

ABA Task Force on the Future of Legal Education
c/o Art Garwin, Deputy Director
ABA Center for Professional Responsibility
American Bar Association
VIA EMAIL

April 11, 2013

Dear Chief Justice Shepherd and Task Force Committee Members:

Thank you very much for seeking input as you undertake the important work of exploring and making recommendations for the future of legal education. We submit these comments on behalf of the boards and the membership of both the Association of Legal Writing Directors (ALWD) and the Legal Writing Institute (LWI). ALWD is a non-profit professional association of directors and professors 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. The Legal Writing Institute (LWI) is a non-profit organization dedicated to improving legal writing by providing a forum for discussion and scholarship about legal writing, analysis, and research. The Legal Writing Institute has over 2,800 members, includes representatives from 38 different countries, and is the second largest organization of law professors in the United States. Virtually every ALWD member holds a dual membership in LWI, and the two organizations jointly sponsor many ongoing projects designed to improve the quality of legal education. ALWD and LWI members teach not only courses in the first-year curriculum, but also a variety of upper-level legal drafting, advocacy, and casebook courses. In summary, we are a diverse community with a common goal: to improve the quality of legal writing education, research, and scholarship.

Our comments focus in particular on the following themes, ideas, and questions as articulated by the Subcommittee on Delivery and Regulation in its recent invitation to comment:

Theme A: Recognizing Differing Models for Delivery of a Quality J.D. Education

We agree that reasonable minds can differ about the best model for delivering a quality legal education. We presume, however, that all law students expect law schools to provide a curriculum that enables them to prepare for the effective practice of law. Our comments below are based on that presumption.

Theme B: Improving Pedagogy, Curriculum, Assessment, and Preparation for Practice.

ALWD and LWI support continuing efforts to improve pedagogy, curriculum, assessment and preparation for practice. Legal writing faculty have developed a reputation for expertise in these areas, and legal writing professionals have been significant contributors to the growing body of scholarship on teaching and learning in legal education. As recognized in the Carnegie Report, the simulation-based pedagogy of legal writing is a model of experiential learning already taking place in every law school in this country.

Some misapprehend the legal writing course as a course in “plain English” or grammar. Legal writing is not focused on grammar any more than Tax Law is focused on math. Students in the modern legal writing classroom learn to formulate and communicate complex legal analysis directed at solving a client’s problem. Legal writing is a course in applied legal theory that develops skills in analysis, synthesis, higher-order and critical reasoning, research, client engagement, and advocacy. Its faculty keep current with rapid changes in the practice of law, including the dominance of digital and web-based resources for research and the use of electronic means of communicating legal advice. Legal writing faculty review multiple drafts and provide intensive formative feedback to their students. Through this feedback, they can diagnose each student’s strengths and weaknesses and move them along the path from novice to master.

In recent years, critics of legal education have attacked the perceived gap between the skills taught in law school and the skills needed in practice. Much of this criticism stems from the fact that law students spend more time learning about the law in the abstract, and less time applying this knowledge in a practical context. Through legal writing courses, students not only become better communicators and writers, they also apply their legal knowledge to realistic client problems. To be effective, a lawyer’s writing must be useful to a reader; it often helps a reader to decide a legal issue. To complete a legal writing assignment, therefore, students must consider not only the relevant law, but also strategic choices that require them to reflect upon their role as future lawyers. Through this process, students exercise professional judgment and begin to make the choices that lawyers make in practice. It follows that guided legal writing is an important tool for teaching legal novices and building their practice competence.

Legal writing professors thus have much to offer their institutions as these institutions consider more practice-focused curricula. Legal writing faculty can be a major resource in supporting improvements in pedagogy and assessment throughout the curriculum. As one professor recently wrote:

If I were starting a law school, I would hire experienced legal writing and clinical professors as the core tenure-track faculty. At existing schools, I would move as quickly as possible to that structure. Why? The legal writing and clinical professors are the ones who know best how to teach what we claim to teach in law schools: how to think like a lawyer. (Professor Deborah J. Merritt, Law School Café, <http://www.lawschoolcafe.org/thread/core-faculty/> (posted Mar. 25, 2013).

The traditional structure of faculty within law schools, however, has often not provided legal writing professors with the status, job security, and voice in governance consistent with their high value to legal education.¹ This lack of status persists despite recent recognition of the importance of legal writing: it is the only course that the ABA standards mandate be included not only in the first year of

¹ One effect of this has been to develop a “caste” system that more heavily burdens women, who comprise 73% of legal writing professors, Ass’n of Legal Writing Dir. Legal Writing Inst., ALWD/LWI 2012 Survey Report 64 (2012), *available at* <http://www.lwionline.org/uploads/FileUpload/2012Survey.pdf>, but only 38% of tenured and tenure-track faculty overall. AALS Statistical Reports on Law Faculty, *available at* http://www.aals.org/resources_statistical.php; Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 J. ALWD 12 (2002) .

law school, but also in the upper-level curriculum.² Recent years have seen progress in equalizing the status imbalance, and at more law schools, legal writing faculty are fully integrated as faculty members. We urge the task force to recommend that effective models for delivery of legal education recognize the integral role of legal writing professors in the law school faculty.

As the task force considers differing models to provide a quality legal education, it should view with great skepticism alternatives that move away from a full-time faculty dedicated to teaching these critical skills. Using part-time faculty might seem like an easy cost-saving measure, but the result would move legal education in the opposite direction from where most agree it needs to go. We must provide students more contact, rather than less, with faculty who spend sufficient time with them to support their need for focused attention and customized instruction. Unlike many graduate programs, law schools admit students with a range of strengths and weaknesses. Law schools owe all of their students the effective teaching that full-time legal writing faculty are particularly qualified to provide. Legal writing faculty are often former practitioners who have dedicated their professional lives to providing students with well-conceived and highly effective experiential education. The renewal of legal education depends in large part on expanding, instead of limiting, the role of these full-time faculty in both curriculum and governance.

The ability to write tops every list of attributes a legal employer seeks in a recent graduate. Legal writing is not the place to cut corners. While the cost of legal education is a legitimate concern for all, costs should not be reduced by cutting out those aspects of legal education that are most needed to ready students for practice, or by first eliminating unprotected legal writing faculty and programs as a way to cut budgets.

There are many exciting things being done at many law schools to bring theory and practice together and to thoughtfully address the needs of today's law students as they look towards future law practice. Identifying and sharing these approaches is a story that should be celebrated. The further equal integration of legal writing professors into the ranks of legal educators would only further aid the marriage of theory and practice in legal education and the practice of law, to the benefit of all. ALWD and LWI are grateful to participate in the task force's exciting work and appreciate your consideration of our comments and suggestions in our collective endeavor to improve the delivery of legal education and ensure that all law graduates are adequately prepared to competently practice law.

Sincerely,



Anthony Niedwiecki
President, Association of Legal Writing Directors
on behalf of the ALWD
board and membership



Melissa Weresh
President, Legal Writing Institute
on behalf of the LWI
board and membership

² ABA Stand. 302(a)(3).