"All the World's A [Page]"*

*Justice Rosalie E. Wahl***

It is an honor and a privilege to be with you this last day of the Seventh Biennial Conference of the Legal Writing Institute - now 1,800 members strong - and to share with you some thoughts.

When I was a girl growing up in the 1930s, living with my grandmother in the old stone house on my family's ancestral 40-acre homestead in Birch Creek, Chautauqua County, Kansas, I read and re - read every book I could lay my hands on. I didn't walk three miles to borrow *The Life of Washington* as Abe Lincoln did, but I did walk two miles to the Houser's home on the edge of the hills for a copy of *Dick Prescott's Fourth Year at West Point*. That could explain why Lincoln became president and I only ended up on the Minnesota Supreme Court.

I fell in love with language and saw my way into worlds that language opened up. Not only did I love poetry and history and stories of adventure - even Horatio Alger - I also loved jokes, for I had a "funny bone" even then and it has stood me in good stead. Every week, when the *Capper's Weekly* came, I would read and cut out - clip, we'd say now - the jokes. One joke in particular sticks in my mind. It was about a Midwest family - in my mind a Kansas farm family - who had gone west to Seattle - in August probably, for by then the crops are laid by and fall crops planted - to visit relatives. Now visiting relatives "out west" was more than a possibility to me, for every family in my community had some relatives "out west." Around the turn of the century, in the first decade of this century almost gone, there was a migration to the Northwest from Kansas and other Midwest states to settle and develop the states of the Pacific Northwest. The graves of my grandmother's parents and brothers and sisters dot the cemeteries of Montana, Idaho, and Washington. Anyway, in this joke, a Midwest family was visiting relatives in Seattle. Every day the relatives would say, "Maybe

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today the clouds will lift and you can see Mount Rainier." This went on for two weeks. The time for the visitors' departure came and the clouds still hadn't lifted. "Well," said the old Kansas farmer, "We don't have much scenery back home, but what we have you can see!"

So, I am wondering if, after two and a half days of conference, of learning from disciplines, you have seen Mount Rainier yet. Have you seen the Mount Rainier of your dreams for legal reasoning and research and writing - the vantage point from which you can see what has been, what can be, and what will be? Maybe yes. Maybe no.

Let's say you not only have seen Mount Rainier but we're standing together on its summit here and spread out below is the world which is the stage on which you act, on which you teach, on which you struggle for recognition and status. Superimposed on that world is the world which is the page, the page on which you write and have writ large, the glory of the language which molds the thought of legal discourse, the thought which creates and molds the language by which we communicate that thought.

Looking inland, we see the way over which we have come: the desert places, the steep, dry ascent, the springs of water and inspiration in the dusty land which have nourished our growth.

Looking outward we see - how did Pete Seeger put it? - "one ocean lapping all our shores." We recall the lines of Emily Dickinson:[1]

> Exultation is the going
> of an inland soul to sea,
> past the houses - past the headlands -
> into deep eternity -
> Bred as we, among the mountains,
> can the sailor understand
> the divine intoxication
> of the first league out from land?

Past the houses of grammar we go, where we must continue to spend time, past the headlands of legal format on which we will still build, out into the deep and changing sea of legal education and scholarship the practice of law in the twenty-first century will require. A part of the "divine intoxication" we feel is the

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[1] *The Complete Poems of Emily Dickinson*, 39-40, (Thomas H. Johnson ed., 2d ed. 1962).

sure knowledge that the analysis, research and writing we teach and the introduction to legal discourse we provide are essential to legal curricula and must be integrated with all courses.

We know, as an article of faith, that legal writing is intricately entwined with legal reasoning and legal analysis - if they are not one and the same - and that we cannot focus on the process of one without also focusing on the process of the other.[2] We also know, as Professor Ramsfield has put it directly and perceptively in her article on "Legal Writing in the Twenty-First Century" as imaged through the survey of legal research and writing programs this institute did in 1990, "Future scholars and practitioners should receive an integrated, institutional message: The most brilliant legal analysis is useful only if it is accurate and can be communicated effectively. Accuracy comes through mastery of sound legal thinking and research strategies; effective communication comes through steady, conscious practice of legal writing processes and techniques."[3] Indeed, the socio-linguistic family of legal writing used in legal writing programs today to train lawyers to think and communicate well requires, and I quote Professor Ramsfield, "approaches and techniques unique to thinking, researching and translating that require consistent practice, reinforcement, supervision and criticism."[4] This requirement of consistent practice, reinforcement, supervision and, particularly, of criticism-feedback was one of the reasons for the establishment of the separate legal research and writing programs in which you are involved, because traditional law faculty have traditionally opted out of the heavy workload that commenting on individual papers entails.[5] As legal writing professionals, commenting on individual papers and conferring with students face to face is your burden and your glory.

