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

Mary Beth Beazley

*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**

### **Morning Session**

**BRITTANY FLOWE:** Welcome everyone. I am Brittany Flowe, the Lead Articles editor of the *Mercer Law Review*. On behalf of all the students and faculty, we are truly grateful for your presence here today. We are excited and honored to be celebrating the twenty-fifth anniversary of the Legal Writing Institute. Thank you all for being here; we are looking forward to a wonderful panel. Now, I would like to introduce Dean Daisy Hurst Floyd.

**DEAN DAISY FLOYD:** Thank you everyone. Good morning. It is my great privilege to welcome you to Macon, to Mercer University, and to Mercer University's Walter F. George School of Law. It is my great privilege to serve as dean and to bring you greetings on behalf of our students, our faculty, and our staff. It is a particular delight for us to be joining with you as we celebrate the twenty-fifth anniversary of the Legal Writing Institute.

Twenty-five years ago, I was a brand new legal writing director at the University of Georgia Law School, and I remember well the first conference I attended and what it meant to me and the ideas that I took

back to the classroom and to my program. That conference really helped launch me in a career in legal education, although, at the time I didn't realize what was happening. I am personally very grateful to the Legal Writing Institute and to those of you in this room, and I am grateful as a professional legal educator to have seen the changes that have occurred within legal education because of the work of the Legal Writing Institute—and many of the other organizations—that have made this a real field, not just for teaching, but for scholarship. So, I am so pleased to be a part of the celebration and the accomplishments thus far, and I am looking forward to what is left to be done and all of the wonderful things that will happen in the future.

Mercer University School of Law is very pleased to be the host school of the Legal Writing Institute. We are proud of that and appreciate the honor of being allowed to continue to be the host school of the Institute.

I do want to tell you about Mercer Law School. I know from speaking with many of you that this is your first visit to Macon, and I want to welcome you. The law school was founded in 1873, so it is one of the older law schools in the country. We moved into this building in 1978. This building was built by the Insurance Company of North America as their regional headquarters. The insurance company was actually founded in Philadelphia, so when they decided to build this building, the decision was made that it should be an oversized replica of Independence Hall. So if it looks familiar to you, that's why. We do resemble Independence Hall, but we are a bit larger. We are on three floors here with classrooms, administrative and faculty offices, a wonderful law library, and some student community space. I say this often—I don't know if it's exactly accurate, but I say it anyway with great confidence—we are one of the few law schools in America with a rocking chair front porch.

We are a faculty of thirty-two full-time faculty members and sixty-five staff members. We are on the small side of law schools when it comes to student enrollment. This year we have four hundred thirty students. We have intentionally chosen to stay small because we think our size reflects a certain approach to legal education to which we adhere, which includes a number of small class experiences and the emphasis on skills, ethics, and professionalism. And, of course, as you know, our legal writing program shares the values of the overall Woodruff Curriculum here at the law school.

You may know about our legal writing program. It includes a required "introduction to legal research" course that all students take in the fall semester. It includes three required semesters of legal writing courses. Additionally, we offer the advanced certificate in research, writing, and

drafting. The advanced certificate program includes a number of upper-level courses and several semesters in the advanced writing group.

I have been very fortunate since becoming dean—I came in 2004—to teach an advanced writing group. That has been a wonderful experience for me as I've gotten to watch our students work together in a setting that offers peer critique and watch not only their development as writers, but also their development as editors and nurturers of each other's writing. I've learned a great deal from my students.

We have five full-time faculty members whose primary teaching roles are in the legal writing program, although all of them teach in a number of other capacities. We also have four professional librarians who teach in our legal writing program. We have many faculty in the law school who help support the legal writing program through their teaching of the advanced writing group or other courses that qualify for the certificate program. So we are a school that has a strong commitment to legal writing; and, indeed, that's one of the things that attracted me when I decided to come here as dean almost six years ago.

I want to thank you for being here and for your many contributions to the program. Please make yourselves at home. I've already heard how wonderful our students are, and that's true. They are here to make sure that you have a good experience today, as we are; please let us know if you have any needs while you're here.

Thank you to all of you. Thank you to our Mercer Law Review students, to Ryan, and to Brittany in particular, for taking the lead in putting this Symposium together.

I am now going to introduce David Ritchie. David is a member of our faculty. He is known to many of you, and I have enjoyed working with and getting to know David through the years that he has been at Mercer. I am proud to say that I recruited David to Mercer. David received his law degree from Howard University School of Law. He also holds a Ph.D. from the University of Oregon. Among his other talents, David brings a great interdisciplinary perspective to his work in legal writing and in other areas. He has been one of the driving forces behind bringing this Symposium here and putting this together. So, it is my delight to welcome Professor David Ritchie to the podium.

*DAVID RITCHIE:* Thank you, Daisy, for that kind introduction. It is so nice to see all of you. It is particularly nice to see all those students in the back of the room. This is an exciting day, and I think that the discussions we're going to have today will be interesting and engaging for all of you.

In addition to being a member of the Mercer faculty, which I'm very privileged to be, I am also currently the assistant editor in chief of the

*Journal of the Legal Writing Institute* which is co-sponsoring today's events. I would like to note that transcripts of today's discussions are being published in the *Mercer Law Review* and follow-up articles by participants of today's program will be published in a companion volume being published by the *Journal of the Legal Writing Institute*.

I need to thank some people before we move on. Let me start by thanking Dean Daisy Hurst Floyd for her generosity in supporting this program. She has been a steadfast advocate for legal writing at Mercer and has supported the Legal Writing Institute in many ways, the latest being her commitment to host this wonderful event.

Next, let me thank Professor Hal Lewis. Hal is the faculty advisor for the *Mercer Law Review*. He is the calm hand at the helm, and I appreciate his advice on hosting this event.

Thanks also to the students on the editorial board of the *Mercer Law Review* for their hard work in pulling this event together. I know they put a lot of effort and time into this. Editor in Chief Ryan Ingram and Lead Articles Editor Brittany Flowe are particularly deserving of recognition. Thanks for your hard work.

I also would like to recognize my colleagues in the legal writing program here at Mercer: Professors Linda Berger, Sue Painter-Thorne, Jennifer Sheppard, and Karen Sneddon. One couldn't hope to find a better group of colleagues. I should note that this is a team that was assembled not only by Daisy but also by Linda Edwards. This is just another example in a long list of things that Linda accomplished while she was here at Mercer, and we appreciate all of that. I can't leave out our teaching librarians who are an integral part of our legal writing program. Professor Suzanne Cassidy, who is the director of the law library, coordinates that group, but also John Perkins, Anne Johnson, Denise Gibson, and Jim Walsh deserve recognition for all that they do for our legal writing program.

Finally, thanks to Professor Kristin Gerdy from Brigham Young University and Pam Lysaght from Detroit Mercy College of Law for putting this fine panel of speakers together. From its inception last December at a conference at Stetson Law School to its full completion today, this program is a testament to their vision and hard work.

Finally, our most heartfelt thanks go to Yonna Shaw, the publications coordinator here at Mercer and general go-to person here at Mercer for all things related to publications and Legal Writing Institute administration. It is certainly not too much to say that this Symposium and so many other things could not actually happen if it wasn't for the hard work of Yonna. It is, in fact, true that Yonna is the glue that keeps all of these things together.

Next, I have the distinct pleasure of introducing a good friend of mine. Kristin Gerdy and I have worked together in one capacity or another for nearly a decade. First as colleagues at the legal writing program at Temple University School of Law in Philadelphia, and most recently as editors for the *Journal of the Legal Writing Institute*. Kristin is the director of the Rex E. Lee Legal Advocacy Program at Brigham Young University in Utah. She is also currently editor in chief of the *Journal of the Legal Writing Institute*. She is a wonderful teacher, a great colleague, and a prolific scholar. Please join me in welcoming Kristin Gerdy.

**KRISTIN GERDY:** Thank you all for being here. It is really amazing to look around and to think that this little idea we had during a break at a conference almost a year ago has brought together such an amazing group of people. And I echo the thanks that have been given to Mercer Law School, to Dean Floyd, to Brittany, and to Ryan. I have been involved with many law review symposia over the years, and I have never seen students who have been as invested and on top of things as Brittany and Ryan have been.

Just a little bit of background. I have been in legal writing since 1996, and to those of you who are students in the room that are 3Ls, I was only one year past where you are now when I started teaching legal writing. I had no idea what I was getting myself into.

Last December at a *Journal* board meeting held at Stetson, we thought about the upcoming twenty-fifth anniversary of the Legal Writing Institute. The current president of the Institute, Ruth Anne Robbins, had planned, and is still planning, a wonderful two-year celebration of the twenty-fifth anniversary. Ruth Anne wanted to do something to commemorate the history of the Institute but also the history of the professionalization of legal writing. During a break, I talked to Pam Lysaght and said, "What do you think of this idea? Maybe we should do a symposium." I went into the meeting and mentioned this idea to the *Journal* board members and they said, "That's a great idea." David said, "Mercer Law Review is always looking for a great symposium." The next morning Pam and I put together the speakers on these wonderful panels that you're going to hear today. This really came together, and it was said from the very beginning that this was just meant to be because it was so easy.

So, welcome. Thank you for all that you have done, and we're looking forward to a wonderful array of speakers today. I will turn the program over to our first moderator, Mary Garvey Algero from the Loyola School of Law in New Orleans.

**PLENARY I: THE HISTORICAL PERSPECTIVE**

**MARY GARVEY ALGERO:** Good morning. When I introduce the panelists, I have to make a remark just from my own experience with each of them. The first person I will introduce is Laurel Currie Oates. Laurel is the director of Seattle's legal writing program. At my first legal writing conference at Chicago-Kent in 1994, someone said, "You have to meet Laurel Oates." And when she walked up, I said, "She's the one who wrote the textbook I use. She's a rock star." I felt like I should bow down. Laurel is probably one of the first people I met in legal writing. She has done so much, not only starting the Legal Writing Institute with a group of other people, but also building it to an international level.

