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Building Bridges: A Call for Greater Collaboration Between Legal Writing and Clinical Professors

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I. Introduction: No More Silos

One job of a dean is to build bridges among constituencies.¹ While many deans today focus their efforts on external constituencies, facilitating connections among faculty groups remains a vital and important function. One challenge when a dean attempts to bring groups together is the “silo mentality” — a mindset in which individuals or groups perceive that, by hoarding information and resources, they will elevate themselves and their positions. My slogan, on the other hand, is “no more silos.” Law schools are educational institutions. For most, our mission is to provide students with an outstanding legal education. To achieve this goal, all groups must share knowledge and information openly and collaborate in ways that will improve the education we offer our students.

Two faculty groups that have much to share are legal writing professors and clinicians. While we have our differences, they pale in comparison to the complementary methods we use and the goals we set for our students. We want our students to understand how to apply the law to real-world situations. We want them to excel in analysis and synthesis. We want them to develop interdisciplinary problem-solving skills and the judgment necessary to represent clients competently. We want them to be professional, ethical, and civil.

With these similarities in mind, below are several thoughts, from a decanal perspective, about how legal writing and clinical faculty might collaborate in ways that will improve students’ educational experiences, advance both fields, and help law schools achieve their important missions. Of course, initiatives that might work well at one school might not fit the dynamics of another. We should, therefore, view these possibilities along a cooperation continuum and select the place on that continuum where our individual schools might start.

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¹ Or, to “crase lines.” See *Erasing Lines: Integrating the Law School Curriculum — Proceedings from the 2001 ALWD Conference*, 1 J. ALWD (Pamela Lysaght, Amy E. Sloan & Bradley G. Clary eds., 2002).

II. Ideas for Collaboration

A. Lead efforts to articulate and assess professional competencies

As institutions, law schools have not been great innovators in defining the professional competencies our students should possess at graduation or developing effective methods to assess whether students have achieved those competencies. Although some have dared to be different, most have been content to use curricula and assessment techniques that date back generations.² And most have been hesitant to define core competencies beyond those identified in the MacCrate Report.

I sense, however, that change is imminent. Our professional and regional accreditors are pushing for outcomes assessment,³ the American Bar Association recently amended Chapter 3 of the Standards for Approval of Law Schools regarding "Program of Legal Education,"⁴ and if U.S. Secretary of Education Margaret Spellings has her way, outcomes and accountability will be the new touchstones in higher education.⁵

As legal educators, we must teach students how to perform. Performance — or competency — requires, among other things, mastery of a specific body of knowledge and the ability to apply that knowledge. It is possible to visualize this concept in terms of a mathematical formula — $P(K, A)$ — in which performance

² E.g. Catherine Carpenter & ABA Sec. Leg. Educ. & Admis. to the B., *A Survey of Law School Curricula, Executive Summary*, <http://www.abanet.org/legaled/publications/curriculumsurvey/executivesummary.pdf> (2004). Recently, Stetson University College of Law published a book on its 106-year history. Michael I. Swygert & W. Gary Vause, *Florida's First Law School: A History of Stetson University College of Law* (Carolina Academic Press 2006). The required curriculum from 1900 would not look terribly foreign to today's law students and faculty. *See id.* at 66–67.

³ E.g. ABA Sec. Leg. Educ. & Admis. to the B., *Report of the Accreditation Policy Task Force*, http://www.abanet.org/legaled/AC%20Task%20Force/cmtetf_20070612134026.pdf (May 29, 2007); U. Va., Institutional Assessment & Studies, *SACS Reaffirmation and Assessment*, <http://www.web.virginia.edu/iaas/assessment/SACS.htm> (accessed July 3, 2007). For additional information on this general topic, see Gregory S. Munro, *Outcomes Assessment for Law Schools* (Inst. for L. Sch. Teaching 2000).

⁴ E.g. Memo. from John A. Sebert, Consultant on Legal Education, to Deans of ABA-Approved Law Schools, University Presidents, Chief Justices of State Supreme Courts, Bar Admission Authorities, Leaders of Organizations Interested in ABA Standards, and Deans of Unapproved Law Schools, *Revisions to ABA Standards 302 and 305* (Aug. 23, 2004), <http://www.abanet.org/legaled/standards/standardsdocuments/memor302and305standards.pdf>; see also Kenneth D. Chestek, *MacCrate (In)action: The Case for Enhancing the Upper-level Writing Requirements in Law Schools*, 78 U. Colo. L. Rev. 115 (2007).

