The Politics of Legal Writing

Proceedings of a Conference for Legal Research and Writing Program Directors

July 28-29, 1995

Co-Sponsored by
West Publishing Company
and
The California Western School of Law

Edited by
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Editors' Notes

These Conference Proceedings are available because West Publishing Company agreed to prepare audio recordings of the conference sessions and transcribe those tapes for eventual publication and distribution. On behalf of all the directors who attended the July 1995 conference, we would like to thank West for its generous support. In addition, we could not have completed this project without the aid of the many friends and colleagues whose words you will find in this document, and we owe them thanks for their original presentations and subsequent work. Jacque Fifer, of the University of Arkansas School of Law, had perhaps the most difficult tasks of all: making sure that the diverse edits were consistent and correct, and putting all of them into one cohesive document. We owe her an immeasurable debt.

We thought it might be helpful to explain the process by which these Proceedings were prepared. First, the conference presenters were mailed a print copy and WordPerfect diskette of the transcripts for review and preliminary editing. We all found that our spoken words needed to be revised, sometimes quite heavily, for reading as opposed to listening. The final plenary session was not taped, due to an oversight, and those presenters, Jill Ramsfield and J. Christopher Rideout, were gracious enough to try to reconstruct the essentials of their session. All presenters have tried, however, to preserve the essential context of the conference experience. The "question and answer" sessions following each of the presentations have been summarized, however, because the audience's remarks were not always recorded well enough to transcribe accurately. Maureen Arrigo-Ward prepared the first draft of the bibliography that is found in Appendix D.

The three of us divided up the responsibility for editing the two days' sessions, and we then reviewed each others' segments for overall consistency. Each presenter was given an opportunity for a final review before publication.

Our goals for this project were twofold. We wanted to provide legal writing directors who were not able to attend the conference with the wealth of information and insights shared in San Diego and we wanted to prepare a record of what proved to be an historic meeting. We also hope that we have captured some of the excitement and energy of those two days.

Jan Levine
Rebecca Cochran
Steve Johansen

INTRODUCTION

Ralph L. Brill (Chicago-Kent College of Law)

I first taught Legal Writing in 1960, as a Problems and Research Instructor at the University of Michigan Law School. I have been actively involved in the field since, as teacher, program director, and member of the various groups interested in the field of Legal Writing.

In the early days, ours was a very lonely field. There was little opportunity for those dedicated to the field to obtain assistance, advice, comfort, or training. While the Association of American Law Schools (AALS) had a section called Legal Research and Writing, its membership consisted almost exclusively of law librarians, and its programs therefore naturally dealt with legal research. One rarely saw the same Legal Writing teacher at successive AALS Annual Meetings; the convention was to teach the course for a year or two and then move into doctrinal teaching or return to practice. Almost no writing textbooks designed for law school use existed. The few Legal Writing articles in law journals offered little imaginative advice; most merely suggested ways to teach the subject as cheaply as possible. Few schools had dedicated Legal Writing professionals as directors; surely not as teachers. Few even had programs, as such. If a school had a program, it usually was run by a tenure-track faculty member who had no real interest in the field and who did little more than hire the teachers from year to year. And needless to say, little faculty support existed for Legal Writing, and little administrative and financial support was provided.

What a difference today! In the last ten years, Legal Writing has been a dramatic growth industry. The number of people dedicated to teaching Legal Writing as their careers has mushroomed. They have produced an impressive number of high quality books on legal writing, research, and reasoning. They have written hundreds of articles presenting inventive ideas for program design or teaching methodology. Organizations devoted to the improvement of the field have grown or become active -- as, for example, the AALS Section, renamed the section on Legal Writing, Reasoning and Research; the Legal Writing Institute; SCRIBES; and the Communication Skills Committee of the American Bar Association's Section of Legal Education and Admissions to the Bar. All frequently present excellent programs designed to help Legal Writing professionals design better programs and improve teaching. Law schools finally have begun to invest sufficient resources to build quality Legal Writing programs, administered and led by excellent directors.

July 1995 marked two extremely important events in the growth of the Legal Writing field -- (1) "The Politics Of Legal Writing: A Conference For Legal Research and Writing Program Directors," and (2) the formation at that conference of the Association of Legal Writing Directors.

During and immediately after the 1994 Legal Writing Institute Conference, hosted by Chicago-Kent, Jan Levine talked with several other directors about the idea of a directors' conference for the following summer. He took the lead in organizing the conference; West Publishing Company agreed to sponsor the conference, and offered the talents of Greg Brown,

John O'Neill and Monique Burseema for financial, advertising, and administrative support. Ruth Vance and Cheryl Beckett joined Jan in planning the program. They had the help of directors throughout the country, thanks to the heavy use of the internet, with over one thousand e-mail messages exchanged. Maureen Arrigo-Ward and Jackie Slotkin persuaded California Western School of Law to host the conference, and Jackie provided highly efficient administrative support.

Approximately one hundred Legal Research and Writing directors, from law schools throughout the United States, as well as Canada and Australia, took part in the conference. Twenty-five very experienced directors led discussions on such topics as Status and Salary; Workload and Teaching Load Standards; Supervising and Training Legal Writing Teachers; Implementing Curricular Change; and Grading Philosophies. Sessions were organized to allow for presentations, audience response, small group discussions, and individualized advice. The planners scheduled a topic, "Where Do We Go From Here?", as the closing session of the conference, hoping the participants might want to form an organization and plan another conference. They underestimated the excitement the conference had generated; the group early asked to move that session up to 11:00 a.m. on the first day, and then overwhelmingly voted to create an Executive Committee to establish the Association of Legal Writing Directors and established committees to work out the details of the organization and plan a future conference.

The program was an unqualified success! In buses and cabs going back to the airport, participants were still discussing ideas they had gained. Exuberant e-mail exchanges continued for many weeks after the conference. Nearly every director who attended, most already incredibly overworked, volunteered to become active committee members of the newly formed directors' organization. Plans already were being made for the next conference.

One reading the following transcripts of proceedings is bound to appreciate how far we have come; how dedicated Legal Writing professionals are to improving the quality of legal education; how intelligent they have been in thinking about the problems they confront; how imaginative and innovative they have been in planning programs and implementing changes; how much at the forefront in legal education they have been in integrating learning theories and the teachings of other disciplines; how creative they have been in adopting teaching techniques; and how difficult their task has been made by the obstacles placed in their paths by the legal education establishment. The leadership exhibited at the San Diego conference can only instill great confidence about the future of the Legal Writing field.

OPENING REMARKS AND WELCOME
Jackie Slotkin (California Western School of Law) and Dean Michael Dessent (California Western School of Law)

Jackie Slotkin:

I'm Jackie Slotkin and I'd like to welcome all of you to San Diego, to California Western School of Law, and to the first Legal Research and Writing Program Directors' Conference. I'd like to start by thanking Jan Levine. He was the creative force. The idea for this conference was his. He has consulted with me almost daily through the process of implementing his idea.

I'd also like to thank West Publishing Company, and its representative, Gregory Brown, in particular. West is sponsoring this event with Cal Western, and the company and its representatives have been most gracious. West has invited us to a delicious lunch today and an elegant dinner this evening. Thank you!

"Thank you" also to Martha Ehringer. Martha is our California Western assistant director of alumni affairs, and she should be the unofficial Dean of Social Affairs. I'd also like to thank my co-director, Maureen Arrigo-Ward, who saw Jan's original e-mail message proposing a directors' conference, who said to me, "What do you think?," who accompanied me to Dean Mike Dessent's office to request that we sponsor and host this conference, and who then turned it over to me and said, "*You* can do this, Jackie!"

I'd like to thank all of you as well, for your enthusiasm and your support for this conference. More than 100 program directors are here this weekend. Also, special thanks to Ruth Vance and to Terry Pollman for their work on the agenda and conference materials.

Now I'd like to thank and introduce our Dean, Michael Dessent. He has been our Dean and CEO at California Western School of Law since 1986. He was originally an attorney with Gray Cary Ames & Fry, one of San Diego's finest law firms. He was Executive Vice-President, General Counsel, and member of the Board of Directors of the Price Company, which is now Price Costco. He was also Vice-President, Secretary, and General Counsel for PhotoMat Corporation and for Central Federal Savings & Loan. He is a Cum Laude graduate of Northwestern University School of Law, member of the Order of the Coif Society, and author of THE CALIFORNIA CORPORATION'S MANUAL, a two-thousand page treatise on California corporation law, which he published before he was thirty. He is also the author of numerous articles in legal journals, and he knows more about baseball than anyone I know: he has a seat from Comisky Park in his office; he was on the Advisory Board of the San Diego Padres; and he has coached more "bobby socks" softball teams in La Jolla than any other coach. And for all the years I have known Mike Dessent, he has worn a "piece" of California Western-wear clothing at all times; such as a tie or braces, but always something visible. "Are you wearing something Cal Western today?" [Michael Dessent says in the background "None of your business!"] I'd like to

introduce our Dean, Mike Dessent.

Michael Dessent:

Thank you, Jackie, and please let me offer my congratulations to you, too. This is really an extraordinary achievement -- to have more than double the number of people here than were originally expected to attend!

Some of you may not have been to San Diego before. You are only about seven or eight minutes from Balboa Park, which contains the San Diego Zoo and some wonderful museums and theaters. Today is the opening of the Gauguin Exhibition of the San Diego Museum of Art; if you have a chance to see the exhibit, it would be well worth your while.

Next to the art museum is the old Globe Theater, which is now presenting HENRY IV, with John Goodman starring as Falstaff. It is a three-and-one-half hour production and is just extraordinary. There is a delightful play in the Cassius Carter Theater called PILGRIMS (there are three theaters that make up our complex at the Old Globe and this is a theater-in-the-round). The play is about education and teaching. If you haven't seen that play, it is very clever, quite unique and charming. In any event, I do welcome you here, both to California Western and San Diego.

Many of you have not been to the city, and I suspect most of you have not been to this building. Some of you were asking questions about this building, so permit me a moment to give you a bit of history. This building was constructed in the 1920's, in what was then a new wave of Italian Renaissance architecture. The wave lasted about an hour-and-a-half in a Mediterranean/Spanish climate like this. It really is a unique building. It's a registered historic building. It has the Italian marble staircase which some of you may have walked up to get here, with hand-painted ceilings and tall columns on the second and third floors.

The building was constructed for the Elks Club. Who knows what ceremonies were held here! The Elks lost the building during the Depression to the Masons. It later housed the Department of Motor Vehicles, and I've had people actually say, "I took my driver's test in this building." We took over the building in 1973. The elevated, tiered seating was not here. Nor was I, actually. But my understanding was that the Dean Castetter, in whose courtyard you'll be having dinner tonight, was very entrepreneurial. He approached a number of students, who happened to be carpenters, electricians, and construction people, and said, "In lieu of tuition, would you build us a Moot Courtroom?" So I don't know how they were otherwise qualified to study law, but they did create this unique room.

We have about 80,000 square feet. We also owned a parking lot right across the street, which some of you may have noticed is now a new building, with again, a Northern Italian look in terracotta and teal, with bougainvillea growing over the archways. That building houses our faculty on the top two floors and the administration on the bottom two. And again, it's a delightful building. If you have a chance to tour the building, please do. We've also acquired that

small building on the northwest corner of Third and Cedar from a law firm. We're considering turning it into a student computer center.

There are sixteen ABA-accredited law schools in California (and many more non-ABA schools). There are four state schools and twelve private schools. But there are only two in San Diego: The University of San Diego and our independent law school. There is no ABA law school in all of Orange County, perhaps the largest county in the state. We were negotiating to relocate to Orange County at one point and also thought about moving to Northern San Diego County. But finally the Board of Trustees made a judgment -- about ten years ago -- to stay in downtown San Diego, a city of two million people, the sixth-largest city in the country (we just passed Dallas, I understand, in size). Our students walk to their clerkships and internships; it's a wonderful location for us. The law school itself goes back to 1924; our predecessor was named Balboa Law School. We now have over 5,000 alumni in fifty states and twenty-seven countries. We're one of the oldest law schools in the state of California. Half our students come from out of the state; again, a unique approach because most California schools tend to market somewhat locally. In travelling all over to visit alumni, I have found people have a great deal of loyalty to the institution. Dean Castetter, whose portrait you'll see on the floor below, was quite a beloved fellow; there is a bust of him in the courtyard. In what has now become a bit of tradition for students, as they're entering to take their exams they pat the forehead of the bust.

This is a unique time in legal education, and I think the size of the response to this conference reflects how important it is that communication among all law teachers be expanded. When I became Dean in 1986, having come primarily from business, I saw immediately a political battle between the so-called "substantive" law professors and the "skills" people. Coming from my background, I opted for the skills side and we've increased our programs in a number of areas with that in mind. But a lot depends on the philosophy of the dean.

As an independent entity, our law school this year has a budget of a little over sixteen million dollars. We run this law school like a small business. We have a very prudent fiscal board of trustees. Some of you are aware of the tuition charged here in California. I think of the twelve private schools, tuition ranges anywhere from a little over $16,000 a year to $21,000 a year. If you double that for living expenses and multiply that by three, students are graduating with six figures of debt. Students are paying a lot of money, and they want more than three years of Socratic dialogue. When they get out, they want to know how to practice and be efficient. Law firms don't have time for training programs, and as a result, the burden on Legal Writing and skills teachers is enormous. You are right on the forefront of training people how to be effective as counsel when they graduate. California Western has tried to develop its programs and fashion them in such a way that our students respond positively -- with Jackie Slotkin and Maureen Arrigo-Ward at the lead. I hope your programs get the support they need.

In any event, I wanted to give you an overview of our school and the community. When I came to San Diego from Northwestern Law School in 1967, it was a city of 400,000 people and now it's two million. There were 800 lawyers and now there are 9,000. The largest firm, with

which I associated, had twenty-four people. I saw a letterhead the other day; I'd be seventh out of about 325. So there has been enormous growth in the city of San Diego, and yet it is a charming place. You won't hear a lot of horns honking; it's a safe area to walk around in and enjoy. I'd encourage you to take advantage of the things to see: the port is nearby and there are one-hour harbor cruises. Jackie, I thank you for the chance to speak and welcome these people and I hope your program goes well. Thank you.

Plenary Session #1: STATUS AND SALARY
Jan M. Levine (University of Arkansas School of Law) and Cheryl Beckett (Gonzaga University School of Law)

Jan Levine:

I would like to thank Dean Dessent of California Western School of Law for his welcoming remarks and for his support for this conference. We all owe Jackie Slotkin many thanks for the many hours she has spent on planning and hosting this conference; we could not have done this without her. I'd also like to thank the many other directors who were involved in planning this conference, but particularly Ruth Vance, who was the head of the agenda committee. Finally, we all owe a huge debt of gratitude to Gregory Brown and West Publishing Company for their generous support. West has given us virtually everything we've asked for, but they did draw the line at a t-shirt. Only half in jest, I asked for t-shirts bearing the words "I'm Your Dean's Worst Nightmare -- a Legal Writing Professional with an Attitude."

I'd also like to thank one of my colleagues at Arkansas, who shall be nameless, who provided me with the necessary inspiration to plan this conference. Last summer, when I returned from the Legal Writing Institute Conference at Chicago-Kent, I was quite excited about teaching Legal Writing and directing our program for another year. I think all of us tend to get excited and fired-up after a conference. I was explaining to my colleague that we now have a sufficient number of Legal Writing teachers and directors, a "critical mass" of experienced professionals, that will enable the field of Legal Writing to progress and grow as never before. I told him we are at the point of creating a "calculus" of Legal Writing program and course designs. I told him that there were over 300 people in attendance at the four-day LWI conference.

My colleague, who has been very supportive of my efforts, listened to me and then said, "It's too bad there was no one there who could advance your career." I was flabbergasted at that statement, but as I went back to my office I thought about what I could do to prove him wrong. I remembered one session in the LWI conference that was targeted at directors, a session in which the group attending the workshop found so many things to talk about that we derailed the carefully prepared presentation by Amey Hempel and Angela Passalacqua. I felt that something had started during that session that needed to continue, and I started contacting other directors and discussing the idea of an entire conference devoted to directors and the issues we face.

My colleague was right in the sense that there were no deans from Harvard or Yale in attendance at the LWI meeting, but he was wrong in a more significant way. *We* will advance each other's careers. Legal Writing professionals are the only people who are in a position to advance our careers. We're the only people who have done so to date, and I think one of the things we can do today is to consciously decide to build on the significant achievements of the past ten or fifteen years.

At the end of the conference, tomorrow afternoon, Jackie Slotkin is going to run a session entitled "Where Do We Go From Here?" I'd like to offer you now some ideas about places we can go and things we can do. Some of us are talking about forming a directors' caucus or an independent directors' group. Some of us are talking about holding another conference in two years. We have had many expressions of interest and support from vendors and publishing companies, in addition to West Publishing Company. This conference has the potential to be a major step in our efforts to define ourselves and our field, but we should not allow it to be the final step. An organization of Legal Writing program directors may be an idea whose time has come.

When we started planning this conference, the idea was that we would have a "retreat," something small, during which the directors would be able to talk rather informally about issues of interest. When Ruth Vance and I approached people about moderating the sessions, we thought a moderator would just stand up in front of the room and call on people. We've been a victim of our own success, however, and our small conference of perhaps fifty directors has grown to the more than one hundred people in attendance here today. Last week I finally realized I was going to have to prepare something more formal to say because of the size of the group, but I plan to keep my remarks brief in order to permit the group to have time to talk.

Legal Writing teachers and directors are probably the only group of law professors that has depended on everyone else to tell us who and what we are -- and are not. When we meet, each of us tends to recite a litany that consists of our status, unlike other law professors, and we append a description of the staffing and credit hours of our program. Our status tends to be below that of the other members of the law school teaching academy, and our salaries tend to be lower as well. So who are we?

One mirror we can consult is Jill Ramsfield's survey, which she conducts every two years under the auspices of the Legal Writing Institute.[1] Another mirror is an article I have coming out this fall in THE JOURNAL OF LEGAL EDUCATION.[2] I will use those mirrors to look at two issues this morning: status and salary. (There will be concurrent break-out sessions later this afternoon for three separate groups of directors, based on the three most common models of program staffing: full-time teachers, adjunct teachers, and student teaching assistants (TAs).)

There are 178 law schools accredited by the American Bar Association. Of the

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[1] The published report of the 1990 LWI survey is found at Jill J. Ramsfield, *Legal Writing in the Twenty-First Century: The First Images – A Survey of Legal Research and Writing Programs*, 1 LEGAL WRITING 123, 125 (1991). For more recent surveys, which are conducted every two years, contact Professor Ramsfield at Georgetown University School of Law.

[2] Jan M. Levine, *Voices in the Wilderness: Tenured and Tenure-Track Directors and Teachers in Legal Research and Writing Programs*, 45 J. LEGAL EDUC. 530 (1995).

approximately 130 law schools that responded to Jill Ramsfield's survey in 1994, about eighty-three have a director. So we are a pretty small group, with one director per school except for the rare instances of assistant or associate directors. The director is a tenured or tenure-track member of the faculty at a little more than 40 percent of the schools. What is fascinating is that over the last ten or fifteen years there has been a major change in the status of the director: at about 20 percent of the law schools, at least thirty-seven schools, the director is a person who said, at his or her entry to teaching, "I want to teach Legal Writing or direct the program." These Legal Writing professionals are not people who were tenured before they became involved in our field, and they are not new hires who said "I want to teach contracts, and I'll direct the Legal Writing program, too." We have among us people who have said at their entry to law school teaching that they want to teach Legal Writing or direct Legal Writing programs -- and they are doing so at schools that have granted them tenured or tenure-track status. Virtually all of these teachers and all of these full faculty positions have appeared on the scene only in the past ten or fifteen years, which is a revolutionary change for Legal Writing professionals and for the field of Legal Writing itself.

This may be the wave of future, assuming we all want to have tenure, which is something I suspect is true for most of us here today. I assume that in our hearts, we would all like to have job security, to be treated the same as all the other professors in our law schools, and to have control over our own courses and programs.

This is a fairly young group of law professors. Twenty-eight of the professors in this group were graduated from law school between 1978 and 1985. The ratio of women to men is about two to one. As many of us have long suspected, the distribution of tenure-track faculty positions, an indicator of investment in Legal Writing itself, is inversely related to law school rankings. I know the U.S. NEWS & WORLD REPORT rankings are fraught with problems, but the magazine's survey does reflect something real; for instance, the magazine's top tier consists of those law schools which have been traditionally regarded as "elite" schools (and which are without any doubt the top producers of law school teachers and emulated by most other law schools). We have known since the 1980's that 60 percent of law school teachers are products of 15 percent of the accredited law schools (these include Harvard, which produced 13.9 percent of all law school teachers, and Yale, which has produced 6.8 percent, as well as Columbia, Michigan, Chicago, NYU, Georgetown, Texas, Virginia, Berkeley, Pennsylvania, Wisconsin, and Northwestern).

Within the elite first tier, only one school has a tenured or tenure-track Legal Writing professional on the faculty. In the first and second tiers together, the top fifty law schools, only four to six have tenured or tenure-track Legal Writing professionals. Within the next tier, among the thirty-seven or forty-three schools ranked in the third group, there are only seven tenured or tenure-track Legal Writing professionals. Two-thirds of the tenured or tenure-track Legal Writing positions are found in the bottom two tiers, which are made up of half of the accredited law schools (about eighty-eight schools).

Most of these tenured or tenure-track faculty were hired from outside of the law schools

where they are now teaching. Eleven of twenty-three schools converted their Legal Writing professionals to the tenure-track, but the time periods for the conversions suggest that the longer a Legal Writing professional is at a school in a non-tenure-track position the less likely it is that the position will be upgraded to one on a tenure track. Six or seven schools have created separate tenure tracks for their Legal Writing professionals, but at all the other schools the Legal Writing professional is on an undifferentiated tenure track together with all other faculty members.

The problems for the people in tenured or tenure-track positions are the same problems faced by all directors: accommodation for the workload imposed by the demands of administration and the teaching of writing. Very few schools have modified the teaching load expectations for Legal Writing teachers. Even among those with tenure-track or tenured appointments, very few schools granted any accommodation for the workload involved in teaching writing. A few schools expect their directors to carry only a half-time teaching load to balance out the administrative responsibilities. For example, when the "regular" faculty have twelve hours of teaching per year, the director may teach only six hours. Of course that doesn't take into account that teaching three hours of Legal Writing is more work than teaching three hours of Contracts or Property.

I want to read you a couple of quotes from some of the Legal Writing professionals who have reached peer status within the academy. Many of these people are here today. One said, "My school did not make any concessions for the time I spent administering the Legal Writing Program. I had to satisfy the formal promotion criteria as though my job did not include a time-consuming administrative component." Another said, "I'm not certain how my performance as director will affect my tenure evaluation, I only know that it will." Another wrote, "I hope the work as director and instructor in the program helps me get tenure, however I sometimes fear that a few of my colleagues take the quality and success of the program for granted, as if it had always been that way." Yet another director said, "If there are no problems the school is happy and not interested in administration." Another one of us said, "My autonomy is total as long as there are no complaints." Similarly, another wrote, "The effective administration of the program is probably what the faculty thought about as most important in my tenure decision. If there had been a perception the program is not running well, I don't think it would have mattered what I had published. They based this evaluation part on their own sense how things were going or what is probably something everybody has thought about."

As many of us know, the situation is often worse for women or women with young children. One director said, "Teaching writing is not that different from working at a big law firm. At a firm you must work hard to prove yourself; if you are a woman, you must work twice as hard; if you are a woman with children, you work three times as hard. At a law school, if you are a woman with children and you are teaching writing, you better work twice as hard and produce a whole lot of scholarship in the years before tenure." As a group, we must begin to address these issues about administration, about scholarship, and about teaching load, regardless of what our own individual status may be.

The next issue most often discussed among directors and full-time Legal Writing teachers

is salary. Few of us would challenge the assertion that Legal Writing teachers are likely to be paid less than other full-time law school teachers. Tenured and tenure-track directors are usually, but not always, paid salaries equivalent to those paid other professors of similar rank. Full-time non-tenure-track Legal Writing teachers are often paid salaries that are roughly one-half to two-thirds the amounts paid to new tenure-track teachers who teach doctrinal courses, but of course there are variations based on the local cost of living, the number of years in teaching, and the existence of caps on contract duration. Jill Ramsfield's LWI survey has revealed the national salary ranges and averages, but it has been difficult to get easy access to the kind of detailed comparative information one would need to do something immediate about status and salary.

With the help of many directors and Legal Writing teachers on the two Legal Writing internet discussion lists, I drafted a new survey form that I pilot tested, and I'd like to share with you some of the results. (Lou Sirico was particularly helpful in the design of the survey.) I prepared some examples of redacted responses to the pilot test, and copies are available on the information desk outside. What we have developed is a school-by-school survey that can be reported in graphic format showing the school's geographic location and the workload, status, experience level, and salary of the school's Legal Writing professionals. With this information a director could easily determine what peer schools, or local schools, or schools with similar programs are paying equally-qualified Legal Writing teachers with similar workloads.

We could also show our deans and faculties that we, and our Legal Writing teachers, are underpaid for the work we do and the qualifications we bring to our jobs. There were some side benefits from collecting the salary information in this manner. Virtually everybody who responded to the pilot survey was shocked when they actually totalled up the number of pages of student writing reviewed each year. If you haven't done the math, I suggest you do it when you return home. When I was up for promotion a couple of years ago I made copies of every single paper I read and on which I commented, and then took the hand-truck with the boxes of papers down to the dean's office and showed it to him. Most Legal Writing professionals read two- or three-thousand pages of student writing a year. One reported reading over eleven-thousand pages. Similarly, add up the hours you spend in scheduled student conferences. The numbers can be impressive; they surely are sobering.

Some of the themes I've touched on will be further explored by other presentations today and tomorrow. For example, it is clear that those Legal Writing teachers in tenured and tenure-track positions have achieved their peer status without the help of the American Bar Association law school accreditation standards, but Richard Neumann and Ralph Brill will talk later today about those standards and what we might do to try and change them. What I'd like to leave you with this morning is the idea that things will change for us and for other Legal Writing teachers only if we organize ourselves, set strategies and act collectively, support each other, and, of course, write and publish about Legal Writing.

Now I'm going to turn this over to Cheryl Beckett, who is going to talk about what might happen when you try to change things at your school.

Cheryl Beckett:

When we meet each other, we do tend to tell of our status, our teaching load, and maybe share some salary information; so I will introduce myself that way. I am relatively new to directing a program. I am going into my third year as the Legal Writing program director at Gonzaga Law School in Spokane. My title is "Visiting Instructor of Law and Director of the Legal Research and Writing Program." I am on a nine-month contract, but I have worked this whole summer, fulfilling my administrative duties as director. My salary is at least $3,000 more than the highest paid Legal Research and Writing instructor in my program. I carry a full teaching load, seventy to seventy-five students, in addition to my administrative duties. I have also taught a doctrinal course in the past (for additional salary). I practiced labor and employment law for nine years prior to teaching, so I teach either public sector labor law or employment law.

For the past couple of years I have negotiated with our retention, promotion, and tenure committee, and with our dean, for long-term job security for our Legal Research and Writing faculty. I come here today with some words of caution for you: "Be careful what you wish for." If you separate the issues of salary and status, what you might wind up with is the difficult situation that we now have. I am going to recount for you the process that we have gone through and where we are right now -- which has been very divisive for the program and those of us teaching within it. We have Legal Research and Writing instructors upset with other Legal Research and Writing instructors. We have some instructors at odds with me, because our dean has advocated that the director be given tenure-track status (some instructors believe that the director should be given the same status as the other Legal Research and Writing instructors).

Our law school is part of a larger university, so we are faced with the argument that the law school faculty only gets higher salaries than main campus faculty because of the ABA standards, but since those ABA standards no longer govern law school salaries, there is no longer any incentive to pay any higher wages to *any* law school faculty member, including those teaching Legal Research and Writing.

We are in a quagmire right now. We currently have a five-year "evergreen" contract proposal on the table. The contract will be awarded after six years of satisfying requirements that are found in the tenure-track faculty handbook. In essence what we would need to do in order to receive the first five-year contract would be to undertake the same tasks and show the same accomplishments as tenure-track faculty do in order to receive tenure, including scholarship, formal student advising in addition to the large number of students we already advise, and participate in university governance (in addition to the committee work and law school governance in which we each already engage). Once awarded, so long as we perform satisfactorily, the contract would be renewed annually for another five years.

This contract proposal, which is currently before our faculty, is identical to that offered our clinical faculty under the current ABA Standard 405-E. When the clinical faculty negotiated their contract language, there was some concern from the main university campus that the

clinicians' contract offers, for all intents and purposes, "tenure." But the clinicians have been able to point out successfully, that because their salaries, and in essence their futures, are determined by "soft money," they will not be, in fact, receiving true university "tenure."

Currently, we have five full-time Legal Research and Writing professionals, and we use adjuncts to pick up any additional sections we need to add, depending on enrollment. Our full-time teachers have no employment caps. At Gonzaga, we have a very formal student advising system, with each faculty member being assigned fifteen to twenty students each year that he or she advises throughout the students' education. The faculty member meets with those students to advise them on course selections, academic plans, and other issues of the students' interests. Under the present system, Legal Research and Writing teachers are not assigned such advisees because our faculty recognizes that we already spend a significant amount of time advising our students on several matters, including research and writing. Under the new contract proposal, however, we would have the formal advisees, in addition to the number of students we regularly advise as legal research and writing teachers.

Under the new contract proposal, we would also have to meet a scholarship requirement. Some of us are already doing some of this work either because we are interested in a particular area, or we have been asked to make presentations to various audiences and need to develop material for that. For instance, recently I made some presentations to local law firms on the Bluebook and had to develop some material for the sessions. Last year, I did a CLE session on Legal Writing for our local bar association and developed some material to use at that seminar. So, there are already some things that some of us are doing without the requirement. But we all know the realities of teaching legal research and writing. It is the most labor-intensive job at the law school. When you are teaching legal research and writing to seventy-five students each semester, your scholarship requirement is going to be fulfilled (if at all) in the summer, in that month-and-a-half between handing in your spring semester grades and preparing your fall syllabi.

The problem arises when you are required to do exactly the same things as tenure-track teachers are expected to do for tenure and you do not receive the same or comparable salary. The resentment and dissatisfaction are bound to grow. Although our Legal Research and Writing faculty are in favor of the long-term contract proposal as a means of securing increased status at our institution, some also see the inherent unfairness of not offering comparable pay for comparable status and for meeting the same publication and teaching requirements. Some would say, "Unless we get paid what everyone else is getting paid, so long as we have to do what everyone else has to do, then we are just moving into another ghetto." In fact, the dignity of the position is undermined even more than it is now because at least now there is a *quid pro quo* for the lower salaries. We may now make 50 to 60 percent less than tenure-track faculty, but we do not have to publish and we do not have formal advising responsibilities on top of everything else we already do. That trade-off is what makes the lower salary perhaps somewhat palatable. Some of our Legal Research and Writing teachers believe that once the contract is in place, the comparable salary will necessarily follow. But the realities belie this belief. As a tuition-driven private school, the nationwide decline in law school enrollment is bound to eventually hit our

institution. When that happens, the money simply may not be there, despite all the good intentions of our current administration.

Over the past two years, we have been fortunate to have a dean who is sympathetic to the plight of the Legal Research and Writing faculty. He has generously increased our salaries about 12-13 percent each year. On a nine-month contract without the requirements of tenure-track faculty, our salaries are pretty good, especially in Spokane, Washington. Our salaries are now very competitive with similar programs using Legal Writing professionals who are not on a tenure track or under long-term contracts. So, the questions become: (1) We're making fairly good salaries, we do not have to publish, we have no caps on the years we can teach, so do we really want to go for this? (2) Do we really want this "brass ring"? Is it really a brass ring or is it just another ghetto? (3) Are we really getting an increase in status or are we just shuffling the cards up a little and coming up with a fancy new title with even more time-consuming responsibilities, for the same salary we are now making?

As I stated at the outset, "Be careful what you wish for."

Summary of the discussion following the first plenary session, during which the entire group of directors discussed many of the issues raised by Professors Levine and Beckett:

Several directors discussed the difficulty, or even impossibility, of actually engaging in scholarly writing with their current workloads, a situation made more difficult by the very low salaries which they are now receiving. Some members of the group wondered about the possibility of attaining job security and gaining professional respect without eligibility for tenure, and several explained how professional Legal Writing teachers have contributed to their law schools in ways that promoted the faculty's respect and admiration. Other directors discussed how their efforts to have children and spend time with their families led them to choosing the teaching of Legal Writing as a career in place of law practice or a traditional teaching position. Others stated that they were not interested in producing scholarship or being seen as a "regular" member of the faculty.

Several directors talked about the need to lower their teaching loads to recognize the one-on-one nature of teaching writing. Several other teachers followed that idea by suggesting that Legal Writing teachers need to be full-time professionals for any true change to take place, and indeed, in order for the subject or skill to be taught well; but in response others defended adjunct-taught programs. Another teacher suggested that Legal Writing teaching materials should be seen as scholarship, a change that would enable Legal Writing teachers to meet tenure expectations and receive merit pay increases from their administration. Different models using full-time teachers were discussed, including the advantages and potential problems associated with the Pace University program (where full-time tenure-track professors teach Legal Writing and Criminal Law in a combined course) and the William & Mary model (of Legal Writing integrated with skills training and instruction in professional responsibility).

The notion of Legal Writing teaching as a "skill" or as an "art" was debated. Several teachers brought up the issues associated with schools having no Legal Writing director, but two or more full-time non-tenure-track teachers. The view of the director as protector of the writing program or courses was raised, and several examples were offered illustrating the myriad of possible relationships between the director and the teachers in a program, which are often affected by status or salary differences.

Plenary Session #2: ACCREDITATION STANDARDS AND SITE EVALUATIONS

Richard K. Neumann Jr. (Hofstra University School of Law) and Ralph L. Brill (Chicago-Kent College of Law)

Richard Neumann:

We are going to talk about four things. The first is the organization of the Section of Legal Education and Admissions to the Bar of the American Bar Association (ABA), which administers the accreditation of law schools. The second is the process of reinspection of law schools. (Each accredited law school is reinspected every seven years.) The third item is the changes that are happening now in the ABA and in regard to the reinspection process. And the fourth is how to participate in your own school's site evaluation the next time that you are inspected.

