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Linda H. Edwards

University of Nevada, Las Vegas – William S. Boyd School of Law

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The Legal Writing Institute: Celebrating 25 Years of Teaching & Scholarship

A Symposium of the Mercer Law Review November 6, 2009

Afternoon Session

PLENARY III: SCHOLARSHIP

KIRSTEN DAVIS: My name is Kirsten Davis, and I am an associate professor of law and director of legal research and writing at Stetson. I am your moderator for the panel on scholarship. I have the joy of introducing three individuals whom I consider both mentors, and, in many ways, heroes, and after whom I have tried to model my own career. They are certainly creators, innovators, and revolutionaries in our field. We're going to watch a couple of video clips that celebrate scholarship before we talk about the work that goes into producing scholarship. Then we'll turn to each of the speakers, and then have a question and answer period.

I want to start with Linda Berger. Linda has been inspirational to me in terms of her power to see the possibilities in scholarship and to follow that through. Linda is a professor of law here at Mercer. She was the designer of the program at Thomas Jefferson School of Law before she came to Mercer. She is the founding and current co-editor of the *Journal of the Association of Legal Writing Directors*, and she's the

founder of the SSRN e-journal on law and rhetoric, which is a relatively new endeavor for her and has been highly successful. Much of her work involves thinking about the intersection between rhetoric and legal writing. She'll be talking today about the rhetorical context of our scholarship.

Linda Edwards is now a professor of law at the University of Nevada at Las Vegas, Boyd School of Law. She was the founder of a particularly noteworthy certificate program here at Mercer before she moved to UNLV. She has always been inspirational to me for her intellectual passion and her ability to transfer that passion to students through the use of the small group writing sessions at the upper level. Her textbook on legal writing has been influential, and her recent work has been innovative on briefs, metaphor, and myths. She'll be talking today about voice in legal writing scholarship.

And the third person is Terri Pollman, who is the Ralph Denton Professor of Law and director of the Lawyering Process program at UNLV. She is also a creator and designer of a legal writing program and—not only that—but on the founding faculty at a brand new law school. She has always been important to me for the inspiration she finds in language, as reflected in her foundational piece with Judy Stinson on the language we use in legal writing, the *Tower of Babel* article,¹ and her ability to recognize others and their scholarship, as evidenced by her work with Linda Edwards.² That piece compiled all of the various work we've done in scholarship as a community and was published in the Legal Writing Institute's journal. Terri will be talking today about the audience of our scholarship.

LINDA BERGER: We're the scholarship panel, and we are going to use a number of mixed metaphors today. We will ask you after the presentation which metaphors were the most effective because we're trying on a number of them to test which ones fit the best. Our goal today is to observe the twenty-fifth anniversary of the Legal Writing Institute by suggesting that legal writing professors as a group are entering the third generation of legal writing scholarship.

According to our version of the story of legal writing scholarship, in the first generation, legal writing professors talked about whether they should be doing scholarship or whether they should just be doing teaching. And if they were doing scholarship, they talked about whether

1. Terrill Pollman, *Building a Tower of Babel or Building a Discipline? Talking about Legal Writing*, 85 MARQ. L. REV. 887 (2002).

2. Terrill Pollman & Linda H. Edwards, *Scholarship by Legal Writing Professors: New Voices in the Legal Academy*, 11 J. LEGAL WRITING INST. 3 (2005).

it should be purely practical scholarship or whether it should be something more theoretical.

In the second generation, according to our story of legal writing scholarship, two of the people up here on the podium and a number of other people, including Michael Smith, started to talk about the kinds of scholarship we should be doing. They defined a number of different kinds of scholarship and suggested some that they thought would be better for the development of the discipline.

Now, we are in the third generation of legal writing scholarship. Our proposal is that we should find a rubric for scholarship that allows us to integrate all aspects of our professional lives—that is, teaching, scholarship, and service—and also allows us to engage more fully with outside communities of various kinds. We will sketch out that rubric to some extent.

The first thing I'm going to suggest is that an examination of our own history as well as an examination of the history of other disciplines will help us forecast where we are going by telling us about where we've been. After that, we're going to explore some of the reasons why we write and why we should be engaged in conversations with one another about the ideas in our scholarship, rather than continuing to talk about whether we should write and what we should write. And third, with a nod to James Boyd White, we will begin to address the question of what kind of rhetorical community we're building with our scholarship, what kinds of persons are speaking, and to what kinds of persons. Who are we, and how are we presenting ourselves, and who are our audiences? We probably will not have time to explicitly address all of these things today; we do think that there are some dangers associated with our suggestions, but we also think that they are the kinds of dangerous conversations that a mature discipline should engage in.

I was going to begin with some discussion of the development of our sister disciplines of English composition and literature, the split between speech and rhetoric, the split between composition and literature, but I'm only going to have time to emphasize that reading is always in the academy viewed as being more important than writing. Interpretation, criticism, and analysis are always viewed as being more important than composition, writing, and teaching how to practice. That's going to be important when I get to the future vision that we're going to sketch out.

First, I will discuss the outsider's perspective looking at the development of legal writing scholarship over the last twenty-five years. There's a contemporary rhetorician named Bell Hooks who says that the way to see the most is to look from the margins so that you will see from the outside in and from the inside out.

From the outside point of view, legal writing scholarship started with what I'm going to call step one. Step one was when it was first discovered that lawyers can't write. That apparently happened shortly after lawyers started writing. Jim Elkins did a bibliography that was published about fifteen years ago in which he traced the development of legal writing scholarship.³ The first article in the bibliography was a 1921 article called "Defects in the Written Style of Lawyers."⁴ The next article in his bibliography was in 1948, and this was by Harry Kalven, who described the University of Chicago Law School training program in research and exposition.⁵ So, step one involved these kinds of descriptions of curricula and programs to help lawyers learn how to write.

A couple of articles published during that period illustrated the emphasis on the cost of such programs. One was *A Low-Cost Legal Writing Program—The Wisconsin Experience*,⁶ followed by *Legal Writing and Moot Court at Almost No Cost: The Kentucky Experience*.⁷ These articles indicated that law schools were as concerned about the costs of such programs as they were about their quality.

After step one, came something that I'm going to call leap one. Leap one was "finding a voice" that would allow us to talk and write about our teaching, and that "finding of a voice" came from English studies, especially rhetoric and composition. And it came from legal writing teachers who had come out of those disciplines and then applied those disciplines primarily to the teaching of legal writing. There were a number of important articles in leap one, which used this voice found in other disciplines and applied it to what we were doing. Many of those influential authors are in the room today.

To point to a few examples of articles whose authors are not in the room today, one of them is the 1986 article by Terry Phelps, *The New Legal Rhetoric*, where she proposed that composition theory could give us a substantive pedagogy for teaching legal writing.⁸ This is consid-

3. James R. Elkins, *The Things They Carry Into Legal Writing (And Legal Education)*, 22 LEGAL STUD. F. 748 (1998).

4. *Id.* at 777 (citing Urban A. Lavery, *The Language of the Law: Defects in the Written Style of Lawyers, Some Illustrations, the Reasons Therefor, and Certain Suggestions as to Improvement*, 7 A.B.A. J. 277 (1921)).

5. *Id.* (citing Harry Kalven, Jr., *Law School Training in Research and Exposition: The University of Chicago Program*, 1 J. LEGAL EDUC. 107 (1948)).

6. Stewart Macauley & Henry G. Manne, *A Low-cost Legal Writing Program—The Wisconsin Experience*, 11 J. LEGAL EDUC. 387 (1959).

7. Kenneth B. Germain, *Legal Writing and Moot Court at Almost No Cost: The Kentucky Experience, 1971-72*, 25 J. LEGAL EDUC. 595 (1973).

8. Teresa Godwin Phelps, *The New Legal Rhetoric*, 40 SW. L.J. 1089 (1986).

ered by many to be one of the most important early articles using composition theory to teach. Looking outside of ourselves, we found and applied a theory that would help our teaching.

A similar article in 1993 was the Elizabeth Fajans and Mary Falk article, *Against the Tyranny of Paraphrase*, where the authors brought in not just composition theory but also literary theory.⁹ They started to talk for one of the first times about reading and interpretation and how that was an essential first step before you got to composition. So, that was leap one, “finding a voice” outside of ourselves that would allow us to talk about our teaching.

Then came leap two. Leap two was “building a room of our own,” and that’s the room that was built by the establishment of the Legal Writing Institute and continued with the establishment of the *Journal of the Legal Writing Institute*, and Chris Rideout’s efforts in that regard.

The first issue of the *Journal of the Legal Writing Institute*, published in 1991, included articles by three people who were rhetoric and composition scholars,¹⁰ as well as an article containing the first survey of the field.¹¹ These milestones were instrumental in building our own place where we were going to be able to talk among ourselves about how to teach writing. That was a major leap in our development as a discipline.

In addition to the founding of the Institute and the *Journal*, the LWI also started the biennial conferences. The conferences further built the discipline by allowing us to talk to each other about theories that would help us with the teaching of writing. Around this same time, Terry Phelps and Linda Edwards started the legal discourse colloquia at Notre Dame. These helped a number of us begin to do scholarship; they helped us start talking about our scholarship as well as about our teaching. We found some theories that we could apply to our scholarship, and that was leap two.

Leap three was the movement outside of ourselves, and I’m calling this “other voices, other rooms”¹² to follow leap one, “finding a voice,” and

9. Elizabeth Fajans & Mary R. Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts*, 89 CORNELL L. REV. 163 (1993).

10. See George D. Gopen, *The Professor and the Professionals: Teaching Writing to Lawyers and Judges*, 1 J. LEGAL WRITING INST. 79 (1991); James F. Stratman, *Teaching Lawyers to Revise for the Real World: A Role for Reader Protocols*, 1 J. LEGAL WRITING INST. 35 (1991); Joseph M. Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development*, 1 J. LEGAL WRITING INST. 1 (1991).

11. Jill J. Ramsfield, *Legal Writing in the Twenty-First Century: The First Images*, 1 J. LEGAL WRITING INST. 123 (1991).

12. *Other Voices, Other Rooms* is a book by Truman Capote and also a CD by a singer named Nancy Griffith. TRUMAN CAPOTE, *OTHER VOICES, OTHER ROOMS* (Modern Library

leap two, "building a room of our own." In "other voices, other rooms," we began to look beyond the disciplines we had already started to apply, so we were no longer looking just at composition and its neighbor, rhetoric. We began also looking at literary theory, linguistics, cognitive theory, social science, and feminist theory. And we brought in other disciplines to help us in our scholarship: that is, we also started looking at subject matters and purposes other than our teaching. This was the beginning of the movement toward writing about "substance" or the practice of legal writing. We started talking about the substance of legal writing, and we also started communicating with audiences outside ourselves. We were not just talking about teaching anymore and we were not just talking about pedagogy anymore, but we were communicating about the study and the practice of professional legal writing to a number of different audiences.

In addition to the *Journal of the Association of Legal Writing Directors*, which is the journal that I edit and whose goal is to connect with practitioner audiences, there are a number of other things that exemplify "other voices, other rooms." The Appeal Conferences in Africa are a way to bring in other voices and to move ourselves into other rooms. The Applied Legal Story Telling Conferences are another way to bring in other voices and other rooms. The Persuasion Conference last year, and the Law and Rhetoric Conference that Terry Phelps has put together, are ways that we can now start engaging more with other disciplines and other audiences, and that constitutes leap three, the leap more fully into scholarship.

So, where do we go from here? We are going to suggest that we should do scholarship that focuses on what I'm calling "legal rhetoric." This would allow us to integrate our teaching, our scholarship, and our service in a way that will help most of us advance professionally as well as personally. It will also force us to engage with other communities as well as communicate among ourselves.

Focusing our scholarship on legal rhetoric would mean focusing on the study and the practice of interpreting, imagining, and composing effective legal arguments. It's not just texts, reading and interpreting them, and composing them, but it's also imagining arguments. It's the whole process that starts with analysis and interpretation and ends up with the composition of a legal argument, whether it's written or not.

Why is this a good time, why is rhetoric a good thing, and why are we the right people to focus on legal rhetoric? Law has been associated with rhetoric since the time of Aristotle and the Sophists. Law and rhetoric

2004) (1948); Nanci Griffith, *Other Voices, Other Rooms* (Elektra 1993).

have been inextricably intertwined. Why law and rhetoric for legal writing professors? Because rhetoric empowers the outsiders; it is the outsiders who really need to understand rhetoric. It's not the people in power who need rhetoric. Rhetoric is also a natural path for us as legal writing professors because of what we do as rhetoricians every day in the classroom.

