When Worlds Collide: Exploring Intersections Between Legal Writing and Clinical Pedagogy, Scholarship, and Practice

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The Theme

The essays presented in this issue of the Journal of the Association of Legal Writing Directors (J. ALWD) began as presentations delivered on the panel of the Legal Writing Section Program at the Annual Meeting of the Association of American Law Schools (AALS) in Washington, D.C., in January 2007. The theme of the Section Program, "When Worlds Collide," focused on relationships between legal writing teachers and clinicians in teaching and scholarship. Specifically, these essays explore existing intersections between legal writing and clinical pedagogy, scholarship, and practice as well as the spaces where there is an undeveloped potential for forging and developing professional relationships between writing and clinical teachers. Thus, this symposium is about where legal writing and clinical teachers meet as colleagues and as collaborators. But it is equally about where we collide and where we miss each other.

Over twenty years ago in the Journal of Legal Education, Prof. Anthony G. Amsterdam, a visionary clinician and a father figure of American clinical legal education, anticipated that by the 21st Century, education in clinical and legal writing and research would intersect and merge. ¹ He was, simply put, wrong. It never happened. It could have happened, but it didn’t. Instead, clinical and legal writing practice and pedagogy have remained largely independent and autonomous disciplines within legal education. Clinical and legal writing programs have discrete courses and curricula, publish independent professional journals, and host different conferences. Indeed, at many schools, including my current school and the three other schools where I have taught, legal writing teachers and clinicians inhabit separate buildings that are physically (as well as metaphorically) disconnected from one another. We meet occasionally in our busy schedules, perhaps in a commissary for lunch, or at a faculty meeting, or when engaged in committee work or institutional activities. We are often

complementary forces within the institution, taking similar and supportive positions politically and pedagogically. Nevertheless, we often seem to inhabit separate institutional worlds; hence the title of this program, *When Worlds Collide*.

Although legal writing education and clinical education have remained discrete, our pedagogy, practices, and scholarship overlap. The MacCrate Report emphasizes that legal writing, analysis, and research are core professional and clinical skills. Clinical teachers teach legal writing, reasoning, and research extensively in clinical courses and in clinical settings. Likewise, legal writing teachers often systematically teach other clinical and lawyering skills. Of course, there are differences between our respective pedagogies as well; for example, clinical education takes place in the context of “live” client cases seldom employed in traditional legal writing courses. Yet, the pedagogical goals of legal writing teachers and clinicians inevitably overlap a great deal. Our common focus is to educate students for competent, ethical, and meaningful practice; we both teach the professional skills crucial for professional life.

Similarly, legal writing teachers and clinicians typically have common scholarly concerns and methodologies; clinicians and legal writing teachers reflect upon pedagogy and practices and build theory from close observation of particular cases and the systematic analysis of legal practices. Thus, our scholarly topics reflect and embody our respective pedagogies and practices. There have been recent efforts at collaboration in teaching and scholarship; nevertheless, the readership of legal writing journals and clinical journals remains discrete, and collaboration between legal writing teachers and clinicians is the exception rather than the rule.

“Negative capability” is a phrase I borrow from poetry and twist to suit my purposes in this introduction. It provides a useful conceptual tool for beginning to explore the complex and curiously ambivalent professional relationships between clinicians and legal writing teachers. This phrase suggests that it is the spaces and gaps, the indeterminacies and absences in a poem (sometimes even existing in opposition or counterpoint to the words) that often provide as much of the contextual meaning and structure for a poem as the words of the poem itself. That is, what is immanent is just as important and as structurally relevant as what is expressly articulated. The absences shape meaning. Curiously, this concept is equally relevant to understanding the complexity of professional relationships between clinicians and legal writing teachers. Perhaps this complexity and ambivalence is best suggested by telling the “back story” of this program: how the idea for the theme of this program developed initially and later evolved. I hope that this personal story sets the stage for the essays in this symposium, since various presenters are characters in this story.

