## Legal Writing

*The Journal of the Legal Writing Institute*

**Volume 11**

---

### IN MEMORIAM

---

### THE GOLDEN PEN AWARD

Remarks—Acceptance of Golden Pen Award ........................................... *Richard Wydick*  

---

### ARTICLES

Scholarship by Legal Writing Professors: New Voices in the Legal Academy (with Bibliography) ........................................... *Terrill Pollman*

*Linda H. Edwards*  

---

The Legal Writing Institute: The Beginning: Extraordinary Vision, Extraordinary Accomplishment .......... *Mary S. Lawrence*  

---

Expanding Our Classroom Walls: Enhancing Teaching and Learning through Technology ...................................... *Kristin B. Gerdy*

*Jane H. Wise*  

*Alison Craig*  

---

Is the Sky Falling? Ruminations on Incoming Law Student Preparedness (and Implications for the Profession) in the Wake of Recent National and Other Reports ......................... *Cathaleen A. Roach*  

---

Taking the Road Less Traveled: Why Practical Scholarship Makes Sense for the Legal Writing Professor .......... *Mitchell Nathanson*  

---

*iv*
Unusual Citings: Some Thoughts
on Legal Scholarship ............................ Colin P.A. Jones 377

SONGS
A Song Commemorating the 20th Anniversary of the LWI,
and Celebrating Its Move from Seattle
University School of Law to Mercer
University School of Law ............................... David S. Caudill 393

“Stuck in the Middle with You” ........................ Terri LeClercq 395
REMARKS—ACCEPTANCE OF GOLDEN PEN AWARD

Richard Wydick

Ladies and Gentlemen, thank you for this handsome golden pen. It is a great pleasure to be here, to see some old friends, and to make some new friends.

My book, Plain English for Lawyers, was originally an article in the 1978 volume of the California Law Review. After it appeared, I got a phone call from Keith Sipe, who was starting a new publishing house called Carolina Academic Press. He asked if I’d be interested in having the article published as a little book. I said sure! Thanks to Keith and his colleagues, the little book is in its fourth edition. Now that I have a proper pen, I’m going to prepare a fifth edition that will contain all new exercises. In due course, I hope some of you will try out the fifth edition on your students.

What room are we meeting in tonight? Yes, the Corinthia Room! And who remembers the name of the founder and first king of Corinth? Nobody remembers? It was Sisyphus. We who try to teach law students how to write in plain language have a frustrating task, much like the one assigned to Sisyphus. Sisyphus was a cunning fellow who angered the gods, especially Hades, the god of the underworld. When Sisyphus died, Hades assigned him to push a huge boulder up a hill in Hell. Every time Sisyphus gets the boulder to the top, it breaks loose and rolls back down again. And Sisyphus must start all over, for all eternity.

Why is our task like the one assigned to Sisyphus? How many of you have had a former student come back to the school and tell you,

You know, professor, when I went to work in a law office, I tried to write the way you taught us, using plain language. But my boss told me that real lawyers don’t write that way. Real lawyers use said instead of the or those because said is more precise. Real lawyers prefer the passive voice, because it sounds official or because it sounds indirect and gentle. Real lawyers use long, long sentences, because they write about very complicated, technical things that cannot be expressed in short sentences.
So your former student has capitulated to the boss and now writes like a “real” lawyer. The boulder has rolled back down the hill.

Why do our students capitulate to the boss so easily about legal writing style? They aren’t so spineless about issues of substantive law. They aren’t so spineless about issues of legal ethics. On those issues, they show some grit—but not about legal writing style. Where have we failed them?

Perhaps we have not exposed them enough to the modern literature on legal writing—the source books they could use in arguing their position to the boss. For example, suppose the boss insists that your former student use *shall* in drafting a contract, because *shall* is traditional and has a precise legal meaning. Wouldn’t it be good if your former student knew about Joe Kimble’s article on *The Many Misuses of Shall* published in the Scribes Journal of Legal Writing.\(^1\) That article demonstrates that, far from being precise, *shall* is one of the most frequently litigated terms in our law.

How could we give our students better exposure to the modern literature on legal writing? Here’s one suggestion: Go to your office shelves and gather up an armload of legal writing books and articles that you regard as authoritative. Put them on reserve in the library. Then give your students an exercise in which their hypothetical boss demands that they commit a series of six, or ten, or twelve writing abominations, listing some of the ones that you have discussed in class. Ask the students to cite which of the books and articles on reserve they would use to convince the boss to repent and change his sinful ways. That exercise would accomplish three things. First, it would give the students a bit of citation practice. Second, it would let them find their way through a good collection of source materials, so they will know where to find support for their arguments. Third, it would help them learn that the boss isn’t always right—and that’s an important lesson.

When you leave tonight, please pick up one of the handouts beside the door. It’s a sample of the kind of legal writing we should all work to exterminate. The passage on the handout is part of a 2004 corporate merger agreement. Three of the Nation’s best-known law firms helped put that deal together. The passage contains one sentence, 451 words long. It contains some sub-parts, but they are not indented, so they don’t help the reader understand the structure of the sentence. I think the sentence says something

like this: “If your company backs out of this deal and later does a similar deal with somebody else, you will have to pay us so much money it will make your ears bleed.” I think the maximum is one billion, four hundred forty million dollars.

I invite you to revise that passage. It won’t be easy because it’s complicated, and you have the disadvantage of seeing it out of context. But give it a try. As an incentive, I hereby offer a prize to the person who comes up with the best revision by January 31, 2005. The prize is three bottles of excellent California wine, to remind you of your rainy week in San Francisco.

Thank you for the lovely pen and for the honor of being with you tonight.
I have only one thing to fear in this enterprise; that isn’t to say too much or to say untruths; it’s rather not to say everything, and to silence truths.¹

—Jean-Jacques Rousseau

TABLE OF CONTENTS

I. INTRODUCTION ........................................................................................................... 4
II. METHODOLOGY .......................................................................................................... 6
III. WHAT THE BIBLIOGRAPHY SHOWS ................................................................. 8
IV. THE JUSTIFICATIONS FOR SCHOLARSHIP .................................................. 14
V. WHAT IS A “LEGAL WRITING TOPIC”? .............................................................. 18
   A. Category One: The Substance or Doctrine of Legal Writing .............................. 20
   B. Category Two: The Theoretical Foundations of Legal Writing ...................... 25
   C. Category Three: The Theory and Practice Appropriate to the Teaching of Legal Writing .......................................................... 27

I. INTRODUCTION

In this Article, we explore the questions of whether legal writing topics are subjects fit for scholarship and whether scholarship on these topics could support promotion and tenure. We examine the scholarship of today’s legal writing professors—what they are writing and where it is being published—and we define the term “legal writing topic,” identifying major categories of legal writing scholarship and suggesting criteria for evaluation in this emerging academic area.

The data we use derives in significant part from the bibliography presented at the end of this Article, which lists publications written by members of the academy who consider legal writing and rhetoric a primary area of their expertise. The bibliography contains entries for more than 300 authors. It includes entries for more than 350 books, book chapters, and supplements, as well as more than 650 articles published in traditional, student-edited law reviews.

The bibliography serves several purposes. First, it provides a database for those asking important questions about legal writing scholarship: What do legal writing professors write? Where are those articles being published? What is included in the category of legal writing scholarship? What can constitute the body of work of a legal writing scholar? What kinds of early writing can lead to the development of mature scholarly work? The bibliography also functions as a resource to assist legal writing professors in their

2 The list is not limited to publications about legal writing topics. Rather, it includes publications by legal writing professors, no matter what the topic.
own scholarship. It provides a vehicle for finding and using scholarship created by legal writing colleagues, and it serves to stimulate ideas for new scholarship in this emerging field.

Finally, the bibliography disproves the assumption, sometimes recited in the legal academy, that legal writing professors do not need support for scholarship because they do no scholarship. Despite its circularity, the argument persists. The impressive length of this bibliography demonstrates that even with reduced support, legal writing professors write. One can imagine the productivity that would result if all legal writing professors received the institutional support their non-legal writing colleagues deem so critical for the production of good scholarly work. And if writing is important for the development of faculty members who teach subjects other than writing, it is doubly important for the development of those whose primary teaching area is the writing process itself.

In the following discussion, we first set out the methodology used to compile the bibliography and comment generally on what the bibliography shows (Sections II and III). We note particularly one important issue the bibliography raises—the surprisingly

---

3 The argument fails on grounds other than its circularity as well. For instance, cost is the reason customarily offered for denying scholarship support. If, in fact, legal writing professors do not write, administrators need not deny eligibility for scholarship support. If legal writing professors would not write, they would not use the support, so eligibility for research stipends would cost the institution nothing.

4 Historically, law schools did not provide scholarship support to teachers of legal writing. Many law schools today provide their legal writing professors with the same scholarship support provided for other professors, but some schools still do not. According to the results of the 2005 Survey by the Association of Legal Writing Directors and the Legal Writing Institute, 16 of the 178 responding schools reported either that their school does not provide research grants at all or that the responders did not know their school’s policy. Of the remaining 162 schools confirming the availability of research grants, only 77 reported making that support available to their legal writing faculty members, and at least 11 of those 77 reported awarding lesser amounts to legal writing faculty members. (Seventeen of the responders did not know how the legal writing faculty’s scholarship grants compared to those of other faculty members.) ALWD & Legal Writing Institute 2005 Survey Results, questions 76 & 78, http://www.lwionline.org/survey/surveyresult.asp (accessed Sept. 6, 2005) [hereinafter LWI-ALWD 2005 Survey]. Since salaries for legal writing professors not on a tenure track are, on average, significantly lower than the salaries of their non-legal writing colleagues, Jan M. Levine & Kathryn M. Stanchi, Women, Writing & Wages: Breaking the Last Taboo, 7 Wm. & Mary J. Women & L. 551, 557, 582 (2001), the lack of summer research stipends is especially problematic for legal writing faculty members.

large percentage of non-legal writing topics among publications by legal writing professors. We identify a number of legitimate factors possibly contributing to this imbalance, but we also identify a particularly troubling factor—formal policies and informal attitudes that discount scholarship about legal writing topics as a whole.

Since these policies and attitudes threaten the future of an entire field of academic study, we devote the remainder of the Article to testing their supporting premises. We first review the customary justifications for legal scholarship generally (Section IV), and we clarify the definition of the term “legal writing topic” in Section V. We then test two rationales used to discount legal writing topics, the assumption that legal writing topics do not qualify as scholarship, and the fear that non-legal writing faculty members do not know how to evaluate legal writing articles (Section VI). We conclude that neither rationale withstands reasoned analysis. Both rationales rely on misconceptions about the substance and breadth of the field and also may be tainted with a human resistance to ideas that challenge one’s own.\(^6\) Because the second rationale also signals some legitimate uncertainty about how to evaluate publications in fields unfamiliar to one’s own, we offer methodologies faculties can use to evaluate scholarship in legal writing or in any other field with which they are unfamiliar.\(^7\)

Finally, we conclude that, if legal academics are true to our roles as lawyers, teachers, and scholars and if we are serious about the justifications we routinely offer for legal scholarship, we should not exclude legal writing topics from the legal canon. Rather, we should allow, even encourage, legal writing faculty members to write in their own field, unearthing and exploring the foundations of their discipline. If we do, we may be surprised at what we will learn.

II. METHODOLOGY

We began this project in 2000, when we contacted legal writing directors or deans’ offices at each accredited law school and obtained the names of each school’s legal writing professors. We ran electronic searches for publications by each legal writing professor, and we contacted each professor individually to double-

\(^6\) See infra n. 204 and accompanying text.

\(^7\) See infra nn. 188–235 and accompanying text.
check our results. We returned to the project in 2001, updating the list by using the membership directories of two well-recognized professional organizations, the Legal Writing Institute (LWI) and the Association of Legal Writing Directors (ALWD).

After compiling a preliminary list, we created a website for the bibliography at http://www.legalwritingscholarship.org/. A notice on the two prominent legal writing listservs announced the list and asked legal writing professors to contact the authors or to visit the list online to correct or supplement the list. Additionally, conference attendees at the 2002 Biennial Conference of the Legal Writing Institute in Knoxville, Tennessee received an announcement in their registration materials asking them to visit the website and edit their entries. Finally, we distributed a draft of the list at the 2004 Biennial Conference at the University of Seattle. At a plenary session describing the list, we requested updates and corrections. Since 2004, publication updates have been solicited as part of the annual ALWD-LWI survey of legal writing programs.

The list includes publications of many sorts. Because part of the list’s purpose is to discover what legal writing professors are...
writing, we did not limit the list to any particular kind of publication. The instructions asked participants to include books; book chapters; articles in journals designed primarily for an academic readership; articles in journals designed primarily for practitioners; and articles in newsletters, bar magazines, continuing legal education publications, or law school development publications. The instructions also invited miscellaneous entries under the classification of “other.”

The bibliography includes publications on any topic, but the publication must have been written since beginning law school.\(^\text{13}\) The publication must either have appeared in print or be the subject of a commitment from a publisher; the bibliography does not include self-published materials.

### III. WHAT THE BIBLIOGRAPHY SHOWS

The most important observations pertain to the number, scope, and variety of publications by legal writing professionals. The list contains entries for nearly 300 authors. It includes more than 350 books, book chapters, supplements, and editorships, and over 650 law review articles. It includes at least that many articles in peer-reviewed academic journals, specialty journals designed primarily for practitioners, and other kinds of publications.\(^\text{14}\) By any criteria, the content of the list is impressive.

Law review placements span the spectrum of the academy and include journals at such schools as Harvard, Yale, Columbia, N.Y.U., Cornell, Georgetown, Minnesota, Virginia, California, Michigan, Duke, Wisconsin, Notre Dame, Stanford, and Chicago. The subject areas represented are as broad as the legal academy itself. Topics range from a variety of legal writing topics to topics

\(^{13}\) We used the beginning of law school as the starting point so that the database could support a broad review of the writing histories of legal writing professors. Also, early sample databases indicated that we would encounter questions about whether to include publications begun during law school but published later. We wanted a bright-line test that would avoid those subjectivities.

\(^{14}\) The bibliography demonstrates that, in addition to more traditional scholarship (books, student-edited law review articles, and articles in peer-reviewed academic journals), legal writing professors are writing a vast array of smaller pieces, such as short essays and substantive newsletter articles. These smaller pieces have created a rich and vibrant discourse on teaching, which is, after all, the other primary responsibility of the professoriate. This discourse on teaching probably is unequaled elsewhere in the legal academy. See Mary Beth Beazley, *Better Writing, Better Thinking: Using Legal Writing Pedagogy in the “Casebook” Classroom (without Grading Papers)*, 10 Leg. Writing 23, 30 (2004).
in other areas such as constitutional law, contracts, property, criminal law, environmental law, employment discrimination, professional responsibility, legal history, civil procedure, family law, consumer law, bankruptcy, disability law, education law, media law, and antitrust law.

The list demonstrates that newsletter articles, book reviews, and other kinds of early writing are serving as an entry point for legal writing professors, just as they often do for professors in other areas. Peer-reviewed journals such as the *Legal Writing: The Journal of the Legal Writing Institute*, the *Journal of the Association of Legal Writing Directors*, *The Scribes Journal of Legal Writing*, the *Journal of Appellate Practice and Process*, and the *Journal of Legal Education* are publishing articles on legal writing topics, but many student-edited law reviews are publishing legal writing articles as well.

Uses of the bibliography are limited in some respects. First, it is almost certainly incomplete. Despite its length, the nature and scope of the undertaking virtually ensure that the bibliography does not include all legal writing professors in the country. Further, the list provides only a snapshot view of the publications of current or recent legal writing professionals. It does not include the scholarship of individuals who, for various reasons, had left the field before entries were solicited. Also, entries have not been updated for any who left the field during the project. Finally, since scholarly work is ongoing, the entries for some authors will have become incomplete by the time this Article appears in print. Entries for legal writing professors who are not members of LWI or ALWD are almost certainly incomplete since requests for updates have been made only through the listservs of those two organizations.

Also, the bibliography will not help answer some kinds of questions. One cannot readily discern trends in scholarship by legal writing professors since there is no earlier database to support a comparison. One cannot draw useful inferences about average productivity levels because the bibliography does not distinguish between professors new to the field and professors who have been teaching legal writing for twenty or more years. Nor can one draw useful inferences about the number of mature scholars be-

---

15 The bibliography also does not reflect the greater-than-normal teaching loads of most legal writing professors, so meaningful comparisons to productivity levels for casebook faculty members are impossible.
cause the field is nascent and because, historically, institutional policies have artificially increased the turnover in the field. And since the list does not attempt to track law school graduation dates, one cannot accurately subtract publications written before law school graduation. Despite these limitations, the bibliography does provide important information about scholarship by legal writing professors and the scholarship about legal writing topics.

Among this important information is the comparison between the number of law review articles about legal writing topics and the number about non-legal writing topics. The bibliography reveals that approximately 75% of the law review articles legal writing professors have published are about topics in areas other than legal writing, while only approximately 25% are about legal writing topics. Even using the broad definition of legal writing scholarship described below, most of what legal writing professors have published in the traditional venues for legal scholarship is outside the field.

While the bibliography does not provide evidence of the reasons for this perhaps surprising result, a number of factors may contribute. Some entries include publications written before the author began to teach legal writing. Some entries may have been written soon after the transition out of practice and may deal with a topic area in which the author had developed an expertise while in practice. Also, a number of legal writing professors maintain more than one area of expertise, just as do other law professors. Naturally, law professors with several areas of expertise can be

---

16 Although law schools recognized the need for legal writing courses as early as the 1950s, it is only over the last fifteen years that the “graduate student or young associate” model has been replaced by the “full time professional” model. Maureen J. Arrigo, Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs, 70 Temp. L. Rev. 117, 134, 144–45 (1997) (citing Allen Boyer, Legal Writing Programs Reviewed: Merits, Flaws, Costs, and Essentials, 62 Chi.-Kent L. Rev. 23 (1985)). One old staffing model involved full-time teachers but imposed a limit of one to three years on the number of years a teacher was permitted to teach the course. That staffing model has now been discarded in most law schools. Terrill Pollman, Building a Tower of Babel or Building a Discipline? Talking about Legal Writing, 85 Marq. L. Rev. 887, 912–913 (2002). Despite the marked trend toward more professional programs, turnover may have remained a problem for some time. One survey reported that in forty-five out of eighty-five schools, legal writing professionals stayed three years or less. J. Christopher Rideout & Jill J. Ramsfield, Legal Writing: A Revised View, 69 Wash. L. Rev. 35, 38 n. 8 (1994). Today, staffing models that force legal writing faculty members to leave the position after a set number of years have all but died out. The results of the LWI-ALWD 2005 Survey indicate that, of 119 schools responding, 105 (88%) impose no cap on the number of years a legal writing teacher can remain in the position. Supra n. 4, at question 66.

17 Infra nn. 53–61 and accompanying text.
expected to write in those other areas as well. Undoubtedly, the nascency of the field is a significant factor too. Only in recent years has legal writing begun to develop as an academic field. Today, most law schools have discarded outmoded staffing models in favor of full-time professors with no arbitrary limits on the number of years those professors are permitted to teach the course.\textsuperscript{18} Therefore, for the first time in the history of legal education, the field of legal writing can begin to develop a critical mass of experienced scholars engaged in the serious and important work of developing a vision of legal writing scholarship.\textsuperscript{19}

These factors alone, however, cannot account for the number of non-legal writing topics included in the bibliography. Another more problematic factor—antipathy toward topics relating to legal writing—most likely is at play. Some law faculties tell their legal writing professors that legal writing articles will not be considered for promotion and tenure. Even if a law school does not have a formal policy, faculty mentors may discourage their legal writing colleagues from writing in the author’s own area, predicting that legal writing topics will be discounted. For instance, testimony before the American Bar Association’s Section of Legal Education and Admissions to the Bar Standards Review Committee demonstrated that some legal writing professors have been advised not to write on legal writing topics.\textsuperscript{20} Even without individualized advice,
legal writing professors almost certainly will choose topics with an “internal scholarly jury” in mind. Legal writing professors may choose to avoid risk by refraining from writing in their own discipline.

One must ask whether a policy precluding or discouraging legal writing articles makes sense. Would a law school promulgate a policy that refuses to count torts articles written by a torts professor? Would a law school require the torts professor to write instead in someone else’s field? Contracts, perhaps? And would the law school then evaluate the torts professor’s contracts article against the articles written by professors who actually teach contracts? Such a counterintuitive policy should require a compelling justification.

We speculate that three primary reasons account for the resistance to legal writing topics. First and foremost, other faculty members may misunderstand the content of a modern legal writing course, not realizing its breadth and depth, and especially not realizing the intellectual content that underlies the course coverage. When faculties think of legal writing, they may think of classes on the passive voice and citation form. In fact, technical matters make up a relatively small percentage of most legal writing courses today. Rather, as we discuss in later Sections, legal writ-

---

21 See Julius Getman, The Internal Scholarly Jury, 39 J. Leg. Educ. 337, 337 (1989) (“One important but rarely discussed technique by which legal scholars shape their work is what may be referred to as the ‘internal scholarly jury.’ The jury is made up of those people whom we imagine reading our work and whose presumed reactions of pleasure or disappointment shape our decisions about such things as topic, approach, method of analysis, and materials.”).

22 These suspicions are borne out when legal writing professors speak to each other at conferences and on listservs. The same phenomenon has been noted with regard to clinical scholarship. See Richard A. Boswell, Keeping the Practice in Clinical Education and Scholarship, 43 Hastings L.J. 1187, 1191 (1992); Peter Toll Hoffman, Clinical Scholarship and Skills Training, 1 Clin. L. Rev. 93, 106–107 (1994); Peter A. Joy, Clinical Scholarship: Improving the Practice of Law, 2 Clin. L. Rev. 385, 390 (1996).

The consequences of a constraining tenure process extend well beyond the period of the process itself. As Duncan Kennedy has observed, “Five years of ‘being good’ on probation, subject to the notorious arbitrariness of the promotion process, chills all kinds of divergent thinking, too often forever (the face becomes the mask).” Introduction, 73 UMKC L. Rev. 231, 233 (2003).

23 An informal survey of the legal writing professors at our own schools indicates that technical matters make up less than 15% of the typical legal writing course.
ing courses cover the role and function of the judicial system, common law analysis, statutory interpretation, forms of legal reasoning, case synthesis, structural paradigms, and other rich and complex subjects.\(^{24}\)

Further, most schools offer advanced legal writing electives that expand and deepen the coverage of the required courses.\(^{25}\) A recent advanced legal writing text, *Advanced Legal Writing: Theories and Strategies in Persuasive Writing*,\(^{26}\) can serve as an example of coverage in an advanced course. Professor Smith’s entire text is devoted to such subjects as the cognitive dimensions of illustrative narratives; a multidisciplinary study of the functions of literary references; principles of classical rhetoric; the functions of metaphor and simile; and the ethics and morality of advocacy.\(^{27}\) Many casebook faculty members would be surprised to learn that a legal writing course syllabus can look like this table of contents.\(^{28}\)

Second, some legal writing topics rely on sources from such disciplines as rhetoric, literary criticism, composition theory, cognitive psychology, and philosophy. Thus, these topics fall within a somewhat controversial category of scholarship—interdisciplinary scholarship. Law faculty members are divided about the value of interdisciplinary scholarship. Some consider it an exciting and promising scholarly development,\(^{29}\) while others are less inclined to welcome its reliance on sources outside the law or its emphasis on theory.\(^{30}\) An interdisciplinary legal writing topic, like any other

\(^{24}\) Ralph L. Brill et al., *Sourcebook on Legal Writing Programs* 5 (ABA 1997).


\(^{27}\) Id. at xi–xx.

\(^{28}\) Old understandings of the content of the field largely account for the academy’s historic undervaluation of legal writing as a part of the teaching curriculum as well. Some faculty members today still operate out of these older attitudes, and so may allow a habitual response to the field to distort their judgment. A more accurate understanding of the content of a legal writing course is critical not only to questions of scholarship but also to questions of curriculum and institutional status of legal writing faculty members.


interdisciplinary topic, may be subject to this larger scholarly debate.

Third, many law schools have not yet settled the question of whether legitimate legal scholarship can include sophisticated and rigorous analyses of pedagogy or penetrating critiques of institutional practices.31 Since some legal writing topics fall within these controversial categories, those topics may be considered risky as well.

In his carefully balanced article, Dean Edward Rubin, at Vanderbilt University School of Law, observes that peer evaluation of scholarship functions as a gatekeeper, setting the boundaries of a discipline.32 He reminds us that the evaluation of scholarship is an exercise of power that “determines which . . . groups are excluded or included, marginalized or empowered.”33 These decisions will, over time, limit the intellectual reach of the entire discipline to only what we can now envison.34 So the stakes of our decisions are high. We should not lightly exclude from our definition of permissible scholarship an emerging field of study, for to do so is to reject out-of-hand all potential insights long before we can predict their nature or significance.

In the remainder of this Article, we analyze the propositions usually offered to justify institutional resistance to scholarship on legal writing topics. Two preliminary steps will facilitate the discussion, however. First, we should remind ourselves of the academy’s normative understandings of the values and functions of scholarship. Second, we must clarify the meaning of the term “legal writing topic.”

IV. THE JUSTIFICATIONS FOR SCHOLARSHIP

Law schools devote substantial resources to the production of legal scholarship. As Banks McDowell has observed,

There are large economic costs—support for the ever-growing host of law reviews, research grants, research collections of law libraries, and compensation for student research assistants. There are time and opportunity costs—the hours that faculty

31 See infra nn. 161–184 and accompanying text.
33 Id.
34 See id. at 894.
spend on scholarly research and writing leave less time available for teaching, counseling students, and engaging in university and community service. Finally there are substantial psychic costs to professors who worry about the quality and quantity of their writing.\textsuperscript{35}

The lost time and energy for teaching and counseling students have even caused some to question the value of the entire enterprise.\textsuperscript{36}

We do not agree that institutional and personal resources devoted to scholarship should be invested elsewhere. But because scholarship costs are indeed sobering, law faculties must consider seriously the values served and the purposes achieved by that investment. If law schools invest so much in scholarship, we have an obligation to the profession and to our students\textsuperscript{37} to secure the most value possible for that investment and to ensure that we are serving multiple interests and audiences.\textsuperscript{38}

One of the most important of these interests is the advancement of knowledge for its own sake. Universities have a unique obligation to advance human knowledge. We owe that obligation not only to individual legal constituencies like judges and lawyers, but also, and we hope not to fall victim to grandiosity here, to humanity itself. We refer to the fundamental scholarly urge to understand—to find undiscovered information, to identify unrealized effects, to uncover deep structures, to make new connections or draw new parallels—in short, “to understand as fully and as fundamentally as possible.”\textsuperscript{39}

Another commonly recited value of scholarship is the enhancement of teaching.\textsuperscript{40} Scholarship may enhance teaching if it

\textsuperscript{35} McDowell, supra n. 30, at 265.

\textsuperscript{36} See e.g. John Elson, The Case against Legal Scholarship or, If the Professor Must Publish, Must the Profession Perish? 39 J. Leg. Educ. 343 (1989).

\textsuperscript{37} Students bear a significant portion of the expense and burden of institutional focus on scholarly production. See McDowell, supra n. 30, at 265; see generally Elson, supra n. 36.

\textsuperscript{38} McDowell identifies at least nine possible audiences for legal scholarship: “(1) legal academics, (2) other academics, (3) judges, (4) legal specialists, (5) general practitioners . . . , (6) law students, (7) students from the rest of the university interested in law as it relates to [other disciplines], (8) legislators, and (9) the general public.” McDowell, supra n. 30, at 261.

\textsuperscript{39} Id. at 270; see also Stephen Carter, Academic Tenure and “White Male” Standards: Some Lessons from the Patent Law, 100 Yale L.J. 2065, 2080 (1991) (“The purpose of scholarship is to increase human knowledge. The corollary is that the greater the degree of the contribution to human knowledge, the greater the value of a particular scholarly work. Any test for scholarly quality, then, should rest on answering the question: Does this scholarship increase human knowledge, and if so, by how much?”).

\textsuperscript{40} See Ronald Benton Brown, A Cure for Scholarship Schizophrenia: A Manifesto for
expands the knowledge we can share with our students; if it becomes part of the text of a course;\textsuperscript{41} if it contributes to the moral education of our students;\textsuperscript{42} if it provides examples of excellence;\textsuperscript{43} or if it enhances our own analytical abilities.\textsuperscript{44}

Scholarship also provides a vehicle for improving the performance of legal decision makers.\textsuperscript{45} Part of the justification for law schools’ relatively low teaching loads is the obligation to assist judges and lawyers. Because law faculty members have the luxuries of time, an objective role, and significant institutional support, we can assist lawyers to analyze thorny problems or think more clearly and deeply about their own lawyering responsibilities. Legal scholarship should anticipate social change and recommend resolutions for emerging issues.\textsuperscript{46} Indeed, Dean Rubin maintains that this prescriptive role is the primary purpose of scholarship.\textsuperscript{47} As Dean Rubin explains,

\textquote[Dean Rubin]{[T]he scholar may not literally be addressing the decisionmaker, nor need a decisionmaker ever see the work in question . . . . The notion of a prescription addressed to a particular deci-}

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{42}] Anthony T. Kronman, \textit{Foreword: Legal Scholarship and Moral Education}, 90 Yale L.J. 955, 968 (1981) (A scholar’s pursuit of the truth can “preserve in his students an attitude of friendship, or goodwill, towards those who seek the truth and indeed toward the truth itself.”).
\item[\textsuperscript{43}] David L. Gregory, \textit{The Assault on Scholarship}, 32 Wm. & Mary L. Rev. 993, 1003 (1991) (“So why write? Fundamentally, the answer is a matter of vocation and ethics. The aspiration to excellence breeds excellence in students and in legal audiences.”).
\item[\textsuperscript{44}] \textit{Id.} at 999 (“Although scholarship as an intellectual pursuit is commendable for its own worth, that is not its raison d’etre in the professional law school. If professors do not engage in scholarship, they cannot fully foster critical analytical skills in their students, because their own skills will atrophy.”).
\item[\textsuperscript{47}] Rubin, \textit{supra} n. 32, at 903–904 (“The purpose of legal scholarship is most accurately described as prescription, or recommendation . . . . The entire field crackles with normativity . . . .”).
\end{itemize}
\end{footnotesize}
sionmaker describes the conceptual structure of the work, the way in which its arguments are formulated.48

The academy also has an obligation to speak truth to power.49 That obligation can require confronting government in the persons of judges, legislators, and governmental administrators. It can require confronting the profession in the persons of lawyers, judges, and institutional structures such as bar associations and law firms. And it can require confronting the structures and institutions of legal education as well, for who is more able to critique and improve the vital enterprise of legal education than those who know it best?

Finally, scholarship is a powerful vehicle for personal and professional transformation50 and for the sheer pleasure of doing a difficult task well.51 While an author’s personal and professional

48 Id. at 904.
49 David R. Barnhizer, Prophets, Priests, and Power Blockers: Three Fundamental Roles of Judges and Legal Scholars in America, 50 U. Pitt. L. Rev. 127, 172 (1988) (“Hans Morgenthau . . . claimed the intellectual was responsible for speaking ‘truth to power.’”). Barnhizer finds Arthur Schlesinger “most powerful” when commenting on Morgenthau:

The contemporary intellectual, in [Morgenthau’s] view, lived in a world that was distinct from, though potentially involved with, that of the politician. The intellectual . . . seeks truth; the politician, power. And the intellectual . . . can deal with power in four ways: by retreat into the ivory tower, which makes him irrelevant; by offering expert advice, which makes him a servant; by absorption into the machinery, which makes him an agent and apologist; or by “prophetic confrontation.”

Of the four modes of response, the last seemed to him most faithful to the intellectual’s obligation. The “genuine intellectual,” Hans Morgenthau wrote, “. . . must be ‘the enemy of the people’ who tells the world things it either does not want to hear or cannot understand.” The intellectual’s duty is to look “at the political sphere from without, judging it by, and admonishing it in the name of, the standards of truth accessible to him. He speaks, in the biblical phrase, truth to power.”

Id. at 172–173 (quoting Arthur Schlesinger, Jr., Intellectuals’ Role: Truth to Power? Wall St. J. 28 (Oct. 12, 1983) (quoting Hans Morgenthau)).

50 As one scholar said,

The task the course set me, then, was the direct analogue of Thoreau’s task: to write my way out of Concord, out of false and inauthentic forms of speech and thought, to a kind of Walden, to a voice and language of my own. Writing to me thus became a way of creating a voice with which to speak and be, with which to represent and transform my own experience.

White, supra n. 41, at 1030.

51 Another scholar said,

And of course, for all that, legal scholarship is also something that produces pleasure. I do not want to end this symposium on a note of pure Yellow-Book aestheticism, but I defy any of the symposiasts (and at least many of the readers) to deny that they’re also in the game . . . for those occasional moments
transformation and pleasure do not, alone, justify the resource expenditure for scholarship, this transformation and pleasure have their value for students, the profession, and the institutions we serve. The best faculties are composed of curious people, people who are constantly learning and adapting, people who are intellectually engaged with law, its study, and its practice. Scholarship is one of the best ways—perhaps the best way—to develop and maintain that kind of a faculty.

We join those who believe that these values justify the significant institutional and personal costs of scholarly production. But to claim these justifications, law faculties must take these underlying values seriously when defining acceptable scholarly topics and when evaluating individual scholarly efforts. Taken as a whole, the spectrum of scholarship we produce should serve these articulated values. If it does not, we cannot claim that legal scholarship justifies the enormous investment it requires.

V. WHAT IS A “LEGAL WRITING TOPIC”?\(^{52}\)

Most law professors would agree that the content of a particular field includes at least the topics covered by the texts commonly adopted for those courses.\(^{53}\) For instance, if a property professor is looking for a property topic on which to write, she may look first at the table of contents of a property text. If she finds the category “estates and future interests,” she can be fairly certain that a future interest topic is a property topic. She may write an article exploring a trend in future interests case law.\(^{54}\) She may write a

\[\text{Arthur A. Leff, Afterword, 90 Yale L.J. 1296 (1981).}\]

\(^{52}\) Some have rightly questioned the use of categories to label kinds of scholarship. See e.g. Leslie Espinoza, *Labeling Scholarship: Recognition or Barrier to Legitimacy*, 10 St. Louis U. Pub. L. Rev. 197, 206 (1991). We use the label “legal writing topic” for the purposes of the discussion in this article, but we use it reluctantly and provisionally. See also infra § VII.

\(^{53}\) The content of a legal field usually is broader and deeper than its course texts. Curricular constraints limit the breadth of coverage, and the course context limits depth. Much relevant material is more advanced or more theoretical than is appropriate for coverage in a law school course, though it is important for the development of scholars and teachers in the area.

\(^{54}\) See e.g. C. Dent Bostick, *Loosening the Grip of the Dead Hand: Shall We Abolish Legal Future Interests in Land?* 32 Vand. L. Rev. 1061 (1979); Jesse Dukeminier, *Perpetui-
more theoretical article analyzing the economic underpinnings of future interests.\textsuperscript{55} She may write about a technique for teaching future interests,\textsuperscript{56} or she may analyze the curricular resources law schools devote to teaching various property topics, including future interests.\textsuperscript{57} Our property professor has identified at least four categories of property topics: (1) the substance or doctrines of property; (2) the theories underlying property; (3) the pedagogy of the property class; and (4) the institutional choices affecting the teaching of property. Those four categories may be valued differently by her faculty colleagues, but they are all property topics.\textsuperscript{58} And they all serve, in one way or another, the purposes of scholarship, that is, they advance our understanding of the legal world in important ways. They develop new and important ideas and bring them to the people who need them—the legal academy, lawyers, and judges.

Applying this same methodology to the field of legal writing yields the same four categories. Just as in our property example, legal writing topics include those related to (1) the substance or doctrine legal writing professors teach; (2) the theories underlying that substance; (3) the pedagogy used to teach that substance; and (4) the institutional choices that affect that teaching.\textsuperscript{59} A brief ex-
ploration of each of these categories will clarify the scope of legal writing scholarship.60

A. Category One: The Substance or Doctrine of Legal Writing

The first category—the substance or doctrine of legal writing—includes course content fundamental to a legal writing course. Just as in our property example, course textbooks provide the best starting point for identifying this content. A review of legal writing textbooks demonstrates that this course content includes such basic legal topics as the roles and functioning of the judicial and legislative systems; the doctrine of stare decisis; precedential values and appropriate uses of legal authority; the major forms of legal reasoning; the principles of statutory construction; the ethical duties of legal writers; the standards of appellate review; and other doctrines relating to appellate procedure.61

Nor are legal writing textbooks alone in identifying this course content as basic to a legal writing course. The ABA’s Communication Skills Committee’s first articulated goal for a legal writing program is to “introduc[e] students to the fundamentals of the legal system: the structure of law-making bodies; the sources of law . . . ; the rules governing conflicts between those sources; and

60 For an initial understanding of legal writing scholarship, it is useful to think in terms of categories; but such artificial constructs do not reflect accurately the breadth of many of the articles we shall discuss. On closer inspection, one would find that many legal writing articles contain aspects of several or even all of the identified categories. For instance, no bright line divides category-one articles (articles on the substance of legal writing) and category-two (theoretical) articles. Many category-one articles do address theory, and most theoretical articles take a substantive point as their starting point. Many articles about substance and theory also discuss the pedagogical implications of the article’s thesis, and many primarily pedagogical articles include a significant substantive or theoretical component. Finally, many articles about institutional choices (category-four articles) deal with a substantive or theoretical misunderstanding that causes a misguided institutional choice.

interpretive canons for judging the meaning and weight of those sources.”62

Some of this legal writing course content can also arise in non-legal writing courses.63 For instance, in a property course, the case for the day may invite a discussion of some aspect of the judicial system. Another case the next week may invite a discussion of the concept of dicta. Periodically, the professor may invite consideration of some aspect of policy-based reasoning. But the property professor is unlikely to do more than offer a brief explanation of such concepts. Rarely does a property professor assign any reading material on the judicial system, dicta, or forms of legal reasoning such as statutory construction. It is even more unlikely that a property professor will hold students accountable for the material by, for instance, including it on the course examination. Further, a review of traditional case books demonstrates that these topics are not part of the identified course coverage and certainly are not treated in any intentional and comprehensive way.64

Indeed, the construction of most casebooks, at best, treats the precedential values of particular authorities as irrelevant.65 For example, consider the excellent text we each use for our property courses, Jesse Dukeminier and Jim Krier’s Property.66 Acquisition by capture is taught primarily by assigning Pierson v. Post67 (an 1805 case from the New York Supreme Court of Judicature, an early New York court that had both trial and appellate functions); Ghen v. Rich68 (an 1881 case from the federal trial court in Massa-

62 Brill et al., supra n. 24, at 5; see also id. at 15–19.
63 Non-legal writing professors sometimes write about legal methods topics such as these, and just as in the case of our property example, supra n. 56, such scholarly cross-fertilization is desirable.
64 Professor Brill has observed,
  Only some of these reasoning skills can be taught in doctrinal courses, and those that can be taught in doctrinal courses cannot be taught completely there. For example, although two or three consecutive cases in a casebook can be synthesized into a consistent doctrine on a particular issue, the synthesizing that lawyers typically do is more complicated. A typical problem in the practice of law might involve harmonizing half a dozen cases, all within the same jurisdiction, none of which expressly states the rule for which it stands, and several of which appear to come to inconsistent results.

Brill et al., supra n. 24, at 18 n. 12.
65 At worst, typical casebook construction inadvertently suggests that all authorities are equal.
67 3 Cai. R. 175, 2 Am. Dec. 264 (1805) (cited in Dukeminier & Krier, supra n. 66, at 19).
68 8 F. 159 (D. Mass 1881) (cited in Dukeminier & Krier, supra n. 66, at 26).
chusetts); and *Keeble v. Hickeringill*[^69] (a 1707 case from an English court of an unidentified level and not precisely on point). Note materials include a 1963 Mississippi case[^70], a 1954 law review article[^71], a 1950 case from the Seventh Circuit on which certiorari was denied by the United States Supreme Court[^72], and a 1975 treatise[^73]. Nowhere does this excellent text explain the vastly differing precedential values of each of these authorities. Nor need the property text cover this important subject, for the property student is also taking a legal writing class, and she is learning the principles of precedential values there.

Legal writing course content also includes analytical processes students are expected to use in all of their classes, but for which they receive serious and sustained instruction usually only in their legal writing class. Examples of these analytical processes include common-law rule formulation; the construction of analogies; the synthesis of related authorities; the use of rule-based or policy-based reasoning; and the principles of statutory interpretation.

Finally, legal writing substantive content includes topics usually missing from other courses—topics such as the major structural paradigms of legal analysis; rhetorical principles of persuasion; the characteristics of legal readers; the stages of the legal writing process; strategies for dealing with adverse facts; the impact and use of narrative principles; and the standards of appellate review[^74].

Just as in the property example above, articles about legal writing substance or doctrine (category one articles) analyze the


[^74]: Some, though certainly not all, of these topic areas relate directly to lawyering skills rather than to the more theoretical exploration of law and legal reasoning. The marginal relationship of theoretical scholarship to the practice of law has been roundly criticized, with perhaps the best known recent example being that of Judge Harry Edwards. Edwards, *supra* n. 30; see Robert W. Gordon, *Lawyers, Scholars and the Middle Ground*, 91 Mich. L. Rev. 2017, 2096 (1993); Judith S. Kaye, *One Judge's View of Academic Law Review Writing*, 39 J. Legal Educ. 313, 320 (1989). To the extent that law faculties take that criticism to heart, these more skills-oriented topic areas can build useful bridges between the academy and law practice. Faculties less interested in serving the practice, however, should recognize many theoretical topics among those taught most often in legal writing classes.
application of a doctrine or other topic, exposing questions and proposing answers. For instance,

1. A legal writing article might explore the effect of raising and deciding appellate cases *sua sponte*, without first allowing the parties to brief the dispository issue.\(^75\)

2. Another article might analyze the practice of manufacturing a final judgment in order to obtain appellate review\(^76\) or might propose a method for reducing intercircuit conflicts.\(^77\)

3. An article might explore fiction-writing strategies lawyers can use to construct a persuasive fact statement.\(^78\)

4. Another article might demonstrate the inadequacy of researching only legal sources when both the legal academy and law practice have long since rejected a formalistic understanding of the law in favor of a broad legal realism.\(^79\)

5. Yet another article might explore how bias typically appears in legal language and how it can infect legal analysis and argument.\(^80\)

6. Another might propose the use of object-oriented analysis and design to improve legislative drafting\(^81\) or draw on


methods of statutory interpretation, literary criticism, and musicology to propose a resolution to methodological disputes over statutory interpretation.\textsuperscript{82}

7. Another article might identify the myths and realities surrounding the “plain English” movement,\textsuperscript{83} or chronicle the growing acceptance of electronic communication within the American court system and use current research in rhetoric, cognition, and computer usability to suggest guidelines for using electronic communication with courts.\textsuperscript{84}

8. Still another article might explore the extent to which a lawyer or a court legitimately can rely on non-legal materials in support of policy rationales.\textsuperscript{85}

All of these articles are legal writing articles because they deal with the substantive content of the typical legal writing course, and all of these articles serve the purposes of legal scholarship. They advance knowledge generally; they enhance teaching, often demonstrating a close relationship between the scholarly topic and actual course content; and they improve the performance of legal decision-makers. These legal writing topics directly improve the performance of judges and lawyers by improving their ability to reason effectively, research thoroughly, and communicate clearly.

Some of these topics fulfill the purposes of scholarship in the most traditional of ways. Many are examples of traditional analyses of clearly legal issues, such as topics of appellate procedure, uses of precedent, statutory construction, or professional responsibility. Other category one topics explore new territory, using insights from other disciplines to deepen our understanding of important issues of legal analysis. These examples of grounded interdisciplinary scholarship are directly useful to legal decision-makers, offering new insights to improve the performance of lawyers and judges. They offer the advantages of breaking new ground and expanding the scope of our thinking about law and the


\textsuperscript{84} Maria Perez Crist, \textit{The E-Brief: Legal Writing for an Online World}, 33 N.M. L. Rev. 49 (2003). Professor Crist teaches legal writing at the University of Dayton School of Law.

profession, while avoiding the concern of being too theoretical to be relevant to most legal audiences.

**B. Category Two: The Theoretical Foundations of Legal Writing**

All legal fields rest upon theoretical foundations, and many can claim theoretical ties to other disciplines such as economics, history, political science, statistics, psychology, environmental science, and philosophy. Legal writing topics, too, have theoretical foundations. Those foundations include constitutional theory, legal methods concepts, jurisprudence, composition theory, philosophy, ethics, logic, political theory, rhetoric, literary theory, linguistics, cognitive psychology, narrative theory, comparative law, and legal history. For instance,

1. A legal writing article might challenge the use of unpublished and depublished opinions as a serious breach of traditional understandings of the common law system, resulting in a legal system much closer to a civil law system.  
2. Another article might explore the relationship of narrative to rule articulation, analogy, and policy-based reasoning.  
3. An article might use post-modern philosophy to critique common approaches to the teaching of legal writing, or

---

86 One strand in the conversation about legal scholarship laments the difficulty of saying anything both important and new. See e.g. Christopher D. Stone, supra n. 58, at 1151. Speaking of treatise-writing, Professor Stone observes that “much of the most challenging, creative, and rewarding work . . .—the supplying of insight and system—has largely been done in the major common-law fields.” Id.; see also Geoffrey R. Stone, Controversial Scholarship and Faculty Appointments: A Dean’s View, 77 Iowa L. Rev. 73, 74 (1991) (“Quite frankly, it is difficult to make a useful contribution at the cutting edge of legal scholarship. Sometimes it seems that everything worth saying has been said.”). For a largely unmined field like legal writing, however, the most important and most exciting work—the work of unearthing patterns, making broad connections, unmasking misconceptions—remains to be done.

87 See e.g. Edwards, supra n. 30 (discussing criticisms of overly theoretical scholarship).


90 Joel Cornwell, Languages of a Divided Kingdom: Logic and Literacy in the Writing Curriculum, 34 John Marshall L. Rev. 49 (2000) [hereinafter Languages]; Joel Cornwell,
discuss the relationship of emotions to the more rational aspects of legal decision-making, showing that they work together to construct legal meaning.\footnote{Peter Brandon Bayer, Not Interaction but Melding—The "Russian Dressing" Theory of Emotions: An Explanation of the Phenomenology of Emotions and Rationality with Suggested Related Maxims for Judges and Other Legal Decision Makers, 52 Mercer L. Rev. 1033 (2001). Professor Bayer teaches legal writing at the William S. Boyd School of Law at University of Nevada, Las Vegas.}

4. Another article might compare the American common-law system to other common-law systems, explaining how the American system became uniquely writing-centered and why the American reliance on writing results in a more effective and trustworthy system.\footnote{Suzanne Ehrenberg, Embracing the Writing-Centered Legal Process, 89 Iowa L. Rev. 1159 (2004). Professor Ehrenberg teaches legal writing at Chicago-Kent College of Law.}


8. The theoretical possibilities of legal writing topics are virtually limitless.

All of these articles serve the purposes of legal scholarship. They advance knowledge about the law and the profession. Many of them expressly discuss the application of theory to the profession or to teaching, and thus they serve the purposes of improving teaching and improving the profession. Other examples are highly theoretical, but as Professor Rubin reminds us, the scholar’s work...
can serve legal decision-makers even if it is not addressed to that audience, indeed, even if it is never seen by that audience.\textsuperscript{97} Some of today’s best-known legal scholarship, though theoretical in nature,\textsuperscript{98} serves legal decision-makers in just this way.

\textbf{C. Category Three: The Theory and Practice Appropriate to the Teaching of Legal Writing}

Like other teaching areas, legal writing has been enriched by articles about pedagogy. In fact, the pedagogical conversation among legal writing professors may be more vibrant than that in any other area of the legal academy. Since much of the content of a legal writing course is focused on the teaching of a process, it is natural that legal writing professors would focus scholarly attention on pedagogical issues. Further, many articles about pedagogy take as their starting point a substantive (category one) or theoretical (category two) point. Examples of possible pedagogical topics are ample:

1. An article might analyze aspects of the legal environment of law teaching, such as the application of the ADA to learning disabled law students,\textsuperscript{99} or the tension between liability for peer-on-peer harassment under Title IX and students’ rights of free expression under the First Amendment.\textsuperscript{100}

2. Another article might explore the effects on women and minorities of particular institutional environments and common classroom practices.\textsuperscript{101}

\textsuperscript{97} Rubin, \textit{supra} n. 32, at 904.

\textsuperscript{98} See \textit{e.g. infra} nn. 148–158 and accompanying text (explaining that theoretical topics related to legal writing have long been acceptable for legal scholarship).


\textsuperscript{100} Susan Hanely Kosse, \textit{Student Designed Home Web Pages: Does Title IX or the First Amendment Apply?} 43 Ariz. L. Rev. 905 (2001). Professor Kosse teaches legal writing at the Louis D. Brandeis School of Law at the University of Louisville.

3. Other articles might present a study of the effectiveness of various academic support techniques or critique present practices of teaching legal research.

4. Another article might analyze how the academic discipline of legal writing has developed its doctrine by developing a common professional language.

5. Still other articles might explore the application of various principles of learning theory to the law school classroom.

6. An article might draw on emerging contextualist work in cognitive research to critique existing clinical experiential theory.

7. Or an article might apply writing process principles to the setting of the law school seminar paper.

reigning pedagogies of legal writing and describing the linguistic model used to gauge how teaching law as language marginalizes outsider voices). Professor Baker teaches legal writing at Northeastern University School of Law. Professor Fischer teaches legal writing at the Louis D. Brandeis School of Law at the University of Louisville. Professor Stanchi teaches legal writing at Temple University James E. Beasley School of Law.

102 Laurel Currie Oates, Beating the Odds: Reading Strategies of Law Students Admitted through Special Admissions Programs, 83 Iowa L. Rev. 139 (1997) (presenting a study exploring perceived differences in the ways academically challenged students read judicial opinions). Professor Oates teaches legal writing at Seattle University School of Law.

103 McDonnell, supra n. 79; Terry Jean Seligmann, Beyond “Bingo!": Educating Legal Researchers as Problem Solvers, 26 Wm. Mitchell. L. Rev. 179 (2000); Marilyn Walter, Retaking Control over Teaching Research, 43 J. Leg. Educ. 569 (1993). Professor McDonnell teaches legal writing at Pace University School of Law. Professor Seligmann teaches legal writing at the University of Arkansas School of Law, Fayetteville. Professor Walter teaches legal writing at Brooklyn Law School.

104 Terrill Pollman & Judith Stinson, IRLAFARC! Surveying the Language of Legal Writing, 56 Me. L. Rev. 239 (2004) (presenting a study using correlation analyses and two-sample t-test analyses to analyze the degree to which legal writing professors employ or understand a common set of terms). Professor Pollman teaches legal writing at the William S. Boyd School of Law at University of Nevada, Law Vegas. Professor Stinson teaches legal writing at the Arizona State University College of Law.


8. An article might analyze the use of the Socratic method in law schools in general and in writing courses in particular.108

9. An article might review composition theory’s analysis of the relationship between speech and writing and suggest ways in which that analysis informs the teaching of writing in law school.109

10. Another article might argue that certain principles of rhetoric and literary criticism might serve as the foundations for a coherent philosophy of law study;110 or use principles of rhetorical criticism to argue that legal writing and first-year casebook courses should be viewed as one ongoing rhetorical activity;111 or examine possible definitions of legal writing and their impact on the effectiveness of teaching and learning in the academy;112 or identify the rhetorical roots of legal reasoning and advocate that law schools use classical rhetorical concepts and vocabulary to teach deductive and analogical reasoning.113

11. Another article might compare the historical development and the pedagogical and jurisprudential foundations of le-

---


108 Mary Beth Beazley & Mary Kate Kearney, Teaching Students How to “Think Like Lawyers”: Integrating Socratic Method with the Writing Process, 64 Temple L. Rev. 885 (1991). Professor Beazley teaches legal writing at Moritz College of Law at The Ohio State University. Professor Kearney taught legal writing at Vermont Law School until the two-year cap on her position expired. She now teaches at Widener University School of Law, Harrisburg.


110 Cornwell, Languages, supra n. 90. Professor Cornwell teaches legal writing at The John Marshall Law School in Chicago.


112 Rideout & Ramsfield, supra. n. 16. Professor Rideout teaches legal writing at Seattle University. Professor Ramsfield taught legal writing at Georgetown University Law Center for many years, and now teaches legal writing at University of Hawaii at Mānoa, William S. Richardson School of Law.

gal writing courses and casebook courses, demonstrating how each kind of course complements the other. 114

12. An article might use research in cognitive science, psychology, psychotherapy, composition theory, and critical discourse analysis to explore both the role of student conferences and the institutional and individual constraints that may impede learning. 115

The value of scholarship about pedagogy is the subject of debate within the legal academy, 116 but a compelling case can be made for including pedagogical analysis as part of legal scholarship. Judge Harry Edwards begins his well-known critique of modern legal scholarship 117 with an epigram from Felix Frankfurter: “In the last analysis, the law is what the lawyers are. And the law and the lawyers are what the law schools make them.” 118 He returns to Frankfurter again in the article’s conclusion and argues for “practical scholarship and pedagogy.” 119 He writes “I earnestly believe that much of the growing disarray that we now see in the profession is directly related to the growing incoherence in law teaching and scholarship.” 120

Judge Edwards is writing primarily to criticize highly theoretical scholarship not readily usable by the profession, but his criticism also says something important about taking seriously our role in “making lawyers.” Tellingly, in this same article, Judge Edwards decries inadequate law school attention to legal writing and asserts that “far too few law professors recognize the gravity of the problem.” 121 He notes problems with matters of style and presentation in the practitioner writing he sees, but observes that “[t]he


117 Edwards, supra n. 30.


119 Edwards, supra n. 30, at 77.

120 Id. at 75.

121 Id. at 63–65.
more serious problem is . . . lack of depth and precision in legal analysis.”

If Felix Frankfurter and Judge Edwards are right that the lawyers we “make” define the future of the law, then surely pedagogy should not be excluded from our close, critical scholarly examination. Careful analysis of legal pedagogy serves all the identified values of scholarship. It identifies and proposes solutions for a serious legal problem; the problem of bad legal writing with its attendant effects on clients and on the legal system. It improves the performance of tomorrow’s legal decision-makers far more directly than can a doctrinal article about a particular, often esoteric legal issue or a highly theoretical article addressed largely to other highly theoretical scholars writing in the same specialized field. It advances knowledge about one of our own professions, the profession of teaching. And given the marginalized status of legal writing programs and faculty members at many schools, scholarship about legal writing pedagogy often must speak truth to power.

When we talk about scholarship, we should say what we mean, and we should keep our stories straight. The claim that scholarship enhances teaching is one of the primary justifications for devoting so many institutional and personal resources to the scholarship project. It is difficult to square that claim with institutional policies declaring pedagogy categorically off limits as an area of scholarly inquiry. If serious scholarly treatment of law

122 Id. at 64–65.
123 We do not claim that all publications about pedagogy should be considered scholarship. Rather, we claim that articles about pedagogy, like other kinds of articles, should be taken seriously enough to be evaluated according to their merit.
124 Scholarship about better teaching to a broad group of students is especially important now that law schools no longer dismiss large percentages of their entering classes for academic reasons. See Beasley, supra n. 14, at 30 nn. 5–7.
125 “The life of a law teacher . . . is dominated by two activities . . . teaching and scholarship . . . Teaching and scholarship are the principal activities of the academic lawyer, the activities that reflect his primary professional interest and capabilities, and the institution in which he lives his professional life is deliberately organized to promote these activities. Teaching and scholarship are the raisons d’être of the university.” Kronman, supra n. 42, at 957.
126 Supra nn. 41–45 and accompany text; see also Mary Kay Kane, Some Thoughts on Scholarship for Beginning Teachers, 37 J. Leg. Educ. 14, 14 (1987); Polden, supra n. 46, at 1–5.
127 Of course, one might argue that rigorous inquiry about pedagogy is valuable but different from “scholarship.” The argument would go, “Professors should write ‘real’ scholarship, and if they write about pedagogy in their spare time, that’s good.” The problem with this argument should be obvious. In the press of other obligations, most professors struggle to find time to write at all. Writing requires stealing time—a lot of time—away from student advising, from sponsoring co-curricular activities, from alumni events, from speaking en-
teaching is outside the boundary of acceptable scholarship, we cannot claim truthfully that we write to improve our teaching.

**D. Category Four: The Institutional Choices Affecting the Teaching of Legal Writing**

The final category of scholarship we have identified includes articles critiquing the institutional choices affecting the teaching of legal writing. It would be a mistake, however, to assume that category four articles do not deal with the substance or theory of legal writing. Many of these articles take as their starting point a substantive or theoretical misunderstanding that causes a misguided institutional choice. Certainly, misguided institutional choices can severely impede pedagogy. For instance,

1. An article might explore Rousseau’s speech/writing hierarchy as it is manifested within the structures of the legal academy and use a deconstructionist critique to show the artificiality of separating speech and writing.  

2. Another article, after comparing the pedagogical and jurisprudential foundations of legal writing and casebook courses, might identify and challenge some of the reasons for the anti-intellectual bias against writing courses.  

3. An article might apply principles of rationality, academic ethics, and the cardinal legal standards of the Equal Protection Clause to the disparate treatment and adverse employment conditions sometimes imposed on writing professors.

---


129 Romantz, *supra* n. 114.  

130 Peter Brandon Bayer, *A Plea for Rationality and Decency: The Disparate Treatment*
4. Other articles might present empirical studies to show the disparate impact on women caused by institutional policies affecting legal writing faculty members, or present and analyze survey results about staffing models, teaching loads, curriculum and course content, institutional status, and other aspects of legal writing programs.

5. An article might argue for institutional support for scholarship by legal writing professors or for teaching loads that include more than one area.

6. Another article might explore the trend toward tenure-track legal writing positions and the tenure criteria relevant to them.

7. Or after examining the uniquely writing-centered American common law system, an article might advocate for an enhanced role for writing programs in legal education.

Articles about institutional choices serve all of the identified values of legal scholarship as well. They advance individual and institutional knowledge; they directly enhance teaching; and they often powerfully transform both people and law school programs.

---


133 Liemer, supra n. 5. Professor Liemer teaches legal writing at Southern Illinois University School of Law.


136 Ehrenberg, supra n. 92, at 1195–1199.
more than any other kind of scholarship, articles about institution’s choices serve the crucial function of speaking truth to power. In the final analysis, that function will have more cumulative impact on legal education, and therefore, on the future of the legal profession, than almost any other kind of scholarship.

Further, we in the academy claim that critiques of other institutions—courts, legislatures, agencies—fulfill a fundamentally important duty of the professoriate. If we value our role as critics of others, we can hardly reject our role as critics of ourselves. As Professor Rubin has observed, the very act of evaluating another’s work is fundamentally self-critical. The evaluative process places the criteria, and therefore, the norms of the discipline itself, at issue. This self-testing is even more important and even more effective when the subject of the evaluation is itself an institutional critique. We should hesitate to banish prophetic voices within our own ranks. Whether the voices are “assimilated” or “rebellious,” we need to hear what they have to say.

VI. RATIONALES USED TO DISCOUNT LEGAL WRITING TOPICS

Even a casual look at the bibliography shows that legal writing professors are writing substantive, theoretical, and pedagogical articles, as well as political articles critiquing institutional choices. In this Section, we examine and respond to claims used to discount topics in all of these areas.

---

137 See e.g. David A. Westbrook, Pierre Schlag and the Temple of Boredom, 57 U. Miami L. Rev. 649, 652 (2003). Westbrook notes, “In this way, law professors fulfill a very traditional notion of their duties as public intellectuals—the task of the professor is to improve the polity through criticism.” Id. at 652–653. He goes on to say that Pierre Schlag has turned this criticism back onto the legal academy with great success. Id.

138 Rubin, supra n. 32, at 889.

139 “The evaluation of another’s work involves a confrontation with it that provides one of the best opportunities to develop an awareness of one’s own work and the beliefs that underlie it.” Id. at 889.


141 We focus here on claims about the topics themselves, not claims about the quality of a particular article. To withstand logical challenge, claims discounting a particular topic must presume an article in which the author has achieved all the topic would permit. Otherwise, the claim is not addressed logically to the topic but rather to the sufficiency of a particular effort.
A. Myth #1: Legal Writing Topics Do Not Qualify as Scholarship

One rationale sometimes offered to support a policy discounting legal writing topics is the sweeping generalization that writing on legal writing topics does not constitute scholarship. Even assuming the possibility of a static and universal definition of “legal scholarship,” this assertion cannot sustain reasoned analysis.

