

# Designing and Using Peer Review in a First-Year Legal Research and Writing Course

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*I could feel the excitement in the room that afternoon as the students in my first-year legal research and writing class exchanged motion memoranda drafts. Until now, students had been permitted to work on legal research together, but they had been under strict instructions not to collaborate in the writing process. Each student had written in a vacuum, not knowing how the other forty students in the class organized, analyzed, and wrote. The process was always the same: turn in a draft and get my comments; re-write the draft and get more comments and a grade. With no basis for comparison, students had to rely upon and trust, often reluctantly, the opinion of a novice teacher to tell them if their writing was "good."*

*But no longer. Finally, after six months of waiting, my students were reviewing each other's writing: reviewing to strengthen their analytical and writing skills, gain perspective on their own ability and effort, build confidence in themselves, and discover they were on the "right track." As the students began to work, obviously excited about and engaged in the task, I asked myself: "Why had I waited so long to use peer review?"*

## Peer Review and Legal Skill-Building

Peer review,<sup>2</sup> the editing process in which law students critique each other's written work, is often considered a "secondary" exercise that can be omitted from a first-year legal

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<sup>2</sup> Others have defined "peer review" or "peer editing" as a "structured exercise in which law students critique the written work of fellow classmates by offering both positive and negative comments." Jo Anne Durako, *Brutal Choices in Curricular Design . . . Peer Editing: It's Worth the Effort*, 7 Persp. 73, 73 n. 1 (1999); see generally Lissa Griffin, *Teaching Upperclass Writing: Everything You Always Wanted to Know but Were Afraid to Ask*, 34 Gonz. L. Rev. 45, 72 (1998) (defining "peer review" as "the process through which students review each other's work"). Peer review is a type of cooperative learning, which is defined as a "structured, systematic, instructional strategy in which small groups work toward a common goal." Vernellia R. Randall, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 Thomas M. Cooley L. Rev. 201, 234 (1999).

writing course.<sup>3</sup> For example, many first-year legal-writing courses use only the student-teacher method of evaluation and feedback, engaging each student in a recursive writing process<sup>4</sup> in which the professor provides written comments and oral feedback to the student who revises the work based solely on these teacher-student interactions. By introducing peer editors into the writing process and allowing students the chance to see how other students approach the same legal problem, however, the peer review experience can teach students writing, editing, and cooperation skills that they can apply in legal practice but that they may not learn through the student-teacher editing cycle.

Using peer review in the first-year writing course has several advantages. First, peer review encourages cooperation between students—an effective learning method often absent from the first-year experience<sup>5</sup> but an essential part of legal practice. Further, through their roles as readers and editors, students learn to focus on the needs of their audience,<sup>6</sup> a sensitivity essential for successful writing to the courts, other lawyers, and clients. Moreover, peer review reinforces students' understanding of legal writing and analysis<sup>7</sup> and enhances their ability to transfer those

<sup>3</sup> Durako, *supra* n. 2, at 73.

<sup>4</sup> See generally Linda L. Berger, *A Reflective Rhetorical Model: The Legal Writing Teacher as Reader and Writer*, 6 Leg. Writing 57 (2000) (discussing contemporary thought on the nature of the writing process).

<sup>5</sup> Durako, *supra* n. 2, at 74 (noting that peer review "builds the foundation for teamwork"); see David Dominguez, *Principle 2: Good Practice Encourages Cooperation among Students*, 49 J. Leg. Educ. 386, 386 (1999) ("Cooperative learning enriches traditional law school education . . ."); Griffin, *supra* n. 2, at 72-73 (1998) (commenting on effectiveness of peer review); Gerald F. Hess, *Seven Principles for Good Practice in Legal Education: History and Overview*, 49 J. Leg. Educ. 367, 369 (1999) ("Students who . . . work cooperatively with one another in the classroom can increase both their depth of understanding and their involvement in their own education."); George A. Marcoulides & Mark G. Simkin, *The Consistency of Peer Review in Student Writing Projects*, 70 J. Educ. Bus. 220, 220 (1995) (noting that peer review "increase[s] student interaction and socialization"); see generally Clifford S. Zimmerman, *"Thinking Beyond My Own Interpretation: Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum"*, 31 Ariz. St. L.J. 957 (1999) (discussing the need for and role of collaborative and cooperative learning in law school and legal writing instruction).

