

THE SECOND DRAFT



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Scholarship

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As law schools across the country respond to reduced applications, to a tighter legal market for graduates, and to the realities of fewer “Big Law” positions, the value of a traditional legal education steeped in theoretical musings about doctrine has been called into question. From the *New York Times* to the California Bar Examiners, cries have been heard for more skills education delivered in a way that will make students ready to practice law when they leave law school halls. Some have questioned the value of legal scholarship and called for law schools to seriously re-examine the value placed on scholarly endeavors.

Why then, against this backdrop, is *The Second Draft*: the magazine of the Legal Writing Institute devoting an issue to the topic of Scholarship? Are we not the practical skills professors? Should we not be focusing all of our energy on experiential education and teaching the skills our students need to succeed in a quickly changing legal culture?

The answer is yes and no. We are the skills professors. We do have a history of teaching our students the practical skills they need to succeed in any of number of jobs they will encounter in the legal profession, and we are likely to continue to be leaders in curriculum reform that focuses on skills education. But, we are also a vital part of the academic community. To maintain the balance that is so important to our intellectual communities, we need to communicate to our students that “the law” is a profession built on service, craftsmanship, and intellectual pursuits. Without the study

of legal principles, and without the advancement of novel legal theories, our profession will wither and the role of lawyers in our society will be further diminished. Law school is a place for exchanging lofty ideas, for debating policies, and for learning how to critically think about the world and the rules that govern us all. In order for us as law professors to engage our students, we need to be keeping our own minds sharp and exercised in intellectual pursuits.

Scholarship can be a vehicle for our own intellectual exercise, and by contributing to our profession with our ideas and our words, we model for our students an engagement with the law at a much deeper level. We want to produce students who are skilled and thoughtful. So, we too need to be skilled and thoughtful. By thinking deeply, researching well, and writing clearly, we can keep ourselves well-trained to inspire our students to do the same.

So, we asked the legal writing community to think about and share stories of Scholarship. Why they do it? What they write? How they overcome the challenges of fully participating in all aspects of the academic pursuit? We hope you enjoy the issue.

MB Moylan
Teri McMurtry-Chubb
Mary Ann Becker



Melissa Weresh

Dear legal writing friends and colleagues,

I am writing this column with approximately eight months of the LWI presidency under my belt. As prior presidents have acknowledged, the presidency is a daunting,

exhausting, exciting, and tremendously rewarding post. I am indebted to our outstanding members of the Board of Directors. I also want to acknowledge the tireless Editorial Board of the *Journal of the Legal Writing Institute*, the exceptional editors of the *Second Draft*, and the countless members of LWI who work so very hard to provide programming, resources, and support for our members.

An excellent example of those efforts is the One Day Workshop initiative. This winter, LWI members planned and executed 16 workshops in 14 states and the District of Columbia, providing programming and collegiality for nearly 500 devoted fans of legal writing. At Drake, we hosted one of the smaller gatherings. It was a wonderful experience and a delightful day. Our workshop was attended primarily by friends from the Midwest, but we did enjoy the company of some folks who traveled from farther away. According to the listserv postings, it appears that similarly successful gatherings took place all over the country. Thank you to our current Board members Joan Rocklin and Laurel Oates for coordinating this nationwide project. Thanks are also extended to former Board members Robin Boyle, Tracy McGeough, and Mark Wojcik. Their creativity and hard work brought this great idea to fruition. Finally, thank you to the countless site team members who coordinated these gatherings.

Our Board of Directors has completed another important initiative—a membership survey. Headed by Board members Michael Higdon and Lisa McElroy, the survey

sought to discover what kinds of LWI programming are most important to the LWI membership. The Board intends to use the results to guide and direct its long-range planning. Our initial review of the responses indicates that the Biennial Conference, the One Day Workshops, and the various efforts to support scholarship are important to the membership.

Which brings me to the focus of this issue of the *Second Draft*—scholarship. LWI supports its members’ scholarly efforts in many ways. The LWI journal provides an opportunity for scholarship about all aspects of legal writing, including legal writing instruction. The LWI monograph series collects foundational legal writing scholarship in specific areas and publishes the collection on the LWI website (<http://www.lwionline.org/monograph.html>). Our conferences, including the Biennial Conference, the One Day Workshops, and the Applied Legal Storytelling Conference, highlight existing scholarship and help stimulate new scholarship development. We also support new and established authors through the Writers’ Workshop. Further, LWI collaborates with the Association of Legal Writing Directors (ALWD) and Lexis/Nexis to support scholarship grants. These grants provide funding and mentorship for the scholarly efforts of our members. And, our listserv often serves as a resource for folks working on scholarly projects. Finally, this publication provides a wonderful opportunity for folks to share shorter works related to legal writing.

Whether members choose to address topics related to legal writing, including doctrine and pedagogy, or issues involving other areas of law, or even matters outside the scope of legal academia, LWI has tremendous resources to support and encourage writing. On behalf of the Board of Directors, I wish you all a very successful and productive semester. If you have questions or comments about the Institute’s support of scholarship, please do not hesitate to contact us.

Best,

Mel

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In Defense of Scholarship



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Why produce scholarship? It is our responsibility as educators to participate in a larger conversation, evolve our minds, and continually question our status quo for the benefit of our students. So often I have heard members of the academy lament about how they “have” to publish, how they “have” get tenure, or how they “have” to check one more thing off their “list.” This attitude is disheartening to me because writing is an opportunity for personal growth and contribution to the academic community; it can even be fun. Additionally, ideas generated by the scholarship process can be carried into the classroom to challenge students in novel ways. After all, if we are going to teach legal writing, shouldn’t we be engaged in writing ourselves?

Sure, writing can be difficult; if it were easy, everyone would be doing it. Let’s think about the reasons we joined academia at all. For most of us, we possess some passion for teaching, learning, and connecting with students as they become lawyers. Engaging in research and scholarship makes us better teachers and learners, and it also gives us innovative ways to connect with students. Because by participating in a larger scholarly conversation, we enrich our own understanding of the academic world around us. Additionally, once we begin understanding it, we can contribute to that conversation in a meaningful way. As a field, legal writing is not always recognized by the larger academic community as a significant participant and player. Therefore, to the extent legal writing professors produce scholarship, we can work to change this perception of legal writing as just a skill. Of course, changing this perception also translates into increased credibility among faculty and students at our own institutions.

In addition, scholarly research and writing contributes to a healthy evolution of the mind. Professors who do not challenge themselves through research and writing

may find that their abilities in the classroom stagnate. A teacher who never updates a text or syllabus will not be as engaged in the classroom as a professor who continually researches and incorporates the research into classroom materials. Further, scholarship is part of the tenure requirement at most academic institutions because scholarship tends to promote the evolution of ideas among the faculty. When faculty members are actively engaged in exploring ideas and concepts, students will naturally benefit from the type of classroom conversation that will inevitably occur. As a whole, then, individual scholarly endeavors function to promote a healthy academic environment at educational institutions.

The evolution of ideas inevitably leads to a questioning of the status quo, and this type of questioning serves to legitimize the very existence of educational institutions. Critically assessing the foundation of ideas leads not only to a better understanding of those ideas, but can also lead to new discoveries and ways of understanding them. Moreover, part of becoming a lawyer is learning how to engage in a professional and respectful pattern of questioning and investigation. Lawyers must critically assess evidence and witness statements, they must thoroughly consider and resolve weaknesses in their cases, and they must question the premises for their arguments to ensure they are invulnerable to attack. When a professor engages in the scholarly process, the professor performs similar activities. Scholars critically assess the law and related theories, they consider and resolve weaknesses in the law and theories, and they question the law and theories to ensure their assessments meaningfully contribute to the discourse. So, for a professor who engages in the scholarly process, these skills can be translated into a teaching tool in the classroom.

As a final note, students will be positively encouraged about the legal profession when they see professors who are passionate about their writing. To be sure, scholars may sometimes struggle to identify a topic that is personally meaningful or about which they can maintain passion. Additionally, the impostor syndrome stands ready to undermine the writer’s confidence in the article or ideas, which is why the hope of tenure cannot meaningfully sustain a desire to write; there has to be something more substantial supporting it.

In closing, I would like to share a recent experience as I finished my latest article. On one of my editing days, I spent two hours working on one paragraph, but I did not feel the time at all. I distinctly recall seeing the clock at 1:18 p.m., and at 3:23 I peered back up and felt shocked that an entire two hours had passed by. The writing and thinking process held me in such a trance that time ceased to matter; I became one with the words on my page. A few days later, once I finished the final edits, I felt exhausted in that enormously proud way that you do when you have accomplished something truly meaningful. Even though my husband and children could not really understand why I was so happy to be working hard, I could not imagine doing anything but finishing that article. Studying it, contemplating it, and writing it brought me alive. And

in the course of writing and answering one question, I developed a long list of many more questions I now wish to study and explore. Every time I write an article, I make a list of so many others that I have inside to write.

For me, I write because my mind needs to express the ideas it contains. Of course, it is a plus that my ideas can contribute to a larger discourse community and (hopefully) add value to the existing ideas. The goal of achieving tenure is an added bonus, but I would still write even if I could not get tenure. Researching, thinking, and writing help to create an enduring legacy, and I want to absorb the imprint of the world as I leave my own mark. ■



LWI Writers Workshop participants and facilitators at Lake Lawn Resort in Delavan, WI.

Whatever (Squared)



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In a recent essay called *Whatever*, the author characterized arguments in the current affirmative action lawsuit before the Supreme Court as “just the latest in a long line of legal maneuvers designed to make our compulsive cultural addiction to racial oppression appear morally acceptable.”¹ It is hard, he wrote, to know what to do next in the face of a series of doctrinal arguments about strict scrutiny, compelling state interests, and narrowly tailored means: “Other than emit a despondent sigh. Yeah. Right. *Whatever*.”²

For this issue, the editors of *The Second Draft* asked: “For professors of LRW, does scholarship mean focusing only on issues uniquely related to legal writing instruction, such as teaching research skills or how to construct and draft legal memoranda; or, should it also mean developing an additional ‘doctrinal’ area of expertise?”

I’m going to suggest that the answer is neither; instead, we should focus on *Whatever* and *Whatever, Squared*.

Several years ago, my co-authors and I argued that legal writing professors are already working in “a third generation of legal writing scholarship—one that integrates the elements of our professional lives and engages more effectively with our professional communities. The core of such study and practice is rhetoric.”³ We said that legal writing professors were a natural fit with scholarship that demonstrates to others why legal reading and legal writing count, why they matter, why they are the core components of understanding law and engaging effectively in law study and law practice. I won’t repeat that argument

here, but this short essay obviously relies on the study and teaching of “law as rhetoric” for its support.⁴

What do I mean by *Whatever*? I mean scholarship in which we say (as did the author of the article cited above), “this is what the law says; this is what the lawyers and judges argue; but look, this is the argument you will uncover if you look critically at the larger world in which these events are unfolding.” As experts in constructing and deconstructing legal persuasion and argumentation, we have the ability, and perhaps even the obligation, to examine what is taken for granted in legal reasoning and legal argumentation. This kind of scholarship should sound familiar: it is the kind of scholarship that was first known as “critical” legal scholarship. And it is the kind of “political” scholarship legal writing professors have used for years to examine “what is really going on” in terms of unequal status and to argue for change within the legal academy.⁵

And what do I mean by *Whatever, Squared*? I mean scholarship that goes beyond the separate categories allotted to legal theory, doctrine, skills, and values; this scholarship sheds light on what it means to be a lawyer and to work in the law. The questions posed by the editors fall more or less into the first two of the three apprenticeships described by the Carnegie Report: learning legal analysis and practical skills. My suggestion here is that our scholarship should further explore aspects of the third apprenticeship, the apprenticeship of legal identity, and it should work to integrate all three, to “link the learning of legal reasoning more directly with consideration of the historical, social, and philosophical dimensions of law and the legal profession.”⁶ The third apprenticeship

is open to student and professor; it helps us learn who we are as lawyers by exploring the effects of what we do.

For our students and ourselves, professional and personal identity is formed by what we say and what we neglect to say, what we study and what we neglect to study: “[w]hen faculty ignore—or even explicitly rule out-of-bounds the ethical-social issues embedded in the cases” they discuss, they are teaching that these issues mean nothing.⁷ Third-apprenticeship scholarship incorporates our study of legal theory, doctrine, and practice with our investigations of language, literature, history, culture, psychology, sociology, and other disciplines. It takes seriously the idea that legal rhetoric has substance and consequences. It looks closely at how the broader rhetorical culture interacts with the law within our communities as well as in law school, in the courtroom, in the executive office building, and in the legislature. It looks at the messy details and complex contexts in which legal disputes arise, and it opens up the law and legal arguments to forgotten clients, neglected audiences, and disfavored modes of legal conversation.⁸

Prof. Jack Sammons has argued that legal education needs to move beyond the “seemingly endless dialogue between

... the traditionalists and the technicians.”⁹ Traditionalists assume that they can teach students to think like lawyers. Technicians assume that they can teach students to practice like lawyers. Rather than pursuing only those assumptions, perhaps we can spend some of our time engaged in third-apprentice scholarship: studying and teaching what becomes of us, our students, and the law, while we are in the process of learning and practicing law. ■

¹ Girardeau A. Spann, *Whatever*, 65 Vand. L. Rev. (En Banc) 203, 209 (2012).

² *Id.*

³ Linda L. Berger, Linda H. Edwards, & Terrill Pollman, *The Past, Presence, and Future of Legal Writing Scholarship: Rhetoric, Voice, and Community*, 16 Leg. Writing 521, 521-22 (2010).

⁴ See Linda L. Berger, *Studying and Teaching “Law as Rhetoric”: A Place to Stand*, 16 Leg. Writing 3 (2010)

⁵ See e.g. Jan M. Levine, *Voices in the Wilderness: Tenured and Tenure-Track Directors and Teachers in Legal Research and Writing Programs*, 45 J. Leg. Educ. 530 (1995); Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 Temp. L. Rev. 117 (1997); Pamela Edwards, *Teaching Legal Writing as Women’s Work: Life on the Fringes of the Academy*, 4 Cardozo Women’s L.J. 75 (1997).

⁶ William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* 28 (Jossey-Bass 2007). The report uses different names for the three apprenticeships: legal analysis, practical skill, professional identity, *id.* at 13-14; cognitive, practical, and ethical-social, *id.* at 194-197.

⁷ *Id.* at 140.

