

LET THEM TALK: COGNITIVE & SOCIAL BENEFITS OF ELABORATION

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I. INTRODUCTION.....329

II. TALKING ABOUT WRITING INTRODUCES LAW STUDENTS TO THE DISCOURSE OF LAW332

III. TALKING ABOUT WRITING ENCOURAGES ELABORATION AND SELF-EXPLANATION.....336

IV. TALKING ABOUT WRITING FOSTERS SOCIAL CONNECTEDNESS AND AUTONOMY SUPPORT340

V. CONCLUSION.....348

I. INTRODUCTION

Prohibiting law students from talking about graded writing assignments outside of class deprives them of positive learning benefits while fueling negative learning behaviors.¹ Talking about writing assignments with other law students engages cognitive benefits of elaboration, social benefits of collaboration, and supports student autonomy.²

This Article focuses on the *cognitive and social* benefits of letting students talk about all legal writing assignments outside of the classroom.³ Allowing students to talk about all writing assignments, *including* graded written assignments, outside of the classroom leverages cognitive benefits of elaboration, the discovery of additional layers of meaning, and deeper structural understanding of material.⁴ In addition, allowing students to talk about all writing assignments outside of the classroom provides students with necessary social connection, collaboration, and autonomy support, especially

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1. See Kellen McClendon, *The Convergence of Thinking, Talking, and Writing: A Theory for Improving Writing*, 38 DUQ. L. REV. 21, 21 (1999); Debra S. Austin, *Positive Legal Education: Flourishing Law Students and Thriving Law Schools*, 77 MD. L. REV. 649, 681, 705 (2018); Carol L. Wallinger, *Moving from First to Final Draft: Offering Autonomy-Supportive Choices to Motivate Students to Internalize the Writing Process*, 54 LOY. L. REV. 820, 841 (2008).

2. See McClendon, *supra* note 1, at 21; Austin, *supra* note 1, at 681, 705; Clifford S. Zimmerman, “Thinking Beyond My Own Interpretation:” *Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957, 959 (1999).

3. See discussion *infra* Part II.

4. Wallinger, *supra* note 1, at 841; see also discussion *infra* Part III.

during remote and hybrid learning necessitated by the COVID-19 pandemic.⁵ Talking about writing mimics the practice of law and ushers students into the discourse of the legal community.⁶

Many proponents of talking about writing in and out of the legal writing classroom refer to the benefits of collaborative learning principles.⁷ This Article builds on collaborative learning theory with learning benefits from cognitive science as student conversations about writing not only benefit from collaborative learning, but help with cognition—thinking, information processing, comprehension, learning, and ultimately writing.⁸

We often need to get information and ideas out of our own heads to better understand and clarify them.⁹ Our colleagues, family members, even beloved family pets, are frequent “sounding boards” for information and ideas.¹⁰ “Let me run something by you.”¹¹ “Does this make sense to you?”¹² “What do you think about this?”¹³ While talking to one’s self can be useful, it is not always enough to clarify our muddled thoughts.¹⁴ Talking to another “allows one human brain to communicate with another human brain.”¹⁵ Talking out our writing helps to clarify our thinking and identify errors more than thinking or silently reading what we have written.¹⁶ We often need to *talk to others* to fully understand, clarify, and refine *our own* information and ideas.¹⁷

Talking to others about writing is related to, yet substantially different from, the scholarship on peer review, the process of reading

5. See McClendon, *supra* note 1, at 21; Marie Fazio, *The First Semester of College Has Never Been Stranger*, N.Y. TIMES, <http://www.nytimes.com/2020/10/08/us/college-freshmen-coronavirus.html> (Oct. 26, 2020); Susan DeJarnatt, *Law Talk: Speaking, Writing, and Entering the Discourse of Law*, 40 DUQ. L. REV. 489, 489 (2002).

6. DeJarnatt, *supra* note 5, at 489; see also Wallinger, *supra* note 1, at 839.

7. See Zimmerman, *supra* note 2, at 959.

8. See discussion *infra* Parts II & III; Zimmerman, *supra* note 2, at 959; McClendon, *supra* note 1, at 21.

9. See McClendon, *supra* note 1, at 21.

10. See *id.* at 42.

11. See *id.*

12. See *id.*

13. See *id.*

14. See Kenneth A. Bruffee, *Collaborative Learning and the “Conversation of Mankind”*, 46 COLL. ENG. 635, 642 (1984); McClendon, *supra* note 1, at 23.

15. McClendon, *supra* note 1, at 42 (quoting LLOYD M. HULIT & MERLE R. HOWARD, *BORN TO TALK: AN INTRODUCTION TO SPEECH AND LANGUAGE DEVELOPMENT* 2 (2d ed., Allyn & Bacon 1997)).

16. *Id.* at 47.

17. See *id.*; Bruffee, *supra* note 14, at 636–37.

someone's writing and giving written or oral feedback on the writing itself.¹⁸ This Article speaks to the low-key, low-stakes learning opportunities in study rooms, before and after class, in hallways, near lockers, over coffee or lunch, waiting outside the Professor's office hours, and more specifically to remote learning—anywhere you, dear faculty—are not.¹⁹

This Article discusses the positive learning benefits students experience when they talk *to other students* about what they are learning and what they are writing.²⁰ The cognitive benefits of elaborative learning strategies, including elaboration and rehearsal, help learners generate relationships among concepts and connect prior knowledge and distinguish what they do and do not know.²¹ Students who engage in elaborative learning strategies enjoy more self-directed learning²² and autonomy support.²³ Finally, students who talk with other students to learn enjoy more social connectedness and collaboration with fellow students.²⁴

“Talking is a catalyst of writing.”²⁵ This Article argues that students need to talk *to other students* to learn and to write, both in structured classroom activities and outside of class time.²⁶ Prohibiting students from talking to other students about writing assignments deprives students of positive elaborative learning benefits, increases anxiety and psychological

18. See Marilyn R. Walter, “Writing as Conversation”: *Using Peer Review to Teach Legal Writing*, 16 J. LEGAL WRITING INST. 411, 413–14 (2010). The objective of peer review is to edit and comment on another student's work to become a better editor of one's own work and to work collaboratively. *Id.*

19. See E. Michael Nussbaum, *Collaborative Discourse, Argumentation, and Learning: Preface and Literature Review*, 33 CONTEMP. EDUC. PSYCH. 345, 352 (2008).

20. *Id.*

21. *Id.*; Anthony S. Niedwicki, *Lawyers and Learning: A Metacognitive Approach to Legal Education*, 13 WIDENER L. REV. 33, 45 (2006). Students who can distinguish between what they have learned and what is poorly understood are “more strategic and effective learners.” Niedwicki, *supra*, at 45; Nussbaum, *supra* note 19, at 352.