First, the name of the entity that handles the accreditation of law schools is the Section of Legal Education and Admissions to the Bar of the American Bar Association. The ABA as a whole is the accrediting authority, but the work is done in the Section of Legal Education and Admissions to the Bar. The governing body of the Section is the Council of the Section of Legal Education and Admissions to the Bar. (The governing bodies of the ABA are the Board of Governors and the House of Delegates. The Council is answerable to both of these governing bodies in accreditation and other matters.)

The Section also has a number of committees, the most important of which are the Standards Review Committee and the Accreditation Committee. The Standards Review Committee drafts new Standards and amendments to the Standards by which law schools are measured for accreditation purposes. (They are known formally as the Standards for the Approval of Law Schools by the American Bar Association.) The Accreditation Committee makes the initial determination about whether particular law schools are in compliance with those Standards. There are other committees, but they are not part of the accreditation process. For example, there are committees on curriculum, on law school administration, on continuing legal education, on skills training, and on communication skills, as well as more than a dozen other committees. Ralph and I (and a number of other Legal Writing directors) have served on the Communications Skills Committee, which until recently was titled the Legal Writing Committee.[1]

In addition to the Council and the committees, the Section works out of two offices. The one in Chicago is the ABA's national headquarters. The other office is in Indianapolis. That is

[1] For 1995-1996 the legal writing teachers or directors on the committee are Susan Brody (chair), Ralph Brill, Linda Edwards, Christina Kunz, Jan Levine, Richard Neumann, Theresa Godwin Phelps, and Marilyn Walter.

the office of the ABA's Consultant on Legal Education, James P. White, who -- among other things -- coordinates site evaluations and other aspects of the accreditation process.

The reinspection process works like this: First, although schools are reinspected every seven years, accreditation is continuing. A school's accreditation does *not* expire and need renewal at the end of seven years. Instead, a school remains accredited unless the ABA withdraws its approval. (That almost never happens. In fact, neither Ralph nor I are aware of any instance in which it has occurred.)

A school about to be reinspected prepares a self study, which is a long and detailed document in which the school frankly assesses its strengths and weaknesses, and sets goals for its own self-improvement in the future. This is a very worthwhile process. It forces people to face their own institutional inadequacies. The most persuasive self studies are those that are truly self-critical without going overboard about it. A self study that is filled with self-congratulation and admits no faults is not very useful during a reinspection, and it can generate more suspicion than confidence.

The ABA appoints a site evaluation team, which will have a half dozen or more people on it. They will visit the school for perhaps three days. They spend that time going over documents, reading files, sitting in on classes, interviewing teachers and students, and in general trying to get a sense of where the law school is going and what are its weaknesses and strengths. Site evaluation teams usually include a practitioner or judge, but in the past the other members of the team have all been law school deans and professors. (As you will see in a moment, that should change slightly in the future.)

The site evaluation team writes a report, which does no more than describe what the team learned factually. The site evaluation team does not make judgments on whether Standards are being violated or complied with. The team might report, for example, that the average first-year class size is eighty-eight and not seventy-two as claimed by the school, but it says nothing about whether either number satisfies a Standard. The report goes to the Accreditation Committee and to the school. The school is entitled to submit written comments to the Accreditation Committee, after which the Accreditation Committee meets and issues what's called an action letter.

The action letter includes findings of fact, together with conclusions that are similar to the conclusions of law that you might find in a judicial opinion. The conclusions might be broken down into two categories. The first includes conclusions that particular Standards are being violated. The second is peer advice, in which the Accreditation Committee might express concern that a particular practice of the school might be unwise, even if it does not violate any Standards.

The school must report to the Accreditation Committee, by a deadline set in the action letter, what steps it has taken to remedy the violations listed in the action letter, advising the Accreditation Committee at the same time of any steps that it may be undertaking to address the Accreditation Committee's peer advice. The action letter process might extend over a period of

two or three years while the school makes attempts to solve the problems identified in the action letter, reporting all the while to the Accreditation Committee until that Committee sends the school a final approval letter.

Two Standards are of particular interests to Legal Writing teachers.[2] Standard 302(a)(2) requires a law school to provide at least one rigorous writing experience. Every law school maintains that it easily satisfies this Standard through its required first-year writing program. The other Standard is 405(c) -- previously 405(e) -- which does not provide anything for Legal Writing teachers at all, but does encourage law schools to provide elements of job security to clinicians.

It has long been the fond hope of Legal Writing teachers to share in the benefits of Standard 405(c), but it seems problematical whether that will happen any time soon. And those benefits are not as wonderful as they are sometimes made out to be. Standard 405(c) has actually had surprisingly little effect on the status of clinical teachers. Clinical teachers treat this as a magna charta, but the fact is that there are barely more tenure-track clinical teachers today than there were before 405(c) was adopted. There are many clinical teachers who are on long-term contracts who might not have been there otherwise, but 405(c) is not literally a mandatory Standard. The word "shall" never appears in it, although the word "should" does, and the difference between the two verbs is enormous. In essence, 405(c) is exhortatory only.

Ralph L. Brill:

Let me just supplement with a little history as well, since I'm the oldest law teacher in the world, certainly in Legal Writing. I've gone through five inspections, myself. (That is, I experienced them as a law professor, since I started teaching in 1960.) The purpose of these Standards were, of course, to try to improve law schools. They didn't have a bad purpose, they had a good purpose and, frankly, during the early days of my own experience they served that purpose. When Chicago-Kent was not a very good school, when it had very low salaries, a high student/faculty ratio, and a poor library, the inspection process helped us a great deal. The inspectors would come through, and they would see these things. They were pretty obvious -- they were hard not to see. They would help us.

At that point, we had a private Board of Trustees, and later in '69 as part of the University, of course, we had the University Board of Trustees. They would write these reports and help you a great deal. In fact they often would talk to the dean directly about what are the things you really need the most, asking, "What can we help you with?" And their purpose was to help. Jim White's office was available throughout the year as a help mechanism, not just at the inspection time. Frankly, they therefore helped us a great deal improving all those things, salary, teaching loads, ratios, and library. One of the other things they did, of course, was to publish, at least for the deans, information about what the salaries were at other law schools, what the average salaries

[2] The standards' numbers are subject to change as the standards may be amended in 1996.

were, and what the size of the libraries were at other schools. They shared this information and so you could use it in a political way, to say, "Look, here are our competitors and here's what they're doing: here's what their salary levels are, here's what their student/faculty ratios are, here's the size of their libraries, and here's the objective criteria of how good or bad they are." The information-sharing was a large part of this process, and it was a helpful one.

My feeling is that this has changed in the last seven to ten years. This will lead up to what Richard is going to say about the proposed changes to the Standards and the Department of Justice consent decree. It seems that now the inspection process has become not so much helpful as dogmatic, that "these are the things you have to do." Our last inspection process, for example, at a time when we've attained a lot of things. When our student/faculty ratio is pretty good, when our salaries are pretty good, when our library is very good, nevertheless the inspection was very, very picky. For two or three years we did not get that final approval that Richard mentioned. There were things criticized that in the past any other schools would have been delighted to have our situation.

The history now has turned; the process has become much more one in which the committee says "You have to do this," or "You have to do that." It's not so much to help the law schools, as to make all the law schools do the same sorts of things, even programs that in the past you could experiment with and do something different than other schools. There seems to be an emphasis on sameness.

In my opinion, one of the reasons for that, in the early days -- back in the 60's -- is that the inspection teams coming through had many more practitioners on them. In recent years they have been predominantly law school deans, professors, and librarians. At most, there has been one practitioner on the team. I think that these are the problems that have led up to this consent decree.

The other thing that I think has happened is that the Council has tended to ignore its own reports. Some twelve years ago the Cramton Report was issued, specifically dealing with Legal Writing.[3] It recommended a three-year research and writing program as a minimum requirement for every law school. The Council itself rejected that and watered it down. Instead, it adopted a standard saying each law school "*should* offer one vigorous writing requirement." It's not even a "shall" on that one.

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[3] AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS -- REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY (1979).

The MacCrate Commission Report,[4] which was issued a few years ago, likewise wasn't as clear-cut on Legal Writing issues as we would have liked. If you look at it closely, it surely covers all the skills that we teach in legal research and writing: legal reasoning, legal analysis, oral communication, and written communication. Once again, the MacCrate Report has tended to be ignored. The practitioners in the ABA itself, and the Council, have been pushing for implementation of the MacCrate Report recommendations. Tom Leahy, the President of the Illinois Bar Association, introduced a resolution to require it immediately as part of the Standards, and was turned down.

So it was a good thing to have practitioners involved in that process. It has become, in my opinion, a bad thing for it to become predominantly composed of law school professors, deans, and librarians. And that leads up to, I think, the consent decree between the ABA and U.S. Department of Justice.

Richard Neumann:

I'll try to explain some of the changes going on now in the ABA in regard to the accreditation process.

You might have heard of the Massachusetts School of Law, which is a state-accredited proprietary law school. (Unlike all ABA-approved law schools, it's in business to make a profit.) The Massachusetts School of Law sued the ABA on the theory that a standard prohibiting accreditation of a law school operated for profit constitutes a combination in restraint of trade in violation of the antitrust laws. The Massachusetts School of Law also argued that other Standards would needlessly cut into its profit margin.

In addition, last year fourteen deans circulated a letter (sometimes called the Fourteen-Dean Letter) accusing the ABA of trying to micro-manage their law schools. The tone of this letter is breathtakingly self-congratulatory. Its theory is that law school faculties and administrators (especially the ones represented by the deans who signed the letter) are filled with such brilliance that to hold them to genuine accreditation standards -- standards that mean something and that take real effort to satisfy -- is to rob those faculties and administrations of their creativity.

Any system of regulation will, over time, become more complicated than it needs to be. That is simply in the nature of regulation. Periodically, the system needs to be reviewed and the unnecessary complications removed. The trick is to do exactly that and no more. If you start chopping up the system with a meat axe, you end up throwing out the good, as well as the bad.

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[4] AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT -- AN EDUCATIONAL CONTINUUM -- REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992).

Last year, in response to the Massachusetts School of Law suit and the Fourteen-Dean Letter, the ABA appointed the Wahl Commission to study the reinspection process. Rosalie Wahl, the chair, is a former justice of the Minnesota Supreme Court. The Commission's formal name was the ABA's Commission to Review the Substance and Process of the American Bar Association's Accreditation of American Law Schools. It held hearings last winter and will very shortly issue a report.[5]

In June of this year, the Department of Justice sued the ABA, alleging antitrust violations similar to those alleged in the Massachusetts School of Law suit. For a variety of reasons that do not necessarily corroborate the Justice Department's theory, the ABA immediately entered into a consent decree which now governs, in several ways, the reinspection process.

We should not assume that the ABA did, in fact, combine to restrain trade. The consent decree contains the usual language that no issue of fact or law has been adjudicated, and that the decree is not evidence or an admission by any party as to any issue of fact or law. In other words, the ABA admitted nothing and signed the decree for reasons of its own, perhaps because the ABA Board of Governors felt that the cost of defending the suit on the merits exceeded, in its opinion, the value of the principles involved. The Board of Governors are, for the most part, very senior partners at elite law firms, and the details of law school accreditation might seem to them arcane. At the same time, the legal fees required to defend a matter of this kind can reach seven figures very quickly.

Even if the Massachusetts School of Law's suit was not groundless -- and there are people who make very cogent arguments that it was groundless -- the Justice Department's interest in this matter is bizarre. This year -- 1995 -- is one of the greatest years for corporate mergers in history. Giant corporations are gobbling each other up at a nearly unprecedented rate. Sooner or later, someone will be able to explain why, in a period like this, the Antitrust Division of the Justice

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[5] The Commission reported on August 3, 1995. Among other things, it recommended that the ABA Standards be amended to include a preamble stating that the purpose of the Standards is to ensure "that every law school graduate . . . [h]as mastered a core curriculum through which he or she" comes to understand ethical responsibilities, the fundamental rules of law, and the policies behind them and "[d]evelops analytical and critical legal thinking skills, oral and written communication skills, and obtains familiarity with legal research." As of May 1996, the ABA is in the process of deciding whether to adopt this and other recommendations of the Wahl Commission. The quoted words track a more grammatically correct formulation developed by Ralph Brill and inserted in an ABA Communications Skills Committee memorandum to the Wahl Commission. The Communications Skills Committee, however, had suggested that they appear in a Standard, where the effect would have been more compelling. The Wahl Commission also recommended that the ABA incorporate the essence of the MacCrate Report into the Standards and streamline the reinspection process in a number of ways.

Department devoted a significant amount of effort to the accreditation of a very small part of higher education. The stakes involved here were truly microscopic compared with what you can read about every day in the Wall Street Journal. Something odd happened in the Justice Department, and we don't yet know what it was.

Five features of the consent decree are of interest to us. First, the compensation of law school teachers cannot be regulated by the ABA, which means that the ABA is prohibited by court order from requiring a law school to pay Legal Writing teachers as much as they're paying other teachers. (It also means that Standard 405(c) can no longer affect the salaries of clinicians.) Second, the ABA cannot even collect information on compensation.[6] Site evaluation teams will now go into law schools ignorant of what anybody working for the law school is paid. The Justice Department had charged that the ABA had coerced at least some universities into paying higher salaries to law school professors than the universities might otherwise have done.

Third, site evaluation teams must now include, to the extent possible, a university administrator who is not also a law school administrator. The ABA must try to put a university provost, associate provost, university president, or some similar officer on each team. Fourth, the Accreditation Committee and the Standards Review Committee cannot have memberships that are more than 50 percent law school deans and professors. So more judges and practitioners are going to be appointed to those bodies than in the past. And finally, the ABA must appoint a special commission to study certain Standards that are not necessarily directly relevant to Legal Writing programs, although that commission might end up with an expanded mandate involving Standards that might be relevant to Legal Writing programs.[7]

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[6] One of the functions of an accrediting agency is to prevent employment practices that discriminate against women and minorities. Antitrust consent decrees obtained by the government must, by law, be subjected to a notice-and-comment procedure like the one used for proposed administrative regulations (publication in the Federal Register, etc.). During the notice-and-comment procedure for this consent decree, Marina Angel of Temple Law School pointed out that if an accrediting agency cannot collect salary information, it cannot enforce Standards that forbid discrimination. The Justice Department responded that "[w]hile the ABA may not collect and use salary data to raise general salary levels, accreditation inspection teams may fully investigate allegations of discrimination at a law school, including allegations of discriminatory salaries, and may review salary records at that law school to resolve the discrimination allegations." In other words, a team may ask for salary data only after receiving a complaint about discrimination on the basis of race, sex, or ethnicity, and may ask only for the data needed to resolve that complaint.

[7] To satisfy this requirement in the consent decree, the ABA continued the Wahl Commission's existence and assigned these responsibilities to it. Some of these and other requirements of the consent decree were in fact imposed on the Section of Legal Education and Admission to the Bar by the ABA Board of Governors a few weeks before the Justice

Ralph L. Brill:

As I said before, the current Standards require "one rigorous writing requirement," which is not defined anywhere in the interpretations and which, as Richard said before, is probably pretty easily satisfied by the first-year program.

The Communication Skills Committee proposed substituting a qualitative standard instead of a quantitative standard. We proposed that "every law school must have a program of instruction designed to ensure in each of its graduates minimum competency levels in the skills of legal analysis, legal reasoning, legal research, oral and written communication."

That doesn't require schools to satisfy the standard in any one fashion. They can spread it throughout the curriculum. Obviously, legal analysis and reasoning are taught in doctrinal courses, as well as Legal Writing, although they are taught better in Legal Writing. Legal research may be taught in other areas as well. Oral communication obviously is emphasized throughout the curriculum. A school would have to justify that it has designed its program to help ensure that every graduate possesses minimum competency levels. That doesn't mean that there will be a test for each student as they graduate, but somebody would be able to examine the program of instruction to make sure that they've thought about these skills and designed a program that would try to produce minimum competency in each. A school that had a pass/fail program taught by second-year students as its method of teaching legal research and legal analysis would probably fail under that test as not being adequate.

Actually I think this qualitative proposal has some chance of success after the consent decree, whereas the quantitative one does not. The micro-management that was being criticized was based on quantitative standards (such as requiring a certain number of books in the library). You have to have quantitative standards for the ratio of students to faculty, or for salaries.

I still don't think it will succeed in this environment, but it has a better chance of success than the other two proposals that we made about status. Our second proposal was that full-time directors of Legal Writing programs who were not already on tenure track be accorded job security under the new Standard 405(c). We proposed that full-time Legal Writing teachers should be provided with job security at least equivalent to what administrative personnel at law schools receive.

Law schools do not fire assistant deans or even secretaries after one or two years because it is cheaper to replace them. They give them the expectation that if they do a competent job, they will have continuous employment. We think that Legal Writing instructors at least deserve that continuous employment if they are doing a competent job.

Department brought suit.

Whether either of those two proposals about status have any chance of success in this environment is somewhat doubtful.

I think the consent decree has had an impact on this lack of sharing of information. You can no longer find out the size of libraries and amounts of salaries. So the surveys that Jan Levine and Jill Ramsfield are doing are going to be the means that you are going to have to use for trying to improve your programs, both internally and through any help that the inspection process can give you.

On the other hand, the other good that I think can come with this process is the increased emphasis on having attorneys on the committee and on the inspection teams. My own experience has been that they are the ones that are most interested in skills training. They are the ones who ask the questions about your Legal Writing program and your legal research program. They are the ones who experience the deficiencies of law students who graduate without those skills. As we know, law professors and deans often are not sympathetic to our cause, but lawyers are. I think that part of the consent decree may be a plus.

Finally, the other thing, which is long-range, is that because schools will not necessarily be so concerned with raising the salaries of their tenure track people there may be more money available to do good writing programs. It may be that they can't use as the excuse, "We don't have the money now because we have to give it to the faculty to do something creative in the area of skills training or doctrinal programs." So there may be some good coming out of this consent decree.

Richard Neumann:

Now we will talk about how to get into the reinspection process at your school. Reinspections are going to continue to happen. The overwhelming majority of the Standards are still intact, and most of the process is not significantly changed by the consent decree.

If your school will be reinspected soon and you are on tenure-track status, you might ask your dean to put you on the self-study committee. This is a reasonable request. The Legal Writing program is a significant investment for your school. It's an important part of the educational program, and somebody who understands it should be there on the committee to write the Legal Writing section of the self-study report. But ask well in advance. Self-study committees might begin work a year before the team visits the school.

If you're not on the tenure track, at many schools you will probably not be appointed to a key faculty committee, like a self-study committee, unless your school has a tradition of including teachers who are off tenure-track in the governance of the law school. If you are not appointed to the self-study committee, ask to be consulted on the Legal Writing portion of the report as it is being written or, failing that, ask at the very least to see the self-study report after it is written. If you're on tenure-track, you're going to see it anyway because it will be discussed

at a faculty meeting. If you're off tenure-track, at many schools you would not be shown a copy unless you ask. (It's hard to generalize about why, but I would guess that in most cases it would be simply an oversight, rather than an attempt to exclude you.) Once you've been shown a copy, you can point out to the chair of the self-study committee, and to the dean, any inaccuracies. (And if your faculty does not understand your program, there are likely to be inaccuracies.)

Ralph L. Brill:

I would even suggest that, even if you are not on the committee, you ask the chair of the committee to let you help write the section of the report dealing with Legal Writing. They're not going to want to write the whole report themselves. They don't have the time, and they will delegate aspects of it to other members of the faculty. Frankly, they're going to be looking for help, and you are the one who knows the program best. By doing that, if nothing else, you could educate them even if it doesn't get into the final report, and that's a plus. You should write in an objective manner, pointing out the "goods" but also pointing out, as Richard said before, the "bads"; the things that need improvement, why they need improvement, and how they could be improved. Even if it doesn't find its way into the final report, at least you may succeed in educating members of the faculty.

Richard Neumann:

Whether you're talking to somebody at your school or to a member of the reinspection team, a wise course would be to focus on one or two real problems and to give the school credit for what it's done. If you take the position that everything involved with your program is the result of manifest injustice, you will not be taken very seriously. People are usually not persuaded by presentations like that. Recognize what the school has done for you. It might not have done much, but at least give them credit for what they have done.

Remember that the purpose of accreditation is to protect the consumers. The direct consumers are students, and the indirect consumers are all the future clients of those students. That means that arguments based on unfairness to Legal Writing teachers are usually seen as not germane to the accreditation process. Arguments based on unfairness to the students and to the public are germane. Legal education is not really less hard-hearted than other industries. People in responsibility everywhere in life have to say "no" constantly, and they get used to doing it. If you're not getting paid enough, complaints about that -- as you already know -- just don't go very far. But if, on the other hand, the students are getting an inadequate education, then it's the responsibility of the school to provide a better one.

Ralph L. Brill:

You ought to try to provide the dean with the names of students that the team will interview. Students who are sympathetic to your cause will tell them what is going on and what is not going on; what the good things are about the program and what the bad things are.

Similarly, alumni must be interviewed by the team, and alumni, from their perspective in practice, are in a perfect position to be able to tell what was good or bad about their law school experience, and specifically what was good or bad about their Legal Writing experience.

Richard Neumann:

I'd like to close by saying that I think that strategies aimed at getting people in authority to tell law schools what to do are less productive than strategies based on exploiting the marketplace as it is. It's an uphill fight to get anybody in authority to do anything for you. Even if you are able to persuade an accrediting authority to issue rules that favor you, you cannot count on the continued existence of those rules in the future. People who don't like those rules will constantly be lobbying to get them changed, and you will never know when they might succeed. And even while those rules are in force, you have to depend on somebody else to enforce them.

On the other hand, students and prospective students really are very interested in what it takes for them to succeed in the practice of law. Students want to be able to graduate so that they can practice law hitting the ground running. In any large law firm, recent graduates do nothing but research and write for the first few years after they are hired. And even in smaller firms, there are three things that the partners do not think they should have to teach to newly hired lawyers: how to research, how to write, and how to speak like a professional. In the increasingly competitive economy that we now live in -- where there is no shortage of lawyers looking for jobs -- that means that Legal Writing as a subject matter has an advantage that grows as each year goes by. It only remains for Legal Writing teachers and directors to figure out how to use the state of that marketplace to advance the field and the position of those who teach it.

An organization of Legal Writing directors could, among other things, work on exactly that. We could, every year, do the kind of surveys that Nancy Wright and Jan Levine talked about earlier so that the information is already readily available to anybody who needs it inhouse. There could be a central place where that information could be obtained within hours, and Fedexed overnight. A core group within the organization could advise people who are coming up for tenure, or coming up for contract renewal, or going through any other struggle within their law school on the strategies that have worked elsewhere.

During the discussion session following the second plenary session, Professor Neumann described the AALS and the AAUP involvement in Legal Writing:

The one thing to remember about the AALS is that it's exactly what it says it is: the Association of American Law Schools. It's an association of employers. It's not an association of law school teachers, which is why the sections in the AALS are permitted only to put out newsletters and to have programs at the annual meeting. They're not allowed, unlike the sections in the ABA, to take public positions. AALS sections are not allowed to file briefs in court cases or anything else. The Association of American Law Schools has been quite good in recent years on diversity issues. They've worked together with the ABA on reinspections, and, in fact, one

member of each ABA inspection team is appointed the AALS reporter, the person who reports the results of what the team found to the AALS, so the AALS can decide whether the law school being inspected continues to satisfy the bylaws of the AALS. But Legal Writing teachers and directors are disfavored employees, and an association of employers is not going to help disfavored employees.

The American Association of University Professors (AAUP) has a policy statement on *de facto* tenure which is probably forty or fifty years old. Basically their position is if a university or college employs somebody for seven years as a full-time teacher, they've got tenure whether the school likes it or not. Most schools accept this position as having a kind of moral authority, and some of them have even deluded themselves into thinking it has a legal authority.

If the policy statement has a legal authority, it's only in situations where the AAUP -- which is a labor union for professors (although not usually law school professors) -- is the bargaining agent for teachers, and the contract between the AAUP local and the university specifically incorporates the AAUP position on *de facto* tenure. Many universities get around this whole problem by simply putting in appointment letters to people who are off tenure track a clause that says you will never come up for tenure and your acceptance of this position is an agreement that you will never apply for tenure.

Plenary Session #3: WORKLOAD AND TEACHING LOAD STANDARDS

Dennis Hynes (University of Colorado School of Law)

Dennis Hynes:

My name is Dennis Hynes and I am the Director of the Legal Writing Program at the University of Colorado in Boulder. I must admit right from the start that I do not myself teach Legal Writing, so I am not out there in the classroom and on the firing line. We have three full-time instructors at Colorado who are actually doing the job. Nevertheless I do have a few ideas on this subject.

Lou Sirico was scheduled to co-moderate this session with me. Lou has had some health problems and cannot be here today. He suffered cardiac arrest in May and is under competent medical care, but his doctors advised against the strain of traveling. That means I will be presenting and then rebutting Lou's arguments. That makes things very easy for me, but we're all the poorer for missing Lou's level-headed, experienced, and thoughtful approach to this issue. I did call Lou and asked him for his opinions. They diverged from mine so I am going to be having a debate with Lou in absentia.

With regard to the title of this session, "Workload and Teaching Load Standards," it could be construed to refer to the directors of Legal Writing programs, rather than Legal Writing instructors themselves. A discussion of exactly what directors do, what directors should be doing, and what benefits they have would be interesting, but I have a sense that that's not what we're supposed to be talking about here. For this group to come up with a recommendation with regard to workload and teaching standards for directors would be construed as self-serving in some quarters. Also, we have such a variety among us with regard to employment conditions and teaching responsibilities that I think that it would be hard to come up with anything useful. I thus construe this heading "Workload and Teaching Load Standards" to apply to the actual Legal Writing instructors.

One could argue with regard to that topic that the same reservation applies that I just articulated for directors: that the group of people involved work under such diverse conditions that it is impossible to talk intelligently about workload and teaching load standards. We have adjuncts who teach Legal Writing, students who teach Legal Writing, and full-time professionals, so you cannot articulate workload and teaching load standards. Acknowledging that, there is at least one specific, concrete suggestion that I would like to focus us on today. That is the student/teacher ratio concept. Granted, it makes a difference what kind of instructor you have. You have to have a focus, and I'm going to focus on this from the perspective of the full-time professional Legal Writing instructor (the profession is moving sharply in that direction) and recommend a ratio of 45:1. I came up with that after making phone calls to some people who know quite a bit about this business, as part of the preparation for this talk. Several of them

recommended 45:1.

No such standard has been promulgated by the ABA. As you heard from Richard Neumann and Ralph Brill this morning, the ABA has focused on job security for clinicians only and has not even addressed similar protections for Legal Writing people. The AALS -- Association of American Law Schools -- has made no effort to address such a standard. Nor has the AAUP addressed the distinct circumstance of Legal Writing instructors. Nevertheless, I suggest that such a standard be debated and perhaps proposed. It is not the only standard one can think of in terms of workload and teaching load, but it is specific and concrete. Furthermore, the student/teacher ratio concept has been around in American education for many, many years.

Lou's response to the idea of proposing a standard of a recommended 45:1 student/teacher ratio for full-time, professional Legal Writing instructors, or any other standard, is negative. He argues that you obtain improvement in the working conditions of instructors by doing quality work and earning respect. He gave me an illustration of that by referring to a group colloquium that was put on by all the Legal Writing instructors at Villanova before the full Villanova faculty last spring. The faculty was impressed by the colloquium, by the quality of the presentation, and by the people involved in the writing program. He said, "That's the way you get improvement. It's by earning respect and by doing quality work; standards won't do it." I am sympathetic with that approach and I like that idea of persuading people through quality job and quality performance. In essence, what Lou seems to be saying is, "You catch more flies with honey than with vinegar."

Nevertheless, it seems to me that a specific, concrete standard, if sensible and supportable, can be a helpful thing, a useful thing for people to have. It can provide direct assistance to a director by providing neutral support for reducing the student/teacher ratio, assuming it is above 45:1, which I would guess it is in many programs (the ratio at CU is 58:1). It would help in conversations with the dean and -- if it comes to that – the faculty.

It also can help indirectly by inhibiting the dean from loading extra work onto the Legal Writing instructors. For example, a temptation exists to dump second- and third-year Moot Court work on the Legal Writing instructors, including preparation of the records, updating the list of judges, getting teams ready, dividing up the teams, disciplining the teams, and so forth. All of that you dump onto the instructors on top of a 58:1 student/teacher ratio in a demanding first-year program, without any compensation. My dean and I fight about this every year because he says running Moot Court is a natural part of the job of being a Legal Writing instructor. In a sense that is true, but my argument is the instructors are overworked already and if you're going to do that, you ought to compensate them. He has agreed, very reluctantly, to give them modest additional compensation, but we fight that battle every year. If I had a 45:1 student/teacher ratio standard, I would be able to say to him, "These people are overworked already." I would have a frame of reference for that argument. It would give me a little extra edge; that's the only point I'm making.

One other illustration: the University of Colorado had a four-and-one-half million dollar budget shortfall identified within the last few months because the retention rate in the

undergraduate school dropped off dramatically; that is, sophomores, juniors and seniors were not coming back in the same numbers as they were before. The University central administration responded to that by requiring every school and department to take a budget cut. The dean called me into his office in April of this year. I was recruiting for two new writing instructors at the time. He said, "I think I'd like to take one of the Legal Writing instructor positions," reducing it to two. "That's a good way to go after a good part of the budget cut." I argued that this would jump the student/teacher ratio up into the 80's, and it's going to affect the quality of the educational product for the students in a very negative way. If I'd had a 45:1 student/teacher ratio recommended by a respected organization, I would have had additional support for my argument.

One other thing about this idea of devoting some time to discussing standards is that it picks up on the point that Jill Ramsfield mentioned this morning: "Let's not just sit and whine; let's do something positive." This would be an illustration of doing something positive.

Assuming for a moment that promulgation of such a standard is desirable, several issues remain. One question is, "Promulgated by whom?" I can think of three groups, one of them being this group. We have a closing session tomorrow afternoon entitled "Where Do We Go From Here?" One thing that can be considered is promulgation of such a standard. I'm not saying this is the only standard; this is just an example. Alternatively or in addition, the Legal Writing Institute could consider this at its conference next summer in Seattle. That group has been known to pass resolutions. It's a very respected group. They do a superb educational job in their conferences every other summer. Third, it could be considered and perhaps recommended by the AALS Legal Writing Section at its winter meeting in San Antonio. Now I know we heard this morning, from Richard Neumann, that the various sections cannot pass standards or draft resolutions, but I wonder about that. I'd like to push that a little bit. I understand this is in part a political issue, but these are the three possibilities.

Thought would have to be given as to how you would support a 45:1 student/teacher ratio. We've gotten some perspective on that this morning. Jan Levine has been very helpful in focusing our attention on that. He suggests collecting data on the number of pages an instructor reads and marks up every year. Also, we could focus on how many individual conferences each instructor has in a year. It's a staggering amount compared to other teachers. Also, identify the number of hours spent in classroom teaching, in addition to the number of hours spent scheduling. For example, scheduling first-year appellate arguments is a major headache for our instructors. They have to find rooms for everybody, get robes for the judges, and go out and find judges and outside lawyers, as well as inside people. Sometimes the outside people are easier to get than the inside people, but you've got to get them, you've got to get a time and a place, you've got to get them there and get them the documents, and get it organized. It's a tremendous burden.

Jill Ramsfield's statistics also give us a start on formulating a standard. In her statistics, she indicates about half of the schools fall within the range of thirty-six to seventy-five on a student/teacher ratio. It needs refinement, but there's something there. My guess is, with proper documentation, 45:1 would be easy to support. I think all three groups should be asked to study

and support such a standard, and perhaps other standards as well.

That's my thesis. I haven't given a lot of time to Lou. I can tell you what Lou would say. He would say, "Nonsense. It's not the way to go at it." Now, that's the time I'm giving to Lou.

What I'd like to do is to open this up. I do not mean to confine this to student/teacher ratio. I raised that only because that's a specific, well-defined, historically addressed example. There are many other questions that could be explored. We have Lou's perspective saying you shouldn't do it at all; you have my perspective saying you ought to, and pick and choose your issues carefully.

Summary of the discussion following the third plenary session led by Professor Hynes:

Several directors discussed the analogous situations faced by teachers of English composition on college campuses. The organizations of teachers in that field, including the Council of Writing Program Administrators (C-WPA) and the Conference on College Composition and Communication (CCCC), have standards on workload and teaching load,[1] although there are no real enforcement mechanisms similar to the ABA accreditation process. Several directors pointed out that composition teachers as a whole are quite exploited at the undergraduate level, and in many institutions composition teachers have no job security, no tenure, and are on year-to-year contracts, sometimes teaching at several schools simultaneously in order to make a living.

One director pointed out that in English departments the composition class often is limited to fifteen or twenty students, and that at law schools almost every faculty member may teach a doctrinal first-year course with an enrollment of seventy-five to one-hundred or more. Arguments about class size for Legal Writing teachers must take into account the workload of the more expensive members of the faculty. Another director pointed out that the overall costs to a law school in salaries and benefits for full-time teachers with student/teacher ratios of 45:1 or 50:1 might cost a school near to half a million dollars. Any effort to change to full-time teachers must counter the costs argument by pointing out the need to provide a quality education to students, particularly in the first year, when students need opportunities for contact with teachers and more individual feedback through conferences.

Another director shared the notion of a "Small Group Teaching Task Force," which was a group of faculty members that promoted a faculty consensus about allocating teaching resources,

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[1] Conference on College Composition and Communication, *Statement of Principles and Standards for the Postsecondary Teaching of Writing*, 40 COLLEGE COMPOSITION AND COMMUNICATION 329 (1989) (commonly known as "The Wyoming Resolution"); Christine Hult and the Portland Resolution Committee, *The Portland Resolution: Guidelines for Writing Program Administrator (WPA) Positions*, 16 WRITING PROGRAM ADMINISTRATION: JOURNAL OF THE COUNCIL OF WRITING PROGRAM ADMINISTRATORS 89 (1992).

and the understanding that certain classes need to be small while other classes can be larger. Similarly, another law school had already made Legal Writing a part of a small-section first-year curricular plan.