More than anyone else in the academy, what we teach is legal rhetoric. We teach people to interpret cases and statutes, to criticize opinions and briefs, to articulate rules, and to create and invent arguments. We teach people to do the parts of rhetoric that I'm not so crazy about—arrangement and style—as well as the more interesting parts, imagination and invention. We are legal rhetoricians in the classroom as well as in our scholarship.

In addition to that, what we do in the legal writing classroom makes us confront some of the really critical issues that you have to confront if you want to teach and do scholarship about legal rhetoric. One of those issues is the issue that Peter Brooks has raised about John Yoo and the "Torture Memo."¹³ Isn't Yoo just a really good law student? Isn't the "Torture Memo" exactly what we've been teaching our students to do in terms of manipulating and using the language? If we are serious about teaching and using legal rhetoric, that's one of the questions that we would have to confront in the classroom.

Another kind of question that legal rhetoric would force us to confront is the use of personal voice and the place for that sort of voice. This is the question James Boyd White worries about: In much of legal writing, nobody is at home. We are basically teaching people not to have a personal voice, but instead to adopt the culture and the rhetoric of the practice of the law. What does that do to the rest of the student's life? Is that a good thing or is that a bad thing? Is it just part of a necessary process, or is there something else we can do?

Why law and rhetoric now? One reason is that formalism is dead. Formalism is the view that the judges act like umpires and merely administer the rules; the judge acts as a machine and can decide what the outcome should be once the judge figures out what the rules are. Except for U.S. Supreme Court confirmation hearings and law school exams, formalism is dead.

The fact that formalism is dead leaves traditional legal scholarship with very little to do because traditional legal scholarship deals with precise analysis of legal rules. If formalism is dead, the legal rules really are not the only way that outcomes are determined; so, you really

13. Peter Brooks, *What to Do about Yoo?*, CHRONICLE OF HIGHER EDUC., May 8, 2009, <http://chronicle.com/article/What-to-Do-About-Yoo-/44311/>.

don't have that much to do in traditional legal scholarship. The alternative that traditional legal scholarship has currently come up with is a deeply cynical view of realism, the view that judges decide everything based on politics, attitudes, and personal preferences. Now a great deal of scholarship is about empirical studies showing that's what judges do. That doesn't seem like a very productive kind of scholarship. On the other hand, rhetoric allows me, my students, and lawyers to have a productive role. If you think of the law as working through a rhetorical process, rather than determined only by the rules or only by power, we really can affect the outcome. This makes rhetoric a deeply attractive way to go about doing scholarship.

The last thing I'm going to talk about is what it would mean if you really were to adopt "law as rhetoric" as the thread that ran through the fabric of your entire professional life. First, rhetoric works to guide us in the study of legal texts and legal arguments. Classical rhetoric and contemporary rhetoric give you tools and approaches that you can use to read, analyze, interpret, and criticize legal arguments. Second, we can use rhetoric, as we all have done, as a process for composing legal arguments. New rhetoric, classical rhetoric, and contemporary rhetoric give you ideas for inventing, imagining, composing, arranging, and putting the right style on your legal argument. Third, rhetoric gives you a perspective or a lens that allows you to look at something and say, "Why is it that way; why is it not another way?" It allows you to come up with unique arguments, refigure story lines, and come up with new ways of framing problems. As Kenneth Burke says, if you turn something around and you look at all the different ways in which it could be viewed and all the different metaphors that you can use for describing that concept, you are using a very powerful, creative, and imaginative tool.¹⁴ That's the third way rhetoric would help us integrate our teaching, our service, and our scholarship.

LINDA EDWARDS: My part today is to offer a few thoughts about two topics: some of the purposes of our scholarship and how we might think about our scholarship as a shared enterprise. We know we're talking to a room full of people who already know the value of scholarship, but not everyone in our community would agree. As we see on the listserv periodically, we have a number of different audiences represented, a number of different communities represented, and voices within our community represented. So, I want to talk about some of the most

14. KENNETH BURKE, A GRAMMAR OF MOTIVES AND A RHETORIC OF MOTIVES 503 (1962) (discussing metaphor, metonymy, synecdoche, and irony).

important reasons why we need to write. Some of these reasons are the same as in any other academic writing and some are more specific to us.

Scholarship is expensive. It takes significant institutional and personal resources. For legal writing professors, these personal resources and costs can be especially high given the exceedingly heavy teaching loads that so many of us carry. So, why should we write? We need to be clear about our purpose.

Maybe the most important purpose—and I hope that I’m not being too grandiose here—is the advancement of human knowledge, the fundamental reason that humanity needs to understand as well, as fully, and as deeply as possible. We owe that obligation to a couple of particular constituencies in law practice—judges and lawyers. But these instrumental uses for advancing knowledge don’t quite tell the story. We owe that obligation to humanity itself because humanity itself often advances in unpredictable ways simply by coming to understand more fully and more deeply the most amazing little pieces of our experience of life.

We, in the academy, are optimally situated to discover new information and to make those new kinds of connections. We might be tempted in the legal writing world to think that this responsibility need not apply to us because other professors who are not as busy as we are can fulfill this responsibility, but this is not a satisfactory answer. First, many non-legal writing professors are at least as busy as most writing professors. Are they going to be exempt as well? Are we going to relegate the pleasure and obligation of expanding human knowledge simply to those with leisure time? If we do that, then some of the best minds will be taken out of the game, and humanity’s understanding of the world in which we live will be the poorer for it.

Second, and more importantly, scholarly contributions are not generic. Legal writing professors have a unique set of experiences, a unique perspective, and a unique set of skills. Some contributions will be made only by legal writing professors. If legal writing professors are not writing, then those contributions will never be made. We’ll be making a decision to forego understanding those things. That would be a significant loss.

Another important purpose of scholarship is the enhancement of teaching. Of course if a teacher knows more, that teacher can impart more. But that simple correlation doesn’t fully describe the reason that writing enhances our teaching as legal writing professors. The most important way that writing enhances our teaching is the discipline of doing what we expect our students to do. It’s easy to forget how excruciatingly difficult writing can be, and how frustrating it can be to try to master a new subject and then present that new material in a logical way. And, how intimidating it can be to, metaphorically, expose

oneself in print. We can forget how confusing and disorienting it is to write in a new language or voice, or in a new genre, or to a new audience. If we ask our students to do these things, can we ask anything less of ourselves? Tennis coaches play tennis. Cooking teachers cook. For the same reasons, legal writing teachers should write.

And this rationale, by the way, doesn't mean that we should write office memos and briefs. That might be a tempting kind of conclusion to draw, but ultimately it misses the primary value that our writing can have for our teaching, because most of us can write an office memo or a brief easily. We can almost do that in our sleep. We miss the experience our students have if what we're writing is limited to the genre we teach. Most of us have to work a lot harder to write a law review article. We experience a lot more intimidation, confusion, and insecurity—all those feelings that our students feel every semester. The greatest teaching value for our writing is experiencing again the kind of difficulties we ask our students to experience every semester. We need to be writing the things that stretch us.

Scholarship can also be personally and professionally transformative. This kind of transformation has value beyond the scholar's own transformation. The best teachers are curious, constantly learning, adapting, and intellectually engaged. Students and judges and the rest of us are served by the work of that kind of transformative scholarly enterprise. I have been honored to be the recipient of so much of that important work, done by the people in this very room.

Although that transformative power applies to all disciplines or academic areas, maybe we, as legal writing professors, need it the most. Why is that? Because legal writing professors often teach nothing but two sections of Legal Writing I and two sections of Legal Writing II—year after year, while non-legal writing professors generally teach three to four different courses every year. We need to do scholarship for both personal and professional transformation, perhaps more than anyone else in the legal academy. We need to be experiencing the excitement of exploring that new intellectual territory and seeing where it could lead us.

These internal purposes provide all the justification we need. Ideally, these are the reasons that we will write. But, of course, we have one external reason as well. If we're ever to achieve equal status and full membership in the academy, we'll need to be both good teachers and good scholars. The hard reality is that if we are subject to reduced professional expectations, we will always be subject to reduced professional status. That's just the way it is. Yes, scholarship is hard and it

takes significant resources, but even for legal writing professors its purposes are more than worth its costs.

So, if we're going to do scholarship, how should we think about what we're doing? This afternoon, I want to talk about scholarship as conversation. It can be easy to forget that scholarship is a shared project. After all, it's mostly done alone. To a writer, it feels like speech making: She has an idea. She's going to present it standing up, metaphorically, in the community of scholars. She's going to sit down to great applause. End of project. We all want that. But in fact, everything we write is generated from a body of ongoing work by others. It will be presented to others to become a part of a shared discourse that's inherited by everyone who comes after us.

So instead of speech making, let's think about conversation. Imagine a room full of people in animated conversation. The door opens and someone, let's call her Professor Henderson, walks in. How can Professor Henderson and the rest of the people in that room help advance this shared project of struggling to understand some kind of hard question? Professor Henderson should first sit down and listen for a while. Maybe she should lean over to the person beside her and say, "What did I miss?" She should find out who's saying what, where the direction is heading, what is already covered, and what positions have been stated already. Once she has a good idea of what's been said already, she should start to participate. When she stands up to make her point, she should try to say something new. It would be silly if she stood up and said, "Well, X said this and Y said that, and Z made this other point," and then sit down. She needs to say something new because when she stands up to talk she makes an implied promise to her listeners that she's going to be a good steward of the conversational time that she's taking up. But, of course, she should also mention what's been said already because she needs to connect her new ideas to the threads of the conversation.

What duties do the other people in the room have? Do they have some kind of responsibility to this ongoing conversation? Well, certainly. They have the duty to listen to her with an open mind, anticipating that they will learn something new, and willing to be persuaded of something that they didn't necessarily think about before Professor Henderson started to talk. They need to be happy to have a new voice entering the conversation. Instead of wondering who this strange person is who came into the room, they need to welcome her into the conversation. Maybe they should be willing to tweak her idea. Maybe they should even be willing to disagree with her idea. Because after all, this is a shared project of searching for the best answer.

So, let's say that somebody in the room doesn't really agree with Professor Henderson. We'll call him Professor Brown. Does he have an obligation, at some appropriate point, to share his perspective with the group? Yes, because what if the best answer the group would have been able to come to is somewhere in between those two perspectives? What if it's somewhere on the other side of Professor Brown's perspective? The group might not ever get there without all of those voices participating.

We've all shared good group deliberations like this. In fact, good faculty meetings proceed exactly this way. With this kind of full, thoughtful, broad, and respectful participation all of the participants come away learning a great deal more. They understand their topic much more deeply and fully than any one of them ever could alone.

I think this model works pretty well for our scholarship. So, how are we in the legal writing world doing with the criteria that have been implied in this discussion? The first is thorough research. Our articles, generally speaking, are pretty well researched. We are good researchers ourselves. We teach that skill, and usually our articles tend to show those skills. We do have to reach out beyond our own discipline, though. We have to read in other disciplines and hear other voices to make the connections between our work and scholars who might not know about us. If we want to be full members of the academy, we have to start with our scholarship. We should start making those connections in the work we do and the work others are doing. There is fabulous work going on outside our own discipline, and our scholarship will be better if we can rely on that body of work too.

Are we making new points, and relating them to old points? Generally speaking, yes. Every once in a while we don't do such a good job with this. Every once in a while we announce an idea as if it were the first time anyone had ever thought of it without realizing that, in fact, Chris wrote about it twenty years ago. But most of the time we're doing a good job of coming up with something new and relating it to the foundational work in our field.

How are we doing at welcoming new scholars into the shared conversation? Are we glad when they make new points that we haven't thought about? Almost always, yes. Our community is one of the most supportive academic communities anybody could ever hope to find. Of course, and let's just be honest here, even an established scholar can have a twinge of proprietary emotion when a new voice enters a conversation. But as members of this marvelous community, we have always put that little twinge behind us and welcomed that new voice into the conversation. I think that's exactly what Mary Lawrence taught us to do and has been continuing to remind us to do all of these years.

But our collegiality occasionally gets in the way. It is hard for us to disagree with each other in print, and for some understandable reasons. Terri Pollman refers to this as the “provocative voice.” The provocative voice is not always encouraged in our community. We are reluctant to disagree with each other, but mature disciplines aren’t afraid of disagreement. I hope we will be learning more and more how to disagree with each other and still be the kind of supportive community we need to be.

In a marginalized community, disagreeing with each other is complicated, particularly if we do it publicly. If Professor Brown wants to disagree with Professor Henderson, but Professor Henderson is on a tenure track or is working toward a long-term contract, how should he feel about that? Should he refrain from disagreeing? Should he keep back those points that he might have wanted to make? Well, certainly we hope he is sensitive to audience. We are the rhetoricians in the academy. We need to be very sensitive to audience. In a sense we have, like all marginalized communities, an inside audience and an outside audience, and whenever we put anything into print, we have to remember that. We have to remember that we’re writing both inside and outside, so we need to write in a way that is sensitive to the possibility that a reader from outside the community might misunderstand our point.