22. Niedwicki, *supra* note 21, at 48; see also Kristin B. Gerdy, *Teacher, Coach, Cheerleader, and Judge: Promoting Learning Through Learner-Centered Assessment*, 94 L. LIBR. J. 59, 61 (2002). Adult learners, including law students, have a deep need to be self-directing. Niedwicki, *supra* note 21, at 48. “[T]he role of the professor should be more of a facilitator or coach, not as the primary educator.” *Id.*

23. Sheila Rodriguez, *Using Feedback Theory to Help Novice Legal Writers Develop Expertise*, 86 U. DET. MERCY L. REV. 207, 216 (2009).

24. Austin, *supra* note 1, at 681, 694. “Social connectedness results when students can form and maintain healthy relationships, feel supported by and connected to their friends, and are satisfied with these associations.” *Id.* at 681. “Social connectedness is enhanced when law students establish and maintain healthy relationships, and feel satisfied with, supported by, and connected to their peers, faculty, and mentors.” *Id.* at 694.

25. McClendon, *supra* note 1, at 47.

26. See discussion *infra* Parts I–IV.

insecurity,²⁷ suppresses autonomy,²⁸ reduces learner control over one's own learning,²⁹ and increases social isolation.³⁰ Part I discusses the importance of talking about writing to introduce students to the discourse community of law.³¹ Part II discusses the cognitive elaborative learning benefits of students talking about writing.³² Part III discusses the collaborative and inclusive social autonomy support benefits of students talking about writing.³³ Part IV provides concrete recommendations for LRW faculty willing to let go and let them talk about graded writing assignments outside of the classroom.³⁴

II. TALKING ABOUT WRITING INTRODUCES LAW STUDENTS TO THE DISCOURSE OF LAW

“Write the way you think.
Write the way you talk.
Talk the way you think.
Talk the way you write.
Think the way you write.
Think the way you talk.”³⁵

Talking about writing is as critical to law student learning and professional development as writing itself.³⁶ Talking about writing

27. See Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y L. & ETHICS 357, 376 (2009). Law school pedagogy engenders “psychological insecurity” and inhibits curiosity and genuine intellectual interest. *Id.*; see also Stephen C. Halpern, *On the Politics and Pathology of Legal Education (Or, Whatever Happened to that Blindfolded Lady with the Scales?)*, 32 J. LEGAL EDUC. 383, 389 (1982).

28. Peter H. Huang & Corie Rosen Felder, *The Zombie Lawyer Apocalypse*, 42 PEPP. L. REV. 727, 745 (2015). Law students who had greater autonomy support from faculty felt more respected and understood instead of controlled, more satisfied in needs for autonomy, competence, relatedness, and self-esteem. *Id.*

29. Rodriguez, *supra* note 23, at 216.

30. Peterson & Peterson, *supra* note 27, at 360. “[S]tudies have shown that . . . students’ intrinsic motivation decreases, as does their contact with social support networks.” *Id.*; see also Ann L. Ijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524, 526–27 (1998).

31. See discussion *infra* Part I.

32. See discussion *infra* Part II.

33. See discussion *infra* Part III.

34. See discussion *infra* Part IV.

35. McClendon, *supra* note 1, at 22. McClendon’s paper explores “the relationship among thinking, talking, and writing as the basis for suggesting that by ‘talking-out’ what we write, we can improve our writing.” *Id.* at 23.

36. See *id.*

introduces law students to the discourse of law.³⁷ In *Law Talk: Speaking, Writing, and Entering the Discourse of Law*, Susan DeJarnatt argues that legal educators generally, and legal writing faculty specifically, usher students into the discourse community of law, which relies on “conversation[s] about writing,” by enabling students to “talk with each other about their writing.”³⁸

Law students struggle with the transition to the discourse community of law for several reasons.³⁹ Law school teaches through speech—lectures, discussions, and the Socratic method—but primarily evaluates academic progress through written analysis, especially in the first year.⁴⁰ Law students lack experience as readers or audience members of written law and legal discourse.⁴¹ Further, law students struggle to understand what need *not* be said or explained to the intended audience.⁴² Legal educators generally, but legal writing faculty specifically, can encourage students to use oral skills they already possess to help them “work together to experience their writing as situated in a discourse community, the community of law.”⁴³

Law is a writing and talking profession,⁴⁴ while law school itself is a “pseudo-oral” environment.⁴⁵ Law schools teach oral communication skills by providing “an eclectic hodgepodge of opportunities to talk” through the Socratic method in class, trial advocacy, appellate advocacy, clinics, and other courses on negotiation and mediation.⁴⁶

Law students need to talk to learn to write.⁴⁷ Conversations with other students about analysis and writing help students develop their own

37. DeJarnatt, *supra* note 5, at 489; see also Sarah O. Schrup & Susan E. Provenzano, *The Conscious Curriculum: From Novice Towards Mastery in Written Legal Analysis and Advocacy*, 108 NW. U. L. REV. ONLINE 80, 82–83 (2013).

38. DeJarnatt, *supra* note 5, at 489.

Much of the fundamental task of LRW is to enable students to learn that new discourse and to become members of both the academic and practice legal communities. LRW, more explicitly than many other law school classes, specifically aims to have students become members of the broader community of law, outside the law school.

Id. at 492.

39. See *id.* at 490, 493, 508.

40. *Id.* at 490.

41. *Id.* at 493.

42. DeJarnatt, *supra* note 5, at 493, 508.

43. *Id.* at 493. “Law students lack experience as readers of the law; their ability to invoke the audience for their legal writing is limited by their lack of experience as members of that audience.” *Id.*

44. See *id.* at 506; Jane Korn, *Teaching Talking: Oral Communication Skills in a Law Course*, 54 J. LEGAL EDUC. 588, 588 (2004).

