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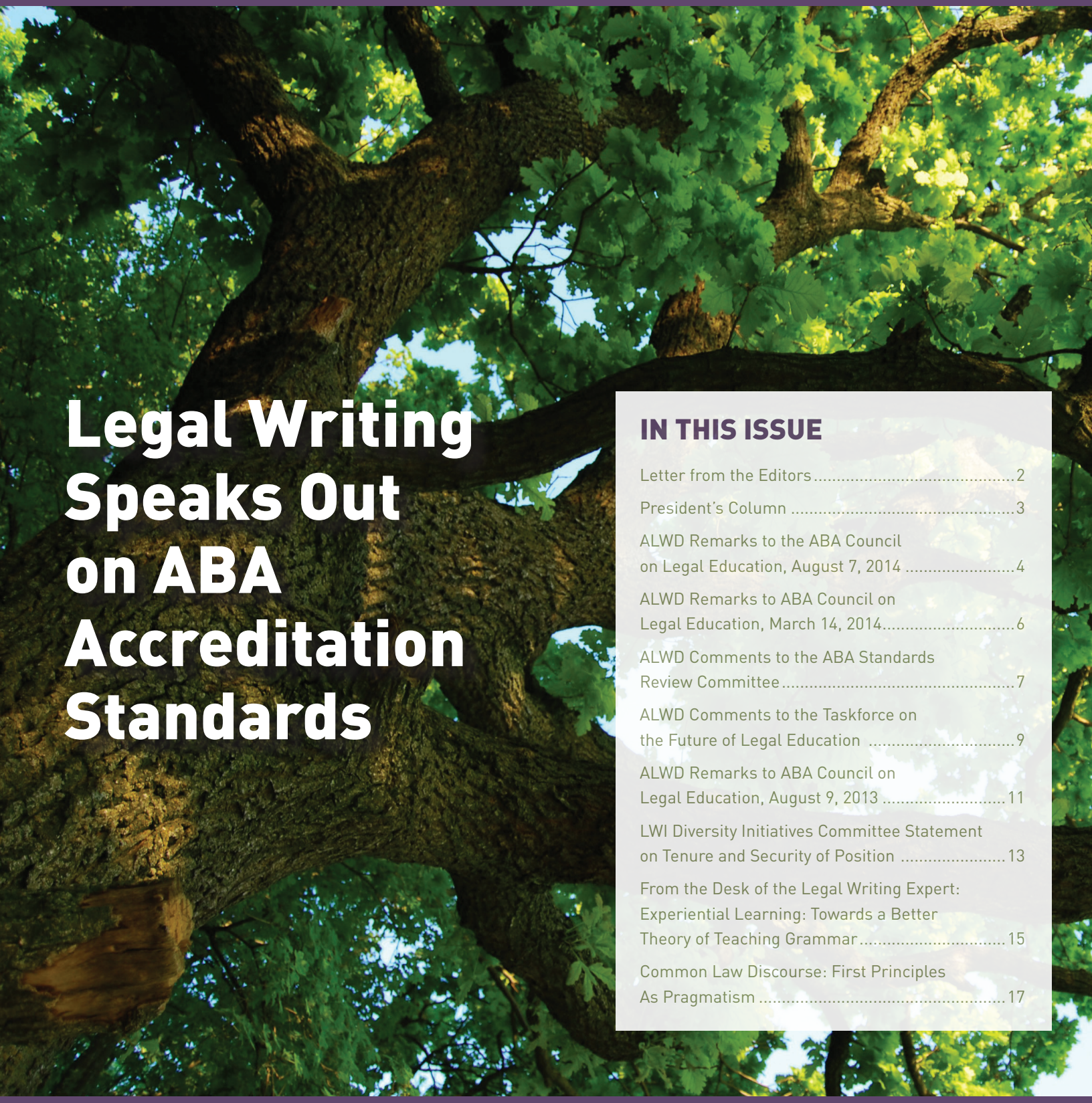

Legal Writing Speaks Out on ABA Accreditation Standards

IN THIS ISSUE

Letter from the Editors

At this summer's 16th Biennial Conference of the Legal Writing Institute, over 500 legal writing and academic support faculty came to Philadelphia to learn about new teaching techniques, discuss recent scholarship, attend committee meetings, see old friends, and make new connections. Since its inception, the Legal Writing Institute has served as a platform to develop legal writing methodology, provide support to faculty, and to create a voice in the legal academy for a frequently marginalized specialty.

In line with these goals, The Second Draft created this special issue, "Legal Writing Speaks Out on ABA Accreditation Standards," to bring together opinion pieces, articles, and comments on the proposed changes to Sections 303 and 405. These articles analyze how these potential changes can affect legal writing with respect to experiential learning and status and they are an opportunity for legal writing faculty, as a community, to continue to respond to current legal writing issues that the very first Legal Writing Conference began to do 30 years ago.

On a personal note, the outgoing editors of The Second Draft, Mary Ann Becker, Harris Freeman, Teri McMurtry-Chubb, and Mary-Beth Moylan would like express our gratitude to the legal writing community for the opportunity to work with so many talented members of our community in editing and producing The Second Draft for over four years. We would like to welcome the new members of the editorial board: Sherri Lee Keene, Diane Kraft, Chantal Morton, Abigail Perdue, and Steven Schultz. We are sure that they will find their work on The Second Draft to be as rewarding and challenging as we have!

Mary Ann Becker
Teri McMurtry-Chubb
Mary-Beth Moylan

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The President's Column

Dear LWI colleagues,

During our 16th Biennial Conference in Philadelphia this summer, we marked the 30th anniversary of the first such gathering of legal writing professors, which took place in 1984 at the University of Puget Sound. This summer's conference highlighted continuity and change, as we celebrated our members whose service to their students and to LWI has extended for more than 30 years and as we recognized that the "faces of LWI" are changing.

There is no question that both our members and our field have evolved over the past 30 years. Although our first priority has always been to help our students acquire the skills, knowledge, and judgment they need to be productive and ethical members of the legal profession, we have grown up as an intellectual community that is devoted not only to teaching, but also to research, writing, and public service. The financial, technological, social, and cultural pressures on us reflect the pressures now affecting the legal profession and legal education generally. Those pressures both encourage and allow us to innovate, to re-conceptualize, and to adopt new ways of engaging with our many distinctive audiences.

This work is well underway. LWI members and committees are planning and carrying out an array of projects that will strengthen connection and communication within our own community and with the bench and bar. This fall, the LWI Moot Court Committee will sponsor its first Moot Court Conference at Marquette Law School on October 25, 2014; this Committee is nearing publication of the Moot Court Handbook. The One-Day Workshops Committee has already announced plans for ten One-Day Workshops to be held in December at law schools across the country. As this year's joint ALWD-LWI Survey is released, ambitious plans are in play for substantial expansion of and improvements to that survey. As discussed at the Biennial Conference, the Editorial Board of the LWI Journal is completing its current volume and exploring the brave new world of electronic publication. Similarly, the editors of the LWI Monograph Series are at work on Volume 4 of this significant resource that provides a foundation and framework for legal writing teaching and scholarship and that is available to all on the LWI website.