Other areas of scholarship in the academy thrive on disagreement. The kinds of substantive disagreement that would be accepted as a matter of course can, in marginalized communities, be interpreted by outsiders as something much more serious, especially if the readers are people who are not yet convinced of the clear equal status of legal writing. So we have to write honestly and share our disagreements with each other, but we have to do it in a way that makes clear our respect for the work of the person we are disagreeing with. That is a very delicate rhetorical balance, but I hope that the next generation of scholars will help us do that.

I want to say one more thing about disagreeing: The value of an article is not a matter of whether I agree with it or whether someone else agrees with it. Some of the most important work in a discipline actually calls into question all its commonly held beliefs and assumptions. If the work is well-researched, well-presented, and filled with creative insights, it deserves high praise as a separate matter from whether a particular reader happens to agree with all of the points it makes.

I think the future of our scholarship is exceedingly bright. We’re making big strides, deepening and broadening our understanding of our discipline, citing each other more, reaching out beyond our community

and citing other areas more, and making intellectual and scholarly connections. I hope we will learn to support each other while we disagree from time to time. I can't think of a better time to be in the legal writing world or a better community in which to be doing scholarship. Philosophy has long since turned to the study of language. Jurisprudence has unseated the theoretical underpinnings of routine case crunching scholarship. This is our time, and I can't wait to see what we do with it.

TERRILL POLLMAN: I am going to talk about audience and about writing—what I like to think of as writing for our most demanding selves. Identifying an audience is a complex question for any scholar in the legal academy or elsewhere but especially for legal writing scholars.

There is a longstanding debate about the proper audience for legal scholars. Judge Harry Edwards, for example, wrote with dismay about how legal scholars were not writing doctrinal scholarship.¹⁵ It was the start of the age of interdisciplinary scholarship, and Judge Edwards was disappointed that scholars were writing for each other and not for judges. Judge Edwards is just one example; there are many who maintain that the proper audience for scholarship is judges and that legal scholars should be eager to do scholarship because that is how scholars affect the law or make a direct connection to the law. Others say that writing for other scholars does sufficiently connect academics to changing the law by shaping the legal academy, academic discourse, and the education of the next generation of lawyers. Erwin Chemerinsky and Catherine Fisk argued that scholars should go beyond at least two audiences to many audiences.¹⁶

When Linda Edwards and I sat down to talk about the topic for this panel, audience for legal writing scholarship, we didn't talk about judges and we didn't talk about scholars in other areas. Conditioned by years in the legal writing community with a "we/they" framework, we talked about what we called "the inside audience" and "the outside audience." That conversation led me to ask the questions, "What does it mean for an audience to be inside?" "What does an 'outside audience' mean?"

The inside audience is composed of other legal writing professors. Our community ethic is extremely strong, and we have come to value highly uncritical support and unquestioned acceptance. The outside audience, in contrast, is made up of other law professors on the faculty and

15. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992).

16. Erwin Chemerinsky & Catherine Fisk, *In Defense of the Big Tent: The Importance of Recognizing the Many Audiences for Legal Scholarship*, 34 TULSA L.J. 667, 675 (1999).

especially tenure committees. We in the legal writing community tend to see the “outside audience” as critical, adversarial, and threatening job security for many of us. The rewards and the dangers posed by that audience are real.

Thus, although this way of thinking can be stultifying, I don’t minimize the dangers we face when we write for faculties composed of scholars in other fields. But this fear of the outside audience, of the critical audience, can be destructive for many legal writing professors when it means they don’t write. They reject the whole enterprise. They feel they already have enough to do without taking time to write scholarship.

There are probably a lot of reasons legal writing professors sometimes don’t write. We all know that grading, say, thirty or forty papers four times a semester doesn’t leave a lot of time for writing. We all know that many of us need summer teaching money to make up for lower salaries. With the labor-intensive nature of what we do, there are plenty of reasons why we don’t write.

But the fear of criticism sometimes also holds people back. It creates the paradoxical situation of writing teachers who don’t write and who don’t believe in the value of writing. This reminds me of faculty members who come to teaching because they don’t like law practice. They get in the classroom and their disdain for practitioners shows, and I think that’s damaging for students. But that’s the direct analogy to those of us in the legal writing world who minimize the value of legal scholarship by saying that nobody reads those articles anyway, and saying, “They don’t have the influence that I have in my teaching.” You see this attitude on our listserv often. These legal writing teachers reject the idea of writing completely. I think that’s one aspect of the outside audience and critical audience that has stunted the growth of our community.

Other legal writing teachers do summon the fortitude to write, and they are faced with the important questions of whether to write for the inside audience or the outside audience. There are dangers in writing for both. One of the dangers is that legal writing teachers face even more of a dichotomy between inside and outside than others. When the torts teacher writes and has to decide whether he’s writing for the torts audience or the general academy or for judges, everyone that the torts teacher is writing for had a good basic torts class in their law school education. The people that we are writing for often had poor, if any, legal writing training. They don’t have the vocabulary and basic foundational education in rhetoric and communication that are required to read our scholarship. So sometimes they are not an engaged or knowledgeable audience.

Another issue when legal writing scholars decide to write for this outside audience, in addition to the dangers of the audience not understanding them very well, involves the question of choosing topics. When Linda Edwards and I wrote the bibliography a few years ago on the scholarship produced by professors who self-identified legal writing as one of their primary interests, seventy-five percent of the writing was on other topics. Writing to please the outside audience directly contributes to stunting the growth of our own community.

But there are also difficulties in writing for the inside audience. One risk is that we may be writing for a smaller and less influential audience, although that is changing. Whether we look at our own professional journals, the number of legal writing topics in general law reviews, or symposia, like this one, it's clear that we have made inroads. It is also clear, however, that many in the legal academy would not take the time to read a legal writing article.

The other problem lies in that ethic of support and non-confrontation that Linda Edwards was talking about. If we write only for ourselves, it leads to the suppression of that "provocative voice." If we're going to write for this supportive community that's afraid to take each other on sometimes, then we're going to limit ourselves. It's not going to be someone else limiting the topics and the ways that we grow. It's going to be a self-limitation.

If there are troubling aspects to choosing between an inside and an outside audience, there are also problems continuing with a we/they view of audiences generally. The most salient is the limitation in the way we think. We are torn, sometimes paralyzed, by choosing between the two audiences when there are many more out there. The most obvious is that some legal writing scholars miss the chance to think about influencing judges and practitioners. Others do consciously choose to write for judges and practitioners. Ruth Anne Robbin's article on the visual presentation of briefs¹⁷ has been recommended to practitioners by the Seventh Circuit. Kathy Stanchi's article on confronting adverse authority¹⁸ is another of many examples of legal writing scholarship that is useful to the practitioner.

Another interesting phenomenon is that when judges write, they often write about legal writing, whether it's Judge Ruggero Aldisert¹⁹ or whether it's Justice Scalia. The latter has been noted today for saying

17. Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 2 J. ALWD 108 (2004).

18. Kathryn M. Stanchi, *Playing with Fire: The Science of Confronting Adverse Material in Legal Advocacy*, 60 RUTGERS L. REV. 381 (2008).

19. See RUGGERO J. ALDISERT, *OPINION WRITING* (1990).

there's no such thing as legal writing.²⁰ But on the other hand, he's written a book with Bryan Garner about legal writing.²¹ Judges care about legal writing and are a natural audience for us, so I don't want to forget that audience.

It is important for legal writing scholars and the new generation of legal writing scholars to put aside the framework of we/they, the inside/outside audience, not letting that limit our thinking. An exception may be someone in the tenure process, but otherwise I hope we begin to reject that choice.

There is some other research and scholarship within our discipline that suggests the audience we're looking for is the individual audience, and it might be that we should be writing for ourselves. There are many theories about motivation, but the one that has captured the imagination in the legal academy is the extrinsic and intrinsic motivation theory and debate. Most of you will be familiar with it from Larry Krieger's work.²²

The literature on humanizing education focused on intrinsic and extrinsic motivation theory and its link to self-determination theory to argue that if you are motivated internally by intrinsic motivation, by curiosity, by your own satisfaction, and by something that you want to do, you learn more deeply. You work on things longer, and you take greater satisfaction in them. In that case, the research shows that you have better success.

If you are extrinsically motivated, then you're motivated by things like money or status or tenure. Those are much more difficult things to accomplish. It turns out that people who use externals for their motivation tend to end up disinterested. You see that outside of the legal writing community or on any faculty. That's the new faculty member who comes in excited about teaching, and at the end of the tenure process, with this external motivator hanging over his head, will never write again. Many in legal writing have written about motivation. So, we should think about that internal intrinsic motivation and what it might do for us.

Finally, before I finish today, I want to talk about using audience to advance the community as a whole. There are two important habits we

20. See Edward A. Adams, *Scalia: Legal Writing Doesn't Exist*, Aug. 9, 2008, A.B.A. J., http://www.abajournal.com/news/article/scalia_legal_writing_doesnt_exist/.

21. ANTONIN SCALIA & BRYAN A. GARNER, *MAKING YOUR CASE: THE ART OF PERSUADING JUDGES* (West 2008).

22. See, e.g., Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 833 (2007).

could develop. The first is reading each other's work. I joined the Board of the *Journal of the Legal Writing Institute* last year, and while reading everything that comes in, I realized how much I was not reading beforehand. I think that stems from a couple of things. We have had such vibrant and frequent national conferences, and we have become used to that conversation that Linda Edwards talked about happening at a conference. We have the conversation through presentations and through the listserv. We don't rely enough on writing for each other and reading each other's work.

The second habit relates to a peer review process that begins very early in the writing process. I have watched junior faculty members at three different institutions come in and start with a draft that a legal writing professor would be embarrassed to show anyone. And the junior faculty members pick two or three people that they trust not to judge them on the basis of a bad draft. It starts there and goes in concentric circles outward, and each time the draft gets better and better. We watch our students do that. A lot of legal writing scholars think they've done that if they show their finished draft to one person before they send it out. We don't start with a bad product and go through draft after draft with people we trust to make something good. These drafts start out as something our students would be embarrassed to give us as a zero draft and end up published in highly prestigious law reviews because they are terrific articles. We know how to teach people to do this, and I think it's time for us to start doing it more ourselves and using the process a little better.

I want to end by saying that most of us came to teaching because we love to learn. A synonym for scholar is student, and one important way we learn—and we all know this—is to write. It's been wonderful to watch in the last twenty-five years of the Legal Writing Institute how we have built a discipline by writing and showing our love of learning by writing. The next twenty-five years will give us even more chances to do that, and I look forward to it.

KIRSTEN DAVIS: Any questions?

AUDIENCE QUESTION: The “we’re all nice to each other” issue and the “provocative” issue are affected by gender and affected in a couple of ways. It can be affected by our stereotype—that women are supposed to be nice. But the other thing, and I say this as someone who writes, as most of us in this room have written, tenure letters. I was instructed to be critical in the letter. This is something that women are told to do and men are not. If the community that is writing the letter is seen as being too inside—that is if you’re a person of color who is getting letters from

another person of color, if you are a woman who is getting a letter from another woman, if you are a legal writing person who is getting a letter from another legal writing person—well, then, of course they're not going to say anything critical. They're all friends with each other. And for us, that's true because we are friends with each other.

So, I was told to make sure I said something critical, and one of the times I said something critical, that person did not get tenure. Did they quote my letter? What did they say? You're asking us to be critical of each other when we're a marginalized community. And I guess the other thing I'm thinking is that it is a great topic of scholarship: how to be critical of your peers.

And I'm just going to extend it by pushing it just a little bit more to talk about Ron Clark who has started Ron Clark Academy. I read his book on teaching,²³ and I found a lot of things relevant to our teaching. But the one thing I remember is that he is teaching his fifth graders how to have the kinds of conversations where person number one talks and then person number two says, "Well, here's how I feel about what person number one said." So, what is a way to be argumentative but still respectful in an effective way?

LINDA BERGER: To advance as a discipline, we actually do need to engage with the ideas that are in our work, and that involves criticism. But I think that you can criticize the idea but not the person, or talk about an alternative way of looking at the idea that doesn't really say the person didn't do it thoroughly. Those are some of the approaches you might take in your scholarship responding to somebody else. In the experiences we've all had in writing a tenure review letter, we know that criticism can be very harmful.

TERRILL POLLMAN: My faculty is one that doesn't take a letter seriously unless there's criticism in it. But I think you have to be very careful. I also think the other piece of that is that I am being asked to give my opinion. I'm willing to look hard for positives, but I am not willing to say something beyond what I believe.