45. DeJarnatt, *supra* note 5, at 506.

46. Korn, *supra* note 44, at 588.

47. See *id.*

internal conversations about analysis and writing, as well as ushering them into the complex and unfamiliar discourse community of law.⁴⁸ To facilitate these conversations, faculty must engage students in conversation among themselves at as many points in the research, analysis, writing, and revising process as possible.⁴⁹

To enter the discourse of law, students need to experience being the legal writing audience. Furthermore, they need to model the discourse community within their law school experience, and collaborate to talk about their writing, its intent, how it met that intent and how it failed. In short, we need to expand the classroom structure to include opportunities for students to respond to the work of others, as lawyers would, and to communicate directly with their readers.⁵⁰

Many law classes effectively aid students in entering the discourse of law with collaborative learning activities⁵¹ and peer review exercises,⁵² which require conversations about legal analysis and writing itself.⁵³ Many legal writing classrooms model reader-writer conferences on memo assignments, like a meeting with the assigning supervisor, a pre-trial conference, or a client meeting.⁵⁴ Some LRW faculty have students participate in simulated senior attorney research meetings where law students orally present their research findings to the faculty who assumes the role of senior attorney questioning the students' results as well as process.⁵⁵ Other LRW faculty, myself included, require students to present their research and analysis to an actual attorney outside of class time as part of an ungraded simulation assignment.⁵⁶ This is a true simulation experience intended to

48. See DeJarnatt, *supra* note 5, at 508; Sarah E. Ricks, *Some Strategies to Teach Reluctant Talkers to Talk About Law*, 54 J. LEGAL EDUC. 570, 572 (2004). "[T]alking about law is an important way to think through a legal concept or problem." *Id.*

49. DeJarnatt, *supra* note 5, at 509.

50. *Id.* at 512.

51. Zimmerman, *supra* note 2, at 961.

52. See, e.g., Walter, *supra* note 18, at 413–14; Kirsten K. Davis, *Designing and Using Peer Review in a First-Year Legal Research and Writing Course*, 9 J. LEGAL WRITING INST. 1, 1–2 (2003); Patricia Grande Montana, *Peer Review Across the Curriculum*, 91 OR. L. REV. 783, 785 (2013).

53. Walter, *supra* note 18, at 413.

54. DeJarnatt, *supra* note 5, at 518.

55. Sarah J. Morath, *From Awkward Law Student to Articulate Attorney: Teaching the Oral Research Report*, SECOND DRAFT, Fall 2013, at 6, 6–7.

56. *Id.* at 7. The Oral Report to Volunteer Attorney assignment is ungraded and is purely for experiential learning. See *id.* Students present to professional mentors, who question the students about their research and analysis, but do not review the students' writing. See *id.*

provide students an opportunity to practice talking about the law in a very realistic legal discourse setting.⁵⁷

In practice, lawyers spend much of their time writing and “conversing about their writing or another lawyer’s writing.”⁵⁸ Lawyers arguably get paid to do only two things: writing and talking.⁵⁹ Lawyers rarely write without discussing their writing with someone else.⁶⁰ “Most lawyers do not simply create a final work product on their own.”⁶¹ Lawyers work collaboratively with other lawyers in brainstorming, editing, and being edited.⁶²

Most law students write individually, not collaboratively, and have few opportunities to discuss their writing with anyone other than their legal writing professor.⁶³ Students experience the most learning benefits when talking about their writing *while still in the process* of working on their written analysis, not after the final product has been submitted.⁶⁴ Students need to engage in conversations with each other at many points in their reading and writing process as these conversations about research, analysis, and writing are critical to students’ development of fundamental writing skills.⁶⁵

Kellen McClendon writes about the convergence of thinking, talking, and writing in the legal writing classroom to better understand communication and writing.⁶⁶ McClendon describes thinking as a cognitive behavior, a cognitive process, and problem-solving.⁶⁷ Thinking is described as internal speech or internalized conversation.⁶⁸ We essentially have conversations with ourselves while thinking.⁶⁹ Talking is ancient and

57. *Id.* at 6–7.

58. DeJarnatt, *supra* note 5, at 507. “A lawyer’s life consists of talking about written analysis, in conferences with supervisors, in meetings with clients, in settlement and mediation conferences, in oral argument. Law school rarely models this reality.” *Id.*; see also Michael I. Meyerson, *Law School Culture and the Lost Art of Collaboration: Why Don’t Law Professors Play Well with Others*, 93 NEB. L. REV. 547, 557–58 (2015).

59. Ricks, *supra* note 48, at 572.

60. DeJarnatt, *supra* note 5, at 510; Meyerson, *supra* note 58, at 557–58.

61. Meyerson, *supra* note 58, at 557.

62. *Id.* at 557–58.

63. DeJarnatt, *supra* note 5, at 507.

64. *Id.* at 518. “One of the concepts shared by . . . modern composition theorists and by progressive LRW pedagogy is the importance of focusing on the process of writing and not exclusively on the end product.” *Id.*

65. *Id.* at 509.

66. McClendon, *supra* note 1, at 42.

67. *Id.* at 27–28.

68. DeJarnatt, *supra* note 5, at 495.

69. See McClendon, *supra* note 1, at 30–31.

predates literacy by thousands of years.⁷⁰ “Until a hundred years ago, the vast majority of people were illiterate, and for them language was something which came in through their ears and out through their mouths.”⁷¹ Language is “man’s most precious possession,” facilitating thinking and communication.⁷² And, language bridges thinking, speech, and writing.⁷³

Most law faculty would likely agree that class discussion is one of the most effective ways of teaching.⁷⁴ “The place of conversation in learning, especially in the humanities, is the largest context in which we must see collaborative learning.”⁷⁵ “Furthermore, most of us believe that ‘class discussion’ is one of the most effective ways of teaching.”⁷⁶ “The truth, however, is that despite this belief the person who does most of the discussing in most of our discussion classes is the teacher.”⁷⁷ The objective is to get our students talking more, in and out of class, and ideally to one another about what they are thinking and writing.⁷⁸

III. TALKING ABOUT WRITING ENCOURAGES ELABORATION AND SELF-EXPLANATION

Talking about writing has many cognitive learning benefits, in addition to inducting students into the discourse community of law.⁷⁹ Encouraging students to talk about graded written assignments leverages elaboration to develop a deeper understanding and analysis of complex concepts.⁸⁰ “Elaboration is the [cognitive] process of giving new material meaning by expressing it in your own words and connecting it with what you already know.”⁸¹

70. *Id.* at 32.

71. *Id.* at 34 (quoting DICK GILLING & ROBIN BRIGHTWELL, *THE HUMAN BRAIN* 55 (1982)).

72. *Id.* at 37.

73. *Id.* at 37, 47.

74. Bruffee, *supra* note 14, at 645.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.* at 642.

79. See DeJarnatt, *supra* note 5, at 489; Schrup & Provenzano, *supra* note 37, at 83–84.

80. See DeJarnatt, *supra* note 5, at 509–10; PETER C. BROWN ET AL., *MAKE IT STICK: THE SCIENCE OF SUCCESSFUL LEARNING* 5 (2014); SUSAN A. AMBROSE ET AL., *HOW LEARNING WORKS: 7 RESEARCH-BASED PRINCIPLES FOR SMART TEACHING* 251–52 (2010).

