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Response: "You Can't Please Everyone, So You'd Better Please Yourself": Directing (Or Teaching In) a First-Year Legal Writing Program

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Levine: Response: "You Can't Please Everyone, So You'd Better Please Your

**"YOU CAN'T PLEASE EVERYONE,
SO YOU'D BETTER PLEASE YOURSELF":
DIRECTING (OR TEACHING IN) A
FIRST-YEAR LEGAL WRITING PROGRAM**

JAN M. LEVINE**

This Article grew out of some informal comments to my friend and colleague, Professor Maureen Arrigo-Ward, when she shared with me a draft of her article in this symposium issue.¹ In this Article, I focus on the fundamental, yet often hidden, interrelationships of teacher status, program design, and staffing issues as I review her ideas and suggestions for legal writing directors. The Article will follow the overall organizational scheme of Professor Arrigo-Ward's article in order to facilitate their combined use by the reader.

The title of this Article is worth some explanation. I wanted something that complemented the title of Professor Arrigo-Ward's article, and I decided on some lyrics from a song that is particularly apropos to the situation in which many legal research and writing teachers now find themselves. Rick Nelson began his career in entertainment as the child, both real and fictional, of Ozzie and Harriet Nelson, the prototypical 1950s all-American parents. His ensuing career as a teenage rock-and-roll idol resulted in many top hits. When Nelson grew older, he found that his fans wanted to hear only the old songs, not those he was then writing and singing. "Garden Party" is Nelson's tale about his participation in a concert at New York City's Madison Square Garden, a concert in which his new songs were the subject of derision from his fans, who wanted to hear only the old standards. In "Garden Party," Nelson tells his fans, and all listeners, that he will remain true, not to what he once was and what others wish him to remain, but to what he has become. Directors of legal writing programs must do the same.

* RICK NELSON AND THE STONE CANYON BAND, *Garden Party*, on GARDEN PARTY (MCA Records/Decca 1972).

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1. Maureen Arrigo-Ward, *How to Please Most of the People Most of the Time: Directing (or Teaching in) a First-Year Legal Writing Program*, 29 VAL. U. L. REV. 557 (1995).

I. INTRODUCTION

Professor Arrigo-Ward begins her article with a somewhat pessimistic overview of the state of legal research and writing programs, suggesting that many "still need to grow."² It appears that, at many schools, we are already playing with the big kids, and we should be.³ I recently conducted a survey of tenure-track and tenured legal research and writing teachers at ABA-accredited law schools and found there are now at least thirty-one ABA-accredited law schools where legal research and writing professionals identifying themselves as such at their entry to the academy hold tenured or tenure-track positions. There are probably at least three or more schools where that is true.⁴ That is approximately twenty percent of all ABA-accredited law schools. None of these positions at those schools existed prior to the late 1970s, and most appear to have been created in the past ten or fifteen years.⁵ Furthermore, there are additional schools where directors were granted tenure prior to assuming the directorship, but now sees themselves as a legal research and writing professional and are regarded as such by others within the field.

If you are embarking on a career in teaching legal research and writing, or are going to be directing a program, you are joining a growing and vital community of teachers and scholars. You should be optimistic about your career while being cognizant of the challenges that you will face.

Professor Arrigo-Ward's article certainly serves as a much-needed guide for a new director. She shares with the reader many of the benefits she gained from being "mentored" into her directorship.⁶ I learned much from the skilled legal writing director who first hired me to be an adjunct part-time teacher of legal writing, and learned more from working with co-directors at another school, but there are other sources of knowledge for a new director. In addition to reading texts and the many law review articles about teaching legal research

2. Arrigo-Ward, *supra* note 1, at 557.

3. See J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 66-67 (1994).

4. Jan M. Levine, *Voices in the Wilderness: Tenured and Tenure-Track Directors and Teachers in Legal Research and Writing Programs* (unpublished manuscript on file with the author). An earlier report of the survey was offered as part of a workshop presentation at the 1994 Legal Writing Institute conference.

5. Compare Jill J. Ramsfield & Brien C. Walton, *Survey of Legal Writing Programs* (unpublished manuscript 1992); Jill J. Ramsfield, *Legal Writing in the Twenty-First Century: The First Images*, 1 J. LEGAL WRIT. INST. 123 (1991) [hereinafter Ramsfield, *First Images*]; Anita L. Morse, *Research, Writing, and Advocacy in the Law School Curriculum*, 75 L. LIBR. J. 232 (1982); Marjorie Dick Rombauer, *First-Year Legal Research and Writing: Then and Now*, 25 J. LEGAL EDUC. 538 (1973).

6. Arrigo-Ward, *supra* note 1, at 559.

and legal writing,⁷ a new director should feel free to ask other directors for advice and counsel, by telephone, with electronic mail,⁸ and at face-to-face meetings.⁹

A new director should realize that the faculty and administration at a typical law school are likely to have no consensus opinion about what a legal research and writing program should entail. They may not even understand the difference between a "program" and the separately conceived and virtually autonomous courses they are used to teaching. Academic freedom in law schools is usually far more absolute than that in undergraduate schools or other graduate schools. A law school curriculum, with rare exception, is a political compromise arrived at by equals who wish to preserve their own freedom. The first-year curriculum is often the result of the bloodiest battle in which any faculty might engage, and some coordination of upper-division offerings may occur, but neither part of the law school's overall curriculum approaches the interlocking design and carefully planned pedagogy found in legal writing programs. The most critical externally-set program parameters with which a director must deal are staffing and the mix of credit hours and course grades; they are intimately related to each other and to other facets of program design, but many faculties may not have thought through the relationships at all. If you are a new director, you may have been hired to start up a new program, you

7. For a recent listing of articles, see George D. Gopen & Kary D. Smout, *Legal Writing: A Bibliography*, 1 J. LEG. WRIT. INST. 93 (1991). A new director should be sure to receive: (1) THE SECOND DRAFT, the bulletin of the Legal Writing Institute (contact Professor Jane Kent Gionfriddo at Boston College during 1994-96; thereafter, the Institute itself, at the Seattle University School of Law, can refer you to the current editor and have your name placed on the mailing list); (2) the section newsletter from the Association of American Law Schools; and (3) PERSPECTIVES, a periodical about legal research and writing from West Publishing Company.

Virtually all texts about legal writing or legal research are accompanied by teacher's manuals. One particularly helpful manual written for directors is RICHARD K. NEUMANN, JR., DIRECTOR'S MANUAL for LEGAL REASONING AND LEGAL WRITING: STRUCTURE, STRATEGY, AND STYLE (1990). Professor Neumann's 32-page manual addresses staffing models, course structure, teacher selection, teacher training, and methods of supervising teachers. *Id.*

8. There are electronic "bulletin boards" or "discussion lists" on the Internet, some of which are specifically intended for use by legal writing teachers. LEGWRI-L is a general legal writing list administered by the Chicago-Kent College of Law. To subscribe, send an electronic mail message to <LISTSERV@CHICAGO-KENT.KENTLAW.EDU>; the message should be <SUBSCRIBE LEGWRI-L>. DIRCON95 is a new list administered by the University of Arkansas School of Law to facilitate planning for a conference of legal writing directors in July, 1995. To subscribe, send an electronic mail message to <LISTSERV@LAW.UARK.EDU>; the message should be <SUBSCRIBE DIRCON95>.

9. The Legal Writing Institute holds multi-day national conferences every other summer, usually at the end of July in even-numbered years. The Legal Writing Section of the Association of American Law Schools usually has section meetings every January at the AALS annual meeting. A Director's Retreat is being planned for the summer of 1995. There also may be smaller meetings of schools in a particular geographic area. Information about these conferences is available in the newsletters and electronic mail bulletin boards. See *supra* notes 7 and 8.

may have been hired as the director of an existing program already structured and running, or you may be entering a program experiencing great flux. These are quite different situations, presenting different challenges and calling for different responses. The beginning of your directorship is the time to begin being sure you can "please yourself."

A legal writing program rarely begins from scratch, unless the law school is brand new, offering the new director or teacher the greatest latitude for realizing, with minimal difficulty, his or her vision of what the program should be. Of course, that usually is not the case; but even if it is, that situation calls for a clearly stated vision and an understanding of program design decisions. Such a vision must be shared by the administration and faculty of the law school, and realizable given the financial parameters within which you will operate. It must also in subtle but important ways reflect the mission and character of the institution within which it is housed.