LINDA EDWARDS: Personally, I'm not willing to say something I don't believe either. But within that world, I need to remember that if a tort article is being evaluated in the tenure process, most faculties will expect that evaluation letter will have some critique that the writer of the letter thinks could have been done differently. That would be

23. RON CLARK, *THE EXCELLENT 11: QUALITIES TEACHERS AND PARENTS USE TO MOTIVATE, INSPIRE AND EDUCATE CHILDREN* (2004).

expected as a matter of course, and some criticism will make the letter more credible in the praise that it gives in that context with that audience. But what I'm trying to do is write a letter that will equalize that process of reading my tenure letter so that if it's true, it's very clear that I am disagreeing as a matter of substance, but that I am still able to see, nonetheless, the real value this work has for the advancement of our discipline, and that ought to be the operative question.

It is a hard balancing act. I think fundamentally we can't be dishonest. We owe it to our own discipline and to the academy in general to be honest, but we also need to remember that readers are very different and that we need to write to the audience like rhetoricians. We need to write to the audience that's going to be reading our letter.

TERRILL POLLMAN: Ruth Anne.

AUDIENCE QUESTION: I guess this isn't as much a question as it is a comment. I agree with the thought that we need to have a conversation in which the conversation may actually say, "I disagree with you." Somebody should have come right out and disagreed with the article I wrote and didn't. The person who disagreed did it so subtly that it took me sitting down and teaching it to my students to suddenly realize that I've been teaching it wrong for the last three years. I had to go in and say to my students, "I'm wrong." I wish he had come right out in his footnote and said, "Here's where I break with the author." I would have paid more attention, my teaching would have been better, and my students would have learned it better.

TERRILL POLLMAN: Mary.

AUDIENCE QUESTION: Also somewhat of a comment on something I see in our faculty. Our young faculty come up with an idea and they're ready to vet it, and I'm thinking, "What? Where are you?" Some of that has to come because, in some ways, we've been defending that we're even a discipline for so long. We're supposed to be writing gods; otherwise, anyone can do this. So, why would the writing god come up with the perfect thing on that first draft? Now, like you said, it's against what we teach, which is the whole process, and you have to go back and back and back. But I think that's part of it. One of the reasons I wanted to make a comment is that the writing groups provide that safe environment because you don't want to go to other people on your faculty and let them see your worst.

TERRILL POLLMAN: The last place you go is your faculty.

AUDIENCE QUESTION: But if you go to other people within the safe community, and I guess that's the rub, there's a time to be the safe community and then there's a time to criticize and comment. Maybe one of the things we're moving into is finding the balance there. I do see that in the young scholars, though: "I have an idea; let me show you."

AUDIENCE QUESTION: Coming from an actual law practice within the courtroom, we're dealing with other attorneys and we're used to criticizing other people's arguments all the time. That's what we do, and we do it in a professional way. Listening to you speak about how we need to be critical of each other, I don't think I even realized that we weren't. Maybe there is something that can be learned from the newer teachers who are coming in from a real-world practice, that there is a very professional way to say, "I really respect the way that you thought about this, but here's what I think about it," and respectfully disagree.

TERRILL POLLMAN: Kristin.

AUDIENCE QUESTION: Let me just say from the *Journal* editor perspective that this is exactly what we're facing right now. There are several young scholars, and maybe even not-so-young scholars, who feel like, "If I write an article and I send it to the *Journal of the Association of Legal Writing Directors* or the *Journal of the Legal Writing Institute*, you need to publish it. You need to help me grow as a scholar." We received sixty articles this year, and we have given offers to eight. We've turned down fifty-two authors, some of whom we know are very upset that we did not find their articles "worthy," in their words, of being published. How do we balance our mentoring roles with the idea that we do want to further the quality of our scholarship, but that the discipline has matured and the bar has been raised? How do we still mentor young scholars while increasing the level of quality and increasing the level of conversation in our two journals?

LINDA BERGER: I was thinking about legal writing as feminism, and just a minute ago I was thinking about legal writing from the point of view of battered women's syndrome because of the safe community idea. Elizabeth is onto something there. People who have not been in legal writing for twenty-five years are not going to feel the same obligation to support each other and each other's ideas all the time.

Now, on the nurturing or mentoring aspect, a number of efforts have gone on—the Legal Writing Institute Writers' Workshops, the ALWD

Scholars' Forums and Workshops, and a number of regional conferences, not just with the ALWD Scholars' Forums, but a number of regional conferences that are doing this on their own. Those will help younger scholars improve their scholarship. As members of the editorial boards of the *Journal of the Association of Legal Writing Directors* and the *Journal of the Legal Writing Institute*, we also end up doing a lot of mentoring ourselves, and that's a good thing. It's time consuming, and we have a lot of other things to do, and that's probably not a full answer, but that's what I'm thinking would help.

TERRILL POLLMAN: It's another way scholarship informs teaching. There's nothing like getting your own article back with comments on it to let you know how your students feel.

LINDA EDWARDS: The quickest way to make a difference on that topic is for everyone in this room to say at every opportunity when our community meets, including electronically on the listserv, if you haven't had your draft reviewed by other colleagues at least ten times, don't send it to a journal. It's not ready to go. If that statement becomes a part of our shared common wisdom because everyone in this room has repeated it, people will start to do that. The people who don't do it, just don't think about doing it. They think getting to that relatively decent draft has been so hard that they hope they're done and they want to send it in. Repeating that simple message would do a lot.

AUDIENCE QUESTION: One of the things that peer review journals do, that happens in other disciplines all the time, is that a young scholar or a more mature scholar or whoever, gets a lot of feedback. But when we do submit that article elsewhere, it's much better for it. I think the question is the willingness to accept it.

KIRSTEN DAVIS: Greg has his hand up over here.

AUDIENCE QUESTION: Throughout this conversation the word that comes to mind for me is scholarship "constitution." It's interesting how there are generational differences and how all of these questions change over time because if you're not quite so marginalized as to community, we have such differences. This school compared to my school's legal writing program is a world of difference, and that makes it difficult. Do we have a constitution of that sort or something that plays that role, and if not, do we need that?

*AUDIENCE QUESTION: Best Practices.*²⁴

TERRILL POLLMAN: Yes. We're writers of the constitution, but when Linda and I were first talking about this, we were saying there should be some signal we could give each other that says, "I'm going to criticize your article, but I still love you."

AUDIENCE QUESTION: I want to check on something that Chris and Kirsten said. We also see sort of a phenomenon, and I don't know if this is happening with the *Journal of the Association of Legal Writing Directors*, but we have had some young scholars. We've accepted the article, but we've wanted revisions. Collectively, a mentoring process had gone on, and we are told, "I got accepted by a law review, and they're not interested in doing any revisions. Bye." So, we have to get a message out that there is an opportunity with mentoring. I was wondering if the *Journal of the Association of Legal Writing Directors* had that experience, and if so, if you've had any thoughts about how at the *Journal* we may address these issues.

LINDA BERGER: Kristin and I have had similar issues, where people would tell us either that or that their school valued the student-edited law review more than the peer-edited journal in the field, including the one situation that I thought was among the most interesting, although after it was explained to me it made a little bit more sense. There was a school which would not give an author a scholarship stipend if they published in a peer-edited journal. They had to publish in a student-edited journal. There is some rationale for that, but it wouldn't matter for this point.

There are a number of things we can do as a community. We need to convince deans, faculty promotion, and tenure committees, and all of those folks that this is a good placement. We need to convince the authors that going through the peer review process is going to give them a better article. And maybe we should start talking about how when we went through the peer review process, we ended up with a better article, because I think almost all of us did.

SHORT BREAK

24. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007), available at http://www.law.sc.edu/faculty/stuckey/best_practices/best_practices-full.pdf.

PLENARY IV: PROGRAM DESIGN

BROOKE BOWMAN: Welcome to the last panel. I am Brooke Bowman from Stetson University College of Law, and all I have to say at this point is “Wow.” I’m subbing for Rachel Croskery-Roberts, and as I was preparing this introduction, I thought, “How do I introduce these three individuals? How did I get this honor?” I’m standing amongst the rock stars of legal writing, the heroes, the pillars of this discipline, in my opinion. These individuals encourage, energize, and challenge us into the future. They inspire us to be more creative every day.

When I think of the hundreds of books, articles, and newsletters that these three have published, and the hundreds of presentations given and panels they served on, as well as the leadership positions in LWI, AALS, and ALWD, I’m in awe. And that does not even begin to describe their jobs—the hours of instruction in and out of the classroom, office conferences, oral arguments, and the critiquing, reviewing, and commenting on student papers. I think of how these three individuals, and all of you in the first three or four rows, have mentored each and every one of us.

We will begin this session on program design with a discussion of the past, followed by a discussion of the present and future. We have three panelists. Suzanne Rowe, the director of legal research and writing from the University of Oregon School of Law, will talk about what we can learn from the past—surveys. Susan Duncan, associate professor of law from the Louis Brandeis School of Law, University of Louisville, will talk about the ABA standards and what is currently happening. Eric Easton, professor of law and the co-director of the legal skills program from the University of Baltimore School of Law, will talk about the future and thinking outside the box. So, I turn the program over to Suzanne.

SUZANNE ROWE:²⁵ For almost twenty years, the Legal Writing Institute’s survey of legal writing programs has helped us see the professionalization of our discipline, just as time-lapse photography helps us observe a caterpillar’s development into a butterfly. The Institute has conducted surveys regularly since 1990 when Jill Ramsfield conducted the first national survey that became the Institute’s survey. The return rates have been remarkably high; even in the early years, the return rate was above eighty percent, and in recent years over ninety percent of law schools have responded. The insights provided by this time-lapse

25. This discussion was accompanied by a PowerPoint presentation with graphs and charts. That presentation, as well as a footnoted version of this discussion, is posted under the speaker’s name on SSRN at <http://ssrn.com/author=432038>.

review of legal writing shows clear progress, but that progress has not been unanimously achieved, and a few schools are now trying to stuff their butterflies back into chrysalises.

This presentation will highlight a few of the more significant developments in program design revealed by the Institute's surveys, focusing first on programs and then on the professors who teach in them. We have much to celebrate during the Institute's twenty-fifth anniversary, but if you've been tempted today to romanticize the early days, the following statistics should knock off the rose-colored glasses. We still have challenges facing us. Expanding and enhancing the survey's questions can help us both face those challenges and further the professionalization of our discipline.

Turning now to program design: One of the most interesting trends in program design is that schools are moving away from "programs." While the survey still asks about the "first-year program," or the "required program," a number of the schools—including our host for this Symposium—offer legal writing, not as a program per se, but as a series of courses in a curriculum. As the parameters of legal research and writing (LRW) programs develop, the survey may need to update its language. Whether program or course or curriculum, a few markers of development are clear: (1) less reliance on student teachers, (2) more variety in the curriculum, (3) lower student-teacher ratios, (4) more semesters and credits, and (5) more upper-level skills courses. I'm going to go through each of those briefly.

First, as programs develop, we see less reliance on student teachers. In 1990 many LRW programs relied on student instructors for some level of teaching, and seven percent of schools used student instructors exclusively. Questions about student teachers were so pervasive on those early surveys that it seems to have been the assumption that it was impossible to teach LRW without them. By 2008 the assumption had shifted, as only one school used student instructors exclusively, two other schools used teaching assistants for more than fifty percent of the classroom teaching hours, and sixty-eight percent of the schools did not use teaching assistants at all. (Please note that I am going to be talking about the 2008 survey as the most recent one because the 2009 statistics aren't yet available.)

Next, variety in the curriculum is another sign of progress. In the early days, legal writing programs were tightly organized in lockstep fashion. This uniformity helped ensure comparable experiences for first-year students being taught primarily by student teachers or short-term instructors. As student teachers and caps on instructor contracts have gone the way of the dodo—with apologies to our colleagues still teaching in the Ice Age—so, too, has disappeared the need for uniformity.

In questions on the survey regarding the curriculum, the three possible responses are “uniformity,” “general consistency,” and “variety,” and the following topics are included: selection of citation text, the number of major assignments, due dates and lengths of assignments, selection of textbooks, syllabus coverage, grading, number of minor assignments, and class lectures and exercises.

Through 2008 uniformity continued in the selection of citation texts and the number of major assignments. The least uniformity has always existed in the content of class lectures and exercises. In most instances, the shift has been from lockstep uniformity to general consistency. In one instance, the selection of textbooks, not citation texts, the shift has been from uniformity to variety.