The next person I would like to introduce is Jill Ramsfield. One of Jill's books is a book that I have just come to love.<sup>1</sup> I saw it as a law student and thought it was the greatest. I still use it with my students.

The other person on our panel is Mary Beth Beazley. When I saw Mary Beth make a presentation in Seattle, she had all of us on the edge of our seats. She was brilliant, entertaining, and captivated the entire group. Mary Beth is the director at The Ohio State University Law School. She also has written a textbook on appellate practice that's used widely.<sup>2</sup>

I'm not going to take up their time, and I'll turn the program over to Laurel Oates.

**LAUREL OATES:** Thank you so much to all of you who have put this program together. This is just a wonderful experience for those of us who have been teaching legal writing. I am going to start with one personal story before I go to the story of the Legal Writing Institute. I was hired after I graduated from the University of Puget Sound. I went to work for the court. I wasn't really sure what I was going to do. One day I got a call and was asked, "Would you like to teach legal writing?" I had a degree in elementary education so it seemed like a good fit. I went off to teach, and the first day the dean told me two things: First, under no circumstances will you be here more than two years—it's now been thirty. Second, as a legal writing professor, never teach content. And I think that is one of the huge differences in legal writing today. I could teach citation and I could teach research, but I could never teach the law. Times have changed remarkably.

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1. MARY BARNARD RAY & JILL J. RAMSFIELD, *LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN* (2000).

2. MARY BETH BEAZLEY, *A PRACTICAL GUIDE TO APPELLATE ADVOCACY* (2d ed. 2006).

I have labeled my remarks this morning, "Once Upon a Time" because in so many ways this feels a little bit like a fairy tale for me.

Once upon a time, far, far away, at what was then a very new law school situated on this beautiful bay on the northwest coast of the State of Washington, two very young, and maybe very naïve, legal writing teachers, Chris Rideout and Laurel Oates, decided to have a conference: a legal writing conference. Using \$3000 from a National Endowment of the Humanities grant that Chris had received to promote writing across the curriculum, and promising their dean, the wonderful Fred Tausend, that they would pay, from their own meager salaries, any cost overruns; they developed a program, prepared a brochure, and sent that brochure not just to the handful of people they knew who taught legal writing but also to deans across the land. And then they waited, and made phone calls, and then waited, and made more phone calls. (Remember, back in those days, there was no such thing as email or listservs.)

As word spread, the registrations began coming in, and on a warm and sunny day in August of 1984, 108 individuals from 56 law schools gathered at the University of Puget Sound. In fact, Mary Lawrence was one of the people in attendance.

Because, in those days, very few of the individuals who taught legal writing had travel budgets, that first conference was a simple affair. Most of the individuals who came paid their own travel expenses, most stayed in the dorms, and there were no banquets, just picnics on the lawn that featured hamburgers and volleyball. However, thanks to Chris Rideout, there were some speakers with national reputations: Joe Williams gave two presentations, and there were also presentations by Stephen Witte, Fred Bowers, and Marjorie Rombauer's colleague from the University of Washington, Lynn Squires. For many of us, though, the most memorable parts of that conference were the conversations that we had during the breaks, during the meals, and late into the night as we sat in the dorm's lounge drinking wine and eating leftovers. At long last we had found a cadre of individuals who shared our experiences, both good and bad, and our passion for teaching.

Not surprisingly, having found each other, the individuals who attended that first conference were determined to find a way to stay in touch. In fact, almost everyone who responded to the questionnaire that was sent out after the conference favored starting an "institute" that would sponsor not only conferences but also a newsletter and a journal.

Although it would have been easy for that dream to be set aside in the rush to prepare for class, to meet with students, and to critique and grade papers, luck was with the group. There had been an AALS Legal Research and Writing Section conference in Louisville, Kentucky, in 1980, and Ralph Brill and others had, somehow, persuaded the AALS to



sponsor a second conference for March 1985 at Chicago-Kent College of Law. It was during a lunch held at that 1985 conference that the Legal Writing Institute was officially created. Among the fifteen individuals who attended that lunch was Daisy Floyd, the dean of Mercer Law School and the host of this Symposium.

The months and years following that first conference were busy ones. The first newsletter, which was created the old-fashioned way by typing, retyping, cutting, and scotch taping, was published in January 1985 and contained a proposal for a journal. The Institute also drafted articles of incorporation, elected its first board of directors, crafted and adopted bylaws, named the newsletter, and adopted a logo. Last, but certainly not least, the Institute planned its first official conference, the 1986 conference.

In many ways the 1986 conference was a turning point: The number of participants and presenters grew, the board met and made plans to continue the newsletter and to begin work on a journal, and the "idea bank" was born. Most important, though, was the impromptu speech that George Gopen gave at the closing lunch. Although no one had the foresight to record his remarks, George's passion and his call to action are forever etched in the minds of those who were at that 1986 conference.

In reminiscing, it is easy to romanticize the past. In fact, those were very good days. We made friendships that have lasted a lifetime; we created programs that incorporated the best of writing and learning theory; and we introduced teaching methods—for example, the process approach and collaborative learning—that have changed the ways in which law students are taught. Those days were, however, also very bad days. Many of the individuals who were with us at those first conferences were forced either to become migrant teachers or to leave teaching because of the two- or three-year caps on legal writing positions. In fact, four years after the 1984 conference, most of the individuals who had been at that conference had moved on to other careers. It would be more than ten years before the majority of schools would remove the caps and allow those of us who wanted to make teaching legal writing a career to actually do so.

Although progress has been slow—most individuals who teach legal writing do not have the same status or receive the same salaries as the other individuals who teach other subjects—there has been some progress. Although there are many individuals who have worked hard to promote that change, many of us owe our positions and our status and workloads to our next speaker, Professor Jill Ramsfield, who at the very first conference drafted and presented a "Statement on Security in

Employment for Legal Writing Professionals” and who, in 1990, masterminded the first national survey.

*JILL RAMSFIELD:* Thank you so much for this Symposium and for the opportunity to be here. Students, I am impressed that you are here. Thank you for being a part of history. Thank you for being willing to take the baton we are about to pass to you. At the last Legal Writing Institute conference, four of my former students attended as legal writing professors. I hope you, like them, are hearing a call to what I think is the most rewarding, interesting, and fascinating course to teach in law school: legal writing. I call it “performance art.” My background is music, and legal writing professors are the people who teach performance. As with all performing arts, it is hard to teach well: you need to know the theory, you need to know the history, and you need to teach good techniques.

Those of us here today began as a kind of pick-up orchestra at that first conference. We loved what we were performing, but we were unsure of our future as professional artists, as a profession. We did not know whether we would have deans who would be leading the way for us, honoring what we do as a profession, helping us to move forward in our careers. Some have; many have not. We have had a lot of challenges, and we have used those challenges to develop our performance standards and artistic expression within the profession. Whether we are developing a program, a classroom, or scholarship, we have united as a group of feisty and focused performers. We have met our challenges energetically, persistently, and passionately, and that is our story here today.

The air at that first conference was electric. The idea was to pass on sound pedagogy about legal writing and to think about what it is we teach and how we teach it. I was a legal writing instructor at the time of that first conference, and I was asked to lead a small group discussion. I said to Laurel and Chris, “Well, what does that mean?” and they said, “Well, just have people talk about what they want to talk about and introduce themselves. This is a get-to-know-each-other time.” I had had plenty of training in such exercises, and I love facilitating. So, we went around the room. Every single person said essentially the following: “I don’t know where my next job is going to be. I can’t afford to feed my family. I’m making no money, I have no job security, and I’m killing myself reading these papers.” I was taking notes, thinking we would be having a jovial time, but I realized, “We have a big problem here.”

At the time, of course, we didn’t know if there would be another conference. We didn’t know what was going to happen next. So I thought, “Let’s just write this down. Let’s publish a statement.” I asked

if anyone would be willing to help, and a few brave souls, including Terry Phelps, offered to do so. I think now that those actions must have been much to the chagrin of Laurel and Chris. As usual, they were flexible and willing, saying something like, "We're here to talk about teaching. It's okay to write this statement, but can you not take any time away from the conference?" And I said, "No, of course not. We'll do it when we are out of session."

So, we came up with the "Statement on Job Security for Legal Writing Professionals," which has been published by Mary Lawrence in her wonderful history of the Legal Writing Institute.<sup>3</sup> The statement basically said, "Deans, the way you are treating legal writing professionals is not working. You are hiring smart and talented people, they are trying to do a good job for you, and you are essentially firing them as soon as they get to be really good at what they do. There is no common sense in that, so you should recognize us as a profession, and you should give us job security." The original statement says that legal writing professionals should be treated equally with law faculty.<sup>4</sup> Equality became very important. We composed the statement at that conference, and we sent it to every law school dean. It was a very bold thing to do in 1984. It was the beginning of our profession.

Now fast forward to George Gopen's inspiring speech. He said, "We should do a national survey, and Jill should do it." I confess to being a bit surprised, responding with "Thanks, George." Evidently a number of colleagues had met and suggested that this would be a good idea. George delivered the message with his characteristically eloquent call to us all. At that time, I had moved to Georgetown University Law Center, and we did have the resources to do the survey. We thus wrote, collected, and compiled the LWI 1990, 1992, 1994, and 1996 national surveys.<sup>5</sup>

They were done in paper form, copied and sent to each law school in the nation. It was not fun, but it was important. I was not an expert on empirical research, but I knew we needed at least a hundred questions to compile the kind of comprehensive information needed to make a change. I wrote the questions, edited them, and sent out the surveys. I knew that we needed a high return rate to be credible with decision makers, so I demanded the return of those surveys. By

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3. Mary S. Lawrence, *The Legal Writing Institute—The Beginning: Extraordinary Vision, Extraordinary Accomplishment*, 11 J. LEGAL WRITING INST. 213, 223 (2005).

4. *Id.* at 222–23.