First and at the very least, the assertion is overbroad. Recall the topics in categories one and two described above, such as the roles and functioning of the judicial and legislative systems; the doctrine of stare decisis; precedential values and appropriate uses of legal authority; the forms of legal reasoning; the principles of statutory construction; relevant ethical duties of lawyers; the standards of appellate review; and other doctrines relating to appellate practice. One can hardly deny that these topics qualify as subjects of legal scholarship. Some of them have been well established as subjects of legal scholarship for many years. Consider, for example, such classics as Judge Benjamin Cardozo’s *The Nature of the Judicial Process*,[143] Karl Llewellyn’s *Bramble Bush*[144] or his famous “thrust and parry” article;[145] Edward Levi’s classic book on legal reasoning;[146] David Mellinkoff’s *The Language of the Law*;[147] or Robert Cover’s famous Forward to the Supreme Court 1982 Term, *Nomos and Narrative*.[148]

Other kinds of legal writing topics are more recent threads of the legal conversation, but many have been received by the academy with fanfare.[149] Consider, for instance, Steven Winter’s book on the role of metaphor in law;[150] Tony Amsterdam and Jerome

---

Bruner’s book, *Minding the Law*;\(^{151}\) James Boyd White’s book on law as translation;\(^{152}\) Susan Bandes’s anthology on the role of emotion in law;\(^{153}\) Lash LaRue’s book on the Constitution as narrative;\(^{154}\) Fred Schauer’s book on rule-based reasoning;\(^{155}\) Peter Brooks and Paul Gewirtz’s anthology on narrative and rhetoric in the law;\(^{156}\) or Lawrence Solan’s book applying generative linguistic theory to the issues of statutory construction.\(^{157}\)

To exclude all legal writing topics from the category “legal scholarship” would require excluding the work of such renowned scholars as these and many more. Yet, unless the work of these well-known legal scholars is excluded from the category of legal scholarship, no reasoned justification can be advanced to discount all legal writing topics. The only other possible explanation would be that topics count as legal scholarship when Professors Cover, LaRue, Bandes, Schauer, Solan, White, and Winter write about them, but not when legal writing professors write about them.\(^{158}\)

Categorization and Imagination in the Mind of Law.” (The proceedings of that conference can be found in volume 67, issue 4, of the *Brooklyn Law Review*.)


\(^{158}\) We cannot help but notice that virtually all of the well accepted, even nationally acclaimed publications about legal writing topics—that is, those whose place as part of legal scholarship is unquestioned even though they address topics covered primarily in the legal writing classroom—have been written by men. We also notice that the vast majority of the people who actually teach legal writing are women. Stanchi, supra n. 131, at 467 (“[A]n institutionalized and illegitimate status hierarchy operat[es] in American law schools. Like any status hierarchy, its boundaries are well defined and well enforced. . . . T)his hierarchy is gendered, with the lowest rank overwhelmingly composed of women and the highest rank overwhelmingly composed of men. The players in this status hierarchy are the faculties and
Certainly no one in the academy would advocate that we decide what is legal scholarship based on the identity of the author.\textsuperscript{159} Clearly, substantive or theoretical legal writing topics (articles in categories one and two) are and long have been well within the scope of acceptable, even admirable, legal scholarship.

Second, the question of whether an article about pedagogy or institutional practice (categories three and four) constitutes “real” scholarship is unrelated to whether the topic pertains to legal writing. The value of articles on pedagogy is the subject of an ongoing debate in the academy.\textsuperscript{160} Nothing in that debate, however, distinguishes whether the article addresses teaching methods for a casebook course,\textsuperscript{161} a seminar,\textsuperscript{162} or a legal writing course.\textsuperscript{163} Law schools will have to decide how to value such articles as Todd Rakoff’s \textit{The Harvard First-Year Experiment},\textsuperscript{164} Philip Kissam’s \textit{Seminar Papers},\textsuperscript{165} Scott Burnham’s \textit{Teaching Legal Ethics in Contracts},\textsuperscript{166} Cass Sunstein’s \textit{Risk Assessment and Resource Allocation by Law Students},\textsuperscript{167} and Leonard Riskin’s \textit{Mindfulness: Foundations of American Law Schools. At the top are the tenured ‘doctrinal’ professors, roughly 70 percent of whom are male; at the bottom are legal writing professors, roughly 70 percent of whom are female.”). We hope that the concept of “traditional” scholarship is not gender-related, but it may be. Professor Karin Mika observed a similar phenomenon in “traditional” constitutional scholarship. Karin Mika, \textit{Self-Reflection within the Academy: The Absence of Women in Constitutional Jurisprudence}, 9 Hastings Women’s L.J. 273, 305–306 (1998) (“However, the bulk of writings by female authors tend to appear in the context of a gender-related discussion. The majority of venerated constitutional law ‘scholars’ are overwhelmingly male. Although there were many prolific female authors in the Nineteenth century who wrote eloquently about contemporary issues, their work usually does not appear in our legal texts. This is, no doubt, because their work was not, and is still not, considered traditional legal scholarship that could be used in conjunction with the case method of study.”).

\textsuperscript{159} For an interesting related point, see Carter, supra n. 39, at 2066 (“[O]ne claim that seemed absolutely inadmissible is that either article might stand on its own. Evidently, there is no “on its own” any longer. Not only must one know the context, one must know the author. The more one knows about the author, the less work one has to do to evaluate the argument.”).

\textsuperscript{160} See supra sec. 5(C).


\textsuperscript{162} See e.g. Fajans & Falk, \textit{supra} n. 107.

\textsuperscript{163} See e.g. Linda L. Berger, \textit{A Reflective Rhetorical Model: The Teacher as Reader and Writer}, 6 Leg. Writing 57 (2000).


ational Training for Dispute Resolution. Whatever a law school decides about the value of pedagogical articles, clear-sighted and fair-minded assessment requires that articles on torts pedagogy, civil procedure pedagogy, seminar pedagogy, or legal writing pedagogy be treated the same way.

Similarly, debate over the value of articles critiquing the institutional practices of legal education is ongoing, but nothing in that debate distinguishes among topics challenging institutional practices based on race, gender, jurisprudential school, skills courses in general, or legal writing courses in particular. Whatever a law school decides about the value of articles on institutional practices, all rigorous articles critiquing institutional practices should be treated alike.

At some law schools, pedagogical or political articles may be counted as legal scholarship, and the relevant question is the quality of a particular article. Other law schools may take the opposite view, refusing to consider any pedagogical or political article, no matter what its intellectual rigor. But there is no basis for counting a pedagogical or political article about another subject area and not counting a similar article about legal writing.

In fact, most law schools that discount pedagogical or political topics probably apply that policy across the board, to all subject areas. Consider two recent articles, Teaching Civil Procedure through Its Top Ten Cases, Plus or Minus Two and Making Contracts Relevant: Thirteen Lessons for the First-Year Contracts Course. Each article has something important to say. The civil

169 Christopher D. Stone, supra n. 58, at 1165 (“[The law] involves continual explanation and justification. Justice requires that like cases be treated alike; analogies have to be sorted into those that fit and those that do not. Metaphors have to be kept within the bounds of judicious constraint.”).
171 Kevin M. Clermont, Teaching Civil Procedure through Its Top Ten Cases, Plus or Minus Two, 47 St. Louis U. L.J. 111 (2003).
procedure article applies schema theory to argue that civil procedure professors should give more attention to the subject’s landmark cases. The contracts article recommends a preventive law focus in the first-year contracts course.

Most law schools that would discount an article about legal writing pedagogy probably would discount these articles as well, at least for tenure and promotion purposes. At many schools, however, the articulation of those two decisions would differ. For the article about civil procedure pedagogy, faculty members would say that articles about pedagogy do not count as legal scholarship. They would not say that civil procedure articles do not count. For the article about legal writing pedagogy, however, faculty members are not likely to say that articles about pedagogy do not count. Instead, they are likely to say that legal writing articles do not count.

Similarly, consider an article on valuing diversity in hiring for doctrinal positions, such as Derrick Bell’s Diversity and Academic Freedom. If a law school has adopted a policy that discounts articles critiquing institutional practices, faculty members are likely to explain the problem with this racial critique of law school hiring and tenuring processes by saying that articles about law school politics do not count. They are not likely to say that articles about race do not count. If the article is about hiring practices affecting legal writing professors, however, those same faculties may justify discounting the article by explaining that it is about legal writing.

These differences in description constitute errors in categorization, perhaps prompted by a classic induction error—the erro-

---


174 See e.g. Levine & Stanchi, supra n. 4; Neumann, supra n. 131. Professors Levine and Stanchi teach legal writing at Temple University. Professor Neumann taught legal writing at Hofstra University.

175 “A category is a set of things . . . treated as if they were, for the purposes at hand, similar or equivalent or somehow substitutable for each other.” Amsterdam & Bruner, supra n. 151, at 20. Professors Amsterdam and Bruner point out, Acquiring and negotiating our categories is part of . . . learning . . . a profession . . . . Whether the categories deal with nearly universal human experience . . . or are found only in . . . legal digest headings[,] . . . we need to get them
neous assumption that legal writing articles are pedagogical or political. And since induction and classification are steps in the construction of analogies, these errors lead directly into errors of analogical reasoning. The article on civil procedure pedagogy is analogized to other articles on pedagogy, while the article on legal writing pedagogy is analogized to other (unknown but imagined) articles on legal writing topics. Essentially, the speaker is articulating the conclusion of an unspoken syllogism. The induction error occurs in the minor premise, but since the premises are unarticulated, the error is “smuggled” into the reasoning process. An examination of the actual categories of legal writing topics would expose the analogical error.

We in the academy have a special responsibility to take seriously our reasoning processes and to take care with our language. As Professor Cover explained, language is power. Our language creates and constrains the intellectual world we inhabit, and the world of legal scholarship is no different. The categorization error and the conclusion of the faulty syllogism produce a serious consequence—they exclude an entire subject area from academic exploration without offering a justification for the exclusion.

right both to make sense of the world and to communicate with one another about it.

That means we are always at risk that our categories may lead us astray. Indispensable instruments, they are also inevitable beguilers. To interrogate their uses and their dangers is a necessary part of legal studies, as it is of any preparation for considered thought and action.

Id. at 19.


177 Major premise: Articles about pedagogy or politics do not count. Minor premise: Legal writing articles are about pedagogy or politics. Conclusion: Legal writing articles do not count.

178 Professor Rubin uses the term “smuggling” in discussing the evaluative criterion that legal scholarship should state its normative premises. He writes,

The imagery of smuggling is quite precise here. One can smuggle contraband, such as narcotics, but one can also smuggle perfectly legitimate items, such as wristwatches. The defining characteristic of smuggling is that the material is brought in clandestinely, and not subject to established rules of inspection. Thus, there is no way to determine whether it is contraband or not, no way to gauge its quality, and no way to control its effect upon the market.

Rubin, supra n. 32, at 916 n. 88.


180 “[L]anguage is no mere instrument which we can control at will; it controls us.” Frederick Pollock & Frederic William Maitland, The History of English Law vol. 1, 87 (2d ed., Cambridge U. Press 1898).
When faculty members talk about legal scholarship, we should speak clearly, precisely, and candidly. We can say that legal writing topics will not count for promotion and tenure only if we intend also to exclude the work of many of today’s best-known legal scholars. We can exclude legal writing topics as a category only if we intend also to exclude topics like appellate procedure, forms of legal reasoning, the functioning of the common law system, ethical duties pertaining to advocacy, and the philosophy of language. But if we do not mean to exclude the books and articles addressing those topics, we should not say that “legal writing articles” will not support promotion and tenure.

We can say that articles about pedagogy or politics will not count. But if we take that position, we should not articulate differently our reasons for discounting an article on legal writing pedagogy and an article on civil procedure pedagogy. We should not say that our decision in one case was based on the article’s relationship to a particular course, such as legal writing, while our decision in the other case was based on the article’s pedagogical or political nature.

Or we can say that pedagogical and political articles can serve important scholarly values by directly improving our ability to make good lawyers, thereby improving the law and the legal process.181 We can say that these articles will be evaluated like any other kind of article—that is, by looking at the intellectual rigor the article required, the comprehensiveness of the research on which it is based, its contribution to the scholarly conversation on its topic, and its potential to advance the study and practice of law.183 Some pedagogical articles clearly meet these standards; some may not. Some authors may intend their pedagogical pieces as service to the academy and would not claim that they represent scholarship. But the evaluation process should be based on criteria related to the function of legal scholarship rather than on factual and logical errors.

And if we say that articles about pedagogy do not count, we should not say that one of the primary reasons for spending mas-
sive institutional and personal resources on scholarship is to enhance our teaching.

B. Myth #2: Non-Legal Writing Faculty Members Do Not Know How to Evaluate Legal Writing Articles

The other rationale sometimes offered for discounting legal writing topics is the concern that non-legal writing faculty members do not know how to evaluate legal writing topics. This rationale essentially says, “Your scholarship does not count for promotion and tenure because I do not know enough about your field.” Or perhaps, as Judge Richard Posner put it, “what I do not know is not knowledge.”

One must question a rationale that, by its very definition, limits scholarly inquiry to existing fields. Such a rationale flies in the face of a fundamental purpose of scholarship in the academy: to generate and disseminate new knowledge. If an evaluator feels inadequate to evaluate a publication, perhaps a more appropriate response is a combination of becoming more competent and seeking review by others already competent in the field. Indeed, law faculties have long evaluated legal scholarship outside their individual areas of expertise in just this fashion.

We do not mean to make light of the difficulty of evaluating an article in an unfamiliar area. Evaluating works outside one’s own area always requires some assessment of the place of that work in

184 Richard A. Posner, The Present Situation in Legal Scholarship, 90 Yale L.J. 1113, 1129 (1981) (“[The difficulty] of fitting interdisciplinary research into the law-school mold . . . is compounded by the well-known hostility of scholars to types of scholarship different from their own, a hostility captured in the adage, ‘what I do not know is not knowledge.’”).

185 Am. Assn. U. Prof., General Report of the Committee on Academic Freedom and Academic Tenure, 1 Am. Assn. U. Prof. Bull. 17 (1915) (reprinted in L. & Contemp. Probs. 393, 397 (Summer 1990)); see also Geoffrey R. Stone, supra n. 86, at 76 (“[L]aw schools should always be open to new ideas. Scholarship should never be dismissed as unworthy merely because it is unorthodox, controversial, or even deeply unsettling.”).

186 The American Association of Law Schools reported that

Nearly two-thirds [of law schools] indicated that the school assigns responsibility for scholarship assessment within the law school to more than one category (e.g., faculty colleague with special knowledge, tenure committee, all tenured faculty). . . . Nearly 70 percent use outside evaluations on a regular basis and another 10 percent in “exceptional cases,” but not regularly. This compares with 40 percent in 1979 using outside evaluations regularly, and another 20 percent using them in exceptional cases, meaning that in 1979 just under 60 percent used outside evaluation at all compared to 80 percent in 1989.

AALS Tenure Report, supra n. 20, at 485.
the existing literature, a literature with which the evaluator is unfamiliar. An evaluator whose own area is civil procedure, for instance, faces this difficulty whether the subject of evaluation is in the area of legal writing, sales, criminal law, or international law. Since this sort of difficulty has never stopped faculties from evaluating other scholarship, however, the concern must mean something else.

And in fact it does. Faculty members concerned about their ability to evaluate legal writing scholarship are seeing in some articles a methodological difference with their own work. In other articles, they sense an ideological difference. In still other articles, they find both methodological and ideological differences. To evaluate such articles is “to cross the conceptual divide that separates one’s own views from the views of the author.” The journey across that divide has enormous value, for to cross it is to see the world in new ways. As lawyers, teachers, and scholars, this is precisely the kind of journey we have a duty to make, for all three roles ask us to be ready to look at the world differently. And in the case of tenure decisions, we have another kind of duty to make that journey. As Professor Rubin chides, “[I]t is surely irresponsible to reject the work categorically and deny the person tenure. In that situation, at least, legal academics are obligated to evaluate the works of those in different subdisciplines as fairly and conscientiously as possible.”

So how does a non-legal writing faculty member evaluate a legal writing article? Again, we find that stereotypical generalizations about legal writing topics simply do not work. The field includes topics of precisely the kind law faculties have been evaluating for years. It also includes less traditional scholarship such as interdisciplinary topics, skills topics, and highly theoretical topics. These different kinds of articles present an evaluator with significantly different situations.

For topics within the fold of traditional scholarship, evaluation should proceed as it would for any other traditional article. No

\[187\] Rubin, \textit{supra} n. 32, at 940–941.

\[188\] \textit{Id.} at 941.

\[189\] “Of course, importing foreign methods into the traditional categories of legal analysis and synthesis can be dismissed as mere ‘academic stuff,’ but this dismissal is inconsistent with our professional traditions of flexibility, and comprehensiveness, and our willingness to learn anything that will be necessary or helpful.” Phillip C. Kissam, \textit{The Evaluation of Legal Scholarship}, 63 Wash. L. Rev. 221, 241 (1988).

\[180\] Rubin, \textit{supra} n. 32, at 941.
law faculty should have trouble evaluating a classic analytical article on some topic about precedent, procedure, or statutory construction. Most faculties agree on at least some norms, such as the intellectual rigor the article required, the comprehensiveness of the research on which it is based, its contribution to the scholarly conversation on its topic, and its value to the advancement of the study of law. These norms apply easily to this variety of legal writing scholarship.

Many articles meet those criteria by using a relatively standard schema. They (1) pose a question that matters; (2) present the current scholarly thought on that question; (3) identify an inadequacy in that analysis; (4) and propose and support a new or supplemental answer. Law faculties have been evaluating articles like these ever since scholarship has been evaluated in the academy. Non-legal writing professors can recognize good scholarship on these traditional legal writing topics, just as a contracts professor can recognize good scholarship in tax or intellectual property.

A more difficult question is whether less traditional legal writing scholarship can be evaluated fairly using such generally applicable criteria. But this same question arises in other nontraditional areas and is debated there as well. Some argue that nontraditional scholarship should be evaluated by a distinct set of criteria. Such an approach would seem to require a distinct set of criteria for each subdiscipline. Others argue that scholarship in newer subdisciplines should be evaluated by the same criteria that apply to all other legal scholarship.

For instance, Stephen Carter has argued that scholarship about race should be evaluated

\[\text{References}\]

\[\text{191 AALS Tenure Report, supra n. 20, at 489–491.}\]
\[\text{192 For a similar schema, see Rubin, supra n. 32, at 903–904.}\]
\[\text{193 Other non-traditional areas include interdisciplinary and empirical scholarship,}\]
\[\text{clinical scholarship, and scholarship providing political, racial, feminist, or cultural critique.}\]
\[\text{194 Milner S. Ball, The Legal Academy and Minority Scholars, 103 Harv. L. Rev. 1855}\]
\[\text{(1990); Robin D. Barnes, Race Consciousness: The Thematic Content of Racial Distinctiveness}\]
\[\text{in Critical Race Scholarship, 103 Harv. L. Rev. 1864 (1990); Leslie G. Espinoza, Masks}\]
\[\text{and Other Disguises: Exposing Legal Academia, 103 Harv. L. Rev. 1878 (1990); Alex M.}\]
\[\text{Johnson, Jr., The New Voice of Color, 100 Yale L.J. 2007 (1991); Joy, supra n. 22, at 393–}\]
\[\text{397; Duncan Kennedy, A Cultural Pluralist Case for Affirmative Action in Legal Academia,}\]
\[\text{1990 Duke L.J. 705.}\]
\[\text{195 We adopt Rubin’s definition of “subdiscipline” here. Rubin uses “subdiscipline” to}\]
\[\text{refer to “[w]orks that do not display qualitative differences from one another in either ideolo}\]
\[\text{gy or methodology.” Rubin, supra n. 32, at 909.}\]
\[\text{196 E.g. Randall L. Kennedy, Racial Critiques of Legal Academia, 102 Harv. L. Rev.}\]
\[\text{1745 (1989).}\]
using the same criteria as those more generally applicable. He wrote

[T]he quality of a piece of scholarly work . . . turns on a demonstrated mastery of the relevant material and the ability to contribute to a dialogue, or to spark a new one. It turns on saying something that not only is not in the prior literature, but is not obvious in light of the prior literature. It turns, further, on making a logical argument—not a correct one, necessarily, or even a non-controversial one, but certainly one that is coherent. And it turns on setting out fairly the possible objections and dealing with them, or even noting, when appropriate, the extent to which they successfully limit one’s own position.\textsuperscript{197}

The difficulties of applying these criteria to nontraditional work are normal and even necessary for scholarly development of a healthy discipline. Professor Kissam points out that our evaluation always lags behind new developments in scholarship.\textsuperscript{198} Indeed it must, for if mature work

is to be of high quality, significant originality, and substantial importance or influence, the scholar, in most cases, will need to break away from the more conventional approaches and methods exhibited by the earlier stages or perspectives of legal scholarship.\textsuperscript{199}

He writes that this break may “feature rich understandings of practical professional contexts”\textsuperscript{200} or “may include knowledge of more effective teaching and communication techniques, the tacit knowledge of outstanding practitioners, or simply the knowledge and methods of other academic disciplines.”\textsuperscript{201} Therefore, he writes, our “formalist paradigm” is insufficient for evaluating scholarship. It limits our vision of “the richer possibilities that might accrue from pursuit of more innovative patterns in contemporary scholarship.”\textsuperscript{202}

Professor Geoffrey Stone, then Dean of the University of Chicago Law School, warned against three potential problems in evaluating newer forms of scholarship:

\begin{itemize}
\item \textsuperscript{197} Stephen L. Carter, \textit{The Best Black, and Other Tales}, 1 Reconstruction 6, 29 (Winter 1990).
\item \textsuperscript{198} Kissam, \textit{supra} n. 189, at 223.
\item \textsuperscript{199} \textit{Id.} at 246.
\item \textsuperscript{200} \textit{Id.}
\item \textsuperscript{201} \textit{Id.} at 247.
\item \textsuperscript{202} \textit{Id.}
\end{itemize}
First, we may undervalue “good” work because we do not understand it. Aficionados of law and literature may not appreciate the subtle elegance of a novel application of the Coase Theorem. They may not understand why the work is original or useful. Moreover, because they do not grasp the work’s substance, they may tend to dismiss its significance. Even law professors fall victim to human nature.

Second, we may undervalue “good” work because it suggests, implicitly or explicitly, that the work we do is not valuable. Practitioners of law and economics may feel that feminist theory rejects the basic premises of their work. An all-too-human response is to dismiss those ideas that do not “appropriately” value our own.

Third, we may undervalue “good” work because it promotes a view of the legal system or society or human relations that is fundamentally inconsistent with our own world view. Such work may challenge not only the value of our work, but also our broader sense of the appropriate order of things socially, economically, politically, and personally. Work that casts doubt upon everything we cling to is not likely to be embraced enthusiastically.203

Perhaps the two most thorough and thoughtful treatments of evaluation of nontraditional scholarship are Professor Rubin’s On beyond Truth: A Theory for Evaluating Legal Scholarship,204 and Professor Kissam’s The Evaluation of Legal Scholarship.205 Professors Rubin and Kissam agree on many points. Both remind us that we should evaluate scholarship in light of its purposes, and each grounds his suggested evaluative approach expressly in those purposes.206 Both support the value of nontraditional scholarship207

---

203 Geoffrey R. Stone, supra n. 86, at 74. Appropriately, Dean Stone also cautions that scholarship is not necessarily good simply because it is new. Id.
204 Rubin, supra n. 32.
205 Kissam, supra n. 189.
206 Id. at 222, 230; Rubin, supra n. 32, at 902–903.
207 Kissam identifies six categories of legitimate legal scholarship. Kissam, supra n. 189, at 230–239. The first four categories he considers traditional: legal analysis, legal synthesis, the resolution of doctrinal issues, and teaching materials. Even these categories, he observes, “are developing a new complexity” of values, subcategories, and methods. Id. at 239. The other two categories, scholarship of understanding and scholarship of critique, are based on a perspective outside legal doctrine itself. Publications in these categories use a broad array of methods and reflect diverse perspectives on law, the legal system, and legal education. In the scholarship of understanding, Kissam includes scholarship such as clinical or skills scholarship, that is, scholarship that “analyzes, reflects upon, and interprets legal practices as opposed to legal doctrine.” Id. at 237 (emphasis added). Many legal writing topics would fall within this category. Kissam observes that today’s scholarly pluralism has
and deal with the difficulties of evaluating scholarship when the evaluator is outside the article’s subdiscipline, and therefore, unfamiliar with its literature, its ideology, and its methodologies. Both conclude that fair, effective evaluation of nontraditional scholarship is both important and achievable. Finally, both conclude that the key to effective evaluation is the evaluator’s duty to notice, admit, and lay aside her own inherent perspectives and biases.

Professor Kissam’s approach is exhortatory. He urges faculties to remain open to valuing a variety of kinds of scholarship and to maintain a flexible approach to evaluation. An evaluator should apply relevant criteria in light of the specific intended audience for the piece, as well as its values, purposes, methods, and perspectives. Further, the evaluator should be watchful for and mindful of any social or political obstacles that might interfere with effective evaluation. Criteria for value should include whether the work forges connections to larger projects; informs or inspires the work of others; illuminates a difficult problem; provides practically useful knowledge; disseminates knowledge to new audiences; wades into the deep waters of theory; or even delights and inspires its readers.

Professor Kissam cautions that, despite the rhetoric we sometimes employ, we should not expect all scholarship to meet the highest absolute standard, and this refreshingly honest state-
ment applies to traditional and nontraditional scholarship alike. According to Professor Kissam, we should (and most of us do) require only “good” scholarship, which he defines as scholarship that is original and competent, measured by whether it is factually accurate, well written, and based on appropriate methods. Whether a faculty agrees with Professors Kissam, Rubin, and Leff on this point, a faculty must take care to hold traditional and nontraditional scholarship to the same standard. If a faculty usually finds traditional scholarship sufficient when it is original, factually accurate, well written, and based on appropriate methods, the faculty should not apply a higher standard to nontraditional scholarship.

Professor Rubin reaches the same conclusions about evaluation but takes a route quite different from Professor Kissam’s broader generalizations and exhortations. Professor Rubin uses the work of Jürgen Habermas, Hans-Georg Gadamer, Martin Heidegger, and Edmund Husserl to build a full theory of evaluation. As a foundational matter, Professor Rubin reminds us that all evaluation grows out of the phenomenological experience of the evaluator and that therefore, all scholarship is historically and subjectively contextualized. He proposes a theory of evaluation that does not claim an objectivity it cannot achieve. Rather, his theory assumes and accounts for the effect of differences in indi-

---

215 Kissam, supra n. 189, at 227–228.

216 Kissam defines other standards, in ascending order, as “important” scholarship (which may have the potential to impact the lives and work of others or to resolve a particularly difficult intellectual question) and “influential” or “outstanding” scholarship (which “substantially affects the behavior of others or causes others to change fundamentally how they think about difficult issues”). Id. at 228–229.

217 Professor Rubin stated the following:

Underlying the critique of methodology is an epistemology grounded in the personal experience of individual human beings. That experience is seen as the starting point for all intellectual inquiry, the ultimate ground-plane or referent for thought. Any claims about the world must be built upon the foundation of individual experience—the ‘lifeworld’ that the individual inhabits—for nothing else is real to that individual.

Rubin, supra n. 32, at 907.

218 Id. at 908.
vidual experience, particularly with regard to differences both of methodology and of ideology. 219

Professor Rubin proposes that all scholarship be evaluated by the same criteria but that certain “sensitivities” be applied to scholarship outside one’s own subdiscipline. Specifically, all scholarship should be evaluated according to (1) the degree to which it identifies its foundational norms (its normative clarity); (2) the degree to which it presents a logical rationale for its claims (its persuasiveness); (3) its relationship to the historical development of its field (its significance); and (4) the degree to which it contains “an identifiable insight that the evaluator can grasp through application” 220 (its applicability). 221 To evaluate a work, Professor Rubin says, we must know “what scholars in the field are attempting to achieve.” 222

Evaluating work in a subdiscipline different from one’s own requires the evaluator to transcend her own subdiscipline, 223 so Professor Rubin suggests employing the “sensitivities” of doubt and anxiety. Doubt is an act of will, an intellectual effort that allows us to bracket our own natural experience of the world and therefore recognize it as just that—our own phenomenological experience. 224 Anxiety is more emotion-based, arising against our will. Anxiety is a “sensation of uncertainty” about one’s own beliefs. 225 Both doubt and anxiety “suggest an openness about one’s own work, a willingness to stand apart from it and see it as merely one position among many.” 226 Professor Rubin writes,

If one finds oneself rehearsing one’s prior arguments, or articulating refutations in one’s mind, or searching assiduously for new ways to justify one’s conclusions, then a work which generates such responses should be judged to be of value. Thus, the very process of formulating counter-arguments, which is a mechanism for outright rejection of the author’s work when un-

219 By “methodology,” Rubin means a set of procedures generating research and resolving questions. By “ideology,” he means “an interlinked set of normative beliefs that generate a comprehensive vision of a given subject.” Id. at 899.
220 Id. at 937.
221 Id. at 912–940.
222 Id. at 902.
223 Id. at 943.
224 Id. at 944–946.
225 Id. at 946.
226 Id.
critically performed, becomes a datum for assessing that work’s
quality in the context of a more disciplined evaluative theory.\textsuperscript{227}

Thus, if the evaluator is willing to be both honest and self-aware,
the very distance between the evaluator and the article provides
the opportunity to gauge the article’s effectiveness.

According to Professor Rubin, the degree to which the work
differs from one’s own determines the degree of reliance on doubt
and anxiety.\textsuperscript{228} For work that differs in both methodology and ide-
iology, the sensitivities of self-doubt and anxiety should guide
judgments of all criteria except the degree to which the work iden-
tifies and remains consistently within its foundational norms.\textsuperscript{229}

A word about the role of ideology is in order here. As we have
seen, Professor Rubin defines an ideology as “an interlinked set of
normative beliefs that generate a comprehensive vision of a given
subject.”\textsuperscript{230} He cautions that

those who subscribe to [an ideology] do not perceive it as an
ideology at all, but simply as the proper way to view the world.
When such an ideology is maintained by the majority of schol-
ars in an academic field, it will define the boundaries of the
field and regulate debate within it.\textsuperscript{231}

Because Professor Rubin is writing primarily about scholarly
camps such as law and economics, critical legal studies, or feminist
legal theory, his examples of ideological differences all pertain to
different views of the legal system. But ideological differences cer-
tainly exist with regard to legal education as well. In fact, because
they place at issue the allocation of our own and our institutions’
finite resources, ideological differences over legal education can be
even more painfully divisive than jurisprudential differences. We
include both in the category of ideological differences, therefore,
and caution evaluators consciously to transcend their own ideol-
ogies of legal education as well.

If an evaluator has a negative attitude toward a legal writing
topic (without regard to the quality of the article’s analysis of that
topic), the evaluator should recognize that reaction as strong evi-
dence of an ideological difference. According to both Professors

\textsuperscript{227} Id.
\textsuperscript{228} Id. at 940–961.
\textsuperscript{229} Id. at 947–953.
\textsuperscript{230} Id. at 889 (emphasis added).
\textsuperscript{231} Id. at 900.
Kissam and Rubin, an evaluator should take great care to remove from evaluation the effects of an ideological difference. Professor Kissam’s approach reminds us generally to value broad, open discourse. Professor Rubin’s postmodern and phenomenological approach proposes a decisional model specifically designed to foster a conscious skepticism about our own ideologies.

Under either approach, legal writing scholarship can be evaluated fairly and effectively by faculty members outside the field. As we have seen, some legal writing topics are examples of traditional scholarship, presenting no added evaluative challenge. Such articles can unearth assumptions, point out unnoticed or unexpected effects, or resolve troubling problems. Non-legal writing faculty members should have no trouble evaluating legal writing scholarship of this sort since, in Professor Rubin’s terms, it does not differ from traditional scholarship in either methodology or ideology.

Other legal writing articles—such as articles about interdisciplinary topics, topics using empirical methods, topics relating to legal skills, pedagogical topics or topics about institutional choices—may differ from traditional scholarship in methodology, ideology, or both. Evaluating articles in these categories may require more of the evaluator, but the burden is no greater because the topic area is legal writing as compared to feminist legal theory, clinical scholarship, critical race theory, law and literature, rhetoric, or law and philosophy. Professor Rubin’s theory of evaluation is particularly useful here, because it recognizes different evaluative stances depending on the combination of the particular evaluator and the nature of the article. The degree to which the article differs from one’s own work determines the degree of reliance on Professor Rubin’s proposed sensitivities.

While Professors Rubin’s and Kissam’s approaches are both theoretically sound, each has practical limitations. The usefulness of Professor Kissam’s approach may be limited by its generality and over-reliance on exhortation. Professor Rubin’s approach may be limited by its complexity and abstraction. We offer a supplemental model intended to be more concrete than exhortation and simpler, less abstract, and more broadly familiar to the legal academy than phenomenology and post-modern philosophy. We suggest that, when evaluating an article using nontraditional methodologies or written from a nontraditional ideological perspective, the evaluator adopt a role similar to that of an appellate court reviewing factual findings. The appellate court does not substitute its
own judgment for the findings of the trial court. An appellate judge, recognizing the distance between the trial court’s vantage point and the cold appellate record, does not ask whether she would have come to the same conclusions as did the trial court. Rather, she assumes the rhetorical stance of the trial court judge and evaluates the reasoning process the trial judge used. If there is sufficient evidence to support the trial court’s conclusions, the appellate judge affirms.\textsuperscript{232}

The distance between the cold appellate record and the trial court’s vantage point can mimic the distance between an evaluator and a work of scholarship significantly different from her own. The evaluator should begin by recognizing the distance between the subject text and her own work. She therefore approaches the text with the same kind of tolerance for other views as is inherent in the appellate review of facts. She is willing to admit the validity of multiple perspectives and the fallibility of her own. She is prepared to value conclusions with which she disagrees so long as those conclusions meet fundamental standards of rationality, consistency, and evidentiary sufficiency.

Professors Kissam and Rubin each make a compelling case justifying this need to transcend individual perspectives. We join them in urging faculty evaluators to focus on the quality of an article within its own field and according to its own methodological and ideological perspectives. Also, we join Professors Kissam, Rubin, and others who would apply standard criteria to evaluate legal writing topics, but with the caution that those criteria should be applied with the kind of openness, flexibility, curiosity, and self-awareness that Professors Kissam and Rubin both describe.

Professor and former Dean Geoffrey Stone of the University of Chicago offers some practical advice for achieving this kind of evaluative process. To evaluate scholarship, especially newer forms of scholarship, Dean Stone would first ask faculty members to talk with each other, defining exactly what they like or dislike about the article. Second, he would have them ask both what is wrong with the article and what they can learn from it. Third, he would ask those who understand and appreciate the article to translate its point and its value into terms more familiar to the doubters.\textsuperscript{233} Finally, Dean Stone reminds us of two ideals every law school should strive to meet: openness to new ideas and insist-


\textsuperscript{233} Stone, supra n. 86, at 75.
ence on excellence in scholarly research. With this kind of good faith process, balancing concern for quality with desire for new ideas, legal writing topics can be evaluated fairly and effectively by those outside the field.

VII. THE TROUBLE WITH CATEGORIES

For the purposes of this Article, we have referred to a number of categories of scholarship, but we cannot end this discussion without recognizing the problems inherent in any attempt to categorize scholarly inquiry. Even a casual look at the literature reveals a confusing variety of taxonomies. Some discussions of legal scholarship use categories based on jurisprudential schools such as legal realism, critical legal studies, feminist legal theory, or law and economics. Others distinguish categories based on differences in the kinds of sources considered authoritative, such as traditional scholarship based on legal sources, interdisciplinary scholarship drawing on other disciplines, and empirical scholarship, which gathers and analyzes particular data bases. Other commentators categorize scholarship based on its primary audience, identifying theoretical scholarship intended primarily for an academic audience, practical scholarship intended to be useful to the practitioners, and teaching scholarship, whose primary intended audience is students. Still other categories are based on the purpose of the individual piece, for example, legal analysis, legal synthesis, resolution of doctrinal issues, teaching materials, understanding, and critique. Clinicians use the category “clinical” scholarship. Judge Posner distinguishes doctrinal analysis (which “involves the careful reading and comparison of appellate opinion with a view to identifying ambiguities, exposing inconsistencies among cases and lines of cases, developing distinctions, reconciling holdings, and otherwise exercising the characteristic skills of legal analysis”) from positive analysis using social science methods and from normative analysis.

We have referred to a number of these categories and have ourselves used the terms “legal writing topics” and “legal writing scholarship.” But we do so provisionally, knowing that all classifi-

234 Id. at 76–77.
235 Kissam, supra n. 189, at 230–239.
236 E.g. Joy, supra n. 22.
237 Posner, supra n. 184, at 1113.
cations limit and distort, if only subtly. These categories are useful primarily for their value in facilitating one kind of discussion or another, but when the issue under discussion changes, a classification may well lose its usefulness. The terms “legal writing scholarship” or “legal writing topic” have helped us discuss the value of scholarship on topics arising in legal writing courses. But this classification misleads because, as we have seen, “legal writing” topics overlap with other curricular subject areas, with classifications based on authoritative sources, with classifications based on intended audiences and uses, and with ideological and jurisprudential categories. The same danger exists for the subcategories within the larger category. We have discussed four subcategories of legal writing scholarship—substance or doctrine; theory; pedagogy; and institutional choices—but we have seen that many articles span more than one. Indeed, the best articles almost always do.

We hope that soon the question whether legal writing topics can qualify as scholarship will be resolved so the need for a separate category will disappear. When that day comes, we hope that the relevant discussion will focus on the purpose and quality of a particular scholarly effort, regardless of its underlying course connection.

We join Dean Donald Polden in recommending the categories set out in Ernest Boyer’s 1990 Carnegie Foundation report on academic scholarship. Boyer recommends four scholarly categories: (1) scholarship of discovery (searching for knowledge, primarily for its own sake); (2) scholarship of integration (connecting ideas across areas of thought); (3) scholarship of application (testing and amending theories by applying them to a practice); (4) scholarship of teaching (gathering and communicating the subject’s material or studying pedagogical methods). Categories such as these are grounded firmly in the values to be served by scholarship, and they focus evaluation directly on how well the publication accomplished its particular purpose. These categories admit the legitimacy of varying ideologies, authoritative sources, particular subject areas, and intended audiences. They focus the debate on the merits of the particular scholarly work rather than on contention between ideological camps. They accordingly advance the funda-

---

mental purposes of scholarly inquiry and set the stage for a more accurate evaluation of individual scholarly efforts.

VIII. WHERE DOES THIS LEAVE US?

As the bibliography demonstrates, many legal writing professors are publishing. The nearly 300 authors listed here have published more than 150 books, over 200 book chapters and supplements, over 650 law review articles, and at least that many articles in peer-reviewed academic journals, specialty journals designed primarily for practitioners, and many other kinds of publications. Placements include the most prestigious journals, and topics include most legal subjects. Clearly, legal writing professors have written much, often without the traditional kinds of institutional support such as research stipends, research assistants, faculty development funds, formalized scholarship development programs, or informal mentoring by faculty colleagues. And of course, the traditional institutional support, important as it is, does not address the primary impediment to writing: heavy teaching loads and high student/faculty ratios. When more legal writing professors are given the same institutional support other faculty members receive, undoubtedly they will write even more.

Since legal writing professors are writing and writing well, the academy cannot postpone the question of what to do with legal writing scholarship. First, law schools should use all the standard formal and informal incentives to encourage their legal writing faculty members to write. Unlike many doctrinal areas, which have been mined for writing topics for many years, the young field of legal writing is bursting with important unexplored ideas. We know that writing is important to the substantive development of all law faculty members because there is no better way to deepen one’s understanding of an area than to write about it. But writing is even more important to the development of professors who actually teach the writing process. Not only does the professor develop her understanding of the substance of her field, but she develops her understanding of the nature of the very process she teaches. A law school should no more discourage a legal writing professor

\[\text{Supra n. 4.}\]

\[\text{See supra n. 86 and accompanying text.}\]
from writing than a tennis club should discourage its tennis coach from picking up a racket.

Second, there is no legitimate reason to discourage legal writing professors from writing in their own field. Many legal writing topics are solidly within the canon of legal scholarship, have been the subject of work by well-respected legal scholars for many years, and have been evaluated by law faculties with ease. Other legal writing topics are more interdisciplinary, empirical, or otherwise innovative. Those topics may be new to the imagination of the legal academy, but their relationship to law and to the advancement of legal knowledge is clear. Still other legal writing topics fall within the larger categories of pedagogical or political articles. The viability of those topics as legal scholarship depends not on their relationship to legal writing but on a particular faculty’s assessment of pedagogical or political scholarship in general. Whatever a faculty decides about pedagogy or politics, the decision should not be articulated with reference to any particular course.

As Judge Posner241 and others242 have observed, human nature may cause some faculty members to resist new ways of thinking and new approaches to the law or to legal scholarship. Professor Rubin refers to a particular kind of conceptual bias—ideological bias243—as one of the problems with evaluation of scholarship. As Professor Rubin explains, “those who subscribe to [an ideology] do not perceive it as an ideology at all, but simply as the proper way to view the world.”244 Outdated attitudes toward legal writing courses and professors function the same way. Without updating their knowledge and reassessing their attitudes in light of that information, well-meaning faculty members simply may not be able to see the world in any way other than the way it looked when and where they studied law.245 We need to remind ourselves, in Aviam Soifer’s words, to “[r]isk [t]oleration.”246 so we can continue to learn, and to teach what we learn to tomorrow’s lawyers.

241 Posner, supra n. 184, at 1129.
242 E.g. Rubin, supra n. 32, at 895.
243 Professor Rubin defines an ideology as “an interlinked set of normative beliefs that generate a comprehensive vision of a given subject.” Id. at 899.
244 Id. at 900.
245 See supra nn. 185–191 and accompanying text.
246 Aviam Soifer, Musings, 37 J. Leg. Educ. 20, 24 (1987); id. at 23 (“Many of us seem so determined to impose our own particular values on an indeterminate world” that we never recognize “the abyss of uncertainty” right in front of us.).
Speaking about legal scholarship, Frederick Schauer has written,

[All disciplines . . . should find it useful to engage in serious self-reflection and self-criticism. Without it, the contingent methods and perspectives of the discipline begin to seem inevitable, making the exploration of alternatives less possible, and the understanding of the discipline itself less rich. When a discipline challenges its own understandings, it takes a step towards deeper appreciation of those understandings themselves. [Without such self-reflection], there is a risk of forgetting that . . . normativity is contingent and not inevitable.]

This Article calls for just such self-reflection.

Legal writing faculty members are beginning to find their own voices. Many have begun the long, exciting process in which, as Julius Getman writes,

[Colleagues, cohorts in a movement, teachers, fellow law review editors, and judges are largely replaced by one’s self. It occurs when the writer becomes more concerned with expressing his or her own vision of justice than with the reaction of others. Developing one’s own voice is an important step toward scholarly distinction.]

When legal writing faculty members have found their voices, every part of the academy will be enriched by their contributions. But if the academy does not allow these voices to develop—if, instead, we tell them what they may and may not say—we will lose a vital thread in the conversation about law, the legal profession, and legal education. We will never know what we would have learned had we been willing to listen.

---

248 Getman, supra n. 21, at 340.
SELECTED BIBLIOGRAPHY

SCHOLARSHIP BY LEGAL WRITING PROFESSORS

Aamot, Kari


Abate, Randall S.

The Third Time Is the Charm: The Structure and Benefits of a Three-Semester Legal Writing Program, 16 Second Draft (newsltr. of Leg. Writing Inst.) 7 (May 2002).


Regulations’ Aim: Get the Lead Out, Natl. L.J. B15 (June 24, 1996).


DEC Proposes Amendments to Pollution Regulations, 4 Envlt. L. 17 (1993).


Aderson, Francois

For the Founders, Partisan (1992).

Algero, Mary Garvey


IRAC—A Desirable Tool If Used with Care, 10 Second Draft (newsltr. of Leg. Writing Inst.) 3 (Nov. 1995).


Allen, Terrell


Anderson, Helen

Generation X Goes to Law School: Are We Too Nice to Our Students? 10 Persps. 73 (Winter 2002).

Bach, Tracy

*Necessity Is the Mother of Re-Invention*, 18 Second Draft (newsltr. of Leg. Writing Inst.) 1 (June 2004).


*Building on the Basics*, 16 Second Draft (newsltr. of Leg. Writing Inst.) 4 (May 2002).


*Collaboration in Legal Writing and Beyond*, 15 Second Draft (newsltr. of Leg. Writing Inst.) 9 (June 2001).

*Teaching the Poetry of Question Presented*, 9 Persps. 142 (Spring 2001).


*Sharpening the File: Teaching Case Synthesis in the Classroom*, 14 Second Draft (newsltr. of Leg. Writing Inst.) 7 (May 2000).


**Baker, Angela Passalacqua**


**Baker, Brook K.**


Learning to Fish, Fishing to Learn: Guided Participation in the Inter-

Back to the Future: Co-op and Northeastern’s Twice Born Law School,
in Tradition and Innovation: Reflections on Northeastern Universi-
ty’s First Century 41 (Linda Smith Rhoads ed., Northeastern Press
1998).

Transcending Legacies of Literacy and Transforming the Traditional
Repertoire: Critical Discourse Strategies for Practice, 23 Wm. Mitch-
ell L. Rev. 491 (1997).

Learning Through Work: An Empirical Study of Legal Internship, 45
McDevitt, and Robyn Miliano).

Beyond MacCrate: The Role of Context, Experience, Theory, and Reflec-

A Theory of Contextualized Learning and Its Implications in Research,
Analysis, and Writing Programs, 9 Second Draft (newsltr. of Leg.
Writing Inst.) 2 (Nov. 1994).

Bannai, Lorraine

Sailing Through Designing Memo Assignments, 5 Leg. Writing 193
(1999) (co-authors Anne Enquist, Judith Maier, and Susan McClel-
lan).

Fostering Diversity in the Legal Profession: A Model for Preparing Mi-
nority and Other Non-Traditional Students for Law School, 31

Internment during World War II and Litigations, in Asian Americans
and the Supreme Court: A Documentary History 755–788 (Hyung-

Barger, Coleen M.

Book Review, L. Teacher (Spring 2004) (reviewing Robert M. Jarvis,
Thomas E. Baker & Andrew J. McClurg, Amicus Humoriae: Anthol-
ogy of Legal Humor (Carolina Academic Press 2003)).

On the Internet, Nobody Knows You’re a Judge: Appellate Courts’ Use

The Uncertain Status of Citation Reform: An Update for the Undeci-

Arkansas’ Putative Father Registry and Related Adoption Code Provi-
sions: Inadequate Protection for Thwarted Putative Fathers, 1997
Ark. L. Notes 49 (co-authors Kathryn A. Sampson and Kim Flanery
Coats).

How to Write a Losing Brief, 30 Ark. Law. 10 (Spring 1996).

Probate Law, Ark. Law. 16 (Jan. 1989) (co-author Jean D. Stock-
burger).

Bast, Carol M.


E-mail in the Workplace: Use at Your Own Risk, 9 J. Leg. Stud. in Bus. 65 (2002).


Citation Wars and the Erosion of Traditional Citation Forms, 15 J. Paralegal Educ. & Prac. 19 (1999).


Bateman, Paul


Bauer, Mark D.


Bayer, Peter Brandon


Bean, Kathleen S.


*A Place at the Bar*, 1998 Ky. Humanities 11.

*Connecting with Our Legacy: Kentucky’s Early Women Lawyers, a Multimedia Tribute* (1998) (included photography exhibit and “virtual” exhibit on the web) (curator: Robin R. Harris; research by Kathleen S. Bean).

*Women Teaching in Law School Classes*, Louisville Law. (Fall 1989).


Beazley, Mary Beth


“Riddikulus!”: Tenure-Track Legal-Writing Faculty and the Boggart in the Wardrobe, 7 Scribes J. Leg. Writing 79 (2000).

How to Read a Writing Sample, 87 Ill. B.J. 615 (1999).

How to Get the Writing Sample You Need, 87 Ill. B.J. 557 (1999).


The President’s Corner, 13 Second Draft (newsltr. of Leg. Writing Inst.) 1 (Nov. 1998).


Time Is a Resource Students Must Learn to Use, 9 Second Draft (newsltr. of Leg. Writing Inst.) 9 (Mar. 1994).

Teaching Students How to “Think Like Lawyers”: Integrating Socratic Method with the Writing Process, 64 Temp. L. Rev. 885 (1991) (co-author Mary Kate Kearney).

Beck, Karen S.


Beh, Hazel Glenn


Beneke, Candyce T.


Berger, Linda


Berres-Paul, Toni

Making Schedules Work: Flexibility Is the Key to Balancing the Competing Elements of Life, 55 Or. St. B. Bull. 39 (Oct. 1994).

An Encouraging Note: Recruiters Are Still Offering Such Work Options as Alternative Schedules, 54 Or. St. B. Bull. 26 (June 1994).
Berry, Carole C.


Berry, Gregory Alan


Blackwell, Thomas F.


*Texas Business Organizations Forms/FAST* (West 1994) (legal forms on disk).

Blevins, Timothy

*Using Technology in the Classroom*, Syllabus (publication of ABA Sec. of Leg. Educ. & Admiss. to B.) 4 (1st Qtr. 2004).


*Hallmarks in Professional Writing*, Brief (newsltr. of Orange City B.).

Blum, E. Joan

*Writing Labs: Commenting on Student Work-in-Progress*, 14 Second Draft (newsltr. of Leg. Writing Inst.) 11 (Nov. 1999).

*Teaching Case Synthesis in Living Color*, 12 Second Draft (newsltr. of Leg. Writing Inst.) 7 (Nov. 1997).

Blumenfeld, Barbara

*Integrating Indian Law into a First Year Writing Course*, 37 Tulsa L. Rev. 503 (2001).

2005] Selected Bibliography


Why IRAC Should be IGPAC, 10 Second Draft (newsltr. of Leg. Writing Inst.) 3 (Nov. 1995).


Selecting the Best Authority to Cite (available at http://lawschool.mtcigs.com/writing/select/select.htm) (Lexis Online Teaching Materials).

Bohl, Joan Catherine

Mom, Dad and Me: Court Ordered Grandparent Visits Invade Family Privacy, Leg. Times 58 (Jan. 10, 2000).


Grandparent Visitation: Over the River and into the Courts, 35 Tr. 28 (Dec. 1999).


“Those Privileges Long Recognized”: Termination of Parental Rights Statutes, the Family Integrity Right and the Private Culture of the Family, 1 Cardozo Women’s L.J. 323 (1994).


Bowman, Brooke J.

Quick Tip: Keep Proper Attribution SIMPLE: A Mnemonic for Placing Citations in Proper Citation Format, 20 Second Draft (newsltr. of Leg. Writing Inst.) 6 (Dec. 2005).
Our Extended Family, 17 Second Draft (newsltr. of Leg. Writing Inst.) 16 (July 2003).

Boylan, Jean M.

Crossing the Divide: Why Law Schools Should Offer Summer Programs for Non-Traditional Law Students, 5 Scholar (St. Mary’s L. Rev. on Minority Issues) 21 (Fall 2002).

Boyle, Robin A.


Bratman, Ben E.


“Reality Legal Writing”: Using a Client Interview for Establishing the Facts in a Memo Assignment, 12 Persps. 87 (Winter 2004).

Why I Teach, L. Teacher (Fall 2003).


Brill, Ralph L.

ABA Adopts New Standards Relating to Legal Research and Writing, 5 Persps. 71 (Winter 1997).

ABA Sourcebook on Legal Writing Programs (LexisNexis 1997) (co-authors Susan L. Brody, Christina L. Kunz, Richard K. Neumann, Jr., and Marilyn R. Walter).


A Tribute to Professor Warren Heindl upon His Retirement, 69 Chi.-Kent L. Rev. 843 (1994).


Brody, Susan L.


Brostoff, Teresa


**Busharis, Barbara J.**


**Buske, Sheryl**


**Byers, Ellen**


**Calleros, Charles R.**


Using Both Nonlegal Contexts and Assigned Doctrinal Course Material to Improve Students’ Outlining and Exam-Taking Skills, 12 Persps. 91 (Winter 2004).


Demonstrations and Bilingual Teaching Techniques at the University of Paris: Introducing Civil Law Students to Common Law Legal Method, 12 Persps. 6 (Fall 2003).


Using Classroom Demonstrations in Familiar Nonlegal Contexts to Introduce New Students to Unfamiliar Concepts of Legal Method and Analysis, 7 Leg. Writing 37 (2001).


Same-Sex Harassment, Textualism, Free Speech and Oncale: Laying the Groundwork for a Coherent and Constitutional Theory of Sexual Harassment Liability, 7 Geo. Mason L. Rev. 1 (Fall 1998).


Training a Diverse Student Body for a Multicultural Society, 8 La Raza L.J. 140 (1995).


Reconciling the Goals of Federalism with the Policy of Title VII: Subject-Matter Jurisdiction in Judicial Enforcement of EEOC Conciliation Agreements, 13 Hofstra L. Rev. 257 (1985).

Canavan, Marcia


*Bringing the Jail to the Forefront*, 3 Corrections Mgt. Q. (June 1997) (written as Marcia Minuck).

Cary, Eve


*New York Criminal Law* (Richard A. Greenberg ed., West Publg. Co. 1996 & annual Supps.) (contributed to the following chapters: Sex Offenses, Kidnapping, Offenses against Public Order, Offenses against the Right to Privacy, Megan’s Law, Escape, Obscenity, Prostitution, Fireworks, and Unauthorized Recording).


Caudill, David S.


Ethnography and the Idealized Accounts of Science in Law, 39 San Diego L. Rev. 269 (2002).


Selected Bibliography


New Wave Land Use Regulation: The Impact of Impact Fees on Texas Lenders, 19 St. Mary’s L.J. 319 (1987) (co-authors William Terry Bray and Jack E. Owen, Jr.).


Chestek, Kenneth D.


WordPerfect for Windows 6 in the Law Office (Que Corp. 1996).


Chin, William W.


Life in America As Told by Asian American Authors, Portland C.A.C.A. Times (July/Aug. 2002).

Appellate Practice—The Lawyer; the Law Student, Connections 4 (Spring/Summer 2002).

Living Spaces for Asian Americans in Portland’s Chinatown, Portland C.A.C.A. Times (May/June 2002).


2005 | Selected Bibliography

The Performers of Asian/Pacific Islander Students in Oregon High Schools, Portland C.A.C.A. Times (Mar./Apr. 2001).
Oregon Must Reacquire Control over Its Economy, Resources, Oregonian (Portland, Or.) B9 (Oct. 2, 2000).
Oregon History: Chinese Gold Miners, Connections 16 (Summer/Fall 2000).

Cialkowski, Amanda Buttress

Engaging Students in Improving Technical Writing Skills, 14 Second Draft (newsltr. of Leg. Writing Inst.) 12 (Nov. 1999).

Clary, Bradley G.

Advocacy on Appeal (2d ed., West 2004) (co-authors Sharon Reich Paulsen and Michael Vanselow).
“To Note or Not to Note”, 10 Persps. 84 (Winter 2002).
Successful First Depositions (West 2001) (co-authors Sharon Reich Paulsen and Michael Vanselow).
Roadmapping and Legal Writing, 8 Persps. 134 (Spring 2000) (co-author Deborah N. Behles).

Primer on the Analysis and Presentation of Legal Argument (West 1992).

Cochran, Rebecca A.


Cohen, Beth D.

Instilling an Appreciation of Legal Ethics and Professional Responsibility in First-Year Legal Research and Writing Courses, 4 Persps. 5 (Fall 1995).

Collins-McShane, Maureen


Email and Attorney-Client Communications, 88 Ill. B.J. 541 (2000).


Selected Bibliography

2005

Drafting with Style, 88 Ill. B.J. 173 (2000).
Communication as an Art Form, 86 Ill. B.J. 95 (1998).
The Fine Art of Drafting (Shhh) Bills, 85 Ill. B.J. 617 (1997).
Tips for a Successful Client Interview, 85 Ill. B.J. 441 (1997).

Cooney, Leslie Larkin

Ten Magic Tricks for an Interactive Classroom, 8 Persps. 1 (Fall 1999) (co-author Judith Karp).
Discussion Boards and Legal Writing, 11 Second Draft (newsltr. of Leg. Writing Inst.) 7 (May 1997).
Agricultural Financing, in Secured Transactions in Florida ch. 12C (Fla. B. 1996).
**Scope of Article 9, in Secured Transactions in Florida** ch. 2 (Fla. B. 1996).

**Cooper, Davalene**

*The Ethical Rules Lack Ethics: Tort Liability When a Lawyer Fails to Warn a Third Party of a Client’s Threat to Cause Serious Physical Harm or Death*, 36 Idaho L. Rev. 479 (2000).


Evidence, in Mottla’s *Proof of Cases in Massachusetts* vol. 3 (1995 & Annual Supps.) (co-author Marc Perlin).


Adopting the “Stepchild” into the Legal Academic Community: Creating a Program for Legal Research Skills, in *Expert Views on Improving the Quality of Legal Research Education in the United States* (West 1992).


**Cornwell, Joel R.**


Cotorceanu, Peter


Issues in Funding Trusts (Va. CLE 1993) (CLE materials).


Craig, Alison


Crist, Maria Perez


The Internet (OSBA CLE Inst. June 11, 2003).

The E-Brief: Legal Writing for an Online World, 33 N.M. L. Rev. 49 (2003).

The Internet (OSBA CLE Inst. June 19, 2002).

The Internet (OSBA CLE Inst. June 27, 2001).


The Internet (OSBA CLE Inst. June 8, 2000).

Internet Resources for Corporate Counsel (Cincinnati B. Assn., Corp. Counsel Seminar, Nov. 30, 1999).


Technology in the LRW Curriculum—High Tech, Low Tech, or No Tech, 5 Leg. Writing 93 (1999).

The Internet: Strategies for Effective Use in Law Practice (Ohio CLE Inst. 1998).


Curtis, Debra Moss


Wills and Trusts (BarCharts, Inc. Feb. 2004).


Supervise Your Lawyers and Staff, 16 Fla. B.J. 74 (Dec. 2002).


Secured Transactions: Revised Article 9 of the Uniform Commercial Code (BarCharts, Inc. June 2002).

Bringing the Internet to the Classroom, Jurist Website (April 2002).


Tune In, Turn On (So They Won’t) Drop Out, 15 Fla. B. News 8 (Aug. 2001).


Pro Bono Students Practice What They Teach, Fam. L. Commentary 30 (June 1996).


Dailey, Susan R.


View from the Bench: Crosscurrents in American Law and Literature, 18 Quinnipiac L. Rev. 155 (1998) (reviewing Barry R. Schaller, A Vi-
sion of American Law: Judging Law, Literature, and the Stories We Tell (Praeger 1997)).


In the Margins: Effective Responses to Student Writing, 9 Second Draft (newsltr. of Leg. Writing Inst.) 8 (May 1995).

Writing Specialist as Pariah: Reflections on My First Year, 9 Second Draft (newsltr. of Leg. Writing Inst.) 8 (May 1995).


Daily, Melody Richardson

Damages: Using a Case Study to Teach Law, Dispute Resolution and Lawyering, 2004 J. Disp. Res. 1.


Liberty and Justice: The Story of the Kansas City Metropolitan Bar Association (CCA Publications, Inc. 1994).

Legal Research and Writing, 14 Tr. 12 (1991).


Davis, Kirsten K.

The ALWD Citation Manual: A Practice-Driven Improvement, Ariz. Atty. 24 (June 2004) (co-author Tamara Herrera).


Davis, Wendy B.


Coalbed Methane: Degasification, Not Ventilation, Should Be Required, 2 Appalachian J.L. 25 (Spring 2003).


The Appalachian School of Law: Tried but Still True, 32 Stetson L. Rev. 159 (2002).

You May Still Be Liable, Bristol Herald Courier 7A (Oct. 27, 2002).

Out of the Black Hole; Reclaiming the Crown of King Coal, 51 Am. U. L. Rev. 905 (Spring 2002).


Unauthorized Practice of Law, 16:6 Paralegal Rev. 11 (June 2001).


An Attorney’s Ethical Obligations Include Clear Writing, 72 N.Y. St. B.J. 1 (2000).

Consequences of Ineffective Writing, 8 Persps. 97 (Winter 2000).


Intellectual Property, in Massachusetts Paralegal Practice Manual (MCLE 1997) (co-author Joan Flores) (reprinted in The Best of MCLE (MCLE 1997)).


DeJarnatt, Susan L.


Teaching Analysis, 14 Second Draft (newsltr. of Leg. Writing Inst.) 9 (May 2000).


Dernbach, John C.


Dickerson, A. Darby


Deflating the Risks of Inflatables, NASPA Leadership Exch. 22 (Dec. 2005) (co-author Peter F. Lake).


Motion Potion: Tips for Magical Briefs, 16 Prac. Law. 7 (May 2005).


Speed Cite for the ALWD Citation Manual (Aspen L. & Bus. 2001).


Citation Frustrations—And Solutions, 30 Stetson L. Rev. 477 (2000).

In re Moot Court, 29 Stetson L. Rev. 1217 (2000).

Professionalizing Legal Citation: The ALWD Citation Manual, 47 Fed. Law. 20 (Dec. 2000).


It’s Time for a New Citation System, Scrivener 2 (Summer 1999).


It's Time for a New Citation System, Scrivener (publication of Scribes) 2 (Summer 1998).


Oral Reports to Supervisors, 12 Second Draft (newsltr. of Leg. Writing Inst.) 13 (Nov. 1997).

Context Is Key, 11 Second Draft (newsltr. of Leg. Writing Inst.) 6 (May 1997).


Writing Opposing Counsel, 84 Ill. B.J. 527 (1996).


An Un-Uniform System of Citation: Surviving with the New Bluebook, 26 Stetson L. Rev. 53 (1996).