Lower student-teacher ratios are a rather obvious cause for celebration. Ratios have improved significantly, especially in the past ten years. In 1990 twenty-five schools had a student-teacher ratio higher than seventy-five to one. At seven schools, a single professor was responsible for over one hundred and fifty students, and the worst recorded ratio was two hundred and sixteen to one (assuring great levels of interactive feedback and help for students). As late as 1999, ratios were still high at fifty-three to one. There was steady progress from 2000 through 2008 when the national average was down to about forty-one to one.

I used to think that the reported ratio was just for required legal writing courses, but in an informal survey I did last year I found that this ratio reflects the total teaching load. So when you look at forty-one to one in 2008, that might mean that the LRW courses are even smaller because people are teaching upper-level electives as well. Of course, the ABA's *Sourcebook on Legal Writing Programs*²⁶ suggests a ratio of thirty-five to one, so the celebration about decreasing ratios is tempered by the challenges at many schools where the ratios are still too high.

Turning to credits and semesters, another great cause for celebration is that LRW is now awarded more credits and taught for more semesters. In 1990 seventy-nine percent of the schools responding to the survey required just two semesters and most schools awarded two to four credits for the course. Embarrassingly, zero credits was an answer option, though no one in 1990 admitted offering no credit for a required course. In 2008 it appeared that all schools required at least two semesters for the course, a significant number of schools required

26. American Bar Association Section of Legal Education and Admissions to the Bar, *Sourcebook on Legal Writing Programs* 89, 95, 100 (2d ed. 2006) (explaining that the optimal student-teacher ratio depends on the faculty status of the teacher and that teacher's other faculty obligations).

additional credits of LRW in the second year, and a few required third-year courses. Because of the presentation of the survey's current question, it's hard to tell exactly what the total number of LRW credits is averaging at most schools, but it is certainly more than four credits. The survey could easily add that question.

The survey has always asked helpful questions about what LRW courses cover in those credits and semesters, but as academia moves to outcome measures, the survey needs to change its questions in that regard. The survey can simply change the focus of questions from the assignments given to the skills students should master. Certainly, analytical skills should join writing, research, and speaking skills in the survey responses.

The final topic on program design that I'll cover is upper-level courses. In 1990 sixty percent of the schools offered upper-level electives in LRW. Today over ninety percent do. According to the 2008 survey, these upper-level offerings include general writing courses, drafting in a variety of settings, advanced advocacy, scholarly writing, judicial writing, and advanced research. That is an impressive list, but it's a little dated or maybe just too limited. It may not be able to include the variety of courses that schools are offering or that they should be offering. It may not, for example, capture the writing-across-the-curriculum courses that Professor Carol Parker talked about this morning. It may not include pro bono projects that include a classroom component. It might inadvertently omit practice labs in business transactions. And it may not include the hybrid course that resulted when an LRW professor taught trusts and estates or when the trusts and estates professor incorporated skills into that course to energize students and deepen their analytical abilities. The survey can, and should, capture more of this variety.

Moving to part two: professional teachers. Examining the development of legal writing programs requires examining the progress of the professors who are teaching in them. Here we see progress in our titles, security of positions, and participation in faculty government. We may see some backsliding in our academic freedom and perhaps in our use of writing specialists.

The titles we currently have at our law schools vary widely. At forty schools we are called "professor" (recognizing gradation from assistant to associate to full). At forty-seven schools we are called "professor of legal writing." "Clinical professor" is used at seventeen schools. Apart from these titles with the magic word "professor" in them, we have twenty-five schools that use the title "instructor" and seventeen that use "lecturer." An additional thirty-two schools marked the ever present survey response "other," which includes assistant deans and visitors. We

have come a long way from the 1990s when the survey question asked whether LRW professors were typically referred to as “Professor,” “Mr.” or “Ms.,” or “other.”

The next issue concerning professional teachers is security of position. Throughout the life of the survey, some LRW professors have been tenured. In the 1990 survey, eighteen percent of schools reported that their predominant staffing model for legal writing included tenured or tenure-track professors. But for decades the term “tenure” has had an asterisk next to it, as the professor labored under unreasonable teaching loads, organized hordes of student teachers, or mentored a rotating menagerie of short-term colleagues who were expected to leave as soon as they’d developed any expertise. This “tenure” didn’t offer much opportunity for deep thinking and scholarship, but some people miraculously managed to do it. Today tenure sometimes means teaching only legal writing. There are, however, a number of schools where tenure really does mean tenure: professors hired to teach and write in their primary area of expertise, which happens to be legal research and writing, and other areas when the professor’s interest matches the school’s need.

But in 2008 only twelve schools—that’s seven percent—reported staffing models predominantly of tenure-line professors. Up to forty-four additional schools reported a staffing model that includes tenured or tenure-track programs in a hybrid model (meaning a model that may also employ contract, part-time, or adjunct instructors or rely on graduate fellows or law students). Does that mean that we have fallen from eighteen percent of schools with a tenured faculty in 1990 to seven percent in 2008, or did we have thirty-one percent in 2008, or is the percentage somewhere in between? Perhaps revisions to the survey can make this percentage clear.

Even without tenure, LRW positions are more secure. In 1990 eighty-four percent of full-time, non-tenure track legal writing professors had one-year contracts, and eighty-six percent stayed in teaching for five years or fewer. Of the fifteen founders of the Legal Writing Institute, just a handful were still teaching five years later. In 2008, of the eighty-six schools that reported a model using predominately full-time, non-tenure track teachers, many offered 405(c) status, obviously something that didn’t even exist back in 1990, or contracts of three years or more. Fifty-six offered contracts of two years in length or more.

The challenge is that in 2008 thirteen schools still capped the number of years that an LRW faculty member could teach. (Kudos to Montana for recently changing from a capped program to a tenure-track program!) The difficulty in using the survey data here is that schools are asked to check all the categories that apply, which produces overlap. I’ll leave

the technical solution to that problem to minds more technical than mine.

Important to these secure positions has been the development of standards for evaluating legal writing faculty. In 1999 the survey first asked the question, "Are there written standards or criteria for evaluating LRW faculty?" In 1999 twenty-five percent of schools responding said, "Yes." By 2008 sixty-nine percent said, "Yes."

As LRW professors have earned long-term appointments from their schools, they have increased their voice in faculty governance. This voice is evident in three areas: attending faculty meetings, voting on faculty matters, and participating on faculty committees. The information in the survey is fragmented, though it shows some important trends. The fragmentation results from the survey's division of LRW faculty into directors and non-directors. This division needs to be phased out as LRW professors erase the lines between themselves as well as between LRW and casebook colleagues. If valid reasons exist for continuing this distinction, the survey could ask for information about everyone then break out information by status. At least the survey could put the information about directors (the minority) after information about non-directors (the vast majority) so the survey doesn't seem so director-centric.

The survey considers attending faculty meetings and voting together, so I will as well. Full participation in faculty meetings is closely linked to job status. In 1994, when this specific question was added, all tenure-track faculty members were allowed to vote at faculty meetings. Only forty-two percent of LRW faculty who were full-time but not on tenure track received that privilege. In 2008 the survey didn't even ask the question for the tenure-line directors, presuming that those directors will have full participation opportunities. But among the one hundred twenty-six schools with non-tenure track directors, eighteen allowed those directors to attend faculty meetings and vote on all matters; one hundred and eight did not.

Let's look at those statistics more specifically. At fifty-four schools, non-tenure track directors were allowed to attend faculty meetings and vote on all matters, except those relating to hiring, promotion, and tenure, which, of course, are the most important issues that we faculties face. At twenty-five schools, directors could attend faculty meetings but not vote. Disappointingly, directors at five schools were not allowed to attend faculty meetings. This leaves twenty-four schools with directors who weren't sure whether they were allowed to attend and to vote at meetings. It's safe to say that those directors are not participating fully in faculty government.

Turning to LRW faculty members who are not directors, in 2008 sixty percent were permitted to attend faculty meetings and vote on most matters. But is "most" enough? Here are the statistics: At thirty-four schools, LRW faculty could attend faculty meetings and vote on all matters. At sixty-one schools, they could attend and vote on all matters except hiring, promotion, and tenure. At forty-eight schools, LRW faculty members could attend faculty meetings but not vote. At twelve schools, LRW faculty could not even attend faculty meetings.

The numbers of non-participating faculty members are particularly troublesome at a time when the attention of the national academy is turning to skills training. Those who might bring the most experience to the table aren't being allowed to share their views. The numbers are also disturbing if student representatives are allowed to vote but full-time faculty members who teach legal writing are not.

Faculty governance takes place not just at faculty meetings but also in faculty committees. In 1999 four-fifths of directors and two-thirds of LRW non-directors were serving as voting members of committees. The current statistics are even more positive: most directors (those at one hundred thirty-six schools in 2008) served as voting members of faculty committees, and about three-quarters of non-directors (at one hundred twenty-one schools) were able to serve as full voting members of faculty committees. But these numbers mean that in 2008 directors at twenty-four schools and non-directors at thirty-five schools did not get to participate fully on committees. Directors at nine schools and non-directors at thirty schools were deemed unfit to serve on faculty committees at all.

By far the most popular committee assignments for all LRW faculty are the curriculum committee and the admissions committee. For LRW directors, the LRW committee is next in popularity. Why do we need an LRW committee? Should we add a torts committee? The next tier in popularity for directors are the appointments committee, the library committee, and the moot court committee. Least popular for directors are the technology and clerkship committees. Interestingly, those two committees are more popular for non-directors. (That makes sense at my law school because I have no technological savvy and one of my colleagues who is not tenure track or a director has served as the chair of the clerkship committee for two years and has done a fabulous job.)

The survey could capture more information about committee service. For example, which committees do LRW faculty chair, showing not only participation but leadership? On the negative side, are there committees that LRW faculty are precluded from serving on? For those faculty members who are not allowed to serve on any committees, what is the school's reason?

While I've focused today on progress toward further professionalization in LRW programs, the survey's data raise some cautionary flags. I want to mention two. The response to one question suggests a problem in academic freedom. Since 2000 the survey has asked which citation manual will be used the following year. It seems a silly question, but what it boils down to is who selects your course texts: LRW professors with positions that afford them academic freedom or deans and non-writing colleagues who know best? Since 2003 we've seen a steady shift from the *ALWD Citation Manual* to *The Bluebook*. That would be fine except for the whispered stories and e-mail confessions of LRW professors being forced to select one citation text over the other. Academic freedom should support each of us making that decision. (Remember that we get to choose our own writing texts but not our own citation texts.)

Another challenge concerns writing specialists. Writing is thinking, and legal writing encompasses all the facets that Carol listed in her presentation this morning. Given the wide array of thinking and writing skills that LRW faculty are expected to teach, our courses can't devote much time to writing fundamentals that students should have learned as early as grade school. At the same time, law schools shouldn't be graduating students who can't write. Writing specialists are the logical solution for diagnosing students' writing problems—whether at the level of sentence structure, organization, genre, or something else—and to teaching students better writing. But why aren't more schools hiring writing specialists? After a peak in 2006, where forty-four schools had writing centers, the number of schools employing writing specialists has declined. This decline may be a normal ebb and flow, but going from forty-four to thirty-one in two years sounds like a drop.

Hiring writing specialists should show the value that the school places on writing and the recognized difficulty in teaching writing to law students. It should not be a kick down the food chain. I've heard colleagues say, "I don't teach grammar," with the same tone as, "I don't do windows." Or, closer to home, "I don't teach legal writing; I'm a real professor." Just as legal writing and legal thinking are inextricably connected, so legal writing and grammar are inextricably connected. Ask the Canadian company that had to pay two million dollars to renegotiate a contract based on a faulty comma.²⁷ I think writing specialists can help us diagnose the problems along the spectrum of legal writing. Sadly to say, the survey doesn't support my view that legal

27. *Million-Dollar Comma May Aid Canadian Company*, NPR, Oct. 25, 2006, <http://www.npr.org/templates/story/story.php?storyId=6383383>.

writing specialists should be a revered, indispensable part of every legal writing program. I hope that changes.

Where do we go from here? I'll close by summarizing my recommendations for the survey. An in-depth study by the survey committee with comments from the Institute's twenty-two hundred members is certain to come up with some additional recommendations.

First, the survey could clarify questions about staffing models, include outcome measures for LRW courses, expand questions about upper-level courses, and explore the way fundamental writing is taught and who teaches it. Regarding professors, the survey should add questions about chairing faculty committees and ask about school limitations on committee service. And please quit segregating directors from LRW faculty, or at least stop putting directors first.

The survey might ask questions on aspirations for the coming year to show where programs are heading. This additional item might help us stay one step ahead, knowing where movement is likely to come in the future. The survey could ask which of the following are you actively trying to improve at your school in the coming year: student-teacher ratios, more credits and semesters, upper-level courses, job security, voting rights, academic freedom, or staffing model?