<sup>6</sup> Durako, *supra* n. 2, at 74; Griffin, *supra* n. 2, at 73-74; see Andrea W. Herrmann, *Teaching Writing with Peer Response Groups*, May 1989 Educ. Resources Info. Ctr. (ERIC) Clearinghouse on Reading and Commun. Skills Dig. 2, 2 ("Cooperative writing helps students discover audience . . .").

<sup>7</sup> Dominguez, *supra* n. 5, at 387 (noting that peer activities "strengthen [students'] grasp on the academic material"); Gerald F. Hess, *Principle 3: Good Practice Encourages Active Learning*, 49 J. Leg. Educ. 401, 402 (1999) (indicating that active learning, of which peer review is a type, "helps students grasp, retain, and apply content"); Ulle Erika Lewes, *Peer Evaluation in a Writing Seminar*, ERIC ED 226 355, 8 (1981) (suggesting "peer evaluation helps students internalize the requirements of competent writing"); Zimmerman,

skills from one writing project to another.<sup>8</sup> Peer review also teaches students to respect the opinions of peers<sup>9</sup> and think about how to analyze and evaluate a legal problem and communicate that analysis.<sup>10</sup> Additionally, peer review can give students confidence in their editing and writing skills that they may not otherwise gain from the teacher-student editing process.<sup>11</sup> Finally, peer review helps students learn to articulate criticism in a coherent and constructive manner,<sup>12</sup> thoughtfully evaluate feedback from peers, and selectively integrate that feedback into their own writing. In practice, lawyers use these skills when collaborating on cases, integrating conflicting edits into cohesive documents, offering editing suggestions for others' work, editing their own work, and considering multiple drafting approaches to legal documents. Simply stated, adding a peer review experience to a first-year course can complement and build upon the core skills taught in a legal writing course, help students develop practice skills such as cooperation, rewriting, and editing, and better prepare students for their careers as lawyers.

### Designing the Peer Review Exercise

With these benefits in mind, I designed a peer review exercise and incorporated it into my first-year legal research and writing course. The exercise needed to avoid four potential pitfalls. First, given the demands of the first-year of law school, the peer review

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*supra* n. 5, at 1000 (commenting that "the learning advantages [of cooperative learning] extend from basic academic achievement to a complete understanding or mastery of the subject matter").

<sup>8</sup> Lewes, *supra* n. 7, at 6; Randall, *supra* n. 2, at 219.

<sup>9</sup> Durako, *supra* n. 2, at 74; David H. Lynch & Steven Golen, *Peer Evaluation of Writing in Business Communication Classes*, 68 J. Educ. Bus. 44, 47 (1992) (noting that peer review allows students to "gain respect for others' opinions").

<sup>10</sup> *The 1992 Report of the American Bar Association Task Force on Law Schools and The Profession: Narrowing the Gap* includes legal analysis and reasoning, evaluation, and effective communication in its list of Fundamental Lawyering Skills. ABA Sec. of Leg. Educ. & Admis. to the B., *Statement of Fundamental Lawyering Skills and Professional Values* 25-30, 47-50 (ABA 1992) (more commonly known as the "MacCrate Report").

<sup>11</sup> Ronald Barron, *What I Wish I Had Known about Peer Response Groups but Didn't*, 80 English J. 24, 34 (1991) (stating that peer response groups can "make students more confident and more independent writers"); Vidya Singh-Gupta & Eileen Troutt Ervin, *Preparing Students for Teamwork through Collaborative Writing and Peer Review Techniques*, 23 Teaching English in the Two-Year College 127, 129 (1996) (commenting that peer review increases student "confidence in critically evaluating their own work and that of peers").

<sup>12</sup> See Griffin, *supra* n. 2, at 74; Lynch & Golen, *supra* n. 9, at 47.

assignment could not take too much time outside of class to complete because students might focus only on the time burden and not realize the benefits of the assignment.<sup>13</sup> Second, the peer review guidelines needed to closely parallel what students had already learned; otherwise, the guidelines could make students feel confused and unprepared to edit other students' work.<sup>14</sup> Third, the editing guidelines needed to be clear, or the resulting feedback might be overly general ("good job") or miss important organizational and analytical problems by focusing only on smaller issues such as misspellings or punctuation errors.<sup>15</sup> Finally, the exercise needed to avoid the most obvious risk of a peer review exercise in the competitive law school environment: students' fear that sharing their work with or giving constructive criticism to classmates might give others an opportunity to "steal" their ideas and gain an unfair advantage in grading or in a related oral argument competition.<sup>16</sup> Without accounting for that potential concern, students might resist fully participating in the exercise.<sup>17</sup>