It is far more likely that a new director will be hired to run an existing program, and perhaps to make some minor changes. In such situations, the faculty may be seeking a particular kind of director or teacher, one who is largely willing to subsume his or her own personal vision of a writing program in the existing program. The administration and faculty of such a school may be perfectly content with their present legal writing program and simply want someone to assume what they consider to be the "headaches" of running it. Such a school probably will be seeking someone to fit within the mold created over time by the forces within the institution. It would be wise to find out what those forces are before accepting the job; and it would be wise to determine during the application and interview process whether major or minor changes are expected or even possible. A school seeking to significantly expand or change an existing legal research and writing program may be doing so without any faculty consensus about the direction the program may take, and might be looking for someone to supply the vision; or it might have decided on a specific program in advance and looked for the best person to fit the model.¹⁰ Regardless, an existing program, whether subject to change or not, usually comes with existing staff, and a new director will not have chosen the teachers within the program.¹¹ Also, the incumbent director, if there was one, may

10. Law faculties, during recruitment season, seek to either fill curricular needs or find the most promising scholar regardless of specialty, much as sports teams conducting a draft of college athletes decide whether to expend draft choices on positional needs or on the best possible athletes. Law schools probably continue this pattern when looking for legal research and writing program directors.

11. The new director should understand the school's policies on evaluation, hiring, and reappointment of the program staff, and his or her own role in any existing administrative personnel procedures. There may be no explicit standards for hiring, retention, or promotion; there may be caps on the number of years a legal writing teacher within a program is permitted to remain; and

have been a candidate for the position, and may have departed voluntarily or under a cloud.

Professor Arrigo-Ward begins her article by identifying student frustration and anxiety, as well as hostility from law school administrators and faculty, as the foundation of a director's most significant challenges.¹² She suggests that student anxiety is linked to the early receipt of feedback and grades, and that administrator and faculty hostility may be rooted in student complaints and the dean's and faculty's unease about the resources devoted to legal writing.¹³

A new director or teacher should be aware of the other related reasons for student anxiety and complaints. Students are more likely to complain about female teachers than male teachers,¹⁴ and legal writing teachers may be more likely to be female than male.¹⁵ The feedback to students in legal writing courses certainly is provided earlier than it is in other law school courses, but it is also far more extensive, personal, and troubling, especially if students are unprepared for, or unused to, extensive written criticism.¹⁶ Indeed, the very

the faculty may wish to retain or remove the existing teachers. Existing staff may have played a role in the new director's hiring, or they may not; they may like or fear the new director; they may look upon a new director as a possible savior, or they may resent the director bitterly; or a combination of views might exist.

12. Actually, I would prefer to say "stress-related headaches," but I am trying to strike a positive note here by the use of the term "challenges." Understanding the causes of the inherent problems (sorry, I mean challenges) of one's job is critical, and there is no shortage of challenges for a director.

13. See Arrigo-Ward, *supra* note 1, at 559.

14. See NEUMANN, *supra* note 7, at 29 (citing Sheila Kishler Bennett, *Student Perceptions of and Expectations for Male and Female Instructors: Evidence Relating to the Question of Gender Bias in Teaching Evaluation*, 74 J. EDUC. PSYCH. 170 (1982)). Female law professors have noted the differences in the way their students view them, as contrasted to their male colleagues. See, e.g., Joan M. Krauskopf, *Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools*, 44 J. LEGAL EDUC. 311, 328-33 (1994); K.C. Worden, Note, *A Symposium of Critical Legal Study: Overshooting the Target: A Feminist Deconstruction of Legal Education*, 34 AM. U. L. REV. 1141, 1154 (1985); Elyce H. Zenoff & Kathryn V. Lorio, *What We Know, What We Think We Know, and What We Don't Know About Women Law Professors*, 25 ARIZ. L. REV. 869, 879-81 (1983).

15. Ramsfield, *First Images*, *supra* note 5, at n.57 (finding 61% of schools reporting that more than half of their legal writing professionals were female); see also Sarah Rigdon Bensinger, *The Pink Ghetto of the Law Schools* (Legal Writing Institute conference workshop presentation on work in progress, 1994) (using Association of American Law Schools' data, Professor Bensinger's preliminary results suggest that female teachers are significantly over-represented in the subject area of legal writing).

16. I have taught at three very different law schools and virtually all of my students have remarked that their past papers received nowhere near the amount of teacher commentary as they received under my programs, nor were the comments multi-layered. The only exceptions have been students who previously engaged in detailed analytical projects with multiple rewrites, for demanding teachers; it is not surprising that those students were, from the start, among the finest writers I have taught. Law students at any law school are bright and they have been very successful before; many

idea that students need help with "writing" is likely to be a shock to most and a potential source of resentment. Students are also far more likely to complain about new and low-status members of the academy than they are about tenured senior professors, and the tenured or tenure-track faculty teaching non-legal-writing courses also may convey to students a disdain for the legal writing program and jealousy of the hours spent on such an "unimportant" course.¹⁷

Furthermore, students resent continual demands on their time because the legal writing class is a pedagogic anomaly in the first-year curriculum. The credit hours allocated to legal writing courses may not reflect either the actual or perceived student workload. The course also asks that students be active learners (by researching, writing, and rewriting) instead of mainly passive learners (by reading and listening) for much of the year. Although students are likely to compare the different numbers of cases or casebook pages read in their other courses, or the pace of their other teachers' coverage of materials, those differences tend to balance out over the year in the "substantive" classes, particularly if the law school administration takes those variables into account in assigning teachers.

Grades are also a critical, perhaps *the* critical, factor. Most, but of course not all, first-year law school courses are graded solely by reliance on a lengthy end-of-semester examination.¹⁸ Legal writing programs may have grades attached to assignments throughout the semester, and thereby shoulder the burden of bearing possibly bad news to a significant portion of the student body far earlier than do the other courses in the curriculum. For many bright and previously successful students, a low grade in legal writing may be the first time in many years that they have received a low grade. Even weighted grading¹⁹

have succeeded without much effort and are good enough writers, when compared to the larger pool from which they come, to have garnered good grades in writing without much feedback or effort.

17. Imagine, if you will, what your faculty colleagues' reaction would be if one of their own said to students, for example, that "Contracts is unimportant and a total waste of your time." Collegiality among peers prevents such statements. It is not hard to imagine what would happen if a legal writing teacher said something similar to students about a course taught by a tenured faculty member. Legal writing courses and teachers are often the target of explicit or implicit faculty disdain or disparagement, and students adopt such attitudes as institutionally correct.

18. See Philip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433 (1989).

19. Weighted grading would assign less importance to earlier assignments than later ones when calculating a final grade. See Rideout & Ramsfield, *supra* note 3, at 90-92; NEUMANN, *supra* note 7, at 4-5, nn.2-3. My career as a legal writing teacher began when I was an adjunct for two years in a program requiring weighted numerical grades for each and every assignment. I found that students who did well on early assignments had a disincentive to improve or to invest significant energy in the final major project because they were already guaranteed a good grade. Students who did poorly on early assignments became resentful, overly anxious, and often depressed as the semester proceeded, because they saw their final grades as being limited by their early failures, regardless of how much they improved over the semester. Pass-fail programs may be a response

is not an ideal solution, because it does not do away with the anomalous pattern of giving students grades during the semester.

My solution to the grading dilemma is to grade only the final project, but to provide intensive individual feedback to the students on all earlier projects. For example, our first-year course requires the students to research three fact scenarios and prepare three memoranda over the fall semester. Depending on the particular year's syllabi, one, two, or all of those papers have been rewritten after the students received intensive written feedback and attended individual conferences. I expect the students to make errors, but will not penalize them for doing so unless they are repeated on the final project.²⁰

Complaints from the faculty and administration about the legal research and writing program are rooted in the costs of any good program.²¹ It has been suggested that the Langdellian model of law school staffing and teaching, comprised of the case method and large-group Socratic dialogue, has been successful because it provided an economic solution to the law school's problems within the academy, not because it was pedagogically superior. It was cheaper. It allowed small numbers of highly paid teachers to process large numbers of students with minimal expense.²² The teaching of legal research and writing uses many of the techniques of the displaced and disfavored apprenticeship

to such a problem, but having also taught for six years in a pass-fail program, I would never suggest that as a solution unless all courses are so graded, and unless the school wanted to consciously limit the students' interest and effort. The legal research and writing course I taught at Virginia was graded pass-fail, with "C" level work required to pass. Under that scheme, only the finest students, who enjoyed writing or the course for their own sakes, could look beyond the immediacy of the semester to their long-term best interests, and invest significant time and energy in the course. Unless a student was struggling, the goal became figuring out how to invest the minimal effort to obtain a passing grade.

20. Because of the relatively small number of students in each section, the early, intensive, repeated, but ungraded individual contact between student and teacher allows for maximizing the positive factors in learning, while minimizing the negative factors associated with grades. Making mistakes is expected, and students are allowed to rewrite a project until they achieve sufficient mastery to proceed to the next one. Past errors do not limit final performance, unless they are repeated. Students who try to get around the system and work hard on only the final project have to contend with personalized and individual attention to their effort levels, and are told that they will not be able to make up for earlier failures to invest time and energy without seriously hurting their performance in other courses (and they will not do as well in legal writing anyway).

21. See, e.g., Ramsfield, *First Images*, *supra* note 5, at 125 ("Historically, the driving force in creating [legal research and writing] programs has been to find the cheapest, not the best, structure and method.")