The survey might also add a few questions on backsliding in the past year. They would cover the same areas. Did your class size increase? Was the director position downgraded from tenure to contract? Were LRW faculty not allowed to participate in the dean search? Were you told which citation manual to use? Were your legal writing publications not valued as scholarship? Has your program moved from full-time teachers to adjuncts or fellows? Gathering this type of information might help convince the ABA Council that sets standards for accreditation of law schools that standard 405(d) isn't sufficient.

One final request from someone who spent hours poring over surveys from the past eighteen years: could we add a table of contents and an index?

The survey has proved to be an invaluable tool in advancing program design. I salute those of you who invented the survey, those who have worked tirelessly on it for years, and those who will take the survey into our next quarter century.

SUSAN DUNCAN: I am Susan Duncan, and thank you so much for inviting me. This has been a fantastic day. My part of this presentation and my article is examining the history and current action on the law school accreditation standards and suggesting how those might impact our program for law schools generally and then for legal writing specifically.

For the students, I will talk briefly about how the process of changing a standard happens because you might not know how this all works. When the ABA wants to review the standards or change the standards, it goes to a Standards Review Committee, and they are under the Council of the American Bar Association. This Standards Review Committee is engaged in a three-year review right now of all the standards that your schools are accredited by, the standards that Suzanne talked about on job standards, the standards about the curriculum, standards about the library, and all the standards they look at when they come to do a site visit.

Right now they're trying to look at all the standards and revise them along with the rules of procedure. The Standards Review Committee has divided that into subcommittees so that you have different groups looking at all these different issues. They made a schedule over the next three years. They are taking these in chunks, and they're vetting them in the subcommittees. Then they're coming up with drafts and giving them to the Standards Review Committee. Once the Standards Review Committee is comfortable, they'll take a vote and get it to the Council. Once the Council has heard it, they'll send it out for public comments so we'll have an opportunity to go to hearings and talk about the standards, and then it goes to the House of Delegates of the ABA. The House of Delegates will either concur with those changes or they'll send them back for further consideration. I believe that after the second referral, the Council's standards will go into effect; I don't think they can keep bringing it back.

I have had the opportunity the last couple of years to start going to the Standards Review Committee meetings and the Council meetings. They are composed of practitioners, judges, and law professors, and there are maybe thirty on these committees. They also invite interested people to come and watch these meetings. I'm one of those people who sits around the room, watches what they're doing, and reports back to the Legal Writing Institute and the Association of Legal Writing Directors.

Some of these standards over the years have really helped legal writing programs. There wasn't a requirement that you had to have a first-year writing experience, and not always did you have to have an additional writing experience after the first year. Those are fairly recent, believe it or not. You didn't have any kind of 405(d) status; you could be in capped programs, and that's all changed. But I am going to talk about what's new, so you know what you can expect in the future. Probably not by the time you graduate, but I'll bet shortly after, some of these things will go into effect.

It is difficult to talk about these proposed changes because they change. Every time I go to another meeting, there's a whole other set. In fact, when I started to write the article, I accidentally had the wrong draft in the article at first because that's how quickly they're changing. The Standards Review Committee is getting a lot of comments from interested groups, so it isn't just professors writing in. All the legal writing groups and clinicians are writing in, and there's a big interest from the people who teach ethics. They are writing, and you will see a lot of submissions.

If you wanted to come watch what's going on and be able to give your input, because some students have written in, too, go to ABAnet.org, and you can find the Standards Review Committee.²⁸ That's where all the drafts go up and all the submissions go. It's a very helpful website. If you want to see what the Legal Writing Institute is writing about it or what the Society of American Law Teachers group has written about these proposals, all that's posted for the public. You can also see what some students have written.

They haven't passed very much. A lot of this is still in the vetting stage. But one thing that they have passed that will probably go to the Council in December is that there used to be a student/faculty ratio standard that talked about student/faculty ratios and how you calculated those. You might not believe this, but legal writing people were counted as .7. We were not a "whole" person in how they could count the ratios. They have now decided that they are going to delete this method of calculating the ratios, and their logic was that it wasn't important to students what the student/faculty ratio is in law schools. When they decided to do away with the ratio and not tell the schools how to publish the ratio, there was some discussion about how to keep the schools from reporting false or misleading ratios in their brochures to you, or on their websites. So should the ABA make a rule somehow where they do a better job of showing how to calculate ratios? Why it got vetted in the first place was because some schools were playing games with how they calculated the ratios. It was difficult to calculate who was .7 and who was a "real person."

So the committee asked whether they should make the schools have a disclaimer. So if Mercer wants to publish the student/faculty ratio, Mercer has to tell the consumer how they did it so the consumer would know and could look at the schools to make sure that they were being truthful. Others said, "No, we should just make a rule that schools can't

28. American Bar Association, Standards and Rules of Procedure for Approval of Law Schools, <http://www.abanet.org/legaled/standards/standards.html> (last visited Mar. 18, 2010).

report ratios at all. If we're not going to tell schools how to report these, then no school can report it; that will be against ABA rules." They didn't know what that would do to the *U.S. News & World Report* figures because student/faculty ratio is one of the things that goes into the *U.S. News & World Report*. So, would *U.S. News & World Report* just make up their own way to do the student/faculty ratios?

This went on for several meetings, and eventually they decided to do nothing. They will deal with it when a school provides inaccurate information, which is very interesting because the whole reason we got rid of these interpretations is because schools weren't doing the right thing. Now we have no rules, but all the schools are going to do the right thing, and we're not going to do anything until there is some inaccurate information. I don't know how we'll actually know if it's inaccurate, but this is the proposal that I think will go to the Council. It will be interesting to see what the Council does.

We objected to the elimination of the ratio as a legal writing community for many reasons. We felt that they hadn't spent enough time examining alternatives for this ratio. Is there a better way to do the ratio before you get rid of it? We felt that they were not adequately deciding the impact on students—whether depriving the students of the student/faculty ratio information was important. We wanted them to spend more time looking at what that would do to students if students didn't have that information. We thought that there's been a big push for transparency and consistency in the accreditation process when site teams come to schools. Now what meets the standards? What doesn't meet the standards? At least the ratio was a basic approach so we could agree that a school had enough faculty resources if we looked at its ratio. Now we don't even have that. As we're trying to be transparent, it seems that we're taking a step backwards. A lot of schools relied on this rule and put some institutional resources into trying to improve the student/faculty ratios. What would it do to them? So we objected.

Another big motivator, and SALT²⁹ brought this up, was that a lot of times schools had started to put legal writing and clinic professors on the tenure track so they could count us as a "whole" person. It's a good motivator for those schools to give us more job security so they could count us in their student/faculty ratios. We don't know what will happen with this.

Besides the ratios, there is this concept called outcome measures. A lot of it has to do with the Carnegie Report,³⁰ which was a critique of

29. SALT is the Society of American Law Teachers.

30. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

legal education. In addition, *Best Practices*,³¹ a clinical document, talked about things that should be done in legal education. Many other professional schools do an outcome-type measure approach. People from medicine, architecture, and dentistry all use that approach. Foreign law schools use that approach. And there's been a general trend in higher education to use this outcome-measure approach so we're centered upon learning and not so much teaching. So, what do law students know how to do at the end of their law school education? Not just what we offer but what do students know how to do? That's what we should be measuring.

Not everybody is going to support this. There are going to be a lot of professors who are very surprised by this. Some will say that it impacts our academic freedom and that the ABA can't tell us what to teach. Others are going to be very worried that if we have to assess the outcomes and our classes don't come out so well, what will that mean to us? I think some professors are going to say that we can't measure our goals for higher education, that it is simply too hard to do, and that lots of things happen beyond faculty control to influence student learning so the ABA shouldn't be measuring it.

The committee studying outcomes is mainly using a four-fold approach to this. They say that the schools have to identify their outcomes and that the schools have to offer a curriculum so that the students can meet the outcomes. Then the schools have to assess the outcomes. The schools are going to have to do some kind of assessment to see if they are meeting the outcomes they have, and then they have to assess the assessment. The great news for legal writing people is we already do this, so this is going to be nothing new. I think for other professors it will be very new.

I brought you all the most recent draft that I have of how they're going to change the standards.³² You'll see that they've broken it up exactly by those four themes. In 302(a), they said the schools have to identify the outcomes. They've already given us some that law schools have to offer now. Luckily, legal analysis, reasoning, and legal research are all part of this. The standards specifically outline some of the outcomes that schools are going to have to measure. I don't think we have to argue for those. Those are in there.

However, they mention that schools can offer other outcomes that schools think are important. When the schools are looking at other outcomes that they want to achieve, they're really going to have to focus

31. ROY STUCKEY, *supra* note 24.

32. American Bar Association, Standards and Rules of Procedure for Approval of Law Schools (2009 Draft) (on file with Mercer Law Review).

on what's the end, not the means, and they're going to have to be concrete about what these outcomes should be. It's going to take learning a new vocabulary. We're going to have to know what the difference is between a goal and a learning outcome, and what's a learning objective. We're all going to have to learn a lot more about this discipline of assessments and outcome measures to be able to do this effectively. Legal writing is in here, so that's good.

The next thing law schools will be required to do is offer a curriculum so students achieve the outcomes. In that provision, at the bottom of the page, 302(b) and (c), they have left the language from the previous standards that requires one rigorous writing experience the first year and at least one additional writing experience. An earlier version of this draft did not have that in there. They took out the provision that you had to have one writing experience in the first year and a rigorous one. I was at that meeting and objected that I did not think that should be taken out, that at a minimum you had to have that to have a sound legal education, and now it's back in, which is good. I think we need to watch that carefully to make sure that stays in.

Even those schools that have outcome measures—architecture, medicine, and pharmacy—still have input measures, so they still require certain classes like we would for legal writing. So, even those bodies say you don't have to get rid of every input to go over to an outcome-based measure. We should argue that this input should stay in; law schools must have a first-year writing class and, in addition, one more rigorous writing experience.

The next part in the standard is assessing the learning outcomes. Assessing your learning outcomes, which will be the most different thing for all faculties to wrap their hands around, is this is not just about grades. You may not be able to have just one final anymore at the end of the semester. Some will argue that this will not be sufficient for these new standards. I'm pretty sure they will want more.

One essay exam is just a summative kind of assessment. They're going to also want to see formative assessments to determine if students are learning and if I'm becoming a better teacher because of it. Ideally, that means professors are going to have to try to give students multiple assessments and not test everything on one day. This is because maybe the test the professor gives is not perfect for your learning style or maybe there are other external things going on in your life that cause you not to do well on that one day. So we need to look at learning over the entire semester, giving students multiple opportunities to assess their mastery of the subject. Some assessments will be more indirect. Professors should give students mini papers where they just ask a question about something students should know. Professors will collect

them and not grade them but will instead look at them to gauge understanding. Or students will engage in journal writing or put together portfolios. There are all these ideas going around about how professors would assess, but the two big things the ABA could look for are whether teachers are assigning several assessments and whether they are varied. Professors may not be able to just keep giving an essay test to satisfy this standard. That will be very different from what students are used to in your classes. It is too early in the process to know what will satisfy this standard, and I only offer these for discussion purposes. The ABA may not agree with me at all.

Finally, the ABA will want schools to assess the assessment. The purpose is really to look at the institutional effectiveness, not so much how the students are doing individually, but how we are doing as a law school. As faculties, we'll be looking at how these assessments are aligning with our missions, our goals, our learning outcomes, and how we are doing as an institution. We'll need to begin with an assessment audit of what kind of assessments are being done; what's being done in the classrooms already with all our professors. How do those relate to the learning goals? Can the professors show that their exam at the end is right for that learning goal? If you say you want critical thinkers, you can't just give them multiple choice tests. That might not be right for the learning goals, so we're going to have to show a connection. We're probably going to have to work together a lot more as colleagues. We can't just talk about our individual classes. Law professors will need to come together, and we'll have to do curriculum mapping. Maybe some of your schools do that, but I think that will be fairly foreign to most law faculties. We will actually have to show in which classes students are completing these objectives.

If one of our objectives is to make you a proficient writer, we've got to say where in the curriculum you're getting that, and you have to have multiple opportunities to become a better writer.

The thing that we can do as legal writing professors, and you can do as students, is, first of all, stay familiar with what's going on. This is not going to affect the students who are in here right now, but in the next few years, it will. If you have opinions on this, the time to write about this is now. Have your student council association or other organizations submit things or even submit them to me. I can get them to the right people because I really think legal education is going to be delivered very differently.