Special thanks to the outgoing editors and to the new Editorial Board of The Second Draft. Editing and producing LWI's official magazine is a tremendous task that provides great value to LWI and its members.

On behalf of the 2014-16 LWI Board of Directors, we extend best wishes for a great fall semester. If you have questions or comments about LWI programs and projects, please feel free to contact me or any member of the Board.

Best wishes,

Linda Berger

Kathy Elliott Vinson
Professor of Legal Writing & Director of Legal Writing, Research, and Written Advocacy
Suffolk University Law School

ALWD Remarks to the ABA Council on Legal Education August 7, 2014 Boston, Massachusetts

Thank you for inviting ALWD to present at this meeting. ALWD has one representative present at the meeting, Kathleen Elliott Vinson, ALWD's Immediate Past President. Mary-Beth Moylan is currently the ALWD President. ALWD values its long affiliation with the Council on behalf of the legal writing academy, and we are pleased to share this brief summary of our work with you.

ALWD is a non-profit professional association of directors of legal reasoning, research, writing, analysis, and advocacy programs from law schools throughout the United States, Canada and Australia. ALWD has more than 300 members representing more than 150 law schools. ALWD continues to send representatives to SRC and Council meetings to monitor its comprehensive review of the accreditation standards and recommendations. We look forward to continuing our work with you.

Today, ALWD would like to share a brief summary of our work with you, focusing on two main points: (1) the role of ALWD in providing support for the legal academy, and (2) how legal writing faculty, who are most able to assist with meaningful reform, including experiential learning and assessments, are the most vulnerable.

1. The role of ALWD in providing support for the legal academy.

a. Conferences

ALWD provides assistance to its members and others in the legal academy, including ideas to incorporate assessments and experiential learning throughout the curriculum. These ideas were recently discussed at a biennial conference hosted by our sister organization, the Legal Writing Institute (LWI), held in Philadelphia in July. The conference drew approximately 500 legal writing faculty members from across the country and provided pedagogical and scholarly support for members of the legal academy leading curricular changes. Faculty left the conference with fresh ideas of how legal education can train lawyers for future practice.

ALWD's next conference will be held June 3-5, 2015, hosted by the University of Memphis School of Law in Memphis, Tennessee. A call for presentation proposals was recently sent out. The theme of the conference is: *Heart and Soul: Legal Research and Writing (LRW) at the Center of Legal Education*. In many ways, LRW classrooms are at the center of—are the heart and soul of—legal education. The analytical skills that our students develop in legal writing are skills that are at the center of and connected to the work that they do in other first-year courses and the work that they will do throughout their legal careers. At this conference, we will explore the ways in which the LRW curriculum and LRW professors are the heart and soul of our law schools, our law schools' curricula, and legal education generally, including how we make explicit to the students the ways in which the skills they are learning are central to their legal education and how we can help humanize legal education.

b. ALWD Guide to Legal Citation

One of our most exciting projects this year was the recent release of the new Fifth Edition of the ALWD Guide to Legal Citation, along with an Online Companion website packed with exercises to help improve students' mastery of essential citation skills. The new Fifth Edition is a consistent and flexible system of citation for legal materials, designed to be easy for students, professors, practitioners, and judges to understand and use. ALWD engaged in a detailed survey of our membership to identify ways to be more responsive to the needs of the practicing bar and develop a more comprehensive pedagogical tool for teaching legal citation skills. Unlike the Bluebook, which focuses on citation in law review articles, the ALWD Guide primarily focuses on the citation practices of lawyers and judges. However, it does explain and provide law review style citations together with practice citations that are fully consistent with the Bluebook.

c. The ALWD/LWI Survey:

ALWD/LWI annually conducts a survey, which in 2013-2014 had an 89% response rate, representing 178 U.S. law schools and one Canadian law school. The survey is available on our website at http://www.alwd.org A few interesting take-aways from the survey include the following:

1. The survey shows a trend toward more skills training is happening throughout the legal academy, yet it also shows legal writing faculty are at risk during the crisis legal education now faces. Legal writing is a fundamental skill that our students need to succeed as lawyers. At this time, almost all of the 178 US law schools responding to the survey require legal research and writing both semesters of the first year of law school. The average number of credits of legal writing in a required program (spanning all years, not just the first-year courses) increased to 5.71 credits and appears to be growing over the past several years. Also, the majority of the programs integrated research and writing instruction. Finally, responding to questions regarding the effect of the current economic conditions/ decline in law school applications, the highest number of responders stated their programs had been affected (68 programs up from 50), such as an increase in the number of students legal writing faculty teach, a hiring freeze, reducing the number of legal writing faculty, and not replacing faculty when contracts expire or are not renewed.

2. We know from the survey that the make-up of legal writing faculties continues to be disproportionately white and female. This year's gender percentages stayed constant at 72% female and 28% male. Answers to questions regarding diversity of legal writing faculties reported 87.9% of legal writing faculty members identifying as Caucasian. Because salaries and security of legal writing positions still tend to be lower than other law school faculty positions, people of color are actively discouraged from applying for legal writing positions because they lack the potential for tenure and because of the stigmatizing effect of holding non-tenured positions with unequal security of position, research support, salary, and governance rights.

d. Teaching and Scholarship Grants

In addition to supporting our members through our main conference, we also provide grants for teaching and scholarship to support teaching and scholarly endeavors of legal writing professors. We also support scholarship and innovative teaching workshops across the country and fund legal writing scholars to visit law schools. ALWD gives back over $40,000 per year to support these activities

e. JALWD: LC&R

We have our own peer-edited law journal—JALWD: Legal Communication and Rhetoric. The journal's mission is to advance the study of professional legal writing and lawyering and to become an active resource and a forum for conversation between the legal practitioner and the legal writing scholar. The editors of JALWD are exploring ideas to publish online in the future.

2. How legal writing faculty, who are most able to assist with meaningful reform, including experiential learning and assessments, are the most vulnerable.

ALWD members as educational leaders are poised to assist with meaningful educational innovation. Many schools are turning to their skills faculty to guide them through the anticipated and already undertaken changes. ALWD members are ready to assist with curricular change and lead educational reform at their schools.

Ironically, however, at a time when curricular innovation is needed to help students become practice-ready, full-time legal writing faculty, who are most able to assist with meaningful reform, including experiential learning and assessments, are the most vulnerable. More than two-thirds of full-time legal writing faculty are women, and less than ten percent represent racial minorities. The ABA Standards have created and fostered academic status hierarchies, imposing constructive barriers to race and gender equality in the academy, allowing accredited law schools to discriminate among full-time faculty members based on the nature of their teaching responsibilities. Due to lack of

status and job security, during these challenging times in legal education, many legal writing faculty positions have been eliminated or reduced and resources to legal writing programs have been decreased at many law schools.