Standing Issues Related to Franchise Associations, 12 Franchise L.J. 99 (Spring 1993) (co-author William B. Steele III).


92  The Journal of the Legal Writing Institute  [Vol. 11

Remedies for Wrongful Removal of Child from the Jurisdiction by the Custodian, 2 Tenn. Fam. Ltr. 9 (July 1988) (co-author W. David Stalnaker).

Dickhute, Nancy Lawler


Dimitri, James D.

Reusing Writing Assignments, 12 Persps. 27 (Fall 2003).

Donahoe, Diana R.

Drew, Melinda


Basic Law for the Allied Health Professions (Jones & Bartlett 1994) (co-author Michael Cowdrey).


Dunnewold, Mary

Legal Writing Status Issues at Hamline University, AAUP News (newsltr. of Hamline Ch. of Am. Assn. of U. Prof.) (Apr. 2004).


How Many Cases Do I Need? 10 Persps. 10 (Fall 2001).

Common First-Year Student Writing Errors, 9 Persps. 14 (Fall 2000).


Establishing and Maintaining Good Working Relationships with 1L Writing Students, 8 Persps. 4 (Fall 1999).


“Feed-Forward” Tutorials, Not “Feedback” Reviews, 6 Persps. 105 (Fall 1998).

Reminding First-Year Law Students Not to Abandon Creativity, 12 Second Draft (newsltr. of Leg. Writing Inst.) 19 (Nov. 1997).

Durako, Jo Anne


2000 Survey Results, Association of Legal Writing Directors/Legal Writing Institute, 7 Leg. Writing 155 (2001).

1999 Survey Results, Association of Legal Writing Directors/Legal Writing Institute, 6 Leg. Writing 123 (2000).

A Snapshot of Legal Writing Programs at the Millennium, 6 Leg. Writing 95 (2000).

Stop the Presses: Gender-Based Differences Discovered in Legal Writing Programs, 7 Scribes J. Leg. Writing 85 (2000).


Peer Editing: It’s Worth the Effort, 7 Persps. 73 (Winter 1999) (reprinted in Best of Persps. 52 (West Group 2001)).


Building Confidence and Competence in Legal Research: Step By Step, 5 Persps. 87 (Spring 1997) (reprinted in Best of Persps. (West Group 2001)).


Evolution of IRAC: A Useful First Step, 10 Second Draft (newsltr. of Leg. Writing Inst.) 6 (Nov. 1995).

**DuVivier, K.K.**


Lawmanac—Another Tool for the Shed or Your Computer Desktop, 32 Colo. Law. 69 (July 2003).

Nothing New under the Sun—Plagiarism in Practice, 32 Colo. Law. 53 (May 2003).


Nit-Picking or Significant Contract Choices?—Part III, 31 Colo. Law. 95 (July 2002).
Nit-Picking or Significant Contract Choices?—Part II, 31 Colo. Law. 57 (June 2002).
Play It Again, Sam: Repetition—Part II, 30 Colo. Law. 49 (Nov. 2001).
Play It Again, Sam: Repetition—Part I, 30 Colo. Law. 65 (Sept. 2001).
Cross-References, as Stated Above, 30 Colo. Law. 87 (July 2001).
A New Bluebook, 29 Colo. Law. 51 (Nov. 2000).
String Citations—Part II, 29 Colo. Law. 67 (Sept. 2000).
String Citations—Part I, 29 Colo. Law. 83 (July 2000).
Legal Citations for the Twenty-First Century, 29 Colo. Law. 45 (May 2000).
Details, Details: Questions from Readers, 29 Colo. Law. 29 (Jan. 2000).
Mooring Modifiers, 28 Colo. Law. 63 (Jul. 1999).
The Blackletter Law of Form, 28 Colo. Law. 31 (Jan. 1999).
Plain English Part VI: Negatives or the Power of Positives, 27 Colo. Law. 35 (Nov. 1998).
Plain English Part V: Go Aggro over Argot, 27 Colo. Law. 61 (Sept. 1998).
Plain English Part II: Shorter Sentences and Lighter Luggage, 27 Colo. Law. 27 (Mar. 1998).
Right Writing or Rite Riting? 26 Colo. Law. 61 (Nov. 1997).
The Volley of Canons, 26 Colo. Law. 59 (Sept. 1997).
Not Selected for Official Publication, 26 Colo. Law. 79 (July 1997).
Readers Speak Out, 26 Colo. Law. 45 (Mar. 1997).
Nothing So Destructive as Habit, 26 Colo. Law. 41 (Jan. 1997).
The Period and Its Pals, 24 Colo. Law. 1737 (July 1995).
Proper Words in Proper Places, 24 Colo. Law. 27 (Jan. 1995).
A Thousand Probabilities, 23 Colo. Law. 2082 (Sept. 1994).
The Lady Doth Protest Too Much, Methinks! 23 Colo. Law. 1511 (July 1994).
A False Economy, 23 Colo. Law. 1061 (May 1994).
Cease and Desist, 23 Colo. Law. 555 (Mar. 1994).
Are You Practicing an Uninformed System of Citation? 23 Colo. Law. 27 (Jan. 1994).
Quotations Part II: Block Quotes, 22 Colo. Law. 1887 (Sept. 1993).
Letters from Readers, 22 Colo. Law. 947 (May 1993).
We All Lose with Constitutional Amendment by Initiative, Advoc. 3 (May 1993).


Road Maps, 22 Colo. Law. 25 (Jan. 1993).


Gender Neutral, 21 Colo. Law. 1873 (Sept. 1992).

Procrastination, 21 Colo. Law. 1391 (July 1992).

Be Plain, 21 Colo. Law. 909 (May 1992).


Attorney Fees as Superfund Response Costs, Nat. Resources & Env. 34 (Summer 1991) (co-author Carolyn L. Buchholz).


Easton, Eric B.


Annotating the News: Mitigating the Effects of Media Convergence and Consolidation, 23 UALR 143 (2000).


The First Amendment in Cyberspace, in Learning Cyberlaw, in Cyberspace (Lydia Loren ed. 1999) (online).


Values, Borders and the Internet—A Case Study (Chinese), 4 Journalism & Commun. (Chinese Acad. of Soc. Sci., Inst. of Journalism) 16 (1997).


Two Wrongs Mock a Right: Overcoming the Cohen Maledicta That Bar First Amendment Protection for Newsgathering, 58 Ohio St. L.J. 1135 (1997).


Edelman, Diane Penneys


How They Write: Our Students’ Reflections on Writing, 6 Persps. 24 (Fall 1997).


Opening Our Doors to the World: Introducing International Law in Legal Writing and Legal Research Courses, 5 Persps. 1 (Fall 1996).

Edwards, John D.


Teaching Legal Research: Evaluating Options, in Expert Views on Improving the Quality of Legal Research Education in the United States (West 1992).


Edwards, Linda H.


Suggestions for New Scholars, Leg. Writing, Reasoning, & Research (AALS sec. newsltr.) 3 (Fall 2002).

A Chance to Teach Analytical Skills Intentionally and Systematically, 16 Second Draft (newsltr. of Leg. Writing Inst.) 1 (May 2002).

Joining the Club: Strategies for Inclusion, Leg. Writing, Reasoning, & Research (AALS sec. newsltr.) 1 (Spring 2002).


Tribute to Mary Lawrence, 7 Leg. Writing xiii (2001).


Message from the Chair, Leg. Writing, Reasoning, & Research (AALS sec. newsltr.) 1 (Fall 1996).

Message from the Chair, Leg. Writing, Reasoning, & Research (AALS sec. newsltr.) 1 (Spring 1996).


ICAC Format Accomplishes the Limited Purpose It Is Designed to Achieve, 10 Second Draft (newsltr. of Leg. Writing Inst.) 7 (Nov. 1995).

Teaching Legal Analysis, 2 Persps. 52 (Winter 1994) (co-author Paula Lustbader).


Honoring the Law in Communities of Force: Terrell and Wildman’s Teleology of Practice, 41 Emory L.J. 489 (1992) (co-author Jack Lee Sammons, Jr.).


The Use of Statistics to Prove Discrimination under Title VII, ABA Preview 250 (1989).


A Profile of the Grieved Lawyer, 23 Advoc. 2 (Nov. 1980).

When and How to Call in a Specialist, 23 Advoc. 2 (Oct. 1980).

Interest on Late Accounts, 23 Advoc. 2 (Sept. 1980).

Startling Lawyer Malpractice Verdict Upheld in Minnesota, 23 Advoc. 2 (Aug 1980).

Lawyer’s Ethics: Far Reaching Changes Proposed, 23 Advoc. 3 (July 1980).

Take This Job and Shove It: or How to Ethically Withdraw from a Case, 23 Advoc. 3 (June 1980).

Advertising Pitfalls—How to Avoid Them, 23 Advoc. 3 (May 1980).


More CLE Tidbits, 23 Advoc. 2 (Jan. 1980).

Procedure for Ethics Inquiries, 22 Advoc. 2 (Nov. 1979).


Selected Bibliography

2005

Ehrenberg, Suzanne


Eichhorn, Lisa

The Chevron Two-Step and the Toyota Sidestep: Dancing around the EEOC’s “Disability” Regulations under the ADA, 39 Wake Forest L. Rev. 177 (2004).


Enquist, Anne

*Teaching Students to Make Explicit Factual Comparisons*, 12 Persps. 147 (Spring 2004).


*Should I Teach My Students Not to Write in Passive Voice?* 12 Persps. 35 (Fall 2003).


Sailing through Designing Memo Assignments, 5 Leg. Writing 193 (1999) (co-authors Lorraine Bannai, Judith Maier, and Susan McClellan).


Epstein, David M.


Eckstrom’s Licensing in Foreign and Domestic Operations (West 2003).

Fairman, Christopher M.


Fajans, Elizabeth


Writing and Analysis in the Law (Found. Press 1989) (co-authors Helene Shapo and Marilyn R. Walter).

Falk, Mary

Writing for Law Practice (Found. 2004) (co-authors Elizabeth Fajans and Helene Shapo).


Feak, Christine


Feeley, Kelly M.


Fischer, Judith D.

Pleasing the Court: Writing Ethical and Effective Briefs (Carolina Academic Press 2005).
The Role of Ethics in Legal Writing: The Forensic Embroiderer, the Minimalist Wizard, and Other Stories, 9 Scribes J. Leg. Writing 77 (2004).

The Use and Effects of Student Ratings in Legal Writing Courses: A Plea for Holistic Evaluation of Teaching, 10 Leg. Writing 111 (2004).


Commenting on Student Papers, 14 Second Draft (newsltr. of Leg. Writing Inst.) 13 (Nov. 1999).


Getting beyond Race in Assessing the O.J. Case, Orange Co. Reg. 6 (Feb. 11, 1997).


Materials for Legal Writing Workshop (May 1993) (CLE presentation sponsored by the Cin. B. Assn.).

Hereby and Pursuant Are Not Terms of Art: The Law Schools and the Plain English Movement (Feb. 1993) (materials for CLE presentation to the Lawyers' Club of Cincinnati, Ohio).


Fowler, Linda


Friedman, Peter B.

The Class Listserv: Professor’s Podium or Students’ Forum? 8 Persps. 75 (Winter 2000).


Frost, Michael


Greco-Roman Analysis of Metaphoric Reasoning, 2 Leg. Writing 113 (1996).


Fruehwald, Scott


Gallacher, Ian


*Supreme Court’s Recent Decision Raises Class-Action Consciousness*, Daily Rec.


**Garner, Bryan A.**


*Securities Disclosure in Plain English* (CCH Inc. 1999).


*Unclutter the Text by Footnoting Citations*, 33 Tr. 87 (Nov. 1997).


In Praise of Simplicity but in Derogation of Simplism, 4 Scribes J. Leg. Writing 123 (1993).
From the Editor, 1 Scribes J. Leg. Writing v (1990).
An Uninformed System of Citation: The Maroonbook Blues, 1 Scribes J. Leg. Writing 191 (1990) (review of The University of Chicago Manual of Legal Citation (Bancroft-Whitney Co., Laws. Coop. & Mead Data Co. 1989)).

Genty, Philip M.

Termination of Parental Rights, in Family Trial Advocacy, Supreme Court, Appellate Division, First Department (2001).


Voluntary Surrender and Involuntary Termination of Parental Rights on Grounds Other Than Permanent Neglect, in New York Civil Practice: Family Court Proceedings (James Zett et al. eds., Matthew Bender 1990).


Adoption Generally, in New York Civil Practice: Family Court Proceedings (James Zett et al. eds., Matthew Bender 1988).


Gerdy, Kristin B.


Seventh Annual National Legal Research Teach-In Training Kit (West 1999).

Sixth Annual National Legal Research Teach-In Training Kit (West 1998).


Gewirtzman, Doni


Gilligan, Francis A.


The Bill of Rights and Service Members, Army Law. 3 (Dec. 1987).
Application Falsehoods as Basis for Impeachment, Army Law. 50 (Feb. 1986).
Criminal Law Notes: Character Evidence, 109 Mil. L. Rev. 83 (1985).
Credibility of Witnesses, 12 Advoc. 193 (1980).
Credibility of Witnesses, 11 Advoc. 211 (1979).
Let’s Do away with the Exclusionary Rule, L. Enforcement J. (Winter 1976) (co-authored).


Dept. of Army Pamphlet, No. 27–22, Evidence (1975).

Fourth Amendment in Military Practice (1975).


Probable Cause and the Informer, 60 Mil. L. Rev. 1 (1973).

Inspections, Army Law. 1 (Nov. 1972).

Gionfriddo, Jane Kent

The President’s Column on 405c Status for All Legal Writing Professionals, 15 Second Draft (newsltr. of Leg. Writing Inst.) 1 (Jan. 2001).

President’s Opening Remarks on the Status of Legal Writing, 7 Leg. Writing vii (2001).

LR&W Should Begin at the Beginning: Reading Legal Authority, 14 Second Draft (newsltr. of Leg. Writing Inst.) 2 (May 2000).

Using Fruit to Teach Analogy, 12 Second Draft (newsltr. of Leg. Writing Inst.) 4 (Nov. 1997).

Dangerous! Our Focus Should Be Analysis Not Formulas Like IRAC, 10 Second Draft (newsltr. of Leg. Writing Inst.) 2 (Nov. 1995).

Glaser, Cathy

Glashausser, Alex


*Juggling Failure and Success*, L. Teacher 3 (Fall 2003).

*Citation and Representation*, 55 Vand. L. Rev. 59 (2002).

*From Electoral College to Law School: Research and Writing Lessons from the Recount*, 10 Persps. 1 (Fall 2001).


Goldman, Pearl

*Alternative Dispute Resolution as a Vehicle for Promoting Collaborative Learning*, 15 Second Draft (newsltr. of Leg. Writing Inst.) 6 (June 2001).


*Using Technology to Enhance Learning in the Lawyering Skills Classroom*, 13 Second Draft (newsltr. of Leg. Writing Inst.) 8 (May 1999).


Gopen, George D.


*The Professor and the Professionals: Teaching Writing to Lawyers and Judges*, 1 Leg. Writing 79 (1991).


*What’s an Assignment Like You Doing in a Course Like This? Writing to Learn Mathematics*, 21 College Math J. 2 (1990) (co-author David A. Smith).


A Rare Book’s Odyssey, 10 Antiquarian Bk. Mthly. Rev. 52 (1983).


Gore, Jeffrey

Living with Monstrosity, the Future, Is, Meaning, Frame and Metaphor (ASCA Press 2002).


A Case for Modesty, Newsltr. S. Asia Resource Ctr. (U. Chi.) (reviewing David Peter Lawrence, Rediscovering God with Transcendental Argument: A Contemporary Interpretation of Monistic Saiva Philosophy (St. U. N.Y. Press 1999)).

To See-Between the Conclusion and Its Questions: Interviewing Techniques in Freewriting and Verbal Drafting, J. Ill. Assn. of Teachers of English (Winter 1997).

Peace in the Information Age, Strong Coffee (July 1997) (poem).

Endsong, Artisan (Spring 1997) (poem).
Gradisher, Michael R.

Graves, Richard B.
Advice to New Student Works Editors, 30 Stetson L. Rev. 559 (2000).
Texas Litigation after Tort Reform ’95 (U. Houston L. Found. CLE 1996).

Greenhaw, Leigh (Hunt)
Griswold, Angela

Four Pointers to Effective Use of PowerPoint in Teaching, 10 Persps. 132 (Spring 2002).

Using Images to Help Teach Legal Research, 10 Training Resources Kit 68 (AALL 2002).

Hamann, Ardath A.

Can an Agreement between One Purchaser and One Supplier Constitute a Group Boycott under the Sherman Antitrust Act? 1 Preview 4 (Sept. 25, 1998).

Imposing a Maximum Retail Price: Is It a Per Se Violation of the Sherman Antitrust Act? 1 Preview 4 (Sept. 18, 1997).


Harrison, Robert

It Only Counts If It Is Clear, 86 ABA J. 76 (June 2002).

Hecht, Deborah


Armies of the Everyday, 23 Jabberwock Rev. 2 (Spring 2002)


An Email from the Writing Center, 14 Second Draft (newsltr. of Leg. Writing Inst.) 20 (Nov. 1999).


Dinnerstein’s Wife, 2 Intense (1998).


Happy to Be a Writer, 70 Writer’s Dig. (Nov. 1990).

Rejection 101, 70 Writer’s Dig. (Nov. 1990).


Dinner with Friends, 7 Woman’s World (Feb. 4, 1986).

The Best Present Ever, 98 Write (June 1985).


---

Herrera, Deborah D.


---

Hoffman, Barbara


Between a Disability and a Hard Place: The Cancer Survivors’ Catch-22 of Proving Disability Status under the Americans with Disabilities Act, 59 Md. L. Rev. 352 (2000).


Hoffman, Craig


Hoffman, Geoffrey A.


Hood, Constance


Hurt, Christine


Network Effects and Legal Citation: How Antitrust Theory Predicts Who Will Build a Better Bluebook Mousetrap in the Age of Electronic Mice, 87 Iowa L. Rev. 1257 (2002).


Hutchinson, Terry


Researching and Writing in Law (Lawbook Co. 2002).

Hyden, Deborah S.

Jacobson, M.H. Sam


Legal Analysis and Communication (WUCL 2003).

Determining the Scope of a Court’s Holding, 11 Persps. 120 (Spring 2003).

How Students Absorb Information: Determining Modality in Learning Style, 8 Leg. Writing 175 (2002).


Six Steps to Drafting Good Contracts, 1 New Bulgaria L. Rev. (Sofia, Bulgaria) (1997).

Using the Myers-Briggs Type Indicator to Assess Learning Style: Type or Stereotype? 33 Willamette L. Rev. 261 (1997).

Jamar, Steven D.


On the Technology Horizon, 11 Jurist 29 (Summer/Fall 2001).


The ALWD Citation Manual—A Professional Citation System for the Law, 8 Persps. 65 (Winter 2000).

Using the Multistate Performance Test in an LRW Course, 8 Persps. 118 (Spring 2000).

Written Feedback on Student Writing, 14 Second Draft (newsltr. of Leg. Writing Inst.) 3 (Nov. 1999).


Asking Questions, 6 Persps. 69 (Winter 1998).

The President’s Column: Context and Connection, 12 Second Draft (newsltr. of Leg. Writing Inst.) 1 (Nov. 1997).

Teaching Case Synthesis, 12 Second Draft (newsltr. of Leg. Writing Inst.) 7 (Nov. 1997).


The President’s Column: Reaching Out, 11 Second Draft (newsltr. of Leg. Writing Inst.) 1 (May 1997).


Jarman, Casey M.


Jellum, Linda

Johansen, Steven J.


Other Employment Unfair Labor Practices: ORS 243.672(1)(d), (f), and (h), in Labor and Employment Law: Public Sector (Or. CLE 2002) (co-author Michael T. Tedesco).


Life without Grades: Creating a Successful Pass/Fail Legal Writing Program, 6 Persps. 119 (Spring 1998).


Statutes Affecting Compensation, in Labor and Employment Law: Public Sector (Or. CLE 1990) (co-author Katherine Logan).

Civil Service and Particular Employment Problems, in Labor and Employment Law: Public Sector (Or. CLE 1990).

Jones, James T. R.


**Kagan, Jonathan**


**Kahn, Robert A.**


**Kane, Leah A.**


**Kavanaugh, Kay**


Kearney, Mary Kate

DeShaney's Legacy in Foster Care and Public School Settings, 41 Washburn L.J. 275 (2002).


Breaking the Silence: Tort Liability for Failing to Protect Children from Abuse, 42 Buff. L. Rev. 405 (1994).


Keller, Elisabeth A.

Audiotaped Critiques of Written Work, 14 Second Draft (newsltr. of Leg. Writing Inst.) 13 (Nov. 1999).


Kent, Mara


Going the Distance: Distance Education at the Thomas M. Cooley Law School, 81 Mich. B.J. 48 (Oct. 2002).

Michigan’s Civil Rights Claimants: Should They Be Required to Give Up Their Physician-Patient Privilege When Alleging Garden-Variety


Kimble, Joseph


A Crack at Federal Drafting, 39 Ct. Rev. 44 (Spring 2002).

First Things First: The Lost Art of Summarizing, 8 Scribes J. Leg. Writing 103 (2001–2002) (originally published in 38 Ct. Rev. 30 (Summer 2001)).


The Best Test of a New Lawyer’s Writing, 80 Mich. B.J. 62 (July 2001).


How to Write an Impeachment Order, 36 Ct. Rev. 8 (Summer 1999) (reprinted in 78 Mich. B.J. 1304 (Nov. 1999)).

The Lessons of One Example, 42 Clarity 59 (Sept. 1998).

Lawyers Need to Learn the Elements of Style, Natl. L.J. A21 (Nov. 10, 1997).


In Defense of IRAC (As Far As It Goes), 10 Second Draft (newsltr. of Leg. Writing Inst.) 10 (Nov. 1995).


On Legal-Writing Programs, 2 Persps. 43 (Winter/Spring 1994).
2005] Selected Bibliography 129


Kintzer, Gail


Koby, Michael H.


Religious Liberty in Central Asia, 22 CSCE Dig. 33 (1999).

The Supreme Court’s Declining Reliance on Legislative History: The Impact of Justice Scalia’s Critique, 36 Harv. J. on Legis. 369 (1999).


Kordesh, Maureen Straub

Rolling Up Their Sleeves: Using a Single Case to Teach Multi-Faceted Case Analysis, 14 Second Draft (newsltr. of Leg. Writing Inst.) 3 (May 2000).


“I Will Build My House with Sticks”: The Splintering of Property Interests under the Fifth Amendment May be Hazardous to Private Property, 20 Harv. Envtl. L. Rev. 397 (1996).

Kording, Niccol D.


Kosse, Susan Hanley


The Rx for Burnout: Serve Others, 18 Second Draft (newsltr. of Leg. Writing Inst.) 15 (June 2004).

Buffalo Creek Prevents Legal Writing Class Disaster, 10 L. Teacher 14 (Spring 2003).


Putting One Foot in the Front of the Other: The Importance of Teaching Text-Based Research before Exposing Students to Computer-Assisted Legal Research, 9 Persps. 69 (Winter 2001) (co-author David T. Ritchie).

What Happens When the Internet Becomes X-Rated: How Do We Keep It Safe for Our Children, 4 J. Cath. Educ. 514 (June 2001).

Student Designed Home Web Pages—Does Title IX or the First Amendment Apply? 43 Ariz. L. Rev. 905 (2001).

Teaching Negotiable Instruments Can Be Fun, 8 L. Teacher 9 (Fall 2000).


Krontz, Constance

Improving Legal Writing Courses: Perspectives from the Bench and Bar, 8 Leg. Writing 201 (2002) (co-author Susan McClellan).

Kunz, Christina L.


Making the Most of Reading Assignments, 5 Persps. 61 (Winter 1997) (co-author Helen S. Shapo).

ABA Sourcebook on Legal Writing Programs (LexisNexis 1997) (co-authors Ralph L. Brill, Susan L. Brody, Richard K. Neumann, Jr., and Marilyn R. Walter).

Teaching Research as Part of an Integrated LR&W Course, 4 Persps. 78 (Spring 1996).

The Legal Aspects of Purchasing Services and Technology (Natl. Assn. of Purchasing Mgt. 1995).

Winning the Font Game: Limiting the Length of Students’ Papers, 4 Persps. 65 (Fall 1995) (co-author Helene S. Shapo).

“Standardized” Assignments in First-Year Legal Writing, 3 Persps. 65 (Spring 1995).


Teaching Citation Form and Technical Editing: Who, When, and What, 3 Persps. 4 (Fall 1994) (co-author Helene S. Shapo).


Terminating Research, 2 Persps. 6 (Fall 1993) (co-author Helene S. Shapo).

Winds of Curricular Change, William Mitchell Mag. 23 (Summer 1993).


Integration of Skills as an Overarching Goal in a Legal Writing, Reasoning, and Research Course: Its Influence on Curriculum, Integrated Leg. Research 7 (Fall 1989).


Lawrence, Mary S.

An Interview with Marjorie Rombauer, 9 Leg. Writing 19 (2003).

Legal Research without Cost on the Internet, 11 Experience (newltr. of ABA Senior Laws. Div.) 15 (Fall 2000) (co-authored).

Surviving Sample Memos, 6 Persps. 90 (Fall 1998).
2005]  

Selected Bibliography 133

*Designing the First Writing Assignment*, 5 Persps. 94 (Spring 1997) (co-author Helene S. Shapo).  
*The University of Oregon School of Law 1884–1903: The Thornton Years*, 59 Or. L. Rev. 249 (1980).  

**Leatherman, Don**

*United Dominion and the Consolidated Return Regulations*, 91 Tax Notes 1319 (May 21, 2001).  
*Taxable Transactions Involving S Corporations and Their Shareholders*, in *New York University 58th Institute on Federal Taxation* ch. 7 (Matthew Bender 2000).  


LeClercq, Terri


In the Time of Shoes and Butterflies, 7 Hispanic J.L. & Policy 56 (Fall 2001).

Teaching Student Editors to Edit, 9 Persps. 124 (Spring 2001).


A Texas Death, English in Tex. 63 (Fall/Winter 2000).


“Mister” Indeed! 10 UIL Leaguer (Oct. 1999).


U.S. News & World Report “Notices” Legal Writing Programs, 3 Persps. 77 (Spring 1995).


Avenue Writers, Pecan Press (Austin, Tex.) 10 (Nov. 1992).


Selected Bibliography

Focus on Density, 49 Tex. B.J. 176 (1986).
Min(d)ing the Field: Appellate Judges Speak out, 48 Tex. B.J. 1350 (1985).

Levine, Jan M.

Legal Writing: Examples and Explanations (forthcoming Aspen L. & Bus.) (co-author Richard K. Neumann, Jr.).

Four Rules to Advance the Status of Legal Writing Faculty, Leg. Writing, Reasoning, & Research (AALS Sec. newsltr.) 12 (Spring 2002).


Designing Assignments for Integrating Legal Analysis, Research and Writing, 3 Persps. 58 (Spring 1995) (reprinted in Best of Persps. 3 (West Group 2001)).


Seven Short Suggestions for Using Your Computer to Teach LRW Better, 13 Second Draft (newsltr. of Leg. Writing Inst.) 13 (May 1999).

Some Concerns about Legal Writing Scholarship, 7 Persps. 69 (Winter 1999).
Legal Writing Scholarship: Point/Counterpoint, 7 Persps. 68 (Winter 1999) (co-author Grace C. Tonner).


The Final Word, 8 Second Draft (newsltr. of Leg. Writing Inst.) 12 (Mar. 1994).

Figure Out How You Fit into the Law School Academy, 8 Second Draft (newsltr. of Leg. Writing Inst.) 3 (Mar. 1994).


Levy, James B.

As a Last Resort, Ask the Students: What They Say Makes Someone an Effective Law Teacher, 58 Me. L. Rev. 50 (2005).

Why Most People Can’t Write: A Neurologist Suggests Some Answers, 13 Persps. 32 (Fall 2004) (reviewing Alice W. Flaherty, The Midnight Disease: The Drive to Write, Writer’s Block and the Creative Brain (Houghton Mifflin 2004)).

Three Views of Visiting, 18 Second Draft (newsltr. of Leg. Writing Inst.) 1 (June 2004) (co-authors Samantha Moppett and Terrill Pollman).


We Teach Thinking, Not Writing, 17 Second Draft (newsltr. of Leg. Writing Inst.) 12 (July 2003).

Motivating Students to Learn, 9 L. Teacher 14 (Spring 2002).

Be a Classroom Leader, 10 Persps. 12 (Spring 2001).

Better Research Instruction through “Point of Need” Library Exercises, 7 Leg. Writing 87 (2001).


“Can’t We All Just Get Along?”—Cooperative Legal Writing Assignments, 15 Second Draft (newsltr. of Leg. Writing Inst.) 1 (June 2001).

Legal Research and Writing Pedagogy—What Every New Teacher Needs to Know, 8 Persps. 103 (Spring 2000) (reprinted in Best of Persps. 39 (West 2001)).


Book Review, Leg. Writing, Reasoning, & Research (AALS sec. newsltr.) (Fall 2000) (reviewing Gerald Amada & Michael Clay Smith, Coping with Misconduct in the College Classroom: A Practical Model (College Administration Publications 1999)).

50,000,000 Elvis Fans Can’t Be Wrong: The Socratic Method Works, 14 Second Draft (newsltr. of Leg. Writing Inst.) 5 (May 2000).

Critiquing Student Papers—The Quick and the Dead, 14 Second Draft (newsltr. of Leg. Writing Inst.) 5 (Nov. 1999).

Dead Bodies and Dueling: Be Creative in Developing Ideas for the Open Universe Memoranda, 7 Persps. 13 (Fall 1998).


Constitutional Challenges to Withdrawal Liability under the Multiple Employer Pension Plan Amendments Act of ERISA, chapter in treatise (ABA).

**Lewis, Robin**


**Lieberman, Jethro K.**


*Eight Blocks Away, Memories of September 11, 2001* (N.Y. L. Sch. 2002).


*War Story. Thirty Years without a Cup of Coffee or a Sailor’s Oath*, Press at James Pond (Jan. 31, 2001).


Ruminations on a Crescendo of Litigation, Natl. Forum (Fall 1991).


Stroock, Stroock & Lavan: An Informal History of the Early Years, 1876 to 1950 (Stroock, Stroock & Lavan 1987).


Writing Like Pros(e), 6 Cal. Law. 43 (Jan. 1986) (co-author Tom Goldstein).

Book Review, 71 ABA J. 86 (June 1985) (reviewing Lawrence M. Friedman, Total Justice (Russell Sage Found. 1985)).


When Should Lawyers Squeal on Their Clients? Wash. Post C1 (Dec. 21, 1982).


Corporate Dispute Management (Jethro K. Lieberman ed., Matthew Bender & Co. 1982).


Checks and Balances, the Alaska Pipeline Case (Lothrop, Lee & Shepard Bks. 1981).


Putting Law into Ethics, Liberal Educ. 250 (Summer 1979).


Crisis at the Bar: Lawyer’s Unethical Ethics and What to Do about It (W. W. Norton Co. 1978).


The Relativity of Injury, 7 Philosophy & Pub. Affairs 60 (Fall 1977).


New Ways to Cut Legal Fees, N.Y. Mag. 83ff (Feb. 14, 1976).


The Race Admissions Case, Juris Doctor 22 (June 1974).


Developments in Antitrust during the Past Year, 39 Antitrust L.J. 578 (1970).

Are Americans Extinct? (Walker & Co. 1968).


Court in Session (Sterling Publg. Co. 1966).


Liemer, Susan

Staffing Models & Other Personnel Issues; Hiring a Director; Administration, Training and Other Director’s Responsibilities; Review of Programs and Teachers, in ABA Sourcebook on Legal Writing Programs (forthcoming Eric Easton ed., ABA 2005) (three solicited chapters) (co-author Jan M. Levine).


Being a Beginner Again: A Teacher Training Exercise, 10 Persps. 87 (Winter 2002).

The Quest for Scholarship: The Legal Writing Professor’s Paradox, 80 Or. L. Rev. 1007 (2002).


Every Case Has Two Stories, 8 L. Teacher 12 (Spring 2001) (reprinted in Best of L. Teacher ___ (forthcoming 2004)).

Verbs Are It, 89 Ill. B.J. 151 (Mar. 2001).

A Millennium of Legal Writing, Scrivener 1 (Winter 2001) (reprinted in 15 Second Draft (newsltr. of Leg. Writing Inst.) 24 (June 2001)).

Memo Structure for the Left and Right Brain, 8 Persps. 95 (Winter 2000).


Contract Basics, Artfirst 8 (Spring/Summer 1997).


Understanding Your Copyrights, Artfirst 2 (Fall 1996) (reprinted in City of L.A. Pub. Arts Newsler. 4 (Spring 1997)).

Lien, Molly Warner


Loudenslager, Michael


Lysaght, Pamela


Maatman, Mary Ellen


Majette, Gwendolyn Roberts


Malmud, Joan


Margolis, Ellie

Teaching Students to Make Effective Policy Arguments in Appellate Briefs, 9 Persps. 73 (Winter 2001).

Marlow-Shafer, Melissa

Student Evaluation of Teacher Performance and the "Legal Writing Pathology": Diagnosis Confirmed, 5 N.Y.C. L. Rev. 115 (2002).
In-Class Exercises That Foster Student Collaboration, 15 Second Draft (newsletter of Leg. Writing Inst.) 13 (June 2001).
Shakespeare in Law: How the Theater Department Can Enhance Lawyering Skills Instruction, 8 Persps. 108 (Spring 2000).
Effective Assessment: Detailed Criteria, Check-Grading, and Student Samples, 14 Second Draft (newsletter of Leg. Writing Inst.) 6 (Nov. 1999).

Markus, Karen

Latex and the Law, Nurse Week Mag. (July 12, 1999).
Patient Dumping, Nurse Week Mag. (June 29, 1998).
California’s Malpractice Laws, Part 1, Nurse Week Mag. (June 29, 1998).
Holding Managed Care Liable, Nurse Week Mag. (Apr. 20, 1998).
Holding Managed Care Accountable, Health Week Mag. (Apr. 13, 1998).
RN need to Know Legal Risks of Giving Advice, Nurse Week Mag. (May 26, 1997).
Confidentiality of Medical Information, Part 2, Nurse Week Mag. (Jan. 7, 1997).
Confidentiality of Medical Information, Part 1, Nurse Week Mag. (Nov. 25, 1996).
Patients with HIV Have Right to Nursing Care, Nurse Week Mag. (July 22, 1996).
What RNs Must Know about Advance Directives, Nurse Week Mag. (Sept. 1995).
Ethics of Providers’ Disclosing Their HIV Status, Nurse Week Mag. (July 1995).
HIV Status, Confidentiality, Health Week Mag. (June 1995).
Nurses’ Responsibilities Regarding Informed Consent, Nurse Week Mag. (May 1995).

Matthews, Joan Leary


Clean Water/Clean Air Bond Act—Opportunities for Municipalities to Upgrade Drinking Water Systems, Footnotes (Co. Atty.'s Assn. of St. of N.Y.) 7 (Spring 1997).


Matthews, Stephanie

McArdle, Andrea


McClellan, Susan


*Sailing through Designing Memo Assignments*, 5 Leg. Writing 193 (1999) (co-authors Lorraine Bannai, Judith Maier, and Anne Enquist).

McDonnell, Thomas Michael


McElroy, Lisa Tucker

Sandra Day O’Connor: Supreme Court Justice (Millbrook Press 2003).
Meet My Grandmother: She’s a Supreme Court Justice (Millbrook Press 1999) (co-author Courtney O’Connor).
Meet My Grandmother: She’s a United States Senator (Millbrook Press 2000) (co-author Eileen Feinstein Mariano).
Meet My Grandmother: She’s a Deep-Sea Explorer (Millbrook Press 2000) (co-author Russell T. Mead).

McGinnis, Doretta Massardo


McGaugh, Tracy L.


McKinney, Ruth Ann

Depression and Anxiety in Law Students: Searching for Solutions: Are We Part of the Problem and Can We Be Part of the Solution, 8 Leg. Writing 229 (2002).

McLaughlin, Julia Halloran


McManus, Kathleen


Mercer, Kathryn Lynn


“You Can Call Me Al in Graceland”: Reflection on a Speech Entitled “We Have Diamonds on the Soles of Our Shoes”, 3 Persps. 38 (Winter 1995).


Meyer, Phillip N.


The Pathology of Practice: A Short Story about Practice, 8 St. Thomas L. Rev. 215 (1995).


Law Students Go to the Movies, 24 Conn. L. Rev. 893 (1992).


Mika, Karin


Milani, Adam A.


Patient Assaults: Health Care Providers Owe a Non-Delegable Duty to Their Patients and Should Be Held Strictly Liable for Employee Assaults Whether or Not within the Scope of Employment, 21 Ohio N.U. L. Rev. 1147 (1995).


Harassing Speech in the Public Schools: The Validity of Schools’ Regulations of Fighting Words and the Consequences If They Do Not, 28 Akron L. Rev. 187 (1995).

**Miller, Douglas**


**Miller, Marshall**


**Mischler, Linda Fitts**


**Modesitt, Nancy M.**


**Moliterno, James E.**


Selected Bibliography


Moore, Ria J.

Methods for Teaching Legal Analysis: A Demonstration of How to Help Students Turn the Facts of a Client’s Case into Good Legal Analysis, 14 Second Draft (newsltr. of Leg. Writing Inst.) 13 (May 2000).

Moppett, Samantha A.


**Mostaghel, Deborah M.**

Wrong Place, Wrong Time, Unfair Treatment? Aid to Victims of Terrorist Attacks, 40 Brandeis L. J. 84 (2001).


**Muller-Peterson, Jane**


**Murray, Michael D.**


Nankivell, Ross

Legal Education in Australia, 72 Or. L. Rev. 983 (1993).


This Far and No Further, Is There a Constitutional Right to Die? 76 ABA J. 66 (Apr. 1990).


Nardone, Ernest


Nathanson, Mitchell J.


Celebrating the Value of Practical Knowledge and Experience, 11 Persps. 104 (Spring 2003).


Hospital Corporate Negligence: Enforcing the Hospital’s Role of Administrator, 28 Tort & Ins. L.J. 575 (1993).
Neumann Jr., Richard K.

ABA Sourcebook on Legal Writing Programs (LexisNexis 1997) (co-authors Ralph L. Brill, Susan L. Brody, Christina L. Kunz, and Marilyn R. Walter).

Newby, Thomas R.

Law School Writing Programs Shouldn’t Teach Writing and Shouldn’t Be Programs, 7 Persps. 1 (Fall 1998).
Dumbing It Down, 82 Ill. B.J. 387 (1994).

Newman, Leslie

Jewish Federation of Delaware, 15 Del. Law. 34 (Spring 1997).
Children and Families First, 15 Del. Law. 28 (Spring 1997).

Oates, Laurel Currie

The Paperless Writing Class, 15 Second Draft (newsltr. of Leg. Writing Inst.) 18 (June 2001).
Beyond Communication: Writing as a Means of Learning, 6 Leg. Writing 1 (2000).
Beating the Odds: Reading Strategies of Law Students Admitted through Special Admissions Programs, 83 Iowa L. Rev 139 (1997).

O’Neill, Kathleen
Adding an Alternative Dispute Resolution (ADR) Perspective to a Traditional Legal Writing Course, 50 Fla. L. Rev. 709 (1998).

Oreskovic, Johanna

O’Toole, Michael
The Significance of Jail Administration in an Era of Public Competition, 4 Corrections Mgt. Q. (Nov. 1998).

Ouellette, Alicia R.
When Vitalism Is Dead Wrong: The Discrimination Against and Torture of Incompetent Patients by Compulsory Life-Sustaining Treatment, 79 Ind. L.J. 1 (2004).

Parker, Carol McCrehan
A Liberal Education in Law: Engaging the Imagination through Research and Writing beyond the Curriculum, 1 J. ALWD 130 (2002).
Writing throughout the Curriculum: Why Law Schools Need It and How to Achieve It, 76 Neb. L. Rev. 561 (1997).

Parker, Deborah Leonard
Oral Argument on Appeal: Conversation and Jazz, N.C. Acad. of Tr. Laws. Tr. Brs. (Spring 1993).

Payne, Lucy Salsbury
The Senate Power of Advice and Consent on Judicial Appointments: An Annotated Research Bibliography, 64 Notre Dame L. Rev. 106 (1989) (co-authors Michael J. Slinger and James Lloyd Gates, Jr.).

Peltz, Richard J.
Use “the Filter You Were Born with”: The Unconstitutionality of Mandatory Internet Filtering for the Adult Patrons of Public Libraries, 77 Wash. L. Rev. 397 (2002).
What Every JMC Grad Should Know: Exposing Students to Legal Research, Media L. Notes 1 (Fall 2001).


Sixth Circuit Sits En Banc in College Censorship Case, Media L. Notes (2000).


Pether, Penelope


Hardy and the Law, 1 Thomas Hardy J. 28 (Feb. 1991) (reprinted in Short Story Criticism vol. 60, 183 (Janet Witalec ed., Gale)).


Discipline and Punish: Dispatches from the Citation Manual Wars and Other (Literally) Unspeakable Stories, Law’s Cultural Mediations, 10 Griffith L. Rev. (2001).


Feminist Methodologies in Discourse Analysis: Sex, Property, Equity? in Culture and Text: Discourse and Methodology in Social Research
and Cultural Studies (Cate Poynton & Alison Lee eds., Allen & Unwin 1999) (co-author Terry Threadgold).


Semiotics; or Wishin’ and Hopin’? 20 Cardozo L. Rev. 1615 (1999).


Teaching Law Students How to Write, 33 Clarity 40 (1995).


True, Untrue or (Mis)represented?—Section 40(1)(a) of the NSW Crimes Act, 16 Sydney L. Rev. 114 (1994).


Book Review, 4 Antithesis 186 (reviewing Ian Hunter, Culture and Government, “And after the Time of Cholera?”).

Phelps, Teresa Godwin


The Margins of Maycomb: A Rereading of To Kill a Mockingbird, 45 Ala. L. Rev. 511 (1994).


2005]  Selected Bibliography  165


*Subordinate to Persuade*, 1 Second Draft (newsltr. of Leg. Writing Inst.) 12 (Oct. 1985).


**Pocock, Sharon**

*Training Students in the Basics*, 17 Second Draft (newsltr. of Leg. Writing Inst.) 8 (July 2003).


*Using an Elaborated Correction Key for Basic Writing Problems*, 14 Second Draft (newsltr. of Leg. Writing Inst.) 15 (Nov. 1999).
Pollman, Terrill


Three Views of Visiting, 18 Second Draft (newsltr. of Leg. Writing Inst.) 1 (June 2004) (co-authors James Levy and Samantha A. Moppett).

Further Thoughts on Better Writing, Leg. Writing, Reasoning, & Research (AALS sec. newsltr.) 8 (Spring 2003).


A Writer’s Board and a Student-Run Writing Clinic: Making the Writing Community Visible at Law Schools, 3 Leg. Writing 277 (1997).


Pratt, Diana


Raeker-Jordan, David


Ramirez, Mary

Enron and the New Paradigm of Economic Crime, 40 Cir. Rider 4 (Fall/Winter 2002).

Ramsfield, Jill J.

The Law as Architecture: Building Legal Documents (West 2000).
Scholarship in Legal Writing, 1 Leg. Writing Dirs. Conf. 87 (1996) (co-author J. Christopher Rideout).
Writing High Impact Briefs, 30 Tr. Law. 54 (1994).
Legal Writing: A Revised View, 69 Wash. L. Rev. 35 (1994) (co-author J. Christopher Rideout).

Ramy, Herbert


Ray, Mary Barnard

Common Confusing Usage Rules, Some Rules Bear Repeating: Fewer and Less, Affect and Effect, Correspond to and Correspond with, Different from and Different Than, and Oral and Verbal Are Just a Few, 73 Wis. Law. 49 (June 2000).

Skill Is Key to Crafting Memorable Quotes: Here Is an Exercise That Helps Writers Understand the Bones of English, the Grammar That Can Make It Eloquent and Memorable, 73 Wis. Law 57 (Mar. 2000)


How to Use Legalese, 72 Wis. Law. 34 (July 1999).

Finding the Perfect Tense: Different Verb Tenses Can Be Coordinated in One Passage to Express Actions That Happen at Different Times, That Happen Because of Each Other, or That Happen Only in the Context of Another Action, 72 Wis. Law. 28 (Apr. 1999).

Pet Peeves of Improper English Usage: Readers Sound off on Pet Peeves of Their Own, 72 Wis. Law. 53 (Mar. 1999).

Reversing Ripley: Telling a Story Your Reader Can Believe: Three Writing Techniques Can Make the Unlikely Seem Natural- Foreshadowing the Surprise, Establishing a Solid Foundation, and Showing More Than Telling, 72 Wis. Law. 29 (Feb. 1999).

Transitions Enable Readers to Follow the Writer’s Thinking, Legal Writers Need to Use Enough Accurate Signals to Guide Their Readers through the Complex Terrain of Most Legal Reasoning, 72 Wis. Law. 35 (Oct. 1999).

How Individual Differences Affect Organization and How Teachers Can Respond to These Differences, 5 Leg. Writing 125 (1999).


A Dear John Letter . . . Or How to Construct Your Litigation Documents, 71 Wis. Law. 49 (Apr. 1998).

When Weaving Emotional Arguments into Legal Logic Remember to Focus Your Fire, Use Writing Techniques That Add Drama and Force, and Have Faith in the Quality of Your Argument, 71 Wis. Law. 47 (Mar. 1998).

Pet Peeves of Improper English Usage, 70 Wis. Law. 51 (Dec. 1997).

Writing Good News and Bad News Letters, 70 Wis. Law. 45 (Sept. 1997).

Spell Checkers, Proofreading and the Lack of Free Lunches, 70 Wis. Law. 47 (May 1997).

Logic and the Legal Reader, 70 Wis. Law. 28 (Feb. 1997).


Reichard, Cynthia J.

Reinhart, Susan
Meeting the Needs of Non-Native Students, Am. Language Rev. (May 1997) (co-author Christine Feak).

Ressler, Jayne

Richmond, Jane
How to Start a Legal Writing Column at Your Firm, AILTO Insider (Am. Inst. for L. Training within Off.) (Summer 1997).
Book Review, AILTO Insider (Fall 1993) (reviewing Steven V. Armstrong & Timothy P. Terrell, Thinking Like a Writer: A Lawyer’s Guide to Effective Writing and Editing (Practising L. Inst. 1993)).
Writing with Confidence at Jones Day, AILTO Insider (Fall 1989).

Ricks, Sarah E.
Some Strategies to Teach Reluctant Talkers to Talk about Law, 54 J. L. Educ. 570 (2004).


Rideout, J. Christopher

Strangers in a Familiar Land, 3 Jurist: Bks. on L. 7 (available at http://jurist.law.pitt.edu/lawbooks/revoct00.htm#Rideout) (reviewing Anthony Amsterdam & Jerome Bruner, Minding the Law (Harv. U. Press 2001)).

Creatures from the Black Lagoon—They’re Nice; or, What Writing Specialists Can Offer Legal Writing Programs, 13 Second Draft (newsltr. of Leg. Writing Inst.) 16 (1999).


Research and Writing about Legal Writing: A Foreword from the Editor, 1 Leg. Writing v (1991).


Ritchie, David T.

Critiquing Modern Constitutionalism, 3 Appalachian J.L. 37 (2004).


Supreme Court Watch: 26 State & Local L. News (ABA newsltr. of St. & Loc. Govt. Sec.) 8 (Spring 2003).

Supreme Court Watch: 25 State & Local Law News (ABA Newsltr. of St. & Loc. Govt. Sec.) 3 (Summer 2002).

Supreme Court Watch: 25 State & Local Law News (ABA Newsltr. of St. & Loc. Govt. Sec.) 5 (Spring 2002).

Putting One Foot in front of the Other: The Importance of Teaching Text-Based Research before Exposing Students to Computer-Assisted Legal Research, 9 Persps. 69 (Winter 2001) (co-author Susan H. Kosse).


Robbins, Kristen K.

Rhetoric for Legal Writers (forthcoming West 2005).


Robbins, Ruth Anne


Creating New Learning Experiences through Collaborations between Law Librarians and Legal Writing Faculty, 11 Persps. 110 (Spring 2003) (co-author S.A. King).

Students Should Have a Choice, 16 Second Draft (newsltr. of Leg. Writing Inst.) 10 (May 2002).


Teach to Your Audience, 16 Second Draft (newsltr. of Leg. Writing Inst.) 8 (Dec 2001).

Varying the Traditional Methods of Peer Editing, 15 Second Draft (newsltr. of Leg. Writing Inst.) 15 (June 2001).


Roberts, Bonita K.


Romantz, David S.


Rombauer, Marjorie Dick


Legal Writing in a Nutshell (West 1996) (co-authors Lynn Squires and Katherine Kennedy).


Regular Faculty Staffing for an Expanded First-Year Research and Writing Course: A Post Mortem, 44 Alb. L. Rev. 192 (1980).


Rosenbaum, Judith

Why I Don’t Give a Research Exam, 11 Persps. 1 (Fall 2002).

Fostering Teamwork through Cooperative and Collaborative Assignments, 15 Second Draft (newsltr. of Leg. Writing Inst.) 7 (June 2001) (co-author Cliff Zimmerman).


CALR Training in a Networked Classroom, 8 Persps. 79 (Winter 2000).

Using Read-Aloud Protocols as a Method of Instruction, 7 Persps. 105 (Spring 1999).


Food and Drugs, in Frumer & Friedman’s Product Liability (1989) (co-author Candice Goldstein).


Implementing Court Unification: A Map for Reform, 17 Duq. L. Rev. 419 (1979) (co-authors Larry Berkson and Susan Carbon).


Court Reform in the Twentieth Century: A Critique of the Court Unification Controversy, 27 Emory L.J. 559 (1978) (co-authors Susan Carbon and Larry Berkson).

Organizing the State Courts: Is Structural Consolidation Justified? 45 Brook. L. Rev. 1 (1978) (co-authors Larry Berkson and Susan Carbon)


Rosenthal, Lawrence


Are We Teaching Our Students What They Need to Survive in the Real World? Results of a Survey, 9 Persps. 103 (2001).

Rowe, Suzanne E.

The Bluebook Blues: ALWD Introduces a Superior Citation Reference Book for Lawyers, 64 Or. St. B. Bull. (June 2004).

The ADA in Legal Writing Classes, Leg. Writing, Reasoning, & Research (AALS sec. newsltr.) 1 (Spring 2004).


From the Grocery to the Courthouse: Teaching Legal Analysis to First-Year Students, 14 Second Draft (newsltr. of Leg. Writing Inst.) 14 (May 2000) (co-author Jessica Enciso Varn).


The Brick: Teaching Legal Analysis through the Case Method, 7 Persps. 21 (Fall 1998).

Ruescher, Robert


Ruhtenberg, Joan


Student Author, Navigational Servitude—Taking of Property under the Fifth Amendment, 13 Ind. L. Rev. 819 (1979).
Ryan, Jennifer Jolly


*Fair Housing Act: The Fair Housing Act’s Protection Based upon Familial Status*, 15 Preventative L. Rptr. 18 (1997).

*Avoiding Housing Discrimination by Real Estate Professionals*, 10 Real Est. Fin. J. 5 (Spring 1995).


Salzmann, Victoria S.


Sampson, Kathryn


*Synthesis and Synergy: Building Your Case and Your Credibility with the Help of Adverse Authority*, 35 Ark. Law. 17 (Fall 2000).


*Keynote Address, Ideals, Obstacles and Achievements* (Psi Ch. Initiates to Kappa Delta Pi Intl. Honor Socy. in Educ., U. N. Iowa)


Burden Shifting in Will Contest Cases: An Examination and a Proposal That the Arkansas Supreme Court Reconcile Arkansas Rules of Evidence Rule 301 with Its Undue Influence Case Law, 1996 Ark. L. Notes 93.


Advice to a Beginning Legal Writing Teacher, 9 Second Draft (newsltr. of Leg. Writing Inst.) (Mar. 1994).

The Constitutionality of Single-Sex Institutions (seminar at Wesleyan College, Macon, Ga., Spring 1992) (with Laura Gardner Webster).


Schiess, Wayne


Writing for the Legal Audience (Carolina Academic Press 2003).

The Five Principles of Legal Writing, 49 Pract. Law. 11 (June 2003).

How to Write an Effective Memo, 32 Student Law. 22 (May 2003).

What to Do When a Student Says “My Boss Won’t Let Me Write Like That”? 11 Persps. 113 (Spring 2003).

Dear Employer . . ., 31 Student Law. 27 (Oct. 2002).

How to Write for Trial Judges, 13 Pract. Litig. 41 (July 2002).

Write Effective Letters to Opposing Counsel, 38 Tr. 70 (June 2002).

Common Student Citation Errors, 10 Persps. 119 (Spring 2002).
Ethical Legal Writing, 21 Rev. Litig. 527 (2002).
Collaborating with the Opposition, 15 Second Draft (newsltr. of Leg. Writing Inst.) 11 (June 2001).

Schultz, Nancy L.

There’s a New Test in Town: Preparing Students for the MPT, 8 Persps. 14 (Fall 1999).
Live(s) for the State? 3 Nexus 37 (Fall 1998).

Schwabach, Aaron

The Role of International Law and Institutions, Theme 1.36, in Encyclopedia of Life Support Systems (UNESCO 2002) (co-author Art
Cockfield) (reprinted in Knowledge for Sustainable Development vol. 1, 757 (UNESCO 2002)).


Transboundary Environmental Harm and State Responsibility, in Encyclopedia of Life Support Systems 1.36.2.2 (UNESCO 2002).

Don’t Blame Canada for Terrorism, Seattle Post-Intelligencer (Oct. 10, 2001).


Comments on Republika Srpska Local Self-Government Law, ABA C. & E. European L. Initiative (June 12, 2000).


The Tisza Cyanide Disaster and International Law, 30 Envtl. L. Rptr. 10,509 (2000).


Schwinn, Steven


Sears, Dennis S.

Selected Bibliography


See, Brenda

Tying It All Together, 10 Persps. 18 (Fall 2001).


Briefing a Case in Reverse, 12 Second Draft (newsltr. of Leg. Writing Inst.) 2 (Nov. 1997).


Seligmann, Terry Jean

Bringing Arkansas Special Education Law into Focus (MEDS/PDN Nov. 2003) (chapters in CLE materials).


Legal Research and Writing, Ark. L. Rec. 18 (Fall/Winter 2002).

A Practical Education: Putting Research and Writing to Work, 16 Second Draft (newsltr. of Leg. Writing Inst.) 5 (May 2002).

Living in the Sunlight: Showcasing the Legal Writing Faculty, Leg. Writing, Reasoning, & Research (AALS sec. newsltr.) 3 (Spring 2002).


Testing the Waters, 15 Second Draft (newsltr. of Leg. Writing Inst.) 12 (June 2001).


Holding a Citation Carnival, 8 Persps. 18 (Fall 1999).

Choosing and Using Legal Authority: The Top Ten Tips, 6 Persps. 1 (Fall 1997) (co-author Thomas H. Seymour).


Massachusetts Materials on Unjust Dismissal and At Will Employment (McLeneli, Inc. 1983).

Appellate Practice in the United States Court of Appeals, Appellate Practice: A View from the Bench (McLeneli, Inc. 1980) (jointly prepared by members of the Women’s B. Assoc. of Mass.).

Litigation in the Fast Lane (1979) (Women’s Bar Association of Massachusetts Litigation Section, materials on expediting civil litigation) (co-author Janis Berry).


Seymour, Thomas H.


Choosing and Using Legal Authority: The Top Ten Tips, 6 Persps. 1 (Fall 1997) (co-author Terry Jean Seligmann).

Shapo, Helene S.


Surviving Sample Memos, 6 Persps. 90 (Winter 1998) (co-author Mary S. Lawrence).
Designing the First Writing Assignments, 5 Persps. 94 (Spring 1997) (co-author Mary S. Lawrence).

Making the Most of Reading Assignments, 5 Persps. 61 (Winter 1997) (co-author Christina L. Kunz).

Matters of Life and Death: Inheritance Consequences of Reproductive Technologies, 5 Hofstra L. Rev. 1091 (1997).


Teaching Research as Part of an Integrated LR&W Course, 4 Persps. 78 (Spring 1996) (co-author Christina L. Kunz).

Winning the Font Game: Limiting the Length of Students’ Papers, 4 Persps. 10 (Fall 1995) (co-author Christina L. Kunz).

“Standardized” Assignments in the First-Year Legal Writing Class, 3 Persps. 65 (Spring 1995) (co-author Christina L. Kunz).


Teaching Citation Form and Technical Editing: Who, When and What, 3 Persps. 4 (Fall 1994).


Brutal Choices, 2 Persps. 6 (Fall 1993).

Notes from Legal Writing Organizations, 2 Persps. (Fall 1993).


Siegel, Martha

“Seven Edits Make Perfect?” The Saga of a Legal Writing Instructor, 5 Persps. 30 (Fall 1996).


Simon, Sheila


Top 10 Ways to Use Humor in Teaching Legal Writing, 11 Persps. 125 (Spring 2003).

I Swear by My Tattoo, 10 L. Teacher 3 (Spring 2003).

Order What Are Your Words In? How Foreign Languages Can Help You Teach the Structure of Legal Writing, 10 Persps. 124 (Spring 2002).


Eunice & Pablo, 5 Green Bag 2d 233 (Winter 2002).


Yikes—The Students Are Editing My Writing, 15 Second Draft (newsltr. of Leg. Writing Inst.) 16 (June 2001).

711 Means More Than Just a Quick Cup of Coffee, 2 ISBA (Standing Comm. on Govt. Laws. newsltr.) 12 (Mar. 2001).


Teaching Active Reading, 8 L. Teacher 11 (Spring 2001).

In Sentence of Death, There Can Be No Doubt, Chi.-Sun Times 26 (December 9, 2000).


Sirico Jr., Louis J.


What the Legal Writing Faculty Can Learn from the Doctrinal Faculty, 11 Persps. 97 (Spring 2003).

Teaching a Collaborative Seminar, 9 L. Teacher 5 (Fall 2002).


Why Law Review Students Write Poorly, 10 Persps. 117 (Spring 2002).

Ask Your Students, 8 L. Teacher 3 (Spring 2001).

Reading Out Loud in Class, 10 Persps. 8 (Fall 2001).


Materials for Teaching Plain English: The Jury Instructions in Palsgraf, Revisited, 8 Persps. 137 (Spring 2000).

Review Sessions: Proceed Productively, 7 L. Teacher 12 (Fall 1999).

Teaching Professionalism, in Fresh Looks at Teaching and Learning Law, Institute for Law Teaching (June 1999).

Advising Clients on Organ Transplants, New Matter (Newsltr., Chester County, Penn. B. Assn.) 6 (Feb. 1999).


Legal Research and the Summer Job . . . Advice from the Law School, 7 Persps. 110 (Spring 1999) (co-author Nazareth A. Pantalon III).

Teaching Paragraphs, 8 Persps. 13 (Fall 1999).


Teaching Oral Argument, 7 Persps. 17 (Fall 1998).

Cardozo’s Statement of Facts in Palsgraf, Revisited, 6 Persps. 122 (Spring 1998).


Getting Respect, 3 Leg. Writing 293 (1997).

Book Review, New Directions 130 (1997) (reviewing Anne Strick, Injustice for All (G.P. Putnam’s Son 1977)).

Advanced Legal Writing Courses: Comparing Approaches, 5 Persps. 63 (Winter 1997).


Spirit of Compromise Shaped 1787 Constitutional Convention, Penn. L.J.-Rptr. 3 (Sept. 14, 1987).


Church Property Disputes: Churches as Secular and Alien Institutions, 55 Fordham L. Rev. 335 (1986).


How to Talk Back to the Telephone Company: Playing the Telephone Game to Win (Ctr. for Study of Responsive L. 1979).


Student Author, Prisoner Classification and Administrative Decisionmaking, 50 Tex. L. Rev. 1229 (1972).


Sloan, Amy E.


Creating Effective Legal Research Exercises, 7 Persps. 8 (Fall 1998) (reprinted in Best of Persps. 30 (West Group 2001)).


Slotkin, Jackquelyn


Smith, Craig T.


Report B Bundesverwaltungsgericht (German Federal Administrative Court), in Annual of German & European Law (forthcoming Berghahn Bks. 2004) (co-author Irene Schlünder).


More Disagreement over Human Dignity: The Federal Constitutional Court’s Most Recent Benetton Advertising Decision, 6 German L.J. No. 4 (June 1, 2003).

Technology & Legal Education: Negotiating the Shoals of Technocentrism, Technophobia, & Indifference, 1 J. ALWD 247 (2002).
An American’s View of the Federal Constitutional Court: Karlsruhe’s Justices “Speak Softly but Carry a Big Stick”, 2 German L.J. no. 9 (June 1, 2001).


Smith, Michael R.


Smith, Robert Barr

The Judge’s Evidence Bench Book (Thomson 2004) (co-authors Leo H. Whinery and Theodore P. Roberts).


To the Last Cartridge (William Morrow & Co. 1994 & Robinson 1996).


All Alone, the Death of HMS Glowworm, World War II History (Mar. 2004).

Revenge for Cawnpore, Mil. History (Feb. 2004).


HMS Upholder, World War II History (Nov. 2003).