Another director defended Lou Sirico's position, emphasizing that gaining respect is something that must be done individually, through quality teaching, much as tenured faculty members earn respect because of what they do in their positions. Another director pointed out that instead of standards, it would be possible to have another director with stature and respect come to the law school as a consultant and address the workload and teaching load issues.

One director suggested that a 45:1 is too high, although it might be an improvement for many institutions. He suggested that the ultimate question to be answered is determining the best ratio in programs where students get regular contact and with opportunities for rewriting.

Plenary Session #4: SUPERVISING AND TRAINING LEGAL WRITING TEACHERS

Maureen Arrigo-Ward (California Western School of Law) and Molly Warner Lien (Chicago-Kent College of Law)

Maureen Arrigo-Ward:

I'm Maureen Arrigo-Ward, Co-Director with Jackie Slotkin at California Western School of Law. This is Molly Warner Lien, the Director of Chicago-Kent's Legal Writing Program. Molly has put together an outline which is really excellent at hitting all the high points. It is available on the table where all the handouts are, in the other room. You are welcome to go pick that up afterwards. I recently published an article, in Valparaiso University Law Review's Spring 1995 symposium issue on legal education, concerning program directing.[1] Many of my ideas about hiring and training are contained in that article and I therefore recommend it to you as a source of additional ideas or perspectives on this topic. I suggested that Molly do most of the talking here because she has some additional things to say and we're very much on the same wavelength. What we wanted to do was just talk to you briefly about some of our ideas and then open it up to all of you as so many of these sessions have been. I think that's really been productive.

Molly Warner Lien:

The session was actually entitled, "Supervising and Training Legal Writing Faculty." I've expanded that to "Hiring, Supervising, Training **and Supporting** Legal Writing Faculty." If you hire well and you support well, you will greatly reduce the need to supervise. At Chicago-Kent College of Law, our program involves fifteen full-time faculty who teach the first-year Legal Writing curriculum. We also require students to take Legal Writing courses in Legal Drafting, and Advanced Research and Writing, during their second year. We have approximately twenty-six adjunct faculty that teach in that program. As a result, hiring is a fairly important part of my job. In terms of how you hire Legal Writing faculty, I'll divide my remarks between full-time appointments to the writing faculty and part-time adjunct faculty.

The first step in the hiring process is to define the ideal candidate. This raises the "Credentials v. Caring" debate. Law faculty who teach conventional courses tend to assume the most important criteria for any academic appointment are the so-called "superstar" academic credentials. Credentials, to be sure, are important. Individuals who have very good credentials are likely to be excellent at legal analysis and they are likely to be very effective communicators.

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[1] Maureen Arrigo-Ward, *How to Please Most of the People Most of the Time: Directing (or Teaching In) a First-Year Legal Writing Program*, 29 VAL. U. L. REV. 557 (1995).

They have had a positive experience in law school, and have a positive attitude toward legal education which we hope they communicate to their students. Further, with respect to schools with "stepping-stone" Legal Writing programs such as the University of Chicago Bigelow program, our program, and several others, Legal Writing may be an opportunity for younger faculty to determine whether they want to pursue a career in teaching. When our program was created, the goal was to hire candidates who would likely succeed in obtaining "conventional" tenure-track positions after their term at Chicago-Kent.

We have shifted the focus and now simply encourage people to pursue careers in teaching, whether those are careers in Legal Writing or careers in more conventional doctrinal areas. In either case, however, faculty tend to be impressed with candidates with exceptional credentials. This often results in the positive consequence of more tenured faculty involvement with writing faculty and the writing program, and greater understanding among the doctrinal faculty of the importance of analysis, research, and writing.

We know, however, that traditional academic credentials do not necessarily indicate that a candidate will be a good teacher of Legal Writing. An excellent teacher of writing has to have superlative writing skills, must be an innovative classroom teacher, and must have potential as a scholar. Most of all, an excellent teacher of writing has a caring attitude towards students, an indefatigable sense of humor, lots of common sense, and a willingness to spend endless and often unrecognized hours conferencing with students and critiquing student work. This may or may not be the same person who comes to you with superlative academic credentials.

The second important decision you have to make in terms of hiring is to figure out how you are going to conduct the process. Obviously if the process is going to involve just your personal decision as the director, you want to really think this through. If the faculty as a whole is going to be involved in the decision, I think a preliminary screening interview is very useful. Faculty time is valuable, and you don't want to be in the very uncomfortable position of having to ask the faculty to take a look at a candidate who ends up giving a substandard presentation. It's very advisable to have at least two people conduct all screening interviews. We do use the AALS process to recruit full-time writing faculty. My own experience is that if you are conducting an interview yourself, you are too engaged in the conversation to really sit back and take an objective look at the person and how good a communicator he or she may be.

You should decide if you want a hiring recommendation to come from just you, or from an appointments committee. If it's coming from an appointments committee, should it be the standard appointments committee for your law school, or should there be a special Legal Writing appointments committee?

It is my recommendation that you do have some sort of committee involved in the process. The general rule in all institutions seems to be that committees are supported unless clearly erroneous. Thus, the recommendation is going to be accorded greater weight if it does comes from a committee.

Finally, who makes the final decision? At Chicago-Kent the full faculty votes on Legal Writing appointments, and I think that has been a positive model. Because the faculty have been involved in the decision, they feel invested in the success of the new writing faculty member and are much more likely to be effective mentors and colleagues for the writing faculty. But how is the faculty going to make this decision? Do you want them to simply act on the committee recommendation? Or do you want the candidate, like any other faculty candidate, to make a presentation? Again, if the candidate does make a presentation, it serves to impress the faculty with the intellectual capabilities of that person, and may lead someone to mentor the candidate in whatever areas of scholarship he or she is interested in. A plus is that your program gets some excellent public relations within your institution. Legal Writing faculty tend to be excellent communicators, tend to give very thoughtful, articulate and well-organized presentations, and often make a better showing than other candidates for "non-writing jobs."

Voting rights on these appointments is a very sensitive issue at a lot of schools. Legal Writing faculty at Chicago-Kent, with the exception of the director and associate director, are not allowed to vote. I am going to be proposing to the faculty this year that the writing faculty should be allowed to vote on writing faculty appointments. Certainly the input of other people who teach Legal Writing in the program is extraordinarily valuable in judging a candidate's qualifications, and it's unfair to ask the writing faculty to invest the time if they don't get any say in the final decision.

For those of you who direct adjunct-taught programs, locating adjuncts is quite a different matter. It is, to say the least, not feasible to conduct a national search, since most of us pay our adjuncts what could charitably be described as an honorarium. We have found that word-of-mouth is generally quite effective in recruiting adjuncts for our program's upper-level courses. Teaching writing as an adjunct is a lot of work for very little money, and you will inevitably have some turnover in your program. With twenty-six adjuncts in our program, we always do. Many adjuncts have enjoyed the experience and are happy to recommend replacements. Talk also with partners of law firms, talk with judges, and talk with persons in supervisory roles in government. Even if they are not interested in serving as adjuncts, they may be willing to recommend other attorneys in their departments or firms who are. A lot of judges are also frustrated at the quality of briefs and are happy to participate as an adjunct in the life of your institution.

A second technique that we have used to augment our adjunct faculty is to make use of the library reference staff to teach upper-level advanced research and writing courses. We have six double-degree people on our library staff at Chicago-Kent, and many of them have proven to be outstanding classroom teachers as well. Initially, they may need a little more support to gain confidence, but they've done a wonderful job. They're involved in the field of legal research, and their expertise is likely to be far, far greater than your own. It certainly is far greater than my own. Another way you can make use of library reference staff is to have them assist other adjuncts who might be teaching upper-level advocacy, drafting, or advanced research courses by presenting lectures on specialized topics. In all of our advanced research classes, for example, our library staff make presentations on legislative histories, the administrative process, state

administrative materials, and specialized reporters.

Third, involve law school alumni in the process. One thing that is demoralizing for many students is that many of them enjoy law school and like to think that they too could have a career in teaching at some point. Your upper-level writing classes, if you offer them, are a great place to give people a chance to teach. It's good for alumni relations and a good way to tell your students: "Yes, we do believe in you, and we will give you an opportunity to teach in our program."

Adjuncts work very long hours for little or no compensation, but you can offer adjuncts some support beyond monetary compensation. Student teaching assistants (TAs) might be offered. If your school has a network for e-mail, get remote access for the adjunct faculty members so that they know they will be able to control the times when they respond to student questions. A lot of busy partners in law firms are worried about having to answer questions all day, everyday. If they have e-mail, it's less of a problem. You can talk with both your WESTLAW and LEXIS representatives. Ours have been very helpful in arranging remote access for our adjunct faculty for use in their academic pursuits.

The final issue I'd like to address about hiring is diversity. I think we all have a commitment in diversity in hiring. Ideally, a law faculty ought to be as diverse as our student body and most of us have gone to great lengths to try to recruit minority faculty. We in Legal Writing don't have a hard time recruiting women. Many programs have had less success in recruiting minorities. It's a problem because there are diversity problems on the tenure-track level as well, and where there's an attractive tenure-track offer the Legal Writing offer is rarely going to win. Just a few suggestions on strategies that might help. First, tap your student organizations, such as BLSA, HALSA, and AALSA. All have contacts within the community in their area and might be able to submit some recommendations. Second, ask judges for assistance. Judges have large numbers of lawyers appear before them, and might be able to make some good recommendations. Third, contact the American Inns of Court. It's an organization I'll be happy to explain if you don't know about it. There are chapters growing all over the United States and they might be able to suggest some qualified minority applicants as well. Finally, and most importantly, to the extent you have minority faculty, do everything you can to support them and retain them.

Maureen Arrigo-Ward:

In the current job market, finding people to do the work is just not a problem. In fact, we often have the opposite problem. I almost dread having to put out the word that there's any kind of an opening, be it full-time or part-time, or even a potential opening, because we really get flooded with applications. Now this may not be the case for law schools that are not in large metropolitan areas. But it seems to me that a huge number of people out there want to teach. Some are unhappy in practice. Some like practice but want to teach instead.

Molly Warner Lien:

In terms of training, here is a checklist of things you ought to be thinking about. I'm sure that this group has a wealth of experience that would benefit all of us. First, make sure all writing faculty understand the structure of the Legal Writing program. This is relatively easy if there is only one Legal Writing course, but if you offer upper-level drafting, or advanced research, or appellate advocacy courses that are not being taught by your first-year faculty, make sure that every faculty member in the writing program knows what every other faculty member in the program is teaching. There is a tendency to want to teach all law within the confines of Legal Writing. It's a demanding enough job, so if somebody else is covering the material, make sure that people have an awareness of that fact. Second, if you are working with someone who has not taught writing before, it takes time to help them define the pedagogical goals of their course. Many faculty remember their own program. With history being what it is, that may not be the best model! Students have to start slowly, but new faculty have often overly ambitious goals. Remind them, as Ralph Brill used to remind me everyday when I started teaching Legal Writing, "They have to walk before they can run." Help new faculty to set manageable goals for students. Third, decide where you do or do not need uniformity in the program, and explain your policies and reasons to new faculty. Some people want to be micro-managers, and some people -- particularly if they have faculty teaching on one-year, non-renewable contracts -- almost have to be micro-managers. Your faculty morale likely will be better if faculty are permitted to use their own creativity, and design their own courses to the extent possible.

The question of uniformity impacts on a number of areas. Do you need uniformity as to text? Often you don't. There is such a wealth of wonderful material out there to teach Legal Writing from, we often wish we could each select ten Legal Writing texts, because it's so hard to choose. If you're comfortable, allow your faculty the freedom to choose an individual Legal Writing text that they like, or to design their own Legal Writing materials. That allows them to present the material in a way that is most comfortable for them. This may or may not work as well with legal research texts. If you have problems coordinating print and on-line research training, for example, you may have to have uniformity to meet scheduling demand. There are only so many computers, even in our building.

Additionally, first-year students have a heightened sense of fairness. They get very concerned about whether other sections are working less, or have a less demanding instructor. So to the extent you can have a guidelines on issues like the nature, length, due dates, and scope of assignments, it will reassure the students. Uniform due dates for returning papers to students generally help a lot. If some professors are very quick to turn back papers, they tend to get a quick positive response from their students on evaluations, yet the professors who takes a little longer may in truth may be doing a much more thorough job of critiquing papers.

Another thing that we have found has to be fairly uniform is the collaboration policy. It is a real hot topic among students. If professor A permits students to talk about an assignment among themselves, and to share research, and professor B says, "No you can't talk to anybody,"

students who aren't allowed to collaborate get upset. A closely related topic is conferences. Some teachers of Legal Writing feel that the best thing is for the student to work alone and then get a detailed and thoughtful critique back. Other faculty prefer a process-oriented approach in which they become involved in the writing of the assignment. Students who are not getting the daily hand-holding tend to feel a little bit put upon, so think about whether you want some uniformity along those lines.

I will leave grading largely to the panel tomorrow, but a curve or guideline for grades is an issue to address. I had an experience my first year as co-director of the Kent program where we had one faculty member who gave no one over a "C+," and another faculty member who gave 60 percent of the students "B+" or above. Since the students would have been justifiably upset at such a disparity, we instituted grade guidelines.

Another thing you have to do to help the new Legal Writing teacher is to clarify career goals. To earn the loyalty of the writing faculty, you've got to be loyal to them. That means viewing writing faculty as more than an exploitable resource. Your goal has got to be to respect the people with whom you work and to support their career plans, recognizing that their best instincts may well be served at an institution other than your own. The people we most want to support are those who have a career commitment to Legal Writing. Introduce them to the career possibilities. It's something we couldn't even talk about ten years ago, and wonderful that we can now. Get your law school to fund their attendance at the Legal Writing Institute and other conferences. At Legal Writing meetings, discuss some of the very debates we've been having here today. Let them know that it's a vital and growing field and that there's nothing more rewarding in legal education. Conversely, if you have other faculty who don't have a long-term career commitment to Legal Writing, but do have a commitment to law teaching, help them as well. Help them plan scholarship, and identify mentors within the institution for that faculty member. If their dream is to teach Contracts, then twist the arm of the Contracts professor. If necessary, ask the dean to twist the arm of the Contracts professor, but get some support for your faculty. If your school has a program of offering lunchtime colloquia on various topics, ask that your writing faculty be allowed to participate and encourage them to do so, so that they can grow as scholars, whether within or without the field of Legal Writing. Ask your library director to appoint a library liaison for each member of the writing faculty to support their research.

Hold a week-long orientation of some sort at the start of the year. I can only refer you to Maureen Arrigo-Ward's and Jan Levine's articles, which are wonderful and describe the things that can be discussed, but some topics are obvious: How do you teach analysis? How do you teach the structure of Legal Writing? What are our philosophies in grading? Let's all grade a sample paper together and have some idea what your norm is going to be. Make sure that the people are comfortable within the institution.

Finally, make sure that the dean and the associate dean meet with the writing faculty. If there's a dean of faculty development, make sure she or he does the same thing. Make sure they understand the building procedures, the FAX, the mail, what to do if they have to get into their

office at 5:00 in the morning. Since writing faculty inevitably do double duty as student advisors, let them know what resources are there for their students. Have your writing faculty meet with Career Services. If you have a dean of students, what does she or he do in terms of counseling? Is there a substance abuse program for students? Are there special services for students with disabilities? Make sure your writing faculty are fully informed about the honor code of the law school and what their responsibilities are with respect to honor code violations.

Maureen Arrigo-Ward:

Over the course of my time in this field, issues around hiring and training and supervising have changed. When I started -- it was eleven years ago, I was out of law school about a year and a half, as was the other person hired to teach with me -- and we needed a very different kind of supervision. Back then, we were pretty typical of the sorts of people being hired. Not a lot of time in practice, but good law school background and presumably what appeared to be teaching potential, good personality, etc. We hadn't necessarily attended Harvard or Yale, but we'd done well in the schools we attended.

Nowadays, we're able to get people who have much stronger academic credentials and several years of practical experience, and it is not uncommon to have applicants with experience teaching in another Legal Writing program. It has really changed the dynamics of training. You need to consider separately each new professor's individual training requirements, rather than necessarily saying, "Okay, we're going to have a training program and you're all going to get the same training." Similarly, supervision needs to be different, depending on the person's background. Supervision is also different depending upon whether the professor will be in the institution for just a year or two as opposed to three or four, which is now our situation. We have phenomenally well-qualified and talented people who are staying three or four years. So even my own ideas about training and supervision are somewhat in flux.

It's much easier to do these things if you have some status and credibility. Those of us fortunate enough (and I am not one of them) to be a tenure track -- or better yet, tenured -- are in a much better position to politic for our staff. Those of us who are on long-term contracts have some ability to do that but as a "security of employment" faculty member you are neither fish nor fowl. It can be more difficult to fight political battles because you don't really have a constituency. I think to the extent that our own status is not yet where it ought to be, that's important not just for us, not because it's self-serving, but because without it we can't do the things we need to do for the people who work with us.

Molly Warner Lien:

I just had a couple of items under the title of "ideas and things that have worked for us on supervising writing faculty." As I said, this section can be real short if you've hired well and trained well. When I became director two years ago, I had absolutely no experience managing people other than my two sons. It took a lot of thought to try to get comfortable with a

management style. You may have resources in your building that can help you with this. Your Career Services office may well offer the Myers-Briggs Assessment to students, and I think it's a good thing for you and for your writing faculty to take advantage of. There are some other tests you can take. The Colby Conative Index is a way of learning about yourself and what you are and are not comfortable doing as a manager. Recognize that occasionally you'll have to do things that you're not comfortable with. For example, an E.N. is extraverted and intuitive -- as opposed to introverted, and sensing. The E.N.'s first response to any management issue with faculty is going to be trying to motivate that person by making them feel good about themselves and life in general. If that doesn't work, the next thing is obviously to go the person, present the facts, and try to work through a solution together. Just recognize that an E.N. will resist the latter.

Make your expectations very clear to the faculty. How many days a week should people be in the building? How many hours a week do you think is the minimum for people to be available for conferences? If your entire faculty is hooked up to an e-mail network, do you expect them to respond to student questions within a certain period? Let people know what your expectations are. In her article, Maureen suggested weekly meetings. How often is up to you, but regular meetings throughout the course of the year can be very helpful, particularly if you're trying something new in your curriculum. If it's not working, you want to be able to get some feedback from your faculty in time to make changes.

Do not be afraid to delegate authority. If you are the director of a large program, ask the administration to name an associate director to the program. This will double the depth of experience. I could not direct the Chicago-Kent program without Suzanne Ehrenberg -- who'll be talking to you tomorrow. She's very involved at every level in designing the first-year curriculum, preparing master syllabi, and has complete authority and autonomy over the entire legal drafting program. If your program is expanded beyond the first-year course, you really need someone like Suzanne. If you have other members of your writing faculty who have particular expertise, put them in charge of training of the writing faculty. If you have someone who's an expert at teaching English as a second language, or remedial English, designate them as a writing specialist. Likewise if you have people who have contributed specially, recognize those contributions and use those talents. If you have somebody who's got great expertise in appellate advocacy, make that person's contributions known within the institution. You might be able to get them appointed Director of Appellate Advocacy, with additional benefits in terms of salary and job security.

If you are adding to the curriculum or changing it, get the input from the people who are going to do the work. Try to arrive at a decision by consensus, but recognize that in the end you have to go with your own decision. Most important: be there to defend and protect the writing faculty. Whether it's a problem with an abusive student, a colleague of yours who is being particularly insensitive to a writing faculty member, a problem getting a health insurance claim: be there. You're the only person that your faculty have. Finally, one thing none of us do enough, and I am guilty of this: thank them. Thank them everyday for the great job they are doing, and go home and thank God you have them, because there are some wonderful people who teach with

all of us.

Summary of discussion following the fourth plenary session, in which the group responded to the issues raised by Professors Lien and Arrigo-Ward:

One director presented a summary of a different model of directing, in which the Legal Writing faculty made a conscious choice to present as non-uniform a picture as possible, in order to make the Legal Writing courses and program appear to the students to be much like the school's doctrinal courses. Even the syllabi and fonts used for course materials were different. Only the final due dates for an assignment linked to a moot court program were uniform. The students stopped expecting the courses to be the same as soon as the courses were intentionally made different. The director also did most of the directing behind the scenes, and tried to make the Legal Writing faculty as autonomous as possible in relationships with the administration of the law school.

Another director talked about how important it is for a Legal Writing teacher to act as much as possible like the other members of the faculty, which results in being accepted as a member of the faculty. Her program indirectly benefited from this behavior. The director also tried to connect Legal Writing teachers with specific friendly members of the doctrinal faculty in order to promote social contact and acceptance of the Legal Writing faculty as peers.

Several directors discussed the perceived need to be more structured with adjunct-based programs, and the difficulties of having a consistent directorial style with programs using mixed faculty (such as full-time teachers and adjuncts). One director pointed out how important it was to limit class size, particularly in adjunct-based programs.

Plenary Session #5: IMPLEMENTING CURRICULAR CHANGE
Aviva Kaiser (University of Wisconsin Law School), Lucia Silecchia (Catholic University of America School of Law), and Ruth Vance (Valparaiso University School of Law)

Ruth Vance:

On our panel today we have Aviva Kaiser from the University of Wisconsin, Lucia Silecchia from Catholic University, and myself. I am Ruth Vance from Valparaiso University. We each have something a little different to share with you. A lot of us are either going through or have gone through curricular changes at our schools, and so we hope that this can be a time to share our experiences. Aviva is going to begin by telling you about factors she deemed important when she proposed changes in Wisconsin's Legal Writing Program. Then I am going to tell you about my experience in changing the curriculum at Valparaiso. Lucia has done a survey on curricular reform that she is going to share with you to wrap up the topic. Her survey is the basis of a forthcoming article. So, let us begin with Aviva.

Aviva Kaiser:

Thank you, Ruth. I will identify and discuss three dimensions of curricular change. The first dimension is deciding what changes, if any, are needed. The second dimension is obtaining approval for the changes, and the third dimension is implementing the changes in the classroom.

First, how do you decide what changes, if any, are needed? Begin by writing down your goals and objectives, and your methods for achieving each of the goals and objectives. This is a time for you to identify the skills and values that you believe should be taught in your program. Be specific about what you want to accomplish and how you plan to accomplish it. For example, do not just say, "I need more credits." More credits will not necessarily give your students more time to do their work, and more credits may not give your Legal Writing faculty more time to grade assignments.

As you contemplate change, constantly remind yourself that your program is only one part of the law school experience. Legal Writing professionals tend to think that we can accomplish everything, or that any deficiencies in legal education can and should be corrected by Legal Writing. For example, we often struggle to incorporate into our Legal Writing curriculum such important topics as ethics, sensitivity to diversity, and new technologies. Remember there are other courses! You may want to survey the upper-level courses at your law school to determine what skills and values are taught in those courses. For example, new technologies, such as Folio Views, may be incorporated into seminars; or advanced research techniques may be taught in a tax, antitrust or business organizations course. You may also want to determine what percentage

of your students participate in externships, and in live client or simulated clinics.

Consider the impact of the changes on the rest of your law school's curriculum, and on activities such as moot court and law review. Be mindful of student overload. For example, in the first semester of law school, our students have sixteen credit hours of doctrinal courses which are numerically graded, and one credit of Legal Research and Writing, which is letter graded. This doctrinal courseload impacts dramatically on what I can reasonably expect students to accomplish in Legal Research and Writing.

Moreover, consider other constraints on your programs, such as budget, credit hours and staff. Certain kinds of curriculum may require a particular staffing model. For example, Legal Writing programs which are related to substantive courses may work best with full time Legal Writing professionals. A curriculum which has a number of small assignments with a fast turnaround time may not work well with adjuncts, especially if the class size is larger than ten or twelve students. Keep in mind your role as the director and what other jobs you have to do. Consider how much training, supervision, and administrative work the changes will require.

When I began to plan curricular change, I wrote down my goals, objectives and methods. I then reviewed the literature and spoke with approximately forty directors. I surveyed our upper-level courses. I sent a questionnaire to lawyers in our community to determine if an adjunct model would be feasible. I then revised my goals, objectives and methods. I sketched out several program models, and tested those models against my goals, objectives and methods. I tested those models against the constraints: budget, credit hours, and potential staffing. I discussed the ideas informally with several members of our faculty. I selected the model that best suited our law school. Only then was I prepared to take that model to the Legal Research and Writing committee for approval.

The second dimension is obtaining approval for the changes, if necessary. Not all changes will require committee or faculty approval. For example, when I became director, our students wrote a canned memo and rewrote it; a research memo, which was also rewritten; and an appellate brief, which was, again, also rewritten, all in one semester. I substituted a trial court brief for the appellate court brief, without committee or faculty approval. The literature suggested that persuasive writing could be taught more effectively through a trial court brief, especially because "standard of review" is a difficult concept for students to understand and it is usually not taught in other courses during the first year. Mastering the formalities of an appellate court brief is quite time consuming, and reduces the time students can spend mastering persuasive writing. Moreover, during their summer clerkships, most students write trial court briefs. Before making the change, I met with the faculty advisor to moot court and the moot court board. I explained the reasons for the change and offered to hold workshops in appellate brief writing. The change was implemented without objection. Two wonderful byproducts occurred. First, the moot court board and I have developed a close working relationship which helps us coordinate our two programs. Second, a well-respected member of the faculty became more knowledgeable about our program.

There will be times, however, that you will need or want committee or faculty approval. When you take your changes to a committee, be well-prepared, but do not be a naysayer. Come with your research and models in hand, but also try to work with the ideas suggested by others. Even if the idea will not work, discuss with the faculty member the concerns that prompted the idea -- poor seminar papers, a particular research deficiency or other problems with students' work product. Cooperating with the faculty and building partnerships will strengthen your program. For example, rather than expand our basic legal research instruction, our instructional services librarian and our government documents librarian will provide, if requested, advanced research instruction for upper-level seminars such as antitrust and tax. I will provide Legal Writing instruction for those seminars, if requested. This result addressed the concerns of the faculty and maintained an appropriate level of research instruction for the first-year course.

After you have obtained the necessary approval for the changes, you are now ready to implement them (the third dimension of curricular change). The work you did to decide what changes were needed and to obtain approval for those changes will put you well on your way to implementing those changes in the classroom. Your review of the literature and your discussions with other program directors will be especially helpful. To implement the changes, you will need to develop course materials, and hire, train, and supervise your teachers.

Begin by planning what materials you will need to develop. The nature of the materials will often depend on your staffing model and the experience of your teachers. For example, because my teachers are adjuncts, I prepare a detailed uniform syllabus. I also prepare a substantial teacher's manual which includes supplementary readings and sample lesson plans. My two half-time program assistants and I develop all nine of the hypotheticals used each year. The teachers are given a copy of the cases, and a memo which thoroughly discusses the hypothetical.

Before you begin the hiring process, decide what characteristics you would like your teachers to possess. These characteristics should be consistent with your program philosophy and goals. Determine what questions you will ask during the interview so that each applicant is asked the same questions. Select and prepare a sample student paper for the applicants to critique.

At the same time, plan what training your teachers will need to accomplish your goals and objectives. Beyond an introduction to your law school, specific course content, commenting, grading and evaluating, and conferencing, are there other topics which would help your teachers be more effective? Should you include such topics as learning theory, rhetoric theory, and coaching theory? Consider how you will accomplish each aspect of the training -- individual sessions, group meetings, or written materials. Discuss your training plans with each applicant. After you hire your teachers, you may need to modify your training plans.

Also decide how you will supervise your teachers. Explain your methods of supervision to each applicant. I visit each teacher's class at least once during the semester. I ask each teacher to give me, for each assignment, a copy of the best paper, a middle paper, and the worst paper. I am able to review the sufficiency of the comments on the papers, as well as the consistency

among sections. I also ask each teacher to give me, for each assignment, the distribution of grades. I then prepare a chart with the distribution of grades for all sections and distribute it to the teachers. The teachers really appreciate this information, especially because I do not have a required curve.

Planning and implementing curricular change is multi-dimensional. While it is exciting and rewarding, it can appear overwhelming. Preparing a plan and drafting a timetable for the changes can make the process manageable.

Ruth Vance:

Thank you, Aviva. Implementing curricular change can be a two-edged sword. You may create a better program for your school, but you will almost certainly create more work for yourself. And, if the school is not ready to properly fund it, you may be doing all of that extra work without any extra compensation or additional personnel. On the other hand, you can establish credibility by building a quality program that will earn you more respect. So, you must carefully weigh the advantages and disadvantages of the program before you propose it.

After the Legal Writing faculty agreed on two proposals, we presented them to the Curriculum Committee. I found that phrasing the proposal in terms of what the students need and what will sell to prospective students was persuasive with the faculty. Telling the faculty that you are overburdened sounds like whining.

I've been at Valparaiso for ten years, and I have made proposals for reform that were unsuccessful in the past. The timing of the proposal was crucial. I believe that a special set of circumstances was present that made our more recent proposal acceptable. At Valparaiso, credits became available because of the recent semesterization of first-year courses. Instead of the traditional first-year courses being taught over the entire year, they were condensed into semester-long courses. In the process, some courses became worth fewer credits.

Also significant was the professors' new burden of teaching a second-year Legal Writing component, in addition to teaching a third-year seminar. It was not long after we established the second-year Legal Writing requirement (more on this later) that the faculty realized how difficult and burdensome teaching Legal Writing can be. Most of the faculty were anxious to be rid of responsibility for the second-year Legal Writing requirement.

To make acceptance of the proposal more likely, we drafted it so as to have minimal impact on the budget. Then, we gained individual faculty members' support so that they would speak in favor of it at the meetings. Faculty were willing to support the proposal because its passage would allow them to escape teaching the second-year Legal Writing requirement, which was the result of my earlier attempt to improve the Legal Writing curriculum.

Several years ago, at my request, the dean appointed an *ad hoc* committee to study the

Legal Writing program and recommend changes. The committee, which included the Legal Writing faculty, came up with a "pie-in-the-sky" proposal that would never stand a chance of passing because it was too expensive. Although the faculty always agreed that the students did not write enough, they had not been willing to hire the additional personnel necessary for a comprehensive program.

Through the political process, the proposal got watered down to a one-credit, second-year Legal Writing requirement where each member of the faculty was required to supervise approximately ten students in a writing experience. We established standards, such as page length and a mandatory re-write, with the goal of consistency among professors. The stimuli for approving this seemed to be that no budget increases were needed and that it might impress our site evaluators, who were due for a visit in the near future. Reluctantly, I supported the proposal, but offered my opinion that it was a band-aid approach. At that point, our program consisted of two credits of Legal Writing, Reasoning, and Research in the fall of the first year; two credits of Appellate Advocacy in the spring of the first year; one credit for the new Legal Writing requirement during the second year; and two credits for a third-year seminar.

In retrospect, the second-year writing requirement was a good experience for the faculty because they got a taste of what it was like to teach Legal Writing to ten students. Many professors became frustrated because they did not know how to label students' writing problems or how to help them to write more effectively, despite being gifted writers themselves. This proved to be a time of consciousness raising regarding the value and contribution of the Legal Writing professors.

More recently, the Legal Writing faculty decided to make another proposal using a different strategy. Rather than requesting the dean to appoint a special committee, we formulated our own proposal and presented it to the curriculum committee. We decided to propose reform that had a chance of being accepted without major tinkering by the faculty. This meant foregoing the ideal program in favor of a realistic program that could be implemented with minimal budgetary impact.

Our proposal expanded the first-year program from two to three semesters. To do this, we enlisted the assistance of five of our librarians to team-teach a two-credit course in the first semester called Legal Research and Introduction to Legal Writing. This format enabled us to switch from "hunt and find" research exercises to more contextual and process-oriented exercises that require writing paragraphs. It also allowed more time to teach computer-assisted legal research. The Legal Writing faculty introduce case briefing and two legal analysis assignments that form a foundation for teaching the objective office memo during the second semester.

The second semester consists of a three-credit course in Legal Writing, Reasoning, and Research taught by the Legal Writing faculty. This semester includes a closed office memo, an open office memo, a closed trial brief, and an open trial brief with an oral argument. The additional time allows us to do résumé, cover letter, complaint, opinion letter, and negotiation

assignments.

The third semester is the traditional two-credit Appellate Advocacy course taught by the Legal Writing faculty. This format allows us to refine persuasive writing techniques and choose more complex problems.

A fourth-semester requirement will be phased in when we have enough faculty to offer class sections limited to sixteen students. During the fourth semester, students will make a choice among Advanced Legal Writing, Advanced Legal Research, and Civil or Criminal Advanced Appellate Advocacy (all of these are taught by full-time faculty), and drafting courses in substantive areas of the law (that are taught by adjuncts). The fifth- or sixth-semester requirement is the traditional seminar.

This proposal consisted of eleven required credits, an increase of four credits. Of course, this proposal required credits to be available in the curriculum. As I stated earlier, timing was crucial. The approval of a semesterized curriculum in the first-year freed up the necessary credits. The curriculum committee decided to have an open forum on the proposal where anyone, including students and faculty, could voice his or her opinion. At the forum, I introduced the proposal and used the MacCrate Report to support the expansion of the program as necessary to expose the students to the vital skills of lawyering. This turned out to be a good strategy because it allowed people to express their opinions and eliminated the surprise factor as a reason to oppose change.

As Aviva said, it is wise to have answers to all the possible questions the committee and faculty-at-large will have about the proposal. We prepared a cost-benefit analysis to answer the concerns of the fiscally conservative. We proposed how it could be staffed at the lowest cost. We checked to see if good adjuncts would be available to teach the drafting courses. Our faculty tends to micro-manage, but when we had the answers to all of their questions, they approved our program as proposed.

We began implementing the program the fall of 1994. After we go through a full cycle, it will be evaluated. Although we projected the costs, the faculty approved the program without mandating the funds to support it because they saw funding as being in the dean's jurisdiction. The only area that has had a problem with sufficient funding is TA salaries. We use student TAs to break the large classes into small groups for individual attention. With the expansion of the program to three semesters, we needed to have a second group of TAs for the Appellate Advocacy course. This has put a squeeze on the budget for TA salaries, even though the students have the option of receiving up to four credits for two semesters, instead of salary. We do not have the union problem that Wisconsin had; our TA salaries are only $1,000 per semester. Fortunately, I think that we will survive this problem.