81. BROWN ET AL., *supra* note 80, at 5; see also Alison King, *Facilitating Elaborative Learning Through Guided Student-Generated Questioning*, 27 *EDUC. PSYCH.* 111, 111–12 (1992).

In the most basic sense, students elaborate by explaining information in their own words to someone else, relating information to what they already know, or explaining how information relates to prior knowledge or other contexts outside of class.⁸² Elaboration also occurs when students “add[] details to . . . information, clarify[] ideas, explain[] the relationship between . . . concepts, make[] inferences,” analogize, or associate newly learned material with prior knowledge.⁸³ Elaborative activities add layers of meaning, promote the learning of difficult concepts, increase structural concept development, and reveal interrelationships between concepts, often exposing critical areas of confusion.⁸⁴

Elaborative strategies support problem-solving and higher-order thinking, such as synthesis,⁸⁵ because elaboration promotes active engagement with material and deep, rather than superficial, processing by encouraging learners to explain, reorganize, and clarify material, identifying gaps in understanding, acquiring new strategies and knowledge, and developing new perspectives and new connections to material.⁸⁶ Further, engaging in critical, elaborative discourse supports student learning gains over longer periods of time.⁸⁷

Critical, elaborative discourse enhances conceptual learning.⁸⁸ In critical elaborative discourse, learners advocate different views, arguments, counterarguments, and rebuttals, while generating connections between ideas and prior knowledge.⁸⁹ Some critics of letting students talk about writing assignments express concern that students will get it *wrong*, or unintentionally go down the wrong analytical path.⁹⁰ Educational psychologists recognize that learners will likely make mistakes during critical elaborative discourse, but the collaborative and critical nature allows learners to reconcile misunderstandings or at the very least identify knowledge gaps for further inquiry and clarification.⁹¹

Modeling elaborative strategies for students helps students later ask themselves (and their peers) the same questions when discussing an

82. BROWN ET AL., *supra* note 80, at 207.

83. King, *supra* note 81, at 111–12.

84. See BROWN ET AL., *supra* note 80, at 207; Nussbaum, *supra* note 19, at 352.

85. See Nussbaum, *supra* note 19, at 346–47.

86. See *id.*; Noreen M. Webb et al., *The Role of Teacher Instructional Practices in Student Collaboration*, 33 CONTEMP. EDUC. PSYCH. 360, 361 (2008).

87. Nussbaum, *supra* note 19, at 354.

88. *Id.* at 349, 354.

89. *Id.*

90. *Id.* at 350.

91. *Id.* at 349, 352.

unknown problem, or one they are trying to solve themselves.⁹² This is especially critical with the informal, inductive logic of legal reasoning that results in probabilistic reasoning, rather than absolute certainty found in formal logic.⁹³

As experts in our field, law faculty have already created and unconsciously maintain a complex network connecting facts, concepts, processes, knowledge, and skills relevant to our legal discourse community and knowledge domain.⁹⁴ Yet, our students have not developed such robust knowledge organizations, resulting in sparse and superficial knowledge structures.⁹⁵ Providing instructional scaffolding for learning activities, like modeling conversations about the law that students can use to structure their own elaborative discourse both in and out of class, promotes learning by helping students practice skills at their current level.⁹⁶

There is a caveat: You will learn more if *you do the explaining* to someone else.⁹⁷ Listening to *someone else* elaborate or explain material results in minimal learning gains at best for the listener.⁹⁸ Students learn more by elaborating themselves, not by listening to someone else's elaborations.⁹⁹ Giving, rather than receiving, explanations leads to deeper learning because it forces the student giving the explanation to analyze the problem as well as their problem-solving approaches.¹⁰⁰ Verbalizing one's own thinking process is critical for learning and strongly correlated with achievement.¹⁰¹

These elaborative strategies may sound similar to readers familiar with critical reading strategies like paraphrasing, or elaborating reading or text in one's own words, discussed by legal writing scholars Ruth Ann McKinney, Anne Enquist, and Laurel Oates, among others.¹⁰² Questioning

92. Nussbaum, *supra* note 19, at 349, 352.

93. *See id.* at 350.

94. *See* AMBROSE ET AL., *supra* note 80, at 43.

95. *Id.* at 43–45.

96. *Id.* at 132.

97. Webb et al., *supra* note 86, at 361.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* at 367.

102. *See* RUTH ANN MCKINNEY, *READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT* 101 (2d ed. 2014); Anne M. Enquist, *Unlocking the Secrets of Highly Successful Legal Writing Students*, 82 ST. JOHN'S L. REV. 609, 669 (2008); Laurel Currie Oates, *Beating the Odds: Reading Strategies of Law Students Admitted Through Alternate Admissions Programs*, 83 IOWA L. REV. 139, 142–43 (1997). Paraphrasing and talking back to text are elaborative strategies used in critical reading. Oates, *supra*; Elizabeth Fajans & Mary R. Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts*, 78 CORNELL L. REV. 163, 163–64 (1993).

text, relating information to prior knowledge, paraphrasing, and rephrasing in your own words are all elaborative learning strategies that students can use when talking about reading, analysis, research, and their writing.¹⁰³

Faculty should model student elaborative learning strategies in collaborative groups by “push[ing] students to clearly describe their thinking,” clarify their analysis, and make steps of processing explicit to support students during their own paired and small group collaborative discussions.¹⁰⁴

Legal writing faculty can incorporate and facilitate elaborative learning strategies in and outside of class.¹⁰⁵ A very simplified approach to elaborative strategies is asking *why* and *how* questions.¹⁰⁶ The following questions and suggestions are general but could be easily tailored for specific assignments.¹⁰⁷

*Questions for Students:**

- Why do you think that?
- How did you get there?
- Can you explain your thought process?
- How would you put that into your own words?
- How does this material contribute to your argument?
- What patterns do you see developing?
- What do you feel like you understand well?
- What seems confusing to you?

*Techniques for Faculty:**

- Instruct students to explain problem-solving strategies, instead of just stating conclusions.
- Prompt students to engage in specific summarizing and listening activities.
- Prompt students to explain why they believe their predictions are correct (or incorrect).

103. See MCKINNEY, *supra* note 102, at 29, 101.

104. Webb et al., *supra* note 86, at 377.

105. See *id.* at 362.

106. *Id.* at 362, 372–73.

