

# USC Gould

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## Overcoming Writer's Block and Procrastination for Attorneys, Law Students, and Law Professors

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# OVERCOMING WRITER'S BLOCK AND PROCRASTINATION FOR ATTORNEYS, LAW STUDENTS, AND LAW PROFESSORS

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## I. INTRODUCTION

*I can only write when deadlines have passed and I feel like there is a gun to my head. Even then it takes enormous effort to make myself do it, and I can only write in intense, long binges where I neglect everything else in my life. Afterward I feel completely drained. I hate writing.*

*I've been working on this memo forever, but I don't seem any closer to the end. I spend hours on Westlaw and I'm always discovering more cases I need to read before I can feel confident about what I'm writing.*

*I have plenty of time to write, but I waste enormous amounts of time on insignificant tasks, games, or just sleeping. I dread actually sitting down at my desk and beginning to write. I'll find any excuse to do something else. No one knows how serious a problem this is, and I lie when my boss asks how the brief is going.*

*I know my publishing record will be the single most important factor in my tenure review, but somehow I lose sight of that because I feel overwhelmed with the demands of teaching and administrative*

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*tasks. Maybe it's a way of avoiding writing—if I wrote anything it would be obvious I'm out of my league here.*

*Whatever I write seems like absolute crap to me. I can spend hours on a single paragraph, only to tear it up in disgust. What made me think I could be a lawyer? I'm terrified that I don't have what it takes, but I can't afford to fail at this career.*

These statements are typical of what we hear from the writers and lawyers with whom we work. As a psychologist with over two decades of experience as a therapist, teacher, consultant, and group leader for writers with productivity problems, and as an attorney and professor teaching high achieving law students how to be effective legal writers, we know that legal writers face unique challenges. Law is a particularly writing-heavy profession; one legal writing text begins bluntly: “Lawyers are writers.”<sup>1</sup> However, lawyers, law students, and law professors often struggle with initiating, sustaining, and completing legal writing projects. Even the most competent legal professionals experience periods in which the written word just does not flow freely.<sup>2</sup> This article provides a guide for legal writers who are seeking to understand and resolve writing blocks, procrastination, and other common writing productivity problems.

While much of the advice presented applies broadly, lawyers, law students, and law professors each have their own unique writing challenges. Law professors, like other academics, develop intellectual community through writing and generally need to write and publish to advance and ensure job security through tenure—the “publish or perish” threat.<sup>3</sup> Lawyers continually face time pressures such as court filing dead-

1. MARGARET Z. JOHNS & CLAYTON S. TANAKA, *PROFESSIONAL WRITING FOR LAWYERS* 3 (2d ed. 2012); *see also* LINDA H. EDWARDS, *LEGAL WRITING AND ANALYSIS* (2011) (identifying lawyers as professional writers).

2. *See* ROBERTO ARON, JULIUS FAST & RICHARD B. KLEIN, *Breaking Writer's Block*, *TRIAL COMMUNICATION SKILLS* § 55:22 (2d ed. 2011) (“There are times in everyone’s writing career when the words just do not flow easily. Instead of starting to write, it will be time to put some coffee on, to do the laundry, to make a phone call—to do anything but start.”); Paula Samuelson, *Good Legal Writing: Of Orwell and Window Panes*, 46 *U. PITT. L. REV.* 149, 166 (1984–1985) (“We have all had the experience of facing a blank pad of yellow paper with an equally blank mind.”).

3. “The publish-or-perish world of academia spurs anxiety among faculty that can lead to blocking at some time. Without question, those who persistently block perish.” RONALD T. KELLOGG, *THE PSYCHOLOGY OF WRITING* 116 (1994). “Writing plays a central role in scholars’ lives not only because the pressure to ‘publish or perish’ exists in academic institutions but also because writing maintains and fosters a sense of community and defines a common intellectual enterprise.” GESA KIRSCH, *WOMEN WRITING THE ACADEMY* xvii (1993). “‘Because writing is the main form of currency in higher education and largely determines one’s success or failure, severe

lines, client or employer deadlines, closing dates for business deals, and drafting or redrafting legal documents promptly in response to changes in the law or matter status. To complicate matters, not all types of lawyers' legal writing, or legal writing forums, are equivalent. A well-written appellate brief may be perceived to be more important than well-written points and authorities for a non-dispositive motion, for example. Most briefs have judges, but not a public viewing, to worry about. Judges' and judicial clerks' writing, in the form of opinions and bench memos, bears the burden of correctly determining the law and may set precedent in a jurisdiction.<sup>4</sup> Lawyers' writing additionally must meet professional responsibility standards and not jeopardize their clients' rights.<sup>5</sup>

Law students also have to write under both deadline pressure and time pressure, in the case of final exam essay questions, class papers and moot court briefs, law review notes and write-on competitions, and, of course, the bar exam. Legal writing is a new and unfamiliar form of writing for many talented law students,<sup>6</sup> who must contend with both a steep learning curve and, at most law schools, an unforgiving grade curve. Law school success hinges, too, on self-motivation in writing, as in the effective study technique of writing practice essay exam answers.

Throughout your career in the law, "you will probably write more than a novelist."<sup>7</sup> This article highlights some of the complexities of the writing process, offers an overview of common writing productivity challenges, and provides a series of tools for improving legal writing productivity. Whatever kind of legal writer you are, we hope this article will help point to issues at the heart of your own writing challenges and will help you identify how best to make productive changes.

difficulties with writing are probably most common in universities.'" Christina Crosby, *Writer's Block, Merit, and the Market: Working in the University of Excellence*, 65 *COLLEGE ENGLISH* 626, 627 (2003) (quoting KEITH HJORTSHOJ, *UNDERSTANDING WRITING BLOCKS* 5 (2001)).

4. For more on judicial opinion writing, see Ruggero J. Aldisert, Meehan Rasch & Matthew Bartlett, *Opinion Writing and Opinion Readers*, 31 *CARD. L. REV.* 1 (2009–2010). For some tips on overcoming writer's block for judicial clerks, see Jennifer Sheppard, *The "Write" Way: A Judicial Clerk's Guide to Writing for the Court*, 38 *U. BALT. L. REV.* 73, 106 (2008–2009).

5. See generally, e.g., *MODEL RULES OF PROF'L CONDUCT* (2011); *RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS* (2000); *CAL. R. PROF'L CONDUCT* (2012).

6. Unfortunately, "[a]n expert in one domain of writing—novelist, poet, journalist, scientist—is not necessarily even competent in another domain. Each text form requires new ways of inventing and communicating ideas. . . . [T]he problems of what to include in a text and how to express that content are both numerous and widely diverse." KELLOGG, *supra* note 3, at 15.

7. JOHNS & TANAKA, *supra* note 1, at 3.

## II. WRITING IS NOT SIMPLE

Writing is a mentally demanding and complex activity that requires sustained effort and attention. Numerous intricate neurological circuits connected with speech, motor activity, memory, emotion, visual perception, word and sentence construction, and sound recognition light up during the process of writing.<sup>8</sup> We have to coordinate, mentally and physically, all this activity in order to produce intelligible written documents. “Given the heavy investment of cognitive effort and emotional resources in writing long, complex assignments, it would not be surprising if nearly everyone who has put pen to paper has not experienced temporary if not prolonged blocking.”<sup>9</sup>

In addition, “legal writing” is not a singular activity, but rather a “somewhat fluid process of thinking, planning, drafting, rethinking, re-writing, editing, polishing, and proofreading.”<sup>10</sup> It is demanding, and the mechanics of writing are susceptible to breaking down in many ways at any of these stages.

Writing is a sum of many diverse mental activities, behaviors, and relationships that somehow combine to create a finished product.<sup>11</sup> These include generating ideas and gathering facts, making notes, organizing those notes, both expanding upon and refining ideas, building phrases and sentences, creating drafts, revising drafts, seeking feedback, final editing, dealing with criticism, praise, or rejection of the final work—and then getting into your next project. Legal writers have to perform all of these tasks and be able to decide when to move back and forth between them. Hundreds of decisions and corrections of those decisions must be made, even with short documents or assignments.

Being productive is harder if you have had inadequate or incorrect training. Writing, in general, requires that our brains and bodies learn a complex set of neurological and behavioral operations that do not occur naturally.<sup>12</sup> If your early writing training was poor or interrupted, you

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8. For more on the mental processes associated with writing and writer’s block, see generally ALICE W. FLAHERTY, *THE MIDNIGHT DISEASE: THE DRIVE TO WRITE, WRITER’S BLOCK, AND THE CREATIVE BRAIN* (2004) (a neurologist weighs in on writing and the brain).

9. KELLOGG, *supra* note 3, at 116.

10. JOHNS & TANAKA, *supra* note 1, at 15–16.

11. For a rich exploration of the cognitive psychology of writing and the intersection between writing and thinking, see generally KELLOGG, *supra* note 3. Kellogg suggests that writing in fact “may well be an infinite variety of ill-defined problems,” contributing to the difficulty of understanding writing processes and hindrances. *Id.* at 15 (referencing Bazerman’s work on what constitutes an expert writer).

12. See generally FLAHERTY, *supra* note 8.

might experience writing as especially arduous, distasteful, and time consuming. Indeed, “[m]ost people’s relationship to the process of writing is one of helplessness.”<sup>13</sup>

Upsetting remarks from teachers or parents may have made a strong impact, creating intense feelings toward writing, such as resentment, fear, and self-doubt. Educational institutions, including law schools, are responsible for generating and perpetuating a great many bad habits and teachings about writing. For instance: “schooling makes us obsessed with the ‘mistakes’ we make in writing. Many people are constantly thinking about spelling and grammar as they try to write.”<sup>14</sup> Ignorant and rigid methods of evaluation, the pressures of the law school grading curve, unnecessarily destructive judgments and feedback, the encouragement of deadline binge writing, and a lack of sensitivity to different learning styles are education-related issues that can contribute to writer’s block.<sup>15</sup>

Legal writing, too, has its own set of norms that may be challenging or unfamiliar even to law students and lawyers who are highly skilled writers in other arenas. An alphabet soup of structural styles such as IRAC, CRAC, CRRPAC, or CREAC await the new law student, and the skills required for exam writing, objective memoranda, persuasive briefs, academic law review articles, and bar exam essays, while complementary, vary greatly. Clarity, rather than intellectual obfuscation, is preeminent (except when obfuscation is strategically useful); but much “legalese” is

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13. PETER ELBOW, *WRITING WITHOUT TEACHERS* 12 (2d ed. 1998).

14. *Id.* at 5.

15. For example, Jessie Grearson notes that when law students receive comments on their legal writing that emphasize how short they fall of real professional standards, “[s]tudents may feel overwhelmed at the disparity between where they are and where they will need to be as professional legal writers. They may feel inadequate (‘I am not worthy to be part of this scholarly community’), which can lead to writer’s block.” Jessie C. Grearson, *From Editor to Mentor: Considering the Effect of Your Commenting Style*, 8 *LEGAL WRITING: J. LEGAL WRITING INST.* 147, 165 (2002). Alternatively, if a student is bombarded by excessive comments on his or her legal writing and no clear prioritization of goals for improvement, “[t]he student in this scenario is likely to suffer from writer’s block without a clear sense of where to begin.” *Id.* at 153.

anything but clear.<sup>16</sup> Law students hence may emulate archaic and convoluted legal writing styles in an effort to sound “professional.”<sup>17</sup>

In practice, too, a lawyer’s written legal opinion has the fundamental “duty of competence; the duty to the client as an advisor and advocate; and the duty to our justice system as an officer of the court.”<sup>18</sup> Unlike more personal or creative forms of writing, “writing as a lawyer is not about saying something that pleases you as the author,” but rather about “whether the reader understands what you are saying.”<sup>19</sup> Even seemingly simple communications with clients and opposing counsel, by e-mail or letter, demand nuance and skill.

Moreover, few of us were taught anything useful in our educational system at any level, and certainly not in law school, about how to overcome writing blocks, procrastination, or other common problems with writing productivity. “Academic support” or “academic success” programs at some law schools may provide students with a greater variety of resources to address issues such as writing productivity and procrastination. However, few or no such resources are available to practicing attorneys. Attorneys usually have to figure these things out on their own, and competent assistance is difficult to find.

In addition, your ability to write is intimately connected to your psychological state.<sup>20</sup> The intention to write must take precedence over all

16. We lawyers do not write plain English. We use eight words to say what could be said in two. We use arcane phrases to express commonplace ideas. Seeking to be precise, we become redundant. Seeking to be cautious, we become verbose. Our sentences twist on, phrase within clause within clause, glazing the eyes and numbing the minds of our readers. The result is a writing style that has, according to one critic, four outstanding characteristics. It is ‘(1) wordy, (2) unclear, (3) pompous, and (4) dull.’