Wellington’s Camp Followers, Mil. History (June 2003).

Murder by Moonlight, Wild West (June 2003).


Britain’s Bastard River War, Mil. History (Oct. 2002).

The Sinking of Scharnhorst, World War II History (Sept. 2002).

Strike from the Sky, the Assault on the Orne Bridges, World War II (July 2002).

The Raid on Bruneval, World War II History (July 2002).

PIAT, World War II History (May 2002).


Blackpool: Darkest Hour for the Chindits, World War II (May 2001).


In Order to Die: The Legion at Tuyen Quang, Vietnam (Feb. 2000).

A Second Career: The Odyssey of Elmer McCurdy, Wild West (June 1999).

Interview: Mad Mike Calvert, World War II (Feb. 1999).

When Outlaws Ruled No Man’s Land, Wild West (Feb. 1999).


The Victoria Cross, World War II (Mar. 1998).

Kill the Gringos! The El Paso Salt War, Wild West (Feb. 1998).


Miracle at Albuera, Mil. History (Mar. 1997).

Introduction to Feuer, Commando! The M/Z Units' Secret War against Japan (Praeger 1996).


Final Verdict at Nuremberg, World War II (Nov. 1996).

Judgment at Tokyo, World War II (Sept. 1996).

The Short, Nasty Life of Dave Rudabaugh, Wild West (June 1996).

When Mad Mike Calvert Took Umbrage, World War II (May 1996).

Introduction to Imperato, into Darkness (Howell Press 1995).

Nuremberg: Final Chapter for the Thousand-Year Reich, World War II (Nov. 1995).


“A Damned Nice Thing” at Waterloo, Mil. History (June 1995) (reprinted in The Age of Napoleon (Summer 1998), and Great Battles of the 19th Century (Mar. 2004)).

Bad Night in Newton, Wild West (Apr. 1995).

Bass Reeves, Wild West (Feb. 1995).


Fate and Glory, Mil. History (Oct. 1994).

Jeff Milton, Wild West (July 1994).

The Doctor of Dien Bien Phu, Vietnam (June 1994).

The West’s Deadliest Dentist, Wild West (Apr. 1994).

The James Boys Go to War, Civil War Times Illustrated (Feb. 1994).

Susan Travers, World War II (Jan. 1994).


Texas John’s Odyssey, Wild West (Dec. 1993) (reprinted in Best of Wild West (Cowles History Group 1996)).


The Calcutta Light Horse at Marmagoa, World War II (Mar. 1993).

Shootout at Ingalls, Wild West (Oct. 1992) (reprinted in Best of Wild West (Cowles History Group 1996)).
Battle of Pierre’s Hole, Wild West (June 1992).
Killer in Deacon’s Clothing, Wild West (Aug. 1992) (reprinted in Best of Wild West (Cowles History Group 1996)).
Biggest Indian Fight, Wild West (Apr. 1992) (reprinted in Great Battles (Jan. 1995), and in Best of Wild West (Cowles History Group 1996)).
Hot Shot, Cold Steel, Mil. History (Dec. 1991) (reprinted in Great Battles (July 1993)).
Trail of Black Hawk, Wild West (Apr. 1991) (reprinted in Great Battles (Mar. 1993)).
Walter Wenck at Stalingrad, World War II (Nov. 1990).
Prelude to Disaster, Vietnam (Feb. 1990).
May God Strike Me Dead If I Did It, British Heritage (Feb. /Mar. 1989).
Run down in Neutral Waters, World War II (July 1988).
When the Bugle Sounded, Wild West (June 1988).

Soonpaa, Nancy

Content in First-Year Courses, in Sourcebook on Legal Writing Programs (forthcoming 2d ed., ABA 2004).
What Are We Teaching Our Students? Competence and Confidence, 17 Second Draft (newsltr. of Leg. Writing Inst.) 1 (July 2003).


A Retrospective on Three Teaching Experiences and Resultant Ideas about Structuring a Three-Semester Course, 16 Second Draft (newsltr. of Leg. Writing Inst.) 1 (May 2002).

Strategies for Enhancing the Status of Legal Research and Writing and of Legal Research and Strategies to Improve Writing Faculty's Status, Leg. Writing, Reasoning, & Research (AALS sec. newsltr.) 3 (Spring 2002).


The Art of Legal Analysis in the Legal Writing Classroom, 14 Second Draft (newsltr. of Leg. Writing Inst.) 10 (May 2000).

Some Thoughts on Commenting, 14 Second Draft (newsltr. of Leg. Writing Inst.) 9 (Nov. 1999).


Variety—The Spice of Teaching Life, 12 Second Draft (newsltr. of Leg. Writing Inst.) 9 (Nov. 1997).

Using Composition Theory and Scholarship to Teach Legal Writing More Effectively, 3 Leg. Writing 81 (1997).


Spanbauer, Julie M.


Teaching First-Semester Students That Objective Analysis Persuades, 5 Leg. Writing 167 (1999).


Sparling, Tobin A.


All in the Family: Recognizing the Unifying Potential of Same-Sex Marriage, 10 L. & Sex. 187 (2001).

Sparrow, Sophie M.


Why I Teach, 10 L. Teacher 16 (Spring 2003).

Citation Form in New Hampshire: You May Want to Consult the New ALWD Manual, N.H. B.J. (Sept. 2002).


The Lawyer as Supervisor, Manager and Motivator (Natl. Assn. for L. Placement 2000) (co-author Mary B. Sheffer).

Using Rubrics, 14 Second Draft (newsltr. of Leg. Writing Inst.) 16 (Nov. 1999).


Spencer, Shaun B.

Nevada Case Threatens to Expand Terry Stops, Boston B.J. 27 (Mar.–Apr. 2004).

Stanchi, Kathryn M.

The Paradox of the Fresh Complaint Rule, 37 B.C. L. Rev. 441 (1996).
Stein, Amy R.


Stephenson, Gail S.

*Sailors' and Soldiers' Civil Relief Act of 1940*, 177 Around B. 14 (May 2003).
*Appealing Partial Summary Judgments—Avoiding the Article 1915 Trap*, 149 Around B. 16 (Sept. 2000).
*Sex, Services and Society*, 63 Around B. 10 (Mar. 1990).

Stinson, Judith M.

*“Depth” or “Breadth”—Or Can You Have Both?* 18 Second Draft (newsltr. of Leg. Writing Inst.) 21 (Dec. 2003).

Stratman, James


Strong, Michael Wade


Strubbe, Mary Rose


Su, Lynn Boepple


Sullivan, Charles A.


**Swift, Kenneth**

Argue the Case Law, Bench & B. (Minn.) (Mar. 2004).


**Teitcher, Carrie**

Temm, Wanda M.

*New Kid on the Block: The ALWD Citation Manual*, 59 J. Mo. B. 16 (Jan.–Feb. 2003).


Temple, Hollee S.


Thyfault, Roberta


Tjaden, Ted


*The Law of Independent Legal Advice* (Carswell 2000).

Thoughts on the Joint Study Institute 2000: Yale University, Faculty of Law, 26:1 Can. L. Libs. 14 (2001).
How to Overcome Your Online Research Fears, Laws. Wkly. (Feb. 4, 2000).
A Guide to Legal Research for Non-Lawyers (pamphlet adapted with permission from a United States content guide of the American Association of Law Libraries, geared towards pro se litigants and other non-lawyer patrons of the library).

Todd, Adam G.

One Down One to Go: Supreme Court Clarifies PLRA’s Exhaustion Requirements, 8 Correctional L. Rptr. 76 (Feb./Mar. 2002) (co-author Mark Stavsky).
Selected Bibliography

**Tonner, Grace C.**


**Toppins, Paul**


Tyler, Barbara J.

Active Learning Benefits All Learning Styles: 10 Easy Ways to Improve Your Teaching Today, 11 Persps. 106 (Spring 2003).


Cyberdoctors: The Virtual Housecall—The Actual Practice of Medicine on the Internet is Here; Is It a Telemedical Accident Waiting to Happen? 31 Ind. L. Rev. 259 (1998).


Vance, Ruth C.


The Use of Student Teaching Assistants in the Legal Writing Course, 1 Persps. 4 (Fall 1992).

Vance, Shawn D.

Vaughan, Stephanie A.


Vinson, Kathleen Elliott


Interactive Class Editing, 14 Second Draft (newsltr. of Leg. Writing Inst.) 10 (Nov. 1999).


New LR&W Teachers Alert! 14 Ways to Avoid Pitfalls in Your First Year of Teaching, 6 Persps. 6 (Fall 1997).


Vorspan, Rachel


Waggoner, Michael J.


Neighborhood Law Offices: The New Wave in Legal Services for the Poor, 80 Harv. L. Rev. 805 (1967) (co-authored).


Walter, Marilyn R.


ABA Sourcebook on Legal Writing Programs (LexisNexis 1997) (co-authors Ralph L. Brill, Susan L. Brody, Christina L. Kunz, and Richard K. Neumann, Jr.).


Writing and Analysis in the Law (Found. Press 1989) (co-authors Elizabeth Fajans and Helene Shapo).


**Wanderer, Nancy A.**

Writing Effective Law Court Briefs, in Donald G. Alexander, Maine Appellate Practice ch. 5 (2003).


Writing Better Opinions: Communicating with Candor, Clarity, and Style, 54 Me. L. Rev. 48 (2002).


**Wasson, Catherine J.**


Wawrose, Susan


Weigold, Ursula

A New Approach to Legal Citation Form, 13 App. Advoc. 17 (Fall 2000).

Protecting the Record (Rutter Group 1993) (co-authors David Keltner and Lynne Liberato).


The Effect of a Party’s Bankruptcy on an Appeal, 1 App. Advoc. 12 (Summer 1988).

Wellford-Slocum, Robin


Legal Reasoning, Writing and Persuasive Argument (LexisNexis 2002).

Legal Analysis & Writing (LexisNexis 1997).

Weresh, Melissa H.


The ALWD Citation Manual: A Superior Resource for Legal Citation, Iowa Law. (May 2003).


The ALWD Citation Manual: A Coup de Grace, 23 UALR L. Rev. 775 (2001).

The ALWD Citation Manual: A Truly Uniform System of Citation, 6 Leg. Writing 257 (2000).

Choosing Good Topics for Scholarship, Leg. Writing, Reasoning, & Research (AALS sec. newsltr.) 7 (Fall 2000).

Teaching Legal Analysis in Components, 14 Second Draft (newsltr. of Leg. Writing Inst.) 16 (May 2000).

Score Sheets, Templates, Marginal Notes, Peer-Editing and More, 14 Second Draft (newsltr. of Leg. Writing Inst.) 18 (Nov. 1999).
Wharton, Cathleen S.
*Citation Form for Briefs and Memoranda* (CALI) (co-authors Daisy Hurst Floyd and Bertis E. Downs IV).

White, Libby A.
*Treating Students as Clients: Practical Tips for Acting as a Role Model in Client Relations*, 12 Persps. 24 (Spring 2003).

White, Prentice L.
*Stopping the Chronic Batterer through Legislation: Will It Work This Time?* 31 Pepp. L. Rev. 709 (2004).

Whitney, Jean
*LEAP: A Successful Partnership between the Law School and the Nevada Department of Corrections*, 12 Nev. Law. 18 (June 2004).

Wigal, Grace
*Repeaters in LRW Programs*, 9 Persps. 61 (Winter 2001).

Wihnyk, Henry T.
Williams, Joseph M.

Shaping Stories: Managing the Appearance of Responsibility, 6 Persps. 16 (Fall 1997) (co-author Gregory G. Colomb).

Wing, F. Georgann


Woods, Phillip K.


Wojcik, Mark E.


Book Review, 3 Persps. 16 (Fall 1994) (reviewing David Stott, Legal Research (Cavendish Publg. Ltd. 1993)).


Living with HIV and Without Discrimination, in International Law and AIDS: International Responses, Current Issues, and Future Di-
Lawyers out in the Cold, 73 ABA J. 94 (Nov. 1987) (co-author Michael L. Closen).
AIDS in America: Death, Privacy and the Law, 14 Hum. Rights 26 (Summer 1987).
Wydick, Richard C.


Problems in Legal Ethics (5th ed., West 2001) (co-authors Rex R. Perschbacher and Debra Lyn Bassett).


Zimmerman, Clifford S.

From Cooperative Learning to Collaborative Writing in the Legal Writing Classroom, 9 Leg. Writing 185 (2003) (co-authors Elizabeth L. Inglehart and Kathleen Dillon Narko).


In-Class Editing Sessions, 13 Second Draft (newslntr. of Leg. Writing Inst.) 7 (May 1999).


Zimmerman, Emily

“Toto, I Don’t Think We’re in Practice Anymore: Making the Transition from Editing as a Practitioner to Giving Feedback as a Legal Writing Professor”, 12 Persps. 2 (Winter 2004).

The Proverbial Tree Falling in the Legal Writing Forest: Ensuring That Students Receive and Read Our Feedback on Their Final Assignments, 11 Persps. 7 (Fall 2002).

Keeping It Real: Using Contemporary Events to Engage Students in Written and Oral Advocacy, 10 Persps. 109 (Spring 2002).

Zorn, Jean


Proving Customary Law in the Common Law Courts of the South Pacific (British Inst. of Intl. & Comp. Law 2002).


THE LEGAL WRITING INSTITUTE
THE BEGINNING: EXTRAORDINARY VISION, EXTRAORDINARY ACCOMPLISHMENT

Based on Interviews with Laurel Currie Oates and J. Christopher Rideout, and Documents from the Archives of the Legal Writing Institute

Mary S. Lawrence

DEDICATION

For Marjorie D. Rombauer, Legal Writing Icon, Mentor, and Friend. With gratitude, love, and deepest respect.

I. FOREWORD: A PERSONAL NOTE

In 2004, members of the Legal Writing Institute celebrated its twentieth anniversary. Today, we rightly and justifiably consider ourselves legal writing professionals, integral members of legal academia. We are no longer regarded, as we were over twenty years ago, as temporary, disposable law school employees. We owe this dramatic professional transformation in large measure to the Legal Writing Institute and to the vision of its founders, Chris Rideout and Laurel Oates. The Institute helped make us who we now are. In a sense, it gave us our profession.

1 © 2005, Professor Emerita, University of Oregon. Writing this history has been a privilege and a joy. It brought back many happy memories; it gave me the opportunity to spend extensive time with Laurel, Chris, and Marjorie. My gratitude to Seattle University School of Law cannot be overstated: for printing the monograph, but, much more vital to the project, for Lori Lamb’s time. Without her dedication, this history could not have been completed. She transcribed the audiotapes, typed the manuscript through numerous drafts, and arranged for the printing. With this project, she continued the exemplary service she has always given to the Legal Writing Institute.

I acknowledge with thanks the contributions of my dear friends and colleagues who responded to questions and sent us data: Jill Ramsfield, Anne Enquist, Joe Kimble, Chris Kunz, and Ralph Brill. Their reminiscences were invaluable.
I was fortunate to begin my legal writing career under a dean who saw a future for legal writing as an essential part of the law school curriculum. I was even luckier to attend the 1984 legal writing conference at the University of Puget Sound School of Law. It was at that conference that the concept of the Institute was conceived. Out of that 1984 conference came the first newsletter, which later became the Second Draft; Legal Writing: The Journal of the Legal Writing Institute; the Idea Bank; a mentoring program; plans for national conferences; and the very idea of the Institute itself.

But the effects of the early meetings at Puget Sound went far beyond the formation of an organization. Those first conferences were extraordinary: intimate, exciting, heartwarming, and exhilarating. Whenever I think of them, I smile. We had a sense of pure joy in being with people who shared common goals and in learning from each other. Together we felt persuaded that legal writing held great promise; we were inspired to keep working in the field. From feeling isolated and unconnected to like-minded professionals, we created a sense of community—a community built on respect, trust, and genuine affection, free of self-promotion and competitiveness. We made friendships at those early conferences, friendships that continue decades later.

For me, legal writing as a profession is unique in academic disciplines. It is not hierarchical; its members support each others’ careers. It is not parochial; its members strive to improve legal writing instruction nationally. Legal writing is more a community, a family. We owe these unique characteristics to many people but especially to the wisdom of Marjorie Rombauer, pioneer in legal writing at the University of Washington, who inspired us all on behalf of the profession through her program, her publications, and her work in the Association of American Law Schools. This unique sense of commonality also sprang from the vision of the founders of the Legal Writing Institute, Chris Rideout and Laurel Oates. This history is my tribute to their extraordinary accomplishments.

Without Chris and Laurel, there would be no Legal Writing Institute. Chris used part of a grant from the National Endowment for the Humanities (NEH) as seed money for the 1984 conference at the University of Puget Sound. He and Laurel pledged their salaries to cover any shortfall. Together, they did all the exhausting work of organizing the 1984 conference. Their dedication to a vision of legal writing as a profession made the Institute possible.
Today, the Institute has many members who are, I imagine, unaware of how it began and unaware to whom we, all of us, owe gratitude and admiration. The occasion of the twentieth anniversary, together with the transition of the Institute’s home from Seattle University to Mercer University School of Law, made this an appropriate time to memorialize the Institute’s beginning years.

II. GETTING STARTED

August 15 and 16, 1984, were auspicious days for legal writing as a profession. On those two days, the University of Puget Sound School of Law held a conference, “Teaching Legal Writing.” From that conference grew the Legal Writing Institute.

A grant from the National Endowment for the Humanities (NEH) for Writing-across-the-curriculum provided seed money for the conference. The conference was held at the University of Puget Sound because Chris Rideout, then an English professor there, was one of the NEH grant recipients. To the great fortune of legal writing as a discipline, Chris Rideout and Laurel Oates of the University of Puget Sound School of Law collaborated to organize the 1984 legal writing conference.

CR:² I had some money left over from a National Endowment for the Humanities (NEH) Grant—Writing-across-the-curriculum Grant that I was a part of in 1979. I joined people from five other Northwest schools so there were six of us: University of Puget Sound, University of Oregon, University of Washington, Lewis and Clark College, the Evergreen State College in Olympia, and Pacific Lutheran University. We got the grant in 1981. So it was a three-year project.

In the first two years, I think it was, I ran a faculty development workshop through the English Department at the University of Puget Sound, and in the last year, I decided to run a faculty development workshop through the law school. These were workshops in how to teach writing, especially for people who were not in English departments.

Anyway, I got near the end of the grant, and as I recall, I had about $3,000 left. So, I went to Laurel and I said, “I’ve got $3,000

²Mary Lawrence (ML), Marjorie Rombauer (MR), Laurel Oates (LO), and Chris Rideout (CR).
left of NEH money. Let’s have a conference—a legal writing conference.”

**LO:** When we approached our dean, Fredric C. Tausend, about doing a conference, he said, “Sure.” He asked us where we were going to get the money. We told him that we had some grant money. He said, “Is this enough?” And we said, “No.” He said, “That’s fine. We’ll advance you some money, but if you don’t break even, it comes out of your paychecks.” So Chris and I essentially agreed that if the conference did not break even, we would pay the difference.

**CR:** That’s right. But we thought it was worth taking the risk.

**LO:** It was one of those things where it was difficult even to come up with a list of who should be invited because it was hard to tell who in the country was teaching legal writing. When we sent out the invitations, we weren’t sure that anyone would respond. When over eighty people came, we were thrilled.

**CR:** Yes. So, we just got the addresses of all the law schools, and sent a mailing to them. We put together a brochure. Laurel and I just made it up ourselves. We called some people that we knew. Anyway, we got some presenters, put together a brochure, and mailed it to legal writing directors, and then to the address of each law school. Initially, the only person we heard from was Helene Shapo, who told us about Scribes.

Our dean, Fredric C. Tausend, was very supportive. The law school covered the cost of work-study people to work at registration and for things like paper and phone calls. We made between 200 and 300 long-distance calls for each of the early conferences, so paying for phone calls was a substantial contribution.

---


4 Scribes began in 1953. It publishes a quarterly newsletter called “The Scriveners.” The earliest newsletter was published in 1973. Scribes Journal of Legal Writing published its first volume in 1990. By 2003, Scribes had published eight volumes. (The Table of Contents for each volume can be found at www.scribes.org/publications.html.)
III. THE FIRST CONFERENCE

One hundred and eight representatives from fifty-six law schools in the United States and Canada attended the 1984 conference.5

ML: The 1984 conference was a huge success. I remember being both amazed and impressed by the number of people who came.

LO: Yes. Given the fact that most of the people who came to the conference did not have travel budgets, it was a significant number of people. If I am remembering correctly, more than half of the people who attended the conference paid their own way. The same was true of the second conference. Even in 1986, most people who were teaching legal writing did not receive any type of travel budget from their schools.

ML: Laurel, I recall that even in 1984 you had good geographic representation. People didn’t just come from the Northwest.

LO: Right. I think that the people who were from the Northwest were those of us from the University of Puget Sound, Lynn Squires and Marjorie from the University of Washington, and you from the University of Oregon. Some people came from Lewis and Clark and Willamette. There was, however, a relatively large group from the Chicago area and a number of people from the East Coast and California. People had to make a real effort just to make it to those early conferences at the University of Puget Sound.6

MR: Many people recognized the names of the presenters and that helped too.

LO: Right. Because of Chris's contacts within the rhetoric and the composition fields, we were able to have people like Joe Williams and George Gopen as presenters.

CR: We got people to make presentations on fairly basic things: how to design a writing assignment, how to evaluate writing, etc. It seemed at that time that people really needed help with the basics. There just weren’t many resources to go to. What I had felt when I went into legal writing (because I had gone into it in


6 For a list of schools represented at the 1984 Legal Writing Institute conference, see Appendix B (also found in the Legal Writing Institute Archives).
1981), was that there were a lot of resources available for college composition programs that legal writing folks didn’t know about. So I felt that the conference would be a great way to disseminate that information, and you know, for the next ten years or so, I would always try to find someone to speak at the conferences who had something to offer from the college composition world.\footnote{App. A.}

**ML:** We had judges as well as academics. Judge Re was at the 1990 conference in Ann Arbor, Michigan. Judge Lynn Hughes spoke on plain English at the next conference in 1992. Justice Rosalie Wahl gave a keynote address in 1996.\footnote{Supra nn. 27–28 and accompanying text.}

**MR:** The conferences helped us develop a legal writing pedagogy particularly because they included professionals from other fields as well as from diverse law schools.

**LO:** Yes. We were a diverse group. Public schools, private schools, schools that had different kinds of programs. The common denominator was a desire to do better. Almost everyone who came to the 1984 and 1986 conferences came because they wanted to improve their program and because they wanted to become better teachers. People came because they wanted to do a better job teaching legal research, because they wanted to do a better job teaching their students to write, and because they wanted to find ways to motivate their students. I still remember some of those conversations about developing problems, about teaching methods, and about critiquing papers. Although now these seem like “old” topics, at that time we were probably the only group that was talking about these issues in depth, and it was very exciting. I remember being exhausted at the end of each conference but being really motivated to go back and teach. I know it made me a better teacher.

---

**CR:** The University of Puget Sound campus was a perfect place for a conference because it’s small. It was, as you know, really pleasant to be on the University of Puget Sound campus in the
summer. The climate was temperate, and people just really seemed to get to know each other.

ML: I made many friends at the early conferences—friends I still cherish today.

CR: In those days, there was a conference on freshman and sophomore English at the University of Wyoming every summer that was kind of a big deal. Lots of people went. You stayed in the dorms, which made it fairly inexpensive. There were myriad presentations, and then there were barbeques afterwards, or we would go to a rodeo. So you really got to know people. I had attended. So I said to Laurel, “I've got a model for this thing—the Wyoming conference.” We could stay in the dorms, we'll have picnics, and cruises or barbeques, or whatever, and it will be an opportunity for people to get to know each other. So that was kind of the model that we had for the 1984 conference.

ML: The conference was very grassroots, very collegial.

CR: Right, exactly. We felt that would generate goodwill and a sense of belonging. When we planned those conferences (as you know, Laurel and I did the early conferences by ourselves), we were always careful to include activities that would bring people together: a picnic, a boat cruise, a barbeque. We always felt that was a big part of it.

ML: Well, living in the dorms helped too, I think.

CR: Yes, right.

ML: We all ate together. I do remember Jill Ramsfield playing the piano in that lounge.

CR: It had that grand piano in there, yes.

ML: It was just a very, very good gathering place.

CR: That’s right. We specifically requested that Jill play the piano. We always had a reception the evening before the conference started so people could get a drink, mingle, and get to know each other, and we always asked Jill to play the piano. That’s right, that’s an important detail.

ML: The 1984 conference was the most collegial and friendly conference I had ever attended.

LO: I was never a fan of the traditional academic conference. For example, at about the same time that we held our first conference, I went to Conference on College Composition and Communication (CCCC) where everyone stood up and read papers. I said to myself, “No, no, no. We're not going to have a conference where people come to read.” So we urged our presenters to make their presentations very interactive. Although our participants wanted
to hear other people’s ideas, they also wanted a chance to talk about their own ideas.

Because most of the sessions at the early conferences were small, that system worked. People went to a session, they listened, and then they talked to each other. I think that’s what people saw as making our conference unique among academic conferences. The sessions were lively, everyone participated, and then we went out in the evenings and played volleyball.

It was very non-hierarchical and very inclusive. We said that anybody who wanted to come could come. We had, of course, those people who worked in the trenches teaching legal writing, but we also had at least one or two deans. For example, at our second conference, we had librarians, we had people who were directors, we had people who were adjuncts, and we had people who were teachers on short-term contracts. One of the decisions that we made very early on was that we would never put a person’s title on his or her name tag.

ML: That’s a splendid idea. But, you know, I confess that I didn’t notice. I do notice, though, that at some other meetings, people look at my name tag for title and school before they decide to talk to me. I find that annoying, amusing, too.

LO: Yes. Also, during those first conferences, we took everybody’s picture and put them up on the picture board. Again, we never identified or segregated people according to their status.

ML: I believe that one of the major values of the Legal Writing Institute was that it was so inclusive. I think that since those early conferences, that’s been one of the major strengths of the legal writing profession. That inclusiveness and reaching out to new people has characterized the profession. It has been a pretty important characteristic of legal writing. For me, being inclusive is what distinguishes us from other academic disciplines.

LO: I agree. I think those of us who teach legal writing are a unique group. It makes sense, though. If your primary motivation is status or money, you would not choose to teach legal writing. For the most part, all of us who teach legal writing teach it because we love teaching. In addition, some of us were rebelling against the hierarchies that we saw in our own schools. We didn’t want to re-create that within our own Institute. Thus, our primary goal has been to enhance the teaching of legal writing across the country.

ML: You kept the cost of the conferences low enough so that a lot of people could attend.
LO: One of the reasons that we held so many of the early conferences at the University of Puget Sound was because it was a cheap place to have a conference. The University charged us almost nothing and people could stay in the dorms. I do think, however, that the food was one of the highlights of those early conferences. We had an inexpensive but great catering company, and we would save the leftovers. Late at night, people would come down to the lounge and spend hours eating and talking. It was during those late nights that some strong bonds developed. Because the conferences were relatively small and we all lived together, by the end of the conference, everyone knew everyone else, and what kind of program they had.

IV. FORMING THE LEGAL WRITING INSTITUTE

At the close of the 1984 conference, participants wanted to find ways to maintain the relationships begun at the conference. They wanted to continue the exchange of information and ideas about writing programs and teaching.9

MR: Legal writing faculty had a depressing sense of isolation.
ML: There was a real concern about this sense of isolation. People felt the conference was the one chance they had to feel like real professionals with other real professionals.
LO: I think that’s what motivated Chris and me to put on the first conference. We wanted to meet other people who were teaching legal writing. Although our own faculty was interested in teaching, teaching legal writing is very different from teaching contracts or torts or constitutional law.
ML: Lack of job security and lack of status exacerbated that sense of isolation.
LO: Although we talked about status issues during those early conferences, our focus was on teaching. Most of the conference presentations dealt with teaching. It wasn’t until the profession grew a bit that status issues became kind of a second agenda. After a while, we learned that one of the ways in which you can improve a program is to improve the status of the people who teach in that program. In particular, we were interested in getting the caps lifted. If we were going to improve the teaching of legal writ-

9 Oates & Rideout, supra n. 5.
ing, people need to be able to teach at the same school for an indefinite period.

**MR:** Many of the informal discussions at the 1984 conference and at almost every subsequent conference centered on status.

**ML:** Jill Ramsfield and Teresa Phelps drafted a proposal on status that Jill presented at that first conference in 1984. It was the forerunner of the profession’s attempts to change the ABA standards.

---

**Statement on Security in Employment for Legal Writing Professionals 1984**

At last summer’s conference, “Teaching Legal Writing,” one of the conference participants, Thomas John Allen of UCLA, raised the issue of job security for legal writing instructors.

The issue quickly became the focus of many informal discussions among participants. During these discussions, instructors from many schools complained that because most law schools have a policy of limiting the number of years instructors can serve, each new group of instructors must develop its own program and materials for teaching legal writing. As a result, many legal writing programs are poorly thought-out and organized, effective materials are not developed, and few instructors develop the expertise or teaching skills needed to effectively teach legal writing. The instructors agreed that those who suffer the most from the “revolving door” policy are the students and, ultimately, the profession.

Although recognizing that the idea of tenured legal writing instructors is a new and sometimes unwelcome one, Jill Ramsfield from the University of Puget Sound School of Law suggested that the conference provided a good forum for discussing the issue and suggested that a proposal be drafted and presented to the participants at the conference.

At the closing meeting of the conference, Jill Ramsfield read the following proposal to conference participants.
Statement on Security in Employment for Legal Writing Professionals

The participants in the Conference on Teaching Legal Writing find that a major impediment to the effective teaching of legal writing in North American law schools is the lack of security in employment for legal writing professionals, both teachers and administrators. The prevailing practice is to appoint these professionals for a limited term, often as short as one year. This “revolving door” policy has the following adverse effects:

1. What these professionals learn from their experience often cannot be used either by them or by their schools. Their expertise is lost, and incoming teachers often find themselves “reinventing the wheel.”
2. Much-needed research and scholarship on legal writing and its teaching become virtually impossible.
3. Relationships with other law faculty, which could facilitate the integration of legal writing into the law school curriculum, are cut short.
4. Any recognition by the law schools and the bar that good writing is crucial to the study and practice of law loses credibility in the absence of support for the professional status of legal writing teachers and administrators.
5. Qualified people are strongly discouraged from entering or remaining in the field of legal writing, where they have no future. Those who work in legal writing programs, in general, cannot hope to make careers there; rather, they must be willing to defer or interrupt careers elsewhere.

The conference participants therefore urge that law schools extend to legal writing teachers and administrators the security in employment equal to that available to other law faculty.¹⁰

ML: Conference participants were then asked to vote on the proposal. The options were as follows:

- Yes. I endorse the proposal.
- Yes. I would like the proposal to be published in the proceedings from this conference.

¹⁰ Id. at 3–5.
• Yes. I would like the proposal to be sent to my dean.
• No. I do not endorse the proposal.

All the conference participants except one endorsed the proposal and asked that it be published in the proceedings. Participants had mixed feelings about sending the results to their deans. The one participant who did not endorse the proposal thought that it was a good one but premature.\footnote{Id. at 1.}

**MR:** That first conference was a success far beyond attracting the surprising number of people who attended.

> The 1984 conference was the genesis of the Legal Writing Institute. It was the model for the subsequent conferences, and laid the groundwork for the newsletter, the journal, and for the surveys.

**LO:** I think we were at the right place at the right time, and if we had tried to have the 1984 conference five or six years earlier, it might not have worked. In the mid 1980s, law schools began to develop their legal writing programs, and the AALS Section became more active.

**MR:** Yes. The AALS had its first legal writing conference in 1980 in Louisville, Kentucky.

**LO:** As a result, there was a potential community, and the Institute was one way of cementing the contacts that people were making.

**ML:** The people who attended the 1984 conference and the 1980 AALS in Louisville were eager for professional development.

**LO:** Yes. After the 1984 conference, we sent out questionnaires to those who had attended. We got thirty-eight responses. All thirty-eight said they wanted to establish an Institute. In response to the query about what activities the Institute should sponsor, we got the following feedback:
Establish Legal Writing Institute?12

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newsletter</td>
<td>33</td>
<td>3</td>
</tr>
<tr>
<td>Journal</td>
<td>30</td>
<td>3</td>
</tr>
<tr>
<td>Conference</td>
<td>38</td>
<td>0</td>
</tr>
<tr>
<td>Research</td>
<td>23</td>
<td>6</td>
</tr>
</tbody>
</table>

Twenty-six favored a yearly conference. Nine preferred a conference every second year.

ML: I have read letters written to you, Laurel, and to Chris after the 1984 conference. People were just ecstatic about it. They said things like, “We need a newsletter.” “We must have more conferences like this.” You decided to make it an Institute rather than just having conferences without any underlying organization?

CR: Well, we wanted to include people. I think that Laurel and I felt that if we just put on a series of conferences that at some point, the conferences would become overly associated with us, and people wouldn’t feel like they were a part of it. So we wanted to make it something that people felt they belonged to. That’s why we decided to have an Institute.

LO: The 1984 conference was a great success. People learned a lot, had a chance to meet others who taught legal writing, and had a good time. Before e-mail and listservs, it was hard to develop contacts. We were also lucky in that the following year, 1985, the AALS held its second Legal Research and Writing Conference in Chicago. It was at that conference that a lot of people began to say, “We need to do this on a regular basis. It isn’t enough to meet once every five or six years.” So it was at a lunch at the AALS Conference in Chicago that we decided to form an organization. That was the beginning of the Legal Writing Institute.

ML: Marjorie and I were both at that conference. We were coming to the lunch meeting when you formed the Legal Writing Institute. We got lost, and never did get to the meeting.

MR: We were in Chicago.

LO: Yes. It was the meeting of people with long legs who walked quickly. I do remember getting there, sitting down at the

12 Id.
table, and someone saying, “Where are Mary and Marjorie?” I actually think it was Joe Kimble who went out on the street to look for you, and couldn’t find you. I don’t think you ever made it to that meeting.

ML: That’s right. We followed you, because you’re all tall, we could see you ahead of us. We followed you for a while, and then in the crosswalk we got stopped, and we lost sight of you. We had no idea where we were. So we missed the meeting, but we didn’t miss it because we were uninterested in forming the Legal Writing Institute.

LO: There were about fourteen people who came to that lunch from a variety of different law schools and a variety of different geographic regions. That’s where we decided that we really wanted it to be a national institute.

CR: We incorporated as a 501(c)(3) organization. Laurel and I wrote the bylaws and incorporated the Institute in the State of Washington. We filed the bylaws with the State. You’ll see that the original Articles of Incorporation has the signature of three officers. Under state law, you must have the signatures of three officers, and we really didn’t have any officers yet. So I signed it, Laurel signed it, and we kind of appointed our dean, who then was Jim Bond, to sign it. We thought that it would be good to get him to support the idea; that the Law School would contribute to telephone bills, work-study money, and things like that. So, those are the three initials on the Articles of Incorporation. As you know, the Bylaws were changed in the mid 1990s, but that’s how it started.13

ML: It was your intention from the beginning to make it national?

CR: Yes, absolutely. And I think you know at the time I had a joint appointment and taught in an English department as well as at a law school. And I was very aware of the national organizations that were available to college English teachers, and I thought that legal writing people needed something like that. I didn’t think it necessarily needed to be as official or hierarchical as something like the National Council of Teachers of English or the Modern Language Association, but I felt we needed a national organization for an identity. I felt this was a group that needed an identity, and an Institute would give us that.

The Beginning of the Legal Writing Institute

LO: Yes. We incorporated as a non-profit organization. The certificate is in my office, and it is dated April 3, 1986.

The first meeting of the Legal Writing Institute was held on Saturday, March 23, 1985, in Chicago. Fifteen persons were selected to be members of the first Board of Directors of the Legal Writing Institute at that first meeting.14

- James Bond, Wake Forest University School of Law
- Susan Brody, John Marshall School of Law
- Lynne Capehart, University of Florida College of Law
- Daisy Floyd, University of Georgia School of Law
- Ellen Mosen James, City University of New York Law School at Queens
- Noel Lyon, Queens University Faculty of Law
- Christine Metteer, Southwestern University School of Law
- Michele Minnis, University of New Mexico School of Law
- Laurel Currie Oates, University of Puget Sound School of Law
- Teresa Phelps, Notre Dame Law School
- Chris Rideout, University of Puget Sound School of Law
- Renee Hausman Shea, Law School Admissions Council
- Chris Simoni, Willamette University College of Law
- Jim Stratman, Carnegie-Mellon University
- Christine Woolever, Northeastern University School of Law

ML: Each board member was also appointed to one of the standing committees: By-laws and Finance; Newsletter; Journal; or Conference.15

MR: Your survey from the 1984 conference demonstrated that people really wanted more conferences (38 to 0) and that the majority (33 to 3) wanted a newsletter. When did the newsletter start?

ML: I remember that at least one informal newsletter was published after the 1984 conference and before the March 1985 meeting in Chicago. It is dated January 1985. In the newsletter, Laurel and Chris reported on the 1984 conference. The article an-

14 Board of Directors Selected for Legal Writing Institute, 1 Newsrlr. Leg. Writing Inst. 1 (May 1985) (available from the Legal Writing Institute Archives) (Pagination has been added to assist the readers. The early newsletters were not paginated because the newsletters were typed on a typewriter, copied, and stapled and mailed to the members.).
15 Id.
nounced that The University of Puget Sound School of Law had agreed to establish the Legal Writing Institute.

**CR:** During its first year, the newly formed Institute planned to publish two newsletters, and the first issue of the journal with support from the National Endowment for the Humanities (NEH). We knew that after the first year, NEH financial support would no longer be available.

**ML:** The Legal Writing Institute really had its origins in your NEH grant—in Writing-across-the-Curriculum.

**CR:** I’ve always felt that some very good things came out of the NEH grant. The Evergreen State College started a writing instruction outreach program that became a teaching outreach program. It is to this day very prominent in the State of Washington. The Legal Writing Institute was an unanticipated, and, I believe, really important product of that NEH grant.

**LO:** Originally, our goal was to use the newsletter to continue the conversations that had started at the conference. We wanted the newsletter to be a place where people could share ideas about teaching. At first, the newsletter was just mimeographed or photocopied, but it served its purpose. Because we didn’t have e-mail, communication was difficult, and the newsletter was a way to keep the community together between conferences. Now the newsletter is more sophisticated, and it’s online.

**ML:** Personally, I think the newsletter was critically important in helping people keep in contact. Once they were back at their own institutions, they felt a sense of isolation, as if they were the only persons in the world teaching legal writing. Also the Notes and Comments Section let people know “who was doing what where.” That Section started in October 1985.

**CR:** When we first started talking about forming an Institute, we felt that its primary activity would be the conference, but we felt that the two other things that we could do were a newsletter and a journal. The newsletter seemed like the easier of the two to start. Laurel is the one who took the primary responsibility for that and she started the newsletter. We published our first issue of the newsletter in 1985. And Laurel is the one who kept that going for a number of years until finally someone else volunteered to do it.

---

The earliest newsletters came out with the heading:

![Newsletter Header](image)

Then in May 1985, just two months after the founding of the Institute at the Chicago meeting, the Legal Writing Institute asked readers for suggestions for a name and logo for the newsletter. The new logo and name were inaugurated in the October 1985 issue.

**The Second Draft**

*Newsletter of The Legal Writing Institute*
In January 1985, the Legal Writing Institute published its first newsletter. In that issue, and in the issue that followed in May, we asked our readers to suggest a name and logo for the newsletter. We received several suggestions and from those suggestions we selected the name and logo that you see above.

The name, The Second Draft, was suggested by J. Denny Haythorn, Director of the Law Library and Professor of Law at Whittier College School of Law. In suggesting the name, Professor Haythorn wrote that the name “indicates a draft of our work, not the first or the last, but merely our progress toward our goal. . . .” We agreed with Professor Haythorn, and, because we thought the name reflected what we wanted this newsletter to be, a place where we could share work in progress, we adopted his suggestion.

The first logo was designed by Susan Brody of The John Marshall School of Law.17

What about the Institute logo and its color, the one we are all now familiar with. How did that come about?

CR: We owe those to Chris Wren. As you know, Chris Wren was one of the early attendees, and at the time, Chris and his wife Jill were associated with Ambrose Publishing. They had a graphic designer. And Ambrose agreed to volunteer their graphic designer’s time to design a logo for the Legal Writing Institute.

ML: Oh, I didn’t know that.

CR: They sent us some test logos. There was some debate about whether each line should be the same size or whether they should be in ascending order. We also had some debate about the color. I think in there is a color chip that the graphic designer suggested because she said that color is a very important part of identity. But, at that time, we just used the University of Puget Sound’s print shop. The Print Shop couldn’t quite match the designer’s colors, so the official color of the Legal Writing Institute became the color chip that the UPS Print Shop had (the color that came the closest to the designer’s color chip).

MR: Laurel and Chris initiated and carried out an incredible number of projects within an even more astonishing short time after the 1984 conference. Within less than a year, we had an Institute with a board of directors and standing committees, a news-

17 Id.

ML: I'm curious and I think Marjorie is too—I don't know how you did all this. At about the same time as the Legal Writing Institute was born, Laurel, your daughter was born.

LO: Yes.

ML: And you were running a program.

LO: Yes.

ML: Starting an institute while teaching classes and learning about composition theory.

LO: Actually, there are days now I sit back and say, “How come I can't do that today, or how did I do that?” All I can say is that being young and loving what you’re doing and being enthusiastic about it clearly gives you a lot of energy. But again, it was never doing it completely on my own. I mean, I think one of the major things that has helped us at the University of Puget Sound is that there has been a group of us who have kind of come up through it together, and we share the same values. We are willing to bail each other out when we need to be bailed out. The support that existed was especially necessary in those early years. Plus, it was just very exciting to do it. I do look back and I think, “I wonder how I could have done this,” but I can also remember many a night when I left school thinking teaching and having young children is probably the best thing. I would go in the morning, and I would stay there until three or 3:30 p.m. and then I would go home and be with my kids during dinner, and I would come back and teach in the early evening. There were more days than one when I didn’t get home until midnight. Then it just started all over again the next day.

ML: You have to like what you’re doing.

LO: Yes, I think that’s the key. You can do any job as long as you like what you’re doing.

ML: In the 1980s, law schools’ interest in the teaching of legal writing increased.

CR: For example, I counted eleven presentations on legal writing at the Conference on College Composition and Communication (CCCC), held in Minneapolis on March 21–23, 1985. That figure does not include other presentations that, to my knowledge, also mentioned legal writing or legal writing programs. Increasingly, I would say, legal writing was becoming a visible area for research and teaching, as its presence on the program for a conference as large and diverse as CCCC’s indicates.
ML: Another example: the AALS held that first conference in Kentucky in 1980 and followed up with the second AALS legal writing conference in Chicago only five years later. That was a coup for the AALS Section. And in 1984, the American Bar Association Section on Legal Education and Admissions to the Bar asked ABA-approved law schools to describe their legal writing programs. One hundred and three schools responded. The results of the survey were published in 1985.\textsuperscript{18}

LO: As I said, we were at the right place at the right time. It was absolutely fortuitous that I got to know Chris through the NEH Writing-across-the-Curriculum project for undergraduate programs. But for the fact that Chris had been involved in the writing process and composition theory, we might not have had an Institute.

MR: Nevertheless, you being at the right place at the right time, as you say, does not diminish what you accomplished.

V. THE LWI JOURNAL

\begin{quote}
In January 1985, the newsletter outlined proposals for a journal.

Journal, The Journal, tentatively titled the Journal of Legal Analysis and Legal Writing, will be published once a year. The first half of each journal will be devoted to scholarly articles; the second half of the journal will feature more practical articles describing how ideas and materials can be used in the classroom.

The first issue of the journal is scheduled to be published in early April. The theme of the issue will be “Teaching Legal Writing,” and included in the issue will be articles by Joseph Williams on writing and socialization and on style and coherence in writing, an article describing a theoretical basis for teaching legal writing, and a series of short articles on teaching legal research, evaluating student writing, teaching style and syntax, teaching lawyers to teach writing, and using collaborative learning to teach legal writing.\textsuperscript{19}
\end{quote}

LO: The Journal was not published that quickly though. That proposed publication date seems unrealistically ambitious now.

\textsuperscript{18} Id. at 2.
\textsuperscript{19} 1 Newsltr. Leg. Writing Inst. (Jan. 1985).
CR: We got off to a good start with the newsletters, thanks to Laurel. The Journal was harder because you had to have articles to publish. My model for the Journal was not a law review, and not even a mainstream academic journal, but rather a journal like something called Pretext. I always felt that Pretext ran very high-quality articles. It seemed to come out when the editor felt he had enough articles to put together an issue, and so—it seemed to me—that that might be the best model for us at least initially. We formed a committee after the 1988 conference to try to solicit articles. The problem was trying to find articles. I had always invited one or two composition people to those first few conferences, including Joe Williams, who I think came to the first three. In one of his presentations, he applied some of his cognitive developmental work to legal writing.

ML: I remember that one.

CR: Yes.

ML: That was a terrific talk.

CR: It was a great talk. Joe agreed to let us publish it. So we had one article. I think Jim Stratman also had something.

ML: Yes, he did. I remember.

CR: Yes. And so then we had to find some other articles, and it took a while to put together enough for volume one, but we finally got it together. I think it came out in 1991. I was very happy about that, but the day after it came out the question was, “What are we going to publish in volume two?” And it just became very difficult to get articles. The other thing that happened was that people were starting to get onto tenure tracks in legal writing, and there was pressure for the journal to be a vehicle to publish our own people. That was hard for me because I felt that if we were going to have respect in the academic world, we had to avoid being perceived as just promoting ourselves.

ML: That’s correct. And faculty tenure committees often have a bias toward traditional academic journals.

CR: And that became a tension that existed in the journal. In February 1995, when the Journal board had a retreat in Chicago, it became very clear during that retreat that the majority of the people felt that we just had to publish regularly. We also decided, I think it was at that retreat, to publish conference proceedings—to use the conference as the source of material for the Journal. It clearly meant that the Journal would go in the direction of pedagogical pieces that weren’t necessarily research or theory oriented,
but even then we had difficulty finding material for the off-year issue.

And we still do to this day. And we’re still trying to walk the line. It’s not that the doors were thrown wide open. The Journal has always rejected quite a few pieces, but it’s still a difficulty, you know. The Journal became something other than the kind of academic journal I thought it needed to be to garner us the kind of respect we wanted in academia. Still, I’m very proud of it. I think establishing the Journal has been a great contribution to our profession.

VI. THE SECOND CONFERENCE AND BEYOND

The University of Puget Sound hosted its second legal writing conference in July 1986. The theme of the conference was “Legal Writing: The Next Step.”

MR: You must have started planning for the 1986 conference almost immediately after the first one.

LO: I remember doing a de-briefing at the end of the first conference and thinking about what we should do differently the next time. Although we came up with some things that we wanted to do differently, on the whole, we were surprised that the 1984 conference went as well as it did. As a result, when it came time to do the second conference in 1986, we decided to model it after the first one. We decided to use the same location, we picked a similar format, and we tried to create an environment in which people could sit down, talk to each other, and share ideas.

ML: In terms of the Legal Writing Institute conferences, you started off with a surprising number of participants at that first conference, and the number has grown almost every year, hasn’t it?

LO: Yes, we haven’t had any one year when there was a major dramatic increase, but attendance has grown every single year. We started out with around 100, and then we had 150 and we’ve been over 275–300 for probably the last ten years, and the 2002 conference at Knoxville, Tennessee, I think was our highest. I think we had close to 425 at that last conference. And so, when you start talking about active members, we have a fairly high percentage of our active members who come to the conferences.

MR: How many listed members do we have now?

LO: I think we have close to 1,500 members. Of that number I would think probably half are active members who either attend a
conference or who participate in a committee, or participate on a fairly regular basis on the listserv, or in some way do more than just have their names on our membership list. So, it’s a fairly substantial number. I think we probably have at least one active member from about 85–90% of the law schools in the country, so it’s a very well-represented group. Even some of the unaccredited law schools have people who are reasonably active in the group. Again, it really depends on the program. Programs with people who are long-term tend to have a much larger group of active members than programs taught by adjuncts, by fellows, or short-term teachers. It’s a fairly substantial number although there are considerably more than 1,500 people teaching legal writing nationwide.

**ML:** How does this growth affect collegiality—the sense of community we achieved in the 1980s?

**LO:** The question is whether membership will continue to grow, and how do we, as a Legal Writing Institute, accommodate that many people and still keep some of the positive characteristics of when it was smaller. At the end of the last conference, I hadn’t even talked to everybody who was there, let alone did I know the names of everyone. What we don’t want to have happen is that people come to a conference and feel isolated. We have gone from 108 attendees at the first conference in 1984 to 473 attendees in 2004.

**MR:** When did you decide to move the Legal Writing Institute conferences from Tacoma in alternate years? Was that an experiment, or?

**LO:** When we started the Institute, we didn’t have a long-term plan for the Institute. We did know, though, that we wanted the Institute to be national. Thus, instead of running the Institute from Tacoma, we asked individuals from a number of different schools to serve on the board. Later, board members were elected, as is the practice today. Similarly, early on we decided that the best approach would be to have Legal Writing Institute conferences only in even numbered years. In addition, we decided that it would be a good idea to alternate between Seattle and other locations around the country. Our plan was that we would have national Legal Writing Institute conferences in even-numbered years

---

20 For a list of all past directors of the Legal Writing Institute, see *Legal Writing Institute Board of Directors*, at www.lwionline.org/about/history/bod.doc.
and that in the odd-numbered years there would be regional conferences.

<table>
<thead>
<tr>
<th>Dates and Locations of Legal Writing Institute Conferences</th>
</tr>
</thead>
<tbody>
<tr>
<td>1984   TACOMA, WASHINGTON</td>
</tr>
<tr>
<td>1986   TACOMA, WASHINGTON</td>
</tr>
<tr>
<td>1988   TACOMA, WASHINGTON</td>
</tr>
<tr>
<td>1990   ANN ARBOR, MICHIGAN</td>
</tr>
<tr>
<td>1992   TACOMA, WASHINGTON</td>
</tr>
<tr>
<td>1994   CHICAGO, ILLINOIS</td>
</tr>
<tr>
<td>1996   SEATTLE, WASHINGTON</td>
</tr>
<tr>
<td>1998   ANN ARBOR, MICHIGAN</td>
</tr>
<tr>
<td>2000   SEATTLE, WASHINGTON</td>
</tr>
<tr>
<td>2002   KNOXVILLE, TENNESSEE</td>
</tr>
<tr>
<td>2004   SEATTLE, WASHINGTON</td>
</tr>
</tbody>
</table>

**ML:** How did you decide where the conferences would be held?  
**LO:** We first asked for people who were willing to take on the task whose institutions could house the conference. We then tried to move the conferences to different parts of the country. For example, we held the 2002 conference in Knoxville, Tennessee, because we had never had a conference in the southern half of the country.  

**CR:** The board decided that every other conference would be somewhere else, and the first one was at the University of Michigan in 1990. I remember I was the chair then, and Diana Pratt was hosting the conference in Ann Arbor, Michigan. I just called her constantly and said, “No matter what you do, you can’t lose money.” You have to overestimate on everything, and at least break even. But I said if you make money that’s okay too, because this is the Institute’s only source of income to pay for the *Journal*, the surveys, newsletters, and so on. We were always very miserly with the Institute’s money. Our only source of income was the surplus from the conference. Anne Enquist was treasurer. Actually, she served as treasurer for twelve years, 1986–1998.21 But by then

---

21 As the Legal Writing Institute Treasurer, Anne Enquist filed annual financial reports and prepared the Institute’s taxes from 1986–1998. At the end of her tenure as treasurer, these records were passed on to the subsequent treasurers—Steve Johansen followed by Duvalene Cooper and Carol Parker.

Anne Enquist reports:
we had had three conferences—1984, 1986, and 1988. They were all at the University of Puget Sound. Laurel and I had put all three together. So it was a great relief for us to have someone else do a conference. We had made money on each. So we had money in reserve. We weren’t making big bucks in those days, but we clearly had a cushion. And Diana made money as well.

**ML:** Putting on a conference is a tremendous amount of work. Diana worked very hard on that conference, and so did her husband.

**CR:** She did a great job.

**ML:** Her husband worked at the conference and so did her son.

**CR:** Her son helped register everybody—that’s right.

**ML:** And she used the dorms for that conference. I thought that was a successful conference.

**CR:** It was very successful, and not just because it didn’t lose money. It was at that conference in 1990 that the Board of Directors decided to have a program committee. That was the point at which the responsibility for putting together the program went to a committee rather than just Laurel and me, which was good for us. It was so much work.

**ML:** Having a program committee must have relieved you and Laurel of a good deal of the burden you’d been carrying.

**CR:** We always had a legal writing work-study student, and increasingly it turned out that about half of the student’s time was spent working on Institute work, and the University never complained. The University always let us use that student. Then the legal writing program hired Lori Lamb in July 1988. And by the late 1980s or early 1990s, that was a big part of Lori’s job. As you know, it was very grassroots. We had lots of volunteers who helped, especially with the conference, and that was wonderful. And I think Laurel and I always wanted to keep it kind of grassroots. But as attendance at the conferences grew and the member-
ship list expanded, Lori became indispensable. Today, many people, when they think of the “Legal Writing Institute,” they think of Lori Lamb.

**MR:** Since the first conferences, what kind of support (financial or other) has the Legal Writing Institute received?

**LO:** We have had diverse support for the conferences. We have been able to keep the registration fees relatively low and also make a profit. Who have been the key supporters for the Institute? Well, the University of Puget Sound, and Seattle University obviously. Also the publishers have helped us.

The publishers now attend the conferences. They set up displays. Sometimes they give demonstrations. On occasion, they sponsor a lunch or dinner. We take the publishers’ book bags, their pens, right? And their coffee cups? I think it’s in some way a sign of the respect that the publishers have for us as a profession. Publishing is the place where the market is and indirectly where decisions are being considered about how programs should be run and what kinds of materials might be used in programs.

**ML:** At the time of the first conferences, that was a time when there weren’t that many texts available. There wasn’t that much material available.

**LO:** You are right. When I first started teaching, there were only a couple of books available. Marjorie’s book, *Legal Problem Solving* came out in 1973 and Lynn Squires and Marjorie’s *Nutshell* came out in 1982, and there were a few research books, but that was about all. As a result, the conferences gave us an opportunity to share materials and think about developing additional materials. It wasn’t too much later that a number of people began writing legal writing books. So the publishers were helpful to us as a discipline. They were out there to ask, “What kind of resources do you guys need?” and they were hoping to publish some of those resources. They encouraged the development of the teaching of legal writing and research.

**ML:** The Legal Writing Institute conferences made an innovative and very practical contribution to the development of resources through the Problem Bank and Idea Bank. The Idea Bank is now online.

---


One of the Institute’s great contributions to the profession has been the survey.

VII. THE LWI SURVEY

In 1990, Jill Ramsfield conducted the Legal Writing Institute’s first national survey of legal writing. It was published in the first issue of Legal Writing: The Journal of The Legal Writing Institute (Fall 1991).

The report on the first survey was titled “Legal Writing in the Twenty-First Century: The First Images.” In the article, the first survey is likened to the Hubble telescope, then new.


LO: In 1990, Jill Ramsfield at Georgetown came up with the idea of doing a national survey that would show the status of legal writing professionals across the country. It was designed essentially to give us information first about ourselves, but then also to give the larger legal community information about who was teaching legal writing, and under what conditions legal writing was taught. Jill did the first four surveys for the Legal Writing Institute. It was a horrendous job because essentially Jill developed a questionnaire and sent it out to people and maybe 25 to 30% of them sent it back. So she would telephone and get people to give her the information, and then after that she did a wonderful statistical analysis. Basically, she did the entire project by hand.

Since then, we have computers and consequently the later surveys have become more and more sophisticated, primarily under the direction of Lou Sirico, Jo Anne Durako, and Kristin

the genesis of the Idea Bank, see the Special Alert from the Legal Writing Institute: Call to Action, announcing the creation of the LWI Resource Center. Memo. from Leg. Writing Inst. to All Leg. Writing Colleagues, Special Alert from the Legal Writing Institute: Call to Action (Sept. 20, 1998) (available in the Legal Writing Institute Archives) (discussing George Gopen’s address in which he discusses several new efforts, including the creation of a resource center). Legal memorandum assignments contributed by members would be reproduced and made available to all conference participants.


Gerdy, to the point now where the survey is online. The results are tabulated; the surveys have charts and graphics.

**ML:** When I asked Jill about the surveys, she pointed out that she did them by hand. For the 1990 survey,

I just made up a bunch of questions. I know that, later in the process, I asked for feedback and suggestions for questions, but I just made up 100 of them from the beginning. I think we have copies of all the original surveys if you want to see them. I had listened to the complaints, concerns, and questions of our colleagues. I had also talked to (uninformed) deans and faculty. I decided to just start in on the basics of geographical locations and demographics. Then I just called on my own knowledge of the field to invent questions about what was taught in the class, how many drafts, who taught research, etc. As for status, I observed all the models being used and tried to ask questions about all of them. This was the hardest part because I didn’t want people to have to answer all 100 questions, just the questions about their model. I also wanted to allow for hybrids. So we used different colors of paper!! We also worked hard on the types of questions and choices of answers. I had a computer-savvy student and a faculty colleague help me make the survey look good, but it was not until 1994 that we got help from the main Georgetown campus in compiling the data. We did it by hand for the first two.

I was also determined to get a statistically significant response. I knew deans and faculty would scoff at anything less. So we just got on the phone and harassed people. They were wonderful about responding because we shared the same interests. Thus, all my surveys had about an 80% response rate, not bad for paper copies.

Jill is very modest about these early surveys, and, of course, they don’t look as professional as the recent ones. But they were done by hand. I think they were a magnificent achievement. They had a positive effect on the profession. And they won the attention of administrators, ABA committees, and judges.

**MR:** How did legal writing teachers use the early surveys?

**ML:** I know that Jill’s surveys had an influence beyond legal writing programs. In 1996, Justice Rosalie E. Wahl of the Minnesota Supreme Court attended the Institute conference at the invitation of Chris Kunz. Justice Wahl referred to Jill’s 1990 survey in her speech at the Institute conference in Seattle.\(^\text{27}\) That speech is

\(^{27}\) Justice Rosalie E. Wahl was the first woman to serve on the Minnesota Supreme
worth reading today. It’s reprinted in the 1997 Legal Writing: The Journal of the Legal Writing Institute. Justice Wahl quoted extensively from Jill’s article on the surveys, confirming for us the importance of the surveys.

LO: What the survey did is to give us a database of information that individuals could use in talking to their own faculty and their own deans about legal writing. It allowed, I think initially, for people to talk about salary issues and discrepancies of pay among people who were teaching legal writing within their own schools, and then across the country. Second of all, it started showing people about the various levels of status—people who previously had short-term contracts were getting long-term contracts, people moving into tenure positions.

I do think that the survey may be the one single piece of information that has been most influential in persuading faculties and deans to change the status of their legal writing faculties. For example, our school is currently (in 2003) reviewing the status of the legal writing faculty, and the primary data that our faculty is looking at are the data from that survey. Based on that survey they are saying, “We’re falling behind.” Therefore, the faculty seem to be willing to consider making changes. I think, first of all, salary. Second, I think it helped get rid of the caps on legal writing positions. Third, I think it is helping people move from quasi-short-term/long-term contracts into some kind of official long-term contracts with voting rights or some type of tenure whether it be tenure restricted to legal writing or general tenure.

So, the surveys as they have developed have changed dramatically the number of topics that Jill used to ask people about. She would simply sit down and figure out which questions to ask. The good news is that it has shown that status and salary have just improved dramatically. The difference between the first survey data and the current survey data is actually pretty remarkable.

MR: Does the Legal Writing Institute sponsor the surveys?

Court. Appointed to the court in 1977, she was elected to serve in 1978, and successively re-elected in 1984 and 1990. Justice Wahl chaired the Section of Legal Education and Admissions to the Bar of the American Bar Association in 1987–1988. She proposed the formation of a study to examine the continuum between legal education and practice. The study was headed by Robert MacCrate. It resulted in the influential MacCrate Report published in July 1992. The report sought to define the skills and values needed to practice law. Justice Wahl chaired the subcommittee that drafted a statement on lawyering skills. In 2003, William Mitchell College of Law dedicated its Legal Practice Center, naming it for Justice Wahl.

LO: It is now a joint project between the Legal Writing Institute and the Association of Legal Writing Directors\(^29\) (ALWD). Both organizations pay half the costs of producing it. It’s expensive. It started with the Legal Writing Institute and now it’s a joint project between the two groups.

VIII. CONTINUED GROWTH, CONTINUED SUCCESS

**LEGAL WRITING INSTITUTE**

**MISSION STATEMENT**

“The Legal Writing Institute is a non-profit corporation founded (1) to promote an exchange of information and ideas about legal writing and (2) to provide a forum for research and scholarship about legal writing and legal analysis. . . .”\(^30\)

MR: The Legal Writing Institute has been hugely successful. And even though very much larger, it hasn’t swerved from its original mission.