In summary, be aware that implementing curricular change is a political process. You must be willing to enter that process, continue to negotiate for funds to support any reform, and

take on more work that may not be fully compensated. Our Legal Writing faculty and librarians were willing to do that, and I believe that our program is doing what it was designed to do: approach writing as a step-by-step process, give students exposure to more types of legal documents, and immerse students in the writing process for all three years of law school.

Lucia Silecchia:

Some of my perspectives on these questions come from serving for two years as the assistant director of the Lawyering Skills Program at Catholic University. They also come from my experience this past year working on curricular development in our environmental law courses. I'm also on our curriculum committee which is now undertaking a review of the Legal Writing opportunities at the law school, particularly those for upper- level students. The fourth source from which I've gathered a lot of information and insights about curricular reform has been from all of you. In January 1995, I surveyed Legal Writing directors about the scope of coverage for first-year Legal Writing classes. The results of that study, which I will share with you today, gave me a lot of valuable insights on these complex curricular questions.

As we've already heard, before you do your curricular reform, you have to think about your goals. One of the fundamental questions a lot of programs are asking themselves now is "should the first-year program be a research and writing course, or should it be a broad-based skills course?" I think the answer to that question is going to be very different for different schools given the variables at every school.

My survey highlighted some important statistics regarding curriculum reform. Please keep in mind that these are preliminary statistics; I am working on an article that will include all the final results. Since 1990, only five years, seventy-eight directors had instituted curricular reform; only twenty-five said that they hadn't. It seems clear that in this area, the curriculum changes a lot more frequently than in most others. In addition, twenty-eight directors are planning curricular change, while forty-one are not. Among those who haven't made changes, there is still a significant group of people thinking about them. One of the things that surprised me was that fifty-four respondents said that the MacCrate Report had no impact on their curricular reform, forty-eight said it had some influence, and only three said it had a significant impact. This is an interesting insight into the role of external pressure on curricular issues in law schools. Finally, the survey revealed attitudes toward change. I asked directors, "In an ideal world, if you could add whatever you wanted in expanding your program, what would you like to do?" Out of 110 responses, the majority said more writing time, eighteen said more research time, and another thirty-four favored expanding the broad base of skills.

These statistics show that we are talking about a curriculum that is subject to a lot of change. One of the advantages of being in an area of the curriculum that changes is that we can respond to changing needs. But keep in mind some of the downsides of frequent curricular change: it can create the impression that the program is inconsistent, or that it's a perpetual experiment. If you're the one who is reforming curriculum, you're going to be the one who runs

the risk -- as everybody does when they are making a change -- of having a disaster on your hands every now and then. Reform can result in your having a very high profile.

I am distributing a list of twenty questions to think about when you consider making curricular changes. These are twenty generic things that no matter where you are, you might want to consider. There are just a couple of highlights on this list that I'd like to mention. First, review the literature in the field before you do your curricular innovation. There's a lot of scholarship in Legal Writing that goes directly to teaching methodology and curricular development. Many legal educators are uninformed about Legal Writing programs because they have changed a great deal fairly recently. Survey the literature and educate your colleagues. That's also one of the ways we can help each other. Through the scholarship we do, we can let each other know what our thoughts are on the issues all schools face.

Another issue to consider is how the reforms expand the scope of coverage in the first-year skills classes. Very few programs scale back. Most changes add to a program, making it even more ambitious. Be sure to consider: At what point does increasing the skills coverage reach a saturation point? How much can be loaded into the first year? At what point does it become counter-productive? Also, consider whether your first-year program is getting so ambitious that it takes the focus away from research and writing. For example, I think professional responsibility should be taught in every first-year course. If you take that on as part of your research and writing class, you reduce the amount of time you have to teach research and writing effectively. So be very careful as you take more things into your first-year program.

Another issue to consider is the degree of uniformity among sections that your reform requires. Decide whether the reform will require uniformity among your instructors and whether that is good or bad. Also, consider all the ripple effects -- obvious and non-obvious -- that your curricular reform should have. A lot of these are not things that would be intuitive, but for every change that you are planning, try to predict every possible person in your law school that it might affect. Does moving LEXIS training to the spring mean that your career service office can't use that to help students with job searches? Does adding a research component in the spring affect your library staff? Does expanding your program to three semesters mean that those who teach a popular upper-division elective are going to have their class enrollments go down? Think about a lot of those ripple effects and try to speak with all those people before you actually put your proposals together.

Finally, critique every change that you're thinking about. Every change that we've thought about has its plus sides, but there are very few of them that are really 100 percent positive. There's always a downside to any change. If you're interested in a proposal, mention in on the internet discussion listserv. Ask other directors, "Do you see any problems? Anything I should be aware of? Have you tried this and run into some blind spot that I'm not thinking about?" That might be a way to get some informal but informed outside perspectives on your ideas.

At Catholic, we had a major curricular reform in 1990 that went through the formal

process of consulting the curriculum committee, undergoing faculty review, changing the program, increasing credit hours, changing scope of coverage, and adding a one-week orientation program. That was our last formal type of curricular reform. We've also had two other things happen. First, we've had administrative reforms, which have increased the staffing size, and severed the program's formal ties with the Moot Court program. We also have a lot of changes coming from the instructors themselves, because we have full-time professional instructors. They are the ones in the best position to fine tune, re-order, and develop the course quality. There are many ways to implement curriculum reform. Think about what you want to change and which of those ways might be most positive. And, welcome the opportunity to be in such a creative field!

After this session, the directors discussed a number of issues raised by Professors Kaiser, Vance, and Silecchia:

Several directors noted the importance of involving the entire faculty in Legal Writing curriculum reform. Some schools were able to implement changes as part of a school-wide reform effort. When the entire school is looking at reform, it is much easier to change the Legal Writing program. However, one director cautioned against taking on additional responsibilities without additional staffing.

On a related topic, directors encouraged involving the Legal Writing staff in curricular reform. Some schools had Legal Writing teachers on the curriculum committee. This makes Legal Writing more visible to the rest of the faculty and guards against assaults on programs by well-meaning but uninformed colleagues.

Directors noted that lots of schools have made changes to their programs in the past five years. There are many directors who can offer advice as to just about any anticipated change. Directors were encouraged to contact colleagues across the country to learn of their experiences. Gathering information from other schools is also helpful in convincing other faculty of the wisdom of proposed changes.

Several directors discussed the importance of considering other changes to Legal Writing. For example, several directors felt all program directors should incorporate professional responsibilities issues into their curriculum. In addition, others suggested that we need to consider the kind of writing that our students will be doing in practice -- and not limit coverage to traditional litigation documents.

Plenary Session #6: INTRASCHOOL AND EXTERNAL PUBLIC RELATIONS FOR LEGAL WRITING PROGRAMS

Ralph L. Brill (Chicago-Kent College of Law),
Bari Burke (University of Montana School of Law), and
Carol Parker (University of Tennessee College of Law)

Ralph Brill:

This panel is Bari Burke, Carol Parker, and, well, I think you know who I am. (They've let me go first because I'm the oldest.) A lot of the things that we're going to say I'm sure have been said over the last two days by responses from the audience and in remarks from people on the panels. My own two themes are (1) blow your own horn, because no one else is going to do it for you; and (2) probably more importantly, get all the allies you can. I'm going to talk about some ways of trying to get allies first.

There are a number of possible allies for Legal Writing programs. First, let's talk about the admissions office. As you all know, admissions are now declining. The O.J. trial and the other publicized trials have had their negative effects, and applications are fairly dramatically falling off this year. So admissions officers are going to be in a position they were in ten or fifteen years ago, when applications for admission started to fall off. They need all the help they can get in their recruiting prospective students.

There are a number of things you can do to help them; in which case, they will become allies. You've all been deluged with Chicago-Kent's brochures. I apologize for that but, as you know, we make brochures -- and fairly slick ones at that. You can do the same. They don't have to be an expensive item. A brochure that describes your program and emphasizes the strengths of the program is a very effective device for admissions offices to send out to prospective students. Chicago-Kent was very fortunate a number of years ago, when I was still director of the program. George Gopen wrote an article about the state of Legal Writing programs,[1] and he was nice enough to include about three or four pages about the Kent program. More people have read that article in the United States than any other, because our admissions office made multiple reprints of it, with his permission, and the permission of the Michigan Law Review, and sent it out to all of our prospective students. It was our first brochure on Legal Writing and, as you know, we've developed our own since.

Second, our admissions department holds receptions for prospective students or for those who have been admitted, but haven't made up their minds. A number of our Legal Writing faculty

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[1] George D. Gopen, *The State of Legal Writing: Res Ipsa Loquitur*, 86 MICH. L. REV. 333 (1987).

volunteer to participate by giving sample classes or by discussing with the prospective students the strengths of our program. And that is an important asset for the admissions office: the personal contact between faculty and prospective students.

Something else you can do is volunteer, or have some of your staff volunteer, to read some of the writing samples of the applicants, especially the close cases, to evaluate the writing portion of the admissions application and give your opinion on the strengths and weaknesses of those candidates. If you have the time, you can address pre-law groups at your undergraduate school or others in the area, or, if the dean is willing to send you out on trips, to talk to groups in other parts of the country.

The Pre-Law Handbook! I would venture to say that most of you have never read the Pre-Law Handbook, that is, the portion dealing with your own school. It's usually written by the dean or somebody in the dean's office. Very few of the faculty, let alone Legal Writing directors, have ever read what's in that book unless they read it when they were prospective students. What the material on your school does of course is list the statistics about the school, but it is also written as a public relations piece. There is a section devoted to skills training, for example. It would be a very good idea for you to get a copy of the Pre-Law Handbook, to see what your school has written about your program and to offer suggestions for improving the description to emphasize the strengths of your program. That would be a very valuable thing for you to do for admissions.

Another potential ally is the Placement office. The Legal Writing brochure I mentioned before likewise serves a purpose there because it is sent out, not just to prospective students, but to prospective employers. It is very important for them to know about skills training. They are very interested in that aspect of legal education, as you know. Even if your colleagues are not, they are, in this market especially. If you have a good program, the strengths of the program can be conveyed to law firms.

You can aid placement directors by recommending students who have a special strength in research and writing. These are students they really should try to place as law clerks for judges or in key firms. But also offer to give recommendation or honest evaluations of other candidates. It doesn't do the school any good, frankly, if it places a student with a law firm or other job in which they really won't perform very well. Law firms tend to evaluate your school by the limited performance of one or two representative graduates. They stigmatize the school by their experience with your graduates. If it turns out to be a bad experience because, for example, your grads lack research and writing skills, the firm may not come back for interviews in later years. So you are doing a school a favor, frankly, by screening out people as well as screening in people, by giving honest evaluations on candidates for jobs at places where you would like to get future hires.

Similarly, if you can arrange it, you might want to meet with law firms to see what they think their needs are for skills of new associates. This is one of the things you can use for dean feedback, i.e., what the law firms are telling you, if you can arrange meetings with hiring

partners.

As a further aid to placement, you can offer the students a service of helping them polish their writing samples. As you know, writing samples are so important today in placement. At many schools, where you don't have re-writes, an applicant who turns in a first-draft -- even a good one -- surely is not as likely to do as well as one able to turn in a polished rewrite. If you have time or if your staff has time for certain students, offer them the help in polishing their writing samples.

If you use adjuncts in your program in any way, adjuncts are an incredible source for placement support. They have a stake in your institutions. They are your teachers. They know the strengths and weaknesses of your program, so they should be able to be used in the placement setting as well. I think too few schools take advantage of that aspect of adjunct teaching. They let them teach the classes for little pay, but they don't really use them in the positive way of getting back to their firms and to other firms.

Of course, faculty are key players to make allies. I'm sure most of you use faculty members in things like Moot Court competitions. The faculty have always loved that aspect of your program. They feel they have a stake in your program; they see your best students; they perhaps see your best writing samples. But you can use them in other ways to try to get them to have a stake in your program, with some care. For example, if you have an assignment in a doctrinal area that somebody else is teaching, you can ask the doctrinal teacher for advice on the problem, and whether it needs further facts or refinements, things of that sort. One little device that I've used was to assign a problem in an area in which one of my colleagues has written an article. That means that all the students on that problem will have to read the article. So you play to their egos. Everybody wants their articles read and this way assures at least somebody will read it, unlike most of their articles.

Use problems to supplement doctrinal teachers' courses. In today's world, where so many doctrinal courses have been cut down, -- at my school, for example, Torts is now a four-hour course instead of a six-hour course -- there are lots of subjects that we just cannot cover. And so, for example, our director, Molly Lien, has required that the first closed memo assignment cover an area that the Torts teachers are not teaching, intentional infliction of mental distress, in this case. It is something that the Torts teachers do not have to cover in class and yet they know and are happy that the students will cover it. There are lots of other areas of that kind, in Torts, Property, and Contracts, and again the doctrinal teachers can feel that something is being accomplished through your course that helps their courses. They can feel that the students are learning more about Torts or Contracts or Property in your course and that will help the students in their courses.

Arrange meetings with faculty teaching first-year courses, or other faculty. First, you are professional teachers and you are obviously interested in gaining skills and learning about teaching methods. You can arrange seminars in which teaching methods and career development are

discussed, inviting a selected faculty member or two or three to come in and talk about teaching methods or career development. And again, they feel like they have a stake in helping you with your program, with your skills and you personally. Or arrange meetings with first-year course faculty. You are counselors. You and your staff are counselors to students in a much more dramatic way than anybody else. You deal one-one-one with students. And lots of their problems center around what the other classes are doing, what they are doing in their doctrinal classes.

It's amazing to me, and it always has been, how little we know about what other teachers are doing in their classes. I don't even know what some of my colleagues are doing in other sections of Torts, only by hearsay from what the students tell me. So, if you arrange a meeting, you tell the dean and other faculty that you think it's important for you to serve your counseling role, which all Legal Writing instructors do, that you be aware what other teachers are doing in their classes -- i.e., what their coverage is, what their philosophy is, what their methodology is. At the same time, of course, you share with them what you are doing in Legal Writing. It may be very surprising to them to hear what you are doing in Legal Writing. Recently, we had a candidate for a Legal Writing teaching job who gave a presentation on syllogisms and legal reasoning. Some of my colleagues were shocked that we taught that in Legal Writing. The rest of the faculty don't even know what you do in the course. They often think it's pure grammar, spelling, subject/verb agreement, and all that good stuff. So it's important to give them the feedback on what you are doing as well, to explain what kinds of assignments you give, what the methodology is, and it will be amazing sometimes how their eyes are opened.

You may be able to do some other little things, like offering to read faculty members' articles, rough drafts, and make comments on them. Obviously, you have to use a little discretion -- you don't want to chop apart their articles too badly. But you can offer to check it for some stylistic things and citation form.

Invite yourself to lunch with faculty members, and by all means, if you are allowed to, go to faculty meetings. Speak up. I've always been amazed that Legal Writing people sometimes just sit there quietly. You have a different perspective, especially because you are so close to the students and you know what the students problems are much more than the doctrinal course teachers do. You can offer that perspective, as well as the perspective of your own experience. Lots of times, your staff are recent graduates; they can offer the perspective of recent law school graduates and they can offer insights to the faculty on matters they are discussing. At the same time, by interacting, you can gain some sort of insight as to who's hostile to your program and who's friendly to your program. Who the good guys are and who the bad guys are. Then, try to arrange lunches with the good ones or try to overcome the bad ones.

Students, of course, are natural potential allies. If there are complaints, you have the ability to channel those to other people, saying "The students are all up in arms about this kind of thing and they don't think the program is succeeding." On the other hand, if the students are satisfied with your program, if they are very happy with things about it, then make sure that these students get invited to pre-law conferences or admissions receptions, so they can talk up your

program and not just the other aspects of the school. Try to see that these students get invited to alumni affairs, as well.

Use student evaluations creatively. First, the evaluations you receive in your course typically are taken at the wrong time. They are usually distributed toward the end of the semester, before all the grades are in, at a time when many of the students are unhappy with you or your staff. The questionnaires should be taken, I think, after the semester, when grades are in.

I suggest that you also suggest to the administration that they do an evaluation of all the seniors as they are about to graduate. These would evaluate the graduates' entire law school experience. Their perspective is so much different at that point. They have worked probably at least in the summers, and possibly in part-time employment in their second and third years. They are no longer close to the first-year course. They are no longer suffering the slings and arrows of Legal Writing. They can see the goods and bads of the program from a different perspective. They know how helpful their training has been in their summer employment or how unhelpful it's been, if that's the problem. And they can give a much more objective evaluation of that experience, with their added maturity and experience.

My own anecdote is about a teacher that I had in law school that we all hated. But later on, we all adored him. That is, we thought he was the best teacher we had because we finally understood what he was trying to accomplish. So hindsight is 20/20, but when you're actually going through it, it's not; it's cloudy.

Alumni are an incredible source that are overlooked by most Legal Writing directors and staffs. The evaluation form that I suggested for seniors can also be used to poll alums. You can talk the dean into sending out an evaluation form to all recent alums -- within the last three or four years -- evaluating from that perspective, now that they've been out that long, what was good or bad about their law school experience? Did it train them well for their careers? The Garth and Martin study did something similar to that.[2]

If these alums say good things about your program, of course you can publicize all those and say, "See how well we train them"; if they say bad things about your program, you can publicize those and say, "Look how bad this is; I've been telling you this all along. This is what we need from the perspective of our recent graduates, the ones who are in the field and they are telling us that this was the most important skill, and they didn't get enough of it, and it wasn't adequate enough," and, well, you know the rest of it. Faculty and administration are very influenced by those kinds of things. When there is negative criticism of any aspect of the school in public, it's criticism of them too. In other words, they are being stigmatized by the defects in your program. And their attitude is apt to be "You better fix that because we don't want to be

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[2] Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469 (1993).

stigmatized by the defects in your program. So fix it!" And you say, of course, "We need your help, we need money, we need staff, we need this and that." And then they are much more willing to do it. Without that ammunition, without the data, it's very difficult to get the support. Sitting around and saying we've got these problems, coming from a group that is the oppressed, is not going to do it. Data is necessary.

If your school has a Board of Overseers, as many do, ask to appear before them and discuss the Legal Writing program. I serve on the Board of Overseers at another law school and was asked by their dean to be on it, specifically because of the problems its Legal Writing program was experiencing -- the student complaints, the faculty's unwillingness to do something about it. I was able to provide insights about what was going on in the Legal Writing world for the Overseers. They in turn then used pressure -- which the dean wanted and used -- on the faculty to change their program. And it was changed! Again, the Board of Overseers typically is composed of practitioners. Practitioners typically understand much better than our academic colleagues the need for the skills and the arts that we teach.

I mentioned yesterday, in passing, the use of speakers programs. If you have speakers programs at your school, try to get a speaker like George Gopen[3] or Terry LeClercq,[4] or any number of people in this room. First of all, they can speak to the students. You can have them use the vehicle of the speakers program for helping the students in improving their writing. They also can speak to the faculty. The faculty surely can use help in approving their writing. And at the same time, they can help educate the faculty on what is going on in this field. You have to get the faculty to start recognizing that Legal Writing is a valid field of legal education, which too many of them refuse to do.

Next, there are some other publications besides the Pre-Law Handbook – there are all these unofficial ones, like the "fifty-six top law schools," -- there are twelve or thirteen of these publications on the market. Some of them work in strange ways. One of them is published by a man who sits in his garage at home and just gives his own ratings, but he can be influenced. He has been. One school went from something like 150th to 33rd after a dinner with him and some personal conversation. The other ones get their information largely from students. They interview students at your school. I don't know who the students are; they don't identify them, obviously. But there's nothing wrong with you trying to get some students to write to these people and say, "I've read what you've written about our school and it isn't true. It's either better or it's worse and here's why . . .". Those kind of things may get them to change the data. An awful lot of people rely upon those things for deciding what law school to go to. If nothing else, they should at least be an accurate portrayal of the strengths of your program.

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[3] George Gopen teaches at Duke University.

[4] Terry LeClercq teaches at the University of Texas.

Now of course I've left out probably the most important person to try to influence, which is the dean. Dean's are (I was one once so I know this) influenced by several things. The main thing is *money*. Somebody said yesterday "If I need a 45:1 ratio it's going to cost $400,000, end of conversation, right?" What do you do then? Well, too often you do nothing. What you should be doing is to identify ways of getting money. It's not your job to get money, right? But it is your job to formulate ideas by which the dean can develop methods of gaining money for the school to help pay for the program.

There are several things that come to mind. For one thing, your strength and your staff's strength is in teaching research and writing skills. Forty states in this country have mandatory continuing legal education requirements and the other ten at least offer non-mandatory courses all over the place. Two of the most popular courses in the CLE repertoire are research and writing courses, especially the writing courses. The lawyers flock to these, especially those from the large firms. They send their young associates. Many of these firms hire experts for in-house training programs of their own. What would be wrong with suggesting to the dean that the staff put on a CLE program, during the summer? For alums, they could charge a modest fee;, for non-alums, they could charge a more exorbitant fee. And the money would go toward your program -- for helping to staff it, to help pay better salaries, or for increasing the amount of credit.

A CLE course also serves the law public's need -- that is, the lawyer's need -- for improving the quality of their writing or research. You can have one program on legal drafting; you can have one on sophisticated research techniques. After all, at most schools, the only research training most grads have had was in their first year. Most schools still don't have advanced courses. And, as we all know, a one-year program is not sufficient to really train people adequately in research techniques. Also, the writing your graduates have done has been, for the most part, limited to the first year, with modest additional writing assignments or seminars or things of that sort. But they need sophisticated training if they are doing, for example, brief writing. You could hold a program on persuasive writing and really show how to write sophisticated, persuasive briefs and not the ones we do in the first-year that are not sophisticated. You could offer training on new research developments. If you're well versed in Internet and computerized research, or things of that sort, you could do training on these new techniques or sources. These CLE programs bring in money.

The second idea I have is one I've mentioned before in an earlier version of this talk that I gave in 1986 at the Legal Writing Institute. I've done a survey and the number of credit hours required for graduation by American law schools range from a low of eighty, to a high of ninety-six. But most schools are around the eighty to ninety mark. So, if you're below eighty-eight or ninety and if your school also charges tuition by the hour, rather than as a flat amount, there is a very easy way of getting more money. If you went from eighty-four hours to ninety, or eighty-four to eighty-eight, or even eighty-four to eighty-six, you would be requiring at least two more hours per student. I don't know how many entering students you have, but let's assume you have 200. If your tuition were $300 or $400 per credit hour, you can do the math and see that the increase in required hours brings in -- if it were a four hour increase for 200 students and if your

tuition were $300 per hour -- it would be something like $24,000 a year. And $24,000 a year pays for almost one staff member or at least it goes a long way. If you have more students or more tuition per hour, or you make a bigger leap (say six hours), it's more than $24,000.

Even if your school doesn't charge tuition by the hour, but rather a flat fee per semester, if you can convince the dean to announce an increase in graduation requirements of let's say from eighty-six to ninety, and all the extra hours will be given to Legal Writing courses -- as, for example, by adding an upper-class or increasing the first year credits -- surely students can understand that, in this market, they will be getting something dramatically extra for their money now, that they will be getting something they will need upon graduation, that this school is doing something to inculcate the skills training they've read about as being so essential in job placement and practice. Sure, they are going to have to pay for the improvement. But, frankly, the only effect is really going to be on the first entering class after the change; the following classes won't realize the change. From then on, it will be whatever the tuition now is, and they will know they have to take ninety hours for graduation. So increasing the hours for graduation and charging extra tuition for the increased hours is a way of paying for the increase in your program that deans can understand. In that school where I am on the Board of Overseers, I recommended this method to the dean, and the school immediately implemented it. And that was a state school with a fairly modest tuition, but it was enough to hire one more Legal Writing person.

Finally, to my second cliche -- blow your own horn, because nobody else will do it for you! You people are immensely creative! Over the years, I have been so impressed by the Legal Writing teachers' and directors' innovations in teaching techniques. You are at the head of the class, the very forefront of the profession, on learning theory, on teaching theory, on collaborative learning. I go to AALS and other meetings for doctrinal teachers and there's almost nothing ever done on teaching methods. It's always on theory and scholarship. But you are so creative in developing ways to better teach your courses with limited resources.

Well, you have to be as creative in the public relations aspect and figure out ways that will blow your own horn because other people, unless you gain them as allies, will not do it for you. You have to circulate things about yourself and your program to others. When you get back from this conference you can send a memo to the faculty about some of the great ideas you've learned. You can circulate what some of your competitors are now doing. For example, I can now tell people that Loyola of Chicago is now doing something new and innovative, and, "Wait a minute now, we don't want them to pass us by, do we?" Information made available to other people is power for you. And lobby! Once you get something don't rest on your laurels; keep lobbying for more. It's like the water torture, dripping away. The dean should know that next year you are going to be there asking for more.

Carol Parker:

Good morning! It's such a pleasure to follow Ralph. All I really need to do is nod and applaud. Nevertheless, I would like to offer some additional observations on a point Ralph raised,

that is, the importance and benefits of tooting one's own horn. For many of us, that may be a difficult thing to do. The notion of self-promotion may seem not only onerous, but also a bit unseemly. I think we should get over that. By promoting our programs, and the people who teach in and administer those programs, we make our educational contributions available to the law school community. Marketing our writing programs within our law schools is important work, because we are selling something very good.

First, Legal Writing programs provide students with tools for understanding the authorities that they study when they are in law school. By focusing on the process of case analysis, synthesis, and statutory interpretation, we teach them how to think about law. Very often, that is the primary function of a first-year Legal Writing course. Unfortunately, this contribution often goes unrecognized in the public perception. In some schools the teaching of legal analysis may even be deemed inappropriate for a writing course.

Second, we help students develop professional skills that they will need almost immediately. After the first year of law school, many law students will be providing legal analysis on which lawyers will depend when they advise clients or make arguments to courts. To be effective in this role, students must be able to communicate legal analysis accurately and do so in documents tailored to serve the intended purposes and audiences.

Finally, Legal Writing programs contribute to legal education by giving students opportunities to explore the ways that they construct meaning from bits of data derived from factual situations, doctrine, and the great sweep of social policy that they are learning about in all of their law school courses.

These are wonderful contributions. Often though, Legal Writing programs suffer from image problems. Often they are thought of only in terms of a first-year writing course that seems to cost an awful lot of money and raise a lot of commotion and nevertheless leave students unable to use apostrophes correctly.

This view is troubling not only because it misperceives the goals and importance of the first-year sequence, but also because it excludes from its conception of "the writing program" all the other writing activities undertaken throughout the curriculum. By compartmentalizing other writing experiences in such boxes as "clinic," "moot court," "trial advocacy," or "law review," this view ignores the connections between the various activities by which students develop the skills they will need as professionals and self-learners throughout their legal careers.

If this view represents the public perception of a Legal Writing program, it should not be surprising that often there's a distorted perception of what's going on. One of my colleagues has said, "There's no constituency for the first-year writing program." In a way that's true. If the program is viewed solely as a first-year course, it serves a population of students who are in a state of shock for most of the year, and who receive their first detailed, critical feedback -- and often their first law school grade -- in that class. Their perceptions of the experience may not gel during

the time they are in the class. Upper-level students may be willing to commiserate with first-year students about the course or tell them about summer clerking experience, but most are ready to move on and may not feel that they have a continuing interest in the writing program.

In addition, the people who teach the course often feel overworked and under-appreciated and lack the time, space, and encouragement to reflect on the contribution that they're making or to become acquainted with the doctrinal faculty. The doctrinal faculty, in turn, may feel distant from the writing people, in part because their paths within the institution do not seem to cross and also perhaps in part because the Legal Writing teachers are overworked and underpaid and it's uncomfortable to think about them or to associate themselves with a program that requires high effort and affords low reward. This attitude is communicated to students in a variety of ways, including the most blatant, such as when the Torts professor tells first-year students to work on Torts instead of Legal Writing.

Accordingly, institutional structure and public perceptions may discourage development of a cadre of champions for law school writing programs. On the other hand, they foster a rich environment for certain varieties of complaints about the writing program, such as, "I'm quite sure that I'm not learning what I'm supposed to be learning, because I am only getting one credit hour"; or "I'm quite sure that no one in the institution values me or the course I teach, because I'm not making very much money"; or "Fifteen students were absent from my Property class today because their briefs were due."

Because a Legal Writing program involves all aspects of communication concerning legal analysis, it affords a variety of opportunities for complaints. A program with no constituency to defend it provides a large -- and safe -- screen on which law students and teachers may project the frustrations attendant to the law school experience. Drained by dealing with complaints, directors sometimes feel resigned to spending their time putting out fires and dodging bullets, rather than thinking about ways to promote a positive image for the program. Legal Writing teachers may reach a point at which they think, "I'm just going to come in and out the back entrance, to teach my class and that is all; I'm going to do the very best job I can for my students, and I'm not going to deal with the rest of it, because it's noise and I don't want to. Who cares about Legal Writing, anyway?"

While fatigue is understandable, the question, "Who cares about Legal Writing?" should be taken as a serious one. Anyone who raises a complaint about the writing program has already invested energy in the undertaking, has demonstrated concern. So, it appears that many people care about Legal Writing, although they may not know it until you show them. If Legal Writing professionals do not make our contributions available to the entire law school community and do not explain the potential for professional development throughout all the writing experiences in law school, we miss an opportunity to offer students the best educational experience.

If we fail to promote our writing programs, we promote low self-esteem in students, giving them the message that they haven't had very good training in professional skills. We miss

opportunities to help them think about themselves as professionals who are entering a rhetorical profession. Legal Writing programs help students develop the skills and attitudes that will serve them throughout their professional careers. If we don't recognize that, if we are not proud of that, and if we do not communicate that, then I think we do our students a disservice.

Legal Writing teachers have expertise that may be useful to doctrinal faculty, as well. As a group, we have devoted considerable time to thinking about teaching methods. In particular, AALS programs and the outstanding conferences sponsored by the Legal Writing Institute have afforded opportunities for Legal Writing professionals to discuss a variety of issues in learning theory and pedagogical techniques. Teaching writing requires attention to individual learning in a way that some other courses may not and the field seems to attract people who like to think about teaching. It is not surprising that many academic support programs grew out of Legal Writing programs.

One public relations tactic we can employ is to organize opportunities for the faculty to discuss teaching methods. For example, I recently presented a faculty seminar on using writing as a tool for learning in large classes, and I found that the faculty to be very interested in discussing teaching methods and the rationales that support them. This sort of program promotes the idea that a law school writing program offers tools for learning throughout students' law school careers. Its role extends beyond the first-year curriculum and teaching grammar and syntax.

Similarly, involving upper-level students in a variety of writing experiences is good for internal public relations. In addition to encouraging them to participate in law review, moot court, clinic, and research seminars, one of the best ways to show upper-level students the value of the writing program is to involve them in the first-year program. Teaching assistants, for example, are among the greatest public relations people on earth. Another experience that upper-level students find rewarding is serving as student judges for first-year oral arguments; in addition to contributing to the first-year students' education, the student judges gain experience in using a legal document for its intended purpose. Inviting upper-level students to speak to first-year classes about clerking experiences, in particular those involving writing, is another good way to promote the writing program to the first-year students, by showing them the practical value of the writing course, and to the upper-level students, by encouraging them to reflect on the skills they developed through the writing program.

Finally, directors can promote their programs by making sure that first-year students avail themselves of opportunities to learn from second- and third-year students' writing experiences. For example, first-students could be asked to read the finalists' briefs in an intramural moot court competition and then attend the oral argument. Afterwards, they could discuss the arguments in class and perhaps have an opportunity to talk with the advocates about their strategies. Whatever the context, encouraging all students to avail themselves of opportunities for writing throughout the law school curriculum is good public relations for the writing program and helps us make our best contribution to our students' education.

Bari Burke:

Good morning. I'm glad to be here; I'm glad to see old friends and some new people. I'm still smarting a little from the choice of San Diego over Missoula, Montana, as the locale for this meeting and I'm hoping that as the organization proceeds, we come to see Western Montana. But, in any event, I am glad to be here. When Carol, Ralph, and I spoke on the phone, I said I was more than happy to pull up the rear because I could bet that Ralph and Carol knew more than I did about this. Not that I was surprised, but they affirmed that everybody in this room knew as much or more than I did and had some very creative ideas. I actually have only two ideas to offer this morning. The first has to do with student evaluations. I start my class, which is currently taught in the first semester, but will be taught in the second semester, by saying to the students, "I'm baffled that in past years I have been told in my student evaluations that I am disorganized, and I am baffled because . . . well, could you please pull out your syllabus?"

I have a thirteen- or fourteen-page syllabus with an entire page devoted to each week of what they will do. It talks about what they have to do in class, and what they have to do in small group meetings, and what they have to do outside of class. It literally schedules them week-by-week for a semester, by the hour. And I say, "Your criticism on my student evaluation should be "you are compulsive, you are overly organized, you do not allow for any flexibility in the world. So what I want you guys to do is keep track all semester of what I do well and what I don't do well. What the program does well and what the program doesn't do well. And separate me from the program, because one the problems over the course of a semester is that students tend to blame me for problems with the program."

Now I like to think that I have all the power in the world, and as a tenured member of my faculty I may indeed be able to voice opinions more easily and with some more safety than some other people. But still I am not responsible for me and seventy-five students. If anything, I have groveled long and hard in front of my faculty and dean to change that ratio. In fact, student evaluations can be some of my best lobbying tools with my faculty and your dean because the students tell the associate dean and others, what they need. And it's not me then being the only spokesperson for what the students need. So actually in the last couple of years, the students have said, "We want to write more, and therefore we need more people teaching this class because what can Bari do if there's one of her and seventy-five of us?" Now that was my dream fifteen years ago and somehow with the help of all of you in the Legal Writing Institute, that helped me figure out how I could get the students to voice their needs in a way that really supports the program, and me.

It also helps to set up your goals and objectives as specifically as possible at the beginning of the semester because then when the students evaluate you, they're evaluating you against your goals and objectives, and not against their own that they might not be clear about. A few years ago one of the most devastating things I heard from the students is that their self-esteem about writing was lower when they finished my class than when they started. And of course, partly I could reassure myself that was just because they thought they wrote so well when they started and

they had some realistic assessment of their writing skills. However, I'm not sure that's true; and even if that is true, it doesn't help them to have a lower self-esteem when they're done. So, throughout the semester I let them know what I think they're doing well. And then I talk about how what they tell me in the evaluations will help me improve the program so that their esteem continues to climb.