RICHARD C. WYDICK, *PLAIN ENGLISH FOR LAWYERS* 3 (5th ed. 2005) (quoting DAVID MELLINKOFF, *THE LANGUAGE OF THE LAW* 23 (1963)).

17. See Samuelson, *supra* note 2, at 149 (“[L]ucidity [in legal writing] does not come naturally to most law students, perhaps because they have been forced in their legal studies to read so much bad writing that they mistake what they’ve read for the true and proper model.”); see also Terri L. Enns, *Students Critiquing Novice Writing: Building Hope by Building Bridges*, 48 Duq. L. Rev. 403, 407–08 (2010) (“Because they are negotiating that difficult transition from novice to expert, novice legal writers can be expected to exhibit some of the following characteristics: (1) focusing on the concrete features of a problem rather than refining or rephrasing in any way; (2) writing ‘self-evident banalities,’ things that those already within the discourse community do not need to be told; (3) ‘bad’ writing that focuses on the concrete and ‘tend[s] toward episodes of incoherence’; and (4) overuse of professional language.”).

18. JOHNS & TANAKA, *supra* note 1, at 4.

19. Sue Carol Rakow, *The Essentials of Good Legal Writing*, 28 Los Angeles Lawyer 24 (2005) (“Survival Guide for New Attorneys in California”).

20. See generally KELLOGG, *supra* note 3.

other thoughts and feelings, despite the fact that some of these internal dynamics are *not* supportive of your legal writing agenda. In our work, we observe and hear many stories of how our students, clients, or coworkers avoid writing—and we, ourselves, have been known to avoid it. The magnificent energy and creativity of the human mind (and lawyers are an especially energetic and creative bunch) is seldom so exquisitely manifested as when it is devising methods of defeating the intention to write. Despite your best intentions, you can easily be derailed from writing by the compelling and ubiquitous siren songs of e-mail, the Internet, parties, conversation, television, hot baths, the refrigerator, or the compulsion to scrub tile grout with a toothbrush.

You also have to do it by yourself. Writing is often a solitary undertaking, and lawyers need to be able to tolerate loneliness, self-doubt, fatigue, dread, delayed gratification, uncertainty, criticism, and overwhelm—yet still continue to write. Others can encourage (or threaten) you in various ways, but at the end of the day, it is you alone who must actually make yourself produce. Writing is hard, too, because attorneys, like other humans, are always confronting time-consuming biological and social realities like the need to sleep, eat, complete other assignments, and spend time with family and friends. Because time and energy are limited, and often already in short supply for lawyers and law students, legal writing projects frequently require a sacrifice of some sort in other areas.

Finally, writing may be professionally and personally rewarding, but you take personal risks when you write.<sup>21</sup> You are producing something for public scrutiny that could expose you to negative judgments and criticism (and may have serious legal consequences for your client or career). Lawyers are notoriously perfectionistic and risk-averse, and they may intensely fear others being angry, bored, or disappointed by their writing. If your legal writing addresses controversial subjects, involves a client's substantive rights, or expresses opinions contrary to those of a supervisor or that might rattle the legal academy, there are additional risks involved. Because the ability to write productively is essential for legal career goals, such as completing a law degree, achieving tenure in academia, or making partner at a law firm, the pressure to produce can be a motivating force. On the other hand, it can also generate crippling anxiety spirals, procrastination, and work stoppages.

In our experience, to have at least occasional problems with beginning or sustaining legal writing is more the norm than the exception. Stu-

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21. "Writing involves emotional risks in the process and emotional benefits in the product." KELLOGG, *supra* note 3, at 111.



dents should take heart that this is true even for attorneys and law professors with years of experience and success. If legal writing never seems difficult, you have indeed been blessed (but we would counsel you not to speak extensively about this blessing in the company of other lawyers).

### III. UNDERSTANDING COMMON WRITING PRODUCTIVITY PROBLEMS

Writer's block is not a single, identifiable syndrome. "There is no quick definition of writer's block, no facile description of the stymied writer."<sup>22</sup> Rather, people use the phrase to describe a variety of difficulties that result in a halt or significant decrease in writing productivity. As noted, writing is a complex, multifaceted enterprise that breaks down in myriad ways. Methods of writing, scheduling, procrastination, and personality affect individual writers' processes very differently.<sup>23</sup> The various forms of writer's block often share themes such as perfectionism, procrastination, overwhelm, anxiety, and fear of criticism. However, each person's writing process has its own context, history, and specific pattern of behavior, thoughts, and feelings.

We recommend seeking a very specific understanding of the assets and liabilities of your own writing process. This will help you craft a well-considered and successful plan for improving your legal writing productivity. The following common difficulties reported by blocked writers, while not exhaustive or mutually exclusive, may be relevant to your legal writing process.

#### A. *Time and Scheduling Difficulties*

Many lawyers and law students with productivity problems have trouble with *time*. "No particular work schedule is associated with high productivity"<sup>24</sup>—merely, you must find time, protect it, and then use it

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22. MIKE ROSE, Preface, *WHEN A WRITER CAN'T WRITE: STUDIES IN WRITER'S BLOCK AND OTHER COMPOSING-PROCESS PROBLEMS* ix (1985) (hereinafter *WHEN A WRITER CAN'T WRITE*).

23. See, e.g., KELLOGG, *supra* note 3, at 50–51. Kellogg identifies method and personality as key factors in writers' process and performance. "Method includes the strategies, tools, work scheduling, environment, and rituals used by a writer to retrieve and manipulate knowledge . . . . Personality refer[s] to several dimensions of individual differences that are theoretically relevant to writing. Although many personal factors might be included here, four seem most pertinent. Intelligence, motivation, cognitive style, and anxiety are rich sources of individual differences among writers." *Id.* at 50.

24. KELLOGG, *supra* note 3, at 194.

well despite the competing pulls of other responsibilities, people, pleasures, and the complex workings of your mind. Each day, through conscious planning or unconscious default, we prioritize our activities and make decisions about how to spend time. It can be quite a challenge to determine how much time the writing demands of your career require and to incorporate that into a workable routine.<sup>25</sup> It may require some maneuvering to insert sufficient blocks of writing time into your daily or weekly schedule. Even if you find the time, you are still faced with the daunting task of sticking to the schedule and actually writing something during the minutes or hours you have carved out.

Common problems with time and scheduling include:

- Inability to make future plans about writing.
- Inability or reluctance to schedule your day (or week, or month, or semester).
- Inability or reluctance to stick to a schedule you have made.
- Losing track of time, getting distracted.
- Chronic lateness.
- Overbooking your time.
- Inability to estimate how long a task will take.
- Overwhelm and anxiety when thinking of the future.
- Working too little or too long at a stretch.
- Inability to write, except just before or after deadlines.
- Insufficient prioritizing of writing relative to other activities and commitments.
- Over-focusing on the passage of time and worrying that time is too short.

### *B. Difficulty Starting*

For many people, the primary challenge is taking the step of sitting down at their desk and beginning to write.<sup>26</sup> Their anticipatory anxiety or resistance creates a mental barrier to taking the first step.<sup>27</sup> Often they entertain an inaccurate and exaggerated estimate of the agony that will ensue if they write. Lawyers who have difficulty starting to write often do

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25. For more on the relation between scheduling challenges and writing performance, see KELLOGG, *supra* note 3, at 190–94.

26. See ARON, ET AL., *supra* note 2 (“The hardest part of any document is putting the first words on paper.”).

27. See, e.g., ELBOW, *supra* note 13, at 27 “[A]t the beginning is . . . when you are least warmed up and most anxious. Anxiety keeps you from writing. You don’t know what you will end up writing. Will it be enough? Will it be any good? You begin to think of critical readers and how they will react. You get worried and your mind begins to cloud . . . Anxiety is trying to get you so stuck and disgusted that you stop writing altogether. It is writing that causes all the anxiety.”).

fine once they have taken the plunge. The challenge is to learn to set up your legal writing life to increase the odds of diving in.

### C. *Rejecting Ideas Prematurely*

Another problematic tendency involves thinking of ideas but then rejecting them before they have been considered sufficiently or written down. Generally this idea-rejecting process takes place in the solitude of the individual mind. Ideas arise but are not written down because of a feeling that they are not “good enough.”

You must be able to tolerate the raw quality of your first thoughts in order to let them out of the privacy of your head and allow them to exist nakedly in black and white. Often ideas look different on paper than they seemed in your head, and you can evaluate them more objectively. The process of writing down rough ideas in the early stages of a legal writing project is not a waste of time. Once written, even if they embarrass you, ideas are preserved and can be reflected upon and improved over time. You are not proclaiming they will be the final product just because you wrote them. Writing first thoughts is a step in the process that permits you to develop your ideas more fully and generate additional ideas and inspiration.

Techniques that facilitate getting ideas on paper include “freewriting,” or a “brain dump.” Freewriting, as discussed in Peter Elbow’s book *Writing Without Teachers*, is simply writing any and all words that come to mind, without pausing and without trying to censor or control what comes out.<sup>28</sup> Bret Rappaport notes that “[t]he [freewriting] process is, unfortunately, too often ignored by lawyers in the writing process”—lawyers who would benefit from opening their minds to less bounded, more powerful creative associations.<sup>29</sup> Similarly, as described by Suzanne Rowe, “[t]he goal of a brain dump is to move as much information as possible out of your head and onto a page. That will free up space for

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28. See ELBOW, *supra* note 13, at 3–11.

29. Bret Rappaport, *Using the Elements of Rhythm, Flow, and Tone to Create a More Effective and Persuasive Acoustic Experience in Legal Writing*, 16 LEGAL WRITING: J. LEGAL WRITING INST. 65, 108–109 (2010); see also *id.* at 109 (“[L]awyers should free write more often because, ‘[t]he free writing process—opening the mind to all associations, possibilities, hunches that may occur—provides a powerful basis for exploring the factual and legal possibilities of the case. The ungrounded initial flights of fancy not only facilitate but may be essential to the development of the most grounded of plans.’”) (quoting Charles J. Moxley, Jr., *Effective Litigative Writing*, 10 J. BUS. & TECHNICAL COMMUN. 143, 148 (Apr. 1996)).

critical thinking.”<sup>30</sup> Rowe suggests giving yourself ten minutes to write as much as possible, as fast as possible, without worrying about typos, organization, coherence, or the quality of your ideas.<sup>31</sup> With permission to write imperfectly and quickly at first, the vastness of the blank page is initially conquered and “[a]ssessment comes later, when you’ve gotten some brain cells freed up.”<sup>32</sup>

If even freewriting feels impossible, you can turn to the time-honored legal art of dictation.<sup>33</sup> Before word-processing software became so easy and ubiquitous, lawyers commonly dictated legal documents and correspondence; some still do—Meehan clerked for a judge who dictated most of his first drafts of opinions. Rowe notes that “[t]he old-fashioned way to do this is with a Dictaphone. . . . Then ask a very patient secretary to transcribe your garbage” (or transcribe it yourself) before beginning to edit.<sup>34</sup> Modern speech-recognition software such as Dragon (“You talk, and it types.”)<sup>35</sup> serves the same purpose, automatically transcribing speech.<sup>36</sup>

Both freewriting and dictation are tools to circumvent compulsive, premature rejection of ideas and to “undo[ ] the ingrained habit of editing at the same time you are trying to produce.”<sup>37</sup> Whatever the technique, the goal is to get ideas on paper *before* judging them. The act of actually writing words also stimulates creativity in a way that does not occur when words remain in your mind.

#### *D. Freezing Up or “Drawing a Blank”*

The problem of freezing up often takes the form of staring blankly at your paper or computer monitor and being unable to think of what to write next. Typically a sense of anxiety accompanies this behavior, increasing as time passes without any thoughts or words arriving. This form of anxiety when faced with a writing task is also known as “writing appre-

30. Suzanne E. Rowe, *Unblocking Writer's Block: Moving Ideas From Head to Page*, OR. ST. B. BULL. 37 (Oct. 2006), available at <http://www.osbar.org/publications/bulletin/06oct/writer.html>.

31. *Id.*

32. *Id.* See also ELBOW, *supra* note 13, at 28 (Getting something, anything, down on paper “operates as a set of lines that hold me up when I write, something to warm up the paper so that my ink will ‘take,’ a security blanket”).

33. See KELLOGG, *supra* note 3, at 177–78 (Some studies have indicated that dictation may generally increase productivity in fluent users).

