GIVING UP GRAMMAR AND DUMPING DERRIDA: HOW TO MAKE LEGAL WRITING A RESPECTED PART OF THE LAW SCHOOL CURRICULUM

STEWART HARRIS*

Those of us who teach practical writing courses will never get any respect unless we radically change the way we teach and write. Specifically, we should: (1) stop teaching basic grammar and writing skills, except by example; (2) stop coddling students with endless one-on-one conferences; (3) use oral commentary and standard models instead of providing written "feedback" on individual papers; and finally, in the time we gain by instituting the first three reforms, (4) concentrate on producing traditional legal scholarship, rather than publishing articles that attempt to make the teaching of Legal Writing a "scholarly" subject, or that serve as mere soapboxes from which to broadcast our discontent. If we take these four simple steps, we will reap immediate benefits in efficiency, efficacy, and job satisfaction. In the longer term, if we act more like traditional law professors, we may eventually find ourselves treated like traditional law professors, rather than mere professors of Legal Writing.

---

* A.B. Princeton University, Woodrow Wilson School of Public and International Affairs, J.D. University of Pennsylvania Law School. Assistant Professor of Law, Appalachian School of Law. Professor Harris has taught writing classes at the University of Pennsylvania Law School, the University of Florida's Levin College of Law, and at the Appalachian School of Law, where he also teaches Constitutional Law, First Amendment, and Civil Procedure. In 2003, and again in 2005, the first-year class at the Appalachian School of Law voted Professor Harris "Professor of the Year."

TABLE OF CONTENTS

I. INTRODUCTION

I am a Legal Writing heretic. What you are about to read will win me no friends in the Legal Writing community, and would probably get me fired from most Legal Writing programs in the United States. So be it. The truth often hurts.

Like this truth: Legal Writing professors get no respect.

Or this one: they will never get any respect unless they radically change the way they teach and write.

Or especially this one: to have any hope of being accepted as equals in the legal academy, Legal Writing professors must stop acting like eighth-grade English teachers.

One of the first questions I ask the annual crop of 1Ls in my Civil Procedure class is, "What does 'Civil Procedure' mean"? They seem amazed to learn that "Civil Procedure" is a compound term, each part of which has a meaning that is relevant to their understanding of the subject.

Similarly, "Legal Writing" is a compound term. As its two parts indicate, there is a legal component and a writing component. In my experience, most Legal Writing professors fail to recognize this and concentrate disproportionately on writing. As a consequence, most first-year Legal Writing courses give relatively short shrift to legal analysis. The same is true of many upper-level courses, such as Appellate Advocacy or Legal Drafting, that emphasize practical writing.[1] As a result, these various writing classes often become what amounts to remedial English composition courses with relatively little attention given to teaching and learning the law.

Most professors of Legal Writing no doubt consider it necessary to emphasize composition, given the generally weak writing skills their students bring to law school. I do not. Indeed, I believe that Legal Writing courses neglect law for writing not so much out of need, but primarily because of the deeply flawed teaching methods that Legal Writing professors commonly use. If we eliminate the flawed methodology, we will eliminate the problem.

Accordingly, in this Article I advocate a radical reduction in the writing portion of Legal Writing courses through a fundamental restructuring of how we teach them. This restructuring will do several things. It will allow an increased emphasis on legal analysis in writing courses. It will significantly reduce the teaching load of Legal Writing professors. Finally, it will enhance the status of those of us who teach writing courses. For if Legal Writing teachers concentrate more on

---

[1] I exclude seminars, which tend to focus on the professor's scholarly interests, and which therefore are not generally denigrated as "writing" classes.

teaching law and producing legitimate legal scholarship—in other words, if they act more like traditional law professors—they will no longer be square pegs trying to fit into the round holes of the legal academy. Eventually, they may even earn their rightful place among their peers.

II. THE FUNDAMENTAL REALITIES OF THE LEGAL ACADEMY

The most fundamental mission of any law school is to teach the law.[2] Many law schools define this mission very broadly, including in their curricula such antecedent or ancillary subjects as history, philosophy, and social science. But not even the most broad-minded of law faculties consider elementary English grammar or basic expository composition to be a legitimate part of their pedagogical bailiwicks. These subjects are properly (if rarely) mastered in college, high school, or even junior high school. Graduate students should have learned them long before entering graduate school. They are, therefore, not proper subjects for law faculties to teach. Nothing will change that fact. Therefore, Legal Writing professors who insist upon teaching basic grammar and composition will always be considered outsiders in the legal academy, and, like outsiders in almost any professional setting, they will be relegated to second-class status.