22. See John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157, 160-62 (1993); see generally ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850s TO THE 1980s* (1983). The responsibility for the failure of legal research training has also, quite persuasively, been laid at the feet of Langdell. See Thomas A. Woxland, *Why Can't Johnny Research? or It All Started with Christopher Columbus Langdell*, 81 L. LIBR. J. 451 (1989).

model of reading the law with an individual mentor. Good legal research and writing programs are expensive in terms of staff costs, and there are always competing demands from other constituencies within the law school, particularly for "spending" faculty positions on teachers of "substantive" courses.²³

While Professor Arrigo-Ward correctly attributes the importance of program personnel to the success of a legal writing program,²⁴ success may be more fundamentally a function of the law school's faculty and administration believing in the importance and value of the program and conveying those positive beliefs to the students.²⁵ The institutional climate is critical, and it is the fundamental prerequisite for success of even a well-staffed, well-conceived, and fully-funded program. Professor Arrigo-Ward points to her school's tradition of support for its legal writing program, founded on a now fifteen-year-old article about the California Western program,²⁶ and it is likely that the faculty's support of the program over those fifteen years is one of the primary reasons the program is successful.

II. DESIGNING THE PROGRAM

Professor Arrigo-Ward begins her discussion of program design assuming that a legal writing program requires a certain level of uniformity and consistency among the teachers and the various sections of the course.²⁷ Although I agree wholeheartedly with her, this is an issue worthy of some extended discussion because such uniformity and the concomitant sacrifice of a degree of individual academic freedom is unique within most law schools, where usually there are no other "programs." This issue involves complex and interrelated compromises about staffing, pedagogy, and workload for teachers and students.

It is unlikely that many law teachers would propose that their colleagues,

23. Faculty may fear dilution of their votes if "too many" skills teachers are able to influence the school's direction, or they may simply not wish to spend the resources on something perceived as so different from their own courses and teaching. It is notable that reviews of possible models for legal writing program design often focus on relative costs to the faculty and suggest compromises based on preservation of traditional faculty roles and teaching styles. Design choices such as LL.M. or fellowship programs are often rationalized by claiming that they give prospective law teachers an introduction to "real" teaching. See, e.g., Allen Boyer, *Legal Writing Programs Reviewed: Merits, Flaws, Costs, and Essentials*, 62 CHI.-KENT L. REV. 23, 33-35, 50-51 (1985).

24. Arrigo-Ward, *supra* note 1, at 560.

25. It is, unfortunately, more likely that the reader is aware of the harmful effects of the statements of professors who disparage their school's legal writing programs and legal writing teachers. See, e.g., Rideout & Ramsfield, *supra* note 3, at 47-48.

26. Arrigo-Ward, *supra* note 1, at 561 n.15 (citing Peter W. Gross, *California Western Law School's First-Year Course in Legal Skills*, 44 ALB. L. REV. 369 (1980)).

27. Arrigo-Ward, *supra* note 1, at 561.

or the dean of the school, would have the power to dictate course content, coverage, teaching style, or books for a contracts or torts class. Other than legal writing programs, law schools do not have analogues of departments within colleges, where departmental chairpersons might have some authority to set semi-uniform standards for basic introductory courses, such as English Composition or Introductory Algebra. Other than the listing of a few course prerequisites, informal discussions of course coverage, and the perennial debates about which courses to teach in the first year, most law school faculties zealously preserve each professor's right to determine the content and teaching style of his or her own courses. Legal writing courses, and legal writing programs are, however, seen as "different."²⁸ The questions are whether there are legitimate reasons for the difference, and whether the determination of content and style is to come from the director or from outside the program. The answers are found between the lines of Professor Arrigo-Ward's article, and are rooted in resources, teacher status, professional longevity, and the difficulties of teaching legal research and writing. Not all of the answers are comfortable ones for legal writing professionals.

Professor Arrigo-Ward's program has had as many as six teachers teaching fifteen sections of the basic legal research and writing course;²⁹ my own program has five teachers for five sections. Unless a program seeks to seriously overload legal writing teachers (or extend their reach by using teaching assistants to assume a large part of the burden of individualized review of papers, which creates other problems) there will be far more sections of legal research and writing than there are of any other course in the school. The sheer number of bodies required to teach any legal writing course, even fairly well, pushes schools to make compromises in teacher salary, and thereby status. The resulting underclass is heavily worked and underpaid, and an easy, yet troubling and self-justifying answer to forestall rising discontent is to limit the time the members of the underclass may remain.³⁰ Student teaching assistants and graduate law students automatically depart after a year or two, but post-graduate teachers respond to the disincentives built into the position and leave even if not required to do so, unless they cannot afford to leave or truly enjoy what they are doing despite the low salary and high workload. The built-in rapid turnover of staff justifies a centrally-directed program that can survive the constant change

28. This past semester, one of my non-legal-writing colleagues, in a faculty legal writing committee meeting, stated that he was troubled by the committee's very existence. He asked why we had a legal writing committee when we did not have a torts committee or a contracts committee. I took it as an example of an unusually enlightened view of the issues.

29. Arrigo-Ward, *supra* note 1, at 561.

30. This compromise in pedagogy based on resources is not new. See Rombauer, *supra* note 5, at 539-40 (finding the compromise inherent in the seminal legal writing program described in Harry Kalven, Jr., *Law School Training in Research and Exposition: The University of Chicago Program*, 1 J. LEGAL EDUC. 107 (1948)).

of teachers.

One obvious problem for legal research and writing program directors is how to attract and retain excellent legal writing teachers, and keep them happy and productive, despite the resource and status-deprived environment in which they operate. Professor Arrigo-Ward focuses extensively on recruiting and training the right kinds of teachers for a legal writing program.³¹ It is not likely that any other teachers in the law school academy consider providing new teachers with such intensive training and it is not likely that any other group of law school academicians spend so much of their year hiring and training new teachers (not even clinicians, who rely largely on a new teacher's practice experience to provide that basic level of competency).

Recent surveys and articles have revealed that experienced legal writing teachers arrive at similar pedagogical conclusions about review of papers,³² conduct of conferences, and other teaching techniques. Those lessons are often incorporated in program and curricular design by experienced directors who cannot afford to let a constantly changing group of inexperienced teachers learn the same complex pedagogic lessons by trial and error.³³ The existence of a "program" provides a standardized context that ameliorates both the differences among multiple sections and student discontent with the anomalous pedagogy itself.

The need for a program or a director might be reduced if a law school was willing to grant tenure status to a group of legal writing professionals, and if those teachers were rewarded for remaining committed to teaching legal writing. It is possible that the group of professional high-status legal writing teachers would thereby create formal or informal mechanisms to promote some level of uniformity. Such programs, however, require long-term investments by schools in faculty positions devoted to legal writing, investments that most are not willing to make. If the teachers are not dedicated legal writing professionals, who are given all the academic incentives to continue teaching legal writing, it is doubtful schools can maintain such diffused programs over the long haul because the teachers' professional focus will shift to the "substantive" part of their teaching and scholarship, and student and faculty discontent with the

31. See generally Arrigo-Ward, *supra* note 1. See also Rideout & Ramsfield, *supra* note 3, at 88-90.

32. See, e.g., Anne Enquist, *More Than Surviving Grading Papers: Insights From Experienced Legal Writing Teachers* (1994) (unpublished manuscript on file with the *Valparaiso University Law Review*) (workshop presentation at 1994 Legal Writing Institute conference).

33. This control results in both perceived and real sacrifices in the academic freedom of those teaching legal writing. Those sacrifices, when joined with the second-class status of the teachers of legal writing, may form a dangerous positive feedback loop for resentment and disharmony.

resulting disintegration and lack of uniformity of the writing courses is likely to force a shift to another model of teaching legal writing.³⁴

Professor Arrigo-Ward's description of the California Western program and syllabus is an excellent example of a well-conceived, centrally-directed program.³⁵ New directors should realize, however, that program design variables and pedagogic strategies must be identified and prioritized before developing a legal writing curriculum and course syllabus, and that the end result often is a compromise that fits the available resources and pedagogic priorities. Prior to designing a program, a director³⁶ needs to consider at least six general issues and the interrelationships of the choices to be made about each. I will explain the six issues and my own preferences for addressing them as examples of the kind of design decisions in which a director must engage.³⁷

The first issue to be addressed is what mechanisms are available for recognizing student workload and measuring performance, such as the number of semesters for the program, the available credit hours for the courses, and the type of grading scheme to be employed. I believe that a legal writing program must, at a minimum, be two to three semesters long, and five to seven credits must be awarded for the students' year-long work. Ideally it should begin in the first semester of the first-year, and it should be graded.

The second issue is the relationship of the course with other concurrently

34. Marjorie Dick Rombauer, *Regular Faculty Staffing For an Expanded First-Year Research and Writing Course: A Post Mortem*, 44 ALB. L. REV. 392 (1982).