As legal education, the bench, and the bar continue to face significant challenges with how to implement needed reforms, ALWD can help be a catalyst for lawyering skills instruction, experiential learning, and assessments. ALWD looks forward to working with the ABA to continue to improve legal education and the status of LRW faculty. ■

Mary-Beth Moylan
Professor of Lawyering Skills
Director, Global Lawyering Skills Program
University of the Pacific McGeorge School of Law

ALWD Remarks to ABA Council Meeting March 14, 2014 San Diego, California

I. Introduction

Thank you for inviting us to present today. I am Mary-Beth Moylan, president-elect of ALWD. With me today is Kim Chambonpin. We filed a written report updating ALWD's activities and it should be in your materials. Our immediate past president Anthony Niedwiecki also appeared at the Council's public hearing in Chicago in February and presented testimony there.

II. The Relationship between Experiential Courses Requirement Standard (303) and the Professional Environment Standard (405)

Standard 303 promises to increase the importance of experiential courses in the curriculum of accredited law schools.

Legal Writing and Clinical faculty teach the courses that will be required under the proposed changes to Standard 303.

An increase in the number of units required in experiential education will mean more classes taught by LRW faculty because they are prepared to teach simulations and practical courses. Just by way of an anecdote, at my school, we adopted a curriculum change to require experiential courses and practicums last year. As a result several faculty members converted doctrinal courses into practicums or experiential courses – several of the faculty members who did were legal writing faculty, and of the entirely new courses that were created to help students fulfill the requirement, the majority are being taught by our skills faculty. As a practical matter this happens because LRW faculty members are often paid less and therefore more willing to teach "overloads" to supplement their compensation.

For students to value these courses, which the ABA is about to recognize are critical for law schools to provide, the people teaching he classes need to be valued. Students understand that they should value courses taught by valued professors.

The current section 405 sets up a hierarchy where skills faculty are differentiated and guaranteed lesser security and status than other law school faculty. Legal writing faculty members are singled out for the bottom rung of the ladder.

ALWD supports a standard that sends a message of equality. As the increased experiential course requirement demonstrates the ABA's recognition of the importance of skills education, students need to know that skills classes are vitally important to their education. Having professors who are called "professor" and have equal status teaching skills classes, creates a consistent message throughout the ABA Standards. In the absence of a standard that requires tenure for all faculty regardless of subject matter taught, ALWD urges that governance rights and a form of security of position equivalent to tenure with a guarantee of academic freedom, be required for all faculty. Alternative 1 proposed by the SRC comes close to this. We would urge that the 5 year presumptively renewable contracts should be considered a floor for faculty who are not tenured or on a tenure track, rather than just a factor to consider. ■

Ralph Brill
Professor of Law
Chicago-Kent College of Law
Illinois Institute of Technology

ALWD Comments to the ABA Standards Review Committee February 2014 Chicago, Illinois

Please excuse this paragraph of introduction, in which I seem to be patting myself on the back enough to break either my back or my arm. I feel I need to explain a bit of who I am, to explain my opposition to the SRC's present draft of ABA Standards revisions, specifically those on security of position.

I am in the middle of my 51st year of law teaching, all but one of it at Chicago Kent College of Law. I have taught about 15 different subjects. I've served as Acting Dean, Associate Dean, Director of Research and Writing, chaired virtually every law school and many university committees, been very active in the ABA, the AALS and state and local bar associations, chaired several ABA committees, been on six ABA site inspection teams, visited many other law schools as a consultant, etc. etc. During my terms as Associate and Acting Dean, I personally created our now incredibly successful Trial Advocacy Program, our similarly excellent Moot Court Program, the school's first Clinical Program, and the research assistance for scholarship by faculty program. I was able to induce teachers from elite law schools to visit with us for a semester or more. I created the first placement department the law school ever had. I assisted Ron Staudt in the first use of computer technology program in the country, set up listservs for Legal Writing and for Tortlaw, and was invited speaker at the AALS and at other law schools on the use of technology in teaching law, as well as various topics in the field I love the most, Legal Writing. On the national professional level, I have received the Blackwell Award from the LWI and ALWD, the distinguished service award from the AALS Section on Legal Writing, Reasoning and Research, the joint LWI/ ALWD Terri LeClercq Courage Award, and the Burton Legends in the Law Award. As a Chicago Kent professor, I have been voted Teacher of the Year, been awarded Distinguished Service Awards by our alumni association on several occasions, had alumni-created scholarships created named after me, had the moot court writing award named after me, had the Student Bar Association's annual faculty service award named after me, and most recently had over 450 alums raise 1.5 million dollars to fund the Ralph L. Brill Chair, the law school's first faculty chair.

At Chicago-Kent, besides my own nearly two-year term as Acting Dean, I have been under the direction of eight other deans or Acting Deans. I gained tenure at Chicago Kent in my fourth year at the law school.

Turning to the proposal to eliminate any requirement of tenure or other forms of job security:

During those 51 years, I have either experienced first-hand or witnessed from a distance at other law schools such incidents as (1) a very fine young professor (tenure track) being told by a dean that he would not be renewed for the second year of his appointment because he was Jewish, and "we have quite a few of those here" and "his continuation would upset the Cosmopolitan atmosphere of the school;" (2) a dean, upon his appointment, create (without prior university authority) a new title of Distinguished Professor and bestow it on four of the members of the Dean Selection Committee which had chosen him; (3) a dean, in a closed meeting, loudly profess that as long as he was dean there would "never be a Negro or a woman on the faculty" and there wasn't, (4) a dean tell his main opponent in the dean selection process that "I have talked to the dean at __ school and recommended that they hire you, so you won't be a thorn in my side during my deanship.", (5) a dean award large increases in salary to several of the faculty, but claim that the university budget did not allow for any increases for the rest of the faculty, (6) a dean handpick a new director of legal writing, who had virtually no experience either as a teacher of legal writing or as an administrator, and pay her twice what the existing, very experienced, very competent legal writing teachers were being paid, and moreover assign her a half load of teaching responsibilities; (7) shall I go on? I only have another one hundred or so stories similar to these.

The point I am trying to make is that the position of dean is a very powerful position. I know that from my two year experience. I was able to make decisions on

salaries, on teaching schedules, on summer stipends, on office assignments, on committee assignments, or, if I wanted to, use the threats of mistreatment to get something I wanted from each faculty member, tenured or not. (I assure you, I did not abuse the privilege).

Were it not for the security of tenure I received way back when, I am confident that several of the deans at Chicago Kent would have been happy to get rid of me. Some would have done so because of my exercise of opposition speech to programs or policies they were advocating. To be sure, those hypothetical attempts probably ultimately would have led to my protection through the Academic Freedom provisions in the proposed ABA Standards revisions. However, if Academic Freedom was my only protection, I would have had the burden of proving those violations by an internal grievance procedure and ultimately a court proceeding. That method can be costly, both financially and psychologically. But had I been non-renewed because of non-academic freedom violations – e.g., because the dean just did not like me, my faculty politics, my being a pain, or my lifestyle -- I would have had no academic freedom grounds for filing a grievance even if I could prove the underlying reasons. Were it not for the tenure I received so long ago, the fear of retribution would possibly have inhibited from doing things I felt obligated to do for the benefit of the students I loved so dearly and the school I treasured.