34. See Rowe, *supra* note 30.

35. See DRAGON SPEECH RECOGNITION SOFTWARE, <http://www.nuance.com/dragon/index.htm>.

36. See Rowe, *supra* note 30.

37. ELBOW, *supra* note 13, at 6.

hension.”<sup>38</sup> You might also become anxious about the fact that you are anxious, because you know that anxiety interferes with writing. As this anxiety spiral intensifies, it becomes even harder to think clearly or produce anything at all. Although some anxiety or fear of failure in intellectual work can be motivational, anxiety inhibits abstract thinking, interferes with short-term memory, and can wreak havoc on productivity.<sup>39</sup>

Freezing up can be partially remedied by effective planning and outlining before writing. Legal writing projects are often complex, and “[w]ithout any planning or outlining, the writer sits down with little or no idea what she will write.”<sup>40</sup> Legal outlining helps writer’s block “because you have text on the page and a format for the discussion.”<sup>41</sup> Without a preliminary outline, it is harder to know where to place good ideas that may arise as you write—and easier to lose your momentum and train of thought. Returning to outlining throughout your drafting process can also be a way to kick-start a stalled discussion: “If you failed to draft an outline at the preparation stage and you are suffering from writer’s block, get started by outlining the discussion.”<sup>42</sup> Legal writers who organize their thoughts through tools like case charts<sup>43</sup>, bubble charts,<sup>44</sup> and traditional “I.A.1.a.” outlines of law and facts<sup>45</sup> have the advantage of a road map as they proceed with their writing projects.

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38. See John A. Daly, *Writing Apprehension*, in *WHEN A WRITER CAN’T WRITE*, *supra* note 22, at 43–82; Cynthia L. Selfe, *An Apprehensive Writer Composes*, in *WHEN A WRITER CAN’T WRITE*, *supra* note 22, at 83–95.

39. See KELLOGG, *supra* note 3, at 177–78 (“[A]nxiety plays a mixed role in intellectual pursuits. On the one hand, anxiety and fear of failing can motivate people to perform useful activities. On the other hand, anxiety can paralyze the thinker or at least produce detrimental effects on thinking operations.”).

40. Lisa Healy, *Ending Writer’s Block*, 18 *PERSP. TEACHING LEGAL RES. & WRITING* 151 (2010), <http://store.westlaw.com/pdf/perspec/2010-winter-spring/2010-Winter-Spring-12.pdf>.

41. Jennifer Sheppard, *The “Write” Way: A Judicial Clerk’s Guide to Writing for the Court*, 38 *U. BALT. L. REV.* 73, 106 (2008-2009).

42. *Id.*

43. See Healy, *supra* note 40.

44. See Rowe, *supra* note 30, at 38.

45. ARON ET AL., *supra* note 2 (“Doing an outline is a good first step. Organize the material by topic and subtopic. Using the “I.A.1.a” system will work well.”).

### *E. Procrastinating*

“Procrastination is pushing aside or putting off writing,”<sup>46</sup> and it is one of the most common behaviors associated with writing. Procrastination feels good, at least temporarily. Each time you put off working on a brief, research memorandum, article, or other legal writing project, you create a moment of relief for yourself. It feels good to procrastinate because (for a while, anyway,) you do not have to face the many challenges that legal writing presents. Unfortunately, procrastination patterns are typically repeated and reinforced, causing many lawyers to procrastinate again and again, despite their best intentions.

Procrastination takes many forms. Not every delay or pause in writing is true procrastination—“[t]here are all sorts of necessary mulling and rehearsing periods in our composing processes; differentiating them from true blocks is difficult[.]”<sup>47</sup> We define procrastination as the avoidance of writing that one wants or needs to do, even though one is capable of and interested in doing it. “Procrastination frequently occurs in alternation with intense, desperate episodes of rushed writing under deadline.”<sup>48</sup> The varieties of thoughts, feelings, and behaviors associated with procrastination are among the enduring challenges of human experience and operate like a heroin addiction: procrastination fixes our immediate discomfort while leading us to a host of other problems.

Legal writers who procrastinate may castigate themselves for being “lazy,” but that label is misleading. Laziness implies a degree of contented relaxation that rarely applies to lawyers, law students, or non-tenured law professors. The procrastination state, on the other hand, is typically very dynamic and uncomfortable on the inside, even if nothing is happening on the outside. In addition, while procrastinating, you often are working hard—just on other matters.

Thinking of procrastination as a cycle or wheel highlights how we unwittingly create and maintain behavior that we do not like, and then feel unhappy and controlled by it. While each person’s style and cycle of procrastination is unique, this “wheel of suffering” includes several common features. The experience of suffering, unfortunately, is central—“all blocked writers share two traits: they do not write despite being intellec-

46. NATALIE GOLDBERG, *WILD MIND: LIVING THE WRITER’S LIFE* 211 (1990) (“[Procrastination] is thinking the moment is tomorrow. It is a way not to let in vital energy . . . . Procrastination is a cutting off. It diminishes you.”).

47. Mike Rose, *Complexity, Rigor, Evolving Method, and the Puzzle of Writer’s Block: Thoughts on Composing-Process Research*, in *WHEN A WRITER CAN’T WRITE*, *supra* note 22, at 227.

48. DAVID A. RASCH, *THE BLOCKED WRITER’S BOOK OF THE DEAD: BRING YOUR WRITING BACK TO LIFE!* 21 (2011).

tually capable of doing so, and they suffer because they are not writing.”<sup>49</sup> The more you go around the procrastination wheel, the more you reinforce the patterns. The steps become grooved and automatic, and the wheel eventually spins without your conscious awareness. If this cycle seems familiar to you, you are not alone:

**Procrastination**  
*The Wheel of Suffering*



1. Unclear, Unrealistic Goals; Denial of the Problem

Despite a consistent, enduring pattern of work avoidance, procrastinators commonly embark on projects with naive hope and optimism. It is a form of denial about the problem. It seems that it should be fairly easy to tackle the project, and you dismiss the inner voices reminding you of long-standing avoidance patterns. You might say to yourself: “This time I’ll just work every day and stay ahead of the deadlines. No more of that procrastination wheel for me!” This denial interferes with the need

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49. FLAHERTY, *supra* note 8, at 81. Flaherty adds that “someone who is not writing and not suffering does not have writer’s block; he or she is merely not writing.” *Id.* at 82.

to thoughtfully manage your behavior. If you tell yourself that writing should go easily, then why should you bother guarding against potential problems? As a result, you get out of the gate poorly prepared to meet the predictably difficult challenges that lie ahead. You also blindly step onto the wheel of procrastination by laying the groundwork for delaying the start of writing.

## 2. Delay Start

Often, time seems plentiful at the beginning of a legal writing project. There seems to be no big problem with letting things slide a bit. “What’s the hurry?” Some physical and emotional comfort usually accompanies postponing, and because there is seemingly such a large cushion of time, it is easy to quiet the tiny voice of truth encouraging you to start. “I’ll get to it soon enough—don’t worry!” This is the top of the slippery slope. Without knowing it, you are setting up the dynamic for the rest of the project: the pattern of avoiding writing.

Lawyers often must write under intense time pressure, but tight deadlines do not necessarily solve the problem of avoiding writing. The need to finish quickly does not guarantee a timely start. Indeed, panic about the need for a fast turnover on a motion or letter may even cause a delayed start, as you fixate on the seemingly impossible task before you, other pressing matters, or both.

At this point on the wheel, it helps to remember the command, “Write first!” This means that, no matter what your inner dialogue is telling you, you should proceed with the more challenging task (writing) before *any* other. Procrastination and distorted priorities often accompany each other, with writing postponed by the excuse that other matters are more pressing. However, if you work for even five minutes, you will start the project by writing, not postponing.<sup>50</sup> This formula will improve productivity. It will also make it easier to start work every day thereafter.

## 3. Fear of Failure; Anxiety

As time passes, the need to start writing grows, and tendrils of fear might work their way into your consciousness. It becomes clear that the task you face may be more difficult than you previously acknowledged, and the clock is ticking. As you imagine beginning to write, anxiety per-

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50. See ARON ET AL., *supra* note 2 (“Once you have completed an outline, start writing . . . . You may wind up throwing the first draft away, but this will get the process going. There is no need to start at ‘I.A.1.a.’ Start where you feel comfortable with what you are saying, even if it is an issue you expect to put in the middle of the document. Once you start writing, every other part of the writing will become easier.”).



colates, and the wheel of suffering gains momentum. Self-doubt about your competence arises, memories of previous failures surface, and a sense of dread engulfs you. One problem with anxiety is that it interferes with concentration and short-term memory, functions essential to writing.<sup>51</sup> As a result, attempts to write might be false starts that reinforce your fear of failure. It feels better to distract and calm yourself by popping open a beer or checking your Facebook page.

#### 4. Resentment

As discomfort and stress register more clearly in your mind and body, you feel trapped. You wonder how you ever got yourself into such a hell. You want to strike out and slug someone, but there really is no one to blame. Your resentment might make you rebel against your work, rip up drafts, bristle at coworkers, friends, and family, mentally flagellate yourself, and want to kick your dog. Sometimes this resentment takes the rebellious form of “No one tells *me* what to do, not even myself!”

Resentment and fear are close relatives. As discussed further *infra*, it takes skill to work with these volatile emotions so that they less affect productivity.

#### 5. Missed Goals: Pep Talks

When the pattern of postponing has been established and your inner turmoil is activated, you attempt to establish goals for productivity to bring yourself to the task. As in the first stage, you are still in denial about the seriousness of the problem. You attempt to address the powerful forces of procrastination by generating some inner deadlines, writing them on your calendar, and giving yourself pep talks about why you should get going. The humbling reality is that these attempts to resolve the problem are ineffective, and you cannot make yourself sit at your desk and type simply by telling yourself that you should.

#### 6. Daydreaming

Daydreaming is truly a tricky problem. “[E]ncounters with undirected and even recurrent forms of thinking”<sup>52</sup> are common aspects of the writing process. “Daydreams, dreams, and repetitive ideas and images that refuse to let go of conscious attention are just as much part of the

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51. “[A]nxiety plays a mixed role in intellectual pursuits. On the one hand, anxiety and fear of failing can motivate people to perform useful activities. On the other hand, anxiety can paralyze the think or at least produce detrimental effects on thinking operations.” KELLOGG, *supra* note 3, at 111.

52. KELLOGG, *supra* note 3, at 15.

writer's [and lawyer's] life as are well-defined goals and directed problem-solving steps."<sup>53</sup> When you daydream, you disconnect from awareness of your presence in this world and slip into a realm where your mind drifts along on other currents.

Stopping writing for even a few moments can be a slippery slope.<sup>54</sup> Even when you remember to write, within minutes of beginning, your mind may wander. In the morning you might establish the goal of writing two sections of a brief before a coffee break but, somehow, three hours later, you find yourself "networking" in the office kitchen, planning next year's vacation in great detail, or watching a stream of YouTube cat videos. Your mind is not your own. The process of disconnecting and getting lost in the labyrinths of the mind (or Internet—an excellent mechanism for engaging in daydreaming) is subtle and quick. You are usually unaware of what is happening.

Legal writing may arouse stressful feelings, so the impulse to wander in the inner recesses of your mind is seductive because it allows escape and relief. When you allow unconscious forces to capture your consciousness, you lose valuable time and productivity.

#### 7. Avoidance; Worry

As the cycle of procrastination continues, your concern and motivation to avoid escalate. On one hand, worry helps elevate your awareness of what you need to do, but on the other hand, it also causes discomfort and increases your impulse to avoid writing. You may witness yourself engaging in self-sabotaging behavior yet be unable to stop procrastinating. Each time you avoid writing, the level of distress associated with your project dips *temporarily*, but your internal discomfort grows. There seems no way out except to worry and avoid more.

#### 8. Lying; Self-Criticism

When lots of time has passed with not enough to show for it, shame and self-loathing worm their way into your psyche. When asked about your project, it feels too embarrassing to tell the truth, so you hedge a bit—or maybe a lot. You tell your colleagues, teachers, friends, or significant others that you are making progress, even though you are not. You

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53. *Id.*

54. *See, e.g.,* GOLDBERG, *supra* note 46, at 4 ("Sure, you can stop for a few moments, but it is a tricky business. It's good to stop if you want, look up and get a better picture of what you're writing about, but often I don't stay there. If I give myself a little gap, I'm off for an hour daydreaming. You have to learn your own rhythm, but make sure you do some focused, disciplined 'keeping the hand moving' to learn about cutting through resistance.").

may also delude yourself that the situation is different than it really is. At this point, you feel badly about both your inability to write and that you are deceiving others. More bad feelings become associated with writing, making it that much more onerous to sit down and face the monster. In addition, you now carry the fear that some of those you lied to will learn the truth and painful relationship damage will result. You sometimes wonder how you will ever get out of your predicament, and your stress level rises. It feels out of control.