5. See Jill J. Ramsfield, *Legal Writing In The Twenty-First Century: The First Images*, 1 J. LEGAL WRITING INST. 1, 23 (1991); Jill J. Ramsfield, *Legal Writing In The Twenty-First Century: A Sharper Image*, 2 J. LEGAL WRITING INST. 1 (1996).

"demanded it," I mean that I called everyone who did not return a survey within the timeframe. I said, "We have to have it. I cannot have deans saying, 'But there's only a twenty-six percent return rate.'" I think that first survey had an eighty percent return rate, and now the rate is in the nineties. The surveys have been taken over by others who have done a much better job, but we got the process started.

These, then, are my three points about our beginnings. First, as performers and teachers, we began then to discuss and develop the pedagogy and performance technique that defines our profession now. Those discussions continue to be the focus of the Legal Writing Institute. Our profession really does come down to what we teach every day, how we teach it, how we import the theories and practices of composition theory and linguistics, and the theories and practices of the legal profession. We infuse our classrooms, comments, and conferences with those theories and practices. We continue to have rich conversations that all began with that original grant and first conference.

Second, we put our collective foot down with the Statement on Professionalism for Legal Writing Professionals. That foot has stayed firmly in place, and has since been joined by thousands of feet, tapping out job security, equality, and tenure for legal writing professors.

Third, we started the surveys. They have helped us to hire additional legal writing professors, to reduce the class size from as much as 216 down to 10, to create tenure-track positions, to increase legal writing salaries, and to increase the credits that students receive. Most important is the intellectual and professional integration of legal writing into the curricula of law schools across the nation.

What is next? Where will our performance art take us? We are likely to be called on to help imagine and create the legal work of the twenty-first century, which may be some sort of fusion of entrepreneurship, innovative legal practice, and sustainability. We have to start thinking the way entrepreneurs are thinking and see the way electronic networking is opening possibilities for us. It is likely to become a completely different kind of law practice. We in legal writing must see that, foresee it, and prepare our students accordingly. Legal writing professors and legal writing programs are at the center of those changes. We are the violin and piano and voice teachers, those teachers who have the conversation with each student about not only individual techniques and the classical music of memos and briefs, but also about ensemble performance and the postmodern music of Twitter and new legal paradigms for international law. As a profession, we began with just a little conversation and a small conference in 1984, and now we have virtuoso professors with permanent positions who are inspiring law students every day.

Thank you for including me in today's conversation. I was lucky to be in the right place at the right time then, and I am honored to be here today.

**MARY BETH BEAZLEY:** Good morning. I want to say thank you to Daisy and all the students and faculty at Mercer Law School, to the members of the Legal Writing Institute and to the members of the Mercer Law Review for inviting us here. I was not fortunate enough to be in Tacoma in 1984, although I was already teaching legal writing at that time. I graduated from law school in 1983 and *was* fortunate enough to be in Terry Phelps's inaugural class at Notre Dame Law School. She and I started law school on the same day, I like to say, except she already had her Ph.D.

My first LWI conference was in 1988, and I remember it vividly. I got to have dinner with Marjorie Rombauer—or, as I said at the time, with THE Marjorie Rombauer. One of the many traditions that was started at that first conference is having the newbies have dinner with the oldbies.

I am here to talk about the impact that the Legal Writing Institute has had on faculty because I am someone who has really benefitted from this impact and from all the things the Legal Writing Institute set in motion. When I think of the issues we face, I think of three questions that I have been asked. In fact, two of them were asked during an infamous interview that I experienced when I interviewed with Vermont Law School.

I have told the story several times about how an intoxicated professor from some other school interrupted us during the interview. At one point in the conversation, he said, "Well, you can't teach people how to write, they either know it or they don't. Did they teach you how to write at Notre Dame?" That is one of the crucial questions that we have faced in legal writing: Can you teach someone how to write? Many people erroneously believe that the ability to write is innate, that you are trying to teach something that cannot be taught.

The other question is one that Vermont's dean asked me—and my answer is more revealing actually than the question. He asked, "Where do you see yourself in five years?" I said, "I don't know but I don't want to be a law professor." I knew that the subject that fascinated me was legal writing, and I knew that this job I was applying for lasted only two years. I could not even conceive of the possibility of being a full-time permanent legal writing professor.

The third question I was asked by a friend who said, "Legal writing? Can't they get people's wives to do that?" And she said this to a person whose job was teaching legal writing.

These three questions illustrate three pieces of misinformation that we in legal writing face: number one, that you cannot teach people how to write; number two, that there is no substance or doctrine to legal writing—it is something that you can do off the top of your head, with no preparation; and number three, that there's no need or possibility for the development of expertise, and therefore, no need for scholarship, no need for tenure, and no need for permanent jobs. These are the three pieces of misinformation that the Legal Writing Institute has been fighting against for years.

And one of the many ways that the Institute has continued this fight is the conference. Every two years we get together, we share, and we talk. And at those conferences, we learned from each other that you *can* teach someone how to write—and more importantly, you can teach someone how to be a legal writer. We also learned that we have a field of study and that we are better teachers of legal writing when we stay around for a while and become engaged in that field. Finally, we learned that we have something to say, not just to each other but to the rest of the legal academy as well. I wish I could break this talk down into these three separate points, but like much of the law, I find it to be a seamless web.

My first job out of law school was teaching at Vermont Law School. I was at this beautiful location at this beautiful law school, and my roommate was also teaching legal writing. The first semester that we taught, we didn't talk to each other as we prepared our notes for class, and we were sick to our stomachs, wondering, "What am I going to teach? How am I going to teach?" And then the second semester, we started talking and sharing, and it really helped. Now imagine sharing ideas with the whole country, and you'll get some idea of the difference that the Legal Writing Institute made. This was in 1983, so it was before cell phones and before the Internet. I think that legal writing and the Internet were made for each other in many ways.

To give you an idea of how primitive our materials were, this is the actual book I used my first year of teaching appellate advocacy at Vermont Law School. It's Stern and Gressman's book of Supreme Court practice.<sup>6</sup> It is over a thousand pages long. It's a great book in many ways, but only fifty pages of that book are devoted to how to write the brief. My students bought a fifty-dollar book (which was quite expensive at that time), and they were furious. The other book we used was a much better book, *Legal Writing in a Nutshell*.<sup>7</sup> Even so, in those days

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6. ROBERT L. STERN & EUGENE GRESSMAN, SUPREME COURT PRACTICE: FOR PRACTICE IN THE SUPREME COURT OF THE UNITED STATES (5th ed. 1978).

7. LYNN B. BAHRYCH, LEGAL WRITING IN A NUTSHELL (4th ed. 2009).

I was much more devoted to the sentence than to the legal argument. And that is one of the big things that I learned at the LWI conferences.

People said, "Wait a minute, even if all the sentences are grammatically correct, the writing might still not be good." There is something about legal writing that is different. There is a substance that needs to be taught. That was a revelation because a lot of our deans thought that all we were teaching was sentence structure and grammar and maybe plain English. Some still believe it, alas. A United States Supreme Court Justice who is a co-author of a legal writing book<sup>8</sup> said recently that there is no such thing as legal writing.<sup>9</sup> I was talking to Lyn Goering, of Washburn, about this issue, and she said, "Well yes, I guess it is writing, but that's not what we teach, that's just how it comes out." I think that is so beautiful: what we are teaching is the analysis and the law and the reasoning, the impact of jurisdiction et cetera et cetera, but the writing is how it comes out.

Now we have much more choice when we are looking for textbooks. There are at least a dozen great legal writing textbooks out there. And I think it would be hard to find one of these books that didn't start in some way at a Legal Writing Institute Summer Conference. I remember when Shapo, Walter, and Fajans's book<sup>10</sup> came out, and it had the annotations in the margin that revealed what was going on in each paragraph of a legal argument. I said to my students, "If this were a sex book it would be banned for being too explicit."

Legal writing teachers were deconstructing legal documents and telling people what is going on in a piece of legal writing. At an early Legal Writing Institute conference, Laurel Oates distributed a handout on organization, and it was the talk of conference. It was so exciting. I remember it was a trapezoid that illustrated how to organize the analysis of a legal issue, and I'm confident that it went into the textbook that she wrote with Anne Enquist and Kelly Kunsch.<sup>11</sup>

And I know that Jill Ramsfield and Chris Rideout's article, "Legal Writing: A Revised View,"<sup>12</sup> said, "Yes, you can teach legal writing."

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

9. 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/](http://www.abajournal.com/news/article/Scalia_legal_writing_doesnt_exist/).

10. HELENE S. SHAPO, MARILYN R. WALTER & ELIZABETH FAJANS, *WRITING AND ANALYSIS IN THE LAW* (2008).

11. LAUREL CURRIE OATES, ANNE ENQUIST & KELLY KUNSCH, *THE LEGAL WRITING HANDBOOK: ANALYSIS, RESEARCH & WRITING* (3d ed. 2002).

12. J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35 (1994).

It's hard to even imagine all the ways that the Legal Writing Institute has helped advance the field of legal writing. The first way, as I have already noted, is by getting people together and giving them a chance to share ideas and to road test their scholarship. Another way that the LWI helped to advance the field is by starting the listserv when the Internet first arrived at law schools. The listserv created even more opportunities for people to share ideas. I believe that this was in the early 1990s and that Ralph Brill at Chicago-Kent was instrumental in getting things going. By that time, I had moved to Ohio State, and I was the only person there teaching legal writing full-time.

I remember the day that it was installed and that I was signed up for the Legal Writing listserv. When I came back from class, it was live and I turned it on. There was the list of messages. And it was as if I was no longer alone; suddenly all my friends were there with me, in virtual reality if not in the flesh. And it was just a wonderful opportunity to communicate, get help, and get advice. The listserv is so egalitarian. You don't have to show your pedigree before you show your idea. I believe that I would not have tenure right now if it were not for the listserv because, even though I was all alone and had no one to share my ideas with, the listserv enabled me to get to know hundreds of people, and that gave me the courage to do presentations at the summer conference and eventually to write about them.