Another fundamental reality of law school life is that there is a pecking order among law professors, and it is based primarily upon perceptions of scholarly accomplishment. Professors who have written widely-used case books or treatises, professors who have become the pre-eminent experts in some area of law, no matter how tiny or esoteric, professors who sit on lots

---

[2] I realize that there are those who would place scholarship above teaching in the hierarchy of law school missions. But even if one considers the production of scholarship to be a higher calling, teaching remains more fundamental. Without tuition-paying students, it is unlikely that anyone would subsidize legal scholarship. Moreover, I am aware of few law review articles that have had an influence on society comparable to the impact of the thousands of newly-minted lawyers who emerge from law schools every year. In any event, the "pernicious" and never-ending debate over the relative values of law teaching versus legal scholarship is not the focus of this Article. *See, e.g.*, Sidney Buchanan, *Reflections on Teaching*, 39 HOUS. L. REV. 1101, 1115 (2002).

> [W]hen pressed to the wall, I would choose a law faculty of competent teachers and incompetent scholars over a law faculty of incompetent teachers and competent scholars. But, what makes this whole discussion a pernicious abstraction is that I don't have to make that choice. We can and should have both competent teachers and competent scholars, and a law school that lacks either ingredient is in serious difficulty.

Id.

of important-sounding panels at important-sounding symposia are at the top of this pecking order. Professors who devote themselves to teaching win lots of awards and are denied tenure.

In the face of these stark realities, many Legal Writing professors have, dodo-like, proudly refused to adapt. They sit in faculty common rooms and vainly attempt to impress their "doctrinal" peers with complaints about how late they had to stay up the night before to finish commenting on student memoranda. Their scholarship often focuses not on law, but on how better to teach Legal Writing,[3] and sometimes on how unfairly they are treated by their doctrinal colleagues.[4]

Obviously, the dodo approach is not working. If you have any doubts, try this simple experiment: march straight on down to your Dean's office, pound on the desk, and tell him or her that you are being treated unfairly, that Legal Writing is as important—nay, more important—than any other law school course, and that you demand equal treatment. Then go and clean out your desk.

---

[3] Like this Article. This is, however, both my first and last article about Legal Writing. It is a crowded field. *See, e.g.*, Mary Kate Kearney & Mary Beth Beazley, *Teaching Students How to "Think Like Lawyers": Integrating Socratic Method with the Writing Process*, 64 TEMP. L. REV. 885 (1991); Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 NEB. L. REV. 561 (1997); Michael R. Smith, *Alternative Substantive Approaches to Advanced Legal Writing Courses*, 54 J. LEGAL EDUC. 119, 119-20 (2004).

> One byproduct of the boom in advanced legal writing has been the publication of numerous books and articles devoted to it. In the last few years several textbooks designed to be used in upper-level courses have appeared, and several teachers have written comprehensive articles on advanced legal writing. Most of these articles describe in detail the specific advanced writing courses designed and offered at the author's law school.

Smith, *supra*, at 119-20 (footnote omitted).

[4] *See, e.g.*, Peter Brandon Bayer, *A Plea for Rationality and Decency: The Disparate Treatment of Legal Writing Faculties as a Violation of Both Equal Protection and Professional Ethics*, 39 DUQ. L. REV. 329 (2001); Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117 (1997).

III. HOW TO MAKE LEGAL WRITING A RESPECTED PART OF THE LAW SCHOOL CURRICULUM

Since law schools stubbornly refuse to adapt to Legal Writing professors, Legal Writing professors, indeed all professors who teach courses with an emphasis on practical legal writing, must adapt to the realities of law schools. But how do you do it?

I submit that those of us who teach writing courses can adapt to the realities of the legal academy by fundamentally changing the way we teach and by shifting the focus of what we write. Specifically, we should: (1) stop teaching basic grammar and writing skills, except by example; (2) stop coddling students with endless one-on-one conferences; (3) use oral commentary and standard models instead of providing written "feedback" on individual papers; and finally, in the time we gain by instituting the first three reforms, (4) concentrate on producing traditional legal scholarship, rather than publishing articles that attempt to make the teaching of Legal Writing a "scholarly" subject, or that serve as mere soapboxes from which to broadcast our discontent.