Even in the early 1960s, when legal research and writing were peripheral to the core curriculum in most law schools, it was this critical, one-on-one relationship which impressed my novice, 40-some-year-old, non-traditional soul when I was a law student. The law librarian, our only woman faculty member, handled the few weeks of research assignments early in law

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[2] *See,* Jennifer Jaff, 35 J. LEGAL EDUC., 249, 250 (1986).

[3] Jill J. Ramsfield, *Legal Writing in the Twenty-First Century*, LEGAL WRITING: THE JOURNAL OF THE LEGAL WRITING INSTITUTE. 123, 131 (1991).

[4] *Id.* note 70 at 136.

[5] *Id.* note 48.

school. Later, moot court required the preparation of a cursory pleading and the preparation and delivery of an oral appellate argument.

But the long paper required of me and my classmates was under the supervision and instruction of Mr. Danforth, our demanding and scholarly civil procedure professor. I have only to close my eyes to find myself sitting again on a chair in the library stacks outside Mr. Danforth's office door waiting with trepidation for my second or third rewrite conference on a paper I was doing on the jurisdiction of child custody before the adoption of uniform laws in this subject area. You can imagine, then, my satisfaction and delight many years later when I - now a member of the Minnesota Supreme Court - received a note from a then-retired, but still demanding, Mr. Danforth, expressing his unconditional approval of an opinion I had written for the court in a difficult zoning case. This is the influence you have on the lives your teaching touches in a personal way when the spark is struck between a love of the language and even a fumbling analysis of a legal problem which casts some light on the direction in which the law might grow.

Between those student years and my 17 years on the Minnesota Supreme Court, I was an appellate advocate before that court for indigent criminal defendant clients of the Office of the State Public Defender in over 100 felony appeals. In 1973, William Mitchell College of Law - the law school that had given me both knowledge and love of the law and the tools with which to shape it - called me back to establish there a criminal clinical program that included a course I taught on appellate advocacy. The students in that course served in teams of two as my student lawyer associates on felony appeals I was still handling for the State Public Defender. The students researched the issues and wrote the briefs under my supervision. Together we strategized and discussed the ethical as well as the legal issues. Side by side we scrutinized both reasoning and writing. These were students in their last year of law school. None of them up to that time had ever worked so closely with a law school professor or had such feedback on their work. Professional responsibility came alive: our obligation of zealous representation of the client within the perimeters of the facts and the law; our duty not only to the client but to the court; the absolute integrity of the facts; the need to research and present to the court all relevant case law, even that against our position; the professional

courtesy shown opposing lawyers and the court; thorough preparation of the case with the best possible work product.

Why do you make this statement? Is there a better way to frame the issue? What is the rationale for this argument? What is the argument we need to refute? How do we handle this precedent holding squarely against our position? Is there any authority in other states we might use to persuade the court to change the rule or ameliorate its harshness? Was justice done here? Then, again, and more than once, "This brief is good enough for a grade but it's not good enough for the court. Rewrite it!"

So it goes with you, I expect, more or less. Your 1990 survey indicates that 80 percent of the programs in the 130 law schools responding provide for written feedback on more than four assignments per year.[6] In 88 percent of those law schools, commenting is done by the legal research and writing professionals who also hold numerous face-to-face conferences with the students individually.[7]

How do you do it, you who are underpaid and overworked? Maybe the harder question is "why do you do it?" Your 1990 survey showed that most of the schools responding had a high student-faculty ratio, with over half showing a ratio of 50 students to one legal research and writing professional, most of whom earned between $20,000 and $30,000 a year and worked under one-year contracts.[8] The combination of heavy workload, low pay, and low status has led, predictably, to a high turnover of legal research and writing professionals. If it isn't burnout, it's the cap many law schools put on the time legal research and writing professionals can stay - two years, five years - which force these seasoned teachers to leave, to the detriment of the creative, innovative legal writing, analysis and research programs they have worked so hard to develop.[9]

This is the way law schools recognize and reward the teachers whose teaching of the lawyer's primary skills of written and oral communication in their legal writing, reasoning and research programs lies at the heart of legal education. After all, many of you are full-time staff and your salaries, in the words of one dean, "Fall within the acceptable range of disparity that

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[6] *See, supra,* note 3, 129.