For the legal writing professors, I would say start to get a thorough knowledge of assessment literature. I've learned so much just trying to get up to speed going to these meetings. And I brought three books I've used a lot in preparing for this. One is *Assessing Student Learning* by

Linda Suskie.³³ The other book, *Assessment Clear and Simple*,³⁴ is very good. It has a guide on how to do this at the department level and also at the law school level. Sophie Sparrow and her co-authors just published *Teaching Law by Design* in 2009.³⁵ It has a full chapter on assessment, so it's really helpful.

If we become the experts, we're going to be on the curriculum committees. There are going to be new assessment committees, and schools are going to need chairs for the committees. We are the logical people to help talk about learning style and how we do assessments. We're used to giving multiple drafts and giving feedback. The whole underlying principle behind this new shift is to get the students to figure out what they are learning and then provide them with a lot of feedback because it's really important. It helps students learn better and helps improve my teaching. It helps the institution, and we have not done that very well. In the past, professors have usually just evaluated students. Students got a grade that really didn't tell the professor how much the student learned, and it didn't really help improve teaching skills. But now professors are going to have to talk to their colleagues about what students have learned and hopefully, collectively, faculties are going to make this a better educational experience for law students by paying attention to what the assessments are saying. Finally, faculties will have to show under these standards how they used those assessments to improve the law school experience. These assessments can't just go on a shelf.

It will be very different. It's very exciting. I don't think we need to be scared about this as legal writing professors. We are going to be some of the most important leaders in this, and we need to watch what happens in the next year.

ERIC EASTON: I am the last speaker of the last plenary of the day. I can't tell you how exciting this has been.

My task was to talk about program design and thinking outside of the box. What I have learned is thinking outside of the box is mainstream in your thinking, and it's really incredible. On the other hand, Suzanne's presentation keeps us from being lulled into a false sense of security. We hear about all of these things like integrated programs and

33. LINDA SUSKIE, *ASSESSING STUDENT LEARNING: A COMMON SENSE GUIDE* (2d ed. 2009).

34. BARBARA E. WALVOORD, *ASSESSMENT CLEAR AND SIMPLE: A PRACTICAL GUIDE FOR INSTITUTIONS, DEPARTMENTS, AND GENERAL EDUCATION* (2d ed. 2010).

35. MICHAEL HUNTER SCHWARTZ ET AL., *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* (2009).

outcome assessments, and when you look at the stats, they are not all that good. There is a lot of work yet to be done.

All of us have at one time or another had occasion to consider or reconsider the program model we've been working with. Usually there's a trigger of some sort. It could be a new dean or the prospect of a sabbatical inspection. It could be a budget crisis, like what we're going through now, or the opposite; it could be a financial windfall in some cases. A new faculty champion might arise for a particular kind of program innovation—or a faculty saboteur. It might be something that we learned at a Legal Writing Institute or Association of Legal Writing Directors conference. It could also be just the cycle of bureaucratic reorganization that comes around every so many years to decide that, yes, torts should be three credits; no, torts should be six credits; no, it should be four credits—that never-ending cycle. These reconsiderations have led to a fair diversity of program models—three-, four-, all-semester programs; adjunct, contract, tenure track staffing models; directors, co-directors, no directors, writing specialists, teaching assistants, no teaching assistants, teaching librarians, and post-graduate fellows—you name it. There is some model like it out there.

Our curricula reflect some fresh thinking as well. The introduction of more and varied practice skills in our programs, counseling, negotiation, drafting, client communications, professional responsibility, and even law firm management now and again creeps into the curriculum. Some of us have ventured even further away from the traditional model to integrate our programs with first-year or upper-level courses, to support or at least champion writing across the curriculum, and to acknowledge the phenomenon of globalization by exporting our teaching or importing our students.

We've been guided in these innovations by a variety of studies: the MacCrate Report in 1992,³⁶ the *Sourcebook on Legal Writing Programs*³⁷ in 1997 and 2006, the Carnegie Report,³⁸ and *Best Practices* in 2007,³⁹ and new studies that keep coming up every day, including some on assessment. And, of course, we've freely shared our ideas and

36. American Bar Association Section on Legal Education and Admissions to the Bar, *Legal Education and Professional Development, An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (1992) (MacCrate Report).

37. American Bar Association, Section on Legal Education and Admissions to the Bar, *Sourcebook on Legal Writing Programs* (2d ed. 2006).

38. SULLIVAN ET AL., *supra* note 30.

39. STUCKEY, *supra* note 24.

experiences among ourselves at national and international and regional conferences, journals, law reviews, listservs, and blogs.

Today I want to step back from the detail and take a long view as to where we may be headed. My central thesis is simply this: The time for reconceptualizing and reinventing the legal research and writing programs has ended, and the time to destroy them is coming. It is our job to take the lead in that enterprise. I thought when I wrote this it would sound a little subversive. After today, I hope it's a little provocative but hardly subversive.

Since Langdell's day, legal education has straddled the divide between the academy and the profession. Since Langdell's day, the academy has had the upper hand. The introduction of professional skills courses is a comparatively recent development. Most were taught by adjunct practitioners, or more recently, by under-valued clinicians and legal writing teachers. Over the past twenty-five years, we have professionalized our programs, our curricula, and by adopting and adapting academic scholarship as a value, our own status.

As a consequence, we may have become somewhat complacent. Some of us are now deans, associate deans, and acknowledged faculty stars. Many of us are tenured full professors or are well on the way, and with clinicians and other supportive faculty, at least a few of us now have the numbers to win faculty votes in our institutions. Yet we continue to work in an academic world that takes its priorities from more than a century ago in the face of documented demands to the contrary by the principal consumers of our labor—namely, the profession.

Again and again we're told that our students are not ready for practice when they graduate from law school. That's the message we get from new apprenticeships we see being created in law firms. Again and again their deficiencies are identified and solutions suggested as if no one ever read *McCrack* or *Carnegie* or *Best Practices*. Again and again that advice is ignored. Why? I think it's because the academic tail still wags the professional dog, and it's time to reverse the emphasis in law school. It's going to be up to us to lead the way. It's time to take charge of legal education, and program design is our Archimedean fulcrum.

I am not advocating that we abandon the struggle for status within the status quo. Scholarship remains the coin of the realm. Nor am I suggesting we return to the day when we were neither expected nor encouraged to write. Certainly our students have benefitted from our research. I hasten to add, however, that excludes most of my own work. My research priorities were established long before I even had a sense of the legal writing community.

I am certainly not asking anyone to jeopardize job security or career advancement. On the contrary, the more deans and tenured professors

we can produce, the easier that revolution will be. I am charging those of us with some clout, whether pervasive or situational, to take program design, restructuring and other opportunities to advance three specific goals.

First, take over the first-year doctrinal curriculum as the opportunity arises. *Teachers* have to teach the core curriculum. At many schools, that means us. It means clinicians and other conscientious faculty members. There are many fine legal scholars who are also outstanding teachers, but there are others who are not, and teaching in the first year should not be a chore that's expected of all faculty regardless of their teaching skills. Let us replace those who would do better with upper-level seminar courses. I think the introduction of outcome assessments will help us along the way.

I don't think it will be as hard as you might think. I have some doctrinal colleagues who would much rather teach their upper-level specialty courses than the first-year courses they've been tasked to teach. And, of course, you've already taught first-year doctrine anyway in your memo assignments and your brief assignments. I know there are some faculty colleagues who don't think you can teach doctrine. Don't ever think you can't teach doctrine. I've taught contracts and torts in both stand-alone courses and integrated legal writing courses, and if I can do it, we can all do it.

There are a variety of ways to do this. You might be able to structure your program so that each legal writing teacher can teach one doctrinal course every semester or every other semester. You might be able to integrate your legal writing course with one or more doctrinal courses following the late, lamented Pace Law School model⁴⁰ as we've done in Baltimore. You may even be able to bring some doctrinal teachers into the conspiracy, at least temporarily, until they realize how much work they have to do.

The model has worked pretty well for us in Baltimore. We're gradually turning our faculty and administration into believers. We still have problems. Our classes are still too big and continuation courses pose some coordination problems. The faculty is not as stable as we'd like it to be from year to year, but we think we have good support for the changes that we want to make. Of course, this is not the integrated program some of us probably remember from law school. My legal writing class consisted of a doctrinal teacher saying, "Here, this is a memo assignment. Go do it. And by the way, stop by the library and they'll give you some handouts so you can do the legal research as well."

40. See Michell S. Simon, *Teaching Writing Through Substance: The Integration of Legal Writing With All Deliberate Speed*, 42 DEPAUL L. REV. 619 (1992).

This is certainly a far cry from that. My memo came back marked "good," and I was really thrilled. It didn't have any other marks on it. So I figured, "Well, I'm done with that."

The second point I would urge is that however you manage to seize control of the first-year curriculum, refocus it to reduce reliance on reading cases and increase the time spent on preventive law, such as drafting contracts, problem solving—settlement agreements, litigation process, pleadings, discovery documents, motions, etc. You all know from your own experience that your students—and you students know this, too—that you don't ever forget the doctrine that you learn from doing a memo or a brief. That doctrine stays with you forever. It's the other doctrine that flies out of your head the minute the bar exam is over. We need to incorporate more of that even at the expense of coverage, and we have to get over the "whole-book" attitude.

We do need teaching materials to do that. We need different books now. Not just a few problems sprinkled through the books but books that integrate the kind of client letters, memos, pleadings, motions, briefs, and transactional documents that we use.

We can do it. Writing across the curriculum is a no brainer. The declining culture may be resistant to it. It requires a lot more time and effort than many of our colleagues are willing to devote to teaching. It may be more difficult to inculcate certain professional values where professors only grudgingly accept the requirement. But that doesn't mean that we shouldn't keep the pressure on to incorporate writing across the curriculum wherever we can.

Third, insinuate yourself, your colleagues, and your program into the upper division using whatever entrée you can find or create: advanced writing courses, writing centers for scholarly writing and job-oriented writing samples, pre-bar preparation courses, pre-clerkship research and writing boot camps. Those of us who also teach upper-level specialties and write conventional law review articles can assuage our guilt by introducing the skills and values of this new emerging culture into those courses as well. Find common ground with clinicians and externship supervisors. Get involved in career services programs. Stake out seats on appointments, curriculum, new assessment, and other important committees. Above all, make sure that promotion and tenure policy committees recognize our scholarship and our peer-reviewed journals. Bring practitioners into the planning and implementation of your integrated courses. They have a stake in the success of your efforts, and they can help you overcome some of the likely resistance to it. Get involved in bar exam administration. Lobby for changes that emphasize practice skills and exert some external pressure for change in the law school.

By now you may be thinking that I probably have too much time on my hands if I can expect you to do all or any of this while you're grading one hundred-plus memos during a semester. We work harder than anyone else, and we'll keep working hard. But we must add change to our workload.

This kind of systemic change, though, takes more than just hard work from us. We have to have smaller classes. We have to have more faculty. The hundred-student doctrinal class should have been jettisoned a long time ago, and that has to be part of the change, too. If the profession wants practice-ready graduates, it has to help us with the resources to do it.

This may not be the year for your school to change. It's not easy to ask for more resources in this economy. But sooner or later, change is going to come. Ultimately, your program will cease to be a program and will become the dominant culture of the law school. And ultimately preparing our students for practice will become the dominant culture of legal education. I'm seeing signs of that all around the country. Law schools are taking seriously their mission to educate students for practice.

AUDIENCE QUESTION: Directors usually fill out the surveys. Some directors are going to be academic leaders on the faculty. But I think if we really want to get the answers, we need to be asking non-directors to complete the surveys; and so, I think that's a really tough question.

SUZANNE ROWE: Yes, I was thinking about that, too. I think that's a great idea. The year I was on sabbatical, one of my colleagues filled out the survey, and I thought it was a great learning experience for her and for me. I gave her the past answers and said, "You answer them the way you think that they should be answered." It's a great idea to have non-directors fill out the survey. I don't know if we want to do two surveys per school or if we want to rotate it around. There are bigger minds than mine who can figure out the statistical part of things, but I do think we need to get information from more than just the directors.

AUDIENCE QUESTION: Are you going to be chairing the survey?

SUZANNE ROWE: No, thank you.

AUDIENCE QUESTION: By asking about programs, we continue to perpetuate this notion that everybody is doing the same thing, so when I'm trying to answer these questions on the surveys on behalf of the school, it's much more complicated, and I'm not sure we're getting really

good data. In order to promote faculty autonomy, we should be asking people who self-identify as teaching legal writing about a lot of these things. Do you select your own books? Do you select your own problems? How much control do you have? I am concerned that the data we're getting is really not quite accurate because I'm having trouble answering the questions because it doesn't reflect the way our department is moving in terms of faculty autonomy.