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The Back Story

Previously, in addition to teaching legal writing, I served as a clinician in a legal clinic at one school and taught in and served as Coordinator of a Lawyering Skills Program at another. But these experiences were many years ago. And so, with some intentionality, I tried to reconnect with my clinical colleagues. I was in a dry spell composing about legal writing. Legal writing as a scholarly topic seemed to lack a fuller context. I was frankly tired of writing about what I was teaching and how I was teaching it or about the political struggles of teaching legal writing and the secondary status of writing teachers in legal education. I was becoming bored with the topics prevalent in legal writing; there was, at that time, little of the new legal writing scholarship about rhetoric, categorization theory, metaphor, learning theory, and other topics. I thought selfishly that renewed connections with clinical colleagues might provide material for scholarship and spark new scholarly ideas. I attended and presented several papers at three International Clinical Conferences sponsored by UCLA and the University of London Institute of Advanced Legal Studies (IALS). I was immediately struck by the camaraderie among clinicians, the passion clinicians had about their work, and also by how much I seemed to hold in common with many clinical colleagues from other schools. We seemed like kindred spirits or tribesmen from closely related clans.

I read the papers and listened to the presentations by clinical scholars at the UCLA conferences, including Carrie Menkel-Meadow and Michael Millemann. Clinical scholarship seemed akin to the best of legal writing scholarship in several important ways. First, clinical and legal writing scholarship often place emphasis upon the same subjects, pedagogy and effective practice. Clinical presentations were generally about writing practices, advocacy, rhetoric, and narrative, which are subjects that are often the focus of recent legal writing scholarship. Of course, this overlap is not surprising since the professional focus of both these fields is often upon effective teaching pedagogy and effective law practice. I found this work, like the best of legal writing scholarship, accessible, carefully written, passionate, and intellectually engaging.

The presentations at the three UCLA Clinical Conferences I attended seemed especially alive and resonant for me as a legal writing teacher. I found myself taking notes at the various presentations and engaging clinical scholars about their work. Clinicians readily agreed to work with me, helping me develop narrative-based theories of advocacy and recommending clinical paradigms and models that might be of assistance in formulating theories of advocacy and

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argumentation. The connections with clinicians seemed immediate and natural. Of course, this collegiality was facilitated by the physical beauty of Arrowhead Lake Conference Facility, excellent communal dinners, and social activities that legal writing conferences seldom match.

As I read articles in the Clinical Law Review, I was struck by how similar the topics of many articles are to the topics in legal writing publications. For example, in a recent edition of the Clinical Law Review published at the time of this AALS Program, there were featured articles on Teaching Legal Research and Writing with Actual Legal Work: Extending Clinical Education into the First Year⁴ and Teaching Writing in Clinical, Lawyering, and Legal Writing Courses: Negotiating Professional and Personal Voice.⁵ The first article, co-written by Michael Millemann, a clinician, and Steven Schwinn, a legal writing professor, is about a collaborative program teaching legal writing and clinical skills using live cases in the first three semesters of law school. The second article, written by my former New York University Lawyering Program colleague Andrea McArdle, who now directs the writing program at the City University of New York Law School, is about writing across the curriculum and “proposes pedagogic approaches that can help emergent lawyers undertake the delicate negotiation between professional and personal voice.”⁶ The article “argues that there is good reason for clinical, simulation-based, and legal writing pedagogies to be in conversation on the question of cultivating individuality and bolstering confidence in student writers.”⁷ These articles further demonstrate that there is already a great deal of crossover between clinicians and legal writing teachers in scholarship.

Of equal importance, the methodology of clinical scholarship parallels that of legal writing scholarship. Characteristically, in clinical and legal writing scholarship, there is a close descriptive reading of practices, pedagogy, and texts. These descriptions are rich, with a multivalent complexity and contextual analysis, often in a way that traditional legal scholarship does not recognize as crucial, as if the richness and detail might somehow detract from a more theoretical analysis. In legal writing and clinical scholarship, theory is often built from the bottom up, rather than the top down.

Despite these similarities in clinical and legal writing scholarship, there were few if any legal writing teachers attending the past three UCLA Clinical Conferences. These “absences” were striking as many of the papers and presentations were on subject matter that would intrinsically be of interest to teachers of legal writing and lawyering skills. Many of the presentations and papers brought a new angle and perspective that made familiar legal writing

⁴ Michael A. Millemann & Steven D. Schwinn, Teaching Legal Research and Writing with Actual Legal Work: Extending Clinical Education into the First Year, 12 Clin. L. Rev. 441 (2006).
⁶ Id. at 501.
⁷ Id. at 502-503.
topics more stimulating and alive. Simultaneously, the thought occurred to me that clinicians could learn a great deal from the recent scholarly work of many legal writing teachers. Yet, when I attend legal writing conferences, seldom are there clinicians attending or presenting (unless the clinicians also teach the basic legal writing and research courses). Although we both teach many of the same fundamental professional skills and our curricula often overlap, we seem to exist in strangely parallel worlds. There is little opportunity for professional dialogue or the sense that we are truly engaged in a common enterprise. Should this be so? What do we lose from the separation? How does this space or absence define who we are and what we do within the legal academic community?