[7] *Id.*

[8] *See, supra,* note 3, 126.

[9] *Id.*

exists between tenured faculty and legal writing instructor salaries." As Theresa of Avila is alleged to have said to God after a particularly trying period of her life, "If this is the way you treat your friends, no wonder you have so few."[10]

Yet here you are, 300 strong, at the dynamic seventh biennial conference of the Legal Writing Institute. Through your conferences and Journal and newsletter you have promoted the exchange of information and ideas about legal writing. Your research and scholarship about legal analysis and legal writing, your pedagogy, is becoming increasingly sophisticated. The atmosphere in your presence is yeasty and exciting. Every year you are making the case clearer and clearer for your acceptance by, and your inclusion as full members in, the law faculties of your respective law schools.

And yet the cry that goes up from the heart of you here is "What can we do to gain the respect, the status, the remuneration commensurate with the quality, the quantity and the importance of our contribution to legal education and the students' ability to practice law?" I have heard such a cry before; It arose from the hearts and throats of clinical legal educators at a significant ABA national conference on professional skills and legal education in Albuquerque, New Mexico, in 1987, the year I chaired the ABA Section on Legal Education and Admissions to the Bar. ABA presidents and former presidents, judges, members of the bar, law school deans, administrators, and faculty members, primarily clinical faculty members, had gathered to assess the progress and acceptance of clinical legal education in the law school world. At that time, every ABA-approved law school had a skills training program, and there was much diversity among those programs. Many of the programs were on exhibit at the conference in a great sharing of theory, techniques and practice. Idealism, excitement, exhaustion - all were there; but what touched me most of all was the underlying sense of sadness and frustration, the sense of second-class citizenship of these talented legal educators.

It might be useful to trace some of the similarities between the struggles of clinical legal educators and legal research and writing professionals for recognition, respect, remuneration, and status on law school faculties. Reform of law school curricula is notoriously slow because those on law school faculties who bene-

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[10] Phyllis McGinley, THE LOVE LETTERS OF PHYLLIS MCGINLEY, 54, (1954).

fit from present allocations of power and resources are unwilling to change. Clinicians have sought to use the ABA Standards of Approval of Law Schools and their interpretations to effect change. Those standards and interpretations, if not the battleground, at least have been the field of action on which the Section of Legal Education and Admissions to the Bar and the ABA House of Delegates are hammering out recognition by the profession - the academy, the bench, and the practicing bar - that clinical legal education, with its emphasis on lawyering skills and values, with all its pedagogical and philosophical ramifications, is an essential, integral, legitimate part of legal education. Legal writing and research are also essential, integral, legitimate parts of legal education.

Before examining the standards developed to move clinical education - and that could move legal research, analysis, and writing - into the mainstream of legal education, I would note the chronological milestones that have marked and stimulated the growth of clinical legal education over the last three decades. Legal writing and research have been implicated and advanced by some of these developments but have not been a main focus.

1) Beginning in 1967, The Ford Foundation infused $10 million through the Council on Legal Education for Professional Responsibility (CLEPR) into clinical programs in law schools, encouraging law faculties, through grants, to offer training in lawyering skills which the bench decried as lacking in law graduates, and funding national conferences on legal education. Money has always been the key!

2) In 1979, the Section's Crampton report on the role of law schools in lawyering competency urged the improvement of lawyering skills through legal education.