I've written one law review article about our Legal Writing program.[5] One thing that I do in the article is explain the objectives and methods of our program. I ask students to read that at the beginning of the semester before they're terrified about law school. I set out why we do what we do and I can use both the practical reasons and the theoretical reasons. That actually gets them thinking about the writing process and how there's theoretical reasons for making certain choices. In Missoula, I have been able to use a lot of the practicing bar in one way or another. I got a chance in writing to thank lawyers for the contributions they've made to the writing program. That was in footnotes, mind you, so I would talk about the program in text and then name people in the footnotes who had really helped with those things over the years. But that article allowed me to thank people, and show them that their contributions meant something to me, to the students, and to the school. And they were willing to contribute because they felt recognized for the contributions they had made.

The growth in Legal Writing scholarship is also important. Although I understand that an awful lot of doctrinal scholarship is esoteric and nobody reads it, some of the scholarship that you all have done has made a huge difference to my life and my program's life. In 1995, there are many excellent Legal Writing textbooks and articles. That was not true in 1979. My workload was heavier and my classes were nowhere near as good. The kind of scholarship available today allows us to reach one another and allows us to reach other audiences to the extent we can eke out the time to do it. We should set some realistic timetables. As some people said, if it takes four or five years to get some curriculum review accepted and then more for implementation, the same can be true for some of the writing that you might want to do. So you don't produce an article every year or two. But if you do an article in five years or six years, it's something that really contributes to the growth of our entire discipline.

One of the things that I guess I understand having listened yesterday and this morning so far, is there really should be at least two directors of writing programs. One director needs to do all this public relations and develop all these allies and work outside the building as well as inside the building, and then somebody has to be available for the academic Legal Writing program and the implementation and administration. So to the extent you can be two people, you all have a lot of ways to be able to do it.

At the end of the session, the directors discussed several issues raised by Professors Brill, Parker,

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[5] Bari R. Burke, *Legal Writing (Groups) at the University of Montana: Professional Voice Lessons in a Communal Context*, 52 MONT. L. REV. 373 (1991).

and Burke:

The directors discussed how to involve alumni/ae and outside supporters without offending the dean, who may view alumni contact as part of his domain. One suggestion was invest the dean in the process -- suggest alumni be used to evaluate the entire law school -- not just Legal Writing. A second idea was to pass on any unsolicited comments supporting the program on to the dean.

Several directors offered other ideas for improving public relations. These included getting to know the state supreme court justices, and referring to Legal Writing teachers as "professors" and "faculty" instead of "instructors." Directors were also encouraged to speak up when other professors unintentionally demean Legal Writing faculty. Another suggestion was to offer writing seminars to Law Review members.

Some directors look outside the law school for support. One director wrote a writing column for a state trade newspaper. Some directors encourage their colleagues to do public speaking and provide expertise to local media. Several schools have sought local law firms to provide modest prizes for the first year Moot Court competitions.

Plenary Session #7: GRADING PHILOSOPHIES
Suzanne Ehrenberg (Chicago-Kent College of Law) and Steve Johansen (Lewis & Clark Northwestern School of Law)

Suzanne Ehrenberg:

Good morning. My name is Suzanne Ehrenberg and I am Associate Director of Legal Writing at Chicago-Kent. With me on the panel today is Steve Johansen from Lewis & Clark. The topic of our presentation today is grading philosophies. But I think both of us perceive this as being more of a discussion-oriented session than one in which we impart information to you, because there are a lot of controversial issues arising under the general heading of grading philosophies and I don't profess to have any great wisdom. I have certain opinions on these issues and I will share them with you, as will Steve. But I think that this will really be a good opportunity for all of us to share ideas on these issues.

Those of you who have been following the Internet discussions over the past few months can attest to the fact that there are a wide range of opinions on the issue of exactly how we should evaluate student work. In particular, there's been a very lively exchange about the issue of whether it's better to evaluate papers holistically, and by that we mean assigning the grade based on one's overall gut-level assessment of the paper, or whether it's preferable to use a score sheet in which one assigns numerical point values to very specific aspects of the paper. There was considerable disagreement about whether the score sheet method was more objective and produced fairer, more consistent grading than the holistic grading system.

Another hot topic in the area of grading philosophy is whether to use blind grading, in which the identities of the students are concealed from you when you are grading their papers, or to grade openly, knowing the identity of the student author. The issue here, of course, is do we need blind grading to provide students, and ourselves as well, with the assurance that grades have not been adversely affected by personal bias. Do we need blind grading to protect ourselves against accusations of bias? Alternatively, does a blind grading system create an unnecessary barrier between instructor and student, and interfere with the instructor's ability to relate to students as individuals, to recognize their recurring writing problems and deal with them on an individual basis?

A grading issue of particular interest to me, and one which has not yet been discussed on the Internet, is the issue of what standard we use in evaluating student work. Should we hold students to a consistent practicing attorney standard, or should we apply a law student standard -- one which will become more rigorous as the semester progresses. Is the practicing attorney standard an easier one to recognize and apply? Alternatively, does it have the negative affect of depressing student morale and giving them the sense that they can never produce competent work?

Ironically, the one issue I did not consider addressing in this discussion initially, is really the most fundamental issue of grading philosophy a director must confront. And that is the issue of whether the course should be graded at all. Because I teach a graded course, I smugly assumed that this was the optimal way of teaching Legal Writing. Although I knew that many schools have a non-graded course, I assumed that anyone who taught within such a system did so under duress from an obstinate administration and would gladly switch to a graded system if given the opportunity to do so. Then I talked to Steve Johansen, and he quickly set me straight. Steve has been happily teaching a non-graded Legal Writing course at Lewis & Clark for seven years.

We thought we'd begin this discussion with a point/counterpoint on the issue of whether the Legal Writing course should be graded. Steve will go first.

Steve Johansen:

I planned to begin by observing that I thought there was one point where there was consensus among us, and that was that Legal Writing courses should be graded. However, I have discovered that I am not alone in believing that grades are counter-productive. My sense is that most of us regard "pass/fail course" as a euphemism for "bad program." And it isn't. Frequently, a director explaining how her program has improved starts like this: "Well, our school used to have a terrible program. We had a pass/fail program . . .," and then they go into a litany of other problems: "it was taught by students," "it was one credit," "the faculty didn't support it," and "no one paid attention to it." I submit that the problem with such a program is **not** how it assesses students. A non-graded course can be successful, if structured correctly.

The first question to ask about assessment is "What is the purpose of evaluating student work?" One purpose is to rank students. If your purpose is to rank students, grades do a very good job. At least for ranking within your class. They're really not very reliable for ranking compared to other schools or even other teachers within your own school.

Here's something to consider about ranking. Yesterday, Jan Levine mentioned U.S. NEWS & WORLD REPORT and its rankings. I believe Jan said it was "hooey." I think most of us would agree; we don't like to be ranked any more than our students do. (Now, at Lewis & Clark there's one part of U.S. NEWS that we love and that's because they ranked us first in Environmental Law. We know U.S. NEWS does a good job in ranking Environmental Law schools but it does a mediocre job in every other ranking.) The same is true for students. If you are an "A" student, you probably like rank. It's a nice reward. Most law professors probably liked rank when they were students, at least to the degree that it rewarded them. But I don't think ranking is really why we evaluate student work. Our primary goals must to be to assess our students' understanding of what they are doing and to provide information to the students so they can improve their analysis, their writing, and their research. Grades don't do that. It is the comments that you put on their papers that are doing that.

Imagine if you had two papers. The first was a student's memo with a grade on it and

nothing else. The second paper had only your margin notes and end comments to the same paper -- without the text or the grade -- just your comments. Now, which paper would be more telling to a colleague, or an employer, or a student? I suggest the comments, even without the student work, is more informative. Of course, the easy response to that is that we don't do that. Nobody just puts a grade on a paper and gives it back. But if you have all those comments, that "A" or "B" really doesn't tell a student anymore than what you've already told them.

A common belief is that we need grades to motivate students and a way to get Legal Writing taken seriously. I don't believe it. First, students should be motivated to work hard at their writing because writing is what lawyers do. This is the only course that applies to every area of practice in every area of the country. I'd much rather students concentrate on learning their craft than on getting a good grade.

If grades do motivate students, it's only short-term. At best, grades in law school can motivate students until they get them. All of our students come to law school being successful students their whole life and then they get to law school. Then, suddenly, when they get to law school, they're getting "B's" and "C's" and are in the middle of the class. They see that as bad. To get a "B-" is not success and soon they come to believe they can't compete; there's nothing they can do to change. Thus, grades act as a disincentive to work -- rather than an incentive.

Well, I could go on, but we would like to have plenty of time for questions, so I'll turn things over to Suzanne.

Suzanne Ehrenberg:

I should begin by saying that I am uncomfortable with the process of grading, and by that I mean the process of assigning a score to a paper. It's a difficult thing for me to do, and in individual cases it's emotionally wrenching for me. If I had an opportunity to get rid of that part of my job without sacrificing other things that I consider to be important, I would happily give it. I think we'll all concede that the presence of grade creates all kinds of problems that we'd be happy to be rid of. Because we grade our course, we have students coming in and quarreling over those grades. Steve probably could have given you a litany of other ills that are associated with grading. Arguably the presence of grading encourages unethical behavior on the part of students: plagiarism, defacement of library materials. It aggravates student anxiety. So there are a lot of negative features that go along with the process of assigning grades to papers.

Nevertheless, I would never give it up. I strongly believe that students need the motivation of grades to put in the work necessary to produce even a minimally competent piece of Legal Writing. There will always be students who are motivated, even in the absence of grades. However, even at Chicago-Kent, where there is a five-credit course, there are some students who feel that because the amount of work required of Legal Writing is disproportionate to the number of credits they receive, it's not worth putting in the time. It's hard for me to imagine how students like that would be motivated if there were no grade associated with the course. Steve made a

distinction between students who are working to get a grade and students who are working in order to learn. I think that in Legal Writing it's difficult to separate the two in the same way that I think you can sometimes in other kinds of courses. To produce the kind of work that earns the high grade in Legal Writing, students have to learn. They have to be engaging in certain skills and performing certain tasks and by performing those tasks they are necessarily learning. It's very difficult to produce a high quality piece of Legal Writing without learning. So I think it's impossible to separate out those two in the context of Legal Writing.

One thing that occurred to me just last night is what effect, if any, does the presence of a graded system have on the way I teach the course. I have nothing to compare this to; I have never taught a non-graded course, but I think that perhaps the presence of the grade motivates me as well. It makes me feel very accountable to the students because I'm assigning them a grade; it's going to be on their transcript and for many employers the Legal Writing grade is the first thing they look at. That places a lot of responsibility on me and I think it motivates me to give the best possible instruction and to give a lot of qualitative feedback. Admittedly sometimes I know I'm giving a lot of feedback because I know I'm defending a grade, but the end result is a positive one because the student is getting feedback.

Finally, I'll turn to the political issue. In a world where Legal Writing instructors and the Legal Writing course have a diminished status in the eyes of faculty and students, it's essential that there be a grade associated with a course and as many credits as possible. I think it sends a message to the students and to the rest of the faculty that this is a course that is valued by the law school, that it's an important part of the curriculum. I guess my final comment would be that all other things being equal, I think the political argument has to tip the balance in favor of a graded course.

<u>After Professors Johansen and Ehrenberg raised issues related to grading, the directors held a lively discussion on a number of issues:</u>

Some directors questioned whether Legal Writing courses should be just like the law school's other courses. Some felt that Legal Writing should take the lead in developing better ways of assessment, better teaching strategies, and more varied approaches to learning. Because Legal Writing is a relatively new discipline, it is not burdened with a history that limits some other areas of legal education. Others argued that for Legal Writing to gain greater acceptance as a serious discipline, it must be treated as an equal to other areas of study. An important first step is to make Legal Writing a graded course -- just as other first year courses are. One director suggested that it would be better to eliminate grades in other courses, at least in the first year.

There was some discussion as to whether, under a pass/fail system, some students actually failed Legal Writing. Some schools have an option of giving a student an "F" in the rare instance that the student refused to complete the work. Others pointed out that pass/fail systems are not truly ungraded, but merely reduce the number of grade options. Some schools have three options: Honors/Pass/Fail.

The directors also discussed a variety of grading alternatives. Some preferred to weight their assignments, increasing the weight given to assignments as the year progressed. This rewarded those students who started slowly but improved over the course of the year. Others did not grade assignments until the final task at the end of the semester, to get the best of both approaches. Several directors noted that because they met regularly with their students, and put extensive comments on papers, that most students understood how they were doing, regardless of the grading approach. Others argued, however, that some students seem to need a grade, in addition to comments, to understand where they stood in relation to their classmates.

The directors also discussed the merits of blind versus open grading. Those in favor of blind grading felt it allowed them to maintain objectivity in grading. It also was an effective shield against claims of favoritism. Blind grading allowed students to trust their teacher to be fair. Those who favored open grading argued that it allowed for better communication with students. It was important to know who wrote a paper in order to address the particular concerns of that student.

The final area of discussion was the standard used for grading students. One director believed it best to use an objective "competent practitioner standard" throughout the year. Under this system, students' grades would tend to improve over the course of the year, as their skills improved. Another approach is the "good law student standard." This approach compares students to their classmates. This would allow for some students to earn high grades even early in the year.

Plenary Session #8: SCHOLARSHIP IN LEGAL WRITING[*]

Jill J. Ramsfield (Georgetown University Law Center)[**] and J. Christopher Rideout (Seattle University Law School)

Legal Writing, as a discipline and field of inquiry, garners more attention each year. Once occasional, our discipline is now studied by all incoming law students; once the province of dilettantes, our field is now peopled by experts.[1] For non-experts, the field may appear obscure: foggy, familiar but treacherous, even unconquerable. For us, however, the field is rich with resources and possibilities. Our scholarship is just beginning to uncover the features that distinguish the legal discourse community from others, such as the rhetorical norms lawyers use to accomplish specific goals and the complex writing processes lawyers use to problem-solve. Our scholarship is just beginning to inform the choices that law schools make when designing writing programs, that legal scholars make when researching, and that lawyers make when writing. To inform more fully these choices, to ensure excellence in student performance, and even to enter gracefully into cyberspace, we need to provide more scholarship. We need to reach to other disciplines, such as linguistics and composition theory, to pull from them theories and methods. We need to create new theories and methods for Legal Writing, using empirical studies and protocols. And we need to continue developing our collective voice by which we can speak graciously to experts and non-experts alike.

To do so, we may want to reach back to our past, to hear what our predecessors have said, to honor their efforts in discovering this specialized field. Our understanding of their struggles will sharpen our perspective on our own scholarship. Their work can inform our choices about our future.

Early Scholarship

Articles and books on Legal Writing appeared as early as the turn of the century. Mostly, they were aimed at curriculum reform. In 1909, for example, a book appeared on teaching brief writing.[2] Langdell himself had commented that "the library is the proper workshop of professors

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[*] Due to an oversight, this conference session was not recorded. Professors Ramsfield and Rideout have graciously prepared this short article for these Proceedings.

[**] Thanks to Melissa Bradley for her assistance.

[1] *See* Jill J. Ramsfield, *Legal Writing: A Sharper Image,* 2 LEGAL WRITING 1, __ (1996).

[2] BRIEF MAKING AND THE USE of LAW BOOKS (Roger Cooley, ed., 2d ed. 1909).

and students alike. . . ,"[3] but his system had left the teaching of research and writing out of the law classroom. By 1917, the omission of formal classes on researching prompted a librarian to write that the law student's training in using the library was not keeping up with his training in legal thinking:

> [A] technique in legal research commensurate with his development along other lines is the crying need of the lawyer today. . . . The use of law books should be treated as a distinct field, for it is not included in any course of general study, nor any course of technical study in either adjective or substantive law.[4]

The author suggested clinical training as a necessity.[5]

Nevertheless, the problem persisted because the emphasis in educational reform during the 1930's was not focused on students' abilities to research and write. The legal realists, while they succeeded in reforming the core curriculum to reflect more emphasis on social and economic problems as well as policy,[6] ignored the problems of translating these ideas effectively into texts. By 1939, an article appeared noting that a few schools had instituted courses in "Use of Lawbooks" in the first year,[7] but none was yet addressing Legal Writing.

Articles on Legal Writing courses as such began to appear in the 1930's and 1940's, but

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[3] Christopher C. Langdell, *Teaching Law as a Science*, 21 AM. L. REV. 123, 123 (1887).

[4] Mary S. Foote, *The Need for College Instruction in the Use of Law Books*, 10 LAW LIBR. J. 25, 25 (1917); *see also* Roger Cooley, *Examination in Legal Bibliography*, 2 AM. L. SCH. REV. 509 (1911); Edward Q. Keasbey, *Instruction in Finding Cases*, 1 AM. L. SCH. REV.69 (1902); Charles C. Moore, *Law School Instruction in How to Find the Law,* 7 Law Notes 64 (1903); Frederick C. Hicks, *The Teaching of Legal Bibliography*, 11 Law LIBR. J. 1 (1918); John Wigmore, *The Job Analysis Method of Teaching the Use of Law Sources*, 16 ILL. LAW REV. 499 (1922).

[5] *See* William V. Rowe, *Legal Clinic and Better Trained Lawyers -- A Necessity*, 11 ILL. L. REV. 591 (1917).

[6] *See* Anita L. Morse, *Research, Writing, and Advocacy in the Law School Curriculum*, 75 L. LIBR. J. 232, 241 (1982).

[7] Marjorie D. Rombauer, *First-Year Legal Research and Writing: Then and Now,* 25 J. LEGAL EDUC. 538, 539 n.7 (citing Robert A. Leflar, *Survey of Curricula in Smaller Law Schools*, 9 AM. L. SCH. REV. 255, 258-259 (1939) (stating that twenty-three law schools required such "use of lawbooks" courses in the first year)).

the courses were still remedial courses focused on basic writing skills,[8] with no emphasis on the special demands and features of the legal discourse community. Instead, law professors, who thought that these programs would be the solutions, concentrated on teaching English grammar and composition, largely because the 1930's had seen a "fad that formal study of English grammar had no or little place in the public school curricula."[9] Also, of course, the legal academy had opened its doors to previously excluded groups, among them returning G.I.s. The concept of writing still suffered from the distinction between so-called "substance" and "style," a distinction since debunked.[10]

According to one scholar, research and writing courses were introduced, if at all, on a no-credit or remedial basis,[11] a kind of throw-away action aimed at particularly bad writers. The articles that followed showed schools struggling with this decision.[12] Both legal research strategy and analysis were becoming increasingly complex in the post-war era. To cope, law schools did allow legal bibliography courses to find their way into most first-year curricula, but those courses were essentially mechanical and divorced from the intellectual problem-solving techniques necessary to effective research and writing.[13]

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[8] *Id.* at 540.

[9] *Id.*

[10] *See e.g.,* Lee Odell, *Context-Specific Ways of Knowing and the Evaluation of Writing, in* WRITING, TEACHING, AND LEARNING IN THE DISCIPLINES (Anne Herrington & Charles Moran, eds., 1992).

[11] Rombauer, *supra* note 7, at 539 (stating "[t]he early 'research and writing' courses were what the name implies, a joinder of bibliography instruction and writing experience, frequently with an added mixture of remedial objectives related to deficiencies in legal education perceived during the post-World-War-II ferment.").

[12] By 1956 the deficiencies in writing caused "lingering perplexities" about what to do. At the University of Southern California, there were "an inordinate number of freshman [law] students who fail[ed] to earn passing grades…a significant proportion of marginal students two or three points above disqualification, and…students with strong undergraduate academic records and outstanding Law School Admission Test scores whose performances [were] disappointing." Irwin O. Spiegel, *Experimenting in Legal Method at the University of Southern California*, 9 J. LEGAL EDUC. 92, 92 (1956). There, they experimented with exams to find a solution.

[13] *See* Rombauer, *supra* note 7, at 540. Rombauer notes that the strides Cooley had made in fostering intellectual development were cut short by the strictly bibliographic approach taken later in research texts. She also states that a second opportunity to instruct students in problem-solving abilities was missed with the group of texts that emerged in the late 1940's,

Some schools instituted Legal Writing or legal methods courses, and some with relative success. Articles appeared that studied these courses. The University of Chicago, in response to what was called "unanimous agreement…that, whatever else a lawyer is to be and is to do, he must be a man trained in the use of language, in the clear presentation of complex and technical materials; he must, that is, be an expert in exposition,"[14] experimented for ten years with a program that involved adjuncts, faculty, and graduate fellows who were recent law school graduates. In 1947, a report appeared, describing a program whose objectives were to give students training in the relationship among research, analysis, and exposition; to teach students originality as well as specificity; and to complement the first-year curriculum by providing a more balanced picture of law than was done in the classroom.[15] The Chicago faculty had committed themselves to bringing back research and writing: the course called for about 300 hours of student time, the writing of twelve assignments, and eight-hours of credit out of the forty hour total. The course "was about the equivalent of the basic first-year course in Torts or Contracts."[16] Unfortunately, practical training did not continue beyond the first year, but this was a good foundation.

At about the same time, in a report on Curriculum Reform, Karl Llewellyn suggested that skills training was necessary to teach lawyer competency.[17] The doctrinal analysis accomplished by the case method study needed balance with training in other skills, such as statutory interpretation, appellate advocacy, drafting, and counseling.[18] This report was not widely accepted, especially by faculty at the most prestigious schools, who did not see the findings as

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when bibliography alone was again emphasized. *Id*. at 541.

[14] Harry Kalven, Jr., *Law School Training in Research and Exposition: The University of Chicago Program*, 1 J. LEGAL EDUC. 107, 107-108 (1948).

[15] For example, classroom discussion might cover the importance of a governing law and statutes within a particular jurisdiction. *Id*. at 118-19.

[16] *Id*. at 109. This comparison is crucial in the development of legal research and writing programs because of its commitment to steady writing practice by awarding credits, allocating sufficient time, and infusing the course with intellectual validity.

[17] Karl Llewelyn, *The Place of Skills in Legal Education,* 45 COLUM. L. REV. 345, 369-77 (1945). The term "skills" unfortunately perpetuates the separation between theory and practice. Llewellyn himself described an integrated approach that would fuse analysis and writing. Modern composition theory suggests that research, analysis, and writing are inseparable. *See* J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View,* 69 WASH. L. REV. 35, at 56-61 (1994).

[18] *Id*.

pedagogically valid.[19] "[T]heir skepticism, reflected in curriculum decisions concerning credits, teaching loads, and assignments, and the status given to instructors in skills programs, ensured failure."[20] This report was hinting at what we now know: reading (in the case study method) must be complemented by writing (in Legal Writing courses) to complete the learning cycle.

Some schools followed Chicago's example. None, however, was as generous with credits or with personnel.[21] Articles showed that the Legal Writing courses' focus remained on the remedial,[22] the credits remained low,[23] and the cost remained minimal.[24] The articles were essentially program descriptions that emphasized structure, content, and remedial English, but revealed little or no study of the underlying pedagogy.[25] Nevertheless, the articles began to call

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[19] Morse, *supra* note 6, at 245 (citing Marjorie D. Rombauer, *Regular Faculty Staffing for an Expanded First-Year Research and Writing Course: A Post Mortem*, 44 ALB. L. REV. 392 (1980)).

[20] *Id.*

[21] *See* Rombauer, *supra* note 7, at 541, n.22 (citing David F. Cavers, *The First Year Group Work Program at Harvard*, 3 J. LEGAL EDUC. 39 (1950)). Rombauer says that, though the Harvard program was not as rigorous as the Chicago one, it did contribute to the writing program movement. Its principal purposes were "increasing understanding of legal processes and of students' job as law students, removing psychological impediments to effective study." *Id.*

[22] *See, e.g.*, Harold Horowitz, *Legal Research and Writing at the University of Southern California -- a Three Year Program,* 4 J. LEGAL EDUC. 95 (1951); Irwin D. Spiegel, *Experimenting in Legal Method at the University of Southern California*, 9 J. LEGAL EDUC. 92 (1956); Daniel R. Mandelker, *Legal Writing -- The Drake Program*, 3 J. LEGAL EDUC. 583 (1951).

[23] *See* Rombauer, *supra* note 7, at 542.

[24] *See* Stewart Macaulay and Henry G. Manne, *A Low-Cost Legal Writing Program -- The Wisconsin Experience*, 11 J. LEGAL EDUC. 387 (1959).

[25] *See* Robin K. Mills, *Legal Research Instruction in Law Schools, The State of the Art or, Why Law School Graduates Do Not Know How to Find the Law*, 70 LAW LIBR. J. 343, 344 n.9 (1977)(citing Alfred L. Gausewitz, *Teaching Legal Method and Analysis*, 23 ROCKY MTN. L. REV. 67 (1950)); Donald Kepner, *Rutgers Legal Method Program*, 5 J. LEGAL EDUC. 99 (1952); W.L. Matthews, Jr., *First Year Legal Writing and Legal Method in a Smaller Law School*, 8 J. LEGAL EDUC. 201 (1955); William R. Roalfe & William P. Higman, *Legal Writing and Research at Northwestern University*, 9 J. LEGAL EDUC. 81 (1956); Mortimer Schwartz, *Legal Method at Montana*, 6 J. LEGAL EDUC. 102 (1953);

for more attention to Legal Writing.

Law schools, they said, were unique in upper-level university education in the degree to which they relied on class work as the exclusive educational procedure.[26] One writing specialist observed that the lawyer's work requires special sensitivity to language: "[l]aw is a kind of language, albeit a very special one not to be tampered with [sic] by amateurs, and like any other language can be profitably studied through the lenses of grammar, semantics, rhetoric, and logic."[27] Another specialist observed that the quality of writing reflects the quality of thinking behind the writing, and that writing can be taught, just as thinking is.[28] At least one school tried to integrate Legal Writing into the curriculum.[29]

Jerome J. Shestack, *Legal Research and Writing: The Northwestern University Program*, 3 J. LEGAL EDUC. 126 (1950).

[26] *See* Kalven, *supra* note 14, at 108. Kalven notes that "laws schools for the most part have signally failed to afford the law student opportunity for sustained exposition, other than the writing of examinations. Another facet of the same shortcoming is the failure of law schools to afford sufficient opportunity for individual work." *Id.*

[27] C.B. Bordwell, *A Writing Specialist in the Law School*, 17 J. LEGAL EDUC. 462, 465 (1965). Bordwell reports on a writing specialist who was asked to assist at the University of Oregon, probably on the assumption that the students just needed English instruction. The specialist discovered that legal writing is based on normal English syntax, but embedded with legal terms. However, students have a problem learning how to use these unfamiliar terms and can appear to "lose their grip on ordinary written English." *Id.* at 463. The writing teacher is "secondary and advisory," and should consider himself to be "overhearing" statements about the law written by the student to his professor, then commenting not on the legal analysis, but the way it is expressed. Ironically, while the specialist observed the workings of the legal register, he unwittingly perpetuated the dichotomy between analysis and writing.

[28] Glenn Leggett, *Judicial Writing: An Observation by a Teacher of Writing*, 58 LAW LIBR. J. 114 (1965). Leggett argues that concrete advice about writing, e.g., use shorter words and begin at the beginning, is not the essential thing to be taught. Writing can only be as simple as the thing being written about, he says, and the author's style tends to reflect the way he or she thinks and looks at the world. This approach suggests that judicial opinion writing could offer good examples of voice, politics, policy, and the close integration of legal analysis with legal writing.

[29] *See* Robert N. Covington, *The Development of the Vanderbilt Legal Writing Program*, 16 J. LEGAL EDUC. 342 (1964). This program may typify the efforts made to integrate writing during this period. Vanderbilt wished to institute a course in Legal Writing that included both legal method, emphasizing such things as *stare decisis* and the techniques of synthesizing cases, and legal bibliography, emphasizing original research and writing

By the 1970's, law schools were again drawing more students, whose interests in law were politically and socially motivated. New Legal Writing courses -- and the articles analyzing them -- were born. This wave of courses, like that in the 1930's, was motivated by distress over poor grammar, a situation prompted by another gap in teaching grammar during the seventies. Assuming that the bad writing was merely the fault of poor undergraduate training, faculties set up programs without any research into the deeper rhetorical transfers these varied students were making.[30] Articles on this sort of experimental research showed that these programs often faltered or failed.[31] They failed largely because they did not incorporate the special characteristics and features of legal writing.[32]

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rather than the library-manual exercises of the existing legal bibliography course. They also wanted to provide first-year students with a faculty adviser. *Id.* at 343. Those faculty advisers graded students' papers throughout the program. The student writing improved after the program began, and there was also increased use of writing assignments in upper-level classes. However, the workload of the course may have diverted the students from their other work, and the absence of objective criteria to measure improvement in student skills made measurement of the program's success difficult. The article concludes on a remedial writing note, stating that more should be done for students with particularly low writing skills. While some excellent methods were used, they were not named, analyzed, or measured. Nor was the relation between writing and learning explored.

[30] *See* Joseph M. Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development,* 1 LEGAL WRITING 1 (1991). This article appeared, of course, at the end of this era.

[31] *See, e.g.,* Marjorie D. Rombauer, *Regular Faculty Staffing for an Expanded First-Year Research and Writing Course: A Post Mortem*, 44 ALB. L. REV. 392 (1980); *see also* Margit Livingston, *Legal Writing and Research at De Paul University: A Program in Transition*, 44 ALB. L. REV. 344 (1980). Both of these programs identified problems with programs that had been instituted in the seventies, among them staffing turnover, large classes, and burnout. Each identified the need for remedial writing and tutoring as a solution to legal writing ills. While some students may have indeed needed such work, many probably simply needed a clearer definition of the expectations within the legal discourse community, more intense practice, and classes that used effective pedagogy. At that time, experience within these programs was at once providing the information and signalling the need for further research into effective pedagogical techniques.

[32] One program published its dialogues, which revealed the lack of sound pedagogical analysis of the problems of bad legal writing, but set forth some of the issues surrounding the growing debate about the place of Legal Research and Writing in the curriculum. *See* David Lloyd, *A Student View of the Legal Research and Legal Bibliography Course at Utah and Elsewhere -- A Proposed System*, 25 J. LEGAL EDUC. 553 (1973); Richard I. Aaron, *Legal Writing at Utah -- A Reaction to the Student View*, 73 J. LEGAL EDUC. 566 (1973); Boyd

The articles also started developing nomenclatures for Legal Writing programs. Having been called "stepchildren" earlier,[33] Legal Writing programs then became the "orphans" of first-year curricula, a name that was to stick for years, perhaps causing more problems than it solved, despite its accuracy.[34] Rather than being welcomed into the legal education family on equal footing with other courses, the programs were treated in varying ways, which developed into several models: the faculty model,[35] the graduate student model,[36] the partial faculty model, the teaching assistant (TA) model,[37] the adjunct model, the non-faculty model, the student-run model, and the writing specialist model.[38] Low cost was still a proud priority.[39]

Kimball Dyer, *Whatever Happened to Legal Writing at Utah?*, 26 J. LEGAL EDUC. 338 (1974). Dyer justifies the changes that had occurred at Utah by describing his own course. The premise for that course was that "It is a matter of style." *Id.* at 338. This belies the continuing surface treatment of a host of complex intellectual tasks.

[33] *See* Stewart Macaulay & Henry G. Manne, *A Low-Cost Legal Writing Program -- The Wisconsin Experience,* 11 J. LEGAL EDUC. 387, 388 (1959); *see also* Mary Ellen Gale, *Legal Writing: The Impossible Takes A Little Longer*, 44 ALB. L. REV. 298, 317 (1980).

[34] *See* Jack Achtenberg, *Legal Writing and Research: The Neglected Orphan of the First Year*, 29 U. MIAMI L. REV. 218 (1975). Achtenberg details the attitudes toward Legal Writing programs, and suggests goals, formats, and models for successful programs. His article may have spawned the many reforms that continue to this day, as faculty are caught between the strong American tradition of enjoying teaching theory and leaving the practice to others, and the ethical necessity to prepare students to be competent practitioners. His arguments are sound, but they were not widely accepted, as schools continued to keep resources at a minimum.

[35] *See id.* at 242-247 (describing the various faculty models); *cf.* Rombauer, *supra* note 7 (describing the problems with the faculty model at the University of Washington Law School).

[36] *See* Achtenberg, *supra* note 34, at 247-253.

[37] *See id.* at 253-56; William Marple, *The Basic Legal Techniques Course at Catholic University School of Law: First-Year Lawyering Skills*, 26 J. LEGAL EDUC. 556 (1974).

[38] *See* Flora Johnson, *Legal Writing Programs: This Year's Models,* 8 STUDENT LAW. 11 (1980); *see generally* Michael Botein, *Rewriting First-Year Legal Writing Programs,* 30 J. LEGAL EDUC. 184 (1979). Stating that "[l]aw teachers are notoriously lazy in defining their educational goals," and that this situation is even more aggravated in Legal Writing "since the course has no substantive content [sic]," *id.* at 185, Botein describes five models: the full-time faculty, associate-in-law, faculty teaching assistant (TA), supervised student, and student-run models. The focus of his descriptions is cost. *See also* Allen Boyer, *Legal Writing Programs Reviewed: Merits, Flaws, Costs, and Essentials,* 62 CHI.-KENT L. REV. 23 (1985) (describing

The articles chronicle a pattern. Faculty remained reluctant to invest resources in writing programs, which then continued to falter. If the program created intense contact between a faculty member and students, it was too time-intensive and exhausting for the faculty.[40] If the program was taught by students, the feedback was not of high quality.[41] Cost was kept down by using professors and hiring TAs[42] or by setting up a program in which students self-taught,[43] although cost continued to be a concern.[44] Still, no serious scholarship appeared about the nature of Legal

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three models: the faculty, associate-in-law, and student TA models).

[39] *See* Kenneth B. Germain, *Legal Writing and Moot Court at Almost No Cost: The Kentucky Experience*, 25 J. LEGAL EDUC. 595 (1973).