To be sure, a clever dean could still try to affect me, by a fear of no salary increase, assignment of a terrible teaching schedule, being required to teach courses I didn't know anything about, or being moved to a miserable office. But the methods I might then use to fight back –e.g., vocal complaints to the rest of the faculty, appeals to alumni, other ways of causing the dean embarrassment -- would have been protected -- by my tenure, not by academic freedom!

Tenure is broader than Academic Freedom! Long-Term, presumptively renewable contracts are broader than Academic Freedom! But it is the smaller things – not violations of Academic Freedom -- that can make life comfortable or uncomfortable for faculty and that require faculty to choose to comply or leave. I have inspected a (for-profit) school where the legal writing teachers were not referred to by any professional title --- not professor, not instructor, not lecturer, not teacher, but only Mr. or Ms. And they were placed in an office in a building away from the law school, in space they had to share with one another. They were not even allowed to attend faculty meetings. They were paid poorly. They had year-to-year contracts. They were given horrible teaching loads. If they complained, they were not renewed.

The current ABA Standards, though not terribly strong, nevertheless have resulted in improvements of condition for many of the legal writing and clinical faculty. For one thing, the only subjects (other than professional responsibility) that must be offered by every law school are the subjects these teachers teach…..legal analysis, legal reasoning, legal research, oral communication, written communication, advocacy, drafting. At least two rigorous writing experiences must be offered, and clinical training offering the possibility of live-client interaction is required. Yet, the teachers who teach these subjects have the least status and security. They are listed as sub-humans, as .7 of a full- time teacher, even if they are teaching more classes and more students than any doctrinal faculty member. Over 70% of the Legal Writing teachers are women (which ironically does benefit schools in satisfying the ABA diversity standard).

The existing standards, weak though they are on the issue of security of position, have nevertheless made an enormous difference in the way many schools have treated legal writing professionals. Legal writing in the 60's and 70's was usually taught by recent graduates on short-term contracts, or by graduate students, or even by 3L law students. Now, well over half of the legal writing teachers in the country are on long-term or continuous contracts, presumptively renewable, without caps. http://lwionline.org/surveys.html About fifteen schools have made all legal writing faculty tenure track or tenure eligible. About 79 have put legal writing faculty on long or short term, renewable contracts --- the equivalent of security of position under 405(c), since cause would be required not to renew them. Finally, about 73 schools have hybrid programs, like Chicago Kent's—we have seven of our legal writing teachers on continuous contracts, 405(c), with full voting rights, except on tenure and appointments to tenure track. The other four are in apprenticeship positions, serving up to three years, teaching legal writing and one other course, and beginning their scholarly writing as a prelude to landing a tenure track job at another school. Over 60 graduates of the program are teaching at American law schools.

Abolition of tenure or other security of position provisions in the accreditation standards undoubtedly will result in a reversal of the gains of legal writing teachers as well as clinicians. And at lesser law schools, the move also will lessen further the quality of those schools' doctrinal teaching as well. In the new world of legal education, with the greater entry of for-profit schools into the accredited field, the SRC's adoption of lessened security of position standards, and with the inevitable downturn in applications to law schools, one can expect that the elite schools will continue to use revenue to attract and keep great scholars, and probably maintain tenure. The lesser ranked schools will abolition tenure, and then need to use money to lure qualified teachers for the doctrinal courses. Such moves are bound to lessen the security of position for the skills faculty. Schools may again resort to short-term contracts, use of adjuncts, or even students, to teach Legal Writing. Doctrinal teachers may be asked to use legal writing exercises as parts of their courses to take the place of separate legal writing courses. If Legal Writing programs are continued at these schools, the teachers will be expected to take less money, and be subject to rapid turnover. ■

Teri McMurtry-Chubb
Associate Professor of Law
Mercer University Walter F. George School of Law

ALWD Comments to the Taskforce on the Future of Legal Education August 10, 2013 San Francisco, California

Thank for the chance to address you this afternoon.

My name is Teri McMurtry-Chubb, and I am an Associate Professor of Law at Mercer University Walter F. George School of Law. I am here as a representative for the Association of Legal Writing Directors Board of Directors (ALWD) and legal writing professors nationwide.

My colleague, Mary Beth Beazley, who is an Associate Professor at The Ohio State University Mortiz College of Law, is also with me today.

My remarks will be brief and primarily address the Taskforce's Working Paper at section G on p. 28 and Section A under Roman Numeral VIII (8) on p. 31 respectively.

Section G, p. 28

We applaud and support this Taskforce's efforts to innovate legal education, particularly in the areas of the faculty culture and teaching.

Legal writing has developed significantly over the last 40 years. Whereas once it might have focused on mechanical drafting skills (grammar, structure, usage, and legal citation), it now stands at the intersection of law, composition studies and cognitive psychology. The average legal writing course today focuses on legal research, use of authority, analytical thinking, strategic thinking, and oral presentation skills. The legal writing course is where each student receives individual instruction and feedback on how to think like a lawyer and to communicate that thinking to courts, clients, and other stakeholders.

As legal writing faculty, we have been at the forefront of our law schools in:

- Developing learning outcomes for the courses and programs that we design
- Developing innovative teaching methods
- Designing and implementing formative and summative assessment measures in our courses and programs

The Taskforce's Working Paper places value on teaching skills and experiential learning. As the Academy's leaders in these areas, we support the Taskforce's efforts to balance teaching and scholarship, including broadening scholarship to include scholarly inquiry into teaching and learning, curricular planning, and law at the intersection of cognitive psychology and composition studies. Our colleagues around the country produce quality scholarship in these areas and are recognized by the bench and practicing bar for their innovative approaches.

As a professional organization, ALWD takes teaching seriously. The old saying: "If you want to know what's important to a person or organization, then look at where they spend their money and their time" applies to us. We give back about $40,000 annually in teaching and scholarship grants to our membership. We sponsor a journal, the Journal of Legal Rhetoric and Communication, which is a peer reviewed journal. The articles that appear there are often cited in judicial opinions and bar journals. We host multiple regional and national conferences each year, along with our sister organization the Legal Writing Institute, which give our members a forum for discussing scholarship and teaching. We also fund a speaker's bureau so that those at the top of our field can share their knowledge and experience with our colleagues who do not teach legal writing. Improving teaching and making better connections between the academy, bench, and practicing bar are where we spend our money and our time.

TRANSITION: As the Taskforce moves forward, we would urge it to push for innovation, and in doing so embrace innovation from a culture of equality and transparency.

p. 31, Section A, Roman Numeral VIII (8)

Presently, the pervasive staffing model in legal education enshrines a system of inequality based on the subject matter a professor teaches. This inequality presents a particular problem for legal writing faculty. The Taskforce's discussion of faculty culture alludes to both concerns about status and concerns about fear of change among faculty.