Keeping these pitfalls in mind, I decided to use the peer review exercise in conjunction with the primary writing assignment in the second semester, a ten-page summary judgment memorandum. As with all other assignments in the course, students could research cooperatively and discuss the substantive issues in the memorandum assignment. However, they were specifically instructed not to collaborate in the writing process. Thus, this would be the students' first opportunity to review

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<sup>13</sup> Durako, *supra* n. 2, at 73 (noting that "students . . . need time in the curriculum to complete the peer edits").

<sup>14</sup> See *id.*

<sup>15</sup> *Id.*; see generally John C. Bean, *Engaging Ideas: The Professor's Guide to Integrating Writing, Critical Thinking, and Active Learning in the Classroom* 222-23 (Jossey-Bass 1996) ("Unless the teacher structures the sessions and trains students in what to do, students are apt to give each other eccentric or otherwise unhelpful advice.").

<sup>16</sup> Thanks to Judith Stinson for pointing out this evident, yet often overlooked, pitfall. See generally Durako, *supra* n. 2, at 73 (noting concern that "[s]ome students may gain an extra advantage if they receive excellent peer edits . . ."). Zimmerman notes that "competitive rivalry" exists among first year law students and is fostered by "[t]raditional legal teaching methods." Zimmerman, *supra* n. 5, at 972. However, cooperative learning "results in higher achievement than does a competitive goal structure when the tasks become more complex." *Id.* at 994 (quoting Marla Beth Resnick, *A Review of Classroom Goal Structures* 2 (unpublished Ph.D. dissertation, DePaul U. 1981) (on file with Dept. of Psych., DePaul U.)). As such, he suggests that "[i]t would be absolutely wrong to reject a particular pedagogy because it either does not further or actually limits competition." *Id.* at 975.

<sup>17</sup> In fact, even in my pass/fail writing course, at least two students indicated a reluctance to participate in class discussions about the substance of the primary writing assignment, apparently because they did not want to lose a perceived competitive edge.

classmates' writing. I chose the persuasive memorandum assignment for the peer review exercise because, at that point in the year, students had completed five substantial writing assignments and would be more likely, by virtue of instruction and practice, to possess the knowledge and experience to provide a useful critique of the memorandum's organization and analysis.

In designing the exercise, I gave special consideration not only to the potential design pitfalls but also to the scope of the editing tasks, the time allotted to editing, the opportunity for multiple sources of feedback and group discussion, and the opportunity for self-evaluation. First, the scope of the peer review focused primarily on the organization of the argument section and quality of the analysis rather than on style matters such as grammar and punctuation. I chose this substantive limitation for a number of reasons. To begin, the memorandum used for the peer review exercise would be a "first-draft," and thus the broader concerns of organization and analysis would be ripe for consideration. Also, because the course and grading criteria emphasized legal analysis and organization, students would be familiar and comfortable with those topics and the exercise could emphasize the importance of strong organization and analysis as the foundation for quality writing. Finally, I elected to avoid style matters such as grammar and punctuation on a colleague's advice that, even though students may receive accurate faculty instruction on these matters, students often have an incorrect understanding of grammar and punctuation rules and may make erroneous comments about them in peer review.<sup>18</sup>

Second, to avoid concerns about onerous outside-of-class assignments or any perceived unfair competitive advantage of having another student's draft for an extended time, I limited the time allotted to the exercise to a one and one-half hour class period. I set this limitation not only to relieve students' anxiety about sharing work but also to more closely replicate the attention a memorandum might get from the audience for a memo in practice such as from a judge or a supervising attorney. The in-class limitation also required students to concentrate their edits on

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<sup>18</sup> This is not to say, however, that with sufficient training and supervision, using the peer editing exercise to evaluate grammar, punctuation, spelling, and citation would be inappropriate or counterproductive in later stages of the editing process. *See e.g.* Durako, *supra* n. 2, at 76 (suggesting peer review can be used to "learn a specific skill" such as citation form).

analysis and organization, and it gave them a sense of the time pressures they will face in practice.