⁵ U.S. Dept. Educ., *Action Plan for Higher Education: Improving Accessibility, Affordability and Accountability* (Sept. 26, 2006), <http://www.ed.gov/about/bdscomm/list/hiedfuture/actionplan-factsheet.pdf>.

is a function of knowledge and ability.⁶

As legal writing and clinical professors, we are ideal candidates to lead the effort to define and assess professional competencies. As a group, we often arrive in academia with significant practical experience, and we tend to maintain strong ties with the bench and bar. We therefore have a keen understanding about what the legal system needs and expects from our recent graduates. In addition, because we usually work with students in individual and small-group settings, we have the privilege of watching students closely as they progress through our programs. This proximity permits us to see clearly their struggles and triumphs, strengths and deficiencies, misunderstandings and misperceptions, reactions to and use of feedback, and, when we're lucky, their transformation from novice to professional.

Legal writing and clinical courses provide natural laboratories to allow students to mix doctrine and skills. They are places where students can experiment with applying legal doctrine to clients' cases and communicating, in writing and orally, about those cases. They are the epitome of P(K, A).

We also have been leaders in innovative teaching and assessment techniques. Sophie Sparrow's work on rubrics⁷ and Mary Beth Beazley's work on integrating legal writing pedagogy into the "casebook" classroom⁸ are just two examples of such innovation from the legal writing field. In addition, leaders in both the legal writing and clinical fields have devoted significant thought and resources to develop best practices for their respective areas.⁹ As such, we have already mastered the types of processes necessary to transform entire curricula — and, eventually, all of legal education.

Articulating and assessing competencies is difficult work. Unfortunately, most law professors and administrators are not trained in education theory or assessment. For this reason, we need to build bridges to individuals and organizations with this type of expertise. But, we also need to place our own skills on the proverbial table. Transformative processes require leaders who can collaborate effectively, build coalitions, be persuasive, and marshal resources. Although we might still lack status at some schools, we are champions of collaboration and advocacy. Over the past ten to fifteen years, we have been

⁶ I want to thank my colleague Peter F. Lake, the Charles A. Dana Chair at Stetson University College of Law, for collaborating in developing this formula and other ideas regarding competencies and assessment.

⁷ Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics — Explicit Grading Criteria*, 2004 Mich. St. L. Rev 1.

⁸ Mary Beth Beazley, *Better Writing, Better Thinking: Using Legal Writing Pedagogy in the "Casebook" Classroom (Without Grading Papers)*, 10 Leg. Writing 23 (2004).

⁹ ABA Sec. Leg. Educ. & Admis. to the B., *Sourcebook on Legal Writing Programs* (Eric B. Easton gen. ed., 2d ed. 2006); Roy Stuckey et al., *Best Practices for Legal Education* (Clin. Leg. Educ. Assn. 2007), http://www.cleaweb.org/documents/Best_Practices_For_Legal_Education_7_x_10_pg_10_pt.pdf.

among the most effective change agents on campus. Because of us, most students learn legal writing in small sections taught by full-time professionals. Because of us, students often receive graded academic credit for legal writing courses. Because of us, all schools offer some type of clinical experience for students. Because of us, students have the opportunity to participate in meaningful interscholastic advocacy competitions. Because of us, students today have more upper-level writing, drafting, and simulation experiences available than ever before.

When approaching a task that seems too large and overwhelming, we must take the advice we offer our students: break the task into discrete elements. One element of reconceptualizing professional competencies is to articulate what skills, or abilities, our students must possess to be effective attorneys, regardless of the specific jobs they accept upon graduation. Two other pieces of advice we often dispense is that change is incremental and that "the power of one" does have meaning. One person, over time, can shift the culture.

I encourage legal writing and clinical professors to work together — both within their institutions and through national organizations — to begin defining the abilities that a student must possess to transition successfully to his or her chosen legal or law-related position. As a guide, we should look not only to the MacCrate Report and the American Bar Association Standards, but also to models outside of our field. Professor Richard Neumann, for example, has encouraged law schools to study how architectural schools teach and evaluate students.¹⁰ Another example is the performance-based assessment program designed by Brown University's Alpert Medical School.¹¹

Brown's competency curriculum was developed in the 1990s and implemented around 2000.¹² As part of the curricular revision, the Brown faculty, deans, and students "set out to paint a portrait of the ideal physician[, and a]fter listing the characteristics of that ideal, . . . delineated the nine abilities expected of all."¹³ The nine abilities are:

- I. **Effective communication:** listens attentively and communicates clearly with patients, families, and the health care team.