#### 9. Overwhelm; Deadline; Anxiety Threshold

As the deadline for your writing project nears, reality breaks through and you become motivated by dread and the fear of failure. As this fear becomes more powerful than the fear of writing, you desperately propel into action. You imagine the awful consequences of not completing your work on time and are genuinely baffled about how you could have put yourself in this predicament again. You had promised yourself that you would not wait until the last minute to begin, but you did. Now, however, there is no time for wallowing in self-pity, daydreaming, or lecturing yourself. Somehow you have to do it, and though the challenge seems monumental, you force yourself to face the task.

#### 10. Binge; Disappointment; Rationalizing

At this point, a last minute, deadline-driven frenzy of writing erupts. Possibly with the use of stimulants, long binges of work ensue in an adrenalized state of hyperactivity. Everything else in life is sidelined and forgotten as the monomaniacal focus on writing takes center stage. You might feel both dread and thrill in trying to beat the clock—and perhaps a perverse sense of satisfaction that you were able to procrastinate for so long, yet will still be able to complete the project.

Generally, if you finish this way, you know that you could have done better had you not been forced to write in a manic binge. You may feel a sense of disappointment in the final product, yourself, or both. Following this disappointment comes the ego-redeeming mental exercise of telling yourself that you are more capable than the final product suggests. You might rationalize the result in a variety of ways and assure yourself that you could have done better with sufficient time.

#### 11. “I’ll Do Better Next Time”

Finally, you reach a juncture upon completion in which you promise yourself to change your approach to writing. You intellectually know better than to procrastinate, and you mentally reaffirm your commitment to this goal. The problem is that you fail to implement a clear, defined path

to accomplish these non-trivial behavioral changes. You feel satisfied with simply telling yourself that the next time will be different. But it will not be. Rather, you start another journey around the wheel.

#### *F. Working Long Hours with Little to Show For It*

Some very energetic and disciplined attorneys find that they are unable to effectively progress in their writing projects. Though they put in long hours and do not appear to avoid work, somehow meaningful progress eludes them. Some of the reasons this occurs include:

##### 1. Excessive Editing or Rewriting of Early Drafts

Excessive rewriting as you go makes the experience of writing slower and more stressful. Compared with other forms of communication, “[w]riting has the advantage of permitting more editing. But that’s its downfall too.”<sup>55</sup> Significant mental energy is required to solve minute editing problems while simultaneously trying to generate ideas. Unfortunately, however, for many of us, our “editorial instinct is often much better developed than [our] producing instinct.”<sup>56</sup>

Some legal minds are compelled to concentrate on the trees rather than the forest in the form of, for example, correcting grammar nuances or ensuring perfect “Bluebooking.” Elements of perfectionism are commonly associated with this microscopic scrutiny of an early draft.<sup>57</sup> As Julie Baker and Lisa Healy note, “[i]f you begin writing with the idea that each sentence must be perfect, then you will never get past the first few sentences.”<sup>58</sup> Frustration, doubt, fear of failure, distaste for the process, and—eventually—a disinclination to write characterize this syndrome.

Some very successful lawyers prefer to write this way. However, if this is your style, and if it leads to frustration and work avoidance, then you may need to address the problem.<sup>59</sup> Try to “focus on the substance

55. ELBOW, *supra* note 13, at 4–5.

56. ELBOW, *supra* note 13, at 25.

57. See ELBOW, *supra* note 13, at 14 (“Central to this model is the idea of keeping control, keeping things in hand.”). For suggestions and exercises on overcoming perfectionism, see DAVID D. BURNS, *FEELING GOOD* 300–23 (1980).

58. Julie A. Baker & Lisa H. Healy, *The Writer Who Hesitates Need Not Be Lost*, *MASS. LAW. WKLY.*, June 4, 2007. See also Healy, *supra* note 40 (“[W]ith no plan to edit [beyond a single draft], each sentence is crushed under the weight of perfection: with only one draft, each word, sentence, and paragraph must be perfect as it is put on paper.”).

59. A tool such as the “Writing Productivity Self-Assessment” can help you better identify your particular writing habits and productivity challenges. See RASCH, *supra* note 48, at 32–35.

before the finishing touches.”<sup>60</sup> As Peter Elbow notes, “Editing, *in itself*, is not the problem. Editing is usually necessary if we want to end up with something satisfactory. The problem is editing that goes on *at the same time* as producing.”<sup>61</sup> Likewise, rewriting is a critical part of the legal writing process,<sup>62</sup> but there is rarely a need to achieve perfection in the first draft. Combining the editing and creation processes is tempting, but it will likely slow your writing and overly increase your investment in drafts that reflect earlier, less-developed thinking.<sup>63</sup>

Legal writing scholars agree that a successful writing process includes multiple distinct steps, such as prewriting (research, analysis, and outlining), completing a first draft, rewriting, editing, and proofreading.<sup>64</sup> Depending on the project, these stages need not occur linearly, and they may be truncated or collapsed.<sup>65</sup> However, planning for multiple stages and drafts of a project, instead of aiming for initial perfection, may be liberating; “with the knowledge that this will be the first of many drafts,

60. JOHNS & TANAKA, *supra* note 1, at 59.

61. ELBOW, *supra* note 13, at 5 (emphasis in original); *see also* NATALIE GOLDBERG, *WRITING DOWN THE BONES: FREEING THE WRITER WITHIN* 26 (1986) (“It is important to separate the creator and the editor or internal censor when you practice writing, so that the creator has space to breathe, explore, and express.”).

62. Indeed, U.S. Supreme Court Justice Louis Brandeis is famously said to have remarked: “There is no such thing as good writing. There is only good rewriting.” RICHARD K. NEUMANN, JR., *LEGAL REASONING AND LEGAL WRITING* 65 (5th ed. 2005).

63. *See, e.g.*, GOLDBERG, *supra* note 46, at 2–3 (“Most of the time when we write, we mix up the editor and creator. Imagine your writing hand as the creator and the other hand as the editor. Now bring your two hands together and lock your fingers. This is what happens when we write . . . [But, i]f you keep your creator hand moving, the editor can’t catch up with it and lock it.”); ELBOW, *supra* note 13, at 29 (“If you stop too much and worry and correct and edit, you’ll invest yourself too much in these words on the page. You’ll care too much about them; you’ll make some phrases you really love; you won’t be able to throw them away.”).

64. *See* JOHNS & TANAKA, *supra* note 1, at 59–60 (also referencing VEDA R. CHARROW, ET AL., *CLEAR & EFFECTIVE LEGAL WRITING* 92 (4th ed. 2007); LINDA H. EDWARDS, *LEGAL WRITING AND ANALYSIS* 67 (3d ed. 2011); NEUMANN, *supra* note 62; TOM GOLDSTEIN & JETHRO K. LEIBERMAN, *THE LAWYER’S GUIDE TO WRITING WELL* 42 (2d ed. 2002).

65. Kellogg suggests that prewriting, initial drafting, and draft revision should be considered “different *phases* of product development rather than as separate writing processes . . . [A] writer need not always move forward in a linear fashion through these phases[.] . . . Prewriting, first draft, and subsequent draft phases are merely convenient markers for discussing the evolution of a document from incipient ideas to final product.” KELLOGG, *supra* note 3, at 26.

[you] will be able to write freely and quickly—if a sentence isn't perfect, it can be edited later.”<sup>66</sup>

## 2. Getting Lost or Hiding in Research

Legal writing projects generally require a certain amount of background research. Indeed, “[y]ou cannot write an argument until you thoroughly understand the argument and know, legally and factually, what the points are that you can and should make.”<sup>67</sup> Some anxious lawyers, eager to get something on the page, may jump too soon into the drafting process.<sup>68</sup> Many lawyers, law students, and law professors, however, struggle with the transition from absorbing information to producing writing.

Legal research is interesting, feels “productive,” and the amount of information available on Lexis, Westlaw, Google Scholar, and the Internet is virtually infinite. Research is also less demanding than creating arguments, sentences, and paragraphs that a reader will evaluate. Many lawyers love to read, and some are tempted to indulge their enjoyment of reading beyond the project's requirements or to follow chains of semi-related cases that lead them far afield.<sup>69</sup> (Law students, too, often prefer reviewing casebooks and commercial outlines to engaging in the more effective study techniques of drafting their own outlines and writing practice exam answers.) Spending excessive time doing research online or at the law library may also arise from the need to reassure yourself that you know everything about the subject, to prevent any possibility of the humiliation of making a public mistake.

Lawyers, of course, must do enough research to do their jobs well and abide by their professional responsibility to clients. But at some

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66. Baker & Healy, *supra* note 40. “By striving for a working draft instead of a work of art, you will give yourself a document that you can evaluate to see whether your structure is working, whether you have included each argument you need to make and whether there are any gaps in the legal or factual arguments you should go back and fill in.” Baker & Healy, *supra* note 58; *see also* JOHNS & TANAKA, *supra* note 1, at 16 (“As you rethink and rewrite the draft, you’ll find that your analysis improves as your understanding of the problem develops. The process of putting your ideas down on paper will help you think them through more clearly.”).

67. Julie A. Baker & Lisa H. Healy, *The Writer Who Hesitates Need Not Be Lost*, MASS LAW. WKLY (February 20, 2009).

68. This approach ignores the fact that “reading, researching, organizing and outlining [are] all necessary steps you must take before you can actually begin to write anything. If you view these steps as part of the writing process, you will not feel the constant anxiety of ‘I should be writing. I should be writing.’” *Id.*

69. *See, e.g.*, ARON ET AL., *supra* note 2 (“[W]hat frequently happens [is] you read one case that leads to another case that leads to another case. After a while, you will be looking at cases far removed from the issues at hand.”).

point, the research must stop and the writing must begin—“[y]ou shouldn’t expect to figure out every last detail before you start writing.”<sup>70</sup> Suzanne Rowe suggests outlining ideas as you research:

Start with a rough outline of the questions, issues, elements or factors involved in your project. As research fills in your analysis, add key ideas and citations to your outline. Don’t think about how perfectly you’re writing each sentence; just get the thoughts down in some semblance of order. Because your focus at this point will be on researching, you’re less likely to become hyper sensitive to how you’re writing the outline.

At some point, you may find yourself writing big chunks of text simply because the research has uncovered a concept that suits your situation perfectly or because the analysis is finally coming together. By the time your research is complete, you’ll have at least a thorough outline. You may even have a rough draft.<sup>71</sup>

Reading (or re-reading) and taking notes for a long time without writing anything may signal a problem.

### 3. Commitment Difficulties

Commitment difficulties in legal writing are characterized by successive rewrites that are not refinements of an initial draft but rather repeated excursions into entirely new approaches, driven by excessive self-doubt. Some reconsideration and overhaul is a healthy part of legal analysis and the writing process, but when doubt becomes the dominant psychological driver, a descent into agony and frustration may ensue.

Usually this pattern is connected with a fear of committing to a particular argument or line of thought because commitment makes you feel vulnerable to criticism or failure. What if your choice is not the “right” or “best” one for your client, your supervisor, or your area of legal scholarship? What if you have made a crucial but unnoticed mistake that will undermine the whole argument or document?

Rewriting assuages this anxiety by permitting different approaches in an endless search for the perfect passage or turn of phrase. Legal writ-

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70. JOHNS & TANAKA, *supra* note 1, at 16.