[40] *See* Livingston, *supra* note 31, at 361 (suggesting that finding faculty members who are willing to cope with the frustrations of the first-year writing course is "an unlikely situation."); *see also* James A.R. Nafziger, *Teaching Legal Writing in the United States*, 7 MONASH U. L. REV. 67 (1980)(echoing Reid Dickerson's comment that faculty find it difficult to face the "stupefying tedium of scrutinizing each student's written work." Reid Dickerson, *Legal Drafting: Writing as Thinking, or, Talk-Back from Your Draft and How To Exploit It,* 29 J. LEGAL EDUC. 373, 374 (1979)); Rombauer, *supra* n. 7 at 410 ("working with students' papers . . . is hard work for the teachers as well as the students.").

[41] *See, e.g.,* Achtenberg, *supra* n. 34 at 255; Botein, *supra* note 38 at 194; Allen Boyer, *Legal Writing Programs Reviewed: Merits, Flaws, Costs, and Essentials*, 62 CHI-KENT L. REV. 23, 39-43 (1986).

[42] *See* James D. Gordon, *An Integrated First-Year Legal Writing Program,* 39 J. LEGAL EDUC. 609, 612 (1989). Gordon gives the dollars and cents that detail exactly how inexpensive this kind of program can be. *See also* Botein, *supra* note 38 at 194; Botein does the same.

[43] *See* Peter W. Gross, *California Western Law School's First-Year Course in Legal Skills*, 44 ALB. L. REV. 369 (1980). The legal skills -- there's that word again -- course at California Western's law school was modelled on the following premises: 1) skills learning by self-teaching; 2) skills learning as concept-formation; 3) identifying and separately addressing skill elements; 4) reconciling the need for teaching expertise with the need for a large number of teacher hours; and 4) making efforts to improve instruction.

[44] This is peculiar when cost does not seem to be a concern in hiring other faculty members. "Competency and cost, to a certain extent, are directly related." *See* Boyer, *supra* n. 38 at 24. Boyer suggests that an effective writing program depends upon several considerations, such as ensuring that the teachers are both competent and motivated; structuring the program well; taking into account the particular characteristics of the school; integrating the program with the school's existing curriculum and institutions; and keeping the

Writing itself.

Instead, as programs were remodeled, articles focused again on when and how to teach legal research. Legal bibliography courses could be taught by law librarians,[45] legal research could be taught through instructional systems development,[46] legal research commandos could be created by using pathfinders,[47] or legal research strategies could be integrated into the writing courses.[48] Integrating research with analysis gradually took priority, however, as Legal Writing programs sought to create approaches similar to those used by practitioners and scholars.[49]

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program in accord with the school's institutional objectives. These objectives cannot be met by a student-run program, but require fully paid professionals, he suggests, although his reported salaries are now quite low. *Id.* at 48.

[45] Sandra Sadow and Benjamin R. Beede, *Library Instruction in Law Schools*, 68 LAW LIBR. J. 27 (1975).

[46] Harold Washington and Glenda L. Partee, *An Instructional Systems Development Application to a Course in Basic Legal Research*, 31 HOW. L.J. 67 (1988). The authors apply a systems approach to designing a course in legal research. The ISD model involves the determination of job activities, the selection of tasks and functions, the construction of job performance measures, and analysis of existing courses, and the selection of the instructional setting. This theory is implemented by putting the steps of research strategy into step-by-step charts that students use when doing research assignments.

[47] Victoria K. Trotta, *A Map Through the Maze*, 1991 CAL. LAW. 53. "[A] pathfinder is a brief document containing basic information on a commonly posed research question or a particular source." *Id.* These tools at once inform the researcher of a useful series of sources to consult and provide him with an order that will be efficient. *See also* Robert C. Berring, *Basic Training: The Crisis in Legal Research*, 1991 CAL. LAW. 50. Berring, a veteran legal research teacher and law librarian, bemoans law schools' unwillingness to ensure that students are taught how to research.

[48] Christopher G. Wren and Jill Robinson Wren, *The Teaching of Legal Research*, 80 LAW LIBR. J. 7 (1988). The Wrens suggest three frameworks for helping students research effectively: a context that helps students understand how law is created; a method that helps students evaluate the legal problems confronting them; and various strategies for conducting effective research.

[49] *See generally* Wesley Gilmer, *Teaching Legal Research and Legal Writing in American Law Schools*, 25 J. LEGAL EDUC. 57 (1973); Helene S. Shapo, *The Frontiers of Legal Writing: Challenges for Teaching Research*, 78 LAW LIBR. J. 719 (1986); *see also* Ramsfield, *supra* note 1 (indicating that over 60 percent of law schools integrate legal research with Legal Writing courses).

Then interdisciplinary voices appeared. Professionals from other areas of expertise suggested solutions for the writing course, as well, such as teaching it as a form of communications arts,[50] as a basic skills course taught by a non-lawyer,[51] and as an integrated approach involving the whole introduction to legal analysis in the first year.[52] One professor even suggested using entertainment law as the backdrop for Legal Writing courses in order to take out the drudgery.[53] Not all of these articles were research-oriented pieces of scholarship, but they hinted at the future: careful interdisciplinary studies that link Legal Writing to second language learning, to cognitive psychology, and to composition theory.

Some articles aggressively criticized Legal Writing itself. Those in the Plain English movement were putting pressure on lawyers to make their writing more accessible.[54]

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[50] David M. Hunsaker, *Law, Humanism and Communication: Suggestions for Limited Curricular Reform*, 30 J. LEGAL EDUC. 417 (1980); *see also* Ronald J. Matlon, *Communication in the Legal Process: A Pre-Law Course at the Univ. of Arizona*, 31 J. LEGAL EDUC. 589 (1982).

[51] Lynn B. Squires, *A Writing Specialist in the Legal Research and Writing Curriculum*, 44 ALB. L. REV. 412 (1980). Squires was a non-lawyer writing specialist in the University of Washington's Legal Analysis program. She felt that a non-lawyer could bring a good change of perspective to Legal Writing, offering "normal" standards to a field where "abnormal" language usage abounds. *Cf.* C.B. Bordwell, *A Writing Specialist in the Law School*, 17 J. LEGAL EDUC. 462 (1965).

[52] Paul T. Wangerin, *Skills Training in "Legal Analysis": A Systematic Approach*, 40 U. MIAMI L. REV. 409 (1986).

[53] Robert M. Jarvis, *Using Entertainment Law to Teach Legal Writing*, 3 ENT. & SPORTS L. REV. 243 (1986).

[54] The Plain English movement began in the 1970's, spurred in large part by consumer advocates who demanded that insurance documents and sales agreements be in language readable to the average consumer. Now at least thirty-seven states have Plain English laws in one form or another, and the legal community has been forced to respond accordingly. In tandem with the larger movement, the Legal Writing community has long advocated clean, clear language. The Legal Writing Institute, whose members number over 900 Legal Writing specialists internationally, recently adopted a Plain English Statement. 1992 SECOND DRAFT at 10. One proponent of the Plain English movement in Legal Writing suggests that simple, clear language protects arbitration decisions from being overturned by courts. Mary Aslanian-Bedikian, *Clear Expression in Labor Arbitration*, 63 MICH. BAR J. 1068 (1984).

Commentators[55] and judges[56] continued sounding alarms at the declining quality of legal writing. Students were leaving law school writing just as poorly as when they arrived, said one commentator.[57] Still, no serious scholarship had delved into the theory behind teaching Legal Writing.

When Legal Writing programs had existed for a while, some articles and other works began appearing that saw beyond remedial, cheap methods. Legal Writing, they suggested, was specialized and could be taught as such;[58] Legal Writing was an integral part of analysis;[59] and research and writing needed to be integrated with each other[60] and with the first-year curriculum at large.[61] Further, they suggested that Legal Writing needed to continue throughout the three

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[55] *See, e.g.,* Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure,* 103 HARV. L. REV. 926 (1990). Lasson attacks faculties themselves, turning the tables on the very people who criticize others' legal writing.

[56] *See, e.g.,* Appellate Judges Conference, *Appellate Litigation Skills Training: The Role of the Law Schools*, 54 U. CIN. L. REV. 129 (1985).

[57] *See* Flora Johnson, *Teaching Legal Writing: An Idea Whose Time Has Come -- Or Has It?*, STUDENT LAW. 10 (1979). Johnson states that many students cannot write well when they enter law school, and cannot write any better when they graduate. Law firms are unhappy about this. Ironically, what many law schools do is to make students' writing worse by allowing jargon and "magic phrases," using judicial opinions as writing models, drafting from books that "enshrine tautologies," and using archaic language and phrases. Law schools tend to separate writing from "thinking like lawyers." Additionally, Johnson, says, law professors would rather talk about law than about writing, and may feel uncomfortable about their own writing skills, or their ability to explain how to write; coupled with the time-consuming feature of reading and commenting on papers, the work is too difficult, so faculties have avoided it.

[58] *See* Gale, *supra* note 33, at 303; Wesley Gilmer, Jr., *Teaching Legal Research and Legal Writing in American Law Schools,* 25 J. LEGAL EDUC. 57 (1973); George D. Gopen, *The State of Legal Writing: Res Ipsa Loquitur*, 86 MICH. L. REV. 333 (1986).

[59] Wren, *supra* note 48.

[60] *See, e.g.,* JAN M. LEVINE WITH KATHRYN A. SAMPSON, ANALYTICAL ASSIGNMENTS FOR INTEGRATING LEGAL RESEARCH AND WRITING (1996).

[61] *Id.*; Gross, *supra* n. 43, at 369. Gross states that the teaching of writing is the teaching of reasoning: they cannot be separated. Legal educators are beginning to recognize this, resulting in courses that could be called "Legal Problem Solving" or "Legal Skills" rather than simply "Legal Writing." This program, based on the principle that teaching Legal Writing is teaching legal reasoning, also began to import ideas from composition theory using PETER

years, which reinforced what some faculty had discovered much earlier.[62] One professor suggested an approach to teaching legal problem-solving that used written exercises throughout the curriculum to demonstrate that legal analysis includes abilities to use facts, read and interpret statutes, make analogies, and understand policy.[63] Programs remodeled around these concepts were tuning themselves to the students' needs, to the law school's demographics, and to the changing demands of practice, even if the research was mostly experiential.

Articles began describing successful programs. For example, some programs that succeeded awarded six credits per year,[64] had continuity in teaching by using tenured instructors,[65] or integrated the program with the first-year curriculum.[66] One program identified five concrete problem categories to address in Legal Writing: cosmetic problems, serious grammatical problems, organizational problems, rhetorical problems, and problems in confidence.[67] Once these

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ELBOW, WRITING WITHOUT TEACHERS (1973). *See* Gross, *supra* note 48, at 388.

[62] Philip C. Kissam, *Thinking (By Writing) About Legal Writing,* 40 VAND. L. REV. 135 (1987); William J. Bridge, *Legal Writing After the First Year of Law School,* 5 OHIO N.U. L. REV. 411, 425-33 (1978); Gale, *supra* note 33, at 335-42; Gilmer, *supra* note 49, at 580-81.

[63] *See* Wangerin, *supra* note 52.

[64] Constance Frisby Fain, *A Comprehensive Legal Communication Skills Program: The Thurgood Marshall Model*, 1 S. ILL. U. L.J. 1 (1982).

[65] Ruth Fleet Thurman, *Blueprint for a Legal Research and Writing Course*, 31 J. LEGAL EDUC. 134, 139 (1981).

[66] James D. Gordon, *An Integrated First-Year Legal Writing Program*, 39 J. LEGAL EDUC. 609 (1989).

[67] Norman Brand, *Minority Writing Problems and Law School Writing Programs*, 26 J. LEGAL EDUC. 331, 332 (1974). Brand suggests several solutions to cure the problem, such as teaching paragraph development, using flow charts for developing an argument through a series of yes-no questions, and making writing routine to build confidence. He warns against the law review experience as a substitute for steady expository writing because frustration is high and criticism too vague to be helpful to young writers. *Cf.* Robert Batey, *Legal Research and Writing from First Year to Law Review*, 12 STETSON L. REV. 735 (1983). Batey reports that the ABA's Task Force on Lawyer Competency stated that legal research and writing are two of the fundamental skills necessary for competent lawyering. While law students are offered many opportunities to sharpen their skills, many do not realize the importance of Legal Writing courses. During the first year, most students consider Legal Writing a "time-consuming diversion" from the "real" work. The author argues that research and writing is the real work of lawyers and, additionally, students will be rewarded with a

categories were used to decipher writing problems, practical and specific solutions resulted. In another program, the six-credit course explored case analysis, legal reading strategies, composite brief writing, legal methodology, persuasive prose and law examinations, and legal research methodology.[68] Students were required to practice, were accountable for their performances, and received steady feedback. Methodology from composition theory was beginning to arrive in Legal Writing courses.

Also beginning to emerge were discussions that revealed the complexity behind the intellectual endeavor of Legal Writing.[69] Analysts began to recognize that the causes of bad legal writing lay in linguistic, rhetorical, social, and even political arenas.[70] Some of the causes of bad

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sense of growing accomplishment in their skills if they make the effort. "The first-year course in research and writing presents an opportunity to begin to develop skills crucial to effective lawyering; taking full advantage of that opportunity requires extensive effort. At the end of the course, the student who has worked hard will be ready for more sophisticated research and writing challenges," such as law review writing. *Id*. at 738.

[68] *See* Fain, *supra* note 63, at 5-33.

[69] Gopen, *supra* note 58, at 339-45. Gopen lists eight causes for bad legal writing: adjudicated jargon (lawyers feel they have to write that way); conforming to legal precedent (lawyers have to compare and contrast and cannot be very original); the club (departing from convention will risk losing membership); the hostile audience (everyone is out to get the lawyer); practical pressures (the power structure in law firms is disconcerting when partners mark up papers for the sake of marking up); the toll booth syndrome (I've thrown in all of my work so I should get to finish even if the change didn't go through the machine); the lure of money and power (it is in the lawyer's self-interest to keep legal prose unreadable); and lack of linguistic awareness (lawyers haven't had good teachers and don't read good prose enough). This diagnosis puts legal writing in its social discourse context.

[70] *See* Jay Feinman and Marc Feldman, *Pedagogy and Politics*, 73 GEO. L.J. 875 (1985). The authors argue that current law school pedagogy does not give students the skills they should possess as lawyers. Rather, "thinking like a lawyer," the traditional focus of legal education, comprises several legal skills: acquiring a legal vocabulary, understanding how legal doctrines and principles are applied in particular fact settings, the ability to read and use judicial opinions, and understanding the categories of legal argument and their use. Current law school education techniques are based on the belief that "intelligence and talent are normally distributed among the population" and that one's talent is immutable. The authors disagree with this theory, stating that learning curves are more a product of inadequate schooling than students' abilities; given appropriate instruction, nearly all students can master the skills necessary for the "novice lawyer." Appropriate instruction includes giving students objectives for their courses, deciding the level of learning required, and designing devices for measuring students' achievement. Many of these should be ungraded devices to determine

legal writing lay in the structure of law schools themselves: the premium placed on its oral culture skewed learning in favor of good talkers and bold volunteers, not good writers.[71] So, again, the lack of context for writing and its practice emerged as causes of bad legal writing. In general, a discovery was underway that treatment of writing problems had been superficial and had ignored what composition theorists and linguists had known for a long time: learning a special register in a new discourse community is complex and requires repeated, sustained, concentrated effort and practice.

History, theory, and practice began to merge. Put in its historical context, Legal Writing was easier to read and interpret. Put in its social context, it revealed causes of poor logic, jumbled organization, and turgid prose. Theory informed writing and vice versa. The causes of bad writing were complex and needed practical assistance from the experts. Many law schools sought that help, either through hiring writing specialists or through extending long-term contracts to their writing professionals. Some integrated writing courses with the curriculum, and others required students to take more upper-level writing courses.[72] Some continued to reinvent their programs. As Legal Writing professionals stayed longer on the job, they discovered interesting and creative pedagogy that could be borrowed from the experts in linguistics, composition theory, and cognitive psychology.

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how students are doing and to decide if more information, or a different method, would help students learn better. *See also* Kissam, *supra* note 61, at 148-51. The "bureaucratization" of law schools demands "objective" evaluation of law faculty performance, e.g., published scholarly articles, favorable student evaluations. More creative approaches to teaching may frustrate those standards of measurement and deprive the professor of the time necessary to teach writing.

[71] *Id.* at 142-45. In law schools, writing is considered a substitute for oral communications, and the emphasis is primarily with the finished product, not the process. The current idea of legal expertise rewards the ability to get the "right answers" quickly, and oral communication is more conducive to this quickness. So some students mask their inability to write by using the "evanescent quality of speech," the oral conventions of simplicity, repetition, and the possibility of qualifying dialogue. *Id.* at 146. Because of this emphasis on short-term oral expression, exam writing has become the only important context for writing and is essentially "a teacher's *simulated oral examination* of the student." [Emphasis included.] This emphasis on oral communication inappropriately undercuts the critical dimension of writing; instead, he suggests, writing should be used throughout the legal curriculum to develop critical abilities.

[72] Lucia Ann Silecchia, *Designing and Teaching Advanced Legal Research and Writing Courses*, 33 DUQ. L. REV. 203 (1995).

A new field of inquiry finally emerged.[73] This field borrowed concepts from the vigorous research into teaching writing that had taken place during the 1970's and 1980's. These concepts included teaching writing as a recursive process,[74] requiring multiple drafts of work,[75] teaching problem-solving techniques for working on the drafts,[76] and using peer criticism.[77] The experts offered solutions that involved innovative classroom techniques and learning strategies that could percolate throughout the law curriculum, but those solutions had to be imported carefully into a still-resistant academy.

Articles describing just how to do that are now necessary. Now, the field of Legal Writing is attracting more scholars, often lawyer-scholars who believe that law schools can demystify

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[73] James F. Stratman, *The Emergence of Legal Composition as a Field of Inquiry: Evaluating the Prospects* 60 REV. EDUC. RES. 153 (1990). Stratman states that legal thinking may involve unique social and rhetorical problem-solving skills not required for skill in ordinary argument; many of the cognitive skills legal writers need are described usefully in terms of the cognitive skills that other writers need, specialized courses in writing could be very beneficial for learning in traditional law courses.

[74] John R. Hayes & Linda S. Flower, *Writing as Problem Solving*, 14 VISIBLE LANGUAGE Vol. 4, 388 (1980). "A recursive process is one which can contain itself as a part." *Id.* at 397. When the editing process identifies a major fault in the text, such as lack of content or poor organization, that editing process may employ the whole writing process of prewriting, writing, rewriting, and editing to fix the fault. *Id.* at 398.

[75] Janet Emig, *Writing as a Mode of Learning,* 28 C. COMPOSITION AND COMM. 34 (1977). Emig suggests that "[w]riting serves learning uniquely because writing as process-and-product possesses a cluster of attributes that correspond uniquely to certain powerful learning strategies." *Id.* Those learning strategies include profiting from "multi-representational and integrative re-enforcement," seeking self-provided feedback, making "generative conceptual groupings," "proceeding from propositions, hypotheses, and other elegant summarizers," being "active, engaged, personal -- notably self-rhythmed." *Id.* at 40.

[76] Donald M. Murray, *How to Teach the Student to Teach Himself,* from DONALD M. MURRAY, A WRITER TEACHES WRITING (1968) at 130-33. Murray suggests that students as well as teachers have been confused into believing that learning is a passive process. Students can learn by talking about drafts, talking to each other about drafts, and reading the paper aloud.

[77] *See id.*; *see also* KENNETH A. BRUFFEE, A SHORT COURSE IN WRITING (1985). Bruffee advocates collaborative learning as a means of helping students "learn to write better by becoming members of an active, constructive community of writers and readers." *Id.* at 1. Students work in groups supervised by teachers, and learn to invent ideas, defend and explain propositions, describe and criticize each other's work, research together, and specialize.

Legal Writing and more proactively usher students into legal thinking. Books and articles have appeared describing how to do this.[78]

Legal Writing programs and their cousins, the clinics, are combining forces to train law students to communicate well. To practice law and to become a legal scholar, students needed to understand the deeper rhetorical nature of legal discourse and its permutations in various contexts, such as the law office, the seminar, the exam. *What is "logic"? How does one construct meaning through writing? How does one account for nonsensical decisions? How does the legal discourse community handle classical notions of rhetoric? What has it constructed or deconstructed to affect so-called reasoning? How does language itself frame results?*

Our colleagues, the scholars on main campus, have been exploring similar questions for years. Linguists, composition theorists, and psychologists have been exploring how language and thinking intertwine, how writing serves as a powerful tool for learning, and how certain methodologies acculturate students best to new discourse communities. We need now to explore how these theories and methodologies work in the legal discourse community.

Now, most schools are hiring Legal Writing experts, many of whom are tenure-track professors who have chosen this field as a career.[79] And most schools have stopped limiting the number of years Legal Writing professors can stay.[80] This is good news for Legal Writing scholarship, which relies on the experts to further it. Legal Writing professors are now more poised to research and write about Legal Writing. The questions now are what topics to pursue.

Future Scholarship

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[78] Since 1980, dozens of books have emerged on Legal Writing, compared to a handful before then. *See, e.g.,* SUSAN L. BRODY, ET AL., LEGAL DRAFTING (1994); CHARLES R. CALLEROS, LEGAL METHOD AND WRITING (2d ed. 1994); VEDA R. CHARROW, ET AL., CLEAR & EFFECTIVE LEGAL WRITING (2d ed. 1995); LAUREL CURRIE OATES, THE LEGAL WRITING HANDBOOK (1993); RICHARD K. NEUMANN, JR., LEGAL REASONING AND LEGAL WRITING (2d ed. 1994); KAREN K. PORTER, ET AL., INTRODUCTION TO LEGAL WRITING AND ORAL ADVOCACY (1989); DIANA V. PRATT, LEGAL WRITING: A SYSTEMATIC APPROACH (2d ed. 1993); MARJORIE DICK ROMBAUER, LEGAL PROBLEM SOLVING: ANALYSIS, RESEARCH & WRITING (5th ed. 1991); HELENE S. SHAPO, ET AL., WRITING AND ANALYSIS IN THE LAW (3d ed. 1995).

[79] Jan M. Levine, *Voices in the Wilderness: Tenured and Tenure-Track Directors and Teachers in Legal Research and Writing Programs*, 45 J. LEGAL EDUC. 530 (1995).

[80] *See* Ramsfield, *supra* note 1, at __. The bad news is that they may keep the workload so high that burnout can occur and no time can be devoted to scholarship. *See* Levine, *supra* note 80, at 546-50.

Future scholarship will need to cover a broad range of subjects, from linguistic behaviors to rhetorical preferences. Such research might follow a sequence from theory to classroom to projected learning behaviors. Under theory, for example, we might first want to know exactly what distinguishes legal writing from other writing. How deeply embedded are the differences? If these differences exist and are not merely superficial, in what ways do they affect our teaching?

Such research also raises questions about how legal writers and readers are situated rhetorically and about how that situation may differ from other writing situations. What are the features of the discourse community? What are the common written forms within that discourse, and what are their genre features? Are those genre features similar to those in other, analogous genres for writing? We know, perhaps by common sense, that the legal discourse community has its own norms, as does any other community. But what are those unspoken norms that lawyers use when they communicate with each other and with others? In what ways do scholars communicate differently from judges or government lawyers, for example? How successful are these modes of written communication? Have they changed over, say the last twenty years?

The better we can understand the features of the legal discourse community, the better we can begin to demystify our students' acculturation into it. The more we analyze the products of Legal Writing, the better we can evaluate its success as a means of learning, communication, and persuasion. The more we understand about the social and psychological processes that lie behind legal writing, the better the guidance that we can offer to novices in the discourse, our students.

In addition to understand better the features of legal discourse, we might want to also look at the formal structures for written legal prose, a territory already covered well by the textbooks. What schemata (of analysis, of persuasion, of narration) lie behind the familiar organizational patterns for standard legal documents? Do legal writers use intermediate organizational patterns as they go through the legal process of writing a legal document? In argumentation, to what extent do lawyers rely upon classical forms for argumentation and to what extent on new forms? Are some forms for argumentation, for example, more effective than others? What can we learn from research in cognitive psychology and rhetorical studies about how readers read, remember, learn, and transform? In light of such research, how does work in areas such as reader expectation theory help us to construct legal documents that are both are both architecturally sound and elegant?

Topics Suggested at the Conference

Protocol Analysis in Legal Writing: How Do Legal Writers Write?
What is the Legal Writer's Rhetorical Situation?
How Do Studies in Cognitive Psychology Affect Legal Language Acquisition?
What Analytical Paradigms Do Judges Use?
What "Opposing Arguments" Work Best?
How Do Judicial Opinions Use Classical Rhetoric?
What Are the Modes of Reasoning Use By "First Nation" People?
Can Case Studies Show How Judges Are Persuaded?

Does Narrative Theory Help Or Hurt the Legal Writer?
How Does Involving Clients Affect Legal Writing?

We should also analyze legal language itself. Some research already exists on the ways in which "turgid legal prose" owes its origins to such influences as Anglo-American legal traditions, historic conventions and the weight of precedent. With the increase in legal writing programs, itself a kind of reform movement within legal education, and with the influence of movements like plain English, legal language may be becoming clearer and more accessible to the varied audiences with the law. Nevertheless, the influence of such reform movements, to the extent that they are influencing the usage of legal language at all, has not been fully examined. What exactly are the usage patterns or the register within which lawyers communicate; what are the characteristics? How much is old, archaic, and unuseful, and how do legal writers distinguish between the useful and the unuseful? What historical usage patterns still serve a legitimate or useful purpose and why? To what extent is "plain English" replacing, or capable of replacing, more archaic usages? Do different legal genres -- for example, statutes -- demand different standards for usage? What theories of language and language usage can best guide us in assisting lawyers to communicate more clearly and concisely? Are there linguistic or rhetorical theories of interpretation, or decoding, that can assist us in teaching our students and in making recommendations to practitioners?

Topics Suggested at the Conference

Who Communicates Best Within the Legal Discourse Community?
How Do Lawyers Communicate with Non-Lawyers?
How Is English Used for Legal Purposes?
How Are International English Used in Legal Discourse?
What Is the History of American Legal Discourse?
What Is Coherence and Cohesion in Legal Discourse?
What Discourse Markers Work in Legal Writing?
Discourse Analysis: What Is Jurists' Speech?
How Do Legal Genres Work?
How Does the Same Author Shift Register When Writing to Different Audiences?
Deconstructionism: What Is Its Effect on the Written Word?
How Do We Contextualize Positivist Statements?
How Do Feminist Linguistics and Feminist Jurisprudence Intersect?

Once we know more about the discourse community, about its rhetoric, genres, and conventions, and about its linguistic usages and registers, we can begin to understand how we might demystify these features for our students, how we might help to acculturate them into writing for the law. This inquiry might first look in the direction of learning theory and cognitive psychology, then look at ways in which the materials and the conclusions derived from those areas, however tentative, might influence our classroom practices. In our view, many of those currently in the field of Legal Writing have already begun to look in these directions, with some

instructive initial commentaries. Seemingly, however, much remains to be done.

A look at the program for any conference or workshop on Legal Writing reveals the ubiquity of the questions we all have about how our students learn Legal Writing and about how we might improve our classroom practices. What, for example, is entailed in first-year law students' "getting it" -- in mastering legal analysis in such a way that they can write credibly for the law? On the other hand, why do accomplished legal writers still struggle with many of their writing tasks? What are the best models for ushering beginning law students into legal discourse? How might those models be translated into components of a Legal Writing curriculum? Is legal research a form of analysis? In what ways is the teaching of Legal Writing also the teaching of legal analysis? Does the writing-across-the-curriculum movement transfer well to law school? Are we requiring our students to interpret and master different legal registers -- for example, classical legal English, on the one hand, and the legal prose that we are encouraging them to write, on the other? Does the process of writing for the law differ from other models of the writing process? If so, in what ways? Are upper-level courses, or writing across the entire three years of law school, essential to training good legal writers? Do analytical paradigms mastered at the undergraduate level transfer to the legal writing classroom? Can we describe such paradigms, and build on them? Do methodologies developed in "foreigner talk" studies transfer to the Legal Writing classroom? How will the Legal Writing classroom deal with an emerging cyberspace? The questions, of which these are just a sample, are myriad, and the definitive answers few. We have much work to do.

Topics Suggested at the Conference

How Do the Views, or Theories, of Teaching Legal Writing Work in the Classroom?
Are We Ready For a New View?
Who are the Learners in the Legal Classroom?
How Do Race, Gender, and Ethnicity Affect Legal Writing?
How Do Studies in Literacy Affect Teaching and Thinking in the Law Classroom?
Is the Law Classroom Ready For Writing Across the Curriculum?
Do Computers Assist Legal Writing and Research?
How Do We Use Critical Reading to Teach Critical Writing?
How Do We Best Respond to Student Legal Writing, both Practical and Scholarly?
Does Peer Evaluation Work in Legal Writing?
How Do Student Conferences Work Under the Social View?
What Classroom Techniques Work in Teaching Legal Writing under the Social View?
What is the Teacher's Role in the Legal Writing Classroom?

Scholars in Legal Writing are pioneers in a new field. This field is necessarily interdisciplinary, and so its scholarship must draw on diverse fields and methodologies. Our inquiries will no doubt range from the historical to the empirical; our work will include such tasks as gathering data on what models for teaching Legal Writing work best in what contexts, on analyzing how both lawyers and law students write, on appropriating suitable models for cognition

and learning in law school settings, and on using insights from rhetoric, linguistics, and composition studies to better understand legal discourse. The excitement and challenge for us all lies in forging the new area for scholarship. Our field of inquiry is large and new; we will not be limited to narrow or esoteric research. We will, without question, be constructing the framework for research into Legal Writing and it is methodology for at least a decade, and perhaps for several. Most likely, a number of our insights and conclusions can influence the larger law school curriculum.

As we choose which directions to take, we would do well to heed the very advice we give our students -- to take account of our purpose, our audience, our scope, and our stance. For example, the purpose of some scholarship may be to convince readers that a certain methodology should be used to define linguistically the field of Legal Writing, or to inform readers of developments in learning theory. The scholar may also wish to establish herself as a serious theorist, to challenge classical notions of Legal Writing, or to change reader's minds. Another scholar may wish to criticize, challenge, edify, elaborate, synthesize, or amplify previous scholarship. He may want to deconstruct traditional attitudes about writing or its place in education. Another may build the bridges from other disciplines to this one, showing similarities and differences between research and methodology.

To accomplish these purposes, the scholar may draw on other disciplines for guidance. She may want, for example, to design methods for building versatile, effective, individual Legal Writing processes. She may draw on composition theory to define the writing process, which is recursive. She may then gather writing protocols designed to show how legal writers use multiple sources, choose among many analytical paradigms, and adjust to local audiences. Her results will allow her to theorize about the methods that successful legal writers use to build efficient writing processes. Practically, such research may show that factoring in so many constraints adds considerably to the time it takes to produce documents -- a surprise for novices. Or the scholar may adapt current learning theory methodology to the Legal Writing classroom and to the law office: learning styles become more magnified because of the personal nature of writing. An effective Legal Writing course needs to present information in ways accessible to all learners. What are those methods and why will they work?

Linguists have developed considerable work on discourse theory, but have stopped short of analyzing written legal discourse. The scholar may draw from discourse theory to see how it manifests itself in Legal Writing. For example, the Legal Writing scholar can research precisely how lawyers shift registers when explaining analysis to different audiences, for example, lawyers, non-lawyers, expert lawyers, expert non-lawyers, and so on. We need to know how acquiring legal language compares to general language acquisition; some theories may be drawn from work in language acquisition. Using work in "foreigner talk" may help law professors develop an appropriate language for hastening acquisition of legal talk, if that is desirable.

As the Legal Writing scholar selects her topic, she will have to decide which audience to target for her work. Because of its interdisciplinary nature, Legal Writing scholarship that pulls

from linguistics may initially be more interesting to the linguists, who are unfamiliar with the legal discourse community. Empirical work in how legal writers write may appeal to law professors in general, who are baffled by poorly written exams, or to practitioners looking for more efficiency on the job. Work in composition theory may appeal to both the composition specialists and Legal Writing professors. Rigorous and thorough research and creative theory should appeal to both law professors and faculty in related disciplines.

Such interdisciplinary scope will take Legal Writing scholars to the main campus. The original nature of the scholarship will be in doing what non-Legal Writing experts cannot do: demonstrate how theories used elsewhere apply -- or do not apply -- to Legal Writing. No longer will it be sufficient to limit the scope of Legal Writing articles to "what we do at our school." Instead, the Legal Writing scholar will need to broaden his vision of what Legal Writing is, perhaps explaining why certain methodologies work, but proving that their origins lie elsewhere. If the work is original, such as empirical research on how judges use language, or how scholarly legal language differs from practical legal language, then the scholar must create, explain, and justify the research methodologies. If the scholar creates pedagogies for the law classroom, then he must include the bases for the pedagogies, demonstrate whether or not similar pedagogies have worked elsewhere, and explain why they do or do not transfer well into Legal Writing. If the scholar uses narrative to describe a classroom situation, for example, he must go beyond the anecdotal and use that narrative to develop her scholarly thesis in an original way. Empiricism, theory, or narrative, this new scholarship sits poised to define itself as sharp, thorough, and eminently useful.

The nature of that scholarship will emerge from the scholar's choice of stance. She may choose to be aggressive, conciliatory, blunt, accommodating, or confrontational. Exclusion from the legal academy breeds resentment and anger, stances that can seep into Legal Writing scholarship if not carefully measured. The scholar may choose a stance thinking proof is necessary, a demonstration to novices -- readers uninitiated to the field of Legal Writing – of the features and scope of the scholarship. The appropriate stance may be that of the teacher, the scholar, the inventor: direct, careful, enthusiastic. It may be one of discovery, revelation, or guidance. Deeply rooted in this scholarship may be a kind of persuasion because, at this point, the legal academy it unfamiliar with the field. That persuasion can be gentle or robust, but the scholar must decide. We are, after all, more responsible for our writing than any one else in the legal academy.

Conclusion

We are the scholars of a new discipline. Our work, so carefully cut out for us by our predecessors, continues. We know legal writing is a process that charts a mind's journey from question to answer; we know that legal research is an analytical selection that shapes that intellectual journey; and we know that our discourse is a complex intersection of language, logic, and law. We do not yet know the depth of our discipline, nor have we fully articulated its breadth. We own a rare moment in scholarship, a moment of discovery and careful preservation,

a moment of intellectual adventure. As we develop our discipline, we can work together to chart its magnificent terrain and preserve it natural beauty.