LO: That’s right. Its main emphasis is still on teaching, especially at the conferences. The Legal Writing Institute has always had as its primary purpose to enhance the teaching of legal writing. So we had always had a primary focus on pedagogy, and scholarship about the teaching of legal writing. There were questions in the early and mid-1990s about what kind of political role the Legal Writing Institute should take. In the early to mid-1990s, the Legal Writing Institute’s members started talking about whether it should be primarily an educational group or whether it should also take on a political role. Again, this is not something that we all sat down and voted on. It just kind of evolved, but it became clear that probably the Legal Writing Institute could be truer to itself if it did not become a political group. As a result, the second group, ALWD, was formed, and it also has, of course, evolved. But ALWD has by far a more political nature than the Legal Writing Institute. Still, there is a huge overlap between the people who are active in both organizations. So sometimes it is hard to tell whether somebody is actually acting on behalf of the

\(^29\) The Association of Legal Writing Directors was founded by Jan Levine, who was its first president.

\(^30\) J. Christopher Rideout drafted the Legal Writing Institute’s first Mission Statement. As the Legal Writing Institute’s membership grew, its primary mission did not change.
Legal Writing Institute or ALWD. For example, when we’ve spoken at ABA meetings on the status of legal writing faculty, I think most of us have identified ourselves as belonging to both groups. The distinction between the two groups, I think, is that the Legal Writing Institute is open to everyone who is in any way touched by or involved in the teaching of legal writing and has as its primary purpose the pedagogy of teaching legal writing, whereas ALWD is limited to directors or people of stature in the legal writing community.

ML: The emphasis on teaching must also mean that the focus of the Legal Writing Institute programs has changed somewhat from the way it used to be when we first started.

LO: Right.

ML: And that now when we have people who have been teaching longer, the program has to change to address different levels of experience.

LO: Yes, it does. I think, in some ways that’s how we have dealt with the numbers. The problem is that we don’t want different “tracks” of people. We still want groups to be interacting with each other. For the last three or four conferences, we’ve had a new teacher’s track, so that at each time slot there was something designed for people who are in their first or second year of teaching—for example, designing assignments, conducting effective classes, conducting conferences, or critiquing, all of those kind of issues.

In many ways, that allows our most experienced members of the Legal Writing Institute to interact with our newest people because we have tried to keep those groups relatively small and not to talk at them, but to provide a lot of workshops. For example, for the session that Dan Barnett and Anne Enquist put together on critiquing student papers, there was an initial introduction of information and resources. But then the new teachers divided into relatively small groups with each group having a mentor so they could deal with practicing how you do it, and dealing with people’s questions, and again the sharing that has been so important a part of the Legal Writing Institute. The new people have great insights that those of us who have been around for maybe too long have forgotten. It’s fun to listen.

ML: Mentoring has been an important contribution of the Legal Writing Institute. It started informally. I remember getting lots of phone calls. Marjorie did too. New people can now send e-mail. And now mentoring is more formally organized; that grew out of the buddy system we had at the 1990 Ann Arbor conference.
LO: I think one of the very positive things that the Legal Writing Institute has done in the last four or five years is to establish a new member outreach committee. Now, when we identify somebody as a new member of the legal writing community, the new member committee sends new people a letter and a list of resources. When they come to the conferences, they have a mentor who will be their buddy throughout the conference and make sure that they get introduced to a variety of people. So I think we have taken some steps to stay inclusive. The larger the Legal Writing Institute gets, however, the more isolated people can feel. We’re thrilled that it’s large, but we also need now to figure out what to do about that.

MR: How have the conference programs changed to accommodate legal writing professionals, people dedicated to legal writing careers, at different stages in their careers?

LO: To accommodate the people who are at different places of their careers, we now offer a larger variety of sessions. For example, while at the first few conferences, the focus was on teaching and not on scholarship, now we have a number of sessions that deal with scholarship. We have forums for people to share their scholarship, forums on how to do scholarship, and how to get scholarship published. In addition, we continue to try to branch out and to learn from the other disciplines, which I think is something both the newer and the more experienced people benefit from. So, you know, we have presentations by people from rhetoric sometimes. We’ve had people, sometimes, who have more specialized knowledge in areas of learning theory. People like Jim Stratman with his research on reading, and people who are not teachers of legal writing. We try to take the best of what other professions offer, and then use that information to improve the teaching of legal writing.

ML: Many of the presenters at the first two conferences were from other disciplines—for example, George Gopen, Jim Stratman, Lynn Squires, Joe Williams, and Stephen Witte. It’s good to continue that tradition. Your own program and the Legal Writing Institute itself illustrate the benefits of cross-disciplinary exchange. The Legal Writing Institute grew out of Writing-across-the-Curriculum.

LO: Without Chris and Anne, those of us at the law school would never have learned about some of the things that were going on in the composition area. And as a result we would not have created the program that we did. We learned from each other. Our
curriculum, for example, is based on spiraling. I got that concept from Mary.

ML: And that theory, in turn, I had adapted from Jerome Bruner.

LO: Yes. I think that our program benefited from the fact that Chris and Anne were trained in composition theory and not law. In addition, I think that our program benefited from the fact that Anne and I had degrees in education. So again, it was really three disciplines interacting with each other: composition, basic educational psychology and practice, and then the law itself.

MR: It was a good combination. You must have had strong institutional support from your dean.

LO: We have to credit Fred Tausend for being willing to accept people from other disciplines into the law school environment and recognizing the needs of the legal writing program. Having a practitioner as dean was very important; plus, we had a very active board of visitors at that point. They sent formal recommendations to our faculty. There was some lobbying that the skills courses be given a fair amount of attention. So having Chris and Anne there as writing specialists, particularly in the early years at the University of Puget Sound, was extremely important. Some of our students did not enter law school with all the skills they needed. Chris and Anne were there to help those students. It was really important to have Chris and Anne there when the legal writing faculty rotated in and out every two years. Our program is proof that having writing advisors helps not only the students, but has a positive impact on the writing program itself.

ML: Writing advisors have their own organization now. Anne helped found it with Betsy Fajans and Mary Ray in 1988: The Association of Writing Specialists.

MR: What are the most challenging aspects of putting together an Institute conference program?

LO: It is a challenge to try to come up with a program that is interactive. It means that where we used to, at the most, have two concurrent sessions, now at the last several conferences, we have at least six things going on at the same time. Even when you divide 400 people into six groups, you still have large numbers.

We’re beginning to reach a facility limit, too, for locations for the conference where you can have (maybe in the future) groups of forty. Ideally we would like each of these sessions to have maybe no more than forty people in them, to provide an opportunity for people to interact. Most United States law schools have problems
when you start asking for ten rooms that are available at the same
time and that are conducive to the kinds of presentations and
workshops we want to do.

There are challenges to putting on an Institute conference, but
the truth of the matter is the new people keep coming back, the
people of mid-range keep coming back, and the experienced people
keep coming back. So they must be coming back for a reason. Part
of that, I think, is clearly the presentations. I think that we had
over 100 individuals at the last two conferences make present-
tions. So there is huge group of people who are getting an oppor-
tunity either on their own or as part of a panel to share what they
are doing. We instituted a “one presentation per person” rule so
that those of us who have been around a long time would not dom-
inate the program.

ML: The need for this rule just shows how much legal writing
has grown since 1984. Then we wouldn’t have dreamed we’d need
a rule like that. It is also proof, Laurel, that the Institute is still
inclusive.

LO: Right. People are attending not only to listen, but are giv-
en an opportunity to share what they are doing. People keep com-
ing back to make connections, socialize, and renew associations
and friendships.

MR: It’s fellowship.

LO: Fellowship.

MR: And, being with people who appreciate what you are d-o-
ing and just keeping up with who’s new and who’s still there.

LO: Right.

MR: It’s a really tight-knit community even though it’s wide-
spread in this country.

LO: It is very widespread. I do think the group is probably
closer than it ever has been in part because of the listserv.

ML: Ralph Brill set up the first legal writing listserv in 1993.
This was prior to the 1994 Legal Writing Institute conference in
Chicago. It was, Ralph says, “To enable attendees to participate in
topics presented at the Conference.” After the conference, the
listserv was continued for all the people who attended the confer-
ence and then to further subscribers.

LO: Not everybody participates in the listserv, but a large
number of people do participate by writing and even larger num-
bers read it. Part of it, they go to conferences and they keep say-
ing, “I’ve been waiting for e-mails” or “I’ve been reading his e-
mails,” and “You know, she e-mailed me this or whatever—I want
to meet this person.” So in some ways the contacts are now being established before conferences. Particularly for the new people. Then they can put faces with names.

But as I said, an aspect of this is troubling to me because I worry that when I look around sometimes at conferences, I think that person is standing over in the corner by himself or herself and not having anyone to engage with. That’s the problem when you get a larger group. But, for the most part I think when a person appears to be isolated at a conference, somebody will approach that person and start up a conversation.

I think it’s clear that many of us attend to socialize. I am interested in what my colleagues are doing, but I also, just like other professionals, want to catch up on the news, right?

**ML:** One advantage in these conferences is that many people can use them to demonstrate professional growth to their institution. Not just those considered for tenure. We have so many more people who have the opportunity to be presenters. That really helps people who have to go before a personnel committee to renew their contracts. That’s one aspect of inclusiveness that has always worked well.

**LO:** And I think that we figured that out pretty early on; we are kind of at two levels. One was that people were more likely to be able to come to conferences if they were presenters or workshop leaders or moderators; then their schools would pay for them to attend. Second of all, people who wanted to stay in the profession for a long time were going to have to show professional development. The Legal Writing Institute conferences are the perfect place for people to be able to do that, and having been on the program committee a number of times, I know that we conscientiously go through the topics that people are preparing and kind of the bibliographies that they put together. We also attempt particularly to find people who are in their second, third, or fourth years of teaching who have never presented before.

**MR:** Yes. That’s a good policy.

**LO:** And if there’s a choice between a senior person and a person who’s been around two, three, four years, we have, on a majority of occasions, elected to give the slot to the person who’s newer. Simply because, one, we may not have heard his or her voice before. Second, it should help them professionally to be able to put on his or her application for reappointment or for tenure that he or she made a presentation at a national conference.
ML: Yes. Deans and committees accord more respect to national meetings.

LO: And the fact that it’s a large conference—

ML: Yes, lots of people. That’s very helpful.

LO: Yes. Professors and most deans are impressed. There are relatively few professional groups in the legal profession that consistently draw such large numbers. I don’t think the contracts professors, you know, do they draw up to 400 people to a contracts conference?

MR: Only at the AALS meetings, and I would guess they never get that high in any of the AALS sections.

LO: And again, I think it’s been relatively recently that any significant number of legal writing faculty have been funded to go to AALS meetings. It’s only been very recently, maybe in the last five years, that our dean would pay expenses for my own legal writing faculty to attend. My recollection is that in the early years, there were relatively few people who taught legal writing full-time who would show up. It was one reason we didn’t have board meetings there for a while because not enough people were able to attend. There were more people who were essentially teaching legal writing with a doctrinal course or who were librarians.

MR: Librarians were in the AALS at the beginning; there were a substantial number of librarians in the writing section. Then, gradually, they dropped off as the focus was more and more on legal writing and legal thinking. The librarians formed their own AALS Section.

ML: Eventually, academic support people, who had been part of the writing section, formed their own section too.

LO: The number of people at the Legal Writing Section meeting in January is substantially larger now than it was ten/fifteen years ago. More people get money from their schools to be able to go to the AALS conferences. Interest and support for legal writing has increased.

ML: Right. In recent years for our AALS Section meetings, the room has been absolutely packed, and you couldn’t find a place to sit.

LO: It is not unusual now to have 200 people at those Section meetings. They’re not necessarily all people who have the primary teaching responsibility of teaching legal research and writing. The programs probably draw people outside legal writing depending on the topic. “Better Thinking, Better Writing” was the topic of the 2003 AALS Section meeting, which should have an appeal to peo-
ple besides those who just teach legal writing. Such topics broaden awareness of legal academics about legal writing programs.

ML: In recent years, the Legal Writing Institute has had a formal presence at the AALS annual meetings with Institute receptions for two awards it sponsors: the Golden Pen Award and the Thomas Blackwell Award. The latter is sponsored jointly by the Legal Writing Institute and ALWD. It honors the life and memory of Thomas Blackwell, whose tragic death in 2002 was a great loss to the legal writing community. The Blackwell Award recipients to date have been Richard Neumann (Hofstra), Pamela Lysaght (Detroit Mercy), and Ralph Brill (Chicago-Kent).

LO: The Blackwell award reception has been packed. Tom’s family and members of the Appalachian faculty—Tom was legal writing director there—have attended.

ML: The Golden Pen Award had a very different inception. It grew out of the Plain English Movement. Joe Kimble was its foremost advocate at Legal Writing Institute conferences. He was instrumental in setting up the award. Recipients of the Golden Pen Award have been Arthur Levitt, SEC Chairman; Donald LeDuc, Dean, Thomas M. Cooley School of Law; Linda Greenhouse, United States Supreme Court reporter for The New York Times; Judge Robert E. Keeton, Founder of the Style Subcommittee on Federal Court Rules; and Professor Richard Wydick of Berkeley, author of Plain English for Lawyers.

LO: Members of the Legal Writing Institute devoted a good deal of discussion...

ML: Sometimes heated.

LO: Right, to whether to adopt a Plain English resolution that Joe promoted.

ML: I remember Judge Lynn N. Hughes of the U.S. District Court for Houston, Texas, argued in favor of the resolution at the 1992 conference. And one entire issue of the Second Draft newsletter was devoted to Plain English.

31 Thomas F. Blackwell (1961–2002) died shockingly and tragically while director of legal writing at Appalachian School of Law, where he was killed by a former student. The entire legal writing community mourns his loss. Moving tributes to Blackwell can be read in Pamela Lysaght, Molly Warner Lien & Clinton W. Shinn, In Memory of Thomas F. Blackwell, 8 Leg. Writing 1 (2002).


33 Judge Lynn N. Hughes, Do We Need Charters for Plain English? 8 Second Draft 1 (Nov. 1992).

ML: Yes. It passed nearly unanimously.

**PLAIN LANGUAGE RESOLUTION ADOPTED**

At the 1992 conference of the Legal Writing Institute, which has 900 members world-wide, the participants adopted the following resolution:

1. The way lawyers write has been a source of complaint about lawyers for more than four centuries.
2. The language used by lawyers should agree with the common speech, unless there are reasons for a difference.
3. Legalese is unnecessary and no more precise than plain language.
4. Plain language is an important part of good legal writing.
5. Plain language means language that is clear and readily understandable to the intended readers.
6. To encourage the use of plain language, the Legal Writing Institute should try to identify members who would be willing to work with their bar associations to establish plain language committees like those in Michigan and Texas.35

LO: That was a bit of a departure for the Legal Writing Institute. Conference programs only very rarely focused on political issues. Programs generally centered on teaching, especially in the early years.

MR: To what extent have you found that you’re recycling some of the conference topics that you have used in the past, and do you do that intentionally? Or does it just happen?

ML: You mean at the conferences?

LO: At the conferences. I think that part of it is intentional. I think you want to have those basic core topics for the new people that will always be there at every conference. So my guess is that probably at every conference that we’ve ever had, there’s been a session on designing assignments and one on having student conferences. So there are certain perennial topics. I think that is actually a very good thing.

MR: Especially for the newcomers.

LO: Other topics are quite varied, depending on what interests people in any particular year. So there’s some repetition. For a while, we had a large number of technology presentations because people were experimenting with technology. We went through a stage where we had a large number of presentations on learning theories and different diagnostic tools to determine learning styles. In the last several years, we’ve had emphasis on teaching diverse students (disabled students, ESL students), teaching professional responsibility. A lot more about bias, both in legal analysis and writing.

LO: An attendee can now look at a program and say, “I have six choices. Yes, I heard that topic last time, but, this is where I am right now, and I’m going to choose a different topic.”

MR: It is clearly a challenge for those people who are scheduling the conference program.

LO: Now we have the capability, if we choose to do so, to put the conference presentations on digital tape and upload the tapes to the Internet. The advantage of doing that is it makes presentations more widely available. My basic concern about doing this, however, is that people may choose not to come to the conference, which means they only get a fraction of what the Legal Writing Institute offers. You may get the information, but you miss out on the discussions after the presentations.

MR: You lose the collegiality.

LO: The planning committee has to make a decision about how to proceed. We’ll probably start slowly; maybe tape all the sessions for brand new people—the people who come on board after our conference.

ML: That could provide a teacher training packet for directors who can’t bring all their teachers to a conference.

LO: Exactly.

ML: And for people who can’t attend. Sometimes the new teachers can’t get there.

LO: That’s exactly right. That seems to be the way to start it.

MR: Yes. The next step might be something patterned after our CLE Best-of-the-Year.

LO: Exactly.

MR: Best-of-the-Year and then a small packet of what seems to be the cutting edge.

LO: Exactly. Maybe down the road twenty years from now—maybe we will only have virtual conferences. But the good thing is that many people will still want to go to Seattle in the summer.
ML: I noticed on the program brochure for the Legal Writing Institute conference from 1986 that the conference was called “The Next Step.” What do you see as the next step twenty years after 1986 when you thought up “The Next Step” title?

LO: I do think the next twenty years are going to be a time of remarkable change for the legal profession. Part of that is due simply to the technology that is available to us as lawyers, and the technology that we will be expected to use. I think another change is in the nature of law firms themselves and that the mentoring that historically was done by law firms may not take place in the future. Plus, I think, to some extent, that there is a far more diverse group of people who need and want access to legal services. Thus, as a profession, we face huge challenges. Those of us who teach legal writing need to keep reminding ourselves that we’re not training students to do what we did ten years ago. Instead, we need to look toward the future.

MR: So the Legal Writing Institute has been evolving in many ways.

LO: To some extent, it has been the vision all along that the Institute needed a place to start, but it wasn’t necessarily the place where it was going to stay. We started with a national board of directors. Because it was pretty simple, initially all the functions came out of the University of Puget Sound very quickly. We decided the conference shouldn’t be every four or five years, but every two. We decided we needed to have a newsletter, and now the newsletter rotates amongst schools. Each time we rotate, there is probably a little competition, maybe some improvement. The next editors have to produce a newsletter at least as good as that of the previous editors—or better. I think that’s great. Then there’s the Journal. Essentially we realized that one person could not do a journal, and it has now started rotating. The Journal really doesn’t have a physical location at all. It’s just produced volume by volume.

During the first six or seven years, the presidency was at the University of Puget Sound. The secretary and treasurer were at the University of Puget Sound. We quickly decided we were tired. So the presidencies also started rotating. The conferences were held in other locations.

ML: Now the home base will move too.
LEGAL WRITING INSTITUTE
HAS A NEW HOME

I am pleased to announce that the Legal Writing Institute has found a new home. Over the course of the next few months, we will transfer our base of operations from Seattle University to Mercer University School of Law in Macon, Georgia, where Linda Edwards will take on the responsibility for overseeing the Institute’s operations. While we are very excited that Mercer will be our new home, the selection process was quite challenging. Several schools submitted outstanding proposals, and it was difficult to choose among them. It is a tribute to the strength of our discipline that so many schools were willing and able to take on this challenge.36

LO: To some extent, the move is much easier to do now because so much of the data can be transferred easily electronically. We do have some boxes of records, etc. that we’ll have to send to the new home base in Georgia, but for the most part, we’re talking about who maintains the mailing list, who maintains the membership, who maintains the website, and who maintains the listserv, and pretty much with a click of the button we can send all of our data to the new home of the Legal Writing Institute, and then Mercer University School of Law can take over.

ML: But a switch to a new home base is more than just a mechanical transfer of information. It can also be a break in continuity.

LO: The major problem I actually foresee in the transfer is losing our institutional memory. Lori Lamb has been with us for so long now. Lori recognizes names and knows where people are. I mean there is a wealth of information that’s in her head. It’s going to take a while for the next person to be able to acquire that knowledge. When somebody calls with a question, Lori knows immediately who can answer that question. She is amazing.

I’m not sure that if we asked people who have been in the Legal Writing Institute fewer than ten years where the home of the Legal Writing Institute was in 2002 that most people would know. The Journal comes from one mailing address. The newsletter

36 Steve Johansen, The President’s Column, 17 Second Draft 3 (July 2003).
comes from another mailing address, the listserv is a private server. The website—I don’t think there is anything on it that identifies it as from a particular institution. I mean, I’m not sure that the Legal Writing Institute has a physical location in most people’s minds anymore. I think that is good.

**ML:** I think it’s admirable that you can say you opened up the operation of the Legal Writing Institute to lots of the new people. That we don’t think of the Legal Writing Institute as a location. The Institute is people, not a place. That’s one thing about legal writing—it’s a community as well as a discipline.

**MR:** That’s one of its strengths.

**ML:** Many people realize, you know, that you, Chris, Anne, and Lori put this together. It was a major accomplishment that made a difference to all of us. It still makes a difference and will in the future. That should not be forgotten.

**MR:** Amen.

**ML:** I don’t think we should forget what people have done just because life goes on. Things change, but let’s not forget, for example, what Marjorie has done. What you and Chris have done. I have always felt that the Northwest was in a sense the cradle of legal writing as a profession, with Marjorie’s program at the University of Washington and the Legal Writing Institute at the University of Puget Sound. It’s been a fortunate congruence of people and their interests. So let’s not forget the contributions people like Marjorie, like Ralph Brill made. Who you and Chris are.

**LO:** But I think in part the success of the Legal Writing Institute is that it is not identified with one a single person.

**ML:** You and Chris certainly were not self-promoting. But we all knew how much effort you put into it. And at the beginning, we all had strong feelings about the camaraderie at the University of Puget Sound conferences. I, for one, made many of my best friends there.

**LO:** In some ways, it’s kind of fun now when the chairpeople don’t have a clue who I am. So, you know, I’m just another person.

**ML:** And that makes me sad.

**LO:** I have to keep remembering there’s a history, and things that are gains can also be lost. We need to make sure we don’t lose our sense of continuity.

**MR:** The sense of fellowship.

**LO:** I guess one of my greatest fears is that for those of us who teach legal writing in legal writing programs, the Legal Writing Institute may become less like we have been in the past, and be-
come more like the rest of the academic world. That’s a system based on hierarchy. It’s a system that often doesn’t put the student first, and I really feel strongly about that. When I go to work every day, I try to put the students first. We need to make sure in striving to become professional, we don’t become what we were protesting against.

**MR:** In legal writing we’ve been friends, not competitors.

**LO:** I almost always think of the Legal Writing Institute in terms of my daughter because she was born about the same time the Legal Writing Institute was conceived. The first conference was in 1984. Just as my daughter has grown up, so has the Legal Writing Institute. Letting the Legal Writing Institute go find its home someplace else is a kind of natural progression. I am sure that at Mercer the Legal Writing Institute will prosper.
EXPANDING OUR CLASSROOM WALLS: ENHANCING TEACHING AND LEARNING THROUGH TECHNOLOGY*

Kristin B. Gerdy**
Jane H. Wise***
Alison Craig****

I. INTRODUCTION

A wide range of factors supports a decision to incorporate technology into law teaching. These factors range from the theoretical to the practical and from pedagogical to professional, but three factors are particularly important: trends in law practice, technical experience of law students, and cognitive processing. First, technology is particularly well suited for legal education, and especially for legal research and writing instruction, because the nature of law practice is becoming increasingly technical.¹ Modern lawyers need a much higher level of technological competence to succeed—it is no longer enough to employ a legal secretary to type briefs. Current trends toward electronic filing, digital presentation of evidence, and electronic conferencing and collaboration require the lawyer to possess a level of technical competence.² This is the responsibility of legal educators to prepare students for the realities of practice, and that includes an introduction to the realities of technology in the law.³

---

² See Maria Perez Crist, Technology in the LRW Curriculum—High Tech, Low Tech, or No Tech, 5 Leg. Writing 93, 96–97 (1999).
³ Johnson, supra n. 1, at 101; see generally Pamela Lysaght & Danielle Istl, Integrating Technology: Teaching Students to Communicate in Another Medium, 10 Leg. Writing 163 (2004) (describing the reasoning behind and implementation of a technology unit within
Second, most modern law students have used computers both in the classroom and at home since their early elementary school days, leading them to expect technology to play a role in their legal education as well.\textsuperscript{4} According to a report published by the National Center for Education Studies in 2003, about 90\% of American children and teenagers, ages five through seventeen, used computers in 2001, with nearly 60\% using the Internet.\textsuperscript{5} By the time they reach high school, nearly three-quarters of American students are online.\textsuperscript{6} Use of computers and the Internet in educational settings has increased significantly since the early 1980s. In 1984, 27\% of students from elementary school through college used computers in school. In 1989, 43\% of students used computers at school, and by 1997 69\% of students reported using computers in their classes.\textsuperscript{7} According to a 2002 study on Internet use by college students conducted by the Pew Internet Project, 20\% of college students were introduced to computers by the time they were eight years old, and all were using computers by the time they turned eighteen.\textsuperscript{8} The vast majority (86\%) of college students use the Internet, compared to nearly 60\% of the general U.S. population.\textsuperscript{9}

Increasingly, Internet use is becoming part of the undergraduate educational experience. For example, during Winter Semester 2004, Brigham Young University reported that more than 80\% of its undergraduate students utilized the online course software Blackboard.\textsuperscript{10} American college students find the Internet central to their educational experience, using it to communicate with teachers and other students, to research and to access library ma-
terials, and to handle administrative tasks like reporting absences. These students overwhelmingly report that Internet use has positively impacted their college experience.

The Internet has also changed the way students approach their education. For example, while students used to depend on the campus library for the majority of their research needs, today’s students opt for Internet searching, with almost three-quarters using the Internet more than the library and slightly less than 10% preferring the library. Because these trends are escalating in secondary and undergraduate education, more and more law students will enter law school expecting, if not demanding, that professors incorporate technology into their courses. This trend will increasingly be true as more and more undergraduate universities incorporate technology into their curricula.

The third and perhaps most important reason to consider implementing technology into legal education is that the advent of e-mail, instant messaging, and readily accessible Internet browsing has influenced the way students learn. According to Carole A. Barone, head of the National Learning Infrastructure Initiative, students who regularly use these technologies expect their learning to be more “hands on” than passive (“they expect to try things rather than hear about them”), and they tend to learn more visually and socially. Because of their familiarity with the Internet and the way it “links” information, today’s students expect and learn best from information presented in a “non-linear, dynamic, and interactive way.” The online-cyber environment presents information in multiple formats, such as text, pictures, video, and graphics, and allows users to link information from various locations throughout the Internet seamlessly and dynamically. This connectivity, and students’ experience with it, has changed the way students conceive of information and learn from it. Law stu-

---

11 Jones, supra n. 8, at 2–3.
12 Id. at 3. Slightly more than one-third of surveyed students (34.3%) strongly agreed with the proposition that the Internet had a positive impact on their college academic experience in general, while an additional 44.2% agreed with the proposition. Id. at 8 tbl. 3. Sixteen percent were “neutral” and only 3.5% disagreed. Id.
13 Id.
16 Id. at 23.
In this Article, we will provide a brief overview of learning theory, discuss the thoughtful use of technology, and describe four specific projects we have created at BYU Law School.

II. LEARNING THEORY AND LEARNING STYLE

To more fully understand how technological advances impact learning, it is useful to consider a short summary of learning theory, focusing particularly on learning styles and student-centered learning principles. Learning has been described as the “process of progressive change from ignorance to knowledge, from inability to competence, and from indifference to understanding.” The way learners progress through the spectrum from ignorance to knowledge is often referred to as a learning style. In his leading work on learning styles, educational theorist James W. Keefe defined learning style as “characteristic cognitive, affective, and psychological behaviors that serve as relatively stable indicators of how learners perceive, interact with, and respond to the learning environment.” Learning style does not reflect upon a person’s intelligence, and one style is not superior to another. While learning style is likely to be relatively stable throughout a person’s life, it is not unalterable and often must be adjusted to enable the student to learn in a less than ideal environment.

Professor Paula Lustbader summarized: “Theories about learning styles indicate that learners have a preferred mode of learning, that people learn in different ways, that a variety of...
learning styles will be present in any classroom, and that no one teaching method is effective for all students.”

The idea that people learn in different ways emerged in educational literature as early as 1892; however, the specific phrase “learning style” was probably first used in the 1950s by Thelan in his discussion of the dynamics of work groups. Since that time many educational theorists and researchers have explored the concept of learning style, leading to the creation of numerous models and theories.

This multiplicity of theories all categorized under the same descriptor often leads to confusion. To comprehend learning style theory more accurately, it is necessary to understand that learning style theories exist on four different levels. According to Professor M.H. Sam Jacobson, “Learning styles are affected by a number of characteristics, including a person’s intelligence, personality, information processing mechanisms, social interaction needs, and instructional preferences.”

The deepest layer of learning style theory focuses on personality models. Learning style at the personality level tends to be the most stable throughout a person’s life. A second layer assesses how students process information while learning. The third layer is behavioral and focuses on how students interact in learning settings. The fourth layer explores learners’ instructional preferences—the ways in which they like to be taught. The four levels are not isolated since each influences the others.

23 Keefe, supra n. 21, at 7.
24 See e.g. David A. Kolb, Experiential Learning: Experience as the Source of Learning and Development 20–21 (Prentice Hall 1983). Basing his theory of experiential learning on the work of three earlier educational researchers, including Dewey, who saw “learning as a dialectic process integrating experience and concepts, observations, and action,” Lewin, who placed emphasis on experience to test abstract concepts and on feedback processes, and Piaget, who believed the key to learning “lies in the mutual interaction of the processes of accommodation of concepts or schemas to experience in the world and the process of assimilation of events and experiences from the world into existing concepts and schemas,” David A. Kolb’s learning theory emphasizes the central role of experience in the learning process. Id. According to Kolb, true learning combines experience, perception, cognition, and behavior. Under this theory, “knowledge is continuously derived from and tested out in the experiences of the learner.” Id.
25 Jacobson, supra n. 20, at 146.
27 Id.
28 Id. at 21.
29 Id. at 46.
30 Id. at 36.
31 Id. at 7.
Although learning style is linked to the individual student, understanding the concept of learning style is arguably as important to the teacher, and its application can dramatically improve teaching, especially when the teacher attempts to incorporate technology into class activities. Traditional theories of education were based on the model that teachers, as repositories of information, were simply responsible for dispensing that information to their students. If a student did not learn the material, it was viewed as the student's fault entirely. That teaching paradigm did not include adapting teaching style to facilitate learning when students failed to learn; students alone were expected to adjust. With the introduction and acceptance of learning style theories, this paradigm has shifted, and overall education is improving—beginning with the individual student's recognition of how he or she learns and progressing to the teacher's ability, if not responsibility, to adjust teaching style to best facilitate learning.\(^{32}\)

Although understanding and adapting teaching to accommodate different learning styles is advisable, taking the concept to the extreme can be detrimental. If students are allowed to learn using only their preferred style because it feels comfortable, they can be seriously hindered in their ability for future learning and development. Students can, and should, learn to use different learning strategies, but they are most comfortable with assignments within their learning style preference. Students can feel alienated if they are forced to stay out of their comfort zone too long, and this discomfort may be significant enough to interfere with their learning. Thus, one of the objectives of true education should be to teach students to learn in both their preferred and less preferred styles.\(^{33}\) Although formal assessment of a learner's style is unrealistic in many situations, merely acknowledging and understanding that there are different learning styles is the first step in accommodating those styles. One seemingly constant characteristic of law student learning style is that law students can be classified as “adult learners” and learn best when they are able to incorporate principles of adult or student-centered learning.

In the early 1970s, Malcolm Knowles introduced adult learning theory.\(^ {34}\) Called “andragogy,” his theory outlined the distinct

---

\(^{32}\) See Keefe, supra n. 21, at 31–32; see also Jacobson, supra n. 20, at 142–146 (discussing the significant ways in which teaching to diverse learning styles helps all students learn).

\(^{33}\) Richard M. Felder, Matters of Style, 6 ASEE Prism 18, 18 (Dec. 1996).

\(^{34}\) See Malcolm Knowles, The Adult Learner: A Neglected Species 39–63 (4th ed., Gulf
characteristics distinguishing how adults learn from traditional pedagogical theory used with children—“andra” meaning adult as opposed to “peda” meaning child. Modern educational literature refers to these concepts by the less age-specific term, student-centered learning. Student-centered learning is based on four main premises.\textsuperscript{35}

The first premise posits that learners are self-directing, meaning that they prefer to make their own decisions and manage themselves rather than having the will of the teacher imposed upon them.\textsuperscript{36} Thus, learning is enhanced by mutual inquiry by student and teacher.\textsuperscript{37} One means of including self-direction is by providing flexibility and options when possible, thereby allowing individual students to decide for themselves the option that works best for them. Flexibility that allows the student to be self-directed enhances learning and is perfectly suited to learning activities that involve technology. Students can use technological learning tools at their own pace and often can self-select the sequence and timing of their learning.

The second premise of student-centered learning is that learning occurs best experientially.\textsuperscript{38} This premise particularly holds true for older students (including law students) who can call upon greater reservoirs of experience, the most effective basis for learning. Students learn most efficiently and effectively when material is introduced sequentially—taking the student step-by-step from simple concepts through complex concepts while relating those concepts to the students’ experience. Students encounter more learning difficulties when new information is presented without such context. The best way to provide context is to begin with an overview of the material to be presented and to end with a summary of how it all fits together. But it is not enough to provide a context solely within the scope of the material to be covered in the class; learners need a framework tied to information or experience


\textsuperscript{36} See Knowles, \textit{Adult Learner}, supra n. 34, at 57–58.

\textsuperscript{37} Id. at 53–60.

\textsuperscript{38} See id. at 55–60.
already within their grasp in which to place the information they receive. With such a framework the learners can see how each individual skill or concept fits into the overall structure or “big picture” that extends beyond the scope of the course itself and how it fits into their existing experience. In fact, a key to successful adult learning is the use of examples or questions—small and insignificant as they may seem—that cause students to examine their experience and recall a context into which new information can be placed. Electronic materials, particularly those posted on Internet sites or on internal course pages, allow students access to such context and examples. Technological tools are well-suited for providing background information and other “big picture” summaries that do not require extended discussion.

The third premise of student-centered learning is that the student must be “ready to learn.”39 Knowles asserts that curriculum must be timed to coordinate the subjects or skills taught with the concurrent tasks facing the student.40 Students learn best when they understand the importance of material they are learning and see that it is linked to performance that is expected of them in their social role. They must be motivated to learn,41 and that motivation comes from a belief that what they are learning is relevant and important to their lives—both short term (in preparing for and succeeding in the current course) and long term (in their professional lives). Again, technological tools are particularly well-suited for point-of-need learning. When better for a student to sit down and actually discover and appreciate the finer points of legal citation than when struggling with the student’s draft of a research memorandum? Certainly in-class teaching is important and necessary, but out-of-class access to supplemental materials online can aid students at their point of greatest need—when they are truly “ready to learn.”

The final premise of student-centered learning concerns the concept of orientation to learning, which stresses the presentation of material in the context of problems students are likely to face in the “real world”; thus, instruction becomes problem-centered rather than subject-centered.42 The totality of legal research and

39 Id. at 60–61.
40 Id.
42 See Knowles, Adult Learner, supra n. 34, at 61–63.
writing pedagogy is based on this premise of student-centered learning—nearly all that we do is grounded in the philosophy that students must solve problems and act as practicing lawyers would. The use of technology in so doing is merely an added component of the “reality.”

The results of a survey of graduate students conducted in the early 1990s confirm these principles. When asked about their preferred learning methods, the students involved cited “orderly presentation of material interspersed with . . . drill and practice.”

“They did not like to read text[books], but preferred discussion where they could listen to other students’ ideas.” Application-type essays were the preferred method of evaluation.

III. USING TECHNOLOGY TO FURTHER LEARNING

By keeping the fundamental concepts of learning style and the four premises of student-centered learning in mind when implementing technology, faculty will better serve their students and enhance learning. For example, because law students are familiar with “surfing” the Internet, they gravitate toward course information placed on class websites. When teachers post course information on the Internet rather than (or at least in addition to) providing such materials in hard copy, students benefit because they can access the information from a distance at any time they find necessary (so long as the students can connect to the Internet), thus accommodating student schedules and learning styles. Technological tools can provide a “visual architecture” for the class through course outlines, posted assignments and dates, PowerPoint lectures, sample assignments and answers, additional references, tutorials, and other online components.

44 Id.
45 Id. at 31.
47 Id. at 31.
48 Natl. Learning Infrastructure Initiative, Supporting Learning through Technology:
Providing handouts and other materials online in advance can also improve class discussion and make class time more effective.\textsuperscript{49} Materials using graphics, video, audio streaming, and online simulations can supplement traditional class content and vastly improve the learning of visual and kinesthetic learners.\textsuperscript{50} In addition to catering to students’ preferred learning styles, faculty can use technology to encourage or require students to use different learning styles and skills by implementing print, graphical, and experiential components in their teaching.\textsuperscript{51} Along with formal course materials, less formal online services, like online writing centers, can encourage student learning and adapt to different learning styles.\textsuperscript{52} Further, because students’ learning appears to be influenced by the fluid and connected nature of online materials, students are arguably more likely to understand complex concepts and relationships when presented online.\textsuperscript{53} Online exercises, readings, and discussion forums help students assess their own understanding of course concepts.\textsuperscript{54} Technology can provide an effective way to present information outside of class, but when using technology in such a way, teachers must be sure to involve students and establish a dialogue about the information (either in a class setting or through technological means like e-mail or electronic discussion boards) to avoid establishing a passive/dependent learning style.\textsuperscript{55} Faculty can help enhance individual understanding through e-mail, online discussion and conferencing, and other communication technologies to expand course dialogue beyond the finite class period.\textsuperscript{56} Technology can also encourage students to

\begin{itemize}
  \item \textsuperscript{49} See Lasso, supra n. 15, at 39.
  \item \textsuperscript{50} Johnson, supra n. 1, at 101–103.
  \item \textsuperscript{51} See Arthur W. Chickering & Stephen C. Ehrmann, Implementing the Seven Principles: Technology as Lever, 49 AAHE Bull. 3 (Oct. 1996) (available at http://www.tltgroup.org/programs/seven.html) (describing seven principles for excellent teaching and illustrating how technology can be used to enhance each).
  \item \textsuperscript{52} Susan R. Dailey addresses the online legal writing center (OWL) in her article, Linking Technology to Pedagogy in an Online Writing Center, 10 Leg. Writing 181 (2004). Professor Dailey reviews scholarship on OWLs, discusses the ways an online legal writing center could support the general law school curriculum, and addresses the pedagogical implications of using the online legal writing center to meet the needs of students. See generally id.
  \item \textsuperscript{53} Lasso, supra n. 15, at 31.
  \item \textsuperscript{54} Johnson, supra n. 1, at 102.
  \item \textsuperscript{55} See Anthony F. Grasha & Natalia Yangarber-Hicks, Integrating Teaching Styles and Learning Styles with Instructional Technology, 48 College Teaching 2 (2000).
  \item \textsuperscript{56} Natl. Learning Infrastructure Initiative, supra n. 48.
\end{itemize}
take part in self-reflection and self-evaluation and can provide structure for students who need structure while leaving flexibility for others.57 Finally, since technological activities allow students to work at their own pace, students who quickly master concepts and skills can easily move forward while students who struggle can spend additional time and access additional resources and feedback.58 All of these supplemental materials can be used at the students’ own pace and on their own time schedules, which increases both the students’ abilities to internalize the material as well as their satisfaction with the learning process itself.59

A. Technology and Learning Objectives

While technology can definitely contribute to student learning, it is critical for teachers to have a sound reason for using particular technologies in their courses.60 It is not enough to use technology for its own sake, either because it is new and exciting or because it may enhance learning in general, because, when used improperly, technology can actually hinder student learning.61 Instead, each technological application needs to have a specific purpose, must meet a specific educational need or learning objective, and should be suited for that objective. Hence, a professor should not simply use PowerPoint because he or she has it on the computer or because he or she wants to try something different.

Technology helps students improve performance when it directly supports some concrete learning objective. Therefore, learning objectives and standards must be clear to the students for technology to be effective.62 Some technologies are better suited for some learning activities and objectives than others would be—technologies are simply tools, and some tools are better for certain jobs than they are for others.63 Technology can be used to change educational activities, but unless the activities themselves are ef-

57 See id.
58 See id.
59 Johnson, supra n. 1, at 102.
63 See Chickering & Ehrmann, supra n. 51.
Effective, adding technology is not likely to change the outcome; therefore, the effectiveness of technology is more accurately a measure of the effectiveness of the activity.⁶⁴

Effective planning for implementing technology involves three key components.⁶⁵ First, faculty members must determine the academic goals—the educational goals or outcomes—the faculty members want students to achieve.⁶⁶ Articulating academic goals and learning outcomes requires faculty members to assess the needs and expectations of the students, the faculty, and the larger institution.⁶⁷ Second, faculty members must determine what activities or resources will help students reach those goals.⁶⁸ This evaluation should not be tied to particular technologies, but instead should focus on what the student needs to do or to access to achieve the desired outcome.⁶⁹ Third, faculty members then determine which technologies are appropriate for those activities or resources.⁷⁰ It is only at this point that the faculty member should consider “the role technology could play in improving those activities [or resources].”⁷¹

IV. INCORPORATING TECHNOLOGY INTO AN LRW PROGRAM

Our faculty in the Rex E. Lee Advocacy Program at BYU implemented this three-step process when deciding how to incorporate technology into our first-year legal research and writing course.⁷² Our first step was to conduct a simple needs analysis to

---


⁶⁵ Id. at 7–8.

⁶⁶ Id. at 8.

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id. Factors common to successful implementation of technology include (1) “well-chosen software integrated into a well thought-out program of instruction,” (2) “technology that’s used to reinforce, enhance and elaborate on teacher-taught concepts,” (3) “software training and support for teachers,” and (4) “student access to updated software and well-functioning computers.” Mary Lou Santovec, The Seven Myths of Online Learning: Which Do You Believe? 6 Distance Educ. Rpt. 1 (Nov. 2002).

⁷² Unlike situations in which faculty implement these instructional design principles to create a new course, we used these principles to improve an existing course that was working very well; therefore, we did not analyze every aspect of the course, but only those
examine the needs of our students, the instructors, and the institution, and to determine the specific learning objectives we wanted to target. Although each member of the Advocacy faculty has a minimum of three years of law teaching experience, we decided to follow the advice of instructional designers on campus to undergo a formal analysis of student experience and needs rather than simply work from our preconceived ideas and current learning objectives. While much of this information was second nature to us, it was a good reminder to put down on paper what we often overlook.

First we examined our students: all first-year students at the J. Reuben Clark Law School are required to take Introduction to Legal Research and Writing and Introduction to Advocacy (together these classes are often referred to simply as “Advocacy”). Every student in Advocacy has an undergraduate degree from an accredited institution and has successfully completed the Law School Admissions Test and the rigorous law school application process. However, their levels of writing proficiency vary widely. While most have a working knowledge, if not a mastery, of many of the technical aspects of writing, few have experience with legal discourse. The same is true for their research skills. While most, if not all, have completed primary research on some topic during their undergraduate education, few have experience working with legal materials or addressing the authority issues involved with assessing legal materials. Finally, very few, if any, have experience with the analytical processes involved in identifying, proving, and applying legal principles and rules.

Next we tried to articulate the institutional goals that impact our course and evaluate the way our course “fits” within the overall curriculum. Instruction in modern law schools is founded on the notion of teaching each student to “think like a lawyer,” and

we felt needed specific attention. Thus, the description of the process that follows reflects our analysis of only those specific course elements and will be noticeably incomplete.

73 Entering students in the class of 2007 had a median LSAT score of 164 and a median GPA of 3.7.

74 Anecdotal reports from students show that their undergraduate writing experiences range from formal honors theses requiring in-depth research in primary sources and final written product exceeding fifty pages, fully referenced and showing sophisticated analysis, to “senior papers” topping out at ten pages and requiring very little research.

75 The majority of J. Reuben Clark law students received their undergraduate degrees from BYU, which requires all students to complete an “advanced writing” course to graduate. As indicated above, however, the requirements of these “advanced writing” courses vary widely.

76 Even those students with prior legal experience often grossly overestimate their abilities to conduct legal research and analysis.
the Advocacy faculty at BYU shares that notion; the added dimension in Advocacy is that we also teach students the basics of writing and speaking “like a lawyer.” In Advocacy, students learn to use their analytical skills to identify and solve legal problems—in essence, Advocacy provides the laboratory for applying the analytical skills students are gaining in their other courses. In turn, these analytical and writing skills help students to succeed in their other courses.

By the end of the Advocacy course, law school faculty and administration expect students to be able to research, analyze, solve, write about, and present orally their analysis of complex legal issues and problems, both objectively or predictively and persuasively. This aim should be achieved with the least amount of intrusion into the time they spend on their other classes.77

After examining our course’s “fit” within the law school, we examined the relevance of our course to the larger legal discipline and outside stakeholders. Again, the results were fairly obvious, but being forced to put them down on paper helped to focus our inquiry. We determined that lawyers are professional thinkers, researchers, and writers. The lawyer’s stock in trade is her ability to reason and write. According to the “MacCrate Report,” a document created by the American Bar Association Task Force on Legal Education and the Bar, there are ten “fundamental lawyering skills.”78 The Advocacy curriculum directly addresses six of them, including problem solving; legal analysis and reasoning; legal research; communication; litigation procedures; and organization and management of legal work.

The final step of the initial “needs analysis” stage required us to articulate instructional objectives or learning goals on which we would focus the remainder of our inquiry and our ultimate learning activities and use of technology. After considering the numerous learning objectives we had previously identified for our students, we decided that seven were particularly important and would be our current focus. Although there are many ways to phrase learning objectives, we chose to state our objectives as

77 In other words, while we could teach enough material to consume every waking hour the students have to devote to law school, we have to restrain ourselves and fill only three hours of in-class time and approximately six hours of out-of-class time each week during the fall semester and two hours in-class and four hours out-of-class during the winter semester.

questions to the students. This format focuses on the students rather than on the instructor, something we have attempted to do throughout our curricular design. Our seven learning objectives ask

1. Can you identify and explain the relevant facts, procedural posture, legal rules, and principles within a court’s opinion?

2. Can you identify and articulate the reasoning behind a rule and its application as explained within a court’s opinion?

3. Can you write a complete and coherent proof of a conclusion of law that shows your reader the conclusion you predict, states the rules that govern that conclusion, explains and analyzes those rules and shows how they operate, and applies them to the facts of your case?

4. Can you draw meaningful analogies or make relevant distinctions between the facts of precedent cases and the facts of your client’s case?

5. Can you apply the reasoning drawn from precedent cases to the facts of your case to show your reader why and how that reasoning should lead to the same or a different result?

6. Can you communicate in “plain English” with appropriate punctuation, grammar, and style to avoid legalese, unnecessary jargon, and other styles that call attention to the writing itself or that in other ways obscure or distract attention from your meaning?

7. Can you identify, plan, and implement a complete and effective research strategy to solve a legal problem? As you research, can you use finding tools, primary and secondary sources, and updating tools?

A. Our Specific Projects

With these learning objectives in mind, we were ready to consider the instructional resources and learning activities that would enable students to meet the stated objectives. Again, we had several existing learning activities we had used successfully in our classes, but for purposes of this project, we tried to start with a clean slate. After discussing a long list of potential activities and resources, we decided to focus our efforts on four initiatives. First, we chose to create an instructional activity to help students learn
to read cases more effectively. Second, we decided to create a database of annotated sample memoranda highlighting organization, analysis, and application to show students a variety of examples of legal analysis and writing. We believed that coupled with instruction and discussion of these principles in class and individual conferences, the annotated samples would give the students concrete references to which they could turn. Third, we wanted to find a way to improve the lecture portion of our legal research instruction and make that instruction more accessible for student use and review. Finally, we decided to make our existing grammar, punctuation, and usage diagnostic test available to students for pre-school use in an attempt to have students arrive in class ready to move forward. We also wanted to make the feedback mechanism of the diagnostic more useful for the students and more comprehensive for the faculty.

After we identified these four activities and resources, we were finally ready to examine how technology might fit into our instructional design. The remainder of this Article will describe each of the four activities; explain how we chose to implement technology in their creation and delivery; illustrate the technologies used and resources required; and discuss our experiences with—and our students’ reactions to—the activities.

1. **Reading Cases Video**

   Our first project was aimed at helping students accomplish our first two learning objectives: identifying the elements of a court’s opinion and articulating the reasoning behind a rule and its application. (While an in-class lecture or discussion could be used to teach principles for reading cases, we lack the time in the first-year Orientation Week to teach this material.) But research has tied critical case reading to a student’s ability to write about his or her analysis of complex legal issues and problems, so mastering strategies for reading cases is fundamental in progressing as a legal writer. Technology-based instruction outside of the classroom seemed heaven-sent to teach students how to read cases like a lawyer.

   The reading strategies we wanted to teach students were based on work done by Mary A. Lundeberg, who had observed and

---

analyzed the reading practices of law professors and practicing attorneys with at least two years experience. Lundeberg’s method involved observing those experts along with an equal number of “novices”: men and women with at least a Master’s degree who were assumed to be “good readers.” They were all asked to read two contracts cases that were typical of first-year contracts cases in difficulty, length, and style of writing. They were then asked what the relevant facts in the cases were, what the issues were, what the rules in the cases were, and what the judges’ reasoning was all about—the same things we ask our students to do. To encourage her subjects to think aloud, Lundeberg interjected questions based on the subjects’ actions such as, “What are you looking at?” “What are you smiling at?” “What caused you to say, “Aha!”” She recorded the time each subject took to read each page as well as the verbal and nonverbal messages she heard or observed.

Lundeberg identified six strategies used by the experts in reading the cases: (1) context (“attending to (a) headings, (b) the parties involved in the case, (c) the type of court, (d) the date [of the opinion], and (e) the name of the judge”); (2) overview (previewing the length of the opinion and the decision rendered, marking the procedural posture while reading, summarizing the facts); (3) rereading analytically (selective rereading and marking the text); (4) underlining the text; (5) synthesis (pulling together the underlying threads, tying together the facts, issue, rule, and rationale into a cohesive whole); and (6) evaluation (approving or disapproving of the judge’s ruling).

Not surprisingly, the novices all experienced confusion in reading the cases. Some attributed the defect to themselves: “I feel like an idiot. Why is this so hard for me to figure out? I didn’t get much sleep last night. I don’t have any idea what the issue is: I lost my concentration on the second page.” Some attributed the defect to the text rather than to themselves: “Now I know why law students drink so much. Do law students really have to read this junk?”

81 Id. at 410–411.
82 Id. at 411.
83 Id. at 412–414.
84 Id. at 416.
85 Id.
With these reading strategies identified, we next asked ourselves what kind of an instructional format we could use to teach those strategies.

The acquisition of expertise of any kind is linked with the use of stories, in part because they provide a context and allow students to relate new information to something familiar. Stories can engage students in this learning objective through practical reasoning. An anthropological study of Xerox repair technicians concluded that not only did they learn from formal training programs, but also through examining actual problems. In particular, they learned from the “stories tech-reps tell each other around the coffee pot, in the lunchroom, or while working together on a particularly difficult problem.” A story format would work well in our instructional format because from our first picture books to the most sophisticated plays and novels, stories usually engage us the most.

In fact, cases themselves are the perfect story format. The drama in law is most apparent in cases, for the very nature of the adversarial system entails conflict: each case must involve two or more parties whose interests are in opposition. What we needed was a terrifically interesting case that would be accessible to first-year law students, one with a controversy implicit in the facts and with an interesting cast of characters. In a case, the stories are not developed as much as those by a skilled author with a sense of pacing and emotional nuance. Cases turn rather technical when they turn away from the facts—the story—but there are reasons for the dryness, and these were things we wanted the students to observe: the role of the judiciary, the nature of a legal system, and the policy reasons behind the issues. These abstractions become what are most important because the system is premised on cases being decided according to the rules, and so the opinions discuss the rules much more than they discuss the underlying facts. But for first-year law students, the facts had to be accessible and compelling.

87 Id.
and set the stage for the abstractions we wanted to teach through Lundeberg’s strategies.

Enter Costanza v. Seinfeld, a case used in our textbook. In the case, Plaintiff Michael Costanza, a college roommate of entertainer Jerry Seinfeld, claimed that his name and likeness were being appropriated by the show Seinfeld. He claimed that, like him, the television character George Costanza from Jerry Seinfeld’s television series was short, fat, and bald; that like the television character, Michael Costanza also knew Jerry Seinfeld from college; that both Michael Costanza and the character George Costanza purportedly came from Queens, New York. The plaintiff asserted that the self-centered nature and unreliability of the character George Costanza were being attributed to him, and this humiliated him. Because most of the law students would be familiar with this television series, students would already have a context for the case; the facts would be accessible, compelling, and set the stage for learning Lundeberg’s strategies.

We wrote the script for our film, Reading Cases Like a Lawyer, with the case Costanza v. Seinfeld as a centerpiece. To point out the discrepancies between how lawyers and students read cases, the characters in the film are attorneys and film students attending a “Media and the Law Seminar,” where the case will be read and discussed. The film was to be short; we did not have enough resources to embark on a major motion picture, so the key principle in the film became the message that lawyers read cases differently than undergraduates or graduate students do and that we can teach them how to read like lawyers. There is also the hint that lawyers write differently and research differently than incoming first-year students.

The film begins with a voice-over as the title of the film and the credits roll by:

By now you’re adept at figuring out what your professors have wanted and then regurgitating it back. It doesn’t work that way in law school. Simply figuring out what “they want” isn’t enough. Instead, within the confines of legal precedent, it’s your

---

92 A copy of this film, Reading Cases Like a Lawyer, can be obtained from Kristin Gerdy, Director of the Rex E. Lee Advocacy Program, Brigham Young University, 457 JRCB, Provo, Utah 84602. Please enclose a check for $5.00 made payable to J. Reuben Clark Law School with your request to cover copying and mailing costs.
originality that matters. What is the right answer? Well, in the law there is never just one right answer. Thinking like a lawyer means seeing all the angles, and that begins with reading cases. There are strategies for reading cases. Let me show you.

Next, a man and a woman are shown watching an episode of *Seinfeld* in their home. The man is identified as a lawyer “who knows how to read cases.” There is a cut to another woman and man in another house watching the same *Seinfeld* episode. The woman is identified as a broadcast journalism student “who has never read a legal case.”

The next scene occurs in a “Media and the Law Seminar,” and the camera scans an audience of lawyers and non-lawyers with “our” lawyer and “our” broadcast journalism student both present as attendees. A preliminary discussion of the case, *Costanza v. Seinfeld*, is going on with the instructor passing out copies of the case for everyone to read. The lawyers obviously know what they are doing and take out pens to annotate the case as they read. The non-lawyers’ facial expressions show that they are confused and slow in understanding what they are reading.

The instructor calls time and begins questioning the attendees: what are the facts of the case, the issues before the court, the rules the court applied, and the rationale behind the court’s holding? The film makes it obvious that the lawyers in the group have had no trouble reading and understanding this case; they are able to answer the instructor’s questions with ease. The non-lawyers are hard-pressed to state what the facts are or to identify issues, holdings, or the court’s rationale.

The narrator next identifies the strategies lawyers use for reading cases, starting with the premise that lawyers always have a purpose for reading cases, for instance, reading to see how the law has changed or for understanding an area of law that is not clearly defined. The film then identifies the strategies for reading cases like lawyers do, speaking directly to the viewer and showing the strategies being used:

1. Put the case in context. This strategy includes identifying the parties, the court hearing the case, the date of the decision, the judge writing the opinion, any headings in the case, and the number of pages in the case.

2. Read the case for an overview. The overview reveals the case’s structure because most cases follow a pattern: (a) First, there will be a summary of previous legal proceedings and who won in the prior court. A case will have a
longer procedural history if it has been appealed to a higher court. (b) Next, the issue or dispute, or why this particular case is in court, will be identified. (c) Then the facts follow. They tell what happened, to whom, and why. (d) Finally, the decision is often found at the end of the case, and the rule is usually stated in the paragraph or two preceding the decision in language like, “The rule is not disputed . . .” or “We are asked to hold that . . .

3. Reread analytically. This rereading is the third strategy and is the time to identify legal terms and to make sure that the readers grasps the facts, the rule of the case, and the decision the court made on each particular issue.

4. Mark certain key information such as the date of the decision, issues, rules and any important terms that need to be identified.

5. Synthesize the elements of the case. How do the issue, the decision, the rule and reason for the rule fit together? Do you understand why the court decided the case as it did? Once these main ideas of the case come together, you can generate hypothetical questions and situations. For instance, what would have happened if some of the facts had been different? What would have made the court decide differently?

6. Evaluate the result. Do you approve or disapprove of what the judge did? How did the judge make the decision?

The film ends with both the lawyer and the student in his and her respective home watching another episode of Seinfeld.

How does a law school go about making a movie? BYU has an excellent film program attached to its Department of Theatre and Media Arts. After inquiring, we found out that our project would qualify for a senior film student’s required project. As a senior film project, all camera use would be without charge, and the student director and the camera crew would receive university credit for their work, and there would be no charge for their services. We drafted law students, faculty members, and friends to be actors, and used university sites and family members’ homes for sets.

We met with a film faculty mentor and committee in the theatre department with a budget (worked out by the senior film student) and schedule for filming. The film department gave permis-

---

93 Our very capable and talented director was Christian Sanford, then a senior in BYU’s film department.
sion for equipment use and location, and approved the school credit for the senior film student and student camera crew.

We next met with the dean and technology committee in the law school with a budget, a schedule, and the reason for the film; they approved our budget. The order of whom we approached first and when was tricky: we needed a fleshed-out project before we could see the dean and get approval for the budget. The budgeted items were for film, film processing, editing, transfer charges, food, and some props. Our total cost was about $2,300.

The entire production process was completed in a matter of weeks. We handed the senior student director a completed script in June; we filmed for three days in July; the film was processed and edited in late July; the final editing with titles, music, and credits was finished in early August; and we posted the film to the law school web page before school started at the end of August.

We require our incoming students to watch the film, *Reading Cases Like a Lawyer*, before the first day of class through our law school’s web page. About two weeks into the semester, we hold a workshop with the students where we show the film again and review in depth Lundeberg’s strategies for reading cases. Not only do the students enjoy this assignment, but since we have been using the film, we have noticed that students are clearer on what “rules” are in cases, and how those rules can be applied in their memoranda right from the beginning of the first semester. This has been especially helpful because our Legal Writing and Research program is now able to teach students to think like lawyers in practical contexts even before the first class. Students transform doctrinal learning into action by integrating legal analysis with practical skills—the most important of which is writing. By offering students information on how to critically read cases like lawyers before the first class even begins, we met our teaching objective through the application of technology.

2. *Sample Memo Database*

Our second project was designed as a first step toward our students’ accomplishing our third, fourth, and fifth learning objec-

---

94 Actors’ caveat: they may work gratis, but they will not work hungry.
95 Another film project at the law school concurrent with ours had been budgeted at $20,000. We came in under our budget, and that project had cost overruns of $5,000. Needless to say, the dean was very happy with our project.
atives: writing a complete and coherent legal analysis, drawing meaningful analogies and distinctions, and applying reasoning from precedent cases to the facts of their case. As all legal writing professors know, students beginning to do legal analysis and writing need to see a variety of samples; these samples serve as models for both their writing and their analytical processes.

Our second learning resource was a database of annotated sample memoranda highlighting organization, analysis, and application, and was designed to show students a variety of examples of legal analysis and writing and to explain both the elements and the strengths involved therein. We decided to create the database in an electronic format and believed this project would be an effective and productive use of technology because it would “reinforce, enhance and elaborate on teacher-taught concepts.”

The annotated memos would reside on our course websites and would be available to all Advocacy students at any time throughout the course. These sample documents were designed to be used as supplements both to in-class instruction and discussion of these principles and to individual conferences with both faculty and teaching assistants. The annotated samples would give the students concrete references to which they could turn for explanation and modeling. Admittedly, this was not a novel idea and was simply built upon sample memos we had all distributed in our classes. In the past, we have had a limited number of annotated and unannotated sample memoranda available to students. What made the resource more meaningful was the depth of the collection. Instead of giving students access to one or two memos, this online collection would be able to provide not only a greater number of sample memos, but also a wider variety of sophistication in the analysis and writing styles and means of organizing them in a way that shows students a progression from very simple to highly complex legal questions.

Creating this resource did not require any new technology. Because we use Microsoft Word’s revising and commenting features to critique student papers, we were able to easily incorporate these same tools to annotate the sample memos. This format also assisted our students as they referred to the samples before their

96 Santovec, supra n. 71.

97 Although we created the annotated documents in Word, we posted them in .pdf format on our course websites, so students could not download and use the documents as templates for their own memos.
first assignments were due, thus preparing them for the look and feel of the critiques they would receive on their own memos. Some of us went so far as using some of the same language or referring specifically to comments on the annotated samples while critiquing early student memos.

The students responded well to the online samples. They appreciated their availability and the depth of the annotations—they commented that they wished there were more samples available (which is something we are continuing to work on, time permitting). Further, problems we had encountered when distributing a single sample memo were lessened, if not eliminated, because of the variety of sample documents. For example, when we distributed a single sample memorandum dealing with a standing issue, several first-year students would submit their first memos (which did not involve a standing issue) with reference lines, questions presented, and conclusion statements that made reference to their clients’ “standing” in the case. In hindsight we realized that the students were merely copying the language from the sample memo without understanding its relevance to the issue in the case. With a variety of sample memos addressing different issues, students were more easily able to see that standing was merely an issue in the case and not something that would be replicated in all memos.