Third, because I wanted to give students the opportunity to read more than one memorandum and receive feedback from more than one student, I created editing groups of three students.<sup>19</sup> By assigning students to three-person editing groups, they could see two other students' approaches to the same problem and critically evaluate whether these approaches improved upon their own. Additionally, I anticipated that the three-person group might result in conflicting advice that students would need to evaluate, thus enhancing their critical thinking skills and simulating the situation in which several attorneys review the same document and provide conflicting editorial comments. Finally, I thought by providing students more than one set of comments on their memoranda, they not only would receive a greater variety of feedback but would also be more likely to trust the reliability of those comments, particularly when student editors made similar suggestions about the writing.<sup>20</sup>

I also wanted the students to participate in a small group discussion immediately after commenting on each other's memoranda. I thought this would give students the opportunity to discuss and debate approaches, elaborate upon edits, clarify criticisms, generate a better understanding of the legal arguments and writing strategies used in the memoranda,<sup>21</sup> and create enthusiasm for the writing project.

Finally, not only did I want students to learn from the comments they received from their peers, I also wanted students to employ what they had learned from commenting on a peer's

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<sup>19</sup> I am not the first to use groups for peer evaluation in the legal writing setting. See Jo Anne Durako, Kathryn M. Stanchi, Dianne Penneys Edelman, Bret M. Amdur, Lorrain S.C. Brown, & Rebecca L. Connelly, *From Product to Process: Evolution of a Legal Writing Program*, 58 U. Pitt. L. Rev. 719, 731 (1997) (requiring students to evaluate memoranda of two others in peer review exercise).

<sup>20</sup> Marcoulides & Simkin, *supra* n. 5, at 221 ("Single reviews are easiest, . . . but multiple reviews increase the reliability and the amount of potential feedback given to each student.").

<sup>21</sup> "[T]hrough peer interaction, what individuals learn is more and qualitatively different than what they would learn on their own.' . . . [E]ach student reaches a higher level of thinking." Zimmerman, *supra* n. 5, at 996, 1000 (quoting Melanie L. Schneider, *Collaborative Learning: A Concept in Search of a Definition*, 3 Issues in Writing 26, 36 (1990)); see generally Hess, *supra* n. 7, at 407 ("Good discussions prompt students to use higher-level thinking skills: to apply rules in new contexts, analyze issues, synthesize doctrines, and evaluate ideas."); Randall, *supra* n. 2, at 219 ("Cooperative Learning is more effective in developing higher level reasoning. Students generate more new ideas and solutions . . .").

writing to improve their own writing and editing skills. Thus, I incorporated self-evaluation into the exercise, encouraging students to reflect upon their own writing in light of the peer review experience.

### **The Directions<sup>22</sup>**

I designed the directions to allow students to easily and effectively participate in the peer review exercise. To limit the amount of training and preparation necessary for students to successfully participate in the exercise, the directions provided to the students for reviewing their peers' papers used terms and concepts already learned in the legal writing course.<sup>23</sup> Thus, to prepare for and participate in the exercise, students needed only to review the instructions and apply them.

The directions required students to consider specifically the organization and analysis in the argument section of the memorandum and included only editing tasks that the students could easily understand and complete. These limitations served two functions. First, focusing only on the argument section allowed students to complete the review within the class period. Second, directing students to focus only on that section highlighted and reinforced the organization and analytical skills they had already learned during the year.

The directions instructed students to first read only the point headings in the argument section and note in the margin if they could not understand the arguments just from the point headings. This task encouraged students to think about both the substance and the form of the point headings and to consider whether they successfully conveyed the content of the writer's argument.

Next, the directions asked students to read the argument section and complete four specific editing tasks. First, students were asked to put a question mark next to any word, sentence, paragraph, or argument they had trouble understanding and to note why their understanding was impaired. The directions gave examples of appropriate notations: "sentence too long or incomplete," "paragraph covers more than one topic," or "analysis

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<sup>22</sup> The directions I used for the exercise are attached as Appendix A. Thanks to Mary Beth Beazley for providing suggestions for and an example of peer review directions.

<sup>23</sup> "Peer critiques are most effective if students are applying a clear set of criteria to the written work." Hess, *supra* n. 7, at 410.

of facts insufficient." Although the directions encouraged students to make broad comments, I anticipated that the comments would serve as a springboard for a more detailed discussion during the small group session that followed the editing assignment.

