

LEGAL WRITING IN THE ACADEMY 2000–2010: A DECADE OF PROMISE AND PROGRESS

Darby Dickerson*

Lawyers are professional communicators. As such, we must use words effectively to perform virtually every important task. And because significant portions of legal practice occur in writing, lawyers are also professional writers. So it is not surprising that legal writing routinely tops the list when practitioners and judges are surveyed about critical lawyering skills. But while lawyers and judges have long touted the importance of legal writing, the academy has historically undervalued the field. For decades, legal writing courses, and those who taught them, were marginalized. Thankfully, this decade has been proven to be one of both progress and promise for legal writing as an academic discipline.

From the 1940s until the late-1990s, law schools often assigned adjuncts, librarians, or upper-level students to teach legal writing. Well into the 1990s, it was rare to find full-time legal writing professors, especially ones with tenure or on the tenure track. Even those lucky enough to find full-time employment endured awful conditions. They taught large classes for little pay,

* © 2011, Darby Dickerson. All rights reserved. Darby Dickerson is the Dean of Texas Tech University School of Law, and she holds the W. Frank Newton Endowed Professorship. She was the Vice President and the Dean of the College of Law at Stetson University from 2004 to 2011. From 1996 until 2004, she served as Director of Legal Research and Writing at Stetson. She is the author of the *ALWD Citation Manual*, which is now in the fourth edition, and received the 2005 Burton Foundation Award for Outstanding Contributions to Legal Writing Education.

William C. Burton, the founder and Chairman of the Burton Awards Program, asked Dean Dickerson to write this overview. He stated,

As one of the most distinguished and noted leaders in the crusade to raise the level of legal writing I hope you accept this request and prepare an overview of the subject area. You are one of the truly esteemed leaders in legal writing and academia. That is why you were honored by our program with one of our highest awards. That is also why I request that you please compile an article on recent developments in legal writing. I know you will offer a proper and unique perspective to the changes which have occurred in this critically important discipline.

Email from William G. Burton, Partner at Sagat/Burton LLP, to Darby Dickerson, Vice President & Dean, Stetson U. College of L., *Thank You* (Oct. 10, 2010, 8:30 a.m. EST).

and were professional vagabonds, limited to two or three years at a particular school.¹

During these decades, most legal writing courses were pass/fail; they carried little academic credit, and even less respect. Non-legal writing faculty members and deans often presumed that anyone with a law degree—or even just one year of law school—could teach legal writing. Many viewed the course as a way to explain only document design, basic legal research, and remedial grammar. Others viewed it as a nuisance that detracted from more important and serious pursuits.

Fortunately, several brave pioneers—including several Burton Award winners—were willing to risk their academic careers to improve both legal writing instruction and the job conditions for those who teach it. Among their many acts of courage, these professors, with other visionary colleagues, formed the Legal Writing Institute in 1985 and the Association of Legal Writing Directors in 1996.

LWI and ALWD helped break “the depressing sense of isolation”² that many legal writing faculty felt, and provided the leadership and resources that spurred many incredible advances in the 2000s. The organizations convene national conferences and produce two academic journals—the *Journal of the Association of Legal Writing Directors* (renamed *Legal Communication & Rhetoric: JALWD* in 2011) and *Legal Writing: The Journal of the Legal Writing Institute*—that help legal writing faculty develop as scholars and teachers. They sponsor surveys that faculty have used to improve educational programs and job status. They connect legal writing faculty with one another to share information, ideas, and insights. They fund scholarship grants that have helped legal writing faculty win promotion and tenure. They convinced publishers to expand their catalogues of legal research and writing books. They promoted a professionalized system of citation. And the list goes on. In short, the work of these organizations dramatically improved how legal writing is taught, and who teaches it.

1. Karen Mika, *Acknowledging Our Roots: Setting the Stage for the Legal Writing Institute*, 24 *Second Draft* (bull. of Leg. Writing Inst.) 4 (Spring 2010).

2. Mary Lawrence, *The Legal Writing Institute: The Beginning: Extraordinary Vision, Extraordinary Accomplishment*, 11 *Leg. Writing* 213, 221 (2005) (quoting Professor Marjorie Rombauer).