The second event contributing to development of this symposium was my participation in the Persuasion Institute, which has met annually for the past four years. The Persuasion Institute is a three-day program where I worked, in conjunction with other legal writing teachers, clinicians, and experienced practitioners, to teach brief writing and persuasion skills to federal public defenders. I collaborated with clinicians including Prof. Phyllis Goldfarb, who is a presenter on this panel. We presented materials, and also worked in small writing workshop groups, with federal public defenders on their pending appellate and post-conviction relief work. It was a marvelous and energizing experience, if also somewhat exhausting. It struck me how much the pedagogy that has developed in legal writing during the past twenty-five years (including the teaching of narrative persuasion and rhetoric in upper-level writing courses) could contribute to teaching practitioners. I also realized how much there was to learn from experienced master practitioners about writing, advocacy, and persuasion, and how much clinicians had to teach legal writing teachers about brief-writing practice as well. The work energized my own scholarship and brought a new dimension to my teaching when I returned to the law school to direct the legal writing program. It also informed programmatic choices that were made by our curriculum committee in reshaping the legal writing program. Finally, there was a deep personal and professional interest in working with experienced clinicians in a collaborative teaching project that emphasized the commonalities apparent between clinicians and legal writing teachers.

But, again, my work at the Persuasion Institute revealed gaps, absences, spaces, and indeterminacies as well. This time many of the spaces and absences were within myself. The experiences at the Persuasion Institute caused me to reflect upon my “day job” as a legal writing teacher when I returned to school. Initially, I realized how much I missed not having “live” clients and cases. It had been many years since I practiced law and worked with clients in a civil law clinic. I missed the direct contact with live clients and real cases. I admired the clinicians’ deep engagement with their clients and how this engagement energized them in their work. It occurred to me that the motivation of many of my legal writing students — to achieve excellent grades and to perfect writing and analysis skills for summer jobs and for better examination performance — seemed shallow and selfish by comparison. In addition to the public interest dimensions
of working with practitioners and clinicians, I realized I missed the excitement, high drama, and emotional buzz of live cases.

Additionally, I realized that no matter how much time I devoted to fabricating “real” and complex problems and writing assignments that would engage my students, these problems never replicated the factual and narrative complexity and the ever-shifting dynamics of the legal writing problems faced by practitioners and clinicians. Instead, traditional writing assignments in legal writing courses typically stripped the narrative complexity from legal writing practice, shifting the focus to strengthening the legal reasoning and analytical skills emphasized on traditional law school examinations. And I felt sad about how so much of the legal writing curricula traditionally seemed shaped to reemphasize the skills necessary for success in doctrinal courses rather than in real world advocacy and argumentation. I wondered whether this had to be so. And I wondered whether, if legal writing had taken the other path and merged with clinical education as anticipated by Amsterdam\(^8\) so many years ago, a different type of legal writing and lawyering skills curriculum may have developed.

Finally, I felt somewhat sad as I recalled that it was the public interest dimensions of law practice that drew me to law school so many years ago, and now seemed to draw some of my students to law school looking for direction and purpose in their lives and careers to become a part of something larger than themselves. Often, a student’s motivations and longings these days are diffuse; career plans are not fully formed. Consequently, the local culture of the law school has a significant effect upon shaping students’ career plans. I recalled how the culture of law school and my personal economic situation redirected my initial aspirations to practice public interest law. It then seemed easier to take a different path. But I wondered whether my career trajectory to a private firm and then into teaching might have been different if different skills and subject matters were emphasized during my years at law school. More troubling, I think, is the possibility that I am responsible for directing and shaping the career trajectories of many students. Specifically, I felt sad that by teaching legal writing the way I did, as a functional skills course developed in the shadow of the traditional first-year curriculum rather than in collaboration with clinicians employing live cases and representing real clients, I may have inadvertently contributed to shaping the professional trajectories of many of my legal writing students, unintentionally de-emphasizing the public interest dimensions of law work that could be brought directly into legal writing courses to renew the vigor of the legal writing curriculum.