107. See *id.* at 362.

IV. TALKING ABOUT WRITING FOSTERS SOCIAL CONNECTEDNESS AND AUTONOMY SUPPORT

“[L]earning is a social process.”¹⁰⁸ Talking about writing with another student develops social connectedness, autonomy support, and the writing itself.¹⁰⁹ Faculty should consider student learning holistically, from the cognitive processes of learning to the learning environments and course climates that influence student learning, foster social connectedness, and support student autonomy.¹¹⁰ Course climate refers to the intellectual, social, and physical environments where students learn, as well as how faculty communicate with students, “hospitality that students perceive,” and “inclusion and comfort that students experience.”¹¹¹

Course climate begins with the course syllabus and can establish an encouraging or punitive course environment.¹¹² Researchers studied how students perceive course climate by subtly manipulating course syllabus language.¹¹³ Researchers created two versions of the same syllabus for an introduction to American politics course, with identical policies worded differently: one encouraging and one punitive.¹¹⁴ Both syllabi had identical requirements, but the language varied subtly, especially in describing possible negative grading consequences.¹¹⁵

In the study, students were divided into two groups—one receiving the “encouraging” syllabus, the other receiving the “punishing” syllabus.¹¹⁶ Researchers gauged student perceptions of the instructors based on the syllabus language, asking if students would be comfortable talking to the

108. DeJarnatt, *supra* note 5, at 520; *see also* Bruffee, *supra* note 14, at 647, 652.

109. *See* DeJarnatt, *supra* note 5, at 509.

110. *See* AMBROSE ET AL., *supra* note 80, at 158.

111. *Id.* at 158, 176.

112. *Id.* at 176–77.

113. *Id.*; John T. Ishiyama & Stephen Hartlaub, *Does the Wording of Syllabi Affect Student Course Assessment in Introductory Political Science Classes?*, 35 PS: POL. SCI. & POL. 567, 567 (2002).

114. AMBROSE ET AL., *supra* note 80, at 176–77; Ishiyama & Hartlaub, *supra* note 113, at 568.

115. Ishiyama & Hartlaub, *supra* note 113, at 568. The encouraging (or rewarding) syllabus language reads: “If for some substantial reason you cannot turn in your papers or take an exam at a scheduled time you should contact me prior to the due date, or test date, or you will only be eligible for 80% of the total points,” whereas the punishing syllabus reads: “If for some substantial reason you cannot turn in your papers or take an exam at the scheduled time you must contact me prior to the due date, or test date, or you will be graded down 20%.” *Id.*

116. *Id.*

professor outside of class.¹¹⁷ Students were more likely to seek faculty help when the syllabus used encouraging language and much less likely to seek faculty help when the syllabus used punitive language.¹¹⁸ Students new to the college environment were more likely to be intimidated by punishing language.¹¹⁹ Applying this finding to legal education, faculty teaching first-year law students should minimize punitive language in syllabi that may cause law students to be similarly intimidated and not seek faculty help.¹²⁰

With remote instruction and courses organized through online Learning Management Systems (“LMS”), students are often exposed to both faculty and course syllabi online prior to any class meetings.¹²¹ With remote learning, students may form initial and possibly lasting impressions of both faculty and course climate through encouraging or punishing syllabus language or practices that impact their overall course experience.¹²²

Law school is notorious for its “culture of competition and conformity,” encouraging individualism and isolation while discouraging collaboration and student-to-student interaction.¹²³ The individualistic, anti-collaborative culture is at odds with the collaborative, team-oriented approach more common to the practice of law.¹²⁴ The isolation and emphasis on individualized learning have only been exacerbated by the COVID-19 pandemic and transition to online, hybrid, and remote teaching and learning methodologies.¹²⁵

Encouraging, modeling, and fostering social connectedness and student collaboration with other students helps to ameliorate the individualistic, isolating culture and usher students into the collaborative discourse and practice of law.¹²⁶ When students form and maintain healthy relationships, they experience social connectedness through support from and

117. *Id.*

118. AMBROSE ET AL., *supra* note 80, at 176–77. “Scolders [worded punitive] policies in boldface block letters and promise[d] harsh punishments rather than offering a pedagogical rationale for the policy.” *Id.*; see also Ishiyama & Hartlaub, *supra* note 113, at 569.

119. Ishiyama & Hartlaub, *supra* note 113, at 569; see also AMBROSE ET AL., *supra* note 80, at 176–77.

120. See Ishiyama & Hartlaub, *supra* note 113, at 569; AMBROSE ET AL., *supra* note 80, at 176–77.

121. Richard J. Harnish & K. Robert Bridges, *Effect of Syllabus Tone: Students’ Perceptions of Instructor and Course*, 14 SOC. PSYCH. EDUC. 319, 328 (2011).

122. *Id.*

123. Meyerson, *supra* note 58, at 555 (quoting Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 519 (2007)).

124. Meyerson, *supra* note 58, at 556–57.

125. See Fazio, *supra* note 5.

126. Meyerson, *supra* note 58, at 578.

connection to peers.¹²⁷ These healthy relationships where law students feel supported by and connected to both peers and faculty enhance social connectedness.¹²⁸

Despite their learning and socio-cognitive benefits, collaborative and cooperative work have not been well-received in legal education.¹²⁹ In many law schools, legal work products are viewed as the result of “primarily individual effort and . . . solely personal achievement.”¹³⁰ Individual performance and the individualist culture are stressed implicitly and explicitly by law faculty, the Socratic method, and competitive grading policies.¹³¹

Collaborative argumentation is a social process where individuals work together to construct and critique arguments.¹³² Social learning theories teach us how people learn from each other in social contexts and inform how faculty can construct active learning communities.¹³³ Lev Vygotsky, a Russian teacher and psychologist, examined how social environments influence learning, finding that we learn through interactions and communications with peers as well as teachers.¹³⁴ Faculty can create learning environments that maximize the learner’s ability to interact with each other through discussion, collaboration, and feedback.¹³⁵

Faculty can create structured conversations about writing.¹³⁶ First-year law students can present their analysis to a professor, another first-year student, teaching assistant, upper-level student, or even a volunteer attorney who does not know the issue—i.e., the professor or teaching assistant from another class, or even volunteer attorneys from the community.¹³⁷ Faculty should not fear that students are not yet ready for this experience, as students need to model the discourse of the community in order to learn it.¹³⁸

Traditional legal pedagogy teaches through speech but expects written outcomes and evaluates through written analysis.¹³⁹ We are constantly reading and talking about what we read, coaching first-year law students to look deeper into complex primary sources (statutes and cases

127. Austin, *supra* note 1, at 694.

128. *Id.*

129. Meyerson, *supra* note 58, at 554; Zimmerman, *supra* note 2, at 963.

130. Meyerson, *supra* note 58, at 554.

131. *Id.* at 554–56.