¹⁰ *Models from Other Disciplines: What Can We Learn from Them?* 1 J. ALWD 165 (2002); Richard K. Neumann, Jr., *Donald Schon, The Reflective Practitioner and the Comparative Failures of Legal Education*, 6 Clin. L. Rev. 401 (2000).

¹¹ Brown U., Alpert Med. Sch., *MD Curriculum, Performance-Based Assessment*, <http://bms.brown.edu/students/curriculum/index.php> (accessed July 3, 2007).

¹² *Id.*

¹³ *Id.* The new curriculum and approach included the abilities base, a revised mission statement, and a comprehensive knowledge base. The new curriculum is presented in Stephen R. Smith et al., *An Educational Blueprint for the Brown Medical School*, http://biomed.brown.edu/Medicine_Programs/MD2000/Blueprint_for_the_Web_04.pdf (n.d.).

II. Basic clinical skills: obtains an appropriate history and performs a skillful, comprehensive examination in a variety of patient encounters.

III. Using science in the practice of medicine: recognizes and explains health problems based upon current scientific understanding; develops a plan for intervention that utilizes scientific understanding.

IV. Diagnosis, management, and prevention: diagnoses, manages, and presents [sic] the common health problems of individuals, families, and communities in a collaborative relationship.

V. Lifelong learning: is aware of the limits of his/her personal knowledge; actively sets clear learning goals, pursues them and applies the knowledge gained to the professional practice.

VI. Professional development and personal growth: practices medicine with an awareness of his/her strengths and weaknesses; seeks help for difficulties; develops appropriate coping strategies and responds appropriately to constructive criticism.

VII. Social and community contexts of health care: in addressing the broader context of medicine, responds to nonbiological factors that influence health; utilizes community resources to support patients; advocates for better patient and community health.

VIII. Moral reasoning and clinical ethics: recognizes the ethical dimensions of medical practice and health policy; identifies, analyzes, and effectively carries out a course of action that takes account of this ethical complexity.

IX. Problem solving: recognizes problems and takes effective steps in developing a plan of action to address these problems.¹⁴

For each ability category, Brown also developed “a list of specific criteria that the student is expected to master at a certain level of achievement, depending upon the student’s stage of professional development.”¹⁵ The three levels are novice, intermediate student, and advanced student.¹⁶ While all doctors need some level of mastery within each ability, not all doctors need to attain

¹⁴ Brown U., Alpert Med. Sch., *MD Curriculum, Performance-Based Assessment*, <http://bms.brown.edu/students/curriculum/index.php> (accessed July 3, 2007).

¹⁵ Smith et al., *supra* n. 13, at 4.

¹⁶ *Id.*

advanced mastery in each. Accordingly, Brown determined that all students must master all abilities at the intermediate level before graduation. At the advanced level, however, students are expected to demonstrate proficiency in only three or four abilities, based on their own professional goals and interests.¹⁷

Moving from medicine to law, the list of professional abilities might include the following:

- I. Legal analysis and reasoning**, including the abilities to spot legal issues, develop appropriate rule statements, apply facts to the law, engage in analogic reasoning, and draw reasonable conclusions;
- II. Legal and factual research**, including the ability to find and use a wide variety of legal sources in a variety of formats and the ability to investigate facts related to legal assignments;
- III. Problem solving**, including the ability to draw from different legal and nonlegal fields to resolve client problems, to apply legal research to a client's situation, to work effectively in teams, and to cope effectively with ambiguity and change;
- IV. Effective written communication**, including the ability to write and draft effectively for various audiences, including clients, opposing counsel, judges, and the legislature;
- V. Effective oral communication**, including the ability to use verbal and nonverbal skills effectively in a variety of contexts, and to use active and responsive listening skills;
- VI. Ethics and professionalism**, including the ability to take initiative and personal responsibility for performance;
- VII. Client representation and interpersonal skills**, including the ability to interact effectively with clients, to counsel and advise clients, to interact with opposing counsel and judges; this ability also would involve demonstrating strong organizational skills, interpersonal skills, and time management abilities;
- VIII. Service to the profession and community**, including pro bono service and leadership skills; and
- IX. Lifelong learning and personal growth**, including the ability to learn and continue to learn, eagerness for lifelong learning, the ability to identify and address problems — emotional, personal, and health-related — that might affect his or her well-being or professional capabilities, and the ability to accept and respond appropriately to constructive criticism from

¹⁷ *Id.*

clients, colleagues, and supervisors.

Legal writing and clinical faculty play integral roles in teaching and assessing many of these crucial skills. It only makes sense, then, for us to lead the quest to identify the abilities graduates should master, and to determine how their development of those abilities can be effectively assessed. Below are just a few examples of how we might advance these goals:

► The Legal Writing Institute, the Association of Legal Writing Directors, and the Clinical Legal Education Association can collaborate through task forces, joint conferences, Association of American Law Schools (AALS) programs, and other projects to examine issues related to curriculum and assessment reform.