3) The 1980 Guidelines for Clinical Legal Education, the report of the AALS/ABA Committee on Guidelines for Clinical Education, chaired by Robert McKay, gave the first comprehensive analysis of clinical legal training and was part of the struggle that led to the enactment of Standard 405(e). The report contained this conclusion: "While the Committee believes that each law school must determine its own curriculum, the Committee believes that each law school has a responsibility to provide students with the opportunity to gain an understanding of the basic competencies required by lawyers in order to function in the attorney-client relationship." What those competencies are, and how and where they should be taught, continues to be

debated. Certainly legal writing and research are among those competencies. Some members of the bar and some members of the House of Delegates believe that certain of the MacCrate recommendations regarding skills training should be mandated by the Standards. Law school deans generally oppose such a mandate. Flexibility and diversity of clinical programming have been important in the development of those programs as they have been in the development of legal writing programs.

4) The 1987 ABA National Conference on Professional Skills and Legal Education in Albuquerque, mentioned earlier, was a mountain-top experience out of which grew the creation of the MacCrate Task Force.

5) The MacCrate Task Force issued its report in 1992 on Law Schools and the Profession: Narrowing the Gap. The report recognized the growth of the skills-training curriculum as the most significant development in the post-World War II legal education era[11] and launched a great dialogue in the law schools and in the bar about fundamental lawyering skills and professional values. Legal writing and research are recognized in the report as fundamental lawyering skills.

The ABA Standards of Approval of Law Schools provide the basic tools for needed change. Standard 301 sets out the broad objectives required of a program of legal education. Standard 301(a), as adopted in 1973, required that "a law school shall maintain an educational program that is designed to qualify its graduates for admission to the bar." As a result of the MacCrate Task Force recommendations, the House of Delegates in 1993 added the phrase "and to prepare them to participate effectively in the legal profession."

Standard 301(b) requires that: "the educational program of a law school shall be designed to prepare the students to deal with both current and anticipated legal problems." The Commission to Review the Substance and Process of the ABA Accreditation of American Law Schools and the Section's Standards Review Committee have proposed enforcing this mandate in the Recodification Draft of the Standards, which will be voted on by the House of Delegates at the ABA annual meeting in August by requiring that the written self-study required of the dean and faculty of a law school by Standard 202(a) shall in new Standard 202(b): "address and describe how the law school's pro-

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[11] The ABA Task Force on Law Schools and the Profession: Narrowing the Gap: Legal Education and Professional Development-an Educational Continuum 6 (1992).

gram of legal education conforms to the requirements of 301(a) and (b)." In other words, how is the program preparing students to "participate effectively in the legal profession" and to "deal with both current and anticipated legal problems"?

Standard 302 of the Proposed Recodification Draft on curriculum contains some significant additions. Standard 302(a) reads as follows:[12]

> (a) a law school shall offer to all students:
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> (1) instruction in those subjects generally regarded as the core of the law school curriculum;

(This is the bailiwick of the traditional law school faculty).

> (2) an educational program designed to provide its graduates with basic competence in legal analysis and reasoning, legal research, problem solving, and oral and written communication;

(This is NEW. It is your special area of expertise. Get it passed by the House. Take it and run).

> (3) at least one rigorous writing experience;

(This can be a part of the educational program required in (2) but it is not the only mandate you can claim).

> and
>
> (4) adequate opportunities for instruction in professional skills:

(Formerly law schools were not required to offer such opportunities TO ALL STUDENTS.)

Standard 302(b), formerly 302(a)(iv), continues to require instruction of all law students in the history, goals, structure, duties, values and responsibilities of the legal profession and its members. Every assignment you give provides opportunities for instruction in the professional and ethical values necessary in the solution of the problem. Standard 302(d), which is new, provides that "a law school should offer live-client or other real-life practice experience for credit . . . through clinics or internships . . .." Standard 302(e), also new, provides that "a law

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[12] Justice Wahl's interjected comments are printed in italics and enclosed in parentheses. (Eds.)

school should encourage its students to participate in pro bono activities and provide opportunities for them to do so."

Standard 404 on Faculty Responsibilities similarly provides that a law school shall establish policies with respect to a faculty member's responsibilities in teaching, scholarship, service to the law school community, and professional activities outside the law school, which address, among other things, the faculty member's "(5) obligations to the public, including participation in pro bono activities." (NEW).