- ABA Standard 405(d) does not afford as much security of position for law professors who teach legal writing as it does for clinicians in 405(c). In turn, 405(c) does not provide as much security of position for clinicians as it does for casebook faculty. Law schools have consistently interpreted Standard 405(d) to mean that short-term non-presumptively renewable contracts are sufficient to attract and retain law professors who teach legal writing. If this is true, it is only true because the majority of jobs offered are on short-term non-presumptively renewable contracts. There are few choices.

- Each year, ALWD and our sister organization, the Legal Writing Institute, conduct a survey on legal writing curricula nationwide. Included in that survey are questions about staffing models. Our 2013 survey, for which we received a 95% response rate (189 law schools and 1 Canadian law school) reveals that the majority of us are on presumptively non-renewable short-term contracts, and many have no say in faculty governance (many of us cannot attend faculty meetings at our schools, and if we can attend we cannot vote). It also reveals that 76% of law professors teaching legal writing are women, and that on average they are paid less than the 23% of male law professors who teach legal writing. Lastly, and probably most disturbingly is that law professors who teach legal writing are overwhelmingly White. Unstable and uncertain job status makes it difficult to attract and retain people of color. As members of marginalized groups, it seems counter-intuitive for us to sign-up for more instability and marginalization in our employment situations.

-Though unintended, Standard 405(d) has perpetuated this system of inequality. If tenure is not mandated but still allowed the current stratifications will remain. Perhaps a better system would be to allow each school the flexibility to decide what system of job security to provide its faculty, and in doing so require that all full-time faculty have access to that system of security, regardless of what subjects they teach.

- The current stratification means that those most able to innovate law school curricula and teaching methods will be in the least likely position to provide leadership in this area. We often have no vote at the table. If casebook faculty both fear change and cherish their status, they are unlikely to consult low caste faculty for leadership in teaching innovation. These cultural factors, therefore, inhibit the teaching of core competencies that the ABA and this Taskforce recognize as being crucial to the future of legal education.

Lastly, I want to address the notion that tenure has only been for the benefit of professors. This is not true. Faculty who have job security are able to develop and try new teaching methods, and conduct research into what may or may not work. They have the time and inclination to focus on their students, to support their colleagues, and to make their institutions stronger. Faculty members without job security will fear challenging a dean who may not understand the best teaching methods for a particular subject area; they cannot participate in a robust discussion with their colleagues and administrative team about how to best serve the students and make the program of legal education at their institution stronger.

- Page 9 of the Working Paper talks about the importance of providing accurate consumer information. We agree with the recent calls for transparency as to job placement and student debt, and we also call for transparency as to teaching and curricular focus. First, we believe that schools should disclose which courses – particularly which mandatory courses – are usually taught by full time as opposed to adjunct or part time faculty. This is particularly important to legal writing, because legal writing requires hands-on instruction, which the report recognizes as important. The typical legal writing course requires 5-10 hours of individual instruction per student per semester. This time is spent critiquing student papers, holding individual student conferences, and providing the individual diagnosis and instruction that develops the core competencies of each individual student, competencies that are much more difficult to develop via the lecture hall. Students who are going into debt for their legal educations should be confident that they will receive competent instruction that develops their individual skills.

Thus, legal writing courses, like clinics, are particularly well suited to the use of full-time faculty. We do not recommend mandating full-time instruction for the teaching of legal writing; rather, we recommend that law schools voluntarily disclose or disclose under the mandates in rule 509 which of its courses are being taught by full-time as opposed to adjunct or part time faculty.

Let me reiterate that legal writing faculty spend at least 5-10 hours per student outside of in-class instruction per semester. These hours, which translate to 200-400 hours per teacher per semester do not take into account time spent teaching, preparing to teach, developing simulations that we use in experiential teaching, time spent serving on faculty committees, student advising, and time spent on scholarship. Also, as a group of professionals, legal writing faculty spend a significant amount of time on national service activities, which is one of the reasons we have moved to the forefront in developing innovative teaching methods. An adjunct, by definition, cannot devote the time and attention to students because their first priority must be their clients and other responsibilities of their practice. Likewise, they do not have the time to devote to professional development. Therefore, an adjunct program faces challenges in innovating over time.

It might be beneficial to allow more heterogeneity in law school curricula. However, if law schools have different curricular foci, it is vital that each law school disclose their particular curricular focus to its incoming students so that they are fully informed consumers.

Legal writing faculty stand ready to help to continue promoting innovation in legal education, through this Taskforce, or any other groups that work to make or implement recommendations.

IN CLOSING

There is no question everyone agrees that lawyers need good writing and analytical skills; the current accreditation standards emphasize this. We applaud this Taskforce's endeavor to innovate legal education to make client-ready and practice-ready students. We only ask that you do so by embracing a culture of equality and transparency. ■

Mary-Beth Moylan
Professor of Lawyering Skills
Director, Global Lawyering Skills Program

ALWD Remarks to ABA Council on Legal Education August 9, 2013 San Francisco, California

Thank you for inviting us to present at this meeting. ALWD values its long affiliation with the Council on behalf of the legal writing academy, and we are pleased to share this brief summary of our work with you. First, I would like to introduce myself and the other ALWD members who are here with me. I am Mary-Beth Moylan. I am the director of Global Lawyering Skills at UOP, McGeorge School of Law. With me, are Teri McMurtry-Chubb from Mercer and Mary Beth Beazley from Ohio State. I have been the president-elect of ALWD for a week and two days. Kathy Vinson is our new President, and Anthony Niedwiecki, who has represented ALWD at a number of Council meetings, is now in the role of Immediate Past

President. He will continue to represent the organization at Council and Task Force meetings in the future.

Today, I would like to touch on three main points: (1) The ALWD/LWI survey – about which Anthony spoke at the March 2013 Council meeting; (2) The role of ALWD members in educational innovation; and (3) The role of the ALWD in providing support for the legal academy.

1. The ALWD/LWI Survey:

When Anthony had a chance to present to the Council in March, he discussed the survey that ALWD annually runs in partnership with the Legal Writing Institute (LWI). He indicated that by this meeting, we would be able to report on the 2012-2013 ALWD-LWI survey results. I would like to take a moment to highlight a few interesting take-aways from the survey:

a. In 2012-2013, the survey had a 95% response rate. This is an amazing rate that represents 190 U.S. law schools and one Canadian law school responders.

b. The survey shows common practices and trends in legal writing and skills education in American law schools. One important trend that is happening throughout the legal academy is the trend toward more skills training. Legal writing is a fundamental skill that our students need to succeed as lawyers. At this time, almost all 190 US law schools responding to the survey require legal research and writing both semesters of the first year of law school. Forty-eight (48) schools require a legal writing course in the first semester of the second year and eighteen (18) schools also require a legal writing course in the second semester of the second year. A handful of schools have a third year legal writing requirement.

c. We know from the survey that the make-up of legal writing faculties continues to be disproportionately white and female. This year's gender percentages stayed constant at 77% female and 23% male. Diversity of legal writing faculties decreased with 86.2% of legal writing faculty members identifying as Caucasian. This was an increase from 78.4% in 2011-2012. Because salaries and security of legal writing positions still tend to be lower than other law school faculty positions, issues of attracting talented and diverse candidates from both genders continues to be an issue for us.