⁸ See e.g. Kathryn M. Stanchi, *Resistance is Futile: How Legal Writing Pedagogy Contributes to the Law’s Marginalization of Outsider Voices*, 103 Dick. L. Rev. 7 (1998) (suggesting that law schools teach students “to incorporate concepts of critical theory into the art of lawyering”); Brook K. Baker, *Language Acculturation Processes and Resistance to In”doctrine”ation in the Legal Skills Curriculum and Beyond: A Commentary on Mertz’s Critical Anthropology of the Socratic, Doctrinal Classroom*, 34 J. Marshall L. Rev. 131 (2000) (arguing that legal education and skills teaching “needs a critical edge in a world of inequality”); Ty Alper et al., *Stories Told and Untold: Lawyering Theory Analyses of the First Rodney King Assault Trial*, 12 Clin. L. Rev. 1 (2005) (analyzing narrative strategies that were used or could have been more effectively used by prosecution and defense lawyers); Pamela A. Wilkins, *Confronting the Invisible Witness: The Use of Narrative to Neutralize Capital Jurors’ Implicit Racial Biases*, 115 W. Va. L. Rev. 305 (2012) (applying cognitive science and narrative strategies to help capital defense lawyers counter implicit racial biases); Matthew I. Fraidin, *Changing the Narrative of Child Welfare*, 19 Geo. J. on Pov. L. & Policy 97 (2012) (arguing that child welfare lawyers can make a difference by starting with the premise that “families involved with child welfare are bundles of assets, rather than collections of problems”).

⁹ Jack L. Sammons, *Traditionalists, Technicians, and Legal Education*, 38 Gonz. L. Rev. 237, 237 (2002-03).



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Thinking Outside the Box: Publication Opportunities Beyond the Traditional Law Review

Does having time to engage in scholarship seem like an impossible dream because of your other commitments as a legal writing professor? Does the thought of scholarship keep you tossing and turning with anxiety because of the daunting size of the task? If you answered yes to either of these questions, perhaps how legal writing professionals define scholarship needs to be re-envisioned. Traditionally, legal scholarship within the academy has been defined somewhat by its heft and placement: law review articles that are over thirty pages long containing more than one hundred footnotes. As legal writers, however, we know that there is also value in seeking diverse audiences found in often overlooked venues.

Several publication opportunities exist beyond the traditional law review article. Instead of focusing on the size of the writing, placement can be better guided by the audience the scholarship is designed to reach. Although audiences can overlap, most legal publishers are trying to reach (1) practitioners; (2) law students and professors, or (3) the general public. What follows is a compilation of publication venues arranged by intended audience.

Practitioners:

Bar Journals

Bar journals provide publishing opportunities for legal writing professors focusing on legal writing topics or other areas of expertise of particular relevance to practitioners. The American Bar Association publishes many scholarly periodicals with the requirements for submission varying by publication.¹ Check the submission instructions carefully for each bar journal before sending your manuscript because some require exclusive consideration and some will not work with unsolicited authors.

Many state bar journals are happy to receive submissions from legal writing professors. While it makes sense to inquire about publication opportunities in the state where you work or reside, you may also want to consider state bar journals that reach larger audiences such as the New York State Bar Association Journal and the Texas Bar Journal.

CLEs

Putting a presentation together for a CLE can be a scholarly enterprise because it causes you to organize, research, synthesize, and present material. A CLE presentation also contributes to an existing conversation on a topic. As a result of all the work that goes into the presentation, two

¹ A list of ABA journals with links to submission instructions can be accessed online at http://www.americanbar.org/publications_cle.html.

publication opportunities logically arise: (1) publication of an article on the CLE topic, and (2) publication of the material assembled to accompany the CLE.

Writing on the CLE topic can result in placement in any of the venues covered in this article, as well as in a traditional law review. For example, the recent call for articles from the Second Draft encouraged presenters from the last LWI Biennial Conference, which was approved in many states for CLE credit, to consider turning their presentations into an article for this volume.

In the alternative, you could consider publishing the materials you created for the CLE. Some large CLE providers, such as ALI_CLE and the Practicing Law Institute, either publish the handouts created for the CLE, or recruit authors to help create materials to accompany CLE presentations.

Law Students and Professors:

CALI Exercises

CALI stands for The Center for Computer-Assisted Legal Instruction. It is a non-profit consortium of nearly every US law school, although CALI also welcomes members from [paralegal programs](#), [law firms](#), and [individuals](#).² CALI provides online lessons in every area of the law. Because of CALI's focus on teaching methods and exercises, it is a natural forum for a new legal writing professor.

There are generally two paths for becoming a CALI author. First, CALI invites legal research and writing professors to write lessons through its Legal Research Community Authoring Project.³ Second, CALI is seeking authors for its new open, digital casebook series through its eLangdell Stimulus Project.⁴

² Membership information and a list of law school members can be found at <http://www.cali.org/faq/8054>.

³ The list of needed subjects and instructions for submitting a proposal are at <http://www.cali.org/static/lrcap>.

⁴ Instructions for this project are at <http://elangdell.cali.org/content/write-elangdell-casebook-or-chapter>.

Newsletters

Newsletters present a great opportunity for legal writing professors to get their work published with a minimal amount of time and research as compared to a full-length law review article, with word limits in the range of 500 to 2000 words.

There are many newsletters, both in print and on-line, that seek articles on topics directly related to the legal writing field. Each volume of *The Second Draft*, for example, is based on a legal writing-related theme and professors can submit an article on innovative teaching ideas, methods of assessment, or even classroom exercises. There are also other newsletters that seek articles based on writing, skills, and pedagogy; for example, *The Law Teacher* accepts unsolicited submissions on any topic related to law teaching.⁵

The best way to become aware of publishing opportunities is to regularly read various newsletters, and review the specific submission guidelines, including word limit and potential themes.

Textbooks

While authoring and publishing a book may sound like a daunting task, there are numerous types of books for which legal writing professors can make significant contributions. In addition to comprehensive texts intended for first year mandatory legal writing courses, you can author a supplemental text that is part of a series⁶, or a book that focuses on a particular skill that can be used to supplement first-year legal writing classes, advanced writing courses, or other courses.

The first step in getting your book published is submitting a proposal to potential publishers. Proposals generally require a description of the proposed book, an analysis of the competition (market analysis), anticipated learning goals, and a table of contents or sample chapter. If the publisher is interested, your materials will be forwarded to outside reviewers (professors who teach courses where the book may be used). Before embarking on a textbook proposal, consider inviting other professors to be co-authors or contributing authors.

⁵ Additional newsletters include *Clarity*, *Perspectives*, *The Learning Curve*, and *The Scrivener*.

⁶ For example, the *Legal Research Series* is published by Carolina Academic Press.

General Public:

Blogs

Writing blog posts has significant advantages, but you also need to be aware of the substantial risks. The wonderful aspect of writing for blogs is that your writing will reach an incredibly large audience because of the lack of geographic limits. The far-reaching nature of the blogosphere will also help you develop relationships in the legal academy as readers react to your posts and provide comments. This wide-spread availability and public nature of blogs, however, also makes them riskier because they are open to a larger audience for criticism and may exist in the blogosphere forever. In addition, some readers in the legal academy consider blogs less scholarly than other venues. Nevertheless, they are still worthwhile because they provide opportunities to share your ideas in short posts that help you network with others in the legal writing community.

Blogs focusing on legal writing and legal skills include: <http://lawprofessors.typepad.com/legalwriting/> and http://lawprofessors.typepad.com/legal_skills/. Before writing a post for a blog, contact the blog editors to learn if they are interested in postings from guest bloggers.

Magazines and Newspapers

Magazines and newspapers are good writing platforms for legal writing professors who like to write somewhat creatively. A typical piece for a magazine or a newspaper can consist of any subject and be of any length; the piece may even run as a series. The type of writing can vary from an opinion piece, to an advice column, to a question-and-answer form. The only rule that most magazines and newspapers impose is to limit footnotes.

As with newsletters, the key to finding out about publication opportunities for magazines and newspapers is to subscribe to and read these publications regularly. Law-specific magazines can be found by looking on <http://www.law.com>. These magazines include The American Lawyer, Corporate Counsel, National Law Journal, New York Law Journal, New Jersey Law Journal, and Texas Lawyer. Law.com also sponsors many legal newspapers, both online and in print. These publications include Am Law Litigation Daily, Connecticut Law Tribune, Delaware Law Weekly, Daily Business Review (FL), Daily Report (GA), and Law Technology News. In addition, most major

metropolitan areas publish weekly Business Journals.⁷ These journals offer a great opportunity to publish articles on issues from employment law to transactional drafting.

In conclusion, engaging in scholarly pursuits does not have to be an impossible dream for busy legal writing professionals. By thinking outside the traditional scholarship box and seeking out diverse audiences, legal writing professionals can steer the future of legal scholarship – all while getting much needed sleep.

⁷ A list of the 40 Business Journals is online at <http://www.bizjournals.com/#>.



LWI Writers Workshop participants discuss an article, from left to right: Lou Lirico, Maggie Tsavaris, Neil Sobol, and Mary Ann Becker

Alternative Forms of Legal Scholarship -- Courting the Bench



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The *sine qua non* of the professional mission of legal education is the education of lawyers.¹ As legal writing educators we can direct our mission

to educate lawyers to those who practice in our courts, including judges. Positions with the Judicial Conference Committees are a valuable form of alternative legal scholarship for both the law school and the professor. The law school benefits because work on the Committee helps foster the relationship between the school and the bench. Legal writing professors benefit because participation makes them current on issues important to the court, informs their teaching, and provides ideas for traditional scholarship.

Federal and state courts have a Judicial Conference or College, which is the policy making body concerned with the administration of the courts.² In Illinois, the Supreme Court is responsible for the Judicial Conference of Illinois.³ Numerous judges across the state from both the trial and appellate courts serve on the various committees making recommendations to the Illinois Supreme Court.⁴ The committees study and make recommendations on issues concerning discovery procedures, managing complex litigation, administering juvenile justice, providing alternative dispute resolution, and administering probation.

Although the judiciary is responsible for their courts, most court systems have an administrative office, either

statutorily or constitutionally authorized, that manages their court system.⁵ For example, the Administrative Office of the Illinois Courts (AOIC) is the administrative arm of the Illinois Supreme Court.⁶ The AOIC is responsible for staffing the Judicial Conference committees. Although the committees are primarily made up of judges, a few committees may include a non-judge member if their assignment warrants one. If a committee needs a professor-reporter who is a non-judge, typically the AOIC posts a request for position statements. The AOIC then interviews prospective candidates and makes recommendations to the Court. The Court issues an order appointing various judges and, if necessary, a professor-reporter to each Committee.

A professor-reporter is generally assigned to the study committee for two reasons; she has expertise in the issue the study committee has been assigned to review and she is a good writer. Once assigned to a committee, the professor-reporter works collaboratively with the judges on the committee to address the charge that the committee was given by the Court. The committee meets regularly to discuss their ongoing projects, which may include the creation or revision of court manuals on specific issues or study of an issue or litigation management. Ultimately the committee reports their recommendations to the Court and, if their charge required one, produces the manual.

Writing with the Judicial Conference Committee benefits the legal writing professor by reconnecting the professor to practice, using skills to educate judicial officers, and providing opportunities to test out ideas for traditional scholarship. Typically a professor-reporter is assigned to a committee that is looking at a specific issue. The professor is chosen because she has expertise or experience in that issue. By participating on the committee the professor gains valuable insight about the practical concerns of the judiciary. The professor in turn brings a broader or

more academic approach to the issue. This insight brings the professor back to the practice of law by participation in discussions that use meld practical concerns and academic reasoning to form recommendations. These issues are often of broader concern and can be used by the professor as a basis for a scholarly article.

The legal writing professor's participation on the Judicial Conference Committee benefits their law school by putting the law school in a positive light before members of the bench. Because very few non-judges are assigned to the study committees, professors that participate become known not only to the members of the committee but also to the judges throughout the state. The committee

recommendations and manuals are available to judges throughout the state at all levels; trial, appellate, and supreme courts. The published materials identify the members of each committee including the professor-reporter and the law school affiliation. This benefits the school because of the positive association of the professor's work on the committee with the law school.

This alternative allowed me to use both my experience with litigation and with legal writing for the education of lawyers -- here judges. This opportunity allowed me to keep current on issues important to the court, informed my teaching, and provided ideas for traditional scholarship. ■

1 John Henry Schlegel, *The Lost Professor*, 21 Law & Social Inquiry 967, 997 (1996).
 2 See, e.g., Judicial Conference of the United States, 28 U.S.C. § 331; Judicial Conference of the State of New York, N.Y. Jud. Law § 214;
 3 Il. Const. art. VI, sec. 17; see also, Illinois Supreme Court Rule 41, Il. S. Ct. R. 41.
 4 www.state.il.us/court/supremecourt/jud_conf/default.asp; see Annual Conference Reports.

5 See e.g.; www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/AdministrativeOffice.aspx (federal courts); www.nccourts.org/courts/CRS/AOCadmin/default.asp (North Carolina state court); www.courts.oregon.gov/OJD/OSCA (Oregon state court).
 6 The Illinois Constitution empowers the Illinois Supreme Court to appoint an administrative director and staff to assist the chief justice in fulfilling administrative and supervisory duties. Il. Const. art. VI, sec. 16; see also, Illinois Supreme Court Rule 30, Il. S. Ct. R. 30.



Jill Ramsfield explains different writing processes with LWI Writers Workshop participants and facilitators, from left to right: Jill Ramsfield, Chris Rideout, Barbara Gotthelf, and Diane Kraft.



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The World is Not Flat: Conference Planning and Presentation as Part of a Multidimensional Understanding of Scholarship

INTRODUCTION

Scholarship. For many academics, the word is filled with a combination of excitement, anticipation, obligation, and dread. Academics are expected to reliably produce scholarship, much like sculptors are expected to produce art, baristas cappuccinos, and stockbrokers profits. In the world of legal academia specifically, the term “scholarship” conjures up images of thick volumes filled with lengthy articles on weighty doctrinal subjects advancing ideas that, if only read by the right people with the right amount of power and conviction, may change the course and shape of history. The Oxford English Dictionary defines “scholarship” as “academic study or achievement; learning of a high level.”² Merriam-Webster’s definition refers to “a fund of knowledge and learning.”³ While “scholarship” has perhaps traditionally been viewed as strictly words on a page, some scholars view it to be a multidimensional enterprise, something that encompasses the many aspects of the life of a scholar.

“Scholarship” is perhaps understood best when one considers its many benefits and the multiple interests it serves. In *Scholarship by Legal Writing Professors: New Voices in the Legal Academy*, Linda Edwards and Terrill Pollman identified many of the interests served by traditional written scholarship, including the advancement of knowledge for knowledge sake, the enhancement of

² http://oxforddictionaries.com/us/definition/american_english/scholarship?q=scholarship

³ <http://www.merriam-webster.com/dictionary/scholarship>

teaching, the improvement of legal decision-making, and the catalyst for professional transformation through the “sheer pleasure of doing a difficult task well.”⁴ The idea of scholarship as comprising more than just the generation of a tangible written product is taken up in Maksymilian Del Mar’s *Living Legal Scholarship*, which asserts “five responsibilities of legal scholarship: the responsibility of reading, writing, teaching, collegiality, and engagement.”⁵ Del Mar emphasizes that “[t]he five responsibilities must be understood holistically: they work together to provide a picture of the ethical life of a legal scholar.”⁶

This article tells the story of how the authors’ journey has led them to the belief that planning and presenting at legal writing conferences is a powerful way to engage in many (and at times perhaps all?) of Del Mar’s “five responsibilities of legal scholarship.” While not a substitute for the hard work and sheer intellectual pleasure of putting together a piece of written scholarly work, we see conference work as an important supplement to – and perhaps catalyst for – traditional written scholarship.⁷

This article addresses the notion that Del Mar’s ethical life of a scholar occurs in many dimensions, in full living color if you will. Part I explores the traditional assumption that scholarship must be exclusively written, or what we’ve termed “two dimensional scholarship.” Part II explores the notion that scholarly endeavors are multidimensional

⁴ 11 LEGAL WRITING: THE J. OF THE LEGAL WRITING INST., 3, 15-17 (2005), available at http://www.law2.byu.edu/Law_Library/jlwi/archives/2005/pol.pdf.