Small-Group Session #1: LEGAL WRITING TAUGHT BY FULL-TIME TEACHERS

Linda Edwards (Mercer University Law School) and Dr. Martha Siegel (Suffolk Law School)

The presenters opened the discussion by noting that supervising full-time teachers presented a set of challenges different from the challenges of supervising adjuncts or student assistants. The presenters distributed a handout listing a series of questions, but focused first on several issues: (1) establishing criteria for the hiring and reappointment of full-time teachers; (2) expecting scholarship production by full-time teachers; (3) responding effectively to resistance to change, especially by tenured or long-term contract instructors; and (4) working with the existing administration and faculty structures.

Additional issues raised in the discussion included: (5) the running of a collegial program where a large salary discrepancy exists between a director and those the director supervises; (6) removing an instructor who has substandard teaching skills and no interest in Legal Writing as a profession, but who has published traditional law review articles and has close friends on the tenured faculty; and (7) how often, and under what circumstances, a director should observe the classroom teaching of full-time teachers.

While discussing criteria for reappointment of teachers, the group noted that some of the best teachers (according to the director's in-class observations) did not receive good student evaluations; yet other mediocre to poor teachers (according to the director's in-class observations) received rave reviews. Some directors devise their own program-specific evaluations; others prefer to use the same evaluation as used by the tenure-track faculty. At one law school, the doctrinal faculty evaluate Legal Writing personnel and a director observed that these evaluators can be "savage." Several directors commented that students notice the presence of even the most unobtrusive director, skewing the observed teaching environment. One director uses videotaping, reviewing the tape with the instructor privately. This technique has the advantage of minimizing differences of memory about what happened in the class. Several directors specifically invite all instructors to visit their own classes and welcome the feedback the instructors can give the director.

The group next explored concerns with supervising full-time teachers while making programmatic changes. Issues of supervision and program-change intersect when a director introduces changes over the resistance of the instructors. Often tense, these situations may require a director to choose between the academic freedom of the full-time teacher and the director's overarching responsibilities to the students and the institution. At least one director characterized this tension as one of "being held accountable for the quality of the program, but lacking the authority to compel change."

In response, one director suggested that the authority of a director in supervising full-time teachers directly correlates with the director's status within the law school -- a status that requires, as another director observed, "unequivocal support from the Dean." Another director characterized the consequences of the lack of support from the Dean: "I want to be supported in my dealings with the instructors who work with me, but I feel like I'm put in the position of doing quality control without the equipment to do it."

The group also discussed some of the challenges of hiring and retaining full-time teachers: a kind-hearted faculty that overrides a director's recommendation to terminate; the difficulties of retaining excellent professionals; and the Scylla and Charybdis of involving doctrinal faculty in the hiring and retention process. The advantages of involving doctrinal faculty include shared responsibility for the hiring decision. However, sharing the hiring responsibility may result in hiring teachers the director did not support and the awkwardness of supervising those new hires. Another dilemma specific to retention and the criteria for contract renewal was captured by one director who worried about how to tell someone: "You're wonderful, and we love you, but you're not extraordinary."

The discussion produced no definitive answers, but the range of advice and experiences demonstrated that our programs, though often quite different in context, institutional support, and placement on an evolutionary spectrum, share many common issues.

Small-Group Session #2: LEGAL WRITING TAUGHT BY STUDENT TEACHING ASSISTANTS

Julie Cheslik (University of Missouri-Kansas City School of Law) and Christy McCrary (University of Texas School of Law)

Christy McCrary:

I'm Christy McCrary from the University of Texas. We have a full-time writing professor working with the teaching assistants (TAs). (We call our teaching assistants TQs, short for Teaching Quiz Masters (TQs), just to confuse everyone outside of Texas). This coming year we don't have enough TAs who met the position's standards so we are throwing in five adjuncts to play a role. So we have a very confusing program.

Julie Cheslik:

Christy and I decided that we were not going to give a formal presentation. I want to point out, however, that I have distributed copies of an article I wrote, published in THE JOURNAL OF LEGAL EDUCATION, on Legal Writing programs and how they use TAs.[1] Some of you may have seen that before today.

In the article, I looked at issues such as training, and whether the timing of training has any relationship to whether the director thought the TAs did a good job. One of the findings was that there was some evidence that training right before the exercise the TA was going to perform was more effective than training months in advance. Some of us feel badly about a weekly meeting with our TAs right before they do something, but in fact there is some evidence that that's the best time to train TAs. So one of the things that we might want to talk about is training.

I'm also interested in talking about hiring. My personal philosophy is that it's very important that the director have almost absolute authority to hire TAs, to supervise them and to pretty much tell them exactly what to do. I think, unlike Legal Writing instructors, TAs are quite a far step from being prepared to create pedagogically sound problems and offer instruction on their own. Further, I think they don't feel comfortable doing that; they want some direction from us.

The other issue we might want to talk about is TA compensation. In this particular study,

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[1] Julie M. Cheslik, *Teaching Assistants: A Study of Their Use in Law School Research and Writing Programs*, 44 J. LEGAL EDUC. 394 (1994).

there are some charts on TA compensation, whether schools give academic credit -- figure 12,[2] for example -- whether they get pay alone, and if they give credit, how much credit is awarded. There is a wide variety of methods of compensating TAs. One of the things I find is that it's much easier to get credit, particularly non-graded credit, for TAs, than to pay them. My personal experience is that TAs like to get graded credit, if you can get that through the politics of your faculty.

Finally, we could talk about TA responsibilities. We should be careful in deciding what responsibilities we give to TAs. One of the things I tried to study was the level of satisfaction with using TAs. I compared that with what type of duties we gave them. You can look, for example, at figure 3,[3] and what you find pretty clearly is that if you let TAs grade student work, there is four times as much dissatisfaction with that part of the program. I am separating evaluating from grading. Everybody uses TAs to evaluate, which seems to be a relatively good thing. It lightens our burden, gives the TA responsibility, and it gives the first-year student a mentor. It's an issue for us to consider, however, whether we should let student TAs actually assign grades to our students; and if so, in what context?

Christy McCrary:

Another issue to consider is whether there a role for TAs in an ideal program.

Julie Cheslik:

I would frame the issue as, "What do we let TAs do?" One of the things that this survey established is that when we do let them grade, for example, we let them do that in only a very controlled, well-established environment. For example, having them check BLUEBOOK format and similar tasks. Very few people were letting TAs both completely design a lesson plan and then carry it out. People used TAs to provide more feedback. One way we could break it down is, "Do TAs teach citation" versus "Do they teach writing and analysis?" Or is writing and analysis pretty much reserved for full-time faculty or for tenure-track or tenured faculty? Those are some of the issues that we could talk about.

After these opening remarks, the directors in the audience pursued discussion on a range of issues. They first focused on the roles and uses of TAs in their respective programs:

One director described a program supervised by the program director, using third-year students who do the teaching. The students are called Legal Writing Instructors; they are hired in their second-year and they teach for the entire third-year. They teach a pass/fail class that is

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[2] *Id.* at 407.

[3] *Id.* at 398.

two credits a semester. The director has very limited oversight: graded papers are reviewed for consistency in grading and in the comments given in evaluating the papers. The first-year class is typically about 240-250 students in size, making it very difficult for the director alone to evaluate any first-year student work.

Another director described a program where the TAs are graduate students and post-graduate students. Scholarship and fellowship programs are tied to a TA requirement. Only those TAs with common-law degrees are permitted to go into the legal research and writing program, however. The TAs are not selected for the program on their legal and writing skills; a faculty committee determines the best candidates for advanced degrees. TAs are assigned to small group sections, usually one first-year and two upper-division sections. For training, the TAs have to arrive two weeks early, before the commencement of class. Then they attend a weekend retreat with a facilitator, who presents materials on small group instruction. The facilitator is a professional in that field and expert in advanced teaching methods, with an emphasis on small group instruction, grading, and evaluation. He focuses particularly on pure evaluation and self-evaluation.

TAs perform a mixture of tasks in another director's program. In this first-year legal research and writing program, professors teach part of the program. The professors create five writing experiences, with 60 percent of the grade based on those writing assignments. In addition, the TAs teach six library exercises, depending on the subject matter (one for Torts, one for Contracts, etc.). TA autonomy is limited, however, because the students are given lectures on research by expert practitioners. The TAs attend the lecture, then follow up with a tutorial. The TAs check the citations. The professors grade on content, and there's flexibility from professor to professor. This director found that some professors mistrust the TAs to grade until they get to know them. Then the faculty realize the TAs are very competent, and the professors start giving them more responsibility. The director teaches in the program, and for every assignment, the TA ranks the students' work, while the director assigns the final, actual numerical grade.

One director described a hybrid program where full-time faculty teach Legal Writing in the first semester, in connection with a substantive course, in small sections. Every first-year student is assigned to a class of between twenty-three and twenty-seven; there are six such groups. With a first-year class of about 150, each first-year student has a small substantive course where they are taught writing by that same professor. Each professor, the prior year, has hired or selected two TAs. Those students are second-year students who have been selected on the basis of academic proficiency, interpersonal skills, and writing ability.

Each faculty member gives different weight to the importance of interpersonal skills, writing ability, and analysis skills. Some don't look at grades at all; some look at grades and hire on that basis. Every faculty member has his or her own preferences. Thus, the director works with TAs whom she has not selected herself. The director, however, is involved in the faculty's hiring of the TAs. The director prompts other faculty when it is time to conduct hiring and reminds them of the kinds of qualities that would be helpful, from her perspective, for TAs to

have. The director selects two senior scholars from the group that she has supervised.

The director trains the TAs. They meet once a week throughout the entire year, and try to meet at the beginning of each semester for at least a day. The first semester focuses on the wide variety of roles that the TAs will serve. The TAs serve as mentors. Their role in teaching depends on their small section faculty members. Faculty members do not give any independent authority to the TAs. A TA usually serves as a second independent reader. They are available to students, conduct office hours, and are available to meet with the students. They also are active in the research program directed by the director. The director's task is to coordinate everyone's roles. In the spring, the TAs serve as the editors and instructors in the Moot Court program, which is also graded pass/fail. The senior scholars and director serve as coordinators and advisors. The TAs receive academic credit only.

Another director described an eighteen-year history of using TAs as primary instructors in a Legal Writing and research program. In this program, there is a director and faculty instructors who co-teach with the director. The faculty lecture on legal analysis, research and writing, and use simulations, which are typically more successful than the lectures. The successful interactions, from the director's perspective, have been between the TAs and students and among students themselves. The ratio of TAs to students is very small: each TA has seven or eight students. There is some advanced training for the TAs. TAs who remain with the program mentor new TAs. The director believes that professionals may overlook the potential of peer learning and peer teaching. The learning environment should draw upon different resources, including law students. Learning theory supports the effectiveness of peer learning.

This director hires two groups of TAs each year. Twenty-seven TAs are hired each quarter, which requires much hiring, training, and extra supervision. The director concluded that supporting TAs at the time a task is performed is much better than front-loading the training. For example, no one would lecture first-year students for a year about legal research and writing and then have them do research the next year. Similarly, TAs need support at the time that they're involved in their own teaching. That's when directors can serve as valuable resources.

The TAs prepare most of the critiques of student papers. Faculty try to give them guidance on commenting and feedback on the commenting skills. In terms of hiring TAs, the director found diversity to be very important. Because TAs are mentors to the incoming students, having the group of TAs be representative of the class is important. The TA selection sends a message about the status of students within the school.

This director found that TAs have, in some ways, a unique relationship with students when they serve as instructors. They provide guidance and support, but there's also socialization and mentoring. Sensitivity to issues of diversity and diversity training are important components of the TA program.

The presenters then focused the discussion on TA hiring issues. Professor Cheslik

mentioned one director's which suggests that what a past TA says about a prospective TA may be the most important hiring criterion. One director agreed that he relied heavily on student recommendations to select new TAs. The presenters divided the hiring issue into two separate issues: (1) determining who has input in the hiring decision, and (2) what a director should look for in a TA.

One director considers TA recommendations as part of a fifteen-part TA form. TAs are asked to evaluate all the students in their group for their potential to serve as TAs. (In addition, the director wants to know who the TA would not recommend). Two TAs evaluate each student, providing a cross-check on the recommendations and safeguarding against personality conflicts that could affect the recommendation. The fifteen-part hiring criteria also include competence in writing. Although TAs learn a lot by commenting on other people's writing, they do need to have the confidence to project basic competency in writing. TAs submit a writing sample which, in close cases, the director looks at, but the director typically relies on what the instructors have said in the past.

Next, the director looks for basic success in other course work, largely because being a TA is such a demanding position. A TA should not jeopardize her own academic success by spending about twenty-five hours a week being a TA. In some, but not all instances, success in course work is a partial measure of intellectual flexibility, which the director finds is an important quality for TAs. Interpersonal skills are also considered. TAs need a range of skills, including talking in front of a group and being an extraordinarily good listener. Interpersonal skill is the most complex criteria to describe. That's where sometimes intuition comes in. For example, very quiet students could still be terrific TAs even if they've never talked in class.

Besides the evaluation form, the interviews, and grades, one director has prospective TAs submit a writing sample. The TAs also critique a sample paper. All applicants get the same sample student paper, and they make comments. This allows a director to see if a potential TA is just overly picky and wants to correct every single thing, or gives a vague, holistic evaluation with no specifics. The TA applicants interview with the instructors, with the current TAs, and the director.

Julie Cheslik:

There is a section on the survey where I asked a question about problems with the TAs selected. People gave various responses, ranging from some wanting to offer more training to other directors who had never ever had a problem with a TA. I find that amazing. In the past six years I have terminated two TAs because I felt that their performance was actually hurting their students. I always select a research assistant for myself; then I can use that person as a backup, if necessary. I know when TAs are having problems because I go to their classes myself and evaluate them during the year. I have the writing instructors evaluate them during the year and I also have the first-year students evaluate them at the semester. Through our weekly meetings I have a pretty good idea how people are performing. But if by the end of the semester, through

progressive discipline, I can't improve their performance, I get them out of the classroom.

Christy McCrary:

Our TAs play so much more of a role than just teaching that it is somewhat more difficult to remove them. They have some specific mentoring and socializing roles that are actually assigned to them. We've had to remove one for sexual harassment, and there wasn't really any choice about it. But that's the only one we've actually removed. One actually ended up getting his salary cut off, but we continued to credit him.

Julie Cheslik:

Decisions to remove a TA from the job are usually mutual. I have a discussion with TAs who are in trouble and often they are relieved to get out of the responsibility. Obviously I've met with them all along, and said, "This might have been better," and "Here's what you can do to improve," and "I've gotten these complaints." At the end of the semester, we go over the whole group of evaluations and by the end of it, I ask them how they feel about their performance. And most who aren't working out well acknowledge that it's not working. I say, "Would it make you feel better if you didn't have to do this anymore." In the two cases I've had they both said "Yes" and left my office feeling relieved that they were out of it.

The group then discussed problems with specific TA performance further:

Another director described a TA whose fellowship was not renewed. The TA made a case for arbitration because TAs are covered by a union agreement. The TA had asked that she be given preference over any incoming student because she was in the program the first year. The reason she did that was money. It was worth $15,000 a year in fees. In such a case, a talk would not have resolved the problem.

One of the directors raised the related problem of a writing instructor not performing well. The director pointed out the connection between who has input in hiring and who has input when somebody isn't performing is a connection that needs to be discussed. The dean and the faculty may then have a stake in the person's performance, and maybe the teachers have also developed relationships outside of the person's role as a TA.

A director described a situation where one of the TAs started dating somebody in his session. The TA told the director and the senior fellows, "I just want you to know, I'm dating a student in my section," and basically offered to comply with whatever directions were given to him. The solution the director worked out was to have the other senior fellow be the editor for the student the TA was dating. This scenario had been made a part of the TA training. TAs are told that dating their students is discouraged; that they're in a position of trust and that if they do begin to date somebody in their small section, it may jeopardize their position.

Julie Cheslik:

In talking about TA termination, we're all thinking about how we avoid ever getting into that situation. And that probably brings us to training. We've mentioned a couple of things. Some directors provide training in learning theory. I think that's interesting. We do that. We have all of our TAs do various learning styles assessments. We have them study educational theory and processes like Bloom's "Taxonomy of the Cognitive Domain,"[4] and other similar materials, so they know how people learn.

The learning styles assessment shows the TAs that you can not stand up in front of a group of people and talk at them. The majority of people are not auditory learners. They learn by doing things: going in the library and doing research, discussing, writing. We also train in program policies, such as the absolute rule: "Do not date your students." Obviously, we also train in substance and legal analysis.

Christy McCrary:

We do a lot of training. We start with three days of training in August that covers a lot of general things, not specifics. It's everything from housekeeping, and getting ready for orientation, to actually taking a refresher in grammar, punctuation, and style. They take some of the Orientation Program student papers that the students have just written and actually critique them. Then we circulate around the room and see what questions they have, and then follow up with a session that gives them a refresher on what it seems that they had the most questions about. One of the things we added a couple of years ago, partially because of issues like sexual harassment and dating, is a series of fifteen or twenty little case studies; the "What do you do ifs . . .?" These have been enormously helpful. In fact, we've increased that part of the program up to maybe two or three hours. The material is written out, but we also thought about doing a videotape at some point, but right now it's in hard copy and is available to you if you'd like a copy.

Julie Cheslik:

The University of Wisconsin has an excellent conferencing videotape. It shows nine or ten little vignettes of a TA having conferences with an angry student, with a passive student, with a hostile student, and with a student who wants to talk about everything except the paper. The University of Wisconsin will provide you with that videotape.

Christy McCrary:

The University of Puget Sound, in Seattle, also has a videotape about conferences.

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[4] Benjamin Samuel Bloom, TAXONOMY OF EDUCATIONAL OBJECTIVES (1956).

For the first two assignments that the TAs grade, the TAs give their responses to us a day or two after they get the papers. So, presumably, the TAs have not yet evaluated the rest of the papers. We write fairly extensive comments on them and talk to the individual TAs about those reviews. We also address the other issue, which is "How do you actually phrase comments?", and some of the more specific things that are easier to train on when they actually have their first set of papers right there in front of them.

I'm doing a two-day orientation with them before they start teaching this year, so that I can talk about writing basics. I want them to feel very comfortable with that as they start. And we can talk about classroom presentations, so they can think about it before they actually have to get up in front of the room. I want to present a little bit on critiquing papers and conferencing and things like that. But then I also have the weekly meetings with them and we talk about the substance of what they're actually going to be teaching the next week, and more about the specifics of what they're doing. When they have to do it is when they get really nervous.

Julie Cheslik:

I agree. All of a sudden TAs realize they need specific training to perform a particular task. All education is really the convergence of those two things: What do you need to know, and when do you need to know it? One other example of timely training is when you warn the TAs about possible problems among their students. We just went through our two-day long training, and I noticed that the longer you use TAs, the more horror stories you hear, and the more you warn the TAs about. You say "If the student does this," and "if the student does that," and then other writing instructors may chime in and say, "Oh yeah, I had one like that," and so on.

Well, I think we scare those TAs to death. I think we did not sufficiently "build them up" and bolster their confidence at the start. The philosophy of your writing program, and however you articulate it, is what you give the TAs early in their training, in those initial workshops. You don't, at that point, teach them how to evaluate a student paper. I think TAs like that. They want to know that there is a philosophy. They are willing to buy into it as long as they think it's reasonable and it's discussable. But they can not handle all the minutiae early on. They want to hear that detail right before they do it, and its better for their students.

The other directors then discussed these training issues:

One director addressed the issue of TA self-confidence. The director discovered that TAs were very nervous because they were afraid they would be unprepared. If the TAs had been told in September, "Don't worry, you're going to be ready for everything when you get to it because we're going to give you this," a lot of fears would have been eased. Another director stated that in communicating with TAs, he viewed them as people who are considering actively whether they want to be a teacher themselves.

Another director described a TA training program that included sessions during an

orientation week. The training is tailored to any kind of skill development that is necessary, particularly in computer technology, because some of the TAs don't know much about that. TAs are expected to attend the lectures of expert research practitioners. The TAs have to sit in on the course given by the professor of those sessions as well. For every one of their sessions, the director prepared a statement of learning objectives. The director also provided the TAs with marking grids, or sheets on stylistic conventions. The director found the important thing in terms of training was trying to create an atmosphere in which the TAs are deemed important.

One director shared what a very famous professor who mentored him had told him when he began teaching: "It'll take you ten years to be as good a teacher as you'll be this year." Many years later the director understood why that was true. At the start, a teacher is closer to the students; the teacher understands their difficulties and is not lost in minutiae. That first year a teacher is not trying to demonstrate that he can write the most wonderful article. It takes another ten years before a teacher can simplify things again.

The director felt this was a good description of why TAs are quite frequently so successful, especially with first-year students. They are so close to that process of socialization, so empathetic, so approachable, and less judgmental. One TA told the director she thought the first part of her job was to figure out how to really like each of her students. If she had accomplished that then she thought everything was going to work out. Things, in fact, have worked out. That helped revolutionize the director's thinking about what a part of TA training was -- which was to support people not only in their process of the technical ability they've shown giving feedback, but how important the interpersonal component of relationship and structure in the experience, in facilitating the learning process and an individual learning process.

Julie Cheslik:

I think this is an extremely important point. So many of us, and I'm guilty of this, see training as problem prevention by a description of every problem that has happened. Really, when you think about it, maybe one percent of students may consume 99% of your problem file, but those are the students we want to warn our TAs about. And so they are immediately put off on a sort of tenuous or wary relationship with the students. Instead, it's really our job to convey to TAs that our job, as I think Duncan Kennedy said it, is "To love your students." That's the cardinal rule of teaching. Maybe we do that when we grade our students' papers. I always picture every author as a favorite student. We must convey little things like that to our students; that we're in this because we want them to learn, to create an environment in which they can learn. If we're constantly warning our TAs against all the bad things about this job, we've completely failed. Failed not only the first-year students, but also our TAs.

In the training sessions I ask them, "Why do you want to be a TA?" I always find out pretty much the same thing. Most of them see their most important role as that of mentor. They do not see their most important role as conveying citation knowledge, or conveying research knowledge, or conveying writing or analytical skills. The reason they have signed up to do this

demanding job is because they want to help first-year students. They've just been through it and they see that role as critical. I think it's important that we not destroy that, that we not make them into mini-experts at the expense of that mentoring.

Which brings us to another thing, and that's what kind of training do we give our TAs in terms of referrals. They will get approached by their students, as you know, about a wide variety of issues -- not all of which have to do with teaching or analytical skills. I'd be interested in hearing what kind of training we give our TAs if someone comes to them with a personal problem, what type of a structure do we have so that the TA does not take upon themselves a role for which they are unqualified, the role of psychologist or psychiatrist. The TAs are asked to do quite a bit. They are told everything from, "My husband or wife beats me or emotionally abuses me" to "I'm out of money and I'm going to get evicted." We have all of those things come up in any given year in our program and I'm sure that many of you do.

From the group, one director commented:

Students can be quite mature and supportive of each other students can be. The director related that two students out of twenty students in a section were in a major medical crisis; it was a very unlucky year. One of them almost died. The director and two students and their parents stayed up half of the night in the hospital during that crisis and everybody in the class volunteered to take notes and instantly signed a card to get well. It was good will expressed by mature people.

An important part of the TAs job is to facilitate the group part of the process and the existence of the group. It's both a goal of individual development and of group development that the best TAs look to trying accomplish. This runs contrary to some of the theory or expressions we sometimes hear at our conferences about who has information. In fact, the students have knowledge which is useful to each other. Their discussion of a problem may be more useful to them than an office conference with us.

Christy McCrary:

The University of Texas Counseling Center comes in and does training with the TQs, first thing in the spring semester. One counselor has done it for a number of years and knows the program well, and the roles that our TQs play: what they are asked to do, and what kinds of problems law students often have. So they have a fairly good grounding. They're really good now; if they have any questions, they come and ask us. TAs are the ones that are going to have a much better chance than the rest of us of catching a student's emotional or psychological problem early. If you took TAs away, in a place like Texas, which has 550 first-year students, and is an incredibly unfriendly and imposing place, an awful lot of the students would just sink under the pressure.

Julie Cheslik:

After we've been teaching for a while, we adopt coping mechanisms that discourage students from coming to us with their problems. We quickly move through the halls, and we quickly get out of there after class, and we quickly become all business. I think we come in enthusiastic about that mentor role, seeing ourselves as mentors. But then we quickly realize that mentoring may not be rewarded at our institution. It places an even more important burden on the TA to be available to mentor students if we are overworked and underavailable.

The group then discussed this issue:

One director commented that as a result of some very bad problems in other departments in terms of sexual harassment, and perhaps an over-response of the general faculty to some problems, students are seen as dangerous persons.

One director also had problems with the role conflict. There is some conflict between the role of student as mentor and friend, and the role of a student as teacher. The greatest strength of having TAs do the teaching is that they are approachable and they are close to the experience and they understand what the first-years are going through. They are just wonderful mentors. When the director interviewed potential instructors they all say, "Oh, the reason I want to do it is because I want to be a mentor and I want to help people through this experience," which is wonderful -- it's certainly a quality TAs need to have. But the TAs may lose track of the fact that they have to convey a lot of information in a once-a-week class during the year and they sometimes give that short shrift. They'll run through the material in twenty minutes and say "Okay, what kind of concerns do you guys have about exams or about jobs?"

Christy McCrary:

Or sports things! It's like you start out with "TQ football." It's a real concern to me that because they haven't been out and practicing, they don't fully understand the importance that they are charged with conveying to their students. They want to be a friend and say, "Oh well, I think we've done enough here, so I'll let you go ten minutes early."

Julie Cheslik:

I think this has probably been a problem for all of us; how to help the TAs arrive at that proper balance in their various roles. I think it's important to recognize that it depends on your program's structure. Your students, for example, don't have another writing instructor, so all of the substantive information, plus this mentoring, has to come through the TAs. Some of us can leave a lot of mentoring to the TAs because we have a writing instructor.

In a year when you have TAs getting into what I call a "gripe session" with students, you may need to intervene to provide some on-the-spot training to give TAs techniques to help first-year students vent their stress in helpful ways. I've had reports of an occasional TA holding a session that was geared toward "The tricks of the trade: How to get through law school without

really trying." I had to nix that. I had to teach the TAs to see themselves a little more as experts. I think it's something that maybe we evaluate and reevaluate according to what our program is and according to what stage our program is in.

Christy McCrary:

One thing I've thought a lot about doing (but I don't think it's particularly effective and I'd be interested in how you folks do it) is to have a series of lectures about the specifics of the substantive law. Everybody goes and hears it in one place and then they discuss it with their TAs in classes. But I can't really imagine that being all that effective.

One director responded:

The lecture method is not terribly effective. TAs, even though they don't know as much as you, can convey what they know more effectively to seven or fifteen students than a lecturer can to one hundred or two hundred. Another response to the problem is to give the TAs a very detailed lesson plan and frequent in-group exercises. It is better to have the TAs spend that time commenting on papers because they can be a good reader, but that they can't yet really be a teacher.

Julie Cheslik:

We give TAs lesson plans totally developed according to school of education style lesson plans. We show them the objective, the methods, and how much time to spend on each thing. We even tell them what to write on the board.

Christy McCrary:

From student evaluations of the TAs, we've received lots of wonderful comments. We pull out some of the ones that we think will be the most effective for the TAs just to think about. There are always a bunch of them that say the TAs are too social. We find more that will thank and bless their TAs for their mentoring and their teaching. But they still want to be taught and if they have somebody that comes in and rushes through the substance and then just goes off to "TQ football" or something, you'll hear about it in the evaluations.

We give the TAs verbatim comments, but not with the individual TA's names. We also have a little fifteen-minute pretend conference before we do some mock conferences. It's one in which someone comes in as the flighty TQ who only wants to talk about that "TQ football game" last night. We also talk specifically in that third day of case studies about finding a balance between these conflicting things. I think that we've put them in the most difficult role of anybody in that school, in so far as what we ask them to do is inherently difficult.

The discussion next focused on the proportion of men and women who apply to become TAs:

Professor Cheslik found that she had hired a disproportionate number of women, without consciously trying to keep it relatively even 50-50 or really at 60-40 (40% women to reflect the composition of the law school). She found more women are interested in serving as TAs.

One director observed that, as director, she tries to overcome the ghettoization of this kind of work, to show it is not solely a woman's job. She wants to remove the glass ceiling. She found that when the program used students to do tasks thought to be really important, they selected mainly women. When they picked practitioners to participate, the best ones in the city were all women; now the program has a little affirmative action program going to find men.

Christy McCrary:

We've had more women than men in the TA program in the past couple of years. I didn't even notice what we'd done in our hiring this year and when we were dividing up sections, and we try within the sections to even it out gender-wise, we realized we've got seventeen guys and eight women. I hadn't even realized it when we picked them.

Julie Cheslik:

I wonder if we're dictating the overrepresentation of women as TAs by our own genders (predominately female) and the fact that women are overrepresented by two to one, at least in the tenure-eligible Legal Writing community according to Jan Levine's research,[5] and therefore, by modeling that behavior to our students, we're communicating something.

This is my suggestion for a final discussion topic: in a group in which, as a whole, we hear so much discussion about being overworked and being not appreciated and being "under statused," why we don't delegate to TAs more of the things that TAs can do competently and possibly more competently and more efficiently than we can? Why aren't there more people who are using TAs in a way that they feel happy about? I'm assuming we're all using TAs and are happy about it, although we certainly have issues that we struggle with. What can we do to have TAs not only help our students, but help us in making our job one that we can do for our whole lives? A lot of us are saying, "There's no time for me to do scholarship or to make policy changes in the program." I think that part of administration needs to be delegated to TAs, or to somebody else, so that we have time for scholarship. I guess I'd like to know whether we shouldn't be doing more to get out the good word about how invaluable TAs are. Just about everybody in my survey responded to this by saying that TAs are the best thing that ever happened.

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[5] Jan M. Levine, *Voices in the Wilderness: Tenured and Tenure-Track Directors and Teachers in Legal Research and Writing Programs*, 45 J. OF LEGAL EDUC. 530, 542-543 (1995).

One director responded:

Faculty may assume that what is important about teaching is the one-on-one interaction with students, which occurs either in front of the classroom, by personal comments on papers, or in meetings. Further we may be uninformed about the theory that supports students teaching other students. Third, directors tend not to recognize how useful the TA experience can be for the TA as an advanced writing and research experience.

Julie Cheslik:

I wonder if that's something that we all do. Sort of, "I better do this, it's my job to look at every paper, I better get through it, poor me, I've got to do it, I can't delegate it." I just wonder if what attracts us to this position also dooms us.

Small-Group Session #3: LEGAL RESEARCH & WRITING TAUGHT BY SUPERVISED ADJUNCTS

Sharon Reich (University of Minnesota Law School) and Eric Easton (University of Baltimore School of Law)

Professors Reich and Easton introduced themselves and called for an open discussion:

The first part of the session focused primarily upon the advantages and disadvantages of the adjunct model, often comparing it to the use of full-time instructors and examining the role student Teaching Assistants (TAs) can play when used in conjunction with adjuncts.

Some directors concluded that because legal analysis, research, and writing are critical parts of a student's legal education, they should be taught by full-time faculty. Just as law schools do not teach Torts and Contracts courses using adjuncts, law schools should have full-time instructors for Legal Writing.

Although one Director had believed initially that using full-time instructors was the best overall model for staffing a program, over time she came to realize the unique strengths of adjunct-based programs. First, adjuncts are not viewed as second-class citizens in quite the way that full-time non-tenure track instructors may be viewed. The adjuncts fall entirely outside the law school's political structure. The questions of contract caps and continuity, which may be an issue with full-time instructors, are not present with adjuncts; adjuncts could theoretically stay forever. Some programs have adjuncts who have stayed ten years, but full-time instructors may have only one, two, or three years to teach. Thus, there may be less turnover in a program taught using adjuncts.

Other directors addressed budgetary issues. Benefits beyond cost-savings may arise from using adjuncts. Getting adjuncts, who are practitioners from the community, involved in a law school can be good for the school's public relations. Networking takes place when students know lawyers in the community. Several directors noted that students have obtained jobs through adjunct connections in the local legal community. Also, adjunct teaching creates a dialogue between the legal community and the legal writing program.

The available pool of adjuncts may sometimes depend on the size of the legal community around the law school. Directors in large cities found they had many lawyers to choose from. An adjunct's daily practice can be a positive factor in teaching. Students love to hear "war stories," and they love the contact the adjunct gives them with the legal community. Although adjunct legal writing faculty are not always as available for their students as are full-time

instructors, student TAs may help to fill any gaps.

Sharon Reich:

TAs can complement adjunct teaching. At Minnesota, every adjunct attorney has a TA. These TAs are students who did superbly in the program when they were first-years. They are told that it is part of their job not only to be a TA in the program, but also to be a mentor for their small section of students. They must be available a given number of hours every week. Those hours will increase around assignment time, or around final exams. Because of these TAs, I have never received any kind of complaint about lack of an instructor's availability.

In the first-year program, the students receive a $1200 stipend for the year and a one-quarter tuition credit. They also, of course, get a certain amount of resume value. In the second-year program, the students receive academic credit and resume value. I think the resume value goes a long way in both of our programs. Academic credit is awarded for teaching in the second-year program; payment and a tuition rebate is given for teaching in the first-year program.

I should explain that when I use the term "adjunct," I'm assuming a full- or part-time practicing attorney. An adjunct is somebody, who despite other commitments, wants to teach because they love teaching and they want to give back to the law school or legal community. There's some other intangible benefit there. The adjuncts are definitely not doing it for the money.

A further discussion of adjunct supervision and scheduling ensued:

A director observed that one problem in discussing the advantages and disadvantages of adjuncts is that the term "adjunct" is not well-defined, and it may mean a range of teaching positions at different law schools and legal writing programs. The group agreed that adjunct teaching must be well-supervised. Adjuncts should be provided with the appropriate teaching skills and they must also be provided with the needed teaching materials.

Directors found that adjuncts' class sizes must be kept to a reasonable number. Some directors suggest sixteen or seventeen students as a workable size; others recommended twelve students per adjunct. All agreed that optimum class size greatly depends upon the number of graded assignments given during the semester.