35. My own program, which I would like to think is well-designed, is described in detail in JAN M. LEVINE, *Introduction to ANALYTICAL ASSIGNMENTS FOR INTEGRATING LEGAL RESEARCH AND WRITING 1-11* (1994) [hereinafter LEVINE, *ANALYTICAL ASSIGNMENTS*].

36. I assume that the director will be designing the program, but I realize that all too often the program will be designed by others: the faculty at large, a faculty committee, or the administration. Programs designed by faculty committees often do not reflect expertise in teaching legal research and writing because the committee usually is composed of people who have never taught the course and who have faulty assumptions from their dim recollections of their own student experiences in a first-year legal writing course. Courses designed by a committee are not the product of expertise; they are the result of compromise by faculty members who simply do not have the required expertise. Most of us have probably heard in faculty meetings, many times, the refrain that begins "I do not know much about that, but it seems to me" Somehow, the one topic every law professor and dean seems to have an opinion about is how to structure a legal writing program, even if they have no direct experience in teaching legal writing and directing a program.

37. Of course, not all legal writing teachers share my assumptions, and not all teachers have control over some of the variables at the heart of my assumptions. For example, I have been fortunate enough at three schools to have been able to teach research as part of my course, and to integrate research with writing. At other schools, there may be barriers to such integration, such as a legal bibliography course taught by a librarian who is unwilling to relinquish control over the teaching of research or unwilling to merge the two topics into an integrated progression of assignments.

offered first-year courses. In my opinion, first-year legal research and writing courses are most successful when they stand alone, without formally required connections to other courses, unless the entire first-year curriculum is designed coherently with interlocking courses in a manner that does not diminish the stature of the legal writing course by making it an appendage of another "substantive" course.

The third issue is the determination of the status and number of people staffing the program (full-time or part-time teachers, students, or a mixture), and the number of students enrolled in the entering class. I believe that legal research and writing is best taught by full-time professional teachers. The teachers should have significant experience in law practice, and the course should be taught in small groups of twelve to thirty students per teacher, using a tutorial or seminar model.

The next issue to be explored is the relative focus within the course on analysis, research, and writing (whether these three components are to be separated or integrated).³⁸ I believe that first-year legal research and writing courses should focus on teaching the fundamentals of analysis in the context of research and writing. Legal research is best taught when integrated wholly with legal writing, as interconnected parts of legal discourse and analysis; all student writing assignments should be research-based.³⁹ Assignments over the year must be created with a view to increasing difficulty, increasing ambivalence in the answers, and ever-greater sophistication of analysis, in an upward-spiraling recursive pattern, requiring practice of prior skills along with the acquisition of

38. The debate about the merits of the "process" and "bibliographic" approaches to teaching legal research has been rather heated at times. See Christopher G. Wren & Jill Robinson Wren, *The Teaching of Legal Research*, 80 L. LIBR. J. 7 (1988); Robert C. Berring & Kathleen Vanden Heuvel, *Legal Research: Should Students Learn It or Wing It?*, 81 L. LIBR. J. 431 (1989); Christopher G. Wren & Jill Robinson Wren, *Reviving Legal Research: A Reply to Berring and Vanden Heuvel*, 82 L. LIBR. J. 463 (1990); Robert C. Berring & Kathleen Vanden Heuvel, *Legal Research: A Final Response*, 82 L. LIBR. J. 495 (1990). Others have addressed these issues in a somewhat more concise manner. See, e.g., Rombauer, *supra* note 5, at 539-42; see also Arrigo-Ward, *supra* note 1, at 576 n.52.

39. Unlike Professor Arrigo-Ward, see Arrigo-Ward, *supra* note 1, at 563 n.22, I do not believe that "closed-universe" assignments are all that fruitful. Although I have used closed universe assignments in the past, I have found that my students learned far more about research, and the complex interrelationship of research, analysis, and writing, when they had to perform all three component tasks for every assignment and problem provided to them. The primary benefits of closed-universe assignments are that the teacher has an easier time controlling tangential issues (because the students simply have no way of answering them, although they may still see them) and that larger numbers of students can be assigned the same problem. Some programs may, unfortunately, require closed-universe problems because of the sheer number of students involved or the lack of support for teachers to develop sufficient research-based writing assignments for the students.

new skills.

The fifth issue to be addressed focuses on the goals the writing assignments will address (balancing writing concerns about form, structure, process, and context);⁴⁰ followed by decisions about how writing assignments will be reviewed (specifically, the frequency of review, the amount of commentary, whether conferences will be used, and whether rewrites will be required). My position is that legal writing is best taught by focusing on process and context, not on formalistic concerns, and should include discussions and drafts or outlines in the prewriting phase, and multi-layered commentary and feedback from the teacher on a draft, followed by multiple supervised rewrites.

The final issue involves choosing among the available published texts, considering their fit with the other aspects of the course, the course's costs to students (texts, photocopying, computer hardware and software), and the availability of in-house supplementary materials. My belief is that required texts should address the writing process and research strategy.⁴¹ Supplemental texts, such as a style manual and in-house materials, are essential.

Obviously, my ideal course requires a large number of teachers who are able to devote much time to their students. For example, an experienced legal writing teacher who has spent one to one-and-one-half hours reading each of thirty-two student memoranda has already invested thirty-two to forty-eight hours in that task.⁴² Half-hour conferences with the students adds another sixteen hours. Requiring review and return of the papers to students prior to conferences calls for a two-week work period for a full-time teacher, who can probably only survive four afternoon conferences in a row before his or her brain turns into mush (a result made more likely because he or she spent that morning and the prior evening reviewing papers). Add the subsequent time spent reviewing the rewritten papers, the simultaneous task of keeping the

40. See Rideout & Ramsfield, *supra* note 3, at 48-61.

41. See Arrigo-Ward, *supra* note 1, at 563 n.27 and accompanying text. I have used seven different writing texts over my career; I now use RICHARD K. NEUMANN, JR., *LEGAL REASONING AND LEGAL WRITING: STRUCTURE, STRATEGY, AND STYLE* (2d ed. 1994). My consistent choice for a research text has been CHRISTOPHER G. WREN & JILL R. WREN, *THE LEGAL RESEARCH MANUAL: A GAME PLAN FOR LEGAL RESEARCH AND ANALYSIS* (2d ed. 1986). I supplement the texts with a style manual, MARY BARNARD RAY & JILL RAMSFIELD, *LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN* (2d ed. 1993), and the ubiquitous *THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION* (15th ed. 1991). The students receive supplemental in-house course materials, including assignments from LEVINE, *ANALYTICAL ASSIGNMENTS*, *supra* note 35.

42. This does not take into account page length of the assignment because I based the example on my own workload. I spend about the same time on a student's first six-page memorandum as on the (hopefully) better and more sophisticated eighteen-page memo at the end of the semester, but I have become fairly efficient at the task over the past eleven years.

students busy on other projects during the two weeks of conferences (but not interfering unduly with the courses offered by your colleagues), the earlier hours spent teaching the problem, and the hours spent before the semester even began developing the problem, and it is clear that the number of times the pattern for this one assignment can be repeated depends greatly on the hours the teacher is able to commit to the tasks.

Part-time teachers, whether they are adjuncts or students, simply do not have sufficient time available for detailed review of long student papers and for conducting lengthy individual conferences at the appropriate level of professionalism, particularly if the pattern is repeated several times during the semester. It could not easily be implemented, or repeated, with teaching assistants or part-time adjuncts, unless I would hire a large number of them and keep the student-faculty ratio very low, which increases the difficulties of maintaining uniformity among sections and the difficulties of supervising and evaluating the teachers. That brings us to the next issue identified by Professor Arrigo-Ward: staffing.

III. STAFFING THE PROGRAM

Professor Arrigo-Ward asserts that the ideal situation for a director of a centrally-run program is to have a "large amount of input concerning program staffing," and she talks about developing a "feel" for the "department's" needs.⁴³ I certainly agree. However, I do not think that is an adequate statement of the ramifications on the process of a director's decisions about hiring, firing, and reappointment of what, for a lack of a better word, I will call "staff."

The naked term "staff" implies that the others teaching within the program have a status that perhaps differs from that of the director who supervises them. The term certainly suggests that the teachers are different from the rest of the faculty (who would blanch at referring to themselves as "staff"). The director will, in all likelihood, regardless of his or her own status,⁴⁴ be held responsible for the actions of the "staff" teaching within the program, and if you are a director, you should strive to have the power to make the decisions about appointing teachers for whom you will ultimately be held responsible. If the director is on a tenure-track but is not yet tenured, then in all likelihood the director's administrative decisions, including those regarding hiring, firing, and reappointment, will be a factor in the decisions of the faculty and administration

43. Arrigo-Ward, *supra* note 1, at 564.

44. The status of the director is the single most important decision the school makes in program design, and many schools are now giving legal writing directors tenure-track or tenured status. See *infra* text accompanying notes 4-5.

about the director's tenure.