These suggestions are heretical. They cut against the grain of what might be called the prevailing Legal Writing Martyrdom Mindset: the unstated but widely-shared belief that the more time we spend teaching, the better we teach. Balderdash. There is no nobility in suffering. There is nothing wrong with efficiency. Indeed, I submit that my proposals result not only in less time spent on teaching, but in better teaching. I discuss each in turn.

A. *Stop Teaching Basic Grammar and Writing Skills, Except by Example*

At the beginning of this Article, I stated that we who teach writing classes should stop acting like eighth-grade English teachers. Let me be clear: I intend no disrespect to those who labor in the stony vineyards of nouns, adjectives, and adverbs. Their job is vitally important, and I respect them for doing it, often under very difficult circumstances. On the other hand, I stand by my statement. Compare these two passages, one taken from a popular Legal Writing text, the other from an eighth-grade English book. Before you look at the footnotes, see if you can tell which is which:

> Passage 1:
>
> A paragraph is a group of sentences dealing with one topic. You learned many years ago to recognize a paragraph because the first line is indented a few spaces from the left margin. Indentation is the visual signal that a new idea is about to be discussed. A well-written paragraph also has three internal characteristics: unity, coherence, and development. *Unity* means that only one

> idea is discussed in the paragraph. *Coherence* means that the sentences are arranged logically and are connected by the use of transitions, pronouns, and the repetition of important words. *Development* means that enough specific information is given so that the idea is completely understandable.[5]
>
> Passage 2:
>
> Paragraphs exist for many reasons. First, they help writers organize what they are writing. Second, they help readers see and understand that organization. Third, they give readers a psychological, as well as a logical, break.
>
> Writers need paragraphs to help them stay in control of what they are writing. Paragraphs are like tidy boxes in which to sort information. They make writing a manageable task.[6]

Could you tell which was which?

This juxtaposition starkly demonstrates why law professors must stop teaching basic grammar and composition skills. Our colleagues will not consider us their peers so long as we are teaching subjects that are properly learned in junior high school. But compelling questions remain. How do we stop? Moreover, if we do not teach these skills, who will?

With regard to the first question, and with apologies to the Nike Corporation, I answer: just do it. I currently co-teach an advanced course in Appellate Advocacy. I put the following statement into my syllabus: "The quality of your writing—grammar, style, spelling, etc.—will not be the focus of Appellate Advocacy class sessions or conferences, but it will be vitally important to your grade." There you have it: short, simple, even pithy. Students are responsible for good writing, but they are not going to

---

[5] W. ROSS WINTEROWD & PATRICIA Y. MURRAY, ENGLISH: WRITING AND SKILLS 70 (1985). This is my elder son's eighth-grade English textbook.

[6] LAUREL CURRIE OATES ET AL., THE LEGAL WRITING HANDBOOK: ANALYSIS, RESEARCH, AND WRITING 587 (3d ed. 2002). This is a Legal Writing book that some of my colleagues and I have used over the past few years. The authors devote over 300 pages to the subject of basic English composition, with entire chapters on "Connections Between Paragraphs," *id.* at 579-86, "Effective Words," *id.* at 663-718, and even "Punctuation," *id.* at 797-862. In contrast, they allot only 120 pages to the subject of legal research, *id.* at 435-556, and only 36 pages to a discussion of the law, in a section they label "A Foundation for Legal Writing," *id.* at 3-38. It is not a bad book, but it strikes me as rather imbalanced. Similarly, in my experience, teachers of Legal Writing spend far more time, in class and in conferences, talking about basic writing skills than talking about law, regardless of the proportion of coverage in their books.

learn it from me. I will be too busy teaching them how to conduct an appeal.

I can already hear the anguished cries of a hundred hand-wringing writing professors, "But if we don't teach them, who will"? There are three answers to this question. First, some law students actually paid attention when they attended high school and college; they already know how to write. Second, some students can teach themselves, given enough motivation, *e.g.*, the fact that their final grade will largely depend upon good writing. I believe that this is generally referred to as the "sink or swim" phenomenon; most law students choose to swim. Finally, we can hire real writing professionals to teach writing for us.

Here I must acknowledge a resource that is not generally available. My law school, the Appalachian School of Law (ASL), recently opened a writing center.[7] I send my students there. Indeed, here is the complete text of the statement excerpted from my Appellate Advocacy syllabus:

> **Writing Center**
>
> We strongly encourage you to take advantage of the ASL Writing Center, which provides one-on-one conferences to help students improve their English composition skills. The quality of your writing—grammar, style, spelling, etc.—will not be the focus of Appellate Advocacy class sessions or conferences, but it will be vitally important to your grade.