2. ALWD Members as Educational Leaders:

Many of ALWD's members, as well as many legal writing professionals who are members of LWI, are serving in leadership roles at their schools in efforts at educational innovation. Several new positions in experiential education have been created and filled by ALWD members, for example, Anthony Niedwiecki is now the Assistant Dean for Experiential Education at John Marshall School of Law in Chicago and David Thomson is heading up a new program called "Experiential Advantage" at Sturm College of Law, University of Denver. Several legal writing professors have been appointed as Associate Deans this year, among them Judy Stinson - now the Associate Dean for Academic Affairs, at Sandra Day O'Connor College of Law, Arizona State University, Mary Dunnewold - now the Associate Dean for Academic Affairs at Hamline University School of Law, and Mehmet Konar-Steenberg - now the Dean of Faculty at William & Mitchell College of Law. These are just a few examples, there are no doubt many more. The Standards Review Committee's work has prompted schools to get out in front of anticipated curricular changes to include more skills education. Many schools are turning to their skills faculty to guide them through the anticipated and already undertaken changes. ALWD members are ready to assist with curricular change.

3. ALWD Provides Support to Legal Academy:

One way that ALWD provides assistance to its members and others in the legal academy is through biennial conferences. We were very grateful this year to have Kent Syverud as our keynote speaker at the June conference at Marquette in Milwaukee. Kent's keynote address, as well as numerous sessions on curriculum reform, an update on ABA standards review, and several sessions presenting new teaching ideas, gave our membership a boost of energy to tackle the hard work of delivering quality legal education while simultaneously trying to rethink the way we train lawyers for the next decades.

Importantly, ALWD opened its conference this year to non-members, as well as members of the organization. While the conference is aimed primarily at offering support and new ideas to legal writing directors, many of the programs and sessions offer value to those who want to rethink the teaching of legal skills more generally. Conference attendance this year was at an all-time high, and we did have a number of non-members in attendance. In addition to supporting our members through our main conference, we also provide grants for teaching and scholarship, and we have our own peer-edited law journal—Legal Communication and Rhetoric. ALWD gives back over $40,000 per year to support these activities. ■

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LWI Diversity Initiatives Committee Statement on Tenure and Security of Position, Fall 2012

The LWI Diversity Initiatives Committee respectfully submits these comments to the ABA Standards Review Committee (SRC) in advance of any formal circulation of a proposal to eliminate or substantially modify Standard 405.

Our comments are meant to address the ramifications for legal writing faculty of color if the SRC eliminates or substantially modifies Standard 405 to provide less job stability. As many legal writing scholars have noted, legal writing as a discipline occupies a marginalized space within the legal academy.[1] The main contributing factor to its marginalization is status. In the majority of ABA accredited law schools, legal writing professors are offered only short-term contracts and given no opportunity to participate in faculty governance.[2] These characteristics of legal writing, as it exists presently, make it particularly unattractive to faculty of color who already occupy a marginalized space in the legal academy.

This situation is made more acute by the gender disparity in the legal writing workforce. The overwhelming majority of legal writing faculty are women.[3] Statistical studies have shown that women of color in tenure-track law positions, the gold standard for employment status in academia, have difficulty obtaining tenure due to race and gender discrimination.[4] If these women struggle to obtain job stability through the tenure-track process, it is unlikely that women of color will consider legal writing as their academic profession when its prospects for job stability are virtually non-existent.[5] The current survey of legal writing programs conducted by the Association of Legal Writing Directors and the Legal Writing Institute (ALWD/LWI survey) supports this contention. As of the 2009-2010 academic year, 978 people were employed as full-time legal writing faculty, 697 of them women (71.3%).[6] Of the 978, 763 (78%) were Caucasian, 55 (5.6%) were African-American, 18 (1.8%) were Hispanic, 21 (2.1%) were Asian American, 3 (.3%) were Native American, 4 (.4%) were multi-racial, and 5 (.5%) designated themselves as having a racial or ethnic designation other than those listed.[7]

Standard 405(c) and Interpretation 405-6 grant clinical faculty members job security approximating tenure. However, Standard 405(d) requires that law schools only grant enough security to legal writing faculty sufficient to recruit and retain qualified people to teach legal writing and to preserve academic freedom. As one legal scholar has noted, "Arguably, 405(d) and Interpretation 405-9 could be read together to mean that the ABA considers academic freedom protected under short-term contracts for non-405(c) [legal writing] faculty and deems short-term contracts not necessarily a deterrent to attracting and retaining qualified [legal writing] faculty without 405(c)

1 *See* Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117, 121 (1997); Toni M. Fine, *Legal Writers Writing: Scholarship and the Demarginalization of Legal Writing Instructors*, 5 LEGAL WRITING: J. LEG WRITING INST. 225, 227 (1999).

2 ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., 2010 SURVEY REPORT 61 (2010), *available at* ***http://www.alwd.org/surveys/survey_results/2010_Survey_Results.pdf*** [hereinafter 2010 ALWD/LWI SURVEY

3 *See* Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law School's Dirty Little Secrets*, 16 BERKELEY WOMEN'S L. J. 3, 4-5 (2001).

4 Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUMBIA L. REV. 199, 213 (1997).

5 Teri A. McMurtry-Chubb, *Writing at the Master's Table: Reflections on Theft, Criminality, and Otherness in the Legal Writing Profession*, 2 DREXEL L. REV. 41 (2009).

6 2010 ALWD/LWI SURVEY, *supra* note 2, at 63.

7 *Id*. at 64.

status."[8] The entire population of legal writing faculty of color is only 10.8% of all legal writing faculty teaching full time. This low percentage demonstrates that short term contracts **are** a deterrent to attracting and retaining qualified legal writing faculty, especially legal writing faculty of color, without 405(c) status or the promise of more.

In light of the information above, we urge the SRC to reconsider any proposal to eliminate or substantially modify Standard 405 to provide less stability for legal writing faculty. We also ask that the SRC explore the relationship between Standards 405(c) and 405(d) as they relate to the marginalization of legal writing in legal academia and the recruitment and retention of qualified legal writing faculty of color. Such exploration is necessary for the ABA to meet its diversity goals in accordance with its own criteria. ■

8 McMurtry-Chubb, *Writing at the Master's Table, supra* note 5, at 59.

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Experiential Learning: Towards a Better Theory of Teaching Grammar

I have been the writing specialist at Villanova for just shy of four years. Since taking on that role, I have encountered the following question—or variations on it—at least five times in conference presentations: should we teach grammar and basic writing skills in a legal writing program? I pay attention whenever the question comes up because I, like many other writing specialists, am primarily responsible for this material in our curriculum. It is a logical question with sound arguments on both sides. (Even putting aside my own self-interest, I still count myself among the "yeas.") Both sets of responses, though, start from the same assumption as the question itself about the potential inappropriateness of including grammar and things like it in a legal writing curriculum. The ABA's new mandate for increased experiential learning opportunities and the need to prepare students for them might be an opportunity for the legal writing community to re-think its relationship to this question. In whatever final form they are adopted, the ABA's new proposed accreditation standards will change the context in which students learn legal writing, and in the case of grammar and basic writing skills, that may turn out to be a good thing. Perhaps the changing climate in legal education and the expanded role of experiential learning can help us to ask a better question: regardless of whether grammar and basic writing skills intrinsically "belong" there, is there a strategic value in including them in a legal writing curriculum? Based on my own experiences, the answer is yes.