71. Suzanne E. Rowe, *Unblocking Writer’s Block: Moving Ideas from Head to Page*, OR. ST. B. BULL. 37, 38 (Oct. 2006), available at <http://www.osbar.org/publications/bulletin/06oct/writer.html>; see also ARON ET AL., *supra* note 2 (“It may be a good idea to speed your research by starting to write early in the process, before you have looked up all the cases. When you get a sense of where you are going, you should be able to get a rough draft of your document on paper. Then you can go back and flush out the research.”).

ers caught in this cycle are often so plagued with doubt that they can no longer recognize, appreciate, or effectively develop their own good ideas. The internal stress generated by this dynamic is considerable, and writing eventually produced may be riddled with apologetics and “throat clearing” turns of phrase that avoid strong assertions or confident arguments.<sup>72</sup>

#### 4. Overworking, Difficulty with Stopping

When the legal writing project becomes an obsession, the compulsion to push too long and too hard leads to loss of healthy life balance. Overwork is different from an episode of inspired immersion in work, which is typically a good, energizing experience. Lawyers, law students, and law professors who overwork may become so monomaniacal about their projects that creativity and productivity suffer. Other common consequences are professional burnout and difficulties in relationships, health, and happiness.<sup>73</sup>

#### 5. Including Too Much Peripherally Related Material

To move a project forward, legal writers must decide what is important. More can always be said about a subject (just as more research can always be done), but lawyers who continually add peripheral material and lose sight of the work's focus are less productive, even if they work long hours. Often they find the editing process grueling. Editing decisions are not always easy, and legal writers can lose a lot of time agonizing over what to include and what to omit. Some, out of fear that they might be excising something vital, find it very hard to remove anything from their drafts. Editing questions are unavoidable and have no perfect answers, but when the default position is to preserve everything “just in case,” the work product can get very bogged down.

#### 6. Difficulty Finishing

Some legal writers work well until the end of the project. Then everything stops. Putting the final touches on and presenting it as “finished”

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72. See, e.g., ELBOW, *supra* note 13, at 193–94 (“I can[']t seem to write a sentence that doesn't begin with something like 'It is important to note that' 'We should not fail to see that' 'many readers will see' 'Notice that' 'The main point here is that' 'I feel that it is important to stress or to add to the fact that.' . . . [T]he archetypal form is 'THE THING OF IT IS . . .' . . . They are sort of disguising: taking the force and strength out of the point . . . to *prevent* it from being to forceful: one is afraid of it being too forceful: so the bad effects on writing is just the reason it is there: to fuzz up, take the punch out of it: just in case it is going to get one into trouble[.]”).

73. See, e.g., NANCY LEVIT & DOUGLAS O. LINDER, *THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW* (2010).



arouses uneasy feelings. These individuals may have several nearly completed documents, assignments, or law review articles. When one project is almost complete, they move on to the next. A young faculty member in one of the authors' workshops was denied tenure for his undistinguished publishing record, which reflected his inability to finish several papers for journal submission.<sup>74</sup> Apprehension about public exposure and judgments typically drives this pattern.

### *G. Physical, Psychosomatic, and Emotional Barriers*

For many, the ability to write is limited by health issues: the desire to write is strong, but the body is critically compromised. Repetitive stress injuries from keyboard use are sometimes tragically debilitating, and awareness of correct ergonomics is important for those who write. The authors worked with an assistant professor who was denied tenure because her chronic arm and wrist pain made keyboard use excruciating; she was unable to complete enough work. She began efforts to heal the injuries too late, and alternative technologies such as voice-recognition software were not yet effective enough. Likewise, in law school, one of the authors suffered nerve injuries in her arms and wrists from laptop use, rendering it difficult for her to type for an extended period of time and necessitating regular icing and physical therapy throughout law school and the bar exam. If you spend a lot of time using a keyboard, it is worth learning how to minimize the likelihood of such injuries through proper posture, optimal keyboard sizing, and ideal computer and work station positioning. This is especially true if you begin to experience neck, arm, or wrist pain; repetitive stress injuries are one of the unfortunate hallmarks of our computer age. Fortunately, there are many techniques to mitigate pain and prevent permanent damage.

Psychosomatic writing problems involve physical symptoms generated by emotional conflicts. The authors worked with one student who had neck spasms every time he attempted to write. The spasms pinched a nerve that caused his writing hand to go limp. In therapy, it became clear that the muscular contractions in his neck were connected to his rage at an advisor who was excessively critical and inconsistent—his limp hand probably symbolized the helplessness he felt trying to win the advisor's approval. The physical experience made the writing difficult or impossible, and recognizing his feelings of rage and powerlessness was necessary to facilitate change. Other common examples of psychosomatic barriers are headaches, fatigue, hand or stomach cramps, dizziness, and nausea.

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74. After the wake-up call of his tenure denial he addressed several projects with renewed vigor and completed them all.

Furthermore, depression and anxiety are frequent visitors to those who struggle with writing. Thoughts, memories, and fantasies may also arise in our imagination and generate disturbing emotions that interfere with our work. Sometimes depression and anxiety develop because the writing is not happening. The authors have seen many cases in which blocked writers' mood and sleep patterns improved significantly after the writers reconnected with their work in a meaningful way. Some depressed or anxious writers begin writing productively only after receiving the appropriate therapy.<sup>75</sup> If disturbing, despondent, or distracting thoughts are interfering with your ability to sit down and write, it makes sense to explore the cause. You can increase your ability to maintain your "write mind" (the mind that supports a regular and productive writing process) by paying attention to what is happening in there. Most of the thoughts that disrupt your writing are not mysterious or new. Thoughts that contribute to writing blocks are almost always automatically repeating habits of thinking. These patterns likely were established in your younger, formative years and carried forward into adulthood. You can identify them by placing a bit of attention on your inner mental and emotional processes. The bad news is that these repeating, well-grooved patterns of thinking occur quickly and powerfully, often before your conscious mind knows what has happened. You might be aware of what they are, or you might not. The good news is that you can learn to identify these patterns and consciously decrease their debilitating impact on your legal writing productivity. It is not too hard to pick out the thought patterns once you concentrate on this task because they occur repeatedly.

Harmful thoughts can arise without your noticing or questioning them. The mental activities that accompany blocks typically occur without your conscious choice and even possibly without your awareness. You may experience uncomfortable feelings about writing but fail to notice dark inner dialogues in which you might be saying frightening or critical things about yourself or the project. It is equally possible to be aware of disturbing physical sensations connected to writing but not have a clear idea of the reasons you are experiencing them. Or you may simply notice that you are repeatedly unable to bring yourself to your desk, without knowing why. Feelings of powerlessness and frustration are intensified by a lack of understanding about the inner dynamics that dictate your self-sabotaging behavior. This confusion sets the scene for a depressing spiral of apprehension, decreased confidence, and increased aversion to writing.

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75. See Robert Boice, *Psychotherapies for Writing Blocks*, in *WHEN A WRITER CAN'T WRITE*, *supra* note 22, at 182–218., for an overview of seven different types of psychotherapeutic approaches to writer's block.

Other mental health and learning ability issues such as Attention Deficit Hyperactivity Disorder (“ADHD”),<sup>76</sup> bipolar disorder, schizophrenia, post-traumatic stress, grief reactions, and addictions may need to be treated effectively in order for writing to take place. Though some very well-known and prominent lawyers and writers have had serious addictions and mental health disorders,<sup>77</sup> legal writers should not view a manic episode, excessive drug use, or alcohol as the path to improved productivity. The number of talented people who have forfeited their legal careers or been rendered incapable of writing due to psychological suffering or substance abuse, or both, far exceeds the number of those who have been able to write well in spite of, or because of, their afflictions.<sup>78</sup>

Because writing and legal analysis demand so much mental attention, it is also important to remember that brain functioning is a critical factor in both the performance and inner experience of writing. Each legal writer’s brain develops unique methods of performing and coordinating the many cognitive tasks involved in writing. Everyone has different neurological strengths and challenges; at one end of the spectrum are those who seem to struggle very little with legal writing, and at the other end, those who struggle a lot. Factors affecting brain functioning, such as brain injury, ADHD, sleep deprivation, and dyslexia, increase the challenges significantly. Some legal writers manage to write productively in spite of such challenges, but they must work very hard at it. Undiagnosed learning disabilities pose a challenge, too—some students may not receive an accurate diagnosis until their learning and writing issues surface in the crucible of law school.

A thorough exploration of the connections between writing blocks and psychological and neurological disorders is beyond the scope of this article, but if these issues are part of your legal writing life, you should recognize and address them.

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76. See LEAH CHRISTENSEN, *THINKING OUTSIDE THE BOX: A HANDBOOK FOR LAW STUDENTS WHO LEARN DIFFERENTLY* (2011); Leah Christensen, *Legal Reading and Success in Law School: The Reading Strategies of Law Students with Attention Deficit Disorder (ADD)*, 12 *SCHOLAR* 173 (2010); Leah Christensen, *Law Students Who Learn Differently: A Narrative Case Study of Three Law Students with Attention Deficit Disorder (ADD)*, 21 *J.L. & HEALTH* 45 (2008), *FOR MORE ON DEALING WITH LEARNING DIFFERENCES AND ATTENTION DEFICIT ISSUES IN LAW SCHOOL*.

77. See, e.g., MARCUS BOON, *ROAD OF EXCESS: A HISTORY OF WRITERS ON DRUGS* (2002).

78. “Alcoholism, drug addiction, and various mental illnesses eventually ravage the creator afflicted with them. The rate of destruction may be slow, as in alcoholism, or fast, as in suicidal depression. Either way, the illness destroys the creator.” KELLOGG, *supra* note 3, at 119.

### *H. Gender, Race, Culture, and Writing Blocks*

Throughout Anglo-American legal history, the production of written work has been overwhelmingly the province of privileged, fair-skinned males. Fortunately, this is changing, but attorneys from historically less-empowered segments of society still face professional, personal, and societal hurdles. These realities can contribute to and magnify writing productivity problems.<sup>79</sup>

Confidence crises, hopelessness, and self-doubt may be more difficult to overcome for those who have learned that their efforts will be ignored or undervalued. In academia, for instance, “women are less likely than their male counterparts to think of their work as sufficiently significant to write up and submit; women tend to hold on to work longer than men before sending it out; and women are less likely than men to revise and resubmit manuscripts that have been rejected.”<sup>80</sup>

Gaining access to helpful educational opportunities, collegial support and writing mentorship, publishing opportunities, and professional networks has traditionally been harder for people of color, women, immigrants, and first-generation lawyers. Legal writers who are not native speakers of English also may be blocked by lack of confidence in their command of the language. Appropriate encouragement and practical support goes a long way toward releasing the potential of lawyers, law students, and junior faculty members facing these additional challenges as legal writers.

### *I. Difficulties Sharing Writing and Dealing with Criticism*

Some lawyers write fluently but are unable to show their work to other people. Being private about one's writing is a fine preference in personal journal writing, but it is a problem for those who desire feedback, publication, editing help, or other assistance. Most people, even lawyers, are sensitive to others' reactions and opinions. Legal writers frequently lose confidence and self-esteem when either anticipating or reacting to encounters involving criticism and rejection.<sup>81</sup> It is helpful to learn

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79. See, e.g., TILLIE OLSON, *SILENCES* (1965) (reflecting on years of struggling with writing and the barriers present for women writers).

80. JOHN TRIMBUR, *Foreword* to KIRSCH, *supra* note 3, at x.

81. In addition to fear of criticism or failure, the prospect of success challenges some writers. “When you have dreams of glory and imagine how famous your writing will make you, it is just a sneakier trick to keep you from writing: anything you actually write will seem disappointing to you.” ELBOW, *supra* note 13, at 27. Psychological issues of this type sometimes lead to self-sabotaging behaviors connected with unworthiness or the fear of being the center of attention. David has worked with writers who had early or unanticipated success and who could not later write. A junior pro-

how not to get too devastated or blocked by the inevitable criticism and rejection that comes from showing others your work.<sup>82</sup> You can enhance productivity by steadily improving your ability to control anxiety and tolerate feedback.<sup>83</sup>

Blocked writers commonly have too few people to talk with about their writing. Shame, embarrassment, depression, and competition with law school classmates or work peers sometimes contribute to unhealthy isolation. Connecting with others can be a powerful way to generate renewed inspiration, confidence, and energy for your work. Talking about your legal writing project with a friendly colleague or even a non-lawyer friend can help you put early thoughts into words and may shed light on your project's organizational needs.<sup>84</sup> Isolated or insecure legal writers, meanwhile, frequently find the social, emotional, and psychological barriers to reaching out to be formidable.

Personal, professional, and academic relationships are another complex area in which productivity-related issues may arise. These relationships include people, such as professors, peers, supervisors, and journal editors, who may have strong opinions about and power over your legal writing. Family members' and friends' reactions to your legal career and

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fessor in one of his groups stalled completely after her first published article landed her a job at a prestigious university. Several elements seemed to have contributed to her paralysis, including fear of being discovered as an "imposter" and the daunting challenge of matching her initial success. Another young professor in a writer's group was blocked on her writing productivity because her husband had been unable to finish his dissertation and her progress made her feel guilty.

A certain degree of hope and confidence is generally good for a writer, but problems can arise from anxiety over the anticipation of a positive public response. A grandiose estimation of one's talents can lead to blocks in other ways, such as through fear that if the writing is not received with adulation, it will injure one's pride.