3. Legal Research Videos

Our third learning activity was aimed at our seventh learning objective: identifying, planning, and implementing complete and effective research strategies. The project was initially designed to address an issue common to many legal research and writing courses: a need to improve the lecture portion of our legal research instruction and make that instruction more accessible for student use and review. This activity involved creating a series of seven legal research “lectures” that were distributed to students on CD-ROM and posted on the course website.

Although that need was the impetus for the project, the learning activity became much more important as a law school faculty decision not to begin any classes early meant that we lost nearly six hours of instruction time during Orientation Week—the time during which the majority of our in-class legal research lectures were held.

Unlike the other learning resources and activities discussed in this Article, the research videos were prepared by a single faculty member for use in a single section of the course. The reason for this limitation is two-fold: first, the activity was a fairly radical departure from the norm and as such was entered into with a bit more caution, and second, the section in which the videos are used is the only section in which research is taught by
The legal research video series is based on a “blended learning” model that involves (1) technology-based delivery (content in electronic format that the students can access and revisit at their own pace); (2) face-to-face processing (an in-class component, which we believe is necessary because contact and interaction are required for deeper understanding and application of the concepts); and (3) creating “deliverables” and working collaboratively (assignments and other tangible evidence that students have acquired the knowledge and skills taught and that allow them to share insights and knowledge with other students). The videos themselves present the content. After the students viewed the videos outside of class, we were able to discuss the concepts in class, answer questions, and discuss how the research resources would be used to solve the problems posed in their memoranda assignments. We were also able to use some class time to go together to the law library and practice using the sources themselves. Finally, students had to work collaboratively to demonstrate their mastery of the content and its application by completing a series of research questions about both the results and the process of their research.

We created the videos after having used a series of PowerPoint presentations as the basis for in-class lectures for several semesters. Using these presentations as the basis, we used Microsoft Producer, a free add-on to PowerPoint, to create and add video content. We filmed the video using a simple web-camera mounted on a computer monitor in a faculty office. The faculty member being filmed simply gave her regular lecture to the camera and used a computer mouse to synchronize the PowerPoint slides with the video. The final result is a presentation with the PowerPoint slides in the main screen and video of the professor in a smaller screen to the side of the slides. Students can fast-forward, rewind, or jump to individual slides within the presentation.

---

101 A copy of the legal research video CD-ROM can be obtained from Kristin Gerdy, Director of the Rex E. Lee Advocacy Program, Brigham Young University, 457 JRCB, Provo, Utah 84602. Please enclose a check for $5.00 made payable to J. Reuben Clark Law School with your request to cover copying and mailing costs.
102 The technical details of video production are beyond the scope of this article, but suffice it to say that Producer is an intuitive program that does not require previous experience with video production or editing. In fact, creating the video presentations took only slightly longer than creating the original PowerPoint slides did.
tion using standard navigation buttons and a “table of contents” view of slide titles.

While developing these videos, two hallmarks of quality online instruction were reinforced for us. First, we found that it was essential to develop a template for the lectures so they would have a consistent look and feel. Second, we found it necessary to explain offline how to use the materials. While most students were familiar with the CD-ROM format and were able to access the video materials easily, a few encountered serious frustrations that could have been alleviated by simple, written instructions packaged with the CD-ROM itself—something we will include for future classes.

Student reactions to the videos were overwhelmingly positive. The students enjoyed the ability to watch the lectures on their own time and at their own pace. They also appreciated the ability to review material they did not fully understand on first viewing. While we had wondered whether a simple narrated PowerPoint presentation would produce the same results, the students commented that they liked the video box showing their professor sitting in her office “talking to them.”

The videos also appear to have helped the students learn the legal research concepts involved as well as the in-class lectures would. During the fall 2004 semester, one section used the video in place of in-class legal research lectures. The videos were supplemented with short in-class discussions of the research processes involved and with hands-on research assignments. At the end of the semester, these students were given the same legal research exam as the other five sections of the course that had experienced live, in-class lectures. There was no measurable difference in scores between the students who were instructed by video and those who were instructed in the classroom. Overall, the legal research videos were among the most successful of our learning activities.

103 Marianne C. Bickle & Jan C. Carroll, Checklist for Quality Online Instruction: Outcomes for Learners, the Professor, and the Institution, 37 College Student J. 208, 212–213 (2003) (stating that “learners benefit from consistency in the format of lecture presentation notes”).

104 Id. at 214.
4. **Online Grammar, Punctuation, and Usage Diagnostic Test**

Our final learning activity was aimed at our sixth learning objective: communicating in “plain English” with appropriate punctuation, grammar, and style. This project involved converting our existing grammar, punctuation, and usage diagnostic test to an online format so that it would be available to students for preschool use, allowing us to know where each student stood as early in the semester as possible. The online format would make evaluation much faster and would also make the feedback mechanism of the diagnostic more useful for the students and more comprehensive for the faculty.

In the past, students took a pencil and paper version of the diagnostic test during Orientation Week. Some test preparation tools were available to the students online, but few took advantage of them because they were so busy during Orientation Week that they did not want to take the time to prepare for a test that would not become part of their Advocacy grade. Because the students took the test before the university semester began, the university's testing center and scantron equipment were not available for us to use, so the test had to be scored by hand. Then the Advocacy secretary had to record the scores, e-mail the students a list of the questions they missed, and tally up how many students missed that question. She also had to keep track of the students who had not taken the test and notify them.

When the students received their e-mail from the Advocacy secretary telling them which questions they had missed, they also received a grid that listed the questions on the test by error type. They were asked to find the question numbers they missed, so they could identify which types of problems they needed to work on. Because the students had to fill in the grid themselves, very

---

105 Before writing our diagnostic, Alison Craig, the Legal Writing Specialist, created a list of what she felt were students' most frequent and most glaring errors. After consulting with the rest of the legal writing faculty, she had a list of twenty-five types of punctuation, grammar, and usage problems on which we wanted to test the students. Similar to the diagnostic used at Seattle University, Diagnostic Test for Grammar, Punctuation, and Mechanics in Laurel Currie Oates et al., *The Legal Writing Handbook: Research, Analysis, and Writing*, A-1 to A-11 (Prof. annot. ed., Little, Brown & Co. 1993), our diagnostic is based on a piece of legal writing: using a sample office memo written by a teaching assistant concerning a simple legal problem. Professor Craig adapted the memo to include from three to five examples of each type of problem, some of them correct and some incorrect. Like the Seattle University diagnostic, our diagnostic asks students to identify underlined portions of the memo as correct or incorrect.
few students took the time to do it, so they did not understand the kinds of problems they consistently missed and thus did not know what punctuation, grammar, and usage rules they needed to study. The students encountered another problem with feedback: if they wanted explanations of the questions missed, they had to read a booklet containing the explanations in the reserve library, another time-consuming exercise. Not surprisingly, only a few students took the time to read the explanations to learn from their mistakes. The Advocacy faculty also worried about placing the answer key on reserve because of the risk a student would simply copy the entire booklet so students in future years would have the answers to all of the questions. In terms of feedback on the test, the faculty was also handicapped: the only report they received simply listed their students’ scores on the diagnostic.

Because the pencil and paper version of the test was so cumbersome, we felt the diagnostic was ideally suited to being made available on the Internet. Since the law school has an excellent technology support staff, we approached them about converting our diagnostic to an online tool. We discussed how the students would access the test, how the test would appear on the computer screen, how students would receive feedback at the end of the test, and what information from the test would be provided to the Advocacy faculty.

We met with the technology staff in June. By mid-July, they had created a sample of the test. As we tried out the test and discussed it with each other and with the technology staff, we worked together to solve the problems we encountered. Since we did not have a way to set a time limit on the test—as we had done with the pencil and paper version—we decided instead to tell the students how long we expected the test to take and that the length of time they took on the test would be recorded and sent to their writing professor along with their score. We reasoned that the student who was tempted to take the test in fifteen minutes might decide to spend more time on the test; likewise, the student who wanted to spend three hours on the test might also reconsider. Although we told students to expect to take the test in fifty to seventy-five minutes (seventy-five minutes being the time limit for the pencil and paper version), students took the online version more quickly:

106 Our thanks especially to Vance Everett, Systems Manager, who provided the technological skills to make the diagnostic available online.
the median time for the taking the online version was thirty minutes.

We also wanted to allow students to take the test more than once if they wanted to—something that required too much work and supervision with the pencil and paper version. However, we did not want to receive the students’ scores after they had taken the test multiple times. Our technology staff suggested that the first time the students took the test, their scores would be reported to their Advocacy professor. Thereafter they could retake the test as many times as they liked, but those scores would not be reported.

We found our problems with feedback could also be easily solved online. When the students finish the online test, they receive their score and see the grid that shows them their errors grouped by problem type. Thus, they immediately see the pattern of their errors and know, for example, whether they missed one, two, three, or more questions on commas with items in a series. If the students want to see an explanation for any question, they simply click on that problem number on the grid, and they see an explanation for that question only.

The reports for the Advocacy teachers show the entire class and each section with highest, lowest, and median scores as well as the amount of time each student took to complete the test. The computer tallies the number of students who missed each question, and the professors can see and print each student’s error grid. In addition, the computer tracks which students have and have not taken the test.

The complete diagnostic was online two weeks before the semester started, and after some testing, it was made available to the students along with the online preparation aids: a two-page description of the rules they would be required to know on the test, a short practice test, a fifty-minute PowerPoint presentation on most of the rules, and a second fifty-minute PowerPoint presentation that reviewed the more difficult rules and explained the rest of the rules they would encounter on the test. As in the past, the students were required to take the diagnostic before the semester began, but now all the information they needed, all the preparation tools, and all the feedback were available to them in one convenient location: online.

We believed our plan was good, but we wondered just how much students made use of the extra time and online tools. Although we had not collected data from previous years when the
students took the pencil and paper version of the test, our impression has been and anecdotal reports from students have confirmed that almost none of the students used any of the preparation tools because the students were too busy with other work; thus, even though the same four tools were available online, the students made almost no use of them. To gauge the effectiveness of the new format, we asked the students to participate in a survey—online, of course. The survey clearly shows that our work to put the diagnostic online did make a big difference in how the students prepared for the diagnostic and how much they used the available feedback. According to information from the survey, most of the students, approximately 77%, used at least one of the four online preparation tools available to them. Approximately 18% used all four online tools; another 13% of the students used three of the tools, and 25% used two online tools.

The survey results showed the students’ use of the online feedback for the diagnostic was even more impressive. In the past we usually found that only one or two students had done more than just look at their scores because the feedback mechanism required so much work on their part. This year, in contrast, 93% of the students did more than just look at their score: 80% looked at the grid that showed their errors grouped by question type—perhaps not surprising because their overall score was displayed on the same page as the grid; 47% looked at the explanations for some of the questions they missed—now accessible at the click of the mouse on the error grid; 20% looked at the explanations for all of the questions they missed; and 21% printed out or saved copies of the grid showing their errors by question type.

In addition to the advantages to the students, the faculty members were also able to see not just their students’ scores but also how long each student took on the test, which types of questions they missed, and average and median scores. Finally, the information gained from the diagnostic this year will be used by the writing specialist to evaluate the effectiveness of the diagnostic, something she has not been able to study as thoroughly in the past.

To sum up, we found that when we put the diagnostic online, it became the evaluation and teaching tool we had always wanted

---

107 We found that one student who took the test in less than nine minutes had clearly guessed on every answer—her score was less than 50%! We required her to retake the test, print out her score sheet, and deliver it to her professor and to the writing specialist.
it to be. The students were able to take the diagnostic before the rush of other work; they had time to use the online preparation tools; they received immediate and detailed feedback; and the students who wanted—or needed—to retake the test were able to do so. The professors also received more feedback that they and the writing specialist can use to help the students improve their writing. With the information we have from the online version of the diagnostic, we can even improve the diagnostic itself.

V. CONCLUSION

Three factors motivated us in our desire to use technology to enhance our teaching and expand our classroom walls: the trend in legal practice toward the use of more technology, the technological expertise of our students, and our understanding of student-centered learning theory. Despite these general benefits, we see technology as a tool that should be used only when it fulfills a specific purpose and is suited to a specific learning objective.

Based on our learning objectives, we identified four activities in which technology could help us teach our students. The case reading video helps students understand that they will need to learn to read in a different way, helping us fulfill our first two learning objectives. The video provides an interesting introduction to the subject of reading cases using a case that the students can relate to from their past experience. The sample memo database helps us with our third, fourth, and fifth objectives: students need to be able to write a complete and coherent proof of a conclusion of law and make meaningful analogies and distinctions. The legal research videos provide the students with information to help them effectively research a legal problem, our final objective. The online diagnostic gives the Advocacy faculty and students feedback on their ability to follow legal conventions of punctuation, grammar, and usage, another of our learning objectives.

We have been able to create and put into use these tools with modest amounts of money and in a reasonable time period of a few weeks over the summer. We believe that if technology is thoughtfully used and learning objective-focused, it can be more than just a new way to present the same information. It can become a powerful tool that helps us in our task of teaching students to become effective legal researchers and writers.
IS THE SKY FALLING? RUMINATIONS ON INCOMING LAW STUDENT PREPAREDNESS (AND IMPLICATIONS FOR THE PROFESSION) IN THE WAKE OF RECENT NATIONAL AND OTHER REPORTS

Cathaleen A. Roach*

The Legal Writing Institute’s Twentieth Anniversary Conference theme, “Horizons,” exhorts legal writing professionals to do two things: first, to review and celebrate the accomplishments since the Institute’s inception, and next, to look out and gauge what the next as-yet-uncharted waters may bring.

In only twenty years—an amazingly short period of time—research on legal process, learning theory, and other topics has revolutionized law school pedagogy.¹ The LWI has helped to change the way young law students think. It has also helped to change the way many law professors think about teaching. It has affected legal education directly, dramatically, and beneficially in the last twenty years.

With these formidable changes in pedagogy finally achieved, however, this Article now asks the new question: If our law-students-of-the future are changing in fairly dramatic ways, must our hard-won “pedagogy” change too?

A flurry of recently released national reports—including the National Commission Report on Writing released in April 2003,²

---

¹ See e.g. Cathaleen A. Roach, A River Runs through It: Tapping into the Informational Stream to Move Students from Isolation to Autonomy, 36 Ariz. L. Rev. 667, 669 (1994) (containing a general discussion of learning theory and law school pedagogy).

² Natl. Commn. on Writing in Am.’s Schs. & Colleges & The College Bd., The Neglected “R”—The Need for a Writing Revolution (Apr. 2003) (available at www .writingcommission.org/prod_downloads/writingcom/neglectedr.pdf) [hereinafter Writing Report]. Later, the National Commission on Writing issued two additional reports to the
and the National Endowment of the Arts survey released in July 2004, and the recently released National Assessment of Adult Literacy survey—suggest, by implication, that because the fabric of American culture has changed so dramatically in twenty years, incoming law students may also be changing and may come to us less prepared than in past years.

The National Commission on Writing’s report, The Neglected “R”: The Need for a Writing Revolution (Writing Report), the National Endowment for the Arts’ Reading at Risk: A Survey of Literary Reading in America (Reading Report), and the new National Assessment of Adult Literacy survey, suggest that there are seismic changes in the culture in which our incoming law students grew up. These seismic changes evidence an American culture that reads far less than it did twenty years ago and has drastically reduced the amount of writing that it generally requires of its school-age children.

Moreover, a recent information literacy survey (AALL Information Literacy Survey) examines law students in particular and concludes that even those in top-tiered schools are arriving with less than adequate basic research skills. These ground-breaking studies require us to take a harder look and to “know the times we live in.”

Over the next few years, the essential inquiry should be whether a causal relationship exists between broader cultural changes and reduced levels of law student preparedness. In short, we must ask, “Is the sky falling?” That is, “is the preparedness level of our incoming law students in the next one to ten years declining, and if so, how dramatically?” In particular, how does less exposure to writing and reading affect what first-year law students


4 See infra nn. 17–21 and accompanying text.


6 1 Chronicles 12:32.
bring to our law schools—regardless of their LSAT standardized test scores?

This Article argues that “yes, the sky is falling” or, at the very least, we’d better take a good, long look at the question. Widespread cultural changes, resulting in overall declining student writing levels and reading efforts, will likely affect incoming law student preparedness for law schools at every tier level.

This Article first discusses the anecdotal impetus for my inquiry into incoming law student preparedness levels. Next, the Article examines the national Writing Report, the national Reading Report, and the AALL Information Literacy Survey (regarding law students), in some depth. It also briefly references other recently published surveys on literacy levels including the National Assessment of Adult Literacy. Thereafter, it considers the implications of the reports and the literacy survey regarding the bottom line on incoming student skill levels. Finally, it offers suggestions and calls for a “climate change” within the law school community, concomitant curriculum changes, and aggressive data collection efforts.

I. THE INQUIRY

I became interested in this topic when I returned to teaching part-time. Earlier, I’d worked full-time for a number of years teaching lower- and upper-level writing courses and developing DePaul University College of Law’s nascent Academic Support Program. I took almost six years off⁷ and then returned to teach a section of first-year legal research and writing.

When I first arrived, I thought I had experienced an important change, but I did not know whether that change was personal in me (the “returning dinosaur” syndrome), or had to do with the “morphing” of my law students (some perplexing cultural trend) in my nearly six-year absence. While I am still not convinced that the change isn’t a little bit of both the dinosaur syndrome and some cultural morphing, the dissonance between what I left and what I returned to was great enough that for two concurrent years, in 2003 and 2004, I informally queried my small group.

⁷ I discuss this decision and others in an essay. Cathaleen A. Roach, The Essential: An Essay (1997) (copy on file with the Author; copies made available upon request).
of law students to get at the root of my perceived changes in attitude.\(^8\)

Specifically, and in a nutshell, what I was trying to address was the seemingly marked change in my students' comfort level with fairly rudimentary, pedestrian writing exercises (i.e., we hadn't even gotten to the tough stuff yet). I saw marked discomfort with and genuine concern about breaking down large numbers of cases, and large numbers of ideas, into first, primary subdivisions. I hadn't remembered them "freaking out" in the way they currently had when approaching a mass amount of material that then required systematic whittling away to get at some core ideas and basic divisions. This was the cursory, initial "whittling" phase and they were already flummoxed. Of course, what I came later to surmise was that my students' comfort level had decreased, possibly because their exposure to and experience with large, complex writing projects had decreased as well.

It may also be noteworthy that a number of these students came from highly regarded Ivy League and Big Ten institutions, that is, not schools traditionally thought of as weak on academics. Thus, the source of this heightened anxiety at such rudimentary, beginning phases was truly puzzling.

Consequently, in a highly unscientific and statistically insignificant inquiry (but, of course, highly informative and relevant for my own limited use), I asked a few questions of my students to assess how much undergraduate writing they had done before law school.\(^9\) My theory is that they were panicking more because they had done intensive writing less.

To use a wonderful analogy proffered by Professor Myron Moskovitz,\(^10\) I wondered whether my students had less experience

---

\(^8\) I informally, anonymously queried each of my two, year-long LRW classes. These were simple inquiries of approximately ten questions. I designed the questions to try to get an inexact and general idea of how many exams the students had written (as distinguished from scantron multiple-choice exams) and how many long research papers they had written in their undergraduate years. I was trying to get a picture of how frequently the student wrestled with amassing large amounts of data and reducing that data to formal papers or essays, both in a timed situation (exams) and more standard research papers. Informal survey results on file with the Author.

\(^9\) Id.

\(^10\) I cite Professor Moskovitz extensively in my piece on academic support programs. In his article, Professor Moskovitz likens the experience of taking final exams (for those who do not utilize practice problems) to a young tennis player who studies all of the rules of tennis but will not actually play tennis until the final exam, whereupon his entire grade will be based upon that single performance. Roach, supra n. 1, at 669, 673 (citing Myron Moskovitz, Beyond the Case Method: It's Time to Teach with Problems, 42 J. Leg. Educ. 241 (1992)).
“hitting the tennis balls” than I had hoped and, as a result, were less comfortable and confident in their ability to do so.

My inquiries provided some useful information. For example, there was a large disparity—even within my own little classroom—in how much writing my students had completed in undergrad. In my fall 2004 class, one student reported writing only two exams in four years of college. The rest of this student’s exams apparently were scantron machine graded exams.

In contrast, another student in the same section reported writing thirty exams in college. In addition, that same student self-reported having prepared sixty to seventy research papers in four years of college.

As an interesting corollary, subsequent to my own inquiries, I started looking to see whether others had studied this same question of declining law student writing experience. I found only two inquiries: the first, by Washington University, as described by Professor David Becker, which polled all entering first-year law students,11 and the second, the recent law student information literacy survey described above.12

Professor Becker reported that Washington University for a time surveyed its applicants to determine the writing experience of students at their respective colleges.13 Although these statistics were never tracked formally, Professor Becker reported that writing requirements and writing experience in undergraduate programs have “declined precipitously, although not uniformly.”14

In the second survey, law librarians at Boston University, Northwestern University, and University of North Carolina reported their survey of 330 self-selected law student survey respondents. As discussed in far greater detail below, this survey may be useful because it is the first statistically significant survey that looks at the question of incoming law student preparedness from a “generic research skills” perspective.15 The survey authors

---

11 See David M. Becker, My Two Cents on Changing Times, 76 Wash. U. L.Q. 45 (1998). After I began my research, Professor Becker generously shared his thoughts with me on the changing writing abilities of incoming law students. Importantly, the two questions asked of applicants to Washington University were not used for admission purposes, nor were the responses formally tracked. The questions no longer appear on the application to the law school. (Copies of notes on file with the Author).
12 See Hensiak, Burke & Nixon, supra n. 5.
13 Becker, supra n. 11, at 56.
14 Id.
15 See Hensiak, Burke & Nixon, supra n. 5, at 1.
concluded that even students in their upper-tiered law schools arrive with inadequate basic research skills.\textsuperscript{16}

\section*{II. SEISMIC CULTURAL CHANGES—THE NEW DATA}

Although I found little research specific to law students, my return to teaching coincided with a busy time for the statistical study of reading and writing at a national level.

The \textit{Writing Report} came out in April 2003. One year later, in July 2004, the highly regarded \textit{Reading Report} and the American Association of Law Librarians (AALL) Information Literacy Study were released.

Further, as this Article was going to press, the U.S. Department of Education released a report in December 2005, indicating that skill levels for average college graduates and those with graduate studies/degrees are in decline.\textsuperscript{17} Pursuant to its National Assessment of Adult Literacy survey, the U.S. Department of Education reports that only 31\% of U.S. graduates scored at the “proficient level” for high-level English skills (termed “prose literacy”), meaning that “[the graduates] were able to read lengthy, complex English texts and draw complicated inferences.”\textsuperscript{18} This was a decline of 9\% from the previous study done ten years earlier.\textsuperscript{19} “Document literacy” declined for college graduates by 10\%, and for those with graduate studies/degrees, “prose literacy” declined 12\% and “document literacy” declined 14\%.\textsuperscript{20} “Prose literacy” and “document literacy” closely track essential skills required of lawyers, including the skills needed to synthesize and analyze documents and to make complex inferences.\textsuperscript{21}

In short, these national reports and law student surveys may confirm what many of us may have been experiencing anecdotally, that is, that law students may be entering school less prepared to

\textsuperscript{16} Id. at 11.
\textsuperscript{18} Dillon, \textit{supra} n. 17, at A28.
\textsuperscript{19} Natl. Ctr. for Educ. Statistics, \textit{supra} n. 17, at 15.
\textsuperscript{20} Id. at 15.
\textsuperscript{21} Id. at 3.
jump into research and writing. For the first time, there are some actual numbers, (instead of “gut feelings” or raised eyebrows) that we can start to analyze; and second, more importantly, these reports suggest that the situation is going to get worse in the next ten years, before it gets better—if at all.

These reports and survey are sufficiently statistically sound and sufficiently relevant that they may “jump start” an important new dialogue at our law schools. They might be particularly useful because for the first time we have some actual numbers with which to analyze the challenges legal writing faculty and students will face in the coming years.

A. The National Commission on Writing Report: The Neglected “R”—The Need for a Writing Revolution

The National Commission on Writing in America’s Schools and Colleges (currently named the National Commission on Writing for America’s Families, Schools and Colleges) is a group of approximately twenty national leaders in education, including presidents and provosts from such institutions as the University of Texas, the University of Kansas, Vanderbilt University, and Bowdoin College. The College Board—a not-for-profit group that represents 4,300 schools and universities but is perhaps best known for its administration of the SAT—commissioned this group to examine the state of writing in the Nation’s schools and colleges.22

The Writing Commission used National Assessment of Educational Progress (NAEP) survey data, which is also known as “the Nation’s Report Card” and is published by the United States Department of Education. Analyzing 1998 data, the Writing Commission declared that of the traditional three “Rs”—reading, writing and arithmetic—writing in our Nation’s schools was the “Neglected ‘R’”; it also noted that the status and decline of writing instruction in our Nation’s elementary and high schools was so troublesome that it called for nothing short of a “cultural transformation”23 and a “writing revolution”24 in order to address the writing crisis.

22 See Writing Report, supra n. 2, at 7.
23 Id. at 8 (emphasis added).
24 Id. at 3 (emphasis added).
Specifically, the Commission noted that the recent school reforms in math and reading meant teachers now neglected the writing “R” in education. More troubling for our purposes as law teachers, the Writing Report also noted the following:

* Most elementary students spend less than three hours per week writing, which is approximately 15% of the time they watch television per week;\(^{25}\)
* The traditional research project in high school, for example, the extended research paper or “senior thesis,” is dead because teachers don’t have the time to grade them anymore;\(^{26}\)
* Even in English class, only about one-half of high school seniors report that they are assigned papers that exceed three or more pages once or twice a month;\(^{27}\)
* Approximately 40% of high school seniors never receive or hardly ever receive assignments of three pages or longer in English class;\(^{28}\)
* One in four students was deemed “proficient” in writing;\(^{29}\)
* One in 100 students was deemed an “advanced” writer.\(^{30}\)

The Commission reported, “Writing, always time-consuming for student and teacher, is today hard-pressed in the American classroom . . . . Of the three R’s, writing is clearly the most neglected.”\(^{31}\)

In an astonishing parallel to the pedagogy of legal writing, the Writing Report strongly suggests that our Nation’s students are not writing and therefore are not learning critical thinking and analytical skills. The Commission also noted in the Writing Report that

[j]f students are to make knowledge their own, they must struggle with the details, wrestle with the facts and rework raw information and dimly understood concepts into language they

---

\(^{25}\) Id. at 20.

\(^{26}\) Id.

\(^{27}\) Id.; see also Erika Hayasaki, 2 R’s Left in High School, L.A. Times A1 (May 19, 2003); Editorial Op., Losing the Art of Writing, Plain Dealer (Cleveland, Ohio) B8 (May 16, 2003).

\(^{28}\) Writing Report, supra n. 2, at 20.

\(^{29}\) Id. at 16.

\(^{30}\) Id.

\(^{31}\) Id. at 3.
can communicate to someone else. In short, if students are to learn, they must write.\(^{32}\)

The Commission made the following five recommendations:

1. Create a “National Writing Agenda” to heighten the national awareness of and sense of urgency about the writing neglect; this agenda recommended *doubling* the amount of time spent writing in the classrooms and recommended that writing be introduced into every class, including e.g., science and mathematics classes;\(^{33}\)

2. Establish uniform, accurate procedures to assess and measure results;\(^{34}\)

3. Create a National Educational Technology Trust to finance hardware and software for the training and assessment of teachers and students;\(^{35}\)

4. Concentrate on professional development with dramatically increased emphasis on the National Writing Project\(^{36}\) and the infusion of millions of dollars over the next five years, with the ultimate goal of 100 million dollars within five years,\(^{37}\) to go toward training teachers to include writing throughout their curriculums;\(^{38}\)

5. Create a (subsequent) new group charged with implementing the action agenda called “the National Challenge Group.”\(^{39}\)

The *Writing Report* identified and quantified a national crisis in the teaching of writing and for the first time provided real numbers to support its “crisis” theory.

The Commission did not want the *Writing Report* to be another report that collects dust on a shelf. As Phase II of the project, it

\(^{32}\) *Id.* at 9.

\(^{33}\) *Id.* at 3.

\(^{34}\) *Id.* at 4.

\(^{35}\) *Id.*

\(^{36}\) Initially developed at the University of California, Berkeley, the National Writing Project is now more than thirty years old and focuses its efforts at training local teachers— at approximately 146 sites throughout the nation—to return to their school districts and incorporate new writing techniques throughout their local school curricula (available at http://www.writingproject.org).

\(^{37}\) Telephone interview with Alan Heaps, V.P., College Bd. & Spec. Asst. to the Pres. (July 2, 2004) (notes on file with the Author).

\(^{38}\) *Writing Report, supra* n. 2, at 5.

\(^{39}\) *Id.* at 6.
created a “National Challenge Group” to implement the five recommendations over a five-year period. Led by former United States Senator Robert Kerrey (Democrat from Nebraska), now President of the New School University in New York, this group is working with The College Board on a number of fronts, including a widespread public awareness campaign and financing.40

For example, the National Challenge Group is charged with creating publicity to bring writing back to the nation’s consciousness.41 Thus, in December 2004, it published a second report that focused on the effects of the writing crisis and the cost to the business community.42 This amazing report, Writing: A Ticket to Work... Or a Ticket out; A Survey of Business Leaders (Business Roundtable Report), estimates the Fortune 100 companies that responded to the survey may spend as much as $3.1 billion annually to address and remedy writing deficiencies of its workforce, including its professional workforce.43 In addition to publicizing the costs of the writing problem to business, the Business Roundtable Report was designed to recognize the importance of writing generally.44 Later, in July 2005, the National Commission on Writing published a third report, Writing: A Powerful Message from State Government, and discussed the costs to state governments of reduced employee writing skills.45

As noted above, the Writing Report, out of necessity, used the 1998 NAEP figures. After the Writing Report’s spring 2003 release, however, the NAEP released the Year 2002 NAEP numbers for the writing assessments. These numbers—taken four years after the test results used by the Commission in its report—indicate that for purposes of law school educators, the problem is getting more severe, at least for the short run.46

The 2002 figures show that twelfth grade writing scores are down from the already-low numbers discussed in the Writing Report.47 The fourth and eighth graders tested showed some slight

40 Id. at 35; see also Business Roundtable Report, supra n. 2, at 5.
41 Id.
42 Business Roundtable Report, supra n. 2.
43 Id. at 4.
44 Id. at 3–5.
47 Id.
improvement from their 1998 NAEP numbers; however, less than one in three of those students were deemed “proficient” writers.

Interestingly, the twelfth graders tested in 1998 for the Writing Report should be arriving at our law schools right about now. Similarly, the 2002 NAEP tested twelfth graders who should theoretically arrive at our law schools in approximately three or four more years. Perhaps even more alarmingly, these numbers at least suggest that the low writing scores are a systemic problem and may be prevalent for years to come.

This has huge implications for law schools and the practice of law.

B. The National Endowment for the Arts: Reading at Risk Report

A second report portends a pincer effect.

In July 2004, the National Endowment for the Arts (NEA) released its own report, Reading at Risk: A Survey of Literary Reading in America. The Reading Report summarized the results of a study on reading in America. It paints an equally bleak portrait of the seismic cultural changes that may affect our incoming law students.

At the request of the NEA, and as part of a supplement survey conducted by the United States Bureau of the Census in 1982, 1992, and 2002, this census study surveyed adults (not elementary and high school students) and tracked “arts participation” across America. The Bureau polled over 17,000 Americans, making it one of the most reliable, largest, and most respected census surveys of its kind.

The Reading Report used the 2002 census study statistics and issued ten findings including the following:

---

48 Id. The fourth graders’ scores rose four points from the 1998 test scores, and the average scores for the eighth graders rose three points.

49 Scott Stephens, U.S. Students Writing Better but Most Aren’t Proficient, Plain Dealer (Cleveland, Ohio) B1 (July 11, 2003).

50 See Reading Report, supra n. 3.

51 Id. at vii. The study defines “arts participation” as, “a variety of art forms, including attendance at live concerts, plays, and dance performances; visits to art museums and historical sites; and participation through broadcasts, recorded media, and the Internet.” Id. at 1.

52 Id.
* All types of book reading (that is, both literary and non-literary reading) have declined. Only 56.6% of survey respondents read a book of any kind in the previous year, which is down from 60.9% a decade earlier;

* The number of adult Americans reading literature of any sort has declined 10% in 20 years and is now 46.7%;\(^{53}\)

* Further, the amount of literary reading has decreased \textit{in all education groups} including a 15% decline in 20 years in college-educated readers and readers with graduate educations;\(^{54}\)

* Incredibly, while college-educated readers and those with graduate education are much more likely to be “readers,” nonetheless, one in three Americans polled with a college education (approximately 37%) did not read a single novel, play, or poetry in the previous year.\(^{55}\) One in four with a graduate education (approximately 25%) did not read literature in the previous 12 month period;\(^{56}\)

* Finally, over the past 20 years, young adults (18–24 years) have declined 28%—from the group most likely to read literature, to the group least likely to read literature (with the exception, only, of those older than 75 years)\(^{57}\)—and the rate of decline for the youngest adults is 55% greater than that of the total adult population (a 28% decline in 20 years versus an 18% decline in 20 years).\(^{58}\)

The dismal figures in the \textit{Reading Report} prompted these remarks by Chairman Dana Gioia:

Although the news in the report is dire, I doubt that any careful observer of contemporary American society will be greatly surprised—except perhaps by the sheer magnitude of decline. \textit{Reading at Risk} merely documents and quantifies a huge cultural transformation that most Americans have already noted—our society’s massive shift toward electronic media for entertainment and information.\(^{59}\)

\(^{53}\) Id.
\(^{54}\) Id. at xi.
\(^{55}\) Id.
\(^{56}\) Id. at 9.
\(^{57}\) Id. at xi.
\(^{58}\) Id.
\(^{59}\) See id. at vii.
2005] Is the Sky Falling? 307

Pointing specifically to the problem of “passivity” with a Nation that chooses not to read, NEA Chairman Gioia continues in the Reading Report,

Reading a book requires a degree of active attention and engagement, indeed, reading itself is a progressive skill that depends on years of education and practice. By contrast, most electronic media such as television recordings and radio often require no more than passive participation. Even interactive electronic media, such as video games and the Internet, foster shorter attention spans and accelerated gratification . . . print culture affords irreplaceable forms of focused attention and contemplation that make complex communications and insights possible. To lose such intellectual capability—and the many sorts of human continuity it allows—would constitute a vast cultural impoverishment.60

Author Andrew Solomon agrees that reading is not a passive experience but instead, “it requires effort, concentration, attention. In exchange it offers the stimulus to and the fruit of thought and feeling.”61 In a masterful—and heartbreaking—assessment of what we as a nation might lose with a continued decline in reading, Solomon continues,

The metaphoric quality of writing—the fact that so much can be expressed through the rearrangement of 26 shapes on a piece of paper—is as exciting as the idea of a complete genetic code made up of four bases: man’s work on a par with nature’s. Discerning the patterns of those arrangements is the essence of civilization.62

C. The Information Literacy Survey of Law Students

The AALL Information Literacy Survey,63 also published in July 2004, is important, not because it is a “national report” but rather, because it is apparently the first report that attempts to statistically measure a decline in the preparedness skills of upper-tier first-year law students. This Survey starts to quantify the ef-

60 Id. (emphasis added).
62 Id.
63 See Hensiak, Burke & Nixon, supra n. 5.
fects of the national reading and writing crisis described above, as it relates to the readiness of incoming law students.

In this Survey, law librarians from Northwestern University, Boston University, and the University of North Carolina conducted a survey of 330 self-selected first-year law students at those same law schools between September and October of 2003.64

The Survey asked thirty questions of the first-year law students using a web-based survey tool called “Survey Monkey.”65 The Survey questions were designed to assess the generic research capabilities (e.g., the difference between types of research indexes) of incoming law students.66

This Survey, although not extensive in its research questions, is important for two reasons. First, the number of law students surveyed (330) and the upper-tier-status of the law schools surveyed lend a gravitas to the Survey. Second, it may be the first survey that looks specifically and meaningfully at the generic “preparedness” of incoming law students in a quantifiable form.

In their report on the Survey, the Survey authors hypothesized that

[our] recent personal experiences teaching students revealed that many students who should have had research experience in secondary school, college/university, or both, do not have even a foundational understanding of how to conduct research. Many of these students have not used an online catalog, are unaware that everything is NOT online, do not know the difference between a full text and an index search, and do not know to consult the index of a set of books, such as an encyclopedia. At the commencement of law study, these incoming law students are then not simply facing the challenge of using legal research tools for the first time, but using any research tool.67

After a review of the Survey responses, the law librarians concluded,

The data gathered from this survey confirms . . . that students begin law school without basic research skills . . . . The survey also revealed that despite their lack of research experience and knowledge, students view themselves as adequate if not good researchers. . . . Based on the survey data, it appears that we

64 Id. at 1–2.
65 Id. at 1 (citing SurveyMonkey.com, http://www.surveymonkey.com).
66 Id. at 6–11.
67 See id. at 1 (emphasis added).
need to start with some foundational research skills rather than jumping into digests, statutes and treatises. If we meet students at their entry point, rather than 10 steps down the road, it is very likely that students will be more successful learning legal research skills . . . 68

The Information Literacy Survey at least suggests that the problem of law student preparedness is at our doorstep already and is so pervasive a problem as to be present in the upper-tier law schools as well as other law schools. When juxtaposed with the national reports, it also suggests that a causal relationship may exist between reduced research readiness in law school and the generic decline in students’ writing abilities and reading exposure that results, presumably, from reduced thesis and research paper writing in high school and college.

III. IS THERE ANY GOOD NEWS?

The national Writing Report, the Reading Report, the newly released National Assessment of Adult Literacy Survey, and the AALL Information Literacy Survey paint a bleak picture for those of us trying to anticipate the academic needs and abilities of our incoming first-year students in the next coming years. There are, however, a few noteworthy trends that may lessen the severity of the encroaching deficits.

A. Publicity

Briefly, the National Challenge Group hopes to implement the National Commission on Writing’s five recommendations in part by increasing publicity and public involvement. If, for example, the Challenge Group succeeds at getting the Writing Project budget to $100 million in five years to educate more teachers on how to teach writing, we may see a greater national commitment to writing instruction.

Additionally, the Reading Report received much more national “press” than the Writing Report received one year earlier. Finally, the Business Roundtable Report received a great deal of media attention when it was delivered to Congress in December 2004. 69

---

68 Id. at 11.
69 See e.g. Sam Dillon, What Corporate America Cannot Build: A Sentence, N.Y. Times A23 (Dec. 4, 2004); Editorial, Writing Wrongs, Boston Globe A22 (Dec. 14, 2004); Laura
More immediately, both the SAT and the ACT\textsuperscript{70} have changed the college entrance tests to include writing assessments. Changes to the SAT are mandatory. For example, in March 2005, the SAT added 800 new points (and thereby increased the test total from 1,600 points to 2,400 points) that are devoted exclusively to writing assessment.\textsuperscript{71} This is likely to have a corresponding increase in college-bound students’ demand for increased writing instruction at the high-school level, before they take the SAT.

With the SAT, two-thirds of the new 800 points will be scantron tested grammar correction and usage. One-third will be a twenty-five minute essay that will be graded by two human beings and not a machine.\textsuperscript{72}

C. Undergraduate Changes

Some university programs are already starting to respond to the reading and writing crisis. Writing programs at Duke University and Princeton have been recently revamped, primarily in response to complaints of their professors that their undergraduate students cannot construct lengthy, sophisticated research papers.\textsuperscript{73} Columbia, Bowdoin, and Brown are also scheduled to follow suit and revamp their freshman writing programs.\textsuperscript{74}

Generally, when revamping writing programs, these schools eliminate graduate assistants who teach the writing courses and bring in post-doctoral students who are trained to teach writing.\textsuperscript{75} Duke University has added a second intensive writing class to its required curriculum.\textsuperscript{76}


\textsuperscript{72} See \textit{id.}; see also Ramin Setoodeh, \textit{SAT, What’s Your Score?} 145 Newsweek 9 (Apr. 4, 2005).


\textsuperscript{74} \textit{id.} at 39.

\textsuperscript{75} \textit{id.}

\textsuperscript{76} \textit{id.}
Changes in media attention, in college admissions testing, and undergraduate writing programs may provide some reasons to be optimistic. However, I am skeptical for several reasons. First, revamped programs in writing are highly labor intensive and are therefore expensive. Cost is still the tail that wags the dog in this issue. For example, Princeton calls its new program “the million dollar difference.” Yet, how likely is it that public universities and others will have the funds necessary to “ivy see—ivy do?” Even adding writing requirements to a college curriculum may hardly be enough to stem the cultural declines in writing and reading that might typically span a ten-year educational path for our incoming students.

Noteworthy, for example, was the July 2004 Illinois state legislature’s decision—fully one year after the Writing Report was released to much fanfare and publicity—to drop writing assessment from its ISAT student testing as part of cost-cutting measures to save $6.2 million. This testing change virtually guaranteed that fewer Illinois schools would have focused on writing skills (because they were no longer tested). Many expected that fewer districts would invest in training teachers on better writing if they knew their school performance was not judged on writing because “you [only] treasure what you measure.”

Second, legitimate concern exists regarding adverse effects on poorer schools that cannot, or choose not to, increase the funding required for such labor-intensive changes to the curriculum.

In short, we simply have a huge problem that is now only starting to be quantified for us with survey statistics. This problem implicates cultural forces, technological forces, and economic deficiencies that will take a long time to remedy, if they may be remedied at all.

77 Id.
78 Id.
80 Id. (quoting Becky McCabe, a principal in Urbana, Illinois). Just prior to going to press with this Article, however, the Illinois legislature reinstated the writing testing requirement beginning in the 2006–2007 academic year, as a response, in part, to national criticism of Illinois’ earlier decision to eliminate the testing, as reported by Diana Rado. Diana Rado, State Revives Writing Exam, Chi. Trib. Metro 1 (June 23, 2005) (available at www.StudentsFirst.us).
IV. IMPLICATIONS

A. Skill Level—The Bottom Line

The Writing Report, the Reading Report, the National Assessment of Adult Literacy Survey, and the AALL Information Literacy Survey have important implications for law schools and for the legal profession generally. Student skill levels are affected, and student attitudes may be affected as well.

First, and most importantly, these reports suggest that when we think about incoming law students, we may have to rethink our traditional notions of standard “preparedness” levels. The high school seniors in the Writing Report may be at our doorstep very soon. The college graduates referenced in the 2005 National Assessment of Adult Literacy Survey82 (with a 31% proficiency level for “prose literacy” and a 25% proficiency level for “document literacy”) may be applying to law schools today. The AALL Information Literacy Survey83 suggests that our students-in-need might be present in law schools already.

There is a recurrent theme seen throughout the elementary, high school, and college statistics in the reports, and confirmed in the AALL Information Literacy Survey, regarding a dearth of demanding writing and research assignments. These numbers point to a generation of students that is not as experienced in the rigors of extensive research papers and senior thesis-writing as generations past.

Specifically, the Writing Report explains that the senior research paper is “dead.” Moreover, even modest efforts at theme writing and synthesis in English class appear to be limited to an average of three pages, for up to 40% of high-schoolers.

This means that many students come to college (and later, to law school), without meaningful experience in gathering lots of information and absorbing, assimilating, breaking down and re-organizing that same information . . . and then repeating those same tasks over and over and over again, an additional one thousand times!

Additionally, the unfunded mandates required by the federal government in the No Child Left Behind Act will only exacerbate

82 See supra nn. 17–21 and accompanying text.
83 See supra n. 5.
the existing crisis in writing instruction. This is because the emphasis that the federal legislation places on assessment and in-class reading and math instruction means there will be even less in-class training and time for writing exercises that are labor-intensive and time-intensive.

Thus, by the time these students get to college, many of these students—even perhaps those judged “good” students or even “excellent” students by their school administrators—may not know how to do these research papers at all. Moreover, potentially even those with rudimentary experience will not be terribly proficient at it.

The law librarians echo similar concerns. Their report explains that even at the post-university level many incoming law students are inexperienced with general research strategies and basic resources.

In other words, while it is generally felt that some students are pretty good at gathering information, as a writing teacher of Princeton undergrads put it, “Almost none of them are capable of turning [all that gathering] into a real paper with a real thesis and an argument.”

Or, put slightly differently, as Professor Molly Lien stated in her ground-breaking research on law and technology, we must be concerned that “students appear to equate the ability to access the material with mastery of the material. They view downloaded information as learned information.”

If Princeton is seeing difficulties, there is likely a problem in other colleges and universities as well.

The reports portend writing skill deficits and raise the possibility of incoming reading deficits as well. The Reading Report explains that even at the highest professional levels, Americans are

---

84 See e.g. Taking a Sword to the Pen, Chi. Trib. 14 (Aug. 14, 2004) (criticizing the State of Illinois’s decision to drop the writing test for the ISAT, which tests third, fifth, and eighth graders, and stating “If eliminating the tests encourages schools to stop teaching how to write, we’ve got a big problem.”); see also Cathaleen Roach & Andrea Kaufman, The Writing Equity Gap: Disparities in Writing Achievement between Disadvantaged and Privileged School Districts (current working title for work in progress); but see supra n. 80 (regarding Illinois reinstatement of the test as this Article went to press).

85 See Taking a Sword to the Pen, supra n. 84; see also Kaufman & Roach, supra n. 81 (suggesting that this unwittingly further promotes disparities between poor and wealthier school districts that can purchase writing programs and assessments).

86 See Bartlett, supra n. 73.

not reading the way they once did, and that the steepest decline in reading is among the eighteen to twenty-four year olds.

In short, if rigorous training in writing and reading is required to develop a student’s “analytic template”\(^{88}\) before the student arrives at law school, these studies suggest we may have to set the bar back a little and prepare for more remedial work—regardless of incoming LSAT scores and regardless of the upper-tier status of the undergraduate or law school institution.

Consequently, as writing and research teachers on the front line, we may have to anticipate at least three areas of reduced skills: (1) significantly diminished organizational skills as a result of little or no exposure to complex writing assignments and lengthy research papers; (2) diminished reasoning and analytical skills—the poorly molded “analytical templates” referred to above—which may profoundly impact a student’s ability to approach difficult legal problem sets; and (3) decreased competency in basic grammar and compositional skills.

To borrow Professor Moskovitz’s tennis ball analogy again,\(^{89}\) we can no longer presume that our incoming students have hit the tennis ball 2,000 times before they arrive at law school. We should prepare for and anticipate these remedial needs.

Moreover, this is no short-term crisis. These reports also suggest that this crisis in writing preparedness and in reading may not be a temporary blip, but in fact, may be a problem for at least another ten years because the NAEP numbers (“the nation’s report card”) show the deficits beginning in third-grade testing and continuing on through high school testing.\(^{90}\)


89 See supra n. 10.

90 See supra n. 39.
Lack of writing and reading experiences can yield writers who have only poorly framed or inadequately formed analytic templates. Of course, this can affect law school readiness.

More troubling, however, and more ephemeral, is the passivity referenced by the Reading Report. Increased passivity could be most threatening to the demanding study and practice of law. If reading is not valued and complex writing is not learned and practiced, what will happen to the very ethos—and the work ethic—of legal research and study, which typically exalts in the ability to review large amounts of information and distill it to concrete and contextual argument? When students get so much of their information electronically, and when between one in three or one in four of the college graduates or graduate students may not be reading literature at all but instead are passively receiving all or most of their information, we may risk churning out increased numbers of highly passive, disengaged learners. This passivity could obviously affect law students’ research efforts. It may also affect attention spans and levels of contemplation.

We should monitor whether our law students, like the general population, may be losing the “irreplaceable forms of focused attention and contemplation” referred to by NEA Chairman Gioia, even if universities make the modest curricular reforms to writing programs referenced above, for example, with Princeton and Duke.

Additionally, grade inflation may affect student participation and passivity levels, too. Academic debate legitimately questions the effect of widespread campus grade inflation on the quality of undergraduate learning. If, for example, 91% of Harvard seniors graduate with honors, 80% of grades at the University of Illinois are As and Bs and 50% of Columbia students are on the dean’s

---

91 See Lien, supra n. 87. Professor Lien asks this essential question about technology and the law. I would like to expand the inquiry to include changes in the work ethic and ethos as a result of cultural changes in levels of reading and writing training and thus, steady declines in critical thinking and writing skills.

92 See supra n. 60 and accompanying text.

list, one might wonder whether simply revamping undergraduate writing curricula will do enough to stem the tide of a culture-wide decline in undergraduate expectations and overall standards for writing and research. Similarly, a newly released report reviewing 90,000 high school students in twenty-six states suggests that grade inflation may be a problem in high schools as well: 65% of students who studied no more than three hours a week nonetheless reported getting mostly As and Bs.

A decline in expectations and standards in both high school and undergraduate learning will likely further negatively impact the amount and quality of writing experiences of incoming law students. Moreover, it may be problematic that, like the students’ self-assessment of their own research skills in the AALL Information Literacy Survey ("despite their lack of research experience and knowledge, students view themselves as adequate if not good researchers"), inflated grades and lowered expectations at the high school and college levels may yield similar disconnects in how students perceive their own writing experiences and abilities.

It is important not to “blame the victim,” but rather simply to understand and respond to this new cultural milieu from which our students emerge. A decline in writing experiences and expectations in high school and college contrasts sharply with the rigorous expectations of first-year law curricula. Anticipating student inexperience or confusion will be key to revamping and providing them with the tools they will need in the future.

V. SUGGESTIONS

How law schools and the legal community at large should respond to this pincer effect of diminished reading and writing training is a question worthy of deep respect, great compassion, and introspection. Why we should care about this is obvious, but what we should do about it and who should be responsible, are much trickier questions.

94 Id. (citing former Harvard Dean Henry Rosovsky’s 2002 study for the American Academy of Arts and Sciences).

95 Thomas L. Friedman, Where Have You Gone, Joe DiMaggio? N.Y. Times A23 (May 13, 2005).

96 Hensiak, Burke & Nixon, supra n. 5, at 11.
A chief purpose of this Article, therefore, is to get the legal writing community ready to anticipate these student casualties instead of simply reacting to them when they arrive.

Written twenty-five years ago, Professor Gale’s words ring more true now than ever: “It will no longer suffice to blame the grammar school, the high schools and the colleges for graduating the inept; law schools owe themselves and their profession more than a lame apology for failing where others before them have also failed.”

Law schools interested in anticipating and studying incoming student under-preparedness might well begin with four topics: climate changes; data collection; curriculum; and finances and technology.

A. Climate Changes

1. National Scope: Climate Changes for Law Schools and Bar Associations.

One way to fix the problem is to change the climate in which it is studied. As of this writing, the United States Congress has received three separate reports from the National Commission on Writing since April 2003. A nationally known former senator now heads “phase two” of the National Commission’s national plan. In the interim, the venerable institution of the National Endowment of the Arts was so concerned about the reading crisis that it studied more than 17,000 American households to look at the problem. Additional national education reform attempts (albeit flawed) are evidenced by the federal No Child Left Behind Act. Finally, the U.S. Department of Education released its separate study assessing high-level English skills of U.S. college graduates.

All of these efforts reflect a national leadership that is engaged in and alarmed by reading and writing deficits. Because these reports might imply that to some degree those deficits may reach the hallways of our law schools—and perhaps more importantly—the hallways of our courtrooms, they must be viewed by law schools with the same level of concern and seriousness that other educators and leaders around the country view them.

97 Mary Ellen Gale, Legal Writing: The Impossible Takes a Little Longer, 44 Alb. L. Rev. 298, 301 (1980).

98 See supra nn. 17–21 and accompanying text.
The first order of business, therefore, is to use these national groups, that is, the National Commission on Writing, the NEA, the Congress, the U.S. Department of Education, and the Fortune 100 companies’ responses to the crisis, to spur the legal academy to study the issue with a proportionate amount of interest and industry.

2. A Climate Change for Law Students

Also, we must be mindful of the NEA Chairman’s concern about intellectual “passivity” resulting from diminished reading, and we must take heed of the National Commission’s concern that students who don’t write may view “writing” mostly as “self expression” and “fail to grasp the importance of writing as a means for learning.”\(^9\) They may under-appreciate—or may be downright hostile to—the idea of writing as learning, as analytical training, as making something knowable, and as a process to assist in “connecting the dots.”\(^1\)

Consequently, as part of our attempts to achieve climate change in law school administration, we should think about climate change in law students as well. Students will need to see our efforts not as a denouncement of their generation, but rather as a partnership created to provide them with skills to which they may not have been sufficiently exposed in their earlier education. If this training is successful, these students may see greater value in LRW and its importance in assisting their law school education.

B. Data Collection

The two reports and survey described above, and the corollary Business Roundtable Report, are a start at creating awareness and a climate change in our law schools and with our law students.

The pursuit of hard data, more specific to law students, however, must be the next push. At the time of this writing, the AALL Survey is the first and only study of law students. It studied three top-tier schools and used only thirty questions. Now might be an excellent time to continue that good effort and pursue a law student survey broader in reach and scope. New, broader studies

\(^9\) See Writing Report, supra n. 2.
\(^1\) Id. at 3, 14.
Data-collection efforts should be at least three-tiered: (1) surveys of incoming students, (2) testing of third-year students, and (3) studies of young lawyers in practice.

1. **Data Collection First Year: Incoming Assessment Efforts to Get “Baseline Numbers”**

   We should survey incoming students to get a base-line sense of the amount and quality of undergraduate research and writing they performed prior to their arrival to law school.\(^1\) Next, we should conduct diagnostic testing on three levels and watch for changes in: (1) basic grammatical and composition skills; (2) reading ability, global thinking, analytical depth and creative quality of analysis; and (3) basic “library research strategy skills.” These incoming assessments not only would be useful for the individual students, but also would be equally useful to monitor groups of incoming students over many years.

2. **Data Collection during the Third Year, before Graduation**

   Three years later, these same students should be tested again prior to graduation. This separate data collection would be extremely useful for both law school administration and the individual students. Students could be tested, preferably in the fall of their third year, with the same or similar composition and grammar diagnostic tests as in their first year, and thereby track their own improvement and progress. Students not progressing could then be advised and take extra efforts to remedy deficits prior to taking the bar exam and beginning law practice.

3. **Data Collection in the Profession**

   Law schools should partner up with national and local bar associations to study the effects of cultural changes in reading and writing patterns on the legal profession. They should study the effects on the practice by our young lawyers, as well as changes

---

1 See e.g. Becker, supra n. 11.
relative to our clients resulting from cultural changes in reading and writing training.

Professor Lien’s broad-ranging work on technological changes in the legal workplace would be an excellent place to start. She theorizes that cultural changes in technology will affect legal practice and ultimately the law itself. Such studies might be expanded to determine whether and how cultural changes in writing and reading patterns (in addition to changes in technology) will affect a practitioner’s skills.

C. Curriculum

Climate changes and data collection must be the first priorities. Once assessments of incoming first-years are completed, however, we can take that data and change the curriculum accordingly. One option is to divide curriculum changes into curriculum changes “outside” of LRW and those changes “within” LRW.

1. Curricular Changes outside LRW


Professor Carol Parker argues persuasively that the National Commission’s remedies to the national writing crisis are a good starting point for law schools to address the writing concerns of incoming law students. The Commission identified a comprehensive five-year “action agenda” to move the nation to genuine reform of the crisis. Thereafter, it divided its action agenda into distinct parts. Briefly, these included: (1) creation of a national Writing Agenda, (2) a doubling of in-class writing time and writing throughout all class subjects, (3) creation of a national Educational Technology Trust to explore technology in self-correction exercises, assessment and measurement of writing competence, and (4) professional development.

102 See Lien, supra n. 87.
Professor Parker took the five parts of the National Commission’s Recommendations and integrated each part into a proposed law school reform agenda.

Two areas she reviewed are especially noteworthy here. First, Professor Parker argues that—like the creation of a national writing agenda—law schools must create a comprehensive writing policy and ask what kind of research and writing curriculum it would take for the school to fully comply with the ABA standards. Just as the National Commission stated that every state should revisit its education standards to make sure that includes a comprehensive writing policy, Professor Parker contends that the writing crisis requires that each law school do the same.

Next, the National Commission recommended that the amount of time students spend writing (and the scale of financial resources devoted to writing) be at least doubled. The National Commission further recommended that writing should be assigned across the curriculum, for example, in math and science classes. Professor Parker argues that this dovetails perfectly with the movement in “writing across the curriculum” in law schools today.

b. Writing throughout the Curriculum

In fact, five years prior to the Commission Recommendations, Professor Parker advocated that law schools adopt “Writing throughout the Curriculum” for many of the same reasons that were argued later by the National Commission when it advocated that grade and high schools adopt writing across the curriculum.\(^{104}\)

Professor Parker suggests that a law school writing program should not be envisioned simply in terms of its first-year legal writing course, but rather throughout all three years in law school. She argues persuasively that the “development of communicative skills is inseparable from the development of analytic skills”\(^{105}\) and notes that “within too many law schools the notion has persisted that writing is a discrete skill to be taught only in ‘legal writing’ classes in the first year of law school.”\(^{106}\) She advocates that writing be integrated throughout the curriculum and that law schools change the definition of “a law school writing program” so that it refers not only to those courses in which primary emphasis is on

\(^{104}\) Carol Parker, *Writing throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 Neb. L. Rev. 561 (1997).

\(^{105}\) *Id.* at 562.

\(^{106}\) *Id.*
written communication, but also to writing opportunities present in doctrinal courses, seminars and clinical courses as well"\(^1\) because “neither a single ‘rigorous writing experience’ [the old ABA standard for law school accreditation] nor a first-year legal writing class is sufficient to provide basic competence in written communication.”\(^2\)

Requiring law students to write more in doctrinal and clinical classes, and not just in LRW, increases essential opportunities to write and involves the entire faculty in the collective endeavor. Scholars point to Southern Illinois University College of Law as one that has very successfully begun to integrate writing across the curriculum.\(^3\)

c. Other Curricular Changes “outside” LRW

Next, research developments in reading theory—as it relates to law students—including research by Ruth Ann McKinney\(^4\) and Laurel Oates\(^5\) might greatly inform teaching efforts “outside” the traditional LRW classroom as well. In individual studies, these authors look at reading in law school to analyze whether underlying analytical problems originate in poor or underdeveloped reading strategies. Others teach the careful reading of statutes, for example, by having students write statutes.\(^6\)

Beyond new research and course development efforts in reading, expanding the law librarians’ role also might be extremely useful. It seems likely that we will need expanded courses on “basic research strategy” (i.e., pre-legal research), which might provide lots of “layered” projects to try to address the dearth of

---

\(^1\) Id.
\(^2\) Id. at 563.
\(^3\) See Parker, supra n. 104. Also see her handout for LWI July 2004 Conference Presentation, on the Writing throughout the Curriculum Program, at Southern Illinois University College of Law. Professor Sue Liemer is the LRW Director at Southern Illinois University in Carbondale, Illinois.
\(^5\) See Laurel Currie Oates, Presentation, Teaching Students to Read, Analyze, and Synthesize Statutes and Cases (Seattle, Wash., July 23, 2004). Oates suggests that many “thinking” problems law students encounter may stem from underlying problems in how students read the cases. Laurel Currie Oates, Beating the Odds: Reading Strategies of Law Students Admitted through Alternative Admission Programs, 83 Iowa L. Rev. 139 (1997).
research experiences students are likely to have been exposed to in high school and at the university level.  

Incoming student assessment data would be useful to separate those students with adequate or superior research experiences from those students who did not receive such training earlier.

Such a “basic research strategy and resources” course might be part of an expanded first-year library introduction class and taught by the staff of the library.

There is also interesting new research coming out which examines whether the “google-trained” generation has difficulty in discriminating among and between types of research resources available on the internet. Thus, an effective introductory “research class” might respond to the reading and writing crisis by including the nuts and bolts of research strategies and hard cover resources, as well as online resources and how to discriminate between them.

2. Curriculum Changes within LRW

It seems clear that old academic curricular structures will not be sufficient to address the encroaching law school “preparedness” crisis. In turn, this likely alters LRW curriculum as well.

None of the suggested reforms is possible without a commitment to slowing down the process of teaching research and writing. We must abandon the hurriedness of trying to shoehorn research and writing training into two or three required semesters of standard LRW training. It likely was never a good idea to limit such training to two or three semesters in the first place; it is now apparent, given the remedial needs of many incoming law students, that the standard required two or three semesters is definitely not adequate.

LRW faculties need to be mindful that long-term deficits in writing exposure yield at least two distinct types of deficiencies: (1) the relatively easy to diagnose-and-fix types of deficiencies seen in grammar and compositional skill problems; and (2) the more

---

113 See John Merrow, supra n. 93, at 20, 22 (describing the dearth of writing opportunities for some students in large public universities).
114 See supra nn. 8–11 and accompanying text (discussing the vast differences in undergraduate writing exposure among my own students, including one of whom who wrote sixty to seventy papers, and another who wrote only two exams in four years).
115 See e.g. Measuring Literacy in a World Gone Digital, N.Y. Times C1, 2 (Jan. 17, 2005).
systemic, more difficult “analytic template” deficiencies which result from years-long deprivation in the frequency and difficulty of writing, synthesis and research experiences.