Pitching basic writing skills instruction to be appropriately sophisticated for a community of soon-to-be expert learners may be a challenge, but it also creates the opportunity to teach grammar in a way that contributes to preparing students for experiential learning and the workplace. The rules for comma use do not translate unaided and by themselves into enhanced professionalism, but new professionals must write and use these rules when both the rhetorical situation and the concepts shaping their sentences may be new or unfamiliar. The latter has always been an inevitable shift when students move from academic to practice settings or to forms of experiential learning. In the past, employers may have anticipated mentoring new writers through this learning curve; in the current legal job market, that is no longer the case. The new ABA standards on experiential learning ensure, however, that students will now face it earlier and more often while in law school. Writing specialists and others who teach basic writing skills to law students may be in a position to help students negotiate the encounter. In this regard, the new ABA standard on experiential learning may offer an opportunity to re-think how law schools approach teaching not just grammar, but any basic writing skills they address.

Finding strategic value in including grammar may mean changing the context in which law schools teach it. It did for me. In response to these changing conditions, I overhauled our program's basic writing skills workshops. Generally speaking, our workshops already worked well: more students attended than we anticipated, survey results were generally positive, and the legal writing faculty and I developed a shared vocabulary for describing—and holding students more highly accountable for—grammar, punctuation, and the tenants of clear expression. I decided that our writing skills workshops would better prepare students for the workplace—and better complement our legal writing classes—if students also practiced evaluating another professional's rhetorical choices, the same sort of choices they face in their own work. So, I re-developed our workshops around a consistent fact pattern, similar to the client-problem approach. I implemented this approach by reworking the core narrative offered in a client problem and downplaying the role of the memo.

Our workshops now introduce students to a fact-pattern—a blue-collar employee facing her supervisor's reprisal after reporting another co-worker's sexual misconduct—through the fact section of memo. All the other exercises, though, simulate other documents that are frequently part of an employment litigation file: a client affidavit; a policy from an employee handbook; letters between the employee's attorney and human resource

officials; and a report summarizing an administrative investigation of the complaint. To encourage students to comment on grammar and any aspect of the writing they found clumsy, the instructions asked students to assume the role of the supervising attorney, rather than the writer, as they read. The goal of the instruction was to empower students to flag anything—like unneeded narrative or introductory language—as amateur .

A shift like this one does not detract from the focus on basic skills; rather, like good legal writing, it takes more accurate stock of the audience's—in this case, our students—needs. But it does require some management. Though the new goal for our workshops was to let students grapple with the relationship between context and language, the circumstances differed from the legal writing classroom. "Language" needed to maintain a tangible relationship to each workshop's narrow topic and "context" needed to teach novice writers to negotiate unfamiliar rhetorical situations. Similarly, the material also needed to avoid introducing or relying too much on substantive legal concepts in order to keep the focus on basic writing skills. This new approach harnesses the benefits of a problem-based tool and but modifies it so that students practice basic writing skills in a context that prepares them for experiential learning and the workplace.

The broad range of these supporting documents offers complexity and organic opportunities for reinforcing basic rules that quizzes and short exercises may lack. A test question that includes a mailing address will stand out to a perceptive student as assessing in some fashion the test-taker's ability to format one correctly (though why a person would do such a thing may well remain a mystery). Embedding the same material in a client affidavit replicates where in their professional work students are likely to need to know the rule—and to forget to use a comma to separate the elements. Likewise, the chronology of a memo's fact section accommodates more and more varied passive voice constructions, including some that are more easily overlooked (like this one); the greater range also lets students discuss which constructions truly seem like a problem and which ones seem potentially benign. Asking students to consider whether the word "recalcitrant" is appropriate to use in an employee handbook relied upon by a large corporation and circulated among its two-thousand employees connects a writer's most basic choices to the audience's needs and the document's purpose. It reinforces for students that legal writers must take into account not only the content they want to convey but also how other professionals will interpret their work; it reminds them of the impact that their fundamental choices about grammar and punctuation can have on the force of their words. Finally, introducing students to a succession of new documents in each workshop reproduces the evolving and unfamiliar parameters students will see when they first write in practice and in our clinics.

This approach may not give students every answer, but it can help them form more effective—and more professional—questions. An approach like this one still refines students' knowledge of grammar but in addition, hopefully, it also contributes to developing the acuity they will need to successfully face new tasks in externships, clinical experiences, and ultimately the workplace. Grammar and basic writing skills alone will not make students better prepared for the workplace and experiential learning; arguing that would be overstating the case considerably. But if we ask better questions of the strategies by which we teach this material, we may give ourselves even more effective tools that contribute to that objective. ■

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Common Law Discourse: First Principles As Pragmatism

The strident call for reform in legal education is particularly resonant within the legal writing community. And not surprisingly – we share a long-held commitment to pedagogical innovation. Perhaps first inspired by James Boyd White and The New Rhetoric movement, legal writing courses now utilize didactic techniques based in literary as well as post-modern theory.[1] Constructivist teaching prisms such as flipping, freewriting and the zeroth draft have become commonplace in syllabi;[2] our lexicon includes references to epistemic "discourse communities"[3] and "constitutive rhetoric."[4] However, the theoretical debates that frame LRW course design rarely surface during in-class discussion. Proposals to expand the required experiential content of the J.D. program could strengthen this perception of legal writing classes as involving categorically different kinds of thinking from doctrinal work. In addition, my instinct as a recent graduate is that many students might find such a credit requirement burdensome and paternalistic. I instead argue that we simply make our courses more attractive to students so that they elect to enroll for them. To do this we should make the academic, rather than practical, content of our courses more transparent.