⁵ Maksymilian Del Mar, *Living Legal Scholarship*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1051001, 5 (Aug. 1, 2007), cited in Linda L. Berger, Linda H. Edwards, Terrill Pollman, *The Past, Presence, and Future of Legal Writing Scholarship: Rhetoric, Voice, and Community*, 16 LEGAL WRITING: THE J. OF THE LEGAL WRITING INST. 521 (2010), available at http://www.law2.byu.edu/Law_Library/jlwi/archives/2010_1.htm.

⁶ *Id.*

⁷ “Often a presentation represents just the first part of the process--thinking and talking things through--and is the seed that prompts a professor to spend the months researching and writing and conversing further to produce a fully realized article. And because we’re writing teachers we know the magic of writing: it makes us think deeply and in an entirely different way than speaking does.” E-mail from Linda Berger, Family Foundation Professor of Law, University of Nevada, Las Vegas William S. Boyd School of Law, to Karen Thornton (April 15, 2013, 12:54 EDT) (on file with Karen Thornton).

and can include a variety of non-written forms. Part III illustrates how planning and presenting at legal writing conferences is an example of multidimensional scholarship, one where the immediacy of live reaction and refinement bring scholarly production to life. This section concludes with practical guidance based on the authors’ experiences in how seizing the opportunity to do your own conference planning can benefit you, your school, and the broader legal writing community.

I. Two-Dimensional Scholarship: The Implied Assumption of Scholarship as Written

What we think of as “traditional” legal scholarship only began in the 1950s and since then has evolved considerably.⁸

⁸ See Linda L. Berger, Linda H. Edwards, Terrill Pollman, *The Past, Presence, and Future of Legal Writing Scholarship: Rhetoric, Voice, and Community*, 16 LEGAL WRITING: THE J. OF THE LEGAL WRITING INST. 521, n.10 (2010) available at http://www.law2.byu.edu/Law_Library/jlwi/archives/2010_1.htm (“What we think of as typical or traditional legal scholarship has changed a great deal during its short history. In the 1950s, law schools began to move from relying on part-time teachers who were also practicing lawyers or judges to hiring full-time professors who created a “community of scholars.” Richard Buckingham et al., *Law School Rankings, Faculty Scholarship, and Associate Deans for Faculty Research* 5 (Suffolk U. L. Sch. Research Paper, Working Paper No. 07-23, 2007), available at <http://ssrn.com/abstract=965032>. Some have traced the intense focus on faculty scholarship in law schools “back to 1959 when the AALS adopted an official research standard. The standard noted that faculty members had an important responsibility to advance and share ‘ordered knowledge’ [and that] AALS member law schools had an obligation to assist their faculty and encourage research and scholarship.” *Id.* at 5-6.

“Much of the subsequent legal scholarship was doctrinal and descriptive, or theoretical and prescriptive; the purpose of most scholarship was to prescribe a better outcome to a judge. As Judge Posner put it, the task of “doctrinal” legal scholarship was simply to “extract a doctrine from the line of cases or from statutory text and history, restate it, perhaps criticize it or seek to extend it, all the while striving for ‘sensible’ results in light of legal principles and common sense.” See Richard Posner, *Legal Scholarship Today*, 115 HARV. L. REV. 1314, 1316 (2002). The prescriptions were predominantly based on policy arguments derived from beliefs about the way society should be organized or operated.

“Typical of the criticisms of this kind of legal scholarship were Judge Edwards’s comments that law faculties had

While much has been said and written about the virtues and limitations of legal scholarship, however, very little has been said about the implicit expectation that it be *written*.

Examples of the assumption that “scholarship” refers solely to the written word are numerous, even in legal writing, a field where much has been said about the ever-changing shape and landscape of scholarship. Others have recognized the significant value of legal writing conferences; some have even pointed to legal writing conferences as one of five components that together establish “legal writing” as a unique discipline.⁹ These commentaries maintain an implied distinction, however, between conferences and written scholarship.¹⁰

[T]he expansion of our scholarship to “other voices” and “other rooms” prompted conferences and workshops whose point was to encourage scholarship and to discuss specific subjects associated with professional legal writing, such as rhetoric, persuasion, and storytelling. [] Supporting the creation of this community of scholars are such efforts as the LWI Writers’ Workshops, held every summer, and the ALWD Scholars’ Workshops and Forums, conducted as part of regional legal writing conferences.¹¹

Attempts to measure the volume of scholarship in the legal writing field have omitted the numerous oral presentations given at dozens of conferences each year, focusing instead on developing bibliographies of written works.¹² In short, evidence of legal academics

(legal writing or otherwise) *explicitly* recognizing conference work as an important component in a multidimensional scholarly enterprise remains elusive.

II. Recognizing the Multidimensionality of the Scholarly Endeavor

If “scholarship” is more than what appears in print on a page – or, ever increasingly, on a screen – what is the “more” that it is comprised of? What unifying goals and principles connect scholarship in its various forms? In his 1981 article, *Legal Scholarship and Moral Education*, Anthony Kronman¹³ tackled these questions, explaining that “[t]he defining characteristic of scholarship is its preoccupation with the discovery of truth . . . and the promotion of knowledge. . . . To understand the world as it truly is - this, and nothing else, is the goal of scholarship.”¹⁴

To Kronman the goals of scholarship are inextricably bound to a legal academic’s responsibilities as an educator. “To a significant degree,” he argues, “law teaching is a training in advocacy; that is one of its central functions. Advocacy entails an indifference to truth, which in turn encourages a cynical carelessness about the truth, thus undermining the important good of community . . . law teachers have a moral responsibility to prevent this cynicism from taking root in the souls of their students.”¹⁵ Law teachers’ responsibility can be met “through scholarship, or, more precisely, through the way in which [they] bring[] [their] scholarship into the instructional process carried

than half published between 1980 and 1991. [] When Linda Edwards and Terry Pollman published their compilation of scholarship by legal writing professors in *Legal Writing* in 2005, their bibliography contained entries for more than 300 authors, including more than 350 books, book chapters, and supplements; more than 650 articles in student-edited law reviews; and at least that many articles in peer-reviewed journals, specialty journals, and other kinds of publications. [] At that time, only about 25 percent of the law review articles legal writing professors had published were about legal writing topics. []”).

13 Anthony Townsend Kronman was dean of Yale Law School from 1994 to 2004. See Curriculum Vitae, available at <http://www.law.yale.edu/faculty/AKronman.htm>.

14 Anthony Townsend Kronman, *Forward: Legal Scholarship and Moral Education*, 90 *YALE L.J.* 963, 967-68 (1981).

15 *Id.*

on in the classroom.”¹⁶ More than merely reporting to students what they have gleaned from their scholarly work, Kronman argues that law teachers “bring into the classroom the spirit of [their] work, not its finished product.”¹⁷ Recognizing that “there is no simple recipe” for bringing the “spirit of scholarship” into the classroom, Kronman counsels only that “[e]very teacher has to try, in his own way, to comport himself as a scholar. . . presenting oneself as a bearer of distinct values. . . .”¹⁸

In short, Kronman asserts that “[t]he most important thing a teacher teaches his students is what he cares about, and why.”¹⁹ If a law teacher meets this “responsibility as a moral educator, the law teacher also fulfills one of his obligations as a scholar, and in this way, perhaps, he achieves a better understanding of his own vocation and its meaning.”²⁰

In this description of the necessary link between law teachers’ scholarship and their teaching, Kronman recognizes that “scholarship” is multidimensional, comprising much more than just a series of written pages and a relationship between a writer and a reader. Maksymilian Del Mar’s “five responsibilities of legal scholarship” – reading, writing, teaching, collegiality, and engagement – similarly point to a multidimensional view of scholarship.²¹ “The five responsibilities must be understood holistically,” Del Mar asserts, emphasizing that “they work together to provide a picture of the ethical life of a legal scholar.”²²

In recognizing the importance of multiple elements joining together to form scholarship, both Kronman and Del Mar each implicitly identify the central principle that unifies all scholarship: conversation. The idea of writing in general and scholarship in particular as conversation is not new,²³ but despite academics’ ready

16 *Id.*

17 *Id.* at 968.

18 *Id.* at 967-68.

19 *Id.* at 968.

20 *Id.* at 968-69.

21 Del Mar, *supra* note 5, at 5.

22 *Id.*

23 Berger et al., *supra* note 8, at 533-35, n.52. Kenneth Burke’s famous “parlor metaphor,” or “unending conversation metaphor” as it is sometimes called, is often invoked in discussions about writing as conversation. Burke describes the “unending conversation” as a give-and-take process: what one

embrace of scholarship as conversation, the idea of scholarship being broad enough to include the creation of a collegial community at a conference and fostering oral communication within it remains novel. Del Mar’s recognition of “scholarship” as a bundle of responsibilities and Kronman’s link between scholarship and teaching press us beyond traditional assumptions to a notion that a multidimensional understanding of “scholarship” can include conversations taking place in non-written forms.

III. Planning and Presenting at Legal Writing Conferences as an Example of Multidimensional Scholarship

If scholarship is about continuing an endless conversation within a community of scholars, why are legal academics reluctant to include conference work – which is at its core a collection of formal and informal conversations – within the definition of what comprises “scholarship”?²⁴ Perhaps the culture of “publish or perish” that took root with AALS’ 1959 adoption of an official research standard (citing faculty members’ responsibility to advance and share ‘ordered knowledge’) simply does not leave room for the notion that non-written forms of information sharing can be a valuable pursuit as an adjunct to one’s vocation as a scholar.²⁵ Perhaps the very idea of being obligated to *produce* gets in the way of considering the many ways in which we are capable of *producing*.

The time has come to recognize a broad view of production. Conference planning and presentation add

says (or writes) in a conversation has the capability of being taken up by others. Those who use sources can ultimately become sources by participating in academic discourse. See http://www.mhhe.com/socscience/english/tc/haller/haller_module.html.

24 Berger et al., *supra* note 8, at 529 (explicitly recognizing conferences as conversations, noting that “[t]he LWI’s biennial conferences, surveys, and collections of materials and ideas were essential to the establishment of the community of teachers, as they brought together diverse teachers, concepts, and experts for continuing extensive conversations about how we could improve the teaching of legal writing in law schools.”).

25 See *id.* at n.49. (“According to the most recent ALWD-LWI survey, legal writing professors at 146 schools are either required or encouraged to produce written scholarship. ALWD & Leg. Writing Inst., *2008 Survey Results* 62 (2008) (available at http://www.alwd.org/surveys/survey_results/2008_Survey_Results.pdf”).

abandoned scholarship directed to judges, practicing lawyers, and legislators in favor of producing scholarship that primarily engages in theoretical dialogues with academics in other fields. Harry T. Edwards, *The Growing Disjunction between Legal Education and the Legal Profession*, 91 *Mich. L. Rev.* 34, 34-36 (1992).”).

9 See *id.*, at 532-33 (identifying five achievements that suggest legal writing is an established discipline: dedicated and peer-reviewed journals, two flagship organizations – LWI and ALWD, an active listserv, dedicated regional and national conferences, and a community of professionals).

10 See, e.g., *id.* at 529 (mentioning a “series of legal discourse colloquia organized by Terry Phelps and Linda Edwards [that] introduced authors to scholarly habits, knowledge, and mentors that would guide their subsequent work.”).

11 *Id.* at 531.

12 *Id.* at 532 (“In the first issue of *Legal Writing*, George Gopen and Kary Smout listed 409 articles and 103 books, more

a dimension to production, one where scholarship is brought to life in multiple dimensions. In *Discipline-Building and Disciplinary Values: Thoughts on Legal Writing at Year Twenty-Five of the Legal Writing Institute*, J. Christopher Rideout takes an expansive view of the notion of “production” in the legal writing community. In producing “both words and things,” Rideout argues, legal writing academics “define another important part of our disciplinary practices. In producing, it could be said that we create value, with varying economies to that value.”²⁶ Rideout explicitly recognizes that

[w]e produce when we sponsor academic conferences and workshops-- regional, national, and international-- and make countless presentations at those conferences. Many of those presentations lead to articles that we then publish--often in our own journals. We produce textbooks and other teaching materials, which we rely on as classroom practitioners. We also produce reference materials for the legal profession. In addition, our practices produce jobs, ranging from adjunct lecturers to tenured full professors. Finally, we have created professional legal writing organizations, including the Legal Writing Institute, the Association of Legal Writing Directors, the legal writing section of the Association of American Law Schools, and Scribes. Through those organizations, we sponsor programs that help us with the professional obligations of our jobs, including administering workshops for beginning teachers, authoring research and travel grants, or hosting workshops on producing scholarly writing. And also through these organizations, we sponsor newsletters and journals for our profession.²⁷

In recognizing the many manifestations of value-laden production that legal writing professionals generate in the course of their careers, Rideout seems to embrace Kronman’s multidimensional vision of scholarship²⁸ and also Del Mar’s theory that scholarship comprises five responsibilities that “must be understood holistically . . . to provide a picture of the ethical life of a legal

26 See J. Christopher Rideout, *Discipline Building and Disciplinary Values: Thoughts on Legal Writing at Year Twenty-Five of the Legal Writing Institute*, 16 LEGAL WRITING: THE J. OF THE LEGAL WRITING INST. 477, 480 (2010).

27 *Id.* (emphasis added).

28 Kronman, *supra* note 14, at 968.

scholar.”²⁹ As academics, legal writing professionals are scholars when they engage fully in their professional life.

Participating in legal writing conferences is an integral part of that engagement. Participation can fulfill our responsibility to share what we care about and to listen. Together we can gain a better understanding of our shared vocation. Regional conferences in particular provide a unique setting for having these conversations, as they can bring into the discussion those individuals who previously would have been left out, such as adjuncts and practitioners.

