supra* note 10; Stratman, *How Legal Analysts Negotiate Indeterminacy*, *supra* note 10; Stratman, *When Law Students Read Cases*, *supra* note 10.

188. *See* David J. Herring & Collin Lynch, *Measuring Law Student Learning Outcomes: 2013 Lawyering Class* (UNM School of Law Research Paper No. 2014-09, Jan. 23, 2014), available at <http://dx.doi.org/10.2139/SSRN.2387855>.

189. This could be done through an exercise in which students respond to negative feedback of their work or respond to a particularly terse email.

others to produce new documents. Students can learn to use models effectively to guide their own writing by examining the rhetorical features of a particular type of document, to evaluate the strength or weakness of a sample document, or to identify an author's preferred style after reviewing a series of documents written by the same author. Exercises that ask students to write and read together in an integrated work process will help students to develop skills in summarizing and also substantiating claims. Exercises that combine tasks—simultaneously researching, reading, and writing—could be used as a complex, capstone exercise. Alternative capstone exercises could involve impromptu writing assignments or writing projects that have strict word and time limits. Students also need exercises that require painstaking self-editing in which the stakes are high and editing mistakes financially or emotionally costly. While some of these ideas are already in play in many legal research and writing classes, the challenge is to measure the efficacy of these exercises and introduce such exercises consistently across the curriculum.

C. Workplace Communication and Interpersonal Skills and the Development of Realistic Exercises

Our findings also suggest the need to explicitly prepare students for workplace dynamics and to give them opportunities to develop interpersonal skills to navigate the sort of high pressure and hierarchical workplaces that we observed. These sorts of skills could, for example, be developed through simulation exercises that require communication with supervisors. Such exercises should allow for debriefing and discussion of emotional reactions, stress management techniques, and self-reflection and self-evaluation. In a similar vein, students need to complete exercises that are realistic. For example, an email inbox exercise that asks students to view an inbox, organize, prioritize, and respond to email accordingly would be a realistic way to discuss email and work/life balance issues. Another possible exercise could require students to practice defining what tasks should be completed with only vague conversations or emails to direct them, as compared to tasks that require follow-up questions to ensure that the student is preparing the desired work product. Our research confirms that other such realistic exercises should include conducting research with free resources as

a starting point or tool, reading and using statistics, and doing tasks with numerous interruptions.

Countless other ways undoubtedly exist in which legal researchers, law firms, and educators could draw upon our findings; we encourage the exploration of these ideas. It is crucial that we make genuine and coordinated efforts to provide law students with a practical understanding of the legal profession in addition to providing them with a theoretical foundation in the law.

VI. CONCLUSION

This small study of junior associates began in 2012 as a way to educate ourselves to design a class that would help prepare our students for legal practice. We learned that we needed much more than a single class to prepare our students for the current practice of law. Our students in 2012 faced a steep learning curve upon entering the legal profession. Since then, the need for law students to leave law school ready for practice has become even more important. Young attorneys continue to face a highly competitive legal job market, high student debt, and demanding workplaces. Legal education may not be able to alter this situation, but it could do more to help. Notably, legal educators should consider devoting more time to teaching reading skills. Although legal educators often assume that students possess the necessary reading skills, this study indicates that this assumption is faulty and that instruction in this area is likely a key component in the successful transition to practice.¹⁹⁰

We hope that these preliminary findings will generate interest in this type of study, inspiring others to engage in the direct observation of junior associates at work. Much remains to be done, and it will require a collective effort to develop sound pedagogical methods for training new attorneys. Those efforts, though, will go a long way toward improving legal education and advancing the legal profession.

190. See Stratman, *When Law Students Read Cases*, *supra* note 10, at 59 (Stratman's article, in addition to reporting the results of a reading study with first-year law students, includes a review of legal reading studies by several other researchers such as Mary A. Lundberg, Dorothy H. Deegan, and Laurel Currie Oates.); see also Christensen, *supra* note 73.