"Aha!" you exclaim. "So that's how you can do it! You just dump the job on someone else"!

"That's not entirely true," I reply. As I said before, I feel that well-prepared or well-motivated graduate students are capable of writing competently on their own. Even without an on-campus writing center, I would not spend my class time on dangling participles.[8] On the other hand, I must admit that our Writing Center is a very valuable resource.

It is not grandiose—just a medium-sized, converted seminar room with a few tables, chairs, and desktop computers. There are several

---

[7] As of 2003, only fifteen American law schools had writing centers staffed by professional writing teachers. Association of Legal Writing Directors/Legal Writing Institute, *2003 ALWD/LWI Survey Results*, at 16-17, *at* http://www.alwd.org/alwd-Resources/surveys/2003survey/PDFfiles/2003surveyresults_alwd_.pdf. (last visited Mar. 6, 2005) [hereinafter *2003 ALWD/LWI Survey Results*].

[8] At the times I taught there, neither the University of Pennsylvania Law School nor the University of Florida's Levin College of Law had writing centers staffed by writing professionals. I used the traditional Legal Writing model at Penn; I began developing my current approach while at Florida.

bookshelves and a desk. Behind the desk, however, is the nerve center of the whole works: our Writing Center Director, Jackie Davis. Ms. Davis is a fully-qualified teacher of English composition who taught at the college level for many years before coming to ASL. Unlike most law professors, including me, she actually knows how to diagnose specific writing problems and prescribe specific cures. She not only understands English grammar, she can explain it, using proper terminology (Do you remember what "pluperfect" means? Did you ever know?).[9] She is, in other words, something that a law professor is not: a writing professional. And her professional ability produces results. Since she opened up shop last year, the quality of composition in my classes has skyrocketed. At the same time, I have had much more time to teach what I was hired to teach: law. It is a marvelous collaboration.

"But," you say, "my Dean would never spend the money for a writing center." That may be true. I don't know your Dean. However, I do know that you will certainly not get a writing center if you don't ask for one. When you do, you can point out that it is not really that expensive. Many, perhaps most law schools have an underutilized room tucked away somewhere, as well as a few extra tables, chairs, and computers. The big expense is the staff, but here an unfortunate fact of life works in your favor. As poorly paid as Legal Writing professors are, true writing professionals, many of whom are teachers at state colleges and public schools, are even more poorly paid.[10] Thus, for a relatively modest cost by law school standards, your institution can establish and staff a writing center. It is a wise investment.

B. *Stop Coddling Students with Endless One-on-One Conferences*

Yes, I said, "coddling," because that is what happens in most Legal Writing conferences. Indeed, these conferences often degenerate into protracted love fests, with the professor trying to use something called "positive feedback"[11] to "empower"[12] the student. I remember when law

---

[9] Ms. Davis tries to avoid the grammar-teacher's vernacular. However, for the record, "pluperfect" means, "an action completed prior to some past point of time specified or implied, formed in English by *had* and the past participle, as: *he had gone by then*." THE OXFORD DICTIONARY AND THESAURUS 1148 (American ed. 1996) (emphasis in original).

[10] The average salary of Legal Writing professors ranged "[f]rom an average low of $48,931 to an average high of $60,198" in 2003. *2003 ALWD/LWI Survey Results*, *supra* note 7, at ii. The average salary for public school teachers in the United States is currently $45,891 according to the National Education Association. National Education Association, *Rankings and Estimates: Ranking of the States 2003 and Estimates of School Statistics 2004*, May 2004, *at* http://www.nea.org/edstats/images/04rankings.pdf.

[11] Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 108 (2002).

school was supposed to prepare you for the rigors of practice. I cannot remember the last judge who "empowered" me.

Where did this idea come from? Think back to high school—did your school pay for a tutor? What about college—did your professors lovingly critique each draft of your term paper before you handed in the final version? So why did law schools jump on the bandwagon? Why, in fact, did they apparently build the bandwagon in the first place? I honestly don't know. I do not think that there is any written record of the first Legal Writing teacher who decided to don a warm-colored cardigan and move her chair next to the student whose paper she was critiquing in order to avoid the alienation that comes from speaking across a cold, hard desk. Perhaps it was a Sixties thing.