The LWI conferences created so many opportunities for presentations, which led directly to scholarship. And all of that productivity helped some deans to say, "Maybe we should keep these people around for a while."

We have all talked about these two-year caps and three-year caps, which were just ridiculous. Just as people were getting their feet under them, the job would disappear. And I think the activity that the LWI stirred up led deans to say, "These folks are getting pretty good. I guess we'll let them stay a little longer." And the caps would get longer and longer and then eventually disappear—not everywhere, but at almost every school.

Even with all of this growth, we still have miles to go. We are not done. There are still too many schools where the legal writing faculty don't have job security. There are too many schools where legal writing is not recognized as being a real field, a field worthy of scholarship. My pet peeve is that other courses are called "substantive courses" or "doctrinal courses," but ours is not. That's wrong. Legal writing has substance; legal writing has doctrine. It's being developed all around us. Because of the limits that have been put on so many legal writing faculty, our scholarship, our doctrine, and our theory has sometimes had to come up through the cracks in the sidewalks. Even though so many



of us are limited in so many ways, this field just cannot be stopped. We have something to say, and we have things to write about and things to develop. We are developing as we go.

I was at a conference a few weeks ago with the American Law Institute-American Bar Association (ALI-ABA). One of the themes of that conference was that we've got to train the trainers, we've got to train teachers. It's a truism in all college and university teaching (not just in law teaching). We think that if you're smart enough to get a law degree or a Ph.D. in a field, you can go in there and teach, without any concept of principles of pedagogy (how to teach children) let alone andragogy (how to teach adults). Although most of us did not set out to do scholarship on teaching method, we realized that we had a different subject matter on our hands, and so some of us explored different ways to teach this different subject matter. And some of that work has come full circle, as we have realized that teaching methods that work in legal writing classes can work in casebook courses as well. Much of that work has been pioneered at Legal Writing Institute conferences. Many of the people sitting in the first few rows here today have been real leaders in that scholarship.

We have something now not just to give to each other but to give to the rest of legal education. We've just got to make sure they hear it. That is one part of our task. Laurel Oates is going to finish by talking about another area where we're branching out—not just out of our own law schools, but out of the country as well.

*LAUREL OATES:* I asked for a few minutes at the end of this session to talk about another organization, APPEAL,<sup>13</sup> which has, during the last two years, received generous support from both the Legal Writing Institute and the Association of Legal Writing Directors.

In many ways, APPEAL's story is the story of the Legal Writing Institute. After visits to Uganda in 2003 and 2005, Professor Mimi Samuel and I wanted to find a way to bring together those individuals in East Africa who were interested in promoting effective legal writing. Not surprisingly, we decided to have a conference and, in the fall of 2006 did what we had done so many years earlier—started trying to find and contact those individuals in East Africa who were either already teaching writing or trying to find a way to teach writing.

The response was wonderful, and in March 2007, thirty East Africans from seven countries and twenty U.S. Legal Writing Institute and ALWD members from fourteen law schools gathered at the small, but

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13. APPEAL stands for Academics Promoting the Pedagogy of Effective Advocacy in Law.

beautiful, Fairview Hotel in Nairobi, Kenya, to share ideas about how to improve the teaching of legal writing. Like the participants at the 1984 conference, those attending this conference exchanged information, shared stories, and formed friendships. And, as had happened twenty some years earlier at the first Legal Writing Institute conference, at the end of that conference, the participants decided to cement their newly discovered relationships by forming a new organization: APPEAL, which stands for Academics Promoting the Pedagogy of Effective Advocacy in Law.

Just as the first few years of the Legal Writing Institute were busy ones, so too have been the first few years of APPEAL. In the last two years, APPEAL members have collected and sent more than 2000 pounds of books to stock the shelves of East African law schools, it has raised the money and brought seven East Africans to the 2008 Legal Writing Institute conference in Indianapolis, and it organized and held a legal writing conference in Pretoria, South Africa, which was attended by twenty U.S. academics and more than eighty South African academics, clinicians, magistrates, judges, and practicing attorneys.

The Nairobi and Pretoria conferences have been important conferences in a number of ways, not the least of which that they have provided me with the opportunity to reflect on what the Legal Writing Institute does and how it does it. First, I have come to appreciate why, in a world in which there are so many things that need fixing, it makes sense to spend time and money teaching writing. As it turns out, one of the easiest, and cheapest, ways for a government to gain the trust of its people is to train its public officials, judges, and magistrates to write and speak clearly. Second, questions from our colleagues in East and South Africa have highlighted what I like most about the Legal Writing Institute. For example, at the final lunch at the Pretoria conference, a group of South African professors peppered me with questions about their experiences with the U.S. professors who attended the conference.

— Are all of the U.S. professors who teach legal writing as excited about teaching as the individuals who are at this conference?

— Is it true that individuals from different universities share ideas and materials?

— At your conferences, are people this inclusive, this collegial? Aren't they competing with each other?

It has been easy to answer these questions.

— Yes, even after teaching for ten, twenty, or thirty years, we are that excited. We have always worked together to improve the programs

that we teach in, and we are excited about, and committed to, teaching legal writing.

— Yes, we have an amazing community whose members readily share not only ideas but also materials.

— And no, our members do not compete with each other. We are a community in which, almost without exception, everyone puts the interests of the community above his or her own personal interests.

In labeling this section of my talk, "Happily Ever After," I do not want to suggest that this is the end of the story. In fact, I hope that the Legal Writing Institute is where we want all twenty-five year olds to be: maturing, but still a little bit naïve about what can be accomplished, and very enthusiastic and energetic.

I would, however, like to use this pause in the Institute's life to recognize and celebrate the contributions of two individuals who hold a very special place in my heart and in the history of the Legal Writing Institute: Mary Lawrence, who has been the Institute's soul and our historian, and my close friend and colleague, Anne Enquist, who through the last two decades has been our conscience and, as a long-time member of the board of directors and the treasurer for more than twelve years, has devoted thousands of hours to shaping the Institute and its future.

It is because of the work of people like Mary Lawrence, Anne Enquist, Mary Beth Beazley, Jill Ramsfield, Pamela Lysaght, Mary Garvey Algero, and the many others who have served on the board; served on a committee; worked on the newsletter, the *Journal*, or the website; or organized, attended, or presented at a national or regional conference that the Institute is the lively and thriving organization that it is today. Thanks to all of you.

**MARY GARVEY ALGERO:** Thank you for those wonderful presentations. Does anyone have any questions for our panelists? I wonder if how we teach is moving out of just a select group of faculty into the entire faculty? At least the Carnegie Report<sup>14</sup> is pushing us that way. Do you see special roles for those of us who have been doing that for a while?

**LAUREL OATES:** It goes back to the very beginning. The Institute started with the notion of writing across the curriculum—taking writing out of the English department and saying that writing needed to be

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14. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) (publishing a comprehensive study conducted for the Carnegie Foundation for the Advancement of Teaching).

taught in the context of the doctrinal areas, or the areas of study—and now, within the law school, saying that writing shouldn't be its own little self-contained curriculum. It really needs to be a part of every day. I think that those of us who teach writing really believe that's where it has to go. But there's also a little bit of fear because we know how hard it is to teach writing, and we often wonder whether we can inspire others to take the time and the effort to study how to teach writing before they go forward to teach. I think it has to happen, and I think it has to happen not only in other courses but we need to continue to teach ourselves writing as we go out into practice. As attorneys, we deal with so many different people from so many different experiences, and the way we write to one client isn't going to be the way you might want to write to another client. As you start doing international work, sometimes you can put that kind of writing into another cultural context and it really doesn't work so it needs to be a continuing process.

*MARY BETH BEAZLEY:* We are teaching thinking, not writing. The ways that I think so many of us in writing have figured out how writing reveals thinking allows us to get inside the student's head, and that's true for every class, not just the writing class; and, so, that's sort of a task we can teach students how to do. This goes to Jill's point about being adaptive. We can't say to our colleagues on the faculty, "What you need to do is assign everybody a ten-page paper and then give individual criticisms and comments for each one." That will not happen. Because of our experience and our knowledge, we can't give a hundred percent of that value without a hundred percent of that time, perhaps, but we can give fifty or seventy percent of that value with less time. We've developed a lot of coping techniques and a lot of other techniques that we can share with our colleagues.

*JILL RAMSFIELD:* I would say leadership. I think the Carnegie Report is going to have an impact, and I think we actually are the local professors who know how to do interactive learning and new models for learning. Law students, look at you. You don't want to listen to talking heads. You want to be doing something, and many classrooms are kind of talking heads or quasi-Socratic.

I think we are going to see legal writing people become leaders. And, I want to add research to the mix. We keep saying legal writing, but research is really a huge part of this. I'd like to see writing and research across the curriculum. You should be doing tax research and tax papers in your tax classes, and so on.

I'm in the funny position right now of having a faculty member who is so excited about the Carnegie Report that she's upset with the legal writing calendar because she doesn't have a space to assign papers and to do her mid-term exams. Well now there's an opportunity for coordination and cooperation because she can see that the students are responding so well to the activity, the engagement, and being lawyers. I want some of that. I want the students to do papers but I don't have enough room for them. I have to say, "I'm sorry, but my calendar is set." It doesn't bother me if you give them more assignments; I'm fine with that. That's a position we're going to see ourselves taking, leading the curriculum committee. We're going to be leading the remodeling of legal education. We're going to be leading professors in good techniques to use across the curriculum.

### SHORT BREAK

### PLENARY II: TEACHING

**ROBIN BOYLE:** Welcome to our second panel on teaching. My name is Robin Boyle, and I am from St. John's University School of Law. Before we begin, I would like to thank Sue Provanzano for helping to develop some of the ideas that you will hear today, as well as Jane Kent Giondriddo, who unfortunately could not attend, because she also helped develop some of the topics that you will hear today. In preparation for this panel, I also want to thank those of you who responded to a mini-survey that was sent out on the listserv this summer. We were asking about the Carnegie Report which you will hear more about.