132. Nussbaum, *supra* note 19, at 348; Webb et al., *supra* note 86, at 361.

133. Webb et al., *supra* note 86, at 362.

134. *Id.* at 361.

135. Austin, *supra* note 1, at 694; Nussbaum, *supra* note 19, at 348.

136. DeJarnatt, *supra* note 5, at 522.

137. *Id.* at 520; *see also* Morath, *supra* note 55, at 7.

138. DeJarnatt, *supra* note 5, at 520, 522.

139. *Id.* at 490.

primarily), to remember, develop meaning, context, and deeper meaning in order to connect ideas, synthesize rules, and produce organized, coherent written work in a new format.¹⁴⁰

Letting students talk about graded writing assignments outside of class also supports learner autonomy.¹⁴¹ Autonomy support is a learner-centered concept based in self-determination theory, a “rigorously empirical theory of human motivation . . .”¹⁴² According to self-determination theory, positive learner motivation is shaped by the characteristics of the learner’s social environment and course climate.¹⁴³ All humans need to experience “autonomy, competence, and relatedness to thrive and maximize their positive motivation.”¹⁴⁴ We need to feel that we are good at what we do or can become good at it, that we have choice and can enjoy our activities, and can relate meaningfully to others in the process.¹⁴⁵ Autonomy support includes faculty communication and teaching methods that help students internalize learning goals and is “most salient in an unequal power situation” as in Professor-Law Student.¹⁴⁶

Autonomy support has three critical features: (1) choice, where faculty provides learners with as much choice as the task or objective allows; (2) rationale, where there is no choice, faculty provides a meaningful rationale for the lack of choice; and (3) student perspective, where faculty demonstrates awareness and consideration of the student’s point of view.¹⁴⁷ In sum, law faculty demonstrate law student autonomy support by offering choices in how students learn, meaningful rationales when choice is not available, and acknowledging the student perspective.¹⁴⁸

In a three-year longitudinal study on self-determination theory in legal education, Sheldon & Krieger found that law students who received greater autonomy support from law faculty experienced greater autonomy, competence, and relatedness as well as higher subjective well-being, better academic performance, and more self-determined motivation in pursuing

140. *Id.* at 510–11.

141. See Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCH. BULL. 883, 894 (2007); Wallinger, *supra* note 1, at 841.

142. Sheldon & Krieger, *supra* note 141, at 884.

143. *See id.*

144. *Id.* at 885.

145. *Id.*

146. Rodriguez, *supra* note 23, at 216 (quoting KENNON M. SHELDON ET AL., SELF-DETERMINATION THEORY IN THE CLINIC: MOTIVATING PHYSICAL AND MENTAL HEALTH 29 (2003)).

147. Sheldon & Krieger, *supra* note 141, at 884.

148. *See id.* at 893.

post-graduation careers.¹⁴⁹ However, law students who rated faculty more controlling experienced less autonomy support, declining psychological need satisfaction, reduced well-being, poorer academic performance, and less self-determined motivation in pursuing post-graduation legal careers.¹⁵⁰ The most important causal factor was autonomy support.¹⁵¹ Sheldon & Krieger argue that “[t]hese results suggest that, to maximize the learning and emotional adjustment of its graduates, law schools need to focus on enhancing their students’ feelings of autonomy.”¹⁵²

Autonomy support involves teaching methods that nurture students’ intrinsic motivation.¹⁵³ It is most critical in professor-student relationships, where professors are in a position of authority over students.¹⁵⁴ Faculty support student autonomy by providing as much choice as possible over how to learn and implement course material, meaningful rationales when no choice is available, and acknowledge or consider the student perspective, particularly during difficult or uninteresting, but necessary, material.¹⁵⁵ Autonomy supportive methods encourage students to discover meaning themselves, without emphasizing the professor’s superior knowledge or as the sole source of meaning and information.¹⁵⁶

In her article, *Using Feedback Theory to Help Novice Legal Writers Develop Expertise*, Sheila Rodriguez engaged law students in an informal feedback session.¹⁵⁷ Law students reported never feeling like they had control over their legal writing.¹⁵⁸ Rodriguez argues that “law students are more likely to develop legal writing expertise when teachers use a feedback method that: (1) reinforces feelings of autonomy and competence; and (2) minimizes students’ perception of the power imbalance between student and teacher.”¹⁵⁹ Rodriguez also found that controlling statements convey the message that students are not in control of their learning.¹⁶⁰

Controlling and autonomy-suppressing faculty behaviors lead to negative learning experiences, feeling controlled, and alienation.¹⁶¹ “Professors who use controlling behaviors pressure students to behave in a

149. *Id.*

150. *Id.*

151. *Id.*

152. Sheldon & Krieger, *supra* note 141, at 894.

153. Wallinger, *supra* note 1, at 833.

154. *Id.*

155. *Id.* at 833–34.

156. *Id.* at 834.

157. See Rodriguez, *supra* note 23, at 208–09.

158. *Id.* at 209.

159. *Id.* at 211.

160. See *id.* at 208–09.

161. Wallinger, *supra* note 1, at 829.

certain manner while ignoring the student's perspective on the experience, and providing few, if any, choices."¹⁶²

Most saliently for this Article and legal writing faculty specifically, controlling behaviors include "strict prohibitions on cooperation and collaboration . . . [on] graded writing assignments," and prohibiting "students [from] talking to each other . . . about graded writing assignments."¹⁶³ Faculty rationales for prohibiting students to collaborate with or talk to one another about graded writing assignments often do so to ensure students cannot cheat.¹⁶⁴ While faculty concerns about academic dishonesty are valid, such controlling behaviors cut off engagement, prevent students from relating to and connecting with each other, and prohibit students from *learning from one another*.¹⁶⁵

Law faculty are role models for law students and can both foster and model collaboration, social connectedness, and autonomy support in the classroom.¹⁶⁶ There are many ways to adapt these elements of autonomy support—choice, rationale, and student perspective—to legal writing.¹⁶⁷

Faculty can provide "autonomy support *with structure* . . . '[by providing] clear expectations, [identifying] optimal challenges, and [providing] timely and informative feedback as . . . [students] attempt to . . . [meet the] expectations and challenges.'"¹⁶⁸ Autonomy support and structure are complementary and mutually supportive classroom elements.¹⁶⁹ "Autonomy support in legal education can, and likely best should, be combined with a structure of defined expectations, challenges that 'stretch' the student, and feedback on performance."¹⁷⁰

Another method of supporting student autonomy is through cognitive apprenticeships that support learner development.¹⁷¹ The Carnegie Foundation's report, *Educating Lawyers: Preparing for the Profession of*

162. *Id.* at 841.