The initial hiring process should reflect the status of the people being hired. Professor Arrigo-Ward focuses on the process used at California Western for hiring full-time staff; I will address the process for such people, but I also will address the somewhat different factors that might be involved in hiring teachers of other statuses. Let us begin with the rare program having tenure-track faculty teaching legal writing, and a tenured or tenure-track director exercising some oversight for the program. A tenured or tenure-track director arguably should have a central role in faculty decisions about appointing other teachers within the program by, at least, having a seat on the faculty appointments committee, or even by being the chair of the relevant subcommittees.⁴⁵ The director in such a situation should hope that the faculty and dean would hear his or her voice as a crucial, if not *the* critical voice in such decisions.

Depending upon the length of contractual appointments for legal writing teachers (or for you as a new teacher or director), the process established (or the one you push for if you are a candidate) might look very much like the one used by the faculty for tenure-track candidates. If a faculty workshop or presentation is required of "regular" candidates, then one should be required for legal writing teachers who are seeking long-term contracts. The topic could be legal writing or something "substantive," but the rite of passage should be similar. If the school permits only short-term contracts for legal writing teachers, then the presentation might not be appropriate. Regardless, the arrangements for the candidate's travel and time spent while visiting the school should be as similar as possible to those made for "regular" candidates. The way a school treats candidates for legal writing positions, of any status, reflects the way the person will be viewed after hiring.⁴⁶

The law school, or the university or college, may have formal rules about appointment, reappointment, supervisory review, and peer review for non-tenure-track, full-time instructional staff. It is possible that in the past the dean may have exercised full authority of appointment, with little or no input from the faculty or legal writing program staff. The director must be aware of those

45. If tenured, the director would be on the promotion and tenure committee (or an analogue) composed of the tenured faculty.

46. When I was interviewing for positions, it was painfully clear to me how different schools viewed the directorship, regardless of how the status was formally denominated. If my travel arrangements were made without my input, or even not fully reimbursed, and if I was not scheduled to meet the dean, the librarian, or the faculty members as a group, or even shown the law school, then it was clear to me what the future held if I accepted an offer to teach at that school.

Sadly, this kind of treatment of legal writing candidates is all too common. One candidate for an instructor position with my program told me recently that we had treated her better in the interview process than had other schools interviewing her to be a director.

external rules and past practices and develop some internal formal or informal program policies and procedures. The law school may already have procedures for other-status professionals, such as clinic staff attorneys or librarians, which may serve as helpful models for comparison (it is also possible that those models may pose a distinct problem for you).

Professor Arrigo-Ward discusses the California Western short-term contract hiring process and suggests that the director avoid making all initial hiring decisions alone,⁴⁷ but it may be advisable for the director to strive to be the ultimate decision-maker on initial contractual appointments, even though the dean may have the actual power of appointment and input from faculty may be helpful. The director is going to have to work with the legal writing teachers in the program and will be responsible for them and their operation in the director's program. Thus, great deference should be given to the director's opinion. Professor Arrigo-Ward is correct when she suggests that the faculty and administration of law schools reflexively apply the standards normally used for "regular" tenure-track appointments to hiring legal writing teachers, and that such candidates may be temperamentally or intellectually unsuited to teach legal writing.⁴⁸ I would try to avoid the problem by limiting the role of the faculty to interviewing candidates which you (perhaps with the dean's help) have selected.⁴⁹

If the school permits long-term contracts for outstanding legal research and writing teachers, perhaps after an initial short-term appointment, then increased faculty involvement in those reappointment and promotion decisions would be appropriate based on the greater institutional commitment to the teacher, and the faculty role may be modeled on something similar to the school's processes for promotion of tenure-track and tenured faculty. However, decisions to not reappoint a teacher should not be reviewed by the faculty because allowing such appeals would ultimately, albeit indirectly, remove all of the director's authority within the program.

A school's decision to advertise nationally, regionally, or locally is often linked to the school's ambitions for the program and sense of the school's mission, and the time in which non-tenure-track legal writing teachers may

47. Arrigo-Ward, *supra* note 1, at 565.

48. *Id.*

49. "Faculty" includes the librarians of the law school. Ask the librarians to give a tour of their facility to the candidates, and include them in the rounds of interviews and meals. Not only does that give you a valuable source of information about the research sophistication of the candidates, but it also helps the librarians to feel a part of the process of hiring the teachers with whom they will be working closely.

At many schools, it may even be difficult to get faculty to meet any legal writing candidates, particularly if the year involves other appointments activity.

remain in the position. As Professor Arrigo-Ward notes,⁵⁰ national recruitment efforts will be expensive for the school and the successful candidate, and program administrators need to consider whether the non-local candidate will be able to recoup his or her financial and emotional expenses of relocation over the possible term of appointment. Non-local candidates who are married, who have children, or who own homes may require the program to offer job security ranging from three to five years or more.

A program may use practicing lawyers as adjunct legal writing teachers, or it may use LL.M. candidates to teach legal writing. Both situations present special challenges for a director. A school using adjuncts as instructors probably has a far larger number of legal writing teachers to hire than if the program used full-time staff, in part because adjuncts are able to devote far less time to the program. Given the large number of adjuncts, and the typical yearly turnover, decisions in such situations may largely be delegated to the director. Decanal or faculty involvement, particularly with the interview process, is likely to be minimal at best. The director should, however, be wary of the unusual variations in the adjunct hiring process. I have heard directors describe deans who hired adjuncts to reward individual or law firm contributions to the law school, legal writing appointments that were structured as family "packages" for recruitment of tenure-track or tenured faculty members, and deans who made all decisions about hiring and left the director to make the decisions about firing.

Part-time teaching by LL.M. candidates presents another set of concerns. Many schools use LL.M. students to teach legal research and writing because it is less expensive than hiring full-time teachers, the pool of talent (particularly at high-ranking schools) is seen as intellectually impressive, and the staff turnover is guaranteed. A candidate for a directorship at such a school should determine if he or she will have any role in the admission decisions about candidates for the LL.M. program, and would probably be well advised to seek the power to veto candidates who would be unsuited to teach legal research and writing. A program using LL.M. candidates to teach legal research and writing has set up a series of potential conflicts, and the director should make every effort to avoid, or clarify the resolution of, those conflicts. The graduate students are going to be taking courses for an advanced degree and must satisfy the faculty members supervising their coursework. The graduate students are going to be seeking employment for the next year, they have research interests which call for scholarly writing of their own, and their overall progress is overseen by the faculty director of the LL.M. program. Teaching within the school's legal research and writing program presents a very special set of demands on the teacher's time and is likely, except in rare cases, to be placed

50. Arrigo-Ward. *supra* note 1, at 565.

low on the teacher's list of priorities.

Several articles have been written about using student teaching assistants (TAs) for legal writing programs,⁵¹ and I used TAs myself for six years at the University of Virginia School of Law. Hiring decisions about such students should be made by the director alone, perhaps with input from current TAs, especially from the TA for a particular candidate. In addition to looking at the same factors considered when hiring professionals to teach, the focus for TAs should be on the candidate's own performance in legal writing (not on overall performance in law school); the candidate's demonstrated competence on reviewing and editing a poorly-written student paper (as Professor Arrigo-Ward suggests for full-time professional teacher candidates);⁵² and the candidate's interest in, and commitment to, the job (he or she should be a zealot about the program).

Professor Arrigo-Ward discusses her "full disclosure policy," which she uses for hiring teachers on short-term contracts.⁵³ I agree with her reasoning and practice. However, I would mail that information, and full descriptions of the program and position, only to candidates who survived an initial screening.⁵⁴ My initial screening begins with a careful review of the applicant's cover letter and the associated materials. I do not rely too much on stellar law school credentials without factoring in the reputation of the school.⁵⁵

51. See, e.g., Julie M. Cheslik, *Teaching Assistants: A Study of Their Use in Law School Research and Writing Programs*, 44 J. LEGAL EDUC. 394 (1994); Ruth C. Vance, *The Use of Teaching Assistants in the Legal Writing Course*, PERSPECTIVES, Aug. 1992, at 4-5; Boyer, *supra* note 23, at 35-46 (summarizing several articles about programs across the country).

52. Arrigo-Ward, *supra* note 1, at 568.

53. Her description of the demands of the position is quite accurate. See Arrigo-Ward, *supra* note 1, at 566. I would also send candidates a copy of the entire issue of THE SECOND DRAFT, March 1994, which contains twenty-three teachers' answers to the question: "What advice would I give if my best friend wanted to become a teacher of Legal Research and Writing?" See THE SECOND DRAFT, *supra* note 7.

54. This assumes the full-time teacher, or the part-time adjunct. In a program using LL.M. candidates, such information should be made available to people seeking entry to the program, and again, perhaps in more detail, to those who have been accepted into the program but not yet enrolled. Student TAs would learn of the workload from their own TA, and you can make sure of that by having current TAs talk to candidates before they have applied; generally, I found, the finest candidates for TA positions idolized their own TAs, and asked them all about the demands of the position.