SUZANNE ROWE: There are actually two levels of questions we're talking about here. When I look at the survey, there are some hard questions that I just want answers to. How many credits is your course awarded? Anybody on the faculty can answer those. But there may be a second level of questions that goes to some of these more nuanced things, and we need to ask more people the answers to those questions.

AUDIENCE QUESTION: I have a question about what Susan was talking about, and I really want to emphasize how important this shift is to the outcome. If you read through the standards now, you see things like how many tens of thousands of minutes of instruction there has to be, a pure kind of input problem. Count up the minutes. That really is where we're going, and it's very interesting. I have questions about this very rigorous writing experience because in this draft that you've given us, you've included what would be the new 302(b). You describe that as being an input and it looks like that because it's about an offering, but I want to encourage us to talk about this very carefully because I think you could cast a rigorous writing experience not as an input. Yes, you have to offer it, but it is in a sense an outcome because Eric showed us, if you are the person who comes away saying, "Gosh, nobody has ever gone through my writing with any kind of care." I get at the end of my papers, "good," "A," which I certainly have heard from my students. In a sense, that's an outcome. They've never had that experience. If you get a J.D., you better have gone through an experience like that where somebody goes through line by line very carefully in some systemic way. Can we do that, and if so, how do we do that really well?

AUDIENCE QUESTION: One of the things they say is the rigorous writing experience will be evaluated based on how many drafts and how much interaction with the teacher. Unfortunately, it doesn't say what the status of that teacher is.

AUDIENCE QUESTION: There is a little of that specificity right now, and I think that it will stay.

AUDIENCE QUESTION: They haven't talked at all about the interpretations per se.

AUDIENCE QUESTION: But like he says, it's something we need to keep our eye on.

AUDIENCE QUESTION: It's something we need to be really, really careful with because I get in these conversations and things get turned around, "Oh, you're talking about inputs again," which now has a perjorative meaning. So, we have to be careful about how we talk about it.

SUSAN DUNCAN: I'll post on the listserv. The AALS meeting is going to be in New Orleans, and they're going to have a panel discussion about it. It would be great for people to go and listen to what they're saying. They're going to try and have these hearings before standards go to the Council. This time the Standards Review Committee is committed to getting a lot of feedback before it ever gets to the Council. I think this is the first time they're really letting the broader academy hear and get some details because a lot of people are very confused about it and what it is.

AUDIENCE QUESTION: On the American Bar Association's website, there is a very important report on outcome assessment measures by Randy Hertz and the Outcome Measures Committee.⁴¹ He's really been paying close attention, and that report itself sort of gave birth to some of this, and it's really well written.

AUDIENCE QUESTION: Susan, is there any discussion about the idea of showing improvement over time? So we assess and we say, "Well, only fifty percent got this at the level we expected." How is this going to relate to relative grading or curving?

SUSAN DUNCAN: I haven't heard anything about that. It's so sketchy right now. The assessment books say that the accreditors shouldn't really worry about what the assessment shows but just that you're assessing and then improving. You shouldn't worry if you have fifty percent, but if you're paying attention to it, and what have you done to try to change it.

41. CATHERINE L. CARPENTER ET AL., A.B.A., REPORT OF THE OUTCOME MEASURES COMMITTEE (2008), available at <http://aba.net.org/legaled/committees/subcomm/Outcome%20Final%20Report.pdf>.

AUDIENCE QUESTION: But would it mean that you would have then fifty-five percent the next time? What does improvement mean? Improvement in assessing—the assessment is more accurate— or that you’re getting better outcomes with your students on the whole, or that the entire curve is moving forward?

SUSAN DUNCAN: I think they want better assessment. The curve is going forward, but it’s also very individual with every school. It’s going to depend on your mission and your own goals, so none of this will be cookie cutter.

AUDIENCE QUESTION: Nobody knows. Law schools will define their missions.

SUSAN DUNCAN: Yes, it will be very individual.

AUDIENCE QUESTION: Curving means a balancing.

AUDIENCE QUESTION: It doesn’t say you have to eliminate any curves.

KRISTIN GERDY: Now, we have one of our most dynamic speakers. She is going to talk about looking into the future. We’ve had twenty-five years of retrospective, talking about exciting things, but now we’re going to hear just very quickly from Ruth Anne Robbins, the current president of the Legal Writing Institute.

RUTH ANNE ROBBINS: We are going to have to do a kinesthetic exercise, so I want everybody to take out something that is shaped like [a pen] and we will be using it towards the end. There is a visual coming around because I’m a visual person. I am just going to summarize where we are going. I know that some of you in the audience may be thinking, “Oh no, where is she going,” because everybody has been competing to be the most provocative speaker of the day. And those of you who know me know, I am the person who put the “bad ass women of legal writing” stuff for sale on Café Press. They were a little bit scared when I was elected right here at Mercer four years ago to be the president-elect of the Legal Writing Institute. Hopefully, I haven’t done too bad a job, but I do know that I received some phone calls saying, “We’re terrified that you’re going to take this institution down or do something terrible with it.” Hopefully I haven’t.

But I have been talking about a vision, and it sounds like everybody at the Legal Writing Institute has this same vision, and that’s to use our

resources to facilitate the development of our field and to simultaneously build more bridges with everybody around us. We have made tangible progress towards this. In the last several years we have been reaching out and have built real bridges with clinicians. We have built real bridges with SALT. We are working to support the Academic Success programs, who are the next people coming up the ladder and who need our support. We are working on the ABA issues. We are, though, at a tipping point for ourselves, to use a borrowed and hackneyed literary illusion.

Any organization has a life cycle, a heroic path, and the experts in the field of developmental psychology and Jungian psychology are always talking about how we're moving on that path until we choose to move down a different path. We have plot lines we choose to live. I have in my handout a book from Carol Pearson,⁴² who is a Ph.D., and who looks at heroic archetype across many disciplines, be it business, interpersonal, or advertisement. She studies Carl Jung and Joseph Campbell. There is a quote that really helps define what we should be doing with ourselves: "Freedom begins the moment we become conscious of the plot line we are living and, with this insight, recognize that we can step into another story altogether."⁴³

We get to choose our story line. Pearson goes on to say our experiences in life are quite literally defined by our assumptions. We make up stories about the world and to a great degree live out their plots. What our lives are like will depend on the scripts we consciously, or more likely unconsciously, have adopted. So what scripts has the Legal Writing Institute been following over the last twenty-five years, and which ones should we leave behind?

We started out as the "orphan hero" searching for a community, and I left blank in the handout how to best the initial dragon when we were orphans because it's very obvious; we created the Legal Writing Institute. We created a society. We have shown that we have found our voice and we are still finding our voice, and in that we have been the "explorer heroes." Finding our voice as the pedagogy experts in the school, finding ourselves as the composition experts in the school, but really at this point, finding our voice as rhetoricians. The pedagogy voice belongs to academic success, and there we should probably leave it and support them.

We have also chosen to prove ourselves, which is what a "warrior hero" does. I know that Hollywood likes to think that the only kind of hero is the warrior hero, but that's merely somebody struggling to show

42. CAROL PEARSON, *THE HERO WITHIN: SIX ARCHETYPES WE LIVE BY* (1998).

43. *Id.* at 17.

that she can overcome a dragon by absolutely killing it. We work and continue to work erasing lines—we then had a conference with that title. We have our status struggles. It's a story line that we love to live, and we need to continue to fight. And so, I think that we have to live that story line to a certain degree.

We have also proven ourselves by being “creator heroes.” We have created a discipline in which we have a stack of textbooks. We have lots and lots of textbooks in legal writing. And we have shown ourselves to be “caregiver heroes” in the law school community. How many legal writing professors are the “go-to-girls,” and I use that as a gender neutral term, of the law school when they need somebody to chair a special project? Whose door do they knock on? We know whose. We give back to our communities generously. When the students need letters of recommendation written, we're who they go to, and we give of ourselves for that, and we love doing it. Sometimes we sacrifice ourselves a little bit too much and give up our weekends to do it, but we do it because we're caregiver heroes and that's a story line that we have sacrificed.

But there is a higher order story line that we can choose. We can choose to be the “sage heroes.” That's what Linda Berger and Linda Edwards and Terri Pollman were talking about, or we can choose the last, and probably the best of the heroes, which is the “magician hero.” And here is the kinesthetic exercise I promised you. Wave your pens, because they are our magic wands.

We are the legal writing magicians, and I'm including everybody in the back there because you are at Mercer, which has the most amazing legal writing program, one that we all borrow from, one that we all look to, and one that we all hope is what our school becomes. You are ambassadors of legal writing, too. And it is the best job in the world. The worst days at work are still not enough to detract from the title of the “best job in the world.” And we get to tell ourselves that, and call up friends and brag and say, “It's the best legal writing job.” How wonderful. Look how much we have to offer each other with symposiums like this and how much we have to offer our students who have sat there patiently in the back with only a few laptops going. Look how much we are offering the practicing bar, which is made up of our former students.

It is not just a job about the mechanics of citation. It's not something that is just about concrete roles, even if we wish it was. Linda Berger said it more eloquently than I ever could. We are the people who study the art of communication and the art of persuasion, and we are set and poised to take over the role of expert in part of the legal community. Persuasion is a large part of being a lawyer. We are the ones who have

the time and desire to study it. We are the experts. We have been developing that expertise. We can understand that universe at a level that is deeper and better than what others can do. Thus, we can transform the world because we have that power, and I'm using the concept of power in a good way.

Rhetoric and persuasion. That's what our students all want to learn from us. Formal memo writing is really kind of boring and may be losing its connection to modern practice. Students want to learn how to be lawyers. We want to teach them. The present students, the past students, and lawyers out there practicing want it. I'm guessing that the future students want it, too.

So, how are we going to do it? How are we going to move forward and transform our role and expand the universe or be the universe? Well, we are going to do it in a few different ways. This is where I get to be provocative, and you may disagree with some of it.

First, we can study it and do more doctrinal scholarship. Yes, there should be a required reading list. I just violated our academic freedom by saying there should be a required reading list. We need to be reading articles out there by certain authors. Yes, we should read about pedagogy, absolutely. But if there's an article written by Kathy Stanchi, we should be reading it. If there's an article written by our own Linda Berger, we should be reading it. Ellie Margolis, Michael Smith, Coleen Barger, and Michael Higdon: read it. Everybody who is in this room who has written: read their articles too, because everyone here has done wonderful work that has actually transformed the practice.

Look at the appellate attorney blogs. They are writing about us. I've been paying attention. I know that Linda Berger has been paying attention. They are commenting on our scholarship. We're already transforming the world with our magic. Our students love it. When I told my students that I had to cancel class to attend the Legal Writing Symposium in Macon, Georgia, they wanted to know who was going to be here. "Is Mary Beth Beazley going to be there? Can you say hello to Mary Beth Beazley for me? Is Suzanne Rowe going to be there? I read her article as a first year. Is Linda Edwards going to be there? Is Kathy Stanchi going to be there?"

Second, we can write about it in our teaching-based materials. We can offer different paradigms. Our textbooks are too document oriented right now. I'm being provocative here. Instead, we can actually write about legal writing in a persuasive, communicative way. It doesn't have to be about memos. It doesn't have to be about briefs. It has to be about advocacy that we happen to do through memos, be they informal or formal, or through briefs. That's where we're headed. That's how we transform the world.

Last, we can teach legal writing in new ways. I personally think the first-year curriculum is now of lesser importance based on the new economy. I know the 1L curriculum is the one everybody fights about, but after their first year, not all of our students are getting legal jobs. Their first-year grades are not necessarily what's leading all of them into the jobs after their 2L summers because there aren't as many jobs after their 2L summers. Right? It's what you do in your second year and your third year to get those clerkships and to get those jobs.

The first-year writing curriculum is a foundation. The most important writing curriculum is in the upper levels. Maybe that means that legal writing should remain at two credits in the first year, but those upper-level courses we teach are three credits and four credits. And maybe it's writing across the curriculum and maybe it's entire courses devoted to the study of nothing but rhetoric, which used to be taught in colleges and in high schools and should be taught again. Maybe there are courses devoted to nothing but story telling. Maybe there are courses devoted to, I don't know, nothing but public speaking and oral advocacy. That's where the future is. That's where we can teach people when they need it.

So, absolutely first year is about foundation, but the Legal Writing Institute has to be about more than just what's going on in those first two semesters and has to move into something much bigger and broader for the audience that we care about the most, the ones who graduate and become the attorneys.

So, with that, I want to put the magic and the wands down so that I may thank the *Journal* for putting this Symposium together. I want to thank Kristin, Pam, Brooke, David, Linda, Yonna, Brittany, and the *Mercer Law Review* editor in chief, Ryan, and everybody else. I want to congratulate Chris, and I want to congratulate Laurel.

Thank you to everybody for being here.