► Clinical and legal writing faculty at individual schools can open a dialogue with each other, and hopefully with “casebook” faculty as well, about the abilities law students should possess at graduation. They also can develop and share assessment techniques, including rubrics, student conferences, peer assessment exercises, and other innovations.

► Clinicians and legal writing faculty can engage curriculum and academic standards committees on the important issues of student competencies. At many schools, recommendations that carry a committee’s imprimatur may survive when recommendations from individual faculty do not.

► Clinical and legal writing faculty can collaborate to develop, implement, and evaluate course materials that concern professional competencies, including syllabi, orientations, and exercises.

► Clinical and legal writing faculty can continue their practice of providing continuous, as opposed to episodic, feedback to students, and can encourage others to follow our lead. When students understand the value of a competency-based program, they will begin to expect and demand it school-wide.

Together, we can make a difference for our students and for legal education.

B. Lead efforts to improve pedagogical cooperation and transform the classroom experience

At many institutions, clinical and legal writing professors work more collaboratively than professors in other disciplines.¹⁸ As such, we are accustomed

¹⁸ Although this point is too important for a mere footnote, I also urge us to work closely

to sharing ideas, triumphs, and failures. Both groups' openness to new and shared ideas can lead to greater cooperation between the two, which, in turn, can yield amazing results for our students. And, in the right climate, we can lead changes across the entire curriculum.¹⁹

On a meta level, it is essential that law schools provide students with an opportunity to learn material at a reasonable pace and, in later semesters, to reinforce and further develop key concepts. The best curricular models begin by offering students a solid foundation in the discipline's core subjects. They end with capstone courses that reinforce key concepts from the core subjects, allow students to gain a deeper and more sophisticated understanding of those subjects and how they relate to each other, and provide students with an opportunity to apply the concepts to "real world" situations. The best curricular models are, therefore, concentric or iterative:²⁰ they provide knowledge about the same subjects at different points in the curriculum, and the knowledge presented in later semesters builds on and reinforces what was taught and learned in earlier semesters. Stated differently, the curriculum is not linear and courses within it are not independent from one other; instead, the curriculum is more circular or spiraled, and courses are, to a significant degree, interrelated. For example, to learn insurance law, students must understand basic concepts from torts, contracts, property, civil procedure, legal drafting, and other topics, and then must advance their knowledge in those areas. Similarly, pretrial practice requires students to use and apply civil or criminal procedure, evidence, legal research and writing skills, and concepts from a variety of doctrinal areas.

At this level, legal writing and clinical faculty can have a significant impact in at least two ways. First, we can work to develop logical linkages between our courses, with first-year legal writing courses providing the foundation and clinical programs providing the capstone. The skills we teach our students are quite similar, and successful clinical experiences often depend on students starting with basic competencies in legal research, analysis, writing, and oral communication. Thus, we can create our own, mini-iterative process that will allow students to acquire and hone skills over the entire J.D. curriculum. Second, as pedagogical innovators, we can join together to teach other faculty about the value of techniques such as simulations and live-client experiences, drafting assignments, and regular feedback that does not restrict time for class preparation, scholarship, or university service.²¹ We can accomplish this goal by offering to guest-teach or team-teach class sessions, co-sponsoring teaching colloquium for full-time and adjunct faculty, and sharing anecdotes with colleagues informally.

with academic support professionals, with whom we also share similar techniques and goals.

¹⁹ E.g. Pamela Lysaght & Cristina D. Lockwood, *Writing-Across-the-Law-School Curriculum: Theoretical Justifications, Curricular Implications*, 2 J. ALWD 73 (2004); Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 Neb. L. Rev. 561 (1997).

²⁰ See William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* 99 (Jossey-Bass 2007).

²¹ E.g. Beazley, *supra* n. 8.