In any event, we must stop the coddling. Such conferences do little beyond raising unrealistic expectations. Law students quickly come to expect, indeed demand, a great deal of intensive, individualized attention. They might bring the same six-page memorandum back three or four times, expecting you to note each miniscule change between versions and praise each minor improvement, real or imagined. Worse yet, they may forget about their papers and try to use you for cheap psychotherapy.[13] Writing conferences create monsters.[14]

They also, I am convinced, lower performance. Students who have you at their beck and call will not spend their own valuable time editing their papers. They will expect you to do it for them. You must correct each sentence. You must suggest new words to use. And if you fail to correct something in a given draft, you are, in the student's opinion, permanently estopped from raising the issue again.

Most importantly, for our purposes, one-on-one writing conferences consume far too many working hours. The arithmetic is straightforward. Assume the following numbers:

> 44 students
> 3 assignments

---

[12] Robin S. Wellford-Slocum, *The Law School Student-Faculty Conference: Towards a Transformative Learning Experience*, 45 S. TEX. L. REV. 255, 348 (2004).

[13] Philip N. Meyer, *Confessions of a Legal Writing Instructor*, 46 J. LEGAL EDUC. 27, 38 (1996). "With some students, the conferences were deeply psychological, like therapy sessions with the lost, the desperate, and the confused (a good title, perhaps, for a paper about legal writing: 'The Lost, the Desperate, and the Confused')." *Id.*

[14] I say, "writing conferences" to distinguish such conferences from traditional office hours meetings between faculty and students to discuss legal issues. As noted previously, I include meetings with seminar students in this latter category, because, in such meetings, the focus is almost always on the substance of the student's argument, rather than the punctuation or style in his or her seminar paper.

> 2 conferences per assignment
> 20 minutes per conference

Then multiply them:

> 44 x 3 x 2 x 0.33 = 87.2 hours spent in conferences per semester.[15]

That translates into more than two forty-hour workweeks of nothing but student conferences. Many Legal Writing teachers have more students and spend more time in conferences. Could you use an extra two weeks each semester to finish up that law review article?

C. *Use Oral Commentary or Standard Models Instead of Providing Written "Feedback" on Individual Papers*

Even more time-consuming than individual writing conferences is the Legal Writing professor's most common method of critiquing student submissions.[16] Many Legal Writing professors seem to consider it their sacred duty to go over each draft memorandum or motion in minute detail, and to perform what appears to be a complete, line-by-line edit.[17]

---

[15] "In the 2002-03 academic year, the 'average' LRW faculty member taught 44 entry-level students 3.6 hours per week using 3 major and 3.5 minor assignments, read 1,561 pages of student work, and held 51 hours of conferences." *2003 ALWD/LWI Survey Results*, *supra* note 7, at v. I think that this 51-hour figure significantly understates the amount of time spent in student conferences by the average Legal Writing professor. Although it is not clear where the 51-hour figure comes from, it was apparently derived by averaging data for "[t]otal hours in conference required or strongly recommended," as set out in Appendix C to the Survey. *Id.* at C-10. This data appears on page C-10 in a table designated "LRW Faculty Status by Average Class Size and Workload." *Id.* By its own terms, however, such data does not include optional student conferences, which add significantly to the workload of the typical writing professor.

[16] The *2003 ALWD/LWU Survey* reported that

> [t]he most common methods of commenting on papers during the 2002-03 academic year were comments on the paper itself (171), comments during conferences (144), comments at the end of the paper (132), general feedback addressed to the class (127), grading grids or score sheets (101) and feedback memos addressed to individual students (96) (Question 24).

2003 ALWD/LWI Survey Results, *supra* note 7, at iv.

[17] Meyer, *supra* note 13, at 38. Meyer wrote:

> I read the students' papers, forty to fifty of the same memoranda and briefs, usually multiple drafts, about three times each semester. And, as I said, I diligently edited these papers—every sentence, every line—as

(*continued*)

Paragraphs are moved. Words are changed. Entire sentences are rewritten.[18] And all of this is done with pens using green ink to avoid upsetting the students' delicate sensibilities, or with soft, gentle pencils, to facilitate the further editing of the editorial comments themselves.[19] I doubt that Maxwell Perkins gave such service to Ernest Hemmingway.