55. I am not suggesting that you dispense wholly with review of academic performance, but you should remember that you are not likely to be hiring teachers for tenured positions involving scholarly production. Law students (or law professors) who did well in school without struggling at all often have a difficult time understanding how anyone could have difficulty with legal analysis or legal writing. See Rideout & Ramsfield, *supra* note 3, at 40 n.16. Someone who experienced problems in the beginning of law school, but ultimately did well, may be better suited to the tasks of teaching legal writing; and the teacher's post-graduate experience, talent, and especially

The cover letter usually reveals critical details about the candidate's writing abilities and motivation for applying,⁵⁶ and I look favorably on applications that show, in the letter and resume, anything about prior teaching experience or anything involving counseling or mentoring functions.

If the application materials reveal qualities necessary for a good legal writing teacher, then I will place telephone calls to several references, and if those are positive, I will call the candidate. I tell the candidate that I am conducting preliminary telephone interviews and that I plan to invite some of the candidates to town for a visit and formal interview. I ask candidates open-ended questions about things often not revealed in the letter and application materials, but which are central to the position.⁵⁷ My questions are directed towards career goals, the demands of the position, the differences between the unfettered academic freedom of a "regular" teaching appointment and one teaching within a legal writing program, and the motives for seeking this particular position at our school.⁵⁸

If the telephone conversation goes well, I send the candidate a packet of information about the program, school, and town. During the next week or two, I contact other candidates and their references, review writing samples,⁵⁹ and recontact those candidates for whom an interview seems appropriate; people I decide not to bring to town receive a call or letter declining to proceed further. A candidate may also experience second thoughts after our conversation and review of the information packet.

I support Professor Arrigo-Ward's use of a sample paper for candidates to

motivation to teach legal writing, may far outweigh a few more high grades that could be many years in the past. Generally, I believe that candidates in the top one third of an excellent law school merit serious consideration, although I might discount that even further given significant and impressive post-graduate experience and professional success.

56. The letter is often prepared by a candidate who knows only what the advertisement states, although a seriously interested candidate might call the director to find out more about the program prior to application. The cover letter might reveal that the author has not tailored the letter to the particular position (or even worse, it might have nothing at all to do with a position teaching legal writing), it might reveal the applicant's own agenda in seeking an appointment at your school, and it will certainly demonstrate the writer's skill at crafting a letter.

57. Professor Neumann also suggests preliminary telephone interviews. NEUMANN, *supra* note 7, at 9-10.

58. In these telephone conversations, a director might discover that the candidate desires a one-year appointment while he or she writes articles to improve his or her chances of a "real" teaching job, or believes that all legal writing teachers are really working part-time regardless of the job description, or believes it is a good opportunity to meet people to date. A candidate may be fleeing a current job with no idea of what is involved with any of the alternative positions for which he or she has applied (or even where your state may be found on a map of the United States).

59. I must admit, however, that I do not place much faith in writing samples that have been edited to an unknown degree for publication.

critique,⁶⁰ although I would dispense with it if the candidate could provide me with a sample of similar work done in another legal writing program. I do not employ Professor Arrigo-Ward's suggested "mock student interview" technique.⁶¹ Instead, I address the same goals by ensuring that every candidate is interviewed by law students, often from my own section of the course. Students almost instinctively know what to ask, and what to look for, to learn about character and commitment, and an interview with students provides the candidate with another avenue of information about the program, the director, and the student body. It also bolsters the students' positive views of the program if they are involved in hiring the teachers.

IV. MANAGING THE PROGRAM

I am very comfortable with the centralized control of the writing program that Professor Arrigo-Ward describes.⁶² Many directors may not feel as "directive," however, and it is probably helpful to explain to them, and to new directors, as well as to the staff of centrally-directed programs, why many directors run programs with that kind of uniformity and control.

This Article has already pointed out several of the reasons for sacrificing the academic freedom of those teaching within legal writing programs. The director is likely to be the only person within the program who has any measure of job security, and the faculty and dean are likely to hold the director responsible for what goes on in the entire program. Because the director is the one who will remain after current staff have departed, particularly in a program with caps on contract duration, the director's vision of the program and the courses is the one that will endure. The director is likely to have more teaching experience than the other staff in the program, and has probably already made the mistakes that newer staff are likely to make; it would be natural to want to avoid repetition of past errors on a programmatic level.

Such centralized direction calls for the teachers within the program to "buy into" the director's vision of the program (in fact, they must accept the notion

60. At Virginia, when I selected between nine and 12 TAs every year, this type of exercise was critical to my evaluation of the candidates. An excellent candidate mirrored the style and techniques of the already-experienced TA who had reviewed the candidate's work during the year, and if I chose those students who already knew how to critique papers because it had been done so well on their own papers, it minimized the need for me to engage in any formal TA training during the year. When reviewing such tryouts, a director should look for technical proficiency and prioritization of comments within an overall hierarchy of concerns, but focus on the tone of the comments. Supportive comments, communicated clearly and positively, are the hallmark of a natural teacher of legal research and writing.

61. See Arrigo-Ward, *supra* note 1, at 570.

62. *Id.* at 571-73.

of a program at the most fundamental level), and to sacrifice their own freedom to determine their courses' content. This necessary sacrifice must be made by the group as a whole, and if the sacrifice is not made, or made grudgingly, then the probability of dissension within the program is heightened.⁶³ A more "collegial" model of program design is possible, particularly when the program has existed in staff-stable form for a long time, but the two models cannot easily coexist, especially in a new program. A wise director would be sure to have the faculty and dean endorse the director's choice between the two models, and all hiring and reappointment decisions should be made with the model clearly stated, whether evidenced in written form or provided verbally to those seeking to join the program. This is something that every new director should address, especially if the director's vision of the program, and his or her role, differs at all from what has existed at the school in the past.⁶⁴ If, in the past, the teachers in a legal writing program had more freedom than the new director believes is wise, and perhaps also had fewer responsibilities, then it will be very difficult to change those teachers' habits and approaches to achieve the kind of teaching you want within the new program.

The director should also be aware of the overall faculty policies and practices regarding grading, office hours, and related items. For example, it may not be politically wise to institute required office hours for the "junior" legal writing faculty if the faculty as a whole believes that office hours are up to the discretion of the individual faculty member. Similarly, implementation of program-wide grading policies might be affected by the existence or absence of any institutional grading policies.

One of the most important methods of setting programmatic norms for teachers and students is the creation of in-house course materials which are uniform for the entire first-year class. Our materials are photocopied and punched for a three-ring binder; they contain lists of the required texts, the section schedules, faculty offices and telephone numbers, an introductory statement about the program, extensive rules about preparing assignments, a detailed syllabus of readings and assignments, citation exercises, and several sample memoranda.⁶⁵ Each section's assignments may be inserted in a part of

63. The cooperative attitude of legal writing programs at many law schools may be indirectly related to the large numbers of women teaching within legal writing programs. The notion of self-sacrifice for the collective good, a view of the legal writing program as a cooperative melange of the people teaching within it, may be a view that women are more willing to take than are men.

64. A new director must have explicit discussions regarding this topic with the dean, and should determine if hiring decisions about new staff and reappointment of existing staff can be postponed until the director has accepted the position and clarified his or her views of the roles of the staff and director.

65. The fall 1994 materials for our course are available on the University of Arkansas web server at URL <http://law.uark.edu/arklaw/levine>.

the looseleaf binder, and further supplemental materials may be kept in the course materials as well. The course rules address plagiarism, library etiquette, grading, and deadlines. The course materials, particularly the detailed syllabus, also serve as an implied agreement by which the legal research and writing program faculty set uniform deadlines for student work, timetables for return of papers, and uniform grading policies. Providing detailed and lengthy material of this nature at the start of the course sends a powerful signal to the students, and to the rest of law school's faculty, about the direction of the program itself and the amount of work that goes into the teachers' planning of the course. It might be helpful to share the materials with the faculty teaching the first-year students. In particular, distributing the syllabus to your colleagues who do not teach legal writing alerts them, far in advance, to the peaks and valleys of student work during the semester.

Staff training programs of the depth and duration of the one used at California Western imply that the contracts of the teachers require that they be in residence for the two or more weeks that such a program will entail.⁶⁶ Mailing articles and other written materials to incoming staff, and asking them to review the material and prepare course-related items prior to arrival, simply does not stand much chance of success. Similarly, if the legal writing teachers are required to produce assignments or other materials for review by the director before the semester or prior to distribution to students, then all of the involved parties must clearly understand the need for advance preparation and submission of that work for review. Although legal writing teachers may be on standard nine-month academic year contracts along with the "regular" tenure-track faculty, they may not want to be responsible for engaging in all of this work when they are receiving relatively low salaries and are not eligible for supporting summer grants,⁶⁷ and they may not realize that the workload during the year will prevent them from working on subsequent assignments (or from working on much else).