In short, it would appear that these reports and other data will require LRW faculties to amend or expand their curricula on two ends: (1) a remedial end (that is, to supplement that which the students may be no longer receiving in high school and college training), and (2) a more advanced end (using upper-level courses to provide increased opportunities to write more, to research more, and to develop more thoroughly their analytic templates).

At that point, it is fairly easy to argue that LRW courses need to be increased from two to three credit hours, and that law schools need to go beyond the traditional two or three semester mandatory writing requirement.

D. Finances and Technology

All of this is likely to cost more money. At the national level, as described above, we have seen enormous amounts of money directed to the research and remedying of this problem: three Reports have been sent to Congress; the National Writing Project hopes to have spent $100 million dollars on this crisis within five years; the College Board responded by amending its SAT and adding 800 points to writing; the Business Roundtable estimates that Fortune 100 companies may spend as much as 3.1 billion dollars annually addressing writing deficiencies in their work force; and various state legislatures have responded by funding statewide writing testing.116

Law schools should respond in kind.

Technology, however, can be an enormous help. For example, I directed my students to the grammar websites that accompany the Diana Hacker text that they use for grammar.117 Law professors have studied highly useful ways to integrate technology into the classroom118 including using data projectors and computers to help

116Dell’Angela, supra n. 79 (explaining that an increasing number of states are adding writing assessments to their standardized exams, in hopes they will increase writing instruction for grade and high schools in those states).
118For an in-depth and highly informative overview on strategies and blueprints for law schools to use to integrate electronic technology into the curriculum, see Rogelio Lasso,
teach legal synthesis\textsuperscript{119} using course web pages,\textsuperscript{120} and using computer tutorials on an array of law school subjects by requiring students to interact with the information by answering simple questions or completing exercises as part of the tutorial requirement.\textsuperscript{121}

Similarly, the National Writing Commission advocates that the federal government create a National Educational Technology Trust with millions of dollars made available to finance hardware, software, and training for every student and teacher in the nation. They argue that new technologies should be applied to the teaching and assessment of writing including technologies that help to identify grammatical mistakes, assess writing samples, and measure student writing competence.

Although the National Commission extols the virtues of using and creating technology to alleviate the time-crunch and teacher pressure, nonetheless, the idea that technology can get us out of this mess is problematic.

Technology, after all, helped us to get into this situation. First, our culture is now so electronic media-centric that families read fewer books and newspapers and turn to technology for significant portions of their entertainment. One result, laments the NEA, is that we are less trained in deep, contextual reading and nuance. Additionally, for many high school and university students, technology in the form of the ubiquitous scantron test has usurped myriad opportunities for testing organization and synthesis skills presented by the old “bluebook essay testing.” We have lost something major with the development of the 300 and 400-person university lecture courses, many of which by necessity are graded by scantron test and/or graduate teachings assistants.

In short, we have to remember that while technology can assist teachers and reduce time pressures, and might speak to new generations raised on technology, it simply cannot replace teacher time.


\textsuperscript{120} Jennifer Jolly-Ryan, \textit{Coordinating a Legal Writing Program with the Help of a Course Webpage: Help for Reluctant Leaders and the Technology-Challenged Professor,} 22 Quinnipiac L. Rev. 479 (2004).

Even the National Commission in its section on “measuring results” reports that assessments of student writing must go beyond multiple-choice, machine-scorable items and should require students to actually create a piece of prose.\textsuperscript{122} The College Board’s SAT exam also illustrates this by having the writing portion, which is one-third of its total score, graded by human beings and not machine scored.\textsuperscript{123}

Instinct tells me that many of the answers will lie with human beings—the old-fashioned, highly labor-intensive slogging through drafts, drafts and more drafts. Highly labor-intensive endeavors require smaller class sizes, lots more reading and grading of written exercises, and increased staffing. This will require concomitant increases in funding or at the very least, a reallocation of existing resources.

The great challenge, therefore, becomes how to use technology to augment teacher time and training (such as grammatical and compositional testing assessments and self-correction opportunities), but not allow administrators to conclude that this problem can be fixed exclusively with technology and without significant increases in staffing.

It is not a stretch to conclude that the law schools have lagged behind the national reporting and leadership efforts regarding recent developments in reading and writing data. The good news is that LRW is the perfect vehicle to bring this new information, thoughtfulness, and pedagogy into the twenty-first century, as it did so ably in the latter half of the twentieth century.

LRW pedagogy, because it has been so flexible and responsive to research like learning theory and technology, which it has integrated into its discourse, is perfectly poised to quantify and adapt to the changing preparedness levels of our incoming law students.\textsuperscript{124} Our pedagogy has been hard-won and enormously useful to the law school community at large.

It is time to alert our law school communities to this cultural data and to lead the way with more sophisticated data and analysis relative to law schools in particular, in order to remedy these seemingly pervasive societal problems presented in law student readiness and under-preparedness.

\textsuperscript{122} See supra n. 2.
\textsuperscript{123} See Setoodeh, supra n. 72, at 9.
\textsuperscript{124} I thank my colleague Ruth Ann McKinney for our fall 2004 telephone and e-mail conversations and for her guidance and thoughtfulness formulating these conclusions.
National efforts show us what kind of money and effort that genuine reform will require.

We'll need to convince our law school communities that while it is one thing to say, “The sky is falling!” it is another thing, entirely, to try and fix the problem.
TAKING THE ROAD LESS TRAVELED: WHY PRACTICAL SCHOLARSHIP MAKES SENSE FOR THE LEGAL WRITING PROFESSOR

Mitchell Nathanson*

I. INTRODUCTION

One of the perks that comes with a position in my school’s legal writing program is the opportunity to receive a stipend for summer scholarship. Because this stipend represents a substantial percentage of my salary, the decision to accept it was a no-brainer. That was the easy part. The more difficult part came soon after, when I had to sit down and figure out just what it was I was going to write about. Because legal writing professors at my school, like the legal writing faculty at most law schools, are not required to publish,¹ I had never developed a scholarship “game plan”² and had never seriously considered the issue beforehand. Now, with a sizable economic carrot dangling before me, I had to confront something that, the more I thought about it, became stickier and stickier.

Frankly, I doubt topic selection is an issue that many of my doctrinal brethren have given much consideration. After all, it is a relatively simple process for a torts or criminal law professor, for example, to choose their field of scholarship. If they wish, they only need to peruse the docket of the court of their choosing to find a topic. Of course, given the unfortunate absence of “legal writing” cases on most dockets, this did not solve my dilemma.

* Associate Professor of Legal Writing, Villanova University School of Law. I would like to thank Dean Diane Edelman for her insightful comments on earlier drafts of this Article.

¹ See ALWD & LWI, Legal Writing Institute 2004 Survey Results, 62 question 81, http://www.alwd.org/alwdResources/surveys/2004surveyresults.pdf (accessed Feb. 11, 2005) [hereinafter ALWD/LWI Survey] (noting that of the schools responding to the 2004 survey, twenty required their legal writing faculties to produce scholarship, seven expected them to produce scholarship, twenty-nine encouraged their legal writing faculties to produce scholarship, and seventy-two neither required or expected their legal writing faculties to produce scholarship).

Moreover, a plethora of helpful articles guides the new doctrinal professor in choosing appropriate scholarly topics to write on. Many of these advise the new professor to limit her focus and to become an expert in her particular field rather than write on whatever legal issue interests her at the time. This advice, once again, did not help me because I was still unclear about what my particular field is. The fact that I teach legal writing was of little help to me in this regard given, as noted above, the absence of substantive law on this topic.

Analyzing the scholarly writings of my legal writing colleagues proved to be of little help as well. The vast majority of the legal writing professoriate who choose to write seems to have disregarded the doctrinal advice to specialize in one particular field, choosing instead to write on myriad topics. Some of these topics have a legal writing connection, but many do not. This is true even among professors with a scholarship requirement. More commonly, the legal writing professor with a scholarship requirement will adopt the scattershot approach of his legal writing colleagues when it comes to topic selection, with some proclaiming that they do not intend to write about legal writing at all.

This is good news and bad news all at once. For when it comes to scholarship, it appears as if a legal writing professor “can” write about whatever he wants. Although this is certainly a liberating concept, it does not, however, answer the more difficult question

---

3 See e.g. David P. Bryden, Scholarship about Scholarship, 63 U. Colo. L. Rev. 641 (1992); Slomanson, supra n. 2; Donald J. Weidner, A Dean’s Letter to New Law Faculty about Scholarship, 44 J. Leg. Educ. 440 (1984).

4 See Slomanson, supra n. 2, at 434 (noting that law professors may receive differing advice about whether to specialize in their scholarship or publish in multiple areas, and discussing the competing merits of each approach).

5 While other authorities have proposed that legal writing professors should develop scholarship on the substance of legal writing itself, see e.g., Michael R. Smith, The Next Frontier: Exploring the Substance of Legal Writing, 2 J. ALWD 1, 5 (2004) (noting that the journal of the ALWD calls specifically for “scholarship on the ‘substance’ of legal writing . . . that is, . . . scholarship that focuses on the doing of legal writing rather than the teaching of legal writing”), the Author does not consider the substance of legal writing itself to be a viable field for legal scholarship, because of the lack of a doctrinal-law basis for the subject.


7 Id. The survey found that approximately 75% of law review articles published by legal writing professors are on topics other than legal writing. Terrill Pollman & Linda H. Edwards, Scholarship by Legal Writing Professors: New Voices in the Academy, 11 Leg. Writing 3, 10 (2005).

(and the one I was seeking an answer to) which is, what should a legal writing professor write about? If specialization makes sense for the rest of the faculty, then should not it make just as much sense for the legal writing faculty? And if so, given that legal writing is a “legal skills” rather than “substantive law” course, what exactly is our area of expertise, at least relative to the rest of the faculty? As mentioned above, the more I explored this area, the more difficult and murky these issues became—which led to an initial sigh of relief. For “difficult” and “murky” are good. “Difficult” and “murky” are the stuff of law review articles. At last, I had my topic. With that out of the way, I was now ready to begin.

I started with the assumption that, in general, legal writing professors should engage in scholarship, regardless of its impact on salary or promotion. Even if it plays no formal role in a legal writing professor’s career, the value of scholarship is still significant. As other legal writing professors have noted, scholarship enhances the prestige of the legal writing faculty, not only among our colleagues, but among our students, who will be less likely to view us as second-class citizens. Moreover, scholarship enables us to retain the strong writing and research skills needed for our job. For this reason alone, scholarship makes perhaps more sense to the legal writing faculty than anyone else.

In addition, as legal writing professors become more entrenched in our overall law faculties, scholarship makes sense for the same reasons that it makes sense to the rest of the faculty. It allows our students to recognize us as influential figures in the development of the law and gives us an opportunity to set an example to them; “to give [legal writing professors] the confidence they need to assume leadership in the proper development of the law . . . [and] . . . to demonstrate that helping in the proper development of the law is a great public service that can be an immensely satisfying part of their future.” It also serves our institutions because “the [v]alue of a law degree from [our] school will be enhanced significantly if the depth of faculty expertise is made known.” Finally, and more simply, it allows us to grow and be-

---

11 Weidner, supra n. 3, at 442.
12 Id.
come stronger, more able academics. All of these general ideas apply to everyone on a law faculty. It is only when the legal writing professor gets to the specifics, to try to determine the best way to achieve all of the above goals given his unique role on the faculty, that all of this advice becomes hazy.

The old adage that you should “write what you know” applies universally—to fiction as well as non-fiction and to scholarship written by the legal writing professor as well as to the doctrinal professor. The overarching question, then, that I will attempt to answer in this Article is this: Just what is it that legal writing professors, at least as compared to our doctrinal counterparts, know? If this can be determined, then the question of what our scholarly focus should (as opposed to “can”) be becomes a simple one. Whatever our relative area of expertise is among our faculty colleagues should be the focus of our scholarship. Given that, as a group, we tend to take a different path to academia than our doctrinal colleagues, the key to our collective area of expertise may very well be found through an examination of our pre-teaching experience.

In addition, this Article will focus not merely on what we should publish but where we should publish it once it is written. Although at first blush it may appear to be little more than an academic exercise to focus on these issues, given that legal writing professors at most law schools are free to write on whatever they choose and then publish it wherever they can, these are, in fact, issues with greater ramifications. Because scholarship is considered by many to be perhaps the most exalted and important of a law professor’s academic obligations, it is inexorably tied with the issue of status: an issue close to the heart of anyone in the legal writing community who has struggled to obtain greater footing in the legal academy for the past several years. Therefore, even if scholarship plays no tangible role in our salary, retention, or promotion, what we publish and where we publish it are nevertheless important factors in our ongoing effort to raise our academic profile and achieve equality with our doctrinal peers. In fact, given

---

13 Id.
14 See Fine, supra n. 9, at 230.
15 See infra sec. II(A)(2)–(4).
16 Infra sec. II(A)(2)–(4).
17 See Slomanson, supra n. 2, at 432–433 (discussing the three components of a law teacher's academic obligations: teaching, scholarship and service); see also Weidner, supra n. 3, at 441 (“You will not be a complete person as an academic unless you produce, on a regular basis, scholarship that is read and relied on by people who work in your area.” (emphasis added)).
that scholarship is the single most important status factor on most law faculties, and is done by doctrinal professors not merely to inform but to increase prestige, legal writing professors would do well to consider how scholarship can work likewise for us. As part of the legal writing community’s effort to obtain equal status on law faculties, an examination of this overriding status factor in the doctrinal community is needed. This Article will attempt to undertake this analysis—to examine the legal writing professor’s scholarly role within the legal academic community in an effort to determine where we best fit in. Or, better yet, stand out.

II. WHAT SHOULD WE PUBLISH? DETERMINING THE LEGAL WRITING PROFESSOR’S FIELD OF EXPERTISE

To some who have written about scholarship and the legal writing professor, the question of content is more or less a non-issue. Some argue that because most legal writing professors have significant experience in some substantive field to draw upon, this field can be a source for scholarship. Others argue that irrespective of personal experience, legal writing professors can simply draw upon current events to identify an interesting legal angle that can form the basis of a law review article. Still others suggest an interdisciplinary approach, given the recent popularity of interdisciplinary scholarship.

The inherent fault contained in each of these approaches stems from the same faulty assumption. Each approach assumes that the resulting work of scholarship should look and feel no different than the scholarship produced by doctrinal professors. The legal writing professor, however, is uniquely handicapped in this regard irrespective of the approach she chooses.

18 See Slomanson, supra n. 2, at 432–433 (noting the existence of “a counterproposition to the supposed triangulation of excellence [that] underlies the question ‘why law professors must make scholarship their single most important task’” (quoting Robert M. Jarvis, Why Law Professors Should Not Be Hessian-Trainers, 13 Nova L. Rev. 69, 72 (1988))).

19 See Bryden, supra n. 3, at 643 (“Academic prestige derives almost entirely from one’s reputation as a scholar, and the scholarly reputation of one’s faculty.”).

20 Liemer, supra n. 10, at 1029.

21 Fine, supra n. 9, at 231.

22 Id. at 234.

23 See Liemer, supra n. 10, at 1029. Professor Liemer’s article attempts to assuage the fears of law school administrators and doctrinal faculty members by stating that “law school[s] need not worry that [they] will only end up with bar journal type articles to [their] credit.” Id. This statement contains the assumption that the scholarship of the legal writing faculty will ultimately resemble that of their doctrinal colleagues.
For example, those choosing to draw upon their substantive law experience in an effort to complete a traditional law review article will most likely draw upon their experience as practitioners. Unfortunately, and as will be discussed more fully in Section II, traditional legal academics tend to disparage practitioner’s problems and, as a result, law review articles that are practice-based, as opposed to theoretical, are generally less well-regarded and more likely to be relegated to less-prestigious journals.24 If considering not merely what a legal writing professor can write about but what she should write about (with an eye on scholarship as status symbol), this approach may not be the most prudent.

In addition, choosing the “current events” approach presents additional problems unique to the legal writing professor, for there is a strong likelihood that the substantive topic chosen, be it practical or, worse, theoretical, will be one in which the legal writing professor is not an expert, at least not compared with his doctrinal colleagues.25 Choosing to write on the constitutional issues raised in the 2000 Bush-Gore election may be interesting, but the legal writing professor needs to be aware that the “true” experts, the constitutional law scholars in the academic community, will also likely be writing in this area and their work will necessarily exhibit a deeper understanding of the issue than the non-expert’s.26 This is not to suggest that a legal writing professor is incapable of producing valuable scholarship on constitutional issues, only that it is more difficult for a legal writing professor than for a doctrinal expert. Again, when the issue of status is taken into account, the determination of what to write about becomes multi-faceted. Choosing a topic that a legal writing professor is likely to produce superior, as opposed to merely good, work becomes paramount. Other-

24 See Fine, supra n. 9, at 235; see also Slomanson, supra n. 2, at 437 (“Traditional wisdom counsels against topics involving the practical aspects of law practice. The leading thou-shalt-not is the production of [p]ractice-oriented materials for continuing legal education, bar journals, and practice manuals. This may include digests or summaries of recent opinions or cases being litigated.” Id. at 437 (quoting Alfred C. Yen, Advice for the Beginning Legal Scholar, 38 Loy. L. Rev. 95, 96 (1992))).

25 See Fine, supra n. 9, at 233. The author notes that the most apparent danger of the “current events” approach is “that a writer may be seduced into approaching these topics without having any real expertise in the field.” Id. This danger is only highlighted, she concludes, given the likelihood that the true experts, those who teach and specialize in the areas of law relevant to the current event, will also write on the topic, thereby making the differences in knowledge only more obvious. Id.

26 See id. (recommending an interdisciplinary approach only for those who have “formal academic training in another discipline”).
Taking the Road Less Traveled

wise, scholarship will not be an effective means toward achieving increased status.

Finally, the interdisciplinary approach merely shifts, rather than resolves, the substantive law dilemma and ultimately presents the same problems as the current events approach. Although those who have had formal academic training in another academic field should use this to their advantage, those who lack such training will be venturing into the same uncharted waters as those attempting to write on constitutional topics for the first time. Applying learning theory to a legal writing issue, for example, can certainly result in useful scholarship, but its usefulness will likely depend on the author’s expertise in this interdisciplinary field. One who lacks the thorough understanding that comes with years of study of a discipline and who instead has come about her knowledge by way of study of a few (or even several) articles on the topic will most likely produce scholarship that only scratches the surface of the issue. Regardless of the amount of time spent reading up on the interdisciplinary field, the reader will never become the “true” expert that a pre-eminent scholar is expected to be.

Moreover, research in diverse fields can result in wasted time from the author’s standpoint as she is forced to reinvent the wheel, so to speak, to conduct her research.

A. Professional Background Survey

Having found each of the above-noted scholarly approaches to selecting content lacking when applied to the legal writing professor, I decided to conduct a survey in the hopes of resolving this dilemma. My goal was simple: I wanted to determine what, if anything, the typical legal writing professor brings to the academic table relative to her doctrinal colleagues. I wanted to find out whether we are different in any relevant way, with the assumption that any relevant differences would highlight our area of expertise relative to the rest of our faculties. To determine this, I focused on post-law school, pre-initial teaching position experience. This was done based on the assumption that once a professor enters academia, she begins the process of building upon and dispensing the knowledge that she has accumulated up to that point. The post-

---

27 Id. at 234.
28 See id.
29 Slomanson, supra n. 2, at 434.
law school, pre-teaching years are the ones that lay the foundation for the areas of expertise of a particular professor later on. Many constitutional law scholars draw upon their experiences as Supreme Court clerks; I wanted to determine which experiences we, as legal writing professors, draw upon once we enter academia.

1. **Method**

The 2003–2004 AALS Directory of Law Teachers\(^{30}\) served as the exclusive basis for the information gathered in my survey. I randomly selected fifty doctrinal professors\(^{31}\) and fifty legal writing professors\(^{32}\) and compared their post-law school,\(^{33}\) pre-initial teaching position backgrounds. I excluded adjunct professors, and I also excluded individuals who currently held administrative positions to avoid intermingling the potentially differing expertise and backgrounds needed to be a dean or other administrator with those needed to be a pure professor. Finally, because complete biographies were not included by everyone who responded to the 2003–2004 AALS Directory, I eliminated from my survey those whose biographies contained more than one unaccounted-for post-law school year.

Pursuant to these guidelines and limitations, my method involved randomly selecting biographies from the Directory. Whenever a biography violated one of the above guidelines, I made another blind selection from the same page. The results of my survey are summarized below.


\(^{31}\) I defined “doctrinal” professors as those who listed courses other than legal writing or legal research and writing as the courses they currently teach.

\(^{32}\) I defined “legal writing” professors as those who listed legal writing or legal research and writing as a course they currently teach.

\(^{33}\) I defined “post-law school” as subsequent to the award of the initial legal degree. For purposes of the survey, the award of an LL.M. was considered “post-law school.”
2. **Survey Results**

### I. General Information

<table>
<thead>
<tr>
<th></th>
<th>Doctrinal</th>
<th>Legal Writing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$n$</td>
<td>%</td>
</tr>
<tr>
<td>Male respondents</td>
<td>27</td>
<td>54%</td>
</tr>
<tr>
<td>Female respondents</td>
<td>23</td>
<td>46%</td>
</tr>
<tr>
<td>Mean number of years between law school graduation and initial law teaching position</td>
<td>5.42</td>
<td>8.04</td>
</tr>
</tbody>
</table>

### II. Work Experience Prior to Teaching

<table>
<thead>
<tr>
<th></th>
<th>Doctrinal</th>
<th>Legal Writing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$n$</td>
<td>%</td>
</tr>
<tr>
<td>Mean number of years law firm experience prior to initial law teaching position$^{34}$</td>
<td>2.12</td>
<td>4.5</td>
</tr>
<tr>
<td>Mean number of years law firm experience of those with some law firm experience</td>
<td>3.53</td>
<td>7.4</td>
</tr>
<tr>
<td>No law firm experience</td>
<td>20</td>
<td>40%</td>
</tr>
<tr>
<td>More than one year law firm experience</td>
<td>23</td>
<td>46%</td>
</tr>
<tr>
<td>More than three years law firm experience</td>
<td>19</td>
<td>38%</td>
</tr>
<tr>
<td>Public interest law experience prior to first teaching position$^{35}$</td>
<td>6</td>
<td>12%</td>
</tr>
<tr>
<td>Mean number of years public interest law experience prior to initial law teaching position</td>
<td>0.52</td>
<td>0.4</td>
</tr>
<tr>
<td>Mean number of years public interest law experience of those with some public interest law experience prior to first teaching position</td>
<td>4.33</td>
<td>5</td>
</tr>
<tr>
<td>Governmental experience prior to first teaching position$^{36}$</td>
<td>12</td>
<td>24%</td>
</tr>
<tr>
<td>Mean number years government experience prior to first teaching position</td>
<td>1.22</td>
<td>1.16</td>
</tr>
<tr>
<td>Mean number years government experience of those with some government experience prior to first teaching position</td>
<td>5.08</td>
<td>4.83</td>
</tr>
<tr>
<td>Corporate/in house experience prior to first teaching position$^{37}$</td>
<td>0</td>
<td>0%</td>
</tr>
</tbody>
</table>

---

$^{34}$ This number includes twenty doctrinal and ten legal writing professors with no law firm experience.

$^{35}$ I defined “public interest law experience” as experience working full time or having as one’s primary employment, employment with a not-for-profit organization.

$^{36}$ I defined “government experience” as experience working full time or having as one’s primary employment, non-clerkship employment with a branch of the federal government or a state government or public sector organization.

$^{37}$ I defined “corporate/in-house experience” as experience working full time or as one’s primary employment, employment with a non-law firm, private sector corporate entity.
### III. Clerkship Breakdown

<table>
<thead>
<tr>
<th>Clerkship experience</th>
<th>Doctrinal</th>
<th>Legal Writing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fed.</td>
<td>State</td>
</tr>
<tr>
<td>Doctrinal clerkship court breakdown</td>
<td></td>
<td></td>
</tr>
<tr>
<td>—Supreme</td>
<td>16</td>
<td>1</td>
</tr>
<tr>
<td>—Intermediate</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>—District/trial</td>
<td>7</td>
<td>0</td>
</tr>
</tbody>
</table>

### IV. Academic Breakdown

<table>
<thead>
<tr>
<th>Initial law degree</th>
<th>Doctrinal</th>
<th>Legal Writing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n</td>
<td>%</td>
</tr>
<tr>
<td>Initial law degree from top 20 schools</td>
<td>29</td>
<td>58%</td>
</tr>
<tr>
<td>Initial law degree from Harvard Law School</td>
<td>14</td>
<td>42%</td>
</tr>
</tbody>
</table>

3. **Survey Summary**

While the survey yielded many similarities, there were some striking differences as well. Legal writing professors take on average 33% longer to secure their initial law teaching positions (8.04 years versus 5.42 years). When this time differential is broken down, we see that although there are no significant differences in public interest, government, or corporate experience, the average legal writing professor has more than twice as much (4.5 years versus 2.1 years) law firm experience as the doctrinal professor (with 40% of doctrinal professors having no law firm experience as compared with 20% of legal writing professors). This discrepancy

38 Includes one respondent who had both a state and federal clerkship.
39 Includes two respondents who had multiple federal clerkships.
is highlighted more dramatically by looking at only those with law firm experience. Here, the difference in experience becomes even more pronounced (7.4 years for the typical legal writing professor versus 3.5 years for the typical doctrinal professor). Overall, 68% of legal writing professors surveyed had three or more years of law firm experience, while only 38% of doctrinal professors had three or more years of law firm experience.

These differences in law firm experience, both in kind and in degree, are significant. In many law firms, particularly the larger ones, an associate’s initial years are spent mostly in the library or as a background member of a team of attorneys. Although the transformation from a complementary to a leading role often occurs gradually over time, it is typically in approximately the associate’s third year that she emerges from the shadows and begins to assume a more proactive role in handling files. This is typically the point when she begins to take a more active role with clients and in making significant strategic decisions. In short, the attorney with simply no law firm experience but significant experience is able to obtain a more complete and accurate understanding of the myriad issues confronting a practicing attorney. This attorney, should she decide to enter academia, is also significantly more likely to become a legal writing professor than a doctrinal one, according to the results of my survey.

4. Application of Survey Results

If looking at differences in professional backgrounds for clues about the legal writing professor’s area of expertise, the above-noted distinctions are instructive, for it appears as if legal writing professors bring significantly more practical experience to the academic table than do our doctrinal counterparts. As such, within

---

41 I acknowledge that the survey results represent merely a randomly selected sampling of law teachers and that more detailed studies may result in slightly varying statistical results. However, these results can be confirmed anecdotally, and moreover, are bolstered by a recent, more extensive survey on the backgrounds of recently hired doctrinal faculty, see Richard Redding, “Where Did You Go to Law School?” Gatekeeping for the Professoriate and Its Implications for Legal Education, 53 J. Leg. Educ. 594 (2004), which likewise concentrated on the AALS Directory of Law Teachers for its database, using the 2000–2001 edition and focusing on new faculty hires between 1996 and 2000. Id. at 597. Professor Redding surveyed 443 teachers and found that 45% had some law firm or corporate experience prior to entering academia, and that the average number of years of experience among those with some legal practice experience was less than four years. Id. at 600–601. The statistical results in the professional background survey conducted by the Author are meant to serve as a springboard for the discussion that follows.
the law school community, we are the relative experts on the issues that confront the practicing attorney, and our scholarship should be directed to take advantage of our expertise.

Initially, these results appear to be unfortunate from the standpoint of the legal writing professor. This is because, as noted above, practical (or practice-based) scholarship is traditionally frowned upon by the academy and afforded less prestige than scholarship with a theoretical focus. Accordingly, upon first blush, it appears as if doing the scholarship we are most qualified to do would not be beneficial to us in our quest for increased status. Our dual scholarship and status goals appear to be at odds.

However, the well-chronicled societal need for more practical scholarship from the legal academy may alter this conclusion considerably. As stated by Donald Weidner, Dean of Florida State University College of Law, in a 1994 letter to the law school’s first-year faculty, the productive scholars are the ones who know how many areas are crying out for analysis and comment. They are the ones who know how many improvements [can] be made to the law, if only people focused on them. Fortunately for the legal writing professor, the cries for practical scholarship—her field of expertise—are loud and getting louder. Legal writing professors thus have the opportunity to fulfill our scholarly role by stepping into this breach and focusing our scholarly efforts on analyzing and solving practice-based problems. As will be discussed throughout the remainder of this Article, the growing disconnect between the academy and practicing bar appears to be something that can best be solved through the scholarship efforts of the legal writing professoriate. The following Sec-

42 See Fine, supra n. 9, at 234; see also Bryden, supra n. 3, at 643.
43 Weidner, supra n. 3, at 442.
44 See generally Joan S. Howland & William H. Lindberg, The MacCrate Report, Building the Educational Continuum (West 1994). At the keynote address before the conference on the MacCrate Report, the speaker quoted the following statement of Christopher Columbus Langdell of Harvard: “What qualifies a person, therefore, to teach law, is not experience in the work of a lawyer’s office, not experience in dealing with men, not experience in the trial or argument of cases, not experience, in short, of using law, but experience in learning law.” Id. at 7 (quoted in Alberto-Bernabe-Riefkohl, Tomorrow’s Law Schools: Globalization and Legal Education, 32 San Diego L. Rev. 137, 142 n. 23 (1995)).
46 See id. at 34 (discussing the need for more practical teaching and scholarship).
tion analyzes this disconnect in an attempt to obtain a better understanding of where it originated, why it exists today, and how legal writing professors can use their relative area of expertise to effectively fill the gap in such a way that likewise increases our status within the legal academic community.

B. The Divergence between Traditional Legal Scholarship and the Practicing Bar

1. Judge Edwards’s Lightning Rod

In his now famous (or infamous, depending on one’s perspective) article, District of Columbia Circuit Court Judge Harry Edwards took the legal academy to task for failing, in his opinion, to produce enough scholarship relevant to the problems typically faced by the judiciary and practicing bar. He “feared that . . . law schools and law firms [were] moving in opposite directions,” resulting in a decline in the type of scholarship most needed by the practicing bar—practical scholarship. Judge Edwards defined “practical scholarship” as follows:

It is prescriptive: it analyzes the law and the legal system with an aim to instruct attorneys in their consideration of legal problems; to guide judges and other decisionmakers in their resolution of legal disputes; and to advise legislators and other policymakers on law reform. It is also doctrinal: it attends to the various sources of law (precedents, statutes, constitutions) that constrain or otherwise guide the practitioner, decisionmaker, and policymaker.

To solve this problem, Judge Edwards called for law schools to hire more “practical scholars”: scholars familiar with the issues facing the judiciary, legislature, and practicing bar and skilled in analyzing and commenting on them; scholars focused less on theory and more on concrete problems. He encouraged schools to hire

47 Id. at 77 (arguing for “ethical practice, and ‘practical’ scholarship and pedagogy”).
48 Id. at 34.
49 Id. at 42–43 (emphasis in original).
50 Id. at 50–51; see also Redding, supra n. 41, at 605 n. 25. Professor Redding’s statistical analysis confirms many of Judge Edwards’s statements. His survey found that there was “a negative relationship between the number of years in practice and the quality of the hiring law school, indicating that few faculty hired at highly ranked schools have extensive practical experience.” Redding, supra n. 41, at 605 n. 25. This finding may explain why Judge Edwards believed that those who normally would be called upon first to comment on
scholars who make the focus of their work on the problems that face the practicing attorney on a daily basis and who seek practical solutions—solutions that can be readily reached through the use of the legal tools available to the practitioner in her practice. The absence of such scholars, Judge Edwards argued, has led to the resolution of far too many important issues without the input of academic lawyers, as judges and practitioners currently have little use for much of the scholarship now produced by the legal academy.51

It is significant that Judge Edwards recognized the importance of academic commentary. His argument was not a mere rehash of the familiar refrain on the irrelevance of the ivory tower. Rather, his article was a cry for assistance from the academic community in resolving the problems he faces on the bench on a daily basis. As he stated in his article, he believed that legal academics were obligated to assist the practicing bar in administering our system of justice.52

Importantly, in calling for an increase in practical scholars and scholarship, Judge Edwards did not discount the importance of theoretical scholarship in the development of the law.53 He was simply calling for a better balance between the two.54 Other scholars who have commented on this issue agree that a balance between “practical” and “theoretical” scholarship is what is needed—not an argument over which is better or more worthy or important.55 Without such a balancing of interests, the current state of legal scholarship is, as one scholar described it, disheartening, as ever more law review articles are produced that fail to reflect the interests of society at large or those who work in the profession.56

Subsequent to the publication of his article, Judge Edwards has come under attack for, among other things, the anecdotal ba-
Taking the Road Less Traveled

ses for his conclusions. As is evidenced in his article, much of what Judge Edwards concluded was the result of his personal opinion and the opinion of his law clerks. Unfortunately, the merit of his conclusions has become lost in a seemingly never-ending dissection of the methods he used to reach them, especially since the research that has emerged in the wake of Edwards’s article supports many of his opinions, despite protestations to the contrary.

A 1996 study of legal scholarship by University of Iowa professor Michael Saks and others, undertaken in large part to test the merit of Edwards’s conclusions, found that, consistent with Edwards’s opinion, legal scholarship is of increasingly greater value to other legal scholars and of no increased value to practitioners. A comparative study of law review articles published in 1960 and 1985 found that their utility increased most significantly among scholars, marginally significantly during this time among judges and legislators and not significantly among practitioners. Dividing the potential readership of law reviews into “consumer groups,” consisting of (1) scholars, (2) judges and legislators, and (3) practitioners, the Saks study asked its panel of “reviewers” to determine the relevance of a particular article to each consumer group. Although the reviewers (and hence, the authors of the study) concluded that overall, law review articles were of more utility to the general legal populace in 1985 than in 1960, they nevertheless conceded that this was not the case with regard to practitioners. As the lack of utility of legal scholarship to the practicing bar was the premise for most of Judge Edwards’s conclusions, it is curious that the authors claimed to have nevertheless disproved him.

58 See e.g. Edwards, supra n. 45, at 52, 52 n. 54 (referring to discussions with law clerks).
59 See Saks et al., supra n. 57.
60 Id. at 369.
61 Id.
62 Id. at 369 n. 68 (noting that “[t]here was no statistically detectable change for the utility to practitioners” and noting in the footnote that “most, if not all, of our article raters began with the . . . assumption . . . [of] growing disutility of law review articles to anyone [but] legal scholars”).
2. The Causes of Disjunction between Academic and Practicing Lawyers

a. Lack of Practical Experience

As Judge Edwards stated and the Saks study showed, much of the traditional legal scholarship is not responsive to the needs of practicing attorneys. Moreover, this may be because, as my professional background survey indicates, on average, doctrinal professors lack the expertise to fully appreciate and analyze the issues confronting the practicing bar. Judge Edwards recognized this in his article when he stated disparagingly (and in a statement that no doubt was an open invitation to the academic criticism that inevitably followed) that “many law professors see themselves as intellectually superior [and] disconnected from the rest of the profession.” More fairly and accurately, it is probably the simple lack of long-term practical experience and the comparatively quick transition from student to professor that results in the feeling that many doctrinal professors have that they are primarily academics rather than lawyers. This may be why some practitioners believe that, “[i]ncreasingly, law professors see themselves more as colleagues of sociologists, economists, and philosophers [rather] than of judges and lawyers.”

Because many doctrinal professors believe that their most important constituency is not the general public or the practicing bar but their fellow scholars, they write articles that many times speak to each other rather than attorneys outside of the academic realm.

63 See supra sec. II(A); see also Redding, supra n. 41, at 612. Professor Redding’s survey found that as the prestige of a law school increases, the average number of years in practice of its professors decreases. Id. While he noted that the average length of practice time of doctrinal professors overall was short—less than four years—this number decreased even more as the prestige of the hiring law school increased. Id. “This likely reflects the fact that while law schools prefer to hire those with some professional experience, practical lawyering skills are less important to the elite schools, which tend to emphasize theory more and practice skills less than the lower-ranked schools.” Id.

64 Edwards, supra n. 45, at 75 (quoting one of the author’s former law clerks).

65 Seth P. Waxman, Rebuilding Bridges: The Bar, the Bench, and the Academy, 150 U. Pa. L. Rev. 1905, 1909 (2002). Those legal academicians who feel a kinship toward their fellow scholars from other disciplines rather than the practitioners in their own field suffer from a displaced loyalty. In many of the humanities and sciences (such as sociology, economics, and philosophy, for example), the academics and practitioners are one and the same. Practicing sociologists reside mostly within universities rather than in separate “sociology firms.” As a result, the scholarly work produced by these academics is, in effect, written for the practitioners in their fields as well.

66 See Bryden, supra n. 3, at 643.
b. The Predominance of Theory and Limitation of Range of Topics in Elite Law Reviews

Of course, even if more doctrinal professors wished their scholarship to speak to the practicing bar, tenure and promotion issues pressure many of them away from this approach. In order to reach the goal of tenure, there is great pressure on tenure-track professors to publish in elite law reviews. This once again leads to unfortunate results for the practicing bar because these journals tend to favor theoretical rather than practical approaches to legal issues and are increasingly narrowing the scope of acceptable topics for publication within their pages. As a result, many of the articles that appear in these top journals are on topics that are of little value to the vast majority of practicing lawyers.

Returning to Saks’s 1996 study, the authors found that, on the whole, the top-quintile journals—the ones most prized for those pursuing tenure—focus more on theory than on practical problems and produce the articles rated the least useful to practitioners. They “have increasingly become the province of legal scholars and the most experimental kind of scholarship, and less a forum for exchanges among legal scholars, practitioners, and judges.” Thus, those scholars interested in securing tenure are naturally encouraged to avoid practical scholarship to increase the likelihood of being published in one of these journals.

The range of topics most likely to be accepted by these top journals also discourages scholars from addressing issues of relevance to the practicing bar. A 2000 study conducted by University of North Carolina professor William Turnier on the decrease of tax law scholarship in law reviews found that an inordinate percentage (over 27%) of law review articles published in his survey of seventeen top-quintile journals were on the topics of constitutional or criminal law. Comparing the frequency of topics selected by these journals over the past fifty-five years, Turnier found that these two topics are becoming increasingly more dominant as time moves on. He concluded that the increasing predominance of constitutional law topics during the 1990s was particularly interest-

67 Infra nn. 68–74.
68 Saks et al., supra n. 57, at 374.
69 Id.
70 Turnier, supra n. 55, at 195 tbl. 2.
71 Id. at 195–196.
ing given the “relative inactivism by the Supreme Court” during this time.\footnote{72} Including other topics such as race, civil procedure, and civil rights (which often have constitutional components or underpinnings) with constitutional and criminal law results in a whopping 41% of all articles published by these top journals in the 1990s on these five topics alone.\footnote{73} On the other end of the spectrum, Turnier found that the number of articles on international law decreased dramatically from the 1960s to the 1990s despite increased globalization during this time and the presumed increasing need of the practicing bar for scholarship that addresses this growing field.\footnote{74} This increasing reliance on these limited topics by top journals is so well known that it has become fashionable in some academic circles to advise new law teachers that it is in their interest to add a constitutional angle to their articles to increase the likelihood of acceptance by a top-twenty law review.\footnote{75}

This advice may very well be sound career advice for the budding academic, but it ignores the needs and concerns of the practicing bar. In an attempt to quantify the amount of time attorneys spend on various fields of law, the American Bar Foundation undertook a long-term study of the Chicago bar.\footnote{76} It found that the members of the Chicago bar’s attention to business litigation increased sevenfold from 1975–1995 and that as of 1995, 64% of lawyers’ time was allocated to the business fields of antitrust, business litigation, real estate, corporate tax, labor, and securities.\footnote{77} However, business-related fields represented (charitably) less than 11% of the topics selected in 1991 and 1996 by the seventeen top-quintile law reviews discussed above.\footnote{78} By contrast, those topics most favored by these law reviews (constitutional law, crim-

\footnote{72} Id. at 195.
\footnote{73} Id. at 195–196 tbl. 2.
\footnote{74} Id. at 195.
\footnote{75} See Slomanson, supra n. 2, at 445–446.
\footnote{77} Id. at 766–767.
\footnote{78} See Turnier, supra n. 55, at 195 tbl. 2. The 11% figure (more precisely, 10.6%) is charitable because it includes articles on these topics that most likely were not business-related. Id. Turnier’s findings on the number of articles published on business-related topics in 1991 and 1996 were as follows: twenty securities, sixteen corporate, sixteen tax, ten antitrust, eleven labor/employment, ten commercial/sales, four creditor/debtor, zero business planning, and zero real estate transactions. Id. This totaled eighty-seven articles or roughly 10.6% of all articles published within these journals during this time period. Id. However, there exists the likelihood that some of the tax articles focused on personal rather than business tax issues, and articles on other subjects may similarly have focused on non-business aspects.
inal law, race, civil rights, and civil procedure) represented only 8% of total practicing attorneys’ time, with constitutional law (the overwhelming favorite topic of these journals) failing to draw enough interest to even register on the American Bar Foundation’s survey results.\textsuperscript{79} Clearly, there exists a gap between the scholarship in these elite journals and the issues faced by the practicing bar. And because publication in these top journals is a goal of many doctrinal professors, there is a disincentive for them to do the type of scholarship that responds to practical problems.

c. The Inability of the Traditional Legal Scholarship System to Respond to Practical Problems

Interestingly, this disincentive has not always been present. The most prestigious of all law journals, the \textit{Harvard Law Review}, began with the goal of serving the practicing bar. In its initial volume, published in 1887, the purpose of the \textit{Harvard Law Review} was stated as follows:

\begin{quote}
Our object, primarily, is to set forth the work done in the school with which we are connected, to furnish news of interest to those who have studied law in Cambridge, and to give, if possible, to all who are interested in the subject of legal education, some idea of what is done under the Harvard system of instruction. Yet we are not without hopes that the Review may be serviceable to the profession at large.\textsuperscript{80}
\end{quote}

The University of Pennsylvania’s law review, founded as the \textit{American Law Register} in 1852, was conceived as a journal, “published, written and edited by practicing lawyers for practicing lawyers.”\textsuperscript{81} Even after control of the \textit{Register} was transferred to the law school and editorial control ceded to student editors in 1895, it remained a publication focused on service to practitioners.\textsuperscript{82} In fact, a 1923 statement of the editorial board indicated a desire to form a closer bond with the practicing bar, such that the review, “[would] be in

\textsuperscript{79} Heinz et al., supra n. 76, at 765 tbl. 3.
\textsuperscript{80} Editors of Harv. L. Rev., Notes, 1 Harv. L. Rev. 35 (1887) (emphasis added).
\textsuperscript{81} Waxman, supra n. 65, at 1908 (correction in original) (quoting Edwin J. Greenlee, \textit{The University of Pennsylvania Law Review: 150 Years of History}, 150 U. Pa. L. Rev. 1875, 1880 (2002)).
\textsuperscript{82} \textit{Id.}
a position to render to the legal profession a service second to none to that of no other law school publication."^{83}

Today, however, as noted above, formal, traditional scholarship largely fails in this mission.\textsuperscript{84} Further evidence of the diminishing value of scholarship to the practicing bar comes from a 1998 study that found that judges’ citations to legal scholarship has decreased by almost 50\% over the last twenty years.\textsuperscript{85} Consistent with Judge Edwards’s conclusions, the practicing bar is increasingly turning elsewhere for assistance in solving most of society’s problems. This is the area of law crying out for analysis and comment that Dean Weidner spoke of in his 1994 speech. This is where current scholarly effort should be directed. However, the traditional legal scholarship system is ill-equipped to adequately respond.

The lack of adequate practical knowledge on both the editorial and authorial side of the traditional legal scholarship system renders this system incapable of satisfactorily addressing the full range of practical issues calling out for academic scholarship. Because most traditional law reviews are student-run and edited, the student editors understandably are more comfortable selecting articles on topics with which they have some familiarity. This results in the selection of articles based more on theory than on practice (after all, these editors have been exposed as students to theory but have not, by definition, been exposed to practice), as well as articles on topics covered in their favorite classes.\textsuperscript{86} While insurance law may be a course offered at practically all law schools, the comparative enrollment between that course and courses on constitutional law or civil rights should quickly explain the differences in frequency that these topics appear in law reviews.

In addition, as stated above, the backgrounds of many doctrinal professors likewise render them uncomfortable with many practical topics. As noted by one doctrinal professor:

\textsuperscript{83} Id.
\textsuperscript{86} See Turnier, supra n. 55, at 194 (concluding that student editors do not appreciate the importance of tax issues and instead consider constitutional and human rights issues more pressing).
It is difficult, or at least seems difficult, to write intelligently about commodities futures, regulation of an industry, taxation of foreign shareholders’ interests in domestic corporations and the like without considerable hands-on experience. Small wonder, then, that we prefer to work on original meaning of the Establishment Clause, or any other topic on which our credentials are equal or superior to those of the most seasoned lawyer.\(^{87}\)

Given the issues faced by both editors and authors, it is no wonder that law reviews have shied away from practical scholarship. Regardless of the cause, however, it is a problem that is crying for a solution. My professional background survey indicates that legal writing professors are equipped with the skills to step in and help to resolve it. Given that, on average, legal writing professors are the relative experts in the area in which there exists a major gap in scholarship, Dean Weidner would most likely suggest that it is our duty as scholars to step in and fill this gap.\(^ {88}\)

When considering the ancillary status question, however, this solution is not as simple. Two important questions are raised that require answers before the appropriate scholarly role of legal writing professors can be answered in full: (1) is it tactically appropriate for legal writing professors to highlight our relative differences from, rather than our similarities to, our doctrinal colleagues when attempting to achieve equivalent status? And (2) is it wise to focus our scholarly efforts on practitioners’ problems given that these topics are traditionally accorded the least amount of scholarly respect? The following Section will tackle the first question. The practical scholarship dilemma will be addressed in Section III.

\[C. \text{The Wisdom of Highlighting Differences in an Effort to Achieve Equality}\]

Although at first blush it may seem counter-intuitive to highlight one’s differences from a group in an attempt to achieve similar status, further analysis of this issue as it applies to the unique situation of the legal writing professor in the legal academic community shows why it makes sense here.

\(^{87}\) Bryden, \textit{supra} n. 3, at 645.

\(^{88}\) Weidner, \textit{supra} n. 3, at 442 (“The productive scholars are the ones who know how many areas are crying out for analysis and comment. They are the ones who know how many improvements could be made to the law, if only people focused on them.”).
As anyone who has spent significant time as a member of a legal writing faculty can attest, legal writing is often trivialized either institutionally or by certain members of a school’s doctrinal faculty. Although certainly this is not a view shared by all (or even most) members of the doctrinal community today, the fact remains that at many schools, the legal writing faculty remains on the fringes of academia; often paid significantly less than our doctrinal colleagues, most often not on tenure-track, and usually subjected to a series of one-year or short-term contracts. All of this occurs despite the fact that judges and practitioners repeatedly cite legal research and writing as the most important legal skills of a new attorney. Clearly, the vast majority of law schools do not provide equal status to their legal writing faculties.

Although it is tempting for the legal writing community to strive to achieve integration through assimilation—to proclaim to our doctrinal peers that, in essence, “we deserve equal treatment because we are no different than you,” this argument does not work in an environment where even minute differences in the traditional status indicators are significant. In fact, we are similar to our doctrinal peers in many ways, but there exist demonstrable differences between us with regard to several of these indicators that most likely have prevented legal writing professionals from achieving equal footing with our doctrinal colleagues.

As noted in the professional background survey in Section II(A)(2), legal writing professors are less likely to have attended a top-twenty law school than doctrinal professors (42% versus 58%). This discrepancy is consistent with the findings of an earlier study that found that only 25% of tenured or tenure-track legal

89 See Peter Brandon Bayer, A Plea for Rationality and Decency: The Disparate Treatment of Legal Writing Faculties as a Violation of Both Equal Protection and Professional Ethics, 39 Duq. L. Rev. 329, 353–354 (2001) (explaining how legal writing professors are subjected to less desirable employment terms and conditions than other full-time professors).
89 See Fine, supra n. 9, at 26–27.
81 See ALWD/LWI Survey, supra n. 1, at 55 question 75. The average salary for a full-time teacher of legal writing in 2004 was between $49,419 and $59,395. Id.
82 Id. at 5 question 10. In 2004, only six legal writing programs had in place a staffing model that utilized tenured or tenure-track teachers hired specifically to teach legal writing. Id.
83 Id. at 48 question 65. Of those legal writing programs responding in 2004, twenty-four had professors with tenure or on tenure-track, thirty-six had professors with contracts of three years in length or more, twenty-four had two-year contracts, and sixty had one-year contracts. Id.
84 See Fine, supra n. 9, at 227.
85 Supra sec. II(A)(2) (in part IV of the chart, discussing the academic breakdown).
writing professors graduated from a top-twenty law school, as compared with 60% of doctrinal professors. More specifically, legal writing professors are far less likely to have attended Harvard Law School (6% versus 28%).

An analysis of clerkship experience likewise highlights some significant differences in status indicators. According to the findings of the professional background survey, although legal writing professors and doctrinal professors were roughly equally likely to have had clerkship experience (38% versus 34%), the type of clerkship experience differed. Doctrinal professors were more likely to have had a federal clerkship than a state court clerkship and were likewise more likely to have had a United States Supreme Court or intermediate appellate clerkship as opposed to a district court clerkship. The most likely clerkship experience for a legal writing professor would be at an arguably less prestigious state court rather than at a federal one and at the trial level rather than at the appellate.

An additional status indicator that highlights the differences between legal writing and doctrinal professors is the practical experience factor. Historically, practical experience has been viewed within the legal academy as a negative when assessing faculty candidates. While some may argue that this viewpoint is antiquated and no longer the norm, the lack of practical scholarship discussed above indicates that practical experience, if not disparaged today, is certainly not embraced.

These, albeit relatively minor, differences between legal writing and doctrinal professors are nonetheless significant. They perhaps explain why the “integration through assimilation” strategy

---

96 Levine, supra n. 8, at 542; see also Redding, supra n. 41, at 600 tbl. 1 (reporting that 86% of new faculty hires at all law schools between 1996 and 2000 received their J.D. degrees from a top-twenty-five school as ranked by the 1999 U.S. News & World Report Law School Rankings).

97 See supra sec. II(A)(2); see also Redding, supra n. 41, at 599 (reporting that 18% of all new doctrinal faculty hires between 1996 and 2000 received their J.D. degree from Harvard).

98 Redding, supra n. 41, at 600 (finding that 57% of the doctrinal faculty hires in his survey had completed a clerkship, with 46% having a federal clerkship and 10% a United States Supreme Court clerkship).

99 See Bryden, supra n. 3, at 642–643; see also Redding, supra n. 41, at 612 (noting that the amount of practical experience of new faculty hires decreases with the prestige of the hiring law school). Redding’s findings give credence to the conclusion that the most desirable faculty candidates are those without significant practical experience.

100 Pursuant to this strategy, legal writing faculties are encouraged to assert themselves as integrated members of their faculties in the hope that eventually their doctrinal colleagues will realize that there are essentially no differences between the two groups and
The mindset that legal writing professors are lesser because of these differences is well-ingrained in many law schools and continues to flourish because of the makeup of doctrinal faculty hires. As the professional background survey found, the elite law schools continue to be the most fertile ground for faculty hiring. At least one study has found that as many as 74% of law teachers received either a primary (J.D.) or secondary (LL.M.) legal degree from a top-twenty school.\(^{102}\) Coincidentally (or perhaps not), these top tier schools were also far less likely to hire legal writing professors to tenured or tenure-track positions. In fact, a 1995 study found that the schools typically ranked in the bottom half of the *U.S. News & World Report*’s law school rankings were far more likely to appoint legal writing faculty to these types of positions.\(^{103}\)

Given the amount of weight in the doctrinal faculty hiring process that apparently is placed on law school attended, it is not

\(^{101}\) Fine, *supra* n. 9, at 225.


\(^{103}\) Levine, *supra* n. 8, at 539.
surprising that the elite schools hire their doctrinal faculty from similarly elite schools at greater than the 74% national average. One recent study of new faculty hires found that more than 96% of doctrinal faculty hires at the top twenty-five schools received their J.D. degrees from these same top twenty-five schools. Conversely, the less prestigious schools hire doctrinal faculty members who attended a greater variety of law schools and are more than six times as likely to hire new doctrinal faculty members from schools outside of the top twenty-five.

These statistics, which seemingly relate solely to doctrinal professors, are of great importance to legal writing professors—they demonstrate why the lesser status of legal writing professors continues. Because doctrinal faculties in all schools continue to replenish themselves with members who attended law schools that were more likely to consider their legal writing faculties as somewhat inferior (perhaps because of the emphasis of these schools on theory over practical skills and experience), it is only natural that these faculties would adopt a similar view of their present legal writing colleagues. This viewpoint is likely more deeply ingrained in the elite schools (which most likely hire a greater percentage of doctrinal faculty members from elite schools) and somewhat less well-established in lesser schools as the faculty pool widens to consider candidates who attended lower-ranked schools—schools that are also more likely to have afforded equal or increased status to their legal writing faculties. This may be why the 1995 study of tenure and the legal writing professoriate concluded that while it is likely that more and more schools will allocate tenure track positions to teachers of legal writing in the future, the schools most likely to do so would likely continue to be those that are lower-ranked.

1. The Legal Writing Professors’ Dilemma

The legal writing faculties at the majority of law schools today face a dilemma. Unquestionably, positive changes in the status of legal writing professors have occurred with great frequency over

---

104 Redding, supra n. 41, at 600 tbl. 1.
105 Id. While less than 4% of doctrinal faculty hires at the top twenty-five schools received their J.D. degrees from a top fifty or lower-ranked school, more than 25% of doctrinal faculty hires at all other schools came from schools other than the top twenty-five. Id.
106 Levine, supra n. 8, at 548–549.
the past several years. (The fact that an ever increasing number of legal writing teachers are officially titled “professors” rather than “instructors” for example, is testament to these changes.)\textsuperscript{107} However, true equality with our doctrinal peers has not been reached in most law schools, and a barrier still exists between our doctrinal colleagues and ourselves. The legal writing community is thus presented with a choice: it can either stay the course and hope for conditions to improve as ever more doctrinal faculty members are hired from lesser schools (schools that gave equal status to their legal writing faculty) by a wider range of law schools, or it can shift the focus of the debate to clear the final, and biggest, hurdle to equality. The former option may very well take decades as incrementally, a greater number of viable doctrinal faculty candidates graduating from schools that treated their legal writing faculties as equals emerges. This process, by definition, will be a multi-generational one, leaving many of those currently teaching legal writing to do so without realistic hope of achieving true equality with their doctrinal peers during their professional lifetimes.

Alternatively, as stated above, the legal writing professoriate can decide to shift the focus of the debate in an effort to achieve the same results much more quickly and efficiently. The goal of equality would remain the same but now, the argument for equality would focus not on our similarities with our doctrinal peers but rather on our unique role within our faculties—a role that enables us to fill a void that only we are qualified to fill. It would center on our ability to bring something unique to the academic table, and for which we hold the competitive advantage. By focusing on our strengths (practical knowledge) rather than our relative weaknesses, we stand a greater chance of ultimate success. Thus, practical scholarship makes unique sense for the legal writing community.

Although practical scholarship is not considered as prestigious as traditional scholarship, this mindset ignores the problem as identified by judges and the practicing bar, who are crying out for “thorough, thoughtful, concrete legal advice.”\textsuperscript{108} In addition, more articles focused on legal practice are needed to fully prepare the modern law student for the issues he or she will likely face as a

\textsuperscript{107} See ALWD/LWI Survey, supra n. 1, at 49 question 68. In 2001, fifty-seven of the schools responding to the survey indicated that they used the “professor” title in one form or another with regard to their legal research and writing faculty members. By 2004, this number had increased to eighty-four. Id.

\textsuperscript{108} Edwards, supra n. 45, at 57.
practicing lawyer.\textsuperscript{109} As the members of our faculties with, on average, the most significant amount of practical experience, we should focus our scholarship on this area of law.

It is important to remember that our relative strength in this area does not highlight a weakness in the academic makeup of our doctrinal colleagues but is, rather, merely a reflection of our different backgrounds and resulting talents. Because of the greater likelihood that doctrinal professors attended the traditional academic “feeder schools,” had federal appellate clerkships, and made comparatively quick transition from student to teacher, they are well-trained in the theoretical aspects of the law. This knowledge is vital to the development of the law.\textsuperscript{110} Legal writing professors, because of their differing backgrounds, simply bring a different area of expertise to the academic table. Neither skill is more significant than the other, and both are equally integral to the development of the law and service to the legal community.

2. \textit{Toward a Law School of “Position Players”}

This highlighting of differences is consistent with the viewpoint that law faculties should optimally be places where people of different backgrounds and skills can come together and complement each other. In his article on the role of scholarship among tenure-track faculty, Professor Kenneth Lasson called for faculties to aspire to “mold [themselves] as position players, not as clones of one another.”\textsuperscript{111} Although Lasson was speaking on the value of scholarship among doctrinal faculty members, his advice rings true as it applies to scholarship by all members of a law school’s faculty. To the extent that a particular member of a faculty has an academic strength relative to the rest of the faculty, that strength should be encouraged and be allowed to flourish.\textsuperscript{112} It is detrimental, not merely to the individual faculty member but to the law school and society as well, to force that faculty member to conform to a traditionally accepted role in order for him or her to achieve recognition and the full range of benefits from his or her colleagues.

\textsuperscript{110} See Edwards, supra n. 45, at 35–36.
\textsuperscript{112} See id.
Theoretical and practical scholarship can and should peacefully coexist in a law school community. It is not an issue of “us versus them” for scholarly supremacy, but rather, the entirety of a law school faculty complementing each other for the ultimate betterment of the greater legal community.\(^\text{113}\) If one supposes that the purpose of law is to better society,\(^\text{114}\) then lawyers who write about the law should have this goal in mind when choosing their topics.\(^\text{115}\) Because the legal academy is the branch of the law charged with the obligation of analyzing and writing about it,\(^\text{116}\) it is vital that all aspects of society are considered when making these choices. Working together, doctrinal and legal writing professors can discharge this obligation in its entirety.\(^\text{117}\)

3. \textit{Practical Knowledge and the “Generation X” Law Student}

Similarly, doctrinal and legal writing professors can and should use our differing skills to work together to prepare students for the practice of law. A proper legal education focuses both on the theoretical as well as the practical aspects of the law. Recent legal scholarship has noted an increase in student unease with regard to the completeness of their legal education.\(^\text{118}\) Many students are dissatisfied with the skill set they are taking with them from law school into the legal marketplace and feel that they are not prepared to tackle much of what will be thrown at them by their employers after graduation.\(^\text{119}\) As these concerns focus on a practical

\(^{113}\) Id.

\(^{114}\) See id. at 943.

\(^{115}\) See Fred Rodell, \textit{Goodbye to Law Reviews}, 23 Va. L. Rev. 38, 42 (1936) (“[I]f any among the lawyers might reasonably be expected to carry a torch or shoot a flashlight in the right direction, it is the lawyers who write about the law.”).

\(^{116}\) See id.

\(^{117}\) See generally Edwards, supra n. 45, at 38–39 (discussing the academicians’ obligation to serve the system of justice).

\(^{118}\) E.g. Rogelio Lasso, \textit{From The Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students}, 43 Santa Clara L. Rev. 1, 15 (2002) (“Law students across the country complain that their legal education leaves much to be desired.” Id. at 16.).

\(^{119}\) See Rodney O. Fong, \textit{Panel Presentation, Generation X: Students in the 21st Century}, part of panel, \textit{The Challenges of Connecting with 21st Century Students} (Opening Plenary AALS 2002 Annual Meeting, New Orleans, La., Jan. 2, 2002) (available at www.aals.org/am2002/workshop.html). Professor Fong discussed the “ultra-consumerism” outlook of the modern law student and how many students are dissatisfied with the skills set they leave law school with after paying thousands of dollars for a legal education. In their opinion, this investment entitles them to concrete knowledge they can apply directly to
rather than a theoretical legal knowledge gap, the practical scholarship of legal writing professors can step in here as well to help fill it.

Research on the topic of educating Generation X students has shown that today’s law students differ from their predecessors in several important ways. Unlike their parents, they take a consumer-oriented approach to their education and see law school not as a purely intellectual experience but as an extensive financial investment toward a career as a lawyer. This change in mindset is significant in that they believe that they should receive “value,” as they rather than their professors define it, in exchange for the payment of tuition. Knowledge for its own sake takes a back seat in the eyes of many students. Instead, they seek knowledge that can be applied directly to their careers as practitioners.