163. *Id.*

164. *Id.*

165. *Id.* at 842.

166. *See* Meyerson, *supra* note 58, at 555 ("[L]aw students learn more than just law from their professors. They also learn what it means to be a lawyer. . . . [T]he greatest role models for students are faculty members themselves.).

167. Sheldon & Krieger, *supra* note 141, at 884.

168. Leah Wortham et al., *Autonomy-Mastery-Purpose: Structuring Clinical Courses to Enhance These Critical Educational Goals*, 18 INT'L J. CLINICAL LEGAL EDUC., 105, 115 (2012) (quoting Johnmarshall Reeve, *Self-Determination Theory Applied to Educational Settings*, in HANDBOOK OF SELF-DETERMINATION RESEARCH 193 (Edward L. Deci & Richard M. Ryan eds., 2002)).

169. *Id.*

170. *Id.*

171. *See id.* at 111.

Law,¹⁷² identifies four effective methods for “cognitive apprenticeships” applicable to legal education: modeling, coaching, scaffolding, and fading.¹⁷³ While the Carnegie report applied these cognitive apprenticeship models to case analysis in doctrinal courses, they apply equally to clinical, experiential, and skills courses such as legal research, and writing.¹⁷⁴

The four methods for cognitive apprenticeship identified in the Carnegie report as applied to legal writing are:

1. Modeling—making the cognitive analysis of legal analysis visible;
2. Coaching—providing guidance and feedback on legal analysis and writing;
3. Scaffolding—providing support for those not yet at mastery and struggling with analysis;
4. Fading—encouraging students ready to proceed independently and stepping back to let students perform analysis on their own.¹⁷⁵

In *Autonomy-Mastery-Purpose: Structuring Clinical Courses to Enhance These Critical Educational Goals*, the authors specifically discuss applying autonomy support to clinical legal education, but the principles apply broadly to all legal education settings.¹⁷⁶ *Autonomy-Mastery-Purpose* synthesizes decades of empirical research on autonomy support spanning self-determination theory and educational psychology and concludes that faculty behaviors in the classroom greatly influence students’ autonomy and learning outcomes.¹⁷⁷ The research shows:

that students with autonomy-supportive teachers, compared with students with controlling teachers, experience not only greater perceived autonomy but also more positive functioning in terms of their classroom engagement, emotionality, creativity, intrinsic motivation, psychological well-being, conceptual understanding, academic achievement, and persistence in school.¹⁷⁸

172. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 61 (2007); Wortham et al., *supra* note 168, at 111.

173. Wortham et al., *supra* note 168, at 117.

174. *Id.*

175. *Id.* (citing THE CARNEGIE REPORT at 63); *see also* SULLIVAN ET AL., *supra* note 172, at 61; Schrup & Provenzano, *supra* note 37, at 80, 83.

176. Wortham et al., *supra* note 168, at 117, 123.

177. *Id.*

178. *Id.* at 123.

The authors provide helpful summaries of autonomy-supportive instructional behaviors and controlling instructional behaviors.¹⁷⁹ Autonomy supportive instruction behaviors include: listening to students, allowing students to work in their own way, providing rationales, offering encouragement, providing informational feedback, and “being responsive to student-generated questions.”¹⁸⁰ Controlling instructional behaviors include: uttering directives or commands, monopolizing learning materials, deadline statements, making should or ought to statements, and criticizing students.¹⁸¹

Controlling student collaboration also disproportionately silences students of color, reinforcing hierarchy and inequality in the law classroom.¹⁸² A study at the University of Florida College of Law revealed significant racial differences in classroom treatment and participation, finding white students participated more frequently and received more classroom attention than students of color.¹⁸³

Law faculty have a unique responsibility and opportunity to model and inculcate equitable, inclusive, and culturally proficient communication skills.¹⁸⁴ “The first step in teaching law students how to be culturally proficient lawyers is by interacting with them in a culturally proficient way.”¹⁸⁵ Inclusive engagement is a learned, intentional behavior.¹⁸⁶ Engaging with racially and culturally diverse peers positively correlates with both social and academic benefits.¹⁸⁷ Such inclusive learning opportunities are not organic—they must be facilitated.¹⁸⁸ Teacher pedagogy and cooperative learning strategies shape and encourage positive student engagement behaviors between and among racially diverse peers.¹⁸⁹

Old law professors can learn new tricks.¹⁹⁰ Syllabi can be revised.¹⁹¹ Controlling language can become more autonomy supportive.¹⁹² Inclusive

179. *Id.* at 124 fig.3.

180. *Id.*

181. Wortham et al., *supra* note 168, at 124 fig.3.

182. See Anastasia M. Boles, *Seeking Inclusion from the Inside Out: Towards a Paradigm of Culturally Proficient Legal Education*, 11 CHARLESTON L. REV. 209, 252 (2017).

183. *Id.*

184. *Id.*

185. *Id.* at 268.

186. Wendell D. Hall, Alberto F. Cabrera, and Jeffrey F. Milem, *A Tale of Two Groups: Differences Between Minority Students and Non-Minority Students in their Predispositions to and Engagement with Diverse Peers at a Predominantly White Institution*, 52 RSCH. HIGHER EDUC. 136, 150 (2011).

187. *Id.* at 136.

188. *Id.* at 138.

189. *Id.* at 147.

190. Wortham et al., *supra* note 168, at 109.

engagement can be facilitated.¹⁹³ The bottom line is that you set the ground rules for elaboration, collaboration, social connectedness, and autonomy support, and inclusion in your classroom.¹⁹⁴

V. CONCLUSION

When we tell our students not to talk about what they are learning or writing outside of our classroom, we convey that we are in control of their thinking, learning, and writing—not them.¹⁹⁵ We also convey that we do not trust them and that we need to control their learning, so they do it *right*.¹⁹⁶ But learning does not only happen in the classroom or in our presence.¹⁹⁷ And, learning often occurs through making mistakes.¹⁹⁸

Course climate, including autonomy-supportive teaching methods, begins with the syllabus and online course material, not just the physical classroom space.¹⁹⁹ Law faculty can design course syllabi to include autonomy-supportive language, model collaborative and elaborative learning strategies, share the cognitive, social, and autonomy-supportive benefits with students, and foster collaboration and social connectedness in and out of the classroom.²⁰⁰ Law faculty must communicate expectations, limitations, and parameters of student elaboration, collaboration, and learning activities.²⁰¹

My interest was sparked by a robust exchange of opinions and policies on this issue on the Legal Writing Institute (“LWI”) listserv in 2019.²⁰² A listserv member posed a question about other *law schools’ policies on student assignments and discussions outside of the classroom*—specifically asking if other LRW faculty *allow students to talk about major*

191. See Ishiyama & Hartlaub, *supra* note 113, at 567; AMBROSE ET AL., *supra* note 80, at 223.

192. Wortham et al., *supra* note 168, at 124.

193. Hall et al., *supra* note 186, at 138.

194. Wortham et al., *supra* note 168, at 124; see also AMBROSE ET AL., *supra* note 80, at 223.

195. See Sheldon & Krieger, *supra* note 141, at 884; AMBROSE ET AL., *supra* note 80, at 78; Wortham et al., *supra* note 168, at 114.