82. Relatedly, problems with fixation on the editing process, discussed *infra*, are sometimes related to anxiety about how work will ultimately be perceived. "In editing, you must finally deal with the hard reality of readers." ELBOW, *supra* note 13, at 42.

83. For exercises on recognizing and countering "approval addiction," (extreme vulnerability to the opinions of others, including the belief that it would be *terrible* if someone disapproved of you), see BURNS, *supra* note 57, at 250-66.

84. See, e.g., ROWE, *supra* note 30, at 38, see also ARON ET AL., *supra* note 2 ("[Talk about the case or matter with someone else. Another lawyer working with you is a possibility, but it does not have to be a lawyer. As you talk about an issue, that issue will become clearer to you. If your listener does not understand what you are saying, it may be that you do not understand it sufficiently yourself.]); SAMUELSON, *supra* note 2, at 167 ("Sometimes talking to a friend can also help you detect if there's some missing link in your argument. Often what's blocking your writing is that you unconsciously know there's some unsolved problem with your analysis. Once you find it, you may be able to solve it, and that may break the block.").

legal writing may run the gamut from supportive to oblivious, disdainful, or jealous. All of these relationships may assist or interfere with your productivity in subtle or overt ways. To an extent, this reality is unavoidable, and learning to manage personal and professional relationships alongside your legal writing is a challenge for many lawyers.

#### IV. TOOLS FOR IMPROVING LEGAL WRITING PRODUCTIVITY

Counterproductive writing habits die hard. The barriers to and challenges of writing are many and powerful. To overcome habitual resistance to writing, lawyers must find sufficient motivation to undertake the effort to write, arrange appropriate space, time, and time management for writing, and implement effective ongoing strategies to overcome procrastination.

##### *A. Investigate Your Motivations for Writing*

Many lawyers consider writing a highly important activity that gives their lives considerable meaning and satisfaction. We have found that attorneys, law students, and law professors are generally much happier when they write regularly and productively. Legal writers may be motivated variously by the desire to:

- Achieve educational goals;
- Serve client needs;
- Achieve professional goals;
- Get or keep a job;
- Stimulate change;
- Contribute to a field of knowledge;
- Answer a question or solve a problem;
- Get published;
- Make money;
- Investigate situations and reveal facts;
- Enjoy the process;
- Build a reputation and gain recognition;
- Help people;
- Take on a challenge;
- Fulfill a requirement;
- Impress or fulfill another's expectations;
- "Write on" to a law school journal;
- Rebel or provoke;
- Enjoy people's reactions;
- Get tenure;
- Influence or persuade;

- Seek justice; or
- Tell a story.

Take some time to reflect on your own professional and personal motivations for writing. Note which of the listed desires apply to you, and add any not on the list. Review those with which you identify, and consider how meaningful each is to you.

Clarifying your motivation(s) for writing and the importance of writing to your legal career might enhance your commitment to actually doing it. How important is writing, as compared with other aspects of your life and legal work? With insufficient desire, it is hard to muster the energy to face the challenges writing entails. You may be only partially aware of how important writing is to you. Staying in touch with your motivation will help you to sustain your ongoing commitment to the practice of writing.

### *B. Write Place, Write Time*

A good writing environment is important. You can improve your odds of writing more productively by thoughtfully choosing and arranging your work setting.<sup>85</sup> Your work place should be accessible, functional, and comfortable enough so that it does not contribute to work problems or avoidance. Your writing space should be supplied with computers, books, and other needed writing tools so that you do not have to wander in search of essentials—every time you get up to roam and look for something, you increase the chances that when you sit down again, it will be in a galaxy far, far away from your legal writing project.

Are you comfortable in the space where you usually work? Or are there disturbing environmental issues, such as uncomfortable temperature, poor lighting, distracting noises, bad seating, or unpleasant odors? Do you relish being alone in silence while writing, or does that give you the creeps? Do you find music or the ambience and background noise of a café beneficial? Is your environment depressing, claustrophobic, or too messy? If any of these conditions can be improved without great effort or expense, improve it. “The key is to find an environment that allows concentrated absorption in the task and maximum exposure to retrieval cues that release relevant knowledge from long-term memory.”<sup>86</sup>

Some lawyers write best in a dedicated work zone not shared with other activities. It is less complicated and easier to start work if you do

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85. See KELLOGG, *supra* note 3, at 186–90 (discussing the importance of writing environment); GOLDBERG, BONES, *supra* note 61, at 95–96 (discussing the utility of a writing studio).

86. KELLOGG, *supra* note 3, at 190.

not have to rearrange the space before each work session. If this is true for you, then simplify and unclutter your workspace. (However, if your writing space needs improvement, resist cleaning or organizing during your designated writing time!)

Working at home has risks and advantages. An ability to work while having “home” time may be compelling, but family influences and distractions can be powerful barriers to writing productivity. Unfinished home projects and tasks may compete with writing for your attention. Is there sufficient privacy and quiet to concentrate? How do you maintain your resolve to write when hobbies, hot baths, television, and food are so readily available? Will children or significant others seek your attention or resent you for taking work home and sequestering yourself in your room or home office?

Valid interruptions can, of course, materialize anywhere, but some settings invite more interruption than others do. At work, the temptation to engage in other professional (or quasi-professional) activities often undermines the self-discipline to write. People may stop in uninvited, or you may be called away during your writing time to solve another’s pressing problem. The phone, e-mail, or text messaging may cause problems.

Interruptions, both at work and at home, pose a problem for many legal writers. Academics whose colleagues or students seek their attention commonly face this issue. No life lacks interruptions, but attempting to minimize them during writing time should pay off. Some find that writing in the office in the early morning or in the evening works well because there are few others around. You can also close your door, inform others that you would like to be left alone, and silence your phone. Computer programs that block access to the Internet or e-mail for set periods of time may help.

Ultimately, of course, “[t]here is no perfect atmosphere, notebook, pen, or desk, so train yourself to be flexible”<sup>87</sup> and experiment with writing in different places. Writing in more than one place may improve productivity, though it might also create risks and hassles. If you use two computers, ensure that the programs are compatible so that your work can be integrated, or save your writing projects to a central network or cloud that can be accessed from any location. Transferring sections back and forth can cause errors and mishaps. Laptops provide the convenience of working virtually anywhere, but they need to be backed up regularly to guard against system crashes, loss, or theft. Also, long stints typing on the laptop, rather than a traditional or ergonomic work station, may be rougher on the neck, arms, and eyes. Any computer station that leads to

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87. GOLDBERG, BONES, *supra* note 61, at 101.



repetitive stress injuries will greatly reduce your productivity, so ergonomic considerations are important.

Computers, in general, may be a double-edged sword. They offer countless ways to accelerate the writing process, but they also provide easy access to tempting, time-gobbling distractions such as e-mail, Facebook and Web surfing, instant messaging, and games, games, games. Do any of these activities affect your productivity? If so, consider ways to reduce exposure to these temptations, such as starting legal writing projects from hand notes at first, working in locations without wireless access, and removing games from your computer.

Those who avoid work by playing computer games (boring and mindless games like solitaire are often chosen for this purpose, as a scan from the back of any law school lecture hall will reveal) may be reluctant to delete games from their computer, tablet, smart phone, or Facebook account. If your attachment to Minesweeper, Spider Solitaire, or Farmville is that strong, at the very least try to make them harder to get to! A professor David once worked with decided to have two desks with separate computers in his office. One setup was for writing, and the second was for all other job-related tasks. His writing computer was not connected to the Internet, and he had deleted all games from that system. The effort required him to stand up, cross the room, and turn on the other system, and it sufficiently deterred his passion for cyberspace distractions.

Some techniques as simple as leaving your computer on and open to your working document may also streamline the path to starting writing each day. One new professor we know used this technique when struggling with preparing her lectures in her first year of law teaching. When her notes were the first thing she saw on her office computer in the morning, she more immediately re-engaged in the material. An effective general rule is always to *write first* before diving into the vast oceans of computer entertainment and communication.<sup>88</sup>

Negative feelings about a work space may also trigger avoidance. If your writing space has been the site of long-standing struggle and disappointment, then regardless of how perfect the spot appears, you might want to experiment with relocation. One big-firm lawyer we know was given several massive drafting projects by a difficult supervisor the year before she was up for partner. She knew that her professional advancement hinged on her performance on these projects, but she was exper-

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88. Fiction writers frequently employ this technique. See, e.g., ANNE LAMOTT, *BIRD BY BIRD* (1995); STEPHEN KING, *ON WRITING: A MEMOIR OF THE CRAFT* (2000).

encing severe anxiety and writer's block due to constant criticism of her work by the assigning partner. She ultimately left town for several days and worked remotely from a pleasant café near the beach where she had done much of her writing during law school. Her writing picked up again, the projects were completed on time, and she made partner the next year. Though a geographical remedy may renew energy and interest in writing, severe writing blocks may require additional measures for lasting change.

The key is to notice how you feel and how well you work in your chosen setting, and then improve it if needed.

### *C. Overcoming the Cycle of Procrastination*

#### 1. Examine Your Own Avoidance Mechanisms

If your bad habits are longstanding, then you are probably unaware of the mechanisms controlling your behavior. You may not consciously register the fact that you are automatically re-enacting a pattern of writing avoidance behavior you have designed to protect yourself from an uncomfortable experience or feeling. Daydreaming, forgetfulness, rationalizing, confusion, and getting distracted by less-crucial tasks are aspects of this cycle.

An important first step to working with recurrent procrastination is acknowledging that you have a problem.<sup>89</sup> This may sting a lawyer's pride or generate feelings such as shame, overwhelm, and dread, but if the problem exists, it is best to face it. If you accept that work avoidance *will always recur*, then you can realistically establish a plan to diminish its impact.<sup>90</sup>

While spinning on the procrastination wheel, it is hard to think creatively or even see obvious solutions. You may know the remedy, but it might be hard to engage in. As discussed, attempted "solutions," such as internal pep talks and verbal self-flagellation, perpetuate—not solve—the problem. These approaches fail for a very good reason: *they are completely inadequate*. You need sharper arrows in your quiver to slay the dragon of procrastination.

It may help to imagine that you have more than one "will" controlling your decisions, and some of these "wills" have their own agendas at odds with your legal writing goals. The other wills need to be acknowledged and contended with thoughtfully and skillfully. They are not stu-

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89. Completing and reviewing a tool such as the "Writing Productivity Self-Assessment," RASCH, *supra* note 48, at 32–35, is one way to determine the nature and severity of your problem.

90. An example of this sort of planning is presented in "Your Writing Productivity Improvement Plan," RASCH, *supra* note 48, at 115–22.

pid, and, in fact, they have made a career of gaining control and outsmarting other intentions that lead to discomfort. Such psychological mechanisms are self-protection programs that have become too effective because we have reinforced them over the years. We feel victimized and powerless because we do not see how we contribute to problems on the procrastination wheel.

Quick-fix solutions to longstanding procrastination (e.g., self-criticism, unrealistic plans, binge writing at deadlines, internal pep talks), especially if those solutions are part of the wheel, are as effective as fad diets. Habits are resilient, and efforts toward successful change must be carefully considered and executed. You may jump off the procrastination wheel at any point in the cycle, but it is important to acknowledge the power of these patterns and set expectations and goals accordingly. First, you should study your writing habits as specifically and objectively as possible and with a spirit of curiosity and self-forgiveness. Focus on your day-to-day behavior as you consider the following:

- What do you typically do when you are avoiding writing?
- Do you reward yourself in obvious or subtle ways for not writing? If so, how?
- Do you do anything that makes legal writing unappealing or aversive?

Some part of you will experience efforts to increase productivity as threatening, aggravating, or an imposition. Any action you take to get off, slow down, or stop the wheel will call forth resistance. You need to address this inner conflict skillfully in order to overcome this challenge and overcome your resistance. The resistance may be an unconscious veering away from the project, a cascade of frightening or negative thoughts, a vague but compelling feeling of dread, or a deviously well-crafted rationalization for doing nothing.<sup>91</sup>

One key to overcoming resistance is building the skill of continuing to write despite these feelings. When you are emotionally charged, it is easy to tell yourself that legal writing is too hard or that you are in the wrong mood for writing. You will benefit from learning how to gently lean into your work even when experiencing anger and fear. Remember that all feelings are temporary and pass with time. You can convert these emotional energies to fuel and usefully channel them into your writing.

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91. You can learn to recognize the resistance in the form of the non-productive thoughts, feelings, and behavior patterns by using the "Writing Productivity Self-Assessment," RASCH, *supra* note 48, at 32–35.