Third, the directions asked the student editors to identify any analytical problems with the arguments. They were asked to identify "holes" in arguments as well as any arguments that were not reasonable or persuasive. Next, the directions guided students to consider the internal organization of each argument. If the students saw that any part of the legal analysis ("CRuPAC")<sup>24</sup> was missing or incorrectly organized, they were to note that in the margin. The directions gave specific examples of potential problems: "Does the argument jump from the rule to the conclusion with no discussion of the facts?" or "Is there a rule with insufficient proof?" Finally, the directions asked students to note if any counterargument they had anticipated had not been addressed.

Before finishing their review of the memorandum, students were asked to consider two additional items. First, students were to note any affirmative arguments that they felt were missing. Second, they were asked to write at the end of the memorandum the three most memorable points about the argument section. The directions gave the following example of an appropriate "overall impression" end comment: "1) excellent use of case authority; 2) very persuasive argument on legislative intent; 3) couldn't follow the arguments on judicial estoppel." The purpose of the "final comment" was to give the author information about audience perception and to allow the writer to revise the memorandum if the overall impressions were not ones the author intended.<sup>25</sup>

As the final task in the peer review, student editors were asked to reflect on their own writing in the context of the peer editing assignment. The instruction directed the students as follows:

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<sup>24</sup> "CRuPAC" is an acronym used to describe Richard Neumann's suggested method of organizing a legal proof. Richard K. Neumann, Jr., *Legal Reasoning and Legal Writing* 96 (4th ed., Aspen 2001). It stands for "Conclusion, Rule, Proof of Rule, Application, and Conclusion." *Id.*

<sup>25</sup> Early study of peer review by English composition scholars suggests that this type of "descriptive" feedback, relating the reader's "experience of reading" the written work, allows the writer to keep control over what, how much, and why to revise. Lewes, *supra* n. 7, at 2 (citing Peter Elbow, *Writing Without Teachers* 85 (Oxford U. Press 1973)).



Think about your own argument section. Did editing someone else's work give you insight into your own writing? For example, did you notice arguments /counterarguments/ counteranalysis you missed? Did you like a particular organizational strategy or stylistic device the memo used that you could apply to your own work? At the bottom of the sheet, note any thoughts you have about your own writing as a result of this review.

Students submitted their written reflections to me at the end of class.

### **The Process**

The peer review exercise took place five days before the first draft of the memorandum was due and was an entirely in-class exercise. The class period lasted ninety minutes: fifty minutes devoted to reading and editing memoranda, thirty minutes assigned to editing group discussion, and ten minutes set aside for wrapping up the exercise. I distributed directions at an earlier class meeting and told the students to review them. I also directed students to bring two copies of their memorandum to class to exchange with their editing group.

I grouped students in threes on the same side of the assignment (plaintiff or defendant). Group assignments were primarily random, although I adjusted the groupings to require cooperation between students who I perceived did not routinely interact with one another and to ensure that each group included both men and women. I made these adjustments to increase the chances that students would receive diverse feedback in the editing process and to give them the opportunity to work with other students that they might not have selected as peer review partners.

Using the peer review directions as a guide, students had twenty-five minutes to edit each memorandum. I gave the class regular updates on the time remaining and required the students to move to the next memorandum after twenty-five minutes had passed. At the end of the time for editing, the students met in their small groups for discussion. They discussed each memorandum for ten minutes, using the time to talk about organizational and analytical issues they noted during the editing session. Students then returned the marked-up draft to the author and gave their peer review instruction sheet, with

reflections on their own writing, to me. The class concluded with a discussion about what students learned from, and their impressions of, the exercise.

### **Student Feedback**

Student response to the assignment, both formal and informal, was primarily positive. First, most students appeared to stay on task during the exercise and seemed interested in seeing how their classmates approached the same writing assignment. Additionally, during the small group session, student discussion stayed on point and often prompted students to ask for clarification and additional guidance that ultimately led them to a greater understanding of the material. After class, several students expressed their satisfaction with the exercise.