The sections below describe the ways in which we personally fulfilled Del Mar’s scholarly responsibilities of teaching, collegiality, and engagement when we identified the opportunity for and built new regional legal writing conferences. By telling this story we hope to challenge members of a discipline that considers itself progressive and interpretive³⁰ to adopt a broader interpretation of scholarship; one that views conference work – and the teaching, collegiality, and engagement that flow from that work – as a powerful supplement to the reading and writing that is the difficult work of traditional written scholarship.³¹

A. Conferences Bring Scholarship to Life

In this section we present the unique benefits that come from the type of the scholarly engagement that happens at legal writing conferences. Reading scholarly articles will spur an academician who takes Kronman’s counsel

29 Del Mar, *supra* note 5, at 5.

30 See Rideout, *supra* note 26, at 489 (2010) (identifying four values within the legal writing discipline: “professionally progressive; pedagogically innovative; occasionally interpretive and hermeneutic; and, at times, political and reformist.”).

31 While Linda Berger, Linda Edwards and Terill Pollman disagree with the notion that conference work “without more[] fully stands in for the process of scholarship” described by Del Mar, they do agree that “it is a good idea to encourage and advocate in our law schools for more recognition of the value of conference planning and presentations. For example, organizing and moderating a symposium that introduces law professors to a new field or subject and helps them understand how to use it in their work might well achieve many of the aims of legal scholarship—goals that benefit the organizer (or the author) but also the audiences, institutions, and communities served by greater knowledge and understanding of the law and legal processes.” E-mail from Linda Berger to Karen Thornton, *supra* note 7.

to contemplate: *how can I use what I just learned in the classroom? Can I use what I learned to become a better teacher? Will it be useful to help me develop curricular innovations? Can I take what I learned back to my institution to improve the way we teach our students?* These are the same takeaways one gains from attending a legal writing conference, and yet that experience is more interactive, encouraging real-time questions and a deeper conversation. A legal writing professor can leave a conference presentation not only inspired by a fresh idea, but with a packet of materials, including feedback data, to help immediately implement that idea into her curriculum.

The written product you are reading now began, quite literally, as a spoken conversation among the authors. The seeds for this article were planted in December 2009, when two of the authors (Iselin Gambert and Karen Thornton) boarded the train from Washington, DC to New York City to attend the first-ever Legal Writing Institute One-Day Conference. We were in the final weeks of our first semester as full-time legal research and writing (LRW) professors, and we relished the opportunity to meet colleagues and absorb insight from the experienced conference panelists.

We remember that first semester well. We remember, of course, the time we spent on creating lesson plans, teaching classes, conferencing with students, and grading papers for the very first time. Perhaps what stands out the most, however, is all the time we each spent searching for a sense of self as academics.

What kind of teacher am I, and how can I best connect with my students? How do I make time to develop a body of scholarship, and what will that scholarship look like? Who are my mentors and where do I fit within my community of colleagues? How do I build a professional reputation and achieve personal fulfillment?

The attendees and presenters at the 2009 One-Day Conference warmly embraced us into the LWI community, where we were encouraged by many to participate actively in the already-vibrant conversation taking place about these identity issues and so many others. We felt welcomed into a Burkeian parlor of sorts to listen and explore possible answers to our questions with seasoned colleagues and mentors.

One of the greatest benefits of attending that One-Day Conference was our introduction to our co-author,

longtime LRW professor and One-Day panelist Amy Stein. Amy graciously made herself available to us as a mentor that day; her inspiration and guidance over the last several years has been a gift. As new teachers we assumed that the greatest satisfaction would come from guiding our students to new levels of awareness and achievement, as well as from pursuing our own written scholarship. With Amy serving as a source of inspiration and support, we came to realize, however, that our greatest sense of fulfillment comes from a broader notion of scholarship: active participation in – and planning of – regional and national conferences that enhance the vibrant kinship of our legal writing community.³²

The other great benefit of attending the One-Day Conference was that traveling to New York forced us out of our insularity in ways that reading scholarly articles cannot. Conferences allow presenters to watch the audience react to their ideas; the presentation allows the presenter to give voice to an idea and as an audience we take notice.³³ We become better listeners. At the One-Day, we got to see first-hand how legal writing faculty test the limits of each others’ analytical thinking in a positive, supportive way. To call this high-level learning and exchange of knowledge scholarship simply means thinking differently about something we are already doing. Conference presentations

32 The Legal Writing Institute (LWI) founders clearly shared this view, as LWI has been the heart and soul of the legal writing profession, creating connections among thousands of teachers and pressing forward a vision of community. Mary S. Lawrence, *The Legal Writing Institute The Beginning: Extraordinary Vision, Extraordinary Accomplishment*, 11 LEGAL WRITING: THE J. OF THE LEGAL WRITING INST. 213, 214 (2005), available at http://www.law2.byu.edu/Law_Library/jlwi/archives/2005_1.htm. In the forward to her memoir, Mary Lawrence writes, “the Institute helped make us who we are now.” Lawrence, at 213. The pioneers who founded LWI in 1984 gathered 108 attendees at the first LWI conference at the Puget Sound School of Law. They took up residence in the dorms at the University of Puget Sound to make the meeting accessible to legal writing professors who lacked a travel budget. “It was very non-hierarchical and very inclusive.... Because the [early] conferences were relatively small and we all lived together ... by the end of the conference, everyone knew everyone else, and what kind of a [legal writing] program they had.” Lawrence, at 217-221. Twenty-nine years later, LWI’s membership has grown to over 2,800 members and as an organization of law professors is now second in size only to the American Association of Law Schools. See

33 See generally Del Mar, *supra* note 5, at 10.

are no less scholarship – they are *interactive, real-time scholarship*, a nurturing environment where we push each other to learn and adapt to new ideas with an energy that would otherwise lay flat on the page of written scholarship.

In the spring of 2010, just a few months after our first meeting at the One-Day, Amy chaired the first annual Empire State Legal Writing Conference, at Hofstra Law.³⁴ Iselin and Karen were encouraged to submit proposals because the call for proposals stated a preference for presentations by new faculty. Taking to heart the expert advice we heard at the One-Day Conference about making time for scholarship, we saw our presentations as a way to give voice to ideas we were developing in our first months of teaching.

We were particularly inspired to attend the inaugural Empire State conference because creating a new conference was not something we had ever given thought to before. We had only previously attended the well-established Central States and Rocky Mountain conferences. After Empire State, we asked our GW Law colleagues, “When is the DC-area conference?” fully expecting that, with at least nine law schools in the immediate region, there was already an established conference in the area. When we learned that no one had ever hosted a local conference before, we realized an amazing opportunity lay before us. What better way to speak up in the parlor than to create a new venue for the community of legal writing scholars to continue the conversation in Washington, DC?

³⁴ Perhaps unsurprisingly, the original idea for the Empire State Conference was born at a national legal writing conference. Robin Boyle (St. John’s University School of Law), Ian Gallacher (Syracuse University College of Law) and John Mollenkamp (formerly of Cornell Law School) had a casual conversation at the 2008 Legal Writing Institute Conference in Indianapolis about the lack of a regional conference in New York, despite the presence of fifteen law schools in the state. Robin subsequently sent an email to the Director/Coordinator of each of the New York state law schools, inviting them to serve on a committee to plan a regional conference. Three additional people agreed to serve on the initial planning committee: Tracy McGaugh (Touro College Jacob D. Fuchsberg Law Center), Amy Stein (Hofstra University School of Law) and Marilyn Walter (Brooklyn Law School). The First Annual Empire State Legal Writing Conference was held in May, 2010, at Hofstra Law School and the Fourth Annual Conference was recently held at Albany Law School.

B. Planning and Hosting a Local Legal Writing Conference Can Take the Conversation to a New Level

We encourage you to consider hosting a legal writing conference in your community. As we learned firsthand through the planning process, there are three main beneficiaries of hosting a conference: you, your law school, and your region’s law schools.

You will benefit. Hosting a conference is a powerful tool for professional development. It will help you make contacts at other schools in the region and even within your own school. Staff and faculty colleagues will learn your name and you will get to know the leadership at your law school. You will gain exposure at the national level through the Legal Writing Institute listserv and other online outlets and at the conference, veterans will be able to associate your face with your name. Hosting a conference in the early years of your career will also enable you to demonstrate to the dean your professional growth and a broader scholarship portfolio, if you have not yet had an opportunity to publish traditional scholarship. Including an ALWD Scholar’s Forum or Workshop at your conference will create space to incubate more traditional forms of scholarship within the broader notion of conference participation as scholarship.³⁵ The Forums can encourage conference participants to use a conference presentation as the outline for a piece of traditional, written scholarship. The Workshops can benefit planners, not just the author participants, by expanding one’s depth of knowledge about a topic just by virtue of reading the proposals and arranging the peer groups.

Creating a forum for creative exchange and professional development among legal writing teachers can help you gain a sense of ownership of your career as a legal writing professor. Gathering together a community that values inclusiveness over rank can strengthen

³⁵ See http://www.alwd.org/news/news_05.html. The Association of Legal Writing Directors offers grants to regional legal writing conference planners to host Scholars’ Forums or Scholars’ Workshops as part of the conference, to create opportunities for authors to get input and feedback from legal writing colleagues on their scholarship projects. The Forum gives authors a chance to present their ideas and works in progress and receive feedback in an informal setting. The Workshops assign authors with a completed draft to small groups where participants have read one another’s drafts and discuss the works in an atmosphere designed to “promote diverse and constructive interactions.”

your sense of worth if you are conscious of your status within the hierarchy of your law school faculty.

Your school will benefit. Your law school, both the LRW program and the school as a whole, will also benefit. Hosting will place your school on the regional and national map of institutions committed to taking their legal writing programs seriously. It may help attract high-quality candidates for future LRW job openings. And it may help boost the law school’s rankings if other faculty and deans take notice.

Your region’s schools will benefit. Your region’s law schools will also benefit from a new conference within the region. Schools in the area will benefit from the schools’ legal writing professors meeting, interacting, and building relationships that can lead to other partnerships in the future. Other schools may decide to host in the future based on the success of the conference at your school, leading to long-term benefits associated with hosting and collaboration. In addition, your region will gain respect nationally as an area professionally attractive to legal writing professors.

Adjunct professors and librarians will benefit. An oft-overlooked constituency that can benefit from a regional conference is adjuncts and local practitioners who aspire to teach Legal Writing, as well as librarians. Attending a local conference when travel to a distant one is impossible gives these individuals access to teaching ideas, connections to other LRW programs, and possible full-time job leads. Those interested in breaking into the field also get an opportunity to meet people and create a network. Presenting at a local conference gives adjuncts an opportunity to develop as legal writing professionals and contribute to the field.

CONCLUSION

As legal writing professors, we all know “the magic of writing: it makes us think deeply and in an entirely different way than speaking does.”³⁶ The scholarly endeavor includes writing, yes, but it includes much more than that. The members of this vibrant legal writing community are bringing scholarship to life in myriad ways every single day through their teaching, collegiality, and other forms of professional engagement. Planning and presenting at legal writing conferences is a powerful way to embrace the multidimensionality of the scholarly endeavor. We hope that this article serves as a springboard for further discussion about conference work as an important dimension of the scholarly life, one which advances the discipline of legal writing both on its own and in conjunction with traditional written scholarship. And we hope we may have inspired you to take part in – or host! – a conference in your community in the months and years ahead. ■

³⁶ Email from Linda Berger to Karen Thornton, *supra* note 7.

Realistic Strategies for Getting Articles Written: Forced Deadlines and Forced Progress



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Regardless of how one defines legal scholarship, the biggest challenge for many legal writing professors is finding the time to do it. I am not going to offer some optimistic, pie-in-the-sky advice about finding a day each week or an hour each day to write on topics that excite you. While ideal for many, such a rhythm is seldom possible to reconcile with the time demands of teaching, grading, and conferencing. I offer instead a more realistic approach that has allowed me to write numerous articles, columns, and public policy reports: forced deadlines and forced progress.

In this context “force” refers to a variety of means beyond self-imposed and essentially unenforceable deadlines or goals. A few examples include:

1. Write a recurring column or article that has a set deadline. For several years I have written the annual survey article on Indiana criminal and procedure for the *Indiana Law Review*. Every January, the law review expects an article, and the editorial board will politely nag me until it is submitted. Beyond articles, writing policy reports for groups like the American Bar Association or National Association of Criminal Defense Lawyers has offered not only the luxury of a deadline but also the ability to work with task force members and organization staff who provide invaluable feedback and required deadlines throughout the project.
2. Take on smaller projects that can become part of a larger one. One way to facilitate #1 is the completion of smaller projects that can be incorporated in some form into a larger project. Shortly after I began teaching, I agreed to write a monthly column that summarized recent criminal cases for the state bar journal. I alternate with another

author, which means at the end of the year I have reviewed about half of the opinions that form the basis of the annual survey article. I also occasionally write commentary for the Indiana Law Blog on the day a significant opinion is issued, which is a resource that can later be used in the monthly bar column or annual survey article. CLE presentations offer other ways to apply this principle.

3. Participate in the LWI Writers’ Workshop, ALWD Scholar’s Forum, or similar opportunities to have a draft reviewed. Each year calls are posted for a variety of workshops where participants submit a draft that is reviewed and discussed in a small group led by an experienced facilitator. Even if the draft is somewhat rough, committing to participate in one of these workshops is a wonderful opportunity to move a project toward completion and receive valuable feedback.

4. Submit a proposal to a regional conference on a partially developed topic. Rather than presenting on a comfortable topic, submit a proposal on a promising topic you hope to develop into an article. Preparing for the presentation and the questions and comments from the audience during the presentation will help move your idea toward an article. If you are writing outside of the legal writing field, the annual Law and Society Conference accepts presentations on a wide range of topics and generally employs a panel format in which a moderator (and perhaps others on the panel) will offer feedback on your draft.

5. Hire a research assistant, especially one prone to nagging. Although a research assistant cannot write an article for you, a good one can certainly help advance a project both by providing useful resources and also by requiring you to commit at least a small amount of regular time and thought toward the project. Consider setting up a standing weekly or biweekly meeting to discuss progress.

6. Escape for a semester or at least a few weeks. For many, unfortunately, the final suggestion may be optimistic. But if your school offers you a research semester or sabbatical, consider leaving town to focus on writing. A few years ago I was very fortunate to have a semester off from teaching, half of which I spent at Stetson University College of Law as part of its Visiting Scholars Program. The program offered an on-campus apartment, an office with use of the library, and feedback from faculty at a presentation near the end of the visit. I was far more productive during

those six weeks away from home than I would have been from the comfort (and with the distractions) of home.

In sum, although legal writing professors face grueling demands on their time and energy, this article offers a few modest and realistic ways to develop or build a record of short or even substantial publications. ■

It's Not All Statistics: Demystifying Empirical Research



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“For the rational study of the law the black-letter man may be the man of the present, but the man of the future is the man of statistics....”