If, in the moment, you are aware of your resistance, you can choose to write in spite of it. This is easier said than done, and we never succeed 100 percent of the time, but every victory slows the cycle. Begin with small steps that are only mildly uncomfortable, because overly ambitious goals and expectations invite anxiety, overwhelm, resentment, and dread.

Following are some strategies based on principles from behavioral psychology that we have found to help reinforce the desired behavior (writing) and discourage unwanted behavior (avoiding writing). Experiment with one or two approaches at first and see what works for you. Start small and proceed gradually. The goal is to *create new habits*; increased writing productivity will follow naturally.

## 2. Stack the Deck in Your Favor

For many reasons, legal work and legal writing is frequently difficult. Respect that reality and prepare as much as possible for success. Avoid habits that derail your train of thought and words. If you can identify factors that have helped you write successfully in the past, plan to incorporate them into your writing session. This could be as simple as recreating the workspace you used when you wrote well in the past. Or, if someone helped you with a previous successful project, seek out that person or someone similar again.

Choose a time when your energy is good and distractions are minimized. Many people find legal writing to be hard work that requires their best concentration and energy level. For many, mornings are a good time and offer the benefit that the work is finished early, not hanging over your head the rest of the day. If you have a plan to write early but, in fact, delay, you greatly increase the odds that you will not write that day. If you have this postponing habit and are engaged in a longer-term project, such as a law review article, we recommend that you adopt the rule that, if you miss your scheduled time, you *must* wait until the next day to write. This spares you the stress of disappointing yourself day after day, and it implicitly communicates that writing is a privilege, not a burden.

Lawyers with families and other job demands might not be available to write in the morning. For them, workday and late-night writing might also offer advantages, including a quiet house or office and fewer interruptions and distractions. Sometimes work, family, and other obligations will unavoidably sap your best energy, and you have to make the most of the time and energy that remain.

Regardless of when you write, encourage change by taking small steps that would be very difficult *not* to take. For instance, if your goal is to start writing every day, then make the sessions short (e.g., fifteen minutes): you will probably find it hard to rationalize skipping the session. Be

pragmatic and do what works, regardless of whether it fits your image of what a “real” lawyer does.

### 3. Establish a Sustainable Daily Work Schedule

Write regularly—daily, if possible—when you have an active project. “Make a writing schedule for the week [or month, or semester] and stick to it.”<sup>92</sup> This is our most important piece of advice. Writing regularly could mean Monday through Friday; a seven-day schedule can also work if your life is not already out of balance from legal overwork. Writing at the same time every day is impossible for many lawyers, but you can strive to make the weekly routine as consistent as possible. Scheduling periods for writing periods and posting them on your calendar or refrigerator also helps. You might wish to set up cues such as phone buzzers that remind you to write. Baker and Healy suggest “having a standard format that you use every time and to use that format to get you started,” such as plugging in the case caption and section headings for a motion or memo, then filling in point headings and subheadings to frame the arguments.<sup>93</sup>

Having a daily schedule and standard format eliminates the daily process of deciding whether to write and how to start. Each time you face a decision about writing or the way to start a new project, the likelihood that you will decide to delay increases. The more regularly you write, the less dreadful it feels. To the extent that, through regular practice you generate new, positive associations with legal writing, you reinforce your efforts.

It is useful to have external structures and reminders to write. This could mean discussing your writing process with other lawyers or peers who will hold you accountable to and encourage you in your work. Or you could arrange to meet and report to others or write with others. The thought of approaching a meeting with nothing to show for your work is often a strong motivation to stay on task.

The initial goal is to establish new routines. We have met many lawyers who hate scheduling their writing and refuse to do it. Some believe that working within a schedule is a worthy idea, but they have never been able to stick to one (or, rather, one that was not imposed by a supervisor or client). When dealing with writing productivity issues, however, initiating a routine of writing sessions is critical. (One blocked writer complained to David that fifteen minutes was not long enough because he was already so far behind on his project. When asked how much writing he was doing each day, he answered “none.”) If you have been doing

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92. GOLDBERG, *supra* note 46, at 46.

93. Baker & Healy, *supra* note 58.

little or no writing, brief periods of work will be easier to tolerate and harder to justify skipping.

Those who experiment with short sessions often find that more gets done in those few minutes than they would have guessed. Small efforts add up over time. The real advantage of the short sessions, though, is establishing the consistent practice of writing. As your habits become stronger, you can increase the duration. Establishing a daily routine will also help you pace yourself and avoid burnout. When a surge of energy for writing rolls in, it is tempting to ride the wave until it crashes. If you get too excited, however, and press far into the wee hours, you will lose sleep, energy, concentration, and the desire to write the next day. Heroically long writing sessions are hard to sustain day after day and can lead to feelings of burnout that interfere with motivation.

Even if you feel you are on a roll, it may be best to stop at a set point and make a note of the ideas you wish to address as the starting point for the next session. This step will help bring closure to your work for the day, allow time for rest, and create momentum for starting up again. Resist the urge to overdo it.

#### 4. Break Big Projects into Specific, Realizable Tasks with Short Time Frames

Your daily legal writing work must be focused on chunks small enough that you can make tangible progress. You could limit the time allocated to your writing or address only a discrete component of your project. Fixating on the enormity of writing an entire brief, paper, or article (or book!) may generate anxiety, confusion, and a sense of being overwhelmed.

Long-distance, open-water swimmers use a technique of lifting their heads and looking forward to their destination with every fifth or sixth breath. Other breaths are taken by rotating the head to the side, which requires less energy and maintains speed better. Looking at the finish line with every breath is exhausting and slower and puts the body in the wrong position in the water. Legal writers can consider this model: look at the whole project occasionally to stay on track, but mostly focus on the daily goals and tasks. And keep breathing. The larger project will eventually fall into place.

#### 5. Decrease Exposure to Distractions and Reward Appropriate Behavior

Choose a time and place to write that limits your contact with anything that triggers your most common avoidance behaviors. These behaviors are usually identifiable, and by making a conscious decision to get

out of harm's way, you increase the odds that you will write. Food, television, the phone, reading material, computer games, e-mail, Web surfing, and socializing are common distractors. Making them less accessible when you write is another way to stack the deck in your favor.

If you love sweets and you head for the cookie jar when you should be writing, keep in mind that eating that cookie will make it harder for you to write tomorrow. This habit is more than just being a little naughty; by rewarding avoidance, you are conditioning yourself to thwart your aspirations. The cookie might not taste as sweet if you look at it this way. Sometimes it is hard to identify how you reinforce your unwanted habits. Those who scrub tile grout to avoid writing and those who read three weeks ahead for contracts class to avoid facing a legal writing assignment may not recognize that there is relief or self-reward involved in those activities, but there is.

You may be able to harness your reward and avoidance behaviors so that they work to your advantage. One of David's class participants would schedule times for housecleaning, which she hated, because then she would write in order to avoid those chores. Faced with two alternatives, humans usually choose the least aversive. Many wonder why the predictable, long-term negative consequences of not writing—like guilt, low grades, self-loathing, and regret—will not motivate them to write. It is because the immediate relief of procrastinating in the moment is a more powerful behavior determinant than the anticipation of bad feelings.

You may also experiment with making a routine, simple pleasure contingent on writing. This might mean that you do not read the news, check your e-mail, watch television, or talk on the phone until you have produced some minimum amount of writing. Choose a pleasure that is part of your daily life. One doctoral student David worked with was getting quite good at the piano during a several-month period in which he did no work on his dissertation. By making piano playing contingent on his having written each day, he was able to establish a regular writing regime and finish the project. This tactic reinforces the writing habit because the work is followed by reward.

If you reward a successful work session, you will build a positive association that supports your good writing habits. Post-work routines may involve meals, naps, music, light reading, or socializing. Many lawyers find that the most powerful reward for reinforcing good writing habits is seeing the fruits of their labor in the form of completed pages. An additional reward is often not necessary, but if you give yourself one anyway, you will enjoy it even more knowing that your writing for the day is

complete. The power of positive association will reframe your thoughts and feelings about legal writing.

#### *D. Reframe Your Thoughts and Feelings about Legal Writing*

It is a cruel irony that your own thoughts create the feelings of being hampered or victimized by writing blocks. When you experience anxiety, anger, overwhelm, or dread about writing, it is because *you* generated these feelings. It may seem strange to look at your emotional life this way, but give it a try. It is tempting to believe that you have no choice about the feelings you experience, but that is only partially true.

A student in one of David's classes spoke about how much she *hated* writing. She also desperately wanted to write because she *loved* to write. This predicament is not uncommon. The real question is whether it is *writing, law, or the disturbed feelings* that arise when they write that frustrated legal writers hate. These differences are not trivial. If you realize that the emotions interfering with your productivity are unfortunate mental habits that you perpetuate, then you have the opportunity to change them.<sup>94</sup>

Just because we think or feel something, that does not make it true. Debilitating thoughts that plague legal writers (e.g., "I have no skill," "I will fail if I attempt this," or "I'm not a real lawyer") are generally exaggerations and distortions of the truth that have gained too much power from their endless internal repetition. Thoughts like these create self-inflicted brainwashing in which the struggling writer is both the terrorist and the terrorized. Dragging these thoughts into the light of day and examining them more objectively is one method of freeing yourself from being bullied and controlled by them. These are mental habits we have learned, not immutable "truths." They are temporary experiences. Sometimes all we have to do is wait them out and they will go away.

Mindfulness meditation can also strengthen your connection with your present state and writing reality. This is a meditation practice that cultivates awareness of the present moment.<sup>95</sup> Mindfulness practices developed from Buddhism and other contemplative traditions are simple, effective ways to improve concentration, awareness of the moment, and

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94. This premise is at the heart of many cognitive behavioral therapy techniques, which focus on reframing "the way you interpret and look at things when you [are] upset so as to feel better and act more productively." BURNS, *supra* note 57, at 15.

95. See, e.g., JACK KORNFELD, *A PATH WITH HEART* 26 (1993); *id.* at 61; JOHN KABOT-ZINN, *WHEREVER YOU GO, THERE YOU ARE: MINDFULNESS MEDITATION IN EVERYDAY LIFE* 24 (1994) (discussing mindfulness meditation practices and identifying mindfulness exercises).



openness to whatever arises—all skills useful to legal writing and practice.<sup>96</sup>

If you stay in touch with your strengths as a lawyer and as a writer and become more aware of the mental processes connected with your blocks, you will have a fighting chance of escaping their control.

*E. Recognize and Remember Your Assets, Talents, and Abilities as a Writer*

Is it possible to be blocked as a legal writer and still feel grateful for your good fortune? Perhaps, although we would not want to minimize the very real struggling and suffering of lawyers, law students, law professors, and others with writing blocks. As wordless days drag by and deadlines rapidly approach, periods of anguish may make writing feel more like a curse than a blessing.

Most of us take writing for granted as a necessary and fundamental aspect of law and society, but writing is actually a fairly recent accomplishment in human development. Even today, most of Earth's inhabitants are illiterate. To a high degree, the ability to write is the result of good fortune. It is a culturally created human capacity that we have inherited from the thousands of previous generations that developed and refined written expression.<sup>97</sup> Similarly, the development of our present rules and disputes of law are a distillation of countless generations of human interaction. It is difficult to comprehend the amount of time, energy, creativity, and persistence that millions of people have invested in the project of bringing writing and the law to their present places in human culture. The educational institutions created to develop and pass on this knowledge are at the heart of American and global civilization.

Consider the many elements that must be present to write at all, much less to write about legal issues. First, you must have been born in a culture that has writers and lawyers and then have been successfully trained for several years. You must have reasonably good health, a high-functioning brain and nervous system, and enough financial resources to pursue advanced legal education. Your personality and emotional constitution have to withstand the rigors of law school and legal practice, and you have to be motivated enough to sustain the required effort. Many of

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96. See, e.g., LEVIT & LINDER, *supra* note 73, at 48.

97. Indeed, one psychologist suggests that “the act of writing exemplifies . . . the very essence of what it means to be human. Creating meaning through symbols is a ubiquitous human activity. The making of meaning in art, dance, music, and oral and written discourse may well be the defining attribute of our species.” KELLOGG, *supra* note 3, at vii. See also FLAHERTY, *supra* note 8, at 1 (“Writing is *the* supreme human achievement.”).

these necessary conditions are not present in the lives of millions on the planet who will never have the opportunity to consider a life as a lawyer, writer, or legal academic. You have a chance.