Our first speaker is Marilyn R. Walter from Brooklyn Law School. She is a professor and director of the writing program. She teaches a variety of courses: first-year legal writing, analysis and research, fundamentals of drafting, law and literature, and employment discrimination. She recently published in the *Journal of the Legal Writing Institute*, *Using Dowry Death Law to Teach Legal Writing in India*.<sup>15</sup> Marilyn's topic today is peer review as it relates to composition theory, to the Carnegie Report, to legal practice, and to the classroom. Some of our topics today are historical and some of them are current and looking to the future.

**MARILYN WALTER:** As many of you know, in 2007 the Carnegie Report on legal education challenged law faculty to consider law school

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15. Marilyn R. Walter, *Using Dowry Death Law to Teach Legal Writing in India*, 15 J. LEGAL WRITING INST. 213 (2009).

as a place where students are in a state of apprenticeship—an apprenticeship of the mind. Our responsibility is to start our students on the road towards assuming the identity of a competent and dedicated professional. The Carnegie Report identified three aspects of this apprenticeship.

The first is doctrinal—the intellectual, formal knowledge that students gain.<sup>16</sup> The Report commented that this was highly over-emphasized in law schools.<sup>17</sup> The second are the skills used in practice.<sup>18</sup> We are not graduating theoreticians, we are graduating students who are going to become effective practitioners, and we need to help them become that. And the third is an emphasis on professional values and ethics, something that the Carnegie Report recommends should become a part of every law school class, not simply a separate required course.<sup>19</sup> In all, the Report recommends a curriculum that fully integrates each of these three apprenticeships.<sup>20</sup>

The same year that the Carnegie Report was published, the national clinical faculty published another book of recommendations on legal education called *Best Practices for Legal Education: A Vision and a Road Map*.<sup>21</sup> *Best Practices* emphasizes the value of pedagogy that blends the theoretical and the practical, what they call “context-based education,” something that those of us teaching legal writing are familiar with.<sup>22</sup> What both of these reports recommend, and what faculty at a number of schools have begun to do, is to apply these principles and recommendations. We need to provide learning opportunities for students to practice expert performance and to give those students feedback so they can improve their performance.

Now, I want to take what may seem like a detour, but actually is not, and that is to talk about three events in my own life that were important in my development as a writer. For each person in the room, the first will ring true, even though your actual experience will be slightly different. It was the moment where you realized that you were a good writer and that this skill was going to be valuable. For me, that moment came in grade six when I realized that two out of three of the essays in my teacher’s essay collection were mine.

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16. SULLIVAN ET AL., *supra* note 14, at 145.

17. *Id.*

18. *See id.*

19. *Id.* at 146.

20. *Id.* at 151.

21. ROY STUCKEY AND OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007), available at [http://law.sc.edu/faculty/stuckey/best\\_practices/best\\_practices-full.pdf](http://law.sc.edu/faculty/stuckey/best_practices/best_practices-full.pdf).

22. *Id.* at 104.

Now fast forward to the point where I was practicing law after graduation. I was working in an office with four excellent attorneys. We wrote appellate briefs in employment discrimination cases representing plaintiffs. In that office, when you wrote a draft of a brief, you made four copies, you gave it to each of the other attorneys in the office, and wrote in the top corner, "comments." We all know that our hoped-for comment in our heart of hearts is, "It's perfect. Don't change a word." But our brain tells us to get over it. You know that your work will be better if you get comments from your colleagues because they will help you see things that you can't see in your own writing.

The third event which made a significant difference in my ability to write was to teach writing. One of the scholars that I want to mention in a moment says, "If you want to learn how to do something, then teach it." And although it seems contradictory, those of us who are teachers, know how true that is.

What I wanted to specifically talk about today is the value of using peer review as a teaching technique and as a way of integrating the second and third events that I mentioned to you, which is working with colleagues and teaching. I have two major goals when I use peer review with my students. The first goal is to teach students to be good colleagues. Law schools are competitive and individualistic. Legal practice can be competitive as well, but it is often collegial because lawyers must work in teams and work collaboratively, including with opposing lawyers.

My second goal is to teach students to be good editors of their own work. They can do that by editing someone else's work and applying the skills and those intuitions that they have learned to become good editors of their own work. There are a number of scholars of composition theory that have been important in our understanding of the value of peer review, but I want to mention two of them.

The first is Peter Elbow, professor emeritus and former director of the writing program at the University of Massachusetts, Amherst. He is the author of *Writing Without Teachers*,<sup>23</sup> which, in some ways, is a title that makes me a little nervous. Other texts he has written are *Writing With Power*<sup>24</sup> and *A Community of Writers*.<sup>25</sup> The other scholar is Kenneth Bruffee whose work I heard of at my first AALS conference. He is a Professor Emeritus at Brooklyn College and the author of *A Short*

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23. PETER ELBOW, *WRITING WITHOUT TEACHERS* (2d ed. 1998).

24. PETER ELBOW, *WRITING WITH POWER: TECHNIQUES FOR MASTERING THE WRITING PROCESS* (2d ed. 1998).

25. PETER ELBOW & PAT BELANOFF, *A COMMUNITY OF WRITERS: A WORKSHOP COURSE IN WRITING* (2002).

*Course in Writing*.<sup>26</sup> For both of these scholars, writing is social and collaborative.

Professor Bruffee had a significant influence on my teaching by introducing me to the concept of collaborative writing and collaborative groups. I can't imagine now how I would teach either of my two writing classes without having students working in pairs or working in groups. Professor Bruffee writes that his basic goal is to help students learn to read and write better through collaborative learning.

Collaborative learning assumes that reading and writing are not solitary individual activities but social and collaborative ones. For many people that's counterintuitive. You think of yourself as sitting in a room by yourself with a pen and paper or a computer, and suffering on your own. His view is that working alone is a part of the process but that really isn't the way you learn to write successfully. Professor Bruffee is a great proponent of peer review and peer tutoring. He writes that through peer review, you learn how to help other students become better writers and you do that in order to learn how to be a better writer yourself.

I mentioned the goal that I have of teaching students to be good colleagues. Professor Bruffee may mention that idea in his book because he feels he needs to convince students that they are going to gain, not lose, by helping each other. But there is no question that students gain tremendously from working with each other.

Professor Elbow has written extensively on peer response groups. He identifies two kinds of feedback. One is criterion-based feedback and one is reader-based feedback.<sup>27</sup> And when he says criterion-based feedback, that's what you are doing when you give the students a list of questions that you want them to respond to in order to comment on someone else's work. Well, that's just made perfectly for law school, and that's the kind of feedback that we often do. In addition, the criteria that he identifies are very familiar to us—the quality of the content, the organization, and the effectiveness of language and usage.

In some ways it's easier for students to give feedback to other students if they are responding to specific criteria. Left on their own without guidance, they may be uncomfortable. They may also offer comments that are of no value because they are trying to be polite. Or they may even turn mean and nasty in what they may say because somehow the process has awoken some tiger in them. So, if we give students a list of

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26. KENNETH A. BRUFFEE, *A SHORT COURSE IN WRITING: COMPOSITION, COLLABORATIVE LEARNING, AND CONSTRUCTIVE READING* (4th ed. 2006).

27. ELBOW, *supra* note 24, at 238.



questions to respond to, it helps them focus and work in a way that's constructive.

Professor Elbow also comments on the value of reader-based feedback.<sup>28</sup> He suggests this is even more valuable because it tells you how your reader is actually responding to your writing.<sup>29</sup> When we have our students do a writing assignment, we first ask them to think about the rhetorical situation, the audience, the purpose, and the tone. Reader-based feedback is a way of having the audience literally respond to your writing.

These principles have been established in legal writing courses in different ways. First, Mercer Law School has a ground-breaking program when it comes to peer review, thanks to the wonderful work of Linda Edwards in establishing the advanced writing groups at Mercer and to Linda Berger who wrote about peer review in advanced writing groups before she came to Mercer and is continuing that wonderful work. Mercer is a leader, an inspiration, and a source of tremendous ideas and energy on how peers can be used to educate each other.

There are also ways of using peer review in traditional writing classes. Simply set aside one class and have an exercise that you have thought through. Give the students an exercise, and then have them bring two copies of their work, exchange it, discuss it, comment with each other on the discussion, and then wrap it up.

I had an interesting experience myself earlier in the year using peer review. I gave the students an assignment to comment on something another student wrote, based on a list of questions. I asked them to review a paragraph with a series of questions in mind and to rewrite it. One question was: "In the paper, are the facts of the case compared to the facts in the precedent when analyzing each issue?"

One student wrote: "In the third paragraph of your discussion you should talk about the facts of the case right after the topic sentence. You did this in the second paragraph of the discussion, and it makes it clearer for someone who hasn't read the case. Also, you say that a sufficient amount of time hasn't passed but you don't give a concrete enough reason whether the cases indicate what a sufficient amount of time is. Maybe it would be better or more effective to talk about what a reasonable amount of time is with respect to these facts." So, that's one.

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28. *Id.* at 255.

29. *Id.* at 256.

Another student responded, and here's the question again: "In your paper, are the facts of your case compared to the facts of the precedent when analyzing each issue?" Answer: "Yes."

Although the results can be mixed, peer review is an exciting way to work with students. It is empowering for them, and valuable in developing them as competent and dedicated professionals. Thank you.

**ROBIN BOYLE:** Our next speaker will also be addressing contemporary issues. Sam Jacobson is from the Willamette University College of Law. She teaches civil research and writing and administrative law. She has written extensively on learning styles and has been providing wonderful materials in that regard. This is Sam's last year of teaching and this is her last public presentation. She will be addressing paying attention in a multi-media world.

**SAM JACOBSON:** I have taken incredible inspiration, plus lots of hugs and support, from all of you in this room, but my day-to-day inspiration has come from my students. One difference in legal writing courses is that I feel I'm completely accountable for making sure that my students master the material. I can't get away with just teaching the class. I have to make sure that they understand the material. If somebody is not understanding, then I have to figure out why. And, so, for twenty-one years of teaching, I've been delving into the brains of my students trying to figure out what is going on in there and how I can do things better.