One of your programs today was on "Teaching Legal Research Through Pro Bono Programs." Writing and analysis would, of necessity, also be involved in such programs. Beyond that, programs involving pro bono service or even emphasis in your own teaching could bring the understanding to students that the law is for everyone, not just to protect the rights of those who can afford counsel - and the best legal counsel available. Every person - regardless of race, gender, class, status, or means - should have access to our system of justice to claim the protection and vindication of the rights the law has given them. And the law, the courts, and the judicial system, recognizing its/our bent for bias, should do justice for all.

It is not enough that state court systems should study, as have the Minnesota Supreme Court and the Washington Supreme Court, among others, through task forces, gender and race bias in their judicial systems and work to eradicate it. It is not enough that state bar associations should urge diversity training in CLE courses and join with the women's bar in assaulting the glass ceiling. We must start in the law schools where our students, our future lawyers, first come. Those students bring with them the biases of the society from which they come and unconsciously use those biases in their analysis and application of the law, and in their treatment of others different from themselves.

We must not confirm what Roger Crampton identified as another bias deeply ingrained in many law students: that law school is a training ground for technicians who want to function efficiently within the status quo.[13] Rather, we must make law school a training ground for professional lawyers, defined by the Section's Professionalism Committee as "experts in law pursuing

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[13] *Section of Legal Education and Admissions to the Bar, American Bar Association, Report and Recommendations of the Task Force on Lawyer Competency: The Role of the Law Schools* (Chicago, 1979).

a learned art in the spirit of public service as part of a common calling to promote justice and public good."[14] You cannot underestimate the importance you have as role models for the law students, who, in your case, are in a one-to-one relationship with you. Your actions in and out of the classroom can enhance or undermine ethical messages about good lawyering, which involves responsibility to and for others.

With regard to professional security and status for legal writing and research professionals, clinical educators have used Standard 405(e), which was adopted by the House of Delegates in 1984 after years of debate. Standard 405(e) provides in part that "a law school should afford its full-time faculty members whose primary responsibilities are in its professional skills program a form of security similar to tenure, and noncompensatory perquisites reasonably similar to those provided to other full-time faculty members."

The Recodification Draft of what is now 405(c) replaces *should* with *shall,* but does not include legal writing directors. A recommendation of the Illinois State Bar Association urges the addition of language to "include legal writing directors" along with full-time clinical faculty members. The Illinois Bar recommendation further urges language that "a law school employing full-time writing instructors should provide terms of employment and working conditions sufficient to attract well-qualified teachers and to permit and encourage them to develop their expertise."

You can mobilize your strength to lobby, through your state delegates, the adoption of these provisions in the House of Delegates. If approved, these provisions would be sent to the Council of the Section for Legal Education and Admissions to the Bar for action, hearing, and comment. There is strong pressure out there to count as full-time equivalent teachers in the student/faculty ratio all full-time clinicians and writing instructors not on tenure track and regardless of terms of employment and working conditions. This would remove the pressure on deans to improve those conditions. You will prevail, though your progress seems painfully slow. Make coalitions with clinicians and other members of your faculties who understand the imperative of integrating skills training and legal writing, analysis, and research into the whole curriculum. Work with your deans and all

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[14] *Section of Legal Education and Admissions to the Bar, Teaching and Learning Professionalism* 6 (1996).

members of the bar who understand the necessity of training true lawyers-true professionals.

In the meantime, and at all times, you must take care of yourselves. I had not been a week in law school when I realized, to my dismay, that there was no poetry in the law and that the law would kill that part of me if it could. You must remember, and remind your students, that the law, left-brain and rational though it mostly is, cannot survive without the imagination of the right-brain to shift your frame of reference and to spark the creative legal solutions to the problems of our day. With that imagination, perhaps you, too, like Laurence Tribe, can prevail in 15 of the 23 cases you argue before the Supreme Court.[15] Nourish that part of yourselves. Pick up Mary Oliver and read *Wild Geese*, which closes with these lines:[16]

> Whoever you are, no matter how lonely,
> the world offers itself to your imagination,
> calls to you like the wild geese, harsh and exciting -
> over and over announcing your place
> in the family of things.

You do have a place in the family of things and in the family of legal educators, a place worthy of dignity and respect and reward.

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[15] Jeffrey Toobin, "Supreme Sacrifice," *The New Yorker,* July 8, 1996, at 46.

[16] Mary Oliver, NEW AND COLLECTED POEMS, 110, Boston (1992).