Sharon Reich:

At Minnesota, we have eighteen students per section. I think that if we could lower that a little bit, it would be good, but we do have two instructors for each of those eighteen students (we have the attorney and the upper-class student). They both grade every paper, but they start by splitting them in half, so they're each the "first reader" on nine papers and the "second reader" on nine papers. That makes it a little bit easier to go through eighteen papers. Ideally, I think that

the ratio would be a little bit lower, but eighteen seems to be manageable, although it is probably at the upper end of the boundary.

The discussion then turned to difficulties experienced because adjuncts are practicing law and teaching at the same time. Professor Reich stated:

We schedule class at a time that minimizes interference with regular business hours. The middle of the day is very difficult for a practicing attorney, even if the class is over the noon hour, because it breaks up the day. What we do at Minnesota -- although our students don't particularly love this -- is have our writing class at 8:00-8:50 a.m. This way, an attorney can start the day at the law school and then leave for the office at about 9:00 a.m. Even though I use very busy, high-powered litigators, there are very few times when they have to reschedule a class. When the attorneys schedule longer things, such as when they're having conferences with students or doing oral arguments, they hold sessions during the evening.

Other scheduling options were discussed:

Some directors scheduled classes in mid-morning; others scheduled around the lunch hour from noon to 2:00 p.m. Although there are cancellations every once in a while, this can be minimized by providing adjuncts with clear procedures about what happens if and when a class must be cancelled.

There are financial benefits to the law schools from using adjuncts rather than full-time faculty. One director predicted that costs alone would keep her program taught by adjuncts, rather than by full-time instructors. In addition, directors find adjuncts offer students the chance to talk to people who have their feet firmly planted on the ground, who know about clients, about pleasing different audiences, about judges, about senior partners, and about what students will experience out in practice. The adjuncts also offer diversity and can act as role models to minorities and women. Many adjuncts view teaching as a nice balance to practice.

Sharon Reich:

Since this session focuses on supervised adjuncts and I went from a loosely-coordinated adjunct program to a closely supervised adjunct program, maybe we could talk a little bit about supervision.

It would be helpful to talk about some different methods of supervision. Our program is designed a little differently, so what I do with supervision is a little bit different. I hold only one group meeting with my adjuncts: that's it. I am a little bit protective of their time; I want them to spend as much time as they need on grading papers and meeting with students.

In my opinion, an adjunct program works only if it is a closely supervised program. At the same time, however, I try to characterize myself more as an overseer than a supervisor. I give

the instructors a bit of autonomy and try not to make it feel like I'm constantly looking over their shoulders because that generates the sense that you think they might not be good teachers. They should be good enough if you hired them.

I wrote this chart on the board to help guide the discussion.[1] The column on the left lists three main areas where you can -- and should -- supervise your adjuncts. First, there's the classroom instruction component of the program. Second, there's the written feedback component (that's the comments on the papers). And then third, and this applies to some programs and not to others, the grading component -- how you supervise the grades adjuncts give your students. These are three broad areas in which we need to supervise our adjuncts or our adjunct/student teams.

Across the top of the chart are four components or stages of a supervisory system that apply to each of the three areas that need to be supervised. First is the kind of training and assistance we give our adjuncts. This applies to each of the three program components: classroom instruction, written feedback, and grading. The second component of supervision is how we observe how our adjuncts are doing throughout the year. Do we observe how they're doing in each of the three program areas? The third component of supervision is how we receive and provide feedback to adjuncts on how they're doing in each of the three program areas. And then, finally, the consequences of how your adjuncts perform in each of the three main program areas. Do you have consequences that you can give them, or are there times when you are unable to impose consequences, for example, if a judge is teaching in your program? In those cases, which hopefully are few and far between, are there other ways to address, or compensate for, problems?

In my particular program, I hold an orientation session at the beginning of the year for all of my adjuncts and all of my TAs. I develop a common syllabus for everybody to use, I assign the writing text and the writing assignments for each class, and I give the instructors an annotated version of the student syllabus that details what should be accomplished in each class session.

I have written a handbook for instructors that talks about teaching techniques and related issues. For the written feedback component of the program, the training and assistance mirrors what I give the instructors for the classroom instruction component. We have the opening orientation session, during which I spend a good deal of time talking about how to give written and oral feedback to students. I also discuss theories about how to approach feedback. Then there's some additional material in the handbook. Grading sheets are there to serve as a guide for providing general comments to supplement the marginal comments made on the writing assignment itself. I don't have to worry too much about training instructors in how to "grade" students in my first-year program because it is a pass/fail/honors program. Even with a pass/fail program there is some training that needs to be done, however, so I talk a little bit about our

[1] Sharon Reich's chart is reproduced at the end of this section.

program and what is considered passing work. I explain to instructors how they should identify for me any student who appears to be approaching a danger level.

I observe in the classrooms throughout the year. I tell the instructors up front that I'm going to do this because I need to see how the program is working, how my syllabus is working, how the instructors are working, and how the students are doing. So I don't think that anybody really minds my coming into the classrooms. To monitor the quality of the written feedback, I have the fifteen instructors turn their papers back to me rather than directly back to the students. I don't look at all the papers; I look at some papers on a random basis in each section. I do it to see how the students are doing, and I do it to see what kind of feedback they are getting from their instructors. I also do it to enforce the deadlines for turning papers back to students. This method has worked like a charm. The feedback has been good, everybody started getting the papers graded on time, and the papers were all back to the students on exactly the same day, which alleviates another potential problem area.

I don't leave myself very much time to review the 270 graded papers because I don't want the students to be without the papers very long -- they go crazy when they don't have their papers back. The time I have depends on the length of the assignments, but a typical period is probably three days. If an instructor needs more time with a particular assignment, then I'll sometimes reduce the three days I have to review the papers down to twenty-four hours. That gives the adjuncts a two-day cushion. The shortest turnaround is one week, for a short paper of only a couple of pages. The longest turnaround time is probably two-and-one-half weeks.

I share individual comments with instructors based on my own personal observations or feedback I receive from students. I also have the students formally evaluate their instructors on a course evaluation form. So instructors get direct feedback from me, particularly when there's trouble, and then they always get those student evaluation forms.

A discussion about evaluating adjuncts followed:

One director preferred not to give adjuncts the actual student evaluations because the classes are small and the adjuncts always want to know who wrote what. The director gives the adjuncts a summary of the evaluations because some of the students may write obnoxious comments. The adjuncts have to see the same students for another semester, so the director does not want these teachers to see sexist or tasteless comments. The director and the individual adjunct can discuss the evaluations and the director can read some of the comments and discuss some of the criticisms in a constructive way. This approach also insures that the director speaks with all of the adjuncts. The students in this program know that the director, not the adjunct, will see the evaluations first-hand.

This Director also found that students tend to give teachers the benefit of the doubt and do not like to criticize the adjuncts. Therefore, the evaluations are a good indicator of trouble: if there are eighteen students and there are five or six negative evaluations, the Director knows an

adjunct is in deep trouble.

Another director preferred to give the adjuncts the evaluations directly. It seemed unfair to him to have the director look at the evaluations, but not let the adjuncts look at them.

Sharon Reich:

We haven't had too much of a problem with obnoxious comments. I do read all of the evaluations. Not only do I read them, but I read them before I give them out to the adjuncts. So if I had something that I thought was particularly inappropriate, I may censor it, but that hasn't been a problem yet. In my program, although the evaluations are anonymous, students know the instructors are going to see them.

The group discussed how adjuncts who receive evaluations need to have them put in some sort of context:

One director explains to adjuncts that evaluations often reveal high and low extremes. There's always somebody in a class who hates the teacher, and there's always someone who just loves the teacher. The director explains to the adjuncts that there are some students with whom you are going to instantly bond: they are going to think a teacher is the greatest thing that ever walked. There are some students, however, who will never be pleased no matter what a teacher does.

Evaluations at the end of the year (or semester) can be less helpful than mid-year (or mid-semester) evaluations. One director now uses evaluations which the adjuncts don't see. Mid-term is when a director can really discern weaknesses in teachers, and still have an opportunity to help them.

The discussion then turned to helping or supporting an adjunct when there are serious teaching problems discovered during the term. Sharon Reich stated:

The key is to reach the instructor early enough. One thing that I do at the beginning of each semester, and particularly at the beginning of the year, is to go in front of those first-year students and say that although I'm really behind the scenes and may seem somewhat invisible, I actively oversee this program. I tell them that if they have any problems, any questions, any complaints, any kudos to give, then I have open office hours for hearing from them. Although sometimes students don't bring their problem to me until it's too late, on the whole I'll tend to hear something. If I hear it early enough, it generally is pretty easy to address the problem because sometimes it's just a matter of how the instructor is presenting herself. It's not that the instructor can't do it, but it's often a perception or presentation problem.

I've generally been successful when I intervene, thankfully, except once. When I could not solve the problem or get a new adjunct, I tried to salvage what remained of the classroom

instruction part of the course by using the TA for that section. I talked to him about being more vocal with ideas, and about contributing to and focussing the discussion to make sure all critical material was covered properly. I visited that class more frequently and participated in it. To ensure the written feedback was adequate in this case, I added my own comments to every single paper in the section. That's only happened once, but it was worth taking the time to do that because otherwise those students really would have missed something valuable.

The directors then called upon one another to contribute more examples and experiences involving supervising adjuncts and resolving problems in adjunct teaching:

One director described a first-semester situation in which the adjunct was not getting along with the class because she seemed aloof. Students came to the director to talk about the adjunct. The students actually clarified the problems through their own discussion, they partially resolved it and decided to go back and reconsider some issues. Then the director talked with the adjunct. A lot of the students had expectations for the adjunct to be more motherly or supportive; the director and adjunct talked about how she could change that expectation, or partially fulfill it.

The adjunct found being up in front of the classroom very difficult. The director and adjunct focused on the classroom teaching, whether it meant using more presentation material, putting more things on the board to take the eye contact away from her and onto the board, or other teaching strategies. Because the adjunct tended to hide behind the uniform lesson plans, the director suggested she use her own materials, get excited about the class and connect with the students. The discussion gave the adjunct the courage to make changes in her teaching. The students said that it worked; in the second semester, the adjunct did much better.

Eric Easton:

We have a rigorously controlled grading system, and I had a teacher who just didn't get it. We explain the grading system at the time of hiring, and we explain it again at our workshop before they begin teaching. We go through it over and over again, but I still had a teacher who said to a student once, "You would have gotten more points for this if it hadn't been for the system." I had to immediately call the teacher when I heard that had occurred and just went over it with him until he understood what was happening.

Sharon Reich:

Our first-year program is pass/fail, so grading issues don't arise. But our second-year program is graded, and I have the instructors rank order everyone on every assignment, but not give individual grades on every assignment. Grades are based on the overall performance over the whole year and so there is a grade only at the end. They're supposed to get general feedback that will tell them how they're doing, but it's not going to be, "you are fourteen out of sixteen on this assignment," or something like that.

Another director shared her ideas:

The director has adjuncts turn in grades to the Director, not to the registrar. The Director instructs adjuncts to grade low on the first assignment, so the adjunct can show progress. There have been a number of times when the director gets the final grades and returns them as unacceptable. Then the adjuncts go back and regrade, usually grading down, but sometimes it's grading up. Then the students can come see the director, who will explain the grading system.

Appendix A

This list was current as of the fall of 1995; however, the individuals listed may no longer be at these addresses. An updated listing of all legal writing program directors is available from the Association of Legal Writing Directors, in care of the Chicago-Kent College of Law, 565 West Adams St., Chicago, IL 60661-3691; tele. (312) 906-5000.

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Appendix B

Conference Actions

On July 28 and 29, 1995, the attendees voted to create an organization of legal writing directors, subsequently titled the "Association of Legal Writing Directors." Volunteers for committee work were divided into five groups: an Executive Committee, a Conference Planning Committee, Proceedings Editors, and a Survey Committee. The group resolved to meet during the January 1996 AALS meeting to consider the reports of the various committees.

The Executive Committee, chaired by Richard Neumann, was further subdivided into three subcommittees: (1) charged with defining goals of the organization (Jan Levine, Pamela Lysaght, Richard Neumann - Ch., and Martha Siegel); (2) charged with defining the advantages and disadvantages of affiliating with the Legal Writing Institute (Steve Johansen, Sue McGuigan, and Jill Ramsfield - Ch.); (3) charged with defining the advantages and disadvantages of creating a new and independent organization (Bari Burke - Ch., Sharon Reich, and Rachel Vorspan).

The Conference Planning Committee consisted of: Maureen Collins, Linda Edwards (Co-Chair), Phil Genty, Maureen Straub Kordesh (Co-Chair), Jan Levine (ex officio), Christy McCrary, Tom McDonnell, Angela Passalacqua, Terril Pollman, Deborah Schmedemann, Martha Siegel, Jackie Slotkin (ex officio), Ruth Vance, Robert Volk, and Ursula Weigold.

The Survey Committee consisted of: Eric Easton, Jill Ramsfield (Ch.), Linda Wright, and Linda Robinson (who volunteered post-conference).

The task of editing of the Conference Proceedings was assumed by Rebecca Cochran, Steve Johansen, and Jan Levine.

Post-Conference Actions

The meeting of directors of legal writing programs was held on January 6, 1996, at the Fairmont Hotel in San Antonio, Texas. The meeting was arranged by Katie McManus and Bonnie Roberts, through the AALS Section on Legal Writing, Reasoning and Research.

At the meeting, the following reports were presented:

1. Jan Levine reported on the summer meeting in San Diego at which participants voted to form a permanent organization of directors of legal writing programs.

2. Maureen Straub Kordesh reported on behalf of the subcommittee on conference planning which began work on (1) an agenda for the business/general meeting of the new organization, scheduled to be held on the day before the Legal Writing Institute Conference in Seattle in July 1996, and (2) on a major conference to be

held in the summer of 1997. The preliminary plans included a meeting to start at noon on the Wednesday before the LWI conference, with a business meeting followed by conference planning, networking, and a meal. Professor Kordesh briefly recounted vendor interest in supporting future meetings.

Richard Neumann reported on behalf of the ABA Committee on Communication Skills. (Susan Brody of John Marshall Law School and chair of the committee could not attend the meeting in San Antonio. Members of the committee include Ralph Brill, Linda Edwards, Christina Kunz, Jan Levine, Richard Neumann, Teresa Phelps, and Marilyn Walter, as well as several law school deans.) The Communications Skills Committee, during the past year, recommended to the Wahl Commission and the ABA Standards Review Committee that the ABA accreditation standards be amended to improve legal writing instruction and the status of legal writing directors and teachers. Some progress was made on the quality of instruction issue, as the current recodification draft of the accreditation standards urged schools to offer quality writing instruction. The Communications Skills Committee was trying to persuade the ABA to insert similar language in a standard (where it would be mandatory). In several ways, the Committee was also trying to persuade the ABA to address status issues.

Professor Neumann presented the report and motion of the Executive Committee which earlier had been distributed via e-mail. After a lively and respectful debate, the approximately fifty-five directors in attendance voted, by voice vote, in favor of the Executive Committee's recommendation that the directors' organization have an existence independent of any other group. The group of directors also voted to accept Chicago-Kent's offer to act, for an indefinite period, as a "home base" for the new organization. The group also voted to empower Bari Burke to appoint the relevant subcommittees and chairpersons to conclude the planning work of the new organization by the end of the spring semester.

After soliciting volunteers and comment, Professor Burke made the following appointments and preliminary decisions: four subcommittees were appointed to continue the planning work of the new organization:

Molly Lien as chair of the subcommittee on incorporation; Richard Neumann as chair of the subcommittee drafting proposed by-laws; Maureen Straub Kordesh as chair of the subcommittee on conference planning; and Sharon Reich as chair of the elections subcommittee.

The following deadlines were established:

Final membership rosters of the four subcommittees were to be prepared by January 19. By February 1, a timetable would be established for reports and other matters. By the end of the

spring semester, a discussion and debate on by-laws, and a vote for officers for whatever terms and positions are set forth by the bylaws would be concluded.

The by-laws were drafted by a committee consisting of Peter Boyer, Mary Beth Beazley, Cynthia Fontaine, Marcia Jacobson, Steve Johansen, Jan Levine, Susan McGuigan, Kathryn Mercer, Richard Neuman (Chair), Deborah Parker, Nancy Shultz, and Rachel Vorspan. After an e-mail discussion and subsequent vote on amendments, the final version of the by-laws were adopted on April 29, 1996.

Elections for officers concluded on May 23, 1996. The Elections Committee (Eric Easton, Sharon Reich (Chair), and Marilyn Walter) reported that the following directors were elected to serve as officers and board members for 1996-97:

President: Jan M. Levine
Vice President: Katie McManus
Secretary/Treasurer: Katie Mercer
Board Members: Mary Beth Beazley (one year)
Ralph Brill (one year)
Susan Brody (three years)
Linda Edwards (two years)
Steve Jamar (one year)
Chris Kunz (two years)
Richard Neumann (three years)
Nancy Schultz (two years)
Ruth Vance (three years)

Appendix C

BY-LAWS OF
THE ASSOCIATION OF LEGAL WRITING DIRECTORS[1]

A Not-for-Profit Corporation duly organized and existing under the laws of the State of Illinois.

DEFINITIONS

For the purposes of these By-Laws,

DIRCON is the Internet discussion list used exclusively by members of this Association;

a **legal writing director** is a person with direct responsibility for the design, implementation, and supervision of a law school's writing program; and

A **qualifying law school** is one that (a) is accredited by the American Bar Association, (b) has applied for provisional accreditation by the American Bar Association (regardless of the outcome), (c) is a member of the Association of American Law Schools, or (d) has a fee-paid relationship with the Association of American Law Schools.

ARTICLE I -- CORPORATE NAME

Section 1. Name: The name of this corporation shall be the Association of Legal Writing Directors.

Section 2. Synonyms: For the purpose of these By-Laws, "ALWD" and "the Association" are synonyms for the Association of Legal Writing Directors.

ARTICLE II -- PURPOSES

Section 1. Purposes: The Association is organized exclusively for charitable, educational, or scientific purposes within the meaning of the Internal Revenue Code, specifically:

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[1] These by-laws were adopted in the spring of 1996.

a. to organize conferences of legal writing directors for the purpose of improving the educational quality of law school legal writing programs;

b. to advise and assist individual directors in the administration of law school legal writing programs and in other aspects of the work of individual directors;

c. to encourage and facilitate research and publications on subjects unique to the educational responsibilities of legal writing directors;

d. to collect and disseminate data relevant to directing legal writing and research programs; and

e. to promote rigor in legal analysis, legal writing, and legal research and to improve understanding among legal educators, students, and the bench and bar about the field of legal writing.

Section 2. Limitations on the Association's Activities. The Association shall not carry on any activity not permitted to be carried on (1) by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code (or the corresponding provision of any future federal tax code) or (2) by an organization contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code (or the corresponding provision of any future federal tax code).

ARTICLE III -- MEMBERS

Section 1. Two Classes of Members: The Association shall have two classes of members: those who have the right to vote pursuant to Section 3 of this Article and those who do not.

Section 2. Qualifications for Members: A legal writing director at a qualifying law school qualifies as a member. If a qualifying law school employs legal writing co-directors of equal rank or multiple directors each directing a separate writing or drafting program, all of them qualify as members. If a qualifying law school employs both a legal writing director and an associate or assistant director not equal in rank to the director, all of them qualify as members. If a qualifying law school employs no one titled a "legal writing director" but the functions of a director are exercised by a person with a different job title (such as an assistant dean), that person qualifies as a member. If a law school employs full-time legal writing teachers but no legal writing director, the teachers may designate one or more of their number who will qualify as a member or as members. A person who once directed a legal writing program in a qualifying law school qualifies as a member if not presently teaching for and supervised by another legal writing director. Finally, by vote of the Board of Directors, a person with stature in the field of legal

writing who is not otherwise qualified as a member may be invited to join as a member. In cases where membership is not clearly decided by this Section, the Board of Directors shall decide whether a person qualifies as a member.

Section 3. Right to Vote: Each qualifying law school has one vote. If only one person at a qualifying school is a member of the Association, that person shall cast a full vote. If a qualifying law school employs co-directors of equal rank or multiple directors of different writing programs, they shall divide the vote between or among themselves as they see fit; if they do not agree on how to split the vote, each shall cast an equal fraction of one vote. If a qualifying school employs both a current director and a person who qualifies as a member but does not presently direct a legal writing program (for example, a former director or a current associate or assistant director), the director shall cast a full vote, and the other person shall not vote. If qualifying law school employs full-time legal writing teachers but no director, the person or persons chosen by the teachers for membership pursuant to section 2 of this Article shall vote as though that person were a director or those persons were co-directors.

Section 4. Annual Meeting of the Association: The Board of Directors shall determine the time and place of the annual meeting of the Association. Each member shall be entitled to attend the annual meeting.

Section 5. Membership Voting by Electronic Mail between Annual Meetings: A matter shall be put to a membership vote by electronic mail whenever the Executive Committee or the Board of Directors determines that the purposes of the Association are best served by a membership vote before the next scheduled annual meeting or whenever the President of the Association receives signed letters or petitions from one-quarter of the members of the Association requesting an electronic mail vote on an issue specified in the letters or petitions. The President shall schedule an electronic mail vote of the membership to occur over a three-day period during the business week. None of the three days shall coincide with a national holiday, the annual meeting of the Association of American Law Schools, Rosh Hashanah, Yom Kippur, the first day of Passover, or the week before or after Easter. During the three days of voting, members may transmit their votes by electronic mail to the Secretary-Treasurer of the Association, except that if the vote is to elect directors or officers, votes shall be sent to a person designated by the elections committee. An electronic mail vote shall be preceded by notice sent to every member by regular mail, and a copy of the notice shall be posted on the DIRCON electronic mail discussion list. The notice shall state the issue to be voted upon, the days on which voting is to occur, and the electronic mail address to which votes are to be sent. If the vote is scheduled to begin on a date in September, October, November, January, February, March, or April, the regularly mailed notices shall be postmarked and the DIRCON notice shall be posted no fewer than 14 calendar days before the first date of voting. If the vote is scheduled to begin on a date in December, May, June, July, or August, the regularly mailed notices shall be postmarked and the DIRCON notice shall be posted no fewer than 21 calendar days before the first date of voting.

ARTICLE IV -- BOARD OF DIRECTORS

Section 1. Responsibilities of the Board of Directors: The Board of Directors is responsible for management of the business, property, affairs and program of the Association.

Section 2. Number of Directors, Terms of Office: There shall be nine members of the Board of Directors. In addition, the officers of the Association shall be ex-officio members of the Board of Directors. Except for the terms of the initial board, directors shall be elected to terms of three years, beginning on the first day of August following election, with terms staggered so that approximately one third of the directors are elected each year. The terms of office of the initial board shall be as follows: three members shall serve from June 1, 1996, to July 31, 1997; three members shall serve from June 1, 1996 to July 31, 1998; and two members shall serve from June 1, 1996, to July 31, 1999. A person who has served for two consecutive terms shall not be eligible for election to the Board for another term until one year after the expiration of the second term. It is not obligatory that all vacancies on the Board be filled at any one time. The Board of Directors shall be chaired by the President of the Association or, in the President's absence, by the Vice-President.

Section 3. Method of Electing Directors: Any member of the Association is eligible to be elected to the Board of Directors. Pursuant to Article VI, the President of the Association shall each year appoint an elections committee. By February 1 each year, the chair of the elections committee shall place a notice on DIRCON, inviting members of the Association to nominate candidates for election to the Board. A nomination may be transmitted to the elections committee chair in any form, but, to be effective, it must be received by March 1. The elections committee shall determine whether each nominated person is eligible. The elections committee shall also contact each nominated person to determine whether he or she is willing to serve. The elections committee may itself nominate candidates in addition to those nominated by the membership. By April 1 of each year, the elections committee shall forward to the President of the Association a list of eligible persons who have been nominated together with statements submitted by those persons. In accordance with Article III, Section 5, the President shall schedule an electronic mail election to be completed no later than April 30 each year. The elections committee shall oversee the counting of ballots and shall certify the results to the Secretary-Treasurer. Nominees receiving the largest number of votes shall be deemed elected, whether or not they receive majorities of the votes cast.

Section 4. Meetings of the Board of Directors: The Board of Directors shall meet at least once a year at a time and place to be decided by the Board. Notice of the time and place of any meeting shall be provided to each director in writing at least 15 days before the meeting. Notice may be given via electronic mail. The Board may conduct business by telephone conference call, provided that a quorum is available. The Board may also conduct business via electronic mail, provided that notice of an impending vote is sent by electronic mail according to the schedule set out in Article III, Section 5.

Section 5. Quorum: A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board. If less than a majority of the directors are present at a meeting, a majority of the directors present may adjourn the meeting to another time without further notice. The act of a majority of the directors present at a meeting in which a quorum is present shall be an act of the Board of Directors.

Section 6. Vacancies: The Board of Directors may, but need not, fill any vacancy occurring in the Board of Directors by a vote of two-thirds of the Board. If the Board of Directors has not filled a vacancy within 30 days after the vacancy occurs, the vacancy may, but need not, be filled by a membership vote pursuant to Article III, Sections 4 or 5. A person elected to fill a vacancy shall serve for the unexpired term of the predecessor in office.

Section 7. Compensation: Directors shall not receive any compensation for their services.

Section 8. Indemnification: The Association shall indemnify any person made a party to a lawsuit because he or she acts or has acted reasonably within his or her scope of authority as an agent of the Association. Indemnification under this Section shall include amounts rendered in judgments or paid in settlement together with reasonable expenses including attorneys' fees.

Section 9. Resignation: Any director may resign by sending a written resignation to the Secretary-Treasurer.

Section 10. Removal of a Director: A director may be removed by either of two methods: (1) a vote of two-thirds of the members of the Board whenever in the judgment of the Board the best interests of the Association would be served by doing so or (2) an affirmative vote of a simple majority of all the members whenever in their judgment the best interests of the Association would be served by doing so.

Section 11. Executive Committee: The Executive Committee of the Board shall be comprised of the Association's President, Vice-President, and Secretary-Treasurer together with two members of the Board to be elected to the Executive Committee for one-year terms by the Board. The Executive Committee shall be chaired by the President of the Association or, in the President's absence, by the Vice-President. The Executive Committee shall be authorized to act on behalf of the full Board when in the Committee's view action is needed before the next scheduled meeting of the Board, provided that the Board is notified in writing within 10 days following any action taken by the Executive Committee. This notification may be made by electronic mail. Four members of the Executive Committee shall constitute a quorum. The Executive Committee may conduct business by telephone conference call, provided that a quorum is available. Notice of Executive Committee meetings may be given orally or by electronic mail. The Executive Committee may also conduct business via electronic mail, provided that notice of an impending vote is sent by electronic mail according to the schedules set out in Article III, Section 5.

ARTICLE V -- OFFICERS

Section 1. Officers: The officers of the Association shall be the President, the Vice-President, and the Secretary-Treasurer.

Section 2. Elections, Terms of Office: Any member of the Association holding voting rights pursuant to Article III, Section 3 is eligible to serve as an officer of the Association. Officers shall be elected annually in the same manner provided in Article IV, Section 3 for election to the Board of Directors, except that the Vice-President shall automatically become President at the end of his or her term. The terms of the initial officers shall begin on June 1, 1996, and end on July 31, 1997. Thereafter, terms of office shall begin on the first day of August following election. If the Presidency of the Association becomes vacant at some other time, the Vice-President shall complete the President's term of office and then serve his or her own term as President. Other vacancies may be filled by a majority vote of the Board of Directors as soon as practical after a vacancy occurs. Each officer shall hold office until a qualified successor shall have been elected or until death, resignation, or removal pursuant to Section 3 of this Article.

Section 3. Removal of Officers: An officer may be removed by either of two methods: (1) a vote of two-thirds of the members of the Board whenever in the judgment of the Board the best interests of the Association would be served by doing so or (2) an affirmative vote of a simple majority of all the members whenever in their judgment the best interests of the Association would be served by doing so.

Section 4. Responsibilities and Powers of the President of the Association: The President shall be the principal executive officer of the Association. Subject to the direction and control of the Board of Directors, the President shall be in charge of the business and affairs of the Association. The President shall see that the resolutions and directives of the Board of Directors are carried into effect except in those instances in which that responsibility is assigned to some other person by the Board of Directors. In general, the President shall discharge all duties incident to the office of president and other duties as may be prescribed by the board of Directors. The President shall preside at meetings of the Board of Directors, the Executive Committee, and the Association as a whole. The President may execute for the Association any contracts, deeds, mortgages, bonds, or other instruments that the Board of Directors has authorized to be executed, except in those instances in which the authority to execute is expressly delegated to another officer or agent of the Association or a different mode of execution is expressly prescribed by the Board of Directors or these By-Laws

Section 5. Responsibilities and Powers of the Vice-President: The Vice-President shall assist the President and shall perform duties assigned by the President or by the Board of Directors. In the absence of the President or in the event of the President's inability or refusal to act, the Vice-President shall perform the duties of the President and when so acting, shall have all the powers of and be subject to all the restrictions upon the President.

Section 6. Responsibilities and Powers of the Secretary-Treasurer: The Secretary-Treasurer shall be the principal accounting and financial officer of the Association. The Secretary-Treasurer shall (a) maintain books of account for the Association, (b) have custody of all funds and securities of the Association, being responsible for them and their receipt and disbursement, (c) perform duties incident to the office of treasurer and other duties assigned by the President or by the Board of Directors; (d) if required by the Board of Directors, give a bond for faithful discharge of duties, (e) record the minutes of the meetings of the Board of Directors, (f) see that notices are duly given as required by law or these By-Laws, (g) be custodian of the corporate records and of the seal of the Corporation, and (h) keep a register of the post office and electronic mail address of each member as furnished to the Secretary-Treasurer by the member.

Section 7. Maintenance of DIRCON: The Secretary-Treasurer or another person designated by the Board shall act as the DIRCON listmanager. The listmanager shall maintain DIRCON as an Internet discussion list open only to members of the Association. The listmanager need not be employed at the law school whose
computer center operates the list. If the listmanager is not the Secretary-Treasurer, the listmanager shall work with the Secretary-Treasurer to insure that the Secretary-Treasurer's membership list and the listmanager's DIRCON subscriber list are identical and accurate.

ARTICLE VI -- COMMITTEES

Section 1. Establishment and Composition of Committees: The Board of Directors may establish and abolish committees as it thinks best. The President of the Association shall annually appoint the chair and membership of each committee. A person may serve no more than four consecutive years on the same committee, after which he or she may not be reappointed to the committee until at least two additional years have passed. Persons who are not members of the Association may serve on committees, but a committee may include no more than one person at a time who is not a member of the Association.

Section 2. Terms of Office: A member of a committee shall continue as such until a successor is appointed, unless the committee is terminated or the member is removed from the committee by a vote of the majority of the Board of Directors.

Section 3. Quorum and Voting: Unless otherwise provided in the resolution of the Board of Directors designating a committee, a majority of the committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be an act of the committee. All members of a committee, whether or not members of the Association, may vote within the committee.

Section 4. Procedures and Rules: A committee may adopt procedures or rules for its own government not inconsistent with these By-Laws or with rules adopted by the Board of Directors.

ARTICLE VII -- CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 1. Contracts: The Board of Directors may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these By-Laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and this grant of authority may be general or confined to specific instances.

Section 2. Checks, Drafts, Etc.: All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Association shall be signed by an officer or agent of the Association and in a manner determined by resolution of the Board of Directors.

Section 3. Deposits: All funds of the Association shall be deposited from time to time to the credit of the Association in banks, money market funds, mutual funds, or other depositories selected by the Board of Directors.

Section 4. Gifts: The Board of Directors may accept on behalf of the Association any contribution, gift, bequest, or devise for the general purposes or any special purpose of the Association.

Section 5. Dissolution: Upon the dissolution of the Association, its assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code (or the corresponding provision of any future federal tax code). Any assets not so distributed by the Association itself shall be distributed for the same purposes to qualified organizations by a state court of competent jurisdiction in the county in which the principal office of the organization is then located.

ARTICLE VIII -- BOOKS AND RECORDS

The Association shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of the Board of Directors, and shall keep at the registered or principal office a record giving the names and addresses of the members entitled to vote. All books and records of the Association may be inspected by any director or her/his agent or attorney for any proper purpose at any reasonable time.

ARTICLE IX -- FISCAL YEAR

The fiscal year of the Association shall be January 1 to December 31.

ARTICLE X -- AMENDMENTS

These By-Laws may be amended or repealed by either an affirmative vote of two-thirds of the Board of Directors or by an affirmative vote of a majority of the members. The By-Laws may not contain any provisions that would be inconsistent with law or the Articles of Incorporation.

ARTICLE XI -- CONFLICTS OF INTEREST

A member of the Board shall not derive any financial profit or gain, directly or indirectly, by reason of membership on the Board or services to the Board. In August every year, each Board member shall prepare and sign a written statement listing any potential conflicts of interest and send that statement to the Secretary-Treasurer, who shall circulate all such statements to the Board as a whole. A Board member who discovers at any other time of year that he or she has a potential conflict of interest shall send a supplemental statement to the Secretary-Treasurer, who shall circulate it as before. A Board member shall disclose to the Board any personal interest in any matter pending before the Board and shall refrain from participating in any decision on such a matter.

ARTICLE XII -- ELECTION OF INITIAL OFFICERS AND BOARD

The notice, nominating, and voting deadlines in Article III, Section 5 and in Article IV, Section 3 shall not apply to the election of the Association's initial officers and Board of Directors, whose terms of office (pursuant to Article IV, Section 2 and Article V, Section 2) shall begin on June 1, 1996. By April 26, 1996, the chair of the elections committee shall place a notice on DIRCON, inviting members of the Association to nominate candidates for election to positions of President, Vice-President, Secretary-Treasurer, and members of the Board of Directors. A nomination may be transmitted to the elections committee chair in any form, but, to be effective, it must be received by May 2, 1996. The elections committee shall determine whether each nominated person is eligible, and it shall contact each nominated person to determine whether he or she is willing to serve. The elections committee may itself nominate candidates. By May 8, 1996, the elections committee shall post a notice on DIRCON, identifying the nominees who are qualified and willing to serve and stating the electronic mail address to which votes may be sent. Members may transmit their votes by electronic mail at any time between and including May 8 and May 23, 1996.

Appendix D

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