196. See Wortham et al., *supra* note 168, at 117.

197. See Ricks, *supra* note 48, at 586; Iijima, *supra* note 30, at 537.

198. See Wortham et al., *supra* note 168, at 127, 133; BROWN ET AL., *supra* note 80, at 7.

199. AMBROSE ET AL., *supra* note 80, at 170, 184.

200. See Ishiyama & Hartlaub, *supra* note 113, at 567; AMBROSE ET AL., *supra* note 80, at 84–85, 223.

201. See Wortham et al., *supra* note 168, at 115, 125.

202. See LWI’s Listserv (LWIC), LEGAL WRITING INST. <http://www.lwionline.org/lwis-listserv-lwic> (last visited May 12, 2021).

*graded writing assignments outside of the classroom.*²⁰³ Supporters cited the benefits of collaborative learning skills, encouraging learning communities, and simulating the collaboration of *real law practice*, while critics cited concerns of plagiarism or difficulties in evaluating a student's individual work product.²⁰⁴ Critics of allowing student discussion about graded assignments expressed concerns about lack of control over student learning, cheating, and difficulty in assessing an individual's work.²⁰⁵

My own teaching philosophy seemed to be confirmed; to allow students to talk about writing assignments outside of class at any stage of the process, but to prohibit students from sharing written work with other students, exceptions being my teaching assistants, the Writing Center, and myself.²⁰⁶ This view was shared by several LRW faculty who responded to the LWI listserv.²⁰⁷ An appendix illustrates syllabus language clarifying expectations for when collaboration is permitted and when collaboration is not.²⁰⁸

Collaborative learning occurs over both a continuum of classroom activities and by degrees of collaboration.²⁰⁹ Many law faculty already incorporate aspects of collaborative learning in their classrooms.²¹⁰ Law faculty are encouraged to incorporate collaborative learning activities in the legal writing classroom, ranging from a smaller to larger degree, for example:²¹¹

1. Small group discussions and brainstorming²¹²
2. Group research²¹³
3. Case charting or outlining²¹⁴
4. Peer review²¹⁵

203. *See id.*

204. *See id.*

205. *See id.*

206. *See id.*

207. *LWI's Listserv (LWIC)*, *supra* note 202.

208. E-mail from David Thomson, Professor of Practice, Univ. of Denv. Sturm College of L., to Jennifer Cooper, Assistant Professor of Practice, Univ. of Denv. Sturm College of L. (Feb. 26, 2021, 4:25 MST) (on file with author).

209. Roberta K. Thyfault & Kathryn Fehrman, *Interactive Group Learning in the Legal Writing Classroom: An International Primer on Student Collaboration and Cooperation in Large Classrooms*, 3 J. MARSHALL L.J. 135, 154 (2009) (suggesting collaborative and cooperative learning activities for the legal writing classroom); *see* Zimmerman, *supra* note 2, at 1009.

210. *See* Zimmerman, *supra* note 2, at 1003.

211. *See id.* at 1009.

212. *See id.* at 1003.

213. *See id.* at 1004–05.

214. *See id.* at 1004–05, 1012.

5. Collaborative writing²¹⁶

Letting students talk about writing supports the growing collaborative learning movement within the legal research and writing discipline.²¹⁷ Legal writing faculty can encourage collaborative *learning* while drawing the line at students *reading* other student work or collaborative *writing* by selecting the degree of collaboration and clarifying expectations.²¹⁸

215. See Zimmerman, *supra* note 2, at 1003, 1004-05.

216. See *id.* at 1003, 1004-05.

217. Meyerson, *supra* note 58, at 585 ("Collaboration has also become a major component of many law schools' legal reasoning and writing programs."). See also John S. Elson, *The Case Against Collaborative Learning in the First-Year Legal Research, Writing, and Analysis Course*, 13 PERSPS.: TEACHING LEGAL RSCH & WRITING 136 (2005).

218. See Zimmerman, *supra* note 2, at 1003-04.

APPENDIX

The following is an excerpt from a first-year legal research and writing course syllabus that encourages collaborative discussions and includes some collaborative writing.²¹⁹

Collaboration with Other Students Encouraged

You are encouraged to discuss your assignments freely with your classmates, but you may not turn in anyone else's work as your own. Articulating the law in your own words is a crucial part of the learning process. You are encouraged to discuss and debate the importance of individual cases to the assignment with fellow students. You are also encouraged to discuss legal issues and ideas with your classmates. However, **you may not share your writing with other students, unless specifically instructed to do so by your Professor.**

Because of the importance of collaboration to learning and preparing for practice, you will be assigned to work with other students collaboratively on some assignments. However, you must read the assignment instructions carefully to understand when collaboration is permitted and when it is not. Since 60% of your grade is determined by your individual work on the Final Memo, the grade you will receive in the course remains within your control. You, alone, are responsible for incorporating the lessons of earlier assignments to the Final Memo.

The practice you are preparing to enter is highly collaborative—even when working with opposing counsel. And there are many benefits of simply having another person to share ideas with, and learn from, particularly in the first year of law school.

Review of Written Work Prohibited

You may not show your written work with anyone except your Lawyering Process Professor, the Writing Clinic, and the Teaching Assistants. Unless I give you specific instructions for an assignment to be researched, written, or peer reviewed in a collaborative group, **you may not share your written work with another student before the assignment is due.** You may not ask for, or obtain, another person's work on similar law

219. E-mail from David Thomson, *supra* note 208. Collaboration excerpt based on material from David Thomson's Lawyering Process I Fall Syllabus. *Id.*

school assignments.

Unless permitted by these rules, by instructions in the assignments, or by me in some other manner, you may not give your written work to any other person for review until the course is completed. Until I have finished my review of all the papers on that assignment for all the students in the section and the class has moved on to another assignment, no one else may look at your paper. You may thereafter use your papers as writing samples for job applications, or to show to persons who are not in law school, in a manner consistent with these rules.