I also asked each student to complete a "feedback form"<sup>26</sup> designed to determine whether the peer review exercise met its goals.<sup>27</sup> This survey yielded mostly positive responses. Ninety-two percent<sup>28</sup> of the students "strongly agreed" or "agreed" that the peer review assignment gave them insight into their writing. Seventy-four percent of the students either "strongly agreed" or "agreed" that their memorandum improved as a result of the exercise. Ninety percent were satisfied that the directions were sufficient to allow them to give meaningful feedback on their peers' papers. More than three-quarters of the class (seventy-nine percent) felt that instruction in the course sufficiently prepared them to participate in the peer review exercise. Conversely, a significant minority of students indicated that they either had "no opinion," "disagreed," or "strongly disagreed" that the exercise improved their editing skills (forty percent) or assisted them in understanding the needs of their audience (forty-two percent).<sup>29</sup>

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<sup>26</sup> Nine questions directing students to circle one of five responses ("strongly agree," "agree," "no opinion," "disagree," or "strongly disagree") were asked about the peer review exercise. The feedback form is attached as Appendix B.

<sup>27</sup> I distributed the feedback form after the students turned in the final draft of the memorandum. To ensure anonymity and minimize student concerns about their responses affecting their grades in the course, students were asked only to circle responses and to indicate the sex of the evaluator by writing "M" or "F" on the top of the form. Students were specifically directed not to write any comments on the feedback form. Of the forty-one students in the class, thirty-eight completed and returned it.

<sup>28</sup> Reported statistics were calculated to the nearest tenth and then rounded to the nearest whole number.

<sup>29</sup> The feedback form took into account the sex of the responding student, with interesting results. For the most part, men and women responded similarly to the

Students were most troubled by the limited time they had to review the memoranda. Sixty-three percent indicated they either "disagreed" or "strongly disagreed" that they had sufficient time to edit their peers' papers. Finally, although students wanted more time for editing, seventy-four percent of students "agreed" or "strongly agreed" that the written feedback helped them understand problems with their own memoranda and with their writing generally, and sixty-nine percent indicated the same level of satisfaction with the oral feedback from the small group discussion.

Anecdotal evidence showed that students took what they learned from the editing exercise and used it to identify areas for improvement in their own organization and legal analysis. For example, students made the following comments in response to the self-evaluation question that asked what they had learned that they could apply to their own writing:

*I will definitely re-think my organization! It was helpful to read a paper that so thoroughly puts the "A" in CRuPAC.*

*This [memo] is extremely well organized . . . . I tend to jump around. . . . My writing could use a bit more structure.*

*I made my [argument] too complicated. I missed some counterarguments. I need to simplify my process.*

*I learned a lot about counteranalysis from reading [my classmate's] paper.*

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questions, indicating satisfaction and dissatisfaction with the exercise in roughly equivalent percentages. However, men and women differed significantly in their opinions of the sufficiency of the directions for the exercise, their preparation to participate, and the sufficiency of the time to edit.

Women were more satisfied with the peer review directions with one hundred percent either "strongly agreeing" or "agreeing" that the directions were sufficient for them to meaningfully participate. Only seventy-three percent of the men responded similarly. Further, ninety-four percent of the women students either "strongly agreed" or "agreed" that the course sufficiently prepared them to give meaningful feedback during the peer review. Only sixty percent of the men indicated that they felt adequately prepared. Finally, a significantly larger proportion of women, fifty percent, as opposed to seven percent of men, believed they had adequate time to complete the editing exercise. I cannot explain these differences, but they are nevertheless worth noting.

*I realized I need to . . . back up my arguments with more case law . . . and remember to [write] my memo [i]n the light most favorable to the client . . . .*

*We looked at [an argument] slightly differently, so I will think about that.*

Moreover, students' written comments on the self-evaluation indicated that they gained respect for their peers' analysis and writing as a result of the exercise:

*[My classmate] did a very detailed analysis . . . . I was impressed with his organization [and] persuasive arguments . . . . I noticed a number of arguments I missed . . . . I'm going to talk to [my classmate] about them.*

*[My classmate's] research was incredible and her analysis was flowing, complete and well researched . . . . I see how [the organizational structure] can be flowing and clear.*

*[My classmate's] paper was well stated, easily read—just a great paper—it would take me a while to produce what she wrote . . .*

### **Reflections about the Peer Review Exercise and Ideas for Improvement**

The peer review exercise appeared to be a substantial success. Student responses suggested that students achieved a better understanding of legal writing techniques and improved the organization and analysis of their own memoranda as a result of the exercise. Students cooperatively interacted with their peers. They gave and received helpful feedback on their writing, and most students improved their editing skills and better understood audience needs following the exercise. More importantly, students gained an appreciation of the abilities and talents of their peers and the contributions each could make to the group.