It seems obvious that part of this momentum for upping the practical content is motivated by job uncertainty for recent graduates. But the recent ebb in hiring could be driven by Schumpeter's vision of a new technological dawn. An ABA or state bar's policy change won't break an external, structural ceiling on employment opportunities for J.D.'s working as lawyers in the States. But we can "expand the pie" by looking abroad. There is empirical evidence that our graduates enjoy a comparative advantage in international lawyering. Since the 1994 implementation of the General Agreement on Trade in Services (GATS), the increase in the exchange of "legal services" has been exponential. Over a 5-year span from 2005 to 2010 the annual US export figure improved from 4.3 billion USD to 7.3 billion USD.5 This is also one industry in which the US still runs a generous trade balance (for 2010, we imported a mere 1.5 billion USD of foreign legal services).6 Increasing amounts of domestic law firms are opening branches in other countries.7 Shouldn't our J.D. graduates join the ranks of this vanguard cadre of cosmopolitan lawyers? And a corollary question: shouldn't American law schools continue to increase export of our degree programs to students from other nations? This notion of exporting law has been (perhaps rightly) equated with a kind of post-colonial program of legal imperialism.8 But if legal education is instead internationalized within the value-neutral paradigm of comparative law, then this ideological balance is removed. Indeed, Christopher Edley, Jr. – the previous dean at Berkeley – considers a near horizon for American law schools where "half of the students are citizens of other nations, and the student experience is structured to exploit that diversity."9 The US legal writing professoriate can remain progressive by emphasizing the

1 *See* Adam Todd, *Neither Dead nor Dangerous: Postmodernism and the Teaching of Legal Writing*, 58 Baylor L. Rev. 893 (2006).

2 *See* Linda L. Berger, *Applying New Rhetoric to Legal Discourse: The Ebb and Flow of Reader and Writer, Text and Context*, 49 J. Legal Educ. 155, 174-77 (1999).

3 *See* Teresa Godwin Phelps, *The New Legal Rhetoric*, 40 Sw. L. J. 1089, 1091 (1986).

4 *See* James Boyd White, *Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life*, 52 U. Chi. L. Rev. 684, 688 (1985).

5 Sabrina Schiller, *A New Global Legal Order, With or Without America: The Case for Accrediting Foreign Law Schools*, 26 Emory Int'l L. Rev. J. 411, 415 (2012).

6 *Id.*

7 *Id.*

8 *See e.g.*, Jedidiah Kroncke, *Law and Development as Anti-Comparative Law*, 45 J. Vand J. Transnat'l L. 477 (2012); *see also* David B. Wilson, *The Professional Responsibility of Professional Schools to Study and Teach about the Profession*, 49 J. Legal Educ. 76, 87 (1999).

9 Christopher Edley, Jr., *Fiat Flux: Evolving Purposes and Ideals of the Great American Public Law School*, 100 Cal L. Rev. 313, 329 (2012).

first principles of common law writing, so as to ensure that graduates from our J.D. programs possess the adaptive fitness for this evolving global market for legal services.

American law schools should double down on those rarefied qualities that make the J.D. unique in professional education - its portability and its intellectual ambition. The legal writing professoriate can achieve these twin goals through the heuristic of "common law discourse." This word choice is meant to capture process values in legal writing shared by our transnational epistemic community.10 Instead of a formalist sequence of assignments that asks students to simply mirror a template memo or brief, the student should internalize the "pluralistic nature"11 of common law reasoning and produce legal documents informed by the discursive context of the prompt. The student should consider those elemental factors that motivate the creation of any professional document (purpose, tone, audience, organization), and how they can marshal them in a way that prescribes an outcome-oriented set of recommendations for the reader.12 Borrowed from the Legal Realists,13 this problem-solving pedagogy animates the Peking University School of Transnational Law's (PKU-STL, my previous appointment) choice to have the initial LRW assignment be a "Client Advice Letter," in which the student is asked to outline the practical choices available to a hypothetical layperson client. Such an assignment also provides discussion substance for the LRW seminar – students can here meditate on the jurisprudential context of solution-based, audience-centric writing.

At PKU-STL, the 1L Transnational Legal Practice sequence combines common law methodology and legal writing into one curriculum. Others agree this is a natural synergy – Professor Levi described precedential argument to be "the basic pattern of legal reasoning."14 Students learn a specific form of positive law analysis in our classrooms that is often absent from 1L doctrinal courses.15 In contrast, Langdell's Socratic Method is packaged within a specific modality of deductive, enthymematic reasoning, where the student applies an abstracted legal rule to the case at hand.16 The problem with this sort of deduction is that the premise is sometimes falsely assumed to be true, providing a measure of artifice and construction to this method. Why should we also "hide the ball?" I instead ask for the same transparency that would be self-evident in other academic disciplines. Legal writing professors should encourage students to question Langdell's axioms, or to challenge IRAC as a reductive "watered-down version of the syllogism."17 An economist would recognize that an aggregate supply curve indicates a Keynesian sensibility. But my own laconic response during my Visa interview for my China-based position ("What is legal writing, Mr. Kerr?") is an index of Kristen Tiscione's intuition that few lawyers can articulate why a piece of legal writing is good or bad.18 If we present our teaching methods within their intellectual contexts, then students will have more coherent rubrics by which to evaluate both themselves and their peers.

Legal writing professors can improve the quality of their students' education by offering a dialectical balance to the types of reasoning they employ in their other classes. For example, Law & Literature guru Robert Ferguson has noted the "monologic voice" and "rhetoric of inevitability" present in opinion writing19 – why not use the legal writing classroom to unpack the discursive content of judicial opinions? It is generally agreed that a sense of Aristotelian pathos can help to make resonant the core theory of a brief writer20 – why not provide an overview of classical rhetoric for our students? Introducing the student to the intellectual history of discursive or rhetorical studies will show them that there isn't the airtight consensus in legal writing that is often presumed. However, this is a very good thing – by encouraging debate over ontological values the student will recognize our subject to have genuine academic content. And it will also provide fodder for an answer when someone asks them that perennial question: "what is legal writing?" ■

10 US law is arguably fungible in instruction of common law method. Professor Jane Ginsburg's text on Legal Methods is one example of how students can gain exposure to kin legal systems while still honing their competence in precedential or analogic thinking. Jane C. Ginsburg, Introduction to Law and Legal Reasoning (Rev. 2d ed. 2004).

11 Soma R. Kedia, *Redirecting the Scope of First-Year Writing Courses: Toward a New Paradigm of Teaching Legal Writing*, 87 U Det. Mercy L. Rev. 147, 162 (2010).

12 *Id.* at 151.

13 *Id.* at 165.

14 Edwin S. Fruehwald, *Legal Argument and Small-Scale Organization*, Hofstra Univ. Legal Studies Research Paper No. 07-11, 3, *available at* ***http://papers.ssrn.com/sol3/papers.cfm?abstract_id=979656*** (citing Edward H. Levi, An Introduction to Legal Reasoning 1-2 (1949)).

15 *See* Kate O'Neill, *But Who Will Teach Legal Reasoning and Synthesis?*, 4 J. Ass'n Legal Writing Directors 21, 22-23 (2007).

16 *See* Kedia, *supra* note 11, at 168.

17 Kristen K. Robbins, *Paradigm Lost: Recapturing Classical Rhetoric to Validate Legal Reasoning*, 27 Vt. L. Rev. 483, 485 (2003).

18 *Id.*

19 Andrea McArdle, *Teaching Writing in Clinical, Lawyering, and Legal Writing Courses: Negotiating Professional and Personal Voice*, 12 Clinical L. Rev. 501, 506 (2006).

20 *See generally* Michael Frost, *Ethos, Pathos & Legal Audience*, 99 Dick. L. Rev. 85 (1994).