Today, the field has an ever-increasing number of tenured and tenure-track professors. Although full-time, non-tenure-track teachers are still the norm, caps are virtually extinct. In addition, class sizes have shrunk. It is rare to hear about legal writing sections with 100 or more students; instead, most professors teach about 42 students each semester.³ One nineteen-year veteran recently described her own professional metamorphosis as follows:

I started teaching legal writing full time in 1993, at a school where I taught 55–60 students per semester; taught three sections, one of which met at 7:30 p.m. on Friday night; was rebuked if the students referred to me as “professor”; became subject to a three-year cap adopted by the faculty while I was there; and was paid \$30,000 (less than half of my prior law firm job’s salary) for the privilege. Now in 2010, I work as a tenured professor with colleagues on the tenure track; teach 30 students in the legal writing courses and others in doctrinal classes and seminars; have a “chair” attached to my job title; and am paid on an equal scale with other faculty.⁴

These improvements in status directly benefit the bench and bar. Legal writing professors are no longer forced to move from school to school; thus, those teaching future attorneys have more experience than ever before. With smaller classes, professors have more time to focus on each student’s development. And with improved status, they have a stronger voice in the law school’s curriculum and culture, and can thus advocate for more and better skills training.

But challenges still exist. Most who teach legal writing still have only short-term contracts. Without long-term security, they remain in the lower castes⁵ of legal education and thus are hard-pressed to advocate for significant changes not supported by their faculty or deans. Most are paid significantly less than their colleagues who teach other required courses. And most are female;

3. See generally e.g. ALWD & Leg. Writing Inst., *2009 Survey Results B-25* (available at http://www.alwd.org/surveys/survey_results/2009_Survey_Results.pdf).

4. Terry Jean Seligmann, “*You’ve Come a Long Way, Baby*”, 24 *Second Draft* 7 (Spring 2010).

5. Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 *J. ALWD* 12, 14–15 (2001).

thus, the “Pink Ghetto”⁶ remains. To ensure that legal writing continues to develop as a field, allies like Bill Burton must continue to stress the importance of legal writing to the profession, and to clients. And those who care about legal writing should continue to insist that the course and those who teach it receive appropriate respect.

Due to the hard and courageous work of many within and outside the academy, legal writing is now treated and perceived more favorably within the traditional law-school curriculum. In 2006, John Sebert, the former Consultant on Legal Education to the American Bar Association, acknowledged this shift:

Law school deans and faculties have come to recognize that legal writing courses provide the opportunity for teaching essential skills that are unlikely to be taught nearly as well elsewhere in the law school curriculum, that there is an essential core content to an excellent legal writing program, and that effective teaching of that content requires professional legal writing faculty who regularly devote substantial portions of their effort to teaching legal writing, research, and analysis.⁷

As a result, legal writing courses—which are now graded—carry more academic credit than ever before. And most in the academy understand that legal writing courses are designed to teach critical-thinking skills that lawyers must possess to represent clients competently.

Another exciting development is the influence that legal writing faculty wield in other areas of the law school and university. Several have been appointed dean or associate dean, and some have served in the central administration. Others are leading their schools’ efforts to implement suggestions from the 2007 Carnegie Foundation report titled *Educating Lawyers: Preparation for the Profession of Law*.⁸ In this role, they are designing learning outcomes, refining assessment techniques, and improving how law courses are taught. Legal writing professors are

6. Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Discrimination in Legal Writing*, 50 J. Leg. Educ. 562 (2000).

7. ABA Sec. Leg. Educ. & Admis. to the B., *Sourcebook on Legal Writing Programs* xiii (Eric B. Easton et al. eds., 2d ed. ABA 2006).

8. William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass 2007).

leaders in advancing interdisciplinary collaborations, particularly in areas like rhetoric, persuasion, and cognitive psychology. Through this ground-breaking work, they are improving the way lawyers communicate with each other, and with clients. The enhanced level of professional acceptance is also reflected in writing-across-the-curriculum programs, certificates of concentration in legal writing, international conferences on legal writing, and endowed chairs in legal writing.

As the 2000s come to a close, it is heartening to know that legal writing faculty and courses have gained new levels of acceptance and respect. So as we enter the 2010s, let's dream what those in earlier decades could not: Let's continue working to make legal writing as relevant within academia as it is within practice, and to ensure that legal writing faculty quickly achieve full parity within the academy.