Dramatic changes in technology and its usage in the last fifteen years may be affecting our students, and their abilities to pay attention. Paying attention is a requirement for the cognitive heavy lifting that we have to do for legal analysis. One study reported that eighty-two percent of children are online by seventh grade and that what they're enjoying on the computer are the games, the instant messages, the e-mail, and the social networking sites.

A 2003 study by the Kaiser Family Foundation reported that children between the ages of six months and six years spend as much time before a media screen as they do playing outdoors.<sup>30</sup> A 2005 study by the same group said that children ages ten to seventeen spend on average

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30. VICTORIA RIDEOUT ET AL., ZERO TO SIX: ELECTRONIC MEDIA IN THE LIVES OF INFANTS, TODDLERS AND PRESCHOOLERS 4 (2003), *available at* [www.kff.org/entmedia/upload/Zero-to-Six-Electronic-Media-in-the-Lives-of-Infants-Toddlers-and-Preschoolers-PDF.pdf](http://www.kff.org/entmedia/upload/Zero-to-Six-Electronic-Media-in-the-Lives-of-Infants-Toddlers-and-Preschoolers-PDF.pdf).

six-and-a-half hours every day using electronic media.<sup>31</sup> When asked how often they used multiple media while watching TV, working on the computer, listening to music, and reading, a third of the children reported most of the time.

Given all the stimulation, what's happening when one's cognitive world becomes overwhelmed by disconnected sensorial bytes? What effect does this have on our thinking? Are we rewiring our brains so that the ability to concentrate becomes a lost skill? What does this over-stimulation mean for law students? How does one learn to pay attention and concentrate?

On this I have good news and I have bad news. The good news is that over-stimulation of our brains likely will not change our brains in any fundamental way.<sup>32</sup> While our brains are very plastic, that plasticity does not extend to expanding our capacity to absorb and process information. Studies have been unable to change that capacity in the long term. That does not mean, though, that over-stimulation is without effect. Some studies using functional MRI scans show the addiction center of the brain is affected. We literally become addicted to the over-stimulation. In addition, sustained stimulation can result in attention deficit syndrome, a temporary condition similar in effect to Attention Deficit Disorder (ADD). Symptoms include difficulty sustaining attention, difficulty organizing tasks and activities, being easily distracted by external stimuli, and being forgetful in daily activities. Because heavy media multi-taskers are more susceptible to irrelevant environmental stimuli, they are also more likely to store irrelevant information in memory and then be wrong.

The bad news is the same as the good news. Brain plasticity does not expand our capacity to observe and process information. Our brain is essentially the same as the Cro-Magnon brain of forty thousand years ago. What worked well for hunting and gathering has its limits to the demands of today, both for what attracts our attention and for what limits our attention. Let me discuss each.

What attracts our attention? As advanced as we like to think we are, what attracts our attention is no different from what attracted the attention of our Cro-Magnon forebearers, the novel or abrupt stimuli that could affect survival. While our survival is no longer at issue in the

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31. VICTORIA RIDEOUT ET AL., GENERATION M: MEDIA IN THE LIVES OF 8-18 YEAR-OLDS 3 (2005), available at [www.kff.org/entmedia/upload/Generation-M-Media-in-the-Lives-of-8-18-Year-olds-Report.pdf](http://www.kff.org/entmedia/upload/Generation-M-Media-in-the-Lives-of-8-18-Year-olds-Report.pdf).

32. For a full discussion of the following scientific data, see M.H. Sam Jacobson, *Paying Attention or Fatally Distracted? Concentration, Memory, and Multi-tasking in a Multi-media World*, 16 J. LEGAL WRITING INST. (forthcoming 2010).

same way as it was for the Cro-Magnons, what draws or catches our attention is still the novel or abrupt stimuli: The bright colors, the beep, the flash, and the new smell.

The potential for additional capture with electronic media is even greater. On the computer screen, we have ads that are blinking or crawling across the screen. We have noises and sounds that announce that if you click on this button you will be the one millionth visitor and get this fabulous prize. All of these attempts to capture our attention wouldn't matter if we could handle them, but we can't. This leads to the next question, why not? What are the limits of our attention?

Our brain handles two types of tasks, cognitive tasks and automatic or highly practiced tasks. Automatic or highly practiced tasks do not require our attention but cognitive tasks do. We can do multiple automatic tasks at the same time like walking, talking, breathing, but we can only do one cognitive task at a time. Let me give an example. Suppose you're driving and carrying passengers in your car and engaged in a lively conversation but then you notice an accident up ahead. What's the first thing you say? "Everybody be quiet." What was a highly practiced task has now become a cognitive task and you cannot engage in two cognitive tasks at the same time—carrying on the conversation and paying attention to the road.

Our ability to do only one cognitive task at a time significantly affects how we can accomplish the tasks that require our attention. The bottom line is we cannot multi-task. While diehard multi-taskers may sputter at the thought, studies indicate that multi-taskers take twenty to forty percent longer to accomplish their tasks, and in one study double the amount of time to accomplish their tasks than if they had done them one at a time; and, in addition, they made twenty to forty percent more mistakes. Why? Our brain can't process two things at a time. When we're multi-tasking, our attention bounces back and forth between the tasks. It does this very rapidly. Each switch takes time, and each switch puts previously obtained information at the risk of being forgotten. The time involved in task-switching plus the forgotten bits mean that multi-tasking takes longer and involves more errors.

While we may intuitively understand why switching from one task to another would take more time, we may not understand why task switching would cause us to forget. The reason is that our working memory can only hold a few pieces or chunks of information, usually about seven. If working memory is full, every incoming chunk will bump a chunk out if it's not committed to long-term memory. Have you ever walked into a room and then forgotten why you went in there? That's a working memory problem where a chunk of what you wanted to get

from the room you have bumped out of your working memory when you started thinking about needing to get stamps at the post office.

Task-switching becomes even slower when the multi-tasker is anxious, under stress, or tired. This sounds like our law students. Under these circumstances, goal-directed attention, conscious attention, is significantly reduced while stimulus-driven attention is substantially increased. That means that the more tired, the more anxious, or the more stressed a person is, the more susceptible to distraction by unrelated stimuli.

In addition, our ability to do only one cognitive task at a time significantly affects how we can accomplish tasks that require deep concentration. The reasoning involved in legal analysis is highly complex and requires the greatest amount of mental effort. Conscious reflective process is essential to legal reasoning. When that conscious process is manipulated, such as with detractors or interrupters, the ability to reason drops dramatically except on an intuitive level. Effective concentration then requires significant cognitive effort, and to achieve that we first have to be conscious of the stimuli that distracts us from our concentration and then we must protect ourselves from those distractions.

When I'm concentrating and the cognitive juices are flowing fast and furiously, I imagine my cognitive activity to look like the spinning plate guy on the Ed Sullivan Show. This guy would spin a plate on the end of a stick and then he'd put it on his nose and then on his forehead, another one on his forehead, and then his shoulders and his arms and his hands and they'd be wiggling all over. There'd be twenty plates all spinning around. Then I get interrupted and all the plates go crashing to the floor, and to get back into the concentration one at a time I have to start spinning all those plates again.

Lest you think the imagery is a bit silly, studies bear me out. It takes about twenty to twenty-five minutes to recover from an interruption and get back on task. That is valuable time that will never be recovered. It takes this amount of time because the distractions shift our cognitive attention focus from the sophisticated to the simple. When focusing on a demanding task, the hippocampus is highly involved in memory, but when there's a distractor, the area of the brain involved is the one concerned with rote activity, not high cognitive activity.

What does all this mean for our teaching? To do well in law school, our students must master cognitively sophisticated legal reasoning, something they cannot do unless they can pay attention and engage in the concentration needed for deep learning. What the new literature on attention tells us impacts our teaching in at least three ways.

The first way it impacts our teaching is that some of our students may need to learn or relearn how to pay attention. Three things make them more susceptible to distractions: interruptions, stress, and lack of sleep.

First, they're going to have to limit and manage interruptions and distractions. This means no multi-tasking, and it means limiting the external stimuli that are constantly interrupting—the little ding when you get a new e-mail message or the little buzz when you get a new text message.

Second, it means that the students have to manage stress and anxiety. It's fascinating that the studies since the 1960s all indicate that the vast majority of beginning law students are clinically depressed and anxious to the point where they can barely think, so asking students to manage stress and anxiety is a pretty overwhelming task for them. It's something that I think all of us work with because we know that unless they can think straight, whatever we say isn't going to matter.

And the last thing is getting sleep. We all survived our undergraduate days with our all-nighters. That's part of the rite of passage. But the studies indicate for every hour less than your baseline of sleep, you lose ten IQ points. What that means is that the brain can continue to do the automatic or highly-practiced tasks as the IQ drops, but it can't engage in sophisticated cognitive activity. That means students can come into class with their laptops and can basically transcribe the class, but they have no idea what's going on cognitively.

The second impact on our teaching is that we need to be sure that we're dividing analytical work into discrete cognitive tasks. If we can only do one cognitive task at a time, are we asking students to do more than one at a time without breaking it into separate parts? Students will be more thorough and more accurate when doing one cognitive task at a time.

A very simple tool that I use is a T-chart, named because it's a "T" on a piece of paper. For each point that students are going to develop, they would put on one side of the T the explanation and illustration that would help to define that side of the point; and on the other side of the T, the explanation and illustration that would help define what that side means. By evaluating each point separately, students will be much more thorough because when they're reading through the cases, they're looking for only one thing and for only one purpose. For example, they may be looking for what an individual case says about what constitutes a dog bite or what does not constitute a dog bite. Only one point at a time and only one case at a time. In this way, students end up being much more thorough.