Options for addressing these problems include specific provisions in the teachers' contracts, contracts extended beyond nine months,⁶⁸ and summer

66. See Arrigo-Ward, *supra* note 1, at 573-95. The need for training programs, and their successes, have prompted many other legal writing teachers to describe their programs in great detail. See, e.g., NEUMANN, *supra* note 7, at 12-22; Donald S. Cohen, *Ensuring An Effective Instructor-Taught Writing and Advocacy Program: How to Teach the Teachers*, 29 J. LEGAL EDUC. 593 (1978).

67. You may even have a new teacher tell you that he or she is not getting paid to do any work until the semester begins.

68. The traditional period for most law faculty appointments is nine months. At many schools, particularly those giving faculty summer research grants, a tenure-track teacher will devote at least part of the three remaining months to scholarly pursuits; the normative expectations are that a teacher will be prepared, regardless of how the summer is spent, to teach his or her courses once

grants to support course material development.⁶⁹ If these items are not addressed, especially if the teachers are not interested in professional development as teachers of legal writing, then the teachers may expect the director to prepare the course for them, or may simply do a poor job of learning from the director how to be a good legal writing teacher. Training programs also require the director's time. If a director is not on a twelve-month contract, training sessions directly compete with the director's own course development work or scholarship, and the director's own appointment contract or summer grants should provide recognition of, and compensation for, the added work of "teaching the teachers."

Professor Arrigo-Ward discusses extensively how to teach legal writing teachers about their primary modes of teaching: the review and critique of student papers,⁷⁰ how to conduct conferences, and how to grade papers.⁷¹ I have only a bit to add to her discussion of comments and conferences, and I will then explain why I differ with her on the merits of the "checklist" grading style versus "holistic" grading.

Especially when a teacher is new, the director must review a sample of the teacher's papers on an ongoing basis, but particularly during the beginning of the semester. The best way to help a new teacher is to look at a sample of the teacher's work while the teacher is still reviewing papers, before any have been returned to the students.⁷² Doing so gives the director the opportunity to see

the academic year begins. By contrast, non-tenure-track legal writing teachers, who often do not have either the salary support or normative expectations of tenure-track faculty, may believe that they have no programmatic responsibilities after their courses have ended and their papers are graded. This anomalous pattern, coupled with the greater demands on legal writing teachers to develop new assignments and teach what are, in effect, substantively new courses every year, is one that must be addressed by the director and the dean.

69. This would be particularly important if the program relies heavily on large numbers of assignments simultaneously addressing legal research and writing; the integrated model that I use in my own program, for example, requires that several months of the summer be invested in refining old assignments and developing new ones.

70. See Arrigo-Ward, *supra* note 1, at 578-82. The importance of the quality of the teacher's review of student papers is recognized by most experienced legal writing teachers. Professor Enquist surveyed 34 of the most experienced legal writing teachers in the country, who averaged 10.6 years of experience. Twenty-seven of the respondents considered written comments to be of "utmost importance." Professor Enquist asked the respondents to rank 10 activities that a legal writing teacher would do as part of his or her job, and commenting on papers was ranked first 11 times. Designing assignments came in first nine times, teaching class came in first four times, and preparing for class came in first twice. Enquist, *supra* note 32. For an exhaustive ground-breaking study of how legal writing teachers actually review and grade student memoranda, see Hunter M. Breland & Frederick M. Hart, *Defining Legal Writing: An Empirical Analysis of the Legal Memorandum* (Law Sch. Adm. Council Res. Rep. 93-06, 1994).

71. Arrigo-Ward, *supra* note 1, at 582-85.

72. NEUMANN, *supra* note 7, at 25.

if the teacher is following the director's suggestions, and allows for correction before things become too seriously skewed. Remember to maintain a file of the teacher's work for your year-end review and evaluation. Teachers should also be cautioned to tell their students, repeatedly, that the written review of their papers is not all-inclusive; the students should not believe that if they fix all of the items prompting comments that they will have written perfect papers. The director also may ask to review generalized comment sheets prior to distribution; and should share his or her own supplemental materials with the other teachers as models. Finally, because review of papers is the most significant component of teaching in legal writing courses, the director should incorporate his or her oversight of a teacher's review of student papers into the reappointment evaluation of the teacher.

The director also should establish firm guidelines for the timing and location of any scheduled meetings a legal writing teacher holds with students. In order to protect staff and students⁷³ and minimize the possibility of problems related to sexual harassment, conferences should be conducted in the law school building or another public site, and they should be held during regular business hours or when other professors are present in close proximity.⁷⁴ The director should also discuss with staff the wisdom of having doors open or closed during those conferences.

Legal writing programs that schedule early individual conferences with students about the first writing project, and repeat that several times during the semester, provide the best way to insure that the students and teachers have a good semester and that the program is viewed positively by the students. A legal writing teacher provides detailed and often painful individual feedback to students, and a significant but indirect part of the teacher's job involves counseling of students.⁷⁵ Scheduling the teacher to meet with the students as soon as possible during the fall semester provides a mechanism for stressing the

73. Legal writing teachers may be more likely to be involved in such problems as a victim, or as a victimizer, because they tend to be unmarried and relatively young (they may be students themselves, or recent graduates), they often have relatively low status in the academy (and see themselves, or are seen by their students, as not that much different from the students), and the teaching techniques of legal writing courses provide many opportunities for individual contact with students (for both good and ill).

74. For example, it would not be wise to invite students to your home for individual conferences late at night. Nor would it be wise to conduct scheduled conferences over a few beers in a local pub.

75. Arrigo-Ward, *supra* note 1, at 592-94. For these reasons, legal writing teachers must establish a good relationship with the school's dean of students. The continual deadlines for work in legal writing classes, and the high degree of personal contact with students, often make the legal writing teacher the first member of the law school faculty or administration to notice that a student is experiencing some personal or emotional problem and might benefit from the attention of a professional counselor.

supportive and helpful role of the legal writing teacher, emphasizes the teacher's human qualities, and sadly, often provides a stark contrast with the rest of the faculty. It allows the students to see through the criticism and perceive the help being offered, and it allows the teacher to get to know the students. Once that happens, the relationship can only improve; delaying the meeting reduces the depth of the relationship and limits what can be accomplished by student and teacher during the course.

A new legal writing teacher, when reviewing papers and meeting with students in conferences, may not understand why a student does not perform well on written assignments, particularly if the teacher does not recall how very difficult the skills are that the students must master. A new teacher often assumes that the student simply did not work very hard, or was not bright, and may send the message to the student directly or between the lines. A teacher should never assume a student is lacking in intelligence or not working hard enough; even if one or both is true, writing problems also may be rooted in inexperience, depression or fear (both common to law students), substance abuse, problems with time management, or learning disabilities. The teacher may also be at fault. Running through the litany of possible problems during a conference, especially when a student's tears and frustration are evident, may prompt a student to identify the root cause of his or her difficulties. For example, I might tell a student that he is obviously intelligent and worked hard on the assignment, but that something is not allowing his full potential to be realized, and ask if there is something that is interfering with his performance. Often the student who has not invested sufficient time in the assignment will then sheepishly admit to writing the paper at the last minute; if so, the admission by the student allows for a better relationship between student and teacher than if the teacher accused the student of being a laggard.

Grades have already been identified as a factor in student discontent.⁷⁶ Professor Arrigo-Ward's use of a legal writing program curve to normalize grades is consistent with the centralized nature of her program,⁷⁷ and mine as well. The director also may wish to review sample papers from each teacher at several grade points as a further method of "quality control" and teacher evaluation. Professor Arrigo-Ward does not, however, discuss so-called "blind" versus identified grading, a subject which is worth discussion. At most law schools, the first-year courses other than legal research and writing are likely to be graded "blindly," without the professor knowing the identities of the students until perhaps the final step in the process. Legal writing programs often differ, largely because the preferred pedagogy (which calls for repeated individualized

76. See *supra* section II.

77. Arrigo-Ward, *supra* note 1, at 582-84.

attention to student papers, follow-up conferences, and rewrites) makes it easy for a teacher to identify many individual students from their writing styles. It is difficult to provide individual feedback to anonymous students. Programs that institute blind grading of all papers must sacrifice the amount and nature of teacher feedback to students in order to assuage the students' unfounded paranoia and distrust of the faculty.

I avoid this problem in part by not grading the early assignments;⁷⁸ and I have for several years not graded blindly at all, even on the final graded project, preferring to review a student's full draft of the final graded project and hold a conference to go over my comments before a final rewrite is submitted and graded. This year, however, our program changed the pattern and did not require full drafts of the final project; the students submitted only outlines or a few pages of a narrative draft prior to a conference, and the final paper will be graded blindly.⁷⁹

Unlike Professor Arrigo-Ward,⁸⁰ I grade "holistically," based on the overall quality of the paper. I might use a general checklist to guide my detailed commentary on each paper, but I do not quantify performance on different items of a student's paper. I have tried the checklist approach and found that I spent far too much time changing my checklist criteria and the relative weight of each criterion to fit with my overall assessment of the students' papers. Holistic grading is easier for an experienced teacher. I suggest that new teachers use a checklist for their own guidance but not provide the completed checklist to the students. The checklist can serve as a guide for the teacher to write a narrative summary of why the grade was assigned; doing so permits more freedom for the teacher, and tends to forestall student comparisons and complaints,⁸¹ something that all directors wish to avoid.