Moreover, providing extensive written commentary is mind-numbingly repetitive. Nearly every paper, one after the other, requires identical admonitions to avoid the passive voice, to use simple, declarative sentences, and to maintain a straightforward organizational scheme. At least one paper in three requires correction of it's improper use of apostrophe's.[20]

The problem with such minute, repetitive editing is not only professorial inefficiency, but pedagogical inefficacy. Many students never even read the writing professor's voluminous, painstaking comments. Of those who make the attempt, a large number find those comments to be indecipherable. While I must admit that my own handwriting is not of the highest quality, I have been entirely flummoxed by the written comments of some of my colleagues (whom I decline to name), who apparently use poorly-cut quill pens when they share their wisdom with students. Finally, even if written commentary is legible, it is often overwhelming. If we are going to be concerned at all about student feelings, let us remember that lots of ink can be quite discouraging, even if it isn't red.

> if my life depended upon it. I wrote out page after page after page of comments and precious feedback.

Id.

[18] Yes, I realize that these sentences are all in the passive voice. I did it for effect. Please stop mentally editing my writing.

[19] Anne Enquist, *Critiquing and Evaluating Law Students' Writing: Advice from Thirty-Five Experts*, 22 SEATTLE U. L. REV. 1119, 1144 (1999).

> There were several strong admonitions not to use red ink when writing on student papers. "I use green ink," said Richard Neumann. "It's easy on the eye and carries no negative baggage."
>
> Four different experts specifically recommended using pencil. "If you are writing comments on the paper itself, use pencil so you can change your mind," recommended Mary Beth Beazley. "I always critique with a soft, #1, black lead pencil," added Ross Nankivell.
>
> "I can (and very often do) erase a comment and either rephrase it or write something different. Also, #1 lead pencil comments are dark and photocopy well, in case I decide I want to retain a copy."

Id.

[20] "of its improper use of apostrophes." Sorry.

In the practice of law, when a procedure is time-consuming, repetitive and often counterproductive, it is time for a different approach. The same is true in academia. Fortunately, I have a proposal: we should speak to our students about their papers *en masse* and use models as appropriate. In my writing classes, instead of writing the same comment dozens of times, I make a single, master list of the most common errors, whether expository or analytical. This is relatively quick and painless. Indeed, the same types of errors tend to crop up, semester after semester. I then discuss these common errors in class, using anonymous examples from student papers. At the conclusion of the class discussion, I invite my students to make an appointment with me if they have a legal question, or at the Writing Center if they have a problem with writing. Only rarely do I write comments on notable papers, whether notably good or notably bad. In the latter case, I will direct the student to the Writing Center or to my office hours, as the situation demands.

During my classroom discussions, I also often use models. In Appellate Advocacy, for example, I have my students submit detailed argument outlines well before they submit their first briefs. I select a good student-submitted outline and project it up on the whiteboard, and we edit it together, in class. By the end of the class, we have not only had a spirited and valuable discussion, we have also done so efficiently. Instead of having the same discussion fifty times, I have had it once, with fifty participants. Instead of being bored and irritable after the twenty-seventh repetition, I have been fresh and, I hope, effective during the single class discussion.

In my Legal Drafting course at the University of Florida, once students had submitted a proposed contract or other document, we would use a similar collaborative process to come up with a single best version in class. Students could then compare their individual submissions to the class model, and, in most cases, they could see where they had gone wrong and how they could improve their next assignments. If individual students still had questions, they could, of course, come to my regular office hours. But relatively few needed to do so.

Unfortunately, my efforts at Florida met with some resistance. One colleague was aghast at the "paucity" of the written commentary I put on student papers (this was back when I was still writing what seemed to me to be a great deal on each paper). She told me that the students would be "upset" if I did not cover their papers with ink. No student ever complained. Another colleague discouraged the use of model documents because next time, she said, my students would "simply copy the models." So what? Human beings learn by imitation.[21] Moreover, I (obviously)

---

[21] And they fail to learn when they are given only negative examples and then told to avoid them. One book that uses this remarkably ineffective approach is BARBARA CHILD, (*continued*)

never gave the same assignment twice, so my students always had to adapt earlier document models to new factual and legal circumstances. I did not see the harm. But there was a great deal of benefit, both for the students, who loved the models, and for me.

Which raises another point: I am not ashamed that these teaching methods help me. Self-help is the point of this Article. But self-help of this kind is not entirely selfish. If we transform our classes into something with which we are familiar, something that we are competent to teach, something we can at least tolerate, if not enjoy, we will be better teachers. And there is another advantage: to the extent that we transform Legal Writing into a subject that so-called doctrinal professors will recognize, something they will not instantly dismiss as both onerous and foreign, we may eventually convince some of them to occasionally teach a writing class or two. On that happy day, we will have moved a long way toward the full integration of Legal Writing into the law school curriculum.