The third impact on our teaching is that we need to be sure we are not distracting. While we can't underestimate the value of humor in

managing stress and anxiety, some presentations might be more distracting than helpful, such as PowerPoint slides with animated images going across the screen. The animation makes students look at the screen, but if they're looking at the animated image going across the screen and not the substantive information, then the slides are too distracting. So, we need to think about what we're doing that helps to focus attention rather than distract. Distraction also can be a problem when you have group work, and I've found that a group of three is optimal because the minute you get that fourth person, you get too many distractors and the group doesn't get the work done.

So, we should think about how we can break things down for students and how we can help students learn to pay attention so they can engage in deep concentration that's necessary to learn sophisticated legal analysis. Thank you.

**ROBIN BOYLE:** We look forward to this article for the *Journal* and even though this is your last year in teaching, I hope this is not your last year in writing.

Carol Parker will provide an historical perspective. Carol is associate professor and director of legal writing and interim associate dean for academic affairs at the University of Tennessee College of Law. She teaches legal process, torts, and healthcare policy. Her scholarship topics have been legal education, legal writing, and torts. Carol's title of her talk today is "Signature Pedagogy of Legal Writing."

**CAROL PARKER:** It is a joy to celebrate the Legal Writing Institute's twenty-five years of teaching and scholarship. The organization has given me so much, and I am more grateful than I can say.

I would like to think that I would have moved beyond assigning writing based on two-paragraph fact patterns set in a hypothetical jurisdiction in which everyone had a cute name, but what I know for sure is that the journey would have been lonely and discouraging. Thinking about what I have learned from all of you over the years and trying to distill what I have learned about teaching writing, it comes down to the idea that writing is a process and that writing is social. Drawing from other disciplines, we moved from the idea of writing as a product to the idea of writing as a process and to an understanding of audience based on consideration of the reader's expectations of the text and responses to the text in a social context. I am grateful to have this opportunity to reflect on what we've taught each other in this remarkable, generous, and creative community.

What we have learned is evident in the increasing sophistication of our conference programming, newsletter, and submissions to the Idea

Bank.<sup>33</sup> Looking back at the program from the 1984 conference,<sup>34</sup> I saw that there were four plenary speakers who addressed seven different topics. One of the topics was "What You Should Know About Writing In Order To Teach Legal Writing."<sup>35</sup> That's still a very good topic. The others were: "Learning the Law is Not Learning Lawyering: Writing for Clients, Not Teachers,"<sup>36</sup> "Approaches to Teaching Conceptual Organization in Legal Writing,"<sup>37</sup> "Statutory language, Ordinary language,"<sup>38</sup> and "Choosing How to Hold Legal Writing Together."<sup>39</sup>

By 2008 the conference<sup>40</sup> offered more than eighty sessions addressing topics ranging from "The YouTube of Professional Practice"<sup>41</sup> and "Different Learning Styles in the Classroom,"<sup>42</sup> to "Nonverbal Persuasion,"<sup>43</sup> and "Comparing Discourse Communities,"<sup>44</sup> and including a

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33. The Legal Writing Institute's Idea Bank can be accessed at <http://www.ideabank.rutgers.edu/> (last accessed Mar. 25, 2010).

34. See Lawrence, *supra* note 3, at 259. The conference was held at the University of Puget Sound School of Law in Tacoma, Washington, from Aug. 15–16, 1984.

35. Stephen Witte, What You Should Know About Writing In Order To Teach Legal Writing, Speech at the Legal Writing Institute Conference: Teaching Legal Writing—A Conference for People Who Teach in or Administer Legal Writing Programs (Aug. 15, 1984).

36. Joseph Williams, Learning the Law is Not Learning Lawyering: Writing for Clients, Not Teachers, Speech at the Legal Writing Institute Conference: Teaching Legal Writing—A Conference for People Who Teach in or Administer Legal Writing Programs (Aug. 15, 1984).

37. Lynn Squires, Approaches to Teaching Conceptual Organization in Legal Writing, Speech at the Legal Writing Institute Conference: Teaching Legal Writing—A Conference for People Who Teach in or Administer Legal Writing Programs (Aug. 15, 1984).

38. Fred Bowers, Statutory Language, Ordinary Language, Speech at the Legal Writing Institute Conference: Teaching Legal Writing—A Conference for People Who Teach in or Administer Legal Writing Programs (Aug. 16, 1984).

39. Joseph Williams, Choosing How to Hold Legal Writing Together, Speech at the Legal Writing Institute Conference: Teaching Legal Writing—A Conference for People Who Teach in or Administer Legal Writing Programs (Aug. 16, 1984).

40. The conference was hosted by Indiana University School of Law-Indianapolis, from July 14–17, 2008.

41. Mark E. Hoch, Grace H. Barry & William Monroe, The YouTube of Professional Practice—Instant Oral Advocacy Review and Feedback thru Revolutionary Web-Based Technology, Speech at the 13th Biennial Conference of the Legal Writing Institute in Indianapolis, Indiana (July 16, 2008).

42. Catherine Cameron, Jeff Minneti & Robin A. Boyle, Teaching to Different Learning Styles in the LR&W Classroom, Speech at the 13th Biennial Conference of the Legal Writing Institute in Indianapolis, Indiana (July 16, 2008).

43. Michael Higdon & Rebecca Scharf, Harnessing the Power of Nonverbal Persuasion: How You Can Make Your Students Better Advocates and Yourself a Better Teacher, Speech at the 13th Biennial Conference of the Legal Writing Institute in Indianapolis, Indiana (July 15, 2008).



day-long workshop on critiquing student work which has become a mainstay for new teachers. Looking at the schedule for the upcoming 2010 conference, I see that the sessions will exceed that number. In recent years, conference programs have identified tracks for new teachers, experienced teachers, and practitioners, as well as a technology track.

Returning for a moment to the 1984 conference program, though, we see workshop sessions that are as vital today as they were then: Using Student Conferences Effectively; Evaluating Student Papers; Teaching Students to Write Persuasively; Teaching Oral Advocacy; Teaching Style and Syntax; Using Peer Collaboration; Teaching Research Strategies; and, my favorite, Integrating Writing into Substantive Law Courses.<sup>45</sup>

Since 1985, the Legal Writing Institute's newsletter, *The Second Draft*, has been a great source of teaching ideas for us all.<sup>46</sup> I found a copy of *The Second Draft* from August 1988—probably mimeographed and definitely not word processed. It includes an article making a case for employing writing specialists in law schools,<sup>47</sup> and a piece drawing on general semantics to explain how S.I. Hayakawa's extraction letter could inform teaching of first-year legal writing.<sup>48</sup> It also included an excerpt from Richard Newman's then-forthcoming textbook in which he explained the structure of legal argument.<sup>49</sup> This issue of *The Second Draft* truly was a foundational document.

Now, notices of themed issues of *The Second Draft* come to me through e-mail, and I can access the issues on the Web. They focus on topics such as "Teaching Through Technology,"<sup>50</sup> "Teaching to Different Learning Styles,"<sup>51</sup> and most recently, "Teaching Implicit Reasoning."<sup>52</sup> In each issue, numerous articles provide new insights and explain exactly how to use those insights to improve our teaching.

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44. Richard K. Neumann & Amy K. Langfield, Developing a Methodology for Comparing Discourse Communities, Speech at the 13th Biennial Conference of the Legal Writing Institute in Indianapolis, Indiana (July 16, 2008).

45. See Lawrence, *supra* note 3, at 259.

46. To examine *The Second Draft* publications, visit [www.lwionline.org/the\\_second\\_draft.html](http://www.lwionline.org/the_second_draft.html) (last accessed Mar. 25, 2010).

47. Gertrude Block, *Law School's Bright "Illiterates,"* THE SECOND DRAFT, Aug. 1988, at 4.

48. Katherine Simmons Yagerman, *Clear Thinking for Students of Legal Writing*, THE SECOND DRAFT, Aug. 1988, at 9.

49. Richard K. Neuman, Jr., *The Structure of Proof*, THE SECOND DRAFT, Aug. 1988, at 15.

50. THE SECOND DRAFT (Spring 2009).

51. THE SECOND DRAFT (Spring 2008).

52. THE SECOND DRAFT (Fall 2009).

And finally, the Idea Bank. In the early days, many of the writing assignments looked very much like my own two-paragraph hypotheticals from that era. By 2008 the assignments posted in the Idea Bank nearly all comprised multiple authentic documents and included very sophisticated teaching ideas.

Over the past twenty-five years, we have developed a signature pedagogy of legal writing. I'm drawing from the language in the Carnegie Report, which defines signature pedagogy as "practices that serve as primary means of instruction and socialization but build bridges between thought and action to provide and prepare the mind for practice."<sup>53</sup> A signature pedagogy is the way by which professional schools induct new members into the field.

The Carnegie Report identifies the case dialogue as the signature pedagogy of legal education.<sup>54</sup> This is the pedagogy of Professor Kingsfield. The dialogue is "entirely focused by and through the instructor" and set in a competitive context to teach processes of analytic reasoning, doctrine, and principles.<sup>55</sup> The Report notes that there are two missing elements in that pedagogy: first, that of context, clients, and roles; and second, the ethical substance necessary to building professional identity and purpose.<sup>56</sup>

In discussing the signature pedagogy, the Carnegie Report identifies its dimensions as the "observable behavioral features" of the pedagogy, their theoretical bases, "the values and dispositions that the behavior . . . models," and, finally, its complement, the absent pedagogy that is not or is only weakly engaged—the shadow pedagogy,<sup>57</sup> which I find the most intriguing of all. The shadow pedagogy discussed very briefly in that section of the Carnegie Report is clinical pedagogy, described as a weakly developed complementary pedagogy "whose marginality in law schools is striking."<sup>58</sup>

The hallmarks of the signature pedagogy of legal writing are authentic tasks within an appropriate level of difficulty undertaken in a collaborative setting, and guided by a more advanced learner by way of an iterative process that includes frequent feedback and opportunities for revision. This pedagogy reflects an awareness of the role of writing in constructing thought and of the ways in which writers may translate

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53. SULLIVAN ET AL., *supra* note 14, at 24 .