Professor Arrigo-Ward briefly addresses student complaints.⁸² It is

78. See *supra* section I.

79. I still suspect, however, that I will be able to identify many student authors from the style, writing problems, and even the physical characteristics of the papers themselves, such as printer font styles. This experiment has also required that I sacrifice, on the altar of fairness to the collective, a good deal of much-needed guidance for the most needy writers. I fear that the poorest writers will suffer from the lack of assistance when grades are awarded.

80. Arrigo-Ward, *supra* note 1, at 583-84.

81. Regardless of the grading style used, I think it critical for legal writing teachers to have prepared, in advance of the students' work, a model or sample answer, for example, a memorandum answering the problem. Teaching without a model is like taking a random drive in the country; you can easily become lost. Good teaching requires that the teacher know exactly what he or she is looking for, and how to get there. The teacher's models can be supplied, in whole or in part, to the students after they have completed their own memos, often accompanied by the finest student papers, so they see what the teacher was looking for.

82. Arrigo-Ward, *supra* note 1, at 594-95.

important for the director to create a formal written statement about how student complaints about teachers are to be handled. Our policy, given to the students in their course materials, asks that the student first bring the complaint to the attention of the teacher, and then to the director if it is not resolved. Students may feel uncomfortable about complaining to the person they perceive as the cause of the problem, but any system that encourages them to first go to the teacher's supervisor will undercut the teacher's apparent authority. If students are unwilling or afraid to see the teacher first, one must assume that they will go to the director or dean.

The director and dean should agree that the dean will send any student with complaints immediately to the director (you do not want to be undercut either). The director can then hear enough of the student's complaint to determine if the student should be sent to the teacher, or if there is indeed something serious enough, or with sufficient conflict involved, such that the director must deal with it in conjunction with the teacher or alone (at least initially). As a director, you must finely balance the need to be supportive of your program's staff with the awareness that all might not be fine in paradise. You, as director, must follow through with any complaints, by talking immediately with the teacher, even if it is just to inform the teacher that you were approached by a student whom you then referred to the teacher. Of course, this balance must be adjusted to account for the status and experience differences among student TAs, adjuncts, full-time non-tenure-track instructors, and tenure-track or tenured teachers.

As Professor Arrigo-Ward points out, the director of the program must champion the program and those teaching within it.⁸³ A director must work with the dean and key members of the faculty to address what one of my colleagues has termed "gratuitous insults" from the administration and faculty. There are many ways in which a law school's administration and faculty further demean legal writing teachers, beyond the basic inequalities of salary and status.⁸⁴ Most of those problems are rather easily remedied, and often require only the exercise of basic civility and politeness among the members of the law school academy.

83. Arrigo-Ward, *supra* note 1, at 591-92.

84. The list of such consciously and subconsciously derived insults towards legal writing teachers is voluminous. Here are some examples: titling them as different from the rest of the faculty for no institutionally sound reason (even forbidding students to call them "professors"), not mentioning legal writing teachers in the law school catalog (or omitting their photographs or educational achievements), putting colored dots next to their names on the mailboxes (or giving them a collective mailbox), not inviting them to faculty meetings or social functions, failing to squarely address whether they can vote at faculty meetings, housing them in the basement or in shared offices, failing to provide computers or access to electronic mail, and not putting their names in the AALS DIRECTORY OF LAW TEACHERS.

The director must assume that the legal writing teachers in the program want to become better teachers. When evaluating their performance, target those areas of teaching other than classroom teaching that are particularly important to teaching legal writing: their evaluation of student papers, their conduct during conferences, and their preparation of student assignments. Create detailed student evaluation forms that reflect these variables and that clarify, for the legal writing teachers, the rest of the faculty, and the students, just what is important in teaching legal research and writing.⁸⁵

V. STRESS MANAGEMENT

Directing a legal writing program certainly is a stressful occupation. There are several items to add to Professor Arrigo-Ward's prescriptions for stress

85. Our students now complete a supplemental teacher evaluation form, which is distributed along with the standard teacher evaluation form that focuses on classroom performance. The students are asked to rank their teacher on a scale from one to five, with one being "strongly disagree" and five being "strongly agree." After each category, room is provided for written comments. The questions are:

I. EVALUATING PAPERS

1. My professor's written comments on my work were clear and understandable.
2. My professor provided sufficiently detailed written feedback on my papers.
3. My professor's written review of my papers was provided to me in a timely manner.
4. My professor's written feedback helped me to improve my writing.
5. My professor's written feedback helped me to improve my choice and use of authority.

II. INDIVIDUAL CONFERENCES AND MEETINGS

1. My scheduled conferences with my professor were helpful to me in improving my writing and analytical skills.
2. My professor was accessible to me outside of class, and I was able to ask questions and seek advice beyond the times regularly scheduled for conferences.
3. My professor's individual discussions with me helped me improve my research skills.
4. I was happy with the timing of my professor's review of my papers when considered in conjunction with the conferences.

III. ASSIGNMENTS

1. The research components of the assignments helped improve my research skills.
2. The writing components of the assignments helped improve my writing skills.
3. The research and writing assignments helped improve my analytical skills.
4. The research and writing assignments were challenging.
5. The research and writing assignments were interesting.
6. The research and writing assignments were thoughtfully planned.
7. The progression of assignments allowed me to practice skills already acquired and to learn new skills.

IV. OVERALL INSTRUCTION

1. The assignments and classes were well integrated.
2. Classroom attendance was valuable for understanding the subject matter.
3. My professor had high standards for my work and the course was demanding.
4. My professor was prepared for class and exhibited command of the material.
5. The in-class discussion of research skills was helpful.
6. The in-class discussion of writing techniques was helpful.

management.⁸⁶ Some of the most important items must be addressed before you accept a director's position; after all, you will be in the best position to negotiate with the dean and faculty prior to accepting an offer. Before accepting a director's position, you should squarely address teaching load, administrative support, related problem areas, and whether you can teach courses other than legal writing.⁸⁷ You should have written evidence of the agreements. If you believe that the legal research and writing program needs revision, try to deal with it immediately.⁸⁸ Doing something impressive and badly needed before you arrive, or during the "honeymoon" period,⁸⁹ will likely impress the faculty and will allow you to start to "please yourself."

Once you become a director, talk with other directors; share your problems (and solutions) with them and listen to their solutions (and problems). Find those members of your faculty who can listen sympathetically and provide you with some insights and solutions (hopefully, one of those listeners will be the dean).⁹⁰ Research the history of the law school's treatment of the legal research and writing program and determine why things are the way they are; go through old files, talk with former legal writing teachers and with senior members of the faculty, and learn from the mistakes of the past. Develop short and long-range plans for reform or change of the program, and for your own career. Having those goals in mind, and working towards achieving them, will help you put each little problem in perspective. Delegate responsibility for some parts of the program to others, whether they be other legal writing teachers, an administrative or student assistant, or a committee.

86. *Id.*

87. Teaching a so-called "substantive" course may help boost your status in the law school among the students and faculty, and if not done as an overload, will help improve your own self-esteem.

88. After all, if you are going to have to revise the program, why not do it right away? If you do so, you will not have to prepare to teach courses to fit a program that you soon will be discarding.

89. For example, at two schools, I put in place something neither had before: a formal program inviting thousands of alumni to participate as judges of the first-year class' oral arguments in the moot court component of the course. (Of course, I made sure I was guaranteed sufficient resources to deal with the added administrative responsibilities of running such a program). This change released the faculty from judging the arguments, helped with alumni relations, gave the students an added incentive to do a good job on their briefs and arguments, landed a few students jobs, and boosted the school's experience base for competing in external moot court competitions. A "no-lose" deal for everyone involved.

90. The director must forge a good working relationship with the dean of the school. After all, you are a member of his or her administrative team, and you will often need the dean's active assistance to achieve significant reforms of the program and to nurture a supportive institutional view of the legal research and writing program. The school's librarian is also a key ally to be courted; remember that you are training students to use a resource that the librarians nurture and care about deeply.

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Perhaps the best way to deal with stress is to remember that you are a legal writing *professional*. My desktop dictionary offers several definitions for "profession," ranging from "the act of openly declaring or publicly claiming a belief, faith, or opinion" to "a calling requiring specialized knowledge and often long and intensive academic preparation."⁹¹ The religious and secular definitions touch on the same core meaning. Few colleagues will share your profession, the teaching of legal writing, and fewer will know about your calling. Far more will have their own expectations for you, and many will try to force you to fit their perceptions of your proper role. Remember, through it all, to remain true to your calling, to what you are and what you have become. Remember, above all else, that "you'd better please yourself."

91. WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 939 (1986).