--Oliver Wendell Holmes (1897)¹

Although Oliver Wendell Holmes was touting the merits of empirical research over one hundred years ago, only recently have legal academics created a journal and conference dedicated to empirical legal studies.² Interestingly, topics of interest to legal writing professors have been a source for empirical research well before the emergence these specialized journals and conferences. For example, empirical research comparing the use of legal prose to plain English in appellate briefs was taking place over 25 years ago.³ In 1996, the second volume of *The Journal of Legal Writing Institute* included an empirical study evaluating which professors' comments students found the most useful.⁴ More recently, the use of laptops in the classroom has become a topic for empirical research by law professors.⁵

- 1 Oliver Wendell Holmes Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897).
- 2 The *Journal of Empirical Legal Studies* was established in 2004 and the inaugural Conference on Empirical Legal Studies occurred in 2006.
- 3 Robert W. Benson & Joan B. Kessler, *Legalese v. Plain English: An Empirical Study of Persuasion and Credibility in Appellate Brief Writing*, 20 LOY. L.A. L. REV. 301 (1987).
- 4 Anne Enquist, *Critiquing Law Students' Writing: What the Students Say Is Effective*, 2 J. LEG. WRITING INST. 145 (1996).
- 5 Kristen E. Murray, *Let Them Use Laptops: Debunking the Assumptions Underlying the Debate over Laptops in the Classroom*, 36 OKLA. CITY U. L. REV. 185, 186 (2011); Jana R. McCreary, *The Laptop-Free Zone*, 43 VAL. U. L. REV. 989 (2009).

Like many legal writing professors, I have found these and other articles with empirical research useful to both my understanding of the doctrine of legal writing and to my teaching of this subject. In engaging in my own empirical research, however, I have discovered that empirical research encompasses more than the statistics espoused by Oliver Wendell Holmes. The legal writing professor of the future should understand that empirical research can be done in a variety of ways and is a viable area for legal scholarship.

Empirical research can involve numbers, but it does not have to. The word empirical “denotes evidence about the world based on observation or experience. That evidence can be numerical (quantitative) or non-numerical (qualitative); neither is any more empirical than the other.”⁶ But, quantitative and qualitative methods produce different kinds of information. Quantitative research may provide information about a pattern, while qualitative research may provide an understanding of why such a pattern exists.

Legal writing professors have used quantitative methods to study law students' expectations and attitudes about grades⁷ and the use of intensifiers in appellate briefs.⁸ These studies used statistical tests, but not all empirical studies do. Simple math such as determining percentages is often enough to generate data that can be quantitatively analyzed.⁹ Many legal scholars, however, have noted the limitations of relying on numbers alone.¹⁰

- 6 Lee Epstein & Gary King, *The Rules of Inference*, 69 U. CHI. L. REV. 1, 2 (2002).
- 7 Emily Zimmerman, *Do Grades Matter?*, 35 SEATTLE U.L. REV. 305 (2012).
- 8 Lance N. Long & William F. Christensen, *Clearly, Using Intensifiers Is Very Bad-or Is It?*, 45 IDAHO L. REV. 171 (2008).
- 9 See e.g., Judith D. Fischer, *Got Issues? An Empirical Study About Framing Them*, 6 J. ASSN. LEG. WRITING DIRECTORS 1, 11 (2009).
- 10 See Caprice L. Roberts, *In Search of Judicial Activism: Dangers in Quantifying the Qualitative*, 74 TENN. L. REV. 567, 603, 610 (2007) (noting that judicial results are more easily quantified, qualitative research can evaluate the reasoning behind the result); See also Cass R. Sunstein et al., *ARE JUDGES POLITICAL?: AN EMPIRICAL ANALYSIS OF THE FEDERAL JUDICIARY* 65 (Brookings 2006) (stating “data capture[s] votes rather than opinions. For the actual development of the law, the opinion matters a great deal.”).

Qualitative research can be done as alternative or in addition to quantitative research. Instead of focusing on numbers, qualitative research evaluates the how and why behind the numerical results. Open ended surveys, interviews, and textual analysis are typical research methodologies used in qualitative research. Such research could involve an in-depth study of law students with ADD¹¹ or analysis of the content of judicial opinions for judicial activism.¹²

Both quantitative and qualitative research offer information that is useful to the legal academy; neither one is more impressive or given greater weight.¹³ Regardless of the type of research, however, “a study can be no better than the data on which it is based, and that data need to be properly drawn and defined.”¹⁴ Consequently, designing a study is perhaps the most important step in empirical scholarship.

Empirical research can take a lot of time, but it does not have to. All scholarship takes time. Unlike traditional scholarship, however, the most laborious part of empirical scholarship occurs early on when designing and conducting a study. Writing about the results, on the other hand, is fairly straightforward. Articles involving empirical research follow a format which includes describing the study and reporting the results. Once a study is complete and the data collected, a significant portion of the article is already complete.

Ample time should be spent formulating a question, designing a study and then implementing the study. If you intend to conduct a study using students, your study must be

- 11 See e.g., Leah M. Christensen, *Law Students Who Learn Differently: A Narrative Case Study of Three Law Students with Attention Deficit Disorder (ADD)*, 21 J.L. & HEALTH 45 (2008).
- 12 See e.g., David S. Caudill & Donald E. Curley, *Strategic Idealizations of Science to Oppose Environmental Regulation: A Case Study of Five TMDL Controversies*, 57 U. KAN. L. REV. 251, 263 (2009).
- 13 See Michael Heise's Comment, *Combining Quantitative and Qualitative Methods in Socio-legal Research*, EMPIRICAL LEGAL STUDIES BLOG, http://www.elsblog.org/the_empirical_legal_studi/2006/06/combining_quant.html (June 21, 2006, 15:59 EST) (stating that “different methodological approaches possess different blends of strengths and weaknesses and none possess an exclusive lock on advancing knowledge”) (last visited Nov. 30, 2012).
- 14 Frank Cross et. al., *Above the Rules: A Response to Epstein and King*, 69 U. CHI. L. REV. 135, 137 (2002).

approved by your school's institutional review board. Such approval may involve completing an application along with submitting your survey or questionnaire. Once your study has been approved, the time it takes to conduct the study depends on the method by which you intend to gather your data. Collecting data using focus groups and interviews takes more time than using a one-time survey or poll.

While some studies take several years to design and conduct and involve a large number of subjects, not all empirical research needs to be this complex. Time-saving techniques include using pre-existing data or implementing a pre-existing survey.¹⁵ Consider using a straightforward data collection method, such as a one-time survey¹⁶ or a poll at the end of class,¹⁷ to save time. If your study is rather involved, you can always write about your study before your results are complete.¹⁸ The theory behind a study can be just as important as the results.

Empirical research is becoming a pervasive part of legal scholarship. In 2006, AALS devoted its annual meeting to exploring the “place of empirical research in the scholarly mission of law schools.”¹⁹ At this year's 2014 annual meeting, AALS is holding additional sessions on conducting quantitative and qualitative research. The *Journal of Empirical Legal Studies* and the annual Conference on Empirical Legal Studies have further elevated the profile of empirical research.

Empirical scholarship covers a variety of topics, from environmental law, to professionalism, to Supreme

- 15 See Robin Boyle, Jeffrey Minneti & Andrea Honigsfeld, *Law Students Are Different from the General Population: Empirical Findings Regarding Learning Styles*, 17 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 153 (2009) (using The Building Excellence (BE) Survey, an online learning style assessment survey developed and administered by Performance Concepts International (PCI)).
- 16 See e.g., Murray, *supra* n. 5 at 198.
- 17 See e.g., Jeffrey Minneti & Catherine Cameron, *Teaching Every Student: A Demonstration Lesson That Adapts Instruction to Students' Learning Style*, 17 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 161 (2009).
- 18 See e.g., Mary-Beth Moylan & Stephanie Thompson, *Enduring Hope? A Study of Looping in Law School*, 48 DUQ. L. REV. 455 (2010).
- 19 <http://www.aals.org/am2006/theme.html> (last visited Nov. 25, 2012).

Court jurisprudence. More recently, as legal education changes to meet the needs of law students and their future employers, scholarship on teaching methods, student assessment, and student learning has become not only increasingly popular, but increasingly necessary.²⁰ Within the legal academy, legal writing professors are well positioned to write on these topics. We often use teaching methods other than the Socratic method, we assess our students throughout the semester, and, because of smaller class sizes and close student contact, we are particularly in-tune to our students' needs. These topics are also well suited for empirical research because they can be evaluated both qualitatively and quantitatively.

Regardless of your area of interest, before you begin empirical research consider consulting the variety of resources that exist on empirical research including: past conferences, published empirical research, and, of course, legal writing professors who engage in this type of scholarship. In addition, the recently published *Oxford Handbook on Empirical Legal Research*²¹ is an excellent resource for those thinking of engaging in empirical legal research. After perusing these resources, you too will agree, that future of empirical scholarship includes more than just statistics. ■

20 See Eric A. DeGroff, *Training Tomorrow's Lawyers: What Empirical Research Can Tell Us About the Effect of Law School Pedagogy on Law Student Learning Styles*, 36 S. ILL. U. L.J. 251, 255 (2011) (noting that "[l]egal education lags behind other disciplines in the development of scholarship, and particularly empirical scholarship, about teaching, assessment and student learning").

21 OXFORD HANDBOOK ON EMPIRICAL LEGAL RESEARCH (Peter Cane & Herbert M. Kritzer eds., 2010).



LWI Writers Workshop participants and facilitators at Lake Lawn Resort, WI.

The Teaching, Scholarship, and Service Triathlon



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Legal writing, as a discipline, has developed tremendously in the past twenty years. During this evolution, legal writing faculty have earned increasing stature within legal academia.² When the position requirements included only teaching, many professors teaching legal writing were initially hired on short-term contracts to teach large quantities of students. Over the years, the other “traditional” components of law faculty positions began to apply to writing faculty as well. Many professors teaching legal writing are now required to engage in the full panoply of academic tasks: teaching, scholarship, and service.³

The question then becomes: how can legal writing faculty, who spend a significant amount of time and energy teaching, commenting on student papers, and working individually with students to explicitly teach the skills of legal analysis and communication, be successful in a discipline that requires the balancing of so many roles? For each professor, one part may be easier than the others or more enjoyable than the others. In addition, individual faculty members may be better at one part than at the others. But legal academia does not offer the luxury of choosing which core requirement or requirements to fulfill.⁴ Likewise, triathletes deal with the fundamental challenge of balancing three complementary but different core tasks. Swimming, cycling, and running each require different skills – yet the real difference between a successful and unsuccessful triathlete is how well one accomplishes all three components.

The obvious analogy between the legal academy’s teaching, scholarship, and service requirements and triathlons suggests some of the advice offered by successful triathlon coaches might be helpful to faculty teaching in law schools.⁵ This advice is especially true

for those in the field of legal writing, where all three requirements have not been traditionally imposed and the learning curve for some may still be steep. Seven key points emerge from the advice provided to triathletes: 1) plan; 2) focus on the weak sports; 3) stay close to home; 4) go short before going long; 5) smooth the transitions; 6) rely on support; and 7) rest. And, by following some of the advice that helps triathletes be more successful, legal writing faculty can be more successful.

1. Plan⁶

Without a plan that accounts for the need to be productive in all three areas, including specific, measurable goals in each area and concrete deadlines, success is less likely. Education theory has long espoused the principle that creating explicit goals for learning increases the likelihood of actually attaining those goals. Most faculty teaching legal writing spend ample time considering pedagogy and the impact of this principle in teaching. Yet how many apply this principle to their own professional development, creating goals in each area?

For faculty, the plan has to include all three components: teaching, scholarship, and service. Further, goals have to be realistic.⁷ In addition, a successful plan requires faculty to also articulate specific strategies to achieve those goals. Success also requires a schedule. Divide the tasks into intermediate stages with measurable outcomes. Finally, try not to rush too much at the beginning; you’ll need energy to push forward at the end. As with triathletes, who are advised to “plan to do the first half of the race slower” so that they do not burn out by starting too fast, slow and steady wins.

experts. See, e.g., Gale Bernhardt, *Ten Tips for First-Time Triathletes*, available at http://www.active.com/triathlon/Articles/10_Tips_for_First-time_Triathletes.htm.

6 As a triathlete coach would say, “plan your race strategy.”

7 Be pragmatic; for instance, in terms of teaching, how many new courses can you prepare? How many courses can you redesign? How many more pages of writing can you comment on? In terms of scholarship, how many articles can you actually write in the next three years? How many can be full-length law review articles? How long will it take to write a book? In terms of service, how many committees can you serve on? How many committees can you chair? How many local, regional, and national offices can you hold?

2. Focus on the Weak Sports⁸

Human nature generally encourages people to spend more time performing tasks they enjoy and have mastered, not those perceived as less enjoyable and more risky or less likely to lead to success. But increases in strong areas provide only marginal overall benefits. On the other hand, substantially greater progress is possible in areas not yet mastered. Most legal writing faculty do not need to spend more time on teaching because teaching is the “strong sport” for many, if not most, faculty who teach legal writing. Similarly, many legal writing teachers do not need to spend more time on service. Furthermore, we usually know where we are weakest. Allocate more time to that “weak sport,” such as scholarship, whatever that may be, and less to your “strong sports.”

3. Stay Close to Home⁹

Third, decreased stress and increased familiarity and confidence breed success and, for those reasons, when expanding into new areas, keep the focus on familiar topics. For example, rather than starting with a lengthy law review article on a completely unfamiliar topic, focus your teaching, service, and scholarship in areas you know about or have already developed an interest. Starting with something familiar allows you to develop areas of expertise and build on those areas; you can then branch out and stray further. In essence, as your expertise grows, your “home” gets bigger.

4. Go Short Before Going Long¹⁰

Fourth, large projects can be daunting and sheer inertia can minimize the likelihood of success. Monumental tasks are difficult to start; they are also difficult to finish if it becomes obvious that you cannot accomplish everything you hoped. Start with smaller, more accessible projects and build from there. The goal is to gain momentum and stick with it. In legal writing, that means teaching the basic or introductory courses before advanced

8 In a coach’s words, “work more on your areas of weakness, not your areas of strength.”

9 Here, a triathlete’s coach would say “compete in races close to home to decrease stress and increase confidence because of your familiarity with the area.”

10 The advice here is “don’t begin with a full triathlon as your first competition.” A full triathlon is 140.6 miles: 2.4 miles of swimming, 112 miles of cycling, and 26.2 miles of running.

1 I would like to thank Megan McAlpin and Liz Frost for inviting me to speak on this topic at the **Second Annual Western Regional Legal Writing Conference** in Eugene, Oregon and for their insightful ideas about this issue; Dean Michael Moffitt and the University of Oregon School of Law for hosting this enlightening conference; Suzanne Rowe for her mentorship and encouraging me to write this paper; Adam Almaraz, Sue Chesler, Tamara Herrera, Carissa Hessick, Kim Holst, Amy Langenfeld, Terri LeClercq, Terry Pollman, and Carrie Sperling for their suggestions and encouragement.