While the wisdom of allowing these students to dictate the parameters of the entirety of their legal education is certainly debatable, the practical knowledge of the legal writing professoriate can be utilized to help allay student fears somewhat and respond to some of their concerns. Theory, regardless of its perceived utility in the eyes of the Generation X student, is a prerequisite to even the most basic understanding of the workings of the law. Thus, to a large degree, these students will be compelled to take their medicine regardless of how distasteful they may find it. However, scholarship on practical issues and concerns can help satisfy these students’ cravings for knowledge and information directly relevant to the issues they will be facing as practitioners in a few short years. In the eyes of the Generation X student, scholarship that

---


121 Fong, supra n. 119.

122 Id.

123 Id.

124 Id.

125 See ABA Sec. Leg. Educ. & Admis. to B., Teaching and Learning Professionalism: Report of the Professionalism Committee 13–18 (ABA 1996). To adequately respond to the call for an increase in training in professionalism in law schools and to better respond to types of issues many students will soon face as practitioners, the committee recommended the hiring of faculty with extensive practical experience and urged law schools to overcome “the apparent reluctance . . . to hire lawyers with extensive practice experience as tenure
addresses their concrete needs is merely different than the knowledge the students are otherwise exposed to, not lesser.\footnote{126}{See Fong, supra n. 119.}

The current disconnect between many doctrinal faculty members and their Generation X students comes in part from the nature of traditional scholarship. Because doctrinal legal scholars see each other as their constituency,\footnote{127}{See Bryden, supra n. 3, at 643.} they may have less to say to their students outside of class on the major substantive issues of the day.\footnote{128}{See Weidner, supra n. 3, at 441–442.} In a scholarly sense, students are neophytes, and as such, can be made to feel left on the fringes of the debate between scholars.\footnote{129}{Id. at 17. Dean Weidner commented that “the biggest pitfall of academia \[is\] spending the bulk of one’s time interacting [with] novices in your areas of expertise. The more years you spend as a legal academic, the less satisfying it will be to have something to say only to your students, who as a group tend to know relatively little about the area you are teaching them.” Id. at 442.} This, in turn, may result in increased angst in students who feel as if their needs and opinions are being ignored. Because practical scholarship speaks directly to practitioners and aspiring practitioners, it brings students back into the fold by focusing on issues that are important to them and their burgeoning careers. The wealth of practical knowledge stored within the combined legal writing professoriate should be tapped so as to enable us to step in and help round out the modern law students’ legal education.

4. Professional Education as a Blending of Practical and Theoretical Knowledge

It is interesting to note that, with the possible exception of the clinical programs and faculty, legal education stands out among the professional educational disciplines as the only one that frowns upon practical knowledge.\footnote{130}{Although clinical programs appear to be ever-increasing components of legal education, clinical faculty members often face their own status issues and marginalization by the doctrinal faculty. An analysis of the role of scholarship of clinical faculty members is, however, beyond the scope of this Article.} Business, medical, and architecture schools all embrace practitioners on their faculties.\footnote{131}{See Waxman, supra n. 65, at 1910 (noting, in addition, that the nature of many academic disciplines dictates that many scholars throughout academia are likewise, de...}
all, medical schools count as full fledged faculty members those who are also or have been practicing physicians.\textsuperscript{132} As many as two-thirds of the faculty at numerous top-tier schools of architecture are either practitioners or have significant practical experience.\textsuperscript{133} There is no inherent theoretical difference between medical and architectural education on the one hand and legal education on the other that would justify an embrace of practical knowledge in the former and a distaste for it in the latter. The difference between them comes down simply to a difference in mindset. To change the culture of inequality within legal faculties, the legal writing professoriate must work to change the ingrained, institutional mindset rather than continue to fight a battle that will invariably result in unequal status for the legal writing professor for years to come.

The focus of the debate over equality must be changed to one that highlights the strengths of the legal writing professoriate rather than our perceived “weaknesses.” It must address the greater concerns of modern legal education and service to the legal community rather than ignore these important and influential factors. As the legal scholarly market is literally crying out for more practice-based scholarship from the academy—scholarship that responds to the issues that vex the practicing attorney on a daily basis and proposes workable solutions—the legal writing professoriate has not only a golden opportunity but a responsibility to step forward into this breach.

This Article is not the first to call upon the legal academy to do a better job of imparting practical knowledge to the legal community. In fact, during his keynote address at the University of Pennsylvania’s Sesquicentennial Anniversary Banquet in 2002, Seth Waxman, a partner at Wilmer, Cutler and Pickering and a former Solicitor General of the United States, addressed this very issue when he said:

\textsuperscript{132} See Waxman, supra n. 65, at 1910 (noting that most members of medical faculties are also practicing physicians).

\textsuperscript{133} See Fisher, supra n. 131, at 168.
Premier law schools . . . need to make affirmative efforts to hire gifted people who have been successful in practice, public and private. I’m referring not just to adjunct professors who rush in and out. I’m referring not simply to the need for more clinical faculty. I’m . . . talking about practitioner-scholars who are fully integrated into the academic faculty.\textsuperscript{134}

The call for such scholars has already been made. It is our responsibility as legal writing professors to stand up and let our doctrinal and practitioner colleagues know that we’re already here.

III. WHERE SHOULD WE PUBLISH? DETERMINING THE APPROPRIATE VENUES FOR PRACTICAL SCHOLARSHIP

Once the legal writing professor has completed her practical scholarship, the next question becomes where she should submit it for publication. Traditional status indicators suggest that she should submit it to a number of student-edited law reviews and hope for acceptance from an elite journal. After all, formal law review articles published in these journals are vested with the greatest level of respect from the legal academy.\textsuperscript{135} This poses a problem for the legal writing professor, however, because, as stated above, practical scholarship is often relegated to the lower-tiered, less prestigious journals.\textsuperscript{136} Moreover, the most appropriate forum for practical scholarship is often in the bar journals and practice manuals that reach her intended audience but that rank at the bottom of the prestige scale, even below the least prestigious law reviews.\textsuperscript{137} Therefore, it appears that for the legal writing professor to write in her field of expertise, she must sacrifice prestige. This flies in the face of the “integration through assimilation” approach to equality for the legal writing professoriate, which would naturally counsel legal writing professors to seek to publish formal law review articles in the same journals that publish the scholarship of our doctrinal colleagues. However, traditional, student-edited law reviews are uniquely inappropriate venues for the

\textsuperscript{134} Waxman, supra n. 65, at 1912.
\textsuperscript{135} See Fine, supra n. 9, at 230.
\textsuperscript{136} See Slomanson, supra n. 2, at 434–435 (“One general list of priorities divides legal writing into four broad categories, in ascending order of worthiness: practice-oriented materials (bar journals and manuals); academic short subjects (essays, book reviews, and brief case notes); law review articles; and books.” (emphasis in original.).)
\textsuperscript{137} Id.
scholarship of the legal writing professoriate for several reasons relating to how they work and whom they reach.

A. Five Reasons Why Student-Edited Law Reviews Are Improper Scholarly Venues for Legal Writing Professors

1. The Predominance of Theory-Based Articles in Top Journals

As stated in Section I of this Article, law reviews have been criticized, notably by Judge Edwards but by others as well, for abandoning practical legal problems and increasingly choosing instead to focus on theory. Judge Edwards gave voice to the many critics, both within and outside the academy, who believe that practical scholarship has declined in law reviews and that the crucial link between the legal academy and our system of justice has been severed by this rising tide of theory-based scholarship.

In reality, this criticism appears to be somewhat of a generalization. The 1996 Saks et al. study remarked that because there are thousands of law review articles published annually (more than any one person could ever possibly hope to read), Judge Edwards’s anecdotal comments are most likely the result of his familiarity with a limited number of journals and articles and cannot possibly cover the entirety of legal scholarship. The Saks et al. study of a range of law reviews across the prestige hierarchy found that only the top quintile journals were guilty of the sins espoused in Judge Edwards’s article. They contained the highest proportion of articles focused on theory while lesser journals contained a greater proportion of the practice-based articles Judge Edwards claimed had all but disappeared. In conclusion, the Saks et al. study stated that focusing merely on these top quintile journals results in a misperception regarding the state of legal scholarship overall and suggested that courts look to a wider range of law reviews for advice in an effort to reestablish the link that Judge Edwards claimed was missing.

138 Edwards, supra n. 45, at 35.
139 Id. at 42, 57.
140 Saks et al., supra n. 57, at 360.
141 Id. at 374.
142 Id.
143 Id. at 374–375.
The Saks et al. study may have effectively discussed the relationship between the law reviews and the judicial system, but it only highlights the problem as these reviews apply to the legal writing community. As the Saks et al. study found, the top quintile journals—those journals that also rank highest on the prestige scale—are far more likely to accept theory-based articles than practical ones. As a result, those who choose to focus on practical scholarship will be more likely to find their work accepted by the less prestigious journals and ignored by the top ones.

Mere publication of an article in a law review article does little to affect one’s academic status because of the sheer number of journals (more than 800 at last count) and articles published annually (more than 5,000 according to some). Given the likelihood that some editor somewhere is short on submissions and facing a deadline, the bar has been lowered to the point where “reasonably intelligent copy” is all that is needed to ensure publication at least in some lesser law reviews. Because practically everyone in the legal academy is publishing work somewhere, it is the status of the journal in which one’s work is accepted that is the overriding factor in determining the scholarly status of the individual. By repeatedly having our work published in these lesser journals, our “lesser scholar” status will only continue to be perpetuated. Part I of this Article concluded that legal writing professors are different, not lesser scholars. Therefore, we need to be conscious to avoid that perception at all costs.

2. The Limited Subject-Matter Focus of Student-Edited Law Reviews

As noted above, Professor Turnier’s 2000 study found that a limited range of closely related subjects receive an overwhelming amount of attention in the elite law reviews. It should come as no surprise that constitutional law and criminal law and procedure were the most popular topics with civil procedure, civil rights, and race (topics that often have constitutional underpinnings) not far behind. Overall, constitutionally based topics (constitutional

---

144 Id. at 374.
145 Lasson, supra n. 111, at 928.
146 Slomanson, supra n. 2, at 435.
147 Turnier, supra n. 55, at 195–196.
148 Id.
Taking the Road Less Traveled

law, civil procedure, civil rights, and race) accounted for nearly 32% of all articles published by these elite journals in 1991 and 1996.\footnote{Id. at 195 tbl. 2.} Moreover, the top five topics combined (constitutional law, criminal law and procedure, race, administrative law, and women and the law) accounted for nearly half of all articles published within these journals.\footnote{Id. at 196.} The predominance of these topics is neither surprising to anyone who has perused a law review nor unknown to those within the legal academy. As stated above, some professors, in fact, believe it prudent to add a constitutional angle to their scholarship so as to increase their chances of being accepted by one of these journals.\footnote{See Slomanson, supra n. 2, at 445–446.}

One who makes practical scholarship his or her focus does not have a similar luxury, however. Because so few practitioners practice constitutional law,\footnote{See Heinz et al., supra n. 76, at 765 tbl. 3. In fact, constitutional law was so sparsely practiced that it failed to even register within the Chicago study. Id.} or even remotely address constitutional issues in their practices, adding a constitutional angle to a practical subject risks alienating the market we are dedicated to serving. However, ignoring constitutional or other issues popular with the elite journals will lessen our chances of publication with them. Although our work nonetheless will likely be published somewhere,\footnote{See supra n. 146 and accompanying text.} it will likely be with a lesser journal, thus once again perpetuating our “lesser scholar” stigma.

3. The Predominance of Footnotes and Turgid Prose\footnote{See Lasson, supra n. 111, at 942 (“Law review prose is predominantly bleak and turgid.” Id.).}

There are as many theories on why legal scholarship looks and reads the way it does as there are footnotes in the average law review article. Regardless of the reasons behind the generally accepted style of law review writing, the style itself presents issues unique to the legal writing community. Unlike doctrinal peers, legal writing professors teach, in part, writing style. Some focus on it explicitly; others may focus more overtly on analytical technique in their classes but cannot help but consider the nature of how it is presented when reviewing their students’ work. We are teachers of legal writing, after all. We
counsel our students to write simply and clearly, avoid excess words, legalese, and the passive voice, among other stylistic sins. Our intellectual honesty may justifiably be called into question if we fail to practice in our scholarship what we preach in class.

Even though publication may not be a formal requirement for promotion or retention, scholarship makes sense for the legal writing professoriate simply to enable us to hone our writing skills. In this sense, and unlike our doctrinal peers, scholarship directly impacts the quality of our teaching: the better writers we are, the better teachers of writing we will become. We are not, however, honing these skills if we write in a style that contradicts what we instruct in class. In his now famous article, Professor Fred Rodell remarked that there are two things wrong with almost all scholarly legal writing: “One is its style. The other is content.” As we teach style, we need to be particularly sensitive to this concern.

Rodell’s article goes on to chronicle the most egregious sins, in his eyes, of the typical law review article—sins that, if anything, have become even more pervasive in the almost seventy years since his article was published in 1936. One such sin is the proliferation of footnotes. “Every legal writer is presumed to be a liar until he proves himself otherwise with a flock of footnotes,” he wrote. He continued, writing that footnotes are the result of “sloppy thinking” and “clumsy writing.” Along the same lines, Justice Arthur Goldberg noted that footnotes “cause more problems than they solve.” It is perhaps for these and many other reasons that the legal writing texts we teach from counsel against the use of footnotes either absolutely or advise a sparing use at best. Regardless of the rationale behind the use of the footnote, few would disagree that they are the antithesis of the simple and clear writing style we attempt to instill in our students each year.

---

155 See Liemer, supra n. 10, at 1024.
156 Rodell, supra n. 115, at 38.
157 Id.
158 Id. at 41.
159 Id.
160 Lasson, supra n. 111, at 940 (quoting Arthur Goldberg, The Rise and Fall (We Hope) of Footnotes, 69 ABA J. 255, 255 (1983)).
161 See e.g. Nancy L. Schultz & Louis J. Sirico, Legal Writing and Other Lawyering Skills 312 (3d ed., Lexis 1998). In discussing the proper format for the argument section of an appellate brief, the authors advise students to “[u]se footnotes sparingly. Generally, if the thought is worthy of a footnote, you can fit it into your argument. Footnotes are undesirable because they interrupt the flow of the argument.” Id.
Another sin of particular concern to the legal writing community is the proliferation of passive voice and other stylistic offenses contained in many law review articles. As one commentator noted, “The style of legal scholarship violates every precept in a manual of expository writing: it is abstract, plodding, pompous, and prolix.”

Rodell highlighted the legal scholar’s fascination with hedged, impersonal statements by pointing out a well-worn phrase, still in (over)use today: “It would seem—,” the matriarch of mollycoddle phrases, still revered by the law reviews in the dull name of dignity.”

Reliance on the passive voice, excess words, awkward syntax, and an emphasis on saying things complicatedly rather than simply—all things we instruct our students to avoid—flourish with abundance in the law reviews. Even if we are not aware of it, we teach our students according to Rodell’s closing credo: “that the English language is most useful when it is used normally and naturally.” Is it then not improper for us to then violate our own teachings in the name of legal scholarship?

Our doctrinal colleagues do not face a similar ethical crisis. Not only do they not teach style, the traditional law review style may very well benefit them in ways that do not inure to us. Because their most important constituency is other scholars, their scholarship is written for each other rather than the general public or practicing bar. As in any profession, there inevitably develops a unique jargon among insiders, impenetrable to those outside of the loop that enables them to communicate with one another in a specialized manner they can readily understand. By contrast, because practical scholarship is meant to be utilized by the practicing bar, it must be written in a style that is easily accessible to lay attorneys. While doctrinal legal scholars may very well communicate with one another via their specialized jargon, legal writing scholars, as experts in practical knowledge, must communicate with their constituency in the simpler language in which they regularly communicate (if we have taught them well when they were our students).

In addition, to the extent that traditional legal writing style can be considered “bad” writing, it does not handicap doctrinal pro-

162 Bryden, supra n. 3, at 647.
163 Rodell, supra n. 115, at 39.
164 Id. at 45.
165 Bryden, supra n. 3, at 643.
166 Id.
167 See Lasson, supra n. 111, at 944.
fessors as it does legal writing professors. “Good” writing is considered good mainly because it is easily accessible to the reader. In general, the demands of the marketplace require good writing because if the reader (the consumer) determines a piece of writing to be “plodding, pompous, and prolix,” he can set it aside and choose to read something else. In this marketplace, good writing will be read (and theoretically rewarded) and bad writing ignored. A professional writer must respond to the wishes of his audience if he wants to continue to be a professional writer.

This market does not exist in the world of doctrinal legal scholarship. There is no need to respond to the desires of the marketplace when a doctrinal professor can merely assign his work to his students. Fellow doctrinal scholars are likewise required to read their colleagues’ work regardless of its style as a courtesy and when making a tenure or promotion decision. Although theoretically, “plodding, pompous, and prolix” writing can affect this determination, it appears highly unlikely that someone would be denied tenure based on his or her writing style.

If legal writing scholars are going to focus on practical scholarship, however, we will be subject to traditional market forces. Given practicing bar members’ busy schedules, they will only read that which is easily accessible to them. If we want to effectively and continually reach our intended audience, we must write in a simple, clear style that grabs their attention and makes them want to read what we have to write. In short, to effectively communicate with our readers, we must practice in our scholarship what we teach in our classes.

4. The Limited Audience for Law Review Articles

Publication in traditional law reviews does not make sense to legal writing professors if for no other reason than the simple fact that many members of our audience do not read law review arti-
Taking the Road Less Traveled

articles. Many practitioners have been trained through experience to avoid law reviews because there typically is not much contained in them that is relevant to their practices.\textsuperscript{177} This is evidenced by the fact that the overwhelming majority of law review articles are cited not by courts or legislators but by one another.\textsuperscript{178} It is the rare law review article that is cited in case reports or annotated codes.\textsuperscript{179} Moreover, as discussed in Part II(B)(2)(c), a 1998 study found that the frequency of judges’ citations to law review articles is declining rapidly: almost 50% in the prior twenty years with the greatest decline occurring in the ten most recent prior years.\textsuperscript{180} While some complain “that [many] law review [articles are] made to be written and not read,”\textsuperscript{181} it is clear that whatever audience exists for them exists within the academic realm.\textsuperscript{182} On the other hand, practitioners utilize those scholarly resources that are more likely to address their concrete problems: bar journals, practice manuals, and continuing legal education materials. For the legal writing professoriate to reach its audience, it is only natural that we focus our scholarly attention on these publications rather than traditional law reviews.

Practitioners utilize these alternative scholarly resources simply because these resources are better equipped to respond more quickly and efficiently to the issues faced in their practices. For example, much of the scholarship that takes place in the field of tax law occurs within the pages of Tax Notes, a weekly journal that is designed to provide the scholarly debate over a particular issue to practitioners quickly: three weeks lead time between submission and publication is all that is required.\textsuperscript{183} By way of contrast, a traditional law review article typically takes about two years to go from idea to publication.\textsuperscript{184} Because of this, “tax scholars who wish to affect the national legislative agenda find that student-edited law reviews provide a ponderously slow vehicle.”\textsuperscript{185} Many of the issues confronting practitioners move so quickly that the traditional law reviews, even if the above-noted style and sub-

\begin{small}
\begin{enumerate}
\item See Edwards, supra n. 45, at 54.
\item See Lasson, supra n. 111, at 932.
\item Id. at 932–933.
\item Waxman, supra n. 65, at 87.
\item Lasson, supra n. 111, at 931.
\item See Bryden, supra n. 3, at 643.
\item Turnier, supra n. 55, at 193–194.
\item Id. at 193.
\item Id.
\end{enumerate}
\end{small}
stance issues were resolved, do not provide an effective scholarly vehicle for them.  

Of course, the sticking point when it comes to the use of bar journals and the like as conduits for legal scholarship is that, at best, bar journals, practice manuals, and continuing legal education materials are considered at the bottom of the prestige scale within the legal academy and, at worst, are not even considered scholarship at all.  

Publication in the least prestigious law review is considered to be more desirable.  

Although there is an unfixable status issue with regard to publication in lesser journals (for publication within them will always be considered lesser than publication in the elite journals that most likely rejected the article), the status issue is a correctable one when publishing in a different rather than a lesser journal. Because legal writing professors bring different skills, and expertise in a different area than our doctrinal colleagues, it should naturally follow that we should publish our work in different journals. As our scholarly mission differs, so should our scholarly publications.

This is not to suggest that convincing our doctrinal colleagues to accept this change in mindset will be a simple task. However, continuing to publish in lesser journals does nothing but perpetuate the stereotype that legal writing professors are lesser scholars than our doctrinal peers. Ultimately, it is easier to demonstrate that a bar journal article responding to the needs of the practicing bar is worthy scholarship than a traditional article that finds its home in a bottom-tier law review mainly because it had previously been rejected by all of the more prestigious ones.

5. Virtually All Law Reviews Are Student-Edited

Legal scholarship is unique among its academic brethren in that it is the only discipline in which the work is primarily dictated and under the control of student-edited journals. Virtually all other disciplines rely most heavily on peer-edited journals. This

---

186 Id.
187 Lasson, supra n. 111, at 936.
188 Cf. Slomanson, supra n. 2, at 437 (noting that traditional wisdom counsels against writing for practice manuals, bar journals, and continuing legal education materials).
189 Id. at 444–445; see also Posner, supra n. 84 (presenting a detailed critique of the shortcomings of law reviews, starting with the problems inherent in student-edited scholarly journals).
190 Slomanson, supra n. 2, at 444–445; Posner, supra n. 84.
has led some to comment that this relationship, in which students dictate the research parameters of the faculty, stands academia on its head.\footnote{Turnier, supra n. 55, at 211–212.} Once again, this relationship between student and faculty presents unique problems to legal writing scholars.

Regardless of the wisdom of this editorial relationship, doctrinal professors are not unduly affected by it. Scholarship is a requirement for them, and publication in elite journals greatly enhances their chances for promotion and tenure;\footnote{See Lasson, supra n. 111, at 927.} so ultimately, it matters little to them if they have to capitulate somewhat to the whims of their student editors with regard to content or style if doing so means publication in an appropriate journal for their advancement. Ceding control of content and style to their students may not be academically desirable, but it is a necessary evil toward achieving their goals of tenure and promotion.\footnote{Id.}

The vast majority of legal writing professors are not tenured or on tenure-track. Indeed, as of 2004, legal writing professors at only twenty-four law schools can claim such status.\footnote{See ALWD/LWI Survey, supra n. 1, at 48 question 65 (indicating that only twenty-four of the 176 schools responding to the 2004 ALWD Survey offer tenure or tenure-track status to their legal faculty).} Accordingly, most legal writing faculty positions do not carry with them a publication requirement.\footnote{Id. at 62 question 81 (twenty of the 129 schools that responded to this question responded that their legal writing faculties were required to produce written scholarship).} Therefore, as a preliminary matter, there exists no greater goal for the typical legal writing professor that justifies the ceding of this control. More importantly, capitulating to the whims of student editors uniquely frustrates many of the goals of the legal writing scholar.

Because, by definition, students lack practical legal experience, allowing them to determine which articles are accepted and which are not invariably results in an overwhelming focus on topics irrelevant to the practicing bar. As discussed in Section I(B)(2)(b), it should come to no one’s surprise that constitutional law and constitutionally based topics dominate the student-edited journals. These are the subjects they are familiar and comfortable with from their classes and ones that do not require practical experience in order to comprehend, at least in theory.\footnote{See Turnier, supra n. 55, at 194.}
An informal survey I conducted with regard to student note topics in Philadelphia-area law reviews confirms the suspicion that student editors are overly enamored of constitutional law-based subjects. My survey of student notes that appeared in the 2001–2002 editions of the University of Pennsylvania Law Review, Villanova Law Review, and Temple Law Review revealed that a whopping 58.6% were constitutional law-based, with the University of Pennsylvania topping the list at nearly 73%. Constitutional law is what the overwhelming majority of student editors are comfortable with as writers, so naturally, it should come as no surprise that these same students would select an overabundance of constitutionally based articles to work on as editors. This results in law review editions that provide little guidance to practitioners and that make for poor venues for the propagation of practical scholarship.

Of larger concern to legal writing scholars are the problems that result from placing students in an editorial role over the scholars’ work. This shifting of roles between student and professor causes many student-editors to become understandably uncomfortable. Suddenly, they are the teachers and placed in a supervisory role over their professors, despite their awareness that they possess far less knowledge on the subject of the article they are editing than their faculty “students.” Reluctant to challenge the substantive assertions and conclusions contained therein, many student-editors focus instead on style and citation issues. Determined to satisfy their editorial obligations and with little else to comfortably focus on, many student editors spend a considerable number of hours “translat[ing] a witty sentence into a tired one, and a sprightly metaphor into tedious, if literal, prose.”

While this informal survey is by no means scientific (after all, it is an “informal survey”), it serves as the springboard for the discussion that follows. This survey was undertaken to confirm the anecdotal suspicion that law review students significantly favor constitutional law-based topics over all other topics. Although it is beyond the scope of this Article to undertake a more detailed study on this hypothesis, the results of the informal survey overwhelmingly confirmed the anecdotal suspicion. Although a more detailed study may produce slightly different results, the overall thesis would likely be similarly proven.

The results were as follows: University of Pennsylvania Law Review (volume 150: eight of eleven student notes contained a constitutional law element (73%)); Temple Law Review (volume 74, numbers 3 and 4, and volume 75, numbers 1 and 2: three of five (60%)); Villanova Law Review (volume 47: six of fourteen (43%)).

See Slomanson, supra n. 2, at 445.

Id. (quoting Richard A. Epstein, Faculty-Edited Law Journals, 70 Chi.-Kent L. Rev. 87, 88 (1994)).
teach style. Tired sentences may not be what they had envisioned when sending their drafts off to their student editors, but since the substance of their articles is likely to remain relatively untouched, the resulting article effectively serves its purpose and reflects well upon its author.

Because legal writing professors teach style, at least in part, an article replete with tired sentences and tedious prose will reflect negatively on us, regardless of its substantive merit. This concern is heightened because our practice-based articles are more likely to be published in lower-tiered or specialty journals, our student editors are more likely to be weaker students than those who populate the editorial staffs of the elite journals. This leaves our work in the editorial hands of students who may very well be poor writers. Our reputations as effective teachers of legal writing are thereby endangered by ceding editorial control of our scholarly work to struggling students who will invariably attempt to “fix” what we know best.

B. The Value of Peer-Edited and Practice Journals as Scholarly Outlets for Legal Writing Professors

To the extent that legal writing professors continue to write traditional law review-type articles, the more proper venue would be peer-edited journals. Although not traditionally as prestigious as the student-edited journals (particularly the top-quintile student journals), they are gaining in prominence, perhaps due to “a level of experience and knowledge” of their editorial staffs that far exceeds that of even the most prestigious student-edited journals. Hybrid journals that use a combination of student and faculty editors are also beginning to emerge and may prove to be an additionally worthy outlet for the legal writing scholar. Professional periodicals staffed by practitioners, such as bar journals, practice manuals, and the like provide similarly attractive alternatives. These professional editors can offer effective criticism on the substance of our scholarship in ways students simply cannot. All of these professionally edited journals may not make the most sense for the rest of the legal academy, but they respond most ef-

201 See id. at 446.
202 Fine, supra n. 9, at 245.
203 See Slomanson, supra n. 2, at 445.
204 See Fine, supra n. 9, at 245.
fectively to the unique skills and concerns of the legal writing professoriate.

Law schools themselves are just beginning to recognize the value of practical scholarship. Yale Law School recently sponsored a new magazine, *Legal Affairs*, that contains articles that focus on current legal issues and is written in a style that appeals to a broader audience than the typical law review. More such publications are needed, and articles in such publications need to be recognized as legitimate academic scholarship.

Although this Article has focused on the differences between doctrinal and legal writing faculties, we are similar in the most basic sense. We are both comprised of academics who need to stay connected with our field(s) of expertise. It is merely the means by which we need to stay connected that differ. Doctrinal scholars do this through traditional law reviews; legal writing scholars need to do this through those journals that speak to practicing lawyers and that do so in a language these readers readily understand.

For our purposes, practical scholarship satisfies the definition of “scholarship” as defined by most law schools. It is “‘analytical,’ ‘significant,’ ‘learned,’ ‘well-written,’ and ‘disinterested.’” Simply because it appears in forums other than traditional law reviews is of no matter. In fact, the “significance” of our scholarship would be greatly compromised if it was contained in publications that rarely reach our constituent audience. It is illogical to conclude that scholarship that effectively fills a need voiced by the legal profession for many years is not worthwhile merely because it appears in a bar journal. Good writing is valuable to the legal academy and the greater legal community regardless of where it technically appears in print. To put it succinctly: scholarship is scholarship. The fact that it takes a different form does not justify a classification of it as lesser, particularly when it serves our system of justice by reaching out to fill an acknowledged scholarly void.

---

205 Waxman, supra n. 65, at 1911.
206 See Liemer, supra n. 10, at 1025; see also Weidner, supra n. 3, at 441–442.
207 See Lasson, supra n. 111, at 935.
208 See id. (citing a variety of law school faculty handbooks defining “scholarship”).
209 See id. at 949 (“Let’s recognize good writing as valuable, even if it’s not in a law review . . .”).
210 See Edwards, supra n. 45, at 38–39.
IV. ACHIEVING INSTITUTIONAL RECOGNITION FOR PRACTICAL SCHOLARSHIP: THE “PROFESSOR OF PRACTICE” MODEL

If the ideal in the academic world is to create an environment in which differences in scholarly opinion and focus are not merely tolerated but embraced, those who choose to concentrate on practical scholarship need to be made to feel welcome, both in job security and in compensation. The “professor of practice” title, which is gaining in popularity in some undergraduate departments (as well as in some law school clinical programs), may provide a model for those law schools that understand the value that their legal writing professors add to their faculties and who seek to formally recognize it.

A relatively new title, professors of practice are typically full-time, non-tenure-track faculty members, who are evaluated primarily on their teaching but who are still required to produce scholarship, albeit with a practical bent. Columbia University’s School of Social Work describes its “Professors of Professional Practice” as members of its faculty “with a unique blend of practice experience, teaching experience and scholarship.” Syracuse University established the Professor of Practice title in 2002 after identifying the “need to bring expert practitioners into the academy (as full-fledged members of the community) to make closer connections and integrations between the world of academic research and teaching and the world of professional practice and decision-making.” The desires to integrate theory and practice and to promote a greater integration between academic scholarship


212 For example, the University of Pennsylvania Law School maintains a “practice professor” position within its clinical faculty (see www.law.upenn.edu/cf/faculty/faculty.cfm?Position_ID=1), while Quinnipiac University School of Law has a Distinguished Professor of Dispute Resolution Law from Practice who is a retired insurance industry vice president with that law school’s Alternative Dispute Resolution program (see http://law.quinnipiac.edu/x541.xml).

213 Fogg, supra n. 211, at A12.


215 Syracuse U., Proposal for Professors of Practice (POPs) at Syracuse University, February 2002, 1, www.universitysenate.syr.edu/profofpractice.pdf (last revised Feb. 18, 2002).
and the “public/private sphere” were cited as rationales for proposing this new faculty rank.215

Although the parameters of these positions vary among schools (with some, such as Syracuse and Massachusetts Institute of Technology’s Sloan School of Business, reserving the professor of practice title for persons with a national or worldwide reputation for excellence,216 while others such as Columbia and Duke open these positions up to a wider range of practitioners), professors of practice often have renewable contracts lasting from three to ten years, with an average minimum contract of five years.217 Along with the increased security that comes with these long-term contracts are salaries that typically are comparable to the salaries of tenured and tenure-track faculty members in their departments.218 Currently, approximately 10% of Duke University’s total faculty are professors of practice, with the largest percentage of them residing in the arts, biology, languages, mathematics, and statistics departments.219

At Duke (which has had this position in place the longest—more than ten years), professors of practice are evaluated both on their teaching and scholarship, with the teaching evaluation carrying the greatest weight.220 The scholarship component is evaluated as well, but the scholarship of the professor of practice can differ from that of his or her tenure-track colleagues in that it can have an applied focus.221 While professors of practice at Duke are required to “maintain a national profile in [their] field,” just like their tenured and tenure-track colleagues, professors of practice achieve this in part through scholarship that reaches the practitioners in their fields.222 For example, a professor of practice in Duke’s statistics department satisfies her scholarly requirements by editing a magazine that focuses on practical applications of statistics in various fields.223 Similarly, “a language professor of the practice might be expected to produce a textbook or articles on

215 Id.
217 See Fogg, supra n. 211, at A12.
218 Id.
219 Id.
220 Id. at A13.
221 Id.
222 Id.
223 Id. (noting that the professor also edited two books on applied statistics and wrote more than sixty papers).
teaching, while public performances might suffice for a music professor of the practice.\textsuperscript{224} These scholarly efforts are not theory-based but rather practical applications of these professors’ expertise, designed to connect them with the practitioners in their fields. Those schools that have adopted the professor of practice position have found them to be critical in their mission to provide a first-rate curriculum for their students.\textsuperscript{225} As a corollary, this title recognizes and rewards people who do important work and who help maintain a healthy academic balance between theory and practice.\textsuperscript{226}

V. CONCLUSION

Returning to Judge Edwards’s criticism of the decline of practical legal scholarship, one can perhaps challenge his conclusions by focusing on his reliance on anecdotal evidence rather than statistics, but his overall conclusion should not be ignored—that it is not enough to merely hire more practical scholars and then consider the problem solved.\textsuperscript{227} Rather,

\begin{quote}
[t]he law school must make itself a congenial place for concrete, “practical” analysis—a place where scholars of different approaches and ideologies accord each other the mutual respect they deserve. Otherwise, “practical” scholars will be discouraged in their work, and prospective scholars deterred from entering the academy.\textsuperscript{228}
\end{quote}

Phase one of Judge Edwards’s blueprint has already been achieved in virtually every law school in the nation. Through their legal writing faculties, law schools can count numerous practical scholars among their professoriate. That these scholars have not been identified to date is not solely the fault of the law schools or their doctrinal faculties. Legal writing professors first need to recognize their unique area of expertise among law faculties, and then stand up and be counted. A concerted effort needs to be made to highlight our unique skills to our administrations and doctrinal colleagues and to impress upon them the scholarly importance of these skills. It is crucial that they understand that although our

\textsuperscript{224} Id. at A14.
\textsuperscript{225} Id.
\textsuperscript{226} Id.
\textsuperscript{227} Edwards, supra n. 45, at 51 (citations omitted).
\textsuperscript{228} Id.
skills may make us different than them, they do not make us lesser scholars or our presence on our faculties any less vital to the education of our students and service to the greater legal community.

It is only then that the most important phase—the achievement of appropriate respect from our colleagues and full integration into our faculties—can even begin to take place. The professor of practice model may provide an example of how this can be done within law schools. Recognizing and embracing the unique skills brought to the academic table by the legal writing professoriate is crucial to the retention of these gifted practical scholars and to encourage the type of scholarship desperately needed by the practicing bar. In addition, making these scholars feel welcome through increased salaries and job security will encourage additional practical scholars to join the academy, thus helping the legal academic community achieve the healthy balance between practical and theoretical scholars it has long been criticized for lacking. Not until this is accomplished will the academy be able to fully discharge its obligation to serve the system of justice.

---

229 Id.; see also Waxman, supra n. 65, at 1912.
230 See Edwards, supra n. 45, at 38.
UNUSUAL CITINGS:
SOME THOUGHTS ON LEGAL SCHOLARSHIP

Colin P.A. Jones∗

Not to start out immodestly (don’t worry, it doesn’t last long), but I am a cited author. I’m not Richard Posner or Laurence Tribe, but try doing a LexisNexis or Google search on my name and you will find cites to one or more of my legal publications. Send me a self-addressed, stamped envelope in care of this publication, and I will send you an autograph.

But seriously, this may seem like a mean-spirited Article, as it deals with the process by which my limited body of published writings came to be cited, and questions whether other writers should even be referring to me as an authority in their own writings. In fact, as I will explain, my belief is that I should probably not have been cited most of the times that I was. This Article will try to explain why I probably should not have been, but nevertheless was cited, and what we can maybe learn from this.

Why am I doing this? Certainly not just as a form of self-abuse. Rather, I think that the fact that, as of December 2004, I am cited as an authority in at least eight other law review articles can teach us something about the way many journals are edited, the way our future lawyers are trained, and even the way law is practiced. Readers who like closure should be warned that I don’t come to any great conclusions, but rather make points and ask questions, which I hope will lead to further discussions of the subject matter. Scholarly debate is what these journals are about, after all. Or is it?

By now the skillfully built-up suspense has probably become close to unbearable, so let me start by elaborating about my publications. All of my publications were written when I was still a law student. The first was a student note on proposed amendments to Japan’s banking law and what they were expected to do to the banking system at the time.1 This note was published in the jour-

∗ Associate Professor, Doshisha University School of Law (Kyoto). A.B., University of California at Berkeley, 1986; LL.M., Tohoku University, 1990; J.D./LL.M., Duke University School of Law, 1993.

nal of which I was one of the Articles Editors. (I had no part in the decision to publish the Note—honestly.) I will refer to this publication as “Japanese Banking.” My qualifications for writing Japanese Banking consisted of (a) having taken a class in United States banking law and (b) being able to read Japanese materials on the subject. I had no experience in the financial industry anywhere, let alone in Japan.

Second, at the request of one of my professors, I wrote an analysis on the latest installment of Japan’s epic saga to finish building its principal international airport in Narita, near Tokyo. I wrote this paper for a special issue of a reputable but fairly obscure (and now defunct, I believe) publication, Law in Japan, and will refer to it in this Article as “Japanese Airport.” My qualifications for writing this paper were (a) the professor’s faith in my ability to do so, (b) some knowledge of Japan’s legal system, and (c) again, the ability to read Japanese statutes, court decisions, and reference materials.

Finally, in a third-year seminar course on Law and National Defense, I wrote a paper about the then-controversial sale of F-16 fighters by the United States to Taiwan and its relation to the Taiwan Relations Act that governs United States relations with the island. I was fairly pleased with how this paper turned out and, on a whim, sent it to a number of journals, one of which very kindly published it. As to my qualifications to write on this subject, I confess to having none, other than having done some background reading about the topic and having been interested in the unique status of Taiwan in international law and politics. I will refer to this article as “Taiwan F-16s.”

There you have it. That is my oeuvre of published and cited scholarly legal writings. All were written at least ten years ago,

---


4 Having said this, being interested in the topic is probably the most important qualification to writing about anything.

5 Well, all right, I have some other recent publications that are more technical or professional in nature, and seem much less likely to be cited, for reasons that we will get to. I also have a translation of an essay on military history published in a book. Kiyoshi Ikeda, Jisaburo Osawa, Men of War: Great Naval Captains of World War II (Stephen Howarth ed., 1993). A Google Search now also turns up the following: Colin P.A. Jones, Japan’s Telecommunications Business Dispute Resolution Committee, 6 World Telecom L. Rep. (newsltr.
and all on topics I have largely forgotten about. This is probably a
good thing because if I had too many more publications out there
that were cited by yet further publications, this Article would
probably not be possible; it would contain more footnotes than ei-
ther reader or author would be prepared to deal with.

To recap, as of December 2004, my works have been cited in at
least eight other scholarly works. I say “at least,” because that is
all I could find online. For all I know, I may be cited as an author-
ity in hundreds of books, magazines, periodicals, or other media
that are not amenable to online searching. This illustrates one of
the points I discuss.

I should make it clear at this point that I have no intention of
making any explicit judgments regarding the merits of any of the
pieces that cite my work. Indeed, I confess to not having even read
any of them in full. This may sound like laziness on my part, and
of course it is, but it also helps to illustrate yet another of my
points.

Before getting to those and other points, however, I will briefly
summarize the ways in which my works have been cited. Japanese
Banking is the most popular of my works, accounting for six of the
eight citations I have generated. In contrast, Japanese Airport

6 I promise that this will be the longest footnote this Article contains. The publica-
tions in question are the following: Dennis Bower, Student Author, An Evaluation of the
(1995) (citing Japanese Banking); Christopher J. Carolan, Student Author, The “Republic of
Taiwan”: A Legal-Historical Justification for a Taiwanese Declaration of Independence, 75
N.Y.U. L. Rev. 429, 435 nn. 39–40, 436 n. 50, 438 n. 65 (2000) (citing Taiwan F-16s);
Andrew Chin, Spoiling the Surprise: Constraints Facing Random Regulatory Inspections in
nese Banking); Christopher A. Ford, The Indigenization of Constitutionalism in the Japan-
port); Akiko Karaki, Regulation and Compliance in Japanese Financial Institutions, 14
Colum. J. Asian L. 327, 339 n. 18 (2001) (citing Japanese Banking); Lawrence L.C. Lee, The
L. 1, 2 n. 7 (1998) (citing Japanese Banking); Brian Arthur Pomper, Student Author, The
525, 526 n. 9, 530 n. 41, 531 n 47, 546 n. 148, 547 n. 154, 550 n. 174, 558 n. 224 (1995)
(citing Japanese Banking); and Eric C. Sibbitt, A Brave New World for M&A of Financial Insti-
tutions in Japan: Big Bang Financial Deregulation and the New Environment for Corporate
Combinations of Financial Institutions, 19 U. Pa. J. Intl. Econ. L. 965, 977 n. 49, 983 n. 81,

7 See supra n. 6 (discussing the articles by Dennis Bower, Andrew Chin, Akiko Kara-
ki, Lawrence L.C. Lee, Brian Arthur Pomper, and Eric C. Sibbitt). Just to be clear, when I
refer to a number of citations, I am referring to the number of articles that cite my works,
and *Taiwan F-16s* merited only one citation each. Of my eight citations, three are contained in student-written notes, and five are articles by practicing lawyers (or persons who had become practicing lawyers by the time their articles were published, as was the case with two of my own articles).

Based on these citations, we can see several things. The first is that apparently I am, or at least was, an authority on Japanese banking law. Granted, I have practiced law in Japan for a number of years and worked on securities offerings for Japanese banks, but this came after I wrote *Japanese Banking*. Even with the benefit of practical experience, I can’t say I ever really thought of myself as an authority. I have some familiarity with the banking system in Japan and how the financial system works in that country, but I think I would be hard pressed to fill more than a handwritten page with what I can coherently express as my “knowledge” of Japanese banking law. As noted above, my qualifications for writing *Japanese Banking* consisted at the time of having taken a class in United States banking law and being able to read Japanese (and being willing to do the work, which is no small thing, of course).

None of this should necessarily detract from my ability to write on the subject of banking law in Japan or any other subject, if by doing so I make a contribution to the scholarship on the subject—if I add something new to the field. But looking at the citations to *Japanese Banking*, virtually all of them are to expository parts of the piece in which I give factual descriptions of what was happening in the Japanese banking system at the time and why. The cites, therefore, are directly or indirectly to factual material that I myself did not generate or analyze but rather gathered from newspapers, magazines, and other sources. By reading and summarizing Japanese-language materials on the subject, I may have provided a service to authors who are not able to do so. But this does not change the basic nature of my contribution. One writer, for example, cites me as “identifying 1991 banking scandals as impetus for Financial System Reform Act” being implemented in Ja-
Another flatters me by both quoting and citing me in a lengthy footnote as a source for his summary description of the history of Japan’s financial industry, and as a source for facts regarding the reforms I wrote about. Yet another cites me as one of many sources of background on events in individual countries that led to the need for increased international banking supervision. And I am cited to support the assertion that United States Glass-Steagall type banking-security style segregation was alien to the Japanese financial industry. I won’t bore you with describing the rest of the citations to Japanese Banking, other than to note that they are of a similar character. In summary, therefore, my contribution is limited to my role as a compiler and transmitter of factual materials already available elsewhere, rather than as an author making useful insights about law.

The note citing Taiwan F-16s also uses my work several times as a factual source; I am apparently an authority on Chinese history. Thus, I am cited as a source for the fact that the Communist Chinese under Mao defeated Chiang Kai-shek in the Chinese Civil War of 1949, that the United States treated Taiwan as a “strategic” ally for some time thereafter, and a couple of other startlingly well-known (I hope) historical facts. Because I was not required to provide citations for some of these facts (the Nationalists’ 1949 defeat by the Communists, for example) in Taiwan F-16s, I have effectively become a primary historical source.

My contribution to the scholarship of others through Japanese Airport is in a pair of quotes in which I characterize the Japanese Supreme Court decision that I was analyzing and the evaluation of my views expressed in these quotes by Mr. Ford, the author citing my work. This evaluation is contained in his own analysis of the indigenization of constitutionalism in Japan. According to Mr. Ford, my comments may overstate the novelty of the Narita holding (the Japanese Supreme Court decision I wrote about)—but they do not overstate its impact upon constitutionally guaranteed individual rights.

10 Chin, supra n. 6, at 118 n. 141.
11 Sibbitt, supra n. 6, at 977 n. 49, 983 n. 81.
12 Lee, supra n. 6, at 2 n. 7.
14 See Carolan, supra n. 6, at 435 nn. 39–40, 436 n. 50, 438 n. 65.
15 Ford, supra n. 6, at 36.
16 Id.
I include the last quote not to inflate my own ego, but because I consider these two quotations of mine and Mr. Ford’s analysis to be my only true published contribution to the legal scholarship of others as of December 2004. Virtually every other citation to my work is to me not as a legal scholar, but to me as a gatherer, compiler, and translator of factual information. Whether I am a qualified and reliable source of information on Japanese banking and Chinese history is open to debate; I like to think that I did my homework, but will also be the first to admit that there is a large body of published writers on the subjects in question who were and are far more authoritative than I can ever hope to be. And yet I am the one who was cited.

This brings me to some of the points I want to raise about the way lawyers are trained at United States law schools, as evidenced by the student-edited law review process. First, do we really need all those citations? The note citing Taiwan F-16s in several places is thirty-nine pages long and contains 251 footnotes, an average of more than six footnotes per page. While it is, of course, flattering to be cited in this work, the idea that Mao winning the Chinese Civil War needs support for the benefit of anyone intelligent enough to be reading the New York University Law Review, is surprising to say the least. And it is perhaps also counterproductive, because most intelligent readers don’t like having that intelligence insulted through underestimation. But if we accept that this statement of fact is needed, it is perhaps even more surprising that the requirement can then be satisfied by referring to me. Referring to my work might even be forgivable if that led into a further “chain of evidence” that took the reader to a more reputable factual source, but as I explained, it does not.

But perhaps the footnotes are all necessary, and the quality of the support does not need to be dealt with. Perhaps. If you accept that editing a law review and writing a note are part of the educational process provided by law schools (typically to its top students), then the unnatural rigor by which the support for factual assertions in a published article must both be provided by its author and demanded by the publication’s editorial staff might make

---

17 In the process of editing a piece on law and morality that was published after this Article was first submitted for publication, Law and Morality in Evolutionary Competition (and Why Morality Loses), supra n. 5, I was asked by the publishing journal’s student editorial staff to produce a citation in support of the fact that President Clinton received fellatio from an intern in the White House. I declined to do so on the grounds that providing a cite for such an infamous happening would actually detract from the quality of the article.
sense, if they are regarded as being a part of this educational process. Perhaps it is part of the training that goes into generating the level of excessive attention to detail in young lawyers that is deemed desirable by law firms and other prospective employers. Thus, just as many law school exams include unrealistic fact patterns, student-edited publications that unrealistically require excessive citations to prove well-known facts may also make sense as part of the educational process—if the primary goal is to produce lawyers who have the discipline to back up every statement they make, that is.

But wait a minute. Do we really want lawyers to be this way? Surely we want lawyers, or at least legal scholars, who are trained to back up their statements with the best possible authorities, not just any authority. And here is my second point: Where is the quality control and the sense of context in the authorities chosen? Surely these are as important to a legal argument as the reasoning they support. It is admirable to demand that all factual assertions be supported by outside evidence. Indeed, this may be required of lawyers in litigation in the absence of stipulations to the contrary. But not all information is equal, and a multitude of “facts” does not equal true knowledge or even a correct conclusion. I hope I would be laughed out of any court in which I was presented as an expert witness on the subject of Chinese history. And unlike litigation, in which the adversarial process may help to weed out ridiculous assertions, there is no such overtly adversarial process involved in editing a law review, nor am I saying that there should be. But even the adversarial process and the detailed evidentiary rules involved in litigation do not (apparently) prevent so-called “junk science” science and other similar “support” from putative experts from becoming an endemic problem in American courtrooms. Is it

---

18 For example, what then of facts? They are meant to be the building blocks of rationality.

It is a fact that the world is flat. It is a fact that Thalidomide stops morning sickness. It is a fact that feeding dead sheep to cows is an effective method for raising livestock. . . . That cigarettes do not cause cancer. That men are more rational than women. That the Maginot Line will stop the German army. . . . That spraying asbestos on our walls and ceilings creates an effective insulation for buildings. . . .

Among all of these, the fact to last the longest as a fact is the one which states that the world is flat. It must therefore be the truest of the group. Indeed, the most rational.


19 See e.g. Robert L. Park, Voodoo Science: The Road from Foolishness to Fraud (Ox-
any different to require that all assertions of fact in a publication be supported by sources but then to allow the requirement to be satisfied simply by providing a cite—*any* cite? Is it any wonder that the practice of law has evolved into a search for any plausible “factual” support for a claimant’s factual assertions, rather than a more considered attempt to find (cynicism filters on, please)—the truth?

In fact, I would suggest, and this is point number three, that the apparent focus on quantity of cites over quality may engender a sort of intellectual laziness on the part of authors and editors alike, a laziness that may not be serving the legal profession well in the long run. This laziness is undoubtedly heightened by the availability of most recent law review articles online in searchable databases such as LexisNexis, which is made available to law schools. While such databases are valuable research tools, they also make it easy for the users to seek support for their writings in the law review database, even when the support needed is out-

---

20 This is an oversimplification of the realities of the law review editing process, of course. Student editors who happen to have common sense and possibly some knowledge of the subject area may require more when cites provided by an author are clearly inadequate. I personally spiked the publication of an article about China when, among other things, the author persisted in citing a Fodor’s travel guide for statistical information about that country.

21 The framers of the Constitution intended the civil jury to be drawn from the same community as the litigants, “informed by community values,” and intended to assist the trial judge in finding the “just” conclusion as to both fact and law without the arbitrary fact/law to which their role is subject in modern courts. Akhil Reed Amar, *The Bill of Rights: Creation and Reconstruction* 84, 88–89 (Yale U. Press 1998). Similarly, one original reason for the importance of public trials in American law was that members of the public might actually have knowledge relevant to the case at hand—to “infuse public knowledge into the trial itself, and, in turn, to satisfy the public that truth had prevailed at trial.” *Id.* at 113. By contrast, juries in modern trials have become anonymous groupings of people who must provide a very simple output (“not guilty” or “negligent”) based upon input controlled by the most complex evidentiary rules in the world. A key requirement for becoming a juror is the absence of any knowledge or connection with the case at issue or the parties involved. This evolution contributes to the willingness of some lawyers to back their claims with dubious factual support, as a juror or fact-finding judge may have limited time, incentive, or even ability to examine the quality of such support.
outside the realm of legal scholarship. I would speculate that most of the citations to my work can be attributed to online searches by authors seeking material on subjects related to their own that can be used to support their own assertions regarding the Japanese banking system, the Chinese Civil War, or whatever. This speculation is based on personal experience: In *Taiwan F-16s*, I found myself having been guilty of citing another law review article repeatedly to support a number of factual matters, such as the date of establishment of the People’s Republic of China.\(^{22}\) The fact that the cited law review article may be one, two, or three steps removed from primary sources, or not refer to them at all, does not seem to matter much in the editorial process.

It may also be a coincidence, but the one article in which I consider to have contributed (albeit minutely) to legal scholarship, appeared in a publication—*Law in Japan*—that to my knowledge is *not* available anywhere online. My other more recent publications are also in books or BNA publications that are not, to my knowledge, readily searchable online.

This leads us to point number four. I know from personal experience that when editors demand that I provide cites to support factual assertions, it is much easier to find such support online in an isolated paragraph than to go to a library and find proper authority in a book one has actually read enough of to be satisfied that it actually supports the assertion. Searchable databases may allow for great efficiencies: “the-heroin-is-free-until-you-graduate” online access provided to students by LexisNexis and Westlaw certainly provides one of the easiest ways of finding “authoritative” support for just about anything. The LexisNexis LAWREV database is a particularly fruitful source of law review articles that contains all sorts of citable factual information. But if all that happens is that an editor demands that a cite be produced, and the author finds a law review article online that contains a paragraph or a footnote that satisfies the requirement, the whole process seems meaningless and can probably be satisfied in fifteen or twenty minutes (speaking again from personal experience). In an ideal world, though, the source cited should have played a part in the article being written in the first place.

\(^{22}\) *E.g.* Jones, *Taiwan F-16s*, supra n. 3, at 52 n. 3 (citing Christian C. Day, *Maintaining the Dragon’s Teeth: Balanced Sales of Advanced Weapons and High Technology to the Two Chinas—An Exercise in Balance of Power Policies by the United States*, 13 Syracuse J. Intl. L. & Com. 29, 42 (1986)).
I am by no means decrying the convenience of databases as a research tool, but if I am correct about the level of reliance on them, there is an even more significant implication to such reliance. That is this—to the extent that most databases require some sort of keyword search, a researcher must have some preconceived notion about what is being sought for him or her to even formulate the necessary search terms. Translated into the practice of law, a lawyer could reach a preferred conclusion, and then simply formulate a database search that will support that conclusion. It becomes irrelevant that finding such support online may be the result of a keyword search and have nothing to do with the author first making the statement for which such support was deemed necessary.

Because what we know is infinitely less than what we do not, serendipity is a highly underrated yet important force in expanding that knowledge. Browsing the stacks of a library or table of contents of a book or journal can lead us to sources and lines of thinking that we would not otherwise have imagined. Yet by relying on technology that works primarily through reliance on searches using specific search terms, we limit ourselves to the knowledge from which such keywords are derived. Thus, we may be inculcating our law students—our lawyers—not with a sense of inquiry, but with a mentality that seeks to support conclusions that have been formed before the support for them was even produced. Or, to put it more bluntly, I should not be cited as an authority for anything related to the history of the Chinese Civil War just because I showed up in a database search. There are plenty of books on the subject by historians who have devoted their lives to the subject, at least one of whom should probably have been read by anyone writing about the issue of Taiwanese independence.

The issue of technology in research leads to my fifth point. It is much easier now than it was twenty years ago to produce a citation on short notice. But the mere state of being online may have the effect of rendering all online sources equal in stature, particularly when any citation will satisfy a busy editor. The Internet is a wonderful thing, as are the online legal databases, but the Internet also makes the border between what is available online and what is not much less enticing to cross. Unfortunately, this border is not one of quality, but of convenience, and may result in the marginalization of authoritative publications that are not available online. Or put another way, the easy availability of online
sources makes it easier for authors and editors alike to use what is easy to find, rather than what is authoritative.

Most people in the legal profession are able to access online legal databases, the content of which is created primarily by legal professionals. And yet, as I have tried to show, legal databases are often used as a source of information by writers on non-legal subjects—in my case history, but perhaps science, psychology, and other fields—where, absent unique qualifications, the writings of a lawyer should probably not constitute even a secondary source of information.

What can be done? It is probably unreasonable to expect law students (and maybe other part-time editors) to judge the suitability of the sources used in each article they edit. However, a few simple rules might improve the reliability and credibility of their publications.

First, absent special circumstances, law review articles should not be permissible sources except with respect to assertions, facts, and conclusions about law or related fields. Authors should be required to do their homework and provide proper support for their writings from authorities in the appropriate fields, be it Chinese history, physics, or sanitary engineering. There will be a certain amount of gray area in making this determination, but certain types of citation (e.g., to me as an authority on Chinese history) will, I hope, be clearly unacceptable.

Second, a certain degree of respect should be afforded the intelligence of the target audience of law review articles. Most readers of law review articles will be intelligent people with law degrees and professional qualifications, i.e., lawyers. Thus, the basic writing principle of “assume your reader knows nothing” should be discarded, not only because it may be vaguely insulting to readers to have their intelligence underestimated, but because it would also save pages and unnecessary effort on the part of authors and editors alike if legal scholars did not have to state the obvious. Time is finite for all of us, and the less time authors and editors have to spend finding cites for facts known by intelligent readers, the more time they can spend on the more controversial portions of an article.

Third, any cite to a source that was found online should be given particular attention by editorial staff. The entire source should be reviewed to ensure that the portion cited is not being taken out of context or otherwise cited in a way inconsistent with the original author’s overall thesis. It should, unfortunately, be
assumed that a citation to an online source was produced after the article was first written, and therefore, does not directly play a part in the evolution of the author’s thinking when he or she wrote the piece. This assumption may not always be true, of course, but editors should at least keep it in mind.

Fourth, the principles that apply to scholarship in other fields should be kept in mind in all law review publications. More than other disciplines perhaps, those writing about law are by training more inclined to focus on advocacy—upon coming up with a plausible argument. In addition, law is unique in academia in having a substantial number of scholarly publications that are edited by students. This means that these publications are not peer-reviewed journals that are typical in other fields. While this probably contributes to the dissemination of a greater diversity of views in legal scholarship than is perhaps possible in other disciplines, it poses a different problem—the necessarily limited familiarity of law students with much of the subject matter they must edit. To the extent that faculty members or practicing lawyers who know something about the subject in question are available to review a particular piece, they should be asked to do so. This would add at least an element of peer review to the publication process. Since the audience for law reviews will not expand with the supply, those publications that develop a reputation for quality control and relevance to practicing lawyers and legal scholars alike are more likely to succeed in influencing these audiences.

Finally, we should probably reacquaint ourselves with a basic truth—that facts are not the same as knowledge. Just because we can find online dozens, hundreds, maybe thousands of sources that relate to what we are writing, their mere existence does not add to our understanding of the subject matter unless we invest the time and thought in acquiring the knowledge that such understanding entails. If anything, the availability of so much information at our fingertips should be humbling; it should remind us that we may need to work harder to understand the underlying subject matter rather than just narrow our search parameters to find a paragraph or sentence that satisfies a citation requirement. Facts and information do not become knowledge until processed and put into context by the human mind. By having so much information so readily available and allowing this information to be used in a pointillist fashion as post-facto support for asserted knowledge, we may be in danger of disengaging our minds from key aspects of the learning process. The publication process should not just encourage advoca-
cy and the accumulation of information; it should encourage the formulation and dissemination of knowledge.
A SONG COMMEMORATING THE 20TH ANNIVERSARY OF THE LWI, AND CELEBRATING ITS MOVE FROM SEATTLE UNIVERSITY SCHOOL OF LAW TO MERCER UNIVERSITY SCHOOL OF LAW*

David S. Caudill**

Everyone knows, the Institute is in Seattle.  
Everyone knows in the Northwest, you’ve got a friend.  
But imagine a conference with a deep southern accent,  
’Cause the LWI is now “gone with the wind.”¹

Chorus:  
“Make me an angel”² who can fly down to Georgia.  
Give me a town where it’s a hundred-and-five.  
And that’s not a dry heat—There’s no cool summer mornings,  
You need air-conditioning, in Macon, to stay alive.³

If we ever meet at Mercer, there’s no high snowy mountain.  
There’s pine trees and red dirt and nothin’ obstructing your view.  
There ain’t no harbor, no chilly dinner cruises,  
But there’ll be an open field, filled with pork BBQ.  

I hate to sound mushy, or romanticize this LEXIS luncheon,  
But this is an audience, where metaphors are no joke.  
If dreams were lightning, and hard work was thunder,  
“This old house would’ve burned down, a long time ago.”⁴

¹ To avoid plagiarism, which phenomenon is the subject of an ongoing project of LWI, the phrase “gone with the wind” should be attributed to Margaret Mitchell, the author of the novel by that name and published by Scribner in 1936.
² “Make me an angel” is also the opening line of the chorus in Prine’s “Angel from Montgomery.” Supra n. *.
³ This chorus would have been much more humorous but for the fact that a heat wave struck Seattle during the 2004 LWI conference; the weather was actually much more pleasant that week in Macon, Georgia.
⁴ Prine’s “Angel from Montgomery,” includes the phrase, “If lightning was desire, and dreams were thunder, this old house would’ve burned down a long time ago.” Supra n. *.

* To be sung to the melody of John Prine’s “Angel from Montgomery” (Sour Grapes Music/Walden Music 1972), as performed by Susan Tedeschi on her CD, Just Won’t Burn (Tone-Cool 1998).

** Professor of Law and Arthur M. Goldberg Family Chair in Law, Villanova University School of Law. Professor Caudill performed this song at the LWI Anniversary Luncheon on July 23, 2004; special thanks to Jay Boone, the “Soul Proprietor” of Emerald City Guitars in Seattle, for providing the away-from-home gear.
“STUCK IN THE MIDDLE WITH YOU”∗

Terri LeClercq∗∗

I’m in the law firm 18 hours a day,
And I don’t know how it turned out this way.
I get a feeling that I’m playing the fool;¹
Hell, I might as well go teach at law school.

Deadlines to the left of me, billing hours to the right,
Here I am, stuck in the middle with you.

Yes, I dreamed of intellectual peers,
No memos stacked way passed my ears.
But I have students who can’t jump-start their brains,
And faculty that don’t know my name.²

Dean to the left of me, stacks of paper to the right,
And here I am, stuck in the middle with you.

Well, you make a difference and are proud to be teaching law,
And your students come running and begging for help and say,
“Please, please!”

So I’m doing this job for almost free,
No time for lunch but for lots of coffee,
I’ve finally learned to teach analysis,³
But the 3-year cap is my good-bye kiss.⁴

Because deans to the left of me, stacks of papers on my right,
Here I am, stuck in the middle with you, stuck in the middle with you.


∗∗ Lecturer and Fellow, Norman Black Professorship in Ethical Communication in Law, University of Texas School of Law.

¹ This depression does not reflect the view of the Author or anyone she has ever talked to (or at least officially documented).

² Author’s prerogative; here, “faculty” is plural and thus easier to fit into the line.

³ See every legal writing/analysis text ever published for background help in achieving this goal.

⁴ The antiquated dinosaur of caps needs to die and become fossil fuel for other legal writing advancements.