D. *Produce Traditional Legal Scholarship, Rather than Publishing Articles that Attempt to Make the Teaching of Legal Writing a "Scholarly" Subject, or that Serve as Mere Soapboxes from Which to Broadcast Our Discontent*

The question of what constitutes legitimate legal scholarship has as many answers as there are law professors.[22] Some prefer theory, while a few want nuts and bolts. Some enjoy a purely historical focus. Still others champion the relatively recent approach of crossing disciplinary lines to address social problems that are not purely legal in nature. But whatever the individual preferences of individual law professors, it is safe to say that the overwhelming majority of them expect legal scholarship to involve at least a modicum of legal analysis.

Unfortunately, many Legal Writing professors have refused to write about law, instead focusing their articles on the teaching of Legal Writing itself.[23] Worse, some of them have chosen to dress up their scholarship with fancy terminology and philosophical analysis, in what is apparently an attempt to appear more "scholarly." Here is one of my favorite examples:

DRAFTING LEGAL DOCUMENTS: PRINCIPLES AND PRACTICES (2d ed. 1992). This was the standard text for my Legal Drafting course at the University of Florida. It nearly drove my students crazy. By my third semester, I had all but stopped using it.

[22] As a former practitioner and current heretic, I prefer to read scholarship that identifies a current problem in the law, proposes a realistic solution, and argues effectively for its proposed reform. I value logic, clarity, and conciseness. I am generally disappointed.

[23] Again, I'm guilty as charged. But this really is my very last article on Legal Writing. I promise.

> Derrida, applying deconstructionist analysis to Rousseau's observation, noted that speech and writing are in fact "dangerous supplements" of each other because neither can truly exist without the other, even though each appears to threaten the other. Like writing, speech is merely an imperfect medium through which thoughts are expressed. Like writing, it can communicate (through recordings, for example) long after the communicator has gone. If writing is the representation of thoughts, then speech is merely a form of or supplement to writing, just as writing is a supplement to speech. When one sees the "dangerous supplement" relationship from both sides, it becomes apparent that attempts to separate speech and writing are artificial and futile, that each needs the other.[24]

Derrida and Rousseau? Really? We do ourselves no favors when we produce this sort of stuff. Nobody is fooled. The teaching of Legal Writing is not rocket science, and it is certainly not philosophy. If we try to make it seem like a separate discipline, worthy of extensive research and scholarly inquiry, we will simply be falling into the same old trap of asking the legal academy to adapt to us, rather than making ourselves adapt to the legal academy. Not to beat a dead horse, but consider this excerpt from a recently-published law review article:

> Rhetoric, and changes in thinking about rhetoric, have influenced legal writing teaching and legal writing's emerging language.
>
> "Rhetoric" today may refer to classical rhetoric—the art and strategies of persuasion based on the work of ancient Greeks. In the late eighteenth and early nineteenth centuries, invention received little attention from rhetoricians, who saw the rhetorical function as reporting objectively, rather than interpreting. Scholars have labeled this view the "current-traditional paradigm." By the mid-twentieth century, however, the view changed. In the modern sense, "rhetoric" may also refer to "the use of symbols to construct alternative meaning frames." The modern rhetorical view that language is constitutive of thought or that language "makes meaning" is critical to the

---

[24] Lisa Eichhorn, *Writing in the Legal Academy: A Dangerous Supplement?*, 40 ARIZ. L. REV. 105, 105-06 (1998) (footnotes omitted).

> argument that through creating language, legal writing teachers are creating meaning.[25]

I hope that I create meaning when I use language. I do not believe, however, that I have to invent new words to teach a 2L how to write an appellate brief.