2 See, e.g., Linda L. Berger, et al., *The Past, Presence, and Future of Legal Writing Scholarship: Rhetoric, Voice, and Community*, 16 *LEGAL WRITING: J. LEGAL WRITING INST.* 521, 525-33 (2010); Anna P. Hemingway, *Accomplishing Your Scholarly Agenda While Maximizing Students’ Learning (A.K.A., How to Teach Legal Methods and Have Time to Write Too)*, 50 *DUQ. L. REV.* 545, 546-47 (2012).

3 See, e.g., Association of Legal Writing Directors and Legal Writing Institute, *Report of the Annual Legal Writing Survey 2012*, available at http://alwd.org/surveys/survey_results/2012_Survey_Results.pdf (hereinafter *ALWD SURVEY 2012*). From 2004 to 2012, scholarship expectations increased substantially. *Id.* at Question 81; Association of Legal Writing Directors and Legal Writing Institute, *Report of the Annual Legal Writing Survey 2004*, available at http://alwd.org/surveys/survey_results/2004_Survey_Results.pdf (hereinafter *ALWD SURVEY 2004*) at Question 81. The teaching load has

correspondingly decreased slightly during this same time frame. *ALWD SURVEY 2012*, Question 82; *ALWD SURVEY 2004*, Question 82; *ALWD SURVEY 2012*, Question 82; *ALWD SURVEY 2004*, Question 82. Service obligations increased slightly during the same time frame. *ALWD SURVEY 2012*, Question 83; *ALWD SURVEY 2004*, Question 83.

4 Even for faculty who have already attained tenure or some tenure-equivalent, post-tenure review has changed the nature of academic independence. Faculty in all disciplines, not just law or legal writing, are being held accountable to deans, provost’s offices, boards of regents, tax payers, and boards of directors for continued productivity. See, e.g., Dan Berrett, *Wrong Kind of Accountability?*, *INSIDE HIGHER ED*, May 10, 2011, available at http://www.insidehighered.com/news/2011/05/10/texas_faculty_and_president_critique_regents_measurement_of_professors; Bill Graves, *Oregon Audit’s Push for More Professor Accountability Clashes with University Culture*, *OREGON LIVE*, May 8, 2011, available at http://www.oregonlive.com/education/index.ssf/2011/05/oregon_audits_push_for_more_pr.html. Specifically as it relates to the field of legal writing, the discipline is at a stage where faculty need to excel in all three areas – teaching, scholarship, and service – and the job can be more fulfilling when that happens.

5 Many of the suggestions in this paper build on tips from U.S. Olympic Triathlon coach Gale Bernhardt, who coached in the 2000 Sydney games, as well advice from as other triathlon

courses,¹¹ serving on a committee before chairing it, and writing shorter pieces before full-length law review articles. Although these incremental steps may seem to delay reaching your ultimate goals, this approach allows you to work out the bugs, gain momentum, and gain confidence, making long-term success more likely.

5. Smooth the Transitions¹²

Fifth, even when the individual tasks have been mastered, transitioning from one task to another takes time. Reducing the time spent transitioning from one component to another will improve overall effectiveness. For example, triathletes spend a lot of time trying to minimize time lost switching between events and have even developed shorthand methods to refer to these transitions. Unlike triathletes, faculty do not always approach these tasks in the same order. Furthermore, we often move back and forth between our various job responsibilities. Therefore, minimizing time spent on transitions can be even more significant to overall efficiency.

For those who teach legal writing, creating synergy between our various roles can minimize the transition time between teaching, service, and scholarship. Find ways for the areas to overlap and build on each other. For example, volunteer for committees and organizations that overlap with your teaching or scholarly interests. Better yet, find service projects that build on both teaching and scholarly interests.

Furthermore, simple time-management techniques can help. Minimize distractions by scheduling meetings during times you expect to transition. Schedule your varied projects based on how you work best; teaching and service can often fit in shorter time slots. Block schedule when you can to leave larger chunks of time to work on one larger project, such as course design, reducing transitions.¹³

11 One way to help even with new course development is to teach a condensed version of the course you envision before teaching the full course, such as developing and teaching a two-week “test-pilot” course before developing the full thirteen-week course.

12 In triathlon terms, this means to “reduce the time it takes to switch from swimming to cycling and cycling to running.”

13 By “block schedule,” I mean scheduling entire days, three mornings a week, or other relatively long time slots to reduce transitions.

In addition, compartmentalizing can help. Ease the necessary balancing by focusing on what you are doing without feeling guilty about other obligations. Rarely, though, does balance exist every day or even every week.¹⁴

6. Rely on Support¹⁵

Sixth, others are often willing to help. Take advantage of that support to provide a solid foundation. Unlike triathletes, legal writing faculty can rely on that support to move forward and we should pull others forward professionally.¹⁶

Within institutions, rely on support from colleagues, teaching assistants, travel funds, and research grants. Externally, rely on national and regional conferences, scholarship, scholars’ workshops, listservs, LWI, ALWD, AALS, the Ideabank, and syllabus banks. It is also helpful to have a good coach; even if that option is not available within your institution, the legal writing community includes an accessible group of national leaders and mentors. And think about support for service activities as well. In short, there is no award for “going it alone.”

14 Quite often, balance is difficult to find even every month and sometimes even every year. You may have very typical “40/40/20” years (time spent on teaching, scholarship, and service being 40%, 40%, and 20%, respectively, of your overall work time); other years, that balance may look more like 10/05/85 or 80/10/10. Over the long haul, though, the goal is to balance the three work obligations with each other and all of those obligations with the other – and frankly, often more important – aspects of your life.

15 The coach’s advice here is to “get good shoes and use the surfboard or kayak during the swim portion if you need to.”

16 For example, during the swim portion of a triathlon, lifeguards are in the water on surfboards or kayaks and swimmers can stop there to rest. They cannot move forward with the assistance of the lifeguard, but they can get support. Unlike some disciplines, we are rare to criticize others to distinguish ourselves. There is no need to reinvent the wheel. Ask others about ways to structure a committee, forms they can share, and ideas for communicating more effectively.

7. Rest¹⁷

Finally, some down time increases overall productivity, but too much rest becomes counter-productive.¹⁸ People generally perform best when not fatigued; in legal writing, the natural breaks during the summer and the winter offer some down time. But these extended breaks can be guilt-producing and inefficient, making it difficult to start working again. Improvement requires continued work with short, periodic breaks to gear up for busier times and to celebrate successes. Think of it as recharging, not shutting down. ■

17 In triathlon terms, “taper and recovery is essential.” For triathletes, the recommendation is to spend two weeks at half-speed prior to a big race to enable the athlete to “kick into high gear” for the race; following the race, the suggestion is to spend two weeks in easy “get out and move” training before resuming the regular – a.k.a. grueling – regimen of triathlon training.

18 Even professional triathletes rest some; they need downtime to avoid burnout and injuries. Interestingly, though, triathlete coaches do not recommend taking long periods of time, like an entire summer, completely off. The following quote sums up one coach’s advice, which involves the “taper and recovery” method described above with two weeks on each side of a race at half-speed or easy “get out and move” mode: “with two Ironman races a year, that’s already two MONTHS of easy training. Pretty hard to justify a long off season with that sort of downtime already incorporated into the year – at least if you’re serious about improving.” How Long Should Your Off-Season Be? Ironman Triathlon Tips, Dec. 17, 2011, available at <http://ironmantriathlonstips.com/>.

The Silent Scream: How Soon Can Students Let Us Know They Are Struggling?



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“I was much further out than you thought/And not waving but drowning.” –Stevie Smith

Law students struggle. Some of them fail. Most succeed.

But when and how do we identify the students who struggle the most or are the most likely to fail? Institutionally, most law schools do not provide students with any form of official warning until after grades are submitted for the first term, often after the beginning of the second term. Some professors who have only end-of-semester evaluations may not know which students will earn low grades until after a final exam. As legal writing professors, we typically see student work before other faculty members. We provide in-depth feedback on a routine basis. Many of our departments require final papers to be turned in before final exam week and, sometimes, graded much before the beginning of the second semester. Thus, legal writing professors are positioned unusually well to be the first to identify struggling students.

Yet, if hard-pressed, most of us could identify within the first few weeks students who broadcast what we might call “symptoms” of underlying struggle: confused looks, disorganization, or off-base questions. Sometimes, perhaps even often, we’re right, and grades confirm our suspicions of student struggle. The earlier we identify students who are likely to struggle, the earlier we can intervene.

Early Data

Each year at MSU Law, our legal writing program administers a series of assessments on basic editing skills: grammar, punctuation, and style.¹ The assessment series begins during orientation, before the fall semester begins, with the Writing Skills Inventory (WSI), a 32-item multiple-choice pre-assessment in plain vernacular English.² Though we use the assessment for various internal purposes, the primary purpose is to inform students of the skills they need to improve in order to pass the post-assessment, the Proficiency Test. The Proficiency Test is identical in format to the WSI, but uses legal language and examples. Students must pass the Proficiency Test in order to receive credit for their second-semester writing class. I offer extensive office hours and optional, but well-attended, seminars throughout the fall semester. Students, however, may choose to prepare for the Proficiency Test in any way they see fit.

After administering this same series of assessments over the past six years, I began to see informal patterns in student performance. Students who did not pass the Proficiency Test on the first try frequently commented that they simply failed to recognize the differences between the five multiple choice versions of the same sentence with differences in punctuation, tense, or other typographical changes. As one example, many students, upon reviewing the test answers they missed, report that they did not differentiate between the words (and non-words) children’s and childrens’ and childrens because they did not even notice the difference in punctuation in the presentation of the three words.

1 Our program is deeply indebted to Anne Enquist, Writing Specialist at University of Seattle. For more detail about the MSU Law Writing Skills Program and our assessments, see the 9/19/12 LRW-PROF-L listserv reply entitled “Grammar diagnostics/assistance for struggling 1Ls.”

2 The language we use is similar to what you might find in TIME Magazine or a local newspaper. Testing students the first week of law school using legal language and examples, we’ve found, does more to test their ability to adapt to new language genres than it does to test their familiarity with writing mechanics. Professor Daphne O’Regan and I have discussed this recommendation elsewhere, including our 2010 LWI presentation, “Changing Approaches to Writing Skills Diagnostic Tests.”

Students frequently commented that they focused more on the “flow” of the sentence, eschewing small details.

As a teacher, I had a problem. A small but noticeable portion of our first year students lacked an implicit skill, specifically attention to small details. Before I could solve the problem, I needed to understand the problem better so that I could intervene in a systematic and responsible way. Through our writing assessments, we had already successfully demonstrated that a student missing particular items on the Writing Skills Inventory increased the likelihood of that student not passing the Proficiency Test on the first try.³ I began to wonder about student success and non-content issues related to testing: familiarity with multiple choice assessments, comfort level with large-room testing environments, or attention to minute details.

Marked for Failure?

In the fall of 2010, I decided to conduct a small research project to track one of these questions: whether student attention to detail in non-test content correlates with Proficiency Test passage.

The design was simple: I examined testing documents as students turned them in. In addition to the responses to the assessment questions, students also had to provide and bubble identifying data, including name, student number, and legal writing section number. If a student failed to enter the data on the testing form correctly, I corrected the error and put the testing form in a separate pile from the testing forms that contained no errors. I recorded the names and student numbers of students whose testing forms had marking errors and submitted all of the tests for scoring.

Once I got the results back from our scoring office, I sorted the results by separating the results of students whose tests contained marking errors. The finding was startling:

3 One of the most powerful correlations we have found is WSI item 14, which asks students to identify a sentence fragment. Students who miss this question are nearly 100% certain to fail the Proficiency Test on the first try. As of this writing, we are combing through our data to look for other powerful predictors of achievement, both within the test and beyond in GPA and even bar passage.

of the 52 students whose tests contained marking errors, almost 20% failed as compared with just over 10% of the “control group.” In short, students whose attention to detail when completing data on the multiple choice test forms⁴ was less than ideal failed a test that focused on small details at double the rate of the non-error group.

What is Persuasive? What is Scholarship?

Whenever I discuss this finding with colleagues both within and outside the legal academy, most find the result to be “interesting.” Responses, admittedly, range from “Oh, wow!” to “Well, duh!” They begin speculating as to what could have caused the disparity in score between the error-prone and comparatively more careful groups. Many legal educators get excited about the prospect of quickly identifying students who might struggle. After sharing this result very widely, most everyone comes up with an idea on how to use the finding to help students.

Is the finding “true”? Perhaps in a Jamesian true-because-it-is-useful sense, but not in the strictest scientific sense. Is it scholarship? In the sense that teacher-scholars find it interesting and use it to modify their practice and inform their theory, I argue yes, it is.

This type of pragmatic scholarship, that which is useful and interesting and informative to our practice, helps to construct a bridge to future discussions of the intersection of content and pedagogy, an articulated theory of legal praxis. Such a discussion will not replace the traditional modes of legal scholarship, but act as a corollary to deepen our understanding of the process of learning in the law school classroom. But now I know something I didn’t know before, and I’ve shared this knowledge with other people. At the very least, I’m a better teacher because of this finding.⁵ At most, the finding has spurred

4 These Optical Character Recognition (OCR) forms are widely known by the proprietary eponym SCANTRON.

5 As one example, I’ve modified the way I present information in Writing Seminar by placing a greater emphasis on identifying small details and how those details allow different or conflicting meanings to emerge. Students have reported

other teachers to pay attention to how well students pay attention,⁶ possibly reducing the likelihood of a student struggling to succeed in the first year of law school.

back to me that they had become aware of a whole new terrifying world of shifting meanings.

6 One of my colleagues reports that she has, based on the marking error finding, changed the specificity of how she gives oral and printed instructions in class.

Empowering ESL Students: Remove the Stigma, Reinforce the Strengths



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Law school student-body diversity in age, ethnicity, culture, socio-economic status, and language is commonplace and growing.¹ Language diversity especially challenges writing specialists and legal writing professors who work to improve the writing of law students whose first language is not English.

Although the life experiences and English language level of such students varies widely,² these students are often considered academically disadvantaged. However, they are not necessarily as disadvantaged as supposed in their ability to improve their writing skills, and they can be empowered to

1 For your school's ranking, see

<http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-school-diversity-rankings> > (last visited June 14, 2012).

2 For example, a class could be made up of U.S. born students who were not raised in the English language; students in US who started learning English under age ten; older students who entered the US and completed high school here; international students with (or without) American undergraduate degrees.

achieve more by recognizing and reinforcing their linguistic and cultural strengths while helping with their writing.