54. *Id.* at 47.

55. *Id.* at 24.

56. *Id.*

57. *Id.*

58. *Id.*

that awareness into deliberate communicative choices that serve particular rhetorical purposes.

The theoretical underpinnings of this signature pedagogy explain the nature of the bridges by which students cross between thought and action, that is, the construction of meaning and deliberate shaping of communicative acts within social context. These theoretical underpinnings have been discussed at length by scholars in this room. Very briefly, they include composition theory, in particular, the new rhetoric in social discourse; and learning theory, which closely parallels composition theory, in particular, cognitive theory explaining how students may develop a schema within the domain of law; and constructivist theory, explaining how students may create their own understanding of law by acting within its social contexts. We also draw on research in expertise—in particular, the idea that expertise is acquired through deliberate practice.

Our signature pedagogy was developed in our teaching of first-year legal writing courses, but certainly this pedagogy has moved beyond those traditional first-year courses to advocacy courses and transactional courses and to first-year legal writing classes focusing on specific doctrinal areas. The early proponents of using writing to teach law, such as Phillip Kissam, described relatively modest approaches, such as Professor Kissam's assignment to students in a constitutional law course of a ten-page paper based on a defined universe of authorities.<sup>59</sup> He found that his students learned more about constitutional law when they wrote an analytic paper delving into a problem.

More recent law review literature offers illustrative models from civil procedure classes, specialized legal writing classes in intellectual property, government law, health or public interest, and upper-level doctrinal courses. For example, a skills-focused class set within a context of a doctrinal course, bankruptcy law, stressed authentic context and tasks, using as a text book a practitioner's book on consumer bankruptcy. Students worked with forms to produce a portfolio of writings such as letters, settlement agreements, discovery documents, and pre-trial statements. There are also examples of doctrine-focused courses that bring in legal writing pedagogy to teach analysis by way of the forms and norms of the profession. In addition, there are practicum courses in which learning of doctrine is enhanced by students' practical applications of the material, perhaps in a team-taught context. And, finally, many clinical courses focus on the writing that students produce

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59. Philip C. Kissam, *Teaching Constitutional Law Differently*, 9 CONST. COMMENT. 237, 239-41 (1992).

in the course of representing a live client, incorporating drafts, feedback, and rewriting of documents prepared in that representation.

While Robin Boyle's informal survey indicates that only a small handful of law schools have formally adopted writing-across-the-curriculum, the respondents do note that writing tasks are being assigned in increasing numbers of doctrinal classes in a variety of forms, including the ones I just mentioned. Even in the schools that have adopted a writing-across-the-curriculum approach, the forms are different. For example, one school requires simply that every course in the curriculum include some type of writing. Another example of a writing-across-the-curriculum program has evolved to include writing assignments in all required upper-level courses and to require participation in a law firm program in the third year, which involves extensive writing within a social context. And, finally, a third school participates in a university-wide writing-across-the-curriculum effort and draws from the other disciplines to support and deepen learning concepts in course material.

What if the signature pedagogy of legal writing became the signature pedagogy of legal education? I don't think it's entirely farfetched to imagine a contextualized experiential writing model involving writing throughout the curriculum as the dominant model for several reasons.

The first sign that lines between doctrine and skills may be blurring is apparent in the many people in the room who identify themselves as teachers of legal writing and research but who also teach courses that would traditionally be defined as doctrinal courses. And there are others who consider themselves deep down to be teachers of doctrinal courses, but who nevertheless teach courses that have writing in the title. That's certainly one piece of evidence of movement.

Second, the ABA's Student Learning Outcome Subcommittee's draft standards concerning outcome measurements<sup>60</sup> may also point that way. The ideas of articulating the professional skills that students should learn in our courses, designing curricula to serve those goals, and assessing students progress by way of rubrics that refer to those goals, and then sharing that evaluation with students are not new ideas to us. Neither is the idea of using learning portfolios as a means of both formative and summative assessment, offered as a good example of an outcome measure. We've been using these approaches for quite some time.

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60. American Bar Association Section of Legal Education & Administration to the Bar Standards Review Committee, Student Learning Outcomes Subcommittee, *Discussion Draft* (Sept. 3, 2009), available at <http://law.du.edu/documents/assessment-conference/bahls.pdf>.

As has been true for many years but seems to be increasingly true, law firms seek to hire graduates who bring strong professional skills as well as intellectual promise. If the signature pedagogy of legal writing serves that need, that's additional support for the notion that it could one day become the signature pedagogy of legal education.

Finally, the idea of clearly articulated goals linked to assessment measures is consistent with the learning expectations of just-in-time learners and also consistent with students' desire for a teacher to tell them what they need to know, so now they can pursue that idea.

According to the recent ALWD/LWI survey data, a vast majority of respondents say that some of their doctrinal courses incorporate writing.<sup>61</sup> Over the past ten years, depending on the year, between two and four schools will respond that all upper-level courses must include such a component, and somewhere between seven and sixteen schools responded that none do. The rest of the schools—and that's a hundred and seventy schools in 2008—answered that some doctrinal courses incorporate writing, with the average percentage of those responses hovering between twenty and twenty-four percent of the teachers at each school. So there's a core group, although it doesn't seem to be expanding rapidly.

What would the profession look like if today's shadow pedagogy were tomorrow's signature? What would be its shadow? Would we be urging the teaching of doctrine across the curriculum? Maybe. What might be lost? Would we sacrifice the knowledge base necessary to ask the right questions, a notion of legal literacy? What is there to be preserved in Professor Kingsfield's model, or is he simply the man behind the curtain with a pillowcase full of trinkets?

I think there's a balance. I think that is what we will find. But for now, the question that we all need to ask, is how will our teaching methods develop to best serve the profession over the next twenty-five years? Thank you.

*ROBIN BOYLE:* We now have time for questions and answers.

*AUDIENCE QUESTION:* I have a question for Marilyn. Especially talking about the first semester and second semester basic legal writing courses, do you find it difficult to evaluate your students individually when they're working in groups?

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61. See <http://www.lwionline.org/uploads/FileUpload/2009SurveyResults.pdf>, at 40, question 37.

**MARILYN WALTER:** The work that they do in groups is not part of their grade, although I don't know whether anyone has done group work where it is part of the grade.

**LINDA EDWARDS:** Well, the advanced writing groups at Mercer are collaborative during the entire year and their brief is turned in at the end of the year for a grade. The six students who are in that group all semester are working together on that grade. And the key there is that the required grading curve does not apply so they don't have to be in competition with each other. That's kind of the extreme, on the edge of full collaboration and full grading. But the key there is they don't have to feel all along like if they give a good suggestion to their neighbor at the table it's going to somehow adversely affect their own grade.

**AUDIENCE QUESTION:** And they each turn in an individual grade?

**LINDA EDWARDS:** Yes.

**AUDIENCE QUESTION:** I have a question for Sam because the research you were talking about is fascinating. I would love to be able to find a way to deliver that information to my students whose addiction centers are really loving what they're doing with this multi-tasking, but they're almost arrogant in their feeling that they can do it all. Any suggestions on how to persuade my students that it really is too much for them and that they're really sort of damaging their own cognitive capacities?

**SAM JACOBSON:** The law school experience helps them figure that out because they get so lost. They'll think they've read the material carefully, but then they go into class and discover they've missed a lot. They'll think they've done great on a memo, but then they get it back and it's a "C." I have always been fascinated by the discussions on the listservs about laptops in the classroom because the greatest way to get students away from technology is to have them fully engaged in their learning. So, using group work and other things where they're accountable for applying what they read to solve a legal problem takes them away from the media. Not only that, but the students have a deep learning experience, one they can replicate in other environments. And what I've learned with my students is that by about the fourth week they really start getting in a groove, knowing what they need to do to concentrate. They've identified what stimuli are distractive to them, they're walking around all the time with earphones on with quiet music or whatever, and they're in their zone so that they can concentrate.

**AUDIENCE QUESTION:** I have a question for Carol. Do you see a real chance for law schools where a dominant model is one that really does say there is room for both of this kind of signature pedagogy that you're talking about that exists now, as well as a curvier shadow pedagogy that is more of what we refocus on? Is there a true and healthy kind of balance that in law school you can do a lot of the theoretical kinds of work that you want but where students are not overloaded on that? That we truly offer for all law students in this country a really good thorough set of experiences? Do you see a balance?

**CAROL PARKER:** Yes, I do think it's possible. I think we ought to work for it.

**ROBIN BOYLE:** I have a question. I'm involved in planning another conference, and it involves trying to bring our new legal writing professors into presenting. We're encouraging them to present on topics of effective teaching methods in legal research and writing. What do you suggest for newcomers to our profession as far as topics for presentation? What should they be covering? What do you think would be worthwhile in terms of a teaching conference?

**MARILYN WALTER:** New faculty are likely people who have just come from practice, and they can bring some of the things that they have learned in their experience in a more junior capacity working with supervising attorneys, learning, and playing the role that those of us who have been teaching for a long time have really forgotten. They can also bring their insights into modern legal practice—what lawyers are doing now that they weren't doing twenty years ago.

**ROBIN BOYLE:** That's a great point. Tell us what they're doing now.

**SAM JACOBSON:** The greatest topics are those that stymie you as a teacher. One of the joys of being in academia is that you can follow your curiosities. If there's a problem you encounter in teaching, you can explore why it's a problem and how to resolve it. That will be valuable to others as well. My inspiration began when I was not communicating well with a particular student: Why not? Many other issues can become stumbling blocks to effective teaching, and explorations of those issues would be wonderful topics on which to contribute. Every person's journey of discovery is a little bit different from every other person, but I suspect our journeys have more in common than not, so all insights are welcomed and appreciated.

*CAROL PARKER:* I would ask what surprised you going into the classroom from practice. That would be something for them to discuss.

*ROBIN BOYLE:* Those are good topics for newcomers to our profession. Thank you.



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