The Presenters

The panelists who were on the AALS program in 2007, and the authors of articles in this issue of J. ALWD, are each uniquely situated to speak to the

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\(^8\) Amsterdam, \textit{supra} n. 1.
program’s theme. Prof. Michael Millemann, Jacob A. France Professor of Public Interest Law at Maryland, collaborated recently with Prof. Steven Schwinn to develop an innovative first-year program employing live cases and integrating legal writing and research teaching and clinical teaching at the University of Maryland School of Law. This is truly a collaborative pedagogy between clinicians and legal writing teachers. Prof. Millemann and Prof. Schwinn have written about their program in a paper presented at the UCLA/IALS Clinical Conference and published in the Clinical Law Review. I recommend this article highly: it presents a capsule history of the evolution of legal writing programs in relationship to clinical education in addition to formulating a strong argument in favor of an integration of legal writing and clinical pedagogy and the use of live client cases in the legal writing curriculum based upon the experiences in an experimental writing program at Maryland.

Second, Prof. Carrie Menkel-Meadow is the A.B. Chettle Jr. Professor of Dispute Resolution and Civil Procedure at Georgetown University Law Center; she is a prodigious and highly regarded legal scholar. She is currently co-Editor-in-Chief of the Journal of Legal Education where she has fostered and encouraged clinical scholarship and legal writing scholarship. Recent editions of the Journal of Legal Education under her editorship include numerous articles by clinicians and legal writing teachers about subjects of deep concern to our respective communities. This is not surprising since Prof. Menkel-Meadow began her career as a legal writing teacher at Pennsylvania and served for many years as a clinician at UCLA School of Law.

Prof. Kate O’Neill is the former Chair of the Legal Writing, Reasoning and Research Section of the AALS. She has written thoughtful critiques of legal writing assignments and pedagogy in the first year of law school. She was Director of Basic Legal Skills at the University of Washington School of Law from 1993 to 2006 and Chair of the Curriculum Committee.

Next, Prof. Phyllis Goldfarb, Jacob Burns Foundation Professor of Clinical Law at The George Washington University Law School, has worked extensively teaching writing and appellate practice to law students in live-client and appellate criminal clinics, in addition to teaching doctrinal law. She has written extensively on many doctrinal topics and on clinical practice and pedagogy. Recently, Prof. Goldfarb collaborated with legal writing teachers and master practitioners to

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9 The panelists are introduced in the order of their presentations on the panel, rather than alphabetically. This J. ALWD issue includes comments by several legal writing teachers (Prof. Tracy Bach of Vermont Law School, Prof. Sarah Ricks of Rutgers School of Law–Camden, and Prof. Susan Wawrose of the University of Dayton School of Law) who did not speak at the AALS Program.

10 Millemann & Schwinn, supra n. 4.

11 Prof. Menkel-Meadow did not contribute a written essay to this issue of J. ALWD.

teach writing and persuasion to post-conviction relief practitioners and federal public defenders representing condemned inmates in death penalty cases.

Finally, Darby Dickerson is currently the Vice President and Dean at Stetson University College of Law, where she has nurtured highly ranked and well-regarded legal writing and clinical programs. Dean Dickerson served as Director of Legal Research and Writing at Stetson prior to her appointment as Dean, and remains active nationally in the development of the field of legal writing. Dean Dickerson is author of the *ALWD Citation Manual*.

These professors are deeply committed to legal writing teaching and clinical pedagogy and practice and have wisdom born of many years of experience underlying their perceptions, presentations, and the articles being published in *J. ALWD*. Further, they are each uniquely situated not only to speak to their experiences and the past history of legal writing and clinical pedagogy and scholarship, but also to look to the future as well.

In this issue, their papers based upon presentations at the AALS Annual Meeting in 2007 are supplemented by responsive notes by Prof. Tracy Bach of Vermont Law School, Prof. Sarah Ricks of Rutgers School of Law–Camden, and Prof. Susan Wawrose of the University of Dayton School of Law.

Recently, there have been increasing efforts to collaborate in teaching and scholarship between legal writing teachers and clinicians. Occasionally, as in the Maryland program, this collaboration is institutionalized programmatically. Nevertheless, collaboration between legal writing teachers and clinicians remains the exception rather than the rule. Should this be so? Where do we go from here? And how do we get there?