We also can advance this goal by serving as examples through our work with each other. As just one example, when preparing for my presentation on *When Worlds Collide* at the 2007 AALS Annual Meeting, I read Michael A. Millemann and Steven D. Schwinn's article, *Teaching Legal Research and Writing with Actual Legal Work: Extending Clinical Legal Education into the First Year*.²² That article led me to focus on the importance of teaching students that facts in cases are not fixed and unambiguous, but instead are dynamic and open to differing interpretations.²³ It also led me to consider how I might allow my Alternative Dispute Resolution students to experience and learn to respond to this "chaos."²⁴

As a result, my co-teacher, Professor Peter F. Lake, and I developed a case file that we used throughout the semester. Our students, who generally worked in two-person law firms and represented a client played by a first-year law student, used the file to conduct simulated negotiations, mediations, and arbitrations. The dispute involved a female associate and the law firm at which she worked. In a nutshell, the firm deferred the associate's partnership vote, and the associate alleged that the firm discriminated against her based on a recent pregnancy and the fact that she now had family responsibilities. Throughout the semester, we added and changed facts in the problem. For example, a few weeks into the class, we informed the actors playing the associate that she was pregnant with her second child; at the same time, we provided the law firm representative with an unconfirmed rumor about the pregnancy. We also added facts about a newspaper reporter calling to question the firm about allegations of sexual discrimination, confidential documents missing from a partner's office (that were later discovered by the partner in the trunk of her car), and a conversation among partners about the associate's grievance against the firm.

Although the students were at first thrown off balance by this fluidity, they quickly regrouped and learned to be much more careful in their fact gathering and verification. By incorporating this one relatively small change, learned from clinical pedagogy, we greatly improved the students' experience and provided them with a more realistic view of how disputes evolve and how quickly a client's interests and BATNA (the determination of whether there are better alternatives than a negotiated agreement) can change.²⁵ I am positive that with just a bit more dialogue and understanding, other collaborative efforts can yield even more significant innovations.

²²12 Clin. L. Rev. 441 (2006).

²³*Id.* at 445.

²⁴*Id.* at 445-446.

²⁵"BATNA" stands for "best alternative to a negotiated agreement." Roger Fischer et al., *Getting to Yes* 97 (2d ed. 1991).

C. Help students understand the role of law and lawyers in society

It is essential that law schools teach students about the role of law and lawyers in society. Many of our students enter law school without a strong background in history and government, without any information about legal jurisprudence, and with inaccurate presumptions about lawyers' roles in society. Sadly, their views of the law are often shaped by unrealistic television programs and novels. Such lack of understanding — and misunderstanding — inhibits our students' ability to truly master both doctrine and skills.

As legal writing faculty and clinicians, we know that law is messy. Cases are not resolved in an hour, gray predominates over black and white, judgment and discretion can be as important as locating the "case on all fours," and law alone rarely solves any client's problem. We also know that cases don't come in neat boxes labeled "torts," "contracts," and "property," and that the lawyer is not the sole decision-maker.

Because we teach the courses in which doctrine and skills collide, we are in an exceptional position to help students learn not just about legal writing, litigation, or a special area covered by a clinic, but also about what it means to be a lawyer. We can teach them, without interrupting or diminishing our core course goals, the importance of access to justice, acting ethically and treating all people with respect, and serving as a counselor, not just an advocate.

Although clinicians and writing faculty certainly can convey these lessons on their own, if we collaborate, our message becomes stronger and louder. When students hear consistent messages over time, they are more likely to absorb, appreciate, and internalize them.

D. Build bridges to the dean

As a final idea, clinical and writing faculty should consider ways to make deans part of the team — part of the solution. As I noted in the introduction, deans are often looking for ways to build bridges, erase lines, and destroy silos. We seek ways to combine resources in ways that make sense and that will advance our programs and mission. When different groups approach us with conflicting requests, we are put in the position of having to allocate scarce resources among many worthy projects. For this reason, we sometimes have to say "no," when we really would love to say "yes!"

As part of the collaboration between clinicians and writing faculty (and hopefully others), think about ways you can present ideas and initiatives to the dean as a team. Think about creative ways to improve the curriculum and improve the educational experience. Show how some goals might be achieved without expending additional financial resources. Be prepared to show how the initiative benefits the greater law school community and will advance strategic initiatives. Be patient and think long-term; give the dean time to plan and budget for future years.

As just one example, if clinicians and writing faculty at your school wish to collaborate to design a new course or to integrate writing skills into a clinic, or vice versa, consider whether the dean and faculty might be willing to re-designate some scholarship grant funds for a faculty teaching grant that will result not only in a new course or a course redesign, but also a conference presentation or paper. In this scenario, collaboration between legal writing and clinical faculty is enhanced, resources are reallocated but not increased, the school still gains publicity within academia, and our students benefit from a better, more integrated educational experience.

III. Conclusion

As individuals, we often suffer from myopia. We become so focused on our own day-to-day activities that we fail to take time to step back, look around, and see the larger picture. We fail to see how collaboration will benefit our respective fields, our institutions, and our students. Legal writing and clinical professors are natural allies. We must act as such to continue advancing the educational experience and the legal profession.