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# On the Clock: Incorporating a Timed Motion Brief Assignment to Promote Efficiency and Self-Awareness in the Writing Process

Cecilia Silver

*Brooklyn Law School*, [cecilia.silver@brooklaw.edu](mailto:cecilia.silver@brooklaw.edu)

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# On the Clock: Incorporating a Timed Motion Brief Assignment to Promote Efficiency and Self-Awareness in the Writing Process

By Cecilia A. Silver

It is a constant refrain in legal writing classes that students “will probably write more than a novelist” in their careers.<sup>1</sup> We also remind students that as lawyers, they will continually face time pressures imposed by clients, supervisors, and the court. These seemingly conflicting aspects of legal practice frustrate newly minted lawyers, who lament the perceived need to sacrifice quality for efficiency in their writing. To prepare our students to flourish in the face of real-world litigation time constraints, we must train them to take a journalistic perspective; students have to be conditioned to run sprints as well as marathons. They need to practice condensing the demanding process of thinking, planning, drafting, rethinking, editing, polishing, and proofreading to produce a high-quality product in a short span of time. To accomplish this goal, students must not only become aware of the ticking clock but also how to approach the writing process.

## I. Background

With the legal world dominated by the billable hour, time is a valuable commodity that must be managed effectively.<sup>2</sup> To best prepare for the realities of the legal marketplace, students must learn to write under severe time pressure so that they will be poised to perform well under the typical conditions they will encounter in practice. In my career

spanning both the private and public sectors, I frequently had to crank out emails, letters, memos, and briefs on an expedited basis with little-to-no lead time. An audience expects to be instantly gratified in today's technology-driven, hyper-connected world. So effective time management and vigilant self-editing are essential professionalism skills to instill at this early juncture of students' legal careers.<sup>3</sup> To achieve these aims, I incorporate a timed discovery motion assignment into an upper-level, writing-intensive course I co-teach in Civil Pretrial Litigation.

## II. The Contours of the Assignment

Our Civil Pretrial Litigation class acquaints students with the types of litigation documents they likely will encounter in the real world. Students are divided into plaintiff and defendant firms, taking an employment discrimination case from initial client contact through settlement by preparing pleadings, responding to document requests and interrogatories, briefing a discovery dispute, and drafting a summary judgment motion. In addition, students have several opportunities to refine their oral communication skills by conducting client interviews, participating in conferences before the judge, and engaging in oral argument.

We chose a discovery motion for our timed assignment because junior attorneys are often tasked with drafting the moving or opposition brief from soup to nuts and with a very tight turnaround. The discovery dispute centers on the plaintiff's postings on various social media platforms and stems from the students' responses to the parties' document requests and interrogatories. After denying the existence of any postings responsive to defendants' document requests and interrogatories, the parties contest whether a photograph of the plaintiff lounging in a hammock with the caption "I could get used to this . . ." that defendants located on Flickr undermines her claim of emotional damages. Based on the alleged relevance of this information, defendants move for disclosure of plaintiff's username and password to allow unfettered access to her other social media accounts. The parties' impasse while attempting to fulfill the obligation to meet and confer before taking the dispute to court is documented in a series of "nastigram" email exchanges between the senior partners of the two firms (played by me and my co-professor).

To simulate the conditions young lawyers usually face, the students are given just eight hours to complete the brief. While they can allocate the time how they choose over the course of several days, they must certify that they have spent no more than eight hours cumulatively. So that the task is not too daunting, we provide the students with a closed universe of four cases; one case helpfully summarizes the relevant jurisprudence on social media discovery. By supplying both the discovery motion standard and substantive research, the students can focus on critical reading, outlining, drafting, and polishing rather than getting mired in the research process.

## A. Assessment

After the students submit their briefs, we perform live critiques of their papers. Given the time pressure of the assignment, we have found this method of feedback very beneficial. Engaging in a dialogue with the students helps us understand the strategic choices they made in drafting their briefs and allows the students to reflect on their writing process and time management. The live critique also reinforces oral communication skills because the students conduct themselves as if they were meeting with a supervisor or partner. After the live critiques, the students have the opportunity to revise their briefs without the time pressure. The initial draft is worth 15% of the final grade; the rewrite counts for 10%.

## B. Lessons Learned

Student reception of this exercise has been uniformly positive. They enjoy having the opportunity to think critically about and discuss the decisions they made in crafting their briefs. They gain insights into how they problem solve and convey their analyses in writing that transcends the motion brief assignment. The students also appreciate that the eight-hour deadline for the assignment does not impose too much on their other commitments. And they like the element of realism inherent in producing a short motion brief on the cutting-edge topic of social media on a tight timeframe.

We have found this exercise to be an excellent tool to underscore the value of organizing and outlining before putting fingers to keyboard. When executed properly, the students realize that good briefs become great briefs during the editing phase of the writing process. The compressed format of the timed motion brief assignment prepares students for the rigors of practice both by getting them comfortable with time pressure and illustrating the importance of organization and editing. Students learn to write like they are breaking the news and not leisurely penning *The Great American Novel*.

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<sup>1</sup> Margaret Z. Johns & Clayton S. Tanaka, *Professional Writing for Lawyers* 3 (2d ed. 2012).

<sup>2</sup> Camille Lamar Campbell, *Timing Is Everything: Teaching Essential Time Management Skills for "Real-World" Legal Writing*, 22 *Persp. Teaching Legal Res. & Writing* 125 (2014).

<sup>3</sup> See Christine P. Bartholomew, *Time: An Empirical Analysis of Law Student Time Management Deficiencies*, 81 *U. Cin. L. Rev.* 897, 900-01 (2013) (discussing the MacCrate report and ABA's recognition that time management is an essential skill for law students).

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*Cecilia A. Silver is a Legal Practice Skills Lecturer and the Writing Specialist at the University of Pennsylvania Law School. She can be contacted at [csilver@law.upenn.edu](mailto:csilver@law.upenn.edu).*