Certain aspects of the assignment design were particularly successful. For example, grouping students in threes rather than pairs had significant advantages.<sup>30</sup> Students read and compared

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<sup>30</sup> In fact, research shows that "the optimal number of students per group is three." Paula Lustbader, *Some Tips on Using Collaborative Exercises*, L. Teacher (newsletter of the

how two other students writing on the same side of the issue created and organized their arguments. Moreover, students were forced to consider whether to integrate those approaches into their own writing. Requiring students to think critically about alternative approaches exposed them to a dilemma often facing lawyers in practice: having several organizational strategies and arguments available but facing a page limitation that necessitates choosing only the most persuasive ones.

The three-person editing group was particularly helpful for students who questioned their ability to analyze a legal problem and organize their writing. Those students could see that there can be several satisfactory approaches to writing a persuasive memorandum. In fact, one student noted in her self-evaluation her realization that her arguments were both on point and acceptably different: "I felt relieved that most of my arguments were covered by [another student] as well . . . . I thought her discussion on one of the point headings was more detailed than mine, although I am not sure if it was necessary."

The small group discussion following the editing exercise was also successful. Students benefitted from the give and take of oral criticism. Unlike with written feedback alone, the discussion provided students the opportunity to ask for clarification of confusing comments. Additionally, meeting in groups allowed the students to discuss, compare, and critique three perspectives on the same organizational and analytical issues, an experience that likely improved their understanding of the material. Moreover, the small group setting seemed to generate discussion about the substance of the arguments, a process that helped students think more deeply about the strengths and weaknesses of their positions. The small group discussion also required students to explain and defend their editorial comments, further requiring them to think critically about the assignment, their comments, and the writing process. In sum, the small group experience exposed students to cooperative writing in a professional setting.

The course and peer review instructions also gave the students the tools they needed to complete the peer review

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(available at <<http://law.gonzaga.edu/ilst/Newsletters/Spring1994/lust.htm>>).

Groups that have more than five members "tend to get off track or have dominating members." *Id.* However, peer review groups should be large enough for students to get "sufficiently diversified responses to their papers . . ." Barron, *supra* n. 11, at 26.

assignment. Most students indicated that they were generally able to understand and use the instructions successfully and were prepared to participate in the assignment. By limiting the scope of the peer review to two fundamental skills and tailoring the directions to fit that scope, the exercise accommodated first-year students' skill level. To the extent that student understanding of the directions needs improvement, the professor could take additional time during class to review the directions and answer any questions.

Although students expressed dissatisfaction with the limited time allotted for the exercise, I believe that in-class peer review is an acceptable alternative to an out-of-class assignment. While students may have felt pressed for time to complete the editing assignment, they were primarily satisfied with the exercise as a whole. Additionally, students' frustration with time constraints is not unique to the peer review exercise but rather extends to other law school assignments, such as exams. Simply, students do not like to be pressed for time. Nevertheless, limiting the time for the exercise focuses students' attention on important skills and minimizes their anxiety about sharing their work with other students. Thus, the benefits of the in-class peer review exercise outweigh the disadvantage of student frustration over time limits.

However, a professor may alleviate time pressures on students while preserving the in-class nature and effectiveness of the peer review assignment. For example, one might allow students additional editing time by extending the class period or conducting the review over two or three class periods. Alternatively, the number of pages reviewed might be further limited to preserve the in-class structure of the exercise. Another alternative would be to use the peer review exercise as a continuation of a short in-class writing assignment. For example, the peer review exercise could be applied to a one- or two-page analysis of a narrow legal issue, thus giving students a peer review experience without time pressure or problem complexity. Moreover, by using peer review on a simple assignment, students could experience the benefits of the exercise earlier in the course and build upon that experience throughout the semester with additional, increasingly complex exercises.

As mentioned above, students seemed confused by and dissatisfied with the role the exercise played in learning about audience needs and improving self-editing skills. These shortcomings may have resulted from my failure to adequately

explain how the assignment should help students develop skills in these areas.<sup>31</sup> To remedy this problem, more time could be spent discussing how student editors play the role of the "audience" in the peer review exercise. For example, the professor may want to lead students in a discussion about how a judge or supervising attorney may respond to the memorandum and encourage students to think about what those readers need from the writing and what they might find persuasive. By leading students through a discussion about audience expectations, students might better focus on audience needs during the exercise and ultimately be better able to address those needs in their own writing.