This article advocates empowering these students by removing the stigma of their being second language students; recognizing that their awareness of grammar, willingness to acknowledge their limitations, and ability to improve their writing skills are often greater than those of native English speakers (NES); and providing professors with information on how to help these students reach their potential. Once empowered, these students are more apt to succeed and enrich the classroom with their diversity. Legal writing professionals who work to give non-native English speakers additional resources and stronger self-esteem help them improve their writing. R. F. Baumeister et. al argue plausible reasons for thinking that high self-esteem will lead to good schoolwork because “[h]igh self-esteem may foster the confidence to tackle difficult problems and enable people to derive satisfaction from progress and success.”³

First, as professors, we need to remove the stigma attached to ESL students to further help them. The “ESL” label emphasizes the secondary nature of the students’ English and their efforts to “catch up” to NES. Moreover, the belief that ESL students are academically disadvantaged undermines their interactions with professors and complicates job searches because the students appear to have fewer, weaker language skills than NES. However, using “bilingual” or “multilingual” indicates such students’ extra skills set and emphasizes their linguistic advantage. Therefore, this article uses the designation L+ (“L plus”), meaning “more than one language.” To help L+ students we must identify them, but some L+ students are reluctant to “admit” English is their second language. So, one way to identify such students without implying an expectation of poor performance is by asking, “What language(s) do you speak in addition to English?” instead of “Have you ever had to study ESL?” Identifying L+ students in this way empowers them by valuing their cultural and linguistic advantage.

3 R. F. Baumeister et al., “Does High Self-Esteem Cause Better Performance, Interpersonal Success, Happiness, or Healthier Lifestyles?” 4 PSYCHOLOGICAL SCIENCE IN THE PUBLIC INTEREST 1, 10 (May 2003).

Second, we need to acknowledge L+ students strengths and help them recognize those strengths. L+ students often show a greater knowledge of English grammar, punctuation, and usage than NES because they have studied English as an academic subject, while NES often rely on an intuitive grasp of these elements. Acknowledging the L+ students’ advantage here mitigates their feeling of being in a weakened position because English is not their mother tongue. Also, L+ students’ academic background in grammar enables them to use and understand grammatical terms in discussions of their writing, thus accelerating their progress.

Further, some NES neither perceive nor acknowledge their writing weaknesses and insist they have always been good writers, whereas, L+ students, tend to accept the need to improve their writing and draw on past motivation to continue doing so. And, L+ students rarely cling to a personal “style,” while many NES arrive at law school convinced their personal writing style will work fine in law school. L+ students, once reminded that they must develop a style that best serves good legal writing, often do so unhampered by a tenacious insistence on the adequacy of their existing writing style.

Finally, many professors know the language diversity of the student body is growing, but they do not how to address the challenges of that diversity, and many L+ students do not actively seek help. The following are guidelines that, if implemented by all of their professors, including their doctrinal, would empower L+ students.

- Encourage L+ students to self-identify and collect a writing sample or questionnaire from the class that would help identify L+ students⁴
- Become familiar with some cultural differences between L+ students’ countries and the US that might affect class performance

4 In addition to showing L+ difficulties such as correct article use, the sample or questionnaire could ask whether the students speak a language other than English; an affirmative here usually indicates that English is not a student’s first language. The author asks this in a questionnaire filled out by all her students and turned in the first day of class.

- In feedback, write clearly and avoid abbreviations, missing articles, phrasal verbs, metaphorical language, or any quirkiness that may make your writing opaque
- Encourage L+ visits to the writing specialist and attendance at writing workshops.⁵

As L+ students become more empowered and more aware of what they have rather than of what they lack, their writing improves, and that empowerment might spill over into other areas of learning, allowing the students’ diversity to enrich the classroom experience, as happened with one of my L+ students, , an Iranian whose first language is Persian. He made an appointment to review persuasive techniques in a request letter he had written to convince his future in-laws to allow him to marry his fiancé immediately instead of waiting until finishing law school and getting a job. A few days after our meeting, the phrase “consanguineal marriage” came up in class in the following thesis statement: “While most American families would view consanguineal marriage as a threat to the nuclear family, many Iranian families believe these marriages should not be illegal because such marriages help reinforce kinship ties.” Though no one in class knew the definition of “consanguineal,” once it was properly defined, murmurs arose from the students and one expression of horror: “Isn’t that when people have two-headed babies?” a student asked. Students began to comment among themselves. Then, my Iranian student spoke up. “My fiancé’s parents were first cousins, and they didn’t have any deformed children. Iranians don’t feel anything is wrong with such marriages.” The restless commenting among the students quieted down, and the discussion on the thesis sentences continued.

Perhaps our conversation about his persuasive letter had helped empower my L+ to affirm his identity and thus share an opinion and stance in class that he might otherwise not have done. And, because of his comfort level with his strengths as a L+ student, the cultural and intellectual level of the class was, perhaps, nudged forward just a bit. ■

5 A lengthier list is available from the author.

Program News

The entire faculty of **Emory Law** recently voted to change the titles of LWRAP faculty from “instructor” to Assistant and Associate Professor of Legal Writing, for one- and three-year contracts; and Professor of Legal Writing, for five-year contracts, subject to university-level approval of the change.

Elizabeth Berenguer Megale, Savannah Law School, announces the hiring of Rose Anne Nespica as associate dean. In addition to her duties as associate dean, Dean Nespica teaches legal writing and transactional drafting, courses included in the legal skills and professionalism curriculum.

Hiring and Promotion

Evangeline Abriel, Santa Clara University School of Law, was promoted to the rank of Clinical Professor of Law.

Deirdre Bowen, Associate Professor of Lawyering Skills, Seattle University School of Law granted tenure March 2013.

David Cadaret will join the LRW faculty at University of Oregon as a visiting professor for the 2013-14 academic year. David has spent the past three years at a tax consulting firm. Before law school, he was part of the football coaching staff at the University of Utah and the University of Virginia.

Lesley Carroll and **Aaron Kirk** were approved by the faculty to receive five-year contracts beginning in the 2013-14 academic year. All seven of the faculty teaching in Emory Law’s Legal Writing, Research & Advocacy Program will now be employed pursuant to five-year contracts with unlimited renewals.

Mary Dunnewold, Hamline University School of Law, was appointed, Associate Dean for Academic Affairs in January 2013.

Judy Fischer, University of Louisville, has been promoted to the rank of full professor of law.

Kimberly Holst, Sandra Day O’Connor College of Law at ASU, has been granted Clinical Tenure and promoted to full Clinical Professor.

Susan Joffe, of Hofstra University School of Law, has been promoted from Associate Professor of Legal Writing to Professor of Legal Writing and has been unanimously approved for a five year contract, which will be presumptively renewable.

Mehmet Konar-Steenberg, a co-coordinator of William Mitchell’s Writing & Representation: Advice & Persuasion (WRAP) course, has been named Associate Dean for Faculty, to begin May 1. WRAP is the College’s first-year skills course, blending research, writing, interviewing, counseling, negotiation, drafting, and oral argument.

Barb Wilson and **Judy Popper**, University of Missouri-Kansas City School of Law, were promoted to full Clinical Professor by unanimous vote, the law school’s highest rank for non-tenured faculty. The UMKC Legal Writing Program benefits from their teaching excellence and is proud that four of its five full-time faculty members are now full Clinical Professors.

Publications and Presentations

Joel Atlas, **Lara Gelwasser Freed**, **Andrea J. Mooney**, **Michelle A. Fongyee Whelan**, Cornell, **John Mollenkamp**, Missouri Department of Revenue, and **Ursula Weigold**, Wisconsin, have released *A Guide to Teaching Lawyering Skills* (Carolina Academic Press 2012). The book explores the essential components of teaching a legal research and writing course.

Lori Bannai, Seattle University School of Law, spoke about the experiences of women of color who teach Legal Writing at the symposium reflecting on the book *Presumed Incompetent* (co-edited by Carmen Gonzalez), sponsored by the Berkeley Journal of Gender, Law & Justice, March 8, 2013. Lori Bannai wrote the introduction to a cluster of articles commemorating *Hirabayashi v. United States*, in which the Ninth Circuit vacated Gordon’s Hirabayashi’s

WWII conviction for refusing to comply with military orders that lead to the incarceration of Japanese Americans, 11 *Seattle Journal for Social Justice* 1 (2012), available at: <http://digitalcommons.law.seattleu.edu/sjsj/vol11/iss1/1>

Heather Perry Baxter, Nova Southeastern University Shepard Broad Law Center, published *Too Many Clients, Too Little Time: How States are Forcing Public Defenders to Violate Their Ethical Obligations*, in the December 2012 edition of *The Federal Sentencing Reporter*. The editors of this peer-reviewed journal invited Professor Baxter to contribute this piece as a follow-up to her 2010 article, *Gideon’s Ghost: Providing the Sixth Amendment Right to Counsel in Times of Budgetary Crisis*, 2010 Mich. St. L. Rev. 341 (2010).

Deirdre Bowen, Associate Professor of Lawyering Skills, Seattle University School of Law, presented her chapter, *Visibly Invisible*, from the book, *Presumed Incompetent*, at the UC Berkeley law School symposium celebrating the publication of the book, March 2013. Deirdre Bowen, with her co-principal investigator, **Kathy Stanchi**, presented their empirical research on *How Jurors Respond to the Timing of Disclosure of Negative Information*. The presentation took place at the invitation of the Delaware Valley, Pennsylvania, Ohio and West Virginia Feminist Law Teachers Twentieth Annual CLE Conference on December 14, 2012. Deirdre Bowen also, upon invitation, presented her work, *Calling their Bluff: Defense Attorneys’ Adaptation to Increased Formalization of Plea Bargaining at the Washington State Defender Association Conference: Ethics 2012: Changing the Landscape of Criminal Defense*. The conference, which attracted over 200 public defense attorneys, was held on December 14, 2012. Deirdre Bowen, *Manufacturing Moral Panic as Political Distraction: An Empirical and Social Theoretical Analysis of DOMAs*,” made the SSRN top ten download list for Family Law, March 2013. Deirdre Bowen, “*Manufacturing Moral Panic as Political Distraction: An Empirical and Social Theoretical Analysis of DOMAs*,” was the featured *Daily Read* in the Constitutional Law Professor’s blog on February 21, 2013. Deirdre Bowen, “*Why Affirmative Action needs Race & Class Diversity*,” was featured in University of Dayton Law Professor Vernellia Randall’s website racism.org.

Mary Bowman, Associate Professor of Lawyering Skills and Associate Director of the Legal Writing Program, Seattle

University School of Law, announces for publication “*Full Disclosure: Cognitive Science, Informers, and Search Warrant Scrutiny*,” *Akron Law Review* (accepted for publication Fall 2013), “*Engaging First-Year Law Students through Pro bono Collaborations*,” 62 *Journal of Legal Education* (forthcoming, Spring 2013). In addition, “*Engaging First-Year Law Students through Pro Bono Collaborations in Legal Writing*,” made several Top Ten download lists from SSRN, including the Legal Writing eJournal.

Susan Chesler, Sandra Day O’Connor College of Law at Arizona State University, published “A Day in the Life of a Lawyer: Property Module” with Professors **Karen Sneddon** and **Pat Longan** (Wolters Kluwer Law and Business 2013). She also presented “Developing Cohesive Outcomes for Upper-Level Writing Courses” with Professor **Judy Stinson** at the 2013 Rocky Mountain Regional Writing Conference, Colorado Law School, Boulder, Colorado, March 2013; “It’s About Time: Assessing Transactional Skills in Thirty Minutes or Less” with Professor **Karen Sneddon** at Emory Law’s Third Biennial Conference on Transactional Education, Atlanta, Georgia, November 2012; “Commercial Law Forms: One Size Does Not Fit All, CLE Program at the 2012 Annual Meeting of the ABA Section of Business Law, Chicago, Illinois, August 2012

Andrew Crouse, Hamline University School of Law, presented *Teaching CREAC for Macro-Organization*, 2013 Rocky Mountain Legal Writing Conference; Colorado Law, University of Colorado, Boulder; Boulder, Colorado (March 22, 2013).

Olympia Duhart, Nova Southeastern University’s Shepard Broad Law Center, wrote “Multiracial Streetcar Named Desire Revival Stirs Controversy on the Great White Way” in June 2012 for *The Huffington Post*, available at http://www.huffingtonpost.com/olympia-duhart/streetcar-named-desire-broadway_b_1610533.html. She is also a new co-author (along with Professors William Araiza, Thomas Baker and Steve Friedland) of the *SKILLS & VALES: CONSTITUTIONAL LAW* learning supplement for the LexisNexis series. Since July 2012, Professor Duhart has made the following presentations: “Planning for Student Outcome Measurements: Course Design, Research and Practice” (with Michael Hunter Schwartz and Paula Manning) at the Annual Meeting of the Southeastern Association of Law

Schools; “From Theory to Action: Preparing Law Students to Meet the Needs of Underserved Communities” (with Angela Gilmore and Todd Clark) at the 2012 SALT Teaching Conference; “How Fisher Creates Challenges in Cultural Competency in Law Schools” at the Society of American Law Teachers (SALT) BA to JD Pipeline Program at Florida International University School of Law; and “Helping Students Become Better Self-Editors” at the Legal Writing Institute’s One-Day Workshop held at Nova Southeastern University.

Mary Dunnewold, Hamline University School of Law, published the following: *Good Process = Good Ethics*, ABA Student Lawyer, 16 (March 2013), *An Ethical Duty to Use the Internet?* ABA Student Lawyer 14 (January 2013), *Lawyer Assistance Programs: Help is on the Way* 16 (December 2012), *Should Lawyers Contribute to Judicial Campaigns?* ABA Student Lawyer 16 (October 2012), and *Work Habits That Can Become a Barrier to Professional Success*, ABA Student Lawyer 18 (March 2012). She also presented *Three Ideas for the LRW Classroom*, at the One-Day Legal Writing Institute Workshop on Preparing Practice-Ready Students, Texas Wesleyan School of Law, Fort Worth, Texas (December 7, 2012) and co-presented with **Beth Honetschlager**, *Incorporating Drafting into the Standard First-Year LRW Curriculum*, LWI Biennial Conference, Palm Desert, California (May 31, 2012).

Anne Enquist and **Laurel Oates**, Seattle University School of Law, published “Just Writing” 4th ed., Wolters Kluwer Law & Business (2013).

Andrea Susnir Funk and **Kelly Mauerman**, Whittier Law School, published *Starting from the Top: Using a Capstone Course to Begin Program Assessment in Legal Education*, 37 Okla. City U. L. Rev. 477 (2012).

Ruth Hargrove, California Western School of Law, published with **Roberta Thyfault**, *The Impact of, and Resistance to, the Use of Foreign Law on Juvenile Punishment in the United States, in Transnational Legal Processes and Human Rights* 39-62 (Kyriaki Topidi & Lauren Fielder eds., 2013).

Tamara Herrera, Sandra Day O’Connor college of Law at Arizona State University, published the second edition of *Arizona Legal Research* (Carolina Academic Press). She also published “The Newest Legal Research Game Changer: Bloomberg Law” in 21 Perspectives: Teaching Legal Research and Writing 7 (2012). Tamara

and **Kimberly Holst**, Sandra Day O’Connor College of Law at Arizona State University, presented “Facing the Fears of the Faculty Talk” at the 13th Rocky Mountain Legal Writing Conference in Boulder, Colorado.