Think for a moment about those who have helped you with writing. Your list might include teachers, parents, mentors, friends, law school professors, colleagues, editors, classmates, and reviewers. You might also include inspirational lawyers, judges, or other legal writers who communicate to you through their works. A sense of appreciation for such blessings can offer a helpful perspective when the writing gets tough. Even so, the legal mind can readily twist blessings into punishment. We can easily get hung up with guilt and self-loathing over not having done more with our gifts. This is one of our many unfortunate mental tendencies, and it is not likely to help us write. Take a moment to consider your good fortune for being able to write, and then see if you can approach your writing as a gift and an opportunity.

Before tackling the challenging issues associated with improving writing productivity, remember your assets as a writer and lawyer. It is easy to lose sight of your strong points or take them for granted when you are consumed by your lack of accomplishment. These assets form the basis of positive change, so it is essential to keep them in mind as key resources and morale aids.

Review the following (non-exhaustive) list and identify your chief strengths as a legal writer. If you identify with only a few items in this list, do not despair. One strong asset may be enough to better enable your writing. You may want to think of examples for each point and add to the list if other assets come to mind.

- I am intelligent.
- I enjoy reading.
- I have perseverance.
- I enjoy writing.
- I am inspired and challenged by the law.
- I have a good memory.
- I like to solve problems.
- I have a broad vocabulary.
- I know grammar.
- I have an effective writing style.
- I am a fast typist.
- I am a good editor.
- I have a good imagination.
- I am creative.
- I am well organized.
- I have strong legal research skills.
- I have had past success with legal writing.

- I have a desire to serve my clients and/or employer well.
- I have a strong work ethic.
- I can persuade people.
- I am able to reason logically.
- I am able to tell a good story.
- I love language and words.
- I have supportive friends or family.
- I have helpful mentors, professors, or peers.
- I have a desire to share knowledge.
- I have good computer skills.
- I know my subject well.

As you review the items you have noted as strengths, try to identify those that you rely on to write (as well as your motivations for your legal writing, as discussed). Though you may take some of these strengths for granted or consider them unimportant, they are important, and you draw on them when you write. Perhaps you faced a tough legal project and succeeded, or someone offered you very useful advice that you accepted, applied, and benefited from. Think about how these strengths can assist you now and how you can stay connected with them.

#### *F. Shift Your Inner Experience*

You can alter your inner experience when writing. Start by identifying your thoughts and feelings about writing, as discussed. Try to hear the thoughts as if they were spoken in the form of a sentence, e.g.:

“If I don’t write this memo, I’ll fail the class and flunk out of law school. Then I won’t be able to get a job and I’ll end up living on the street.” (catastrophic thinking);

“The process of drafting this brief is going to be horrific!” (dread);

“This time the project should flow smoothly.” (denial);

“When my assigning partner reads this crap she’ll find out I’m not a real lawyer.” (imposter feelings);

“There’s so much that I don’t know where to begin; I’ll never be able to do it all!” (overwhelm);

“Oh God, I can’t breathe! Heart attack!” (panic); etc.<sup>98</sup>

Generate a short list of the dominant thoughts about writing that populate your mental universe, and notice how frequently they enter your mind during the day. Have a sense of humor and be amused and sensitive with yourself as you do this.

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98. Articulating your thoughts as sentences makes them concrete and easier to contend with. For a longer list of writers’ common thoughts, see “Mental and Emotional Perspectives Associated with Writing Problems,” RASCH, *supra* note 48, at 85–88.

If nothing seems to emerge in the form of an identifiable thought, pay attention to emotions and body sensations connected with your writing. These are usually recurrent patterns as well, and sometimes with a bit of effort and focus you can identify the thoughts connected with emotions and sensations. The most common problematic thoughts generate the emotions of fear, resentment, hopelessness, or overwhelm. Look for these. If you are only aware of daydreaming or feeling blank, try to notice subtle or faint feelings that may provide clues about what you say to yourself.

You may not be aware that you also have supportive, encouraging, and empowering patterns of thinking that can and do help you write. Our mischievous minds are capable of thoroughly undermining our attempts to write, but they are also our staunchest ally in the writing process. Consciously accessing and highlighting one's abilities and talents as a lawyer and writer has helped some legal writers. Use memories of past success, validations from others, inspirations, and feelings of competence or pleasure that have been connected to your writing and legal work. Recall these thoughts when you notice the negative patterns asserting themselves; this will counter the negativity and reinforce your strengths.

With practice, you will get better at identifying and articulating your thoughts about your writing process. When you notice that you are procrastinating, for instance, shift your attention to your thoughts and feelings. Catch your mental processes in the act, and, without judging yourself, study them. Be curious about your mind: can you pinpoint the inner voices most responsible for your difficulties? Are you able to see how these voices are exaggerated, inaccurate, or distorted? How do these thoughts sound if you say them aloud, or to another? Which thoughts help you to maintain consistent writing, or to return to writing?

Every lawyer and writer we have met occasionally or frequently experiences emotional discomfort while writing or thinking about writing. It is not always easy to see what is happening in the moments when you are deciding whether to write; emotions operate much faster than your conscious mind, and your conditioned emotional responses often determine the outcome. However, even if you do not fully understand the source of your difficult thoughts or feelings, you can learn to increase your tolerance for these internal states and thereby gain greater control of your writing.

Lawyers stereotypically turn to logic for comfort, but if you increase your capacity to accept, feel, tolerate, and understand the emotional side of your nature, you will increase your capacity to write productively. Allow yourself to experience emotions such as fear, resentment, shame, inadequacy, and ambivalence without automatically responding by

attempting to repress or flee from their intensity. They are just feelings. You are going to survive. You will grow stronger by allowing your body to go through emotionally intense states without panicking. These are time-limited experiences. A part of you may feel like you will certainly die if you sit down to write, but you will not. Take baby steps in this direction and see what happens. When disturbing feelings arise, do a little bit more writing instead of moving away from your project. No need to be heroic. You are building up your writing muscles bit by bit, and if you keep it up, these small changes will have big consequences.<sup>99</sup>

One method of reducing emotional discomfort when you want to write is relaxation. Distressing feelings almost always correlate with muscular tension. If you gain some control over the tension, the feelings will have less power over your decisions about writing. We recommend taking three minutes to relax when you start to write or when you are stuck. Sit quietly in a comfortable chair, close your eyes, and take three deep breaths. Then tune in to the muscles in your face, tongue, jaw, and hands. Pay attention to how these muscles feel, and let go of any tightness you notice. When you notice your mind wandering, redirect your attention to these muscles and try to relax them more. Do not be discouraged if you do not get immediate relief; the more you practice this technique, the more effective it will be.<sup>100</sup>

Some lawyers find it useful to do something physical, like pacing or hiking, when they engage in a writing project. A few we know have even set up work stations attached to a treadmill or recumbent exercise bike. Sometimes a repetitive physical activity engages the mind in a way that allows the writing mind to function better. Any exercise that promotes blood flow in the body, and especially in the brain, will help.

Another method of handling uncomfortable or distressing thoughts and feelings during a writing session is pausing to write them down as they arrive. Note them, and then tell yourself that you will consider these issues when your writing session is finished.

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99. If this sort of discipline and concentration sounds like training, that is because it is. Any sport takes practice, and “[w]riting is not an enigma. It is a sport. Apply what you know of tennis, football, or swimming to your writing.” GOLDBERG, *supra* note 46, at 99. “In order to improve your writing, you have to practice just like any other sport.” GOLDBERG, *supra* note 61, at 131.

100. With relaxation practices and other cognitive behavioral techniques, “[i]f you’re willing to invest a little time in yourself, you can learn to master your moods more effectively, just as an athlete who participates in a daily conditioning program can develop greater endurance and strength.” BURNS, *supra* note 57, at 18.

Work, too, on gradually increasing your tolerance for receiving feedback on your writing if this is a source of anxiety.<sup>101</sup> No writer or lawyer can escape negative feedback, but it may be hard to handle, especially for the intelligent, high-achieving individuals drawn to legal study and practice. If you are sensitive about and avoid showing your work to others but would like to be able to, start carefully and thoughtfully. Too much, unorganized, or ill-timed feedback on your legal writing can generate new blockages.<sup>102</sup> Experiment with involving people at different phases of your project, considering when you might benefit most from input and when you are most at risk to procrastinate or block, and go with what feels right.<sup>103</sup> View this as an ability you will cultivate over time, step by step.

By focusing primarily on how to improve your legal writing, rather than on how criticism and rejection make you feel, you cultivate a degree of openness and tolerance for receiving constructive, but uncomplimentary, feedback. The ability to accept such information without wilting is essential for your personal and professional growth. Others' perceptive minds offer a storehouse of information, and you can benefit from knowing what they think is good, or not so good, about your work. Even nasty, ill-tempered remarks, if they contain a grain of truth, can be useful. You will be more willing and less threatened to hear tough but true words about your legal writing if you believe those words will help you write better. Even if they come from the mouth of a jerk.

Be patient and avoid comparing yourself to people who do not seem to struggle as much with feedback. Other lawyers', law students', or academics' feelings or actions do not matter. Our social and interpersonal habits and comfort zones are typically longstanding and resilient patterns connected to many different, powerful feelings. Change in this area is possible but should be approached wisely and gradually. It is essential to

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101. For some techniques on receiving and processing feedback on your writing, see "Advice to the Writer on Listening," ELBOW, *supra* note 13, at 99–104.

102. See, e.g., Susan M. Taylor, *Students as (Re)visionaries: Or, Revision, Revision, Revision*, 21 *TOURO L. REV.* 265 (2005–2006).

"[T]he teacher who has set too many priorities and who provides too many comments. Here, the student is overwhelmed at the amount of issues that must be addressed (or fixed) in the next assignment. The student is often confused about which is the most important of the priorities. This can lead to writer's block because the student has no clear sense of direction.

*Id.* at 293.

103. Some legal writers, out of concern that the project needs to gestate longer in order to develop properly, do not like to discuss their ideas too early in the process. Others, to help brainstorm and focus on what they want to write about, like a lot of interaction in the early stages. Identify the stage at which you prefer to receive feedback, and reflect on its use at that time.

recognize the difference between people in your life who will help you to become more productive and those who will not. Some readers can give thoughtful, sensitive, useful, and honest feedback. Some will glowingly praise everything you show them. (For this reason, your best writing advisors may not be the people you are closest with.) Others, intentionally or not, will stomp your ego flat out of ignorance, insensitivity, or their own unresolved issues. If you have a history of being terrified, or even just apprehensive, about the process of showing your work and receiving feedback, avoid the ego-flattening type, or first show it to a trusted intermediary. You certainly do not need more bad experiences. A supportive mentor, teaching assistant, or workshop is sometimes a good way to seek more feedback. Each step toughens your hide, teaches you something about yourself and others, and lays the groundwork for going further.<sup>104</sup>

The goal on each of these fronts is to develop the ability to recognize thoughts as merely thoughts and feelings as nothing more than feelings (as the song goes). Watch them enter your awareness, and then let them go. Then get back to work.

## V. CONCLUSION

*“Writing is easy. All you do is stare at a blank sheet of paper until drops of blood form on your forehead.”*<sup>105</sup>

Writing is critical for academic and professional success in the law. However, writing, and especially legal writing, is challenging in many ways. Many bright and capable law students, attorneys, and law professors experience writing productivity problems that impact their grades, professional success, self-esteem, confidence, career satisfaction, and career options.

Lawyers, legal academics, and law students are acutely aware of these challenges, but the issues of writing productivity are not adequately recognized and addressed within current educational and professional legal institutions. Luckily, methods for providing assistance for these problems exist. Certainly, “[i]f you have a way of writing that works well for you, keep it (and teach it to others).”<sup>106</sup> If you have difficulty writing, though, you must understand your particular barriers and troubleshoot your writing process.

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104. For more on seeking feedback and increasing comfort with judgment on your writing, see “The Judgment,” RASCH, *supra* note 48, at 93–104.

105. GENE FOWLER, in *THE WRITER’S QUOTATION BOOK* 41 (James Charlton ed., 1985).

106. ELBOW, *supra* note 13, at 72.

The techniques introduced in this article can help individual legal professionals to better recognize and address their writing productivity issues.<sup>107</sup> Law firms, law schools, and the legal profession will likewise be well served to acknowledge and build a greater understanding of the psychological underpinnings of writing blocks and to provide supportive resources and services for students and attorneys who struggle with their writing productivity.

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107. Change will not happen overnight, of course: “[i]mproving your writing is necessarily gradual and erratic.” ELBOW, *supra* note 13, at 107.