But this is not the worst thing we do to ourselves. Even more damaging than writing about the alleged theoretical underpinnings of Legal Writing is what I call, for lack of a more delicate term, whining about Legal Writing. There is apparently a sub-species of law review articles in which various writing professors compare the indignities they have suffered and lament the unfairness of a cruel academic world. Here is a notable example:

> I was about to enter my tenth year of teaching legal writing and my fifth year as director of the writing program at St. Thomas University School of Law. On my office wall were several diplomas: a J.D. from New York University, a masters in Sociology from that institution and an LL.M from Harvard. I have experience in legal practice including four years as a civil rights attorney and three years representing disabled individuals before the Social Security Administration. I clerked for a United States district court judge, and I have had published well-placed law review articles as well as numerous newspaper "op-ed" pieces and a full article in the *New York Times Magazine*.
>
> I believe my record of teaching, writing and committee work, both at St. Thomas and at other schools, evinces a high level of proficiency coupled with complete dedication. While my work certainly was not flawless, I thought I had earned a reputation as a caring, effective professional in the classroom, a strong director of my department and a dependable law school citizen. I was understandably dumbfounded when, on April 7, 2000, the Dean (of one year) summoned me and two other writing professors into his office to announce bluntly that he had

---

[25] Terrill Pollman, *Building a Tower of Babel or Building a Discipline? Talking About Legal Writing*, 85 MARQ. L. REV. 887, 899-900 (2002) (footnotes omitted). Looks like a Tower of Babel to me.

> unilaterally decided to overhaul the legal writing program and that our contracts would not be renewed.[26]

I am sorry that this author lost his job. But that is a private matter between him and his former employer, not fodder for a law review article. Indeed, to all who would attempt to effect change by publicizing their personal discontent, whether in print or otherwise, I say: remember your audience. You are writing for other law professors, who have perquisites and turf to protect. Do you really think that complaining about unfairness, or about the difficulty of your task or the heaviness of your teaching load will make them want to share that load with you?

Because that is the ultimate goal, isn't it? We all want Legal Writing to become a respected, fully-integrated part of the law school curriculum. We all want to be able to teach other classes, not just writing courses. But if we are going to teach those other classes, then who will teach the writing courses? Who will want to integrate more writing into so-called doctrinal courses? The only other faces I see in faculty meetings are the so-called doctrinal professors. But they are the very ones to whom we have been complaining, the very ones we are attempting to convince of our own wretchedness. Indeed, to a great extent, we have succeeded: many doctrinal professors see Legal Writing as a curricular leper that they are loath to touch. If we keep it up, I doubt that they will ever be willing to teach practical writing courses.

Therefore, I suggest that professors who teach writing classes shift their scholarly focus. I suggest that we act more like our doctrinal colleagues. That means that we should develop an area of expertise in the law and write about it. It does not need to have anything to do with Legal Writing. Ideally, it should not have anything to do with Legal Writing. When you are sitting in the faculty common room, you want to be talking about your new, paradigm-shifting legal theory, not about teaching, and certainly not about teaching English composition. Then, after you have written six articles about, say, the Rule Against Perpetuities, your colleagues may decide to take you seriously. They may eventually invite you to speak at an important-sounding symposium. And one day, your Dean might even let you teach a section of Property.

IV. CONCLUSION

I respect the subject of Legal Writing in all of its various manifestations, and I respect those who teach it with dedication and ability.[27] I am critical in this Article, but, I hope, constructively so. I am

---

[26] Bayer, *supra* note 4, at 329.

[27] My model in this regard is my late friend and colleague, Thomas F. Blackwell, who was committed to removing the specious distinctions between practical writing courses

(*continued*)

trying to point out that, while those of us who teach writing courses tend to blame our lowly status on our doctrinal colleagues, doing so is not very useful. Moreover, it distracts us from a fundamental truth: to a great extent, we have done it to ourselves. Now, we must un-do it. We must abandon the traditional Martyrdom Model of Legal Writing pedagogy, and transform our despised subject into something that fits squarely into the traditional law school curriculum.

To that end, I propose four distinct reforms that we can accomplish largely through our own efforts. We should: (1) stop teaching basic grammar and writing skills; (2) discontinue one-on-one writing conferences; (3) use oral commentary and models instead of individualized written "feedback"; and finally, (4) concentrate on producing traditional legal scholarship, rather than publishing articles in which we either attempt to transform Legal Writing into a "scholarly" subject or merely vent our professional dissatisfactions.

If we take these four simple steps, we will reap immediate benefits in efficiency, efficacy, and job satisfaction. In the longer term, if we act more like traditional law professors, we may eventually find ourselves treated like traditional law professors, rather than mere professors of Legal Writing.

---

and the rest of the law school curriculum. He taught both Legal Writing and "doctrinal" courses with equal dedication and to rave reviews. I cannot claim that Tom would have agreed with the proposals in this Article, since I never had the chance to discuss them with him. Tom's office was adjacent to mine; he was murdered there on January 16, 2002.