Kimberly Holst, Sandra Day O’Connor College of Law at ASU, has published *Reflection as a Tool to Combat the Changing Practice of Law*, THE LEARNING CURVE: AALS SECTION ON TEACHING METHODS 38 (Winter 2013) and *Intellectual Property Issues in Real Property Transactions*, in INTELLECTUAL PROPERTY DESKBOOK FOR THE BUSINESS LAWYER, ___ (Sharon K. Sandeen, ed., 3d ed. ABA 2013). She also presented at the Rocky Mountain Legal Writing Conference held at the University of Colorado in March 2013 with Tamara Herrera on *Facing the Fear of Faculty Talks*, at the LWI One-Day Workshop held at the University of Arizona in Tucson on December 7, 2012 regarding *Teaching with Technology*, and at the Emory Transactional Law Conference on November 2012 on *Becoming the Master of the Form*.

Connie Krontz was the sole presenter in an all-day CLE sponsored by the King County Office of the Public Defender, titled, “*Persuasive Legal Writing: A Writing Refresher*,” on February 1, 2013

Karin Mika, Cleveland-Marshall College of Law, published the following articles: *Privacy in the Workplace: Are Collective Bargaining agreements a Place to Start Formulating More Uniform Standards*, in the Willamette Law Review, and *The Benefit of Adopting Comprehensive Standards of Monitoring Employee Technology Use in the Workplace*, in the Cornell Human Relations Law Review.

Patricia Grande Montana, St. John’s University School of Law, has recently published *Peer Review Across the Curriculum*, 91 Or. L. Rev. 783 (2013).

Samantha Moppett, Suffolk University Law School, announces for publication *Lawyering Outside the Box: Confronting the Creativity Crisis*, 37 S. Ill. U. L.J. ___ (forthcoming Spring 2013); *Think It, Draft It, Post It: Creating Legal Poster Presentations*, 18 LEGAL WRITING: J. LEGAL WRITING INST. ___ (forthcoming Spring 2013); *Control-Alt-Incomplete? Using Technology to Assess “Digital Natives,”* 12 CHI.-KENT J. INTELL. PROP. L. ___ (forthcoming Spring 2013). In addition, she has presented *From Watching Paint Dry to Painting a Masterpiece: Exercises and Ideas for Teaching (Boring) Subject Matter*, Thirteenth Annual

Rocky Mountain Legal Regional Legal Writing Conference, University of Colorado Law School, Boulder, Colorado (forthcoming, March 2013) (with **Lisa Healy**), and *Plotting the Elements for the Seven Principles of Good Practice in Legal Education: Using Research Labs to Foster Periodic Assessments & Hands-On Learning*, Poster Presentation Selected by American Association of Law Schools Section on Legal Reasoning, Research and Writing, American Association of Law Schools (AALS) Annual Conference, New Orleans (January 2013) (with Sabrina DeFabritiis).

Sarah J. Morath, Assistant Professor of Legal Writing at the University of Akron School of Law, will publish her article *A Mild Winter: The Status of Environmental Preliminary Injunctions* in volume 37 of the Seattle University Law Review. Sarah, **Elizabeth Shaver** and **Richard Strong**, also Assistant Professors of Legal Writing at the University of Akron School of Law, will publish their article *Motions in Motions: Teaching Advanced Legal Writing Through Collaboration* in volume 22 of Perspectives. Sarah presented *To Give and Receive: Using Student Feedback to Enhance Scholarship* at the Second Annual Western Regional Legal Writing Conference at the University of Oregon School of Law in August 2012. She also presented *Color-Coding Comments to Facilitate Revisions* at the Third Colonial Frontier Conference on “Technology and the Teaching of Legal Writing” at Duquesne University School of Law in March 2013.

Mary-Beth Moylan, **Stephanie Thompson**, and the Global Lawyering Skills faculty, Pacific McGeorge, with Thomas West has just published *Global Lawyering Skills* and it will be available for adoption for fall semester classes.

Ann Nowak, **Debbie Lanin**, and **Joan Foley**, Touro College Jacob. D. Fuchsberg Law Center, co-presented at the 2013 Rocky Mountain Legal Writing Conference. The title of their presentation was “Perspectives in Writing: From the Newsroom and Courtroom to the Classroom.”

Richard K. Neumann, Jr., Hofstra University School of Law, and **Kristen K. Tiscione**, Georgetown University Law Center, have co-authored the seventh edition of LEGAL REASONING AND LEGAL WRITING (2013).

Laurel Oates, **Anne Enquist**, and **Connie Krontz**, published “Just Briefs” 3d ed. Wolters Kluwer Law & Business (2013).

Sara Rankin, Associate Professor of Lawyering Skills, Seattle University School of Law was invited to speak on the opening plenary panel at the 2013 Chapman Law Review Symposium, *The Future of Law, Business, and Legal Education: How to Prepare Students to Meet Corporate Needs*, on at Chapman University School of Law. She presented on the systemic challenges of legal education reform and highlighted the collaborations between SU clinical and legal writing faculty as models of successful innovation in legal education, February 1, 2013. Her article, “*The Fully Formed Lawyer: Why Law Schools Should Require Public Service to Adequately Prepare Students for Practice*,” was accepted for publication for the Spring 2013 *Chapman Law Review*. The article contends that laws schools currently graduate “inchoate” lawyers and explains how and why the key to preparing lawyers for practice is for law schools to prioritize hands-on training in public service.

Suzanne Rowe, Oregon, editor of The Legal Research Series published by Carolina Academic Press, announces six new and updated books: *Arizona Legal Research* (2d ed.) by **Tamara Herrera**, Arizona State; *California Legal Research* (2d ed.) by **Heather Macfarlane**, McGeorge, **Aimee Dudovitz**, Loyola-LA, and Suzanne Rowe; *Louisiana Legal Research* (2d ed.) by **Mary Garvey Algero**, Loyola-New Orleans; *Oklahoma Legal Research* by **Darin Fox**, Oklahoma, **Darla Jackson**, South Dakota, and **Courtney Selby**, Hofstra; *West Virginia Legal Research* by **Hollee Temple**, West Virginia; *Wyoming Legal Research* by **Debora Person** and **Tawnya Plumb**, Wyoming.

Mimi Samuel, Associate Professor of Lawyering Skills, Seattle University School gave a presentation titled *Teaching Skills Online: Bringing the Classroom to the World and the World to the Classroom* at the Eighth Global Legal Skills Conference in San Jose, Costa Rica, March 16-20, 2013.

John D. Schunk, Associate Clinical Professor, Santa Clara University School of Law, published *Indirectly Assessing Writing and Analysis Skills in a First-Year Legal Writing Course*, 40 So. Univ. L. Rev. 47-118 (Fall 2012).

Bill Sherman, Visiting Assistant Professor, Seattle University School of Law, announces a book review essay, *A Pragmatic Republic, If You Can Keep It*, reviewing Jerry L. Mashaw’s work, *Creating the Administrative Constitution: The Lost One Hundred Years of American Administrative Law*, was accepted by the Michigan Law

Review in February, 2013. In addition, his book chapter, "Blackout in the Name of Sunshine: When Government Law Stifles Civic Social Media," will be published in the forthcoming "Politics and Policy in the Information Age," (Ashu M.G. Solo and Jonathan Bishops, eds.) (Springer Science + Business Media, (forthcoming 2013).

Robert F. Somers, Whittier Law School, published *Slander? Prove It: Why a Two Hundred-Year-Old Defamation Law Should Be Changed*, 19 Southwestern Journal of International Law 133 (2012), which explores why evidence from an undercover agent hired by a plaintiff should be admissible where the plaintiff's professional reputation has been defamed.

Denis Stearns Professor from Practice, Seattle University School of Law, presented at an international conference, *Towards Global Food Law: Transatlantic Competition and Collaboration*. The conference sponsors included the University of Washington School of Law and *Hautes études commerciales de Paris*. The presentation was titled, *Ethical Challenges of Settling Claims Arising from Large Foodborne Illness Outbreaks: Three Case Studies*. He also signed a contract to author two entries in FOOD ISSUES: AN ENCYCLOPEDIA, a multivolume inter-disciplinary reference-work being edited by Ken Albala, Ph.D., published by Sage Publications. The entries will be entitled, "E. coli O157:H7: A Multi-faceted History," and "Food, Torts, and Civil Litigation." Publication Date: 2014. And, he has accepted an invitation to author a chapter in an upcoming graduate-level textbook to be published by CRC Press. The chapter will examine the product liability issues and risks related to the retail manufacture and sale of food.

Judy Stinson, Sandra Day O'Connor College of Law, presented at the 2013 Rocky Mountain Legal Writing Conference on "Developing Cohesive Outcomes for Upper-Level Writing Courses with **Susan Chesler**. She also published *Generating Interest, Enthusiasm, and Opportunity for Scholarship*, 9 Legal Comm. & Rhetoric: JALWD 315 (2012) and *The Right to (Same-Sex) Divorce*, 62 CASE W. RES. L. REV. 447 (2012).

Mary Trevor, Hamline University School of Law, published with co-author **Giuseppe DePalo** the following articles: *Worldly Perspectives: Malta*, 31 ALTERNATIVES TO HIGH

COST LITIG. 38 (Mar. 2013); *Worldly Perspectives: Denmark*, 31 ALTERNATIVES TO HIGH

COST LITIG. 28 (Feb. 2013); *Worldly Perspectives: Austria*, 30 ALTERNATIVES TO HIGH

COST LITIG. 203 (Dec. 2012); *Worldly Perspectives: The Netherlands*, 30 ALTERNATIVES TO HIGH

COST LITIG. 190 (Nov. 2012); *Worldly Perspectives: United Kingdom*, 30 ALTERNATIVES TO HIGH

COST LITIG. 173 (Oct. 2012); *Worldly Perspectives: Estonia*, 30 ALTERNATIVES TO HIGH

COST LITIG. 163 (Sept. 2012); *Worldly Perspectives: Making the European Commission's Mediation*

Directive More Effective, 30 ALTERNATIVES TO HIGH COST LITIG. 137 (July/Aug. 2012); *Worldly Perspectives: Hungary*, 30 ALTERNATIVES TO HIGH

COST LITIG. 130 (June 2012); *Worldly Perspectives: Czech Republic*, 30 ALTERNATIVES TO HIGH

COST LITIG. 110 (May 2012); *Worldly Perspectives: International Distinctions--How European Women*

See Their Mediation Practices, 30 ALTERNATIVES TO HIGH COST LITIG. 98 (Apr. 2012); *Worldly Perspectives: Finland*, 30 ALTERNATIVES TO HIGH COST LITIG. 67 (Mar. 2012). She was also the co-editor with Giuseppe DePalo, *EU MEDIATION LAW AND PRACTICE* (2012). And, she presented

The Softer Side: Adding an Alternative Dispute Resolution Simulation to the First-Semester Legal Writing Class, One-Day Legal Writing Institute Workshop on Preparing Practice-Ready Students, Drake Law School, Des Moines, Iowa (December 7, 2013).

Kathleen Elliott Vinson, Suffolk University Law School, published an article, 29 *Hovering Too Close: The Ramifications of Helicopter Parenting in Higher Education* Georgia St. Law Rev. 423 (2013). And, in April 2013, she gave a presentation at the Southeastern Regional Legal Writing Conference at Savannah Law School titled *Problem Solving: Making Students Client Ready*. In addition, in January 2013, she gave a poster presentation for Women

in Legal Education Section at the Teaching Section at the American Association of Law Schools Conference (AALS). The poster was on *Hovering Too Close: The Ramifications of Helicopter Parenting in Higher Education*. In July 2012, she presented on a panel on *Contemporary Issues on Gender and the Law* at the SEALS conference in Florida.

Announcements

Olympia Duhart, Nova Southeastern University's Shepard Broad Law Center, was recently appointed to the LexisNexis Advisory Board. She is also an elected member of the Board of Governors for SALT.

Laurel Oates, Professor of Law, Seattle University School of Law was co-chair of the 16 one-day workshops sponsored by the Legal Writing Institute held during the first week of December, 2012. The workshops were held at law schools across the country and attracted more than 600 participants.

Terry Pollman, UNLV, along with **Jill Ramsfield**, Hawaii, received the AALS Section award this year for contributions to the field.

Kristen K. Tiscione, Georgetown University Law Center, has been elected to the Board of the Association of Legal Writing Directors.

J. Christopher Rideout, Professor of Lawyering Skills and Associate Director of the Legal Writing Program, Seattle University School of Law presented the Section Award for Legal Writing, Reasoning, and Research to Professor **Jill Ramsfield**, now of the University of Hawaii at the 2013 AALS meeting in New Orleans. Jill started her legal writing teaching career with us in the 1980's and still counts a number of our faculty members as friends. January 6, 2013.

Suzanne Rowe, Oregon, has received the Oregon State Bar *President's Public Leadership Award* for her monthly column in the state bar magazine. She originated the column, *The Legal Writer*, in 2006.

Mimi Samuel, Associate Professor of Lawyering Skills, Seattle University School of Law was selected by the Open Society Foundation to teach an Introduction to the American Legal System course as part of its Pre-Academic Summer Program in Istanbul, Turkey. That program is

designed to prepare Open Society scholarship recipients from Western CIS, Central Asia, the Caucasus, the Middle East, and South and Southeast Asia for LLM programs in the United States and Europe, (forthcoming, Summer 2013).

Bill Sherman, Visiting Assistant Professor, Seattle University School of Law was named to Attorney General-Elect Bob Ferguson's Transition Team, December 2012 – January 2013.

Denis Stearns, Professor from Practice, Seattle University School of Law was voted Outstanding Faculty Member, December 2012 graduation, Seattle University School of Law.

Wanda M. Temm, University of Missouri-Kansas City School of Law, was selected as the sole campus recipient for the Provost's Award for Excellence in Teaching, UMKC's highest honor for excellence in teaching for clinical and teaching faculty. The Provost's Award requires clear, compelling, and documented evidence of excellence in teaching, student development and learning as well as sensitivity and adaptability to individual student needs, interests and challenges.

Kathleen Elliott Vinson, Suffolk University Law School, was elected President-Elect of ALWD and will become President in July 2013 of ALWD. In January 2013, she ended my term as Chair of the AALS Section for Legal Writing, Reasoning, and Research and Writing Section and now serve as Past Chair of the Section and am on the Executive Committee. And, she received the Tealig grant from the Center for Teaching Excellence at Suffolk to create a legal writing app for iTunes, *iWrite Legal*, which was launched in the fall of 2012. The app is now available to everyone for free on iTunes.

Conferences

Whittier Law School will host the Third Annual Western Regional Legal Writing Conference on August 9 and 10, 2013. The theme of this year's conference is "Lead the Change" and Richard Neumann will be the keynote speaker. For more information, please visit the conference website at: <http://www.law.whittier.edu/legalwritingconference>, or contact Andrea Susnir Funk at afunk@law.whittier.edu or Kelley Mauerman at kmauerman@law.whittier.edu.