Moreover, the professor could discuss with students how peer review develops self-editing skills.<sup>32</sup> A discussion of the characteristics of good editing in the legal writing context (for example, the ability to identify key parts of a legal argument such as the rule or the analysis) might give students the context they otherwise lack for understanding how peer review develops good editing practices. One could also explain that by applying editing techniques to others' writing, students will be better able to use the same techniques to edit their own writing—a situation in which they often lack the objectivity needed to make accurate edits.<sup>33</sup>

In conclusion, an in-class peer review experience reinforces students' understanding of important legal writing techniques, teaches them to work cooperatively, enables them to better evaluate and edit their own writing, encourages them to respect the opinions of their peers, and better equips them to edit within time limits. Coupled with the satisfaction students gain from being able to work together on their writing and having a context in which to measure the quality of their own writing, peer review is a useful exercise in a first-year writing course to help students learn and improve critical practice skills.

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<sup>31</sup> Durako, *supra*, n. 2 at 73 (noting the importance of adequately explaining the assignment).

<sup>32</sup> *Id.* at 74 ("[B]eing a good peer editor is another step toward becoming a good self-editor—a more subtle skill to learn.").

<sup>33</sup> See Mary Beth Beazley, *The Self-Graded Draft: Teaching Students to Revise Using Guided Self-Critique*, 3 Leg. Writing 175, 181 (1997) (discussing that when students lack the necessary psychological distance for editing their own work they can suffer from "eclipse of the brain," a problem they can often remedy by guided self-critique and practice).

**APPENDIX A**  
**Peer Review-Argument Section**  
**Directions**

Note: You have 25 minutes to complete this review.

Reviewer's Name \_\_\_\_\_

Name of Person Being Reviewed \_\_\_\_\_

1. Write your name on the top of the memo.
2. Turn to the argument section. Read only the point headings. Do you understand the argument just from reading the point headings? If not, make a note in the margin.

3. Now, read through the argument section.

Put a question mark next to any word, sentence, paragraph, or argument you have trouble understanding. Note briefly why (e.g., sentence too long or incomplete, paragraph covers more than one topic, analysis of facts insufficient).

Think critically about each argument raised in the memo. Are there problems with the arguments? "Holes" in them? Do they seem reasonable and persuasive? Note any concerns you have about the arguments in the margins.

Do you notice any of the parts of the legal paradigm (CRuPAC) that are not organized correctly or are missing? For example, does the argument jump from the rule to the conclusion with no discussion of the facts? Or, is there a rule with insufficient rule proof? If so, note this concern in the margin.

At the end of each section, note any counterarguments that weren't addressed that you feel should have been.

4. After reading through the entire argument, note at the end of the argument section any affirmative argument that wasn't raised that you think should have been.

5. Now that you've read through the argument section, what are the three most memorable things about the argument? Write them at the end of the paper. (For example, you might write: "1) excellent use of case authority; 2) very persuasive argument on legislative intent; 3) couldn't follow argument on judicial estoppel.")

6. Think about your own argument section. Did editing someone else's work give you insight into your own writing? For example, did you notice arguments/counterarguments/counteranalysis you missed? Did you like a particular organizational strategy or stylistic device the memo used that you could apply to your own work? At the



bottom of this sheet, note any thoughts you have about your own writing as a result of this review.

**APPENDIX B**  
Feedback Form  
Peer Review Exercise  
Professor Davis  
Spring 2001

Editing my peers' memoranda gave me insight into my own writing.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
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The peer review exercise helped me improve my editing skills.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
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The peer review exercise helped me to better understand the needs of my memorandum's audience.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
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The peer review directions were sufficient for me to give meaningful feedback on my peers' papers.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
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The Legal Writing and Research course sufficiently prepared me to give meaningful feedback in the areas described in the peer review directions.

Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
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My peers' written feedback helped me understand problems with my memorandum and with my writing.

Strongly Agree    Agree    No Opinion    Disagree    Strongly Disagree

The small group discussion following the peer editing exercise helped me understand problems with my memorandum and in my writing.

Strongly Agree    Agree    No Opinion    Disagree    Strongly Disagree

I had sufficient time to edit my peers' papers.

Strongly Agree    Agree    No Opinion    Disagree    Strongly Disagree

My memorandum improved as a result of the peer editing exercise.

Strongly Agree    Agree    No Opinion    Disagree    Strongly Disagree